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SCSL-2003-10-PT-  
(668-671)

668

**THE SPECIAL COURT FOR SIERRA LEONE**

**Before:**

**Registrar:** Robin Vincent

**Date Filed:**

**THE PROSECUTOR**

**v.**

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

**Case No. SCSL-2003-10-PT**

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**DEFENCE MOTION FOR EXTENSION OF TIME  
TO FILE RESPONSE TO PROSECUTION MOTION  
FOR JOINDER AND FOR ADJOURNMENT OF HEARING**

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1. The Defence seeks –
  - (a) An extension of time, if necessary, to file a response to the Prosecution Motion for Joinder; and
  - (b) An adjournment of the hearing of the Motion for Joinder.
2. By Rule 7 of the Rules of Procedure and Evidence (hereinafter "RPE") it is provided in 7(A) that for the purposes of the Rules, time for the doing of any act "shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission by the Registry, Counsel for the accused or the Prosecutor as the case may be".

By Subrule (c) any response to a motion shall be filed within 10 days.

3. The Prosecution Motion for Joinder bears the filing date of the 9<sup>th</sup> October 2003.

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|--------------------------------|-------------|
| SPECIAL COURT FOR SIERRA LEONE |             |
| RECEIVED                       |             |
| COURT RECORDS                  |             |
| NAME                           | 13 NOV 2003 |
| ADDRESS                        | EDMONDS     |
| SIGN                           | H. Edwards  |
| TIME                           | 09:40       |

4. Material is forwarded to me via a website belonging to the Bar Association of Queensland. That is the only website with sufficient capacity to receive the volume of material. No service such as "Hotmail" has the necessary capacity.
5. I left Australia to travel overseas, including to Sierra Leone for the sittings of the Appeal Chamber, on the 5<sup>th</sup> October 2003. I had made arrangements to access the particular website and to remove mail externally. However, as a result of defects within the system, I was unable to do so. I attempted to rectify that situation and the manager of the website made adjustments to the file to alleviate the problem. Annexed hereto is a copy of an email sent Thursday 23<sup>rd</sup> October 2003, but not received by me for at least two days after that date.
6. Unfortunately I was still unable to open the system. On the 31<sup>st</sup> October 2003 I travelled to Sierra Leone and was accommodated in the Defence Office of the Special Court campus. I was involved in Appeal Chamber hearings, but attempted, on numerous occasions, to open the website to receive any mail, and again was unable to do so. The explanation I constantly received was that the system was overloaded and the Special Court had a very narrow band for internet purposes.
7. No person, at any stage, while I was present in Sierra Leone, informed me that there was a Motion for Joinder of Kamara in existence. No person from the Registry nor Prosecution so informed me. I asked the Defence Office if any documents had been delivered for me in hard copy. There were no such documents delivered to the Defence Office.
8. The sole process for service of documents is via an Australian email address. I returned to Australia on the day of the 11<sup>th</sup> November 2003, and late that afternoon opened, for the first time, the email facility into which service is made. It was then that I received the material in respect of a Joinder Motion.
9. Service of documents, by this means, is of no difficulty while I am present in Australia and receiving that material. However, it is a difficulty when I leave my home base of Brisbane.
10. Because service has been effected in the manner described, the meaning of Rule 7(A) must be that notice "has been received in the normal course of transmission by ... Counsel for the accused". The emphasis must be upon "received". If that interpretation is correct then there is no need for an extension of time within which to file a response to the Joinder Motion.
11. If that interpretation is not correct, then I ask in the circumstances for an extension of time within which to file a Response.
12. In order that the issue does not arise again, I will negotiate a form of appropriate service of documents.

13. Further, an important substantive reason for requesting an extension of time relates to the issue of disclosure. The learned Trial Chamber made its decision in respect of witness protection in the Kamara matter on the 23<sup>rd</sup> October 2003. Up until that point, disclosure had not been given to the accused but, rather, without objection from the accused, was made to the Registry pending the decision of the learned Trial Chamber on witness protection.
14. I was contacted in respect of material subject to the disclosure requirements as I was arriving in Sierra Leone on the 31<sup>st</sup> October 2003. The disclosed materials were provided to me on the 6<sup>th</sup> November 2003, the day before I left Sierra Leone to travel home. I received the material subject to the need to verify that the items purportedly disclosed were, in fact, disclosed. The material was left in Sierra Leone in order that copies could be made so that the accused could start work on the material as could Co-Counsel.
15. Copies of the material were forwarded to me by DHL courier on Monday 10<sup>th</sup> November 2003 and those materials have not yet arrived in Brisbane as at the date of preparing this motion (Thursday 13<sup>th</sup> October 2003).
16. Accordingly, instructions are being taken from the client by a Legal Assistant present there, and no analysis, as yet, has been conducted of the material.
17. I am therefore in no position to make any comment about many of the issues raised in the Motion for Joinder.
18. Further, the time for the bringing of a Preliminary Motion began to run, at the earliest, on 6<sup>th</sup> November 2003. In our respectful submission, it would be premature to determine joinder when matters relating to the contents of the indictment had not yet been ventilated.
19. Further, the application of the Prosecution for joinder refers to "disclosed material" (paragraph 4). At least one accused has not yet received disclosure. At paragraph 15 the Prosecutor refers to "duplication of evidence". Paragraph 25 refers to the fact that "the majority of the evidence that will be tendered by the Prosecution against each accused will invariably overlap, and typically be the same". Paragraph 27 asserts that the witnesses to be called to testify are common to all accused persons.
20. Accordingly, we respectfully request the Court to make the following findings:
  - (a) That time for the filing of a response began 6<sup>th</sup> November 2004, or alternatively 10<sup>th</sup> November 2003, or alternatively 11<sup>th</sup> November 2003;

- (b) Alternatively, given the circumstances of service, an extension of time be granted for the filing of a response to the Prosecutor's Motion for Joinder;
- (c) Further, the Motion for Joinder be adjourned from the 24<sup>th</sup> and 25<sup>th</sup> November 2003.

**K.C. FLEMING Q.C.**  
13 November 2003