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SCSL-04-16-T
(17124-17129)

17124

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

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

Registrar: Lovemore Munlo

Date filed: 15 December 2005

THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

URGENT

**JOINT DEFENCE REQUEST UNDER RULE 54 WITH RESPECT TO FILING OF MOTION FOR
ACQUITTAL**

Office of the Prosecutor:
Desmond Da Silva

Defence Counsel for Kanu:
Geert-Jan A. Knoops, Lead Counsel
Cary J. Knoops, Co-Counsel
A.E. Manly-Spain, Co-Counsel

Defence Counsel for Brima:
Kojo Graham
Glenna Thompson

Defence Counsel for Kamara:
Andrew Daniels
Mohamed Pa-Momo Fofanah

| | |
|--------------------------------|-------------------|
| SPECIAL COURT FOR SIERRA LEONE | |
| RECEIVED | |
| COURT MANAGEMENT | |
| 15 DEC 2005 | |
| NAME | SUSAN GUNSTON |
| SIGN | <i>S. Gunston</i> |
| TIME | 09:40 |

I INTRODUCTION

- 1. In the evening of 13 December 2005, the Defence was informed that both the “Kanu – Factual Part Defence Motion for Judgment of Acquittal under Rule 98” (doc. no. SCSL-2004-16-T-444) and the “Joint Legal Part – Defence Motion for Judgment of Acquittal under Rule 98” (doc. no. SCSL-2004-16-T-445) (together referred to as “**Motion**”) were deficiently filed because they were filed “one day out of time. No explanation was tendered.”

II REASON WHY THE MOTION WAS FILED ON 13 DECEMBER

- 2. The Defence understood that para. 1 of the “Scheduling Order on Filing of a Motion for Judgement of Acquittal” of 30 September 2005” (“**Order**”), which reads as follows: “[a]ny Motion for a Judgment of Acquittal shall be filed by the Defence in writing within three weeks from the date that the Prosecution case closes” as falling under the general provision of Rule 7(A).
- 3. Rule 7(A) provides: “[u]nless otherwise ordered by a Chamber or by a Designated Judge, or otherwise provided by the Rules, where the time prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received (...).”
- 4. According to an e-mail message of Mr. Neil Gibson from Court Management of 14 December 2005 (see **Exhibit 1**), the aforementioned paragraph of the Order forms an exception to the general provision of Rule 7(A) of the Rules, and thus the deadline ran from Monday 21 November 2005 in the afternoon, instead of the normal procedure, when the deadline would only start running the day after 21 November, i.e. on Tuesday 22 November.
- 5. In the first place, the Defence is of the humble opinion that literal reading of the Order does not lead to an exclusion of the Rule 7(A) provision.

- 6. In the second place, in case the Trial Chamber would find that a literal reading of the Order does in fact exclude the provision of Rule 7(A), the Defence is of the view that it was not reasonably foreseeable that the wording of the Order formed an exception to the general procedure as laid down in Rule 7(A), and as such, that this unforeseeable interpretation should not be explained to the detriment of the Accused. Moreover, now that no explicit mention is made of this part of the Order being an exception to the Rules of Procedure and Evidence, while at the same time, previous orders of the Trial Chamber mentioned specific filing dates, said interpretation by Court Management cannot be considered as an interpretation which meets the principle of legality., which principle also governs criminal procedural matters.
- 7. It is thus the Defence **primary argument** that the interpretation of the Order as given to us through the e-mail of Court Management,¹ does not exclude Rule 7(A), or, if the Trial Chamber is of the view that it does preclude Rule 7(A), that this was not foreseeable for the Defence at the time of the filing of the Motion, and that consequently, the Defence has filed its Motion in time.

III NO PREJUDICE AND EXPEDITIOUS PROCEEDINGS

- 8. **In the alternative**, in case the Trial Chamber would find that the Order could not be interpreted otherwise than as an exception to the general provision of Rule 7(A), the Defence respectfully submits that, no prejudice is done to the Prosecution by accepting this Motion.
- 9. Rule 98 is designed to expedite proceedings as guaranteed to the Accused by Article 17(c) of the Statute. To prevent the Defence to prepare its case where the Prosecution has not adduced evidence on certain counts of the indictment would not be conducive to an expeditious trial. By not allowing this Motion, the Defence

¹ See attachment 1.

would thus have to present its case on all aspects of the Indictment, while it might be the case – as is argued in the Motion – that on several aspects, no evidence has been adduced. Thus, if the Motion would be accepted, these counts could be stricken from the Indictment. If not accepted, the Defence would have to defend itself to those counts, in spite of the fact that no evidence has been adduced in that respect. Non-acceptance would thus be prejudicial to all parties.

