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SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

Before: Hon. Justice Pierre Boutet, Presiding Judge
Hon. Justice Benjamin Mutanga Itoe
Hon. Justice Bankole Thompson
Registrar: Robin Vincent
Date filed: 23th June 2005

THE PROSECUTOR

Against

SAMUEL HINGA NORMAN

MOININA FOFAN

ALLIEU KONDEWA

(Case No. SCSL-2004-14-T)

**PROSECUTION RESPONSE TO “DEFENCE REQUEST FOR LEAVE TO
APPEAL AGAINST THE CONSEQUENTIAL NON-ARRAIGNMENT ORDER OF
TRIAL CHAMBER 1, 18 MAY 2005”**

Office of the Prosecutor:

Luc Côté
James C. Johnson
Adwoa Wiafe

**Court Appointed Counsel for Samuel
Hinga Norman**

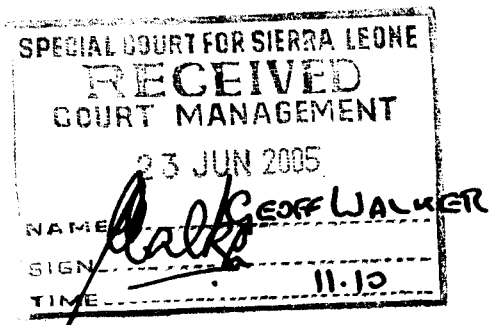
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I. INTRODUCTION

1. The Prosecution files this response to the “Defence Request for Leave to Appeal Against the Consequential Non-Arraignment Order of Trial Chamber 1, 18 May 2005” filed on behalf of the first accused, Samuel Hinga Norman (hereinafter “**First Accused**”).
2. The Defence for the First Accused seeks leave to appeal the Consequential Order on Amendment of the Consolidated Indictment, issued on 25 May 2005 by the Trial Chamber (hereinafter “**The Consequential Order**”). The First Accused submits that the Consequential Order violates his right to a fair trial in that the Consequential Order failed to order a further arraignment of the First Accused on the Indictment, as contemplated by the Appeals Chamber’s “Decision on Amendment of the Consolidated Indictment,” dated 16 May 2005 (hereinafter, “**The Appeals Decision**”).
3. The application requests that the Trial Chamber annul the Consequential Order and instruct that the First Accused be arraigned on the Consolidated Indictment.

4. The Prosecution submits that the Defence application should be dismissed since no exceptional circumstances exist in this case nor has the First Accused suffered irreparable prejudice.

II. ARGUMENTS

5. The Defence argues that the application meets the test for granting interlocutory appeals under Rule 73(B) as a result of the timing of the amendments and the failure to order a further appearance of the First Accused.
6. The Defence argues that the Consequential Order is in violation of the Appeals Decision in that it failed to order a further appearance as contemplated by the said decision. The Prosecution submits that the Appeals Chamber decision contained no such expectation. Had the Appeals Chamber contemplated an order for re-arraignment, it would not have given the Trial Chamber a discretion in the matter. It would simply have ordered the Trial Chamber to do so.
7. Further, the Consequential Order may only be impugned upon a showing that the Learned Justices abused their discretion.¹ Therefore, where the Trial Chamber has acted in accordance with its discretionary powers and in the absence of abuse, the Appeals Chamber should not intervene. The Defence application does not allege any abuse of discretion. The Prosecution submits that the majority in the Trial Chamber acted within its discretion “to make any appropriate order necessary to ensure that the Defence is not incommoded.”² The mere fact that the Consequential Order did not conform to the expectations of the First Accused does not constitute an abuse of the court’s discretion. In keeping with their discretion, the majority in the Trial Chamber decided that no further arraignment was necessary.
8. The Consequential Order does not violate the rights of the First Accused. This is evident from the Appeals Decision itself. The Appeals Chamber opined:
“amendments which do not amount to new counts should generally be admitted,

¹ See, *Prosecutor v. Bagosora et al.*, “Decision on Certification of Appeal Concerning Admission of Written Statement of Witness XXO”, ICTR-98-41-T, 11 December 2003, para. 8. Available at www.ictj.org. See also, para 87 of the Appeals Decision, where the Appeals Chamber stated that it will not second guess the Trial Chamber in matters that are essentially discretionary.


² Appeals Decision, para. 87.

even at a late stage, if they will not prejudice the defence or delay the trial process. The submissions before us indicate that they will not have either effect.”³ The Appeals Chamber further stated, after duly considering all the circumstances of this case, that “[w]e are satisfied that the amendment will not involve an undue lengthening of the time of trial.”⁴

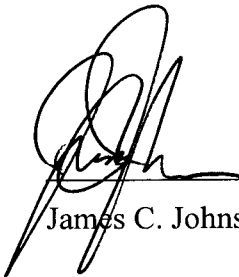
III. CONCLUSION

9. The Prosecution submits that the Defence application should be dismissed since no exceptional circumstances have been shown. Furthermore, as the majority in the Trial Chamber properly acted within its discretion, there is no need to annul the Consequential Order and further order arraignment of the First Accused on the Consolidated Indictment.

Done in Freetown this 23rd June 2005.



Luc Côté



James C. Johnson

³ Appeals Decision, para. 88.

⁴ *Id.*

Prosecution's Index of Authorities

1. *Prosecutor v. Bagosora et al.*, “Decision on Certification of Appeal Concerning Admission of Written Statement of Witness XXO”, ICTR-98-41-T, 11 December 2003. Available at www.ictr.org.
2. *Prosecutor v. Norman et al.*, “Consequential Order on Amendment of the Consolidated Indictment”, 25 May 2005.