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SCSL-04-16-T

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(22979 - 22983)

**SPECIAL COURT FOR
SIERRA LEONE**

BEFORE THE APPEALS CHAMBER

Case No. SCSL-2004-16-A

Before: Justice George Gelaga King, President
Justice Emmanuel Ayoola
Justice A. Raja N. Fernando
Justice Renate Winter
Justice Geoffrey Robertson QC

Registrar: Mr. Herman von Hebel

Date filed: 19 July 2007

THE PROSECUTOR

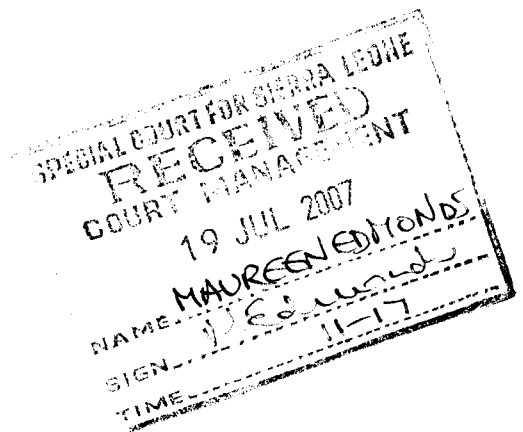
against

Alex Tamba Brima

Brima Bazzy Kamara

and

SANTIGIE BORBOR KANU



PUBLIC

**KANU – REPLY TO PROSECUTION RESPONSE TO URGENT JOINT DEFENCE REQUEST
FOR EXTENSION OF TIME LIMIT PURSUANT TO RULE 116 FOR FILING OF NOTICE OF
APPEAL AND APPEAL SUBMISSIONS**

Office of the Prosecutor:
Christopher Staker
Karim Agha

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

Counsel for Brima:
Kevin Metzger
Glenna Thompson

Defence Counsel for Kamara:
Wilbert Harris
Mohamed Pa-Momo Fofanah

I Introduction

1. On 13 July 2007, prospective Defence counsel for the three Accused filed a joint motion “Urgent Joint Defence Request for Extension of Time Limit Pursuant to Rule 116 for Filing of Notice of Appeal and Appeal Submissions” (“**Motion**”). On 18 July 2007, the Prosecution filed its “Prosecution’s Response to Urgent Joint Defence Request for Extension of Time-Limit Pursuant to Rule 116 for Filing of Notice of Appeal and Appeal Submissions” (“**Response**”). The Defence for Kanu herewith files a reply thereto.

II Legal Standing

2. The Rules of Procedure and Evidence and its underlying principles do not exclude the possibility that recourse is taken to the Appeals Chamber, while a trial has not been concluded in its finality, particularly when, such as in the instant case, such remedy sought would serve the protection of the integrity of the proceedings.
3. It is the moral and ethical obligation of defence counsel during the trial phase of the proceedings to take such recourse, in the event a disruption of the appellate proceedings is foreseeable, especially in case such disruption affects the fair trial rights of the prospective appellants.
4. Accordingly, in such a scenario, the Defence should be allowed legal standing before the Appeals Chamber, even though they may not have been assigned yet.

III Good Cause

5. The Defence submits that the Defence Office has not taken adequate and timely measures to prevent the occurrence of the current situation. The Prosecution refers to this matter in para. 12 of its Response. No appeals counsel for the three prospective appellants have yet been (provisionally) assigned. The Kanu defence already in March 2007 requested the Principal Defender to arrange a contract for

the appeals phase, after Mr. Kanu had indicated to his current Lead Counsel to have him retained for the appeal.

