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SCSL-04-14-T
(18714 - 18719)

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**SPECIAL COURT FOR SIERRA LEONE
Trial Chamber 1**

Before: Justice Bankole Thompson, Presiding
Justice Pierre Boutet,
Justice Benjamin Mutanga Itoe

Registrar: Mr. Lovemore G. Munlo, SC

Date: 3rd July, 2006

PROSECUTOR

Against

**Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa**

Case No. SCSL-04-14-T

Public

**APPLICATION BY FIRST ACCUSED FOR LEAVE TO FILE
INTERLOCUTORY APPEAL AGAINST THE DECISION ON FIRST ACCUSED
URGENT MOTION FOR EXTENSION OF TIME TO SUBMIT DOCUMENTS
PURSUANT TO RULE 92BIS**

Office of the Prosecutor:

Mr Christopher Staker
James Johnson
Joseph Kamara

For Samuel Hinga Norman

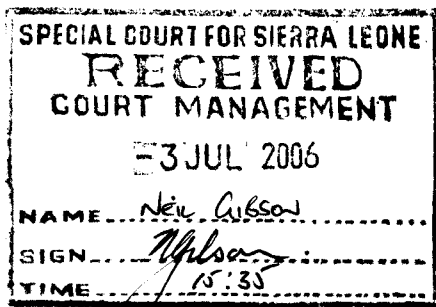
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Alusine Sani Sesay

For Moinina Fofana:

Michiel Pestman
Arrow J. Bockarie
Victor Koppe

For Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana
Susan Wright.



Introduction

1. Pursuant to Rule 73(B) of the Rules of Procedure and Evidence, Court Appointed Counsel for the First Accused hereby file this Application for leave to Appeal against the Decision of the First Accused Urgent Motion for Extension of Time to Comply with Order Contained in “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session”¹.
2. Further pursuant to Rule 6(b) of the Practice Direction for Certain Appeals Before the Special Court, on the 16th of June 2006, Court Appointed Counsel for the First Accused filed a Motion requesting the Trial Chamber to grant an extension of time to submit documents pursuant to Rule 92bis of the Rules of Procedure and Evidence no later than the 16th of June 2006 at 4.00pm
3. The submissions of the First Accused were to the effect that the Defence is requesting the Court to extend the deadline for complying with its Order contained in its Decision in order to enable the Defence sufficient time to file a complete submission of documents pursuant to Rule 92bis. While the Defence has been compiling the documents, there are a number of key documents that we have been attempting to obtain but have yet not been able to do so². Also the Defence submitted that, these documents as with all other evidence must be submitted into the Court before the closing of the Defence case. However, the Trial Chamber in its Decision noted that the Defence shall close its case in September 2006.³ The Defence also notes that Rule 92bis does not contain a specific time frame that the documents have to be submitted, other than the notice period and timeframes for objection.⁴ Counsel further requested the Trial Chamber to grant an extension of time until July 14th 2006.⁵
4. On the 29th of June 2006, the Trial Chamber issued its Decision on First Accused Urgent Motion for Extension of Time to Submit the Documents Pursuant to Rule 92bis. In its Decision the Trial Chamber ruled that, although Rule 92bis of the Rules does not explicitly provide for a time to file the documents intended to be admitted through this rule, The Chamber has power to impose such time restrictions bearing in mind the provision of Rule 26bis that a trial, must be fair and expeditious and the overall interest of justice.⁶ The Chamber further ruled that, in imposing the deadline of the 16th of June 2006 for Counsel for Norman to submit the documents pursuant to Rule 92, The Chamber took into consideration various factors, namely that Counsel for Norman have had sufficient time to properly conduct their investigations and

¹ SCSL-04-14-T-622: The Prosecutor v. Norman et al, Motion for Extension of Time

² Ibid, para. 4

³ Ibid, para 5

⁴ Ibid, para 6

⁵ Ibid, para 7

⁶ SCSL-04-14-T-642: Decision on First Accused Urgent Motion for Extension of Time to Submit Documents Pursuant Rule 92bis

collect evidence, that The Chamber has, as early as on the 21st of October 2005, ordered Counsel for Norman to give “an indication of weather the witness will testify in person or pursuant to Rule 92bis, and thereafter had encourage Counsel for Norman to use the procedure of Rule 92bis, that on the 25th of May 2006, for the first time, as a response to The Chamber’s inquiry, Counsel for Norman informed the Court that they intended to file the documents pursuant to Rule 92bis, that The Chamber thereafter had instructed Counsel for Norman to do so by the 30th of May 2006 or as soon as possible, which Counsel for Norman failed to do, and finally that The Chamber had already granted Counsel for Norman multiple adjournments and extension of time, especially in respect of witness J.A. Carpenter.⁷

5. The Chamber concluded by stating that in the present circumstances there do not exist good and sufficient cause or exceptional circumstances to grant an extension of time to submit documents pursuant to Rule 92bis of the Rules.⁸

