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SCSL-04-15-A
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SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER

Before: Hon. Justice Renate Winter, Presiding Judge
Hon. Justice Jon Kamanda
Hon. Justice Emmanuel Ayoola
Hon. Justice George Gelaga King

Registrar: Herman von Hebel

Date: 4TH May 2009

PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-A)

Public Document

REPLY TO THE PROSECUTION RESPONSE TO KALLON
DEFENCE MOTION FOR EXTENSION OF TIME AND PAGE LIMIT

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SPECIAL COURT FOR SIERRA LEONE	
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Introduction

1. The Kallon Defence files this Reply to the Prosecution Response to Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit, filed on the 1 May 2009.
2. The Kallon Defence submits that the Prosecution is not in principle opposed to the application for Extension of Time to file appeal brief and extension of page Limit, the difference here is the number weeks and page limits to be granted.

Prosecution's Arguments

3. The Prosecution's arguments is that the Kallon Defence has not established good cause for either an extension of time or an extension of page limit of the magnitude requested¹, that they will not oppose an extension of time for filing of appeal briefs by one week² and they will not oppose an extension of page limit to 200 pages for all the parties.³
4. As a preliminary point, the appellant is surprised that the Prosecution is opposed to the Appellant's motion. Before filing the motion the Kallon Defence had sought to discuss with the Prosecution and the Co-accused the possibility of bringing a joint motion for extension of time and page limits in line with previous practice in other trials. Counsel for the second accused circulated a draft. As there was no expedited agreement on the proposed joint motion, the appellant decided to go alone but did not expect that the Prosecution would be opposed to the extension sought by the appellant having informally consented to a 5 week extension. It is because of this honest believe that the prosecutor would not drastically change their position that the Appellant did not expound in detail the reasons for seeking extension.
5. The Prosecution agrees with the Kallon Defence that the RUF case is of some magnitude and is mindful of the need to ensure that all parties are given the opportunity to develop and present their cases on appeal fully.⁴ The comparison that the Prosecution makes between this case and previous cases

¹ Prosecution Response, para. 3

² Ibid, para. 9

³ Prosecution Response, para. 16

⁴ Prosecution Response, Para. 9.

before the Special Court ignores the fact that the present case is much bigger in terms of the convictions, the temporal scope of the indictment and its overall complexity. This is the first time the Special Court has delivered a substantive judgment on Joint Criminal Enterprise, a theory that the Trial Chamber has applied in a broad and oddly expansive fashion.

6. The Kallon Defence further submits that one of the reasons for extension of time is that the RUF case is much bigger and complex and raises many legal issues and crimes attributable to the AFRC by virtue of the expansive Joint Criminal Enterprise adopted by the Trial Chamber. Under this mode of liability, the accused Kallon has been found guilty for the commission of several crimes in a multiplicity of locations in four different districts of Sierra Leone-BO, KENEMA, KONO and KAILAHUN. For the other modes of liability under 6(1) and 6(3) the accused Kallon was likewise found guilty of crimes committed in a multiplicity of locations in KONO, BOMBALI, PORT-LOKO and TONKOLILI districts.
7. The Kallon Defence has filed 31 grounds of Appeal with multiple sub heads raising many legal and factual issues to be dealt with. For the Kallon Defence to do justice to all the issues raised in its grounds of appeal means that an extension of time is necessary and reasonable to permit the Defence argue out the issues dealt with.
8. The Defence submits that there are many important questions of law, fact, and procedure that were involved in the Trial Judgement, many of which must be addressed by Appellant in his brief. A number of these issues are highly complex,⁵ comprise novel theories of individual criminal responsibility (especially concerning joint criminal enterprise liability) and substantive law, and constitute legal and factual issues of critical importance—all of which must be fully and adequately addressed to protect the Appellant's right to an effective defence and to present his case.⁶ Appellant respectfully submits that,

⁵ *Prosecutor v. Stacic*, Case No. IT-97-24-A, Decision on the Defence Motion for Extension of Time ¶15 (April 26, 2004) (“What tips the balance in favour of granting the extension sought is the acknowledged complexity of issues in this appeal”).

⁶ *See Prosecutor v. Blagojevic*, Case No. IT-02-60-A, Decision on Blagojevic's and Jokic's Motions for Extension of Time to File Their Appeal Briefs (July 21, 2005) (effective defence is a consideration); *see also Prosecutor v. Brdjanin*, Case No. IT-99-36-A, Decision on Motion for Extension of Time for the Filing of Prosecution Response Brief, (July 20 2005) (finding good cause shown due to, *inter alia*, the “complexity of the case”).

in light of the importance of these questions of law, fact, and procedure, the interests of justice require that leave be given for a reasonable extension of time to file an Appeals Brief and requests the same.⁷

