

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL 2004-16-T

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

Interim Registrar: Lovemore Munlo

Date Filed: 30 January 2006

THE PROSECUTOR

Against

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

.....

**JOINT- LEGAL REPLY TO PROSECUTION RESPONSE TO
DEFENCE
MOTION FOR JUDGMENT OF ACQUITTAL**

.....

Office of the Prosecutor:

Luc Cote, Chief of Prosecutions
James C. Johnson
Lesley Taylor
Karim Agha
Nina Jorgensen
James R Hodes
Marco Bundi

Defence Counsel for Alex Tamba Brima

Kojo Graham
Glenna Thompson

Defence Counsel for Brima Bazy Kamara

Andrew Daniels
Mohamed Pa-Momo Fofanah

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT DEPARTMENT	
30 JAN 2006	
NAME	Neil Gibson
SIGN	<i>[Signature]</i>
TIME	16:02

1. INTRODUCTION

1. Rule 98 of the Rules of Procedure and Evidence of the Special Court (**The Rules**) states that “If, after the close of the case of the Prosecution, the evidence is such that no reasonable tribunal of fact could be satisfied beyond reasonable doubt of the accused’s guilt on one or more counts of the indictment, the Trial Chamber shall enter a judgment on those counts.”
2. The Defence filed its “Joint Legal Part- Defence Motion for Judgement of Acquittal under Rule 98” (**Joint Defence Motion**) on behalf of all three Accused on 13 December 2005.¹ The Joint Defence Motion was the first part of a two part document filed by the Defence. The second part consisted of separate and distinct elements, relating to the factual and evidentiary material as presented during the prosecutions case filed by each of the three Accused persons.
3. “Brima-Motion for Acquittal Pursuant to Rule 98” (**Brima Motion**) was filed on 12 December 2005 on behalf of the First Accused (“**Alex Tamba Brima**”). “Defence Motion for Judgement of Acquittal of the Second Accused-Brima Bazy Kamara” (“**Kamara Motion**”),² was filed on 12 December 2005 on behalf of the Second Accused (“**Brima Bazy Kamara**”).
4. “Prosecution Response to Defence Motions for Judgement of Acquittal Pursuant to Rule 98” (“**Prosecution Response**”)³ was filed on 23 January 2005.

¹ Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-445, “ Joint Legal Part Defence Motion for Judgement of Acquittal under Rule 98” 13 November 2005, (“**Joint Defence Motion**”)

² Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-443, “ Defence Motion for Judgement of Acquittal of the Second Accused-Brima Bazy Kamara”, 12 December 2005 (“**Kamara Motion**”)

³ Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-443, “ Prosecution Response to Defence Motions for Judgement of Acquittal Pursuant to Rule 98” (“**Prosecution Response**”) 23 January 2005

5. The “Scheduling Order on the Filing of a Motion for Judgement of Acquittal” ordered by Trial Chamber II was made and filed on 30 September 2005, the said Trial Chamber, relying respectively on Rule 26bis, 54 and 98 of the Rules of Procedure and Evidence of the Special Court, ruled *inter alia* that “ Any Defence Reply to the Prosecution Response shall be filled within 5 days of the filing of the Prosecution Response and shall not exceed 10 pages in respect of each Accused”
6. The First and Second Accused reiterate that the evidence led by the Prosecution against them, both in depth and in volume, succeeds in laying sufficient basis for Rule 98 to be invoked and the stipulated counts charges against the Accused should be dismissed for want of capability to support a conviction. The legal and factual grounds for conviction or acquittal are already contained in the Joint Defence Motion and Defence Motion for Judgement of Acquittal of the First and Second Accused respectively. The submissions herein are the result of an analysis of the evidence led in the Prosecution Response to show that it still lacks merit and falls short furthermore of sustaining a conviction against any or either of the First and Second Accused.
7. This Reply consist of two parts, Part One which deals with the Legal issues applies to both the First Accused (Brima) and the Second Accused (Kamara) and Part Two, which deals with the Factual matters, would be separated and specific to the First Accused and the Second Accused respectively.

