

SCSL - 2004 - 15 - T.
(7185 - 7189)

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: Mr. Robin Vincent

Date filed: 19 July 2004

THE PROSECUTOR

Against

ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

Case No. SCSL - 2004 - 15 - ~~KT~~

PROSECUTION RESPONSE TO DEFENCE APPLICATION FOR LEAVE TO APPEAL
GBAO - DECISION ON APPLICATION TO WITHDRAW COUNSEL

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Case No. SCSL – 2004 – 15 – PT

**PROSECUTION RESPONSE TO DEFENCE APPLICATION FOR LEAVE TO APPEAL
GBAO – DECISION ON APPLICATION TO WITHDRAW COUNSEL**

The Prosecution files this response to the Defence Application for leave to file an interlocutory appeal against the Decision on Application to Withdraw Counsel for Accused Gbao, dated 6 July 2004.

I. BACKGROUND

1. On 6 July 2004, during the course of the proceedings, the Accused Gbao orally requested to terminate the services of his Counsel, stating that he does not recognize the legitimacy of the Special Court. The Accused Gbao subsequently added that he wishes to defend himself.¹
2. On 6 July 2004, the Trial Chamber rendered a Decision on Application to Withdraw Counsel, in which it denied the Accused Gbao's request to terminate the services of his Counsel ("Decision"), holding that the Accused "has not established exceptional circumstances as

¹ See page 35, line 24, in transcripts of the 6 June 2004 session, where Accused Gbao stated in Court: "I stand to defend myself".

required by Rule 45(E) in order to withdraw his Counsel”.² The Chamber accordingly ordered that “Counsel currently on Gbao’s Defence Team must continue to represent the Accused and shall, in accordance with Rule 45(E), conduct the case to the finality of the proceedings.”³

3. On 9 July 2004, pursuant to Rule 73(B) of the Rules, the Defence filed an Application for leave to appeal against the Chamber’s Decision (“Application”), which was served on the Prosecution on 12 July 2004.
4. On 13 July 2004, the Trial Chamber issued an Order for Expedited Filing, ordering the Prosecution to respond to the Defence Application by 19 July 2004 and the Defence to reply to any such response by 22 July 2004. The Prosecution files this Response to the Application.

II. DEFENCE SUBMISSIONS

5. The Defence requests the Chamber to grant leave to appeal due to the existence of exceptional circumstances and since otherwise irreparable prejudice would be caused to both parties.
6. The exceptional circumstances cited by the Defence include the status and nature of the right to legal representation, including self representation; the novelty of the issue in question; the contribution to international criminal law which an appellate decision on this matter could make; the facts that co-Accused are potentially affected and were not given the opportunity to address the Court on this matter; that the Accused is asking to dismiss counsel as opposed to counsel asking to withdraw; that the Decision adversely affects Counsel themselves; and that the Decision impacts on all aspects of the Trial.
7. The Defence argues that it will incur irreparable prejudice if leave to appeal is denied. It bases its arguments on the assertions that cross-examinations conducted without proper instructions may lead to the production of evidence which is detrimental to both the Accused and his co-Accused; that investigations which will be carried out without the guidance of the Accused could lead to interviewing witnesses who may adversely affect the defence case; and that a possible conviction will be based on proceedings where no assertions on behalf of the Accused will be made. The Defence bases this last assertion on the expected non-appearance of the Accused coupled with his refusal to provide instructions to Counsel. The Defence further argues that the Prosecution will suffer irreparable prejudice due to its inability to cross-

² Decision, disposition paragraph.

³ Decision, disposition paragraph.

examine the Accused and the lack of opportunity of its witnesses to identify the Accused.

8. The grounds for appeal cited by the Defence centre on the Chamber's erroneous denial of the right of the Accused to represent himself, in that the Chamber misapplied Rule 45(E), which relates to situations where Counsel wishes to withdraw and not to cases where the Accused asks to dismiss Counsel; the Chamber failed to hear Defence Counsel for the Accused and co-Accused prior to ruling on this issue; and the fact that the decision was inconsistent with a previous decision issued by this Trial Chamber addressing the right to self-representation.⁴

III. PROSECUTION ARGUMENTS

Exceptional circumstances

9. The Prosecution agrees with the Defence that the right to self representation is a fundamental aspect of the right to a fair trial, and that there is no guiding appellate decision, or even a body of consistent trial chamber decisions, of an international criminal tribunal on the nature of and possible limitations on this right.⁵ The Prosecution submits that these factors, coupled with the complexity of the trial and the gravity of the crimes charged, may constitute exceptional circumstance justifying a leave to appeal. It is further submitted that the peculiar circumstances of this situation, in particular, the non-recognition of the Court by the Accused and the fact that several Accused persons are jointly tried, may also be considered exceptional.
10. In addition, the Prosecution wishes to emphasize that the failure of the Chamber's Decision to address Gbao's request to exercise his right to self-representation, may in itself constitute an exceptional circumstance justifying the granting of leave to appeal.

Irreparable prejudice

11. The Prosecution agrees with the Defence that the Accused may suffer irreparable prejudice if leave to appeal is denied. The Prosecution bases this position on its assumption that the denial of the right of the Accused to self-representation entailed his resolution to abstain from the proceedings as well as his refusal to provide Defence Counsel with instructions. In light of

⁴ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-PT, Decision on application of Samuel Hinga Norman for self-representation, 8 June 2004.

⁵ See Defence arguments in paragraph 6.c of its Application, referring to the divergence of trial chamber decisions of international criminal tribunals on the issue of self-representation, citing the *Milosevic*, *Seselj* and *Barayagwisa* cases.

these underlying assumptions, Defence Counsel's conduct of the case without the instructions or presence of the Accused at trial, may entail irreparable prejudice for the reasons enumerated in the Defence Application.

Interest of Justice

12. The Prosecution submits that in light of the controversial jurisprudence on this issue, and the relevance of the matter to the proceedings before the Special Court where it has been an issue in both trials before the Trial Chamber, the interest of justice and the principle of finality will best be served by a consideration of this matter by the Appeals Chamber. Such consideration, at this stage, will also prevent the issue from constituting ground for appeal at the end of this trial and will ensure that the integrity of this trial is not compromised by Defence strategies designed to delay the proceedings or achieve other frivolous ends.

No prejudice to the right of the Accused to a fair and expeditious trial

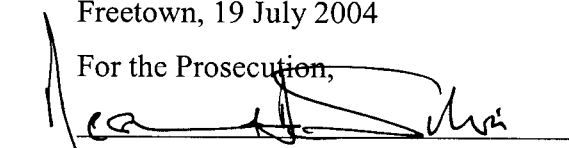
13. The Prosecution emphasizes that granting this Application will not delay the current proceedings since applications for leave to appeal, in accordance with Rule 73(B) "shall not operate as a stay of proceedings unless the Trial Chamber so orders." The Prosecution urges this Chamber to expeditiously deal with the Application, since the sooner the Appeals Chamber is seized of the matter, the less detriment will be suffered by the Accused.
14. Furthermore, it is submitted that the matter does not require a lengthy appeal procedure, since pursuant to Rule 117(A) "any appeal under Rules 46, 65, 73(B), 77 or 91 shall be heard expeditiously and may be determined entirely on the basis of written submissions."

IV. CONCLUSION


15. The Prosecutor submits that for the foregoing reasons, the Defence Application merits the careful consideration of the Trial Chamber.

Freetown, 19 July 2004

For the Prosecution,



 Desmond de Silva, QC



 Lesley Taylor