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2004



SPECIAL COURT FOR SIERRA LEONE

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IN THE APPEALS CHAMBER

Before: Justice Emmanuel Ayoola, Presiding
Justice Raja Fernando
Justice Renate Winter

Registrar: Robin Vincent

Date: 17 September 2004

PROSECUTOR **Against** Issa Hassan Sesay
Morris Kallon
Augustine Gbao
(Case No.SCSL04-15-AR65)

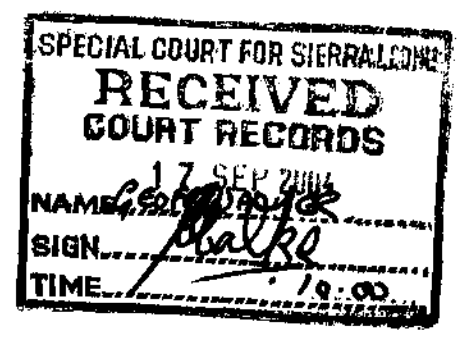
**DECISION ON APPEAL AGAINST THE DECISION OF THE TRIAL CHAMBER REFUSING
THE APPLICATION FOR BAIL BY MORRIS KALLON**

Office of the Prosecutor:

Luc Côté
Lesley Taylor
Sigall Horovitz
Marie-Hélène Proulx

Defence Counsel for Morris Kallon:

Shekou Touray
Raymond Brown
Wanda Akin
Melron Nicol-Wilson
Wilfred Bola Carrol



THE APPEALS CHAMBER of the Special Court for Sierra Leone (“Special Court”);

SEIZED of the Appeal Against the Decision of the Trial Chamber Refusing the Application for Bail by Morris Kallon filed on 23 July 2004 (“Appeal”);

CONSIDERING the Prosecution Objection and Response to Defence “Appeal Against the decision of the Trial Chamber refusing the Application for Bail by Morris Kallon” filed on 2 August 2004;

CONSIDERING the Defence Reply to Prosecution Objection and Response to Appeal against the Decision of the Trial Chamber Refusing the Application for Bail by Morris Kallon filed on 6 August 2004;

NOTING the Decision on Application for Leave to Appeal Against Refusal of Bail by Justice Gelaga King of 23 June 2004;

NOTING the Decision on the Motion by Morris Kallon for Bail of 23 February 2004 (“Decision on Bail”);

HEREBY DECIDE:

I. SUBMISSIONS OF THE PARTIES

1. The Defence presents six arguments in support of its Appeal relating to the burden of proof, the submissions of the Government of Sierra Leone, the presence of the Special Court in Sierra Leone, the seriousness of the charges, the safety of the accused, and the issue of danger to victims and witnesses.
2. In its Response, the Prosecution argues that the Appeal should be summarily dismissed as it does not constitute a “notice of appeal”, and, even if it could be interpreted as such, was filed well outside the time limit prescribed by Rule 108 of the Rules of Procedure and Evidence (“Rules”) without any explanation for its late filing. In the alternative, the Prosecution

presents its arguments as to why the Defence has failed to establish that the Trial Chamber erred in its Decision on Bail. In addition to responding to the points raised by the Defence, the Prosecution argues that bail should not be granted once a trial has begun and that the Appeal should be denied since the risk of flight is particularly high because of the Accused's possible attitude towards the legality of the Court.

3. The Defence Reply contains an apology to the Appeals Chamber and Prosecutor for the lateness of the filing of the Appeal "due to the fact no time limit within which the Appeal should be filed was stated in the Decision and Counsel for Kallon did not avert their minds to the provisions of Rules 108".¹ The Defence repeats its previous contentions and adds that bail can be granted at any time before the completion of a case and that the Accused recognises the legality of the Court.

II. APPLICABLE RULES

4. Rule 108(C) of the Rules states: "In appeals pursuant to Rule [...] 65 [...] the notice and grounds of appeal shall be filed within 7 days of the receipt of the decision to grant leave".
5. Rule 117 provides for an "Expedited Procedure" for appeals under Rule 65. Rule 117(A) states: "any appeal under Rule [...] 65 [...] shall be heard expeditiously and may be determined entirely on the basis of written submissions". Rule 117(B) provides that "All time limits and other procedural requirements not otherwise provided for in these Rules shall be fixed by a practice direction issued by the Presiding Judge". In the context of an ordinary appeal against conviction and/or sentence, Rules 111 to 114 provide the time limits for full submissions, response and reply to be followed by the fixing of a date for a hearing if it is decided to hold one. Since Rule 117(C) states that Rules 109 to 114 do not apply to appeals falling within the expedited procedure, the provisions and time limits set out in those Rules do not apply to appeals against bail decisions.
6. At the time of the current Appeal there was no practice direction pursuant to Rule 117(B) in existence. Rule 108(C) is nevertheless explicit in terms of setting out a time limit of 7 days for the filing of "notice and grounds of appeal," a document which is clearly designed to put the

¹ Defence Reply, para. 6.

other party and the judges on notice of the existence of an appeal and the main grounds to be relied upon.

