SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

Before:	Hon. Justice Benjamin Mutanga Itoe, Presiding Judge Hon. Justice Bankole Thompson Hon. Justice Pierre Boutet	
Registrar:	Robin Vincent	
Date:	28th of April, 2005	
PROSECUTOR	**Against**	**SAM HINGA NORMAN** **MOININA FOFANA** **ALLIEU KONDEWA** (Case No.SCSL-04-14-T)

DECISION ON FIRST ACCUSED'S MOTION ON ABUSE OF PROCESS

Office of the Prosecutor:

Luc Côté
James Johnson
Kevin Tavener

Court Appointed Counsel for Sam Hinga Norman:
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.

Court Appointed Counsel for Moinina Fofana:
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Court Appointed Counsel for Allieu Kondewa:
Charles Margai
Yada Williams
Ansu Lansana

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

SEIZED OF the *Abuse of Process Motion by First Accused for Stay of Trial Proceedings*, filed on the 15th of February, 2005 ("Motion");

MINDFUL of the *Prosecution Response to the First Accused's Abuse of Process Motion,* filed on the 25th of February, 2005 ("Response");

MINDFUL of the *Defence Reply to Prosecution Response to the First Accused's Abuse of Process Motion for Stay of Trial Proceedings,* filed on the 28th of February, 2005 ("Reply");

MINDFUL of the Trial Chamber's *Decision and Order on Prosecution Motions for Joinder*, dated the 27th of January, 2004 ("Joinder Decision");

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

MINDFUL of the Trial Chamber's *Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment*, dated the 29th of November, 2004 ("Indictment Decision");

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("Rules");

ISSUES THE FOLLOWING DECISION:

I. SUBMISSIONS OF THE PARTIES

1. The Trial Chamber will, for ease of reference, outline the central arguments contained in the Motion. In support of their allegation of "gross and sustained abuses of the process" Learned Counsel for the Applicant appears to rely on the following:

(a) That the "constituting of the Special Court itself, at least in one respect, and the subsequent instituting and conducting of the entire pre-trial and trial proceedings upon the current consolidated indictment against the three accused persons, have only been made possible by acts which egregiously violate the substantive fundamental rights of the accused persons".

(b) That the preambular paragraph 2 and Article 1(1) of the Special Court Agreement and Articles 1(1) and 15(1) of the Statute of the Special Court which stipulate that the Special Court was established "to prosecute persons who bear the greatest responsibility for" the relevant crimes infringe the presumption of innocence for the accused persons.

(c) That the current Consolidated Indictment and the trial proceedings conducted upon it "so far have been from their inception not only completely null and void but also contrary to the interests of justice ... primarily because of their original mode of genesis and their subsequent

application as a basis for and a process of administering international criminal justice, all of which have conjointly engendered a gross and sustained abuse of process in which the accused persons are deprived of crucial due process rights and thereby irretrievably prejudiced in their rights to a fair trial ". Counsel, also refer generally to specific Rules relating to the Indictment, including Rules 47, 50(A), 51, 52, 61 and 62.

(d) That the Prosecution's Joinder Motion under Rules 48(B) and 73 "in so far as its joint-charging or consolidation aspect was concerned, was a violation of the relevant material rules" and "its failure to annex the draft consolidated indictment to the motion was also a violation of a regular rule of standard practice in the international criminal tribunals".

(e) That the protection of the Accused against double jeopardy is "egregiously violated in the current trial proceedings" by the refusal of the Prosecution to formally withdraw the "previous separate individual indictments" after the adoption of the Consolidated Indictment.

II. **JURISDICTIONAL BASIS TO ENTERTAIN MOTION**

2. Court Appointed Counsel for the First Accused filed this "Abuse of Process" Motion with the Court on the 8th of February 2005, pursuant to Rules 54 and 73(A) of the Rules. It raises the following issues:

A) JURISDICTION OF THE COURT TO TRY THE APPLICANT

3. Firstly, the Applicant and his Learned Counsel have tangentially raised issues of the jurisdictional competence of the Court to try the Applicant on the charges contained in the Consolidated Indictment. In their arguments in this regard, they have this to say:

"... In each case, it is further submitted, the process and procedure applied were without jurisdiction and so fatally flawed that the ensuing Consolidated Indictment was a nullity ab initio..."

