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**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown – Sierra Leone

IN THE APPEALS CHAMBER

Before: Hon. Justice Renate Winter, President  
Hon. Justice Jon Kamanda  
Hon. Justice George Gelaga King  
Hon. Justice Emmanuel Ayoola

Registrar: Mr. Herman Von Hebel

Date filed: 01 May 2009

**THE PROSECUTOR**

**Against**

**ISSA HASSAN SESAY**  
**MORRIS KALLON**  
**AUGUSTINE GBAO**

Case No. SCSL-04-15-A

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**PUBLIC**

**URGENT**


**PROSECUTION RESPONSE TO KALLON DEFENCE MOTION FOR EXTENSION OF TIME TO  
FILE APPEAL BRIEF AND EXTENSION OF PAGE LIMIT**

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Office of the Prosecutor:  
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Ms Régine Gachoud

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Defence Counsel for Augustine Gbao  
Mr John Cammegh  
Mr Scott Martin

SPECIAL COURT FOR SIERRA LEONE	
<b>RECEIVED</b>	
COURT MANAGEMENT	
01 MAY 2009	
NAME	ALHASSAN FORNATH
SIGN	
TIME	16:00

1. The Prosecution files this response to the “Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit” (the “**Kallon Motion**”), filed by the defence for Morris Kallon (the “**Defence**”) on 30 April 2009.
2. The Kallon Motion seeks an extension of time of eight (8) weeks for filing of the appeal briefs in this appeal (until 12 July 2009) and an extension of the page limit for the Kallon appeal brief from 100 pages to 400 pages.
3. The Prosecution submits that the Defence has not established good cause for either an extension of time or an extension of the page limit of the magnitude requested.
4. Reasons invoked in the Kallon Motion in justification for the requested extension of time are that Defence counsel were not appointed for the appeal until after the Sentencing Judgement was rendered in the case, the size of the Trial Judgement, and the claim that in all of the circumstances an extension of 8 weeks would be reasonable.<sup>1</sup>
5. In the *AFRC* case, which like the present case involved three accused, and in which the Trial Judgement was of comparable length,<sup>2</sup> the extension of time that was granted was nowhere near the magnitude of that now requested in the Kallon Motion.<sup>3</sup> Factors cited in the motion requesting the extension of time in the *AFRC* case, which are not factors present in the instant case, were that the August recess fell during the period in which the appeal briefs were to be prepared, that the Trial Chamber had issued a corrigendum to the Trial Judgement making certain changes to the original judgement, and that all parties were agreed that the extension of time of the requested length was necessary and that good cause was established.<sup>4</sup>

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<sup>1</sup> Kallon Motion, para. 5.

<sup>2</sup> The substantive Trial Judgement in the present case is 687 pages. The substantive Trial Judgement in the *AFRC* case was 572 pages (*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Judgement, Trial Chamber, 2 July 2007).

<sup>3</sup> In the *AFRC* appeal proceedings, an extension of time of **three weeks** was granted for the filing of appeal briefs: see *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A, “Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs”, Appeals Chamber, 10 August 2007 (the “**AFRC Extension Decision**”).

<sup>4</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A, “Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs”, 2 August 2007 (the “**AFRC Extension Motion**”), para. 4.

Furthermore, in the *AFRC* case, an additional factor not present in the instant case was that lead counsel for one of the accused had not been retained for the appeal and had been replaced by the person who was co-counsel at the trial.<sup>5</sup> There had also been other changes in the composition of the defence teams.

