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SCSL-04-14-T  
C 20978-20983  
Case No SCSL-04-14-T

20978

**SPECIAL COURT FOR SIERRA LEONE  
IN TRIAL CHAMBER 1**

Before: Justice Bankole Thompson, Presiding Judge  
Justice Benjamin Mutanga Itoe  
Justice Pierre Boutet,  
Registrar: Mr. Lovemore Munlo, SC  
Date: 16<sup>th</sup> March 2007

**THE PROSECUTOR**

**against**

**SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA**

CASE NO. SCSL-2004-14-T

PUBLIC

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**KONDEWA SUBMISSIONS ON THE DEATH OF THE FIRST ACCUSED,  
SAMUEL HUNGA NORMAN.**

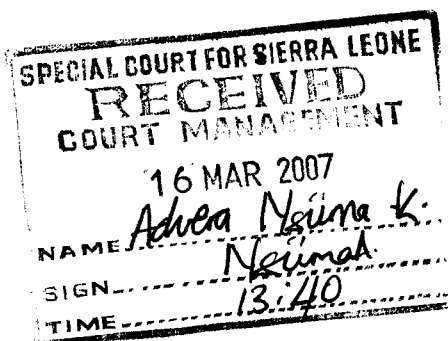
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Office of the Prosecutor:  
Stephen Rapp  
James Johnson  
Joseph Kamara  
Mohammed Bangura

For Allieu Kondewa  
Charles Margai  
Yada Williams  
Susan Wright  
Ansu Lansana

For Samuel Hinga Norman  
Dr. Bu-Buakei Jabbi  
Alusine Sani Sesay  
John Wesley-Hall, Jr.

For Moinina Fofana:  
Victor Koppe  
Michiel Pestman  
Arrow Bockarie  
Steven Powles



## I. INTRODUCTION

1. Counsel for Allieu Kondewa hereby in response to an Order of this Chamber dated 7<sup>th</sup> March 2007 make the following submissions of law.

## II. NORMAN'S DEATH.

2. That the office of the Registrar was officially notified of the death of the 1<sup>st</sup> Accused, Mr. Samuel Hinga Norman, on the 12<sup>th</sup> February 2007. That a certified copy of the death certificate of the said 1<sup>st</sup> Accused was filed in court on the 23<sup>rd</sup> February 2007. That pursuant to Rule 22 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal, the President of the Special Court ordered an inquiry into the death of the 1<sup>st</sup> Accused on the 23<sup>rd</sup> February 2007.

## III. APPLICABLE LAW

3. Article 17 (4) (d) of the Statute of the Special Court provides for the right of the accused: *".....To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing:....."*
4. Article 18 of the Statute of the Special Court provides: *"The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended"*.
5. Article 19 (1) of the Statute of the Special Court provides: *"The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years ....."*

6. Article 20 (1) of the Statute of the Special Court provides: *“The Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds .....*”.

#### IV. SUBMISSIONS

7. Counsel submits that on the death of an accused person the Special Court ceases to have jurisdiction over that accused person. That this proposition is in consonance with the rule and practice in other international criminal tribunals and in several national systems.
8. The accused is required by the Statute of the Special Court to be present during his trial. The implication of this rule is that the accused must be physically present during his trial which cannot happen if the accused is deceased. The general notwithstanding the presence of the accused can be dispensed with in a limited number of exceptional circumstances.
9. In the English case of R. V. Jefferies [1968] 3 ALL ER 238 at 240 the Court of Appeal held as follows:  
*“ We take it to be a general principle that whenever a party to proceedings dies, the proceedings must abate, unless his personal representatives both have an interest in the subject-matter and can by virtue of the express terms of a statute (or from rules of court made by virtue of jurisdiction given by a statute) take the appropriate steps to have themselves substituted for the deceased as a party to the proceedings. .... Moreover neither the Criminal Appeal Rules, 1908, nor any subsequent amendment of them purports to provide procedure for the substitution on the record after the death of the person convicted of someone who could either embark on or continue an appeal”.*
10. Counsel submits that the Statute of the Special Court and the Rules of Procedure and Evidence do not give the Chamber jurisdiction to continue proceedings after the death of an accused person facing trial at the Court.

