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SCSL-2004-16-PT

S327

(5327-5329)

THE SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

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

Registrar: Robin Vincent

Date Filed:

THE PROSECUTOR

Against

ALEX TAMBA BRIMA also known as TAMBA ALEX BRIMA also known as GULLIT BRIMA BAZZY KAMRA also known as IBRAHIM BAZZY KAMARA also known as ALHAJI IBRAHIM KAMARA

AND

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

(Case No. SCSL-2004-16-PT)

KAMARA RESPONSE AND APPLICATION FOR EXTENSION OF TIME TO PROSECUTOR'S MOTION FOR CONCURRENT HEARING OF EVIDENCE

Office of the Prosecutor:

Mr Luc Côté
Mr Robert Petit
Mr Paul Flynn
Mr Abdul Tejan-Cole
Ms Leslie Taylor
Ms Boi-Tia Stevens
Mr Christopher Santora
Ms Sharan Parmar

Defence Counsel for ALEX:

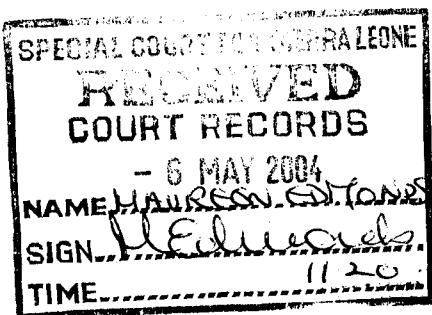
TAMBA BRIMA
Mr Terence Terry

Defence Counsel for BRIMA

BAZZY KAMARA
Mr Ken Fleming QC

Defence Counsel for

SANTIGIE BORBOR KANU
Mr Geert-Jan Alexander
Knoops



1. It would appear that this Motion and supporting material was filed in the Special Court on 30th April 2004 at 15:34.
2. I reside in Brisbane, Queensland, Australia, and Australian Eastern Standard time is 10 or 11 hours in advance of Sierra Leonean time. Accordingly, when the document was filed at 15:34 in Sierra Leone, it was already by then 1am or 2am Saturday 1st May 2004 in Brisbane.
3. The 3rd May 2004 in Queensland was a statutory public holiday. I left Brisbane at approximately 3.00pm, Brisbane time, Friday 30th April 2004 for a short vacation to a resort north of Brisbane, Noosa. That vacation incorporated the public holiday on Monday 3rd May 2004.
4. I was awoken by a telephone call on my mobile telephone in the early hours of Saturday morning, 1st May 2004, to be informed by Ms Simone Monasebian of matters that were then transpiring in court. My co-counsel had expressly run counter to the instructions I had given him in respect of the pre-trial conference.
5. I was rung again an hour or so after that event to be informed, first of what occurred at the pre-trial conference, and, second, that it was likely that a Motion for concurrent hearing of evidence would be filed. This, by then, was, as I have said, some time in the early hours of Saturday morning, 1st May 2004.
6. I returned to Brisbane late on Monday, 3rd May 2004. The first opportunity I had to access material was Tuesday morning, 4th May 2004. I downloaded and assembled the nine PDF files comprising this Application and began the necessary task of reading and researching the matter.
7. I then noted that the material relied upon was confusing in the extreme. For example, in respect of the *Tadic* case, there are only 13 or 14 paragraphs extracted from a very lengthy judgment. It might be argued by the Prosecutor that no other passages are relevant but that is not a chance that I am prepared to take on behalf of my client. Accordingly, research of a significant kind was required to be done in respect of this question.
8. I then note that 89 pages of summarised evidence were annexed. To illustrate the difficulty faced here, for example, the last summary is for witness PNTF1-351. That is in respect of evidence to be disclosed, going to 13 counts in the Indictment, the evidence in chief to last for 75 minutes and the summary of the evidence is as follows

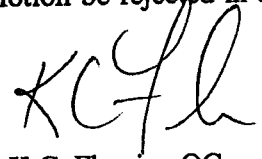
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“This witness will give evidence about the investigations of, evidence gathered and reports written by various NGOs in Sierra Leone.”

- 9. I have not counted the number of witnesses because I do not want to take the time to do so. However, it is necessary to find the appropriate material in the documents that might have been disclosed so that I can properly inform myself as to whether or not the witness is, first, properly summarised, and second, is of the category or characteristics suggested by the Prosecution.
- 10. On the 4th May 2004, at approximately 4pm, I received by DHL a carton containing a number of thousands of pages, with no explanatory note, from the Prosecution. I can only assume that this is material disclosing the names of witnesses, but it remains confusing because, for example, the witness TF1-036 has excluded the name of witness and other important features. I take that as a random sample.
- 11. The Prosecution continues to send documents without explanation as to what the documents are and it is impossible for me to give proper attention to this motion in the time allocated.
- 12. The time schedule set by this learned Trial Chamber cannot be met by me in respect of this matter, despite my best endeavours to do so.
- 13. However, in the event, on the merits of the Application, the Prosecutor cannot do by the back door what he could not achieve, first by his Application for Joinder, and second by his Application for Leave to Appeal the rejection of the Joinder Motion as it was determined by this honourable Trial Chamber.

Each of the reasons expressed by this learned Trial Chamber in rejecting the Motion for Joinder is as valid today as it was when the Joinder Motion was heard.

- 14. In summary then –
 - (a) The learned Trial Chamber give leave to file this document even though it does not comply with the Order of this learned Trial Chamber;
 - (b) That the learned Trial Chamber extend the period of time by which the Accused Kamara respond to this Motion;
 - (c) That, for the reasons stated herein, the Prosecutor’s Motion be rejected in any event.


 K.C. Fleming QC
 Lead Counsel

Dated this 6th day of May 2004