

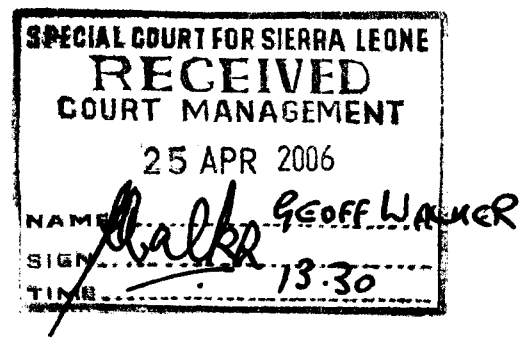
**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

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

Registrar: Lovemore Munlo, *SC*

Date filed: April 2006



THE PROSECUTOR

Against

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

**PUBLIC JOINT DEFENCE APPLICATION FOR PROTECTIVE MEASURES
FOR DEFENCE WITNESSES**

Office of the Prosecutor:
Jim Johnson
Karim Agha
Jim Hodes
Charles Hardaway

Defence Counsel for Brima
Kojo Graham
Glenna Thompson

Defence Counsel for Kamara
Andrew Daniels
Mohamed Pa-Momo Fofanah

Defence Counsel for Kanu
Geert-Jan A. Knoops
Agibola Manly-Spain
Carry J. Knoops

INTRODUCTION

1. Pursuant to Articles 16 and 17 of the Statute of the Special Court for Sierra Leone (hereinafter referred to as the Statute) and Rules 69, 75 and 79 of the Rules of Procedure and Evidence (hereinafter referred to as the Rules), Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu (hereinafter called the Accused persons) through Counsel have given verbal notice to the Prosecution and the Trial Chamber of their intention to seek protective measures for witnesses who may be called by them to testify. Further to that notice, the accused persons hereby request that the Trial Chamber order the measures listed here below in relation to this case.

REASONS FOR PROTECTIVE MEASURES

2. Pursuant to Rule 53 of the Rules a judge may “in the interest of justice, order the non disclosure to the public of any documents or information until further order.”
3. Pursuant to Rule 69 of the Rules, a Judge or Trial Chamber may order at the request of either party “ the non-disclosure of the identity of a victim or witness who may be in danger or risk, until the Judge or Chamber decides otherwise.
4. Pursuant to Rule 75 (A) of the Rules a Judge or Chamber may, at the request of either party “order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.”

5. Pursuant to Rule 75 (B) of the Rules a Judge or Chamber may hold an in camera proceedings to determine whether to order:

I. Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or witness, or of persons related to or associated with him by such means as:

- a. Expunging names and identifying information from the Special Courts public records;*
- b. Non-disclosure to the public of any identifying the victim or witnesses;*
- c. Giving of testimony through image- or voice-altering devices or closed circuit television, video link or other similar technologies; and*
- d. Assignment of a pseudonym;*

II. . Closed session, in accordance with Rule 79;

III. Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television

6. The measures sought are for three categories of witnesses and the category of (domestic) expert witnesses. Firstly for those witnesses who are presently serving soldiers in the Republic of Sierra Leone Armed Forces, secondly former soldiers of the said army and thirdly for those civilian witnesses living in the rural communities and Freetown.

7. The Defence have been warned by those witnesses who are presently serving soldiers that they are at risk of repercussions from the government if and when they testify. These soldiers are afraid of being discharged, of death threats or being termed collaborators of the AFRC Junta as a result of testifying.

8. The witnesses who are ex-soldiers are afraid of reprisals by the pro-government supporters and arrest by the law enforcement agencies, the police and the military and they have constantly expressed these fears to investigators working on behalf of the Defence.

