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SCSL-2003-07-PT
(1380-1383)

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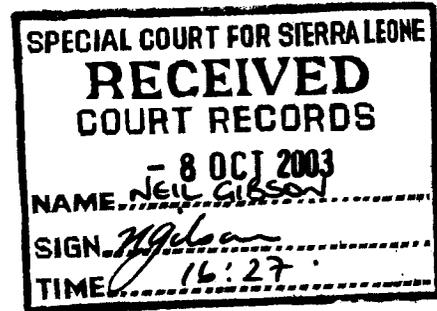
SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER

Before: Judge Robertson, President
Judge King, Vice President
Judge Ayoola,
Judge Winter,

Registrar: Robin Vincent

Date: 8 October 2003



The Prosecutor Against: Morris Kallon

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

**APPLICATION TO STAY DETERMINATION OF ALL PRELIMINARY
MOTIONS - DENIAL OF RIGHT TO APPEAL**

Office of the Prosecutor:

Desmond de Silva QC, Deputy Prosecutor
Luc Cote, Chief of Prosecution
Walter Marcus-Jones, Senior Appellate Counsel
Christopher Staker, Senior Appellate Counsel
Abdul Tejan-Cole, Appellate Counsel

Defence Counsel:

James Oury, Co-Counsel
Steven Powles, Co-Counsel
Melron Nicol-Wilson, Legal Assistant

Procedural Background

1. On 16 June 2003, the Defence filed 'Defence Preliminary Motion Based on Lack of Jurisdiction: Constitution of Sierra Leone'. The Prosecution responded on 24 June 2003 and the Defence filed a Reply on 30 June 2003.
2. On 18 September 2003 the Trial Chamber, pursuant to the Rule 72(E) of the Amended Rules, found that the Preliminary Motion raised "a serious issue relating to the jurisdiction of the Special Court" to try the Accused and accordingly referred the Preliminary Motion, with the Prosecution Response and Defence Reply, to the Appeals Chamber for determination.
3. On 16 June 2003, the Defence filed 'Defence Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Lome Accord'. The Prosecution responded on 23 June 2003.
4. On 30 September 2003 the Trial Chamber, pursuant to Rule 72(E) of the Amended Rules, found that the Preliminary Motion raised "a serious issue relating to the jurisdiction of the Special Court". Moreover, the Trial Chamber found that the issue raised would "significantly affect the fair and expeditious conduct of the proceedings against the accused". The Trial Chamber therefore referred the Defence Preliminary Motion and the Prosecution Response to the Appeals Chamber of the Special Court for determination.

Application for stay

5. On 2 October 2003, the Defence for Sam Hinga Norman filed 'Application to stay determination of all preliminary motions – denial of right to appeal' in the Appeals Chamber.
6. The Defence for Mr Kallon seek to join and adopt the submissions made on behalf of Mr Norman in his 'Application to stay determination of all preliminary motions – denial of right to appeal.'

7. The Defence submits that the Trial Chamber's reference of its Preliminary Motions to the Appeals Chamber pursuant to Rule 72 is:

- (i) *Ultra vires* of the Special Court Statute (Article 20),
- (ii) A violation of the International Covenant of Civil and Political Rights (Article 14(5)), and
- (iii) Contrary to the jurisprudence of the Appeals Chamber of the ICTY (*Tadic* 'Appeal Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujan' 27 February 2001) which, pursuant to the Special Court Statute (Article 20(3)), should guide the decisions of the Special Court.

Orders Sought

8. The grant of a stay:

- (i) Of the determination of all Preliminary Motions filed on behalf of the accused pending determination of the motion filed in the Trial Chamber concerning the *vires* of the proposed procedure.
- (ii) Of all time limits pursuant to Rule 72(G).

9. Further or alternatively a declaration that:

- (iii) The amendment to Rule 72 agreed at the August Plenary Session of the Judges of the Special Court is *ultra vires* the Statute of the Special Court and/or violates the ICCPR and basic international human rights norms.

10. An oral hearing on this application.


James Oury

Steven Powles


Melron Nicol-Wilson

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8 October 2003.