"There is also the question of jurisdiction under the relevant rules. On the one hand, the relevant joinder rules (SCSL Rules 48(A), 48(B), 48(C), 49 and 50) all seem to envisage only specific, identifiable extant items or texts for consideration, rather than future, prospective or anticipated texts or items. So that there is no express jurisdiction for the latter. By the same token, the said rules have not express provision for the Trial Chamber to consider any such supposed, anticipated or non-existent items or texts for consideration or decision under the said rules. And so the said rules are reasonably to be construed as having implied prohibitory injunctions against either seeking or granting any joinder on such a putative or hypothetical basis. As Trial Chamber I at the ICTR ruled only the day before the SCSL joinder:

'The Chamber has no jurisdiction do decide motions on Indictments which have been superseded; nor to decide motions in respect of Indictments which did not exist at the time of filing'"

4. The Chamber notes that this Motion contains arguments that relate to the jurisdiction of the Court from its very inception, and in particular, the personal jurisdiction of the Court over the Accused persons.[1] In this regard, Rule 72 of the Rules provides that any submissions on the jurisdictional basis of the Court should be filed by way of a preliminary motion. Preliminary motions, according to this Rule, are to be brought 21 days following the disclosure by the Prosecution to the Defence, of all materials envisaged in Rule 66(A)(i) of the Rules and it takes place 30 days following the initial appearance of the Accused. This disclosure in fact took place since the 5th of June, 2003.

5. Considering that Rule 72 is the special law governing the filing of motions on jurisdiction, the Chamber is of the opinion that this Motion, in so far as it touches on and raises issues of the jurisdictional competence of the Court, having been filed on the 3rd of February 2004, is time barred because the Prosecution in fact complied with its disclosure obligations under Rule 66 (A)(i) of the Rules as we have indicated above, since the 5th of June, 2003.

B) THE PRINCIPLE OF "RES JUDICATA"

6. In our consideration of the jurisdictional issue, we would like to invoke the well established principle in international law of R*es Judicata,* and to hold that decisions rendered by a Court that is competent to make them are final and that the same issues, except in very exceptional circumstances, may not again be raised or litigated by the parties before that Court.

7. Rule 72*bis* of the Rules sets out the applicable laws of the Special Court that include "general principles of law derived from national laws of legal systems of the world". Rule 72*bis* provides as follows:

The applicable laws of the Special Court include:

i. the Statute, the Agreement, and the Rules;

ii. where appropriate, other applicable treaties and the principles and rules of international customary law;
iii. general principles of law derived from national laws of legal systems of the world including, as appropriate, the national laws of the Republic of Sierra Leone, provided that those principles are not inconsistent with the Statute, the Agreement, and with international customary law and internationally recognized norms and standards.

8. The principle of *Res Judicata* is one of the general principles of law recognised in national laws of various legal systems. The Appeals Chamber of the ICTR in the *Barayagwiza*[2] case stated as follows:

"The principle of 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."

9. It is indeed founded on the logical understanding of the need and necessity for expediency and finality in the judicial process, which is that there should, at a certain stage, be an end to litigation in order to prevent parties from relitigating issues that have finally been laid to rest by the Judges.

10. The Permanent Court of International Justice ("ICJ") has applied the doctrine of R*es Judicata.* in the *Case Concerning Arbitral Award Made by the King of Spain on 23 December 1906,* where it found non-justiciable, a claim by Nicaragua to re-examine the substantive issues of a dispute which was decided by the King of Spain in a prior arbitration case.[3] In *The Pious Fund Case,* the ICJ upheld the submission by the United Sates which contended that Mexico was raising issues that had been decided in a previous legal action.[4]

C) SUBMISSIONS ON THE JOINDER MOTION AND DRAFT CONSOLIDATED INDICTMENT

11. The second issue raised by the Applicant in this Motion is:

"That the Prosecution's Joinder Motion under Rule 48(B) and 73 'in so far as its joint charging and consolidation aspect was concerned, was a violation of the relevant rules' and 'its failure to annex the draft Consolidated Indictment to the Motion was also a violation of a regular rule of standard practice in International Criminal Tribunals.'"

Learned Counsel further refers generally to Rules 47, 50(A), 51, 52, 61 and 62 relating to the Indictment.

