

(641-645)

**IN THE SPECIAL COURT FOR SIERRA LEONE
THE APPEAL CHAMBER**

Before: Judge Robinson QC, President
Judge King, Vice-President
Judge Ayoola
Judge Winter
Fifth judge to be determined

Registrar: Mr Robin Vincent

Date filed: 14th October 2003

Case No. SCSL 2003 - 07 - PT

In the matter of:

THE PROSECUTOR

Against

MORRIS KALLON,

-AUGUSTINE BAO intervening

**REQUEST ON BEHALF OF AUGUSTINE GBAO TO INTERVENE FOR THE
PURPOSE OF REQUESTING A STAY OF THE APPEAL CHAMBER
PROCEEDINGS ON ISSUE OF LACK OF JURISDICTION AND AMNESTY
AND APPLICATION FOR A STAY OF SUCH PROCEEDINGS**

And

**ALTERNATIVE REQUEST FOR THE RESERVATION OF JUDGMENT BY
THE APPEAL CHAMBER UNTIL THE DEFENCE OF AUGUSTINE BAO
HAVE BEEN HEARD ON THE ISSUE**

And

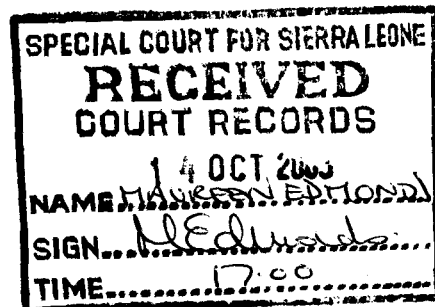
**ALTERNATIVE REQUEST ON BEHALF OF AUGUSTINE BAO FOR
LEAVE TO INTERVENE IN THE PROCEEDINGS BEFORE THE APPEAL
CHAMBER**

Office of the Prosecutor

Mr Luc Cote, Chief of Prosecutions

For Mr Gbao, intervening

Mr Girish Thanki
Professor Andreas O'Shea
Mr Ken Carr



**A. INTRODUCTION: THE EXISTING TIME FRAME FOR THE
EXCHANGE OF PLEADINGS ON PRELIMINARY ISSUES OF
JURISDICTION IN THE CASE OF GBAO**

1. The decision on protective measures by Judge Pierre Bute was handed down on 10th October 2003. The implication of this fact is that the Prosecution is under an obligation to provide immediate disclosure to the Defence. In terms of Rule 72 of the Rules of Procedure and Evidence:

Preliminary motions by either party shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i)

2. It follows that any preliminary motions for Gbao effectively need to be filed within 21 days following Prosecution disclosure, which is imminent. The Trial Chamber will therefore be in a position to refer the matter to the Appeal Chamber before January 2004.

**B. REQUEST FOR LEAVE TO INTERVENE AND APPLICATION FOR A
STAY**

3. It is respectfully requested that Augustine Gbao be given leave to intervene in the case of *Prosecutor v Kallon* under the Appeal Chamber's implied power to hear a party in the interests of justice, for the purpose of requesting a stay of such proceedings to hear motion of lack of jurisdiction for amnesty set down for the 1st November 2003 until a date to be fixed in January 2004;

4. The motion relating to the Lome Agreement to be argued by the Defence for Kallon raises an issue of jurisdiction which has identical implications for Augustine Bao as for Kallon since both were members of the RUF envisaged as former combatants under the Lome Accord. As a beneficiary of this amnesty on the same terms and under the same circumstances as Kallon, it is submitted that Augustine Bao has a legitimate interest in the outcome of these proceedings;
5. Given that the matter is being dealt with by the Appeal Chamber and not by the Trial Chamber it is submitted that the effect of a decision on Kallon's motion without arguments from Augustine Bao may be to prevent Augustine Bao from addressing the issue of the application of the Lome Accord as raised by the Defence for Kallon. Before the amendment of Rule 72 permitting a direct referral to the Appeal Chamber, the Defence for Augustine Bao would have had a legitimate expectation that their arguments on jurisdiction and the Lome Accord would have been heard by the Trial Chamber and possibly also the Appeal Chamber since the motion in Kallon would have first come before the Trial Chamber, not therefore finally settling the matter;
6. It is further respectfully submitted that while it is not the right of Bao to have Kallon's proceedings delayed in this way it is nonetheless in the interests of justice to postpone the proceedings and it is requested that the Appeal Chamber exercise its discretion to grant such stay.
7. It is suggested the prejudice to the efficiency of the work of the Appeal Chamber will be minimal since there are a number of other issues to be argued during the first week of November and the Appeal Chamber later can combine its hearing of the issue of the Lome Accord in the case of Kallon and Gbao with arguments on the same issue by other parties who also have a legitimate interest in contributing to this point, and with the hearing of any other preliminary motions on jurisdiction which arise. Since decisions on protective measures have either been given or are imminent in the cases of all other detainees, it is highly likely that other detainees will wish to contribute to proceedings held in January on the Lome Accord and on other issues;
8. It is further suggested that this will not prejudice the case of Kallon since his Defence team have themselves requested a stay of the proceedings;

