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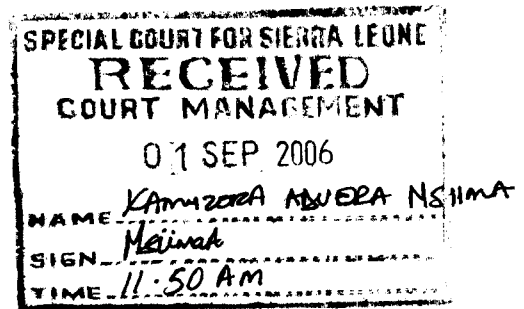
**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

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

Registrar: Lovemore G. Munlo, SC

Date filed: 1 September 2006



THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

PUBLIC

**KANU – DEFENCE RESPONSE TO ‘URGENT PROSECUTION MOTION FOR RELIEF IN
RESPECT OF VIOLATIONS OF THE TRIAL CHAMBER’S ORDER OF 26 APRIL 2006’
AND PROSECUTION VIOLATION OF RULE 46(C)**

Office of the Prosecutor:
Christopher Staker
Karim Agha

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

I INTRODUCTION

1. On 29 August 2006, the Prosecution filed an “Urgent Prosecution Motion for Relief in Respect of Violations of the Trial Chamber’s Order of 26 April 2006” (“**Motion**”).¹ This Motion complains of alleged violations of the Trial Chamber’s “Order for Disclosure pursuant to Rule 73ter and the Start of the Defence Case” (“**Order**”).² This Order was mitigated on 17 May 2006 (“**Mitigating Decision**”).³

II RESPONSE TO PROSECUTION ARGUMENTS

2.1 Witnesses on Original List of First 49 Witnesses

2. As regards the relief requested under para. 18(f) of the Motion, the Defence for the Accused Kanu hereby confirms that, as can be deduced from the final witness list filed on 21 August,⁴ the witnesses who are not on that list are currently not intended to be called upon to testify. Of course, in case the Defence for Kanu would intend to call them at a later stage after all, it would be required to show good cause.

2.2 Expert Witnesses

3. The Prosecution Motion requests that the Defence “be required to show good cause to change its expert witnesses.”⁵

¹ *Prosecutor v. Brima, Kamara and Kanu*, Urgent Prosecution Motion for Relief in Respect of Violations of the Trial Chamber’s Order of 26 April 2006, 29 August 2006, Case No. SCSL-2004-16-T-539.

² *Prosecutor v. Brima, Kamara and Kanu*, Order for Disclosure pursuant to Rule 73ter and the Start of the Defence Case, 26 April 2006, Case No. SCSL-2004-16-T-478.

³ *Prosecutor v. Brima, Kamara and Kanu*, Decision on Confidential Joint Defence Motion as to Inability to Provide Details of Certain Witnesses on 10 May 2006 and Anticipation Subpoenas *Ad Testificandum*, 17 May 2006, Case No. SCSL-2004-16-T-494.

⁴ *Prosecutor v. Brima, Kamara and Kanu*, Confidential Kanu – Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006, 21 August 2006, Case No. SCSL-2004-16-T-534.

⁵ Motion, para. 18(d).

2.2.1 *Primary Argument: No Requirement to Show Good Cause*

4. Primarily, the Defence argues that it is not required to show such good cause. The Order provides that the Defence file a “list of expert witnesses with an indication of when their report will be disclosed to the Prosecution.”⁶ In the Mitigating Decision it was held that “the Defence file their final witness list pursuant to the Order on or before Monday 21 August 2006.”⁷ Therefore, there is no basis for such request by the Prosecution.
5. The Defence thus holds that it was only required to file its final witness list, including references to expert witnesses and the dates of disclosure of their respective reports, on 21 August 2006. The Defence already filed tentative information concerning the then proposed experts on 10 May 2006, in order to assist the Prosecution in the preparation of its case. It was not under any obligation to do so at the time. Moreover, the Defence explicitly indicated with respect to the proposed experts on forced marriages and child soldiers, that they had not yet been confirmed, therewith indicating that their names were not final, and merely an indication to be helpful to the Prosecution’s preparation of the case.⁸
6. The Defence submits that it is not under any obligation to show good cause for its final list of expert witnesses on 21 August 2006. Given the fact that the Prosecution does not provide any legal basis for its request, the Defence respectfully holds that it has been in complete compliance with the Trial Chamber Order and Mitigating Decision in this respect.