9. Those witnesses living in the rural areas are under the authority of the chiefs and the tribal authorities. Some of these witnesses come from areas where there are strong anti AFRC sentiments. Inevitably for the Defence to answer the case put by the Prosecution, witnesses have been sought and identified in areas previously visited by the Prosecution and from where the majority of the Prosecution witnesses came. Those witnesses who have expressed a willingness to testify on behalf of the Defence have expressed a fear that if they were to testify and this fact became known by their chiefs and persons in their hometowns, including those who have already given evidence for the prosecution or who do not want them to testify, they (that is the Defence witnesses) and their families would be shunned, threatened and perhaps forced to leave their homes.
10. The foregoing is further supported by incidents that have happened which involved persons willing to testify on behalf of the Defence. Some time in December 2005 potential defence witnesses were attacked by the police outside the Special Court while waiting to see Counsel. This was the subject of a Defence motion filed before the Trial Chamber. It appeared that the authorities felt that their presence was a security threat and thus arrested them. This incident was widely reported amongst the soldiers which inevitably increased the fears of our potential witnesses.
11. It is also Defence Counsel's experience and supported by an Expert witness currently doing investigative interviews with Officers of the Army that the military hierarchy believe it unlikely that current soldiers would want to testify on behalf of the Defence. Clearly this is reflected in the witnesses unwillingness to come forward and for those who have come forward in not wanting their identity revealed.
12. Furthermore during the month of February 2006, Defence teams took extensive statements from witnesses in the Koinadugu District. Shortly after this, two of the witnesses were threatened and harassed. These two witnesses are people with strong roots in their community and hold positions of respect and high office. They are typical of most of the defence witnesses from the

rural area. It is therefore imperative that measures are taken to protect them so that they would not have to suffer the heartache and indignity of being labelled and forced to flee, or indeed at worst put their lives and that of their family members in danger.

PROTECTIVE MEASURES SOUGHT

13. There being no less invasive means of protection that will adequately ensure the safety and security of individual and the families of individuals called to testify on behalf of the accused, the Defence hereby requests the following measures:

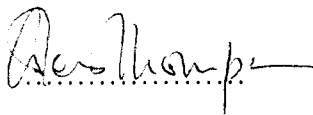
- (a) All witnesses be allowed to testify with the use of a screening from the public;
- (b) The names, addresses and other identifying information concerning defence witnesses and their families, as well as their whereabouts shall be sealed and not included in any existing or future public records of the Special Court;
- (c) The names and addresses of defence witnesses and their families as well as their whereabouts and all other identifying information concerning these witnesses and their families shall not be disclosed to the media and or the general public, including but not limited to those who attend sessions of the trial;
- (d) That the names of defence witnesses be disclosed to the Prosecution on a rolling basis, fourteen days prior to the testimony of each witness;

- (e) There shall be no photographing, audio or video recording, or sketching of witnesses without leave of this Trial Court;
- (f) The names, addresses and all other identifying information concerning the defence witnesses, as well as their whereabouts, shall not be disclosed to the Prosecution until it is established that the Victim and Witness Unit of the Special Court has taken all measures referred to herein as well as measures determined as necessary by the Victim and Witness Unit;
- (g) The Office of the Prosecutor and the Registry be ordered not to reveal to anyone outside the Victim and Witness Unit the names, addresses or other identifying information concerning witnesses and their families;
- (h) The Defence shall use a pseudonym for each defence witness that it intends to call to testify whenever referring to such witnesses in Special Court proceedings and or communications between the parties and the general public;
- (i) The Victim and Witness Unit shall afford defence witnesses the same level of protection and assistance under the same conditions as witness who were called to provide testimony for the Prosecution;
- (j) The defence shall be informed about and associated with all states of the negotiation and implementation of protective and assistance measures undertaken for their witnesses;
- (k) The Prosecution shall be ordered to provide advance written notice to Defence Counsel if he intends to contact any of the witnesses or family members of witnesses who are the subject of protective measures;

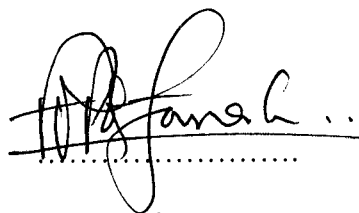
14. The Defence reserves the right to apply to the Trial Chamber to amend the foregoing protective measures if circumstances justify doing so in order to ensure the safety and security of witnesses and their family members.

CONCLUSION

15. The accused persons make this request in an effort to ensure the safety and security of witnesses and their families, recognizing that only when such safety and security is ensured can the Trial Chamber be satisfied that witnesses are able to give full and free testimony.
16. It is respectfully submitted that the foregoing measures are necessary to effectuate the rights of the accused. The Defence therefore respectfully prays that the Honourable Trial Chamber grant the protective measures set out above.



Counsel for Brima



Counsel for Kamara



Counsel for Kanu