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(1192 - 1198)

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

IN THE TRIAL CHAMBER

Before: Judge Bankole Thompson
 Judge Pierre Boutet
 Judge Benjamin Mutanga Itoe

Registrar: Mr. Robin Vincent

Date filed: 11 March 2004

PROSECUTOR

Against

**ISSA HASSAN SESAY
 MORRIS KALLON
 AUGUSTINE GBAO
 (CASE NO. SCSL-2004-15-PT)**

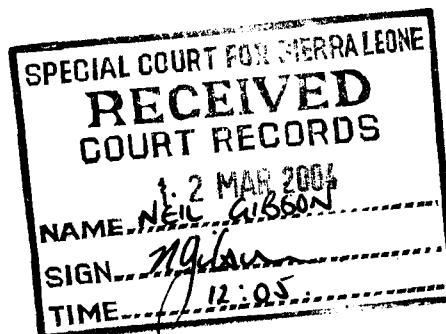
**KALLON - PROSECUTION RESPONSE TO DEFENCE MOTION FOR EXTENSION
 OF TIME FOR COUNSEL TO FILE DEFENCE REPLY TO "PROSECUTION
 RESPONSE TO DEFENCE MOTION FOR QUASHING CONSOLIDATED
 INDICTMENT"**

Office of the Prosecutor:

Luc Côté, Chief of Prosecutions
 Robert Petit, Senior Trial Attorney
 Abdul Tejan-Cole, Trial Attorney
 Boi-Tia Stevens, Associate Trial Attorney

Defence Counsel:

Sylvain Roy
 Rupert Skilbeck
 Haddijiatou Kah-Jallow



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I. BACKGROUND

1. On 5th March 2004, the Defence Office filed a “Defence Motion for Extension of Time for Counsel to file Defence Reply to ‘Prosecution Response to Defence Motion for Quashing Consolidated Indictment’ ” (the “**Application**”).¹ In the Application, the Defence requests an extension of time to file a Reply to the Prosecution Response to the Defence Motion for quashing of the consolidated indictments.
2. The Defence argues for an extension of time to allow assigned Counsel for the Accused to file a reply to the Prosecution Response to the Defence Motion for Quashing Consolidated Indictment. The Defence argues that since the Decision to withdraw the representation of the Accused’ former Counsel, he has not yet been assigned counsel and that all relevant materials pertaining to his case are still in the custody of his erstwhile Counsel. The Defence argues that this is good cause to grant an extension of time in the interests of justice.

¹ Registry Page (“RP”) 1165-1179.

3. The Prosecution opposes the Defence Application and submits that, relying on the previous jurisprudence of this Tribunal,² and for the reasons set out below, the Defence has failed to show good cause or exceptional circumstances to warrant this Court to exercise its discretion to grant an extension of time.

II. PROCEDURAL MATTERS

4. The Prosecution sets out the procedural matters of this Application as follows:
 - a. On 10th February 2004, Counsel for the Accused filed a Motion seeking to quash the consolidated indictment filed by the Prosecution;
 - b. On 13th February 2004, the Prosecution filed a Response to the said Motion in which the Prosecution argued that the Motion be dismissed in its entirety;
 - c. On 18th February 2004, the Defence Reply to the Prosecution's Response was due but none was filed;
 - d. On 27th February 2004, the Acting Principal Defender issued a Decision directing that the assignment of the assigned Counsel to the Accused be withdrawn effective 27th February 2004;

III. ARGUMENTS

A. The Accused was represented by Assigned Counsel

5. Rule 7(c) of the Rules of Evidence and Procedure for the Special Court for Sierra Leone (the "**Rules**") provides inter alia that "(A)ny reply to the response shall be filed within five days" from the date of the response. The Prosecution respectfully submits that based on the Rules, the Defence Reply was due to have been filed on 18th February 2004 and not on 25th February 2004, as was erroneously stated in paragraph 7 of the Defence Application.

² In *Prosecutor Against Morris Kallon*, SCSL-2003-07-PT, "Decision on the Defence Motion for an Extension of Time to file Preliminary Motion", 14 June 2003, the Defence Motion to extend the time limit beyond the prescribed 21 days within which to file preliminary motions was denied on the grounds that no good cause has been shown to justify the Chamber's discretion in favour of the Defence. Similarly, in *Prosecutor Against Issa Hassan Sesay*, SCSL-2003-05-PT, "Decision on the Defence Motion Requesting the Suspension of Delays for filing Preliminary Motions or new Request for an Extension of Delays", 7 November 2003, the Trial Chamber held that no exceptional circumstances or good cause was shown to justify the exercise the Chamber's discretion to grant the extension.

6. The Prosecution further submits that on the 18th February 2004, when the reply was due to have been filed, the Accused was represented by an assigned Counsel, who could have filed the same. The Defence has not advanced any cogent reason why the same was not done and therefore the Prosecution submits that the Application must fail.

B. The Defence Application was filed after the expiration of the time limit

7. The Prosecution submits that an application for an extension of time ought to be made before, and not after, the expiration of the time allocated. As pointed out in paragraph 4 above, the Defence response was due on 18th February 2004; the request for an extension of time was not made before the expiration of this time limit but was filed on 5th March 2004, sixteen (16) days after the expiration of the time limit. The Prosecution submits that this practice is wholly improper and ought to be rejected by this Honourable Court.
8. The Prosecution notes that the filing of a reply is not mandatory under the Rules. If the Defence fails to file a Reply within the time allocated for the same, it loses the right to do so unless an application to extend the time had been made prior to the expiration of the time limit. The Prosecution submits that to allow the Defence an extension of time 16 days after the expiration of the time limit will set a dangerous precedent and run contrary to the previous jurisprudence of this Court. Consequently, the Prosecution urges the Court to dismiss the Application of the Defence.

