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SCSL-04-16-T
(18536-18541)

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

TRIAL CHAMBER II

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

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 14 July 2006

THE PROSECUTOR

Against

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

Case No. SCSL – 2004 – 16 – T

PUBLIC

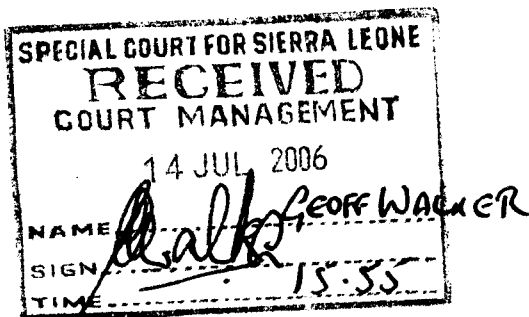
**PROSECUTION REPLY TO DEFENCE RESPONSES TO
PROSECUTION MOTION FOR RELIEF IN RESPECT OF VIOLATIONS OF RULE 67**

Office of the Prosecutor
Mr. Christopher Staker
Mr. Karim Agha

Defence Counsel for Brima
Mr. Kojo Graham
Ms. Glenna Thompson

Defence Counsel for Kamara
Mr. Andrew Daniels
Mr. Pa Momo Fofanah

Defence Counsel for Kanu
Mr. Geert-Jan Alexander Knoop
Ms. Carry J. Knoop
Ms. A.E. Manly-Spain



1. The Prosecution files this reply to the “Brima-Response to Prosecution Motion for Relief in Respect of Violations of Rule 67”, filed on behalf of the First Accused on 13 July 2006 (“**Brima Response**”), and to the “Kanu-Response to Prosecution Motion for Relief in Respect of Violations of Rule 67”, filed on behalf of the Third Accused on 12 July 2006 (“**Kanu Response**”). The Brima Response and Kanu Response were filed in response to the “Prosecution Motion for Relief in Respect of Violations of Rule 67”, filed by the Prosecution on 7 July 2006 (“**Prosecution Motion**”).
2. The Prosecution Motion submits that the Defence for the First Accused is in breach of its obligations under Rule 67(A)(ii). The Prosecution Motion seeks the notification to which the Prosecution is entitled under Rule 67(A)(ii), as well as an order that the Defence not be permitted to call witnesses testifying to alibi evidence until such time as the Prosecution has been given such notice and has had sufficient time to conduct a full and complete investigation of the alibi witnesses and evidence.

First Accused

3. Paragraphs 4 and 5 of the Brima Response argues that an alibi is not a defence in itself. The Prosecution accepts that an alibi is not a defence in the sense that the defence bears the burden of proving it. Nonetheless, the text of Rule 67(A)(ii) is clear. The Prosecution is entitled to be given notice of the matters referred to in that provision, within the timeframe stated in that provision. If the Accused claims that he was in a place other than where the Prosecution alleges him to have been at the time of the alleged commission of a crime, then this is an alibi for the purposes of Rule 67(A)(ii).
4. The Defence argues that the evidence of the First Accused was intended merely to show that he was not in a position to have committed the crime with which he or she was charged, and cannot have been the person that the witnesses to the crime claimed to have seen. The Prosecution submits that this is the reason why any accused in any legal system pleads an alibi: to show that he or she could not have been the person who committed the crime because he or she was elsewhere at the time.
5. The purpose of Rule 67(A)(ii) is to enable the Prosecution to conduct investigations into whether the Accused who advances an alibi was in the specific place he claims to have been at the material time. The First Accused clearly claimed in portions of his testimony

that he was somewhere other than where the Prosecution alleges him to have been at the material time, and Rule 67(A)(ii) is thus clearly applicable. The Defence for the First Accused is in breach of that Rule by not giving the required notice within the required timeframe.

