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SCSL - 2003 - 07 - PT - 076

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(1135 - 1140)

SPECIAL COURT FOR SIERRA LEONE

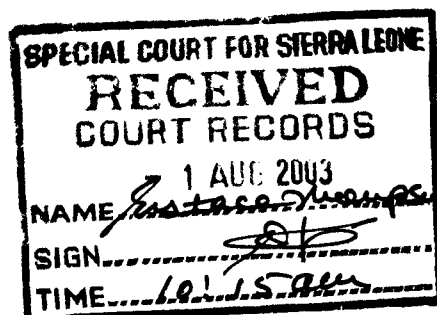
OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Robin Vincent

Date filed: 31th July 2003



THE PROSECUTOR

Against

MORRIS KALLON also known as (aka) BILAI KARIM

CASE NO. SCSL - 2003 - 07 - PT

**PROSECUTION RESPONSE TO DEFENCE "MOTION FOR LEAVE TO
APPEAL 'ORDER ON THE DEFENCE APPLICATION FOR EXTENSION
OF TIME TO FILE REPLY TO PROSECUTION RESPONSE TO THE FIRST
DEFENCE PRELIMINARY MOTION (LOME AGREEMENT)'"**

Office of the Prosecutor:

James C. Johnson, Acting Chief of Prosecutions
Robert Petit, Senior Trial Counsel
Paul M. L. Flynn, Trial Counsel

Defence Counsel:

James Oury
Steven Powles

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OFFICE OF THE PROSECUTOR
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INTRODUCTION

The Prosecution submits that the arguments presented by the Defence in their Application for Leave to Appeal are without merit and therefore the Defence Application should be rejected.

ARGUMENT

A. Procedural Matters

1. On 16 June 2003, the Defence filed a “Preliminary Motion based on Lack of Jurisdiction/Abuse of Process: Amnesty provided by the Lome Accord” (**“Preliminary Motion”**) on behalf of Morris Kallon (**“the Accused”**). The Prosecution filed a “Prosecution Response to the First Defence Preliminary Motion (Lome Accord)” (**“Prosecution Response”**) on 23 June 2003. The Defence was granted an extension of time until 30 June 2003 to file its Reply to the Prosecution Response.
2. Instead of filing a Reply to the Prosecution Response, the Defence filed an “Application for an Extension of Time to Reply to the Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement)”, seeking a seven day delay in order to obtain “a considerable body of documentary material” from the Attorney General and Minister of Justice of the Republic of Sierra Leone and the Chief of Prosecution before the Defence considered it possible for them to properly reply to the Prosecution Response. The extent of the material sought by the Defence is to be found in letters attached to the said Application.
3. On 16 July 2003, the Trial Chamber issued an “Order on the Defence Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement)” (**“the Decision”**) refusing to grant to the Defence an extension of time to obtain the documents sought and file the Defence reply. The Chamber held that:
 - a) The nature of the documents sought was “very broad and vague”;
 - b) That the purported importance of those documents would have warranted a more comprehensive approach;
 - c) That the Chamber could find no peremptory causation between the sought documents and the Prosecution Response on the Preliminary Motion on Amnesty;

- d) Expressed strong reservation as to the overall relevance of the said documents in connection with the issue raised in the Preliminary Motion for Amnesty;
 - e) That the Application had not established that that there were exceptional circumstances or good cause to substantiate the relief sought.
4. On 24 July 2003, the Defence filed a “Motion for Leave to Appeal the ‘Order on the Defence Application For an Extension of Time to File A Reply to the Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement)’” (“**Defence Motion**”).

B. The Application for Leave to Appeal

5. The Defence submits in the Defence Motion that the Trial Chamber’s reasoning was flawed for the reasons as set out in para. 5(i) – (iii) incl. and further contend at para. 6, that:
- “ the resolution of the matter by the Appeals Chamber is vital for the Defence in order to ensure that the Accused receives a fair trial guaranteed to him by Article 17 of the Special Chamber Article 17(4)(B) guarantees the Accused the right to “adequate time and facilities for the preparation of his defence” and that the decision of the Trial Chamber denies the Accused of this right.
6. The Prosecution submits however that the Decision of the Trial Chamber was valid, reasoned and in accordance with applicable International Law and the Rules of Procedure of Evidence of the Special Court (“**the Rules**”). Rule 7(c) of the Rules clearly vests discretion in the Trial Chamber to modify or extend the time for the filing of a Reply to a Response. While Rule 7 of itself provides no specific criteria or guidance for the Chamber when considering an application for an extension of time to file a Reply of this nature¹, it is apparent from reading para. 15 of the Order that the

¹ See *Prosecutor v Morris Kallon, SCSL-2003-07-PT*, “Order on Defence Application for Extension of Time to File Reply to Prosecutions Response to Preliminary Motions”, dated 24 June 2003.

