

(044.)

SCSL-04-15-T  
(24761 - 24766)



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**SPECIAL COURT FOR SIERRA LEONE**

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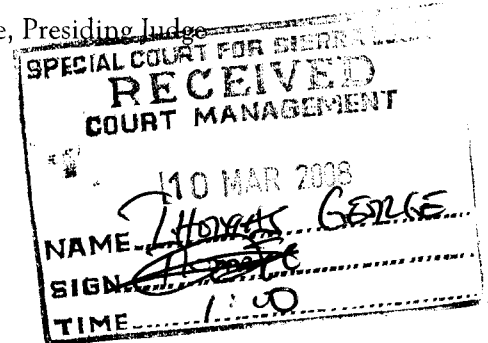
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**TRIAL CHAMBER I**

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

Registrar: Herman von Hebel

Date: 10<sup>th</sup> of March 2008



PROSECUTOR Against ISSA HASSAN SESAY  
MORRIS KALLON  
AUGUSTINE GBAO  
(Case No. SCSL-04-15-T)

Public Document

**DECISION ON KALLON APPLICATION FOR LEAVE  
TO MAKE A MOTION IN EXCESS OF THE PAGE LIMIT**

Office of the Prosecutor:  
Pete Harrison  
Vincent Wagona

Defence Counsel for Issa Hassan Sesay:  
Wayne Jordash  
Sareta Ashraph

Defence Counsel for Morris Kallon:  
Charles Taku  
Kennedy Ogeto  
Lansana Dumbuya  
Tanoo Mylvaganam

Court Appointed Counsel for Augustine Gbao:  
John Camrregh  
Scott Martin

TRIAL CHAMBER I ("Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Bankole Thompson, and Hon. Justice Pierre Boutet;

SEIZED of the Kallon Application for Leave to Make a Motion in Excess of the Page Limit ("Application") filed by Counsel for the Second Accused, Morris Kallon ("Applicant") on the 14<sup>th</sup> of February 2008;

CONSIDERING the Kallon Motion to Exclude Evidence Outside the Scope of the Indictment appended to the Application as a Confidential Annex ("Draft Motion");

NOTING the Response to the Application ("Response") filed by the Office of the Prosecutor ("Respondent") on the 22<sup>nd</sup> of February 2008 and the Reply thereto ("Reply") filed by the Applicant on the 27<sup>th</sup> of February 2008;

RECALLING Article 6 of the Practice Direction on Filing Documents before the Special Court for Sierra Leone ("Practice Direction") adopted on the 27<sup>th</sup> of February 2003 (as amended);

PURSUANT to Article 17 of the Statute of the Special Court and Rule 54 of the Rules of Procedure and Evidence ("Rules");

ISSUES THE FOLLOWING DECISION:

## I. SUBMISSIONS OF THE PARTIES

### 1. The Application

1. The Applicant seeks leave of the Chamber to make a Motion in excess of the page limit. Annexed to the Application is a Draft Motion, 86 pages in length, which seeks to exclude portions of the evidence of 23 Prosecution witnesses. Pursuant to Article 6(G) of the Practice Direction, a Party seeking to file a document which exceeds the page limit, must obtain authorization in advance from a Judge or a Chamber and provide an explanation of the exceptional circumstances that necessitate the

oversize filing.<sup>1</sup> The Applicant submits that both the volume and scope of the evidence which the Draft Motion seeks to exclude and the fundamental nature of the issues raised therein constitute an exceptional circumstance.<sup>2</sup>

2. The Draft Motion itself raises four grounds on which, in the submission of the Applicant, portions of the evidence of certain witnesses for the Prosecution ought to be excluded. Firstly, the Motion points to a number of allegations made against the Second Accused by Prosecution witnesses which, the Applicant argues, cannot reasonably be related to Counts of the Indictment.<sup>3</sup> Secondly, the Applicant submits that allegations of physical perpetration by the Second Accused have been made by witnesses without having been clearly specifically pleaded in the Indictment.<sup>4</sup> Thirdly, the Applicant states that portions of the evidence of Prosecution witnesses relates to material facts pertaining to all other allegations of which they have had insufficient pre-trial notice.<sup>5</sup> Finally, the Draft Motion seeks to exclude evidence which it says is not relevant to any charges in the Indictment.<sup>6</sup>

## 2. The Response

3. The Respondent submits that the Applicant has failed to demonstrate that exceptional circumstances exist justifying an oversize filing on the part of the Second Accused. It contends that the simple fact that the issues raised in the Motion are serious and complex does not constitute exceptional circumstances.<sup>7</sup>

4. The Respondent further submits that because the basic premise of the Motion is that the Accused is facing allegations of crimes for which he has not been charged, the Application actually seeks to challenge defects in the Indictment. As such the Respondent contends that the Motion duplicates another Motion already before the Chamber.<sup>8</sup> The Respondent also points to jurisprudence of the Chamber to the effect that challenges to the Indictment not raised as a

<sup>1</sup> Practice Direction, Art 6(G).

<sup>2</sup> Application, paras 5-11.

<sup>3</sup> Draft Motion, paras 19-23.

<sup>4</sup> *Ibid.*, paras 24-28.

<sup>5</sup> *Ibid.*, paras 29-38.

<sup>6</sup> *Ibid.*, paras 39-41.

<sup>7</sup> Response, paras 1-11.

