

**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: 6 September 2005

THE PROSECUTOR**against****ALEX TAMBA BRIMA****BRIMA BAZZY KAMARA****and****SANTIGIE BORBOR KANU**

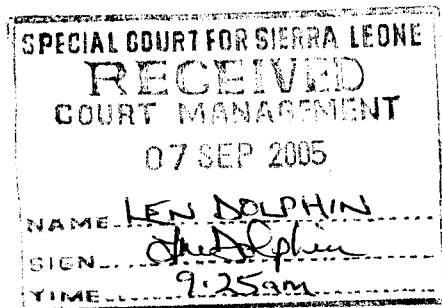
**KANU – DEFENCE MOTION FOR TEMPORARY PROVISIONAL RELEASE
TO ALLOW THE ACCUSED TO VISIT HIS MOTHER’S GRAVE**

Prosecution Counsel:

Luc Coté
Lesley Taylor

Defence Counsel for Kanu:

Geert-Jan A. Knoops, Lead Counsel
Carry J. Knoops, Co-Counsel
A.E. Manly-Spain, Co-Counsel
A. Koroma



I INTRODUCTION

1. Rule 65(A) of the Rules of Procedure and Evidence provide that “[o]nce detained, an accused shall not be granted bail except upon an order of a Judge or Trial Chamber.” Requirements for such request are “that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.” The Rules do not provide for a temporary release, and thus the Defence is of the opinion that the general rule providing for bail should be applicable to a request for temporary release as well.

II FACTS AND EVENTS

2. Mid-June of this year, the Defence contacted the Registry concerning the Accused’s mother’s deteriorating health situation. On 23 June 2004, the Defence filed its “Kanu – Motion for a Temporary Visit of the Accused to His Mother.” On 24 June 2004, the Defence sent a letter to the Registry, with a copy of this motion, making a formal request to have the Accused visit his mother, as she was seriously ill and her illness was becoming worse (**exhibit 1**).
3. The Registry proposed the Defence to solve this matter without involvement of the Trial Chamber. The Defence consented to this approach. Although the Registry did not permit the Accused to go and see his mother, instead, the Registry arranged for the mother to come to the prison facility to visit her son. The Defence at that time decided to agree with the Registry’s approach and subsequently, on 28 June 2005, the Defence withdrew its motion for a temporary visit to his mother (see **exhibit 2**).
4. In July 2005, Co-Counsel Mrs. Knoops-Hamburger visited Mr. Kanu’s mother with Dr. Harding, physician of the Detention Unit (this in consultation with the prison authorities) to inquire about the decreasing health condition of his mother. Co-Counsel subsequently filed a request to the prison authorities and the Registry. Attached to this request was a medical attest of Dr. Harding, indicating that the

health condition of Mr. Kanu's mother was deteriorating. Accordingly, the Defence requested the Special Court authorities to seek for possibilities that Mr. Kanu could see his mother as she was now not able to travel to the Special Court. The Defence never received a response to this request. The Defence is able to submit this correspondence if required.

5. On Friday 2 September 2005, Lead Counsel for the Accused Santigie Borbor Kanu was informed of the Accused's mother's death, which had occurred that same day. The Defence immediately contacted the Registrar, asking him for permission for the Accused to be present at his mother's funeral the following day (in Muslim tradition, one is buried within 24 hours after passing away). On Saturday, the day of the funeral, the Registrar sent an e-mail to the Defence, negatively responded to the request (see **exhibit 3**).

III VIOLATION OF ACCUSED'S RIGHT TO PRIVATE LIFE AND FAMILY LIFE

6. The Registrar in his e-mail dated 2 September 2005, refers to a "risk assessment made in respect of the security arrangements which would need to be in place to ensure both his custodial status and his safety, it is not recommended that he be allowed out of the Detention Facility."
7. This same argument was invoked by the ICTY Prosecution in *Prosecutor v. Dusan Fustar*, where the Prosecution opposed the Defence Motion seeking a temporary provisional release to attend the 40-day memorial of his father's death, stating that "the proposed security procedures are insufficient to guarantee the return of the accused and the safety of witnesses and that the requested length of the release is not justified for the purpose of attending the memorial service."¹ However, the ICTY Trial Chamber granted the temporary provisional release in that case.

