

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

TRIAL CHAMBER

Before: Judge Benjamin Itoe
Judge Bankole Thompson
Judge Boutet

Registrar: Robin Vincent

Date filed: 8 December 2004

PROSECUTOR

Against

**SAMUEL HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA**

Case No. SCSL-2004-14-T

**PROSECUTION RESPONSE "APPLICATION BY FIRST ACCUSED FOR
LEAVE TO MAKE INTERLOCUTORY APPEAL AGAINST THE DECISION
ON THE FIRST ACCUSED'S MOTION FOR SERVICE AND ARRAIGNMENT
ON THE CONSOLIDATED INDICTMENT"**

Office of the Prosecutor:

Luc Côté
James C. Johnson

Court Appointed Counsel for Samuel

Hinga Norman
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.

Stamp: SPECIAL COURT FOR SIERRA LEONE
Signature: NEIL GIBSON
Signature: [Handwritten Signature]
Date: 15:09

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I. INTRODUCTION

1. In the “Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment” (“**Decision for Service and Arraignment**”), the Trial Chamber identified select portions of the Consolidated Indictment as containing new factual allegations and substantive elements. The Prosecution was ordered to apply for leave of the Trial Chamber to either seek an amendment of the Consolidated Indictment in respect of the impugned portions or to expunge the impugned portions altogether.
2. The Defence filed this “Application by First Accused for Leave to Make Interlocutory Appeal Against the Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment” (“**Application by the First Accused**”), on 2 December 2004.
3. The Prosecution filed an “Application for Leave to Amend the Indictment” on 8 December 2004 in response to the Decision for Service and Arraignment. The Prosecution also submitted a request on 6 December 2004, “Prosecution Application for Leave to Appeal the ‘Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment’” (“**Prosecution Leave for Appeal**”).

4. The Prosecution now files this response to the “Application by First Accused for Leave to Make Interlocutory Appeal Against the Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”, dated 2 December 2004.

II. ARGUMENTS

5. The Prosecution supports the submission by the First Accused in so far as it addresses the issue that confusion in the law concerning the “Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment” is a ground for appeal under Rule 73(B), which provides for interlocutory appeals “in exceptional circumstances and to avoid irreparable prejudice to a party.”
6. In regards to the remainder of the Application by the First Accused, the Prosecution is unable to identify any discrete grounds for leave to appeal and, therefore, can not respond further to their arguments.
7. Nevertheless, the Prosecution disagrees with the assertion by the First Accused that the Decision on Service and Arraignment is a basis for “automatic nullity of the proceedings.”¹
8. Furthermore, the Prosecution opposes the application for a stay of the trial proceedings.

A. Leave to Appeal the Decision for Service and Arraignment Should Be Granted on the Grounds that Confusion and a Lack of Clarity in the Law Exists.

9. The Prosecution supports the submission in the Application by the First Accused that granting leave for interlocutory appeal for the Decision on Service and Arraignment is necessary to ensure clarity in the law. As indicated by his Honour Judge Thompson, “this is an area where the law, in some respects, remains

¹*Prosecutor Against Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa, SCSL-2004-14-T, “Application by First Accused for Leave to Make Interlocutory Appeal Against the Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment”, 2 December 2004, Para.7, Registry Page (“RP”) 10936.*

intolerably unclear, if not confusing.”² The differing opinions amongst the Trial Chamber, combined with a “novel or unique legal situation”³ together constitute exceptional circumstances that ought to be deliberated through an interlocutory appeal. For these reasons and the reasons further enumerated in the Prosecution Application for Leave to Appeal, the Prosecution submits that it is in the interest of justice to have these issues heard on an interlocutory appeal.

B. Prosecution Disagrees With the Assertion by the First Accused that the Decision on Service and Arraignment Is a Basis for Automatic Nullity of the Proceedings.

10. The Prosecution submits that the trial proceedings that have been underway since the “Prosecution Motion for Joinder”, filed 9 October 2003, are untainted by the errors identified in the decisions by the Trial Chamber with regard to the Consolidated Indictment and the Joinder of the Accused.
11. The purpose of the indictment process is to ensure the accused person is informed of the charges against him so that he may make preparations to meet the case against him. No matter what the outcome of these applications, the integrity of the indictment process has not been disturbed. The First Accused has been on notice and has been fully informed of the particulars of the charges that the Prosecution intends to prove for *at least* four months prior to the commencement of the trial.
12. The Prosecution submits that the right of the accused to a fair trial, specifically in relation to the indictment process, have not been infringed.

C. A Stay of the Trial Proceedings is Unnecessary and Should Be Denied.

13. The Prosecution opposes the application for a stay of the trial proceedings by the First Accused because it would be an unnecessary, without serving the interest of

² *Prosecutor Against Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa*, SCSL-2004-14-T, “Separate Concurring Opinion of Judge Bankole Thompson on Decision on First Accused’s Motion for Service and Arraignment on the Consolidated Indictment,” 29 November 2004, para. 1, RP 10900.

³ *Prosecutor Against Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa*, SCSL-2004-14-T, “Prosecution Application for Leave to Appeal the ‘Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment’”, 6 December 2004, para. 27, RP 8871.

justice. The stay of a trial is an exceptional exercise of judicial authority and one that should only be used to avoid a substantial identifiable injustice.

14. The proceedings can continue because the challenged material is admissible against all the accused, until the issue is finally determined. Furthermore should the Court accept the Prosecution's Application to amend the indictment, the challenged material remains admissible against the First Accused.


15. In any event, at the conclusion of the Prosecution case, the Court can discern which relevant evidence relates to the particular accused.

III. CONCLUSION


16. The Prosecution submits that leave for appeal on the Decision on the Service and Arraignment should be granted for purposes outlined in the Prosecution Application for Leave to Appeal. The Prosecution further submits the application for a stay of the trial proceedings is unnecessary and the proceedings can continue without causing an injustice.

Filed in Freetown, 8 December 2004

For the Prosecution,



Luc Côté
Chief of Prosecutions



James C. Johnson
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