

043

**SPECIAL COURT FOR SIERRA LEONE**

**TRIAL CHAMBER**

**Before:** Judge Thompson, Presiding Judge  
Judge Itoe  
Judge Boutet

**Registrar:** Robin Vincent

**Date:** 16 June 2003

**The Prosecutor Against:** **Morris Kallon**

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

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

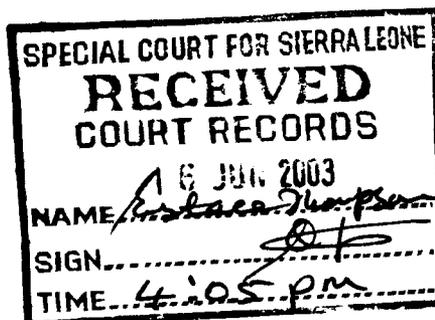
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**Office of the Prosecutor:**

Luc Cote, Chief of Prosecution

**Defence Counsel:**

James Oury  
Steven Powles



***Background***

1. On 30 May 2003 counsel for Mr Kallon filed an 'Application for Extension of Time to File Preliminary Motions'. Clearly articulated in this motion was the fact that it was necessary to give consideration to raising objections based on the form of the indictment pursuant to Rule 72(B)(ii) (See Motion para. 7) and other motions challenging the jurisdiction of the court.
2. It was stated that having received 153 statements from the Prosecution on 26 May 2003 (received by counsel for Mr Kallon on the day that he was departing from Sierra Leone and therefore affording no opportunity to provide said statements to accused for consideration) that it was anticipated that it could take at least 21 days to consider such documents and consider the requisite preliminary motions to be filed.
3. It was also clearly stated that due to transport difficulties to the Detention Unit, counsel for Mr Kallon may only visit him 2 out of every 7 days that they are in Sierra Leone, that counsel only received limited time with the accused. (See Motion para. 4)
4. A 'Defence Reply to Response of Prosecution to Defence 'Application for Extension of Time to File Preliminary Motions' was filed on 9 June 2003. The Reply again clearly reiterated the difficulties that defence counsel experience in maintaining contact with the accused due to the inadequacy of current Detention arrangements. The Reply reiterated that the preparation of preliminary motions obviously requires extensive contact with the accused but that due to the privileged nature of communications between counsel and the accused it would be inappropriate for counsel to articulate the nature of any such discussions as means for justifying an extension of time.
5. The Trial Chamber issued its 'Decision on the Defence Motion for an Extension of Time to File Preliminary Motions' on Saturday 14 June 2003. In normal circumstances counsel would not have received this Decision until

Monday 16 June 2003 (the day upon which Preliminary Motions are due). In the event counsel received the Decision on Sunday 15 June 2003.

6. With the greatest of respect to the Trial Chamber, it appears that the Chamber has overlooked the arguments in favour of granting an extension of time predicated upon a lack of time and facilities to prepare the defence of Mr Kallon due to insufficient time to visit and consult with Mr Kallon at the Detention Unit. There is no consideration at all of this matter in the Trial Chamber's Decision and the Decision seems to construe counsel's request for an extension of time as being based solely on the need to conduct "extensive and complex consideration and research". (See Decision paras 11 and 12)
7. The Chamber found that 'no good cause has been shown by the Defence for an extension of time'. (See Decision para 13)
8. Moreover, the Trial Chamber observed that at the time of filing the application for an extension of time the applicant was well within the time limits prescribed for such motions and therefore questioned the appropriateness and usefulness of the instant motion. (See Decision para 14)

***Present Application***

9. It is respectfully submitted that the original Defence Motion for an Extension of Time was filed "well within the time limits prescribed for such motions" because counsel for the accused took a responsible and well considered view of their position, long before the eve of such motions being due and considered that, in all the circumstances, it would be impossible to consider and complete all of the preliminary motions that counsel intended to file in the time allowed.
10. It is respectfully submitted that, having prepared and filed an application for an extension of time in good time before the expiry of the said time limit, it is perhaps a little unfair to the Defence for the Decision on that motion to effectively be issued by the Trial Chamber on the day on which such

preliminary motions are due, thereby affording the Defence little or no time in which to finalise and file such motions.

