



**SPECIAL COURT FOR SIERRA LEONE**  
DEFENCE OFFICE  
FREETOWN - SIERRA LEONE

**IN THE APPEALS CHAMBER**

**Before:**

**Registrar:** Robin Vincent.

**Date Filed:** 27<sup>th</sup> February 2004.

**PROSECUTOR against**

**MORRIS KALLON**  
(Case SCSL-2004-15-PT)

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**DEFENCE MOTION FOR EXTENSION OF TIME FOR FILING OF APPLICATION  
FOR LEAVE TO APPEAL AGAINST REFUSAL OF BAIL**

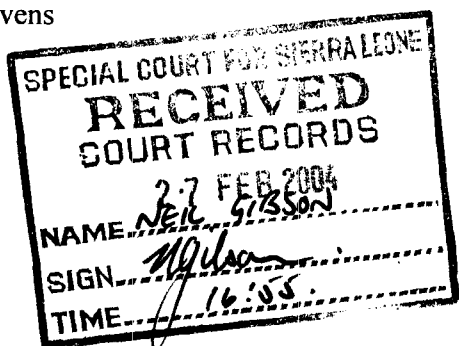
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**Office of the Prosecutor:**

Luc Côté  
Robert Petit  
Boi-Tia Stevens

**Defence Office:**

Sylvain Roy.  
Rupert Skilbeck  
Haddijiatou Kah-Jallow



1. The Defence Office files this motion on behalf of Morris KALLON to request an extension of time to allow Counsel to submit an application for leave to appeal against the decision of Judge Boutet of 23<sup>rd</sup> February 2002 refusing to grant bail.

#### **PROCEDURAL BACKGROUND**

2. The accused, Morris Kallon was indicted before the Special Court for Sierra Leone pursuant to a warrant of arrest and indictment dated the 7th March 2003. Since his arrest and subsequent detention Mr Morris has been remanded at the detention facility of the Special Court for Sierra Leone.
3. On 1<sup>st</sup> May 2003 the Registrar appointed Mr James Oury and Mr Steven Powles as Assigned Counsel for Mr Kallon. On 10<sup>th</sup> December 2003 Mr James Oury agreed to represent the accused under the terms of a legal service contract with the Defence Office.
4. On 29<sup>th</sup> October 2003, Counsel for Morris Kallon filed a confidential motion for bail and request for hearing. A confidential Reply was filed on the 10<sup>th</sup> November 2003.
5. On 16<sup>th</sup> February 2004 Mr Kallon wrote to the Principal Defender requesting the withdrawal of assignment of Counsel.
6. On 18<sup>th</sup> February 2004 the Court Management Section issued a Notice of Hearing regarding the decision on Motion for Bail which was rendered on Monday 23<sup>rd</sup> February 2004 by Judge Boutet, who dismissed the motion and denied the application for bail.
7. In the absence of Assigned Counsel, and on the instructions of Morris Kalona, the Defence Office represented the accused at the hearing.
8. On 27<sup>th</sup> February 2004 the Principal Defender issued a decision withdrawing the assignment of Counsel to Morris. Mr Kallon is presently not represented by Counsel although duty counsel are able to provide legal assistance pursuant to Rule 45.

#### **LEGAL BASIS FOR SUBMISSIONS**

9. Rule 65(E) of the Rules of Procedure and Evidence provides that:  
“Any decision rendered under this rule shall be subject to appeal in cases where leave is granted by a Single Judge of the Appeals Chamber designated under Rule 28, upon

good cause being shown. Applications for leave to appeal shall be filed within seven days of the impugned decision.”

10. Rule 116 States that the Appeals Chamber may grant a motion to extend a time limit upon showing good cause.
11. Article 17 of the Statute of the Special Court for Sierra Leone States that all accused shall be equal before the Special Court for Sierra Leone and that the accused shall be entitled to a fair and public hearing.
12. Rule 45 of the Rules of Evidence and Procedure provides that the Registrar shall establish, maintain and develop a Defence Office, for the purpose of ensuring the rights of suspect and accused. The Defence Office shall be headed by the Special Court Principal Defender.
13. Rule 45 states that the Principal Defender shall, in providing effective defence, maintain a list of highly qualified criminal defence counsel whom he believes are appropriate to act as duty Counsel or to lead the defence or appeal of an accused, and that any request for replacement of an assigned Counsel shall be made to the Principal Defender.
14. Article 5 of the directive for the Assignment of Counsel which took effect on the 3<sup>rd</sup> October 2003, provides subject to the provisions of Article 14 of this Directive a suspect or Accused who wishes to be assigned Counsel a request shall be lodged with the Defence Office or transmitted to it by the suspect or Accused himself or by person authorised to do so on his behalf.
15. The Defence Office further contends that granting of extensions of time to file legal process is a norm practiced in International Criminal Tribunals. See *The Prosecutor v Ferdinand Nahimana*<sup>1</sup> and *The Prosecution v Theoneste Bagasora*.<sup>2</sup>

