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SCSL-04-16-F
(22949 - 22962)

SPECIAL COURT FOR
SIERRA LEONE

22949

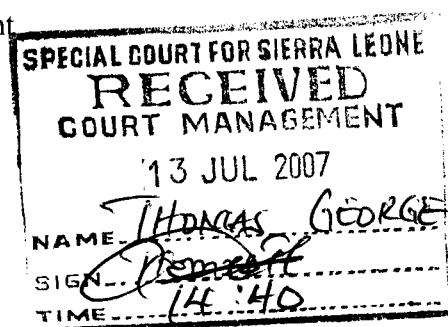
BEFORE THE APPEALS CHAMBER

Case No. SCSL-2004-16-A

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

Registrar: Mr. Herman von Hebel

Date filed: 13 July 2007



THE PROSECUTOR

against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA**

and

SANTIGIE BORBOR KANU

PUBLIC

**URGENT JOINT DEFENCE REQUEST FOR EXTENSION OF TIME LIMIT PURSUANT TO
RULE 116 FOR FILING OF NOTICE OF APPEAL AND APPEAL SUBMISSIONS**

Office of the Prosecutor:

Christopher Staker
Karim Agha

Defence Counsel for Kanu:

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

Counsel for Brima:

Kevin Metzger
Glenna Thompson

Defence Counsel for Kamara:

Wilbert Harris
Mohamed Pa-Momo Fofanah

I Introduction

1. On 20 June 2007, Trial Chamber II issued its Judgement against Brima, Kamara and Kanu. On 10 July 2007, Trial Chamber II issued a Scheduling Order,¹ indicating that the Sentencing Judgement will be rendered against the three AFRC convicted persons on 19 July 2007.
2. Rules 108 and 111, 112 and 113 deal with the time limits for notice of appeal, appellant's submissions, respondent's submissions, and submissions in reply respectively.
3. Rule 108, sub-rule (A) states, subject to Sub-Rule (B) that:

a party seeking to appeal a judgement or sentence shall, not more than 14 days from the receipt of the full judgement and sentence, file with the Registrar and serve upon the other parties a written notice of appeal, setting forth the grounds.
4. Rule 111 provides:

An Appellant's submissions shall be served on the other party or parties and filed with the Registrar within twenty one days of the notice of appeal pursuant to Rule 108.
5. Rule 112 reads:

A Respondent's submissions shall be served on the other party or parties and filed with the Registrar within fourteen days of the filing of the Appellant's submissions.
6. And Rule 113 provides, insofar as it is relevant:

An appellant may file submissions in reply within five days after the filing of the Respondent's submissions.
7. It is therefore submitted that these time limits will start running from the date of the Sentencing Judgement, i.e. from 19 July onwards.²

¹ *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T-619, 20 June 2007 (“**Judgement**”).

² *Prosecutor v. Kunarac et al.*, Case No. IT-96-23-T, Judgement, 22 February 2001, para. 840.

8. Rule 116 states that “[t]he Appeals Chamber may grant a motion to extend a time limit upon showing of good cause.”
9. The Defence for the three proposed Appellants, Brima, Kamara and Kanu, anticipate that in the event that either of the parties were to appeal from the Judgement and/or Sentencing Judgement, the Defence is not in a position to abide by those time limits. The Defence thus respectfully urges the honourable Appeals Chamber to grant the Defence an extension of the time limits as provided for in Rule 116. The Defence submits that it has good cause for making such request, and the following reasons are submitted.
10. It should be noted that undersigned counsel are not yet assigned to the three convicted persons. In that sense, the Defence prays that the Appeals Chamber will not find this motion premature, as that would implicate that the three proposed Appellants would not be able to file any motions until they have assigned counsel, which might theoretically be only after the expiration of the deadline of the notice of appeal. Such an interpretation would therefore seriously violate the rights of the proposed Appellants as laid down in Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) and Article 6(3)(c) of the European Convention on Human Rights (ECHR) which ensures the defendant the right to have legal representation of his own choice and, “and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”. This principle is similarly embodied within Article 17 (4)(d) of the Statute of the Special Court for Sierra Leone.

