

(13580 - 13585)

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

Freetown – Sierra Leone

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

Registrar: Mr. Robin Vincent

Date filed: 6 July 2005

THE PROSECUTOR**Against**

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-T

**PROSECUTION REQUEST FOR LEAVE TO CALL AN ADDITIONAL
WITNESS PURSUANT TO RULE 73bis(E)**

Office of the Prosecutor:

Luc Côté

Lesley Taylor

Defence Counsel for Alex Tamba Brima

Glenna Thompson

Kojo Graham

Defence Counsel for Brima Bazzy Kamara

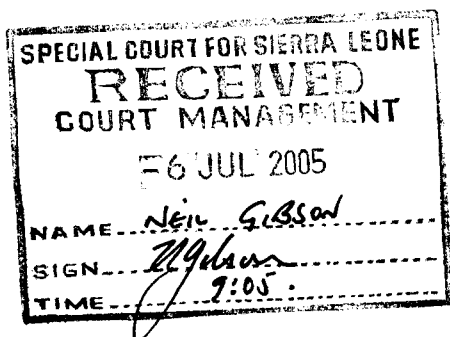
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Geert-Jan Alexander Knoops

Carry Knoops

Abibola E. Manley-Spaine



I. INTRODUCTION

1. On 1 April 2004, Trial Chamber I issued the “Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial” (the “Original Order”).¹
2. On 26 April 2004, pursuant to the Original Order, the Prosecution filed a “Witness List”, which included a summary of the expected testimony of each witness.
3. On 9 February 2005, Trial Chamber II issued the “Order to Prosecution to Provide Order of Witnesses and Witness Statements” (the “9 February 2005 Order”).
4. Pursuant to the 9 February 2005 Order, on 21 February 2005 the Prosecution filed a “Revised Witness List”.
5. Subsequently, on 28 April 2005 the Prosecution filed an “Updated Witness List”.
6. Pursuant to Rule 73 *bis*(E), the Prosecution respectfully requests that the Trial Chamber allow the inclusion of an additional witness, to testify as to the identity of the Accused Brima and Kanu.

II. APPLICABLE LAW

7. In accordance with the jurisprudence of the Special Court, the Prosecution acknowledges that it is required to show “good cause” and to demonstrate that the inclusion of the additional witness is in the “interests of justice”.
8. In its “Decision on Prosecution Request for Leave to Call Additional Witnesses” of 29 July 2004² and “Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund” of 1 October 2004³ in the case against Norman, Fofana and Kondewa, it was recognised by Trial Chamber I that several factors have been taken into account by the international *ad hoc* tribunals in assessing the “interests of justice” and “good cause” requirements for adding witnesses to the

¹ *Prosecutor v Brima, Kamara and Kanu*, Case No.SCSL-04-16-T, Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial, 1 April 2004.

² *Prosecutor v Norman, Fofana and Kondewa*, Case No.SCSL-2004-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses, 29 July 2004.

³ *Prosecutor v Norman, Fofana and Kondewa*, Case No.SCSL-2004-14-T, Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund, 1 October 2004.

witness list.⁴

9. These factors were reiterated by Trial Chamber I in its “Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements” of 11 February 2005⁵ and “Decision on Prosecution Request for Leave to Call an Additional Expert Witness” of 10 June 2005⁶ in the case against Sesay, Kallon and Gbao. Thus, the Prosecution must demonstrate:

- a) that the circumstances being argued to show good cause are directly related and material to the facts in issue;
- b) that the evidence to be provided by the witness is relevant to determining the issues at stake and would contribute to serving and fostering the overall interest of the law and justice;
- c) that leave to call a new witness would not unfairly prejudice the defence; and
- d) that the new evidence could not have been discovered or made available at an earlier point in time notwithstanding the exercise of due diligence.

III. ARGUMENT

10. The Prosecution respectfully requests that Lt. Col. John Petrie, MBE, previously the Commanding Officer of the Republic of Sierra Leone Armed Forces (RSLAF) Joint Provost Unit, as part of the International Military Advisory and Training Team (IMATT) and, subsequently, Chief of Legal Operations in the Office of the Prosecutor at the Special Court, be added to the Witness List and that the Prosecution be allowed to call this witness to prove that the first Accused Brima was also known by the jungle name, code name or nickname of “Gullit” and that the third Accused Kanu was also known by the jungle name, code name or nickname of “55”. Lt. Col. John Petrie, MBE will give evidence as to interactions with the Accused Brima and Kanu during which they accepted the use of these alternative names. These interactions occurred prior to the arrest by the Special Court of either the first or third

⁴ *Prosecutor v. Nahimana et al*, Case No.ICTR-99-52-I, Decision on the Prosecutor’s Oral Motion for Leave to amend the list of selected witnesses, 26 June 2001, cited at para. 29, Registry Page Number 7318 of the 29 July 2004 Decision; and para. 13, Registry Page Number 9632 of the 1 October 2004 Decision.