SUBMISSIONS

Reasons for seeking leave

6. The standard for leave to appeal at an interlocutory stage is set high by Rule 73(B), which restricts such leave to “exceptional circumstances” and “irreparable prejudice” may otherwise be suffered. The Appeals Chamber stated, that test is not satisfied merely by the fact that there has been a dissenting opinion on the matter in the Trial Chamber, or that the issue strikes the Trial Chamber Judges as interesting or important for the development of international Law⁹. Counsel for the Accused submit that the entire range of issues, the law and procedures and the requirements for the extension of time, The Trial Chamber’s interpretation of Rule 92bis violate the fair trial rights of the Accused, do admit of “exceptional circumstances” and “irreparable prejudice” to the First Accused so as to warrant the Trial Chamber, to grant leave to appeal, to consider the important issues therein and to rule on them finally in the interest of the integrity of the entire process to avoid irreparable prejudice to the First Accused.
7. Counsel for the First Accused consider it as an exceptional circumstance that although the Rules do not explicitly provide for a time limit to file the documents intended to be admitted through Rule 92bis, The Chamber has impose such time limit restrictions bearing in mind the provision of Rule 26bis that a trial must be fair and expeditious and the overall interests of justice. The question must always be whether a particular interpretation is appropriate under

⁷ Ibid, page 18694

⁸ Ibid, page 18695

⁹ SCSL-04-14-T-397, The Prosecutor v. Normal et al, Decision on Amendment of the Consolidated indictment, para 43

the rules and practices of this court. In the ICTY case of Halilovic¹⁰, the Trial Chamber granted the Defence further leave to file a Rule 98bis application.

8. The Trial Chamber's interpretation of Rules 26bis, 54, 73, 90(F) of the Rules is at variance with the construction of Rule 92bis and Rule 7bis which violates the fair trial rights of the First Accused and the quest for the truth. As Justice Thompson opined, in this quest of the truth, The Trial Chamber should be guided by the principle that it is of paramount importance for the Chamber to continue to be flexible in the process of receptivity of evidence, as it had been in the case for the Prosecution, so as to ensure that no relevant evidence vital to the discovery of the truth is foreclosed by reason of legal technicalities, novel artificial judicial conceptual distinctions, or outmoded juridical doctrines not contemplated by the plain and ordinary meaning of the applicable statutory provisions and rules.¹¹
9. Counsel further submit that depriving the first Accused the opportunity of filing a 92bis application will admit of both exceptional circumstances and irreparable prejudice to the case for the First Accused. The documents to be tendered by Counsel for the First Accused are very important for the case of the First Accused and will cause irreparable prejudice to the case of the First Accused. More so as the prospective defence witness J. A. Carpenter will no longer be testifying as a witness for the First Accused.
10. The questions and issues mooted in the foregoing paragraphs hereof are among the issues and questions that are intended to form the basis of grounds of Appeal to be filed by the First Accused if granted the requested leave . Counsel for the First Accused, submit that these and other issues and questions to be raised in the appeal are crucial and important questions of fact, law and procedure which go to the very root and of the integrity of the entire trial process.
11. The Appeals Chamber will authoritatively state whether in the present circumstances, the Chamber has power to impose such time restrictions bearing in mind the provision of Rule 26bis especially where Rule 92bis is silent and the defence of the First Accused has not yet to closed its case

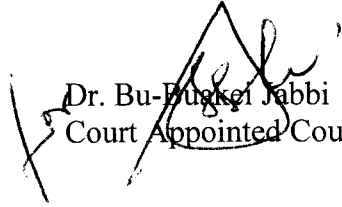
CONCLUSION

12. On the basis of the foregoing and for the reasons and considerations therein, the First Accused hereby applies for leave pursuant to Rule 73(B), and accordingly

¹⁰ Case No. IT-01-48-T: Prosecutor v. Sefer Halilovic, Decision on Further Defence Rule 92bis Motion.

¹¹ SCSL-04-14-T-617: The Prosecutor v. Norman et al; Dissenting Opinion of Justice Thompson on the Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H.E Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone.

respectfully urges the Trial Chamber to grant him, leave to make an interlocutory appeal against the Trial Chamber's Decision on First Accused Urgent Motion for Extension of Time to submit Documents Pursuant to Rule 92bis.


Dr. Bu-Bugkel Jabbi
Court Appointed Counsel

LIST OF AUTHORITIES

- 1. SCSL-04-14-AR73: Decision on Amendment of the Consolidated Indictment**
- 2. SCSL-04-14-T-617: Dissenting Opinion Justice Thompson on the Subpoena Decision**
- 3. SCSL-04-14-T-622: First Accused Urgent Motion for Extension of Time to Comply with Order contained in “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session”**
- 4. SCSL-04-14-T-642: Decision on First Accused Motion for Extension of Time to submit Documents Pursuant to Rule 92bis**
- 5. Case No-IT-01-48-T The Prosecutor v. Sefer Halilovic, Decision on Further Defence Rule 92bis Motion dated 25 July 2005.**