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SCSL-04-16-T
(18749-18755)

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**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

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

Registrar: Lovemore G. Munlo, SC

Date filed: 21 August 2006

THE PROSECUTOR

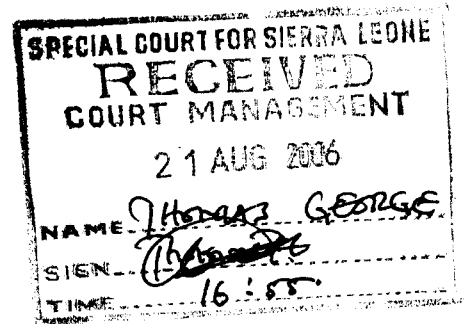
against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU



**PUBLIC JOINT DEFENCE RESPONSE TO PROSECUTION MOTION FOR RELIEF IN RESPECT
OF ALLEGED VIOLATIONS OF THE TRIAL CHAMBER'S DECISION OF 9 MAY 2006**

Office of the Prosecutor:
Christopher Staker
Karim Agha

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

Defence Counsel for Brima:
Kojo Graham
Glenna Thompson

Defence Counsel for Kamara:
Andrew Daniels
Mohamed Pa-Momo Fofanah

I INTRODUCTION

1. On 2 August 2006 the Prosecution filed the “Prosecution Motion for Relief in Respect of Violations of the Trial Chamber’s Decision of 9 May 2006” (“Prosecution Motion”).¹ The Defence herewith files its response to the Prosecution Motion (“Defence Response”).

I OVERVIEW OF RELEVANT FACTS AS TO DEFENCE DISCLOSURE OF IDENTIFYING DATA OF DEFENCE WITNESSES

2. The Defence does not contest that the identifying data of some of the defence witnesses that were called to testify, were not disclosed 21 days beforehand.² However, the Defence has a different view on the facts presented in the Prosecution Motion, and herewith submits that it has done the utmost to disclose all identifying data timely to the Prosecution. Nevertheless, unforeseen circumstances prevented this disclosure from being in time.
3. First of all, an important fact omitted in the Prosecution Motion is that the first disclosure of the Defence with the identifying data of the first set of seventeen witnesses was filed on 22 May 2006.³ As the first witness of this first set of seventeen witnesses testified on 10 July 2006, this disclosure was made seven weeks in advance, thus complying with the Trial Chamber Decision and ensuring the Prosecution ample time to prepare their cross-examination.
4. Furthermore, as this was the first set of defence witnesses called to testify and in view of the pace of the Prosecution witnesses’ testimony, the Defence estimated that these first seventeen witnesses would take at least three weeks. The Defence

¹ *Prosecutor v. Brima, Kamara, and Kanu*, Public Prosecution Motion for Relief in Respect of Violations of the Trial Chamber’s Decision of 9 May 2006, SCSL-04-16-T-525, 2 August 2006.

² *Prosecutor v. Brima, Kamara, and Kanu*, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, SCSL-04-16-T-488, 9 May 2006, p. 3.

³ *Prosecutor v. Brima, Kamara, and Kanu*, Confidential Joint Defence Response to Urgent Prosecution Motion on Witness Call Order and Defence Witness Order of First Seventeen Witnesses and Their Identifying Data, SCSL-04-16-T-502, 22 May 2006, par. 5.

thus decided to disclose the next set of fourteen witnesses, relating to the Koinadugu area, directly after the first witness (after the First Accused) was called, i.e. 11 July 2006.⁴ In this regard it is important to note that another difficulty in estimating the pace of calling a set of defence witnesses, and thus deciding on when to disclose the identifying data of the next set of witnesses, was caused by difficulty in estimating the time needed by the Prosecution for their cross-examination, cross-examinations that appeared to be fairly short in most instances.

5. After the first week of defence witnesses testifying in court, it became clear to the Defence that the pace of calling witnesses was considerably accelerated than initially expected, including days with three or even four witnesses to be called to give evidence in court.⁵ In addition, some of the defence witnesses included in the first set of seventeen witnesses appeared not to be willing or able to testify in court anymore, thus decreasing even more the time between the disclosure of the identifying data of the second set of witnesses and their testimony.
6. Therefore, the fact that the period between the disclosure of the identifying data of the second set of witnesses and the first testimony of a witness from that second set of witnesses was only 7 days was caused by these unforeseen circumstances. According to the Defence, and in view of the available knowledge at the time the Defence disclosed the second set of identifying data, this failure to comply with the Trial Chamber Decision of 9 May 2006 could not have been foreseen nor prevented by the Defence. As a consequence it can not be held that the Defence is in violation with the Trial Chamber Decision when interpreted in conformity with its aim and purpose.

⁴ *Prosecutor v. Brima, Kamara, and Kanu*, Confidential Joint Defence Disclosure of Witness Order with the Second Set of Fourteen Witnesses and Their Identifying Data, SCSL-2004-16-T-509, 11 July 2006. The first witness of the first set of seventeen witnesses testified on 10 July 2006, see transcript 10 July 2006.

⁵ See for example the transcripts of 10, 17 and 18 July 2006, with respectively three witnesses (DBK-085, DBK-103, DBK-096), three witnesses (DBK-100, DBK-090, DBK-095), and four witnesses (DBK-105, DBK-104, DBK-086, DBK-102 (testimony not completed on that day)) called by the Defence.

