

SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

BEFORE: UNKNOWN

REGISTRAR: MR. ROBIN VINCENT

DATE: 4TH MAY 2004

THE PROSECUTOR

AGAINST

MORRIS KALLON

CASE NO. SCSL-04-15-PT

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

Office of the Prosecutor:

Luc Cote
Robert Petit

Defence Counsel for Morris Kallon:

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

SPECIAL COURT FOR SIERRA LEONE	
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Prosecutor v. Sesay, Kallon and Gbao (SCSL-2004-15-PT)

Defence Application for leave to Appeal against the decision of the Trial Chamber refusing the application for bail by Morris Kallon

INTRODUCTION

1. Pursuant to Rule 65 (E) of the Rules of Procedure and Evidence of the Special Court hereinafter referred to as "The Rules", the Defence submits this application for leave to file an appeal against refusal of bail

PROCEDURAL BACKGROUND

2. On the 29th 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 23rd February 2004, the request for bail was refused and the "Confidential motion for bail" dismissed.
4. On the 27th 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 5th 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 19th 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 26th of April 2004 by the acting President of the Special Court, it was ordered that the name of Justice Robertson which was inadvertently included on the cover sheet and signature page of the decision of the Appeals Chamber dated 19th April, 2004, be deleted.

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The Impugned Decision

9. 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 the 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.
10. The Learned Judge declined 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.

ERRORS COMMITTED BY THE TRIAL CHAMBER

11. If granted leave to appeal the Defence will argue the following:

Burden of Proof

The Defence intends to argue that by its ruling the Learned Judge committed an error of Law and Fact. Indeed, the Trial Chamber's analysis of the International Criminal Tribunals for Rwanda and Yugoslavia's Jurisprudence that the burden of Proof continues to rest on the Defence and not on the Prosecution and that the elimination of the Exceptional Circumstances requirement does not eliminate the burden of Proof required of the Defence is in contravention of Customary International Norm.

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12. The Defence will further submit that it was in a bid to avoid such flagrant violations of Customary International Law that the Sister Tribunal for the former Yugoslavia amended its Rules and modified its Jurisprudence to conform to International Law. Indeed up to 17th November 1999, Rule 65 (B) of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (ICTY) required motions for provisional release to show inter alia the Evidence of Exceptional Circumstances in respect of the Accused in order to succeed. This Provision has since been amended and under the New Rule Provisional Release is no longer conditional on the Evidence of Exceptional Circumstances in respect of the Accused.

13. The Presence of the Special Court in Sierra Leone

The Defence will further argue that the presence of the Special Court in Sierra Leone should not interfere with the Right of the Accused to Bail. The establishing parties of the Special Court i.e. the United Nations and the Government of Sierra Leone, recognized that the Special Court had no Independent Police Force and the Sierra Leone Police were limited in their capacity at the time of the Special Court's creation. Nonetheless, the establishing Parties seated the Court in Sierra Leone.

14. The Submissions of the Government of Sierra Leone

The Defence will argue 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. Such a stereotype submission should not have influenced the decision of the Learned Judge as it refused to consider the particular circumstances and case of Morris Kallon.

15. The Community Ties

The Defence will argue that the Learned Judge erred in Law and fact by opining that Morris Kallon does not have ties with Freetown, which is the seat of the Court. It is hereby submitted that Morris Kallon has Community Ties in Freetown, but stronger Community Ties in Bo, where he was born and where his extended family lives.

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16. Seriousness of the Charges

The Defence will submit that the Learned Judge's reliance on the seriousness of the charges against Morris Kallon unreasonably deprived the Accused of an Individualized determination of eligibility for bail and exacerbated the problem of defacto Mandatory detention.

The Defence will further submit that the Seriousness of the charges is not a requirement for the consideration of Bail under Rule 65 (B) of the Rules of Procedure and Evidence of the Special Court. The Bail decision contains no analysis of the allegations against Morris Kallon beyond the Conclusory Statement that they are "of gravity and seriousness". Since the Jurisdiction of the Special Court is restricted to "Serious Violations of 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 bail based on the Jurisdiction of the Special Court.

17. The Safety of the Accused

The Defence will submit that the Learned Judge did not give reasons for suggesting that if the detainee is released within the Local Community of Sierra Leone would undermine his own safety. The Defence submits, that the release of the Accused to the Local Community will not undermine his safety.

18. Danger to Victims and Witnesses

The Defence will submit that the Learned Judge failed to consider the relevant conditions such as to whether the Accused posed a danger to victims and witnesses as provided for under RULE 65 (B) of the Rules of Procedure and Evidence of the Special Court.. Moreover it did not seek to verify whether the Accused will appear when required to do so especially given the assurances the Defence has provided in its oral arguments and in supplementary document containing a list of persons who have guaranteed his appearance.

ARGUMENTS FOR LEAVE TO APPEAL

GOOD CAUSE

19. The Defence submits the the errors adumbrated herein raise substantial issues of grave legal implications which will require the consideration of the Appeals Chamber .

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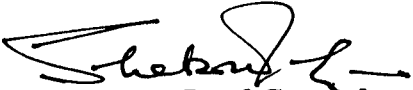
20. The Defence submits that even though the Trial will soon start the estimated duration is unknown and there is a likelihood that the Accused will be subjected to prolonged pre-trial detention which if at the end he is exonerated would have caused him irreparable harm and undue hardship.

REQUEST FOR EXPEDITIOUS HEARING

21. The Defence respectfully request the Chamber to rule expeditiously on the Defence Application.

CONCLUSION

22. For the foregoing reasons the Defence humbly request leave to file an Appeal against the decision of the Trial Chamber refusing Morris Kallon bail.


Shekou Touray, Lead Counsel

Raymond M. Brown, Co-counsel

Melron Nicol-Wilson, Co-counsel

5th May 2004.