7. Article 12 of the Practice Direction on Filing Documents before the Special Court for Sierra Leone (adopted on 27 February 2003, amended on 1 June 2004) states:

A document may be filed outside the time limits set out in the Rules, in particular Rule 7 of the Rules. In such cases, the Party, State, organization or person filing the document shall indicate the reason for the delay on the relevant Court Management Section form. A Late Filing Form shall be completed by the Court Management Section and served with the document. The Judge or Chamber before which such document is filed shall decide whether to accept the document despite its late filing.

8. Rule 116 of the Rules states that “The Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause”.

III. DISCUSSION

9. Notably, the Rules do not provide a procedure with time frames for submissions relating to appeals under Rule 65. Limited guidance can be found in Article 6(D)(ii) of the Practice Direction on Filing Documents before the Special Court which refers to the length of documents and sets out the page limits for the “merits of interlocutory appeals”. The Rules and Practice Direction on Filing Documents suggest that a two stage process for appeals under Rule 65 is envisaged, by analogy with ordinary appeals against judgment. Thus, the first stage, after leave to appeal has been granted, is for the Defence to file a notice of appeal with grounds within 7 days under Rule 108. The second stage is for full submissions on the merits of the appeal, response and reply to be filed.
10. In the absence of a Practice Direction setting out a procedure for appeals under Rule 65, the Defence may be forgiven for filing its submissions at the same time as what purports to be a “Notice of Appeal”. Indeed, it is desirable to have a single stage process for such appeals as will be described in a forthcoming practice direction. The question arises, however, whether the Appeal filed by the Defence can in fact be regarded as “notice and grounds of appeal”

under Rule 108(C) in view of the absence of any itemized grounds of appeal. It is not the function of the Chamber and the opposite party to formulate grounds of appeal from the arguments of the Defence. The Defence would be expected to separate out its notice of appeal, grounds of appeal and submissions based on those grounds even under the limited guidance provided by Rule 108. The Chamber is compelled to conclude that there is really no notice of appeal in this case.

11. Leaving aside the question of the nature of the document filed by the Defence, there was a blatant failure to file anything at all within the time limit laid down in Rule 108(C). The Defence has provided no explanation or excuse for this failure to comply with the time limit under Rule 108 beyond a casual remark by Defence Counsel in their Reply to the Prosecution Objection that they did not "avert their minds" to the relevant Rule. In particular, Article 12 of the Practice Direction on Filing Documents and Rule 116 of the Rules were completely ignored.
12. The Special Court has a limited time to complete its judicial activities, hence the time scale for filing documents should be strictly adhered to. A Judge's or Chamber's discretion to extend the time available can only be exercised where reasonable grounds for a late filing have been demonstrated and where a refusal to extend time would occasion a miscarriage of justice.
13. An applicant who files a document outside the time limits and framework of the Rules and Practice Directions does so at his peril. It is within the discretion of the Judge or Chamber to decide whether or not to accept a document despite its late filing and there are procedures that need to be followed in order to bring a late filing to the attention of a Judge or Chamber. In the instant case, the failure to provide reasons for the late filing has deprived the Chamber of any material on which it could have based an exercise of discretion.
14. The Appeals Chamber finds itself unable to accept the Appeal in the absence of any application for an extension of time or explanation for the delay beyond the casual statement by Counsel that the applicable Rule was overlooked.

IV. DISPOSITION

15. For the foregoing reasons, the Chamber will not consider the merits of the Appeal. The Appeal is rejected on the basis of its failure to conform to Rule 108(C) of the Rules both in terms of its form and the fact that it was filed 23 days out of time, with no accompanying explanation, late filing form or application for extension of time.

Done at Freetown this seventeenth day of September 2004

Justice Emmanuel Ayoola
Presiding

Justice Fernando

Justice Winter

