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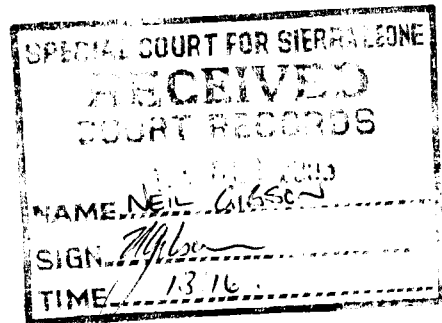
**SPECIAL COURT FOR
SIERRA LEONE**

Case No. 2003-13-PT

Before: Judge Benjamin Itoe
Judge Bankole Thompson
Judge Pierre Boutet

Registrar: Mr. Robin Vincent

Date filed: October 16, 2003



THE PROSECUTOR

against

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

RESPONSE TO THE PROSECUTION MOTION FOR JOINDER

Office of the Prosecutor:

Mr. Luc Côté
Ms. Brenda J. Hollis
Mr. Robert Petit

Defense Counsel:

Mr. Geert-Jan Alexander Knoops

I INTRODUCTION

1. The Defense herewith files its Response Motion to the Request of the Office of the Prosecutor (hereafter referred to as the “**Prosecution**”) filed on October 9, 2003, for an order that the accused Sesay, Brima, Kallon, Gbao, Kamara and Kanu be jointly tried. The Prosecution holds the opinion that the requested joinder is in accordance with the language and spirit of Rule 48 of the Rules of Procedure and Evidence (hereafter referred to as the “**Rules**”), and also would serve the interests of justice, without denying the accused persons of any fundamental right.
2. The Defense in the case of Mr. Kanu observes that disclosure of materials pursuant to Rule 66(A)(i) of the Rules for the Accused has not yet been effectuated. This observation may be of importance for the Court in addressing the Prosecution Motion for Joinder filed October 9, 2003 (hereafter referred to as the “**Prosecution Motion**”).
3. For the following reasons, the Defense prays that the request for joinder be denied.

II FACTUAL ARGUMENTS

4. In the jurisprudence of both the ICTY and the ICTR, mentioned in para. 10 – 14 of the Prosecution Motion, it is indicated that a requirement for a joinder of cases, is the fact that, *inter alia*, the particular acts to which the accused in question is to be connected to, must illustrate the existence of a common scheme, strategy or plan.

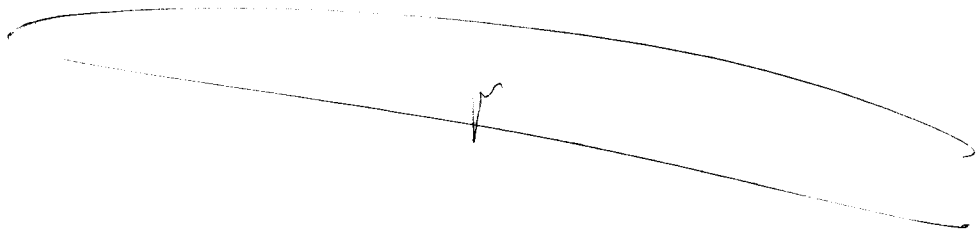
5. In paras. 18 and 19 of the Prosecution Motion, it is stated that the requirements for joinder are fulfilled as the alleged crimes against the accused Sesay, Brima, Kallon, Gbao, Kamara and Kanu, are crimes which formed part of such a common scheme.
6. However, without the disclosure of materials as envisioned by Rule 66(A)(i) of the Rules in the case of Mr. Kanu, the Defense is unable to assess the fulfilment of specifically the requirement mentioned under para. 4 above. Therefore, for this **first** reason, the Defense holds the view that the Court should not grant the Prosecution Motion in the absence of disclosure and as a consequence the inability of the Defense to examine the factual justification for this request for joinder.
7. In the **second** place, the Defense holds that the Court ought not to grant the Prosecution Motion for the following reason. Simultaneously with this Response, the Defense filed a Motion of Defects in the Form of the Indictment and for Particularization of the Indictment. This Motion extensively purports that on several essential and material elements of the Indictment, it lacks sufficient specificity with respect to the charges against the Accused, and the alleged crimes, period, locations and victims.
8. Therefore, contrary to the arguments of the Prosecution in para. 23 – 29 of the Prosecution Motion, and without having decided the Defense Motion mentioned under para. 7 above, it is questionable whether a joint trial would indeed serve the interests of justice. It may be held that the Defense Motion as referred to in para. 7 above, could amount to the conclusion that the criterion of Rule 48(A) of the Rules, namely the requirement of the existence of “*the same or different crimes committed in the course of the same transaction*”, may no(t) (longer) be fulfilled.

III CONCLUSION

9. For all these reasons, the Defense prays that the Prosecution Motion for a joint trial primarily be denied, and alternatively, that the decision on this Motion be suspended until after the Court has ruled on the Defense Motion as mentioned in para. 7 above.

Done in Freetown on this 16th day of October 2003

For the Defense



Geert-Jan Alexander Knoops