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SCSL-2003-07-PT-068
(1081-1086)

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SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

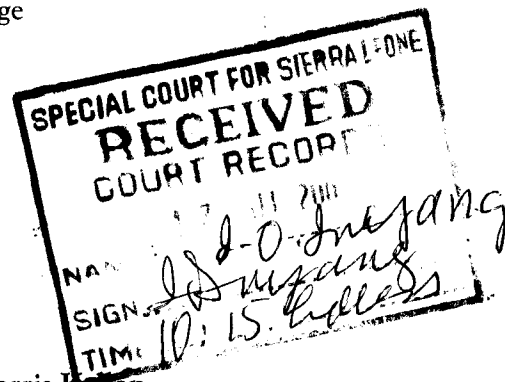
Before: Judge Bankole Thompson, Presiding Judge
Judge Pierre Boutet
Judge Mutanga Itoe

Registrar: Robin Vincent

Date: 16th day of July 2003

The Prosecutor against

Morris Kallon
(Case No.SCSL-2002-07-PT)



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

Office of the Prosecutor:
Luc Côté, Chief of Prosecutions

Defence Counsel:
James Oury
Steven Powles

THE SPECIAL COURT FOR SIERRA LEONE (“the Special Court”)

SITTING as the Trial Chamber (“the Chamber”), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet, and Judge Benjamin Mutanga Itoe;

BEING SEIZED of the Defence Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement) of the 30th day of June 2003 (“the Application”), the Prosecution Response thereto of the 4th day of July 2003 (“the Response”) and the consequential Defence Reply of the 9th day of July 2003 (“the Reply”);

NOTING the Defence Request of Order on Disclosure from the Prosecution of the 9th day of July 2003 (“the Request for Disclosure”);

CONSIDERING the Defence Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by Lomé Accord of the 16th day of June 2003 (“the Preliminary Motion on Amnesty”) and the Prosecution Response thereto of the 23rd day of June 2003 (“the Response to the Preliminary Motion on Amnesty”);

CONSIDERING also the Defence Preliminary Motion Based on Lack of Jurisdiction: Establishment of the Special Court Violates Constitution of Sierra Leone of the 16th day of June 2003;

CONSIDERING the Decision on the Defence Motion for an Extension of Time to File Preliminary Motions of the 14th day of June 2003;

CONSIDERING the Order on the Defence Further Application for Extension of Time to File Preliminary Motions of the 9th day of July 2003;

CONSIDERING the Order on the Defence Application for Extension of Time to File Reply to the Prosecutions Response to Preliminary Motions of the 24th day of June 2003 and the subsequent Order on Time Limits to File Reply to the Prosecution Response to the Preliminary Motions of the 27th day of June 2003;

CONSIDERING Rule 7 and Rule 54 of the Rules of Procedure and Evidence (“the Rules”) and, further, Article 17 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone;

WHEREAS acting on the Chamber’s instruction, the Court Management Section of the Special Court advised the parties on the 11th day of July 2003 that the Application will be considered and determined on the written submissions of the parties **ONLY** pursuant to Rule 73 of the Rules;

NOTING THE SUBMISSIONS OF THE PARTIES

The Defence Application

1. In its Application, the Defence asserts that it is imperative to obtain a body of various documents from the Government of Sierra Leone and the Office of the Prosecutor as these documents are of fundamental and unquestionable importance to formulate a comprehensive reply to the Prosecution Response to the Preliminary Motion on Amnesty.

2. To this aim, and in order to expeditiously proceed with this matter, on the 30th day of June 2003 the Defence has requested to both the Government of Sierra Leone and the Office of the Prosecution the disclosure of such documentation within a seven days time limit.

3. In the event that the Government of Sierra Leone would fail to provide the requested documents within the prescribed time limits, the Defence has indicated that it will requests the Chamber to issue a *subpoena duces tectum* to the relevant individual in the Government of Sierra Leone. Similarly, the Defence has indicated its intention to file the Request for Disclosure seeking an order for the disclosure of the same materials from the Office of the Prosecution.

4. More specifically, the Defence seeks to be granted two reliefs, namely:

1) an extension of time until the 14th day of July 2003 to file a Reply to the Prosecution Response to the Preliminary Motion on Amnesty,

and

2) leave to apply for an additional extension of time by the 14th day of July 2003 in the event that requested materials and documents are not forthcoming from either the Government of Sierra Leone or the Office of the Prosecutor by the 7th day of July 2003.

The Prosecution Response

5. According to the Prosecution, the sought documents appear to be outside the scope of the Defence arguments on jurisdiction raised in its Preliminary Motion on Amnesty. Furthermore, the Prosecution contends that the Defence with its Application is seeking to introduce in its reply to the Prosecution Response to the Preliminary Motion on Amnesty new elements or arguments bolstering or in addition to the same prayers sought in its Preliminary Motion on Amnesty.

