

SCSL-2003-07-PT
(1558-1561)



SPECIAL COURT FOR SIERRA LEONE

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THE APPEALS CHAMBER

Before: Judge George G. King, Pre-Hearing Judge

Registrar: Robin Vincent

Date: 14th day of October 2003

The Prosecutor against

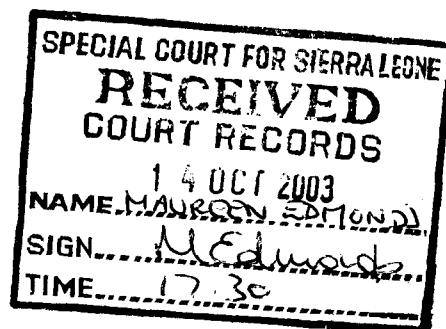
Morris Kallon
(Case No.SCSL-2003-07-PT)

**ORDER ON THE APPLICATION BY THE REDRESS TRUST AND LAWYERS
COMMITTEE FOR HUMAN RIGHTS FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF**

Office of the Prosecutor:
Mr. Luc Côté, Chief of Prosecutions
Robert Petit, Senior Trial Counsel

Defence Counsel:
Mr. James Oury
Mr. Steven Powels

Counsel for the Applicants:
Mr. Richard Hermer



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

SITTING AS the Pre-Hearing Judge of the Appeals Chamber, Judge George G King renders this decision pursuant to Rule 109 of the Rules of Procedure and Evidence;

BEING SEIZED of the Application by the Redress Trust and Lawyers Committee for Human Rights (“the Applicants”) for Leave to File *Amicus Curiae* Brief and to Present Oral Submissions of the 24th day of July 2003 (“the Application to File as *Amicus Curiae*”);

CONSIDERING the Prosecution’s Response to the Application to File as *Amicus Curiae* of the 31st day of July 2003 (“the Response”);

CONSIDERING that the Defence did not file and response to “the Application to File as *Amicus Curiae*” within the prescribed time limits;

CONSIDERING that “the Applicants” did not reply to the Prosecution Response within the prescribed time limits;

CONSIDERING the Defence Preliminary Motion Based on Lack of Jurisdiction/ Abuse of Process: Amnesty Provided by the Lomé Accord of the 16th day of July 2003, (“the First Defence Preliminary Motion”) in which the Defence objects to the jurisdiction of, and alleges abuse of process on the part of, the Special Court to try Morris Kallon on charges contained in the Indictment in violation of the amnesty provisions embodied in the Lomé Accord and signed by the Government of Sierra Leone;

CONSIDERING ALSO the Order on the Defence Application for Extension of Time to file Reply to Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement) rendered on the 16th day of July 2003, (“the Order on the Defence Application for Extension of Time”) dismissing the Application;

CONSIDERING the Order rendered by the Trial Chamber on the 2nd day of October 2003 transferring this motion to the Appeals Chamber pursuant to Rule 54 of the Rules of Procedure and Evidence;

NOTING THE SUBMISSIONS OF THE PARTIES

The Applicant’s Motion

1. The Applicants seek leave of the Special Court pursuant to Rule 74 of the Special Court Rules of Procedure and Evidence to file a joint *Amicus Curiae* brief and to present oral submissions on the matter of the Lomé amnesties, in the present case.
2. In support of their application the Applicants submit that there is a need for additional argument on:

1. Whether the Lomé amnesties apply to crimes under consideration by the Special Court;
2. Whether the Court has power to review the legality of the amnesty;
3. The status of the Lomé amnesties in international law, including a review of the process of negotiation and victims' rights;
4. The Lomé amnesties in the context of international and domestic public policy, for example, the impact on the rule of law in post-conflict societies.

3. The Applicants claim that they are in a unique position to offer such assistance, for they have a substantial interest in the outcome of the case, and moreover they have expert knowledge of the issues involved. The Applicants assert that they are internationally renowned in the area of international human rights law and humanitarian law and the processes of dealing with victims of serious international crimes, including legal remedies in countries of transition. Furthermore they indicate that they are experienced in addressing policy issues arising out of questions of amnesties in post-conflict societies and that they can provide an international legal and geopolitical context to the First Defence Preliminary Motion.

The Prosecution Response

4. The Prosecution alleges that this application is an attempt by the Defence to create new issues and to broaden those already presented in the First Defence Preliminary Motion, and that this adding or widening has no basis in law. Further, the Prosecution submits that this application is an attempt to circumvent the Order of Judge Pierre Boutet rendered on the 16th day of July 2003 refusing the Defence Application for Extension of Time to file Reply. The Prosecution submits that Defence Counsel's First Preliminary Motion deals only with whether the Special Court has jurisdiction to prosecute crimes committed before the 7th day of July 2003 (the signature of the Lomé Agreement) and whether it would be an abuse of process to permit the prosecution of crimes pre-dating that signature. The present application specifies no date. Instead the current application states that the Applicants intend to consider whether the Lomé amnesties apply generally to crimes "under consideration by the Special Court". The Prosecution also submit that the Applicants are intending to stray beyond the strict boundaries of the questions which have been submitted in the First Defence Preliminary Motion in seeking to provide analyses of the Special Court's competence to review the legality of the Amnesty, the status of the Lomé amnesties, and of the Lomé Agreement in the context of public policy.

5. The Prosecution notes that the Defence Office was denied leave to submit *Amicus Curiae* briefs on the First Defence Preliminary Motion on the 17th day of July 2003. Although the basis of the unsuccessful Defence Office Application submission was different, in its decision of the 17th day of July 2003, the Trial Chamber laid out criteria governing whether leave to appear as *Amicus Curiae* would be granted, which the Prosecution argues are not met in the present application. The decision stated that the

discretionary power governed by Rule 74 should not be exercised lightly, and that submissions contemplated should be “desirable for the proper determination of the case”. The Prosecution refers to further ‘criteria’ mentioned in the decision, taken from ICTR case law, and alleges that the Applicant has not satisfied these grounds. These are:

- a. Strong interests in or views on the subject matter;
- b. The desirability of enlightening the Tribunal on events that took place;
- c. The usefulness of gathering additional legal views with respect to the legal principles involved, not with respect to the particular circumstances of a case.

The Prosecution submit that the Applicant has been insufficiently specific on each of these matters, and that a more comprehensive explanation needs to be given of the parameters of the proposed brief.

The Applicants’ Reply

6. The Applicants did not file a Reply within the prescribed time limits.

AFTER HAVING DELIBERATED AS FOLLOWS:

8. The Pre-Hearing Judge of the Appeals Chamber notes that according to Rule 74 of the Rules of Procedure and Evidence, “(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.”

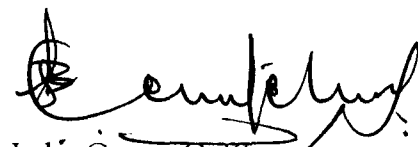
9. Given that the Applicants seek leave under Rule 74, the Pre-Hearing Judge considers that this is a matter that should be decided by the whole of the Appeals Chamber.

NOW THEREFORE, PURSUANT TO RULE 109(B) OF THE RULES,

THE PRE-HEARING JUDGE

TRANSMITS the Application for Leave to File Amicus Curiae and the Prosecution Response thereto, together with the Order by the Trial Chamber transmitting the Application to the Appeals Chamber, to the full Appeals Chamber.

Done at Freetown, Sierra Leone, on this 14th day of October 2003


Judge George G. King

