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SCSL-2003-05-PT
(1686-1692)



SPECIAL COURT FOR SIERRA LEONE

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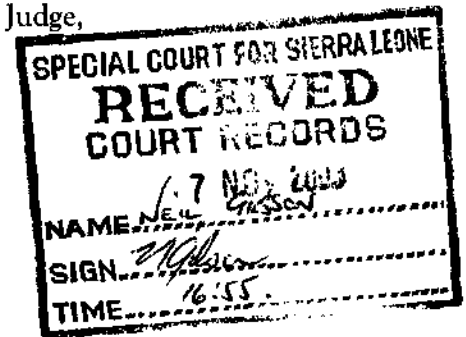
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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Decision of: 7th day of November 2003



The Prosecutor against

Issa Hassan Sesay
(Case No. SCSL-2003-05-PT)

**DECISION ON THE DEFENCE MOTION REQUESTING THE SUSPENSION
OF DELAYS FOR FILING PRELIMINARY MOTIONS OR NEW REQUEST FOR
AN EXTENSION OF DELAYS**

Office of the Prosecutor:
Luc Côté, Chief of Prosecutions
Robert Petit, Senior Trial Counsel
Sharan Parmar, Assistant Trial Counsel

Defence Counsel:
William Hartzog, Lead Counsel
Wayne Jordash, Co-Counsel
Abdul Serry Kamal, Co-Counsel

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 Itoe;

BEING SEIZED of the Defence Motion, filed on the 30th day of June 2003 requesting the Suspension of Delays to File Preliminary Motions or New Request for an Extension of Delays ("the Motion");

CONSIDERING the Prosecution's Response to "the Motion" ("the Response"), filed on the 8th day of July 2003;

CONSIDERING the Reply of the Defence thereto ("the Reply"), filed on the 17th day of July 2003;

CONSIDERING the Confidential Decision rendered on the 30th day of May 2003.

CONSIDERING the Chamber's Confidential Order regarding the Defence request for an extension of time rendered on the 26th day of June 2003.

TAKING INTO ACCOUNT the Confidential Defence Motion on the Application for Extension of Time to File Preliminary Motions, filed on the 24th day of June 2003 ("the Confidential Motion"), the Confidential Prosecution's Response thereto, filed on the 1st day of July 2003, and the Defence's Confidential Reply thereto, filed on the 4th day of July 2003, and the subsequent Confidential Decision rendered on the 7th day of November 2003.

NOTING THE Preliminary Motion on the Form of the Indictment, filed on the 23rd day of June 2003, the Prosecution Response thereto filed on the 1st day of June 2003 and the Defence Reply thereto filed on the 28th day of July 2003 and the Decision rendered on the 14th day of October 2003.

NOTING THE SUBMISSIONS OF THE PARTIES:

"The Motion":

1. In "the Motion" the Defence seeks the suspension of all motions and replies not involving preliminary motions under Rule 72 of the Rules of Procedure and Evidence ("the Rules"), specifically the Defence Reply to the Prosecutor's Response to Defence Motion for an Extension of Time and the Request for Leave to Appeal delay stipulated in the Confidential Decision of the 30th day of May 2003. In addition, Lead Counsel requests that the Reply concerning the Defence Motion on the Defects in the Indictment be suspended until Counsel has been able to reconstruct the Defence team.

2. Further, the Defence requests that all the delays for filing preliminary motions be extended at least two weeks beyond the time requested in the confidential motion

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for an extension of time filed on the 24th day of June 2003 ("the Confidential Motion") as it submits that it is unable to meet those deadlines.

3. The Defence is attempting to reconstruct the Defence team in order to help with the preparation of the case.

4. Lead Counsel has had to postpone his visit to Sierra Leone to meet with "the Accused" but does not envisage that this will need to be changed again.

5. The Defence proposes that it will soon be able to file a preliminary motion which raises an entirely new question for "the Special Court". The Defence requires relief to allow the complete filing of the preliminary motions that are outlined.

