

045

673

SCSL-2003-10-PT  
 (673 - 678)  
**SPECIAL COURT FOR SIERRA LEONE**  
 OFFICE OF THE PROSECUTOR  
 FREETOWN - SIERRA LEONE

Before: The Designated Judge  
 Registrar: Robin Vincent  
 Date filed: 18 November 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

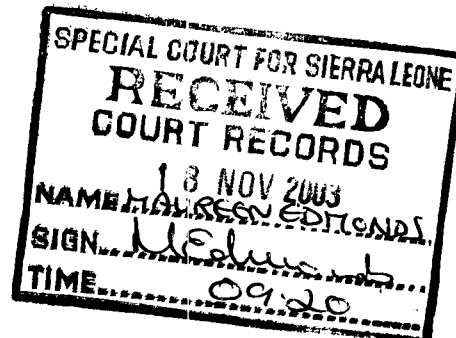
---

**PROSECUTION RESPONSE TO DEFENCE MOTION FOR EXTENSION OF TIME TO  
 FILE RESPONSE TO PROSECUTION MOTION FOR JOINDER AND FOR  
 ADJOURNMENT OF HEARING**

---

Office of the Prosecutor  
 Luc Côté, Chief of Prosecutions  
 Boi-Tia Stevens, Assistant Trial Counsel

Defence Office  
 Ken Fleming, Q.C.  
 Cecil Osho Williams



**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR  
FREETOWN – SIERRA LEONE**

**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 DEFENCE MOTION FOR EXTENSION OF TIME  
TO FILE RESPONSE TO PROSECUTION MOTION FOR JOINDER AND FOR  
ADJOURNMENT OF HEARING**

---

**INTRODUCTION**

1. The Prosecution files this response to *Defence Motion for Extension of Time to File Response to Prosecution Motion for Joinder and for Adjournment of Hearing* (Defence Motion) filed on 13 November 2003. In the Defence motion, Defence Counsel requests: a postponement of the hearing scheduled for 23 and 24 November 2003 on the Prosecution Motion for Joinder (joinder motion) filed 9 October 2003; a Court ruling on the date when filing a Defence response to the joinder motion is deemed to have started and alternatively an extension of time to file a response to the joinder motion. The Defence request is based on their submission that Defence Counsel did not receive the joinder motion until 11 November 2003 and that as at 13 November 2003, Defence Counsel had not received the material which the Prosecution disclosed to him on 6 November 2003, which he had forwarded to him by DHL on 13 November 2003.
2. The Prosecution submits that Rule 7(A) of the Rules of Procedure and Evidence for

the Special Court (the Rules) is determinative of the time for filing a response to the joinder motion. The Prosecution also submits that Defence request for the postponement of the scheduled joinder hearing should be dismissed and Defence has not shown cause for such a delay.

## **ARGUMENT**

3. The Prosecution accepts, even without seeing the annexure referred to in paragraph 5 of the Defence Motion, that Defence Counsel did not receive the motion for joinder until 11 November 2003 due to technical problems with the website through which he receives mail.
4. It is regrettable that Co-Counsel for the Accused, who the Prosecution reasonably believes is based in Freetown, was not also served with the Prosecution's motion. This indeed would have alleviated the notice problem, as it would have certainly put at least one member of the Defence team on notice of the existence of the motion. The Prosecution respectfully submits that the Court seize this occasion to order Court Management to serve court documents on co-defence counsels as well.
5. Nonetheless, the Prosecution notes, as stated in the Defence motion, that Defence Counsel travelled to Sierra Leone on 31 October 2003, and was in Freetown until 7 November 2003. The Prosecution is surprised that Defence Counsel did not at any time during this period make inquiries from Court Management regarding his client's case. Given that Defence Counsel had been away from his office in Australia since 5 October 2003, compounded with the problems of accessing the website through which material is sent to him, the Prosecution submits that it was the duty of Defence Counsel under these circumstances to take active steps to find out from Court Management whether they had sent anything to him or to review the Court's file for any recent development in his client's case since 5 October 2003.
6. With respect to the assertion in paragraph 7 of the Defence Motion that no documents in hard copy were delivered to the Defence Office for Defence Counsel, the

Prosecution understands the practice at the Special Court to be that where an accused person has been assigned a counsel documents are served on the assigned counsel and not the Defence Office. However, the Prosecution believes that the Defence Office has a role to play to keep defence counsels abreast of developments in their cases, particularly in light of the fact that many defence counsels are abroad.

