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SCSL - 2004 - 16 - PT
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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: 11 February 2004

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA also known as TAMBA ALEX BRIMA also known as GULLIT
ET AL**

CASE NO. SCSL-2004-16-PT

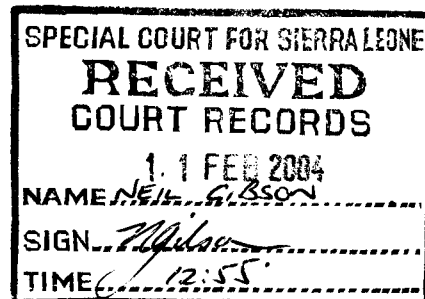
**PROSECUTION REPLY TO "DEFENCE RESPONSE ON BEHALF OF TAMBA ALEX
BRIMA TO PROSECUTION'S APPLICATION FOR LEAVE TO FILE AN
INTERLOCUTORY APPEAL AGAINST THE DECISION ON THE PROSECUTION
MOTIONS FOR JOINDER"**

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. Terence Michael Terry



SPECIAL COURT FOR SIERRA LEONE

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I. INTRODUCTION

1. The Prosecution files this response to the “Defence Response on behalf of Tamba Alex Brima to Prosecution’s Application for Leave to File Interlocutory Appeal against the Decision on the Prosecution Motion for Joinder” (the “**Defence Response**”), dated 9 February 2004 and filed on behalf of Alex Tamba Brima (the “**Accused**”).¹
2. The Defence argues that the Prosecution’s Application for leave to appeal against the Trial Chamber’s decision dated 27th January 2004 be struck out and/or denied as it was filed out of time and is not only unmeritorious but also totally ill founded.

¹ Registry Page (“RP”) 91-94.

II. PROCEDURAL MATTERS

3. The Defence argues that the Prosecution's Application for leave to appeal against the Trial Chamber's decision was filed outside the limitation period of 3 days as envisaged by Rule 73 (B) of the Rules.
4. The Prosecution submits that its motion was filed within the time limits prescribed and in accordance with Rules. The decision was delivered on 27th January 2004. The Prosecution was served with a copy of the said Decision on 30th January 2004 and it filed its Application on 3rd February 2004.
5. The Application is made pursuant to Rule 73(B) which provides that leave to appeal must be sought within 3 days of the decision. The Prosecution submits that Rule 73(B) must be read in conjunction with Rule 7(A) makes it clear that the time to file began to run from 30th January 2004 after notice of the decision was served on the Prosecution, to 2nd February 2004.
6. Further considering Rule 7(B) and the fact that 2nd February 2004 was a public holiday, the time limit was automatically extended to the subsequent working day, to wit, 3rd February 2004, the date the Prosecution filed its Motion.
7. Finally the Prosecutor notes the "Corrigendum to the Decision and Order on the Motions for Joinder" filed by the Trial Chamber on 28th January 2004 (Annex 1)² which takes note of the delay in filing of the Decision and therefore decides that the delay for filing of the Consolidated Indictment must run from the service of the Decision. The Prosecutor therefore submits that the same consequence must apply for any other delay inherent to the Decision including the delay under Rule 73(B).
8. In further answer to the Defence's argument, the Prosecution is unclear as to the reasons for the Defence assertion that the order dated 3rd February 2004 was wrongly dated or wrongly described. The order, which is annexed to the Defence Motion, merely assigns a new case number to cases ordered to be joined and therefore has no relevance to the present application before the Court.

² Registry Page ("RP") 1829 – 1830.

