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SCSL-04-16-A

044

(044-049)

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-A

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: 02 August 2007

THE PROSECUTOR

Against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

SANTIGIE BORBOR KANU

PUBLIC

BRIMA - DEFENCE NOTICE OF APPEAL

Office of the Prosecutor:

Dr. Christopher Staker
Mr. Karim Agha
Mr. Chile Eboe-Osuji

Defence Counsel for Brima

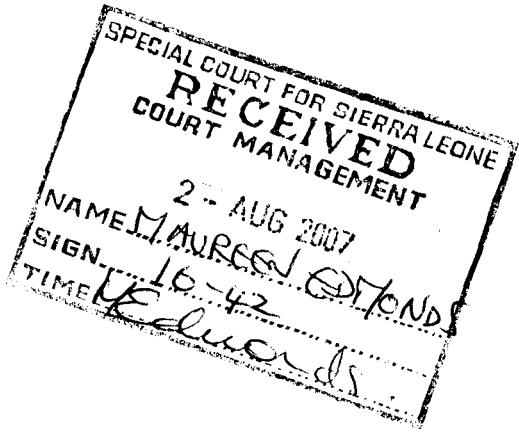
Mr. Kojo Graham – Lead Counsel
Mr. Osman Keh Kamara

Defence Counsel for Kanu:

Mr. Abibola E. Manly-Spain

Defence Counsel for Kamara:

Mr. Andrew Daniels



INTRODUCTION

1. Pursuant to Article 20 of the Statute of the Special Court for Sierra Leone (“**Statute**”) and sub-rule (A) of Rule 108 of the Rules of Procedures and Evidence of the Special Court for Sierra Leone, (“**Rules**”) the Defence for Alex Tamba Brima (“**Accused**”) herewith files its “Brima –Defence Notice of Appeal” (“**Notice of Appeal**”)

II SUMMARY OF THE PROCEEDINGS

2. The Accused persons Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu were indicated on 14 Counts of Crimes against Humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, as well as other serious violations of International Humanitarian law. All the three Accused persons pleaded not guilty to all the charges contained in the Indictment.
3. The Prosecution case-in-chief commenced on 7 March 2005 and closed on 21 November 2005. The Prosecution called 59 witnesses. A total of 80 Prosecution exhibits were admitted.
4. The Defence case-in-chief started on 5 June 2006 and ended on 26 October 2006. The Defence called a total of 87 witnesses including the first Accused Alex Tamba Brima who testified pursuant to Rule 85 (c) of the Rules. A total of 39 Defence exhibits were admitted. The Trial chamber summoned one witness in order to gather information as to whether reliability of one document was susceptible of confirmation under Rule 92 bis (B).
5. Final trial briefs were filed by both the Prosecution and Defence on 1 December 2006. Closing arguments and submissions were made before the Trial Chamber on 7 and 8 December 2006. The Trial Chamber sat for 176 trial days.

6. On June 20, 2007 the Trial Chambered delivered its final judgement (“**Judgement**”) on the Indictment finding the Accused persons guilty on 11 counts out of the 14 counts contained in the Indictment. The Judgement was filed on 21 June 2007.
7. Oral arguments and submissions in respect of sentencing were made before the Trial Chamber on 19 July 2007. The Trial Chamber rendered its Sentencing Judgment on 19 July, 2007. A corrigendum was made on 20 July, 2007 to the Judgement filed on 21 June, 2007.

III UNDERLYING JUDGEMENT

8. The Accused Brima was found individually criminally responsible Pursuant to 6 (1) of the Statute for offences committed in Bombali District and Freetown and the Western Area as charged under Count 1, Count 2, Count 3, Count 4, Count 5, Count 6, Count 9, Count 10, Count 12, Count 13 and Count 14.
9. Further, he was also found individually criminally responsible Pursuant to Article 6(3) for offences committed by his subordinates in Bombali District and Freetown and the Western Area as charged under Count 1, Count 2, Count 3, Count 4, Count 5, Count 6, Count 9 Count 10, Count 12, Count 13 and Count 14.

