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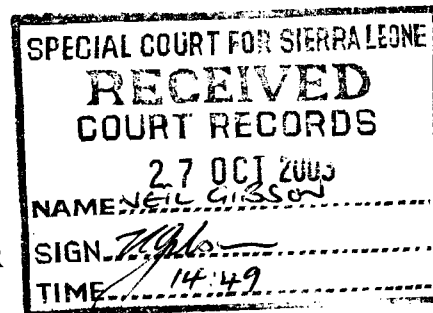
SCSL-2003-11-PT
 (1066-1071)
SPECIAL COURT FOR SIERRA LEONE
 OFFICE OF THE PROSECUTOR
 FREETOWN – SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Judge Robinson, QC, President
 Judge King, Vice-President
 Judge Ayoola
 Judge Winter
 [Fifth Judge Unknown]

Registrar: Mr. Robin Vincent

Date filed: 27 October 2003



THE PROSECUTOR

Against

MORRIS KALLON

CASE NO. SCSL – 2003 – 08 – PT

MOININA FOFANA intervening

PROSECUTION RESPONSE TO MOTION ON BEHALF OF MOININA FOFANAH TO INTERVENE AS AN INTERESTED PARTY IN THE PRELIMINARY MOTIONS FILED BY MR KALLON BASED ON LACK OF JURISDICTION/ABUSE OF PROCESS: AMNESTY PROVIDED BY LOME ACCORD

Office of the Prosecutor:

Mr Desmond de Silva, QC, Deputy Prosecutor
 Mr Walter Marcus-Jones, Senior Appellate Counsel
 Mr Abdul Tejan-Cole, Appellate Counsel

Defence Counsel:

Mr Michiel Pestman
 Mr Victor Koppe
 Mr Arrow John Bockarie
 Prof. Andre Nollkaemper
 Dr. Liesbeth Zegveld

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INTRODUCTION

1. The Prosecution submits this response to the motion filed on behalf of Moinina Fofanah (**the Accused**) on 20 October 2002 seeking leave to intervene in the proceedings before the Appeals Chamber in the case of *Prosecutor Against Morris Kallon*, pertaining to the Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Amnesty provided by Lome Accord. The Defence argues that while the Accused will have the possibility to file his own motions on the issues raised by Mr. Kallon, the outcome of the proceeding may affect the interests and legal position of the Accused. The Defence seeks permission as an interested party pursuant to Article 5 of *Practice Direction on Filing Documents under Rule 72 of the Rules of Procedure and Evidence Before the Appeals Chamber of the Special Court for Sierra Leone* to intervene in the Kallon case. In the alternative, the Defence therefore requests the (a) postponement of the ruling in the Kallon matter until it has heard the Accused's own motion challenging

jurisdiction or (b) postponement of the oral hearing on the Kallon Motion until it could be joined with a hearing on the Accused's Motions.

2. The Prosecution submits that the Defence Motion has no basis in law and should be dismissed in its entirety.

ARGUMENT

A. The Right to Intervene to Request Stay of Proceedings or to Request Postponement of a Decision in the Matter of another Accused

3. The Prosecution submits that the Accused has no standing to intervene in the proceedings against Morris Kallon.
4. The Statute and the Rules make no provision for an accused person to intervene in proceedings of another accused person for the purpose of requesting a stay of such proceedings, for the purpose of requesting an abeyance of a decision in such proceedings or in any other matter.
5. Indeed, the notion that an accused person could be permitted to stay the proceedings or adjourn a decision in another criminal matter to which he is not a party runs foul of the elementary principles of justice and a concept of a fair trial.
6. The Prosecution submits that the Defence assertion that it is in the interest of justice to permit him to intervene in this manner is not persuasive. In the ordinary course of business, decisions are rendered, notwithstanding the fact that such decisions may have similar implications for parties in subsequent proceedings. Against such reality, established principles, such as *stare decisis*, allow the work of the court to progress while ensuring fairness in the treatment of cases with similar facts. The Defence motion is clearly lacking in its appreciation for this well-entrenched principle of law.
7. The Accused will suffer no prejudice if a decision on the Kallon matter were to be reached before he has had an opportunity to address the Court on the matter. A decision in the Kallon matter would not bar the Accused from raising in his own proceedings the same jurisdictional challenge as Kallon. To the extent that his arguments are similar to the arguments raised in the Kallon case, the principle of *stare decisis* should apply. However, the Accused is certainly free to make new

arguments not previously considered by the Appeals Chamber in the Kallon case and affect a new outcome or a decision different from that reached in the Kallon case. But the mere fact that the Accused may be litigating a similar issue in the future is no grounds for him to request a stay in the proceedings against Kallon or a postponement of the decision in the Kallon case.

