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SCSL-2003-06-PT
(1276-1283)

1276

**SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE**

Before: The Appeals Chamber of the Special Court

Registrar: Robin Vincent

Date Filed: 26th September 2003

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA also known as (aka) TAMBA ALEX BRIMA
Aka GULLIT- the Applicant**

CASE NO. SCSL-2003-06-PT

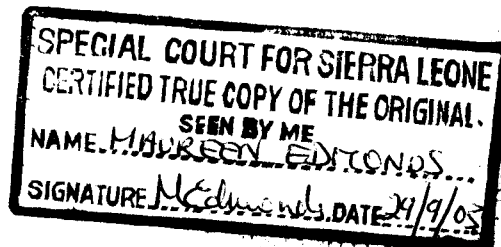
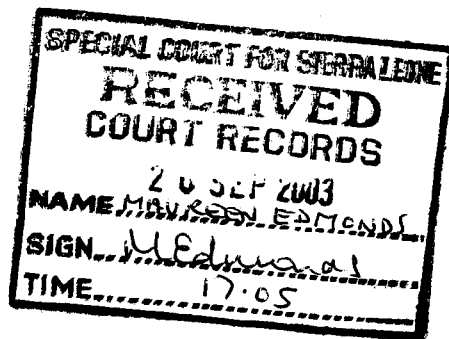
**APPLICANT'S REPLY TO PROSECUTION RESPONSE TO APPLICANT'S
MOTION FOR EXTENSION OF TIME FOR LEAVE TO BE GRANTED TO
THE ACCUSED THE APPLICANT HEREIN TAMBA ALEX BRIMA TO
FILE APPLICANT'S MOTION TO APPEAL AGAINST THE DECISION AND
CONSEQUENTIAL ORDERS OF THE RT. HONOURABLE JUDGE
BENJAMIN MUTANGA ITOE DATED 22ND JULY 2003 REFUSING AN
APPLICATION FOR BAIL OR PROVISIONAL RELEASE.**

Office of the Prosecutor:

Mr. David Crane, Prosecutor
Mr. Desmond de Silva, Q.C, Deputy Prosecutor
Mr. Walter Marcus-Jones, Senior Appellate Counsel
Mr. Chris Staker, Senior Appellate Counsel
Mr. Abdul Tejan-Cole, Appellate Counsel
Ms. Mora Johnson, Appellate Intern
Luc Côté, Chief of Prosecutions
Robert Petit, Senior Trial Counsel
Paul Flynn, Trial Counsel

Applicant's Counsel:

Terence Michael Terry



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In reply to the Prosecution response dated 24th September, 2003 to the Motion of the Applicant herein dated the 16th September, 2003, it is submitted and at a risk of been repetitious that based on the papers filed and the supporting medical papers the Applicant has shown good cause to warrant the grant of leave by the Appeals Chamber for an extension of time to appeal to the Appeals Chamber against the decision of Judge Benjamin Mutanga Itoe of the 22nd of July, 2003 refusing the Writ of Habeas Corpus.

Reference to the Order of Judge Bankole Thompson referred to by the Prosecution which indicated a deadline for the seeking of leave to appeal was only served at my Chambers and not personally on me and in my absence when I was undergoing medical checkup in Europe.

Defence Counsel for the Applicant herein in reply to the response of the Prosecution submits at the outset that he resents the liberty taken by Counsel for the Prosecution throughout the length and breadth of the latter's response to pontificate on the state of Applicant's (Defence) Counsel's health in circumstances wherein Counsel for the Prosecution can neither be considered as a qualified medical doctor nor can he in any way be regarded as otherwise competent to delve into medical matters. Such a posture it is submitted surely smacks of a lack of appreciation of first principles regarding the practice at the Bar not to go behind Medical Certificates of Doctors without showing good cause which in this instant case has in no way been demonstrated by Counsel for the Prosecution. Defence Counsel shall therefore tempting though it is refrain from descending to the level of Counsel for the Prosecution by according him the dignity of a response with respect to the weight to be attached to the Medical Certificates of both Dr. Walter A. Renner and Dr. Roland Doumith for the simple reason that the said Medical Certificates are self-explanatory moreover they speak volumes of the state of the health of Counsel for the Applicant (Defence) at the material time when the said Order of Judge Bankole Thompson of the 4th day of September, 2003 was served in his absence. In any case Counsel for the Applicant would prefer and is indeed inclined to leave the question of whatever weight is to be attached to both Medical Certificates to the Appeals Chamber when the matter of leave for an extension of time falls to be determined by the said Appeals Chamber.

For Counsel for the Prosecution to suggest that the Medical Certificate from Dr. Roland Doumith establishes that Defence Counsel could be unfit indefinitely is misplaced and ought to be rejected. Again it is ridiculous to suggest as Counsel for the Prosecution has proceeded to do that the document from Dr. Roland Doumith should support that Counsel was unable to draft a request for leave to appeal between the period 4th September, 2003 to 8th 2003 without stating what month. It is further submitted that the said

Medical Certificate of Dr. Roland Doumith clearly shows good cause to warrant the grant of extension of time for leave to appeal against the decision of Judge Benjamin Mutanga Itoe of the 22nd July, 2003. The same it is submitted is true of the Medical Certificate from Dr. Walter A. Renner.

