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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 23rd of May, 2005

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14-T)

DECISION ON REQUEST BY FIRST ACCUSED FOR LEAVE TO APPEAL AGAINST THE TRIAL CHAMBER'S DECISION ON PRESENTATION OF WITNESS TESTIMONY ON MOYAMBA CRIME BASE

Office of the Prosecutor:

Luc Côté
James Johnson
Kevin Tavener

Court Appointed Counsel for Sam Hinga Norman:

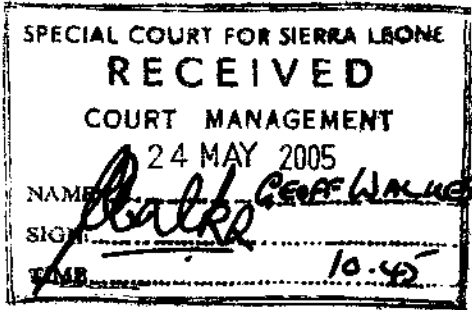
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.

Court Appointed Counsel for Moinina Fofana:

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. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Bankole Thompson, and Hon. Justice Pierre Boutet;

SEIZED OF the *Request by First Accused for Leave to Appeal Against the Trial Chamber's Decision on Presentation of Witness Testimony on Moyamba Crime Base, 1 March 2005*, filed by Court Appointed Counsel for the First Accused on the 4th of March, 2005;

NOTING the *Prosecution Response to Defence "Request by First Accused for Leave to Appeal Against the Trial Chamber's Decision on Presentation of Witness Testimony on Moyamba Crime Base, 1 March 2005"*, filed by the Prosecution on the 15th of March, 2005;

NOTING the *Defence Reply to Prosecution Response to Defence Request by First Accused for Leave to Appeal Against the Trial Chamber's Decision on Presentation of Witness Testimony on Moyamba Crime Base, 1 March 2005*, filed by the Defence on the 18th of March, 2005;

MINDFUL of the Trial Chamber's *Decision on Presentation on Witness Testimony on Moyamba Crime Base*, delivered on the 1st of March, 2005;

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

NOTING the *Decision on Amendment of the Consolidated Indictment ("Appeals Chamber Decision")*, rendered by the Appeals Chamber of the Special Court on the 18th of May, 2005;

NOTING that the Appeals Chamber Decision outlined the test for leave to file an interlocutory appeal as follows:

The standard for leave to appeal at an interlocutory stage is set high by Rule 73(B), which restricts such leave to "exceptional cases" where "irreparable prejudice" may otherwise be suffered.¹

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

¹ Appeals Indictment Decision, para. 43 (emphasis added).

CONSIDERING that the Chamber in this case held 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;²

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;³

CONSIDERING that the fact of judicial dissent amongst the Judges of the Trial Chamber on the applicable law and procedure applied in the Impugned Decision does not in itself constitute an exceptional circumstance, although the nature and significance of the matters sought to be appealed, in conjunction with the fact of dissent, might be considered as factors relevant to this determination;

CONSIDERING that the factors raised by the Defence as supporting exceptional circumstances relate to alleged jurisdictional errors committed by the Trial Chamber;

NOTING that the Defence fully supported the proposal submitted by the Prosecution for the Trial Chamber to render the Impugned Decision;

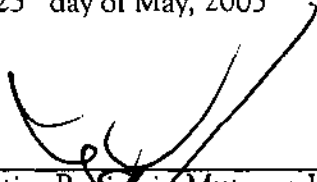
CONSIDERING that the grounds advanced by Court Appointed Counsel for the First Accused in its application for leave to appeal against the Trial Chamber's Decision do not satisfy the conjunctive test of "exceptional circumstances" and "irreparable prejudice" prescribed by Rule 73(B);

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

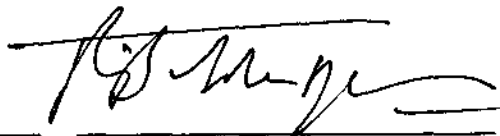
Done in Freetown, Sierra Leone, this 23rd day of May, 2005



Hon. Justice Pierre Boutet



Hon. Justice Benjamin Mutanga Itoe
Presiding Judge
Trial Chamber



Hon. Justice Bankole Thompson



² *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 Prosecution's Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motions for Joinder, 13 February 2005.

³ *Prosecutor v. Sesay, Kallon and Gbao*, Decision on Prosecution Application for Leave to File an Interlocutory Appeal Against Decision on Motion for Concurrent Hearing of Evidence Common to Cases, SCSL-2004-15-PT and SCSL-2004-16-PT, para 21.