

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL 2004-16-T

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

Interim Registrar: Lovemore Munlo

Date Filed: 30 January 2006

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU**

.....
**(FACTUALS) REPLY TO PROSECUTION RESPONSE TO
DEFENCE**

MOTION FOR JUDGMENT OF ACQUITTAL -KAMARA
.....

Office of the Prosecutor:

Luc Cote, Chief of Prosecutions
James C. Johnson
Lesley Taylor
Karim Agha
Nina Jorgensen
James R Hodes
Marco Bundi

Defence Counsel for Alex Tamba Brima

Kojo Graham
Glenna Thompson

Defence Counsel for Brima Bazy Kamara

Andrew Daniels
Mohamed Pa-Momo Fofanah

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1.2 Part two- Factual Issues raised in Prosecution Response with respect to the Second Accused (Kamara)

Counts 1 and 2: Acts of Terrorism and Collective Punishments

1. “The Prosecution adopts the same arguments as set out in the Brima response read together with paragraph’s 85-87 above with respect to counts 1 and 2”. By these arguments the Prosecution is conferring culpability in respect of counts 1 and 2 on the Second Accused for allegedly being present at a meeting in Kamagbengbe. The mere presence of the Second Accused at meeting at Kamagbegbe (which is denied) is insufficient to support a conviction based on counts 1 and 2 of the indictment.

Counts 3 to 5: Unlawful Killings

2. **Kono District**-The Prosecution’s arguments are founded on the testimonies of witnesses TF1-167 and TF1-334.¹ The Second Accused submits that Witness TF1-167 in his evidence never mentioned that Second Accused was present when Savage killed the civilians in Kono. He indicated that they passed Tombodu where they met Savage who had killed a lot of civilians² Witness TF1-334 also did not talk of Second Accused’s presence when talking about Savage killings.³ From the Prosecution’s evidence it is not clear as to who promoted Savage. Witnesses TF1-167 stated that Savage was appointed lieutenant by Superman⁴ and TF1-334 state that Savage was appointed by Second Accused⁵. The Prosecution has fail to prove that Second Accused participated directly or indirectly in the committing these crimes.

¹ Prosecution Response, para 206

² Pages 44-45of the Transcript, 15 September 2005

³ Pages 12-18 and page 56 of the Transcript, 20 May 2005

⁴ Pages 46 of the Transcript, 15 September 2005

⁵ Page 50 of the Transcript , 19 May 2005

3. **Koinadugu-District**-The Second Accused submits that although he was allegedly present in Kabala, Johnny Paul Koroma and SAJ Musa were also in Kabala. SAJ Musa was said to have been the command of the troops in Kabala.⁶ Witness TF1-184's evidence corroborates the evidence that SAJ was also in Kabala.⁷ No evidence was led to show that even Second Accused was directly or indirectly responsible for the unlawful killing in Kabala.
4. **Freetown and Western Area** -The Prosecution relies on uncorroborated evidence to prove that Second Accused was allegedly present and took part in shooting in Kissy.⁸ The Defence states that evidence led by the witness is not sufficient to establish Second Accused criminal responsibility with regards to act committed in Freetown and Western Area.

Counts 6, 7, 8 and 9" Sexual Violence

5. **Kono District**-The Defence submits that Prosecution witness TF1-334 alleges that Second Accused was in command of the AFRC/RUF forces in Kono⁹. Later on in his testimony the witness states that Commander A headed the SLA in Kono and Superman was the overall commander and Johnny Paul Koroma was still in command.¹⁰ The latter statement was collaborated by Witness TF1-167's testimony that all SLA commanders in Kono were under Superman's supervision and Johnny Paul Koroma had said that all SLAs to be under RUF's supervision.¹¹ It is clear from the Prosecution's evidence that Second Accused was not in command in Kono and cannot be criminally responsible for the crimes committed in Kono.
6. **Koinadugu District**- Second Accused submits that Witness TF1-153 testimony was contradictory and based on hearsay¹² and cannot be relied upon. Witnesses TF1-209 and TF1-133 did not make mention of Second Accused's

⁶ Witness TF1-334, 17 May 2005

⁷ Witness TF1-184, 27 September 2005

⁸ Prosecution Response, para 216

⁹ Prosecution Response, para 224

¹⁰ Witness TF1-334, TT 20 June 2005, pp 123-124

¹¹ Witness TF1-167, TT 19 September 2005, pp 40 and 60-61

¹² Prosecution's Response para 227 and Witness TF1-153, TT 23 September 2005, pp 82-83

presence in Koinadugu.¹³ The Prosecution led no evidence to prove that Second Accused look parting directly or in directly in the committing of sexual violence or that he was a part of a joint criminal enterprise thus cannot be held criminally responsibly for the crimes committed in Koniadugu.

Counts 10 and 11: Physical Violence

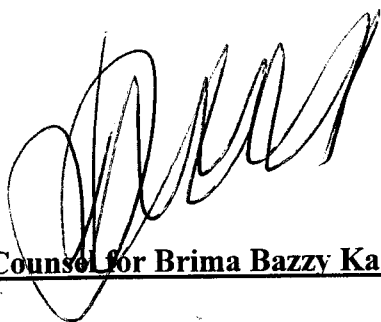
7. **Kono District**-To avoid repetition the Defence by reference to paragraphs 21 and 24 above states that the Prosecution has not led sufficient evidence to show Second Accused is culpable of physical violence in Kono District.

Count 12, 13 and 14-Use of Child of Child Soldiers, Abductions and Forced Labour and Looting and Burning.

8. The Second Accused submitted that the Prosecution failed to establish any evidence to show that Second Accused participated directly or indirectly and consequently criminal responsibility for the alleged crimes charge in these counts as previously argued in the Kamara 98 motion.

Conclusion

9. The Second Accused respectfully prays that the Rule 98 motion be determined in his favour and that he be acquitted on all counts.



Defence Counsel for Brima Bazzy Kamara

¹³ Witness TF1-133, TT 7 July 2005, pp 97-100 and Witness TF1-209, TT 7 July 2005, pp 31-33