

040



SPECIAL COURT FOR SIERRA LEONE

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620

SCSL-2003-07-PT- 2D-040

(620.- 625.)

THE TRIAL CHAMBER

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

**Registrar:** Robin Vincent

**Date:** 14<sup>th</sup> of June 2003

**The Prosecutor Against:** Morris Kallon  
(Case No. SCSL-2003-07-PT)

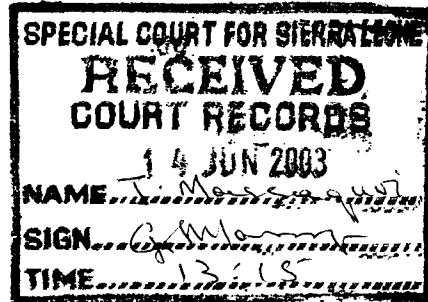
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DECISION ON THE DEFENCE MOTION FOR AN EXTENSION OF TIME TO FILE  
PRELIMINARY MOTIONS

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**Office of the Prosecutor:**  
Luc Côté, Chief of Prosecution

**Defence Counsel:**  
James Oury  
Steven Powles



**THE SPECIAL COURT FOR SIERRA LEONE ("THE COURT")**

**SITTING AS** the Trial Chamber (hereinafter referred to as "the Chamber") composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet and Judge Benjamin Itoe;

**CONSIDERING** the indictment of the 3<sup>rd</sup> of March 2003 indicting Morris Kallon for crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law;

**CONSIDERING THAT** this Court by a decision on the 7<sup>th</sup> of March 2003 of Judge Bankole Thompson approved the aforesaid indictment charging the said Morris Kallon with crimes within the jurisdiction of the Special Court;

**CONSIDERING FURTHER THAT** the initial appearance of the accused Morris Kallon took place on the 15<sup>th</sup>, the 17<sup>th</sup> and the 21<sup>st</sup> of March, 2003;

**BEING SEIZED** of the Defence Motion, filed on the 30<sup>th</sup> of May 2003, requesting the Trial Chamber to make an order for an extension of time to file preliminary motions ("the Motion");

**CONSIDERING** the Prosecutor's Response (Written Submissions) filed on the 6<sup>th</sup> of June 2003 in which the Prosecutor submits that the Defence request for the extension of time within which to file preliminary motions ("the Response") should be considered in the light of the objective and spirit of the Rules in maintaining fair and expeditious proceedings;

**CONSIDERING** the Reply of the Defence filed on 9<sup>th</sup> of June 2003("the Reply");

**CONSIDERING** also the provisions of Article 14 of the Statute of the Court regarding the conduct of trial proceedings;

**MINDFUL** of Article 17 of the Statute of the Courts, Article 14(3) (e) of the International Covenant on Civil and Political Rights and Article 10 of the Universal Declaration of Human Rights all of which provide for the rights of the accused;

**WHEREAS** acting on the Chamber's Instruction, Court Management Section notified the parties on 13<sup>th</sup> of June 2003 that the Motion, the Response and the Reply would be considered and determined on the basis of the Written Submissions of the parties pursuant to Rule 73 of the Rules;

## NOTING THE SUBMISSIONS OF THE PARTIES

### The Defence Motion:

1. By the aforementioned Motion, the Defence seeks an order for an extension of time to file preliminary motions (paragraph 3 of the Motion);
2. More specifically, by the said Motion the Defence requests an order granting an extension of time of 21 days for Mr. Kallon to file Preliminary Motions beyond the time prescribed by Rule 72 with the result that such motions would be due on the 8<sup>th</sup> of July 2003;
3. Further, the Defence avers that Mr. Kallon intends to file a number of preliminary motions pursuant to Rule 72, and that the said Rule 72 stipulates that such motions shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all materials envisaged by Rule 66 (A) (i), and that having received disclosure by the Prosecution pursuant to Rule 66 (A) (i) on the 26<sup>th</sup> of May 2003, all preliminary motions are to be brought in Mr Kallon's case by the 16<sup>th</sup> of June 2003;

### The Prosecution's Response:

4. In their Response filed on the 6<sup>th</sup> of June 2003 to the aforementioned Defence Motion, the Prosecution contends that, contrary to the assertion of the Defence, the Prosecution did fulfil its disclosure obligations pursuant to Rule 66 (A) (i). The Prosecution submits further that requests for extension of time should be made pursuant to Rule 73 and on a showing of good cause:
5. They contend also that in considering this request, being the first, for an extension of time, the Court should bear in mind the objective and spirit of the Rules in maintaining fair and expeditious proceedings which is best reflected in a judicious approach by the Court to the application of the good cause criteria; and that, compared to ICTY and ICTR, there must be good reason behind the Court's decision to shorten the time period for filing preliminary motions by nine days.
6. Finally, the Prosecution agrees that the contemplated preliminary motions which the Defence intends to file encompass complex issues that deserve proper consideration but urges the Court to articulate a standard that reflects the objective of the Rules in maintaining fair and expeditious proceedings.

