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SCSL-2004-15-T  
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**SPECIAL COURT FOR SIERRA LEONE**

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		Case No:	SCSL-2004-15-T
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Appeal against the Decision of the Trial Chamber Refusing the Application for Bail by Morris Kallon

Dated: 23<sup>rd</sup> July 2004

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**CMS7 FORM**

**SPECIAL COURT FOR SIERRA LEONE**

**IN THE APPEALS CHAMBER**

**BEFORE: JUSTICE AYOOLA – PRESIDENT  
JUSTICE A. RAJA N. FERNANDO – VICE PRESIDENT  
JUSTICE WINTER  
JUSTICE GELAGA KING**

**REGISTRAR: MR. ROBIN VINCENT**

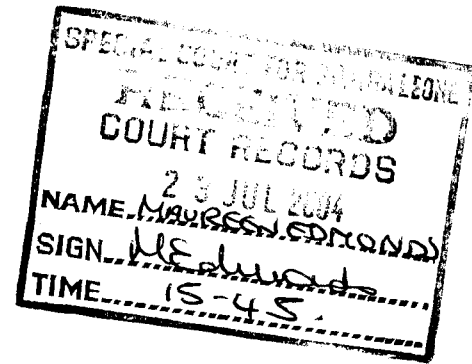
**DATE: 23<sup>rd</sup> July 2004.**

**THE PROSECUTOR**

**AGAINST**

**MORRIS KALLON**

**CASE NO. SCSL-04-15-T**




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**APPEAL AGAINST THE DECISION OF THE TRIAL CHAMBER REFUSING  
THE APPLICATION FOR BAIL BY MORRIS KALLON**

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**Office of the Prosecutor:**

Luc Cote, Chief of Prosecutions  
Robert Peti, Senior Trial Attorney  
Abdul Tejan Cole  
Ms. Boi-Tia Stevens

**Defence Counsel for Morris Kallon:**

Shekou Touray  
Raymond M. Brown  
Melron Nicol-Wilson  
Wanda Akin

**Prosecutor v. Sesay, Kallon and Gbao (SCSL-2004-15-PT)****INTRODUCTION**

1. The Defence for Morris Kallon submits this appeal against the decision of the Trial Chamber refusing the application for bail by Morris Kallon.

**PROCEDURAL BACKGROUND**

2. On the 29<sup>th</sup> of October 2004 Defence filed 'Confidential Motion for Bail' in respect of Morris Kallon pursuant to Rule 65 of the rules and a request for hearing.
3. By a decision of the Trial Chamber dated 23<sup>rd</sup> February 2004, the request for bail was refused and the 'Confidential Motion for Bail' dismissed.<sup>1</sup>
4. On the 27<sup>th</sup> of February 2004 the defence filed a 'Motion for Extension of Time for Filing Application for leave to Appeal against Refusal of bail'.
5. The Prosecution did not file a response to the Motion.
6. By order of the President of the Special Court dated 5<sup>th</sup> March 2004, the time limit for Filing Application for leave to Appeal against Refusal of bail was suspended.
7. The Appeals Chamber by decision made 19<sup>th</sup> April 2004, granted an extension of time limit for an additional 14 days from the date of its decision for the filing of an application for leave to appeal against refusal of bail on good cause shown by the defence.
8. By corrigendum issued on the 26<sup>th</sup> of April 2004 by the acting President of the Special Court, it was ordered that the name of the Justice Robertson which was inadvertently included on the cover sheet and signature page of the decision of the Appeals Chamber dated 19<sup>th</sup> April, 2004, be deleted.
9. On the 4<sup>th</sup> of May 2004 the Defence for Morris Kallon filed an Application for Leave to Appeal against the Decision of the Trial Chamber refusing the Application for Bail by Morris Kallon. This Application was done pursuant to Rule 65(E) of the Rules of Procedure and Evidence of the Special Court.
10. On the 7<sup>th</sup> of May 2004 the Prosecution filed a Response to Defence Application for Leave to Appeal against the decision of the Trial Chamber refusing the Application for Bail by Morris Kallon.
11. On the 12<sup>th</sup> of May 2004 the Defence for Kallon filed a Reply to the Prosecution response to Defence Application for Leave to Appeal against the decision of the Trial Chamber refusing the Application for Bail for Morris Kallon.
12. On the 23<sup>rd</sup> of June 2004 Justice George Gelaga King of the Appeals Chamber of the Special Court granted the Defence Leave to Appeal against the decision of Judge Boutet refusing bail to the Accused Kallon.