## SUBMISSIONS

### Need for adequate representation

16. The Statute of the Special Court, the Rules and the Directive on the Assignment of Defence Counsel all make it clear that it is of fundamental importance that each accused person is properly represented by assigned counsel. There is due to be a status

<sup>1</sup> *The Prosecutor v Ferdinand Nahimana, Hassan Ngeze, Jean Bosco Barayagiwa*, Decision on the Defence Request for Extension of Time Within Which to File Expert Report of Peter Caddick-Adams, ICTR, 8<sup>th</sup> April 2003.

<sup>2</sup> *The Prosecution v Theoneste Bagasora, Gratien Kabiligi, Aloys Ntabakuze Anatole Nsengiyumva*, Decision on Motion for Extension of Time to File an Appeal, ICTR, 19<sup>th</sup> September 2003.

conference on Tuesday 2<sup>nd</sup> March 2004. At this stage, it is important that Trial Counsel makes all important decisions rather than Duty Counsel.


17. Furthermore, the Defence Office is not in a position to file a motion for leave to appeal against the bail decision as the original motion was filed confidentially, so the Defence Office does not know the contents of the motion.

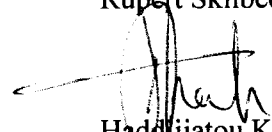
#### **Good Cause**

18. There is good cause to grant the extension of time for applying for leave to appeal, in that Mr Kallon currently does not have Assigned Counsel following the decision of the Acting Principal Defender of 27<sup>th</sup> February 2004 to withdraw Assigned Counsel.
19. The rights of Mr Kallon will be irreparably harmed if he is not granted an opportunity to submit an application for leave to Appeal the decision on his application for bail, and he cannot be effectively represented unless an extension of time is granted.
20. It is in the interest of Justice that Mr Morris Kallon is availed the opportunity to be provided Counsel who will require time to prepare for the appeal having not been appointed and therefore has not received any material essential for the preparation of the appeal.

#### **CONCLUSION**

21. In light of this the Defence office request for an extension of time to file a motion for leave to appeal against the decision refusing bail, such extension to be until 6 weeks after the appointment of Assigned Counsel. Such appointment of Counsel is envisaged will be undertaken within a month.
22. It is also requested that the decision on this motion be expedited in order that the position of Mr Kallon is not prejudiced, in that if this motion is refused he will have to file a motion by the end of 1<sup>st</sup> March 2004.

  
Rupert Skilbeck 27<sup>th</sup> ii. 04.

  
Haddijatou Kah-Jallow



**SPECIAL COURT FOR SIERRA LEONE**  
DEFENCE OFFICE  
FREETOWN - SIERRA LEONE

920

**IN THE APPEALS CHAMBER**

**Before:**

**Registrar:** Robin Vincent.

**Date Filed:** 27<sup>th</sup> February 2004.

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**BOOK OF AUTHORITIES**

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1. *The Prosecutor v Ferdinand Nahimana, Hassan Ngeze, Jean Bosco Barayagiwa*, Decision on the Defence Request for Extension of Time Within Which to File Expert Report of Peter Caddick-Adams, ICTR, 8<sup>th</sup> April 2003.
2. *The Prosecution v Theoneste Bagasora, Gratién Kabiligi, Aloys Ntabakuze Anatole Nsengiyumva*, Decision on Motion for Extension of Time to File an Appeal, ICTR, 19<sup>th</sup> September 2003.



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

921

**TRIAL CHAMBER I**

OR: ENG

**Before:**

Judge Navanethem Pillay, presiding  
Judge Erik Møse  
Judge Asoka de Z. Gunawardana

**Registry:** Mr. Adama Dieng

**Decision of:** 8 April 2003

**THE PROSECUTOR**  
v.  
**FERDINAND NAHIMANA**  
**HASSAN NGEZE**  
**JEAN BOSCO BARAYAGWIZA**

*(Case No. ICTR-99-52-T)*

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**DECISION ON THE DEFENCE REQUEST FOR EXTENSION OF TIME WITHIN WHICH  
TO FILE EXPERT REPORT OF PETER CADDICK-ADAMS**

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**Counsel for Ferdinand Nahimana:**

Mr. Jean-Marie Biju-Duval  
Ms. Diana Ellis

**The Office of the Prosecutor:**

Mr. Stephen Rapp  
Mr. William Egbe  
Mr. Alphonse Van  
Ms. Charity Kagwi  
Ms. Simone Monasebian  
Mr. William Mubiru

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** ("the Tribunal")

