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SCSL-04-14-T
(12620-12626)

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SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

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

Registrar: Robin Vincent

Date filed: 11 May 2005

THE PROSECUTOR

Against

**SAMUEL HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA**
(Case No. SCSL-2004-14-T)

**PROSECUTION RESPONSE TO THE DEFENCE REQUEST FOR LEAVE TO
APPEAL AGAINST THE DECISION ON FIRST ACCUSED'S MOTION ON
ABUSE OF PROCESS**

Office of the Prosecutor:

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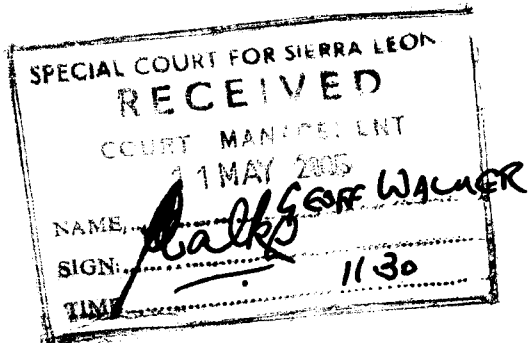
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I. INTRODUCTION

1. The "Defence Request for Leave to Appeal against the Decision on First Accused's Motion on Abuse of Process"¹ (the "**Defence Request**") has been submitted without regard to the unambiguous effect of the subject Decision² that stressed the futility of further litigation on the subject. The Prosecution is, however, obliged to reply to the Defence Request although, it is again confronted with convoluted expressions of unsubstantiated dissatisfaction of the Defence which do not raise legal issues that should need or warrant further consideration.
2. In this regard, the Prosecution submits that the Defense Request demonstrates neither exceptional circumstances nor irreparable prejudice pursuant to Rule 73 (B) of the Special Court Rules of Procedure and Evidence (the "**Rules**"). The Defence Request has not met the threshold required before the Chamber can exercise its discretion to grant leave to appeal.³

¹ *Prosecutor v Norman*, SCSL-04-14-T, Defence Request for Leave to Appeal against the Decision on First Accused's Motion on Abuse of Process" 2 May 2005 (hereinafter "**Defence Request**").

² *Prosecutor v. Norman et al.*, SCSL-04-14-T, "Decision on First Accused's Motion on Abuse of Process", 28 April, 2005 ("hereinafter "**Decision on abuse of Process**"). This decision includes two separate and concurring opinions, which found the motion itself to constitute an abuse of process. See *Prosecutor v. Norman et al.*, SCSL-04-14-T, "Separate and Concurring Opinion of Justice Pierre Boutet on the Decision on First Accused's Motion on Abuse of Process", 28 April 2005. (hereinafter "**Separate Opinion of Judge Boutet, 28 April 2005**") and *Prosecutor v. Norman et al.*, SCSL-04-14-T, "Separate and Concurring Opinion of Justice Bankole Thompson on the Decision on First Accused's Motion on Abuse of Process", 28 April 2005 (hereinafter "**Separate Opinion of Judge Bankole 28 April 2005**")

³ *Prosecutor v. Issa Hassan Sesay et al.*, SCSL-2004-15-T, "Decision on Application By the Second Accused For Leave for Interlocutory Appeal Against the Majority Decision of the Trial Chamber of 9th

3. The Prosecution further submits that the Defence Request constitutes a re-litigation of issues in continuum. The Defence Request seeks to re-argue issues that have already been determined in previous decisions of the Trial Chamber or that are on appeal.⁴
4. The Prosecution submits also, that the Defence Request amounts to an attempt to circumvent the prescription of Rule 72 which provides that objections based on preliminary motions, (*such as lack of jurisdiction*) shall be brought within 21 days of disclosure of material pursuant to Rule 66(A)(i), which takes place 30 days following the initial appearance of the Accused. It is therefore clearly evident, considering the scope and limits of Rule 72, that the **Abuse of Process Motion**⁵ which formed the basis of the current application was filed out of time and not in accordance with the specified Rule. This issue has been determined, settled and ruled upon by this same Chamber, before whom, leave to appeal is being sought.⁶

II. ARGUMENT

Absence of Exceptional Circumstances and Irreparable prejudice

5. It is the Defence submission, that the entire range of issues and processes since the Prosecution's Motion for Joinder, the Consolidated Indictment, the Amended Consolidated Indictment, constitute serious issues of grave and fundamental nature in the application for leave to appeal, which affects the entire trial process, and its very integrity as an international criminal adjudication body. Further, the Defence contends that it also involves both exceptional circumstances and the

