

(9250 - 9253)

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: 11TH OCTOBER, 2004.

THE PROSECUTOR

AGAINST

MORRIS KALLON

CASE NO. SCSL-04-15-~~XT~~

**KALLON - DEFENCE REPLY TO PROSECUTION RESPONSE TO THE
MOTION ON ISSUES OF URGENT CONCERN TO THE ACCUSED MORRIS
KALLON**

Office of the Prosecutor

Luc Cote
Lesley Taylor

Defence Counsel for Morris Kallon

Shekou Touray
Melron Nicol-Wilson

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT RECORDS	
NAME	NEIL GIBSON
SIGN	<i>Neil Gibson</i>
TIME	11:35

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The Defence files this “Reply” to the Prosecution’s Response to the Motion on issues of urgent concern to the Accused Morris Kallon

BACKGROUND

1. On the 1st of October 2004, the Defence filed a Motion on issues of urgent concern to the Accused Morris Kallon.
2. On the 8th of October 2004, the Prosecution filed a Response to the Defence Motion on issues of Urgent Concern to the Accused Morris Kallon.

PROSECUTION SUBMISSIONS

3. The Prosecution in its response argued that with reference to the decision of Judge Boutet on 17th May 2004, the service of the Amended Consolidated Indictment was deemed to have been personally effected on the Accused on 16th May 2004.
4. The Prosecution further argued that the service of the consolidated indictment and the Amended Consolidated indictment is proper and that the Accused is properly arraigned before the Trial Chamber and that his Counsel has consented to this position by Cross Examining witnesses.
5. The Prosecution also submitted that the Accused has suffered no prejudice even if there has been a failure of service on the Accused, of the Consolidated Indictment or the Amended Consolidated Indictment, because both documents were served upon his Counsel.

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6. Finally the Prosecution submitted that in accordance with Legal Principles, Trial on a subsequent indictment prevents retrial on a former indictment as such it is unnecessary for an order to be issued staying the original indictment.

ARGUMENTS

Personal service has not been effected in accordance with the rules.

7. The Prosecution concedes that personal service of the Consolidated and Amended Indictment as required by the rules was not effected but rely on the statement of the Learned Judge deeming the Consolidated Indictment to have been personally served.
8. The Defence submits that the Rule as to Service is mandatory and requires strict compliance. Its provides no room for a deeming provision as contended by the Prosecution.

Substantial issues can be raised at any stage

9. The Defence further submits that the present stage of the proceedings during which the issue is raised and the fact that the Accused has taken part in the Trial up to this Stage do not bar him from raising the issues.
10. The Defence further contends the Accused is not barred from raising substantial issues relating to his arraignment.

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The proper procedure for withdrawing of an indictment.

11. The proper procedure for withdrawal of an indictment, as provided for by Rule 51 (b) (c) and (d) has not been complied with by the Prosecution. Even though the Prosecution concedes that the original indictment is of no effect . The Defence accordingly submits that an order staying the original indictment, will put the issue beyond doubt.
12. The Prosecution assertion that in accordance with legal principles Trial on a subsequent indictment prevents retrial on a Trial indictment has not been supported by any provision of the Rule or any other authority and is not the complain of the Defence.

CONCLUSION

13. The Defence submits that for the foregoing reasons, the Trial Chamber should dismiss the Response of the Prosecution and grant the relief prayed for by the Accused in the Motion dated 1st October 2004.



Shekou Touray,

Melron Nicol-Wilson