

250)

SCSL-2004-15-T  
(9122-9128)

9122

SPECIAL COURT FOR SIERRA LEONE

IN THE TRIAL CHAMBER

**BEFORE:** Judge Benjamin Mutanga Itoe, Presiding Judge  
Judge Bankole Thompson  
Judge Pierre Boutet

**REGISTRAR:** Robin Vincent

**DATE:** 1<sup>st</sup> October, 2004

**THE PROSECUTOR**

**AGAINST**

**MORRIS KALLON**

**CASE NO.SCSL-04-15-PT**

---

**MOTION ON ISSUES OF URGENT CONCERN TO THE ACCUSED MORRIS  
KALLON**

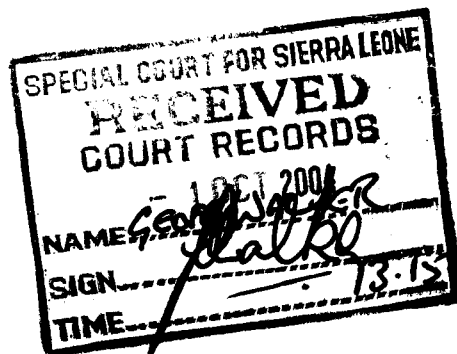
---

**Office of the Prosecutor**

**Defence Counsel for Morris Kallon**

Luc Cote  
Lesley Taylor

Shekou Touray  
Melron Nicol-Wilson



**INTRODUCTION**

1. The Defence for Kallon files this Motion pursuant to Rule 73 of the Special Court Rules of Procedure and Evidence (“the Rules”) to raise the following issues of urgent concern to the Accused Morris Kallon.
  - i. the non-compliance with the Trial Chamber’s Consequential Order of 27 January 2004 that the Consolidated Indictment be served on the Accused in accordance with the provisions of Rule 52 of the rules;
  - ii. the non-compliance with the Trial Chambers Consequential Order of 12 May 2004 instructing the Registrar pursuant to the provisions of Rule 52 of the Rules to prepare a certified copy of the Amended Consolidated Indictment and to serve it to the Accused;
  - iii. that the Accused Kallon is not properly arraigned before the Trial Chamber on the said Amended Consolidated Indictment on which his trial proceeds; and
  - iv. that the Indictment dated 3 March 2003 which was approved against the Accused Kallon and on which he made his initial Appearance before a Judge and thereunder properly arraigned (“the Original Indictment”) has not been stayed by Order of the Trial Chamber, notwithstanding the Trial Chambers Consequential Order of 27 January 2004 that a Consolidated Indictment be prepared as the Indictment on which a separate joint trial of the RUF group shall proceed.

**PROCEDURAL BACKGROUND**

2. On 7 March 2003, Judge Bankole Thompson approved the Indictment against Morris Kallon, who then made his initial appearance and plea on 21 March 2003 pursuant to the Rules before Judge Benjamin M. Itoe.

*Prosecutor v. Sesay, Kallon and Gbao (SCSL-2004-15-PT)*

3. By Decision and Order on Prosecution Motion for Joinder made on the 27 January 2004, the Trial Chamber ordered the joint trial of Issa Hassan Sesay, Morris Kallon and Augustine Gbao of the RUF, and a separate joint trial of Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu of the AFRC.
4. Further Consequential Orders were made : -
  - i. That the two Consolidated indictments be prepared as the Indictment on which the separate joint trial shall proceed and the Registry assign new case numbers to the Consolidated indictment;
  - ii. That the said Consolidated indictment be filed in the Registry within ten (10) days of the date of delivery of the Decision;
  - iii. That the said indictments be served on each Accused in accordance with Rule 52 of the Rules.
5. The Consolidated indictment filed on 5 February 2004 against Issa Hassan Sesay, Morris Kallon and Augustine Gbao pursuant to the Consequential Order made by the Trial Chamber included new locations and extended time frames in respect of certain Counts and was assigned a new Case number and was to that extent different from the Indictments separately preferred against each of the said Accused persons. The Accused Kallon is categorical that he was never served with it as ordered.
6. By Consequential Order and Corrigendum to the Decision on Prosecution Request For Leave to Amend the Consolidated Indictment made on 12 May 2004, the trial Chamber in granting leave further ordered the Prosecution to file the Amended Consolidated Indictment by 13 May 2004 and instructed the Registrar, pursuant to the provisions of Rule 52 of the Rules to prepare a certified copy of the Amended Consolidated Indictment and to serve it to the Accused Issa Hassan Sesay, Morris Kallon and Augustine Gbao.

