

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

SEIZED of the “Application for Leave to Appeal the Decision (3 August 2006) on Defence Motion for Clarification and for a Ruling that the Defence has been Denied Cross-Examination Opportunities” filed by Defence Counsel for the First Accused, Issa Hassan Sesay, (“Defence”) on the 22nd of August 2006 (“Application”);

NOTING the Response to the Motion filed by the Office of the Prosecutor (“Prosecution”) on the 1st of September 2006;

NOTING that no reply was filed by the Defence within the prescribed time limits;

PURSUANT to Rules 7, 54 and 73 of the Rules of Procedure and Evidence (“Rules”);

THE TRIAL CHAMBER ISSUES THE FOLLOWING DECISION:

I. SUBMISSIONS OF THE PARTIES

A. The Application

1. Pursuant to Rule 73(B), the Defence seeks leave to appeal this Chamber’s Decision on Defence Motion for Clarification and for a Ruling that the Defence has been denied Cross-Examination Opportunities, issued on the 3rd of August 2006 (“Impugned Decision”).¹
2. In its original Motion for a Ruling that the Defence has been Denied Cross-Examination Opportunities, which gave rise to the Impugned Decision, the Defence claimed that there was need for clarification as to whether it was estopped from asserting lack of notice in an application for the recall of witnesses.²
3. The Defence submits that the clarification offered by this Chamber in the Impugned Decision, specifically that “the recall of witnesses for cross-examination remains a discretionary matter

¹ Motion, para. 1.

² *Id.*, para. 2. In particular, the Defence sought a clarification as to whether previous rulings of this Chamber, which denied various Defence applications for exclusion of supplemental evidence on the basis that the first Accused had sufficient knowledge of the facts asserted in such evidence, were intended to apply to all applications for discretionary relief.

for the Court,"¹ failed to facilitate the administration of justice.⁴ The Defence further submits that as a result of the Impugned Decision, it cannot be certain as to the intended meaning and application of the prohibition on claiming relief on the basis of lack of notice, thus denying it the right to a fair hearing and an equal opportunity to present its case. The Defence submits that this constitutes exceptional circumstances and irreparable prejudice required to sustain leave to appeal.⁵

4. The Defence asserts that this Chamber's ruling in the Impugned Decision leaves it with the choice of either violating this Chamber's stated provision regarding notice, or foregoing its procedural right to apply for a recall of witnesses. The Defence asserts that the resulting lack of access to the discretionary remedy of recalling witnesses potentially gives rise to irreparable prejudice.⁶

B. The Prosecution Response

5. The Prosecution preliminarily contends that the Application was filed out of time, as it was due on the 21st of August 2006, and should consequently be dismissed by the Chamber.⁷

6. The Prosecution submits that the Defence cannot infer from the Impugned Decision that it is estopped from applying to recall Prosecution witnesses, as the Impugned Decision did not address the issue of recall of witnesses.⁸ The Prosecution further submits that the Defence's original motion for clarification was rather, a request for a ruling on a new issue and that the Trial Chamber correctly ruled that the Defence had not sought any specific relief, but rather, an abstract ruling.⁹

7. The Prosecution asserts that the claim of the Defence cannot succeed on appeal, as it cannot establish that the Trial Chamber was under a positive duty to rule on the issue raised by the Defence. The Prosecution further asserts that even if the Defence's claim could succeed on the merits, this in itself does not satisfy the Rule 73(B) "exceptional circumstances" test. Finally, the Prosecution submits that there is no potential for irreparable prejudice.¹⁰

¹ *Id.*, para. 4, citing Impugned Decision, para. 5.

⁴ *Id.*, para. 4.

⁵ *Id.*, para. 5.

⁶ *Id.*, para. 21

⁷ Response, para. 2.

⁸ *Id.*, para. 7.

II. APPLICABLE LAW

8. In the Chamber's view, it is settled law that Rule 73(B) of the Rules pre-eminently governs the issue of interlocutory appeals against decisions issued by a Trial Chamber. This re-statement of the law notwithstanding, it is, as a preliminary matter, necessary to focus on the law relating to the issue of filing of documents within prescribed time limits in the light of the Prosecution's submission that the present Application was filed out of time. Based on this submission, the Chamber deems it necessary to set out here the applicable law in respect of the prescribed time limits for the filing of applications for leave to appeal. In this respect, it is absolutely clear, from Rule 73(B), that an application to file an interlocutory appeal within the jurisdiction of this Court must be filed "within 3 days of the decision" which is the subject of the appeal.