III. SUBSTANTIVE MATTERS

9. The Defence contends that the Prosecution's motion must be denied because the Prosecution has not shown good cause and or given any valid reason to warrant the granting of leave. The Prosecution submits that the only relevant test to be applied in this application is the test set out in rule 73(B) of the Rules, to wit, has the prosecution shown that it will suffer irreparable prejudice as a result of the decision. Rule 73(B) does not require the Prosecution to show good cause. The Prosecution submits that it has provided sufficient basis for the Trial Chamber to hold that it has satisfied the test laid down in Rule 73(B) and reiterates Part IV of its motion paragraphs 13 – 21.
10. The Defence also claims that the authorities submitted by the Prosecution in support of its Request are clearly distinguishable on their own special facts from this case. However the Defence fails to validate its submission and does not show how the cases are distinguishable. The Prosecution reasserts that whilst some of the factual situation may differ, the principles applied in these cases are relevant and applicable to the present case.
11. The Prosecution does not dispute the fact that the Trial Chamber could on its own volition raise the issue of a conflict of interest if as the Prosecution maintains the Defence failed to do so. The Prosecution however suggests that failure by the Defence to argue the said issue is indicative of the fact that there was little if any possibility of a conflict. The main thrust of the Prosecution's argument is that the possibility of mutual recrimination is not a sufficient factor to bar a joinder. The Prosecution further submits that a mere possibility of a conflict of interest is not the same as a conflict of interest and again does not constitute a bar to joinder. Finally there is no factual evidence of a conflict of interest to support the argument that that there is a possibility of conflicting defence strategies.
12. The Defence also argued that the Trial Chamber never found that the "alleged crimes were committed by the RUF and AFRC as part of a common plan but referred to the alleged fact in that direction." The Defence contends that to have had such a finding if at all would have "tantamounted prematurely to a pronouncement that the alleged

crimes were in fact so committed.” The Prosecution does not in its submission suggest that the Accused had been prematurely convicted. In Paragraph 37 of the Decision the Trial Chambers stated, inter alia, ‘The Chamber finds there exists both factual and legal basis reasonably justifying a joint trial in respect of the Accused persons as exemplified by the several allegations that the Accused “acted in concert”, “shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political control over the territory of Sierra Leone, in particular the diamond mining areas”, and further that the alleged joint criminal enterprise “included gaining and exercising control over the population of Sierra Leone in order to prevent or minimise resistance to their geographic control, and to use members of the population to provide support to members of the joint criminal enterprise.” *In the Chamber’s considered opinion, there is sufficient showing that the factual allegations in the Indictment herein will, if proven, show a consistency between the crimes charged and the Prosecution’s theory that they were committed in furtherance, or were a product, of a common criminal design on the part of all six Accused...*’ In Paragraph 35 of the said Decision, the Chamber noted that ‘On a close textual examination of the several charges as alleged in the various indictments, the conclusion is irresistible that the crimes, as alleged, arise from a number of acts and omissions, allegedly, occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan.’

13. The Defence further avers, without substantive argument in support of its contention, that the reasons advanced by the Prosecution showing it will suffer irreparable prejudice are merely speculative. The Prosecution denies this averment. It has stated as a fact, inter alia, the following: that it intends to lead essentially the same evidence against the six Accused persons; that many prosecution witnesses are common to all six Accused persons; that these common witnesses will be required to testify and be cross-examined at least twice; and that some of the witnesses would not in a position to testify twice due to security concerns. It is also not speculative that that appearance of the same witnesses in two trials will considerably increase the risk of their security and cause considerable strain and hardship on the witness protection program. The

Prosecution therefore submits that the reasons advanced showing that it will suffer irreparable prejudice is factual and realistic and not tentative.

14. The Defence further argues that the mere holding of 2 separate trials on essentially the same evidence by the same panel of judges will by no means jeopardize the principle of a fair trial. The Prosecution draws the Defence's attention to the Decision of the Trial Chamber in *Prosecutor v. Brdanin & Talic* in which it was held inter alia that there is a fundamental and essential public interest in ensuring consistency in verdicts. The Tribunal continued "*Nothing could be more destructive of the pursuit of justice than to have inconsistent results in separate trials based upon the same facts.*" The Prosecution further reasserts its arguments already laid out in the Requests regarding this issue.

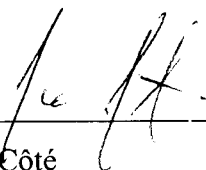
15. The Prosecution submits that the present case warrants the granting of leave to appeal. The Prosecution has detailed in its Application the specific circumstances of this case and submits that those circumstances provides sufficient basis to hold that it has satisfied the requirements of Rule 73(B).

IV. CONCLUSION

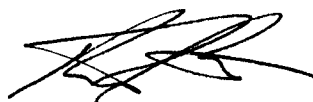
16. Accordingly, the Prosecution submits that the orders prayed for in its motion dated 3 February 2004 be granted.

Freetown, 11 February 2004.

