

387)

SCSL-04-16-T
(14812 - 14815)

14812

SPECIAL COURT FOR SIERRA LEONE

THE APPEALS CHAMBER

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

Registrar: Robin Vincent

Dated filed: 16 September 2005

THE PROSECUTOR **Against** **Alex Tamba Brima**
Brima Bazzy Kamara
Santigie Borbor Kanu
CASE NO. SCSL-2004-16-T

**SECOND RESPONDENT'S RESPONSE TO THE FIRST RESPONDENT'S
ADDITIONAL MOTION TO THE INTERLOCUTORY APPEAL OF ALEX
TAMBA BRIMA AND BRIMA BAZZY KAMARA AND THE RESPONSE BY
THE PRINCIPAL DEFENDER (SECOND RESPONDENT)**

First Respondent

The Registrar

Defense Counsel for Brima

Kojo Graham
Glenna Thompson

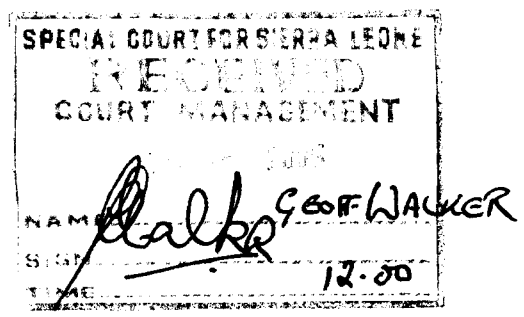
Second Respondent

The Principal Defender

Defense Counsel for Kamara

Andrew Daniels
Mohammed Pa-Momo Fofanah

CASE NO. SCSL-2004-16-T



BACKGROUND

1. On 9 June 2005, Trial Chamber II rendered its Majority Decision “Decision on the Extremely Urgent and Confidential Joint Motion for the Re-appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara and the Cross Motion by the Deputy Principal Defender to the Trial Chamber II for clarification of its oral Order of 12th May 2005,” which will be referred to as the ‘Impugned Decision’.
2. On 11 July 2005, Justice Sebutinde issued her Dissenting Opinion to the Impugned Decision (“Dissenting Opinion”).
3. On 14 July 2004 the Appellants sought leave to appeal on the Majority Decision of the Trial Chamber¹.
4. On 5 August 2005 the Appellants were granted Leave to appeal by the Trial Chamber II.
5. On 2 September 2005(served on 5 September 2005) the Appellants filed a Motion of Appeal.
6. On 9 September 2005 the Second Respondent (The Principal) responded to the Motion of Appeal.
7. On 13 September 2005, the First Respondent, on 13 September 2005, filed an additional Motion on the Interlocutory Appeal of Alex Tamba Brima and Brima Bazzy Kamara

SUBMISSIONS

As a preliminary point, the Second Respondent submits that the so-called “additional” motion filed by the First Respondent is not admissible for lack of a legal basis. Furthermore, no original motion has been filed. The First Respondent has only filed a response to the Defence Motion for Appeal. Therefore, he cannot refer to his motion as an ‘additional’ motion. Secondly, the First Respondent has not cited any statutory basis for his motion neither has he provided the Rules under which he has proceeded. Hence, his motion is baseless. The Second Respondent, therefore, asserts that the First Respondent’s motion is inadmissible *per se*.

¹ “Decision on the Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara and Decision on Cross Motion by the Deputy Principal Defender to the Trial Chamber II for Clarification of its order of 12 May 2005”, 9 June 2005.

The Second Respondent challenges the First Respondent's characterisation of his statement as 'Grounds of Appeal'. The First Respondent should differentiate between the Second Respondent (The Principal Defender) and the Appellant (the Accused persons) as separate entities. In any event, procedurally, the Second Respondent cannot be said to have raised 'Grounds of Appeal' because he is a 'Respondent' just like the First Respondent is: he is not the 'Appellant.' If the Second Respondent had wished to file a cross-motion, he would have done so. In addition, as the First Respondent is aware, there is an established procedure for this and time frames have been stipulated within which to file Appeals. The motion is, accordingly, not only erroneous but misconceived.