It is further submitted that whether Defence Counsel was present before the Special Court on the 22nd July, 2003 when Judge Benjamin Mutanga Itoe delivered his decision orally is not of moment and does not assist OR take the argument of the Counsel for the Prosecution one step further.

It is also submitted that the position taken by Counsel for the Prosecution that the proposed grounds of appeal and therefore the essence of the proposed request for leave to appeal must have been known to the Applicant since July 23rd without stating what year is at best presumptuous and without merit whatsoever.

Again Counsel for the Prosecution reference to the fact that the documents offered in support of the application do show a clear uncertainty as to when Defence Counsel is likely to be fit to resume his duties is a nonsequitur as the issues for determination by the Appeals Chamber constitute the matters raised in the Motion of the 16th of September 2003 filed on behalf of the Applicant herein. Counsel for the Applicant (Defence) therefore with the greatest respect fails to see how the grant of the application based on these 2 Medical documents could in the words of Counsel for the Prosecution create a lacuna by leaving proceedings open handed until such time as the doctor sees fit to allow Counsel to proceed and thereby indirectly request a suspension of proceedings.

Counsel for the Applicant (Defence) further submits that since no request for a suspension of proceedings has been requested by the said Counsel for the Applicant (Defence) the Prosecution submission consequently that such a

suspension of proceedings is wholly unacceptable and would create a totally unworkable and dangerous precedent and would also amount to a conflict with the terms of the order for Legal Assistance granted by Judge Benjamin Mutanga Itoe on 9th March, 2003 by failing to comply with the provisions of Rule 45(C) of the Rules of procedure which requires the principal Defender assigned to be available on a full time basis to the case does not arise and clearly becomes academic.

Reference by the Prosecution to other applications for extension of time relating to Prosecution Motion for Protective Measures for Witnesses and Victims will it is submitted be addressed at the proper time when that issue comes properly before the Appeals Chamber and do not arise for purposes of this particular application.

It is true that Defence Counsel is described as lead Counsel, but the formalities involved in concluding a legal service contract with Co-Counsel are still in progress and have yet to be concluded. To suggest that because lead Counsel health rendered him unable to complete his mandate he should either have referred the mandate to an associate OR withdrawn from this case gratuitous though that may sound begs the issue. In any case Counsel for the Applicant (Defence) may well understand the inherent fears of Counsel for the Prosecution regarding the continuation of the defence of the Applicant by Counsel for the Applicant (Defence). But Counsel for the Prosecution must realize with the greatest respect to him that the Applicant's (Defence) Counsel needs no prompting from him as to when he should take his EXIT if that point will ever be reached which is very doubtful, and certainly not based on gratuitous advice emanating unjustifiably from Counsel for the Prosecution.

The allegations coming as they do and crudely put by Counsel for the Prosecution that Defence Counsel is chronically ill are far fetched, totally out of order, unsupportable medically and clearly a figment of his imagination. In

this regard Counsel for the Applicant (Defence) submits that Counsel for the Prosecution has exceeded the boundaries and latitude accorded him as a "Prosecutor". Indeed the mind boggles over the fact that in a simple application of this type seeking leave for an extension of time to appeal to the Appeals Chamber against the decision of Judge Benjamin Mutanga Itoe of the 22nd July, 2003 which touch and concern the liberty of a citizen has rather strangely invoked a tirade of unpleasantness and invective however disguised bordering on discourtesy to a colleague by Counsel for the Prosecution. This Defence Counsel submits is totally unacceptable.

Indeed reference to engaging the services of Co-Counsel is totally misplaced, quite apart from the fact that it should not fall from the lips of Counsel for the Prosecution to engage in such a matter without first cross-checking his facts. Perhaps in future Counsel for the Prosecution may well advise himself that he needs to check in the first place whether appropriate funds have been made available OR allocated to engage the services of Co-Counsel before he embarks on a frolic of his own.

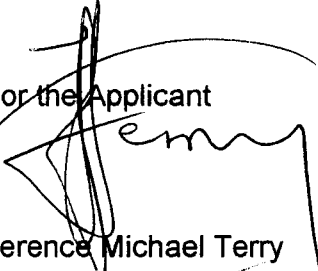
Counsel for the Applicant (Defence) further states that unlike Counsel for the Prosecution who may well be on salary, the Defence Counsel and for that matter the engagement of professional services of a Co-Counsel is contingent upon the availability of funds which will consequently trigger off a legal service contract in that direction. For the benefit of Counsel for the Prosecution he needs to be reminded that the legal services contract for lead Counsel of the Applicant herein has not yet been concluded since June 2003 for reasons beyond the control of lead Counsel for the Applicant herein. Therefore it is submitted that reference by Counsel for the Prosecution to engaging the services of Co-Counsel in the circumstances spelt out was then and even now not only premature but totally misplaced.

Consequently, no weight should be attached OR credence given to the several submissions canvassed by Counsel for the Prosecution in his request that the Appeals Chamber dismiss the Defence Motion of 16th September, 2003 in its entirety.

CONCLUSION

In the light of the foregoing, Counsel for the Applicant herein humbly prays that leave be granted by the Appeals Chamber of the Special Court for Sierra Leone for an extension of time within which to seek leave to appeal against the Order of Judge Benjamin Mutanga Itoe dated the 22nd day of July, 2003 refusing an Application for Bail OR Provisional Release.

Done in Freetown the 26th day of September, 2003.

For the Applicant

Terence Michael Terry
Counsel for the Applicant

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