2. Part One-Legal Issues Raised in Prosecution Response

2.1 Areas for which the Prosecution failed to Present Evidence

8. The Prosecution argues that it need not prove every particular, as set in the indictment.⁴ The Defence disputes this fact on the basis that the prosecution is required to prove every particular as set in the indictment so as to enable the

⁴ Prosecution Response, p 393

accused defend themselves. The Defence hence submits that with respect to those areas pleaded in the indictment for which the Prosecution has admitted to not leading any evidence, judgement of acquittal should be entered for Accused.⁵ The Defence further asserts that with respect to the other areas referred to in the Brima and Kamara Motion respectively, judgement of acquittal must be entered in favour of the Accused

9. The Accused is only able to defend himself when the Prosecution has led adequate evidence as to specific locations and alleged crimes for which the Accused stands charged.

2.2 The Greatest Responsibility Requirement

10. One of the peculiarities of the Special Court for Sierra Leone (SCSL) which makes it different from the International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the former Yugoslavia (ICTY) is that while these two courts have the power to “prosecute persons responsible for serious violations of international humanitarian law” The SCSL has the powers to “prosecute persons who bear the **greatest responsibility** for serious violations of international humanitarian law.”
11. In the Secretary General’s letter addressed to the President of the Security Council, it is stated that “... the determination of the meaning of the term ‘persons who bear the greatest responsibility’ in any given case falls initially to the prosecution and ultimately to the Special Court itself.”⁶ The President of the Security Council in a letter address to the Secretary General underlined the important of the phrase “*Persons who bear the greatest responsibility*’.” *The members of the Council, moreover, share your view that the words beginning with*

⁵ Annex A: Villages and Locations pleaded in the Indictments in respect of which the Prosecution has led no Evidence

⁶ Letter dated 12 July 2001 from the Secretary General addressed to the President of the Security Council, S/2001/693, para 2

*'those leaders who... ' are intended as guidance to the Prosecution in determining his or her prosecution strategy. ''*⁷

12. In *Prosecution v. Fofana*, Trial Chamber further held that the question “whether or not in actuality the Accused is one of the persons who bears the greatest responsibility for the alleged violation of international humanitarian law is evidentiary matter to be determined at the trial stage”.⁸ In the Prosecution Response it argued that Trial Chamber 1’s view must be taken to mean that the full extent of an accused’s liability, if any, can only be determined after all the evidence has been heard. The Prosecution adds that even at the conclusion of a trial, the court may be unable to determine precisely that ranking of an accused in terms of bearing the greatest responsibility against a pool of persons who could arguably qualify.⁹
13. The Defence argues that if the court at any stage is unable to determine whether the accused bears the greatest responsibility then it goes with out saying that the Prosecution failed to lead sufficient evidence to prove that the Accused bears the greatest responsibility. In other words the Prosecution itself is not sure if the Accused actually bears the greatest responsibility for the alleged violations. The Defence respectfully argues that if the greatest responsibility threshold is to be proved only at the end of the trial, then it defeats the purpose for which Rule 98 was incorporated in to the Rules of Evidence and Procedure of the Special Court.
14. The question should be link with the conduct of the Accused in terms of what position he held during the course of the indictment, that conduct has to be established either through documentary or oral evidence. Thus failure to prove by was of evidence that the Accused bore greatest responsibility for crimes alleged in

⁷ S/201/40

⁸ *Prosecution v. Norman, Foana and Kondewa*, SCSL-040140PT-26, “Decision on the preliminary Defence Motion on the lack of Peronal Jurisdiction filed on behalf of Accused Fofana”, 3 March, para 44

⁹ Prosecution Response, p 13

the indictment is bases enough for Rule 98 to be evoked, in order to save time and expenses as intended by the Statute of the Court

15. The Prosecution Response appears to suggest that in the CDF case, Trial Chamber 1 did not address the “greatest responsibility” issues in its Decision on the 98 motion, even though it was raised that in practice Trial Chamber 1 is a precedent for the proposition that the “greatest responsibility” requirement is an issue that is not addressed at the Rule 98 stage.¹⁰ This argument has no base on the grounds that the Trial Chamber I Decisions are regarded as persuasive authority only. Nothing prevents this Chamber from expressing its opinion on whether or not the “Greatest responsibility” requirement is an issue that should be addressed at the Rule 98 stage.

