

I, JUSTICE EMMANUEL AYOOLA, Presiding Judge of the Appeals Chamber of the Special Court for Sierra Leone;

NOTING the Notice of Appeal and Submissions against the Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence ("the Appeal") filed on behalf of Moinina Fofana on 28 October 2004;

NOTING the Practice Direction for Certain Appeals before the Special Court, issued on 30 September 2004 ("the Practice Direction"), in particular paragraph 12 which relevantly states that "[t]he opposite party shall file a response within seven days of the filing of the appeal";

NOTING that the Prosecution Response to the Appeal was filed one day late on 5 November 2004 ("Prosecution Response");

NOTING the Prosecution Request for an Extension of Time to File Prosecution Response to Fofana Notice of Appeal and Submissions against the Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, filed on 8 November 2004 ("the Prosecution Request");

NOTING the Defence Reply to the Appeal filed on 9 November in which the Defence submits that the Appeals Chamber should disregard the Prosecution's untimely response as no substantive reason has been advanced for its oversight,¹ and also the Defence Notice of Intent Not to File a Separate Response to the Prosecution Request for Extension of Time, filed on 11 November 2004;

CONSIDERING that it is in the interests of justice for the Appeal to be determined without undue delay;

EMPHASISING that ordinarily applications for variation of time limits should be filed before the expiration of the time limit sought to be extended and that all Parties have an obligation to comply with the requirements laid down in the Practice Direction;

¹ *Prosecutor against Norman, Fofana, Kondewa*, SCSL-2004-14-T, Moinina Fofana Reply in Support of the Notice of Appeal and Submissions against the "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 9 November 2004, Paragraphs 6-8.

DECIDE that, acting pursuant to paragraph 20 of the Practice Direction, the Prosecution Request is granted. The one day delay in filing the Prosecution Response has been satisfactorily explained, the reasons for the delay being miscalculation of time and application of a wrong rule. This not being a case in which a party simply ignored the Rules and went to sleep, and the delay being for just one day, it is proper in the interest of justice to exercise a discretion to extend time to file the Prosecution Response. No prejudice will thereby be occasioned to the Defence. In the result, the time within which the Prosecution Response should have been filed is extended until the date of the filing of the Prosecution Response on 5 November 2004; and

FURTHER ORDER that:

1. The Prosecution Response is deemed to have been properly filed;
2. Pursuant to Rule 117(A) of the Rules I hereby appoint Justice Winter, Justice Robertson and myself to decide on the Appeal; and
3. There will be no oral hearing on the Appeal.

Done at Freetown this 12th day of November 2004



Justice Emmanuel Ayoola