⁶ Order, para. 1(b).

⁷ Mitigating Decision, p. 2, under (1).

⁸ *Prosecutor v. Brima, Kamara and Kanu*, Confidential Joint Defence Disclosure Pursuant to the Trial Chamber Order of 26 April 2006, 10 May 2006, Case No. SCSL-2004-16-T-490, Annex 2 – List of Expert Witnesses, under 3 and 4.

2.2.2 *Alternative Argument: Good Cause Has Been Shown*

7. In the alternative, the Defence submits that it has already presented good cause in its witness list, as filed on 21 August 2006.⁹
8. The Defence indicated in Annex C to the witness list, with regard to the expert in the area of child soldiers that it “was not able to secure the services of the experts previously disclosed in the Joint Defence Disclosure.”¹⁰ Again, with regard to the forced marriages expert, the Defence indicated in said document that it “was not able to secure the services of the experts originally disclosed.”
9. Moreover, in the disclosure of 10 May 2006, the Defence already indicated that it “has not been able to get confirmation from most of the proposed expert witnesses also, given the fact that the Defence teams have not yet been informed by the Defence Office about the budget for this category of witnesses.”¹¹
10. The inability to secure the services of the initial experts was partly caused by the lapse of time before the Defence received approval by the Defence Office on this issue. In addition, personal reasons of the selected expert witnesses, who initially indicated their willingness to testify but later withdrew their willingness, were of importance. The Defence was thus not in a position to contract them as expert witnesses at an earlier stage.
11. As a result thereof the Defence was forced to find other experts who could testify in these two areas. The Defence presented them in their final witness list of 21 August, whilst indicating it had been unable to secure the services of some of the

⁹ *Prosecutor v. Brima, Kamara and Kanu*, Confidential Kanu – Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006, 21 August 2006, Case No. SCSL-2004-16-T-534, Annex C.

¹⁰ *Prosecutor v. Brima, Kamara and Kanu*, Confidential Joint Defence Disclosure Pursuant to the Trial Chamber Order of 26 April 2006, 10 May 2006, Case No. SCSL-2004-16-T-490.

¹¹ *Prosecutor v. Brima, Kamara and Kanu*, Confidential Joint Defence Disclosure Pursuant to the Trial Chamber Order of 26 April 2006, 10 May 2006, Case No. SCSL-2004-16-T-490, para. 6.

prospective experts tentatively presented in the list of experts filed on 10 May 2006.

12. Therefore, the Defence is of the humble opinion that it has shown good cause, although it is primarily of the opinion that it was, and is, not under an obligation to do so.

2.3 Call Order

13. The Prosecution, in para. 18(e) of its Motion, requests “the Defence be required to follow its original call order and that a failure to do so will result in witnesses from the original, provisional list of 49 witnesses being dropped from the final lists.”

14. The Defence assumes that this “original call order” refers to the order of the first 49 witnesses. However, as stated in para. 2 above, the Kanu Defence does not currently intend to call other witnesses than those included on its witness list, and therefore assumes that this aspect of the relief requested is not relevant to the Third Accused.

15. In addition, the Defence would like to draw the attention of the honourable Trial Chamber to the fact that it has included in the first set of twenty witnesses who will be called from 4 September onwards, of which the identifying data have been disclosed to Prosecution on 11 August 2006, all witnesses who will be called from the original, provisional list of 49 witnesses. This inclusion of these witnesses from the original, provisional list in the first set of witnesses to be called after the summer recess was agreed upon by the Defence on 4 August 2006 in court.¹² Therefore, the Defence submits that it fulfilled the requirement with regard to the original call order, and contrary to the Prosecution allegation, no failure occurred.

¹² *Prosecutor v. Brima, Kamara and Kanu*, Draft Transcript 4 August, p.4-6 (final transcript has not yet been provided to the Defence).

III STATEMENTS REQUESTED FROM FIRST AND SECOND ACCUSED

16. In para. 18(a) of the Motion, the Prosecution requests the Trial Chamber to “order the immediate disclosure of the statements of all witnesses in the individual witness lists of the First and Second Accused.” The Defence for the Third Accused objects to such Prosecution request, insofar as it concerns witnesses whose summaries have already been disclosed in the witness list of the Third Accused or the common witness list.

