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SCSL-04-16-T

17132

(17132-17138)

**SPECIAL COURT FOR SIERRA LEONE**

OFFICE OF THE PROSECUTOR

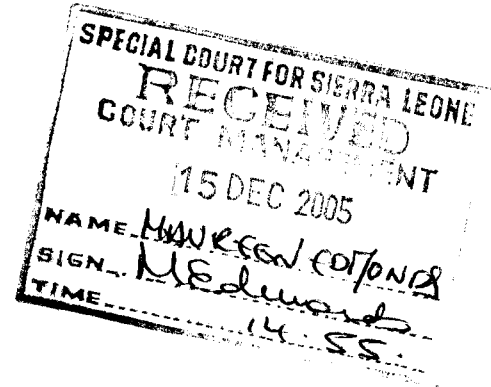
FREETOWN – SIERRA LEONE

**TRIAL CHAMBER II**

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

Interim Registrar: Mr. Lovemore Munlo

Date filed: 15 December 2005



**THE PROSECUTOR**

Against

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

**Case No. SCSL – 2004 – 16 – T**

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**PROSECUTION RESPONSE TO URGENT JOINT DEFENCE REQUEST  
UNDER RULE 54**

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**Office of the Prosecutor**

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## I. INTRODUCTION

1. The Prosecution files this response to the “Urgent Joint Defence Request under Rule 54 With Respect to Filing of Motion for Acquittal” (“**Defence Motion**”),<sup>1</sup> filed on behalf of the three Accused on 15 December 2005.
2. The Defence Motion is filed in response to the fact that the Defence was informed by the Court that certain Defence filings forming part of the Defence Rule 98 motions<sup>2</sup> were filed one day out of time. The Defence filings in question were filed on Tuesday, 13 December 2005. The Defence Motion requests a ruling from the Trial Chamber that the relevant filings were filed within time, or alternatively, requests the Trial Chamber to accept the Defence filings in question, notwithstanding their late filing.
3. For the reasons given below, the Prosecution submits that the deadline for the filing of any Rule 98 motions by the Defence was Monday, 12 December 2005, and that the Defence filings were, in fact, filed a day out of time. However, the Prosecution has no objection to the Trial Chamber deciding to treat the Defence filings in question as having been validly filed, notwithstanding that they were filed one day beyond the deadline.

## II. BACKGROUND

4. On 21 November 2005, the Prosecution closed its case.<sup>3</sup> Immediately thereafter, and in open Court, each Defence Team for each of the three Accused indicated its intention to file a Motion for Judgement of Acquittal in accordance with the provisions of Rule 98 of the Rules of Procedure and Evidence (“**Rules**”). This was, as ordered by the Court on 30 September 2005, done by written submissions filed by each of the Defence Teams. In its order, the Trial Chamber held, *inter alia*, that “[a]ny Motion for a Judgement of Acquittal shall be filed by the

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<sup>1</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-447, “Urgent Joint Defence Request under Rule 54”, (“**Defence Motion**”), 14 December 2005.

<sup>2</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-444, “Kanu – Factual Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 December 2005; *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-445, “Joint Legal Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 December 2005.

<sup>3</sup> Transcript 21 November 2005, p. 16.

Defence in writing within three weeks from the date that the Prosecution case closes.”<sup>4</sup> The Defence Teams chose, according to the issued Order, to file a joint legal part and the facts of the case in separate motions.

5. On 12 December 2005, the Defence filed on behalf of the First Accused Alex Tamba Brima<sup>5</sup> and Second Accused Brima Bazzy Kamara<sup>6</sup> their Motions for Acquittal. One day later, on 13 December 2005, the Defence of the Third Accused filed its Motion for Acquittal.<sup>7</sup> On the same day, the Joint Legal Part of the Defence Motion for the Judgment of Acquittal was also filed.<sup>8</sup>
6. After the Filing, Court Management noted, according to its Notice of Deficient Filing Form, that the last two Documents, filed on 13 December 2005, were filed one day out of time.

## II. ARGUMENTS

7. Rule 7 (A) provides that “[u]nless otherwise ordered by a Chamber or by a Designated Judge, or otherwise provided by the Rules, where the time prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission by the Registry, counsel for the Accused or the Prosecutor as the case may be.”
8. As a preliminary matter, the Prosecution notes that the wording of this provision appears to be ungrammatical. The Prosecution submits that the provision would be grammatical if the word “where” immediately before the words “the time prescribed” were omitted. The Prosecution presumes that the inclusion of the word “where” may have been a typographical error or slip. In any event, the Prosecution understands the effect of the provision to be that where a party is

<sup>4</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-404, “Scheduling Order on Filing of a Motion for Judgement of Acquittal”, (“**Order**”), 30 September 2005.

<sup>5</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-442, “Brima – Motion for Acquittal Pursuant to Rule 98”, 12 December 2005.

<sup>6</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-443, “Defence Motion for Judgment of Acquittal of the Second Accused – Brima Bazzy Kamara”, 12. December 2005.

<sup>7</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-444, “Kanu – Factual Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 December 2005.