¹ See *Prosecutor v. Dusan Fustar*, Case No. IT-02-650PT, Decision on Defendant Dusan Fustar's Emergency Motion Seeking a Temporary Provisional Release to Attend the 40-day Memorial of His Father's Death, ICTY Trial Chamber, 11 July 2003.

8. In similar situations before the ICTY, the accused were allowed to attend their close family members' funerals, such as, in the case of *Prosecutor v. Blagoje Simic*, in order to attend a memorial service forty days after his father's death. In addition, compared to the ICTY cases, the security risks in the Kanu case seem to be less, where the Accused's mother's grave is in Freetown, i.e. the same city where the Accused is being held in detention, whereas the ICTY accused had to be brought to the former Yugoslavia. Especially the fact that the Accused only seeks permission to leave the Detention Unit one half-day to pay his respects, whereas in the ICTY cases, the accused were granted several days, do not seem to create a security risk that could justify denial of this request.

9. It seems obvious that security measures would have been necessary if the Accused would have been allowed by the Registrar to attend the funeral. The Defence realises that in the event of a visit to the grave yard, similar measures have to be put in place. Yet, the efforts and risks of such action should be weighed against the Accused's right to private life and family life, as enshrined in Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR). The ICTY Trial Chamber also considered that "[a]chieving justice, however, also requires respect for the convicted persons' fundamental rights, in particular their right for private life and family life."²

10. In *Ploski v. Poland*, the European Court of Human Rights held that, in general, refusal to grant leave to attend the funerals of detainee's parents constitutes a violation of Article 8 of the European Convention on Human Rights (ECHR) (comparable to Article 17 of the ICCPR), the right to respect for private life and

² See *Prosecutor v. Blagoje Simic*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simic Pursuant to Rule 65(I) for Provisional Release for a Fixed Period to Attend Memorial Services for His Father, ICTY Appeals Chamber, 21 October 2004, para. 22.

family life.³ Exceptions are, of course, possible, but the general rule is that detainees should be granted that right.

11. Accordingly, and in line with this case law, the Defence contends that the Registrar's refusal to grant the Accused the right to visit his mother's funeral constituted a violation of his right to private and family life under Articles 8 of the ECHR, and 17 of the ICCPR.

12. In the aforementioned decision of *Prosecutor v. Fustar*, the ICTY Trial Chamber held that "obvious humanitarian considerations substantially favouring the grant of provisional release for a limited period, namely so that a son be permitted to pay his last respects to his deceased father, weigh in favour of granting the Motion (...)." ⁴

13. The Defence thus holds that the Registrar's decision resulted in a violation of the ECHR and ICCPR. However, it is too late to request for a judicial review of this decision, since the funeral already took place the day after the Accused's mother's death.

IV VISIT TO ACCUSED'S MOTHER'S GRAVE

14. Although the refusal to attend his mother's funeral cannot be reversed for the Accused, to partly compensate for this violation of his right to a private and family life, the Accused herewith requests permission to visit his mother's grave in the very near future in order to pay his last respects to her.

15. Any potential security risks relating to his custodial status and his safety (as set out by the Registrar in his e-mail dated 2 September 2005) could have, for

³ *Ploski v. Poland*, Judgment, European Court of Human Rights, 12 November 2002 (26761/95 – 202, ECHR 729), para. 39.

⁴ See *Prosecutor v. Dusan Fustar*, Case No. IT-02-650PT, Decision on Defendant Dusan Fustar's Emergency Motion Seeking a Temporary Provisional Release to Attend the 40-day Memorial of His Father's Death, ICTY Trial Chamber, 11 July 2003.

instance, be circumvented by having two security officers accompany the Accused, and even having him handcuffed to one of the officers. In that way, return to the detention facility on that same day would have been guaranteed. At the same time, the Accused could in no way pose any danger to any victim, witness or any other person, thus fulfilling the requirements for bail. These options arise also now regarding this request.

