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SCSL - 2003 - 05 - PT - 066

(1380 - 1385)

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SPECIAL COURT FOR SIERRA LEONE

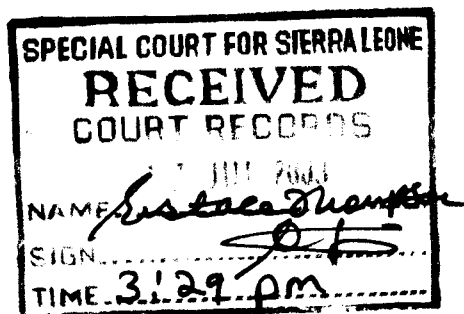
CASE NO. SCSL-2003-05-PT

IN THE TRIAL CHAMBER

Before: Judge Thompson
Judge Itoe
Judge Boutet

Registrar: Mr. Robin Vincent

Date filed: July 17, 2003



THE PROSECUTOR

v.

ISSA HASSAN SESAY

**DEFENCE REPLY TO THE PROSECUTOR'S RESPONSE TO THE MOTION
REQUESTION THE SUSPENSION OF DELAYS FOR FILING PRELIMINARY
MOTIONS OR NEW REQUEST FOR AN EXTENSION OF DELAYS**

Office of the Prosecutor

Luc Cote, Chief Prosecutor
Robert Petit, Senior Trial Counsel
Sharan Parmar, Assistant Trial Counsel

Counsel for the Accused

William Hartzog

I. INTRODUCTION

1. Undersigned Defence Counsel sent a memo to the Court Management Unit, the Prosecution and the Defence Office prior to departure from Canada on Sunday, July 6th, 2003, outlining his travel plans for arrival to the Special Court on July 12th, 2003, a Saturday, and requesting that any time limits for replying, responding or filing motions be suspended until his arrival in Freetown as he had no foreseeable access to the internet from the time he left Montreal, continued from Paris through London, England for meeting with contracted assistants and prospective Counsel and transited via Paris to Freetown.
2. Counsel remains the only lawyer working on the case of Mr. Issay Sesay and cannot work on advancing the file during travel to the court. Counsel has not missed any delay to date, however, prior to the instant Motion he had requested an extension of time to file Preliminary Motions (under deliberation) and prays that the circumstances of the two motions be considered jointly.
3. Counsel is in Freetown now and could participate in a mini-case conference with the Trial Chamber and the Prosecutor to elucidate all matters pertaining to delays and relevant time limits.
4. In the event after his arrival at the SCSL Counsel had no internet service on Sunday, the 13th of July and indeed had no have access until the afternoon of Monday the 14th of July, 2003 when he took cognizance of the Prosecutor's Response to the instant motion.
5. Counsel is now filing within three (3) days of service (reception in the circumstances) of the said Response.

6. Counsel disputes the arguments of the Prosecutor, notably that he has been able to communicate with his client about any of the issues raised or referred to in the instant motion or Response.
7. Counsel disputes that the “repeated requests” for an extension of time limits was unnecessary, notably the Request for the Extension of Time Limits to Seek Leave to Appeal the Order Concerning the Prosecutor’s Access to the Accused”. As Counsel has concluded that the danger to the accused in Judge Bankole’s Order on that issue was removed implicitly by his subsequent Decision on the Request to Intervene in the said motion therefore the Defence will not need to seek leave to appeal the Order on Access to the Accused regarding the issue of the supposedly voluntary nature of the “right to counsel.” In the Decision on Intervention the Honourable Judge affirmed that the accused could always raise the question of the voluntary nature of the “waiver of right to counsel” at a subsequent stage. Defence Counsel’s previously filed Motion to Intervene (for which Defence Counsel were never made aware of or received service of the Prosecutor’s Response of July 5th, 2003, has been the subject of a **DEFECTIVE SERVICE ORDER** issued by the Court Management Unit and brought to the attention of Chambers by internal memorandum.
8. Counsel has received instructions from his client yesterday, the 16th of July 2003, at the Bonthe Detention Centre and confirms that one of the motions sought to be suspended or delayed is indeed one which requires detailed corroboration of the issues raised by the client and which he deems extremely serious to his defence. The said motion is to be completed in the week of July 20th given Counsel’s travel to Bonthe the 14th, 15th and 18th and 22nd of July to the Bonthe Detention Centre, therefore counsel respectfully requests that this time limit be set for Friday July 25th, 2003. Counsel respectfully submits that contact with the accused is essential and definitely necessary for an adequate and effective defence.

9. Counsel is well advanced on the Reply to be filed on an outstanding matter, not yet Responded to by the Prosecutor, and with assistance of experienced international counsel whose retention is to be confirmed on Friday the 18th of July, will enable him to Reply to the Prosecutor's forthcoming Response to his motion on Defects in the Indictment. In the event counsel may reply in a timely manner in any case, however the date of July 25th, 2003 is respectfully requested.

10. The other motion for which Counsel initially requested an extension of time limits, and subsequently a suspension of time limits, referred to as the motion on the jurisdiction of the court concerning the institutional independence of the court will be ready for filing at the end of the week of June 20th, 2003, thus Counsel respectfully requests that the date for this filing be set on July 25th, 2003.

II ARGUMENT

11. Communication with the accused: Counsel cannot effectively communicate with the accused by satellite telephone or via the facilities offered at the Bonthe Detention Facility. Counsel informed Mr. Sesay of the departure of Me Marcil from his defence team but could only offer a sketch of the issues in question. The accused concurred. Counsel was completely unable to discuss substantive issues at any time: the telephone communication is very chpped up and the accused stands in a courtyard within the hearing of all the other accused and the security personnel during these conversations.

12. Counsel humbly submits that the Order of Judge Boutet concerning the Request for an Extension and Suspension of time to seek leave to appeal should rightfully been rendered after the Court disposed of his Motion to Request an Extension of all delays.

13. Counsel do not seek to file additional argument to his Preliminary Motion on Defects in the Form of the Indictment, and regrets that this inference was allowed to be drawn from the wording of the Motion filed.

III CONCLUSION

14. Counsel submits that the arguments presented in the two motions truly reflect the reality of his situation which is now corrected and do justify the suspension and resetting of the time limits to file Preliminary Motions and agrees that this question should be carefully considered by the Trial Chamber.
15. As stated in both the Motion for Extension of Delays and the instant Motion for the Suspension of the Delays, which Counsel pray be considered together, Counsel invokes circumstances going beyond the normal circumstances of a case and are cogent and serious and would detrimentally effect the ability to defend the accused if the time limits are not altered.

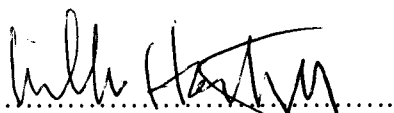
IV PRAYER

16. Counsel respectfully prays that he be allowed to submit all of his Preliminary Motions without further requests for extension either on July 25, 2003 or July 30, 2003 if the court deems this to be acceptable.
17. Counsel will thus be able to file the following two (2) Preliminary Motions: A challenge to the Court's jurisdiction, a challenge based on the accused's grievances (also on jurisdiction), all the while taking into account the forthcoming Reply to the Prosecutor's Response to the previously filed Preliminary Motion on Defects in the Indictment.

18. Counsel prays the Trial Chamber to convoke him for a mini-case conference along with the Prosecutor if the Chamber feels this would be beneficial.

Freetown, 17th day of July 2003.

For Mr. Issa Hassan Sesay

A handwritten signature in black ink, appearing to read "William Hartzog", written over a horizontal dotted line.

William Hartzog, Defence Counsel