11. Counsel submits that it is general principle of law that courts of law should not act in vain. Proceeding with the trial or the case against the 1<sup>st</sup> Accused will be an act in futility as the Court cannot exercise against a deceased in the event of an unfavourable judgement the powers contemplated in Article 19 (1) of the Statute.
12. The state of the proceedings against the 1<sup>st</sup> Accused are such that the Chamber has not made any adverse findings against the 1<sup>st</sup> Accused. In the English House of Lords decision of R. V. Kearley (No. 2) [1994] 3 ALL ER 246 Lord Jauncey of Tullichettle held at page 253 as follows:

*“My lords, although I reach the foregoing conclusion without hesitation I do so with some regret. There is no doubt that as the law now stands injustice could, as pointed out in R. V. Rowe [1995] 2 ALL ER 234 at 235 result if an individual’s estate were obliged to suffer a wrongly imposed pecuniary penalty whether by way of a fine, confiscation order or an order for costs, because there existed no procedure for challenging the order. It must be for serious consideration whether some machinery to alleviate such possible injustice should not be available. This is, however, a matter for parliament since it would be necessary to determine as a matter of policy to whom any such machinery should be available and whether it should be limited to case involving pecuniary matters or whether, and if so in what circumstances, it should also include cases in which relatives of the deceased were anxious to clear his name”.*
13. Counsel submits that one important issue that could result if proceedings are continued against the deceased accused in the present proceedings is that of appeal in the event of adverse findings against him and the resultant question of who can exercise that right will have to be addressed.
14. There are overwhelming English case law authorities that the right to appeal in criminal matters was personal to the accused person and was not exercisable by any other person. These decisions prompted the English Parliament to enact section 44A of the Criminal Appeal Act 1968, which is a section inserted into that Act by section 7(1) of the Criminal Appeal Act 1995. In the case of R. V. Kearley (No. 2) [1994] 3 ALL ER 246 at 253 Lord Jauncey of Tullichettle held as follows:

*“My Lords, as a pure matter of construction untrammelled by authority I should have had little hesitation in concluding that a right of appeal to the Court of Appeal ..... was personal to the convicted person. Widgery LJ with his far greater experience in these matters reached the same conclusion in R. V. Jefferies which fortifies me in the conclusion which I have reached”.*

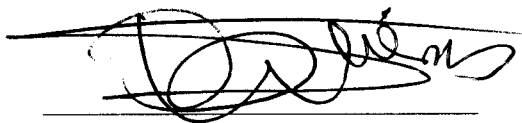
15. Section 44A of the *Criminal Appeal Act 1968* provides that where a person has died “..... any relevant appeal which might have been begun by him had he remained alive may be begun by a person approved by the Court of Appeal”. The Statute of the Special Court and the Rules of Procedure and Evidence do not make any such provision.

#### IV. Conclusion

16. That in the absence of any provision for the continuance of proceedings against a deceased accused person in the Statute of the Special Court and the Rules of Procedure and or anything to suggest that that eventuality was ever contemplated by the drafters of both documents and in the light of the practice international criminal tribunals and in various national jurisdictions Counsel submits that the case against the 1<sup>st</sup> Accused, Samuel Hinga Norman, ought to be abated.

COUNSEL FOR ALLIEU KONDEWA

Done in Freetown this 16<sup>th</sup> day of March 2007



YADA WILLIAMS

TABLE OF AUTHORITIES

1. Rules of Procedure and Evidence.
2. Statute of the Special Court.
3. R. V. Kearley (No. 2) [1994] 3 ALL ER 246.
4. R. V. Rowe [1995] 2 ALL ER 234 at 235.
5. R. V. Jefferies [1968] 3 ALL ER 238.
6. R. V. Whelan [1997] Crim LR 659.
7. Hodgson V. Lakeman [1943] KB 15.
8. Prosecutor V. Mile Mrksic et al, IT-95-13, Trial Chamber, 'Order terminating proceedings against Slavko Dokmanovic', 15<sup>th</sup> July 1998.
9. Prosecutor V. Dusko Jovanovic, IT-02-54-R77.2, Trial Chamber, 'Decision confirming withdrawal of indictment and termination of proceedings', 19<sup>th</sup> April 2004.
10. Section 44A of the Criminal Appeal Act 1968.
11. Section 7(1) of the Criminal Appeal Act 1995.