

Se SL - 2003 - 10 - PT
(482 - 484)



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: 9th day of October 2003

The Prosecutor against

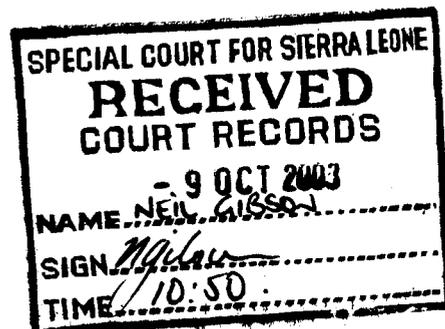
Brima Bazzy Kamara
(Case No.SCSL-2003-10-PT)

ORDER PURSUANT TO RULE 72 (E)

**APPLICATION BY BRIMA BAZZY KAMARA IN RESPECT OF JURISDICTION
AND DEFECTS IN THE INDICTMENT**

Office of the Prosecutor:
Luc Côté, Chief of Prosecutions

Defence Counsel:
Ken Fleming, Q. C.



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

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

SEIZED of the Application by Brima Bazzy Kamara in Respect of Jurisdiction and Defects in the Indictment, filed on the 22nd day of September 2003 (“the Application”), in relation to the criminal suit against **Brima Bazzy Kamara** (“the Accused”);

CONSIDERING the Prosecution’s Response to “the Application” filed on the 29th day of September 2003 (“the Response”);

CONSIDERING that the Defence has not exercised its right to file a reply to the “Response” within the time limits prescribed by Rule 7 of “the Rules”;

CONSIDERING the entire provisions of Rule 72 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING, in particular, the provisions of Rule 72 (E) of “the Rules” which state that “the Chamber” shall refer to the Appeals Chamber for a determination as soon as practicable any preliminary motion which raises a serious issue relating to jurisdiction;

CONSIDERING that the Indictment charges “the Accused” on several counts for Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court (“the Statute”), Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of “the Statute”, and of Other Serious Violations of International Humanitarian Law, punishable under Article 4 of “the Statute”;

CONSIDERING that “the Accused” contends that the Special Court Agreement 2002 (Ratification) Act (“the Act of 2002”), because it is a “Sierra Leonean Act”, must be interpreted pursuant to the Constitution of Sierra Leone;

CONSIDERING that “the Accused”, in light of the above, contends that the Indictment against “the Accused” is invalid in so far as the Prosecutor David Crane is not a prosecutor pursuant to “Sierra Leonean law”, the approval of the Indictment was not made in the course of a public hearing and Judge Boutet, who confirmed the said Indictment, was not appointed pursuant to the Constitution of Sierra Leone;

CONSIDERING that “the Accused” further argues that the crimes defined in Articles 2, 3 and 4 of “the Statute”, adopted into “Sierra Leonean law” by “the Act of 2002”, offend the Constitution of Sierra Leone in so far as the said “Act of 2002” purports to create liability for punishment prior to its passing and that, therefore, allegations in the Indictment prior to the passing of “the Act of 2002” should be struck out;

CONSIDERING that “the Accused” also recalls that a general amnesty was granted by Article IX of the Lomé Peace Agreement in respect of crimes committed in Sierra Leone pre-dating the 7th day of July 1999, and argues that the disclaimer by the Special Representative of the United Nations issued upon signing of the said Agreement, according to which no amnesty would be granted in respect of international criminal law, does not create law in so far as it was not adopted by the parties to the said Agreement;

CONSIDERING that, in light of the above, “the Accused” concludes that the Government of Sierra Leone cannot ignore its obligations under the Lomé Peace Agreement and that the latter has full force and effect in respect of the Indictment against “the Accused”, and requests, therefore, the relevant counts in the Indictment to be struck out;

NOW THEREFORE,

THE CHAMBER,

PURSUANT TO RULE 72 (E) OF “THE RULES”,

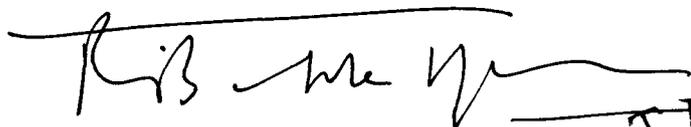
FINDS that the foregoing submissions raise a serious issue relating to the jurisdiction of “the Special Court” to try “the Accused” on all the counts of the Indictment that have been issued against him;

REFERS this “Application”, together with the “Response”, to the Appeals Chamber of “the Special Court” for determination;

ORDERS that the reference of this “Application” to the Appeals Chamber shall not operate as a stay of the trial of “the Accused”;

Done in Freetown, this 9th day of October 2003

The Trial Chamber



Judge Bankole Thompson
Presiding Judge

