

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: 7 March 2005

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU**

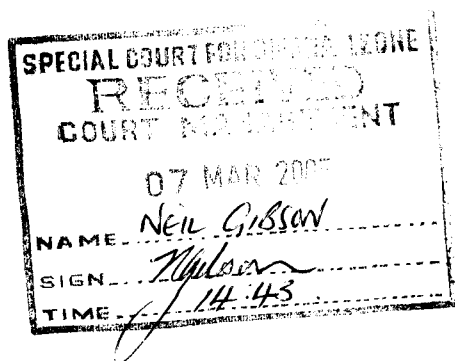
CASE NO. SCSL – 2004 – 16 – ~~X~~T

**COMBINED PROSECUTION RESPONSE TO KANU AND BRIMA –
MOTION TO DISCLOSE PROSECUTION MATERIALS AND/OR OTHER
INFORMATION PERTAINING TO REWARDS PROVIDED TO
PROSECUTION TRIAL WITNESSES**

Office of the Prosecutor:
Luc Coté
Lesley Taylor

Defence Counsel for Brima:
Kevin Metzger
Glenna Thompson

Defence Counsel for Kanu:
Geert-Jan A. Knoops
Cary J Knoops
A.E. Manly-Spain



Prosecutor against Tamba Brima et al., Case No. SCSL-2004-16-XT

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I. BACKGROUND

1. On 4 March 2005 the Accused Kanu filed a Motion to Disclose Prosecution Materials and/or Other Information Pertaining to Rewards Provided to Prosecution Trial Witnesses (“the Kanu motion”) seeking an Order from the Trial Chamber that the Prosecution disclose all information and materials pertaining to rewards provided by the Prosecution to its trial witnesses prior to the examination in chief of the particular witness. The Kanu motion relied upon the English decision of *R v Rashid* (1994) 158 JP 941 and the European Court of Human Rights decision of *Verhoek v The Netherlands* (2004).

2. On the same day the Accused Brima filed a Motion in Support of the Kanu motion (“the Brima motion”). The Brima motion additionally referred to the English decision of *R v Matthew Smith and Ors* [2004] EWCA Crim 2212.
3. The Prosecution hereby files this Combined Response.

II. ARGUMENT

4. The Prosecution is willing to disclose to the Defence details of payments made by the Office of the Prosecutor to or on behalf of witnesses it intends to call at trial. The Prosecution is also willing to disclose the fact of any other rewards or inducements offered to such witnesses, if any. The Prosecution will do so pursuant to its obligation under Rule 68. The Prosecution accepts that such information falls within the class of information which “may affect the credibility of prosecution evidence”.
5. The obligation under Rule 68 is a continuing one. The Prosecution notes that payments by the OTP to or on behalf of witnesses are often made immediately prior to the testimony of witnesses for items such as transport to Freetown. The Prosecution is content to disclose all payments made to date in respect of the 63 core witnesses and to disclose information of any additional payments immediately prior to a particular witness being called, or to disclose final information of each witness on a witness by witness basis, as agreed between the parties. It is the changing nature of this information which has meant that the Prosecution had not, at the time the Kanu motion and the Brima motion were filed, disclosed such information.
6. To this end, the Prosecution notes that neither the legal representatives for Kanu or Brima approached the Office of the Prosecutor to request this information or discuss how such information would be disclosed before filing a motion before the Trial Chamber. The Prosecution states that it is willing to

discuss such matters with all Counsel for the Accused and to resolve such matters without the necessity for pleadings before the Special Court. Indeed in other cases before the Special Court, the Prosecution has acknowledged that information regarding payments made by the Office of the Prosecutor to or on behalf of witnesses would be disclosed pursuant to Rule 68¹.

7. The Prosecution notes that it can only disclose the material in its custody and control. This is the extent of the obligation imposed by Rule 68². As a consequence, the Prosecution respectfully informs the Trial Chamber and Counsel for the Accused that the Office of the Prosecutor is not the only section of the Special Court which makes payments to and on behalf of witnesses. The Witnesses and Victims Section established pursuant to Rule 34 also makes such payments. The Prosecution is not in a position to disclose such information. In accordance with practices adopted in other trials before the Special Court, the Witnesses and Victims Section will, upon request, disclose this information to the Defence.

III CONCLUSION

8. The Prosecution will disclose a record of payments made to its witnesses prior to the evidence in chief of each witness pursuant to its obligation under Rule 68. The Prosecution will endeavour to reach an agreement with Counsel for the Accused as to the timing of such disclosure.

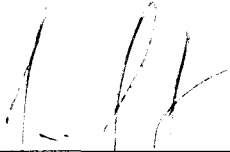
¹ See *Prosecutor v Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Transcript, 6 July 2004, pages 17-18; *Prosecutor v Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Trial Transcript 23 June 2004, page 6, and 7 September 2004, pages 52-3.

² *Prosecutor v Bagilishema*, Case No. ICTR-95-1A-T, Decision on the Request of the Defence for an Order for Disclosure by the Prosecutor of the Admissions of Guilt of Witnesses Y, Z, and AA, 8 June 2000.

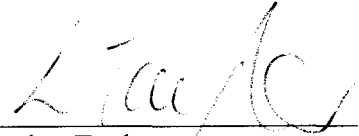
Prosecutor against Tamba Brima et al., Case No. SCSL-2004-16-PT

Filed at Freetown

7 March 2005



Luc Côté
Chief of Prosecutions



Lesley Taylor
Senior Trial Counsel

Prosecutor against Tamba Brima et al., Case No. SCSL-2004-16-~~KT~~

List of Authorities

Prosecutor v Bagilishema, Case No. ICTR-95-1A-T, Decision on the Request of the Defence for an Order for Disclosure by the Prosecutor of the Admissions of Guilt of Witnesses Y, Z, and AA, 8 June 2000.

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