



**IN THE SPECIAL COURT FOR SIERRA LEONE
DEFENCE OFFICE
FREETOWN-SIERRA LEONE
THE TRIAL CHAMBER**

BEFORE: Judge Bankole Thompson, Presiding Judge
Judge Benjamin Mutanga Itoe
Judge Pierre Boutet

REGISTRAR: Mr. Robin Vincent

DATE: 20th May 2004

**PROSECUTOR against MORRIS KALLON
(Case No. SCSL 2004-15-PT)**

KALLON - DEFENCE RESPONSE TO PROSECUTION'S APPLICATION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL AGAINST THE DECISION ON THE "PROSECUTION'S MOTION FOR CONCURRENT HEARING OF EVIDENCE COMMON TO CASES SCSL-2004-15-PT AND SCSL-2004-16-PT"

OFFICE OF THE PROSECUTOR:
Luc Cote, Chief of Prosecutions
Robert Petit, Senior Trial Attorney
Paul Flynn
Abdul Tejan-Cole
Leslie Taylor
Boi-Tia Stevens
Christopher Santora

DEFENCE:
Shekou Touray
Raymond M. Brown
Melron Nicol-Wilson
Wilfred Bola Carrol

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT RECORDS
20 MAY 2004
NAME: *Shekou Touray*
SIGN: *[Signature]*
TIME: 15.07

Prosecution for Sesay, Kallon, Gbao SCSL 2004-15-PT

The Defence for Kallon files this “Response” in answer to the Prosecution’s Application for Leave to file an Interlocutory Appeal against the Decision on the “Prosecutions” Motion for Concurrent Hearing of Evidence Common to cases SCSL-2004-15-PT and SCSL-2004-16-PT”

INTRODUCTION

1. On the 30th of April 2004, the Prosecution filed a Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT.
2. On the 5th of May 2004 the Defence for Kallon filed a Response to the Prosecution Motion for the Concurrent Hearing of Evidence.
3. The Prosecution on the 7th of May 2004 filed a Reply to the Response by the Defence.
4. In a Decision dated 11th May 2004, the Trial Chamber of the Special Court denied the Prosecution’s Motion for the Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT and accordingly dismissed it.
5. On the 14th of May 2004 the Prosecution filed an Application for Leave to file an Interlocutory Appeal against the Decision on “The Prosecution’s Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT.

The Prosecution’s Contentions

6. The Prosecution relies on the Provisions of Rule 73(B) of the Rules of Procedure and Evidence of the Special Court for its application for Leave to file an Interlocutory Appeal in respect of the decision on the Prosecution’s Motion for concurrent hearing of common witnesses dated 11th May 2004.

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7. The Prosecution in its Motion argued that the Trial Chamber failed to clarify how the rights of the Accused will be infringed by holding a concurrent hearing; erred in considering that granting the requested concurrent hearing would have the effect of conducting a joint Trial; was misconceived in holding that the notions of Judicial economy, consistency in Jurisprudence and credibility of the Judicial Process are not well established Principles of Law; and failed to properly consider the Prosecution's argument that hearing the same witnesses twice will involve considerable hardships and risks to there witnesses

Arguments by the Defence

8. The Prosecution submits that it has met the two conditions for Leave for Interlocutory Appeals under Rule 73 (B) of the Rules, namely the existence of exceptional circumstances and the possibility of irreparable prejudice to a party if such Leave were not granted, arguing that paragraph 13-14 of its Motion constitute exceptional circumstances and that not holding a concurrent hearing will cause irreparable prejudice to the Prosecution, for reasons that there is a high probability that some witnesses will not appear for the second Trial to testify because of the hardships and risks involved. Such loss of evidence the Prosecution maintains will entail great detriment to the ascertainment of truth and the fairness of the Judicial Process.
9. The Defence submits that there is no showing of exceptional circumstances or irreparable prejudice by the Prosecution in support of the application in so far as the case against the RUF is concerned for reasons that the trial of the AFRC is separate and distinct from that of the RUF, and that a date has already been fixed for the trial of the RUF whereas no date has been fixed for the trial of the AFRC. The Prosecution is therefore obliged to show exceptional circumstances and irreparable prejudice in respect of each case separate from the other, that is on a case-by-case basis, which it has failed so to do.

10. The Defence therefore submits that the Prosecution's Application for leave to file an Interlocutory Appeal at this point in time having regard to the circumstances, will cause delay in the trial of the RUF if granted, and result in an infringement of the right of the Accused to a fair and expeditious trial.
11. The Defence further submits that the decision of the Trial Chamber dismissing the Prosecution's Motion for Concurrent hearing of common witnesses involves an exercise of discretion based on an assessment of the practical effect of the Prosecution's application and a discretion properly exercised within the framework of clear legal guidelines.
12. Further the Prosecution has not advanced any new arguments in support of its application for leave, but rather barely reaffirms its argument in its Motion for Concurrent hearing of Common witnesses to buttress its argument. The Defence submits that these are issues the Trial Chamber has already adverted its mind to in deciding to dismiss the Motion.
13. Accordingly, the resolution of such a question by the Appeals Chamber, involving a discretion properly exercised by the Trial Chamber, would not materially advance the proceedings.

CONCLUSION

14. The Defence respectfully prays the Trial Chamber to refuse the request of the Prosecution for Leave to file an interlocutory appeal against the decision in its entirety.



Shekou Touray

Raymond Brown

Melron Nicol-Wilson

Dated 20th May 2004