2.3 Joint Criminal Enterprise

16. The Prosecution argues that the indictment alleges all three categories of joint criminal enterprise¹¹. In *Prosecution v. Talic* the Trial Chamber of the ICTY emphasized that it is of considerable importance for both the Trial Chamber and the accused to know with some precision from the indictment whether any particular crime charged is alleged by the prosecution to fall within the object of the enterprise or to go beyond that object.”¹² In the indictment the Prosecution states that the crimes alledged were either within a joint criminal enterprise or were reasonably foreseeable. If the prosecution wants to plead either solely or in the alternative form of liability, the prosecution must plead that the Accused were of the *mens rea* necessary to support each of those forms of liability.¹³

¹⁰ Prosecution Response, para 14

¹¹ Prosecution Response, para 27

¹² *Prosecution v. Bradanin & Talic*, It-99-36, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para 39

¹³ *Ibid* para 41

17. In its pleading the Prosecution failed to give specific evidence as to what crimes fell within the joint criminal enterprise or which ones were reasonably foreseeable. Taking in to account the gravity of the charges against the Accused, it is only but fair that the Prosecution be specific and should lead evidence to prove its case. The Prosecutor has chosen not to articulate the specific aspects of the accused individuals' behaviour that links them to an alleged joint criminal enterprise.
18. The Prosecution alleges that the Supreme Council was the joint enterprise, of which the Accused were members. As clearly stated by the Prosecution the Supreme council's purpose from 25 May 1997 to February 1998 was to oversee the laws and carry out the day to day running of the government.¹⁴ The Defence submits that the Prosecution has failed to establish the common criminal intent that existed amongst the members of the Supreme Council to commit the said crimes as alleged in the indictment or that the crimes were reasonably foreseeable by the Accused from the joint enterprise of the Supreme Council,
19. In the locations of Bo¹⁵, Kenema,¹⁶ Kailahum,¹⁷ Koinaduga,¹⁸ Kono,¹⁹ Bombali²⁰ and in Count 13 on abductions and Forced Labour,²¹ the Prosecution lacks probative and substantiate evidence to prove its case. The Prosecution relies on the fact that the Accused held a leadership position in the AFRC/RUF and was an integral member of the Supreme Council and is therefore guilty on the basis of joint criminal enterprise. The Prosecution failed to lead evidence of material fact that the conduct of the accused makes him jointly responsible for the crimes charged.

¹⁴ Prosecution Response, para 35

¹⁵ Prosecution Response, para 201

¹⁶ Prosecution Response, para 203, 247

¹⁷ Prosecution Response, para 208 and 249

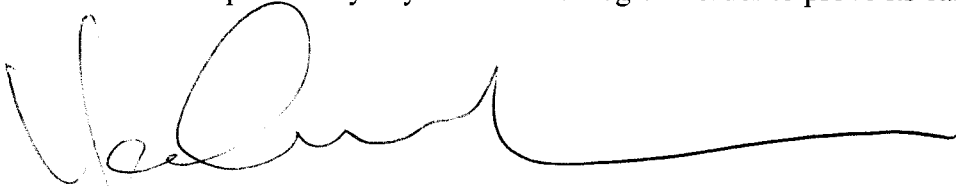
¹⁸ Prosecution Response, para 227-229

¹⁹ Prosecution Response, para 232

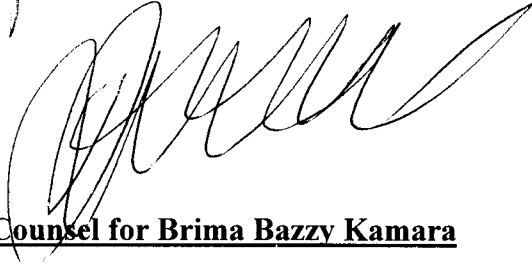
²⁰ Prosecution Response, para 252

²¹ Prosecution Response, para 261

20. The Defence submits that the Prosecution has stretched the concept of joint criminal responsibility beyond limits of logic in order to prove its case.



Defence Counsel for Alex Tamba Brima



Defence Counsel for Brima Bazzy Kamara