

057

SCSL - 2003 - 07 - PT - 057
C1001 - 1006

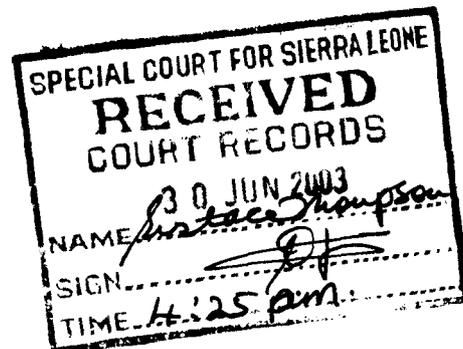
**SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE**

IN THE TRIAL CHAMBER

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

Registrar: Mr. Robin Vincent

Dated Filed: 30 June 2003



THE PROSECUTOR

Against

MORRIS KALLON

CASE NO. SCSL - 2003 - 07 - PT

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE OFFICE
APPLICATION DATED 19 JUNE 2003**

Office of the Prosecutor:

Mr Desmond de Silva, QC
Mr Luc Côté
Mr Walter Marcus- Jones
Mr Christopher Staker
Mr Abdul Tejan Cole

Defence Counsel:

Mr James Oury
Mr Stephen Powles

Defence Office:

Mrs Claire Carlton-
Hanciles
Mr Ibrahim Yillah
Mrs Haddijatu Kah-Jallow
Mr Sam Scratch

I. INTRODUCTION

1. On the 27 June 2003 the Prosecution filed a response to the "Defence Office's application for leave to submit *Amicus Curiae* Briefs" opposing the said application for the following reasons:
2. That the Defence Office no longer has standing to file submissions in this case, given that the accused has been assigned counsel
3. That the Defence Office cannot act as a lawyer for a party and at the same time make submissions before the Court as an independent third-party *amicus-curiae* or *intervenor* as in the Prosecution's submission the potential for conflict arises. In support the Prosecution relied on Rule 45 of the Rules of Procedure and Evidence and argues further that in performing its functions under Rule 45, the Defence Office acts for a party to the proceedings before the Court.
4. That for the Defence Office to now make submissions in this case in an independent capacity to contradict positions or arguments taken by the Accused would be potential conflict with the duties owed by a legal representative to a former client.
5. Further that the role of the Defence Office is to support counsel and not to act as a second defence team presenting its own arguments in a case independently of, or in addition to, the Accused's own lawyers.
6. The Prosecution further submitted that the Defence Office no longer has standing to present submissions in this case in view of the fact that the Defence has legal representation. In support, it referred to the *Milosevic case* which is attached as Annex 1 to the Prosecution's response and distinguished that case from the instant on account of the fact that there was no legal representation for the accused in the Milosevic case.
7. The Prosecution further stressed that in cases where organisations have been permitted to file *amicus curiae* submissions, the organisations concerned have been third parties

independent of the Registry or the Tribunal. It further argued that in this case, the Defence Office is part of the Registry and cannot therefore file such submissions.

8. The Prosecution further argued that permitting the Defence Office to make such submissions would serve to make an undesirable precedent as this would lead to further delays in proceedings before the Court.

II. ARGUMENTS

A. ROLE AND STANDING OF DEFENCE OFFICE

9. Rule 45 of the Rules of procedure and Evidence of the Special Court for Sierra Leone spells out the duties of the Defence Office which have been quoted in extensor by the Prosecution in its response (Page 2, para.4 of the Prosecution's Response). The role of the Defence Office is not as simplistic as has been submitted by the Prosecution confining same to providing initial legal advice and representation to accused persons and ensuring that the rights of suspects and accused persons are respected. The Defence submits that the role of the defence Office is much more complex and is metamorphosing depending on the circumstances of a particular case.
10. The Defence agrees with the prosecution that it has provided initial legal representation and advice to the accused in this case. Much as the Defence accepts that it has provided initial representation to the accused, the Defence however does not necessarily agree with the Prosecution's submission that its role is confined to providing initial legal advice and representation only. Nothing in Rule 45 and 74 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone stops the Defence from filing *amicus curiae* submissions. For ease of reference rule 74 reads:

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, Organisation or person to make submissions on any issue specified by the Chamber.

11. The Question of the role of Defence Office when once an accused has been assigned counsel is not clear in the Rules of Procedure and Evidence and the Defence takes the view

that “ensuring rights of accused persons” should be read effectively to mean that defence Office must ensure rights where important matters of law which turn on issues like jurisdictions arise. The Defence submits that the question of jurisdiction falls properly within the parameters of the rights of the accused and by necessary implication covered by Rule 45 of the Procedure and Evidence of the Court.