For the Prosecution,



Luc Côté
Chief of Prosecutions



Robert Petit
Senior Trial Attorney

PROSECUTION INDEX OF ATTACHMENTS

1. “Corrigendum Decision and Order on the Motions for Joinder”, *Prosecutor Against Sesay* (SCSL-2003-05-PT), *Brima* (SCSL-2003-06-PT), *Kallon* (SCSL-2003-7-PT), *Gbao* (SCSL-2003-09-PT), *Kamara* (SCSL-2003-10-PT), *Kanu* (SCSL-2003-13-PT), 28 January 2004.

PROSECUTION INDEX OF ATTACHMENTS

ANNEX 1

“Corrigendum Decision and Order on the Motions for Joinder”, *Prosecutor Against Sesay* (SCSL-2003-05-PT), *Brima* (SCSL-2003-06-PT), *Kallon* (SCSL-2003-7-PT), *Gbao* (SCSL-2003-09-PT), *Kamara* (SCSL-2003-10-PT), *Kanu* (SCSL-2003-13-PT), 28 January 2004.

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SCSL-2003-06-PT
(1829-1830)

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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 28th day of January, 2004

PROSECUTOR against

ISSA HASSAN SESAY
(Case No.SCSL-2003-05-PT)
ALEX TAMBA BRIMA
(Case No.SCSL-2003-06-PT)
MORRIS KALLON
(Case No.SCSL-2003-07-PT)
AUGUSTINE GBAO
(Case No.SCSL-2003-09-PT)
BRIMA BAZZY KAMARA
(Case No.SCSL-2003-10-PT)
SANTIGIE BORBOR KANU
(Case No.SCSL-2003-13-PT)

SPECIAL COURT FOR SIERRA LEONE	
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28 JAN 2004	
NAME	MAURICE EDWARDS
SIGN	<i>M Edwards</i>
TIME	16:00

CORRIGENDUM

DECISION AND ORDER ON PROSECUTION MOTIONS FOR JOINDER

Office of the Prosecutor:
Luc Coté
Robert Petit
Boi-Tia Stevens

Defence Counsel for Issa Hassan Sesay:
Timothy Clayson
Wayne Jordash
Abdul Serry Kamal

Defence Counsel for Alex Tamba Brima:
Terence Terry
Karim Khan

Defence Counsel for Morris Kallon:
James Oury
Steven Powles

SPECIAL COURT FOR SIERRA LEONE	
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SIGNATURE	<i>M Edwards</i>
DATE	28/1/04

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Melron Nicol-Wilson

Defence Counsel for Augustine Gbao:
Girish Thanki
Andreas O'Shea
Ken Carr

Defence Counsel for Brima Bazzy Kamara:
Ken Fleming
C.A. Osho Williams

Defence Counsel for Santigie Borbor
Kanu :
Geert-Jan Alexander Knoops

THE SPECIAL COURT FOR SIERRA LEONE,

SITTING as the Trial Chamber composed of Judge Bankole Thompson, Presiding Judge, Judge Benjamin Mutanga Itoe and Judge Pierre Boutet;

BEING SEIZED of six (6) motions filed by the Office of the Prosecutor on 9 October 2003 for joinder of the trials of the Accused in *Prosecutor v. Issa Hassan Sesay* (Case No.SCSL-2003-05-PT), *Prosecutor v. Alex Tamba Brima* (Case No.SCSL-2003-06-PT), *Prosecutor v. Morris Kallon* (Case No.SCSL-2003-07-PT), *Prosecutor v. Augustine Gbao* (Case No.SCSL-2003-09PT) *Prosecutor v. Brima Bazzy Kamara* (Case No.SCSL-2003-10-PT), and *Prosecutor v. Santigie Borbor Kanu* (Case No.SCSL-2003-13-PT);

CONSIDERING its Decision and Order on the Prosecutor Motion for Joinder ("Decision"), rendered orally on 27 January 2004;

NOTING the delay in publishing the said Decision;

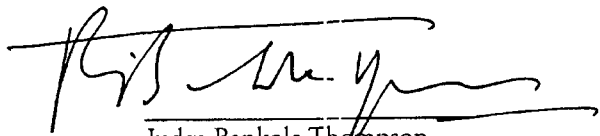
DECIDES AND ORDERS that the second consequential order of the Decision shall be changed in the following manner:

2. That the said consolidated indictments be filed in the Registry within ten (10) days of the date of delivery of this Decision;

Shall read:

2. That the said consolidated indictments be filed in the Registry within ten (10) days of the date of service of this Decision;

Done at Freetown this 28th day of January 2004



Judge Bankole Thompson

Presiding Judge

