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SCSL-04-16-PT
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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
Judge Richard Lussick
Judge Julia Sebutinde
Registrar: Robin Vincent
Date: 28 February 2005

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

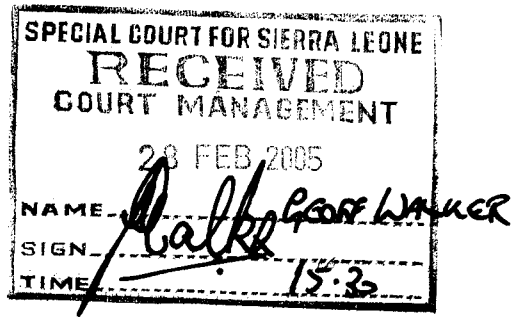
DECISION ON DEFENCE APPLICATIONS NOT TO DISCLOSE PHOTOGRAPHY, VIDEO AND AUDIO RECORDINGS OF THE TRIAL TO THE PUBLIC AND/ OR THIRD PARTIES

Office of the Prosecutor:
Luc Côté
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
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:
Geert-Jan Alexander Knoops
Cary J. Knoops
Abibola E. Manley-Spaine



TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”), composed of Judge Teresa Doherty, presiding, Judge Richard Lussick and Judge Julia Sebutinde;

BEING SEISED of a REQUEST FOR AN ORDER NOT TO DISCLOSE PHOTOGRAPHY, VIDEO AND AUDIO RECORDINGS OF THE TRIAL TO THE PUBLIC AND/OR THIRD PARTIES, filed on 11 February 2005 by the Accused Kanu, on 14 February 2005 by the Accused Brima and on 16 February 2005 by the Accused Kamara, wherein the Trial Chamber is requested to:

- (i) prohibit photography, video and audio recording of the Accused by third persons during the trial;
- (ii) direct the Registry not to publish or disclose photographs, video and audio records of the Accused to the media or other third persons;
- (iii) take reasonable measures to prevent Prosecution witnesses having access to such images prior to their testimony at trial;

CONSIDERING the Prosecution’s Combined Response, filed on 17 February 2005 and the Reply of the Accused Brima filed on 21 February 2005, the Reply of the Accused Kanu filed on 22 February 2005, and the Reply of the Accused Kamara filed on the 22 February 2005;

CONSIDERING ALSO the arguments put forward by the Accused in support of the Motions;

CONSIDERING FURTHER that the proper time for the Trial Chamber to assess the reliability of witnesses is when they give evidence at the trial. If it is contended by an Accused that the credibility of a witness has been adversely affected by his or her exposure to images or audio recordings of the Accused prior to testifying, then that is a matter which can be raised in cross-examination.

This was the view taken by the ICTY in the case of Prosecutor v. Dusko Tadic¹, in which it held that: “In all trials, the potential impact of pre-trial media coverage is a factor that must be taken into account in

¹ *Prosecutor v. Dusko Tadic*, Case No. IT-94-1, Opinion and Judgment, 7 May 1997, para. 542-544.

considering the reliability of witnesses, and where this aspect was raised in cross-examination of witnesses, it has been taken into account in the evaluation of their testimony.”

The ICTY applied the same principle in *Prosecutor v. Zelko Mejakic & Others: Decision on Motion to Remove Photographs of Accused from ICTY Website*², in which it held that “the potential impact of pre-trial media coverage is a factor to be taken into account in considering the reliability of witnesses in all trials before the International Tribunal and is therefore a matter for consideration at trial and not a matter for determination by the Trial Chamber at this stage of the proceedings”.

In a later case,³ the ICTY dealt with an application which sought (inter alia) orders identical to those sought in the present Motions, i.e. (1) to prohibit photography, video and audio recording of the accused by third persons and (2) directing the Registry not to publish or disclose photographs, video and audio records of the accused to the media. In dismissing the motion, the ICTY again held that: “the potential impact of pre-trial media coverage is a factor that must be taken into account at trial and not a matter for determination at this stage of the proceedings”;

HOLDING that, notwithstanding the Accused having appeared before the Trial Chamber on many previous occasions on which the proceedings were recorded by the Registry by means of photography, video and audio recordings, their submissions regarding the potential impact of such recordings on witnesses at the trial remain purely speculative and do not support any material prejudice that would warrant the orders sought;

HOLDING FURTHER that at present there is no application before the Trial Chamber by any “third” or other person seeking authorisation for photography, video-recording or audio-recording of the trial, and that it would not be appropriate for the Trial Chamber to consider exercising its discretion under Rule 81(D) until and unless such an application were made,

² *Prosecutor v. Zelko Mejakic and Others*, Case No. IT-02-65-PT, Decision on Motion to Remove Photographs of Accused from ICTY Website, 20 April 2004.

³ *Prosecutor v. Zelko Mejakic and Others*, Case No. IT-02-65-PT, Decision on Dusko Knezevic’s Request Pursuant to Rule 81(D), 28 July 2004.

HEREBY DISMISSES the Motions

Done at Freetown this 28th day of February 2005



Judge Richard Lussick



Judge Teresa Doherty
Presiding Judge



Judge Julia Sebutinde

