

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

601

037
SCSL-2003-07-PT-2^D-037
(601-615)

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Robin Vincent

Date filed: 6th June 2003

THE PROSECUTOR

Against

MORRIS KALLON also known as (aka) BILAI KARIM

CASE NO. SCSL – 2003 – 07 – PT

**PROSECUTION RESPONSE TO DEFENCE “APPLICATION FOR
EXTENSION OF TIME TO FILE PRELIMINARY MOTIONS”**

Office of the Prosecutor:

Luc Côté, Chief of Prosecution
Sharon Parmar, Assistant Trial Counsel

Defence Counsel:

James Oury
Steven Powles

Justin Thompson
6-06-03 4:45pm

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

THE PROSECUTOR

Against

MORRIS KALLON also known as (aka) BILAI KARIM

CASE NO. SCSL – 2003 – 07 – PT

**PROSECUTION RESPONSE TO DEFENCE “APPLICATION FOR
EXTENSION OF TIME TO FILE PRELIMINARY MOTIONS”**

INTRODUCTION

The Defence Application for extension of time to file preliminary motions ought to be duly considered in light of the significance of the importance of the preliminary motions being anticipated by the Defence and the Court’s obvious desire in maintaining fair proceedings. Noting, however, the clear intent of the Rules of Procedure and Evidence to expedite the trial Process.

1. On 29 May 2003, the Defence filed an “Application for Extension of Time to File preliminary motions” (the “**Application**”). In the Application the Defence:
 - (i) stated that disclosure was due on 15 of April 2003 but was effectively carried out on 26 May 2003, implying that the Prosecution was in breach of Rule 66(A)(i);

(ii) sought an extension of time of 21 days for the filing of preliminary motions from the time limit of “21 days following disclosure by the Prosecutor to the Defence of all materials envisaged by Rule 66(A)(i)”;

(iii) stated that the primary reasons for seeking the extension were because the anticipated preliminary motions were of a complex and substantial nature, to date the Defence has had little contact with the Accused, the Accused is entitled to adequate facilities to prepare his defence and that the Prosecution has had time to prepare for anticipated preliminary motions.

ARGUMENT

I. Prosecution’s compliance with Rule 66(A)(i)

2. In paragraphs 1 and 2 of their motion Defence implies that the Prosecution failed to meet its disclosure obligations under Rule 66(A)(i). The Defence appears to overlook the decision of 17 April 2003 on “The Prosecution Motion to Allow Disclosure to the Registry and to Keep Disclosed Materials under Seal until Appropriate Protective Measures are in Place” in the case of Morris Kallon (SCSL-2003-07-PT), which authorized the Prosecution to “*to make the disclosure pursuant to Rule 66(A)(i) to the Registry*” until witness protective measures had been ordered by the Court [Emphasis added]. In accordance with the said order, the Prosecution met its disclosure obligations pursuant to Rule 66(A)(i).

II. The Application

3. The Defence requests an extension of time pursuant to Rule 7. The Prosecution submits that their request should be made pursuant to Rule 73 and that the Court must make a finding of good cause to warrant the granting of such requests (See Rule 127 of the International Criminal Tribunal for Yugoslavia (ICTY), Rule 116 of the Court and the International Criminal Tribunal for Rwanda (ICTR) concerning appellate proceedings, *The Prosecutor v. Krajisnik*, IT-00-39 & 40-PT, 31 May 2003, *The Prosecutor v. Obrenovic, Blagojevic, Jokic*, IT-01-43-PT, IT-98-33/1-PT, IT—1-

44-PT, 4 October 2001). The Prosecution submits that the requirement to show good cause is equally applicable at this stage as it is in appellate proceedings.

III. Objective considerations

4. Since this is the first request for an extension of time in any case before this Court, the Prosecution requests that Court bear in mind the objective and spirit of the Rules in maintaining fair and expeditious proceedings, which is best-reflected in a judicious approach by the Court to the application of the good cause criteria. Furthermore, the Prosecution cautions against setting any precedent for future requests for extensions of time in cases before this court once these preliminary motions are settled. Of course the Prosecution fully understands that any request for an extension of time must be considered on its individual merits at the direction of the Court.
5. This objective and spirit of maintaining fair and expeditious proceedings was clearly articulated by the Judges of this Court when they adopted Rule 72, which shortened the time period for filing preliminary motions by nine days as compared to the time period under the corresponding Rules of the ICTY and ICTR. This reflects a general approach by the Judges to expedite proceedings before the Special Court.