<sup>8</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-445, “Joint Legal Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 December 2005.

ordered to do something (in this case, to file Rule 98 motions) within a specified period from a specified event (in this case, within three weeks from the date that the Prosecution case closes), then, unless the Chamber otherwise orders or the Rules otherwise provide, time runs from the day after the day on which the party in question would receive notice of the specified event “in the normal course of transmission”. In this case, the Defence was aware of the closing of the Prosecution case on the very date this occurred (that is, on 21 November 2005), since counsel for the accused were present in court at the relevant time. Furthermore, in the ordinary course of events, the Defence would be aware of the closing of the Prosecution case on the very day that this occurs, since it is normal for counsel for the Defence to be present in court at the time.

9. Accordingly, if Rule 7 (A) is applicable, the three-week time-limit for the filing of Rule 98 motions would run from the day after the date on which the Prosecution case closed, that is, it would run from 22 November 2005.
10. Again, the Prosecution understanding of Rule 7(A) is that if a party is required to take action within, say, 7 days, then the party must take that action, at the latest, *on* the seventh day. In other words, in the example given, the day on which time begins to run counts as “day 1”, and the action would have to be taken, at the latest, on day 7.
11. In this particular case, 22 November 2005 was day 1. The parties were required to file the Rule 98 motions within 3 weeks. Three weeks is exactly 21 days. If 22 November 2005 is day 1, then day 21 is 12 December 2005. On this basis, the Prosecution submits that if Rule 7(A) is applicable, then the deadline for the filing of the Rule 98 motions was 12 December 2005.
12. However, the Prosecution does not concede that Rule 7(A) was in fact applicable in this case. The Prosecution notes that Rule 7(A) is expressed to be subject to any contrary order that may be made by the Trial Chamber. The order of the Trial Chamber setting the time-limit for the filing of Rule 98 motions in this case<sup>9</sup> stated that “[a]ny Motion for a Judgement of Acquittal shall be filed by the Defence in writing within three weeks *from the date* (emphasis added) that the

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<sup>9</sup> See paragraph 4 above.

Prosecution case closes.”<sup>10</sup> According to paragraph 4 of the Defence Motion, the Court Records Section of the Registry have taken the view that this wording forms an exception to the general provision of Rule 7(A). The Prosecution submits that it is unnecessary to determine whether or not this is the case. If it is the case that Rule 7(A) is inapplicable, then the three week time limit for the filing of the Defence filings in question would have expired a day earlier, that is, on Sunday, 11 January 2005. As the time limit is automatically extended when it expires on a Sunday, the deadline on this hypothesis would have been Monday 12 December 2005 in any event.

13. Therefore, it is the Prosecutions view that the time limit of three weeks (i.e. 21 days), even if counted from the day after the Prosecution closed its case on 21 November 2005, still ended 21 days later, on 12 December 2005.
14. The Defence Motion argues that the Filing, even if not filed within the prescribed time limit, should be accepted by the Trial Chamber, on the basis that the late filing is “not prejudicial to the Prosecution”<sup>11</sup> nor would it harm the “judicial economy.”<sup>12</sup> In these limited circumstances, the Prosecution agrees that it was not prejudiced and that judicial economy was not affected by the delay. In the particular circumstances of this case, the Prosecution has no objection to the Defence request that the filings in question be accepted.

### III. CONCLUSION

15. For the reasons set out above, it is the Prosecution view that the Defence filings in question were filed one day out of time, but the Prosecution in this particular case does not object to the Defence request that the filings be accepted by the Trial Chamber notwithstanding the delay.

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<sup>10</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-404, “Scheduling Order on Filing of a Motion for Judgement of Acquittal”, (“**Order**”), 30 September 2005.

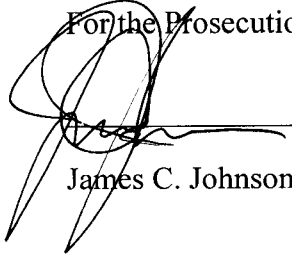
<sup>11</sup> Defence Motion, para. 12.

<sup>12</sup> Defence Motion, para. 11.

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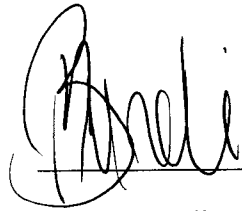
15 December 2005

For the Prosecution,



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James C. Johnson



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Marco Bundi

## VI. INDEX OF AUTHORITIES

### A. ORDERS, DECISIONS AND MOTIONS

1. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-404, “Scheduling Order on Filing of a Motion for Judgement of Acquittal”, (“**Order**”), 30 September 2005.
2. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-442, “Brima – Motion for Acquittal Pursuant to Rule 98”, 12 December. 2005.
3. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-443, “Defence Motion for Judgment of Acquittal of the Second Accused – Brima Bazy Kamara”, 12. December 2005.
4. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-444, “Kanu – Factual Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 December 2005.
5. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-445, “Joint Legal Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 December 2005.
6. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-447, “Urgent Joint Defence Request under Rule 54”, 14 December 2005.

### B. RULES OF PROCEDURE AND EVIDENCE

Rules of Procedure and Evidence of the Special Court, Rule 73(B) Amended 14 May 2005.

### C. TRANSCRIPT

Transcript 21 November 2005, p. 16.