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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER

SCSL-2003-07-PT-20 034
(554-558)

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Robin Vincent

Date: 29 May 2003

The Prosecutor Against: Morris Kallon

(Case No. SCSL-2003-07-PT)

**APPLICATION FOR EXTENSION OF TIME TO FILE
PRELIMINARY MOTIONS**

Office of the Prosecutor:

Luc Cote, Chief of Prosecution

Defence Counsel:

James Oury
Steven Powles

SPECIAL COURT FOR SIERRA LEONE	
COURT RECORDS	
RECEIVED	
NAME	<i>Justice Thompson</i>
SIGNATURE	<i>[Signature]</i>
DATE	30-05-03
TIME	9:30am

1. On 26 May 2003, in accordance with Rule 66(A)(i) of the Rules, the Prosecution disclosed to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial. It is noted that Rule 66(A)(i) stipulates that such disclosure is to be made within 30 days of the initial appearance of the accused. Mr Kallon's initial appearance was on Saturday 15 March 2003, accordingly disclosure pursuant to Rule 66(A)(i) was due on 15 April 2003.
2. Mr Kallon intends to file a number of Preliminary Motions pursuant to Rule 72. Rule 72 stipulates that such motions shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all materials envisaged by Rule 66(A)(i). Having received disclosure by the Prosecution pursuant to Rule 66(A)(i) on 26 May 2003, all Preliminary Motions are to be brought in Mr Kallon's case by 17 June 2003.
3. For the reasons set out below, it is requested that Mr Kallon be granted an extension of time pursuant to Rule 7 of the Rules to file his Preliminary Motions.
4. Mr James Oury and Mr Steven Powles were provisionally assigned as counsel to Mr Kallon on 1 May 2003. Mr Powles was able to make his first trip to visit Mr Kallon in Freetown from 19 to 26 May 2003. Mr James Oury will make his first trip to visit Mr Kallon from 3 to 10 June 2003. As a result of transportation difficulties to the Detention Unit, it is only possible for counsel to see Mr Kallon on Tuesdays and Fridays of each week that they are in Freetown. Thus, to date, counsel have had limited time with Mr Kallon.
5. The Special Court for Sierra Leone is the first "hybrid" Court to be established by the international community. It is unlike the Ad Hoc Tribunals for the former Yugoslavia and Rwanda which were both established by Security Council resolution. The lawfulness of the establishment of both Tribunals was tested in the early cases of *Tadic* ('Tadic Jurisdiction Appeals Decision' 2 October 1995') and *Kanyabashi* (Decision on the Defence Motion on Jurisdiction' 18 June 1997) for the ICTY and ICTR respectively. Because of

the unique nature of the Special Court for Sierra Leone, such decisions, while relevant, do not definitively determine the issue. Accordingly, consideration must be given to challenging the lawfulness of the establishment of the Special Court by the United Nations and Government of Sierra Leone. Such arguments are complex and require extensive consideration and research. The ultimate determination of this will be benefit not only to the Special Court but all similar 'hybrid' institutions that may be established in the future.

6. Moreover, consideration must be given to the applicability and effect of the Lome Agreement on accused indicted by the Special Court as well the criteria adopted and applied in determining which persons are alleged to bear the "greatest responsibility" for offences in Sierra Leone. Again, the complexities of such arguments cannot be overemphasised and will require extensive consideration and research.
7. At the same time as considering such matters, Mr Kallon must consider raising objections based in the form of the indictment. Having received 153 statements from the Prosecution on 26 May 2003, this alone could easily engage the consideration of counsel for the 21 days from receipt of the statements to the deadline for filing Preliminary Motions.
8. As Mr Kallon is one of the first accused to receive disclosure pursuant to Rule 66(A)(i), it falls upon him to consider and raise some of the fundamental questions on jurisdiction that are yet to be raised and determined by the Special Court. Having been recently assigned to Mr Kallon, counsel have had limited time to commence considering and developing arguments on such issues. By contrast the Prosecution, having been operational for some considerable time, have already had an extensive opportunity to address their collective minds to some of the obvious jurisdictional issues that may be raised by accused indicted by the Special Court.
9. Article 17(4)(b) of the Statute of the Special Court for Sierra Leone stipulates that an accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. Given the

complexities of the arguments to be raised, and given the current practical difficulties in arranging communication with the accused, it is respectfully requested whether Mr Kallon may be granted an extension of a further 21 days in which to consider, prepare and ultimately file preliminary motions pursuant to Rule 72. This will result in Preliminary Motions being due on 8 July 2003.

10. The Trial Chamber is assured that this request for an extension of time is made as a result of a genuine desire to research and prepare the strongest possible arguments on behalf of the accused and to thereby assist the Trial Chamber by presenting well researched and thoughtful arguments. It is not a disingenuous delaying tactic and the extension period requested represents the minimum time in which counsel feel they would be able to do justice to any arguments that may need to be raised.

Order sought: An extension of time of 21 days for Mr Kallon to file Preliminary Motions pursuant to Rule 72 with the result that such motions will be due on 8 July 2003.

James Oury

Steven Powles

London, 29 May 2003.

Signed by the Defence office on behalf of Steven Powles, for the reasons set out in the attached e-mail.

John Jones

John Jones
Acting Chief
Defence office

29/5/2003

**E-mail from Steven Powles, Counsel for Morris Kallon, to John Jones, Acting Chief,
Defence Office, dated 29 May 2003**

Dear John,

Please accept this e-mail as a formal request to the Defence Office to sign (i) Application for Extension of Time to File Preliminary Motions, and (ii) Application for Reconsideration of and/or Leave to appeal 'Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for non-public disclosure', both dated 29 May 2003 in Morris Kallon's case. Due to difficulty with fax transmissions it has not been possible for either James Oury or myself to send signed version today.

Many thanks in advance for your kind assistance.

Steven Powles