

SCSL - 2003 - 07 - PT
(1192 - 1195)



SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 30th day of September 2003



The Prosecutor against

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

ORDER PURSUANT TO RULE 72 (E) AND (F)

**DEFENCE PRELIMINARY MOTION BASED ON LACK OF
JURISDICTION/ABUSE OF PROCESS: AMNESTY PROVIDED BY LOMÉ
ACCORD**

Office of the Prosecutor:
Mr. Luc Côté, Chief of Prosecutions

Defence Counsel:
Mr. James Oury
Mr. Steven Powles

THE SPECIAL COURT FOR SIERRA LEONE (“The Special Court”)

SITTING as the Trial Chamber (“The Chamber”), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet, and Judge Benjamin Mutanga Itoe;

SEIZED of the Defence Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Lomé Accord of the 16th day of June 2003 (“The Preliminary Motion (Lomé Agreement)”), in relation to the criminal suit against **Morris Kallon** (“The Accused”);

CONSIDERING the Prosecution’s Response to “the Preliminary Motion (Lomé Agreement)” dated the 23rd day of June 2003 (“The Response”);

CONSIDERING the Order on the Defence Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement) of the 16th day of July 2003;

CONSIDERING FURTHER the Decision on the Motion for Leave to Appeal Order on the Defence Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement) of the 29th day of September 2003;

CONSIDERING the entire provisions of Rule 72 of the Rules of Procedure and Evidence (“The Rules”);

CONSIDERING, in particular, the provisions of Rule 72 (E) of “the Rules” which state that “the Chamber” shall refer to the Appeals Chamber for a determination as soon as practicable any preliminary motion which raises a serious issue relating to jurisdiction;

CONSIDERING, in addition, the provisions of Rule 72 (F) of “the Rules” state that “the Chamber” shall refer to the Appeals Chamber for a determination as soon as practicable any preliminary motion which, in the opinion of “the Chamber” raises an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial;

CONSIDERING that the Defence “Preliminary Motion (Lomé Agreement)” objects to the jurisdiction of “the Special Court” to try “the Accused” on all the charges contained in the Indictment;

CONSIDERING, in addition, that the Defence “Preliminary Motion (Lomé Agreement)” objects that it would be an abuse of process by “the Special Court” to permit the prosecution of “the Accused” on all the charges contained in the Indictment;

CONSIDERING that the Indictment charges “the Accused” on several counts for Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court (“The

Statute”), Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of “the Statute”, and of Other Serious Violations of International Humanitarian Law, punishable under Article 4 of “the Statute”;

CONSIDERING that “the Accused” submits that the Government of Sierra Leone is bound to observe the amnesty provisions it has granted in signing the Lomé Accord, as contained in Article 9 thereof, and that “the Special Court”, as a creation of the United Nations and the Government of Sierra Leone, should not include in its subject matter jurisdiction any acts for which the Government of Sierra Leone has already granted an amnesty;

CONSIDERING that “the Accused”, in light of the above, submits that “the Special Court” should not, notwithstanding the provisions of Article 10 of “the Statute”, assert its jurisdiction over the alleged crimes committed by him prior to the signing of the Lomé Accord, on the 7th day of July 1999;

CONSIDERING that “the Accused” further argues that after the granting of an amnesty in the Lomé Accord, it would be an abuse of process of “the Special Court” to try him for the crimes allegedly committed prior to the signing of the Lomé Accord, on the 7th day of July 1999;

NOW THEREFORE,

THE CHAMBER

NOTING that “the Accused” also alleges that “it is recognized that there may be pressure on the Trial Chamber, as a constituent body of the Special Court, in part established by the United Nations, to simply follow the opinion of the Secretary General of the United Nations as expressed in his report [on the Establishment of a Special Court for Sierra Leone (UN Doc. S200/915)] and find that the amnesty granted at Lomé has no application before the Special Court” and further submits that “the Trial Chamber, to the extent that it can, must conduct an impartial and fair assessment of the law and facts presented and determine the extent of application of the Lomé Accord and the Amnesty contained therein in its own right and independently of the opinion already expressed by the Secretary General of the United Nations;

IS OF THE OPINION that there is absolutely no factual basis or any evidence to support such contention;

AND FURTHER FINDS, given the disparaging and derogatory nature of such comments, that these assertions are highly objectionable and unacceptable to this “Chamber”;

AND, PURSUANT TO RULE 72 (E) AND (F) OF "THE RULES",

FINDS that the foregoing submissions raise a serious issue relating to the jurisdiction of "the Special Court" to try the Applicant on all the counts of the Indictment that has been preferred against him;

FURTHER FINDS that the foregoing submissions also raise an issue that would significantly affect the fair and expeditious conduct of the proceedings against "the Accused";

REFERS this Defence "Preliminary Motion", together with the Prosecution's "Response", to the Appeals Chamber of "the Special Court" for determination;

ORDERS that the reference of this "Motion" to the Appeals Chamber shall not operate as a stay of the trial of "the Accused";

Done in Freetown, this 30th day of September 2003

The Trial Chamber

[Handwritten signature]

Judge Bankole Thompson
Presiding Judge

