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SCSL-2004-14-T
(11204-11207)

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SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 15th of December, 2004

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL04-14-T)

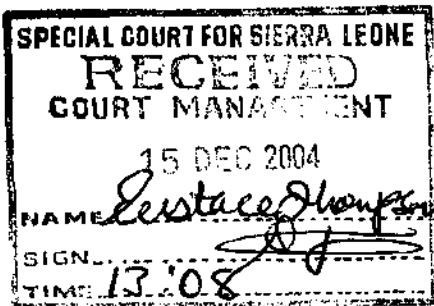
DECISION ON PROSECUTION APPLICATION FOR LEAVE TO APPEAL "DECISION ON THE FIRST ACCUSED'S MOTION FOR SERVICE AND ARRAIGNMENT ON THE CONSOLIDATED INDICTMENT"

Office of the Prosecutor:

Luc Côté
James Johnson

Court Appointed Counsel for Sam Hinga Norman:

Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Tim Owen, Q.C.



Court Appointed Counsel for Moinina Fofana:

Michiel Pestman
Arrow Bockarie
Victor Koppe

Court Appointed Counsel for Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana

THE TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Judge Benjamin Mutanga Itoe, Presiding Judge, Hon. Judge Bankole Thompson, and Hon. Judge Pierre Boutet;

NOTING the Prosecution Application for Leave to Appeal "Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment", filed by the Prosecution on the 6th of December, 2004 ("Application");

NOTING the First Accused Response to "Prosecution Application for Leave to Appeal Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment", filed by the Court Appointed Counsel for the First Accused on the 9th of December, 2004;

NOTING the Reply to "First Accused Response to 'Prosecution Application for Leave to Appeal 'Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment'" filed by the Prosecution on the 10th of December, 2004;

MINDFUL of the Trial Chamber's Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment, including Separate Concurring Opinion of Hon. Judge Bankole Thompson and Dissenting Opinion of Hon. Judge Benjamin Mutanga Itoe, dated the 29th of November, 2004 ("Decision on Norman's Indictment");

NOTING the Consolidated Indictment against the Accused, Sam Hinga Norman, Moinina Fofana, and Allieu Kondewa, approved on the 5th of February, 2004;

NOTING that Rule 73(B) of the Rules of Procedure and Evidence for the Special Court for Sierra Leone ("Rules") provides that:

Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders.

NOTING that Rule 73(B) of the Rules generally does not confer a right of interlocutory appeal but only grants leave to appeal in exceptional cases;

NOTING that the criteria of exceptional circumstances and irreparable prejudice outlined in Rule 73(B) of the Rules are conjunctive and that the Trial Chamber ruled in this regard in the case of *Prosecutor v. Sesay, Kalon and Gbao* and *Prosecutor v. Brima, Kamara and Kanu*, that:

[T]his rule involves a high threshold that must be met before this Chamber can exercise its discretion to grant leave to appeal. The two limbs of the test are clearly conjunctive, not disjunctive; in other words, they must *both* be satisfied;¹

¹ *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2004-15-PT, and *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-2004-16-PT, Decision on Prosecutor's Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motions for Joinder, 13 February 2004.

NOTING the Trial Chamber's prior ruling in the case of *Prosecutor v. Sesay, Kallon and Gbao*, where the Trial Chamber stated that:

[T]he overriding legal consideration in respect of an application for leave to file an interlocutory appeal is that the applicant's case must reach a level of exceptional circumstances and irreparable prejudice. Nothing short of that will suffice having regard to the restrictive nature of Rule 73(B) of the Rules and the rationale that criminal trials must not be heavily encumbered and consequently unduly delayed by interlocutory appeals;

CONSIDERING that the arguments, submissions and grounds advanced by the Prosecution in its application for leave to appeal interlocutorily against the Trial Chamber's Decision on the said First Accused's Motion (which arguments, grounds, and submissions the Chamber has meticulously examined) have satisfied the conjunctive test of "exceptional circumstances" and "irreparable prejudice" prescribed by Rule 73(B);

CONSIDERING that the Application for leave to appeal raises serious issues that concern the charges against the Accused contained in the Consolidated Indictment, and that may impact on the Accused right to a fair trial and the presentation of the Prosecution case;

CONSIDERING that the Application raises issues of fundamental importance to the Special Court and to international criminal law generally;

CONVINCED ALSO of the controversial nature of the specific issues addressed by the Trial Chamber in the Decision which is the subject of the application herein and the diverse legal perspectives from which they can be viewed as evidenced by the Majority Decision, Separate Concurring Opinion, and Dissenting Opinion of the Judges of the Trial Bench; and that it does not conduce to the overall interests of justice and the preservation of the integrity of the proceedings to leave the law on such important issues in international criminal adjudication unsettled and in a state of uncertainty;

CONSIDERING that the difference of legal opinion expressed by the Judges on the Decision on Norman's Indictment on issues of such fundamental importance constitute exceptional circumstances;

CONSIDERING that irreparable prejudice may ensue to the integrity of the judicial system, that could not be cured through the final disposition of the trial, should no leave to appeal be granted;

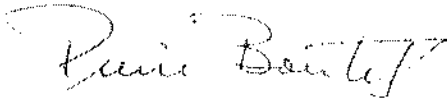
CONSIDERING that the Prosecution filed the Application within the time limits prescribed in Rule 73(B) of the Rules and in conformity with Rule 7(A) of the Rules and paragraph 8 of the Practice Direction for Certain Appeals Before the Special Court,² and that the time limits for filing of an interlocutory appeal run from the day after the filing of the complete Decision of the Trial Chamber, which includes in this instance, a Separate and Concurring Opinion and a Dissenting Opinion.

NOTING the *Order Pursuant to Rule 4*, issued on the 15th of December, 2004, by Justice Emmanuel Ayoola, President of the Special Court, authorizing Hon. Judge Benjamin Mutanga Itoe and Hon. Judge Pierre Boutet to exercise their functions away from the seat of the Special Court;

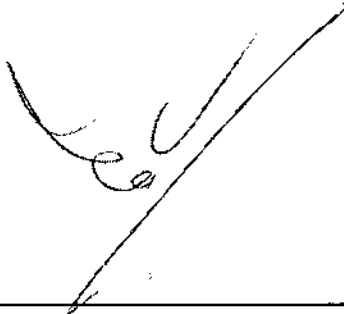
² Adopted on 30 September 2004.

THE TRIAL CHAMBER HEREBY GRANTS the Application for leave to appeal.

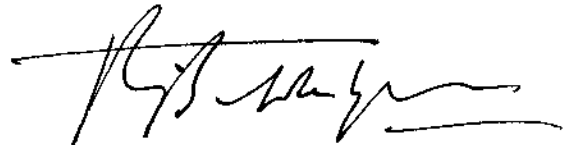
Done in Freetown, Sierra Leone, this 15th day of December, 2004



Hon. Judge Pierre Boutet



Hon. Judge Benjamin Mutanga Itoe
Presiding Judge,
Trial Chamber



Hon. Judge Bankole Thompson