8. Further, should the relief requested by the Defence be granted, it will set a precedent with disastrous consequences for the work of the Court. It will prompt similar requests from other accused persons yet to receive disclosure material, as the issues in the cases are all interrelated. This would cause an extended delay in the case against an accused, which ultimately will have a dilatory effect on other cases. Such a decision will also open the floodgates for parties to bring requests throughout the life of the Special Court to halt proceedings before a Trial Chamber on the basis of motions to be filed in the future on similar issues pending before a Trial Chamber. Certainly this would not be effective for the administration of justice.
9. The Defence application to intervene for the purpose of staying the proceedings or postponing the decision in the Kallon matter should therefore be rejected.

B. The Right to Intervene to Make Submissions under Article 5 of the Practice Direction of the Appeals Chamber

10. The Prosecution submits that the Accused should not be permitted to make submissions in the Kallon case under Article 5 of the Practice Direction of the Appeals Chamber. Again, permitting the Accused to do so would set a dangerous precedent whereby all accused persons could file amicus briefs or request to make oral submissions in other cases before the Special Court whenever an issue arises in one case that may have an affect on them.
11. Further, the Defence request would mean that the Accused would address the same issue twice before the Court: in the Kallon case and in the Accused's own case. Article 5 of the said Practice Direction could not have been intended to permit an accused person to make submissions in a proceeding against another accused and then subsequently bring a motion under Rule 72 on the same issue.

With all due respect, the Prosecution submit that this flies in the face of judicial efficiency.

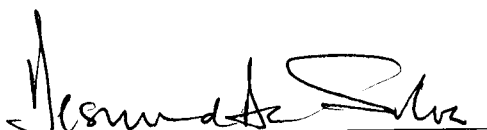
12. The Prosecution reiterates the argument in paragraph 7 above that Accused Fofanah has ample opportunity to bring his own motion under Rule 72 raising jurisdictional arguments. He is certainly free at that time to raise similar issues as the Kallon motion and/or raise different arguments. The fact remains that the similarity in issues does not justify the intervention requested by the Accused. With respect to the Defence, the fact the Accused's case deals with issues similar in nature to those mentioned in the Kallon case does not make the Accused an interested party in the Kallon case.
13. It is further submitted that permitting the Defence to make submissions in the pending Kallon matter would cause further delay to the proceedings in the Kallon case. If the Defence were permitted to make submissions, the Prosecution would have to be given time to respond to those submissions, and this could delay the hearing on the Kallon matter beyond the current scheduled date of 3 November 2003.
14. Regardless of the fact that the Defence takes a position which is supportive of the Prosecution's argument in the Motion on the Lack of Jurisdiction (Judicial Independence), the Prosecution requests that on a matter of principle the Defence application be rejected.

CONCLUSION

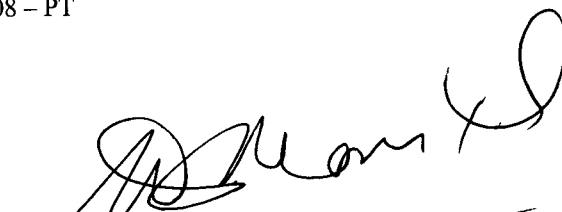
15. For the foregoing reasons, the Prosecution submits that the Defence Motion should be dismissed in its entirety.

Done in Freetown, 27 October 2003.

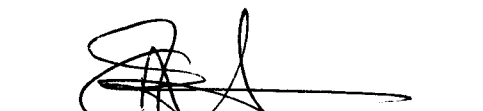
For the Prosecution,



Desmond de Silva Q.C.



Walter Marcus-Jones



Abdul Tejan-Cole