IV GROUNDS OF APPEAL

4.1 FIRST GROUND OF APPEAL

10. Error in law and/or fact due to the Trial Chambers failure to consider that the inequality of arms between the Prosecution and Defence denied or substantially impaired the right of the Accused to a fair trial resulting in a miscarriage of justice.

4.2 SECOND GROUND OF APPEAL

11. The Trial Chamber erred in fact and or in law in finding the Accused Brima responsible under Article 6(1) of the Statute for the abduction of children under the age of 15 years in Bombali District for Military purposes resulting in a miscarriage of justice.

4.3 THIRD GROUND OF APPEAL

12. Error in law and /or in fact due to the Trial Chamber's finding that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of conscription of children under the age of 15 into the armed group or their engagement in active hostilities in Bombali District and the Western Area thereby resulting in a miscarriage of justice. (Paragraph 1836).

FOURTH GROUND OF APPEAL

13. The Trial Chamber erred in fact and/or in law by finding the Accused Brima was responsible under Article 6(3) for the crimes committed by his subordinates in Bombali District between 1, May 1998 and 30, November 1998 in which he did not directly participate resulting in a miscarriage of justice. (Paragraph 1744, page 480)

4.4 FIFTH GROUND OF APPEAL

14. Error in law and/or in fact due to the Trial Chamber's finding that the Accused Brima was individually responsible under Article 6(1) of the Statute for the crimes of murder and/or extermination of civilians in Bombali District resulting in a miscarriage of justice (Paragraphs 1708, 1709, 1714, 1715, 1716).

4.5 SIXTH GROUND OF APPEAL

15. Error in law and/or in fact due to the Trial Chamber's finding that the Accused Brima is liable as a superior under Article 6(3) for crimes committed in Freetown and the Western Area during the relevant indictment period thereby occasioning a miscarriage of justice. (Paragraph 1810, page 498).

4.6 **SEVENTH GROUND OF APPEAL**

16. Error in law and/or in fact due to the Trial Chamber's in finding that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of the crime of outrages on personal dignity in Bombali District and Freetown and the Western Area resulting in a miscarriage of justice. (Paragraph 1835)

4.7 **EIGHTH GROUND OF APPEAL**

17. The Trial Chamber erred in fact and/or in law by finding that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of enslavement in Bombali District and the Western Area thereby resulting in a miscarriage of justice.

4.8 **NINTH GROUND OF APPEAL**

18. The Trial Chamber erred in law and/or in fact by resolving any reasonable doubt in respect of the ability of the Accused Brima in favour of the Prosecution thereby occasioning a miscarriage of justice. (Paragraph 333 – 378).

4.9 **TENTH GROUND OF APPEAL**

19. The Trial Chamber erred in law and in fact by failing to consider the Appellant's testimony of the rivalry between himself and Prosecution witness TF1-334 thereby failing to evaluate in its entirety the testimony of the witness resulting in a miscarriage of justice.

4.10 **ELEVENTH GROUND OF APPEAL**

20. The Trial Chamber erred in fact and/or law by disproportionately relying on mainly two prosecution witnesses namely witness TFI 334 and TFI 167 out of 146 of the witnesses called by both Prosecution and Defence resulting the miscarriage of justice.

4.11 TWELFTH GROUND OF APPEAL

21. The Trial Chamber erred in law and/or in fact by imposing a global sentence of 50 years on the Accused which is excessively harsh and disproportionate and not in accordance with the sentencing practice and guidelines of the ICTY and the ICTR thereby resulting in a miscarriage of justice.

RELIEF SOUGHT

Therefore, the Brima Defence respectfully prays the Honourable Appeal Chamber to find the Appeal admissible and,

- (i) Revise the erroneous factual findings made by the Trial Chamber which grounded the guilt of the Accused under Articles 6(1) and 6(3) for crimes allegedly committed in the Bombali District and Freetown and the Western Area.
- (ii) Reduce the Brima Global sentence of 50 years to 25 years.
- (iii) Render any other decision the Honourable Appeal Chamber deems appropriate.

Respectfully submitted,



KOJO GRAHAM ESQ.

Lead Counsel for Appellant Alex Tamba Brima