"The Response":

6. In its "Response", the Prosecution submits that "the Motion" should be denied as it does not raise circumstances which constitute good cause to warrant the extensions sought by the Defence. "Good cause", it is submitted, is generally defined as a substantial reason amounting in law to a legal excuse for failing to perform a required act as referred to in *The Prosecutor v. Kayishema*¹. Specifically, the Prosecution submits that the circumstances relied upon in "the Motion" do not warrant a total of a four week extension as "the Motion" merely cites the circumstances already relied upon in support of "the Confidential Motion" for an extension of time. The Prosecution realises that preliminary motions are often important and complex, but it reiterates that the Defence is under an obligation to meet the prescribed timeframes.

7. The Prosecution also submits that repeated attempts for extending the time limits prescribed by "the Rules" is contrary to the object and spirit of "the Rules" in maintaining fair and expeditious proceedings. Further, the Prosecution submits that the suspension of all time limits is contrary to the principle of finality and other time limits in "the Rules" as spelled out in a confidential order on a Defence request for extension of delay dated the 26th day of June 2003, and consequently the Prosecution submits that "the Motion" should be denied.

8. By parity of reasoning, the Prosecution also submits that requesting the suspension of delays for filing a confidential application for leave to appeal, which was ordered to be filed within seven days of the 26th of June 2003, should be denied, especially since the time limit was 'essentially fully argued and deliberated upon.'

9. The Prosecution submits that the suspension of filing and for rolling dates for the filing of preliminary motions are contrary to the letter and spirit of "the Rules" which require preliminary motions to be filed within a single reasonable deadline. The Prosecution therefore seeks the filing of all preliminary motions to be completed within

¹ "Decision on the Defence Motion for the Re-examination of Defence Witness Do" ICTR-95-1-T, August 1998, citing Black's Law Dictionary 692 (6th ed. 1990) at para. 14.

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one 'single reasonable deadline' and not several different time periods as requested by the Defence.

10. While the Prosecution 'fully supports the right of "the Accused" to have adequate time and facilities for his defence' it submits that "the Rules" nevertheless prescribe time limits for the filing of preliminary motions and that the good cause criteria must be applied judiciously if these limits are to be exceeded.

"The Reply":

11. In "the Reply" the Defence refers to a memorandum jointly sent to the Court Management Unit, the Prosecution and the Defence Office prior to departing from Canada on the 6th day of July 2003 requesting that any time limits for replying, responding or filing motions be suspended until his arrival in Freetown on the 12th day of July 2003 as he would have no foreseeable access to the internet as he travelled in the interim period. The Defence consequently submits that he did not have access to the internet upon arrival in Sierra Leone and was only able to 'take cognizance' of "the Response" to "the Motion" on the afternoon of Monday the 14th of July 2003. Counsel is now filing three days within the service (reception in the circumstances) of "the Response". Moreover, Counsel submits that he remains the only lawyer working on the case and cannot work on the case as he travels to "the Special Court".

12. Counsel submits that the arguments presented in "the Confidential Motion" and "the Motion" truly reflect the reality of his situation, which is now corrected, and do justify the suspension and resetting of time limits to file preliminary motions and agrees that this question should be carefully considered by the Trial Chamber. Counsel therefore prays that the two motions be considered together as the circumstances go beyond the normal circumstances of a case. Moreover, they are cogent and serious and it would detrimentally affect the ability to defend the accused if the time limits are not altered.

13. Counsel has received instructions from his client who confirms that one of the preliminary motions sought or delayed requires 'serious corroboration of the issues raised by the client that he deems extremely serious to his defence.' Counsel will meet with his client between the 14th and the 22nd of July 2003 and therefore submits a time limit of the 25th day of July 2003 as necessary for an adequate and effective defence.

14. The Defence submits that the motion on jurisdiction, for which Counsel has requested an extension of time and a suspension of time limits, will be ready for filing at the end of the week of the 20th July 2003, and the Defence therefore requests that the filing date be set at the 25th day of July 2003.

15. Counsel submits that he will be able to file two preliminary motions. A challenge to "the Special Court's" jurisdiction and a challenge based on "the Accused's" grievances (also on jurisdiction). Counsel therefore prays that he be allowed to file all preliminary motions, without any further extension of time, either on the 25th day of

July 2003, or the 30th day of July 2003, if "the Special Court" deems this to be acceptable.

