

61

SCSL-2004-15-PT



(1272-1275)

1272

SPECIAL COURT FOR SIERRA LEONE
DEFENCE OFFICE
FREETOWN - SIERRA LEONE

IN THE TRIAL CHAMBER

Before: Judge Bankole Thompson
Judge Pierre Boutet
Judge Benjamin Mutanga Itoe

Registrar: Mr Robin Vincent

Date Filed: 16th March 2004.

PROSECUTOR against

MORRIS KALLON
(Case SCSL-2004-15-PT)

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION FOR
EXTENSION OF TIME FOR COUNSEL TO FILE DEFENCE REPLY TO
"PROSECUTION RESPONSE TO DEFENCE MOTION FOR QUASHING
CONSOLIDATED INDICTMENT**

Office of the Prosecutor:

Luc Cote, Chief of Prosecutions.
Robert Petit, Senior Trial Attorney.

Defence Office:

Haddijatou Kah-Jallow
Rupert Skilbeck

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT RECORDS
16 MAR 2004
NAME: M. W. ... (T.O.N.S.)
SIGN: M. Edmund
TIME: 1:58

INTRODUCTION

1. On 12th March 2004 the Prosecution filed their response (“the Response”) to the Defence Application (“the Application”) dated the 5th March 2004 seeking an extension of time for Counsel to file a Reply to the ‘Prosecution Response to the Defence Motion for Quashing Consolidated Indictment’. The Prosecutor opposed the Application submitting that the Defence has not shown good cause sufficient for the court to exercise its discretion to grant an extension of time.

PROSECUTION’S SUBMISSIONS

A – The Accused was represented by assigned counsel

2. The Defence Office submits that they first had knowledge of the pending motion on the 2nd March 2004 during the Status Conference. The Defence contends that the accused was essentially without effective legal representation when the time limit for filing expired, as by the 17th March 2004 Assigned Counsel had received specific and unequivocal instructions from the client to desist from further representation. The Prosecution have cited a previous decision by the Special Court in support of their contention.¹ However, in that instance the accused was actively represented by Assigned Counsel and the situation is clearly different in circumstances where the accused is effectively without legal representation. The absence of legal representation constitutes good cause.
3. On the 16th February the accused wrote a letter to the Principal Defender requesting that Counsel be withdrawn. Before the 18 March 2004 Counsel communicated to the Client and was informed that he should cease representation with immediate effect.

B – The Defence Application was filed after the expiration of the time limit.

4. The Prosecution complains that the request for an extension of time was not made before the expiration of the time limit. They state that this practice is ‘wholly improper’.
5. The Prosecution have cited no statutory or jurisprudential authority on which to make this bald assertion. Furthermore, they have accused the Defence Office of acting in an improper way with no substantiation for such accusation, which is both surprising and disappointing.

C – Defence Office is competent to deal with the issues raised

6. The Prosecution state that the Defence Office was established for the purpose of ensuring the rights of suspects and accused and that they are therefore fully able to argue this issue.

¹ In *Prosecutor Against Morris Kallon*, SCSL-2003-07-PT

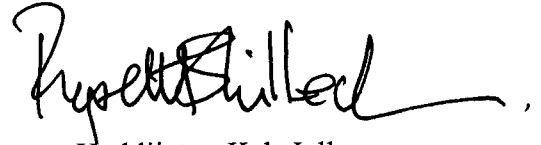
7. Mr Kallon has had Assigned Counsel for many months. He now has a newly assigned counsel. The Defence Office does not have any of the case papers, is not entitled to read them, and does not have sight of confidential matters that have been filed in this case. Consequently, Duty Counsel is only able to preserve the best interests of the client in the interim period. This was accepted by the Trial Chamber at the Status Conference in the case of Mr Kallon and others on 2nd March 2004 when Duty Counsel was only able to represent him on a limited basis.
8. Furthermore, in his decision of 5th March 2004, the President of the Appeal Chamber allowed the time limit for an appeal against refusal of bail to be suspended pending the re-assignment of counsel, recognising the problems that the Defence Office faces in such circumstances. The Prosecution on that occasion – with the same representation – did not appear to oppose the preservation of the rights of the accused.
9. The suggestion made in Paragraph 12 of the Prosecution Response that Duty Counsel must state which documents they have not seen makes no sense: we do not know what we haven't seen, as we haven't seen it. Furthermore, the suggestion that a reply can be made without looking at the documents would amount to professional recklessness.

ADDITIONAL MATTERS

10. It is also suggested by the Prosecution that the Defence Office are asking for an unlimited extension, which will delay the trial process irreparably. This is clearly not the case. New counsel has already been assigned, so any delay will be minimal. Judge Robertson in his order of 5th March 2004 adopted the entirely sensible option of suspending the time limit until such time as counsel was officially assigned.
11. This precarious and unfortunate situation that existed as a result of the unequivocal instructions of the accused that Counsel cease to represent him with immediate effect is unique and unforeseen situation. Contrary to the Prosecution's submissions, an extension to permit Counsel to file reply will not set a dangerous precedent. If there has been any failure by Counsel to represent the accused adequately in any way, then he should not be adversely affected by any such failure.
12. While the Defence Office agrees with the Prosecution that a reply is not mandatory, the right to reply in the instant case should be preserved for assigned Counsel to Morris Kallon to make the decision. The question of the indictment is central and pivotal to the trial process and therefore an opportunity should avail Counsel to reply.

CONCLUSION

13. The Defence Office urges this honourable Court to preserve, protect and promote the accused's right and interest by granting an extension of time for Counsel for the accused Morris Kallon to file a reply.



Haddijatou Kah-Jallow

Rupert Skilbeck

16th March 2004