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SCSL-04-16-T
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**SPECIAL COURT FOR
SIERRA LEONE**

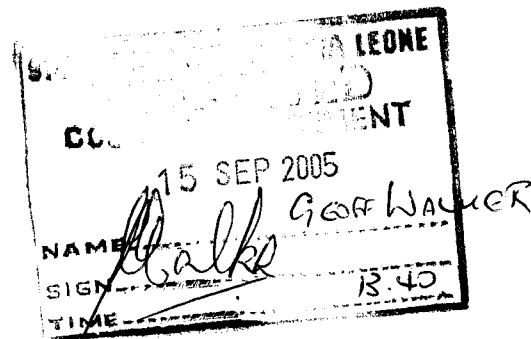
Case No. SCSL-2004-16-T

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

Registrar: Robin Vincent

Date filed: 15 September 2005

THE PROSECUTOR
against



SANTIGIE BORBOR KANU

**KANU – DEFENCE REPLY TO PROSECUTION RESPONSE TO MOTION FOR TEMPORARY
PROVISIONAL RELEASE TO ALLOW THE ACCUSED TO VISIT HIS MOTHER’S GRAVE**

Office of the Prosecutor:
Luc Coté
Lesley Taylor

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

I INTRODUCTION

1. On 6 September 2005, the Defence filed its “Kanu – Defence Motion for Temporary Provisional Release to Allow the Accused to Visit His Mother’s Grave,” and the subsequent day the Defence filed the “Kanu – Defence Additional Documents to Motion for Temporary Provisional Release to Allow the Accused to Visit His Mother’s Grave” (both commonly referred to as “**Motion**”). On 13 September, the Prosecution responded thereto with its “Prosecution Response to Kanu Defence Motion for Temporary Provisional Release to Allow the Accused to Visit His Mother’s Grave” (“**Response**”).

II LEGAL ARGUMENT

2. There are two items of the Response, the Defence would like to shortly reply to, those being: (i) the interpretation of the case of *Ploski v. Poland* before the European Court of Human Rights, and (ii) the reason why the history as set out in sections II and III of the motion should be taken into account.

2.1 European Court of Human Rights Jurisprudence

3. As set out by the Defence in its Motion, an accused should have the right to attend his parents’ funerals. This proposition is supported by the case of *Ploski v. Poland*, in which case it was decided that “refusal to allow [an accused] to attend the funerals of his parents constituted an interference with his right to respect for his private and family life.”¹
4. The Prosecution states that this is not an accurate reflection of the European Court jurisprudence, and indicates that it depends on the circumstances of the case. The Defence respectfully contends that all application of human rights depend on the

¹ *Ploski v. Poland*, attached to the “Kanu – Defence Additional Documents to Motion for Temporary Provisional Release to Allow the Accused to Visit His Mother’s Grave”, para. 32.

particular circumstances of the case, except for the absolute human rights such as the right not to be tortured. Applicability of all other human rights provisions depend on the particular circumstances, and need to be determined on a case-by-case basis.

2.2 History of the Proceedings Should Be Taken into Account

5. In the second place, the Prosecution in para. 6 of its Response indicates that sections II and III of the Motion should not be taken into account, and that the request should solely be regarded on its merits.
6. The Defence submits that to allow the Accused to visit his mother's grave should not be regarded as a 'compensation' for the fact that he was not allowed to attend her funeral. However, fact is, and the Prosecution seems to ignore the distressing fact that the Accused's mother passed away, and that he has not been in a position to pay his last respects to her.
7. It is this reason, the fact that he was both denied to be present at her funeral, and the fact that he was not able to pay his last respects to her, that triggered the particular urgency to file this motion.
8. At the same time, the abovementioned history of the proceedings in this regard is important to trigger the above mentioned right of an accused to attend his parents funerals as delineated by the European Court. Certainly, this history can form part of the "circumstances of the case" as referred to by the Prosecution.
9. A derivative right of an accused to attend one's parents' funerals can be seen as the right to have a decent opportunity to pay one's last respect to the parents, if passed away. It is this derivative right that is invoked by the Accused in the instant case.

10. The Prosecution apparently only expresses concerns as to the security issue. The Defence respectfully holds that this security issue should not be a valid reason to undermine or negate said derivative right of the Accused. Additionally, no objective facts have been submitted by the Prosecution to justify the existence of a security risk such that it could lead to denial of this Motion. It is certainly conceivable that certain arrangements can be made by the authorities of the Special Court for Sierra Leone which may ensure that any security risk can be brought back to the minimum. Be it as it may, this argument can have no bearing on the execution of the mentioned family rights in the Motion.

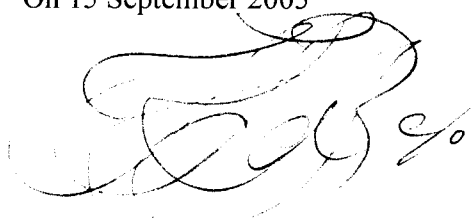
III PRAYER

11. For the reasons set out above, the Defence respectfully requests the honorable Trial Chamber to permit the Accused, in the presence of security, to visit his mother's grave to pay his respect to her, this on a day to be set as soon as possible and under conditions as the honorable Trial Chamber may deem appropriate.

12. Any conditions the Trial Chamber deems necessary under Rule 65(D) of the Rules will be complied by by the Accused.

Respectfully submitted,

On 15 September 2005



Geert-Jan Alexander Knoops