9. Furthermore, the Judgement of the Trial Chamber is voluminous, contains separate dissenting and concurring opinions, and involved a complex and in-depth analysis of novel legal theories and complicated factual analysis. Navigating through the lengthy Judgement necessitates sufficient time for research, analysis, and drafting on the pertinent issues. Appellant submits that the complexity of the Trial Judgement further requires that an extension be granted,⁸ and that allowing for an extension of time will allow the Appellant and his counsel to sufficiently consider the relevant issues contained in the Trial Judgement.
10. The Prosecution agrees with the Defence that they have a greater task than the Prosecution in preparing their respective appeal briefs⁹ and is a good cause for an extension of time and page limit for filing of appeal briefs. The Defence respectfully requests additional time to prepare and file the Appeal Brief. A grant of the extension sought by the Appellant will not prejudice the opposing the Prosecution in any way.
11. The Defence submits that the motion is not made for purpose of delay and is consistent with the Appellant's right to an effective defence.¹⁰ Moreover, Appellant submits that an extension would be in the interests of justice¹¹ as well as the interests of both the Appeals Chamber and the Prosecution to have the Appellant present a carefully written and thorough Appeal Brief.¹² This

⁷ *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-2004-14-T, Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs and Extension of Page Limits for Appeal Briefs (Nov. 7, 2007).

⁸ *Prosecutor v. Todovic*, Case No. IT-97-25/1-AR11bis.1, Decision on Defence's Motion for Extension of Time (Aug. 22, 2005) (complexity of the issues is a factor when determining good faith).

⁹ Prosecution Response, para. 11

¹⁰ See *Prosecutor v. Blagojevic*, Case No. IT-02-60-A, Decision on Blagojevic's and Jokic's Motions for Extension of Time to File Their Appeal Briefs (July 21, 2005)

¹¹ *Prosecutor v. Brdjanin*, Case No. IT-99-36-A, Decision on Prosecution's Request for an Extension of Time to Respond to Brdjanin's Motion to Dismiss Ground 1 of the Prosecution's Appeal (March 11, 2005) ("the Prosecution's explanation does not of itself constitute good cause, but that the circumstances of this case warrant an extension of time in the interests of justice.").

¹² *Prosecutor v. Stakic*, Case No. IT-97-24-A, Decision on the Defence Motion for Extension of Time ¶5 (April 26, 2004); Cf. *Prosecutor v. Krstic*, IT-98-33-A, Decision on the Prosecution's Extremely Urgent Motion for Extension of Time, 14 October 2003 (granting the Prosecution an extension of time to file its rebuttal evidence because, among other reasons, the extension would benefit both the Appeals Chamber and the Defence by allowing the Prosecution to present that evidence in an organized fashion).

additional time will allow Appellant to articulate the important issues more fully, clearly, and concisely, and in a manner that will advance the rights of the accused and assist the Appeals Chamber arrive at a fair and just decision.

12. The Defence notes that neither the appellant nor Counsel have any motivation for causing any unnecessary delay. In fact in view of the fixed remuneration for Counsel at the Appeals stage, it may indeed be expedient for Counsel to seek to conduct this appeal within the shortest time possible. However, because the interests of justice demand that Counsel provide the accused the best and most effective representation humanly possible, it is necessary to seek these extensions .
13. In addition, the Defence submits that there are other circumstances of the case that merit the extension of time. Indeed, in this case, counsel for the Appellant were not involved with all of the proceedings during the course of trial.¹³ The current lead counsel Mr Charles Taku joined the Defence team in the middle of the prosecution case as Co-counsel while Mr Ogeto, current lead Counsel II and Mr Fofanah, Co-counsel joined the team in the middle and at the end of the Defence case respectively. The other members of the team have only recently been appointed specifically for the appeals.
14. Moreover, the Judgement was drafted in English, a language with which the Appellant desires greater fluency. Although the accused speaks and reads some English, he requires further time to understand and consider the Judgement and the technical and complex issues contained therein, and to assist in the preparation of the Appeals Brief. Appellant submits that "it is in the interest of justice to allow the Appellant adequate time to read the Trial

¹³ *Prosecutor v. Blagojevic*, Case No. IT-02-60-A, Decision on Vidoje Blagojevic's Motion for Extension of Time in which to file his Notice of Appeal and on Dragan Jokic's Motion for Extension of Time in which to File his Appeal Brief, (April 14, 2005) ("the changes in Blagojevic's defence team and the delay in transfer of the relevant materials to the new lead counsel constitute "good cause," within the meaning of Rule of Procedure 127, for the extension of time for a reasonable period"); see also *Prosecutor v. Naletilic*, Case No. IT-98-34-A, Decision on Martinovic's Motion for Extension of Time for Filing the Respondent's Brief and on Naletilic Motion for Enlargement of Time for filing Rule 115 Motion, Appeals Brief, and Response to Prosecutor's Appeal Brief, (Aug. 18, 2003) (changes in counsel for Appellants—including both past and ongoing—constituted good cause); see also *Prosecutor v. Blagojevic*, Case No. IT-02-60-A, Decision on Blagojevic's and Jokic's Motions for Extension of Time to File Their Appeal Briefs (July 21, 2005) (lack of legal personnel on Defence team constitutes good cause); *Prosecutor v. Kupreskic*, Case No. IT-95-16-A, Order on Motions for Extension of Time (June 20, 2000) ("change in the assignment of counsel for the Appellant in this case constitutes good cause for extending the time-limit for the filing of the Appellant's Brief"

Judgement and consult with Counsel before filing his Appellant Brief,"¹⁴ and that the ability of the accused to make a full defence depends on his ability to understand and consider the issues raised in the Judgement.