6. Now, on the day the sentencing judgement will be pronounced against Mr. Kanu, no assignment or contract is in place yet, nor is it envisaged that any legal contract will be entered into. Nor have counsel been assigned provisionally, leaving the three prospective appellants without counsel as from this afternoon. This is in flagrant violation of Article 17(4)(d) of the Statute, which provides that each accused has the right “to have legal assistance assigned to him.” It is clear that the three convicted persons are unable to file notice themselves.
7. Moreover, in spite of the Kanu Defence request in March 2007 to the Principal Defender, it was informed by the Defence Office, that the appeals contract – if any – would only start *after* the sentencing, i.e. the Kanu Defence would not be able to prepare for the appeals phase until after the signing of a contract (see exhibits to the Motion).
8. After filing its Motion, the Kanu Defence team informed the Principal Defender that it is not in a position to file a notice of appeal and appeal submissions within the time limits provided for in the Rules of Procedure. Given the restraints imposed upon it, and given the absence of any contract, the time limits proscribed by the Rules are insufficient for prospective counsel to properly represent Mr. Kanu on appeal.
9. Lead Counsel for Mr. Kanu will leave Sierra Leone after the sentencing judgement. No assignment or contract is yet in place. Apart from that, the Kanu Defence cannot reconcile filing an appeal under such circumstances with its professional and ethical responsibilities. As such, the Kanu Defence has informed the Principal Defender it is unable to represent Mr. Kanu on appeal, due to absence of swift and adequate actions on part of the Defence Office to deal with this matter from December 2006, when the parties held their closing arguments, onwards.

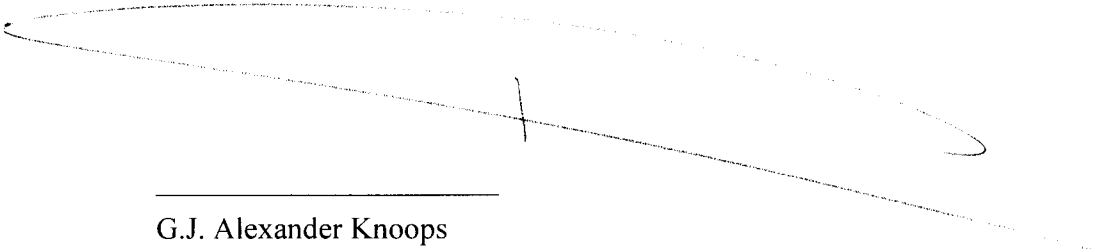
10. Only if a substantial extension of time would be granted, the integrity of the appellate proceedings are protected. The current situation is detrimental for the position of Mr. Kanu.
11. Apart from this situation, the Defence is of the humble opinion that the time limits provided for in the Rules of Procedure and Evidence are too limited. Parties are only granted two weeks to file a notice of appeal, and three weeks thereafter to formulate their submissions. Given the fact that the Judgement of 20 June 2007 consisted of some 631 pages, it would be impossible, and thus professionally unethical, to comply with said deadlines. Also for this separate reason, the Kanu Defence submits that any appeals counsel cannot represent Mr. Kanu on appeal, unless a substantial extension of time be granted.
12. In this respect one should not forget the following two aspects. In the first case, the Defence have not been permitted to do any preparatory work for the appeals phase *until* the signing of an appeals contract, unlike the Prosecution, who has been doing preparatory work for the appeal. In the second place, Defence counsel for Kanu have their own local practice. The case against Mr. Kanu is not the only case counsel are dealing with. Given the failure of the Defence Office to timely have the assignments in place for the appellate proceeding, Defence counsel for Mr. Kanu have other ongoing cases to deal with in the coming months, will make it impossible for them to administer appeal proceedings within the time limits proscribed by the Rules.

IV Prayer

13. For the reasons set out above, the Defence for Mr. Kanu respectfully prays:
 - (i) An extension of time of four months for filing the notice of appeal, starting from the signing of a contract by counsel;

- (ii) Consequently, all other deadlines provided for in aforementioned applicable rules would be delayed for four months, running from the date of the signing of the contract with the Defence Office.
- (iii) Alternatively, a suspension of time limits, at the very least, until certainty of appeals counsel is achieved and thereafter liberty to revisit the issue of extension of time limits.
- (iv) Such other order as the Honourable Appeals Court deems suitable to address the issues raised in this motion.

Done, the 19th day of July 2007



G.J. Alexander Knoops