The Second Respondent posits that issues in question involve fair trial matters, particularly Article 17 of the Statute. The issues also pertain to the Role of the Defence Office in the assignment, removal and or withdrawal of Counsel and his interaction with the Registrar in these matters. The "additional grounds and arguments" were only intended to further articulate grounds one five and six of the Appellants 'Grounds of Appeal' and no more. Furthermore, Grounds 1, 5 and 6 discuss the issues of the rights of the accused and striking Counsel off the List of Qualified Counsel. Thus, these issues are not new. In fact, they have already been discussed by the parties and deliberated upon by the Trial Chamber.² For instance, in his response to the Re-appointment Motion, the First Respondent submitted on the issues raised. Specifically, he argued consistently, in all his submissions, on the relevance of Rule 33(B) as well as the issues concerning fair trial.³ The other issues have also been argued by the First Respondent.⁴

The Second Respondent submits that even though the First Respondents labels these statements as "Additional Grounds of Appeal"; factually, they are not because they are not fresh issues and have not been presented in the laid out format for grounds of Appeal.

The Second Respondent asserts that the issues in his 'ground and arguments' are valid points to raise in any appeal proceeding. Additionally, it is the contention of the Second Respondent that what is included at the end of Part III are not 'Grounds of Appeal' but just 'grounds and arguments.' The American Heritage Dictionary defines 'ground' as 'justification for something existing or happening.' The same Dictionary refers to 'argument' as "an address or composition intended to convince or persuade; a persuasive

² Paras 13-16, 20-22 of the Impugned Decision; In respect of the Second Respondent, they were dealt with in paras 14-17,19, 25,27-8 of his response to the application for leave to appeal dated 22 July 2005

³ Paras 18,19, 24 of the First Respondent's Reply to the motion for Re-Appointment of Counsel for the Accused Persons dated 31 May 2005

⁴ The other points concerning fair trial, security concerns and relationship with Defense Office-See Paras. 1-4, 5-6, 18, paras 10,11, 13, 14, 16, 19, 22-23 of 1st Respondent's Response to the Re-Appointment Motion of 31 May 2005 and Paras.16,20,-1,24 of his response to the Defence Motion for Leave to Appeal dated 22 July 2005. 1st Respondent has covered them in his Response to the Defence Motion for Appeal: Paras 14-16,21,24,26,29-37(Brima Decision);fair trial matters-24,38.41-2, 61,;striking off Counsel & Interference:52,-55,56; rule33(B) -Paras 58,-9,60;

discourse.” The word “argument” is also defined as “a set of statement, which follows logically as a conclusion.” The Second Respondent posits that it is a matter of semantics. Thus, the words “ground” and “argument” should be construed in their ordinary literal n meaning and any suggestive interpretation other than what the Second Respondent intended them to mean, is vigorously resisted.

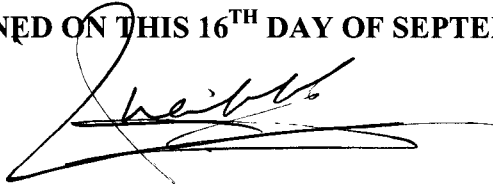
In conclusion, the Second Respondent respectfully submits that the First Respondent has been accorded a fair opportunity to present his arguments in support of all the issues and matters pertaining to the seven grounds of Appeal and should not seek to enlarge that time frame and waste the resources of the Court.

PRAYER

FOR ALL THE FOREGOING REASONS;

The Second Respondent, respectfully, prays that the Appeals Chamber **DISMISSES** the “additional” motion for being inadmissible. In the alternative, should the Appeals Chamber deem it admissible, then, it should be **DENIED**.

SIGNED ON THIS 16TH DAY OF SEPTEMBER 2005



VINCENT NMEHELLE
THE PRINCIPAL DEFENDER