

**SPECIAL COURT FOR SIERRA LEONE**  
OFFICE OF THE PROSECUTOR  
Freetown -- Sierra Leone

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

Registrar: Mr. Robin Vincent

Date filed: 13 July 2005

**THE PROSECUTOR**

**Against**

**Alex Tamba Brima**  
**Brima Bazzy Kamara**  
**Santigie Borbor Kanu**

Case No. SCSL-04-16-T

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**JOINT REPLY TO KANU AND BRIMA - DEFENCE RESPONSE TO  
PROSECUTION REQUEST FOR LEAVE TO CALL AN ADDITIONAL  
WITNESS PURSUANT TO RULE 73bis(E)**

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Office of the Prosecutor:

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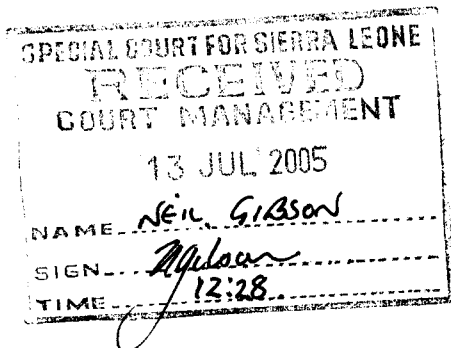
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**I. INTRODUCTION**

1. The Prosecution files this Joint Reply to the Kanu and Brima Defence Responses to “Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)”<sup>1</sup> filed on 8 July 2005<sup>2</sup> and 11 July 2005<sup>3</sup> respectively.
2. In its Response, the Kanu Defence argues that the Prosecution has failed to demonstrate good cause and that calling the additional witness would be in the interests of justice, with reference to the relevant criteria. In particular, the Defence argues:
  - a) It is not in the interests of justice to call a witness who is or was employed by the Prosecution.
  - b) No good cause for calling the witness has been shown as the evidence to be adduced by the witness is not material to the facts in issue.

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<sup>1</sup> SCSL-2004-16-T, Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E), 6 July 2005.

<sup>2</sup> SCSL-2004-16-T, Kanu-Defence Response to Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E), 8 July 2005 (“Kanu Defence Response”).

<sup>3</sup> SCSL-2004-16-T, Brima-Defence Response to Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E), 11 July 2005.

- c) The witness will not testify as to new evidence.
  - d) The evidence could have been made available earlier and the Prosecution has not exercised due diligence.
  - e) The Defence will be unfairly prejudiced by the fact that the witness is a former member of the Legal Operations section of the Office of the Prosecutor at the Special Court.
  - f) There is no issue of identification as meant by the Prosecution and other witnesses could have testified on this issue without the need to call an overseas witness.
3. The Brima Defence associates itself, *mutatis mutandis*, with the legal arguments and submissions made by the Kanu Defence, and does not make any additional arguments.

## II. ARGUMENTS

4. The Kanu Defence argues “that it is not in the interests of justice to call a witness to testify who is a member of one of the parties to the case”<sup>4</sup> and that any weight to be given to the evidence of such a witness would not be very high. The Prosecution submits that this argument has no merit. The previous employment of the proposed witness in an administrative capacity in the Office of the Prosecutor does not render him “one of the parties to the case”. Further, it is common practice for members of the Office of the Prosecutor, in particular investigators, to give evidence at trial and the weight to be given to such evidence is unaffected by the witness’s status as a member of that Office. Indeed, such an investigator, no longer employed with the Office of the Prosecutor, was called in trial proceedings before Trial Chamber I at the request of that Chamber.<sup>5</sup> The oath administered to each witness prior to the commencement of evidence applies equally to all.
5. The Prosecution described the witness’s recent employment history to create a picture of the witness and to highlight the relevance of the proposed testimony. The Defence has focussed on the proposed witness’s previous employment as Chief of Legal

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<sup>4</sup> Kanu Defence Response, para. 6.

<sup>5</sup> *Prosecutor v Sesay, Kallon and Gbao*, SCSL-2004-15-T, Trial Transcript, 27 July 2004, pp. 36-41 and 28 April 2005, pp. 2-38.

Operations in the Office of the Prosecutor at the Special Court. However, it was as Commanding Officer of the Republic of Sierra Leone Armed Forces (RSLAF) Joint Provost Unit as part of the International Military Advisory and Training Team (IMATT) that he acquired the information that the Prosecution wishes to adduce.