December 2004 on the Motion on Issues of Urgent Concern to the Accused Morris Kallon", 2 May 2005, at P.5

⁴ *Prosecutor v. Norman et al.*, SCSL-04-14-T, "Decision on Prosecution Application for Leave to Appeal "Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment", 15 December 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2003-08-PT, "Decision and Order on Prosecution Motions for Joinder," 27 January 2004; *Prosecutor v. Sesay et al.*, SCSL-04-15-PT, "Decision on Motion for Quashing of Consolidated Indictment", 21 April 2004; *Prosecutor v. Norman et al.*, SCSL-04-14-T, "Decision on First Accused's Motion on Abuse of Process", 28 April, 2005.

⁵ *Prosecutor v Norman*, SCSL-04-14-T, "Abuse of Process Motion by First Accused for Stay of Proceedings", 15 February 2005 (No.340, RP. 11972-11981) (hereinafter "**Abuse of Process Motion**")

⁶ Separate Opinion of Judge Boutet, 28 April 2005.

intended avoidance of irreparable prejudice to the Applicant as an accused person on trial, within the terms of Rule 73(B) of the SCSL/RPE.⁷

6. The Prosecution submits that the Defence Request fails to sufficiently particularize and clearly demonstrate how the impugned Decision on First Accused's Motion on Abuse of Process⁸ affects the integrity of the trial. The Defence Request is legally untenable, as it has failed to meet the high threshold of exceptional circumstances and irreparable prejudice to the Applicant, to warrant the Trial Chamber to grant leave to appeal.⁹
7. The Defence Request seems to purport that the exceptional circumstance in the application is evident in the "comprehensive and exhaustive scope of the import and effect of the alleged defects of jurisdiction and processual (*sic*) abuses which *could* completely nullify the entire proceedings in the CDF trial and which also entails "irreparable prejudice" to at least the First Accused"¹⁰. [emphasis added]
8. To the contrary, The Prosecution submits, that the Defence Request fails to explain how the alleged procedural errors have resulted in 'material prejudice' to the First Accused, let alone amounted to a violation of any of the First Accused's substantive rights or the lack of jurisdiction thereof. The Defence Request thus lacks the legal basis and supporting materials to attract the dispensation accorded under Rule 73(B).
9. The Prosecution contends further, that even the 'probability of an erroneous ruling by the Trial Chamber does not, of itself, constitute 'exceptional circumstances' for the purposes of Rule 73(B) application.¹¹

Res Judicata

10. It is the submission of the Prosecution that the Defence Request seeks to re-argue matters that the Court has already ruled upon or that are currently pending before

⁷ *Prosecutor v. Norman et al.*, SCSL-04-14-T, "Defence Request for Leave to Appeal against the Decision on First Accused's Motion on Abuse of Process", 2 May 2005.

⁸ Decision on abuse of Process, *Supra* note 2.

⁹ *Prosecutor v. Sesay et al.*, SCSL-04-15-T, "Decision on Application By the Second Accused For Leave for Interlocutory Appeal Against the Majority Decision of the Trial Chamber of 9th December 2004 on the Motion on Issues of Urgent Concern to the Accused Morris Kallon", 2 May 2005 at P. 5.

¹⁰ Defence Request, *Supra* note 1, para 10.

¹¹ *Supra* note 7, para 20.

the Appeals Chamber, in an unbroken progression. There has to be finality in the judicial process, which is that, there should at a certain stage, be an end to litigation in order to prevent parties from re-litigating issues that have been laid to rest by the judges.¹²

11. Furthermore, the Defence Request contains arguments that relate to the jurisdiction of the Court from its very inception, and in particular, the personal jurisdiction of the Court over the accused persons.¹³
12. In this instance, it is the Prosecution's submission that the well established principle in international law of *res judicata*, directly relates to the above circumstances. Decisions of this Court, competent to decide them are final and that the same issues may not be disputed again by the parties before that Court.¹⁴
13. The Prosecution further submits that there is no inherent right that resides in the First Accused to constantly and repetitively raise matters that have been settled before, or should have been raised at the appropriate time. A resurrection of these matters is legally impermissible and thus has no basis in the Statute of the Special Court or Rules of Procedure and Evidence.
14. It is also, the contention of the Defence, that there may be a "plausible argument that the issues raised in the current application are not the same as those determined in the Joinder Decision and the Service and Arraignment Decision of 27 January 2004 and 29 November 2004 respectively, notwithstanding that such latter issues may be mainly serving as background narrative stuff in the former. That it is an important enough possibility for leave to be granted for relevant determination thereof by the Appeals Chamber."¹⁵
15. The Prosecution submits to the contrary, that despite the high hypothesis conjectured in the Defence submission, the issues raised and determined in the Joinder Decision and the Service and Arraignment Decision of 27 January 2004 and 29 November 2004 respectively, notwithstanding the guise of nomenclature, are the same in context, content, characterization and intent. Therefore, to seek to