<sup>8</sup> *Ibid.*, para 12.

preliminary motion before the commencement of trial should be included in final briefs to be considered at the end of the trial.<sup>9</sup>

3. The Reply

5. The Applicant contends that jurisprudence cited by the Respondent in which leave to file oversized pleadings was refused can be distinguished from the present case, and further contends that the Prosecution's reference to the jurisprudence of the *ad hoc* tribunals is misconceived, in that "the question of whether exceptional circumstances exist is a question of fact to be determined on a case by case basis."<sup>10</sup>

II. APPLICABLE LAW

6. The Chamber notes that the permissible length for motions before the Chamber is set by the Practice Direction at 10 pages or 3,000 words, whichever is greater.<sup>11</sup> Article 6(G) of the Practice Direction provides that

A Party ... seeking to file a document which exceeds the page limits set out in this article shall obtain authorization in advance from a Judge or Chamber and shall provide an explanation of the exceptional circumstances that necessitate the oversized filing.<sup>12</sup>

7. The Chamber notes further that at both the trial and appellate levels, the practice of the Special Court in relation to this provision has focused on the particular context of the application in question. Instructively, the Chamber recalls that in her Decision on a Prosecution Motion for an extension of the page limit for its Appeal Briefs in the case of *Prosecutor v. Brima, Kamara and Kanu*, Justice Winter held that the fact that nine grounds of appeal were to be submitted, coupled with the length and complexity of the Trial Judgment, constituted exceptional circumstances warranting an extension of the 250-page page limit for Appeals Briefs.<sup>13</sup> The Chamber further recalls that when the

<sup>9</sup> Response, paras 17-18 referring to *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao Request for Leave to Raise Objections to the Form of the Indictment, 17 January 2008.

<sup>10</sup> Reply, paras 11-18.

<sup>11</sup> Practice Direction, art 6(C).

<sup>12</sup> *Ibid.*, art 6(G).

<sup>13</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A, Decision on Urgent Prosecution Motion for an Extension of the Page Limit for its Appeal Brief, 24 August 2007, para 5.

Applicant herein applied to it on a previous occasion for leave to file an oversized motion challenging the Indictment, it was submitted that the nature of the issue and its potential effect on fundamental fair trial rights warranted authorisation to file a motion in excess of ten pages.<sup>14</sup> However, Justice Itoe found that the circumstances of the application were not exceptional and ordered that any motion filed by the Defence concerning defects in the form of the Indictment should not exceed the page limits prescribed by the Practice Direction.<sup>15</sup>

8. The Chamber notes from the submissions of the parties that at the ICTY and ICTR, a comparable approach is adopted with respect to applications for leave to file oversized documents, with determinations made on the basis of whether the circumstances of individual applications are so atypical as to merit an extension of the prescribed page limits.<sup>16</sup>

9. The Chamber deems it a plausible proposition, as the Applicant submits, that whether exceptional circumstances exist is a question of fact to be determined on a case by case basis.

### III. DELIBERATIONS

10. Guided by the foregoing principles, it is the considered opinion of the Chamber that the effectiveness of a pleading depends not on its length but on the clarity and persuasiveness of the arguments therein. Furthermore, while we recognise that the volume and scope of the evidence which the Draft Motion seeks to exclude is extensive and that the issues raised therein are important, we are not persuaded that in the context of this case, these factors render the circumstances exceptional such that the filing of an oversized motion should be authorised. Indeed, having considered the Draft Motion in detail, we find that much of the information contained therein could

<sup>14</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-903, Confidential Ex Parte Application for Leave to Make Motion in Excess of the Page Limit, 4 December 2007, paras 6-8.

<sup>15</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Confidential Ex Parte Decision on Kallon Application for Leave to Make Motion in Excess of the Page Limit, 14 December 2007, pp 2-3.

<sup>16</sup> See for instance *Prosecutor v. Seselj*, IT-03-67-PT, Decision on Certification to Appeal to Extend the Deadline for Filing Certain Preliminary Motions, 18 November 2003, in which a Trial Chamber of the ICTY found that challenges to jurisdiction and allegations of defects in the form of the indictment could be classified as exceptional circumstances in the context of a self-represented Accused. Compare with *Nahimana, Barayagwiza and Ngeze v. Prosecutor*, ICTR-99-52-A, Decision on Ferdinand Nahimana's Motion for an Extension of Page Limits for Appellant's Brief and on Prosecution's Motion Objecting to Nahimana's Appellant's Brief, 24 June 2004 in which Justice Weinberg de Roca of the Appeals Chamber of the ICTR held that although the appeal raised important legal and factual issues, no exceptional circumstances had been demonstrated.

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have been more clearly presented in an appendix to a Motion of ordinary length, thereby making the information more accessible and enhancing judicial economy.

11. Accordingly, the Chamber concludes that in the circumstances of the present application no exceptional circumstances exist such that it should authorise a filing in excess of the page limit provided for in Article 6(C) of the Practice Direction.


**IV. DISPOSITION**

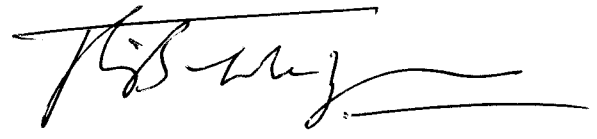
**FOR THE FOREGOING REASONS, the Trial Chamber**

**HEREBY DENIES the Application.**

Done at Freetown, Sierra Leone, this 10<sup>th</sup> day of March 2008.

  
Hon. Justice Pierre Boutet

  
Hon. Justice Benjamin Mutanga Itoe  
Presiding Judge  
Trial Chamber I

  
Hon. Justice Bankole Thompson

