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Se SL - 2003 - 10 - PT

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(687 - 690)

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

Before: Judge Bankole Thompson
Judge Benjamin Itoe
Judge Pierre Boutet

Registrar: Mr. Robin Vincent

Date filed: 20 November 2003

THE PROSECUTOR

Against

BRIMA BAZZY KAMARA also known as

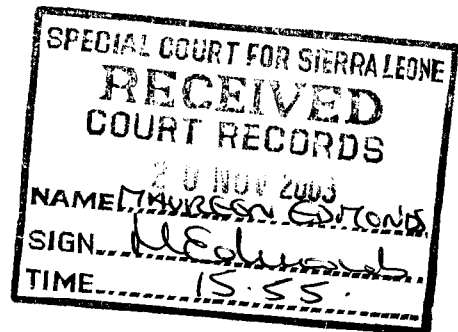
IBRAHIM BAZZY KAMARA also known as ALHAJI IBRAHIM KAMARA

CASE NO. SCSL - 2003 - 10 - PT

**PROSECUTION REPLY TO DEFENCE RESPONSE TO
PROSECUTION MOTION FOR JOINDER**

Office of the Prosecutor
Luc Côté, Chief of Prosecutions
Boi-Tia Stevens, Assistant Trial Counsel

Defence Counsel
Ken Fleming, Q.C.



**SPECIAL COURT FOR SIERRA LEONE
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INTRODUCTION

1. The Prosecution files this reply to *Response to Prosecution Motion for Joinder* (the Response) filed by the Defence on behalf of the Accused, Brima Bazy Kamara, on 18 November 2003.
2. In the Response, the Defense concurs with most of the points of law and facts contained in the Prosecution's Motion for Joinder (joinder motion) filed on 9 October 2003. However, the Defence contends that the joinder motion must fail because the Prosecution must establish "by some measurable standard of proof" that the facts alleged in the indictment and in the joinder motion have credibility, and that the Prosecution has failed to do so. The Defence also submits that the motion for joinder cannot be determined without first deciding on challenges to jurisdiction and the form of the indictment.
3. The Prosecution submits that the Defense Response should be dismissed as it is not supported in law.

ARGUMENT

A. The Procedure for Determining the Joinder Motion

4. The Prosecution submits that in principle, there is no requirement that challenges to jurisdiction and the form of an indictment must be determined before deciding on a motion for joinder.
5. The Prosecution respectfully submits that due consideration be given to the effect a delay on the decision on the joinder motion would have on all parties.

B. The Credibility of the Facts Alleged in the Indictment and the Joinder Motion

6. In support of its motion for joinder, the Prosecution relies principally on the indictment against the Accused as well as the indictments against the other five accused persons who are the subject of the joinder motion. The credibility of each one of these indictments was indeed subjected to a measurable standard of proof. This is reflected, in particular, in the Orders approving the various indictments and the review process of the indictments in general.¹
7. The standard of proof for an indictment within the Special Court's jurisdiction is duly set forth in Rule 47 of the Rules of Procedure and Evidence for the Special Court (the Rules). The Orders approving the said indictments found that each one met the required standard for indictments in this Court. With respect, in response to paragraph 8 of the Response, the Prosecution submits that the Court is not bound by rules of national courts.²
8. As to the facts relied on in support of the joinder motion which are referred to in the Response as paragraphs 26 and 27 of the motion for joinder, the Prosecution submits that the submissions contained in those paragraphs are directly based on the approved

¹ See the Orders approving the Indictment against Issa Sesay, SCSL-2003-05-I, dated 7 March 2003; against Tamba Brima, SCSL-06-I, dated 7 March 2003; against Morris Kallon, SCSL-07-I, dated 7 March 2003; against Augustine Gbao, SCSL-09-I, dated 16 April 2003; against Brima Bazy Kamara, SCSL-2003-10-I, dated 28 May 2003; against Santigie Khanu, SCSL-2003-13-I, dated 16 September 2003.

² See for e.g., Rule 89.

Indictments. If, on their faces, the tested indictments are similar, then there must be a reasonable presumption of similarity in the evidence.

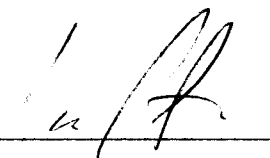
- 9. To the extent the Defence Response suggests that the Prosecution evidence must be reviewed before a determination on the joinder motion is made, the Prosecution submits that such a review is not necessary and that this is a function of the trial. A trial would be pointless, otherwise. Should the Court require proof of the Prosecution’s intention to use the same evidence against the accused persons, the Prosecution submits that the list of material disclosed to each accused person is a reliable indicator.

CONCLUSION

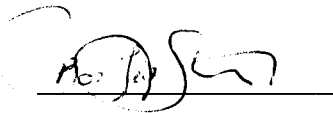
For the foregoing reasons, the Prosecution requests that the Defence Reply be dismissed in its entirety.

Freetown, 19 December 2003.

For the Prosecutor,



Luc Côté



Boi-Tia Stevens