II Good Cause: Provisional New Counsel for Brima and Kamara

11. The Defence office is in the process of provisionally assigning new Lead Counsel for Brima and Kamara, namely Mr. Kevin Metzger and Mr. Wilbert Harris.

Although they have been involved in the trial proceedings against these convicted persons, they were allowed to withdraw as Lead Counsel on 20 May 2005,³ and have not been involved in the proceedings since then. Additional time will therefore be required in order to prepare for the appeal phase.

12. As indicated, the time limits provided for in the Rules of Procedure and Evidence concerning the appeal phase are extremely short, and do not take into account the possibility of change of counsel on appeal. Furthermore, comparing these time limits to the provisions of the ICTY and ICTR, one notices that the time limits provided for within the SCSL Rules are substantially shorter. Both the ICTY and ICTR Rules of Procedure and Evidence provide for a 30 day time limit for notice of appeal, and a seventy five day time limit after that for filing of appeal submissions.⁴ Additionally, in this case, a judgement in relation to the proposed Appellants' culpability comprising some 631 pages was handed down on 20 June 2007. This by itself, it is submitted, coupled with evidence garnered from some 176 days of sitting⁵ which will have to be reviewed in the light of the said Trial Chamber II's reasoned Judgement gives rise to exceptional circumstances by virtue of the volume of said material.

13. It is for this reason that the anticipated provisionally assigned Lead Counsel for Brima and Kamara, prior to appointment and "*de bene esse*" request an extension of the time limits provided for in the aforementioned rules. Extra time is sought for the purpose of perusing the Judgement and the transcripts of all the Defence witnesses as well as the Prosecution witnesses that the Trial Chamber relied on, in addition to all other evidence relied on by the parties. It is submitted that the issues addressed in the Judgement are undoubtedly manifold and the proposed Appellants expect, and ought properly to be permitted, to raise all of those on appeal. For counsel who have not been present during most of the trial, this will

³ *Prosecutor v. Brima et al.*, Case No. SCSL-2004-16-T-278, Decision on the Confidential Joint Defence Application for Withdrawal by Counsel for Brima and Kamara and on the Request for Further Representation by Counsel for Kanu, 20 May 2005.

⁴ See Rules 108 and 111 of both the ICTY and ICTR Rules of Procedure and Evidence.

⁵ Judgement, para. 11.

necessitate a considerable amount of time in preparation, analysis and formulation of arguable appeal grounds and related submissions.

14. In *Prosecutor v. Kupreskic et al.*, the ICTY Appeals Chamber made the following decisions with regard to a defence request for extension of time due to assignment of new counsel:

473. On 17 March 2000, Zoran and Mirjan Kupreskic and Drago Josipovic filed an application for an extension of the time limit for filing their appeal briefs under Rule 111. Similar requests were made on behalf of Vladimir Santic and Vlatko Kupreskic. (...) The Appeals Chamber ordered that the appeal briefs should be filed by 2 June 2000. Subsequently, a further extension of 30 days was sought by Zoran and Mirjan Kupreskic, Drago Josipovic and Vladimir Santic, which was opposed by the Prosecution. On 16 May 2000, the Appeals Chamber ordered that all Defendants should file their appeal briefs on 2 July 2000.

474. On 18 May 2000, the Registrar granted Vlatko Kupreskic's request to withdraw the assignment of counsel acting on his behalf, and new counsel was assigned. The new counsel applied for a two-month extension for filing Vlatko Kupreskic's appeal brief as they were experiencing difficulty in obtaining the case papers. (...) The pre-appeal Judge granted Vlatko Kupreskic's application, extending the time-limit for filing his appeal brief to 4 September 2000 (...).⁶

15. The Defence submits that although the ICTY Rules are already so much more lenient regarding the time limits for the appeals phase, the ICTY Appeals Chamber granted extension of time. Therefore, taking into account the ICTY case law, the Defence submits that its current request should be granted, and that, in view of the matters stated herein, good cause has been duly demonstrated.

