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SCSL-2003-9-PT  
(657-662)

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**SPECIAL COURT FOR SIERRA LEONE**  
OFFICE OF THE PROSECUTOR  
FREETOWN – SIERRA LEONE

Before: Judge Robinson, QC, President  
Judge King, Vice-President  
Judge Ayoola  
Judge Winter  
[Fifth Judge Unknown]

Registrar: Mr. Robin Vincent

Date filed: 23 October 2003

**THE PROSECUTOR**

**Against**

**MORRIS KALLON also known as Bilai Karim**

CASE NO. SCSL – 2003 – 07 – PT

**Augustine Gbao intervening**

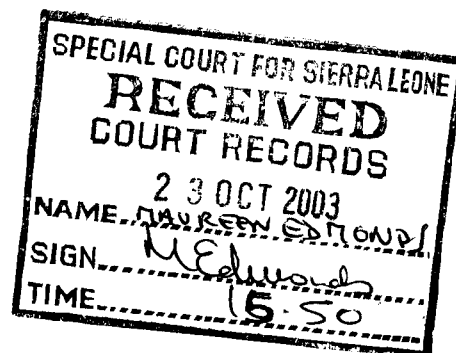
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**PROSECUTION RESPONSE TO REQUEST ON BEHALF OF AUGUSTINE GBAO TO INTERVENE FOR THE PURPOSE OF REQUESTING A STAY OF THE APPEAL CHAMBER PROCEEDINGS ON ISSUE OF LACK OF JURISDICTION AND AMNESTY AND APPLICATION FOR A STAY OF SUCH PROCEEDINGS AND ALTERNATIVE REQUEST FOR THE RESERVATION OF JUDGMENT BY THE APPEAL CHAMBER AND ALTERNATIVE REQUEST FOR LEAVE TO INTERVENE IN THE PROCEEDINGS BEFORE THE APPEAL CHAMBER**

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Office of the Prosecutor:  
Luc Côté, Chief of Prosecutions  
Robert Petit, Senior Trial Counsel  
Boi-Tia Stevens, Assistant Trial Counsel

Defence Counsel:  
Mr. Girish Thanki  
Professor Andreas O'Shea  
Mr. Ken Carr



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OF JUDGMENT BY THE APPEAL CHAMBER AND ALTERNATIVE  
REQUEST FOR LEAVE TO INTERVENE IN THE PROCEEDINGS BEFORE  
THE APPEAL CHAMBER**

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**INTRODUCTION**

1. The Prosecution submits this response to the motion filed on behalf of Augustine Gbao (**the Accused**) on 14 October 2002 seeking leave to intervene in proceedings before the Appeals Chamber in the case of *Prosecutor Against Kallon*, on the challenge to jurisdiction as it relates to the applicability of the amnesty under the Lome Accord raised by Accused Kallon. The Defence argues that the Accused has a legitimate interest in the Kallon matter because he is also affected by the same amnesty provision. The Defence therefore requests leave to intervene in the proceedings against Kallon in order to (a) stay the proceedings against Kallon, (b) postpone the decision in the Kallon matter or (c) make submissions in the proceedings in the Kallon matter in accordance with Article 5 of *Practice Direction on Filing Documents under Rule 72 of the Rules of*

*Procedure and Evidence Before the Appeals Chamber of the Special Court for Sierra Leone.*

2. The Prosecution submits that the Defence Motion has no basis in law and should be dismissed in its entirety.

**ARGUMENT**

**A. The Right to Intervene to Request Stay of Proceedings or to Request Postponement of a Decision in the Matter of another Accused**