12. We observe that the issues which Learned Counsel is raising here are glaringly and textually the same as those that were raised during our examination of the Joinder Motion whose decision we rendered on the 29th day of January, 2004, with a partially dissenting opinion that is appended to it. It is pertinent to note in this regard, that no leave to appeal was sought by the Applicant within 3 days of our Decision as provided for by

Rule 73(B) of the Rules of Procedure and Evidence. In fact, no leave can now be sought for an appeal to be filed by any party at this stage, as this would not only violate the law but will also and above all, constitute an abuse of process which Learned Counsel for the Applicant is canvassing in this Motion.

13. Furthermore, the Trial Chamber finds that Counsel in this case is, for the time being, estopped from bringing this Motion as the issues raised therein touch on and concern matters that have already been determined by the Chamber in its Joinder Decision and that The Chamber, as far as that Decision is concerned, is now functus officio.[5] We observe that no appeal was lodged against that Decision and that the time limit for filing any appeal has expired. In addition, the Decision on the Motion for Service and Arraignment on the Second Indictment is currently on appeal, and in accordance with Rule 73(C) of the Rules, the proceedings on the said Motion are stayed until a final determination by the Appeals Chamber of the issues at stake.

D) THE CURRENT CONSOLIDATED INDICTMENT DOUBLE JEOPARDY AND THE PRINCIPLE OF "FUNCTUS OFFICIO"

14. Thirdly, and furthermore, the Applicant and his Learned Counsel contend:

" That the current Consolidated Indictment and the trial proceedings conducted upon it so far have been from their inception not only completely null and void but also, contrary to the interests of justice... primarily because of their original mode of genesis and their subsequent application as a basis for and a process of administering International Criminal Justice, all of which have co-jointly engendered a gross and sustained abuse of process in which the Accused Persons are deprived of crucial due process rights and thereby irretrievably prejudiced in their rights to a fair trial."

15. The Applicant and his Learned Counsel, to sustain the contentions in their Motion, further argue:

"That the protection of the Accused against double jeopardy is egregiously violated in the current trial proceedings by the refusal of the Prosecution to formally withdraw the previous separate individual indictments after the adoption of the Consolidated Indictment"

16. The Chamber, again here, is of the view that these issues are precisely and textually the same as those that were fully presented and canvassed by the Parties in an earlier Motion by this same Applicant and his Learned Counsel on Service and Arraignment on the Second Indictment, whose decision we rendered on the 29th of November, 2004, and against which an Appeal has been filed, not only by this Applicant and his Learned Counsel, but also by the Prosecution.

17. These Appeals, we note, are still pending before the Appeals Chamber and Learned Counsel, knows very well and more than anyone else, that this Chamber, having rendered its Decision on these same issues which he is again now raising before it in this recently filed 'Abuse of Process Motion', is now functus officio as far as those issues are

concerned, pending of course, the decision of the Appeals Chamber on the 2 appeals filed by both the Prosecution and Defence against our Decision.

CONCLUSION

18. The Chamber is of the view that a Court may exercise its discretion to order a stay of proceedings on the grounds of an abuse of process but "only in the clearest of cases"[6]and "where there is overwhelming evidence that the proceedings under scrutiny are unfair to the point that they are contrary to the interests of justice"[7].

19. Having regard to the foregoing analysis, it is evident to us that the nature of the proceedings in the ongoing trial of the Applicant and his Co-Accused does not at all come within the purview of the standard referred to above because there is, as far as we are concerned, overwhelming evidence of the apparent interaction and due consideration of the principle of fairness in the process before us so far which the Appeals Chamber will of course, in due course, either affirm or annul.

20. We would like to observe here that the language used by Learned Counsel for the Applicant is unprofessional and borders on contempt. In this regard, The Chamber would like to draw Learned Counsel's attention to the provisions of Rule 46(C) of the Rules which provides as follows:

"Counsel who bring Motions or conduct other activities that in the opinion of the Chamber are either frivolous or constitute abuse of process may be sanctioned for those actions as the Chamber may direct. Sanctions may include fines upon Counsel; non-payment in whole or in part of fees associated with the Motion or its costs, or such other sanctions as the Chamber may direct."

21. Finally we observe; firstly, that the applicant has again raised in his submissions and reopened arguments on issues that have already been determined by this Chamber and for which it is now functus officio; secondly, that notwithstanding the very clear and unambiguous provisions of Rule 73(C) of the Rules, he has submitted for re-litigation, the same issues which have been dealt with by this Chamber and are now pending before the Appeals Chamber; and thirdly, he has raised jurisdictional issues which have been finally litigated in the Appeals Chamber and which are now Res Judicata.

