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SCSL-2005-02

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**SPECIAL COURT FOR  
SIERRA LEONE**

**IN TRIAL CHAMBER I**

**Case No. SCSL-2005-01&02**

Before: Designated Judge Pierre Boutet

Registrar: Robin Vincent

Date filed: 17 May 2005

**THE PROSECUTOR**

**against**

**ALEX TAMBA BRIMA**

**BRIMA BAZZY KAMARA**

**and**

**SANTIGIE BORBOR KANU**

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**JOINT DEFENCE REPLY TO PROSECUTION RESPONSE TO URGENT DEFENCE MOTION  
ON STAY OF THE CONTEMPT PROCEEDINGS**

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Office of the Prosecutor:

Luc Coté  
Lesley Taylor

Defence Counsel for Kanu:

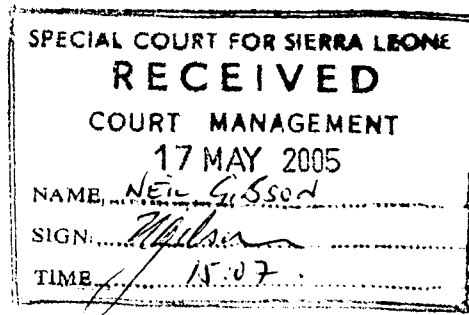
Geert-Jan A. Knoops, Lead Counsel  
Carry J. Knoops, Co-Counsel  
A.E. Manly-Spain, Co-Counsel

Defence Counsel for Brima:

Glenna Thompson  
Kojo Graham

Defence Counsel for Kamara:

Mohamed Pa-Momo Fofanah



## I INTRODUCTION

1. On 3 May 2005, the Defence filed its “Urgent Joint Motion on Stay of Contempt Proceedings” (“**Defence Motions**”) in the cases SCSL-2005-01&02. On 12 May 2005, the Prosecution in Case No. SCSL-2004-16-T responded to this Motion in its “Prosecution Response to Urgent Joint Defence Motion on Stay of the Contempt Proceedings” (“**Prosecution Response**”). It is to this Response that the Defence files this “Defence Reply to Prosecution Response to Urgent Joint Defence Motion on Stay of the Contempt Proceedings” (“**Reply**”).

## II PRELIMINARY ARGUMENT

2. Now that Trial Chamber II specifically referred the contempt proceedings to Trial Chamber I, it is the Defence opinion that the Prosecution Response should not have been filed, as it did, under Case No. SCSL-2004-16-T, but under Case Nos. SCSL-2005-01&02, which numbers pertain to the contempt proceedings. Therefore, from a procedural point of view, now that the Prosecution did not file its Response under the latter case numbers, it should not be taken into account.

## III ACCUSED HAVE STANDING

3. The Defence submits that the argument concerning the locus standi before this Trial Chamber, has already been set out in Section II of its Defence Motions.
4. In response to para. 6 of the Prosecution Response, the Defence wishes to indicate that it was instructed by Court Management, which section had consulted the Chamber’s section of Trial Chamber I, to file the particular Defence Motions in the case of SCSL-2005-01&02. In this regard, the “style in which the Motion has been filed” (see para. 6 of the Prosecution Response) does not have any decisive weight in assessing the *locus standi* of the accused persons in the instant procedure.

5. Concerning the advice given by the Prosecution in para. 8 of its Response, namely that the AFRC Accused should “move the Trial Chamber seized of the AFRC trial proceedings for appropriate relief,” the Defence holds that this has been explicitly denied by Trial Chamber II on several occasions.<sup>1</sup>
  
6. Also from the clear wording of the Impugned Decision of Trial Chamber II to the extent that it referred the matter to Trial Chamber I, it can be deduced that the request for a stay of the proceedings – which can be seen as a sequel to the contempt proceedings themselves – clearly falls within the judicial competence of Trial Chamber I.
  
7. In paras. 11 – 14, the Prosecutor argues that in this regard, the rights of the accused persons as enshrined in Article 17(3) of the Statute, and Articles 14 and 17 of the ICCPR in conjunction with Article of the ECHR, are not at stake. The Defence argument that the suspension of the Brima Defence investigator can indirectly affect the fair trial rights of the Accused in terms of defence preparation, is addressed in para. 12 of the Response by referring to the fact that “the Accused Brima has refused the services of a replacement investigator.” However, such replacement can of course only be accepted by an Accused in the event the particular investigator fulfills the requirements of the Defence team, and above all, has the requisite trust from the accused person, in that he can entrust his case to him or her. Moreover, the Prosecution in said para. 12 refers to the ruling of Trial Chamber II finding that the Accused Brima had ample time to make alternative arrangements regarding the appointment of an investigator. Mindful of the own responsibility of the Defence in finding a replacement, even temporarily, such a replacement should be conducted in compliance with the abovementioned requirements and the necessary confidence of the particular accused to entrust his case to a new investigator. In this regard, the mere availability of time to make

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<sup>1</sup> See for instance Transcript, 2 May 2005, p. 14 (line 26) to p. 15 (line 2).

alternative arrangements cannot exclude the situation that the fair trial rights of the accused persons can be endangered by such a situation.

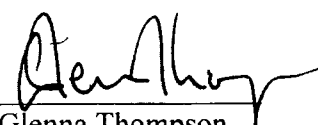
#### IV RELIEF SOUGHT

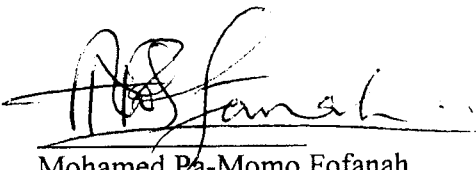
8. It is for these reasons that the Defence respectfully prays the honorable Trial Chamber I to grant a stay of the contempt of court proceedings until the pending motions on this issue (mentioned above) are dealt with by the Appeals Chamber, particularly the appeal against the interim measures, and in any event the appeal against the Decision, and/or any decision the honorable Trial Chamber I will deem appropriate.

Respectfully submitted,

On 17 May 2005

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Geert-Jan A. Knoops

  
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Glenna Thompson

  
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Mohamed Pa-Momo Fofanah





