

I. Introduction

1. As regards the disposition of the present Motion, I do absolutely agree with the unanimous Decision to reject it. However, I have thought it judicially appropriate to make shortshrif of it without much deliberation in this Separate Concurring Opinion. More specifically, this approach has been dictated largely by my judicial conviction that the Motion on Abuse of Process brought on behalf of the First Accused is, by any objective reckoning, frivolous and vexatious in the extreme and abusive of the process of the Court.

2. Based on the legal characterisation of the Motion as set out in paragraph 1 above, it is my considered view that this Chamber has no jurisdiction to entertain it for the brief reasons articulated in the succeeding paragraphs.

II. Supporting Reasons

3. Firstly, the Motion raises, in extremely abstruse and convoluted terms, and this to me is the critical aspect of the matter, issues, notably joinder and amendment of the indictment, that have already been litigated and determined at the level of this Trial Chamber.

4. It is trite law that the doctrine of estoppel precludes a party from relitigating an issue or issues determined against that party in an earlier action even if the second action differs significantly from the first one.¹ This doctrine is variously characterised as: *issue estoppel*, *preclusion estoppel*, *direct estoppel*, and *estoppel per rem judicatam*.² The rationale behind the doctrine is that there must be finality to litigation.

5. The present Motion is in substance a violation of this elementary doctrine. Curiously, too, the Motion seeks to relitigate before this Chamber interlocutory matters that are currently pending before the Appeals Chamber. This is legally disingenuous.

¹ Black's Law Dictionary, Seventh Edition p256.

² Instructively, the doctrine of estoppel has always been recognised in the sphere of international law. Recently, the Court in *Prosecutor v. Bagarawiza* ICTR-97-19-AR72, Decision on the Prosecutor's Request for Review or Reconsideration, 31 March 2000 made this observation:

"The principle of estoppel by *res judicata* is well settled in international law as being one of those "general principles of law recognized by civilised nations", referred to in Article 38 of the Statute of the Permanent Court of International Justice...and the International Court of Justice...As such it is a principle which should be applied by the Tribunal." (para 20).

6. Secondly, the *language, vocabulary, and tone* of the purported legal arguments and submissions make it irresistible to come to no other conclusion than that the Motion reflects a measure of legal and conceptual obscurantism at variance with the core elements of standard legal reasoning. This inference finds ample corroboration from this extract from the Motion paper:

“B. Abuse of Process

Dogged and calculated prosecution adamancy in the avoidance and evasion of material and/or mandatory rules of procedure, together with its ulterior reasoning and impulsion thereto, plus the consistent (even if unintended) blessing of equally determined judicial endorsements thereof, and a certain congenital constitutive anomaly, have sustained the current consolidated indictment in ways tantamount to a gross and sustained abuse of process that has, in turn, and from the very constituting of the Special Court and the earliest beginnings of the entire prosecution process right up till the present proceedings, repeatedly violated and egregiously prejudiced the due process rights of the accused persons, and thereby subverted the interests of justice and the integrity of the judicial process itself.”³ (emphasis added)

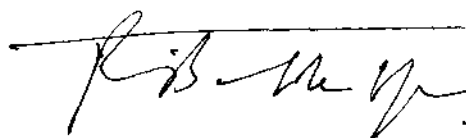
7. Thirdly, it seems incontrovertible that the above passage is crafted not out of a mastery of legal principles but out of jurisprudential sophistry. In addition, it is an intemperate and unjustified aspersion not only on the judicial process itself but also on the judges as custodians of the process.

8. Finally, the Motion itself constitutes an abuse of process on the grounds that it is frivolous and vexatious. It borders on contempt for the international judicial system.

II. Conclusion

I accordingly, dismiss it in its entirety.

Done in Freetown, Sierra Leone, this 28th day of April, 2005



Hon. Justice Bankole Thompson



³ Defence Motion para 8.