15. The Court promulgates rules concerning the length of a party's submissions, but "upon request a Chamber may, where exceptional circumstances have been shown by the moving party, extend the page limit imposed by the Practice Direction."¹⁵ The Appellant gave notice of his intention to appeal in the hope that he would be accorded the opportunity to adequately and effectively present his case. It is impossible to do this in 21 days or within the additional week suggested by the Prosecution. Without sufficient time to present his case, the Appellant cannot be said to have exercised his right to appeal under the Statute.
16. Appeals Chambers have also granted liberal extension of pages in certain instances. In *Galic*,¹⁶ the Appeal Chamber, held that in light of "the exceptional circumstances of this case, the need to carry out the appeals proceedings with reasonable expedition, the principle of equality of arms and the interest of the Appeals Chamber to have the arguments presented clearly," increased the word limit from 30,000 to 69,516. Similarly, the Appeals Chamber in the *Krstic* case allowed an extension of the page limit on the basis of "in particular the need to address certain matters in depth and to do so with reference to the trial record"¹⁷ which is in line with the 31 grounds of appeal filed by the Kallon Defence.
17. The Kallon Defence submits that the Prosecution disclosed thousands of pages of exculpatory material from the Taylor trial which the Defence could not peruse and used at the Trial stage which the Kallon Defence intends to use on appeal.
18. The only reason why the Prosecutor is watering down the number of weeks for extension of time is the fact that the Prosecutor has filed only three grounds of

¹⁴ *Prosecutor v. Simic*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simic for Extension of Time to File Appellate Brief and Request for Expedited Decision (Jan. 19, 2004).

¹⁵ *Prosecutor v. Halilovic*, Case No. IT-01-48-T, Decision on Prosecution's Motions to Strike Halilovic's Redacted Final Trial Brief and to Strike Halilovic's "Defence Final Trial Brief Public Redacted Version," (Sept. 20, 2005),

¹⁶ *Prosecutor v. Galic*, Case No. IT-98-29-A, Decision on Urgent Prosecution Motion for an Order Requiring the Appellant to Re-File his Appeal Brief and Request for Leave to Exceed Word-Limit for Motion, (Sept. 2, 2004),

¹⁷ *Prosecutor v. Krstic*, Case No. IT-98-33-A, Order on Extension of Pages, (May 12, 2003),

appeal¹⁸ compared to the AFRC and CDF where they filed multiple grounds of Appeal and where quick to request for joint motions in both cases with the Defence.

Prosecution's Application for Extension Time to File a Response to the Appeal Briefs.

19. The Prosecution is submitting that the Appeals Chamber grant an extension of time for filing a Response to the Appeal Briefs¹⁹. The Kallon Defence submits that the Prosecution's application is premature and misconceived and is an attempt to derail the current application. The Prosecution definitely knows when to file their application for extension of time to file a response to the appeal briefs and this should be through a separate application and not through the back door as in the present case.
20. The Prosecution submits that there will not be enough time between the appeal brief and the response brief and that it is not feasible to await the filing of the previous brief before applying for an extension of time for the response brief or reply brief.²⁰ The Kallon Defence submits that the Prosecution has not given a good reason why they should not file a proper application before the court for an extension of time to file response to the appeal briefs. In the AFRC and CDF, applications for extension of time to file a response to the appeal briefs were filed after the appeal briefs were filed. The Defence reiterates that the application is premature, misconceived and should not be granted.

Conclusion

21. The Kallon Defence concludes that the Prosecution has failed to explain why the Kallon application for extension of time of eight (8) weeks to file appeal brief and extension of page limit to 400 should not be granted in its entirety.
22. The Defence submits that following the reasons advanced in the Motion and the present Reply, it will be in the interest of justice for the application to be granted in its entirety to allow the Defence enough time and page limits to properly argue the grounds of appeal.

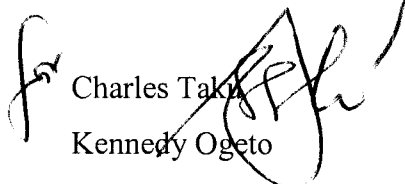
¹⁸ Prosecution Response, para. 11

¹⁹ Prosecution Response, para. 11

²⁰ Prosecution Response, para. 18

23. This application is brought in good faith and it is within the wide discretion of the Appeals Chamber to grant an extension of time and page limit to allow the Defence to properly adjudicate and argue the grounds on appeal.
24. The Kallon Defence submits that there is good cause to extend the time to file its Appeal Brief and extension of page limits and requests that the extension be granted.

Done and dated this 4th May 2009.


for Charles Takwa
Kennedy Ogeto
Kallon Defence