- 10. For the above reason, the Defence respectfully prays the honorable Trial Chamber to accept the document despite its late filing. Article 12 of the Practice Direction on Filing Documents before the Special Court for Sierra Leone, grants the honorable Trial Chamber in this alternative scenario the option to nonetheless accept the filing.

IV COHERENCE OF DOCUMENTS AND ABSENCE OF INTEREST NOT TO ACCEPT FILING

- 11. The Brima and Kamara Defence teams have filed their respective factual parts of the Rule 98 Motion on 12 December 2005. These parts are based on the legal part of the Rule 98 Motion which is currently considered to have been filed out of time. By not accepting the legal part of the Motion, the coherence of the factual parts of the Rule 98 Motions of the Kamara and Brima teams is not longer there. Moreover, the Prosecution will have to respond to the factual Motions filed in the Brima and Kamara Defence cases, and would thus not be prejudiced by acceptance of this Motion. Now that the factual part of the Kanu Motion is specifically connected to the Brima and Kamara motions, as well as the Joint general part of the Rule 98 Motion, it could also be considered to be a form of judicial economy to accept both the joint legal part and the Kanu factual motion as being filed timely. In this sense, the Trial Chamber is able to dispose of all parts in a coherent manner considering the mentioned interrelationship between the several parts filed on 12 and 13 December, both as regards the factual and the legal issues.

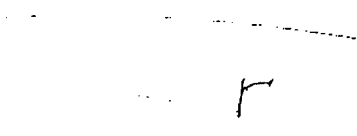
12. Also for this reason, the Defence is of the opinion that it would not be prejudicial to the Prosecution if the Trial Chamber would accept the Motion, despite its alleged delay.

V **Conclusion**

13. Taking into account that the Defence reasonably could have interpreted the Order as including the application of Rule 7(A), and moreover considering that not accepting the Motion because of the different interpretation of the Order, might unnecessarily delay the proceedings against the Accused and extension of the Defence case in terms of Defence witnesses, which will not serve the interests of the case, the Defence respectfully prays the honorable Trial Chamber to accept, either on the basis of Rule 7(A) or Article 12 of the Practice Direction on Filing Documents, the mentioned Motions despite its alleged late filing.²

14. Moreover, the Defence respectfully prays the honorable Trial Chamber to order the Prosecution to respond to this Rule 54 Motion before the start of the Judicial Recess, so that the Trial Chamber can decide on this matter as soon as practically possible.

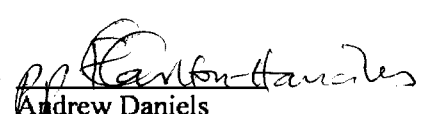
Respectfully submitted,
On 15 December 2005



Geert-Jan Alexander Knoops



Kojo Graham



Andrew Daniels

² Article 12 of the Practice Direction on Filing Documents before the Special Court for Sierra Leone.

EXHIBIT 1

A. Verwiel

Van: Neil Gibson [gibsonn@un.org]
Verzonden: woensdag 14 december 2005 11:33
Aan: kvdvoort@knoops.info
Onderwerp: Re: Deficient Filing

Dear Karlijin,

I was informed yesterday by the Presiding Judge of Trial Chamber 2 that Rule 7(a) states "unless otherwise ordered....." and that the order dated 30th of September 2005 stipulated that any motions shall be filed 3 weeks FROM the date that the Prosecution case closes. The Prosecution closed its case on Monday the 21st of November so hence three weeks would be Monday the 12th of December 2005.

I will ensure your letter once I receive it is placed before the relevant Trial Chamber.

Kind Regards

Neil

Neil Gibson
Officer in Charge, Court Management
Email: gibsonn@un.org
Ext 7251
Tel: +23222297251
Mobile: +232 (0)76667873

"K. van der Voort"

<kvdvoort@knoops.info>

14/12/2005 09:58

Please respond to kvdvoort

To: "Neil Gibson" <gibsonn@un.org>
cc: "fwessel@knoops.info" <fwessel@knoops.info>, "Claire Carlton-Hanciles" <carlton-hanciles@un.org>
Subject: Deficient Filing

Dear Neil,

I received the message below from the Defence Office.

I have checked the deadline several times before filing the document, and was of the opinion that Rule 7(A) of the Rules applied, and that thus the deadline only started running from Tuesday 22 November. Now I was called yesterday evening and informed about the fact that Court Management is of the opinion that it has been filed out of time.

In my opinion, the Order does not set out that it is an exception to Rule 7(A), and it is with this background that we filed the Rule 98 Motion yesterday.

We will file an official letter later today, in order to explain why it was filed in this way. If you have any other suggestions or advice, please let us know!

Kind regards,

15-12-2005