C. The Defence Office is competent to deal with issues raised in the Response

9. The Defence argues in paragraph 13 of the Application that at this stage of the trial process, where issues germane to the effective and adequate defence of the Accused have to be addressed, it is important that Trial Counsel makes the important decision rather than the Duty Counsel of the Defence Office. The Prosecution disputes this argument and submits that in the absence of an assigned counsel, and in cases such as the present circumstances in which the integrity of the process is at stake, the Defence Office can and should represent the Accused.
10. The Prosecution submits that the Defence Office was established “for the purpose of ensuring the rights of suspects and accused.” Rule 45 (A) provides that the “Defence Office shall, in accordance with the Statute and Rules, provide *advice, assistance and*

representation to...*(ii)* accused persons before the Special Court. (*italics mine*). Rule 45(C) provides that the Principal Defender shall provide an effective defence and under Rule 45 (E) in the event of a withdrawal of Counsel, the Principal Defender shall assign another Counsel who may be a member of the Defence Office, to the indigent accused.

11. The Prosecution submits that the functions of the Defence Office are clearly stated in Rule 45. They include providing advice, assistance and representation to all Accused persons before the Special Court. Even in cases in which the Accused has an assigned Counsel, the Defence Office has the function and duty to support Assigned Counsel in order to ensure and protect the rights of the Accused. This function and duty of the Defence Office does not end after the initial appearance of the Accused or upon the assignment of Counsel, but rather continues throughout the trial of the Accused.
12. The Defence asserts in paragraph 16 of its Application that it is not privy to the contents of all documents relating to the Accused and therefore any submission made by the Defence Office on any substantive issue may be merely speculative. With all due respect to the Defence, the Prosecution submits that this argument is irrelevant. The Prosecution submits that the Defence has failed to show any evidence to support its assertion that it is not privy to the contents of certain documents which are relevant to the Application. It is wholly insufficient to simply assert that the Defence Office is not privy to the content of all documents without substantiating the same. Further, the Prosecution argues that knowledge of all documents is irrelevant to reply to the Prosecution's response.
13. The Motion to quash the indictment basically argues that the consolidated indictment filed by the Prosecution adds new allegation that were not included in the original indictment. Unlike the "Defence Motion for Extension of Time for Filing of Application for Leave to Appeal against Refusal of Bail", the Motion to Quash the Indictment and all other related pleadings are public documents and were not filed confidentially. The Motion to Quash the Indictment compared the first indictment with the consolidated indictment and legally analysed the changes made in the latter. The Prosecution does not see the need to access confidential material to be able to file a reply to the same.
14. The Prosecution submits further that a Motion and a response had been filed in the present case; the only outstanding pleading was a reply to the issues raised in the

Response filed by the Prosecution. The issues raised in the Motion to quash the indictment and the Response are essentially legal and not factual. In order to reply to the same, the Prosecution submits that the Defence does not have to be privy to all documents relating to the Accused. A reply should only deal with matters raised in the Prosecution's response and should not contain new arguments unrelated to the Response or which could reasonably have been included in the Motion. The Prosecution submits that these are matters which are entirely within the competence of the Defence Office, and even if the Defence assertions are valid in that the Accused had no assigned Counsel, the Defence Office ought to have been more than capable to deal with these matters.

D. Miscellaneous

15. The Prosecution notes that the Defence requests an extension of time without stipulating the length of the extension requested. An inference that may be drawn from this is that the Defence is seeking an indefinite adjournment. The Prosecution emphasizes the fact that the Accused is charged jointly with two other accused and submits that if the Application is granted, it will affect not only the Trial of the Accused but also the trial of the other accused with whom he is jointly charged. Therefore, the Prosecution submits that to grant the said extension of time requested by the Accused will adversely affect the current proceedings. The issue for determination is of fundamental importance as it deals with the quashing of the indictment. The Prosecution submits that this is an issue which ought to be determined expeditiously.
16. Article 17 (4) (c) of the Statute gives the Accused a minimum guarantee that the Accused and all others with whom he is jointly charged will be tried without undue delay. The Prosecution submits that if the Application is granted it will inevitably delay the entire proceedings.
17. The Prosecution disputes the Defence assertion that to refuse the Application would undermine the fairness of the proceedings and expose the Accused to irreparable prejudice in preventing adequate consideration of the motion by Counsel. That which the Defence asserts, the Defence must prove. The Prosecution submits that the Defence has failed to substantiate its assertion that to deny its application would "undermine the fairness of the proceedings" or expose the Accused to "irreparable prejudice" as alleged.

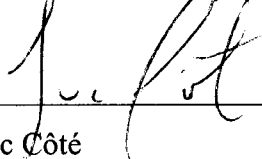
Granting the Defence' request would, in the submission of the Prosecution, defeat the letter and spirit of Article 17 (4) (c) of the Statute.

III. CONCLUSION

18. Based on the arguments above, the Prosecution submits that the Defence Application should be dismissed in its entirety.

Freetown, 11 March 2004.

For the Prosecution,



Luc Côté
Chief of Prosecutions



Robert Petit
Senior Trial Attorney