9. As to the computation of the 3 day time limit prescribed by Rule 73(B), Rule 7(A) states that: Unless otherwise ordered by a Chamber or by a Designated Judge, or otherwise provided by the Rules, where the time prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission by the Registry, counsel for the Accused, or the Prosecutor as the case may be.

III. DELIBERATION

10. Based on the records, the Chamber finds that the Impugned Decision was issued on Thursday, the 3rd of August 2006 and served by the Court Management Section of the Special Court ("CMS") on the same day. Subsequently, the instant Application was filed on Tuesday, the 22nd of August 2006 and served on the following day.

11. In the Chamber's opinion, under Rule 7(A), time limits for filing begin to run the day after a party receives notice of an event.¹¹ In the instant case, the time limit began to run on Friday, the 4th of August 2006, the day after the issuing and the service of the Impugned Decision. From Monday, the 7th of August 2006 through Friday, the 18th of August 2006, this Court was on judicial recess. Time limits for filing documents ran during the recess. Pursuant to Rule 7(B), in cases where the time limits for the filing of a document fell within the period of the recess, the time limit would be

⁹ *Id.*, para. 8.

¹⁰ *Id.*, para. 17.

¹¹ For further reference, see for example *Prosecutor v. Brima et al.*, SCSL04-16-AR73, Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, 8th December 2005, paras 30-34.

extended to the first subsequent working day, which was Monday, the 21st of August 2006.¹² It is our view that in the context of the present Application, the three-day time limit ended on the 7th of August 2006, the first day of the recess. It follows, therefore, considering that no leave was sought or granted for an extension of time, that in order to be within time, the Application should have been filed on the 21st of August 2006. The Chamber finds, therefore, that the Application is not in compliance with Rules 7(A) and (B) and 73(B).

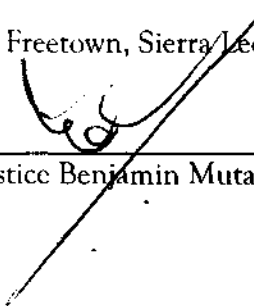
12. The Chamber, accordingly, concludes that the Motion was filed out of time.

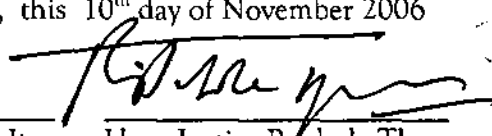
13. Furthermore, according to Article 12 - Late Filing of the *Practice Directions on Filing Documents Before the Special Court*, a party filing a late document shall indicate the reasons for the delay in the relevant form of the CMS which, in turn, shall complete a Late Filing Form to accompany the document. We find that no such indication was made nor was any leave granted by the Trial Chamber for the late filing of the Application.

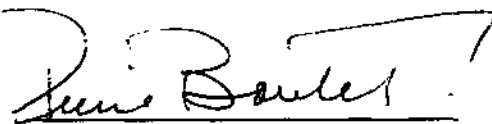
FOR THE FOREGOING REASONS,

THE APPLICATION is accordingly **DISMISSED** in its entirety. We, therefore, decline to consider its merits.¹³

Done at Freetown, Sierra Leone, this 10th day of November 2006


Hon. Justice Benjamin Mutanga Itoe


Hon. Justice Bankole Thompson
Presiding Judge
Trial Chamber I


Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]



¹² See also *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Order Scheduling Judicial Recess and Authorization Pursuant to Rule 4, 15 June 2006.

¹³ For further reference on the issue of late filing of documents, see also *Prosecutor v. Norman et al.*, SCSL-04-14-T, Decision on Kondewa Application for Leave to Call Additional Witnesses, 20 September 2006, in which the Chamber refused to take into consideration a document as it had been filed outside the prescribed timelimits. See also *id.*, Kondewa - Order Rejecting the Filing of Defence Objection to the Prosecution's Motion for Judicial Notice and Admission of Facts, 5 May 2004.