

**SPECIAL COURT FOR SIERRA LEONE**

**The Trial Chamber**

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

Registrar: Robin Vincent

Date: 2 May 2005

**The Prosecutor Against Sam Hinga Norman  
Moinina Fofana  
Allieu Kondewa  
Case No. SCSL-04-14-T**

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**DEFENCE REQUEST FOR LEAVE TO APPEAL  
Against the  
Decision on First Accused's Motion on Abuse of Process**

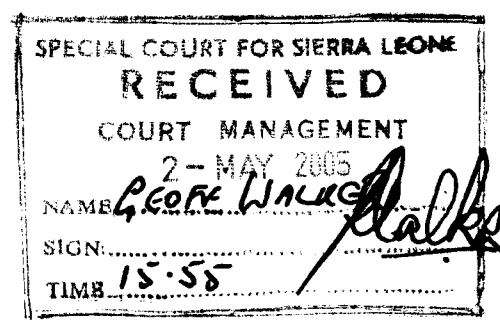
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## I. INTRODUCTION: THE LEAVE BEING SOUGHT

1. Pursuant to Rule 73(B) of the Rules of Procedure and Evidence (RPE) of the Special Court for Sierra Leone (SCSL), the First Accused hereby humbly seeks the indulgence of the Trial Chamber to grant him leave to file an interlocutory appeal, in terms of the said Rule 73(B) of the SCSL/RPE, against its “Decision on First Accused’s Motion on Abuse of Process”, dated 28 April 2005 (#385, RP 12525-12531).

## II. PROCEDURAL HISTORY

2. The First Accused filed the founding “Abuse of Process Motion by First Accused for stay of Trial Proceedings” on 15 February 2005 (#340, RP. 11972-11981), to which the Prosecution responded by filing the “Prosecution Response to the First Accused’s Abuse of Process Motion” on 25 February 2005 (#346, RP. 12113-12118). The “Defence Reply” thereto by the First Accused was filed on 28 February 2005 (#249, RP. 12205- 12211).
3. It should be specifically noted here that the aforesaid **Prosecution Response** of 25/02/05 adopted five or six specified approaches or arguments in seeking to counter the Defence submissions in the aforesaid **Abuse of Process Motion** of 15/02/05, and that the said **Defence Reply** thereto of 28/02/05 systematically itemised the said approaches or arguments and directed specific countering arguments to each and all of the said approaches in its paragraphs 3 to 10 respectively, the submissions in both the Response and Reply respectively being supported by specified cases and decisions of relevant jurisprudence.
4. It is to be further noted that, with the greatest respect, apart from the historical mention of the said **Prosecution Response** and **Defence Reply** in its preambular subparagraphs 3 and 4 respectively, the present subject **Decision** of 28/04/05 by the Trial Chamber does not expressly advert to the specific counteracting submissions, arguments or authorities cited in either the said **Prosecution Response** or **Defence Reply**. Indeed, its Section I on “Submissions of the Parties” deals only and exclusively with submissions by the Defence in the founding Motion itself and the entire **Decision** does **NOT** expressly or specifically advert to any submissions by the Prosecution as such.

5. It may be noted furthermore that Court Appointed Counsel for the First Accused and Applicant was electronically served with the said subject Decision in the morning of 29 April 2005, as he was about to set out for Kenema District in the Eastern Region of Sierra Leone with a team of Norman Defence personnel for further investigation and potential witness tracing, that they returned to base in Freetown late on Sunday 1 May 2005, and that they have nonetheless endeavoured to seek this leave to apply within severe practical restraints in order to comply with the applicable time limit. The two Separate Concurring Opinions in #386, RP 12531-12534 and #387, RP 12535-12537 were made available even much later, to wit, in the mid-afternoon of Monday 2 May 2005.

### III BASES FOR LEAVE SOUGHT

6. It is submitted, with humility and the greatest respect, that serious issues of grave and fundamental nature are involved in this application for leave to appeal against the aforesaid interlocutory **Decision** of the Trial Chamber, which affect the entire trial process and the very integrity of the trial process as an international criminal adjudication, and that this application also involves both “exceptional circumstances” and the intended avoidance of “irreparable prejudice” to the Applicant as an accused person on trial, within the terms of the Rule 73(B) of the SCSL/RPE.
7. First, the relevance and application or the irrelevance and non-application of Rule 72 of SCSL/RPE to the application in the **Abuse of Process Motion** itself. This obviously depends upon the proper meaning and construction to be set upon the said Rule 72. The **Abuse of Process Motion** was made pursuant to Rules 54 and 73(A), without any invocation of Rule 72, obviously on the assumption that the jurisdictional and abuse of process issues raised therein were not confined to and in fact in some cases occurred **after** the pre-trial or preliminary motion stage for which Rule 72 is specifically designed and to which it is exclusively applicable. Indeed, this fact constitutes the Prosecution’s main objection to the said Motion, as outlined in paras. 1-2 and 7-9 inclusive of