In both the ICTY and ICTR both the Trial Chamber and the Appeal Chamber are permitted to extend time limits upon “good cause” being shown -Rule 72 OF ICTY and ICTR (Preliminary Motions) together with Rule 127 ICTY and 116 ICTR (Appellate Procedure). See also *The Prosecutor v. Krajisnik*, IT-00-39 & 40-PT, 31 May 2003; *The Prosecutor v. Obrenovic, Blagojevic, Jokic*, IT-01-43-PT, IT-98-33/1-PT, IT—1-44-PT, 4 October 2001, cited in

Chamber was looking for “good cause” – but was unable to find any justification, cause or reason for the documents sought by the Defence and by extension, cause or circumstances to justify the relief sought.

7. The Prosecution submits that the Defence has consistently failed to establish the relevance of the documents sought or to sufficiently elaborate upon the arguments outlined in the First Defence Preliminary Motion (Lomé Agreement). Contrary to the Defence argument² that it had attempted “to explain the necessity or import of the documents” sought, nowhere within the Pleadings filed to date by the Defence, has the Defence provided such an explanation. In effect the Application for Leave does not assert any new grounds to support the allegation that the Chamber erred in its finding, but rather re-states that the documents sought are necessary for its reply, an assertion that has already been duly considered and ruled upon.

8. The First Preliminary Motion argues essentially that the Chamber lacks jurisdiction to prosecute crimes pre-dating the Lomé Agreement (7 July 1996), as Article IX of the Lomé Agreement granted an amnesty for those crimes and further that it would be an abuse of process for the Chamber to permit the prosecution of the accused for those crimes. Rule 73(B) of the Chamber permits the Chamber to grant leave to appeal where it is established that to do so would be in the “the interest of a fair and expeditious trial”. The Prosecution while acknowledging the Principle of Equality of Arms based on the fundamental concept of fair trial, submits that the Defence has not adequately established the manner in which the Defendant would be denied either a fair or expeditious trial through failure to grant leave to appeal the Chamber Order. Many of the documents sought by the Defence are outside the scope of the Defence arguments on jurisdiction as elaborated in its Preliminary Motion and therefore should have no relevance in drafting the reply to the “Prosecution Response to the First Defence Preliminary Motion (Lomé Accord)”, which the Defences desires to file.

Prosecution Motion in “Prosecution Response to Defence “Application for Extension of Time to File Preliminary Motions”, filed 6 June 2003.

² Para 5 (ii) Motion for Leave to Appeal the “Order on the Defence Application For an Extension of Time to File A Reply to the Prosecution Response to the First Defence Preliminary Motion (Lomé Agreement)”.

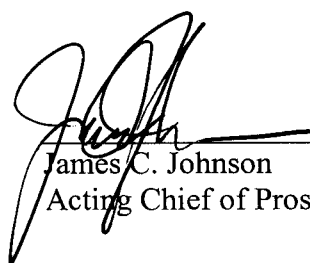
9. The Prosecution reiterates that in seeking an extension of Time to Reply to the Prosecution Response to the First Defence Preliminary Motion (Lomé Accord)" filed on 23 June 2003, the Defence is on the basis of its arguments, attempting to circumvent the rules of the Chamber by introducing new elements or issues in the proposed Reply that the Defence did not raise or address in its Preliminary Motion and would be tantamount to filing a new and additional motion. To permit this would neither be conducive to nor in the interest of an expeditious trial.
10. The Prosecution notes that at para. 7 of the Defence Motion, that the Defence seems to imply that the Chamber was influenced by extra judicial considerations and that the Accused' right to a fair trial was therefore jeopardized. The Prosecution strongly objects to such a characterization. The Chamber correctly took under consideration the effect of repeated attempts to delay filing of pleadings and the length of proceedings, but nowhere is it mentioned or even implied that budgetary considerations either weighed or influenced the decision. To imply that it did is unfounded and incorrect.

CONCLUSION

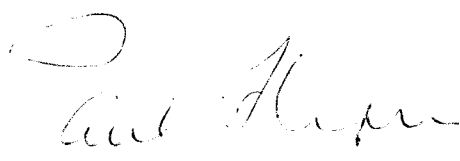
Based upon the foregoing, the Court should dismiss the Second Preliminary Motion in its entirety.

Freetown, 31 July 2003

For the Prosecution



James C. Johnson
Acting Chief of Prosecutions



Paul M. L. Flynn
Trial Counsel