

SCSL-04-14-T
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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo, SC

Date: 17th of July 2006

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14-T)

Public Document

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

Office of the Prosecutor:

Christopher Staker
James Johnson
Joseph Kamara

Court Appointed Counsel for Sam Hinga Norman:

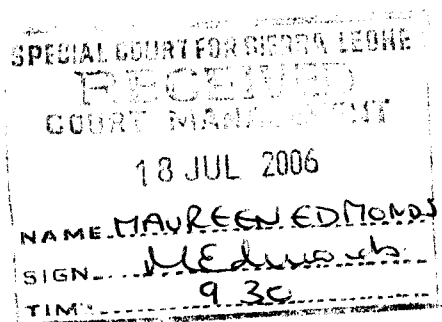
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Alusine Sani Sesay

Court Appointed Counsel for Moinina Fofana:

Victor Koppe
Arrow Bockarie
Michiel Pestman

Court Appointed Counsel for Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana



TRIAL CHAMBER I (“The Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet and Hon. Justice Benjamin Mutanga Itoe;

MINDFUL OF The Chamber’s “Decision on First Accused Urgent Motion for Extension of Time to Submit Documents Pursuant to Rule 92bis”, delivered on the 28th of June 2006 (“Impugned Decision”), wherein The Chamber denied the First Accused’s request for extension of time to submit documents pursuant to Rule 92bis of the Rules of Procedure and Evidence of the Special Court (“Rules”);

SEIZED OF the “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”, filed by Court Appointed Counsel for the First Accused (“Counsel for Norman”) on the 3rd of July 2006 (“Motion”), seeking leave to file, pursuant to Rule 73(B), an interlocutory appeal against the Impugned Decision¹ and maintaining that the Motion satisfies the requirements of Rule 73(B);²

NOTING the “Order for Expedited Filing”, issued by The Chamber on the 5th of July 2006;

NOTING the “Prosecution Response to Application by the First Accused for Leave to Appeal Against the Decision on Extension of Time to Submit Documents”, filed by the Office of the Prosecutor (“Prosecution”) on the 7th of July 2006 (“Response”), opposing the Motion on the basis that the requirements of Rule 73(B) have not been met³ and that, therefore, the Motion should be dismissed;⁴

NOTING the “First Accused Reply to Prosecution Response to Application by First Accused for Leave to Appeal Against the Decision on Extension of Time to Submit Documents”, filed by Counsel for Norman on the 10th of July 2006 (“Reply”);

MINDFUL OF The Chamber’s “Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session”, delivered on the 14th of June 2006 (“Decision of the 14th of June 2006”);⁵

NOTING that leave to appeal is being sought pursuant to Rule 73(B) of the Rules of Procedure and Evidence of the Special Court (“Rules”) which provides that:

Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders.

NOTING that the principles of law governing the issue of granting leave to file an interlocutory appeal within the jurisdiction of the Special Court, have been recently summarised by The Chamber as follows:

- (i) as a general rule, interlocutory decisions are not subject to appeal;

¹ Motion, para. 1.

² Motion, para. 6.

³ Response, para. 3.

⁴ Response, para. 17.

⁵ SCSL04-14-619.

- (ii) Rule 73(B) involves a high threshold that must be met before The Chamber can exercise its discretion to grant leave to appeal;
- (iii) Rule 73(B) specifically requires that an application for leave to appeal must show 'exceptional circumstances' and 'irreparable prejudice';
- (iv) the two-pronged test under Rule 73(B) is conjunctive so that both prongs must be satisfied;
- (v) the legislative rationale behind the restrictive character of Rule 73(B) is to avoid international criminal trials becoming encumbered by a multiplicity of interlocutory appeals thereby causing protracted delays in such trials;
- (vi) the procedural assumption in the Special Court is that trials will continue to their conclusion without delay or diversion caused by interlocutory appeals on procedural matters, and that any errors which affect the final judgement will be corrected in due course by the Appeals Chamber on appeal;
- (vii) the probability of an erroneous ruling by The Chamber does not, of itself, constitute 'exceptional circumstances' for the purpose of a Rule 73(B) application;
- (viii) the fact of judicial dissent amongst the Judges of The Chamber on the applicable law and procedure applied in the Impugned Decision does not in itself constitute an exceptional circumstance, although the nature and significance of the matters sought to be appealed, in conjunction with the fact of dissent, might be considered as factors relevant to this determination.⁶

CONSIDERING that from Counsel for Norman's arguments in their Motion in support of the existence of exceptional circumstances in this case, it is not apparent whether they refer to the alleged misinterpretation by The Chamber of Rule 92bis, in that The Chamber would have taken into consideration the provision of Rule 26bis as well when imposing the deadline for submitting the documents, or whether they refer to an alleged abuse of discretion by The Chamber in not granting Counsel for Norman's motion for extension of time to submit documents;⁷

CONSIDERING that in their Reply Counsel for Norman somehow attempt to rectify their failure to properly advance their arguments in support of their Motion by reiterating that Rule 92bis contains no express time stipulation,⁸ and that this is one of the "crucial and important questions of fact [and] law",⁹ and by claiming that The Chamber's interpretation and application of Rules 26bis, 90(F) and Article 17(4)(c) of the Statute is erroneous and tantamount to a denial of minimum guarantees¹⁰ and that the deadline imposed by The Chamber's Decision of the 14th of June 2006 is "oppressive and internally inconsistent or self-contradictory";¹¹

CONSIDERING that both The Chamber's Impugned Decision and the Decision of the 14th of June 2006, speak for themselves in that the deadline of the 16th of June 2006, clearly referred to the deadline for the filing of the notice under Rule 92bis as well as of the intended documents by Counsel for Norman, and not to the timing for the filing of the objections by the opposing Party and also in

⁶ *Prosecutor against Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, "Decision on Motions by the First and Second Accused for Leave to Appeal The Chamber's Decision on Their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone, the 28th of June 2006, para. 11.

⁷ Motion, paras 6-8. *see* SCSL-04-14-622, "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'", the 16th of June 2006.

⁸ Reply, para. 3(i).

⁹ Reply, para. 3(iv).

¹⁰ Reply, para. 3(ii).

¹¹ Reply, para. 3(iii).

