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SCSL-2004-16-PT
(262-266)

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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: 12 February 2004

THE PROSECUTOR

Against

BRIMA BAZZY KAMARA also known as IBRAHIM BAZZY KAMARA

also known as ALHAJI IBRAHIM KAMARA ET AL

CASE NO. SCSL-2004-16-PT

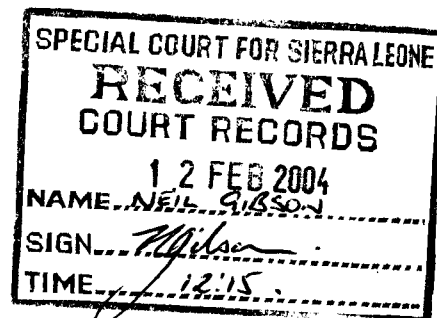
**PROSECUTION REPLY TO “RESPONSE OF KAMARA TO THE PROSECUTION’S
APPLICATION FOR LEAVE TO APPEAL”**

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. Ken Fleming
Mr. C.A. Osho-Williams



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I. INTRODUCTION

1. The Prosecution files this response to the “Response of Kamara to the Prosecution’s Application for Leave to Appeal” (the “**Defence Response**”), dated 9 February 2004 and filed on behalf of Brima Bazy Kamara (the “**Accused**”).¹
2. The Defence argues that the Prosecution’s Application for leave to appeal against the Trial Chamber’s decision and order (the “**Prosecution’s Application**”) be denied on the grounds that no exceptional circumstances has been proved by the Prosecution. The Defence does not address the issue of irreparable prejudice to the Prosecution caused by the said decision.
3. The Defence argues in paragraph 3 of the Defence Response that for the Prosecution’s Application for leave to appeal to succeed, the Prosecution must show that “the discretion has miscarried in some way.” The Prosecution’s understanding of this is that for leave to be granted there must result a miscarriage of justice from the exercise by the Trial Chamber of its discretion not to grant joinder. With utmost respect to the

¹ Registry Page (“RP”) 91-94.

Defence, the only relevant test to be applied in the Prosecution's Application is the test set out in Rule 73(B) of the Rules of Procedure and Evidence for the Special Court for Sierra Leone (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 a miscarriage of justice.

4. Contrary to the Defence's assertion that the motion and the authorities do not disclose an error in the present case, the Prosecution submits that in Part II of the Prosecution's Application (paragraphs 3 -10) it has set out in clear and unambiguous terms the errors complained of in the said decision. In Part IV of the Prosecution's Application, the Prosecution has shown that it will suffer irreparable prejudice if the Trial Chamber's decision stands. It therefore submits that it has satisfied all the requirements laid down under Rule 73(B).
5. The Prosecution does not state in the Prosecution's Application that the mere fact that an Appeal Court may reach a different conclusion is suggestive of the fact that the Trial Court wrongfully exercised its discretion. The Prosecution's argument is that having held that the alleged crimes were committed by the RUF and the AFRC as part of a common plan, for the Trial Chamber to order separate trial, was an error in the exercise of its discretion.
6. The Prosecution submits that the distinction which the Defence labours to draw in the jurisprudence cited by the Prosecution, between situations in which the Accused persons are from the onset charged either individually or jointly is inconsequential. The Prosecution reasserts that the relevant jurisprudence supports the argument that the mere possibility of mutual recriminations or conflicting defences is not a bar to joinder.
7. The Prosecution further notes that the Defence is taking its statements out of context. There is no acknowledgment by the Prosecutor in paragraph 14 of its Application that unless all of the witnesses are called the Prosecution may not have the ability to prove its case beyond reasonable doubt. For ease of reference, paragraph 14 of the Prosecution's Application reads "*The Chamber's decision has serious ramifications for the Prosecution witnesses and consequently on the Prosecution's ability to prove*

its case beyond reasonable doubt.” With all due and utmost respect to the Defence, the same is not an acknowledgement that the Prosecution may not be able to prove its case beyond reasonable doubt.

8. As regards paragraph 14 of the Defence Response, the Defence has misinterpreted the Prosecution’s argument on the question of equality of arms. The Prosecution argument is that the jurisprudence has clearly established that the neither party should be put at a disadvantage when presenting its case. The Prosecution argues inter alia that two separate trials for RUF and AFRC Accused’ will compromise the principle of equality of arms and put it at a substantial disadvantage vis-à-vis the Defence.
9. The Trial Chamber itself acknowledged that based on the Indictments the RUF and AFRC committed the alleged crimes as part of a common plan. It follows from the same that most of its witnesses will be required to testify and be subjected to cross examination twice if this Trial Chambers decision is not overturned. The same will not be required of the Defence witnesses, thereby putting the Prosecution in a disadvantageous and prejudicial position.
10. The Prosecution asserts that it has no intention of “carpet bombing the accused from high altitude”, whatever the significance of this analogy is. In line with the principle of equality of arms and in fulfilment of its consequential obligations, the Prosecution has and will be disclosing all the relevant materials to the Defence and does not intend to take the Defence by surprise as the analogy seems to suggest.
11. The Prosecution submits that the circumstance of 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 provide sufficient basis to hold that it has satisfied the requirements of Rule 73(B).

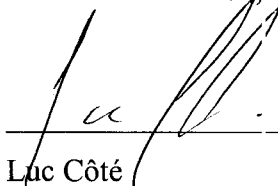
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II. CONCLUSION

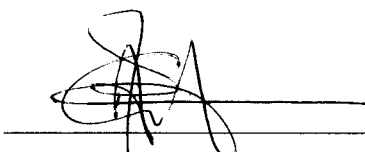
12. Accordingly, the Prosecution submits that the orders prayed for in its motion dated 3 February 2004 be granted.

Freetown, 12 February 2004.

For the Prosecution,



Luc Côté
Chief of Prosecutions



Abdul Tejan-Cole
Trial Attorney