⁵ *Prosecutor v Sesay, Kallon, Gbao*, Case No.SCSL-15-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements, 11 February 2005, paras 34 and 35.

⁶ *Prosecutor v Sesay, Kallon, Gbao*, Case No.SCSL-15-T, Decision on Prosecution Request for Leave to Call an Additional Expert Witness, 10 June 2005.

Accused. Further, Lt. Col. John Petrie, MBE can explain the origin of the jungle, code or nicknames “Gullit” and “55” as explained to him by soldiers of the RSLAF who knew and served with Brima and Kanu.

11. The Pre-Trial Briefs filed on behalf of Brima and Kanu raise identification as an issue and put the Prosecution on notice as to a possible defence. It is argued that Brima does not “accept that he was ever nicknamed ‘Gullit’”.⁷ Similarly, with respect to Kanu, the question of mistaken identity is raised in that “the name ‘55’ was used or misused by several other persons, individuals or organizations”. Reference is made to the use of the name ‘55’ in a Prosecution witness statement in the context of the RUF.⁸ Thus, the identity of the Accused is directly relevant to the facts in issue. The evidence of the proposed witness will assist the Prosecution in responding to the arguments of the Defence and will thereby foster the interests of justice. Moreover, the evidence of Lt. Col. John Petrie, MBE may be instrumental in establishing that Brima and Kanu were known by different names and thereby in revealing the full extent of their liability.
12. The Defence will suffer no unfair prejudice if leave to call the new witness is granted. The issue of identity is raised by them and they must therefore expect that the Prosecution will bring evidence to establish the different names by which the Accused were known. The evidence of the proposed witness will be of short compass. The statement of the proposed witness will be disclosed in sufficient time to allow the Defence ample opportunity to prepare for cross examination. Lt. Col. John Petrie, MBE has indicated that if leave is granted he is available to travel to Freetown in September 2005.
13. The Prosecution had hoped that the issue of identification could have been resolved in a more expeditious manner than by the calling of an overseas witness. However, the position adopted by the first and third Accused makes it necessary in the interests of justice that the Application be granted given that identification remains an issue in the trial.

⁷ *Prosecutor v Brima, Kamara and Kanu*, Case No. SCSL-2004-16-PT, Defence Pre-Trial Brief for Tamba Alex Brima, 17 February 2005, para. 5.

⁸ *Prosecutor v Brima, Kamara and Kanu*, Case No. SCSL-2004-16-PT, Kanu – Defence Pre-Trial Brief and Notification of Defenses Pursuant to Rule 67(A)(ii)(a) and (b), 22 March 2004, para. 29.

14. In this respect it is to be noted that the absence of the Accused from the courtroom during the evidence of witnesses who had the ability to identify the first Accused as Gullit and the third Accused as 55 has made an in-court identification impossible. This absence was unpredictable and unexpected. The Prosecution cannot be expected to have anticipated this absence by including in its previously filed witness list, a witness who could attest to name and jungle, code or nicknames of the first and third Accused. The Prosecution is therefore seeking at this stage to prove identity by other means.
15. The Prosecution submits that in considering this particular Application, the issues of the time which the Prosecution has known of the proposed evidence and due diligence have little weight when compared with the relevance and materiality of that evidence to facts in issue, the absence of prejudice to the Accused and the overall interests of justice.

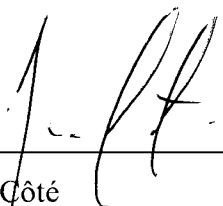
IV. CONCLUSION

16. The Prosecution respectfully submits that the relevance and materiality of the proposed testimony of Lt. Col. John Petrie, MBE to the presentation of the Prosecution's case demonstrates good cause and that his addition to the Witness List is in the interests of justice.
17. Further, the Prosecution requests permission to disclose to the Defence the statement of Lt. Col. John Petrie, MBE pursuant to Rule 66(A)(ii).

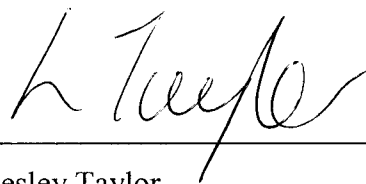
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6 July 2005

For the Prosecution,



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Prosecution Index of Authorities

Prosecutor v. Nahimana et al, Case No.ICTR-99-52-I, “Decision on the Prosecutor’s Oral Motion for Leave to amend the list of selected witnesses”, 26 June 2001

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