

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Robin Vincent

Date filed: 13 September 2005

THE PROSECUTOR

Against

**Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu**

Case No. SCSL-04-16-T

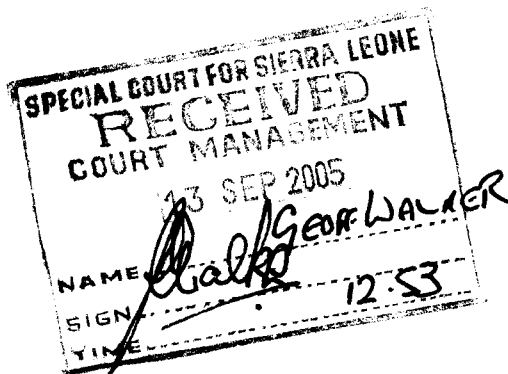
**PROSECUTION RESPONSE TO KANU DEFENCE MOTION FOR TEMPORARY
PROVISIONAL RELEASE TO ALLOW THE ACCUSED TO VISIT HIS MOTHER'S
GRAVE**

Office of the Prosecutor:
Luc Côté
Lesley Taylor

Defence Counsel for Alex Tamba Brima
Glenna Thompson
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Defence Counsel for Brima Bazzy Kamara
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A. Koroma



1. The Prosecution files this Response to the Kanu Defence Motion for Temporary Provisional Release to Allow the Accused to Visit his Mother's Grave, filed on 6 September 2005 ("Motion").
2. The Motion requests permission pursuant to Rule 65(A) of the Rules of Procedure and Evidence (Rules) for the Accused Kanu to be released temporarily from detention in order to visit his mother's grave, following her death on 2 September 2005.
3. The Prosecution submits that a determination as to whether release should be granted must be made with reference to the particular circumstances of the case and may only be granted if the Trial Chamber is satisfied that the Accused will re-appear for trial and, if released, will not pose a danger to any victim, witness or other person.¹
4. The Prosecution notes the Defence submission that the grave of the Accused's mother is in Freetown and that the release would last for approximately one half day. In these circumstances, and with reference to humanitarian considerations, the Prosecution views the main issue as being one of security. The Prosecution submits that the request should only be granted if the necessary security measures are feasible and may effectively be put in place.
5. The Defence states that it will comply with any conditions the Trial Chamber deems necessary under Rule 65(D). The Prosecution submits that the Registrar is the proper organ to assess the security concerns and to advise the Trial Chamber as to the necessary security arrangements and their feasibility for the requested period of temporary release.
6. The Prosecution submits that the request should be considered on its merits and not on the basis of the history behind it as set out in Parts II and III of the Motion. Any relief granted should not be regarded as partial compensation for an alleged violation by the Registrar of the Accused's right to a private and family life, as suggested by the Defence.² The Defence acknowledges that it is too late to request a review of the Registrar's decision³ but to "compensate" the Accused for a violation of his rights would require such a review. The Prosecution therefore emphasizes that while it does not in principle oppose the relief requested in the Motion, namely a visit by the Accused at the earliest opportunity to his mother's grave, it is not presenting any view as to the

¹ See Rule 65(B).

² Defence Motion, para. 14.

³ Defence Motion, para. 13.

Registrar's decision not to allow the Accused to attend his mother's funeral, and submits that the security considerations are paramount.

7. Although the Prosecution makes no submission with respect to the decision of the Registrar, the Prosecution does, however, note that the Defence Motion does not give an accurate representation of the decision of the European Court of Human Rights in the case of *Płoski v Poland*. According to the Defence Motion, in that case 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".⁴ That is not what the European Court of Human Rights held in that case. The European Court in fact made it clear that the application of Article 8 of the European Convention in such cases will always depend on the particular circumstances of the individual case.⁵

Filed this 13th day of September 2005

In Freetown



Luc Côte
Chief of Prosecutions



Lesley Taylor
Senior Trial Counsel

⁴ Defence Motion, para. 10.

⁵ *Płoski v Poland*, Judgment, European Court of Human Rights, 12 November 2002 (26761/95-202, ECHR 729), paras 27 and 38-39.