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SCSL-04-14-T
(12815-12818)

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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: 24th of May, 2005

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

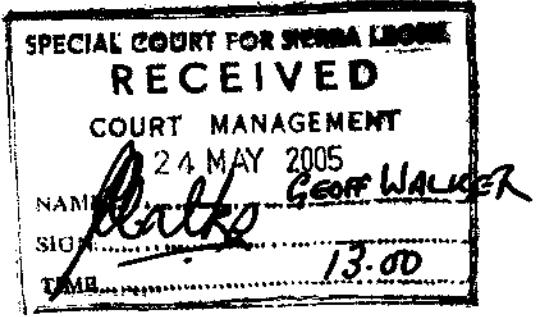
**DECISION ON REQUEST BY FIRST ACCUSED FOR LEAVE TO APPEAL AGAINST THE
 TRIAL CHAMBER'S DECISION ON FIRST ACCUSED'S MOTION
 ON ABUSE OF PROCESS**

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:
 Michiel Pestman
 Arrow Bockarie
 Victor Koppe

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 *Defence Request for Leave to Appeal Against the Decision on First Accused's Motion on Abuse of Process*, filed by Court Appointed Counsel for the First Accused on the 2nd of May, 2005 ("Motion");

NOTING the *Prosecution Response to the Defence Request for Leave to Appeal Against the Decision on First Accused's Motion on Abuse of Process*, filed by the Prosecution on the 11th of May, 2005 ("Response");

NOTING the *Defence Reply to the Prosecution Response to the Defence Request for Leave to Appeal Against the Decision on First Accused's Motion on Abuse of Process*, filed by the Defence on the 16th of May, 2005 ("Reply");

MINDFUL of the Trial Chamber's *Decision on First Accused's Motion on Abuse of Process*, delivered on the 28th of April, 2005 ("Impugned Decision");

MINDFUL of the Appeals Chamber's *Decision on Amendment of the Consolidated Indictment*, delivered on the 16th of May, 2005 ("Appeals Indictment Decision");

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 to the test are clearly conjunctive, not disjunctive; in other words, they must *both* be satisfied.¹

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

¹ *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2004-15-PT, Decision on Prosecution's Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motions for Joinder, 13 February 2004, para. 10 (emphasis in original); see also *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 2004, para. 13 (emphasis in original).

[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.²

CONSIDERING that the reasons advanced by the Court Appointed Counsel for the First Accused in support of his Motion lack specificity and do not provide an adequate explanation as to how the Impugned Decision affects "the very integrity of the trial process" and constitutes "irreparable prejudice" to the First Accused;³

CONSIDERING that the Court Appointed Counsel misconceives the Trial Chamber's ruling on requirements for filing motions on jurisdiction and thus wrongly construes his arguments on the issue in support of his Motion;⁴

CONSIDERING that the Court Appointed Counsel by submitting this Motion simply seeks to re-litigate issues which have been ruled upon by the Trial Chamber and already settled by the Appeals Chamber,⁵ and that the resurrection of these matters is legally impermissible and has no basis in the Statute and the Rules of the Special Court;

CONSIDERING that the fact of existence of differing opinions amongst the Judges of the Trial Chamber on one aspect of the applicable law in the Impugned Decision⁶ does not in itself constitute an exceptional circumstance and that the nature and significance of this Decision is relevant to this determination;

CONSIDERING that the language used by the Court Appointed Counsel in his Motion in many instances is not "comprehensible and considered"⁷ and mindful in this regard of the admonishment not to use "exaggerated language", already given by the Appeals Chamber of the Special Court to the Court Appointed Counsel;⁸

CONSIDERING that the Court Appointed Counsel has not raised any matter of fundamental significance to the integrity of the judicial system and the development of this Court's jurisprudence to justify the granting of leave;

CONSIDERING that the grounds advanced by the Court Appointed Counsel in his Motion do not satisfy the requirements imposed by the first limb of the conjunctive test prescribed by Rule 73(B),

² *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-2004-15-PT, 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, 1 June 2004, para. 21.

³ See, Motion, paras 6, 10.

⁴ Cf. Impugned Decision, paras 3-5, Motion, paras 7-8 and Reply, para. 6; see also *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-PT, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction Filed on Behalf of Accused Fofana, dated 3 March 2004, paras 21-27.

⁵ Cf. Trial Chamber's Decision on the First Accused Motion for Service and Arraignment on the Consolidated Indictment, paras 13, 30, 32, 37, 38 and Appeals Indictment Decision, paras 65-66, 68, 70, 73-74, 86-89 and Motion, para. 9; see also Impugned Decision, para 11-17.

⁶ Motion, para. 7 addressing *functus officio* and *res judicata*.

⁷ See, *inter alia*, Motion, para. 10; see also Appeals Indictment Decision, para. 48.

⁸ Appeals Indictment Decision, para. 48.

namely the showing of "exceptional circumstances", and consequently, there is no need to address the second limb of the test for leave to appeal;

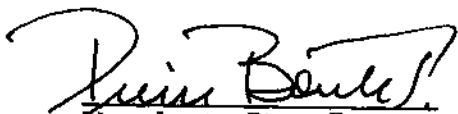
NOTING Rule 46(C) of the Rules which provides that:

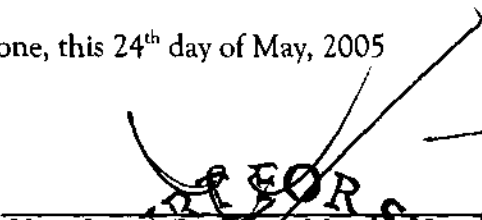
Counsel who bring motions, or conduct other activities, that in the opinion of a Chamber are either frivolous or constitute abuse of process may be sanctioned for those actions as the Chamber may direct. Sanctions may include fines upon counsel; non-payment, in whole or in part, of fees associated with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

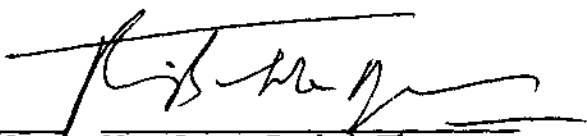
CONSIDERING that this Motion constitutes an abuse of the process;

THE TRIAL CHAMBER HEREBY DENIES the Application for leave to appeal and ORDERS the Principal Defender to withhold from Court Appointed Counsel for the First Accused all costs and fees associated with the Motion.

Done in Freetown, Sierra Leone, this 24th day of May, 2005


Hon. Justice Pierre Boutet


Hon. Justice Benjamin Mutanga Jero
Presiding Judge,
Trial Chamber


Hon. Justice Bankole Thompson

