

546

SCSL-04-16-T
(19022-19027)

19022

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

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

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 6 September 2006

THE PROSECUTOR

Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-T

PUBLIC

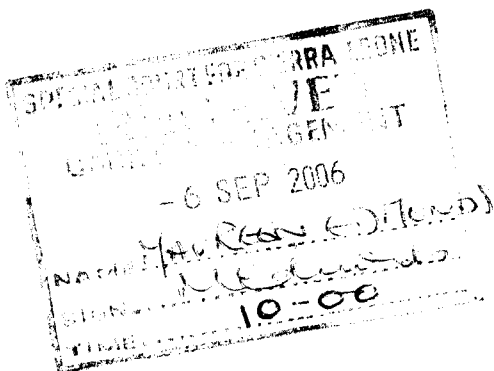
**REPLY TO KANU – DEFENCE RESPONSE TO URGENT PROSECUTION MOTION FOR RELIEF IN
RESPECT OF VIOLATIONS OF THE TRIAL CHAMBER’S ORDER OF 26 APRIL 2006**

Office of the Prosecutor:
Mr. James C. Johnson
Mr. Karim Agha
Ms. Nina Jørgensen

Defence Counsel for Alex Tamba Brima
Mr. Kojo Graham
Ms. Glenna Thompson

Defence Counsel for Brima Bazzy Kamara
Mr. Andrew Daniels
Mr. Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu
Mr. Geert-Jan Alexander Knoops
Ms. Carry Knoops
Mr. Agibola E. Manly-Spain



I. INTRODUCTION

1. The Prosecution files this Reply to the Response on behalf of the Accused Kanu (“**Kanu Response**”)¹ to the Prosecution’s Motion for relief of 29 August 2006 (“**Motion**”).²
2. In its Motion, the Prosecution sought relief in respect of violations by the Defence of the Court’s disclosure Order of 26 April 2006. In accordance with the general practice before this Trial Chamber, a single Motion was filed with respect to all three Accused, however, the Motion differentiated between alleged violations by the First and Second Accused, and alleged violations by the Third Accused. The Prosecution acknowledges that the Third Accused has complied with the order of 26 April 2006 to a greater extent than the First and Second Accused and appreciates some of the clarifications presented in the Kanu Response.

II. ARGUMENT

3. Paragraph 1 of the Kanu Response refers to the Order of 17 May 2006 as the “Mitigating Decision”. The Prosecution does not understand what the Defence means by this terminology. It suggests that the Order of 17 May 2006 somehow lessened the obligations imposed by the Order of 26 April 2006. This is not the case. The Order of 17 May 2006 simply varied the Order of 26 April 2006 by extending the deadline for the filing of the final witness list by the Defence to 21 August 2006.
4. The Prosecution notes the clarification in paragraph 2 of the Kanu Response, that it is not intended for any of the 49 common witnesses on the provisional list that do not appear on the final list to be called to testify, and that good cause must be shown to reinstate them. The Prosecution assumes that this is the position of all three Accused.
5. In paragraphs 4 to 6 of the Kanu Response, it is argued that there is no requirement to show good cause to change the names of expert witnesses. However, the Prosecution notes that the Defence request of 9 May 2006³ for an extension of time to file its final

¹ *Prosecutor v Brima, Kamara, Kanu*, SCSL-2004-16-T-543, “Public Kanu – Defence Response to ‘Urgent Prosecution Motion for Relief in Respect of Violations of the Trial Chamber’s Order of 26 April 2006’ and Prosecution Violation of Rule 46(C)”, 1 September 2006 (“**Kanu Response**”).

² *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-539, “Public Urgent Prosecution Motion for Relief in respect of Violations of the Trial Chamber’s Order of 26 April 2006”, 29 August 2006 (“**Motion**”).

³ *Prosecutor v Brima, Kamara, Kanu*, SCSL-2004-16-T-489, “Confidential Joint Defence Motion as to Inability to provide Details of Certain Witnesses on 10 May 2006 and Anticipation of Subpoenas Ad Testificandum”, 9 May 2006.

witness list made no mention of expert witnesses. Indeed, the extra time was requested in particular “with regard to the witnesses of the Port Loko, Bo, Kenema and Kailahun Districts, as well as with regard to the Freetown and Western Area, including minor changes to the other districts”.⁴ In the Order of 17 May 2006, the Trial Chamber referred to the “particular circumstances” of difficulties encountered by the Defence in accessing certain districts of Sierra Leone and locating witnesses in Freetown who were initially willing to testify, but did not refer to expert witnesses, the names of whom had already been made available in compliance with the Order of 26 April 2006. There is no basis, therefore, for the assertion by the Kanu Defence that it was only required to file its final witness list, “including references to expert witnesses and the dates of disclosure of their respective reports, on 21 August 2006”.⁵ Similarly, there is no basis for the assertion that it was under no obligation even to file tentative information concerning the proposed experts on 10 May 2006. The Kanu Defence is presenting the filing of tentative information on 10 May 2006 as a favour to the Prosecution to assist it in the preparation of its case, when in fact the Defence was under a clear obligation set out in Order 1(b) of the Order of 26 April 2006 to file “A list of experts with an indication of when their report will be disclosed to the Prosecution”.

