

SCSL-2003-01-I-024
(272-275)



SPECIAL COURT FOR SIERRA LEONE

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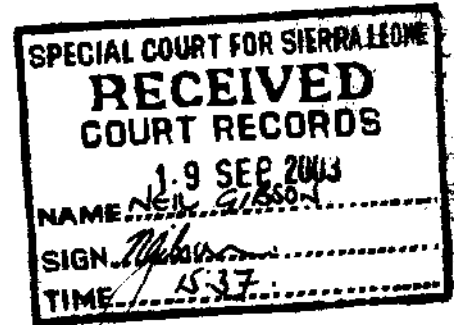
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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 19th of September 2003



The Prosecutor against

Charles Ghankay Taylor
(Case No.SCSL-2003-01-I)

ORDER PURSUANT TO RULE 72 (E)

**DEFENCE MOTION TO QUASH THE INDICTMENT AND TO DECLARE THE
WARRANT OF ARREST AND ALL OTHER CONSEQUENTIAL ORDERS NULL
AND VOID**

Office of the Prosecutor:
Mr. Luc Côté, Chief of Prosecutions

Defence Counsel:
Mr. Terence Michael Terry

THE SPECIAL COURT FOR SIERRA LEONE (“the Special Court”)

SITTING as the Trial Chamber (“the Chamber”), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet, and Judge Benjamin Mutanga Itoe;

CONSIDERING, that an Indictment against “the Accused” has been reviewed and approved on the 7th day of March 2003;

SEIZED of the Applicants Motion Requesting that the Trial Chamber Do Quash the Said Approved Indictment of the 7th March 2003 of Judge Bankole Thompson and that the Aforesaid Purported Warrant of Arrest and Order for Transfer and Detention of the Same Date Issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and All Other Consequential and Related Order(s) Granted Thereafter by Either the Said Judge Bankole Thompson or Judge Pierre Boutet on the 12th June 2003 Against the Person of the Said President Charles Ghankay Taylor be Declared Null and Void, Invalid at their Inception and that They be Accordingly Cancelled and/or Set Aside as a Matter of Law of the 23rd day of July 2003 (“The Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void”) filed by **Charles Ghankay Taylor** (“the Accused”) and by the Government of the Republic of Liberia in relation to the charges against “the Accused”;

NOTING that “the Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void” is made “Under Protest and Without Waiving of Immunity Accorded to Head of State President Charles Ghankay Taylor”;

CONSIDERING the Prosecution’s Response to “the Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void” of the 28th day of July 2003 (“the Response”) and the Defence Reply thereto dated the 30th day of July 2003 (“the Reply”);

CONSIDERING that the Defence “Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void” is deemed to have been filed as a preliminary motion pursuant to Rule 72 of the Rules of Procedure and Evidence (“The Rules”);

CONSIDERING that the same Indictment has then been issued against “the Accused” personally and not against the Government of the Republic of Liberia;

CONSIDERING the entire provisions of Rule 72 of “the Rules”;

CONSIDERING, in particular, the provisions of Rule 72 (E) of “the Rules” which provide that “the Chamber” shall refer to the Appeals Chamber for a determination as soon as practicable any preliminary motion which raises a serious issue relating to jurisdiction;

CONSIDERING that the Defence "Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void" objects to the jurisdiction of "the Special Court" to try "the Accused" on all the charges contained in the Indictment;

CONSIDERING that the Indictment charges "the Accused" on several counts for Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court ("The Statute"), Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of "the Statute", and of Other Serious Violations of International Humanitarian Law, punishable under Article 4 of "the Statute";

CONSIDERING that "the Accused" submits that the Special Court Agreement, 2002 (Ratification) Act, 2002 and "the Rules" are *ipso facto* bad in law and in clear breach of customary international law;

CONSIDERING, in particular, that "the Accused" submits that the alleged primacy of "the Special Court" is limited to the national courts of the Republic of Sierra Leone and lacks the power to assert its primacy over national court of any third States as well as to request the surrender of an accused from any third State;

AND

GIVEN that "the Accused", in light of the above, argues that the Indictment, the Warrant of Arrest and all other consequential Orders issued against him by "the Special Court" are in violation of the criminal immunity of the Head of the Sovereign State of the Republic of Liberia and contrary to the principles of customary international law and the jurisprudence of the International Court of Justice;

GIVEN, furthermore, that "the Accused" argues that the Indictment, the Warrant of Arrest and all other consequential Orders issued against him by "the Special Court" are in violation of the principle that a State may not exercise its authority on the territory of another State and the principle of sovereign equality among all Member States of the United Nations as laid down in Article 2, paragraph 1 of the Charter of the United Nations.

GIVEN that "the Accused" also argues that the aforementioned grounds are procedural in nature and go to jurisdiction *in limine* of the "Special Court";

THE CHAMBER

FINDS that the Government of the Republic of Liberia has no *locus standi* to file such a preliminary motion nor to be a party to such a motion;



AND, FURTHERMORE,

FINDS that the foregoing submissions raise a serious issue relating to the jurisdiction of "the Special Court" to try "the Accused" on all the counts of the Indictment that has been preferred against him;

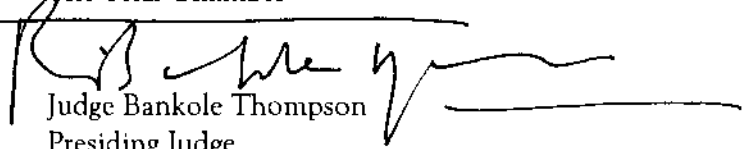
AND THEREFORE, PURSUANT TO RULE 72 (E) OF THE RULES,

REFERS the Defence "Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void", together with the Prosecution "Response" and the Defence "Reply" thereto, to the Appeals Chamber of "the Special Court" for determination;

ORDERS that the reference of this Motion to the Appeals Chamber shall not operate as a stay of the trial of "the Accused";

Done in Freetown, this 19th of September 2003

The Trial Chamber


Judge Bankole Thompson
Presiding Judge

