

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Judge Teresa Doherty, presiding, Judge Richard Lussick and Judge Julia Sebutinde;

SEIZED of the Application For Leave To File An Interlocutory Appeal Against the Decision on Motions for Exclusion of Prosecution Witness Statements and Stay of Filing of Prosecution Witness Statements of 4 August 2004 ("Motion") on behalf of Santigie Borbor Kanu ("Accused");

CONSIDERING the Response, filed on 6 September 2004 by the Prosecution and the Defence Reply thereto filed on 13 September 2004;

MINDFUL of the "Decision on Motions for Exclusion of Prosecution Witness Statements and Stay on Filing of Prosecution Statements" ("the Decision") on 30 July 2004 by Judge Boutet as Designated Judge;

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 stay of proceedings unless the Trial Chamber so orders.

NOTING therefore the general rule that decisions are without interlocutory appeal, and that only if the conjunctive conditions of exceptional circumstances and irreparable prejudice to the accused in Rule 73(B) are satisfied, a Trial Chamber may grant leave to interlocutory appeal;

NOTING AND APPLYING the decision of Trial Chamber I that:

[Rule 73(B)] 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

FINDING that alleged failure to give weight to evidence in interpreting "good cause" by the designated judge of first instance does not constitute exceptional circumstances;

HOLDING that neither exceptional circumstances nor irreparable prejudice to the applicant party has been shown to the satisfaction of the Court;

NOTING that the rationale behind the restrictive nature of Rule 73(B) is that the proceedings before the Special Court should not be heavily encumbered and consequently unduly delayed by interlocutory appeals;²

¹ *Prosecutor v. Sesay et al.*, Case No. SCSL-2004-15-PT, Decision on the Prosecutor's Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motion for Joinder, 13 February 2004; *Prosecutor v. Brima et al.*, Decision on the Prosecutor's Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motion for Joinder, 13 February 2004.

NOTING that the rationale of Rule 66 is to provide the Defence with sufficient time for their preparation for trial;

CONSIDERING further that the remedy for a breach of the disclosure obligations by the Prosecutor would not necessarily amount to the exclusion of the evidence, but may be cured by an extension of time for the preparation of the disclosed material;

CONSIDERING that in any event the Defence has had sufficient time to review the witness statements rightly disclosed by the Prosecution and consequently to prepare for the commencement of the Trial;

TRIAL CHAMBER II HERBY DISMISSES the Motion.

Done at Freetown this 4th day of February 2005

Judge Teresa Doherty
Presiding Judge
Trial Chamber II



² *Prosecutor v. Sesay et al.*, Case No. SCSL-2004-15-PT, Decision on the Prosecutor's Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motion for Joinder, 13 February 2004.