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SCSL-2003-07-PT-073
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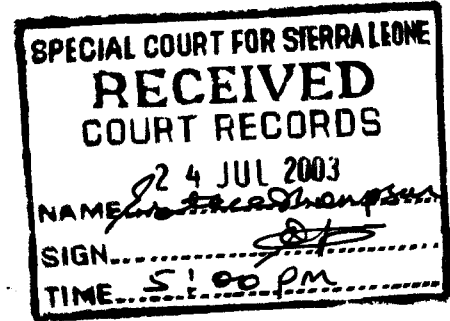
IN THE SPECIAL COURT FOR SIERRA LEONE

IN THE TRIAL CHAMBER

Before: Judge Thompson
Judge Boutet
Judge Itoe

Registrar: Robin Vincent

Date: 24 July 2003



The Prosecutor against Morris Kallon (Case No SCSL-2002-07-PT)

**MOTION FOR LEAVE TO APPEAL 'ORDER ON THE DEFENCE
APPLICATION FOR EXTENSION OF TIME TO FILE REPLY TO
PROSECUTION RESPONSE TO THE FIRST DEFENCE PRELIMINAR
MOTION (LOME AGREEMENT)'**

Office of the Prosecutor:

Luc Cote

Defence Counsel:

James Oury
Steven Powles
Melron Nicol-Wilson

1. On 16 July 2003 the Trial Chamber issued 'Order on the Defence Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lome Agreement).' The Defence were not aware of this Order until 22 July 2003 as a result of seeing it referred to in the 'Prosecution Response to Defence Request for Subpoena Duces Tecum' filed by the OTP on 23 July 2003.
2. The Defence now seek leave to appeal the Order pursuant to Rule 73(B). It is submitted that it is without doubt in the interests of a fair and expeditious trial for a decision to be rendered by the Appeals Chamber on this crucial issue.
3. On 16 June 2003 the Defence filed 'Preliminary Motion based on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by Lome Accord'. The Prosecution responded on 23 June 2003. In order to be in a position to adequately and fairly respond to the Prosecution Reply the Defence needs access to various documents held in the possession of the OTP and/or Government of Sierra Leone. Accordingly, the Defence acted expeditiously in attempting to obtain those documents from the OTP and Government. The Defence requested an extension of time to file its Reply to the Prosecution Response pending receipt of those documents.
4. On 16 July 2003 the Trial Chamber refused to grant the Defence an extension of time to obtain documents and file reply.
5. The Trial Chamber's reasoning is flawed in the following regards:
 - (i) It asserts that "some of the documents appear to be in the public domain". (Para. 13 Order) Even if "some" of the documents are in fact in the public domain there is no doubt that many of the crucial documents requested are not. It follows therefore that if the documents are of import to the Defence they should be granted an opportunity to

obtain the documents which are in the public domain for them to be taken into consideration by the court.

- (ii) It is claimed that the Defence should have provided “a more comprehensive explanation of the scope of the sought documents should have been provided.” (sic) (para 14 Order). The Defence attempted to explain the necessity and import of the documents requested in the most concise and clear manner that it could. The Defence were concerned not to overburden the Trial Chamber with a verbose and lengthy application. It is submitted that the importance of the documents to the Defence was clear. In the Prosecution Response to the Defence Preliminary Motion the Prosecution assert that the Lome Agreement is no longer effective in Domestic Law (Para 10 Response). Thus the Defence need to clarify the validity of this assertion. The Prosecution assert that the Lome Agreement on its proper construction does not apply (Prosecution Response para 11). The documents sought by the Defence would enable it to rebut this assertion. The Prosecution Response asserts that the Defence Preliminary Motion does not establish that the Accused in any way acted on any promise of amnesty. (Prosecution Response para 18.) The documents requested would have shed light on this. Moreover, at footnote 25 of the Prosecution Response, the Prosecution assert that the burden is on the Defence to establish that the acts for which he is charged were performed by him in pursuit of the objectives of the combatants and collaborators. While not accepting that this burden is on the defence, in order to investigate the matters raised the Defence need sight of the documents applied for.
- (iii) The Trial Chamber assert that the Defence are seeking to introduce “new elements or issues that the Defence itself failed to address in its Preliminary Motion on Amnesty” (Order para 16). This allegation is manifestly unfounded. It is respectfully submitted that the Trial Chamber has no insight whatsoever into what the Defence seeks to put

into its Reply to the Prosecution Response. The Defence is mindful of its obligations in Replying to the Prosecution Response and only seeks to Reply to the points raised. The documents requested will be utilised by the defence, as it is entitled to, to respond to the points made by the Prosecution.

6. The resolution of this matter by the Appeals Chamber is vital for the Defence in order to ensure that the Accused receives the fair trial guaranteed to him by Article 17 of the Statute of the Special Court. Access to documents held by the Prosecution and/or Government of Sierra Leone in order to rebut assertions made by the Prosecution in their response is a fundamental right. Article 17(4)(B) guarantees the Accused the right to “adequate time and facilities for the preparation of his defence”. The Trial Chamber decision denies the accused this fundamental right.
7. It is accepted that the Court and Trial Chamber may be under budgetary and time constraints. This is not a justification, however, to deny the Accused a fair trial.
8. Thus a reconsideration of the Trial Chamber’s Decision is very much in the interests of a fair trial. Moreover, it is submitted that resolution of the matter by the Appeals Chamber will lead to a more expeditious resolution of this issue. The Trial Chamber will ultimately rule on the Defence Preliminary Motion. It is anticipated that whichever party loses the argument will appeal to the Appeals Chamber and leave will almost certainly be granted on the basis that it is a “substantial issue relating to jurisdiction”. At that stage the Defence will still need sight of the documents requested in order to advance meaningful arguments before the Appeals Chamber. Matters will be expedited if the Defence is able to obtain access to the documents it now seeks so that the Trial Chamber can be fully apprised of all the arguments that the Defence are entitled to make.

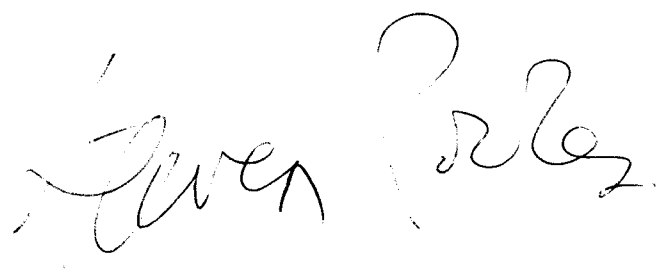
Relief Requested

9. Leave to appeal 'Order on the Defence Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lome Agreement).' Filed 16 July 2003.

James Oury

Steven Powles

Melron Nicol-Wilson

A handwritten signature in black ink, appearing to read "Steven Powles". The signature is written in a cursive style with a large, looping initial 'S'.