16. For these reasons, the Defence for Brima and Kamara assert that an extension of the time limits provided for in the aforementioned rules is warranted. For reasons of judicial economy, the Defence for Kanu requests for the same extension, in order to prevent the cases from being split up, and to enable the Court and Prosecution to deal with all appeals simultaneously.

⁶ *Prosecutor v. Kupreskic et al.*, IT-95-16-A, Appeal Judgement, 23 October 2001, Annex A, paras. 473-474 (footnotes omitted).

III Good Cause: Absence of Contracts with Defence Office

17. Although Mr. Metzger and Mr. Harris are likely to be provisionally assigned as counsel for Brima and Kamara, none of the three proposed Appellants has been formally provided with permanent counsel for the appeals phase. This means practically that none of the teams have been able to spend time on the preparation of the appeals phase, since the hours to be expended on preparation will not be remunerated, given the absence of an underlying contract.
18. Kanu had already indicated to Mr. Knoop that he wished to retain his services and that of his Defence team throughout the appeals phase. In March 2007, Defence for Kanu approached the Defence Office and enquired the possibility to receive an appeals contract in order to avoid any problems in a timely preparation of the potential appeal grounds. In response to the e-mail, Ms. Shakiratu Sanusi, Legal Taxing Officer for the Defence Office, responded on 18 April 2007 (see **exhibit 1**):

We do not have at present a contract template for the appeals phase. Submissions for financial provisions for appeals, if any, were included in the budget recently submitted to the Management Committee. (...) We wait to see what the Management Committee decides. We shall inform you as soon as practicable thereafter and endeavour to ensure that any contractual matters are dealt with expeditiously.

On 11 July 2007, the Kanu Defence sent another e-mail to the Principal Defender (see **exhibit 2**), indicating that we will not have enough time to confine to the time limits provided for in the Rules of Procedure and Evidence. Until a contract has been entered into with the Defence Office, the teams will not be able to start working on the appeals phase. On that same day, the Principal Defender responded to Lead Counsel for Kanu, indicating the Registry decided to allow a lump sum amount of \$110,000 for the entire appeals phase per team, inclusive of all costs to be made (see **exhibit 3**). He also suggests Lead Counsel for Kanu to

be provisionally assigned. However, discussions between the teams and the Defence Office regarding such temporary assignment are still pending.

19. Proposed Counsel for Brima and Kamara are in a similar position to the Kanu team in that they too are in negotiations with the Principal Defender about terms, following a visit to the Court on 9 July 2007. At the time of drafting the indications are that provisional assignments will be made in these cases following the conclusion of the decision as to sentence of the proposed Appellants.
20. Moreover, the Defence for the three teams are not in a position to decide whether they will enter into a contract with the Defence Office since the specific terms of the contract are yet unclear. As the Kanu team indicated in **exhibit 2**, the Defence needs to ascertain whether or not “our team is in a position to do the appeal phase on the contractual conditions proposed by the Defence Office”. It should be noted that the same situation applies to proposed Counsel for the other two convicted persons.
21. Given our previous disagreements with the Defence Office regarding financial matters, the Defence for the three convicted persons cannot decide on this matter until they have been able to negotiate a contract. It would be a violation of the convicted persons’ fair trial rights to have their appeal deadlines running, when they do not formally have legal counsel for the appeals phase.
22. Article 14(3)(b) ICCPR and Article 6(3)(b) ECHR guarantee the right of the accused to have adequate time and facilities to prepare his/her criminal case and to communicate thereto with a lawyer of his/her choice. Additionally it is submitted that Article 17 (4)(b) of the Statute of the Special Court for Sierra Leone echoes the principles enunciated above. It is respectfully submitted that these principles are also applicable to preparing an appeal case and appeal

grounds, especially where the case concerns international crimes and the consideration of novel crimes as discussed in the Judgement in this case.⁷

23. The Defence also refers to Article 14(3)(d) ICCPR and Article 6(3)(c) ECHR which ensures the defendant the right to have legal representation of his own choice and, “and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”. This principle is similarly embodied within Article 17 (4)(d) of the Statute of the Special Court for Sierra Leone. It is submitted that these provisions further support the argument that the extension of time sought, is justified in the interests of justice with particular regard to Part III of this motion.