3. The Prosecution submits that the Accused has no standing to intervene in the proceedings against Accused Morris Kallon.
4. The Statute and the Rules make no provision for an accused person to intervene in proceedings of another accused person for the purpose of requesting a stay of such proceedings or for the purpose of requesting an abeyance of a decision in such proceedings.
5. Indeed, the notion that an accused person could be permitted to stay the proceedings or adjourn a decision in another criminal matter to which he is not a party runs afoul of the principles of justice and a fair trial.
6. The Defence assertion that it is in the interest of justice to permit him to intervene in the intended manner is not persuasive. In the ordinary course of business, decisions are rendered, notwithstanding the fact that such decisions may have similar implications for parties in subsequent proceedings. Against such reality, established principles, such as *stare decisis*, allow the work of the court to progress while ensuring fairness in the treatment of cases with similar facts. The Defence motion is clearly lacking in its appreciation for this well-entrenched principle in the law.
7. The Accused will suffer no prejudice if a decision on the Kallon matter were to be reached before he has had an opportunity to address the Court on the matter. A

decision in the Kallon matter would not bar the Accused from raising in his own proceedings the same jurisdictional challenge as Kallon. To the extent that his arguments are similar to the arguments raised in the Kallon case, the principle of *stare decisis* should apply. However, the Accused is certainly free to make new arguments not previously considered by the Appeals Chamber in the Kallon case and effect a new outcome or a decision different from that reached in the Kallon case. But the mere fact that the Accused may be litigating a similar issue in the future is no grounds for him to request a stay in the proceedings against Kallon or a postponement of the decision in the Kallon case.

8. Further, should the relief requested by the Defence be granted, it will set a precedent with disastrous consequences for the work of the Court. It will prompt similar requests from other accused persons yet to receive disclosure material, as the issues in the cases are all interrelated. This would cause an extended delay in the case against an accused, which ultimately will have a dilatory effect on other cases. Such a decision will also open the flood gates for parties to bring requests throughout the life of the Special Court to halt proceedings before a Trial Chamber on the basis of motions to be filed in the future on similar issues pending before a Trial Chamber. Certainly this would not be effective for the administration of justice.
9. The Defence application to stay the proceedings or postpone the decision in the Kallon matter should therefore be rejected.

**B. The Right to Intervene to Make Submissions under Article 5 of the Practice Directive of the Appeals Chamber**

10. The Prosecution submits that the Accused should not be permitted to make submissions in the Kallon case under Article 5 of the Practice Directives of the Appeals Chamber. Again, permitting the Accused to do so would set a dangerous precedent whereby all accused persons could file amicus briefs or request to make

oral submissions in other cases before the Special Court whenever an issue arises in one case that may have an affect on them.

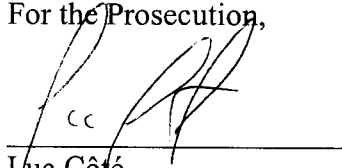
11. Further, the Defence request would mean that the Accused would address the same issue twice before the Court: in the Kallon case and in the Accused's own case. Article 5 of the said practice directives could not have been intended to permit an accused person to make submissions in a proceeding against another accused and then subsequently bring a motion under Rule 72 on the same issue. This flies in the face of judicial efficiency.
12. The Prosecution reiterates the argument in paragraph 7 above that Accused Gbao has ample opportunity to bring his own motion under Rule 72 raising jurisdictional arguments. He is certainly free at that time to raise similar issues as the Kallon motion and/or raise different arguments. The fact remains that the similarity in issues does not justify the intervention requested by the Accused.
13. It is further submitted that permitting the Defence to make submissions in the pending Kallon matter would cause further delay to the proceedings in the Kallon case. If the Defence were permitted to make submissions, the Prosecution would have to be given time to respond to those submissions, and this could delay the hearing on the Kallon matter beyond the current scheduled date of 1 November 2002.
14. The Prosecution therefore requests that the Defence application be rejected.

**CONCLUSION**

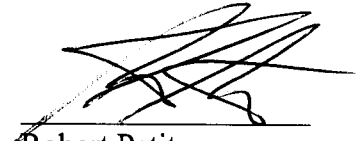
For the foregoing reasons, the Prosecution submits that the Defence Motion should be dismissed in its entirety.

Done in Freetown, 23 October 2003.

For the Prosecution,



Luc Côté  
Chief of Prosecutions



Robert Petit  
Senior Trial Counsel