IV. Irrelevant argument submitted by Defence

6. The Defence states that since their assignment, they have had little opportunity to meet with the Accused. The Prosecution submits that preparation of the preliminary motions as outlined by the Defence do not require such extensive contact with the Accused.
7. The Defence states in paragraph 8 of the Application that the Prosecution has *“already had an extensive opportunity to address their collective minds to some of the obvious jurisdictional issues that may be raised”*. The Prosecution submits that as the party bearing the burden of proof, it is of no relevance to the question of adequate time for Defence preparation of preliminary motions that the Prosecution has been operational, conducting investigations and building its case. This argument also fails

to consider that the Prosecution has been investigating and preparing multiple cases against multiple accused.

8. Finally, the Defence appears to argue in paragraph 7 of their motion that adequate time is required to review the witness statements received as part of the disclosure package before they can submit their preliminary motions. Prosecution notes that in both of the International Tribunals, preliminary motions are due before witness statements are disclosed to the Defence. In the ICTY and ICTR the time for filing preliminary motions is based on disclosure of supporting materials and not on the disclosure of witness statements. (See Rule 66(A)(i) of ICTY and ICTR) As indicated by the practice at the International Tribunals, the Prosecution submits that disclosure of witness statements is clearly not needed prior to the filing of preliminary motions and therefore this argument should be dismissed.

V. Argument in favour of granting a reasonable extension of time


9. In its Application, the Defence outlines significant anticipated preliminary motions to be raised for the first time before the Court, whose deliberation will have a considerable impact upon these and other proceedings. The jurisprudence of both International Tribunals supports a finding of good cause where the issues raised in the case are complex (See *The Prosecutor v. Krstic*, ICTY-98-33-A, 1 May 2003; *The Prosecutor v. Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, 20 May 2003). Allowing the Defence sufficient time to carefully craft, articulate and submit well drafted motions will only aid the Prosecution in its response to such motions and the Court in deliberation of such motions.
10. The Prosecution is also sympathetic to the fact that, despite being experienced attorneys, Defence Counsel were only recently assigned to this case. The anticipated preliminary motions encompass complex issues that deserve proper consideration.

CONCLUSION

The importance and complexity of the preliminary motions to be presented by the Defence for the first time before the Court do warrant careful consideration by the Court. However, the Prosecution requests that the Court articulate a standard that reflects the objective of the Rules in maintaining fair and expeditious proceedings.

Freetown, 6 June 2003

For the Prosecution



Luc Côté
Chief of Prosecutions

PROSECUTION INDEX OF AUTHORITIES

1. *The Prosecutor v. Krajisnik*, IT-00-39 & 40-PT, 31 May 2003
2. *The Prosecutor v. Obrenovic, Blagojevic, Jokic*, IT-01-43-PT, IT-98-33/1-PT, IT—1-44-PT, 4 October 2001
3. *The Prosecutor v. Krstic*, IT-98-33-A, 1 May 2003
4. *The Prosecutor v. Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, 20 May 2003

IN THE TRIAL CHAMBER

608

Before:

Judge Richard May, Presiding

Judge Mohamed Bennouna

Judge Patrick Robinson

Registrar:

Dorothee de Sampayo Garrido-Nijgh

Order of:

31 May 2000

PROSECUTOR

v.

MOMCILO KRAJISNIK

ORDER FOR EXTENSION OF TIME

Office of the Prosecutor:

Ms. Carla Del Ponte

Mr. Nicola Piacente

Ms. Brenda Hollis

Counsel for the Accused:

Mr. Goran Neskovic

I, RICHARD MAY, Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("International Tribunal")

HAVING BEEN APPOINTED as pre-trial Judge in this matter by virtue of an order of the Trial Chamber dated 13 April 2000,

BEING SEISED of a Motion for extension of time filed on 24 May 2000 by the Defence, a Corrigendum filed on 26 May 2000 and an Addendum filed on 29 May 2000 (together "the Request"), seeking an extension of time in which to file preliminary motions pursuant to Rule 72 of the Rules of Procedure and Evidence of the International Tribunal ("the Rules") until 15 June 2000,

CONSIDERING that the reasons given in support of the Request constitute good cause for the purpose

609

of Rule 127 of the Rules,

CONSIDERING also the need to ensure that the proceedings are not unduly delayed and to prepare for an expeditious trial,

PURSUANT TO Rule 127 of the Rules,

HEREBY ORDER that the Defence shall have until Thursday 8 June 2000 to file its preliminary motions pursuant to Rule 72 of the Rules.