24. The Defence submits that the absence of legal contracts to date taken together with the uncertainty as to whether proposed counsel will in fact represent the three convicted persons on appeal, constitute good cause for allowing an extension of time as provided for in Rule 116.

IV Prayer

25. For the reasons set out above, Defence for the three convicted persons pray:

- (i) An extension of time of four months for filing the notice of appeal, starting from the signing of a contract by counsel for the three convicted persons with the Defence Office as to the appeals phase;
- (ii) Consequently, all other deadlines provided for in aforementioned applicable rules would be delayed for four months, running from the date of the signing of the contracts with the Defence Office.


⁷ Discussions on the crime of “forced marriages” preferred in the Indictment.

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- (iii) Alternatively, a suspension of time limits, at the very least, until certainty of counsel is achieved and thereafter liberty to revisit the issue of extension of time limits.

- (iv) Such other order as the Honourable Court deems suitable to address the issues raised in this motion.

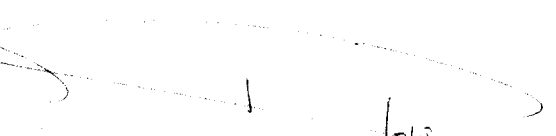
Respectfully submitted,
On 13 July 2007



Geert-Jan Alexander Knoop



Kevin Metzger



Wilbert Harris

TABLE OF AUTHORITIES

Prosecutor v. Brima et al., Case No. SCSL-2004-16-T-278, Decision on the Confidential Joint Defence Application for Withdrawal by Counsel for Brima and Kamara and on the Request for Further Representation by Counsel for Kanu, 20 May 2005.

Prosecutor v. Brima et al., Case No. SCSL-04-16-T-619, 20 June 2007 (“**Judgement**”).

Prosecutor v. Kupreskic et al., IT-95-16-A, Appeal Judgement, 23 October 2001, Annex A, relevant parts: paras. 473-474.

Prosecutor v. Kunarac et al., Case No. IT-96-23-T, Judgement, 22 February 2001, relevant part: para. 840.

22959



"G.J. Knoops"
<gjknoops@knoops.inf
o>

11/07/2007 08:58

To: "'defence-kanu@un.org'" <defence-kanu@un.org>
cc: "'Knoops office'" <office@knoops.info>, "'Herman von Hebel
(vonhebel@un.org)'" <vonhebel@un.org>,
"'(carlton-hanciles@un.org)'" <carlton-hanciles@un.org>, "'Vincent
Nmehielle'" <nmehielle@un.org>
Subject: Contracts - Appeals Phase

Dear Karlijn,

Please find enclosed - just for your information and as a reminder - the reaction we received from Shaki in April last about our request for a contract in the appeals phase from the Defence Office. We realise that an amount of \$ 110.000 for the second phase might not be enough given the fact that we do not know how long the appeals phase will last.

Warm regards,

Carry

KNOOPS & PARTNERS ADVOCATEN
Apollolaan 58
1077 BC Amsterdam
Tel. +31 (0)20 – 470.51.51
Fax +31 (0)20 – 675.09.46

De informatie in deze e-mail is uitsluitend bestemd voor de geadresseerde(n). Indien u dit bericht ontvangt terwijl het niet voor u bestemd is, verzoeken wij u per omgaand contact met ons op te nemen. In dat geval verzoeken wij u tevens om deze e-mail te vernietigen. Enig gebruik van deze e-mail of verstrekking van de inhoud daarvan aan derden is ten strengste verboden, aangezien deze boodschap confidentiële informatie kan bevatten die beschermd is door beroepsgeheim. Alle ontvangers van deze e-mail dienen zich te realiseren dat het gebruik van internet e-mail onderhevig is aan risico's; u dient na te gaan of deze e-mail en eventuele bijlagen besmet zijn met virussen. Knoops & Partners Advocaten acht zich derhalve niet aansprakelijk voor schade voortvloeiend uit deze e-mail.

