

(6124 - 6128)

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN - SIERRA LEONE

Before: Judge Teresa Doherty, Presiding
Judge Richard Lussick
Judge Julia Sebutinde

Registrar: Mr. Robin Vincent

Date filed: 15 February 2005

THE PROSECUTOR

Against

SANTIGIE BORBOR KANU

CASE NO. SCSL - 2004 - 16 - PT

PROSECUTION RESPONSE TO KANU - REQUEST FOR EXTENSION OF TIME FOR HEARING OF "KANU - DEFENSE MOTION FOR DISMISSAL OF COUNTS 15-18 OF THE INDICTMENT DUE TO AN ALIBI DEFENSE AND LACK OF PRIMA FACIE CASE" OF JANUARY 20, 2005

Office of the Prosecutor:

Luc Coté
Lesley Taylor
Boi-Tia Stevens
Jennifer Beckley

Defence Counsel:

Geert-Jan Alexander Knoops
Carry J. Knoops
A.E. Manley-Spain

NEIL GIBSON
Neil Gibson
11:30

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I. BACKGROUND

1. On 20 January 2005, the Defence filed “Kanu – Defense Motion for Dismissal of Counts 15-18 of the Indictment Due to an Alibi Defense and Lack of *Prima Facie* Case” (the motion).
2. On 31 January 2005, the Prosecution filed the following response to the motion: Prosecution Response to “Kanu – Defense Motion for Dismissal of Counts 15-18 of the Indictment Due to an Alibi Defense and Lack of *Prima Facie* Case” (the response).
3. On 3 February 2005, the Defence filed the following reply to the response: Kanu – Reply to “Prosecution Response to Kanu – Defense Motion for Dismissal of

Counts 15-18 of the Indictment Due to an Alibi Defense and Lack of *Prima Facie* Case” (the reply).

4. On 7 February 2005, the Prosecution filed the following: Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18.
5. On 7 February 2005, the Honorable Judge Teresa Doherty issued the following: Order on Expedited Filing and Scheduling Order, which, *inter alia*, scheduled a hearing on the motion on 16 February 2005 at 2:00 p.m.
6. On 11 February 2005, the Defence filed the following: Kanu – Request for Extension of Time for Hearing of “Kanu – Defense Motion for Dismissal of Counts 15-18 of the Indictment Due to an Alibi Defense and Lack of *Prima Facie* Case” of January 20, 2005 (the request for adjournment).
7. The request for adjournment seeks a postponement of the scheduled hearing until 1 March 2005, or in the alternative that the Defence be permitted to present its arguments in written form. The Defence cites the unavailability of the three Defence counsels as the reason for its request for adjournment.

II. ARGUMENT

A. The Prosecution neither opposes nor accedes to an adjournment of the oral hearing

8. The Prosecution is fully prepared to proceed with the oral hearing as scheduled for 16 February 2005. The Prosecution neither opposes nor accedes to the Defence request for an adjournment. The Prosecution acknowledges that the decision to grant or deny an adjournment rests solely with the Court.

B. The Defence should not be permitted to present its oral arguments in written form

9. The Prosecution strongly rejects however, the Defence proposal that in lieu of oral arguments, the Defence be permitted to submit their arguments in written form.
10. Both the Prosecution and the Defence have had ample time to submit arguments on the issue at hand and both parties have indeed presented written briefs on the subject matter. In fact, the Defence submitted two briefs – the motion itself and a reply. There must be finality to litigation, and it is submitted that the Rules of Procedure and Evidence of the Special Court (the Rules) embodies this principle. For example, Rule 7(C) prescribes time limits and the written submissions to be made when a motion is filed: a response and a reply. The Defence proposal, inviting additional written arguments when the parties have exhaustively filed a motion, response and a reply, respectively, in effect seeks to import a new procedure into the Rules and the practice of this Court and should not be allowed.
11. Further, an oral hearing on a motion is not mandatory and a judge can rule on motions based solely on the written submissions of the party. *See* Rule 73. Therefore, if in the instant case the Defence is not disposed to attend the scheduled hearing, and an adjournment is not feasible, the matter can be decided on solely on the pleadings previously filed and submitted by the parties.
12. Finally, it is submitted that where as in this case an oral hearing has been preceded by the submission of written briefs, the hearing merely serves the purpose of amplifying or highlighting arguments already contained in the briefs. Thus if the hearing is not to take place, the exercise of presenting the oral argument in written form is otiose, and a waste of judicial time.

III. CONCLUSION

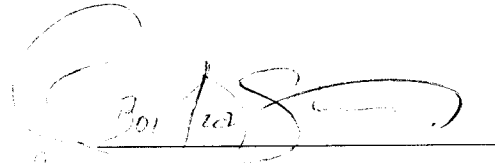
13. For the foregoing reasons, the Prosecution neither accedes nor opposes the Defence application for an adjournment, but prays that the Defence request that written arguments be submitted in lieu of an oral hearing be dismissed.

Freetown, 15 January 2005.

For the Prosecution,



Luc Côté
Chief of Prosecutions



Lesley Taylor
Senior Trial Counsel