17. It concerns the following witnesses of Tamba Brima’s individual witness list:

- DAB-014
- DAB-112
- DAB-126
- DAB-111
- DAB-142

And the following witnesses of Brima Kamara’s individual witness list:

- DBK-113
- DBK-060
- DBK-001
- DBK-064

18. Of all these particular witnesses, summaries have been disclosed by the Defence for the Third Accused on 21 August 2006.¹³

19. The Order and Mitigating Decision only require the disclosure of summaries. If it were to be that the Defence for the First and Second Accused would now be compelled to disclose the statements of said specific witnesses, the Defence of the Third Accused would be unfairly prejudiced, whilst the Prosecution does not have

¹³ *Prosecutor v. Brima, Kamara and Kanu*, Confidential Kanu – Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006, 21 August 2006, Case No. SCSL-2004-16-T-534, Annex A.

any interest in such disclosure, since it already obtained a summary of those same witnesses on 21 August.

IV DISMISSAL BASED UPON RULE 46(C): FRIVOLOUS COMPLAINT WITH REGARD TO THE THIRD ACCUSED

20. The Defence for the Third Accused respectfully holds that the Motion in its entirety should not have been directed towards the Third Accused, and that by doing so, the Prosecution made a frivolous motion to the Trial Chamber pursuant to Rule 46(C) of the Rules.
21. Obviously, the relief requested under subparagraphs (a) – (c) only relates to the First and Second Accused. The subparagraphs (d) – (f) also refer, however, to the Third Accused.
22. Subparagraph (d) refers to the alleged requirement to show good cause, without even indicating the legal basis upon which such relief is requested. The Prosecution request is, as shown above, obviously not based on the Order and the Mitigating Decision, nor on any Rule of the Rules of Procedure.
23. Subparagraph (d) requests the Defence to drop any witnesses from the list of first 49 witnesses. Any witness who is not included on the final witness list obviously no longer belongs to the witnesses the Kanu Defence intends to call. The Defence respectfully holds that such request by the Prosecution is premature; in case the Defence would call one of such witnesses, without showing good cause prior to calling him or her, the Prosecution would have a ground for such request, but not at this moment.
24. Subparagraph (e) relates to the subparagraph (d), and is thus also irrelevant. The original call order no longer applies, and all witnesses who will be called from the original, provisional witness list of 49 witnesses have been included in the first set

of witnesses to be called at the trial session starting 4 September 2006, as agreed upon on 4 August 2006 by both the Prosecution and the Defence before the Trial Chamber.¹⁴ Therefore, also this point is irrelevant and premature.

25. Including the Third Accused in the Motion clearly falls under the rationale of the term 'frivolous' in Rule 46(C). In addition, it occasioned the Kanu Defence to spend unnecessary time on researching the underlying issues and drafting a superfluous response motion.

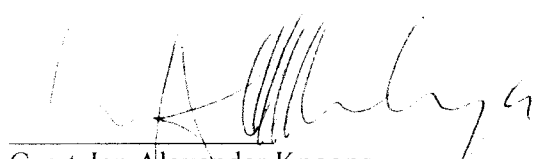
V CONCLUSION

26. The Defence respectfully requests the honorable Trial Chamber to:

- (i) Deny the Prosecution Motion, on the basis that the Motion is a frivolous complaint with regard to the Third Accused, within the meaning of Rule 46(C) of the Rules and directing the Prosecution to clarify any such (prospective) matters without unnecessary judicial intervention;
- (ii) That the relief requested in paragraph 18(d) – (f) of the Motion be denied;
- (iii) That the relief requested in paragraph 18(a) of the Motion, with regard to the witnesses mentioned in para. 17 be denied.

Respectfully submitted,

On 1 September 2006


Geert-Jan Alexander Knoops

¹⁴ *Prosecutor v. Brima, Kamara and Kanu*, Draft Transcript 4 August, p.4-6 (final transcript has not yet been provided to the Defence).

TABLE OF AUTHORITIES

Prosecutor v. Brima, Kamara and Kanu, Order for Disclosure pursuant to Rule 73ter and the Start of the Defence Case, 26 April 2006, Case No. SCSL-2004-16-T-478.

Prosecutor v. Brima, Kamara and Kanu, Confidential Joint Defence Disclosure Pursuant to the Trial Chamber Order of 26 April 2006, 10 May 2006, Case No. SCSL-2004-16-T-490.

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