**SITTING** as Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse and Judge Asoka de Z. Gunawardana;

**BEING SEIZED OF** a Defence request, filed on 29 March 2003, to extend the time in which to file the Expert Report of Mr. Peter Caddick- Adams;

922

**CONSIDERING** the Prosecution's response, filed on 2 April 2003, in which the Prosecution objects to the calling of any Expert Witness with less than 21 days advance notice of the Expert's Report;

**CONSIDERING** that on 31 December 2002, at the request of the Trial Chamber, the Defence of Ferdinand Nahimana submitted for the consideration of the Judges a summary of anticipated evidence to be given by proposed Defence Experts, including Mr. Peter Caddick-Adams;

**CONSIDERING** the Decision of 24 January 2003, which was confirmed on 25 February 2003 in which the Chamber permitted the Defence to call Mr. Caddick-Adams.

**TAKING INTO ACCOUNT** the Scheduling Order issued on 26 March 2003, which schedules Mr. Caddick-Adams to testify on 5-6 May 2003;

**CONSIDERING** Rule 94bis of the Rules which provides for Expert Witnesses;

**HEREBY DECIDES** the said Defence motion upon parties' briefs.

## INTRODUCTION

1. On 3 October 2002, the Chamber issued a "Decision on The Prosecution's Motion to Compel Defence Compliance" and at paragraph 6), it stated:

"The Defence Counsel shall:

- a) Provide the Trial Chamber, the Prosecutor and other Defence Counsel, the full statement of each intended Expert Witness to be called and a Curriculum Vitae in respect of each Expert witness, not less than twenty-one days prior to the date on which the Expert is expected to testify, as provided under Rule 94bis;"
2. In the 13 December 2002 "Decision On The Defence Motion To Re-Instate The List Of Witnesses" at paragraph 3, the Defence is reminded to adhere to the 3 October Decision and provide the Prosecution with their expert reports "not less than" 21 days in advance of each expert's testimony.
  3. On 24 January 2003, in a decision on Defence Expert Witnesses, the Trial Chamber held that, Mr. Caddick-Adams's evidence on the role of the media, the use of propaganda during wartime and his testimony on civil defence systems is relevant and may be of assistance to the Chamber in its deliberations. Consequently, it allowed the Defence to call him as an Expert Witness in the defence of Ferdinand Nahimana. In its 25 February 2003 Decision concerning the reconsideration of the Chamber's earlier decision on Defence Expert Witnesses, the Chamber maintained its views on some Defence Expert Witnesses including, Mr. Caddick-Adams and reiterated its 24 January 2003 Decision. On 26 March 2003, the Chamber issued a Scheduling Order and re-stated its earlier Decision of 3 October 2002 and categorically stated that :  
  
"The Trial Chamber recalls its decision dated 3 October 2002 and orders that the names, curriculum vitae and Reports of each Expert witness be furnished by the Defence to the Prosecutor and other Defence Counsel not less than twenty-one days prior to the date on which the Expert is expected to testify, as provided under Rule 94bis."  
  
4. The Scheduling Order issued on 26 March 2003 provides for the testimony of Mr. Caddick-Adams to be heard on 5-6 May 2003. The date for disclosure of the Report would be 14 April 2003 at the latest.

## SUBMISSIONS OF THE PARTIES

*The Defence*

5. The Defence submits that the prevailing circumstances are entirely outside its control and that "exceptional circumstances" exist as indicated below.
6. The Defence submits that:
  - a) Mr. Caddick-Adams, who is a member of the British Military Reserve Forces, was called up by the British Government to serve in his capacity as media advisor in the current military operation in the Gulf region and he had to oblige with the order;
  - b) The Defence had contacted him about his Report before his departure to the Gulf Region and he had indicated that he hoped to work on it whilst in the Gulf;
  - c) To date, the Defence has not had contact with him since his departure for the Gulf but understands that he in Qatar and the Defence is continuing in its attempts to make contact with him either directly or indirectly. However, the Defence is not able to give any indication of the progress he has made on the Expert Report;
  - d) It may not be possible to obtain a report from Mr. Caddick-Adams at any time prior to the conclusion of evidence in the trial and that in light of the prevailing situation in the Middle East; he may not be able to testify in the trial. However, if a report is forthcoming from him within the 21-day period, the Defence would like to be permitted to use it.

