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Sc SL - 2003 - 05 - PT - 063

(1370 - 1375)

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN - SIERRA LEONE

1370

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Robin Vincent

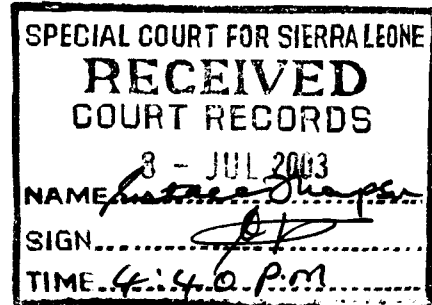
Date filed: 8 July 2003

THE PROSECUTOR

Against

ISSA SESAY, aka ISSA HASSAN SESAY

CASE NO. SCSL - 2003 - 05 - PT



**PROSECUTION RESPONSE TO DEFENCE "MOTION REQUESTING
SUSPENSION OF DELAYS TO FILE PRELIMINARY MOTIONS OR NEW
REQUEST FOR AN EXTENSION OF DELAYS"**

Office of the Prosecutor:
Luc Côté, Chief of Prosecution
Robert Petit, Senior Trial Counsel
Sharan Parmar, Assistant Trial Counsel

Defence Counsel:
William Hartzog, Lead Counsel

1371

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INTRODUCTION

The Prosecution submits that the Defence Motion for a suspension of all preliminary motions other than those specified, and for an extension of time concerning these specified motions, should be denied as it does not raise circumstances which constitute good cause to warrant the extensions sought by the Defence. The Prosecution further submits that repeated attempts to extend prescribed time periods is contrary to the object and spirit of the Rules in maintaining fair and expeditious proceedings. Finally, the Prosecution submits that the Defence requests for the suspension of filing and rolling dates for filing of preliminary motions are contrary to the letter and spirit of the Rules, which require all preliminary motions, regardless of nature, to be filed within a single reasonable deadline.

1. On 30 June 2003, the Defence filed a “Motion Requesting Suspension of Delays To File Preliminary Motions or New Request for an Extension of Delays” (the “**New Request**”). In the Application the Defence:
 - (i) states that as of 25 June 2003, Defence Counsel Hartzog is the only counsel representing the Accused and that efforts are being made to secure additional counsel to the Defence Team;
 - (ii) states that under present circumstances, in addition to those described in an earlier Motion for Extension for Time filed 24 June (the “**First Motion for Delay**”), the Defence can not meet current deadlines prescribed under the Rules for the filing of and replying to, preliminary motions;
 - (iii) requests a suspension of deadlines for pending preliminary motions, specifically:
 - a) the filing of a Defence Reply to the Prosecution Response in the First Motion for Delay, which was filed on 5 July 2003,
 - b) the filing of a Defence Application for Leave to Appeal, which was ordered by Judge Boutet in the Confidential Decision (the “**Leave to Appeal Decision**”) dated 26 June 2003 to be filed in seven days of the said order pursuant to the Defence Confidential Application for Extension of Time to File Leave To Appeal (the “**Application for Time to Appeal**”); and
 - iv) requests a delay of two weeks *in addition* to those dates requested pursuant to the extension of time requested by the Defence under the Second Motion for Delay.

ARGUMENT

I. Circumstances do not warrant four week extension

2. The New Request cites circumstances already referred to in the First Motion for Delay in support of its request for an even further extension of time. In addition, the Defence submits that the removal of co-counsel Marcil from the Defence Team for the Accused has left the Defence unable to meet its obligations prescribed under the Rules to file and reply to preliminary motions. The Prosecution, while reiterating its arguments concerning the initial circumstances, submits that the removal of co-

counsel does not warrant a further extension of time of two weeks in addition to the two to four weeks already being requested by the Defence.

3. The Prosecution reiterates its submissions that the need for contact with the Accused alleged by the Defence is not relevant to the preparation of preliminary motions and does not constitute good cause to warrant the prolonged delay being requested. The Prosecution reiterates that pre-trial proceedings of International Tribunals are characterized by Defence counsel who are usually absent from the seat of the Tribunal, which is a common circumstance that does not pose insurmountable hindrance to Defence preparation of preliminary motions and can not constitute good cause. In fact, the New Request refers to recent contact between Defence counsel and the Accused concerning additions to the Defence team.
4. While the Prosecution fully supports the right of the Accused to have adequate time and facilities for his Defence, the Rules clearly prescribe time limits for the filing of preliminary motions. The Prosecution submits that the integrity of the Rules and the timely conduct of these proceedings require that good cause criteria be applied judiciously especially to repeated requests for extensions of time.
5. The Prosecution reiterates its position that given their importance and complexity, the anticipated preliminary motions require time to properly consider and carefully prepare. While the loss of co-counsel may constitute good cause for a reasonable extension of time in light of the nature of these preliminary motions, the Prosecution submits that Defence counsel remains obligated to prepare its substantive preliminary motions within the prescribed timeframes.¹ The Prosecution submits that efforts to secure additional Defence counsel and expert witnesses, who once recruited would inevitably necessitate time to be able to effectively contribute to these preliminary matters, should not take precedence over such obligations and therefore does not constitute good cause to warrant the lengthy delays sought by the New Request.

¹ As noted in paragraph 7 of the New Request, the Defence has thus far filed several procedural preliminary motions, three of which concern extensions of prescribed time periods.

II. Relief sought

6. The Prosecution reiterates its submission that broader interests in maintaining fair and expeditious proceedings mandate the filing of all preliminary motions within a single reasonable deadline, and not within the several time periods requested by the Defence. The Prosecution further submits that the suspension of all time limits concerning all other preliminary motions is contrary to “the principle of finality and other time limits in the Rules”, which were noted by Judge Boutet in a Confidential Order on a Defence Request for Extension of Delay dated 26 June 2003, and thus must be denied.
7. The Defence specifically requests the suspension of the filing of a Confidential Application for Leave to Appeal, which was ordered by Judge Boutet to be filed within 7 days of 26 June 2003. The Prosecution submits that this request is contrary to the principle of finality and the letter of the Rules, especially as the time period prescribed by Judge Boutet has been essentially fully argued and deliberated upon.
8. The Prosecution submits that the Defence request to file additional argument to their Preliminary Motion for Defects in Form of the Indictment is also contrary to the principle of finality and the letter of the Rules. First, it is clear that the drafters of the Rules intended for challenges to the form of an indictment be brought in one motion.² Furthermore, the Prosecution submits that the filing of additional argument to the Defence Preliminary Motion for Defects in the Form of the Indictment would enable the Defence to exceed the word and page limitations of the Practice Directions.³

CONCLUSION

The Prosecution submits that the integrity of the Rules and interest in the timely continuance of these Proceedings both demand that repeated requests for extensions of time be carefully considered by the Trial Chamber. The Prosecution further submits that


² Rule 72 (G) states that “[o]bjections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by a Trial Chamber.”

³ *Practice Direction on Filing Documents before the Special Court for Sierra Leone*, signed by the Registrar and entered into force on 27 February 2003, Article 8.3. Of note, Article 8.5 stipulates that parties must seek authorization from the Chamber in advance to exceed the page limits and provide an explanation justifying an oversized filing.

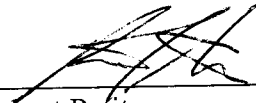
the present Second Motion for extension of time raises circumstances that do not warrant an additional two weeks to the original extension of time sought by the Defence in its First Request for Delay, which altogether proposes a delay of these proceedings of over one month.

Freetown, 8 July 2003

For the Prosecution



Lyc Côté
Chief of Prosecutions



Robert Petit
Senior Trial Counsel