6. In the *CDF* case, the extension of time that was granted was again nowhere near the magnitude of that now requested in the Kallon Motion.<sup>6</sup> However, the extension granted in that case was in fact longer than that which had been granted in the *AFRC* case. This demonstrates that extensions of time for filing appeal briefs do not depend merely on the size of the case at trial or the length of the trial judgement, but that a requested extension of time will depend on the totality of the circumstances of the individual case. In the *CDF* case, there was the factor not present in the instant case that lead counsel for the convicted person who appealed had not been retained for the appeal and had been replaced by the person who was co-counsel at the trial.<sup>7</sup> In the *CDF* case, there was another factor not present in the instant case, namely that the Prosecution was at the time required simultaneously to undertake work on the *AFRC* appeal, which was pending at the same time.<sup>8</sup> In the case of the *CDF* appeal, it was again a factor of significance that both the Prosecution and the Defence jointly agreed that the extension of time was necessary.
7. The Kallon Motion argues that Defence counsel in the instance case were not appointed for the appeal until after the Sentencing Judgement was rendered in the case. However, that circumstance also pertained to the *AFRC* and *CDF* cases.

<sup>5</sup> Lead counsel for Santigie Borbor Kanu during the trial was Mr. Geert-Jan Alexander Knoops. In the appeal proceedings, he was replaced as lead counsel by former co-counsel, Mr Agibola E. Manly-Spain.

<sup>6</sup> In the *CDF* appeal proceedings, an extension of time of **four weeks** was granted for the filing of appeal briefs: see *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, "Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs and Extension of Page Limits for Appeal Briefs", Appeals Chamber, 7 November 2007 (the "**CDF Extension Decision**").

<sup>7</sup> Lead counsel Allien Kondewa during the trial was Mr. Charles Margai. In the appeal proceedings, he was replaced as lead counsel by former co-counsel, Mr Yada Williams.

<sup>8</sup> In the *CDF* case, a Joint Defence and Prosecution motion was filed on 23 October 2007, seeking an extension of time for appeal briefs until 11 December 2007 (**AFRC Extension Motion**), which was granted (**AFRC Extension Decision**). The oral hearings in the *AFRC* appeal were heard on 12, 13 and 14 November 2007. Had the requested extension not been granted, the Prosecution would have been required to file the *CDF* appeal brief during the oral hearings in the *AFRC* appeal. The effect of granting the extension was to allow four weeks from the *AFRC* hearings for preparation of the *CDF* appeal brief.

8. The only other justification for the requested extension cited in the Kallon Motion is that in all of the circumstances an extension of 8 weeks would be reasonable. However, that bare assertion, without details of specific circumstances warranting an extension is not in itself sufficient.
9. The Prosecution is aware that the *RUF* case is of some magnitude, and is mindful of the need to ensure that all appellants are given the opportunity to develop and present their cases on appeal fully. In the circumstances, provided certain conditions are met, the Prosecution would not oppose an extension of time for the filing of appeal briefs by one week until 26 May 2009.
10. The first of these conditions is that any extension of time should be granted to all parties in the case. This is consistent with the practice in earlier appeals cases before the Special Court, and would avoid the inconvenience that appeal briefs, response briefs and reply briefs of different parties would be due on different dates. Such an asynchronous schedule for the filing of briefs by different parties would furthermore serve no purpose, given that the oral hearing in the appeal cannot be held until all briefs have been filed by all parties.
11. The second condition is that the extension of time for the filing of appeal briefs should lead to a corresponding extension of time for the filing of response briefs. It is noted that while the Prosecution has raised only three grounds of appeal, the Prosecution will have to respond to a combined total of some 96 grounds of appeal (some with multiple sub-grounds or issues). Thus, while the Defence may have a greater task than the Prosecution in preparing their respective appeal briefs, at the stage of response briefs the position will be reversed: the Prosecution will have a much greater task in preparing its response brief than will each of the Defence teams in preparing theirs. Extensions of time and pages granted to the Defence for their appeal briefs will add to the Prosecution's task in preparing its response brief. It is therefore submitted, that extensions of time for filing appeal briefs should lead to extensions of equal length for the filing of response briefs. Thus, if a one week extension is granted for the filing of appeal briefs, the deadline for the filing of

response briefs should also be extended by one week, to 16 June 2009. Reply briefs would then be due on 22 June 2009.