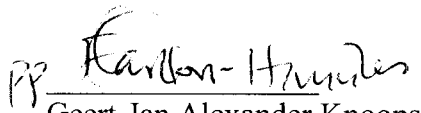
16. The loss of one's mother is one of the most traumatising events in life, and given the fact that the Accused was not allowed to attend his mother's funeral, the Defence respectfully requests the honorable Trial Chamber to allow the Accused a temporary visit to his mother's grave. The Defence is of the opinion that this will help the Accused to come to terms with his loss; this is also the reason why the Defence does this request at this point in time.

V PRAYER

17. For the reasons set out above, the Defence respectfully requests the honorable Trial Chamber to permit the Accused, in the presence of security, to visit his mother's grave to pay his respect to her, this on a day to be set as soon as possible and under conditions as the honorable Trial Chamber may deem appropriate.

18. Any conditions the Trial Chamber deems necessary under Rule 65(D) of the Rules will be complied by by the Accused.

Respectfully submitted,
On 6 September 2005


Geert-Jan Alexander Knoops

LIST OF AUTHORITIES

- *Prosecutor v. Dusan Fustar*, Case No. IT-02-650PT, Decision on Defendant Dusan Fustar's Emergency Motion Seeking a Temporary Provisional Release to Attend the 40-day Memorial of His Father's Death, ICTY Trial Chamber, 11 July 2003.
- *Prosecutor v. Blagoje Simic*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simic Pursuant to Rule 65(I) for Provisional Release for a Fixed Period to Attend Memorial Services for His Father, ICTY Appeals Chamber, 21 October 2004.
- *Ploski v. Poland*, Judgment, European Court of Human Rights, 12 November 2002 (26761/95 – 202, ECHR 729).

LAW FIRM OF KNOOPS & PARTNERS

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To the honourable Trial Chamber
Of the Special Court for Sierra Leone
Jomo Kenyatta Road
Freetown

June 28, 2004

Re: *Prosecutor v. S.B. Kanu*
Withdrawal of Motion

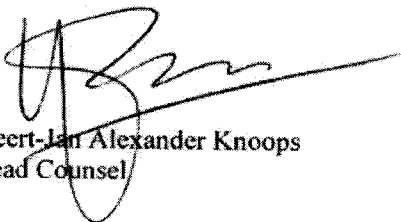
Your Excellencies,

Please be informed that the Defense of Mr. Santigie Borbor Kanu herewith withdraws the "Kanu -Motion for a Temporary Visit of the Accused to His Mother," which was filed by the Defense on June 23, 2004.

On June 26, 2004, the Registry arranged for the Accused's mother to visit her son in the Detention Unit. For these purposes, the application under under Rule 65(B) of the Rules is therefore no longer necessary.

I thank you very much for your attention, and remain with feelings of respect for your Chamber.

Sincerely yours,

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Geert-Jan Alexander Knoops
Lead Counsel

Personal and confidential

To Mr R. Vincent
Registrar of the Special Court of Sierra Leone
Freetown
Sierra Leone

24th June 2004
Re: Prosecution v.S. Kanu
Request for temporal visit home

Dear Mr Vincent,

With reference to our conversation of today, in which conversation you informed me of your status concerning the defendants, I herewith send you, on behalf of our client Mr Santigi Kanu, – confidentially – our motion for request for temporal visit of our client to his ill mother of 86 years of age, which was filed at the Court Management department on 23rd June last.

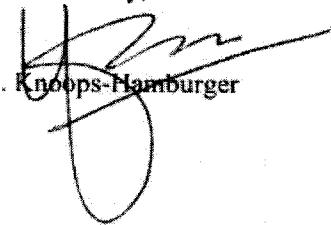
I herewith respectfully would like to ask you to see for possibilities of a visit of our client to his mother, who resides in the area of Aberdeen and who is unable to visit our client in the detention facility. Since our client is afraid that his mother might die without him having been able to visit her, and since it is not known what effect a visit of her to our client in the detention facility – with the assistance of an ambulance – would have on her medically and emotionally, our request is to consider the possibility of our client being able to visit his mother in her own surroundings.

The defence team of Mr Kanu leaves Sierra Leone again on Monday 28th June next. We hope you are able to inform us before Monday of your decision.

Respectfully awaiting your reply.

Thank you for your cooperation.

Yours sincerely,

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C.J. Knoops-Hamburger