

SCSL-2004-16-PT
(846-851)

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THE SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE

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

Registrar: Robin Vincent

Date filed: 15th APRIL 2004

THE PROSECUTOR

Against

ALEX TAMBA BRIMA

CASE NO. SCSL-2004-16-PT

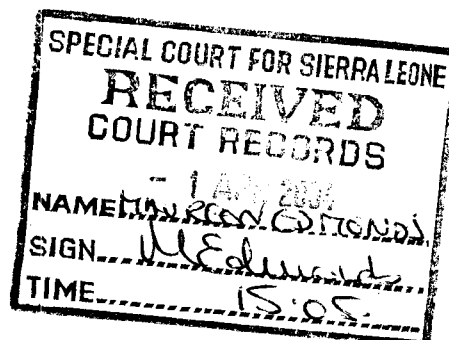
DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION
FOR EXCLUSION OF PROSECUTION WITNESS STATEMENTS AND STAY
ON FILING OF PROSECUTION WITNESS STATEMENTS PURSUANT TO
RULES 5 AND 66(A)(i) OF THE RULES OF PROCEDURE AND EVIDENCE OF
THE SPECIAL COURT FOR SIERRA LEONE

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**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION
FOR EXCLUSION OF PROSECUTION WITNESS STATEMENTS AND
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PURSUANT TO RULES 5 AND 66(A)(i) OF THE RULES OF PROCEDURE
AND EVIDENCE OF THE SPECIAL COURT FOR SIERRA LEONE**

In reply to the Prosecution's response to the Defence Motion for Exclusion of Prosecution witness statements and stay on filing of Prosecution Witness Statements pursuant to the said Rules 5 and 66(A)(i) dated the 29th March 2004, the Defence will adopt and rely upon its several submissions contained in its Motion dated 22nd March, 2004 and filed the 23rd of March 2004 and will further rely on the following below submissions canvassed herein:-

In reply to rubric 6 under the sub-title Arguments at page 2 of the Prosecution response, the Defence submits that the Prosecution has not complied with the disclosure obligations required under the provisions of Rule 66(A)(i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

In reply to rubric 7 at page 2 of the Prosecutions' response, the Prosecutor in error misquoted the said Rule 66(A) (i) in its previous form as nowhere in that Rule does the word "tot" (emphasis mine) appear.

In reply to rubric 8 at page 2 of the Prosecution's response, the Defence maintains its position that for the Prosecution to continuously disclose evidence to the Defence after the 30 days period following the initial appearance of the accused, the Prosecution needs to show 'good cause' in order to do so.

The Prosecution's response is confusedly numbered 7 at page 3 of their response.

In reply to the confused numbered Rubric 7 at page 3 of the Prosecution's response, the Defence concedes that the Prosecution has Statutory continuing disclosure obligation under Rules 66 and 68 but submits that the Prosecution has the duty under the Rules to show good cause. Whether OR not Article 15 of the Statute gives the Prosecutor investigative powers in respect of crimes falling within the jurisdiction of the Court OR Rule 2 defines investigation as occurring both before the issuance of an indictment and after, it is submitted that they do not preclude the Prosecutor from showing good cause to warrant disclosure obligations. Reliance on Rule 50(B) by the Prosecution is inapplicable, as this Rule requires leave of a designated Judge who reviewed it OR in exceptional circumstances by leave of another Judge. Rule 73 bis (e) talks about the interest of justice which will necessitate an Order to be granted provided the Prosecution has sought one on the ground of "interest of Justice". It is submitted that it is at that stage that the additional evidence by way of investigations of other means which has come into the possession of the Prosecution could properly be considered by the Trial Chamber. To that extent reliance on Rules 2, 50(B) and 73 bis(e) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone is merely speculative.

In reply to Rubric 9 at page 3 of the prosecution's response, if as the Defence submits the said Rule mandates the prosecution in its ongoing investigations to show good cause, the Prosecution must do just that and Defence does not therefore subscribe to the view canvassed by the Prosecutor that for the latter to so do will in any way amount to frustrating the legal process or in any way become cumbersome to the Prosecution.

As regards rubric 10 at page 3 of the Prosecution's response, the Defence does not subscribe to the view expressed by the Prosecution that the requirement after the expiration of the 30 days following the initial appearance of an accused for the Prosecution to show good cause in order to be able to disclose witness statements in effect places a restriction on the Prosecution's disclosure obligation too early in the stage of the proceedings and more so as the prosecution has failed to descend into particulars regarding the kind of restriction referred to therein by it. Therefore Defence submits reference to the rest of the matters canvassed under the said rubric 10 by the Prosecution do not and cannot arise and is at best a red herring.