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<sup>1</sup> Decision on the Motion By Morris Kallon for Bail ('Kallon Bail Decision')

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**THE IMPUNGED DECISION**

13. The Learned Judge dismissed the Motion for Bail on the following grounds:-
- a. That the burden of proof on the question of bail rest on the Defence and that the Defence must show that further detention of the Accused is neither justified nor justifiable in the circumstances at hand;
  - b. That the Grounds of Appeal of the Accused did not convince him that in the specific circumstances of the presence of the Special Court in Sierra Leone, particularly in the light of the submissions by the Government of Sierra Leone that the Accused should be granted Provisional Release.
  - c. That the community ties alleged by the Defence on behalf of the Accused do not constitute sufficient foundation to meet the prescribed requirements for Bail.
  - d. That all allegations against the Accused are of such gravity and seriousness that, if released within the Local Community of Sierra Leone, could undermine his own safety and his appearance for Trial. That furthermore the evidence adduced by the Defence pertains to the Accused community ties in Bo rather than Freetown.
  - e. That he is not satisfied that the Accused will appear for Trial if granted bail.
14. The Learned Judge decline to examine in detail the substantive question of whether the Accused will pose a danger to any victim, witness or other person if granted bail.

**LEGAL ARGUMENTS AGAINST BAIL REFUSAL**

**Burden of Proof**

15. The Defence submits that the Learned Judge committed an error of law and fact by holding that the Defendant must bear the burden of proof on the question of bail. The Kallon bail decision analyzes the jurisprudence of both the ICTR and ICTY on the subject. In particular it noted that ad-hoc tribunals had eliminated the ‘exceptional circumstance requirement from their respective versions of rule 65 (B), lowering but not eliminating the burden of proof required of the Defence.<sup>2</sup>
16. The Kallon Bail decision also relied upon several ICTY cases including The Prosecutor v Mrdja<sup>3</sup> for the proposition that the bail rules of International Tribunals should not be interpreted ‘in abstracto but with regard to the factual basis of the single case and with respect to the concrete situation of the individual participant<sup>4</sup>

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<sup>2</sup> Kallon Bail Decision paragraph 29

<sup>3</sup> Prosecutor v Darko Mrdja, Decision on Darko Mrdja’s Request for Provisional release, 15 April 2002

<sup>4</sup> Kallon Bail Decision paragraph 30

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17. The Defence submits that in the case of Prosecutor v Momcilo Krajisnik and Biljana Plavsic<sup>5</sup>, Judge Patrick Robinson in a dissenting opinion in paragraph 6 said,

*'The customary rule, from which Rule 65(B) in its original form derogated, is the principle established in Article 9(3) of the ICCPR that it shall not be the general rule that persons awaiting trial shall be detained in custody.'*

This customary rule is also reflected in Article 5(3) of the European Convention on Human Rights,<sup>6</sup> and Article 7 of the American Convention on Human Rights.<sup>7</sup> There can be little doubt that the effect of this customary norm is to make pre-trial detention an exception, which is only permissible in special circumstances. Again, the foundation for this customary norm is the presumption of innocence. This is the way the European Court of Human Rights ('European Court'), in considering the question of bail, puts it:

*'Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exception to the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases'*<sup>8</sup>

### The Submissions of the Government of Sierra Leone

18. The Defence submits that the Government of Sierra Leone did not consider the application of Morris Kallon for bail independent of the application of Tamba Alex Brima. The submissions of the Government of Sierra Leone in the Kallon case is exactly the same as the submission of the State in the Tamba Alex Brima case and therefore should not be considered objective.
19. The Defence submits that the Learned Judge erred in his assessment of the submission of the Government of Sierra Leone in that he gave due consideration, to a stereo typed submission which is not reflective of the current situation in Sierra Leone at the time of the application for bail by Kallon, even though it may have been reflective of the situation in Sierra Leone at the time of the application for bail by Alex Brima. In the decision dismissing the bail application the learned judge said:

*'Nevertheless, it is important to stress the fact that the present submission have been given due consideration in so far as they provide very valuable and Substantial Information on the Current situation in Sierra Leone, and is, in this respect, an Important factor in determining the Public Interest aspect'*

<sup>5</sup> Decision on Momcilo Krajisnik Notice of Motion for provisional release, Case No. IT-00-39&40-PT

<sup>6</sup> The European Convention on Human Rights was signed in Rome on 4 November 1950 and entered into force on 3 September 1953. The relevant provision states: "Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article { } shall be entitled to trial within a reasonable time or to be released pending trial. Release may be conditional by guarantees to appear for trial."

