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SCSL-2003-10-PT-010
(222-226)

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THE SPECIAL COURT FOR SIERRA LEONE

Before: Judge Bankole Thompson
Designated Judge

Registrar: Robin Vincent

Date filed: 18 June 2003

THE PROSECUTOR

V.

BRIMA BAZZY KAMARA also known as
IBRAHIM BAZZY KAMARA also known as **ALHAJI IBRAHIM KAMARA**

Case No. SCSL-2003-10-PT

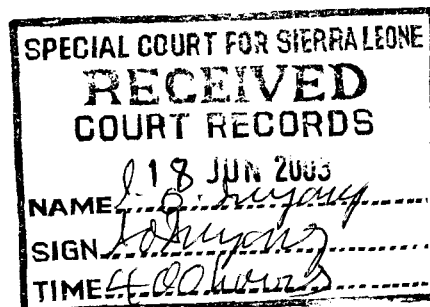
**REQUEST BY THE DEFENCE OFFICE FOR SUSPENSION OF
CONSIDERATION OF PROSECUTION'S MOTION FOR PROTECTIVE
MEASURES UNTIL COUNSEL IS ASSIGNED**

Office of the Prosecutor

Luc Côté, Chief of Prosecutions
Brenda J. Hollis, Senior Trial Counsel

Defence Office

John R.W.D. Jones, Acting Chief of Defence Office and Legal Advisor
Claire Carlton-Hanciles, Defence Associate
Ibrahim Yillah, Defence Associate
Haddijatu Kah-Jallow, Defence Associate
Sam Scratch, Defence Intern



I. INTRODUCTION

1. On 11 June 2003, the Office of the Prosecutor (the “**OTP**”) filed a *Prosecution Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure* (the “**Prosecution Motion**”). The Prosecution requested a Designated Judge or Chamber to issue (11) protective measures.
2. The Defence Office is in the process of assigning Counsel to Mr. Ibrahim Kamara (the “**Accused**”), pursuant to the “Request for Legal Assistance” signed by Mr. Kamara on 30 May 2003. Given that at this stage, no Counsel is assigned, even provisionally, to represent the Accused, the Defence Office acting pursuant to its mandate set out in Rule 45 of the Rules of Procedure and Evidence (the “**Rules**”) of the Special Court for Sierra Leone (the “**Special Court**”) hereby files this request, made pursuant to Rule 54 of the Rules, for an order suspending consideration of the *Prosecution Motion* until Counsel has been assigned and has had the opportunity to file a substantive Response to the *Prosecution Motion*.

II. PROCEDURAL BACKGROUND

3. On 30 May 2003, the Accused declared himself indigent and completed a “Request for Legal Assistance” and a “Declaration of Means”. On the same date, he expressed a preference for the assignment of Mr. Cecil Osho-Williams and Mr. Ajibola Manley-Spaine as his Counsel, by completing a “Power of Attorney”. At the same time, the Accused made it clear that he did not have the means to appoint his own Counsel. It was therefore for the Defence Office to assign a Counsel to the Accused, albeit taking into account the preferences expressed by the Accused.
4. It is important, in this regard, to bear in mind that an accused who has the means to engage his own counsel can engage the Counsel of his choice. If he does not have such means, then he has the right to have Counsel assigned to him, but not necessarily Counsel of his own choice. This is clear from Article 17(4)(d) of the Statute and Rules 44 and 45 of the Rules.

5. The jurisprudence of the International Criminal Tribunal for Rwanda (“ICTR”), moreover, confirms this position. In a Decision in *Gerard Ntakirutimana* on 11 June 1997, the ICTR Trial Chamber declared that Article 20(4) of the ICTR Statute cannot be interpreted as giving the indigent accused the absolute right to be assigned the legal representation of his or her choice. The Chamber added:

“nonetheless . . . mindful to ensure that the indigent accused receives the most efficient defence possible in the context of a fair trial, and convinced of the importance to adopt a progressive practice in this area, an indigent accused should be offered the possibility of designating the counsel of his or her choice from the list drawn up by the Registrar for this purpose, the Registrar having to take into consideration the wishes of the accused, unless the Registrar has reasonable and valid grounds not to grant the request of the accused”.