its aforesaid **Prosecution Response**, and which objection is specifically and comprehensively countered in paras. 1 and 6-8 inclusive of the aforesaid **Defence Reply**. *With respect to Rule 72 as such, the real and crucial question involved here is whether all instances or occurrences of jurisdictional want, processual abuse, etc. in terms of which preliminary motion is defined in Rule 72(B), are in themselves and by their nature confined to (or capable of arising only at) the pre-trial or preliminary motion stage; or, rather, whether some instances of issues in the nature of those mentioned in Rule 72(B) may nevertheless appear or arise thereafter during the trial process itself thereby warranting application to be made to the Trial Chamber for appropriate ruling or relief under such general rules as Rules 54 and/or 73(A), other than under Rule 72?* In other words, does Rule 72 comprehensively provide, for example, “that any submissions on the jurisdictional basis of the court should be filed by way of a preliminary motion” (Emphasis added), as stated in para. 4 of the subject **Decision** of 28/04/05? Or, rather, does Rule 72 merely and restrictively provide that if any objection is to be raised “by the accused” (Emphasis added) at the pre-trial stage, then it must be in respect of a subject matter as outlined in rule 72(B) and in accordance with the other terms and conditions in the rest of Rule 72? These two stipulations are radically opposed, cannot both be true, and are an important issue in the international criminal litigation process needing to be definitively resolved by the Appeals Chamber.

8. *Another related question of general importance in the current trial proceedings of the Special Court is whether such issues as those of lack of jurisdiction and abuse of process, or otherwise, that have so far been determined by the Appeals Chamber before the commencement of actual trial proceedings in the Special Court are comprehensively and exhaustively representative for all time of issues of their similar nature and character in an international criminal prosecution and that such issues of similar nature and character are thereafter completely improbable or incapable of arising during such trial proceedings? Or, rather, whether in spite of the specific issues appertaining to such general matters as jurisdiction and abuse of process which have specifically arisen and been determined at the pre-trial stages, it is nevertheless possible for different specific issues of their similar*

*general natures or characters to be still capable of arising during the trial stages of a major criminal prosecution and of needing to be determined in their own respect at such later stages?* Again, this is an important legitimate issue arising for determination in this by the Appeals Chamber in this leave application.

9. A few general issues also arise from the foregoing, e.g. the relevance or otherwise of the res judicata doctrine or time-barring under Rule 72 as such to some of the specific issues and objections raised in the **Abuse of Process Motion**. Indeed, it may be plausibly argued that the issues raised therein are not the same as those on which determinations have been made in such Trial Chamber Decisions as the Joinder Decision and the Service and Arraignment Decision of 27 January 2004 (#131, RP 6547-6562) and 29 November 2004 (#282, RP 10888-10894) respectively, notwithstanding that such latter issues may be mainly serving as background narrative stuff in the former. This is an important enough possibility for leave to be granted for relevant determination thereof by the Appeals Chamber.
10. It is also submitted that an overriding “exceptional circumstance” in this leave application is the radical, far-reaching and comprehensive or exhaustive scope of the import and effect of the alleged defects of jurisdiction and processual abuses, which could completely nullify the entire proceedings in the CDF trial and which also entails “irreparable prejudice” to at least the First Accused, the avoidance of which “irreparable prejudice” is being sought in this leave application. The characterisation of the language of the aforesaid **Abuse of Process Motion** as reflecting “a measure of legal and conceptual obscurantism” and as being “crafted not out of a mastery of legal principles but out of jurisprudential sophistry” (see paras. 6 and 7 respectively of the Separate Concurring Opinion in #387, RP 12535-12537), considering that the said language is part of a highly compressed argument within the short allowable

space compass of the said **Abuse of Process Motion**, may also qualify it as an “exceptional circumstance” and a potential “irreparable prejudice” to the concerned Applicant to warrant leave for a more ample presentation for consideration and determination by the Appeals Chamber.

#### **IV CONCLUSION**

11. Accordingly, the first Accused hereby seeks leave to appeal against the Trial Chamber’s “Decision on First Accused’s Motion on Abuse of Process” dated 28 April 2005, in terms of the provisions in Rule 73(B) of the SCSL/RPE.

Done in Freetown this 2<sup>nd</sup> day of May 2005.

DR. BU-BUAKETI JABBI

COURT APPOINTED COUNSEL

SAM HINGA NORMAN

FIRST ACCUSED