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SCSL-2004-16-PT.
(95-98)

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SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

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

Registrar: Mr. Robin Vincent

Date filed: 9 February 2004

THE PROSECUTOR

Against

**SANTIGIE BORBOR KANU also known as 55 also known as
FIVE-FIVE also known as SANTIGIE KHANU also known as SANTIGIE KANU also
known as S. B. KHANU also known as S.B. KANU also known as SANTIGIE BOBSON
KANU also known as BORBOR SANTIGIE KANU ET AL**

CASE NO. SCSL-2004-16-PT

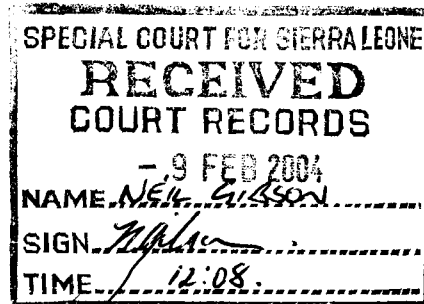
**PROSECUTION REPLY TO “DEFENCE RESPONSE TO PROSECUTION’S
APPLICATION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL AGAINST
THE DECISION ON THE MOTION FOR JOINDER”**

Office of the Prosecutor:

Mr. Luc Côté, Chief of Prosecutions
Mr. Robert Petit, Senior Trial Attorney
Mr. Abdul Tejan-Cole, Trial Attorney
Ms. Boi-Tia Stevens, Associate Trial Attorney

Defence Counsel:

Mr. Geert-Jan Alexander Knoops



SPECIAL COURT FOR SIERRA LEONE

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PROSECUTION REPLY TO “DEFENCE RESPONSE TO PROSECUTION’S APPLICATION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL AGAINST THE DECISION ON THE MOTION FOR JOINDER”

I. INTRODUCTION

1. The Prosecution files this response to the “Defence Response To Prosecution’s Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motion for Joinder” (the “**Defence Response**”), dated 5 February 2004 and filed on behalf of Santigie Borbor Kanu (the “**Accused**”).¹
2. The Defence argues that the Prosecution’s Application for leave to appeal against the Trial Chamber’s decision and order be denied on the grounds that no exceptional circumstances or irreparable prejudice has been proved by the Prosecution.
3. In paragraph 3 of the Defence Response, the Defence argues, without providing the basis or authority for its submission that the Prosecution has not proved that the

¹ Registry Page (“RP”) 87-90.

- outcome of the Trial Chamber decision and order creates an exceptional circumstance and that it creates irreparable prejudice to the Prosecution.
4. The Prosecution reiterates Part IV of its motion paragraphs 13 – 21 and respectfully submits that it has satisfied the requirements laid down in Rule 73 (B) of the Rules.
 5. The Prosecution submit that a mere possibility of a conflict of interest is not the same as a conflict of interest. There is no factual evidence of a conflict of interest to support the argument that that there is a possibility of conflicting defence strategies. The Defence did not canvass this argument in its submissions in response to the Motion for joinder nor in the hearing on the Motion. The Prosecution notes that the Defence has relied heavily on Rule 82(B) which deals with severance rather than joinder. With all due respect to the Defence, the Prosecution submits that on a strict application of Rule 82(B) of the Rules, the Defence must show clear evidence of a conflict of interest and not the mere possibility of a conflict. Furthermore mere possibility of a conflict does not satisfy the test in Rule 73(B).
 6. The Prosecution argues further that the existence of a conflict of interest in itself is insufficient. Under Rule 82(B), there is an additional requirement to show that such conflict of interest *might cause serious prejudice to an accused or to protect the interest of justice*. The Defence which has this burden to discharge has not only failed to show that there is no conflict of interest but it has also not shown that same might cause serious prejudice to an accused or protect the interest of justice as required under rule 82(B).
 7. The Prosecution disputes the argument of the Defence that it has only stated potential procedural ramifications and has failed to satisfy the criterion of “serious prejudice”. The Prosecution denies this assertion and avers that the unsubstantiated assertion by the Defence does not represent the correct position in law. The Prosecution submits that the serious procedural problems may have dire legal consequences which may seriously prejudice the Prosecution’s case.
 8. In addition, the Prosecution further replies that the issues raised in its motion shows serious prejudice in terms of substantive and procedural law. It draws the attention of the Defence to Part II of its motion paragraphs 3 – 10 in which it accentuates the error

of law in the said decision and numerous instances cited in paragraphs 13 – 21 of its motion.

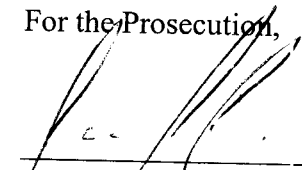
9. Further, the Defence argues in paragraph 5 of its response that under Rule 82 (B) the overall interest of justice and the rights of the accused should be the decisive factor. The Prosecution does not dispute the Defence contention that the rights of the Accused should be respected. However, the Prosecution submits that it was given undue weight and consideration over all the other mentioned in paragraph 44 of the Decision. The overall interest of justice is also a significant factor which ought to have been considered by the Court.
10. In any event, the Prosecution argues that this is not the proper stage to delve into the arguments of the appeal. The test required under Rule 73(B) for leave to appeal to be granted is for the Prosecution to show the Court that it will suffer irreparable prejudice as a result of its decision. The Prosecution respectfully submits that the consequences of the concerns canvassed by it in paragraphs 13 – 21 of its motion clearly show that the decision would cause the Prosecution irreparable prejudice under Rule 73(B).

II. CONCLUSION


11. Accordingly, the Prosecution submits that the orders prayed for in its motion dated 3 February 2004 be granted.

Freetown, 9 February 2004.

For the Prosecution,



Luc Côte
Chief of Prosecutions



Robert Petit
Senior Trial Attorney