**The Defence Reply:**

7. In their Reply filed on the 9<sup>th</sup> of June 2003 to the Prosecution's Response, the Defence complains that they are not privy to any "material" referred by the Prosecution in paragraph 5 of their Response and are unable to reply thereto, and submit that if the Court relies upon such "material" in rendering its decision the Defence would be placed at unfair disadvantage; they argue also that the Prosecution's assertion that "the preparation of the preliminary motions as authorised by the Defence do not require such extensive contact with the Accused" undermines a fundamental minimum right of the Accused, to wit, to ensure that he is afforded adequate time and facilities for the preparations of his defence (Article 17 of the Statute of the Court).

**AND HAVING DELIBERATED AS FOLLOWS:**

8. The Trial Chamber notes that in support of the Motion Defence Counsel relies on Rule 7 of the Rules of Procedure and Evidence of the Court.

Rule 7 provides that:

- (A) Unless otherwise ordered by the Chambers or otherwise provided by the Rules, where the time prescribed by or under the Rules for the doing of any act shall run as from the occurrence of an event, that the time shall run from the date on which notice of the occurrence of the event has been received in the normal course of transmission by counsel for the accused or the Prosecutor as the case may be.
- (B) Where a time limit is expressed in days, only ordinary calendar days shall be counted. Weekdays, Saturdays, Sundays and public holidays shall be counted as days. However, should the time limit expire on a Saturday, Sunday, or public holiday, the time limit shall automatically be extended to the subsequent working day.
- (C) Unless otherwise ordered by a Chamber, any response to a motion shall be filed within seven days. Any reply to the response shall be filed within three days.

It is clear from a plain reading of Rule 7 that it is descriptive only as to time limits and does not provide authority for time extension.

9. Rule 73, pursuant to which the Defence appears to move the Chamber (though not specifically stated) provides:

- (A) Subject to Rule 72, either party may move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Trial Chamber, or a Judge designated by the Chamber from among its members, may rule on such motions having heard the parties in open Court. The Trial Chamber may request that the parties submit Written Submissions in support of a motion.

Although not specifically stated under this Rule, the Chamber is disposed to adopt the "good cause" criteria for determining the merits of such motions under Rule 73 while maintaining and ensuring that the proceedings would be fair and expeditious.

10. The Chamber has carefully reviewed the authorities from sister international tribunals cited by the Prosecution in their Response, to wit, in *The Prosecutor v. Kraijisnik*, IT-00-39 & 40-PT, 31 May 2003 and *The Prosecutor v. Obrenovic, Blagojevic, Jovic*, IT-01-43-PT, IT-98-33/1-PT, IT-1-44-PT, 4 October 2001 and wish to observe that those authorities do not, understandably, provide any definition as to what constitutes "good cause". The only reasonable inference to draw from those cases is that what constitutes "good cause" depends upon the particular facts and circumstances of each case. The Chamber is of the same mind.

11. The Trial Chamber further notes that the request of the Defence for an extension of time is entirely predicated upon the need to conduct extensive and complex consideration and research on the issue of the jurisdiction and legality of the Court as the first and only "hybrid" international criminal tribunal established by the international community. The Chamber agrees that this is an interesting research theme for the purposes of developing the jurisprudence of the Court. However, the Court does not share the view that this is necessarily a subject that requires such extensive and complex research for the reason that being the first and only "hybrid" international tribunal for adjudicating crimes against international humanitarian law there are no previous institutional paradigms with which to compare the Court and derive insightful legal guidance.

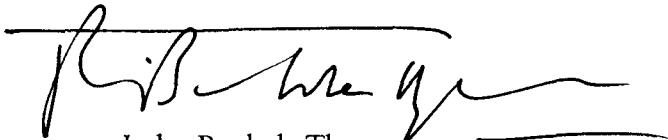
12. The Chamber also notes that the Defence intends to pursue another jurisdictional issue through a preliminary motion, to wit, "the applicability and effect of the Lomé Agreement on the accused indicted by the Court as well (as) the criteria adopted and applied in determining which persons are alleged to bear the "greatest responsibility for offences in Sierra Leone". Again, the Chamber's findings on these points are that, by parity of reasoning, these are not issues of such great complexity that it would require exhaustive and demanding research beyond the prescribed time limit under Rule 72.

13. The Chamber concludes that having regard to the totality of the circumstances of the instant Motion, no good cause has been shown by the Defence for an extension of time.

14. The Court observes that at the time of filing this application the applicant was well within the time limits prescribed for such motions and therefore questions the appropriateness and usefulness of the instant motion at this time.

**PRECISELY FOR THE FOREGOING REASONS, THE TRIAL CHAMBER DENIES**  
the Defence Motion for an extension of the time limit beyond the prescribed 21 days  
within which to file preliminary motions on the grounds that no good cause has been  
shown to justify exercise of the Chamber's discretion in the matter in favour of the  
Defence.

Done at Freetown, Sierra Leone, this 14<sup>th</sup> day of June 2003



Judge Bankole Thompson  
Presiding Judge, Trial Chamber