12. The Prosecution notes that while Defence counsel may have been formally appointed only after the Sentencing Judgment, all parties will have had, even with no extension, more than 10 weeks from the verdict and 5 weeks from formal filing of the sentencing judgment to get organized for their respective appeal briefs. However, the Prosecution as respondent to the three Defence appeal briefs would without the extension have only two weeks to respond to a great volume of submissions in the Defence appeal briefs, and with the requested extension, would still have only three weeks to do so.
13. As to the request for an extension of the page limit, the Prosecution considers that the requested 400 pages is manifestly excessive. Under the Practice Direction, each of the accused is entitled to an appeal brief of 100 pages, and the prosecution is entitled to 170 pages to deal with its appeal in respect of all three accused.<sup>9</sup>
14. In the *AFRC* case, extensions of page limits were granted, to allow the Prosecution 250 pages, and each Defence team 120 pages.<sup>10</sup>
15. In the *CDF* case (where both the Prosecution and the Defence were entitled to 100 pages each under the Rules), extensions of page limits were granted, to allow each party 150 pages.<sup>11</sup>
16. Again, mindful of the need to ensure that all appellants are given the opportunity to develop and present their cases on appeal fully, the Prosecution would not oppose an extension of the page limit to 200 pages for all of the parties in this case, provided that a corresponding extension is granted for response briefs. The Prosecution submits that the Kallon Motion has not established good cause for any greater extension.

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<sup>9</sup> Article 6 E, Practice Direction on Filing Documents before the Special Court for Sierra Leone, Adopted on 27 February 2003, Amended 16 January 2008.

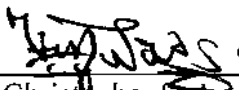
<sup>10</sup> *Prosecutor Brima, Kamara and Kanu*, SCSL-04-16-A-645, "Decision on Urgent Prosecution Motion for an Extension of the Page Limit for its Appeal Briefs", Appeals Chamber, 24 August 2007.

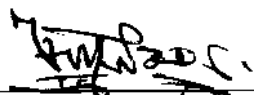
<sup>11</sup> *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A-028, "Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs and Extension of Page Limits for Appeal Briefs", Appeals Chamber, 7 November 2007.

17. The Prosecution further submits that a quick ruling on the Kallon Motion is essential to enable the parties to plan their work, and would request that this motion be dealt with by the Appeals Chamber as a matter of urgency.
18. The Prosecution further requests an immediate ruling on the deadlines for not only the appeal briefs, but also for the response briefs and the reply briefs, in order to enable the parties to plan their work. Given the short timeframes between the appeal brief and the response brief, and between the response brief and the reply brief, it is not feasible to await the filing of the previous brief before applying for any extension of time for the response brief or reply brief.

Filed in Freetown,

1 May 2009

  
for Christopher Staker

  
Vincent Wagana

## Index of Authorities

### Motions

*Prosecutor v Sesay et al*, SCSL-04-15-A-190, Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit”, 30 April 2009.

*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A-050, “Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs”, 2 August 2007.

### Decisions

*Prosecutor Brima, Kamara and Kanu*, SCSL-04-16-A-645, “Decision on Urgent Prosecution Motion for an Extension of the Page Limit for its Appeal Briefs”, Appeals Chamber, 24 August 2007.

*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-A-060, “Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs”, 10 August 2007.

*Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A-028, “Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs and Extension of Page Limits for Appeal Briefs”, Appeals Chamber, 7 November 2007.

### Judgments

*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T-675, Judgement, Trial Chamber, 2 July 2007.

*Prosecutor v Sesay et al*, SCSL-04-15-1234, Judgement, Trial Chamber, 2 March 2009.

### Practice Directions

Practice Direction on Filing Documents before the Special Court for Sierra Leone, Adopted on 27 February 2003, Amended 16 January 2008.