

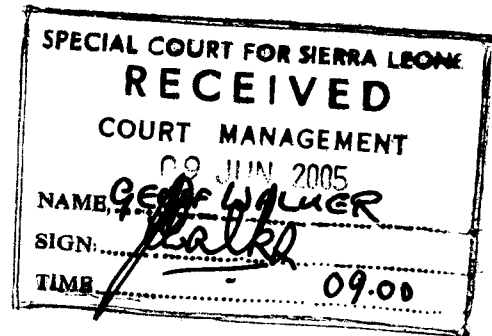
SPECIAL COURT FOR  
SIERRA LEONE

Case No. SCSL-2004-16-T

Before: Justice Teresa Doherty, Presiding  
Justice Julia Sebutinde  
Justice Richard Lussick

Registrar: Robin Vincent

Date filed: 9 June 2005



**THE PROSECUTOR**

against

**ALEX TAMBA BRIMA**

**BRIMA BAZZY KAMARA**

and

**SANTIGIE BORBOR KANU**

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**JOINT DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE APPLICATION FOR  
LEAVE TO APPEAL FROM DECISION ON DEFENCE MOTION TO EXCLUDE ALL EVIDENCE  
FROM WITNESS TF1-277**

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Luc Coté  
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Defence Counsel for Kanu:  
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Defence Counsel for Brima:  
Glenna Thompson  
Kojo Graham

Defence Counsel for Kamara:  
Mohamed Pa-Momo Fofanah

## I INTRODUCTION

1. On 24 May 2005, the Trial Chamber filed its “Decision on Joint Defence Motion to Exclude All Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95” (“**Decision**”). On 27 May 2005, the Defence filed its “Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277” (“**Defence Application**”). In response thereto, the Prosecution filed a “Prosecution Response to Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277” (“**Prosecution Response**”) on 6 June, to which the Defence hereby files its “Joint Defence Reply to Prosecution Response to Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277.”

## II EXCEPTIONAL CIRCUMSTANCES

2. In paras. 10 – 13 of the Prosecution Response, the Prosecution addresses the Defence argument as to the existence of exceptional circumstances as a requirement for leave to appeal.
3. Notwithstanding that the Prosecution addresses the question whether the admission of hearsay evidence may amount to exceptional circumstances, it fails to address the specific characteristics of the instant matter, namely the combination between the hearsay evidence at hand in conjunction with the existence of a prior inconsistent statement vis-à-vis the sworn testimony given by the particular witness.
4. Furthermore, the OTP fails to address the Defence argument that in the humble submissions of the Defence the reasoning of the honorable Trial Chamber with respect to the interpretation of will-say statement, as set forth in paras. 22 – 23 of the Decision, is not comprehensible in view of the acceptance on part of the Trial

Chamber in para. 21 that the purported inconsistency was not “between the prior written statement and the sworn testimony of the witness (...).”

5. Therefore, the Prosecution’s submissions do not refute the existence of exceptional circumstances as delineated by the Defence.

### **III IRREPARABLE PREJUDICE**

6. In the paras. 14 – 16 of the Prosecution Response, the Prosecution addresses the condition of irreparable prejudice. It is to be observed that the Appeals Chamber decision in *Prosecutor v. Norman et al.*, referred to by the OTP in footnote 7 of the Prosecution Response, apparently interprets this condition within the context of the notion that trials should be continued to their conclusion without delay or diversion caused by interlocutory appeals on procedural matters.

7. Two observations can be made in this regard:

- (i) In the humble submissions of the Defence the element of irreparable prejudice should not solely be determined on the basis of the need to conclude a trial without delay or diversion;
- (ii) In the instant case, the underlying issue, namely the admissibility of hearsay in conjunction with prior inconsistent statements, does not qualify as a procedural matter, but rather a matter of substantive criminal law.

8. Accordingly, the reference to the mentioned Appeals Chamber ruling cannot serve to refute the Defence argument that irreparable prejudice may be caused to the Accused in the event no leave to appeal is granted.

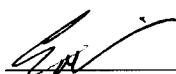
9. Finally, the Prosecution in para. 15 of its Response overlooks the observation by the honorable Trial Chamber in para. 19, in which it was said by the Trial Chamber that “it was not strictly necessary for the Prosecution to establish that the other two persons engaged in the conversation were not available to give evidence.” Consequently, the Trial Chamber accepted the proposition that the other two persons were not available for cross-examination by the Defence as such to refute the statement of Witness TF1-277. This observation by itself may cause irreparable prejudice to the Accused in the event the honorable Trial Chamber would at the conclusion of the trial give probative weight to the allegations of said witness. In this regard, the reference to *Prosecutor v. Aleksovski* is certainly valid in view of the mentioned possibilities to cross-examine the two other persons who were allegedly engaged in the conversation referred to by Witness TF1-277.

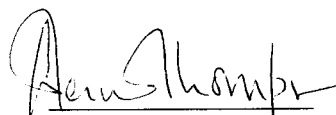
#### IV RELIEF SOUGHT

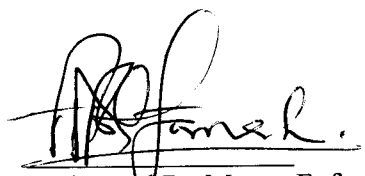
10. Based on the foregoing arguments, the Defence prays the honorable Trial Chamber to grant leave to the Defence to appeal from the Impugned Decision.

Respectfully submitted,

On 9 June 2005

  
Geert-Jan A. Knoop

  
Glenna Thompson

  
Mohamed Pa-Momo Fofanah