12. It should be pointed out that the issue of amnesty is a significant one which may have important implications for not only the rights of the accused but also the future of proceedings before the Court. It is submitted that in order to uphold the integrity and legitimacy of proceedings before the Court such, an application by the Defence Office should be granted. The issue of amnesty is crucial that it may not only ensure respect for the legitimacy of proceedings before the Court but also ensures that the Defence Office with its present resources (human) available can respect the accused’s human rights of challenge to jurisdiction and in the process contribute to developing the jurisprudence of the Court. The Defence Office in this reply will seek direction on defining its role and standing after assignment of counsel.

B. THE PROSECUTION HAS NOT DEMONSTRATED HOW A POTENTIAL CONFLICT MAY ARISE

13. The defence has several functions which are not clearly borne out in the Rules of Procedure and Evidence. In addition to its legal duties of providing initial legal advice and representation to accused persons, the Office also performs administrative functions which have to do with assignment of counsel and the attendant administrative issues that flow from same.
14. The Prosecution in its response also argued for the Defence to now make submissions in this case in an independent capacity to contradict positions or arguments taken by the Accused would be potential conflict with the duties owed by a legal representative to a former client. This would in the estimation of the Office amount to an unjustifiable prediction as to the nature of submissions to be filed. The Defence respectfully submits that the question of amnesty raised in the Defence’s application does not touch on the

substantive issues that arise in the case but is a general question of law and is common knowledge to all parties in these proceedings.

15. The Office will seek direction from the Chamber on the question of “who determines conflict of interest and when does conflict of interest arise”. It is the view of the Defence Office that the question of conflict of interests arises when issues touching and concerning facts in issue in a particular case arises and can only be determined by the Chamber. The Defence Office has carefully not intermeddled in case where surely conflicts of interest would arise such as receiving disclosures etc. It is submitted that the question raised in the Defence application is one of jurisdiction which does not in any way prejudice any other accused as it turns on a general question of law having to do with the power of this court to try accused persons for crimes pre-dating 7 July 1999 and nothing more. How does such an issue conflict with the interest and rights of other accused have not been demonstrated by the Prosecutor?

C. THE ISSUE OF INDEPENDENCE OF AMICUS FROM THE REGISTRY AND THE COURT

16. The Prosecution submitted that in cases where organisations have been permitted to file *amicus curiae* submissions, the organisations concerned have been third parties independent of the Registry or the Tribunal. The prosecution further argued that in this case, the Defence Office is part of the Registry and cannot therefore file such submissions. What the Prosecution failed to do is to show a clear jurisprudence stating that only third party independent of the Court are permitted to file such briefs. It is submitted that such has been the practice in other tribunals because there exists no Defence Office in same as is the case with Special Court. The Milosevic case was merely cited by the Defence Office to establish the use of *amicus curiae* in international proceedings. It is argued here that should there have been in existence a Defence Office in the ICTY, the Chamber should have invited same as *amicus curiae*.

17. It is submitted further that should those Tribunals have been faced with the question the Chamber is presently faced with and there exists a Defence Office, their views would have been different as the submissions of this Office would in no way be prejudicial to either

party. The Defence Office further takes the view that it has a duty under Rule 45 to not only ensure respect for the rights of accused but also to contribute to the jurisprudence and properly so as this Court should be seen to develop its own jurisprudence and guided only by the jurisprudence of the ICTR and ICTY. Again, the Defence Office would seek direction on its role in making submissions on general questions of law such as jurisdiction.

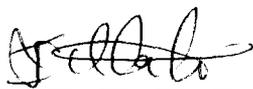
D. THE QUESTION OF DELAY

18. The Prosecutor submitted that there is a potential for delay should the Office be permitted to submit such briefs. The Defence takes the view that such delays as anticipated by the Prosecution may not arise where the Chamber grants such permission that may indicate time-limits within which the Office will be required to file such briefs. The Office contrary to the Prosecution's assertion that such permission may lead to undesirable precedents takes the view that they may contribute significantly to the jurisprudence to be developed by this Court. New legal principles, it is submitted may arise from such briefs and may impact on the existing jurisprudence.

III. CONCLUSION

19. The Defence Office requests that the application be granted pursuant to Rule 74 of the Rules of Procedure and Evidence of the Special Court and that direction be given by the Chambers on the role and standing of the Defence Office in making submission on general question of law as jurisdiction after the assignment of counsel.

Dated at Freetown this 30th day of June 2003



The Defence Office
Claire Carlton-Hanciles
Haddijatou Kah-Jallow
Ibrahim Yillah
Sam Scratch