

109

SCSL-2004-16-PT
(5839-5841)

5839

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-PT

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

Registrar: Robin Vincent

Date filed: September 13, 2004

THE PROSECUTOR

against

SANTIGIE BORBOR KANU

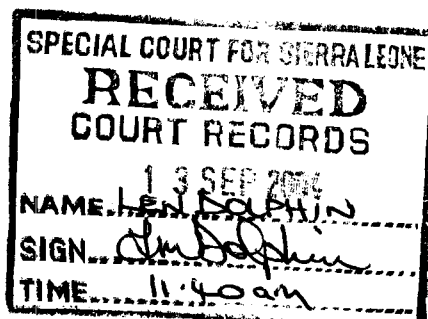
**KANU – REPLY TO PROSECUTION RESPONSE TO KANU’S ‘APPLICATION FOR LEAVE TO
APPEAL AGAINST THE ‘DECISION ON MOTIONS FOR EXCLUSION OF PROSECUTION
WITNESS STATEMENTS AND STAY ON FILING OF PROSECUTION STATEMENTS’ OF JULY
30, 2004**

Office of the Prosecutor:

Luc Coté
Robert Petit

Defense Counsel:

Geert-Jan A. Knoops, Lead Counsel
Carry J. Knoops, Co-Counsel
A.E. Manly-Spain, Co-Counsel



I INTRODUCTION

1. Pursuant to the “Decision on Motions for Exclusion of Protection Witness Statements and Stay on Filing of Prosecution Statements” (“**Decision**”) of July 30, 2004, the “Kanu – Application for Leave to File an Interlocutory Appeal against the ‘Decision on Motions for Exclusion of Protection Witness Statements and Stay on Filing of Prosecution Statements’ of July 30, 2004,” (“**Defense Motion**”), filed by the Defense on August 4, 2004 and the “Prosecution Response to Kanu’s ‘Application for Leave to Appeal against the ‘Decision on Motions for Exclusion of Protection Witness Statements and Stay on Filing of Prosecution Statements’ of July 30, 2004,” (“**Prosecution Response**”), the Defense herewith files its “Defense Reply to ‘Prosecution Response to Kanu’s ‘Application for Leave to Appeal against the ‘Decision on Motions for Exclusion of Prosecution Witness Statements and Stay on Filing of Prosecution Statements’ of July 30, 2004.’”

II LEGAL ARGUMENT

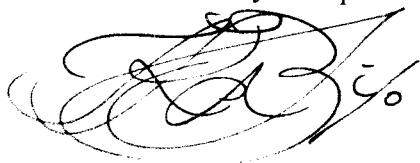
2. The Prosecution in para. 10 of the Prosecution Response notes that the Defense in its Motion does not oppose the findings of the Decision. However, the main argument set out in the Defense Motion is that the Trial Chamber failed to take into account the explicit requirement of old Rule 66(A)(i) and/or new Rule 66(A)(ii), namely that ‘good cause’ needs to be established, and that failure to take this notion into account amounts to an error of law.
3. Moreover, the Prosecution in this same paragraph noted that the Defense did not oppose the Trial Chamber’s findings of the Decision, and that the Defense Motions was rather restricted to substantive matters. However, apart from the fact that the Defense is of the humble opinion that it did in fact argue procedural matters concerning the Decision, grant for leave to appeal may also be warranted based upon substantive arguments, which may qualify the existence of an error of

- law or fact. In such a situation, the interest of justice may benefit from the grant for leave to appeal.
4. As set out in the Defense Motion, this error of law amounts to exceptional circumstances and may lead to irreparable prejudice to the Accused. The Defense thus humbly holds that the above, as more extensively referred to in the Defense Motion, fulfills the requirements of Rule 73(B) of the Rules.
 5. As a result of this, the Trial Chamber made an error of law in deciding that the Defense would not suffer any prejudice from not excluding the disclosed documents as referred to in the Defense Motion.
 6. Thus, the Defense is of the humble opinion that granting leave to appeal from the Decision on the basis of the foregoing arguments is warranted.

III PRAYER

7. For the reasons set out above and in the Defense Motion, the Defense herewith prays the honorable Trial Chamber to grant the Defense leave to appeal from the Decision.

Respectfully submitted,
Done at this 13th day of September 2004



Geert-Jan Alexander Knoops