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SCSL - 2003 - 07 - Pt - 061

(1030 - 1034)

**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN - SIERRA LEONE**

IN THE TRIAL CHAMBER

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

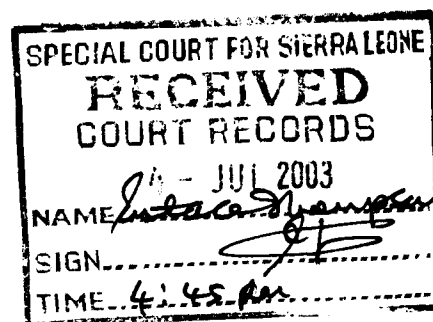
Registrar: Robin Vincent

Date: 4 July 2003

THE PROSECUTOR

Against

MORRIS KALLON



(CASE NO SCSL-2003-07-PT)

**PROSECUTION RESPONSE TO DEFENCE APPLICATION FOR
EXTENSION OF TIME TO FILE REPLY TO PROSECUTION
RESPONSE TO THE FIRST DEFENCE PRELIMINARY MOTION
(LOME AGREEMENT)**

Office of the Prosecutor:

Desmond de Silva, QC, Deputy Prosecutor
Luc Cote, Chief of Prosecutions
Walter Marcus-Jones, Senior Appellate
Counsel
Abdul Tejan-Cole, Appellate Counsel

Defence Counsel:

James Oury, Co-Counsel
Steven Powles, Co-Counsel
Melron Nicol-Wilson, Legal Assistant

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I. INTRODUCTION

1. The Defence filed a “Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by the Lome Accord” (“**Preliminary Motion**”) on 16 June 2003. The Prosecution filed a “Prosecution Response to the First Defence Preliminary Motion (**Lomé Accord**)” on 23 June 2003. The Defence were granted an extension of time until 30 June 2003 to file its Reply to the Prosecution Response.

2. Instead of filing a Reply in time to the Prosecution Response the Defence now seeks by way of an Application for Extension of Time to Reply to the Prosecution Response, a seven day delay in order to obtain a considerable body of documentary material from the Honourable the Attorney General and Minister of Justice and/or the Chief of Prosecution before the Defence considers that it will be possible for them to properly Reply to the Prosecution Response. The extent of the material sought by the Defence is to be found in the letters attached to the Application for Extension of Time

to Reply to Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement).

II. ARGUMENTS

3. The Prosecution submits that the Application should be dismissed as it is ill founded in facts and in law and does not demonstrate good cause why an extension should be granted.

4. The Prosecution notes that the Application was filed on the last day of the delay initially requested by the Defence to file a Reply to the Prosecution Response. Instead of now filing the Reply the Defence is requesting an extension of time to file what will essentially amount a second Motion on Jurisdiction.

5. The Prosecution submits that a party cannot under the guise of Reply bring forth additional arguments in support of the same prayer sought in its own Motion. This is clearly what the Defence is intending to do if its Application is granted since all the documents listed appear to be requested to bolster its original submissions or to provide new grounds or arguments.

6. Having failed to advance these arguments and authorities in its Motion, the Defence should be precluded from now doing so in its reply to this response. The Rules require a party to put all arguments in support of a motion in the motion itself, to enable the other party to address all of those arguments in its response. A reply should only address new matters arising out of the response, and should not contain new arguments unrelated to the response, or arguments which could reasonably be expected to have been included in the original motion.

7. Where new arguments are raised by a party outside of the prescribed time-limits, the other party must be given the opportunity to respond to them, which will result in delays and in additional pleadings beyond those contemplated in Rule 7(3) of the Rules (i.e., motion, response and reply). Therefore, the raising of new arguments outside the prescribed limits is only permissible with the leave of the Chamber. In view of the Defence's failure to advance these arguments in the motion itself, it is submitted that there is no good cause for granting leave to raise arguments for the first time in reply.

8. Furthermore the Prosecution submits that notwithstanding the fact that most of the documents sought appear to be readily available within the public domain, a fact that should have been known or easily ascertained prior to filing the Motion, such documents appear to be outside the scope of the Defence arguments on Jurisdiction as elaborated in its Motion and as responded to by the Prosecution.

9. As stated by the Prosecution the Amnesty Provisions of the Lome Agreement are wholly irrelevant to these proceedings before the Special Court as they concern this Defendant as those provisions are no longer effective in domestic law as they were repealed as a matter of national law on 7 March 2002 (the "**Implementing Legislation**"). The **Implementing Legislation** being an Act subsequent to the Lome Ratification Act of 1999 therefore supercedes and replaces the terms of the Lome Ratification Act to the extent that the two acts are inconsistent. Based on the doctrine of subsequent legislation,¹ if a later enactment is inconsistent with the provisions of an earlier enactment, those provisions of the earlier enactment are impliedly, if not expressly, repealed.

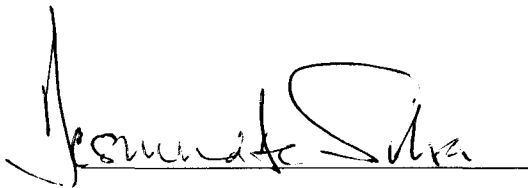
¹ Also known as the doctrine of implied repeal, it states that an earlier Act cannot be used to amend or repeal a later Act. Instead, where any conflict arises between Acts of Parliament that cannot be smoothed by judicial interpretation, the later one always takes precedence: *leges posteriores priores contrarias abrogant*.

CONCLUSION

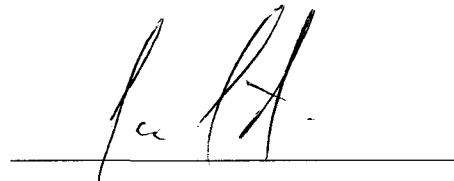
10. For these reasons the Prosecution submits that the Application should be dismissed and that the Defence having failed to Reply to the Response, the Chamber should render its decision on the record as it now exists.

4 July 2003, Freetown

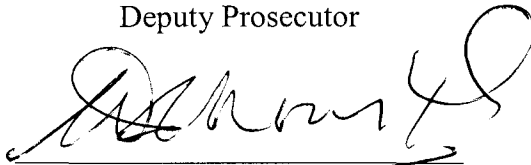
For the Prosecution



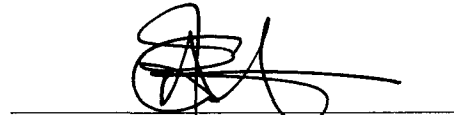
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