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SCSL-2004-16-T
(8427 - 8430)

8427

**SPECIAL COURT FOR
SIERRA LEONE**

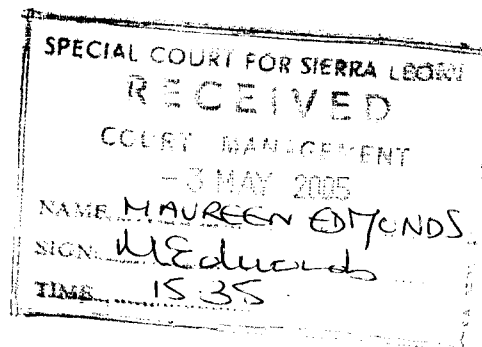
Case No. SCSL-2004-16-T

THE APPEALS CHAMBER

Before: Judge Ayoola, Presiding
Judge A. Raja N. Fernando
Judge Renate Winter
Judge Geoffrey Robertson, QC
Judge George Gelaga King

Registrar: Robin Vincent

Date filed: May 3, 2005



THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

**JOINT DEFENCE APPEAL AGAINST DECISION ON THE REPORT OF INDEPENDENT
COUNSEL PURSUANT TO RULES 77(C)(iii) AND 77(D) OF THE RULES OF PROCEDURE
AND EVIDENCE OF 29 APRIL 2005 BY TRIAL CHAMBER II**

Office of the Prosecutor:

Luc Coté
Lesley Taylor

Defence Counsel for Kanu:

Geert-Jan A. Knoops, Lead Counsel
Carry J. Knoops, Co-Counsel
A.E. Manly-Spain, Co-Counsel

Defence Counsel for Brima:

Kevin Metzger
Glenna Thompson
Kojo Graham

Defence Counsel for Kamara:

Wilbert Harris
Mohamed Pa-Momo Fofanah

I INTRODUCTION

1. Pursuant to Rule 77(J) of the Rules and Article para. 2 of the Practice Direction for Certain Appeals before the Special Court, the Defence herewith files its “Joint Defence Appeal against Decision on the Report of Independent Counsel Pursuant to Rules 77(C)(iii) and 77(D) of the Rules of Procedure and Evidence of 29 April 2005 by Trial Chamber II” (“**Appeal Motion**”).

II SUBMISSIONS BASED ON THE GROUNDS OF APPEAL

2.1 First Appeal Ground

2. Error in law and/or fact due to erroneously finding that there are “sufficient grounds” to institute proceedings against the investigator of the Brima Defence team and the four women, without disclosing the material upon which the Trial Chamber made its Impugned Decision, namely the report of the Independent Counsel. Although Rule 77(C)(iii) leaves considerable discretionary powers to the Trial Chamber, the Defence contends that such decision can only be rendered while at the same time disclosing the underlying report of the independent counsel in order to enable the Defense to properly respond to it in compliance with the principles of fairness and transparency of documents based on which a criminal court comes to a decision.

2.2 Second Appeal Ground

3. Error in law and/or fact due to the fact that the Trial Chamber made its Impugned Decision without first deciding on the several Defence motions referred to under paras. 6 – 9 above, the decisions on which motions are closely intertwined with the *ratione materiae* of the contempt of court assessment. These motions both deal with the procedural as well as the substance of the Trial Chamber’s initial

decision and the ensuing Interim Order. Moreover these submissions also pertain to a request for disclosure of the Independent Counsel's report. Moreover, the Trial Chamber made the Impugned Decision without awaiting the outcome of the first Defence appeal motion under Rule 77 regarding the interim measures on this subject which appeal already lies before the honorable Appeals Chamber.¹ In view hereof the Defence holds that the Impugned Decision can be considered premature at least from the perspective of procedural law.

2.3 Third Appeal Ground

4. Error in law and/or fact due to the fact that the Impugned Decision does not provide any arguments as to why it considers that "there are sufficient grounds to proceed against" the aforementioned five persons.² This therefore results in a lack of motivation, which must, the Defence submits, necessarily result in a reversal of the Impugned Decision. As set out in the first appeal ground, the disclosure of the exact reasons and arguments underlying the criterion "sufficient grounds" to the Defence forms an essential part of the fairness of a contempt of court decision such as the Impugned Ruling of the honorable Trial Chamber, as only such disclosure may enable the Defence to challenge the legitimacy and legality of the Impugned Decision (see also appeal ground one). Also here it should be stressed that the Impugned Decision, as set out in the motions mentioned above, has a considerable impact on the Accused's right to effectively participate in his own proceedings, especially when it concerns the suspension of the Defence's investigator.

¹ See para. 6 above.

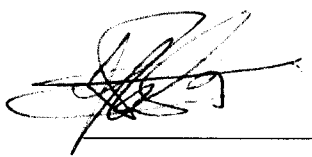
² See p. 3 of the Impugned Decision.


III RELIEF SOUGHT

5. Therefore, the Defence respectfully prays the honorable Appeals Chamber to:
- (i) Grant the appeal and reverse the Impugned Decision, i.e., to declare null and void the Impugned Decision;
 - (ii) Render any other decision the honorable Appeals Chamber deems appropriate.

Respectfully submitted,
On May 3, 2005


ff Geert-Jan Knoops


Kevin Metzger


Wilbert Harris