22. Having regard to these 3 observations and given the foregoing analysis, we, in conclusion, hold that this Motion is not only frivolous, but also amounts to a gross abuse of process, indeed, even more abusive of the process than what the Applicant and his Learned Counsel are deploring in this "Abuse of Process Motion" which, in our considered opinion, is bereft of any merits.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER FINDS AS FOLLOWS:

THAT THIS Motion which in itself, is misconceived and without any merits constitutes an abuse of process.

IT IS THEREFORE DENIED AND ACCORDINGLY DISMISSED.

Hon. Justice Bankole Thompson and Hon. Justice Pierre Boutet append their Separate and Concurring Opinions to this Decision.

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

Hon. Justice Pierre Boutet	Hon. Justice Benjamin Mutanga Itoe Presiding Judge, Trial Chamber I	Hon. Justice Bankole Thompson

[Seal of the Special Court for Sierra Leone]

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[1] See paras 1, 2, 11, 27 and 28 of Motion.
[2] *Prosecutor v. Barayagwiza,* Decision on the Prosecutor's Request for Review or Reconsideration, 31 March 2000, para. 20.
[3] *Case Concerning Arbitral Award made by the King of Spain on 23 December 1906* (Honduras v. Nicaragua), I.C.J. Reports, 1960, 192.
[4] *The Pious Fund Case (U.S. v. Mex.)*, 9 R.I.A.A. 1 (May 22, 1902).
[5] See in particular, paras 13, 30, 32, 37, 38 of the Indictment Decision and paras 11, 15, 32 and 35 of the Joinder Decision.
[6] R v Young [1984] 40 C.R. (3d) 289
[7] R v Power [1994] 1 S.C.R 601, 616

SEPARATE CONCURRING OPINION OF JUSTICE BANKOLE THOMPSON ON DECISION ON MOTION OF FIRST ACCUSED FOR ABUSE OF PROCESS

Office of the Prosecutor:

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Court Appointed Counsel for Allieu Kondewa:

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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 shortshrift 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.

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

[Seal of the Special Court for Sierra Leone]

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[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. Baragawiza* 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).
[3] Defence Motion para 8.

SEPARATE AND CONCURRING OPINION OF JUSTICE PIERRE BOUTET ON THE DECISION ON FIRST ACCUSED'S MOTION ON ABUSE OF PROCESS

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1. I concur with the findings and Decision of Trial Chamber I to dismiss the Abuse of Process Motion filed by Court Appointed Counsel for the First Accused. However, with respect, I cannot endorse the reasoning adopted by the Trial Chamber in respect of the doctrine of *functus officio* as being applicable to this Motion at this stage of the trial. I am of the view that a "court continues to be seized of the case and is not *functus* until the formal judgment has been drawn up and entered", which means final decision, and sentence, if applicable.[1] Therefore, any order or decision relating to the conduct of the trial "may be revoked or varied if the 'circumstances' present at the time of the order have 'materially changed' in relation to the matter that justified the making of the order in the first place".[2]

2. I therefore, offer my separate reasons in support of this Decision below.

I. JURISDICTIONAL BASIS TO ENTERTAIN MOTION

3. Court Appointed Counsel for the First Accused filed an "Abuse of Process" Motion with the Court on the 8th of February 2005. This Motion was filed pursuant to Rules 54 and 73(A) of the Rules. This Motion raises issues that have already been determined in previous decisions of the Trial Chamber or that are on appeal. Furthermore, this Motion is an attempt to circumvent the prescription of Rule 72 which provides that objections based on lack of jurisdiction shall be brought within 21 days of disclosure of material pursuant to Rule 66(A)(i).

4. There are currently two appeals lodged with the Appeals Chamber against the Trial Chamber's Indictment Decision.[3] The arguments set forth in the current Motion, that do not solely concern jurisdiction, raise issues that have already been determined in that Impugned Decision,[4] and furthermore, that have been determined by the Trial Chamber in its Decision on Joinder.[5]

5. The well established principle in international law of *res judicata*, applies in these circumstances, as authority that decisions of the Court competent to decide them are final and that the same issues may not be disputed again by the parties before that Court.