***Prosecutor v. Sesay, Kallon and Gbao (SCSL-2004-15-PT)***

- 7. The Trial Chamber on the same date issued a Scheduling Order for the Further Appearance of the Accused on the Amended Consolidated Indictment to plead to the new charge on Monday, 17 May 2004.
- 8. The Accused Kallon instructs that attempt was made to effect service on him and other Co-Accused on Sunday 16 May 2004 as they were about taking lunch. They refused service on the grounds that Sunday was *dies dominicus non est juridicus*.
- 9. No further attempt was made to serve the Amended Consolidated Indictment on the Accused Kallon thereafter. Consequently, when he appeared in Court on Monday, 12 May 2004 in response to the Scheduling Order, he at the earliest available opportunity raised personally the issue of want of service in particular and refused to plead to the new Count. The Presiding Judge on his behalf recorded a plea of "Not Guilty".
- 10. The position remains the same even as the trial of the Accused proceeds on the Amended Consolidated Indictment.

**LEGAL BASIS FOR THE MOTION**

- 11. Rule 48 provides that: -
  - (A) *Persons accused of the same or different crimes committed in the course of the same transaction may be jointly indicted and tried.*
- 12. Rule 50 provides that: -
  - (A) *[ ... ] At or after such initial appearance, an amendment of an indictment may only be made by leave granted by a Trial Chamber pursuant to Rule 73. If leave to amend is granted, Rule 47(G) and Rule 52 apply to the amended indictment.*

*Prosecutor v. Sesay, Kallon and Gbao (SCSL-2004-15-PT)*

(B) *If the amended indictment includes new charges and the accused has already made his initial appearance in accordance with Rule 61:*

(1). *A further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charge.*

13. Rule 51 provides that: -

(B) *After the approval of an indictment pursuant to Rule 47, but prior to the commencement of the trial, the Prosecution may withdraw an indictment upon providing to the Trial Chamber in open Court a Statement of the reasons for the withdrawal.*

(C) *Once the trial of an accused has commenced, the Prosecution may withdraw an indictment only by leave granted by the Trial Chamber*

(D) *The withdrawal of the indictment shall be promptly notified to the accused and to Counsel for the accused*

14. Rule 52 provides that: -

(A) *Service of the indictment shall be effected personally on the accused. ... or as soon as possible thereafter.*

(B) *Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment certified in accordance with Rule 47.*

15. Rule 2 defines an Accused as

*Prosecutor v. Sesay, Kallon and Gbao (SCSL-2004-15-PT)*

*“A person against whom one or more counts in an indictment have been approved in accordance with Rule 47.”*

**SUBMISSIONS**

16. Personal service on the Accused as required by the rules is not synonymous with service on Counsel and is a matter of strictissimi juris.
- 17 That Sunday being dies non is supported by the Rules and practice of the Special Court.
18. The Accused Kallon at the earliest available opportunity raised the matter in Court when he appeared on the Scheduling order.
19. It is submitted that the want of service of the Consolidated Indictment and the Amended Consolidated Indictment is fatal to the proceedings.
20. The Consolidated indictment or as amended to include a new Count, contains new locations, extended time frames and bears a new Case number. It is both in form and to some extent in substance not the same as the Original Indictment on which the Accused made his initial appearance and plea and therefore has all the features of a fresh indictment.
21. Accordingly, the Trial Chamber should have gone through the procedural steps of staying the Original indictment in the absence of any indication on the part of the Prosecution to have it withdrawn at a later stage after consolidation. In effect it now has the potential of a stand by Indictment against the Accused at the hands of the Prosecution should the Amended Consolidated indictment be thrown out and procedurally unfair.

*Prosecutor v. Sesay, Kallon and Gbao (SCSL-2004-15-PT)*

**CONCLUSION**

In the premises the Defence humbly prays the Court for the following reliefs: -

- (1) An order staying the Original Indictment.
  
- (2) An Order that the Accused Kallon is not properly arraigned before the Court to proceed with his trial on the Amended Consolidated indictment.
  
- (3) Such further or other consequential orders as the Court may deem appropriate.



Shekou Touray

Melron Nicol-Wilson

1<sup>st</sup> October 2004