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Van: Knoops office [mailto:office@knoops.info]

Verzonden: woensdag 18 april 2007 18:08

Aan: 'sanusis@un.org'

CC: 'G.J. Knoops'; 'K. v.d. Voort'

Onderwerp: RE: Contracts - Appeals Phase

Dear Shaki

Thank you very much for the reply.

We will await further information.

Best regards

GJ Alexander knoops

EXHIBIT 1

Van: sanusis@un.org [mailto:sanusis@un.org]

Verzonden: woensdag 18 april 2007 14:20

Aan: office@knoops.info

CC: 'K. v.d. Voort'; 'G.J. Knoops'; nmehielle@un.org

Onderwerp: Contracts - Appeals Phase

22960

Dear Alexander

Vincent has forwarded your email to me to deal with.

We do not have at present a contract template for the appeals phase. Submissions for financial provisions for appeals, if any, were included in the budget recently submitted to the Management Committee. All teams were sent a copy of the proposals for the Defence Office as approved by the Registry for comment. I can say, however, that the proposal for financial provision for the whole of the appeals stage per team is a lump sum payment of USD 110,000 per case, inclusive of *all* expenses.

We wait to see what the Management Committee decides. We shall inform you as soon as practicable thereafter and endeavour to ensure that any contractual matters are dealt with expeditiously.

Best Regards

Shaki Sanusi
Legal Taxing Officer
Office of the Principal Defender
The Special Court for Sierra Leone
Jomo Kenyatta Road
New England, Freetown
Sierra Leone
Tel: +232 22 29 7127 (SL line)
+39 0831 25 7127 (Italy line)
Mobile: +232 (0) 76 536383
Email: sanusis@un.org



"G.J. Knoops"
<gjknoops@knoops.inf
o>

11/07/2007 08:38

To: "'Vincent Nmehielle'" <nmehielle@un.org>
cc: "'(carlton-hanciles@un.org)'" <carlton-hanciles@un.org>, "'Haddi
(kah-jallow@un.org)'" <kah-jallow@un.org>, "'Herman von Hebel
(vonhebel@un.org)'" <vonhebel@un.org>, "'defence-kanu@un.org"
<defence-kanu@un.org>, "'A. Verwiel'" <averwiel@knoops.info>
Subject: URGENT MESSAGE FROM G. KNOOPS

Dear Vincent,

We have been informed by the Trial Chamber that on 19 July 2007 the Chamber will give its sentencing judgment. According to Rule 108, the party appealing from that judgment has only 14 days after that to file a notice of appeal, and 21 days after the notice of appeal to file submissions (Rule 111).

Our client, Mr Kanu, has specifically asked us to represent him also in the appeals stage. We are willing to do so. However, we will not have enough time to prepare for this, given that we still don't have a contract to work on the appeal. We have referred to this issue before in our previous correspondence to you on the subject already in March 2007. Therefore, our team has not been able to spend any time on the preparation of the appeal yet and will not be able to do so until a contract has been entered into.

We consider filing a motion with the Appeals Chamber, requesting for an extension of time limit for above time limits, given that we currently do not have a contract with the Defence Office for the appeals phase. This motion would therefore be on behalf of Mr. Kanu, but indicating to the Chamber that we are not sure yet whether we will be counsel for Kanu on appeal, given the absence of contract and time to contemplate on the contents of the contract.

In any case, Mr. Kanu has previously indicated his willingness to retain the undersigned as Lead Counsel for his case on appeal, and has indicated that he has not changed his mind. I would thus be very grateful if you could send me at your earliest convenience a contract proposal, so that we can decide whether our team is in a position to do the appeal phase on the contractual conditions proposed by the Defence Office or not.

I would be very grateful for your immediate response to this.

