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Before: Judge Bankole Thompson
Designated Judge

Registrar: Robin Vincent

Date filed: 23 June 2003

THE PROSECUTOR

Against

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

CASE NO. SCSL - 2003 - 10 - PT

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

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Defence Office
John Jones, Acting Chief of Defence Office
Claire Carlton-Hanciles, Defence Associate
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SPECIAL COURT FOR SIERRA LEONE
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

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CASE NO. SCSL – 2003 – 10 – PT

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OFFICE FOR SUSPENSION OF CONSIDERATION OF
PROSECUTION’S MOTION FOR PROTECTIVE MEASURES UNTIL
COUNSEL IS ASSIGNED”**

INTRODUCTION

1. On June 18th 2003 the Defence Office filed on behalf of the Accused a “Request by the Defence office for suspension of consideration of Prosecution’s Motion for Protective measures until Counsel is assigned” (the “**Request**”).
2. In the Request the Defence Office
 - i) states that on June 11th 2003 the Prosecution filed a “Prosecution Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure” (the “**Protective Measures Motion**”);
 - ii) states that the Defence Office is in the process of assigning Defence counsel for the Accused and “expects to be in a position to (do so) in the next two (2) days”;

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- iii) states that in the case of two persons accused before the Special Court, Issa Sesay and Maurice Kallon, Assigned Counsel filed motions seeking reconsideration of Orders on similar motions partly on the grounds that they were not assigned at the time the Office of the Defence filed Responses and that they now wish to assert different arguments than those made by the Defence Office;
 - iv) seeks an Order suspending consideration of the Motion in the instant case until permanent counsel has been assigned and has had sufficient time and opportunity to file a Response.
3. The Prosecution submits that the Request is ill founded in fact and in law and should be dismissed.

II ARGUMENT

Standing and role of the Defence Office and assignment of Defence counsel

4. Rule 45 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (the “**Rules**”) call for the establishment of the Defence Office for the purpose, *inter alia*, “of ensuring the rights of suspects and accused” prior to the assignment of Defence counsel, and states that the Defence Office shall, in accordance with the Statute and Rules, “provide advice, assistance *and representation* to ... accused persons” (emphasis added). The Defence Office, as the Request indicates, has provided representation to other accused in other cases. For instance, similar motions for protective measures were filed in the cases of *The Prosecutor against Issa Sesay*, SCSL-2003-05-PT (filed 7 April 2003) and the *The Prosecutor against Morris Kallon*, SCSL-2003-07-PT (filed on 7 April 2003), all responded to by the Defence Office on 23 April 2003 and subsequently decided upon by the Chamber on May 23rd 2003.
5. The Request discloses (at para. 3) that the Accused in this case has declared himself indigent and has completed a “Request for Legal Assistance” and a “Declaration of Means”, and has made it clear that he does not have the means to appoint his own counsel. It is evident from the Request that the Defence Office has determined that the Accused in this case satisfies the indigency

requirements for the assignment of counsel by the Special Court. From this it follows that, pursuant to Article 17(4)(d) that the Accused has a right to have legal assistance assigned to him. The Request acknowledges that while he has a right to have legal assistance assigned to him, he does not necessarily have a right to counsel of his choice. Given that the Accused has requested legal assistance, and given that the Accused has a right to be assigned legal assistance, the Prosecution submits that the Defence Office has a duty to provide such assistance unless and until the Accused has been assigned other counsel.

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6. The Prosecution submits that one of the very purposes of the creation of the Defence Office was to avoid undue delay in proceedings prior to the assignment of Defence counsel, by enabling an accused to be represented by the Defence Office until counsel has been assigned. Otherwise legal proceedings could be delayed indefinitely for lack of legal representation. The position now being adopted by the Defence Office would thus undermine the proper resolution of issues by the Special Court. The Request, which was filed on 18 June 2003, states (at para. 7) that “the Defence Office expects to be able to assign Counsel to the Accused in the next two (2) days”. However, as at today’s date, some 5 days later, the Prosecutor understands that no Defence counsel has yet begun representing the Accused, and that a Defence counsel is not likely to begin doing so for at least a week.

7. The position adopted in the Request, essentially that the Defence Office should not file any responses to Prosecution motions on behalf of an accused, but should wait for assigned counsel to do this, cannot be accepted. It would defeat one of the purposes of the Defence Office, and would lead to unacceptable delays. This position also contradicts the position previously taken by the Defence Office itself. In a filing dated 23 April 2003 in the case of *The Prosecutor against Issan Hassan Sesay*, SCSL-2003-05-PT, the Defence Office stated:

“This perhaps serves to underline the crucial point that the OTP has failed to

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grasp, namely that unless and until permanent counsel is assigned to Mr. Sesay, *the Defence is the legal representative of Mr. Sesay and Mr. Sesay is the Defence Office's client.* Hence the Defence Office not only has standing but has the duty to raise all and any issues that the Defence Office considers should be raised on Mr. Sesay's behalf.... The Defence Office is therefore obliged to provide "*legal assistance*" to Mr. Sesay, an accused person, which – when relief or an order is required – has to be achieved through the filing of Motions, Requests or Applications..... For the Defence Office not to respond vigorously when it considers there may be a breach of the Accused's rights and when the rules of professional courtesy are being flouted, would represent a serious abdication by the Defence Office of its solemn duties." (Italics in the original.)