6. The Prosecution submits that the names of experts filed on 10 May 2006, though stated in the alternative, should be considered as final and that the door was not left open for the Defence to change these names without notice on 21 August 2006. Indeed, the filing of alternative names gave ample latitude to the Defence. Good cause should be demonstrated for a subsequent change.
7. In paragraphs 7 to 12 of the Kanu Response, the Defence argues that even if it was required to demonstrate good cause, it has done so adequately. The Prosecution submits that simply stating an inability to secure the services of the alternative experts already disclosed does not amount to a showing of good cause. The Defence provides some further reasons in its Response, however, it is unclear how the question of the budget for experts impacted upon their willingness to offer their services. Moreover, the Defence does not explain how the selected experts withdrew their willingness to testify for

⁴ Ibid, para. 9.

⁵ Kanu Response, para. 5.

personal reasons, or if all the relevant experts withdrew for personal reasons. Most significantly, as the Prosecution noted in paragraph 15 of its Motion, the name of the new forced marriage expert must have been known for some time in order for the report to be filed on 21 August 2006 and an application to make the change could have been made earlier.

8. The Prosecution notes the clarification in paragraph 15 of the Kanu Response that the Defence has included in the first set of twenty witnesses to be called from 4 September onwards, all the remaining witnesses from the original, provisional list of 49 witnesses to be called in the Defence case. However, the Prosecution notes that contrary to the understanding that these witnesses, of whom four remain, would be the first four witnesses to be called from 4 September,⁶ they have now been listed as numbers 1, 2, 16 and 19 in the call order. Moreover, on the basis of the understanding that the remaining witnesses on the provisional witness list would be called from 4 September, the Prosecution has wasted its resources in investigating and preparing for the cross-examination of a large number of witnesses that have subsequently been dropped from the list.
9. The Prosecution notes that in breach of the Order of 26 April 2006, which required the witness list to include the order in which the Defence intends to call the witnesses, the list of common witnesses filed on 21 August 2006 only specifies the order of call of the next twenty witnesses. The Prosecution submits that the frequency of changes at a late stage and the uncertainty generated by a call order that is in a constant state of flux is causing prejudice to the Prosecution.
10. In paragraph 16 of the Kanu Response, the Defence opposes the disclosure of witness statements with respect to witnesses for whom summaries have been disclosed either in the witness list of the Third Accused or the common witness list. In paragraph 17, the Defence points out that certain witnesses on the individual lists of the First and Second Accused are also on the individual list of the Third Accused. The Prosecution notes that this was not immediately evident from the lists and welcomes the clarification. However, it is unclear whether these witnesses are witnesses common to two of the Accused, and, moreover, if the summary prepared by the Third Accused is equally applicable to the

⁶ See para. 6 of the Motion.

evidence proposed to be elicited on behalf of the First or Second Accused. If there are witnesses common to only two of the Accused, consideration will need to be given to when to call these witnesses. The Prosecution submits that the appropriate time would be after all the witnesses that are common to all three Accused.

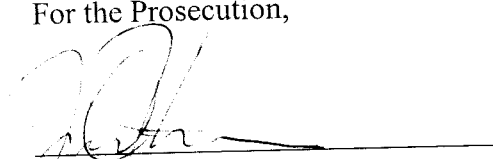
11. The Prosecution notes that the Kanu Response relates only to the specific witnesses mentioned. Subject to what has been stated above in relation to the applicability of summaries to more than one Accused, the Prosecution is not requesting statements where adequate summaries have been provided.
12. Paragraphs 20 to 25 of the Kanu Response argue that the Motion is frivolous as it relates to the Third Accused. The Prosecution submits that a Motion alleging a breach of a Court order and requesting the appropriate relief can on no account be held to be frivolous. It was clear from the Motion that only paragraphs (d) to (f) of the relief requested applied directly to the Third Accused. The Prosecution submits that this did not necessitate a separate filing in the circumstances.
13. Further, the Prosecution submits that the arguments and clarifications in the Kanu Response themselves indicate that the matters referred to as "obvious" or "irrelevant" were in fact in need of elaboration. There is no basis for an application under Rule 46(C).


III. CONCLUSION

14. For these reasons the Prosecution submits that its Motion for appropriate relief was properly brought and asks that the requested relief, as it pertains to the Third Accused, be granted.

Filed in Freetown,
6 September 2006

For the Prosecution,


James C. Johnson
Chief of Prosecutions


Karim Agha
Senior Trial Attorney

Index of Authorities

Prosecutor v Brima, Kamara, Kanu, SCSL-2004-16-T-543, “Public Kanu – Defence Response to ‘Urgent Prosecution Motion for Relief in Respect of Violations of the Trial Chamber’s Order of 26 April 2006’ and Prosecution Violation of Rule 46(C)”, 1 September 2006.

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-539, “Public Urgent Prosecution Motion for Relief in respect of Violations of the Trial Chamber’s Order of 26 April 2006”, 29 August 2006.

Prosecutor v Brima, Kamara, Kanu, SCSL-2004-16-T-489, “Confidential Joint Defence Motion as to Inability to provide Details of Certain Witnesses on 10 May 2006 and Anticipation of Subpoenas Ad Testificandum”, 9 May 2006.