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SCSL-2003-09-PT
(686-690)

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IN THE SPECIAL COURT FOR SIERRA LEONE

Before: ~~The Trial Chamber~~ **The Appeal Chamber**

Registrar: Mr Robin Vincent

Date filed: 31st October 2003

Case No. SCSL 2003 – 07 – PT

THE PROSECUTOR
(Prosecutor)

Against

MORRIS KALLON
(Applicant)

AUGUSTINE BAO intervening
(Applicant)

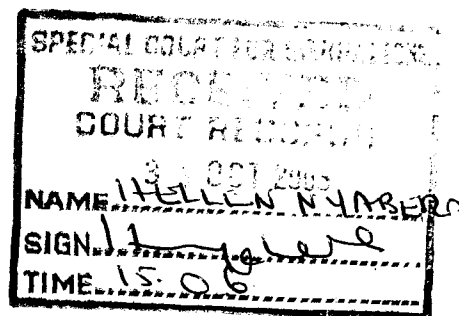
**INTERVENING MOTION IN THE PROCEEDINGS BETWEEN
PROSECUTOR against KALLON ON LACK OF JURISDICTION OF THE
APPEAL CHAMBER TO ACT AS A COURT OF FIRST INSTANCE IN THE
DETERMINATION OF THE QUESTION OF JURISDICTION OF THE
SPECIAL COURT FOR SIERRA LEONE, IN THE EVENT THAT LEAVE TO
INTERVENE TO APPLY FOR STAY IS GRANTED**

Office of the Prosecutor

Mr Luc Cote, Chief of Prosecutions
Mr Robert Petit
Ms Boi-Tia Stevens

For Mr Gbao

Mr Girish Thanki
Professor Andreas O'Shea
Mr Ken Carr



1. It is respectfully submitted that the Appeal Chamber of the Special Court for Sierra Leone derives its nature, competence and powers from the Agreement between the United Nations and Sierra Leone and the Statute of the Special Court for Sierra Leone annexed to that Agreement. These documents must be read in accordance with their ordinary meaning, in their context and in the light of their object and purpose;¹

2. In terms of the Court's Statute, the Appeals Chamber is designed as a body to hear appeals from the Trial Chamber. This finding must derive from
 - (a) The name given to it: 'Appeal' Chamber;
 - (b) The power expressly given to it to 'hear appeals' against conviction and sentence;
 - (c) The fact that its creation is intended to comply with international human rights norms which provide for the right of appeal against conviction and sentence;
 - (d) The history of the provision on the creation of an Appeal Chamber in the Agreement and the Statute, and in particular the fact that it is modelled on the International Criminal Tribunals for the Former Yugoslavia and Rwanda where there are Trial Chambers and Appeal Chambers, and where the Appeal Chamber deals with appeals and only with appeals;

3. Further, it is respectfully submitted that the judges do not have the power to alter the scope of the powers and jurisdiction of the Appeal Chamber in the

¹ See Article 31 of the Vienna Convention on the Law of Treaties of 1969

Rules of Procedure and Evidence, or in the alternative do not have the jurisdiction to extend the Chamber's jurisdiction beyond that which is provided for under the Statute expressly or impliedly.


4. There is a significant different between the situation where an appeal body only acts as an appeal body and where it further acts as a court of first instance. In the latter case, on complex matters of law there is less time for reflection and the input of fewer judges and less stages in the thought processes behind the final resolution of a matter. One would therefore expect such a deviation from the normal structure of court of first instance and court of appeal to have been specifically provided for in the Agreement and/or the Statute annexed to it.

5. It is therefore respectfully submitted that the exercise of first instance jurisdiction by the Appeal Chamber and the renunciation of jurisdiction by the Trial Chamber under Rule 72 (E) of the Rules of Procedure and Evidence constitute an *ultra vires* extension of their respective powers. Beyond those provided for in the Statute and the Agreement on which it is founded.

Girish Thanki

Andreas O'Shea

Kenneth Carr



Index of Chambers General File of Authorities

FILE 1

Special Court for Sierra Leone Documents

1. SCSL Statute
2. Rules of Procedure and Evidence
3. Agreement between the UN and the government of Sierra Leone
4. Special Court Agreement Ratification Act 2002
5. Lomé Accord as annexed to Letter dated 12 July 1999 from the Chargé D’Affaires ad Interim of the Permanent Mission of Togo to the United Nations Addressed to the President of the Security Council
6. Letter dated 9th August 2000, Permanent Secretary of Sierra Leone to the UN, to the President of the Security Council
7. Resolution by Security Council 1315 (2000), 14th August 2000
8. Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, 4th October 2000
9. Report on the Security Council Mission to Sierra Leone, dated 16th October 2000
10. Letter dated 22nd December 2000, President of the Security Council to the Secretary-General
11. Letter dated 12th January 2001, Secretary-General to the President of the Security Council
12. Letter dated 31st January 2001, President of the Security Council to the Secretary-General
13. Letter dated 13th July 2001, Secretary-General to the President of the Security Council
14. Letter dated 23rd July 2001, President of the Security Council to the Secretary-General
15. Letter dated 28th December 2001, Secretary-General to the President of the Security Council
16. PLM Report, Letter dated 8th March 2002, Secretary-General to the President of the Security Council
17. Terms of Reference for the Management Committee for the SCSL, 8th August 2002
18. Ratification and Signatures of Sierra Leone on Treaties of specific interest
19. Constitution of Sierra Leone

ICTY/ ICTR Documents

20. ICTY Statute
21. Rules of Procedure and Evidence ICTY
22. ICTR Statute
23. Rules of Procedure and Evidence ICTR

FILE 2**UN Documents**

1. Rome Statute of the ICC
2. Charter of the International Military Tribunal at Nuremberg, Annex to the London Agreement
3. UN Charter
4. ICJ Statute

Conventions/ Charters/ Declarations

5. Vienna Convention on the law of treaties
6. Vienna Convention on the Law of Treaties between States and International Organizations
7. Montevideo Convention
8. Geneva Conventions + Additional Protocols
9. Universal Declaration of Human Rights
10. International Covenant on Civil and Political Rights
11. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
12. Convention on the Rights of the Child
13. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
14. European Convention on Human Rights
15. African Charter on Human and Peoples' on Human Rights
16. African Charter on the Rights and Welfare of the Child
17. American Convention on Human Rights
18. UN Declaration on the Protection of All Persons from Enforced Disappearances, GA Resolution 47/133
19. International Labour Organization Worst Forms of Child Labour Convention