Best regards,

Alexander Knoops

KNOOPS & PARTNERS ADVOCATEN
Apollolaan 58
1077 BC Amsterdam
Tel. +31 (0)20 – 470.51.51
Fax +31 (0)20 – 675.09.46

De informatie in deze e-mail is uitsluitend bestemd voor de geadresseerde(n). Indien u dit bericht ontvangt terwijl het niet voor u bestemd is, verzoeken wij u per omgaand contact met ons op te nemen. In dat geval verzoeken wij u tevens om deze e-mail te vernietigen. Enig gebruik van deze e-mail of verstrekking van de inhoud daarvan aan derden is ten strengste verboden, aangezien deze boodschap confidentiële informatie kan bevatten die beschermd is door beroepsgeheim. Alle ontvangers van deze e-mail dienen zich te realiseren dat het gebruik van internet e-mail onderhevig is aan risico's; u dient na te gaan of deze e-mail en eventuele bijlagen besmet zijn met virussen. Knoops & Partners Advocaten acht zich derhalve niet aansprakelijk voor schade voortvloeiend uit deze e-mail.

The information contained in this e-mail message is intended exclusively for the addressee(s). If this e-mail was sent to you by mistake, would you please contact us immediately. In that case, we also request that you destroy this e-mail. Any use of this e-mail or disclosure of the contents thereof to third parties is strictly prohibited, as this message may contain confidential information which is protected by professional secrecy. Any recipient of this e-mail should be aware that internet e-mail is subject to risks; you do need to verify that this e-mail and any attachments are free of viruses. Knoops & Partners Advocaten therefore denies any responsibility for damages which might result from this e-mail.

22962

EXHIBIT 3

Vincent Nmehielle@SCSL
11/07/2007 10:11

To: "G.J. Knoops" <gjknoops@knoops.info>@UN-MAILHUB@UNITED NATIONS LOGISTICS BASE
cc: "A. Verwiel" <averwiel@knoops.info>, "(carlton-hanciles@un.org)" <carlton-hanciles@un.org>, "defence-kanu@un.org" <defence-kanu@un.org>, "Haddi (kah-jallow@un.org)" <kah-jallow@un.org>, "Herman von Hebel (vonhebel@un.org)" <vonhebel@un.org>, Shakiratu Sanusi/SCSL@SCSL
Subject: Re: URGENT MESSAGE FROM G. KNOOPS

Dear Alex:

Thanks for your mail on the above. I do very well understand your point. The important thing though is that Mr. Kanu wants to retain you for the appeal phase (and he has communicated this to me), which makes it easier for every one. Regarding the issue of the contract, I had few months ago instructed Shaki, the Legal Taxing Officer to inform you of the Registry's decision of a lump sum amount of \$110,000 inclusive of DLA and travel for the appeal phase. The Registry is also reviewing the contract that we drafted for the appeal phase. I am hoping that we should be able to have a contract to offer you on or before 19 July, all things being equal. In the main, I could provisionally assign you as Mr. Kanu's Appeal Counsel while sorting out the contract issue. I would also be raising this issue with Herman when he returns from his trip this week. I must, however, point out that all appeal phase contract would begin only after the judgement on sentencing has been delivered, which in effect, is the end of the trial phase of the AFRC case.

I hope this helps to clarify the position. Do not hesitate to contact me if you have any further query in this regard.

Kind regards,

Vince

Vincent O. Nmehielle
Principal Defender
Office of the Principal Defender
The Special Court for Sierra Leone
Jomo Kenyatta Road, New England
Freetown, Sierra Leone
Tel : +1-212-963-9915 Ext.178 7039
+232-22-297-039 (SL Line)
+39-083 125-7039 (Italy Line)
+232(0)76 800-080 or +232(0)76 816-568 (Mobile)
Fax: +1-212-963-9915 Ext.178 7299

"G.J. Knoops"
<gjknoops@knoops.info>

07/11/2007 08:38 AM

To "Vincent Nmehielle" <nmehielle@un.org>
"(carlton-hanciles@un.org)" <carlton-hanciles@un.org>, "Haddi (kah-jallow@un.org)" <kah-jallow@un.org>, "Herman von Hebel (vonhebel@un.org)" <vonhebel@un.org>, "defence-kanu@un.org" <defence-kanu@un.org>, "A. Verwiel" <averwiel@knoops.info>
Subject URGENT MESSAGE FROM G. KNOOPS