Done in English and French, the English text being authoritative.

Richard May
Presiding Judge

Dated this thirty-first day of May 2000
At The Hague
The Netherlands

[Seal of the Tribunal]

IN THE TRIAL CHAMBER

Before:

**Judge David Hunt, Presiding Judge
Judge Florence Mumba
Judge Liu Daqun**

Registrar:

Mr Hans Holthuis

Decision of:

4 October 2001

Prosecutor v Dragan OBRENOVIC

Prosecutor v Vidoje BLAGOJEVIC

Prosecutor v Dragan JOKIC

ORDER GRANTING AN EXTENSION OF TIME

The Office of the Prosecutor:

**Mr Peter McCloskey
Mr Mark Vlasic
Ms Janet Stewart**

Counsel for accused

**Mr David Wilson for Dragan Obrenovic
Mr Michael G Karnavas for Vidoje Blagojevic
Mr Miodrag Stojanovic for Dragan Jokic**

I Judge David Hunt, Pre-Trial Judge,

NOTING the "Prosecution's Motion for Joinder" ("Motion") filed on 11 September 2001 and the order of the President of 14 September 2001 assigning the Motion to Trial Chamber II for determination;

NOTING the "Scheduling Order" ("Order") issued by the Pre-Trial Judge on 18 September 2001 ordering that the accused Dragan Obrenovic ("Obrenovic"), Vidoje Blagojevic ("Blagojevic") and

611

Dragan Jokic ("Jokic") file within 14 days of the date of the Order a response to the Motion of the prosecution;

NOTING the "Accused's Request for Extension of Time to File an Opposition to Prosecutor's Motion for Joinder" ("Request") filed by Counsel for the accused Blagojevic on 27 September 2001 seeking an extension of time of 60 days from the time of full disclosure by the Prosecutor pursuant to Rule 66 of the Rules of Procedure and Evidence ("Rules");

NOTING the "Prosecution Reply to Accused's Request for Extension of Time to File An Opposition to Prosecutor's Motion for Joinder" ("Reply") filed on 2 October 2001 in which the Prosecutor objects to the extension of time sought on the basis that the Request is "misleading" as the Prosecutor has met and exceeded her disclosure requirements pursuant to Rule 66 (A) (i);

NOTING FURTHER that the Prosecutor does not object to the granting of an extension of time to Blagojevic of 30 days from 17 September 2001;

NOTING FURTHER that Jokic has only recently retained trial counsel to appear for him;

NOTING FURTHER the "Accused Obrenovic's Opposition to Motion for Joinder" ("Opposition") filed by Counsel for Obrenovic on 2 October 2001 in which Obrenovic seeks permission to file a supplemental memorandum on the issue of joinder no later than the final date set by the Tribunal for the filing of oppositions to joinder by Blagojevic and Jokic;

CONSIDERING that good cause has been shown for an extension of the time in which all three accused have to respond,

BUT CONSIDERING that the Request by Blagojevic proceeds upon a mistaken basis as to the nature of the issue to be determined by the Motion, and that the time sought by him in which to respond to the Motion is excessive and unjustified;

PURSUANT TO Rule 65 *bis* of the Rules;

HEREBY ORDERS:

1. That Blagojevic and Jokic are granted an extension of time of 30 days from the date of this Order to respond to the Prosecutor's Motion.
2. That Obrenovic is granted an extension of 30 days from the date of this Order to file a supplementary memorandum to the accused Obrenovic's Opposition to the Motion.

Dated this 4th day of October 2001,
At The Hague,
The Netherlands.

Judge David Hunt
Pre-Trial Judge

[Seal of the Tribunal]

612

IN THE APPEALS CHAMBER

Before:
Judge David Hunt, Pre-Appeal Judge

Registrar:
Mr Hans Holthuis

Order of:
1 May 2003

PROSECUTOR
v
Radislav KRSTIC

ORDER ON EXTENSION OF TIME

Counsel for the Prosecution:

Mr Norman Farrell
Mr Mathias Marcussen

Counsel for the Appellant:

Mr Nenad Petrusic
Mr Norman Sepenuk

I, Judge David Hunt, Pre-Appeal Judge in this appeal,

NOTING the "Defence Appeal Brief Concerning Rule 68 Violations", filed confidentially on 10 April 2003 ("Defence Motion");

