

SCSL-2004-15-T

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(11261 - 11264)

SPECIAL COURT FOR SIERRA LEONE

Trial Chamber 1

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

Registrar: Robin Vincent

Date: 25 April 2005

PROSECUTOR

Against

**Issa Sesay
Morris Kallon
Augustine Gbao**

Case No. SCSL - 2004 - 15 - T

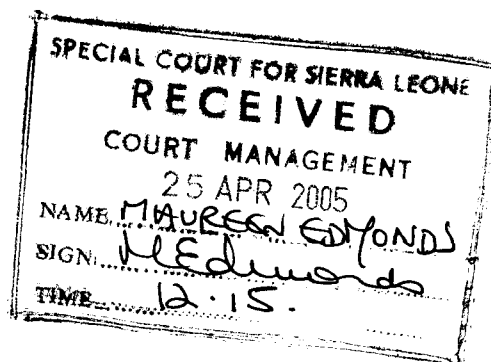
**Reply by the Second Accused to Prosecution's Response to Application by the
Second Accused for Interlocutory Appeal Against the Majority Decision of the Trial
Chamber of 9 December 2004 on the Motion on Issues of Urgent Concern to the
Accused Morris Kallon**

Office of the Prosecutor

Luc Côté
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Shekou Touray
Vincent Nmehielle
Melron Nichol-Wilson
Rachel Irura



I. INTRODUCTION

1. The Defence for Morris Kallon files this Reply to the Prosecution's response to the Application by the Second Accused, Morris Kallon for Leave for Interlocutory Appeal (hereinafter Application for Leave) Against the Majority Decision of the Trial Chamber on 9th December 2004 on the Motion on Issues of Urgent Concern to the Accused Morris Kallon.

II. PROCEDURAL BACKGROUND

2. On Monday 11th April 2005, the Defence for Morris Kallon filed the said Application for Leave.

3. On Friday 22 April 2004, the Prosecution filed a Response to the said Application for leave and served the said Response to the Defence Counsel to Morris Kallon on the same Friday 22 April 2005.

4. The Prosecution in its Response submitted that "the Application for Leave to Appeal demonstrate neither exceptional circumstances nor irreparable prejudice and, accordingly, should be dismissed."

III. PROSECUTION'S ARGUMENTS

5. The Prosecution argues that the Second Accused's Application "does not meet the threshold of the twin criteria of Rule 73(B)" of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, as established by the Trial Chamber of Special Court in *Prosecutor v Sesay and Others* to the effect that the threshold required in Rule 73(B) is high and that the two limbs being conjunctive "must both be satisfied."¹

6. The Prosecution relies on the Trial Chamber's decision in *Prosecutor v Norma and others*² where the Trial Chamber pointed out the need to expeditiously conduct the

¹ SCSL – 2004 – 15 – T, "Decision on Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution's Motion for Joinder," 13 February 2004, para 10.

² SCSL – 2004 – 14 – T, "Majority Decision on the Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution's Request for Leave to Amend the Indictment Against Norman, Fonfana and Kondewa," 2 August 2004, Para 25.

proceedings before the Chamber and the need to “continue to apply the enunciated criteria” contained in Rule 73(B) “with the same degree of stringency as in previous application for leave to appeal...”

7. The Prosecution states that the “averment (sic) in the Defence’s Application for Leave merely rehearsed “a previously articulated argument which was dismissed in the majority decision” and that there had not been any breach of Articles 9(2) and 14(3) of the ICCPR or Rule 50 of the Rules.”

8. The Prosecution argues that the non-arraignment of the Second Accused on all the counts of the amended consolidated indictment and the non-withdrawal of the former indictments do establish exceptional circumstances or irreparable prejudice.

IV. DEFENCE’S ARGUMENTS

9. The Defence for Morris Kallon argues that the fact that a majority decision of the Trial Chamber dismissed the Defence’s original motion on the issue that is the subject of the Defence’s Application for Leave to Appeal does not bar, the Defence from seeking such leave. In furtherance of this argument, the Defence contends that the essence of an appeal to a higher Chamber is to review the decision of a trial chamber on a point of law or procedure despite the fact that it is a majority decision.

10. The Defence maintains its argument that the non-arraignment of the Second Accused on all counts of the Consolidated Indictment is a breach of the Second Accused’s right to procedural fairness that is a substantial part of his right to fair trial under Article 14(3) of the ICCPR and other fair trial guarantees under the Statute of the Special Court and the Rules of Procedure and Evidence of the Special Court as already articulated.

11. The Defence contends that the non-arraignment of the Second Accused on all Counts of the Amended Consolidated Indictment and the non-withdrawal of the original indictments after the filing of Amended Consolidated Indictments are acts that in themselves are more likely to lead to irreparable prejudice – a criterion under Rule 72(B),

which in turn become exceptional circumstances – another criterion laid down by the said Rule for granting leave for interlocutory Appeal.

12. The Defence argues that it is not speculative to be concerned about the slightest possibility of infringing on the Second Accused's right against double jeopardy. In the interest of justice and fair procedure in a serious case such as this, the question to be answered is whether it is possible that the second accused stands in any possible danger no matter how slight, of being prejudiced by his non-arraignment on all counts of the Amended Consolidated Indictment and the non-withdrawal of the other subsisting indictments after the filing of the Amended Consolidated Indictment.

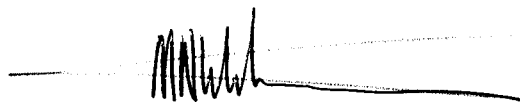
12. The Defence for the Second Accused submits that the non-arraignment of the Second Accused on all counts of the Amended Consolidated Indictment and the non-withdrawal of the original indictment and Consolidated Indictment after the filing of the Amended Consolidated Indictment do establish exceptional circumstances and irreparable prejudice under Rule 72(B) to warrant the grant of leave to appeal the majority decision that is the subject of this reply.

V. CONCLUSION

13. WHEREFORE, the Defence for the Second Accused grant the leave sought by the Defence of the Second Accused .

Respectfully submitted, this 24th Day of April 2005.

Counsel for the Second Accused:



Melron Nicol-Wilson
Shekou Touray
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