9. Further, it is submitted that this position does not prejudice the prosecution, since these are questions of law on which the prosecution have substantial resources and skills to deal with, regardless of the number of defence counsel addressing their minds to the point. In any event, since the Prosecution is an independent body, it is in the interests of the prosecution as well as the Court that the issue of jurisdiction be as fully argued as is necessary for achieving the most valuable jurisprudence on the point;
10. It is respectfully submitted that it is in the interests of the efficient operation of the Court, as in the interests of justice, that arguments on jurisdiction are argued as comprehensively as possible, so that if the Court ultimately finds in favour of its jurisdiction this is on a solid footing. If the Court ultimately finds that it does not have jurisdiction this will be after the most careful analysis of the points and interests at stake.

IN THE ALTERNATIVE:

**C. REQUEST FOR THE APPEAL CHAMBER TO RESERVE JUDGMENT
UNTIL IT HAS HEARD THE DEFENCE FOR AUGUSTINE GBAO ON THE
QUESTION OF JURISDICTION AND THE LOME ACCORD**

11. In the alternative, it is requested that the Appeal Chamber refrain from deciding on the question of amnesty under the Lome Accord until Augustine Gbao has been given an opportunity to be heard on the matter following the filing and referral by the Trial Chamber of its preliminary motion. It is submitted that the Appeal Chamber can hear arguments on two separate dates but reserve judgment until both hearings have been concluded. It is suggested that this is a less elegant solution than a postponement as requested above but would nonetheless ensure that Augustine Gbao and possibly other accused are heard on the question and further ensure that the Appeal Chamber makes a considered judgment having heard the most comprehensive arguments on the issue.

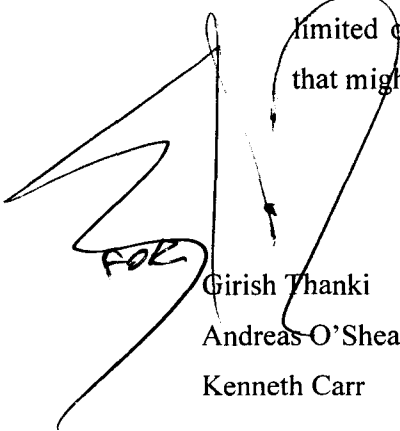
**D. REQUEST FOR LEAVE TO INTERVENE ON THE JURISDICTION
OF THE APPEAL CHAMBER TO ADDRESS JURISDICTION AND ON
THE QUESTION OF JURISDICTION ITSELF**

IN THE ALTERNATIVE

12. Further or in the alternative, it is hereby requested that the Appeal Chamber grant the Defence of Augustine Bao leave to intervene in writing and/or orally in the proceedings of *Prosecutor v Kallon* as provided for in Article 5 of the Practice Direction on the Filing of Documents under Rule 72 of the Rules of Procedure and Evidence Before the Appeal Chamber of the Special Court for Sierra Leone of 22nd September 2003:

- (a) On the jurisdiction of the Appeal Chamber to decide the issue of the Special Court's jurisdiction at first instance and without appeal;
- (b) On the issue of the applicability of the Lome Accord and its impact upon the jurisdiction of the Special Court, within the limits of the issues raised by the Defence for Kallon;

And without prejudice to the accused's right to file preliminary motions on jurisdiction. While this does not provide the Defence of Bao with the fullest opportunity to deal with Bao's amnesty as it pertains to the jurisdictional questions raised in Kallon's motion, it will at least have a limited opportunity to address the issue before it is decided in a manner that might make it difficult for the issue to be revisited.



Girish Thanki
Andreas O'Shea
Kenneth Carr