As regards rubric 11 at page 4 of the Prosecution's response, the Defence repeats and adopts its previous arguments as contained in its motion filed on the 23rd March, 2004 in respect of the historical objective of Rule 66(A)(i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

Again in reply to rubric 12 at page 4 of the Prosecution's response, the Defence adopts and relies on its previous submissions in respect of the second limb of Rule 66(A)(i) and further submits that the assertion of the Prosecution in that connection is with respect misplaced and at best tantamount to an inaccurate reading of the provisions of that particular rule. The rest of the submissions of the Prosecution under rubric 12 it is submitted is unsustainable and is not borne out by the true reading and interpretation of the first limb of the said Rule 66(A)(i) of the Rules of Prosecutor and Evidence of the Special Court for Sierra Leone.

As regards rubric 13 at page 5 of the Prosecution's response, Defence concedes that Rule 66(A)(i) was amended at the 5th plenary meeting of the Judges of the Special Court for Sierra Leone which took place between the 11th and 14th of March 2004. Defence submits that a substantial amount of disclosure took place before the said amendment took place at the said plenary meeting. In any event it is further submitted that since the rule has now been clarified by the amendment, that fact alone without more constitute an important factor to warrant the exercise of the discretion by the Trial Chamber to grant an extension of time to enable the Defence to file its Defence pre-trial brief. Moreover, the mere fact that as the Prosecution puts it under rubric 14 at page 5 of its response that the Rule clarifies that the prosecution's disclosure obligation or duty, continues up until 60 days before trial and thereafter,

imposes a requirement on the Prosecution to show good cause to disclose any more statements of witnesses it intends to call makes it all the more important that due to this amendment that again should with respect constitute further ground to warrant the exercise of discretion by the Trial Chamber to grant an extension of time within which to file the Defence pre-trial brief in the light of this new amendment. The amendment to Rule 66(A)(i) says what it says and cannot with respect constitute the basis on which Defence motion should be rejected however conceived by the Prosecution.

As regards rubric 17 at page 6 of the Prosecution's response, Defence will adopt and rely upon its construction and interpretation of the provisions of Rule 5 as contained in its motion filed on the 23rd of March 2004.

In reply to rubric 18 at page 6 of the Prosecution's response, Defence submits that for the several reasons canvassed above, the several reliefs sought by the Defence, the said Motion should be granted and in particular that the relief so requested in paragraph VII (1)-(3) as contained in the Defence motion be graciously granted by the Trial Chamber.

Again in reply to rubric 20 at page 7 of the Prosecution's response, the Prosecution on its own showing by necessary implication lends support for the tilting of the balance in favour of the exercise of discretion by the Trial Chamber for the grant of an Order extending the time to file the Defence pre-trial brief within a reasonable time following the order of the Trial Chamber dated the 13th day of February 2004 which set a limitation period for filing Defence pre-trial brief up until the 26th of March 2004.

In reply to rubric 21 at page 7 of the Prosecution's response, defence submits that there is no relief sought in paragraph IV (5) of the Defence Motion. Rather the Defence submits that the Order sought and which it prays that the Trial Chamber most respectfully do grant is VII (5) and NOT IV(5) (emphasis mine). As the Prosecution on its own showing has alluded to a non-existing relief allegedly sought by the Defence namely IV (5), the Trial Chamber can only with respect properly adjudicate upon the relief which was actually sought by the Defence in its Motion namely VII (5) – nothing more, nothing less.

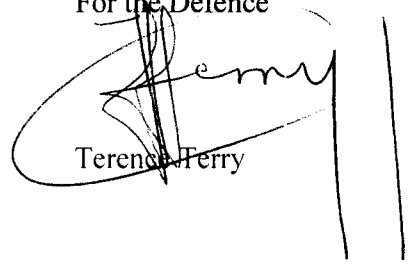
For completeness, the Defence submits that it would be in a better position to comprehensively prepare its Defence pre-trial brief when the totality of all witness statements are disclosed to the Defence. Too that extent, it is submitted that mention by the Prosecution of that magic figure of "300 witness statements" disclosed to the Defence cannot with respect provide the proper climate to guarantee fair trial and pre-trial procedures that will culminate in a comprehensive Defence pre-trial brief.

CONCLUSION

In the circumstances therefore and for the reasons canvassed in this reply and the Defence motion herein, the Defence most respectfully submits that its motion should be graciously granted by the Trial Chamber.

Done in Freetown 1st day of April 2004

For the Defence


Terence Ferry