

076

SCSL-2003-06-PT
(1482-1488)

1482

**SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE**

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

Registrar: Robin Vincent

Date Filed: 15th October 2003

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA also known as (aka) TAMBA ALEX BRIMA
Aka GULLIT
CASE NO. SCSL-2003-06-PT**

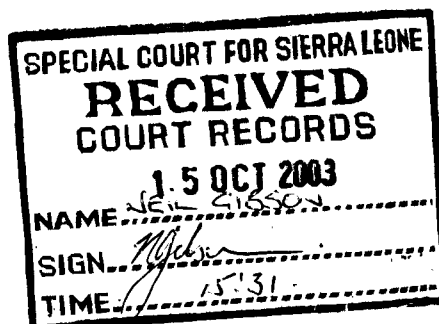
**DEFENCE RESPONSE TO PROSECUTION
MOTION FOR JOINDER**

Office of the Prosecutor:

Mr. Luc Côté
Ms. Brenda J. Hollis
Mr. Robert Petit
Ms. Boi-Tia Stevens

Defence Counsel:

Terence Michael Terry



**SPECIAL COURT FOR SIERRA LEONE
FREETOWN – SIERRA LEONE**

**THE PROSECUTOR
Against**

**ALEX TAMBA BRIMA also known as (aka) TAMBA ALEX BRIMA
Aka GULLIT**

CASE NO. SCSL-2003-06-PT

**DEFENCE RESPONSE TO PROSECUTION
MOTION FOR JOINDER**

Alex Tamba Brima the accused person herein opposes the Motion dated the 8th of October 2003 and filed on the 9th day of October, 2003 seeking a trial jointly with the other (5) five Accused persons namely: Sesay, Kallon, Gbao, Kamara and Kanu respectively notwithstanding the letter and spirit of Rules 48 and 73 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. Consequently it is submitted on behalf of the accused herein that any joint trial of all the named accused persons will hardly serve the interest of justice and no Order with respect ought to be granted by the Trial Chamber for the preparation of a consolidated indictment as the indictment on which the Joint Trial should proceed.

In the first place Counsel for Alex Tamba Brima submits as a preliminary issue that there has been no showing by the Prosecution in which it has disclosed any of the indictment of the (6) six Accused persons to even warrant any consideration for a possible Joint Trial. Due to the fact that no disclosure either by way of the respective indictments of each of the said Accused persons in any way forms part of the application nor is there any reference to any of them in any Attachments OR Appendices to the said Motion praying for the Joint Trial of all (6) six Accused persons - on that fact alone without more it is submitted that the application of the Prosecution is flawed and ought to be dismissed forthwith. It is further submitted that since the application is before the Trial Chamber, it is even more important that the

full compliment of Judges be seised of what indictment was before what Judge to enable the Trial Chamber to sight same and such a process can only be taken to its logical conclusion when that kind OR piece of evidence is before the Trial Chamber. Moreover no Order OR Orders relating to confirmation of any of the Indictment relating to any of the said Accused persons was even disclosed to form part of the papers before the Trial Chamber.

In the light of the foregoing, it is submitted that reliance by the Prosecution on jurisprudence from the ICTY and previous jurisprudence from the ICTR and their related plethora of authorities are not of moment in the fatal absence of establishing the necessary basic first preliminary step namely the kind of evidence relating to either any indictment, and/OR order confirming same and/OR any other pertinent order thereto to take the next progressive step to warrant consideration of the Orders sought in the said Motion of the Prosecution.

It is submitted that the Prosecution is right in its interpretation of Rule 48(B) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, but Counsel for the accused differ with it in so far as the test it has adopted which is not applicable to the facts of this instant case – to wit the offences were not committed in the course of the same transaction. Moreover it is submitted that there is no proximity of time and place, no community of action, no community of purpose OR design and therefore the offences cannot be deemed to have been committed in the course of the same transaction to warrant a trial jointly of all (6) six accused persons.

It is submitted that since the ultimate grant of an order for joinder is discretionary in nature based on the special facts of this instant case, this is not a proper case warranting the exercise of such a discretion by the Trial Chamber according to Law. Furthermore, it is submitted that on balance the interest of justice and the rights of the Accused will not be best served if the Trial Chamber proceeds to exercise its discretion by granting a joint Trial of all (6) six accused persons. Issues of promotion of judicial economy, the avoidance of duplication of evidence and minimizing hardship to the witnesses ought to have been

in the knowledge of the Prosecution when it set out initially to seek and get confirmed separate indictments (although not disclosed) for all the (6) six accused persons - indeed an additional factor in weighing the balance against the exercise of the Trial Chamber's discretion in granting OR refusing to grant a joint trial of all (6) six accused persons. Hence the authority relied upon by the Prosecution in the case of the Prosecutor .v. Kvočka et al, IT-98-30-T and IT-95-4-PT is clearly distinguishable on its special facts and is not on all fours with the instant case. Indeed the principles enunciated therein may very well be a guide for prosecuting authorities, but with respect is not a binding Statement of law for Courts in all cases.