### *The Prosecution*

7. The Prosecution argues that:
  - a) The oral Order of 12 July 2002 required the Nahimana Defence to disclose the names of all of its intended factual and expert witnesses by 22 August 2002 and Mr. Caddick-Adams' name was not on the Defence's list of 22 August 2002;
  - b) The oral Decision of the Trial Chamber dated 2 December 2002 obliged all Defence teams to immediately provide the Prosecution and the Trial Chamber with a list of all of its intended factual and Expert witnesses, whether, or not, they agreed to testify. Consequently, the Defence on 11 and 12 December 2002, moved to include Mr. Caddick-Adams as a defence witness;
  - c) At a 7 November 2002, Status Conference, the Trial Chamber reminded defence counsel that the defence "ought to have been prepared and ready with [its] defence case the day the Prosecution closed its case" and stated that it intended to close the Nahimana case in the January 2003 session, and the Ngeze case in a March 2003 session, but that in any event the defence case was to be closed in March 2003.
  - d) At a status conference in late January 2003, the Trial Chamber indicated that the defence case will close in March 2003 although there was a possibility of a short spill-over session in April 2003;
  - e) The extension for disclosing Prosecution Experts Reports did not deprive the Defence of the statutory 21-day advance disclosure Rule since the Defence received the Reports of all Prosecution experts 3-8 months in advance of their testimony, and in two languages.

### **DELIBERATIONS**

8. The Chamber has considered the submissions of the parties and recalls its various decisions on the subject of Expert witnesses, particularly its 3 October Decision. The Chamber has given



924

the Defence ample opportunity to file an Expert Report and reminded the Defence on 2 December 2002 that "there are some effects if you do not comply, and that is, you stand the risk of not being allowed to call the witness." [1] The Defence has not had contact with Mr. Caddick-Adams since his departure to the Gulf on or about 13 February 2003. It is not in a position to say whether the witness will have his report ready before 14 April 2003 or by any extended date that the Trial Chamber may allow. Furthermore, it acknowledges that the prevailing situation in the Middle East may mean that the witness is unable to testify in the trial.

9. In the circumstances, the Trial Chamber is of the view that the Nahimana Defence has not shown due diligence and therefore further extensions of time cannot be granted because it will cause inordinate delay in the trial which has already taken a long time to conclude.

**FOR THE FOREGOING REASONS, THE TRIAL CHAMBER**

**DENIES** the Defence request for extension of the time within which to file the Expert Report of Mr. Caddick-Adams.

Arusha, 8 April 2003.

Navanethem Pillay

Erik Møse

Asoka de Zoysa Gunawardana

Presiding Judge

Judge

Judge

Seal of the Tribunal

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[1] Transcript 2 December 2002, p. 148, lines 6-8

a25



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

## IN THE APPEALS CHAMBER

**Before:** Judge Inés Mónica Weinberg de Roca, Duty Judge

**Registry:** Adama Dieng

**Decision of:** 19 September 2003

**THE PROSECUTION**  
v.  
**THÉONESTE BAGASORA**  
**GRATIEN KABILIGI**  
**ALOYS NTABAKUZE**  
**ANATOLE NSENGIYUMVA**

*Case No. ICTR-98-41-AR72(C)*

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## DECISION ON MOTION FOR EXTENSION OF TIME TO FILE AN APPEAL

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**Counsel for the Prosecution:**

Barbara Mulvaney  
Drew White  
Segun Jegede  
Alex Obote-Odora  
Christine Graham  
Rashid Rashid

**Counsel for the Appellant:**

Peter Erlinder  
André Tremblay

**I, Inés Mónica Weinberg de Roca**, Judge of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Tribunal"),

**SERVING** as a Duty Judge pursuant to Rule 28 of the Rules of Procedure and Evidence of the Tribunal;

**BEING SEISED OF** "Ntabakuze Defence Motion Under Rule 116(C) for Extension of the Delay to Produce an Appeal Certified Under Rule 72(C)" ("Motion"), filed on 17 September 2003, wherein Appellant Ntabakuze requests an extension of time to file an appeal from 18 September 2003 to 22 September 2003;

**NOTING** that on 11 September 2003 Trial Chamber I of the Tribunal certified for interlocutory appeal its Decision on Motions by Ntabakuze for Severance and to Establish a Reasonable Schedule for the Presentation of Prosecution Witnesses issued on 9 September 2003;

**NOTING** Appellant's submission that his defence team were unable to begin the preparation of the appeal due to physical absence or illness;

**NOTING** Appellant's submission that he did not receive the trial materials essential for the preparation of the appeal until 16 September 2003;

**CONSIDERING** the short duration of the extension requested;

**CONSIDERING** that the Prosecution does not object to Appellant's request;

**CONSIDERING** that the explanation provided by Appellant shows good cause for extension;

**PURSUANT** to Rule 116(A);

**HEREBY GRANT** the Motion and **ORDER** that the time to file the appeal be extended until the end of the day on Monday, 22 September 2003.

Done in English and French, the English text being authoritative.

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Judge Inés Mónica Weinberg de Roca  
Duty Judge

Dated this 19th day of September 2003,  
At the Hague,  
The Netherlands.

**[Seal of the Tribunal]**