7. Additionally, once it became clear to the Defence that the pace of calling defence witnesses was considerably accelerated than anticipated, the identifying data of all the other witnesses was provided in a filing dated 21 July 2006⁶, complying with an order given by the Trial Chamber on 19 July 2006 that “the identifying data of Defence witnesses 32 to 49 will be disclosed to the Prosecution by 5.00 pm on Friday, 21 July 2006,”⁷ Although this eventually turned out to be not in accordance with the 21 days required for the disclosure of the identifying data for three of the witnesses included in this third set of witnesses⁸, this disclosure was agreed upon by both parties.⁹
8. The Prosecution allegation in paragraph 13 of their Motion that the Defence should have filed “a motion seeking an extension of those time limits” is therefore moot in that it negates the ongoing communication between the parties and the Trial Chamber regarding the disclosure of identification data, including a consent order given on 19 July 2006 (see previous paragraph).
9. Furthermore, on 11 August 2006 the Defence disclosed to the Prosecution the next set of twenty witnesses, meant to start testifying from 4 September onwards, including identifying data and summaries. This disclosure is thus in accordance with the 21 days required for the disclosure of the identifying data.
10. In conclusion, in view of the circumstances at the time of the disclosure of the identifying data of the second set of witnesses, the compliance with the additional order made by the Trial Chamber on 19 July 2006, and the timely disclosure on 11 August 2006, it may be said that the Defence has reasonably done what it was

⁶ *Prosecutor v. Brima, Kamara, and Kanu*, Confidential Joint Defence Disclosure of Identifying Data of Third Set of Eighteen Witnesses, SCSL-2004-16-T-516, 21 July 2006.

⁷ *Prosecutor v. Brima, Kamara, and Kanu*, Transcript 19 July 2006, p. 33.

⁸ See Prosecution Motion, par. 6. Only three witnesses out of this third set of witnesses testified before the recess, namely DAB-025, DAB-023, DBK-063, between 7 and 12 days after the disclosure of their identifying data.

⁹ *Prosecutor v. Brima, Kamara, and Kanu*, Transcript 19 July 2006, p. 32, where it was agreed upon by the Prosecution that the orders were consent orders.

obliged to do to fulfil its disclosure obligations. The Prosecution Motion should therefore be dismissed.

II OTHER LEGAL AVENUE(S) FOR PROSECUTION; SEEKING AN ADJOURNMENT

11. In the alternative, the following arguments for dismissal of the prosecution motion arises. In view of the right of the Accused to be tried without undue delay, the Defence supports the Prosecution's endeavour "to cross examine these witnesses without seeking an adjournment."¹⁰ However, if the Prosecution's assertion that "it was not possible for the Prosecution to organise any missions to conduct investigations into these witnesses in order to prepare for their cross-examination"¹¹ and "it [the alleged failures by the Defence to comply with the time-limits of the Trial Chamber] has undermined the right of the Prosecution to conduct a meaningful examination of Defence witnesses"¹² were true, the Prosecution should have requested for an (additional) adjournment, in the interest of its case.
12. This conclusion is further strengthened by the pace of calling of defence witnesses, probably unexpected by all parties, and thus potentially creating circumstances which could have justified an adjournment if sought by the Prosecution. Moreover, a potential request by the Prosecution for an adjournment before starting with cross-examination of a specific defence witness does not necessarily cause a delay in the proceedings. After all during such an adjournment the Defence can continue calling witnesses for examination-in-chief.
13. The Defence therefore respectfully submits that in view of the legal avenue for the Prosecution to request an adjournment as to the cross-examination of a defence witness, without even causing a delay in the defence case, the relief sought by Prosecution in paragraph 14 of its Motion is moot.

¹⁰ Prosecution Motion, par. 5.

¹¹ Prosecution Motion, par. 5.

¹² Prosecution Motion, par. 11, between brackets added by Defence.


III PREJUDICE TO THE DEFENCE

14. Finally, the relief sought by the Prosecution will prejudice the Defence, in that an early disclosure of the identifying as request by the Prosecution, possibly months before the witness will testify, will potentially endanger the protective status of defence witnesses and will unnecessarily burden the defence.

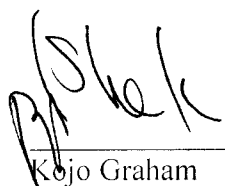
IV CONCLUSION

15. On the basis of the above arguments, the Defence respectfully prays the honourable Trial Chamber to dismiss the Prosecution Motion in its entirety.

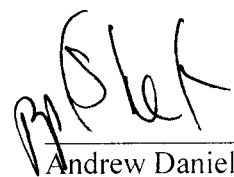
Respectfully submitted,
on 21 August 2006,



Geert-Jan Alexander Knoops



Kojo Graham



Andrew Daniels

TABLE OF AUTHORITIES

- *Prosecutor v. Brima, Kamara, and Kanu*, Public Prosecution Motion for Relief in Respect of Violations of the Trial Chamber's Decision of 9 May 2006, SCSL-04-16-T-525, 2 August 2006.
- *Prosecutor v. Brima, Kamara, and Kanu*, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, SCSL-04-16-T-488, 9 May 2006.
- *Prosecutor v. Brima, Kamara, and Kanu*, Confidential Joint Defence Response to Urgent Prosecution Motion on Witness Call Order and Defence Witness Order of First Seventeen Witnesses and Their Identifying Data, SCSL-04-16-T-502, 22 May 2006.
- *Prosecutor v. Brima, Kamara, and Kanu*, Confidential Joint Defence Disclosure of Witness Order with the Second Set of Fourteen Witnesses and Their Identifying Data, SCSL-2004-16-T-509, 11 July 2006.
- *Prosecutor v. Brima, Kamara, and Kanu*, Confidential Joint Defence Disclosure of Identifying Data of Third Set of Eighteen Witnesses, SCSL-2004-16-T-516, 21 July 2006.
- *Prosecutor v. Brima, Kamara, and Kanu*, Transcripts of 10, 17, 18 and 19 July 2006.