Counsel for the accused submits further that the circumstances of this case cannot by any stretch of imagination be said to meet the criteria essential for an order granting joinder and at the risk of sounding repetitious since none of the indictment of any of the accused has been disclosed, OR attached as Appendix hereto, for any consideration to be given to them by the Trial Chamber, the allegation therefore that the crimes against all (6) six accused persons are crimes which form part of a common scheme to gain effective control of the territory and population of Sierra Leone become merely academic.

Again under 19 at page 5, the Prosecution states that the indictments against the (6) six Accused persons namely Sesay, Brima, Kalloh, Gbao, Kamara and Kanu are almost identical. It also refers to material facts alleged in all the indictments are the same and mentions exceptions. But it is submitted that throughout reliance is placed on indictments by the Prosecution without disclosing the actual indictments for the perusal of the Trial Chamber.

The same reasoning applies mutatis mutandis to the Rubric 20 at pages 5 to 6 respectively. Rubric 21 at page 6 of the Prosecution Motion has no merit for the simple reason that the facts in the case of The Prosecutor v. NYIRAMASUHUKO et al, ICTR. 97-21-1, ICTR-97-29 A and B-1, R-96-15-T ICTR 96-8-I. Decision on the

Prosecutor's Motion for Joinder of Trials 5th October 1999, Paras. 10-12, is not applicable to the instant case.

Under Rubric 22 at page 6 allegations are made in respect of all the accused persons again without disclosing any indictment whatsoever. To that extent the accused herein will in response rely on and adopt the foregoing arguments relating to the non-disclosure of any indictment laying the basis for the charges OR allegations proffered by the Prosecution relating to a common plan, purpose OR design (Joint Criminal enterprise).

As regards the issue of a Joint Trial serving the interest of Justice, Counsel for the accused regrets to state again that the matters relied upon by the Prosecution under Rubric 23, 24, 25, 26, at page 7 to pages 8 and 9 are equally flawed for the same reasons. It is further submitted on behalf of the accused that any discussion on those issues without the Trial Chamber having the benefit of perusing the indictments of the respective (6) six accused persons because of failure to disclose same in the Prosecution motion becomes not only an exercise in futility but also merely academic.

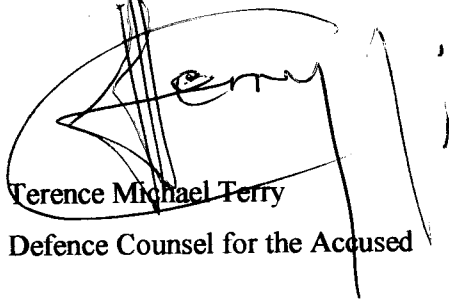
Contrary to what the Prosecution suggest under 30, at page 9, it is submitted by Counsel for the Accused herein that the Trial Chamber should with respect consider it necessary in the instant case in order to avoid a conflict of interest that might cause serious prejudice to the accused herein OR to protect the interest of justice for him to be tried separately.

Whereas Counsel for the accused agrees with the Prosecution that joinder of cases may well be consistent with the evolving international jurisprudence as reflected in decisions rendered by the international ad hoc tribunals, the burden which is squarely on the Prosecution in this instant case has not been discharged by them, and furthermore the necessary first step afore-mentioned to warrant the grant of the Prosecution Motion and order that the Accused persons, Sesay, Brima, Kallon, Gbao, Kamara and Kanu be jointly tried is far from been fulfilled.

CONCLUSION

Consequently the request that the Trial Chamber order that a single, consolidated indictment be prepared as the indictment on which the joint Trial shall proceed be rejected and further that no order be made by the Trial Chamber for the Registry to assign a new case number to a consolidated indictment.

Done in Freetown on this 15th day of October 2003



Terence Michael Terry
Defence Counsel for the Accused

1488

**SPECIAL COURT FOR SIERRA LEONE
FREETOWN – SIERRA LEONE**

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

Registrar: Robin Vincent

Date Filed: 15th October 2003

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA also known as (aka) TAMBA ALEX BRIMA
Aka GULLIT
CASE NO. SCSL-2003-06-PT**

**DEFENCE RESPONSE TO PROSECUTION
MOTION FOR JOINDER**

Office of the Prosecutor:

Mr. Luc Côté
Ms. Brenda J. Hollis
Mr. Robert Petit
Ms. Boi-Tia Stevens

Defence Counsel:

Terence Michael Terry