6. The Defence argues that proof that Kanu was also known by the name “55” does not help to prove that he committed certain crimes or held a particular position and that in any case the “crux of the matter is whether Mr. Kanu was or was not the only person referred to as ‘55’”.<sup>6</sup>
7. The Prosecution submits that the reason for calling the additional witness is to get to the ‘crux of the matter’ by adducing evidence as to interactions between the proposed witness and the first and third Accused prior to their arrest by the Special Court, and discussions between the proposed witness and RSLAF soldiers as to the origin of the names “55” and “Gullit”. His evidence remains relevant even though the real issue relating to mistaken identity as asserted by the Kanu Defence is that other people were or could have been referred to as “55”.
8. The Prosecution does not assert that the evidence of the proposed witness conclusively establishes<sup>7</sup> that the third Accused committed certain crimes or held a particular position purely on the basis that certain witnesses describe an individual named “55” doing certain acts. The proposed evidence is relevant because the Prosecution case is that the code name “55” applied exclusively to the third Accused. The proposed witness will give evidence as to the origin of the code name “55” which will support the Prosecution assertion of exclusivity. This evidence, considered at the conclusion of all the evidence in the case, including that of witnesses who identify “55” as the alias of the third Accused alone and give evidence as to criminal actions committed by him, is material to establishing the full extent of the liability of the third Accused.
9. The Prosecution notes that the Brima Response adopted the arguments of the Kanu Response *mutatis mutandis*. However, the articulated position of the first Accused is that Alex Tamba Brima did and does not have an alias “Gullit”, rather than that other

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<sup>6</sup> Kanu Defence Response, para. 12.

<sup>7</sup> Kanu Defence Response, para. 9.

- people were also called “Gullit”.<sup>8</sup> In these circumstances the Prosecution submits that the evidence of the proposed witness is clearly material to the facts in issue.
10. The Prosecution did not attempt to argue that the evidence to be adduced was wholly new. Similarly, the Prosecution does not deny that it has had the information in its possession for some time.
  11. Contrary to the understanding of the Defence, the aim of calling the proposed witness is not to pursue a dock-identification but to respond to the issue of mistaken identity by leading evidence that the Accused Kanu is the only “55” and that the Accused Brima is also known as “Gullit”. A dock-identification by the proposed witness is unnecessary, given the nature of his evidence.
  12. The Prosecution reiterates that the Accused will suffer no prejudice by the adding of this proposed witness to the Prosecution witness list. As a witness called by the Prosecution it is to be expected that the evidence elicited will support the Prosecution’s case; this cannot be said to constitute prejudice. In any event the Defence has misunderstood the function of the Chief of Legal Operations. That officer performs an administrative role. Further, the evidence of the proposed witness will be of short compass and will not result in any delay so as to cause prejudice to the Defence. Indeed, if leave is granted, the Prosecution will call this proposed witness in September after a non-sitting period of 5 weeks.
  13. While the Prosecution agrees that the test for adding witnesses to the witness list laid down by Trial Chamber I in a number of decisions must be answered, the test is not to be applied mechanically and some of the requirements may be more significant than others depending on the circumstances of the application. Trial Chamber I has stated with reference to expert evidence that :

In applications of this nature, especially relating to proposed expert evidence, the Chamber must seek to balance, on one hand, the pre-eminent statutory right of the accused persons to a fair and expeditious trial and, on the other hand, the paramount obligation and attendant burden of the Prosecution to prove the guilt of the accused beyond all

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<sup>8</sup> See e.g. Transcript, 7 March 2005, p. 88, lines 11-12, where the then Lead Counsel for the first Accused said during the cross examination of the first Prosecution witness, “you will see that we do not accept the nomenclature Guillit or Gullit (sic).”

reasonable doubt.<sup>9</sup>

14. The Prosecution argues that this balancing exercise must be carried out in relation to expert and non-expert witnesses alike. In the current circumstances, where the Defence will suffer no prejudice and the Court will benefit from an enhanced understanding of the jungle or code name phenomenon and its applicability to Kanu and Brima, it would be in the interests of justice to grant the Prosecution's request.

### III. CONCLUSION

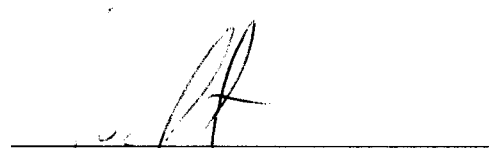
15. The Prosecution respectfully submits that it has demonstrated good cause and that the addition of Lt. Col. John Petrie, MBE to the Witness List is in the interests of justice.

16. Further, the Prosecution requests permission to disclose to the Defence the statement of Mr. Petrie pursuant to Rule 66(A)(ii).

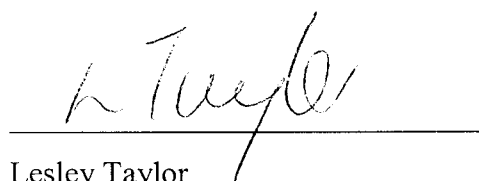
Filed in Freetown,

13 July 2005

For the Prosecution,



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<sup>9</sup> *Prosecutor v Sesay, Kallon and Gbao*, Case No. SCSL-2004-15-T, Decision on Prosecution Request for Leave to Call an Additional Expert Witness, 10 June 2005, para. 13.