

SCSL-04-16-PT
(6027-6030)



SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

TRIAL CHAMBER II

Before: Judge Teresa Doherty, Presiding Judge

Registrar: Robin Vincent

Date: 3 February 2005

PROSECUTOR	Against	Alex Tamba Brima Brima Bazy Kamara Sanigie Borbor Kanu (Case No.SCSL-04-16-PT)
-------------------	----------------	--

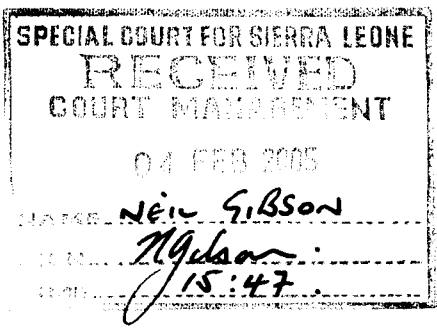
**ORAL DECISION ON PROSECUTIONS MOTION FOR PROTECTIVE MEASURES
PURSUANT TO ORDER TO THE PROSECUTION FOR RENEWED MOTION FOR
PROTECTIVE MEASURES DATED 2 APRIL 2004**

Office of the Prosecutor:
Luc Coté
Lesley Taylor
Boi-Tia Stevens

Defence Counsel for Alex Tamba Brima
Kevin Metzger
Glenna Thompson
Kojo Graham

Defence Counsel for Brima Bazy Kamara:
Wilbert Harris
Pa Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:
Geet-Jan Knoop
Carry Knoop
Abibola E. Manley-Spaine



I, JUDGE TERESA DOHERTY, Presiding Judge of Trial Chamber II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), designated from among the members of Trial Chamber II pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Special Court ("the Rules");

SEIZED of the Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004, filed on 4 May 2004;

CONSIDERING the Response by the Defence for the Accused Kanu and Brima, filed 14 May 2004 and the Consolidated Reply of the Prosecution thereto, filed 18 May 2004;

CONSIDERING the Interim Order on Modification of Protective Measures for Witnesses dated 20 January 2005;

CONSIDERING the Prosecution's List of Protective Measures Received from Trial Chamber I and other Information Filed Pursuant to Scheduling Order of 28 January 2005;

HAVING HEARD the parties in open court on 3 February 2005;

HEREBY ISSUES THIS DECISION:

1. This is a ruling on an application submitted by counsel for the Prosecution. The Prosecution applied on the 4 May 2004 to renew protective measures to protect witnesses that may be called in this trial. Objections on fact and law were filed by Kanu and Brima.¹ No reply was filed by Kamara, and I therefore note that he does not object. No rebuttal evidence was adduced by the Defence.
2. In compliance with an order of 1 February 2005 by this Court, the Prosecution filed information of which witnesses are already subject to protective measures in any other trials in the Special Court. It is now noted that all the witnesses which the Prosecution indicates may be called are already subject to protective measures.

¹ Kanu - Defense Response to Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated April 2004, 14 May 2004; Brima - Defense Response to Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated April 2004, 14 May 2004.

3. The Prosecution submits, and Defence counsel concur, that the provisions of the Rule 75(F) of the Rules applies to all the prospective witnesses. The Rule provides as follows:

(F) Once protective measures have been ordered in respect of a witness or victim in any proceedings before the Special Court (the "first proceedings"), such protective measures:

- i. shall continue to have effect *mutatis mutandis* in any other proceedings before the Special Court (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but;
- ii. shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.

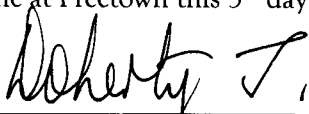
4. I consider that once protective measures have been ordered in respect of a witness or a victim in any proceedings, such protective measures continue to have effect *mutatis mutandis* in cases where a witness will testify in different proceedings before the Special Court and unless and until they are rescinded, varied, or augmented by the Court making them. I would add that such measures, however, cannot be used as an excuse to prevent the Prosecutor from discharging any disclosure obligation under the Rules in other proceedings provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings where the witness appeared.

5. I therefore hold that this application before me today is redundant in respect of all witnesses contained in the list in the Updated Compliance Report filed by the Prosecution on 11 May 2004. I therefore invite the Prosecution to withdraw this application in relation to all witnesses. Before doing so, I would note that this ruling confirms that the order of the Court in the matter of the *Prosecutor v. Sesay, Kallon, Gbao, Case No. SCSL-2004-15* in its Decision on Prosecution Motion for Modification of Protective Measures for Witnesses of 5 July 2004, as varied from time to time, extends to all witnesses in this case, that is, the case of *Prosecutor v. Brima, Kamara, and Kanu*. The Court further notes that references to the Defence in the Order are deemed to include the Accused Brima, Kamara and Kanu and their Defence teams for the purposes of this case.

6. Further, a fuller protective measures order should be served on the Defence to include the variations ordered in the *Prosecutor v. Sesay, Kallon, Gbao*. The Prosecution is hereby ordered to

inform the Defence of all variations made from time to time to the Order of Trial Chamber I of
5 July 2004.

Done at Freetown this 3rd day of February 2005



Judge Teresa Doherty
Presiding Judge
Trial Chamber II

