

644)

SCSL-04-16-A  
(072-075)  
SPECIAL COURT FOR SIERRA LEONE

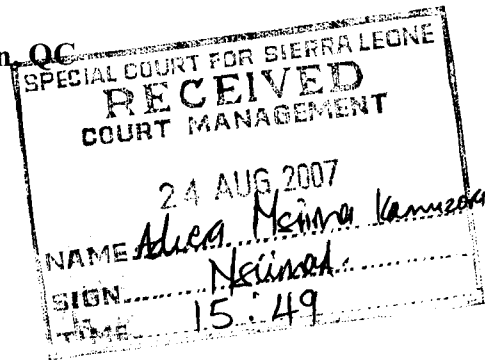
072

IN THE APPEALS CHAMBER

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

Registrar: Mr. Herman von Hebel

Date Filed: 24 August 2007



THE PROSECUTOR

Against

ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU

Case No. SCSL-2004-16-A

---

**BRIMA- KAMARA JOINT RESPONSE TO PROSECUTION MOTION  
FOR VOLUNTARY RECUSAL OR DISQUALIFICATION OF JUSTICE  
ROBERTSON**

---

Office of the Prosecutor  
Dr. Christopher Staker

Defence Counsel for Alex Tamba Brima  
Kojo Graham

Defence Counsel for Brima Bazy Kamara  
Andrew K. Daniels

Defence Counsel for Santigie Borbor Kanu  
Agibola E. Manly-Spain

## I. INTRODUCTION

1. On 2 August 2007 a “Prosecution Motion for Voluntary Recusal or Disqualification of Justice Robertson”<sup>1</sup> (“Motion”) was filed pursuant to the *Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber*<sup>2</sup>, rendered on 13 March 2004 which said Decision held in paragraph 18 as follows:

‘Justice Robertson ought to be disqualified from adjudicating on the following matters:

- (i) those matters involving alleged members of the R.U.F. for which decisions are pending in this Chamber; and
- (ii) Cases involving the R.U.F. if and when they come before the Appeals Chamber; and

the *Sesay- Decision on Defence Motion Seeking Clarification on the Decision on the Disqualification of Justice Robertson from the Appeals Chamber*, rendered on 25 May 2004, the Appeals Chamber<sup>3</sup> further held as follows:

CONSIDERING that the Disqualification Decision was clear, explicit and unambiguous in disqualifying Justice Robertson from adjudicating on the following matters:

1. Those Motion involving alleged members of the RUF for which decision are pending in this chamber; and
2. Cases involving the RUF if and when they come before the Appeals Chamber.

<sup>1</sup> *Prosecutor v. Brima, Kamara, Kanu* Case No. SCSL-04-16- 633, Public Prosecution Motion for Voluntary Recusal or Disqualification of Justice Robertson, filed on 2 August 2007

<sup>2</sup> *Prosecutor v Sesay*, SCSL-04-15-PT-058-Decision on defence motion seeking the disqualification of Justice Robertson from the Appeals Chamber. 13 March 2004

<sup>3</sup> *Prosecutor v Sesay*, SCSL-04-15-PT-140- Decision on defence motion seeking clarification of the decision on the disqualification of Justice Robertson from the Appeals Chamber. 25 May 2004

2. The Appeals Chamber on 16 August 2007 **Ordered**<sup>4</sup> that pursuant to Rule 7(C) and 54 of <sup>074</sup> the Rules, that a time for filing a 'Response to the Prosecution Motion for Voluntary Recusal or Disqualification of Justice Robertson' be extended to no later than 24 August 2007, and further **AUTHORISED** Court Management to serve this Order and accept any response for filing during the official recess period of the Special Court.
3. The Brima- Kamara Defence teams hereby file its joint response to the Prosecution Motion for Voluntary Recusal or Disqualification of Justice Robertson.

## II. PROSECUTION RELIEF

4. In its Motion the Prosecution is seeking the voluntary recusal of Justice Robertson from hearing the Appeal of the Judgment of the Trial Chamber in the A.F.R.C. Case or in the alternative in the event that Justice Robertson does not recuse himself that the remaining members of the Appeals Chamber disqualify Justice Robertson from hearing the Appeal of the Judgment of the Trial Chamber in the A.F.R.C. Case.

## III. PROSECUTION ARGUMENTS

5. The Prosecution state that by virtue *inter alia* of paragraphs 33 and 34 of the Indictment they originally sought a conviction at the A.F.R.C. trial against alleged A.F.R.C. members Alex Tamba Brima, Bazzy Kamara and Santigie Borbor Kanu of the one part and alleged R.U.F members Issa Hassan Sesay, Morris Kalon and Augustine Gbao of the other part for crimes committed "over the territory of Sierra Leone in particular the diamond mining areas" under the doctrine of joint criminal enterprise.
6. The Prosecution concedes that the Trial Chamber found that the joint criminal enterprise mode of liability had been defectively pleaded in the Indictment and was therefore not considered in the A.F.R.C. Judgment.

---

<sup>4</sup> Order Extending Time for Filing a Response to "Prosecution Motion for Voluntary Recusal or Disqualification of Justice Robertson, filed on the 16 August 2007

- 075
7. The Prosecution appealed against the Trial Chamber finding that the Indictment was defectively pleaded on the ground *inter alia* that the Trial Chamber erred as regards their findings on the issue of joint criminal enterprise mode of liability.
  8. The Prosecution argues that for the purposes of paragraph 18© of the Appeals Chamber Decision of 13 March 2004 the appeal of the A.F.R.C Judgment is a case involving the R.U.F. since it involves an appeal relating to the issue of the joint criminal enterprise.


#### IV. DEFENCE SUBMISSIONS

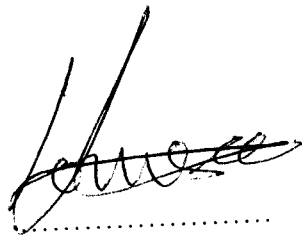
9. The Brima-Kamara Defence submit that they do not agree with the arguments put forward by the prosecution in its motion. In paragraph 4 of the Prosecution's motion where they are alleging Joint Criminal Enterprise, the Brima and Kamara Defence are of the opinion that it is a peripheral issue which does not go into the substance of the RUF case to warrant the disqualification or recusal of Justice Robertson from the AFRC Appeal proceeding.

#### V. CONCLUSION

10. The Defence submits that it is for the Appeals Chamber to use its discretion judiciously in determining whether the Prosecution's arguments fall within the ambit of paragraphs 15 and 18 of the Appeals Chamber's *Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber*, rendered on 13 March 2004.

Respectfully submitted

pp .....   
Kojo Graham  
Counsel for Brima

pp .....   
Andrew Daniels  
Counsel for Kamara