6. The Prosecution submits that the Rules require a party to address all arguments in support of a motion within the motion itself, in order to enable the responding party to contest all those arguments in its response. A reply should only address new matters arising out of such response, without containing new arguments unrelated to the response, or argument which could have been included directly in the motion.

7. Having failed to address arguments and authorities in its Preliminary Motion on Amnesty, the Defence should now be precluded from doing so, through its Application, in his reply to the said Preliminary Motion on Amnesty;

8. As a consequence, the Prosecution asserts that the granting of the Application will amount to empower the Defence to file, outside the time limits and without leave from the Chamber, an additional motion on jurisdiction;

The Defence Reply

9. In its Reply the Defence clarifies that the sought materials will enable to better address:

- a. The intended application of the amnesty granted in the Lomé Accord;
- b. The extent to which the Government of Sierra Leone is bound by the Lomé Accord;
- c. The intended effect of the Secretary-General's reservation to the Lomé Accord on the other parties of the Accord;
- d. The implementation of and adherence to the Lomé Accord by the parties to it;
- e. The extent and manner in which the Government of Sierra Leone considered its obligation pursuant to the Lomé Accord when agreeing to the establishment of the Special Court.

10. The Defence further submits that there is good cause to grant an extension of time to enable the Defence to obtain crucial documents with which to formulate its reply to the Prosecution Response on the Preliminary Motion on Amnesty. Not to allow the Defence the opportunity to obtain all relevant documents would amount to a gross miscarriage of justice and leave the conduct of proceedings open to serious criticism.

AFTER HAVING DELIBERATED:

9. The Defence requests an extension of time to file its reply to the Prosecution Response on the Preliminary Motion on Amnesty on the ground that it does not possess documentation indispensable to formulate a reply to issues arisen therein.

11. Pursuant to Rule 7 of the Rules it remains at the discretion of the Chamber to modify the time limits for responses and replies without particular requirements. The Trial Chamber, however, previously decided that such modification, namely an extension or an abbreviation, should only be granted in exceptional circumstances or for good cause.

12. In the circumstances, the Chamber deems of fundamental importance to determine the relevance of the documents for which the Defence seeks disclosure from both the Government of Sierra Leone and the Office of the Prosecutor. For this matter, the Chamber seeks to determine if new issues have been raised in the Prosecution Response to the Preliminary Motion on Amnesty and primarily to assess if the sought documents, by their nature and scope, could be deemed necessary to the Defence, as it asserts, to prepare a comprehensive reply thereto and, furthermore, to justify the Defence Application as exceptional or for good cause.

13. The Defence attached to its Application a copy of the request made before the Government of Sierra Leone and the Office of the Prosecution containing a list and a description of the sought documents. The Trial Chamber finds that the nature of the documents indicated is very broad and vague. In addition, some of the documents appear to be already in the public domain.

14. In its submissions, the Defence states that the sought documents contain information of fundamental importance for replying to the points raised in the Prosecution Response on the Preliminary Motion on Amnesty. There is however no sufficiently clear indication provided therein as to the specific points such documents are intended to address and why. The Chamber finds that due to the suggested importance of the disclosure of such documents as alleged by the Defence, a more comprehensive explanation of the scope of the sought documents should have been provided.

15. Consequently, the Chamber does not find a preemptory causation between the sought documents and the Prosecution Response on the Preliminary Motion on Amnesty and furthermore expresses strong reservation as to the overall relevance of the said documents in connection with the issue raised in the Preliminary Motion on Amnesty.

16. In fact, it does appear to the Chamber that the Application seeks indiscriminately to open the door for the Defence to introduce new elements or issues that the Defence itself failed to address in its Preliminary Motion on Amnesty. This could possibly amount, as correctly identified by the Prosecution in its Response, to a new motion rather than a



reply. Such eventuality, also in consideration of its impact on the length of the proceedings, is equally subjected to the requirement of exceptionality or good cause.

17. The Chamber finds that the Application has not established that there were exceptional circumstances or good cause for the sought reliefs and therefore cannot sustain the request for an extension of time to file a reply to the Prosecution Response to the Preliminary Motion on Amnesty nor for the filing of a new motion.

FOR THESE REASONS THE SPECIAL COURT

HEREBY DISMISSES the Defence Application in its entirety.

The Defence Request for Disclosure shall therefore be considered as moot.

Done at Freetown, Sierra Leone, this 16th day of July 2003

The Trial Chamber
Judge Pierre Boutet