¹²Decision on Abuse of Process, *Supra* note 2 at p. 4-5.

¹³ Abuse of Process Motion, *Supra* note 5, (No.340, RP. 11972-11981).

¹⁴ Separate Opinion of Judge Boutet, 28 April 2005, *Supra* note 2, at p.2.

¹⁵ Defence Request, See *Supra* note 1, para. 9.

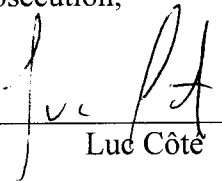
re-litigate the same issues before the same Chamber, especially on matters that are already before the Appeals Chamber, is indeed legally disingenuous.¹⁶

III. CONCLUSION

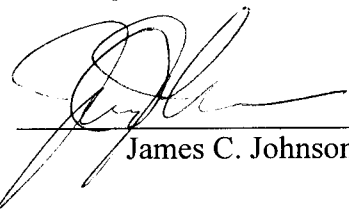
16. For the reasons given above, the Prosecution submits that the Defence Request for Leave to Appeal against the Decision on First Accused's Motion on Abuse of Process, be dismissed in its entirety. It is an impertinent application of a kind that deserves to have Rule 46 forcefully brought into play.

Done in Freetown this 11th day of May 2005

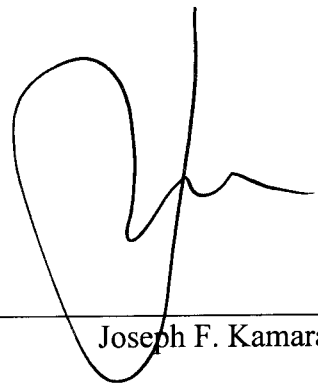
For the Prosecution,



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¹⁶ Separate Opinion of Judge Bankole 28 April 2005, *Supra* note 2 at P. 2

ANNEX A
INDEX OF AUTHORITIES

1. *Prosecutor v Norman*, SCSL-04-14-T, “Defence Request for Leave to Appeal against the Decision on First Accused’s Motion on Abuse of Process” 2 May 2005.
2. *Prosecutor v. Issa Hassan Sesay et al.*, SCSL-2004-15-T, “Decision on Application By the Second Accused For Leave for Interlocutory Appeal Against the Majority Decision of the Trial Chamber of 9th December 2004 on the Motion on Issues of Urgent Concern to the Accused Morris Kallon”, 2 May 2005.
3. *Prosecutor v. Norman et al.*, SCSL-04-14-T, “Decision on Prosecution Application for Leave to Appeal “Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”, 15 December 2004.
4. *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2003-08-PT, “Decision and Order on Prosecution Motions for Joinder,” 27 January 2004.
5. *Prosecutor v. Sesay et al.*, SCSL-04-15-PT, “Decision on Motion for Quashing of Consolidated Indictment”, 21 April 2004.
6. *Prosecutor v. Norman et al.*, SCSL-04-14-T, “Decision on First Accused’s Motion on Abuse of Process”, 28 April, 2005.
7. *Prosecutor v. Issa Hassan Sesay et al.*, SCSL-2004-15-T, 2 May 2005.
8. *Prosecutor v Norman*, SCSL-04-14-T, “Abuse of Process Motion by First Accused for Stay of Proceedings”, 15 February 2005.
9. *Prosecutor v. Norman et al.*, SCSL-04-14-T, ”Separate and Concurring Opinion of Justice Pierre Boutet on the Decision on First Accused’s Motion on Abuse of Process”, 28 April 2005.
10. *Prosecutor v. Norman et al.*, SCSL-04-14-T, “Separate and Concurring Opinion of Justice Bankole Thompson on the Decision on First Accused’s Motion on Abuse of Process”, 28 April 2005.