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SCSL - 2003 - 07 - PT
(3322 - 3325)



SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 7th day of November, 2003

The Prosecutor Against: Samuel Hinga Norman
(Case No. SCSL-2003-08-PT)

and

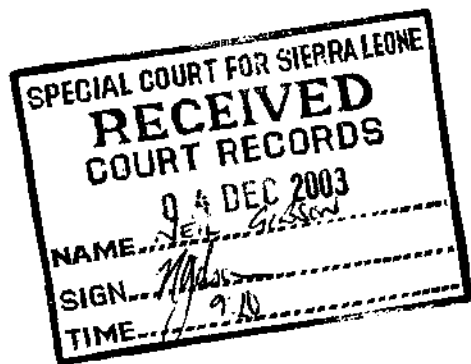
The Prosecutor Against: Morris Kallon
(Case No. SCSL-2003-07-PT)

DECISION ON THE DEFENCE MOTION ON THE DENIAL OF RIGHT TO APPEAL

Office of the Prosecutor:
Luc Côté, Chief of Prosecution
Charles Caruso, Co-Counsel

Defence Counsel:
Mr. Blyden Jenkins Johnson, Lead Counsel
Mr. Suleiman Banja Tejan-Sie, Co-Counsel
Ms. Quincy Whitaker, Co-Counsel

Mr. James Oury, Co-Counsel
Mr. Steven Powels, Co-Counsel
7Mr. Melron Nicol-Wilson, Legal Assistant



THE SPECIAL COURT FOR SIERRA LEONE ("The Court")

NOTING THE SUBMISSIONS OF THE PARTIES;

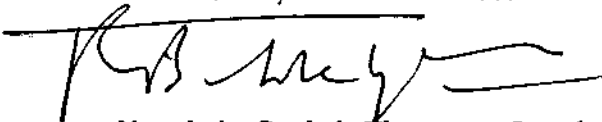
CONSIDERING THE DECISION OF THE APPEALS CHAMBER OF THE 4TH DAY OF NOVEMBER, 2003 DECIDES AS FOLLOWS:

1. We, Judges of the Trial Chamber, had been looking forward, with great expectation, to this opportunity so as to listen attentively to and be guided by your learned and creative arguments on the issues raised in the two Motions of which we are still technically seized, but the substantive deliberations of which we have been, as it were, judicially jettisoned.
2. As our anticipation intensified daily, last Wednesday evening dampened both our anticipation and enthusiasm for this session when we were handed copies of a Decision of the Appeals Chamber on the 4th day of November, 2003 disposing of the same issues which were before our Chamber. In effect, we were given a *Judicial Fait Accompli*. A passage found at para 2 of the said Decision delivered by Justice Robertson, Presiding Judge, corroborates my evaluation of the situation as *Judicial Fait Accompli*. It reads as follows:

"In view of the course we adopt, applications made in the Trial Chamber raising issues as to the lawfulness of Rules 72 and 73 will serve no purpose."
3. Since we, as Judges, subscribe to and practise the doctrine of judicial collegiality, and uphold the principle of judicial hierarchy, we find ourselves in a position in which we are bound by the authoritative pronouncements of a higher tribunal of appellate jurisdiction as an emanation of our cherished and long-revered doctrine of *stare decisis* except if we can distinguish such rulings or restrict their scope.
4. Having, therefore, been dispossessed or deprived of jurisdiction to pronounce on the issue raised in both Motions, *and since we cannot act in vain*, we here express our profound gratitude to you for contributing so richly and creatively to the evolving jurisprudence of the Special Court. We hope we will, in due course, have the opportunity of benefiting from your professional learning and expertise in the law.
5. In light of what I have already stated, we hereby dismiss all the Motions.

Done at Freetown

On the 7th day of November 2003



Hon. Judge Bankole Thompson, Presiding Judge.

SEPARATE OPINION:

1. I would like to thank my brother and colleague Judge Bankole Thompson, the Presiding Judge of the Trial Chamber, for allowing me to make a brief statement this morning about this very important and serious matter. I would also like to thank him for the statement he just delivered on behalf of the Trial Chamber as a whole.
2. I would like to let the record show that I wholeheartedly and entirely subscribe to his statement and would like also to make the following observations with respect to the decision rendered by the Appeals Chamber on Wednesday, the 5th November, 2003.
3. In the said decision, the Appeals Chamber did make reference to discussions that had taken place during the Plenary session in August in London where, and I quote:

“...at this meeting the judges unanimously decided to amend Rule 72 by removing the discretion to refer preliminary motions once the Trial Chamber had determined that they raise a serious issue relating to jurisdiction”.
4. Although, as the record would show, I did support that some amendments be made to Rule 72 to clarify the language of that Rule, I did not support the amendment introduced at that time where and when such amendments were effectively removing “the discretion” the Trial Chamber had to make a determination upon the matter with which it was seized, namely preliminary motions that did “raise a serious issue relating to jurisdiction”. Therefore, for the record, the comment at page 7 of the decision by the Appeals Chamber is inaccurate in that it purports to indicate unanimity when it was a majority.
5. Further, at the Special Plenary meeting held in Freetown in the evening of Thursday 31st October, 2003 I clearly indicated and asked that the Record was to show that although I proposed the amendment that would allow the Appeals Chamber to sit with a quorum of less than five (5) judges, I reiterated my objection to the amendment that had modified Rule 72 to remove the jurisdiction of the Trial Chamber to dispose on the merit of Preliminary Motions and consequently removing the right of Appeal from such decisions.

Done at Freetown
On the 7th day of November 2003



Hon. Judge Pierre Boutet

I concur with the above statements.

Done at Freetown
On the 7th day of November 2003

Hon. Judge Benjamin Itoe