6. In accordance with this law and practice, the Defence Office is in the process of considering whether to assign Mr. Osho-Williams to the Accused, either singly or in combination with another Counsel, since the Accused has also requested the Defence Office to assign to him a Counsel with international criminal law expertise. The members of the Defence Office made it clear at the Accused’s Initial Appearance on 4 June 2003, that Mr. Osho-Williams had not yet been assigned to the Accused (Mr. Osho-Williams kindly agreed to appear at the Initial Appearance in a *pro bono* capacity) and that his application was being considered. The Defence Office must take into account the requirements for assigning Counsel set out in Rule 45(C) of the Rules, and only assign Counsel whom the Defence Office considers has the requisite qualifications. Moreover, the Defence Office is faced with the difficulty that Mr. Osho-Williams is currently subject to the United Nations Travel Ban (see Press Release SC/7782/Rev. 1), which while it does not pose insuperable difficulties to the assignment of Mr. Osho-Williams, is nonetheless a matter that requires due deliberation and, if possible, resolution.

7. Notwithstanding these difficulties, the Defence Office expects to be in a position to assign Counsel to the Accused in the next two (2) days.

III. A SUBSTANTIVE RESPONSE BY THE DEFENCE OFFICE MAY PREJUDICE THE POSITION OF ASSIGNED COUNSEL

8. In the cases of two other accused persons before the Special Court – Issa Sesay and Morris Kallon – the Prosecution, on 7 April 2003, filed motions for Protective Measures, to which the Defence Office filed substantive responses on 23 April 2003. The Defence stated in each case that the Response was “*without prejudice to the position that might be taken by their assigned counsel once such counsel is assigned*” (paragraph 3 of the Defence Responses).
9. The Defence notes that both the assigned Counsel for Sesay and the assigned Counsel for Kallon are now seeking reconsideration of the Order of Judge Thompson made on 23 May 2003, partly on the grounds that Counsel were not assigned when the Defence Office filed its substantive response and that assigned Counsel take a different view of certain matters from that taken by the Defence Office.¹ Those applications are currently under consideration.
10. The Defence Office anticipates that, acting entirely reasonably and in accordance with their rights and duty to defend their client, Counsel to be assigned to the Accused will also wish to file their own substantive response to the *Prosecution Motion*. It would, therefore, not be in the interests of justice for the Defence Office to submit a substantive reply now to the *Prosecution Motion*, only for assigned Counsel at a later stage to have to file applications for the matter to be reconsidered and/or appealed. Moreover, if the Defence Office were to submit a reply, it might in fact prejudice the position of assigned Counsel. It is submitted, therefore, that it is in the interests of all parties for the matter to be suspended until Counsel have been assigned to the Accused, at which point the assigned Counsel should have adequate opportunity to respond to the *Prosecution Motion* on the merits.

¹ *The Prosecutor v. Issa Hassan Sesay* (Case No. SCSL 2003-05-PT), *Application for Reconsideration of and/or leave to appeal regarding the Order of Judge Bankole Thompson (Protective Measures for Witnesses and Victims) rendered on the 23rd May 2003*, 30 May 2003; *The Prosecutor v. Morris Kallon* (Case No. SCSL 2003-07-PT), *Application for Reconsideration of and/or leave to appeal 'Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure*, 29 May 2003

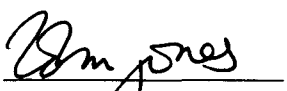
11. Suspending the matter until Counsel is assigned will not unduly delay the proceedings since, in any event, the Prosecution is not obliged, under Rule 66(A)(i) of the Rules, to disclose supporting material to the defence of the Accused until 4 July 2003 (i.e. 30 days after the Accused's Initial Appearance). As stated above, Counsel will be assigned to the Accused within two (2) days, which affords ample time for the Defence to respond to the Prosecution and for the Prosecution to reply before 4 July 2003.

IV. CONCLUSION

12. For the above reasons, the Defence Office an order suspending consideration of the *Prosecution Motion* until Counsel has been assigned and has had sufficient time and opportunity to file a substantive Response to the *Prosecution Motion*.

Dated this 18th day of June 2003.

DEFENCE OFFICE



John R. W.D. Jones, Acting Chief of Defence Office and Legal Advisor
Claire Carlton-Hanciles, Defence Associate
Ibrahim Yillah, Defence Associate
Haddijatu Kah-Jallow, Defence Associate
Sam Scratch, Defence Intern