<sup>7</sup> The American Convention on Human Rights entered into force on 18 July 1978. The relevant provisions state: "Any person detained { } shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial."

<sup>8</sup> *Ilijkov v. Bulgaria*, ECHR, Judgement of 26 July 2001 ("Ilijkov. Bulgari"), para 85 (emphasis added)

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**The Presence of the Special Court in Sierra Leone**

20. The Defence submits that the presence of the Special Court in Sierra Leone should not interfere with the rights of the accused to bail. The establishing parties of the Special Court i.e. The United Nations and the Government of Sierra Leone recognise that the Special Court had no independent Police Force and the Sierra Leone police were limited in its capacity at the time of the creation of the Special Court. Nonetheless, the establishing parties seated the court in Sierra Leone. Article 16 of The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of A Special Court for Sierra Leone ('the Agreement') acknowledges the 'present incapacity' of the Government of Sierra Leone to provide 'security, safety and protection of persons referred to' in the Agreement. Nonetheless, the establishing parties seated the Special Court in Freetown, Sierra Leone.
21. Rule 65 of the rules of procedure and evidence of Special Court governing bail was established Pursuant to Article 14 of the Statue of the Special Court, which was annexed to the Agreement. The Agreement, the Statute, and the Rules, read in pari material make it clear that despite the circumstanced surrounding the presence of the Court in Sierra Leone, Rule 65 vest discretion in the Special Court to grant bail or provisional release to an accused. It is not a mandatory detention rule, notwithstanding the difficulties caused by the location of the Special Court in Sierra Leone.
22. The Defence submits that its opinion that the Learned Judged erred in law is further buttressed with the fact that while the judge took the ICTI position into consideration (where there is a judicial history of not granting provisional release), he did not look at the position of the ICTY where there is a judicial history of the granting of provisional release.
23. Morris Kallon has community ties in Freetown which is the seat of the Court. The defence submits that it is reasonable inclined that by opining that the accused does not have community ties in Freetown, the Learned Judge failed to make any inquiry on this issue before arriving at that conclusion and thereby committed a grave procedural error prejudicial to the accused.
24. It is hereby submitted that Morris Kallon has community ties in Freetown, but stronger community ties in Bo District, where he was born and where his extended family lives.

**The seriousness of the charges**

25. The Defence will submit that the Learned Judge's reliance on the seriousness of the charges against Morris Kallon deprived the accused of an individualised determination of eligibility for bail an exacerbated the problem of defacto mandatory detention. The seriousness of the offences although relevant should not aversely affect the right of the accused to bail.
26. It is further submitted that the seriousness of the charges is not a requirement for the consideration of bail under rule 65 (B) of the rules. The bail decision contains no analysis of the allegations against Morris Kallon beyond the conclusory statement that they are 'of gravity and seriousness.'<sup>9</sup> Since the jurisdiction of the Special Court is restricted to 'serious violations

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of International Humanitarian Law' this means in effect that any accused will be denied bail on the basis of his indictment and that Kallon in particular has been denied an individualized assessment of reasons of the denial of bail.

**Safety of the Accused**

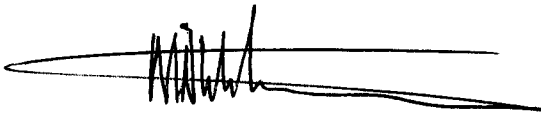
27. The Defence submits that the learned judge did not give reasons for suggesting that the release of the accused within the local community of Sierra Leone will undermine his own safety. The Defence submits that the release of the accused to the local community will not undermine his safety.

**The Judge did not consider the issue danger to victims and witnesses.**

28. The Defence submits that pursuant to the provisions of 65 (B) of the Rules the learned judge failed adequately or at all to consider the element of danger under the rule and thereby reneged on his obligation to apply the rule properly to the facts in issue in respect of the right to the accused to bail.

**CONCLUSION**

29. The Defence respectfully request the appeals chamber to rule expeditiously on this application and to grant the defence an oral hearing on this matter.



Shekou Touray  
Raymond M. Brown  
Melron Nicol-Wilson

23<sup>rd</sup> July 2004.

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<sup>9</sup> Kallon Bail Decision paragraph 44