

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

SEIZED OF the *Defence Request for Leave to Appeal Against the Consequential Non-Arrestment Order of Trial Chamber I, 18 May 2005*, filed by Court Appointed Counsel for the First Accused ("Counsel") on the 13th of June, 2005, where Counsel seek leave to appeal against the "non-arrestment order" by The Chamber in its *Consequential Order on Amendment of the Consolidated Indictment*, or, alternatively, for The Chamber to make an order annulling the "non-arrestment order" and install an order to the effect that the First Accused be arrested before the close of the Prosecution case;

NOTING the *Prosecution Response to 'Defence Request for Leave to Appeal Against the Consequential Non-Arrestment Order of Trial Chamber I, 18 May 2005'*, filed by the Prosecution on the 23rd of June, 2005;

NOTING the *Defence Reply to Prosecution Response to its Leave Request to Appeal Against Trial Chamber I's Consequential Non-Arrestment Order Filed 18 May 2005*, filed by Counsel on the 29th of June, 2005;

MINDFUL of the Appeals Chamber's *Decision on Amendment of the Consolidated Indictment*, rendered on the 18th of May, 2005;

MINDFUL of the *Consequential Order on Amendment of the Consolidated Indictment* ("Consequential Order"), rendered by The Chamber on the 25th of May, 2005, and the *Dissenting Order of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, on The Chamber Majority Consequential Order Dated the 25th of May, 2005, on the Decision of the Appeals Chamber, Dated the 16th of May, 2005, Relating to the Amendment of the Consolidated Indictment*, filed on the 8th of June, 2005;

NOTING that leave to appeal is being sought pursuant to Rule 73(B) of the Rules of Procedure and Evidence of the Special Court ("Rules") which 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;

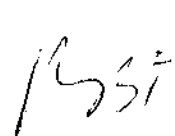
NOTING that the criteria of exceptional circumstances and irreparable prejudice outlined in Rule 73(B) of the Rules represent two limbs of the test and are conjunctive and must both be satisfied;¹

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

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[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 Counsel in support of this Motion, that include the timing of the amendments to the Indictment and failure of the Trial Chamber to order a further appearance of the Accused, are a reiteration of arguments made by Counsel in several previous Motions,³ and do not provide any evidence that The Chamber has not correctly exercised its discretion in issuing the Consequential Order, and as such, fail to demonstrate the existence of any exceptional circumstances for granting this leave;

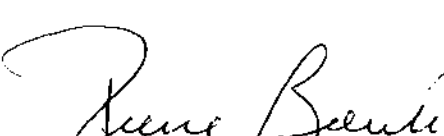
CONSIDERING that the Consequential Order will not cause such prejudice to the case of the Prosecution as could not be cured by the final disposal of the trial including any possible post-judgement appeal, within the meaning of Rule 73(B);

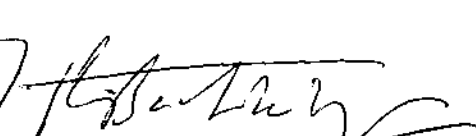
PURSUANT TO Rule 73(B) of the Rules;

THE CHAMBER FINDS that the criteria of exceptional circumstances and irreparable prejudice outlined in Rule 73(B) of the Rules are not met and therefore **DENIES** the application for leave to appeal.

Done in Freetown, Sierra Leone, this 25th day of July, 2005


 Hon. Justice
 Benjamin Mutanga Itoe


 Hon. Justice Pierre Boutet


 Hon. Justice Bankole Thompson

Presiding Judge,
 Trial Chamber I

[Seal of the Special Court for Sierra Leone]



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 *Abuse of Process Motion by First Accused for Stay of Trial Proceedings*, filed on the 15th of February, 2005 ("Motion of the 15th of February") and Motion of the 2nd of May.