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SCSL-2003-07-PT
(1176-1179)

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SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 24th day of September 2003

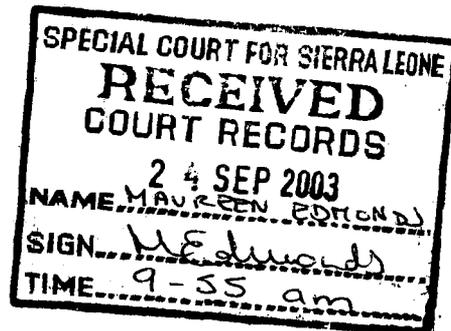
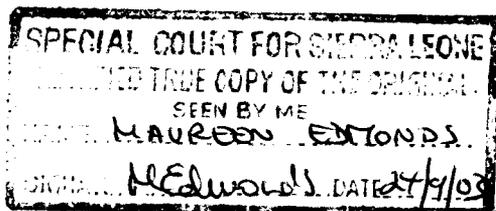
The Prosecutor against

Morris Kallon
(Case No.SCSL-2003-07-PT)

ORDER ON THE DEFENCE REQUEST FOR *SUBPOENA DUCES TECUM*

Office of the Prosecutor:
Desmond De Silva QC, Deputy Prosecutor
Luc Côté, Chief of Prosecutions

Defence Counsel:
Steven Powles
James Oury



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THE SPECIAL COURT FOR SIERRA LEONE (“the Special Court”),

SITTING as the Trial Chamber (hereinafter “the Chamber”), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet and Judge Benjamin Mutanga Itoe;

BEING SEIZED of the Defence Request for *Subpoena Duces Tecum* (hereinafter “the Defence Request”), filed on the 22nd day of July 2003, the Prosecution Response thereto (hereinafter “the Response”), filed on the 23rd day of July 2003, and the Defence Reply thereto (hereinafter “the Reply”), filed on the 28th day of July 2003;

CONSIDERING the Defence Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by the Lomé Accord (hereinafter “the First Defence Preliminary Motion”), filed on the 16th day of June 2003, and the Prosecution Response thereto, filed on the 23rd day of June 2003;

CONSIDERING the Defence Application for Extension of Time to file Reply to the Prosecution Response to the First Defence Preliminary Motion, filed on the 30th day of June 2003 (hereinafter “the Defence Application”), seeking, *inter alia*, disclosure by the Prosecutor and the Attorney-General of Sierra Leone of various documents pertaining to the Lomé Accord and to the establishment of “the Special Court”;

CONSIDERING the Defence Request for Order of Disclosure from the Prosecutor, filed on the 9th day of July 2003 (hereinafter “the Request for Disclosure”);

CONSIDERING the Order on the Defence Application for Extension of Time to file Reply to the Prosecution Response to the First Defence Preliminary Motion, rendered on the 16th day of July 2003, (hereinafter “the Order”), which dismissed, in its entirety, “the Defence Application” and CONSIDERING further that “the Order” declared “the Request for Disclosure” moot;

NOTING THE SUBMISSIONS OF THE PARTIES

The “Defence Request”

1. By means of two letters sent to the Attorney-General of Sierra Leone on the 30th day of June 2003 and on the 1st day of July 2003, the Defence requested the Attorney-General of Sierra Leone to disclose certain documents pertaining to the Lomé Accord and to the establishment of “the Special Court”.

2. The Defence, having received no response from the Attorney-General of Sierra Leone on this matter, is now asking “the Chamber” to assist the Defence with obtaining the requested documents, in order to enable it to prepare its reply to the Prosecution Response to “the First Defence Preliminary Motion”. Therefore, the Defence is asking “the Chamber” to issue a *subpoena duces tecum* to the Attorney-General of Sierra Leone, ordering

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him to disclose the documents for the purposes of preparing its reply.

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The Prosecution "Response"

3. In its "Response", the Prosecution contends that such a *subpoena duces tecum* should be denied, in so far as "the Defence Request" is made pursuant to the "Defence Application", which was dismissed in its entirety by "the Chamber" in its "Order".

4. The Prosecution therefore concludes that, since "the Chamber" dismissed "the Defence Application" for the purpose of obtaining the documents, the request for a *subpoena duces tecum* to obtain the selfsame documents is inappropriate and should be dismissed.

The Defence "Reply"

5. The Defence firstly contends in its "Reply" that the Prosecution does not have the necessary *locus standi* to respond to "the Defence Request", since the *subpoena duces tecum* is directed to the Attorney-General of Sierra Leone and not to the Office of the Prosecutor.

6. The Defence further argues that, at the time of filing, it had not been served with a copy of "the Order", and therefore, was not aware of the dismissal of "the Defence Application".

7. Finally, the Defence is of the opinion that "the Chamber"'s refusal to grant "the Defence Application" does not affect "the Chamber"'s power to issue the *subpoena duces tecum*, in so far as: 1) "the Order" is currently under appeal; 2) the documents requested are of crucial importance to the Defence for the purpose of "the First Defence Preliminary Motion"; and 3) the documents requested are of equal importance to the Defence in the preparation of the Accused's trial in general.

AFTER HAVING DELIBERATED:

On the serving of "the Order" to the Defence Counsel

8. "The Chamber" takes notice of the fact that the Defence was not served with "the Order" before filing its "Request".

9. "The Chamber" shares the concerns of the Defence with respect to late service of "the Order".

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On the merits of the "Defence Request"

10. In its "Order", the Chamber found, *inter alia*, that there was no sufficiently clear indication provided in the "Defence Application", as to the specific points the documents requested were intended to address and why, for "the Chamber" to grant the Defence an extension of time to file its reply to the Prosecution Response.

11. "The Chamber" notes that the subject matter of the "Defence Request" is, by all means, identical to that of the dismissed "Defence Application", in so far as the Defence is asking the Attorney-General of Sierra Leone for the same documents as it was asking the Prosecution for in its "Request for Disclosure", in order to enable it to prepare its reply to the Prosecution Response to "the First Defence Preliminary Motion".

12. Therefore, "the Chamber" confirms its findings on the abovementioned "Defence Application" and deems that the said findings should identically apply to the "Defence Request".

FOR THESE REASONS, "THE CHAMBER"

HEREBY DISMISSES the "Defence Request" that "the Chamber" issue such a *subpoena duces tecum* to the Attorney-General of Sierra Leone for the purposes of enabling the Defence to prepare its reply to the Prosecution Response to "the First Defence Preliminary Motion".

Done in Freetown, Sierra Leone, this 24th day of September 2003

The Trial Chamber

Judge Pierre Boutet



CERTIFIED
MAUREEN EDWARDS
M. Edwards 24/9/03