6. Rule 72*bis* of the Rules sets out the applicable laws of the Special Court that include "general principles of law derived from national laws of legal systems of the world". Rule 72*bis* provides as follows:

The applicable laws of the Special Court include:

i. the Statute, the Agreement, and the Rules;
ii. where appropriate, other applicable treaties and the principles and rules of international customary law;
iii. general principles of law derived from national laws of legal systems of the world including, as appropriate, the national laws of the Republic of Sierra Leone, provided that

those principles are not inconsistent with the Statute, the Agreement, and with international customary law and internationally recognized norms and standards.

7. The principle of *res judicata* is one of the general principles of law recognised in national laws of various legal systems. The Appeals Chamber of the ICTR in the *Barayagwiza*[6] case stated to this effect that:

The principle of 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.

8. The established exception to this principle is that a Trial Chamber may review a decision where there is new evidence or information that refers specifically to the issue that has been determined and that may change the circumstances surrounding the initial decision.[7]

9. Applying the above doctrine to the case at hand, Counsel are estopped from bringing this Motion as the issues raised therein concern matters that have already been determined by the Chamber in its Indictment Decision and Joinder Decision and that these Decisions are final.[8] There is no new evidence or information submitted by Counsel that would cause the Chamber to review its decision. Furthermore, the Indictment Decision is currently on appeal, and in accordance with Rule 73(C) of the Rules the proceedings on the said Motion are stayed until a final determination by the Appeals Chamber. No appeal has been lodged against the Joinder Decision and the time limitations for filing such appeals has expired.

10. Furthermore, the Motion contains arguments that relate to the jurisdiction of the Court from its very inception, and in particular, the personal jurisdiction of the Court over the Accused persons.[9] In accordance with the Rules, any submissions on the jurisdictional basis of the Court should be filed by way of preliminary motion pursuant to Rule 72 of the Rules. Rule 72 provides that preliminary motions are to be brought 21 days following the disclosure of the Prosecution to the Defence of all materials envisaged in Rule 66(A)(i) of the Rules, which takes place 30 days following the initial appearance of the Accused. Considering that Rule 72 is the *lex specialis* governing the filing of motions on jurisdiction, it is evidence that this Motion has been filed out of time and has not been filed in accordance with this Rule.

11. There is no foundation for Counsel's submission that there is an abuse of process. A Court may exercise its discretion to operate a stay of proceedings for an abuse of process only in the "clearest of cases",[10] and where there is "overwhelming evidence that the proceedings under scrutiny are unfair to the point that they are contrary to the interests of justice".[11]

11. This application, by raising issues that are clearly "*res judicata*" with this Court and by re-litigating matters with this "Chamber" which are now pending in the Appeals Chamber, constitute, in these circumstances, an abuse of process. Furthermore, the nature of this application and the language used therein borders on contempt of court.

FOR THE ABOVE REASONS I concur with the Decision to DENY and DISMISS the Motion.

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

Hon. Justice Pierre Boutet

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[1] See R. v. Adams, [1995] 4 S.C.R. 707, 103 C.C.C. (3d) 262, 44 C.R. (4th) 195, 131 D.L.R. (4th) 1, 110 W.A.C. 161, 178 A.R. 161, 190 N.R. 161
[2] *Id*; See also Montague v. Bank of Nova Scotia (2004), 69 O.R. (3d) 87, 180 O.A.C. 381, 30 C.C.E.L. (3d) 71, 2004 C.L.L.C. ¶210-027 (C.A.).
[3] Indictment Decision.
[4] See paras 10-24 amd 29 of the Motion and paras 13, 30, 32, 37 and 28 of the Indictment Decision.
[5] See paras 3-7, 10-18 of the Motion and paras 11, 15, 32 and 38 of the Joinder Decision.
[6] *Prosecutor v. Barayagwiza*, Decision on the Prosecutor's Request for Review or Reconsideration, 31 March 2000, para. 20.
[7] *Prosecutor v. Nyiramasuhuko,* Decision on the Prosecutor's Motion for, *inter alia*, Modification of the Decision of 8 June 2001, 25 September, para. 11.
[8] See in particular, paras 13, 30, 32, 37, 38 of the Indictment Decision and paras 11, 15, 32 and 35 of the Joinder Decision.
[9] See paras 1, 2, 11, 27 and 28 of Motion.
[10] *R v. Young* [1984] 40 C.R. (3d) 289.
[11] *R v. Power* [1994] 1 SCR 601, 616.