8. The fact that assigned defence counsel may be designated in the near future does not relieve the Defence Office of its duty to file proper responses to Prosecution motions in due time. Should subsequently assigned defence counsel file motions seeking reconsideration of decisions taken when an accused was represented by the Defence Office, the Prosecution will respond to those motions at the appropriate time.
9. Unfortunately in the instant case the Defence office has failed to file responses in due time pursuant to Rule 7 (c) of the Rules to the Protective Measures Motion and to the "Prosecution's Motion to allow disclosure to the Registry and to keep disclosed material under seal until appropriate protective measures are in place" (the "**Registry Disclosure Motion**"). Instead, the Defence Office has chosen to file the instant Request for a suspension of time-limits on the last day of the time-limit under the Rules, and only in respect of the Protective Measures Motion.
10. By choosing not to file either a response, or a request for a suspension of the time-limit for the response, to the Registry Disclosure Motion, the Prosecution submits that the Defence has waived the rights to file a response to that Motion.

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11. By choosing not to file a proper response to the Protective Measures Motion, and by instead filing the present Request for a suspension of time-limits, the Defence has failed to respect the time-limit under Rule 7 (c) and has thereby jeopardized the potential ability of the Defence to respond. By filing a request for suspension of time-limits on the very last day of the time-limit, the Request presumes that the Trial Chamber will grant the requested suspension. The Prosecution submits that the appropriate way for the Defence Office to have advanced its current position would have been to file the Request as soon as it had received the Protective Measures Motion. That way, if the Request had been denied, the Defence could have filed a response to the Protective Measures Motion on behalf of the Accused within the time-limit. By waiting until the last day of the time-limit to file the Request, the Defence Office has placed the Accused in jeopardy of losing the right to respond altogether in the event that the Request is denied. The Request in effect seeks to force the Trial Chamber to grant the requested suspension of time-limits in order not to deny the right of the Accused to respond to the Protective Measures Motion.

12. The Prosecution submits that motions relating to protective measures for witnesses are common in international criminal law, share similarities of issues and have generated a significant body of jurisprudence. As the Chamber previously stated, such a motion "...albeit of extreme importance, is a common and accepted procedure in international criminal law" (*The Prosecutor against Augustine Gbao aka Augustine Bao*, SCSL-2003-09-I, "Order on the Urgent request for Direction on the time to Respond to and/or Extension of time for the filling of a Response to the prosecution Motions and the Suspension of any Ruling on the issue of Protective Measures that may be Pending before other Proceedings before the Special Court as a result of Similar Motions File to those that have been filed by the Prosecution in this case"). There is thus no reason why the Defence Office could not have responded adequately to the Protective Measures Motion on the Accused's behalf, with the benefit of existing case law. The argument that assigned counsel might subsequently seek reconsideration of any measure taken by the Defence Office on the

Accused's behalf is speculative, since there is no way of knowing whether this would ever occur. As indicated above, if it did occur, the Prosecution would respond at the appropriate time.

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Suspension of proceedings

13. The Request seeks a suspension of the time-limit for the response to the Protective Measures Motion until such time as assigned counsel "has had sufficient time and opportunity to file a substantive Response".
14. In essence what the request is asking is to render the application of the Rules contingent on the decision of Defence counsel as to when he or she may feel ready to respond to the Protective Measures Motion.
15. The Prosecution strongly objects to this request as it has no basis in law, is arbitrary as to its application, would run counter the stated principles of a fair and expeditious disposition of issues and create an unworkable precedent to the functioning of the Chamber.
16. The Prosecution submits that the issues involved in the Request can only be resolved by applying the Rules not by seeking the delegation of their application to assigned Defence counsel.

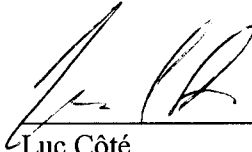
CONCLUSION

1. For these reasons the Prosecution therefore submits that the Request for a suspension of time-limits should be dismissed, and that the Chamber should rule on the Registry Disclosure Motion and the Protective Measures Motion.
2. Alternatively, should the Chamber consider that the best interests of the Accused so require, the Prosecution submits that the Trial Chamber should order that the Defence has an extension of time of 2 days from the date of the Chamber's order in which to file any response to the Protective Measures Motion.


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Freetown, 23 June 2003.

For the Prosecutor,



Luc Côté
Chief of Prosecutions



Robert Petit
Senior Trial Counsel