11. In the time available to counsel to date, the Defence has worked expeditiously on the completion of other motions and has been able to file two preliminary motions which have been filed with the Trial Chamber at the same time as this application for an extension of time.
12. It is submitted that pursuant to Rule 73 of the Rules of Procedure and Evidence “good cause” exists in the particular circumstances of this case to grant an extension of time for the filing of a preliminary motion on the form of the Indictment.
13. In short, in the time available it has simple been impossible to complete a preliminary motion on the form of the indictment and other motions challenging the jurisdiction of the Court. This is, in no small part due to inability of counsel to have the sort of access to the accused that they would have anticipated and expected to be provided by an international criminal tribunal such as the Special Court. At all material times that counsel for the accused were in Sierra Leone, they were only able to visit the accused at the Detention Unit for two out of every seven days. Thus, to date, since their assignment as defence counsel for Mr Kallon, counsel have only been able to spend four days with the accused. It should be noted that at present at the Detention Unit there are no adequate meeting facilities for counsel to meet with accused in. Thus, counsel are forced to impose upon defendants and meet in their cells. Such cells are not, it is submitted, adequate working environments. There was, at the time of counsel’s first visit, no ventilation, no desk, or sufficient numbers of chairs for both the accused and counsel.
14. It is noted that Rule 93 of the ‘UN Standard Minimum Rules on the Treatment of Prisoners’ provides that:

“For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive

visits from his legal advisor with a view to his defence and to prepare and hand to him confidential instructions. ... .”

It perhaps stating the obvious that if counsel is only permitted a limited number of days upon which to visit the accused that this Rule may not have been strictly complied with. It is accepted, however, that every effort is being made to rectify this situation by moving the detainees to a Detention Facility that will provide perhaps greater access of counsel to the accused. Notwithstanding this pending development, the current situation leaves a lot to be desired and may fall well below acceptable international standards.

15. It is accepted by Counsel for Mr Kallon that the Court appears to have undertaken such improvements that it can in relation to the improvement of conditions for the detainees. Counsel for Mr Kallon have attempted to work constructively and in good faith with the Court in recommending further improvements that may be carried out.
16. Other factors that have hampered the consideration, completion and filing of a preliminary motions, in particular based on the form of the indictment include the following:
  - (i) In the interests of justice and with a view to avoiding unnecessary expenditure for the Court, counsel for the accused intend to work and co-operate with counsel for other accused in considering the appropriate form of any motion challenging jurisdiction and the form of the indictment, this will save in duplication of work and therefore costs to the Special Court. It is submitted that this responsible approach by the Defence to the division of common issues amongst the various defence teams is a course that should find support and be encouraged by the Court.
  - (ii) Counsel for the Accused have yet to receive final confirmation from the Court as the nature and amount of remuneration that they are to receive for work carried out as Defence counsel. While it is

not the intention of counsel to delay the work of the Court by postponing work on the accused's case until such agreement is finalised, it similarly cannot be the intention of the Court to expect counsel to work on a pro-bono basis or least before the finalisation of a funding agreement with the Court.

- (iii) Finally, counsel for the accused are conducting this case from London with the obvious difficulties entailed in operating away from the Seat of the Court. Every effort has been made to deal with this matter in an expeditious manner. However, due to time constraints placed upon counsel in dealing with other urgent matters on behalf of the accused it has proved impossible to file all preliminary motions and a motion on the form of the indictment in the requisite time (again on the basis of privilege it is impossible to articulate what such other matters are).

17. In all the circumstances it is submitted that good cause exists for the granting of an extension of time by 21 days until 8 July 2003 for counsel for Mr Kallon for file preliminary motions and a motion on the form of the indictment.

***Relief Sought***

18. An extension of time of 21 days for Mr Kallon to file Preliminary Motions and a motion on form of indictment pursuant to Rule 72 with the result that such motions will be due on 8 July 2003.

*pro parte John Jones*  
James Oury DEFENCE OFFICE

Steven Powles

London, 16 June 2003.



Steven Powles  
<s.powles@doughtystreet.co.uk>  
06/16/2003 02:55 PM

To: "John Jones" <jonesj@un.org>  
cc: "Haddijatou Kah-Jallow" <kah-jallow@un.org>  
Subject: RE: Preliminary Motion on Jurisdiction

Dear John and Haddi,

Please find two preliminary motions attached. one on Lome Accord and the other on Constitution of Sierra Leone. I am also attaching a further application for an extension of time in which to file preliminary motions.

Can you please ensure that all of these motions are filed with the Trial Chamber today ie in next 5 minutes.

James Oury and I of course grant you and the Defence Office the power to sign and file these motions on our behalf.

Many thanks for your kind assistance with this matter.

Kind regards

Steven Powles.



Kallon-PMAmnesty.doc



Kallon-PMConstitution.doc



Kallon-FormIndictExtension.doc