BEING SEISED OF an "Extremely Urgent Motion for Extension of Time" ("Motion for Extension of Time"), filed by the Prosecution on 1 May 2003, whereby it seeks an extension of time in which to file its Response to the Defence Motion;

NOTING that the Prosecution says that it has underestimated the time needed to undertake the extensive legal research required to address the present matter fully;¹

NOTING the Scheduling Order of 22 April 2003 in which the Appeals Chamber ordered the Prosecution to respond to the Defence Motion no later than 1 May 2003 and invited the Prosecution to

613

pay particular attention when doing so to the issue of prejudice in relation to alleged violations of Rule 68 of the Rules of Procedure and Evidence;²

CONSIDERING that the number of issues to be dealt with in the Response, including the question of prejudice, may require additional time for the Prosecution to adequately address these matters;

CONSIDERING also that the Defence has said that it does not object to the extension of time being granted;³

CONSIDERING that good cause has been shown;

HEREBY GRANT LEAVE to the Prosecution to file its Response no later than 8 May 2003.

Done in both English and French, the English text being authoritative.

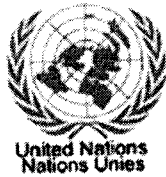
Done this 1st of May 2003,
At The Hague,
The Netherlands.

Judge David Hunt
Pre-Appeal Judge

[Seal of the Tribunal]

-
1. Motion for Extension of Time, par 2.
 2. Page 2.
 3. Motion for Extension of Time, par 7.

614



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN THE APPEALS CHAMBER

Before: Judge Mehmet GÜNEY, Pre-Appeal Judge

Registrar: Mr. Adama DIENG

Decision of: 20 May 2003

Élizaphan Ntakirutimana and Gérard Ntakirutimana
v/
THE PROSECUTOR

Case No. ICTR-96-10-A and ICTR-96-17-A

**ORDER GRANTING AN EXTENSION OF TIME FOR THE FILING OF THE APPELLANTS'
APPEAL BRIEFS**

Counsel for the Prosecutor:

Mr Norman FARRELL

Counsel for Elizaphan Ntakirutimana

Mr Ramsey CLARK

Counsel for Gérard Ntakirutimana

Mr David JACOBS

I, Mehmet Güney, Pre-Appeal Judge,

NOTING the Judgement and Sentence rendered in the present case on 21 February 2003 by Trial Chamber I of the International Tribunal;

NOTING the Notices of Appeal filed pursuant to Rule 108 of the Rules of Procedure and Evidence ("the Rules") by Elizaphan Ntakirutimana and Gérard Ntakirutimana ("the Appellants") and the Prosecution respectively on 21 March 2003;

BEING SEISED of an "Urgent Defence Motion for an Extension of Time for the Filing of the Appellants' Briefs", filed jointly by Elizaphan Ntakirutimana and Gérard Ntakirutimana on 9 May 2003 ("the Request") wherein the Appellants request on the basis of Rule 116 of the Rules an extension of time of 45 days from 3 June 2003 in which to file their Appellant Briefs;

615

NOTING the Prosecution's "Response to Urgent Defence Motion for an Extension of Time for the Filing of the Appellant's Appeal Briefs" filed on 13 May 2003 in which the Prosecution consents to the extension of time sought by the Appellants and requests that any extension of time granted should apply equally to the Prosecution;

NOTING Rule 111 of the Rules, which provides, *inter alia*, that the Appellant's Brief shall be filed within seventy-five days of filing of the Notice of Appeal;

NOTING Rule 116 of the Rules which provides that the Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause;

CONSIDERING that in their Request, the Appellants submit, *inter alia*, that Counsel for Gérard Ntakirutimana is involved in the case *The Prosecutor v. Georges Rutaganda, Case no. ICTR-96-3-A* and that there are a number of grounds of appeal to prepare in the present case;

CONSIDERING that all the other submissions in the Request are not relevant to the Request;

CONSIDERING that the Appellants have indicated that they intend to present submissions on most legal issues in only one brief to avoid repetition;

CONSIDERING that subject to the above, the specific circumstances of the Request constitute good cause in this case;

CONSIDERING, however, that an extension of time of 45 days is not justified in this case;

PURSUANT TO Rule 116 of the Rules;

HEREBY GRANT the Request for an extension of time and **ORDER** that the Appellants and the Prosecution file their Appellant Briefs no later than Monday 23 June 2003.

Done in English and French, the English text being authoritative.

Mehmet Güney
Pre-Appeal Judge

Dated this twentieth day of May 2003,
At The Hague,
The Netherlands.

[Seal of the Tribunal]