AND AFTER HAVING DELIBERATED AS FOLLOWS:

Applicable Law:

16. The Trial Chamber notes that Rule 7 of "the Rules", although not specifically raised by the parties, is concerned with time limits.

17. At the time "the Motion" was filed Rule 7 of "the Rules" read:

(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 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 the 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.

18. This Rule was amended at the Third Plenary Meeting of the Special Court on the 1st day of August 2003 ("the Third Plenary Meeting") as follows:

(A) Unless otherwise ordered by a Chamber or by a Designated Judge, or otherwise provided by the Rules, where the time limit prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission by the Registry, 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 be automatically be extended to the subsequent working day.

- (C) Unless otherwise ordered by a Chamber or a Designated Judge, any response to a motion shall be filed within ten days. Any reply to the response shall be filed within five days.

19. Time limits to file responses and replies have been therefore extended, respectively from seven days to ten days and from three days to five days. Such amendments were made to allow what was considered to be more adequate time to propose such motions while ascertaining that the process would remain both fair and expeditious.

20. The Chamber has carefully reviewed the requests in "the Motion", "the Response" and "the Reply" and to observe that even applying the amended "Rules" that extend the time limits which are now more favourable to the Defence, the request for extension of time would still exceed the new time limit

Legal Standard:

21. Following its previous jurisprudence², the Chamber is disposed to adopt the "exceptional circumstances or good cause" criteria for determining the merits of a request for an extension of time in the instant "Motion".

22. The Chamber notes the difficulty the Defence has experienced difficulties in constructing the Defence team, its perceived lack of contact with "the Accused", and the lack of internet access in the six days it took Counsel to travel to Sierra Leone, however, these do not meet the necessary legal standard of "exceptional circumstance or good cause" to warrant an extension of time.

23. The Chamber notes that many of the arguments raised by the Defence in support of "the Motion" were also included in the earlier confidential motion for an extension of time and deliberated upon in the Confidential Decision, whereby the Chamber denied the motion having found no "exceptional circumstance or good cause".

24. Noting further the Chamber has already granted relief to the Defence in a Confidential Order rendered on the 26th day of June 2003.

25. The Chamber also notes that the Defence has accordingly filed a Reply to the Defects in the Form of the Indictment and the Decision on this issue was rendered on the 13th day of October 2003, therefore this argument for an extension of time is no longer relevant.

² *The Prosecutor against Morris Kallon*, Case No. SCSL-2003-07-PT, Decision on the Defence Motion for an Extension of Time to File Preliminary Motions, Trial Chamber, 14th day of June 2003. See also *The Prosecutor against Alex Tamba Brima*, Case No. SCSL-2003-06-PT, Decision on the Application for Extension of Time for Leave to be Granted to File Defence Motion to Appeal against the Decision Refusing an Application for the Issue of the Writ of Habeas Corpus, Trial Chamber, 15th day of October 2003.

26. The Chamber agrees with the Prosecution’s submission that ‘the suspension of all time limits concerning all other preliminary motions is contrary to the principle of finality and other time limits in “the Rules” as already spelled out in the Confidential Order of the 26th day of June 2003.

27. The Chamber concludes that having regard to the totality of the circumstances of “the Motion”, including the arguments in support of “the Confidential Motion” and the deliberation outlined above, the Defence has not discharged its burden of proving that it had substantiated any exceptional circumstance or good cause justifying the extension of delays sought.

28. Although with the passage of time since filing this motion, the Chamber’s decision may be “moot” and is likely to confirm the *de facto* situation that no such motion could be filed outside the time prescribed a decision must still be rendered to dispose of it.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER DENIES “the Motion” on the grounds that no exceptional circumstance or good cause has been shown to justify the exercise of the Chamber’s discretion in the matter in favour of the Defence.

Done in Freetown, Sierra Leone, this the 7th day of November 2003.

Trial Chamber



Judget Pierre Boutet