- 7. In this regard, it is submitted that in addition to serving documents on counsel who are based in Freetown, a system in place, such as pigeon holes in the Defence Office where members of the defence team, in particular those based in Freetown, would receive information from the Court regarding matters about their clients would assist in keeping defence teams apprised of developments in their clients' cases.
- 8. To the extent the Defence interprets Rule 7(A) of the Rules to mean in this situation that they received notice of the joinder motion on 11 November 2003 when Defence Counsel accessed it on the internet, the Prosecution concurs with that interpretation. Thus under this circumstance and in view of paragraph 11 of the Defence Motion, the Prosecution understands that the Defence does not need an extension of time to file a response to the motion for joinder.
- 9. As to the postponement of the date scheduled for the hearing of the joinder motion, the Prosecution submits that the Defence has not shown cause why the hearing should be delayed, and that there is no need, under any of the circumstances set forth in the Defence motion, to postpone the scheduled hearing of the parties.
- 10. The Prosecution is not insensitive to the plight of Defence Counsel that as at 13 November 2003, he had not yet received disclosure material which he had left behind to be copied for the Accused and for Co-Counsel.
- 11. However, and with regard to paragraphs 13 and 14 of the Defence Motion, the Prosecution submits that it made disclosure to the Defence, well before 13 November 2003. The Prosecution made disclosure to the Defence on 6 November 2003, pursuant to Defence Counsel's request to the Prosecution that disclosed material be retained here in Freetown for him, after being contacted by the Prosecution shortly

after the decision on the motion for protective measures for witnesses was rendered. The Prosecution, mindful of the time it would take to send by courier service disclosure material to Australia and that Defence Counsel was to be in Freetown for the appeals hearing, had contacted the Defence Counsel and inquired of him whether the disclosure materials were to be sent to Australia or held here for him in Freetown.

12. The Defence have ample time to prepare for the hearing scheduled to take place on 24 and 25 November 2003. Although the Defence may not have received the joinder motion in a timely fashion, the point is they have now received the motion, and have received it since 11 November 2003. Further, the Defence received disclosure material on 6 November 2003. To the best of the Prosecution's knowledge, the Defence team consists of a lead counsel, a co-counsel and a legal assistant. Even if lead counsel is not yet in possession of disclosure material, the other members of the Defence team should be able to prepare for the hearing. Further, in paragraph 20(a) of the Defence Motion, the Defence accepts that they are in the position to file preliminary motions by 27 November 2003. It is submitted that the difference between the deadline for filing preliminary motions and the date of hearing for the joinder hearing is so negligible that by the date of the hearing, the Defence would have familiarized itself with the issues relating to the joinder motion.
  
13. Contrary to the Defence submission in paragraph 18, the Prosecution submits that in principle, it is not necessary that the Defence ventilate matters relating to the contents of the indictment before a motion on joinder is determined. While an accused does have rights under Rule 72 of the Rules to address various contents of the indictment, an accused may very well opt not to exercise such rights. Therefore, something as speculative as whether or not an accused will choose to file motions challenging the contents of an indictment cannot be the basis for determining a motion for joinder. Further, a determination of joinder turns on such principles as the need for judicial economy, the avoidance of duplication of evidence, the avoidance of serious prejudice to the accused etc., as outlined in the joinder motion<sup>1</sup>, and not on the objections to the indictment.

---

<sup>1</sup> For a list and explanation of the principles guiding the determination of granting or denying a motion for joinder, see Prosecution Motion for Joinder in this case, filed 9 October 2003.

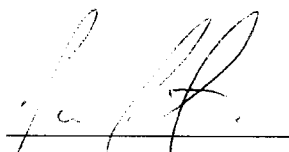
14. It is also submitted that a hearing is discretionary,<sup>2</sup> therefore if the Defence for the Accused Kamara are not disposed to attend the scheduled hearing, the Court could simply rely on their written submissions. Further, if the lead counsel is unable to attend the scheduled hearing, Co-Counsel who is based in Freetown can appear. Alternatively, the hearing as scheduled should go forward with the other parties being heard on that date, and another date could be scheduled for the Defence for the Accused Kamara to be heard. But it is submitted that there is no reason why the hearing as scheduled should not hold.
15. As at the writing of this response (17 November 2003), the date for the joinder hearing has been rescheduled for 2-3 December 2003. In view of this fact, the Prosecution submits that there is no reason for an extension of time for the hearing to allow for preparation.

#### CONCLUSION

16. For the foregoing reasons, the Prosecution requests that:
- (a) the Court find that the time for filing a response to the joinder motion commenced on 11 November 2003, and that
  - (b) the hearing for the joinder motion take place as scheduled.
17. The Prosecution further requests that the Court urgently decide on the Defence Motion given its implication for the impending hearing on joinder.

Freetown, 17 December 2003.

For the Prosecutor,

  
\_\_\_\_\_  
Luc Côté

  
\_\_\_\_\_  
Boi-Tia Stevens

---

<sup>2</sup> See Rule 73 of the Rules.