

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-PT

Before: Judge Bankole Thompson, Presiding
Judge Benjamin Mutanga Itoe
Judge Pierre Boutet

Registrar: Robin Vincent

Date filed: May 17, 2004

THE PROSECUTOR

against

SANTIGIE BORBOR KANU

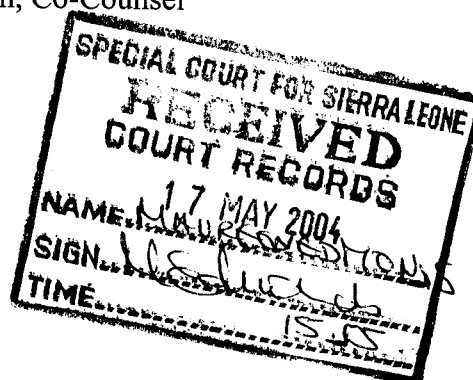
KANU – DEFENSE RESPONSE TO “PROSECUTION’S APPLICATION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL AGAINST THE DECISION ON THE ‘PROSECUTION’S MOTION FOR CONCURRENT HEARING OF EVIDENCE COMMON TO CASES SCSL-2004-15-PT AND SCSL-2004-16-PT”

Office of the Prosecutor:

Luc Coté
Robert Petit
Lesley Taylor
Sharan Parmar
Boi Tia-Stevens

Defense Counsel:

Geert-Jan Alexander Knoops, Lead Counsel
Cary J. Knoops, Co-Counsel
J.O.D. Cole, Co-Counsel
A.E. Manly-Spain, Co-Counsel



I INTRODUCTION

1. Pursuant to the “Prosecution’s Application for Leave to File an Interlocutory Appeal Against the Decision on the ‘Prosecution’s Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT,”” (**“Prosecution’s Application”**) filed on May 14, 2004, and the “Decision on the Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT,” of May 11, 2004, (**“Trial Chamber Concurrent Hearing of Evidence Decision”**), the Defense herewith files its “Kanu – Defense Response to “Prosecution’s Application for Leave to File an Interlocutory Appeal Against the Decision on the ‘Prosecution’s Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT.””
2. Pursuant to Rule 73(B) of the Rules of Procedure and Evidence (**“Rules”**), the Prosecution filed its Prosecution Application, to which the Defense in this instance responds.

II NO ERROR OF LAW OR FACT

3. In the first place, according to the Defense, the Trial Chamber’s decision contains no error of law, nor error of fact which warrants leave to appeal as sought by the Prosecution.
4. Particularly, the Defense points to the previous “Decision on Prosecution’s Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motions for Joinder” of February 13, 2004, (**“Trial Chamber Decision on Joinder”**) where the Trial Chamber rejected leave to appeal, the arguments of which decision indirectly apply here.
5. As the Trial Chamber indicates in its Trial Chamber Decision on Joinder, the assessment of the Trial Chamber that the request of the Prosecutor to have certain evidence heard concurrently be denied does not reasonably amount to any error of law or fact. Also here, the previous ruling of the Trial Chamber rejecting an interlocutory appeal on part of the Prosecutor with respect to the requested joinder of the cases,

implies the presence of an irreversible judicial fact which is not be reopened through these proceedings, i.e. the interlocutory appeal sought by the Prosecutor in its request of May 14, 2004.

III NO "EXCEPTIONAL CIRCUMSTANCES" OR "IRREPARABLE PREJUDICE"

6. First, in the Prosecution's Application, leave to appeal is requested on the basis of Rule 73(B) of the Rules of Procedure and Evidence ("Rules"). This Rule indicates that "*[d]ecisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal.*"
7. The Defense holds that the Prosecution has not proved that the outcome of the Trial Chamber Concurrent Hearing of Evidence Decision creates an exceptional circumstance and that it creates irreparable prejudice to the Prosecution. Therefore, the strict requirement of Rule 73(B) of the Rules has not been met, and the Prosecution should not be granted leave to appeal for the reasons as set out below.
8. The Prosecution in para. 15 of its Prosecution's Application reiterates, similar to its arguments with respect to the joinder motion, the existence of irreparable prejudice to its case in the event the evidence cannot be introduced concurrently in the respective cases. Also here, as was done by the Defense in its arguments as to the Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution Motion for Joinder, filed on February 3, 2004, it should be observed that the alleged irreparable prejudice apparently aims at procedural matters, and not as much at alleged irreparable prejudice as to the substance of the case. In the humble view of the Defense, only the latter prejudice (as to the substance of the preparation and presentation of a case), would fall within the ambit of the term "irreparable prejudice" as enshrined in Rule 73(B) of the Rules. With respect to the argument of the Prosecutor as to the loss of evidence put forward in para. 16 of the Prosecution's Application, it may be observed that these arguments pertain to future expectations and do not relate to any fact, as was also considered by the Trial Chamber in its recent Decision on the Concurrent Hearing of Evidence in para. 38. Therefore, without being

able to anticipate the development and progress of the trials, the honorable Trial Chamber can reasonably not be asked to take this argument into account.

9. The Defense therefore holds the humble opinion that the requested certification for this interlocutory appeal should be denied.

IV CONCLUSION

10. For the reasons set out above, the Defense respectfully prays the honorable Trial Chamber to deny the Prosecution's Application.

Respectfully submitted,

Done at this 17th day of May 2004

pp. Clair Carbon → Harcides.

Geert-Jan Alexander Knoops

Lead Counsel