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SCSL-2003-07-PT-081  
(1162 - 1166)

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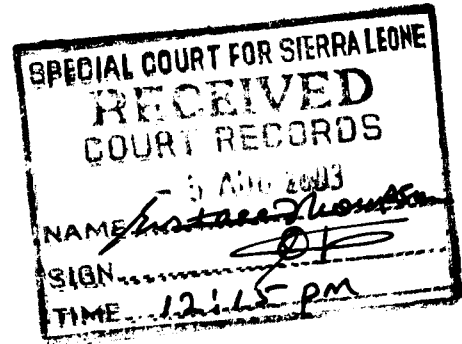
**SPECIAL COURT FOR SIERRA LEONE**

**TRIAL CHAMBER**

**Before:** Judge Thompson, Presiding Judge  
Judge Itoe  
Judge Boutet

**Registrar:** Robin Vincent

**Date:** 4 August 2003



**The Prosecutor Against:** Morris Kallon

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

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**DEFENCE REPLY TO '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)''**

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**Office of the Prosecutor:**

Luc Cote, Chief of Prosecution

**Defence Counsel:**

James Oury  
Steven Powles  
Melron Nicol-Wilson

1. 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 Preliminary Motion (Lome Agreement)’”. On 1 August 2003 the Prosecution filed its response “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)’” (“Prosecution Response”).
2. It is noted that the Prosecution Response was filed “out of time”. Although the filing is technically inadmissible without leave from the Trial Chamber, the Defence does not seek to take any issue with the late filing. It should be noted, however, that as a result of being based at the Seat of the Court, there is less excuse for the Prosecution to file any document out of time than the Defence.
3. The Defence Preliminary Motion on the application of the Lome Amnesty seeks to argue that, in light of the amnesty granted at Lome in 1999, the Special Court (i) has no jurisdiction to prosecute crimes predating the amnesty and/or (ii) that it would be an abuse of process to prosecute anyone for crimes for which they had ostensibly been granted an amnesty.
4. It is submitted that the Preliminary Motion on the Lome Agreement raises fundamental issues of importance to the proper and lawful functioning of the Special Court. The Court, it is submitted, will benefit from well presented and fully argued briefs submitted by the various parties. It is anticipated that documents in the possession of the OTP and/or Government of Sierra Leone may prove of fundamental importance to the Defence in responding to points made by the Prosecution in its Response to the Defence Preliminary Motion on the Lome Amnesty.
5. A clear promise was made in the Lome Agreement that there would be an amnesty for crimes committed prior to the conclusion of the Peace

Agreement. The Prosecution Response to the Defence Preliminary Motion asserts that the Lome Agreement is no longer effective in domestic law. The documents requested are crucial to rebut this assertion. The Prosecution assert in their Response to the Defence Preliminary Motion that the Defence must demonstrate that the acts for which the accused is charged were performed in pursuit of the objectives of the combatants and collaborators. The Defence need access to the documents requested to consider this argument in the detail required. This was all explained in the Defence Motion for Leave to Appeal.

6. Thus it is not correct, as the Prosecution claims, that the Defence has “consistently failed to establish the relevance of the documents sought”. (Prosecution Response para 7). It is incontrovertible that the documents requested by the defence are of fundamental importance to the furtherance of its case and it is therefore clearly in the interests of a fair trial that the Defence is granted access to the documents before filing a Reply to the Prosecution Response on the Preliminary Motion.
7. At paragraph 10 of the Prosecution Response the Prosecution refer to paragraph 7 of the Defence Motion for Leave to Appeal and state that the Defence seemed to imply that the Chamber was influenced by extra-judicial considerations – ie budgetary and time constraints. As explained in the Defence Motion for Leave to Appeal: the Trial Chamber Order was filed on 16 July 2003. The Defence did not receive a copy of the Order until 22 July 2003. Thus Defence counsel was forced to consider and file an application for leave to appeal under extreme time constraints in order to be within the requisite time requirements. Ultimately, Defence counsel only had 45 minutes to consider and draft the Motion eventually filed, with the consequence that it may not have been as eloquently phrased as it might have been. It is hoped that paragraph 7 of the Defence Motion for Leave to Appeal will be read in light of this explanation.
8. In short, the Defence is well aware and mindful of the budgetary and time constraints that have been placed upon the Court. The Court is assured that

the Defence are committed to ensuring that proceedings are conducted in an expeditious and efficient manner and does not seek in anyway to unnecessarily delay or frustrate proceedings. The Defence, however, has a duty to ensure that the minimum rights afforded to the accused are respected. In order to advance arguments of fundamental importance to the Defence case access to the documents requested is sought. Again, it is hoped that paragraph 7 of the Defence Motion for Leave to Appeal will be read in light of the above explanation.

PP:   
James Oury

Steven Powles

Melron Nicol-Wilson

London, 4 August 2003

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"Allison Walsh"  
<Allison.Walsh@ourycl  
arksolicitors.com>

08/04/2003 03:57 PM

To: <Ccarlton-hancils@un.org>, <yillah@un.org>  
cc:  
Subject: FROM JAMES OURY

Dear Claire and Ibrahim

I trust you are well and would be most grateful if you could advise Haddi of the enclosed upon her return from leave.

I would be most grateful if you could file the enclosed today (4th August 2003). You have my authority to sign this Motion on both my and Steven Powles' behalf.

With kind regards to you both.

Yours sincerely

**JAMES OURY**

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