

(1144 - 1148)

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

TRIAL CHAMBER

Before: Hon. Judge Benjamin Mutanga Itoe, Presiding Judge
 Hon. Judge Bankole Thompson
 Hon. Judge Pierre Boutet

Registrar: Robin Vincent

Date filed: 10 December 2004

PROSECUTOR**Against**

**SAMUEL HINGA NORMAN
 MOININA FOFANA
 ALLIEU KONDEWA**

Case No. SCSL-2004-14-T

**REPLY TO "FIRST ACCUSED RESPONSE TO 'PROSECUTION
 APPLICATION FOR LEAVE TO APPEAL "DECISION ON THE FIRST
 ACCUSED'S MOTION FOR SERVICE AND ARRAIGNMENT ON THE
 CONSOLIDATED INDICTMENT"**

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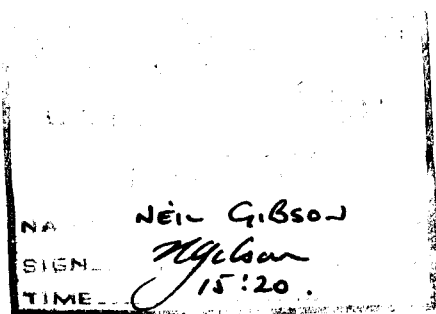
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REPLY TO “FIRST ACCUSED RESPONSE TO ‘PROSECUTION APPLICATION FOR LEAVE TO APPEAL ‘DECISION ON THE FIRST ACCUSED’S MOTION FOR SERVICE AND ARRAIGNMENT ON THE CONSOLIDATED INDICTMENT’”

I. INTRODUCTION

1. The Prosecution files this Reply to the “First Accused Response to ‘Prosecution Application for Leave to Appeal Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment’”¹, filed on 8 December 2004.
2. The Defence opposes the “Prosecution Application for Leave to Appeal the ‘Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment’”² (“**Prosecution Application for Leave to Appeal**”), dated 29 November 2004 for the following reasons:
 - a. The Prosecution failed to seek leave within the 3 day time limit set out in the Rules of Evidence and Procedure.³
 - b. The Prosecution failed to demonstrate irreparable prejudice if leave were not granted.
3. The Prosecution submits that the Prosecution Application for Leave to Appeal was filed in a timely manner and in compliance with the “Consequential Order to

¹ *Prosecutor Against Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa*, SCSL-2004-14-T, “First Accused Response to ‘Prosecution Application for Leave to Appeal Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment’”, 8 December 2004, Registry Page (“**RP**”) 11136.

² *Prosecutor Against Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa*, SCSL-2004-14-T, “Prosecution Application for Leave to Appeal the ‘Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment’”, 6 December 2004, RP 11023.

³ *Special Court for Sierra Leone*, “Rules of Evidence and Procedure”, as amended 29 May 2004, Rule 73(B).

Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”⁴ (“**Consequential Order**”), where the “Trial Chamber Decision” is defined as including the Majority Decision “the Separate Concurring Opinion of Hon. Judge Bankole Thompson and the Dissenting Opinion of Hon. Judge Benjamin Mutanga Itoe”⁵ (“**Opinions**”).

4. The Prosecution also maintains that if leave to appeal the “Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”⁶ (“**Decision**”) is not granted by the Trial Chamber, irreparable prejudice will indeed occur.

II. ARGUMENTS

A. Prosecution Application for Leave to Amend Was Timely

5. The Prosecution Application for Leave to Appeal was filed within three days of the filing of the Decision by the Trial Chamber as defined by the Consequential Order.
6. The Prosecution notes that the Consequential Order instructs the Prosecution as to how to comply with the Decision. In so doing, the Trial Chamber defined the content of the Trial Chamber’s Decision with reference to the First Accused Application for Service and Arraignment. The definition, cited in Footnote 1 of the Consequential Order, does not limit the effect of that definition to the Prosecution’s obligation to either expunge or amend the indictment. Absent an indication that the definition set forth in the Consequential Order is in fact limited to a discrete issue, the Prosecution respectfully submits that the Trial Chamber’s definition is authoritative and applies to any filing based on the Decision, which, as stated in the Consequential Order includes the Majority Decision, the Separate Concurring Opinion and the Dissenting Opinion.
7. The Prosecution Application for Leave to Appeal is directly related to all the parts of the Decision, where one of the principle bases for the Application is the divergent

⁴ *Prosecutor Against Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa*, SCSL-2004-14-T, “Consequential Order to Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”, 30 November 2004, RP 10895.

⁵ Consequential Order, at para. 2, footnote 1, RP 10896.

⁶ *Prosecutor Against Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa*, SCSL-2004-14-T, “Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”, 29 November 2004, RP 10888.

views of the law as stated in each of the individual Opinions of this Trial Chamber. All of the Opinions of the Decision are “relevant documents”, as referred to in the “Practice Direction for Certain Appeals Before the Special Court”⁷, dated 30 September 2004. It would be neither fair nor practicable to force the Prosecution to file an application prior to having all three Opinions of the Trial Chamber with respect to the Decision at issue.

8. Finally, the Prosecution took all reasonable steps in coming to this conclusion and confirmed with Court Management that the time-limit ran from 3 December 2003, the date his Honour Judge Itoe’s Dissenting Opinion was filed.
9. The Prosecution maintains it has met the requirements of Rule 73(B) by filing the appeal within three days of the filing of the Decision.

B. Irreparable Prejudice Will Occur if Leave to Appeal Is Not Granted

10. The Defence submits that the Prosecution failed to meet the standard of irreparable prejudice necessary to grant a leave for an interlocutory appeal. The Prosecution respectfully submits that it met its burden and would suffer irreparable prejudice if leave to appeal is not granted.
11. This submission is based on the grounds that irreparable prejudice to the Prosecution and the Second and Third Accused will result by allowing the Decision to stand because it impedes a continuation of the current trial proceedings against all three accused based upon a single Consolidated Indictment.
12. If the trial continues based on separate indictments, the First Accused will face less factual allegations than the other two accused persons and therefore, will not be required to defend himself against those allegations. If at the end of the trial, and the Prosecution successfully appealed the Decision in question, the only remedy would be to recall all witnesses whose evidence implicated the First Accused on issues present in the Consolidated Indictment in order to allow the First Accused to cross examine such witnesses.

⁷ *Special Court for Sierra Leone Appeals Chamber*, SCSL-2004-16-T, “Practice Direction for Certain Appeals Before the Special Court”, 30 September 2004, para. 18, RP 5947.


13. Furthermore, the Prosecution is surprised that the First Accused has taken this position with regards to the Prosecution Application for Leave to Appeal, where the Defence claimed in their application to appeal⁸, and the Prosecution supported this submission, that the confusion of the state of the law in this area is grounds for a leave to file an interlocutory appeal.
14. The Prosecution respectfully submits that the lack of clarity in this area of the law is grounds for leave for an interlocutory appeal and that failure to allow appellate review would result in irreparable prejudice.

III. CONCLUSION

15. The Prosecution maintains that it submitted the Leave to Appeal in a timely manner in accordance with Rule 73(B) of the Rules.
16. The Prosecution submits that it established the grounds for irreparable prejudice in the Prosecution Leave to Appeal.

Filed in Freetown, 10 December 2004

For the Prosecution,



James C. Johnson
Senior Trial Attorney

⁸ *Prosecutor Against Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa*, SCSL-2004-14-T, “Application by the First Accused for Leave to Make Interlocutory Appeal Against the Decision on the First Accused Motion for Service and Arraignment on the Consolidated Indictment”, 2 December 2004, para. 9, RP 10938.