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SCSL-2003-10-PT

1449

(1449-1452)

**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE**

IN THE TRIAL CHAMBER

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

Registrar: Mr Robin Vincent

Date Filed: 22ND January 2001

THE PROSECUTOR

v.

**BRIMA BAZZY KAMARA also known as
IBRAHIM BAZZY KAMARA also known as ALHAJI IBRAHIM KAMARA**

Case No. SCSL-2003-10-PT

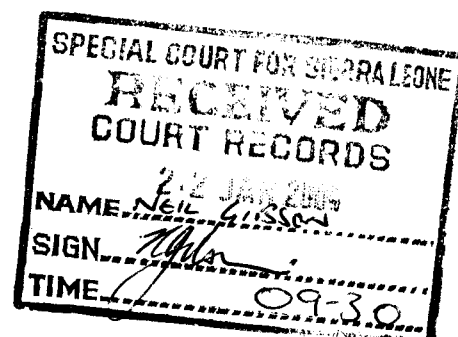
**REPLY TO THE PROSECUTION RESPONSE TO
PRELIMINARY MOTION ON DEFECTS
IN THE FORM OF THE INDICTMENT**

Office of the Prosecutor:

Mr Luc Côté, Chief of Prosecutions
Mr Robert Petit, Senior Trial Counsel
Ms Boi-Tia Stevens, Assistant Trial Counsel
Mr Christopher Santora, Assistant Trial Counsel

Defence Counsel:

Mr Ken Fleming Q.C.



1. The Prosecutor gave disclosure, purportedly pursuant to Rule 66(A)(i) on 6 November 2003. No issue is taken in respect of that date, because that date was mutually agreed between Lead Counsel and Prosecution. Accordingly, in ordinary circumstances, time for filing this motion would have expired on 27 November 2003.
2. However, at 4.00pm on Tuesday 25 November 2003 I was served with 112 documents, which the Prosecutor said was “pursuant to the Prosecution’s disclosure obligations”.
3. That service was two days before, it is said, time expired for the filing of this Motion.
4. The Prosecution says that it was simply making subsequent disclosure pursuant to “its continuing disclosure obligations ...”.
5. The obligation under Rule 66(A)(i) is, ignoring the time limit within which it is to happen, to “disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92 BIS at trial”.
6. It is inconceivable that the service of an additional 112 documents, including statements, was other than in respect of “statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92 BIS at trial”.
7. If there is an obligation to disclose it is because it is pursuant to Rule 66.
8. Rule 72 is triggered pursuant to Sub-Rule (A). According to that Sub-Rule, preliminary motions “shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i)”.
9. How could it be otherwise? Was it the Prosecution’s intention that the Motion be filed on only about 50% of the material upon which it intended to rely?

10. The Prosecution's objection to time is untenable.
11. The Prosecution, in section B, defends the Indictment in respect of dates, locations, names and numbers of victims. It says that it is excused from particularity because of the nature and extent of the offences committed.
12. By Rule 67(A)(ii), the Defence has an obligation, although not fatal if not complied with, to provide details of alibi, specifying the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.
13. In addition, pursuant to Rule 67(C), in order to assist the Prosecutor with disclosure obligations pursuant to Rule 68, the Defence may provide the Prosecutor with a Defence Case Statement. That Case Statement is required to set out the nature of the accused's defence, the matters on which he takes issue with the Prosecution, and the reason why he takes issue with the Prosecution.
14. How can an accused meet that obligation if there is no particularity provided to him of where he is alleged to have been at any given time? Unless there is that particularity the Rules provide a meaningless and futile exercise. The purpose of the Rules is to expedite the hearing of matters and to ensure fairness. Fairness cannot be achieved, nor can expedition, if the accused does not know with specificity where he was supposed to have been on a particular day, what he was supposed to have done on a particular day, and to whom he was supposed to have done it.
15. The same arguments can be raised in respect of matters set out in sections C (the Mode of Participation under Article 6(1)), D (Specificity for Joint Criminal Act Enterprise), E (Responsibility of Superior Under Article 63).

16. However, more importantly, we repeat and rely upon the arguments set out in the Brief in Support of the Motion. We take issue with the arguments of the Prosecution.
17. The accused cannot prepare a meaningful defence, nor provide appropriate documentation pursuant to the Rules, until such times as the particularity requested is provided.
18. In the event that the particularity cannot be provided then the Indictment must be discharged.

PP. 
K.C. FLEMING Q.C.

22 January 2004