6. Paragraph 6 of the Brima Response argues that some of the Prosecution's own evidence supports portions of the Brima alibi. Whether or not this is true, it cannot alter the fact that the Defence is required to give the notice provided for in Rule 67(A)(ii).
7. Paragraph 7 of the Brima Response argues that "all the First Accused has done is to raise a reasonable doubt in the evidence led against him". This, of course, is the purpose of an alibi. The Prosecution again repeats that it accepts that there is no burden of proof on the Defence to establish an alibi. The purpose of alibi evidence is always to seek to raise a reasonable doubt.¹
8. Paragraph 7 of the Brima Response argues that Rule 67(A)(ii) only requires the notice to be given "as early as practicably possible", and that the Defence has been unable to give it earlier because of constraints faced by the Defence in finding witnesses and gathering evidence. This Defence submission ignores the plain wording of the Rule. The opening words of Rule 67(A) make it clear that this notice must be provided "As early as practicably possible *and in any event prior to the commencement of trial*" (emphasis added). If for some reason it was not possible for the Defence to meet that deadline, the burden was on the Defence to file a motion showing good cause, and seeking leave to give late notice of an alibi. The Prosecution submits that it is a clear non-compliance with Rule 67 for the Defence to call evidence of an alibi without giving the required notice under Rule 67.
9. Paragraph 9 of the Brima Response refers to Rule 67(B), which provides that failure of the Defence to give the notice under Rule 67(A)(ii) shall not limit the right of the Accused to rely on an alibi defence. However, Rule 67(B) does not have the effect of rendering Rule 67(A)(ii) unenforceable. Rule 67(B) does not relieve the Defence of the obligation

¹ *Prosecutor v. Kayishema and Ruzindana, Judgement*, Case No. ICTR-95-1-T, Trial Chamber, 21 May 1999 ("*Kayishema and Ruzindana Trial Judgement*"), paras. 233-234 (and see also paras. 257 and 272, finding that the alibi evidence in this case was not sufficient to raise a reasonable doubt).

to file a motion showing good cause if it wishes to bring alibi evidence without having given the notice under Rule 67(A)(ii) within the required time-limit.²

10. Furthermore, the Prosecution notes also that where an accused relies on an alibi defence without showing good cause for non-compliance with Rule 67(A)(ii), the Trial Chamber is entitled to take this into account when weighing the credibility of the defence.³

Third Accused

11. The Prosecution notes that the Defence for the Third Accused has given notice, in paragraph 5 of the Kanu Response, that the Third Accused will not be relying on the evidence referred to in paragraph 24 of the Prosecution Motion.
12. The Prosecution notes that the Defence for the Third Accused has not stated expressly that the Third Accused will *not* seek to raise any alibi defence, or that the Third Accused will *not* seek to rely on any alibi evidence apart from that referred to in paragraph 24 of the Prosecution Motion. The arguments in paragraphs 3 and 4 of the Kanu Response, to the effect that the Prosecution Motion is “frivolous”, might be taken to imply that the Third Accused will not be raising any alibi defence. However, in the absence of any express statement by the Third Accused that he will not rely on alibi evidence, and in the circumstances referred to in the Prosecution Motion, the Prosecution maintains its request for an order that the Defence not be permitted to call witnesses testifying to alibi evidence until such time as the Prosecution has been given notice under Rule 67(A)(ii) and has had sufficient time to conduct a full and complete investigation of the alibi witnesses and evidence.

Second Accused

13. The Second Accused has not responded to the Prosecution Motion. The Prosecution submits that the order it seeks should apply to the Defence for all three accused in the case.

² *Prosecutor v. Kayishema and Ruzindana, Decision on the Prosecution Motion for a Ruling on the Defence Continued Non-Compliance With Rule 67(A)(ii) and with the Written and Oral Orders of the Trial Chamber, Case No. ICTR-95-1-T, Trial Chamber, 3 September 1998 (“Kayishema and Ruzindana Decision”).*

³ *Kayishema and Ruzindana Trial Judgement, paras. 237-238; Kayishema and Ruzindana Decision.*

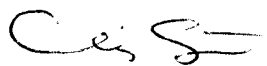
Conclusion

14. As stated above, the purpose of Rule 67(A)(ii) is to enable the Prosecution to undertake its own investigations into alleged alibis. The Rules recognise the right of the Prosecution to undertake such investigations. If appropriate advance notice of the intention to raise an alibi is not given to the Prosecution, this will inevitably lead to delays in the proceedings, as the Prosecution will need time to undertake such investigations. If no advance notice is given at all, the Prosecution will be required to seek adjournments to undertake such investigations as and when witnesses give evidence of such alibis. To avoid unnecessary delay, the order requested by the Prosecution should be granted.

Done in Freetown,

14 July 2006

For the Prosecution,



Christopher Staker
Deputy Prosecutor



Karim Agha
Senior Trial Attorney

Index of Authorities

1. *Prosecutor v. Kayishema and Ruzindana, Judgement*, Case No. ICTR-95-1-T, Trial Chamber, 21 May 1999.
2. *Prosecutor v. Kayishema and Ruzindana, Decision on the Prosecution Motion for a Ruling on the Defence Continued Non-Compliance With Rule 67(A)(ii) and with the Written and Oral Orders of the Trial Chamber*, Case No. ICTR-95-1-T, Trial Chamber, 3 September 1998.