

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

Before: Judge Bankole Thompson, Presiding Judge
Judge Benjamin Mutanga Itoe
Judge Pierre Boutet

Registrar: Mr. Robin Vincent

Date filed: 7 May, 2004

THE PROSECUTOR**Against**

ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

Case No. SCSL – 2004 – 16 – PT

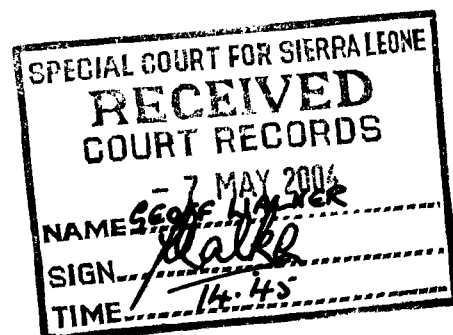
**REPLY TO DEFENCE ‘RESPONSE AND APPLICATION FOR EXTENSION OF TIME
TO PROSECUTOR’S MOTION FOR CONCURRENT HEARING OF EVIDENCE’**

Office of the Prosecutor:

Mr. Luc Côté
Mr. Robert Petit

Defence Counsel:

Mr. Ken Fleming QC



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The Prosecution files this reply to the Defence Response and Application for Extension of Time to Prosecutor’s Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT.

I. BACKGROUND

1. On 30 April 2004, the Prosecution filed a Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT (“Motion”). Also on 30 April 2004, the Trial Chamber issued an Order for Expedited Filing, ordering the Defence to respond to the Prosecution Motion by 5 May 2004 and the Prosecution to reply to any such response by 7 May 2004 (“Order”). On 6 May 2004 Counsel for Kamara (“Accused”) filed a response (“Response”) requesting the Trial Chamber to grant the Defence further time to respond to the Prosecution Motion as well as to deny the Prosecution Motion. The Prosecution files this reply to the Defence Response.

II. DEFENCE SUBMISSIONS

2. The Defence essentially bases its request on the fact that lead counsel representing the Accused was engaged in travel and other personal and work-related activities in the days following the Trial Chamber's Order dated 30 April 2004. Furthermore, the Defence argues for the dismissal of the Motion on the grounds that the Prosecution Motion requests a joint trial, a result which was rejected by the Trial Chamber.

III. ARGUMENTS**Defence Response filed late and improperly**

3. The Prosecution submits that the Defence Response should be dismissed as it was filed after 5 May 2004, contrary to the Trial Chamber's Order dated 30 April 2004, as admitted by the Defence in paragraph 14 of its Response. The Prosecution further submits that the form of the Defence Response warrants its dismissal, as it inappropriately contains, on the one hand, a request for extension of time to respond to the Prosecution Motion and, on the other hand, arguments pertaining to the Merits of the Motion.

No "exceptional circumstances or good cause"

4. The Prosecution submits that the jurisprudence of this Court adopted the "exceptional circumstances or good cause" criteria for determining the merits of a request for an extension of time to file motions. This standard was first adopted in *Prosecutor Against Kallon*¹, where the Court held that the Defence's need for more time to conduct research pertaining to the matter at hand did not constitute "good cause" and therefore did not warrant the granting of an extension of time. This standard was later employed in *Prosecutor Against Brima*², where the Court held that the poor health of defence counsel does not constitute "exceptional circumstances or good cause" justifying the granting of the requested extension of time, and subsequently in *Prosecutor Against Sesay*,³ where

¹ *Prosecutor Against Kallon*, SCSL-2003-07-PT, "Decision on the Defence Motion for an Extension of Time to File Preliminary Motion", 14 June 2003.

² *Prosecutor Against Brima*, SCSL-2003-06-PT, "Decision on the application for Extension of Time for Leave to be granted to File Defence Motion to Appeal against the Decision Refusing an Application for the Issue of the Writ of Habeas Corpus", 15 October 2003.

³ *Prosecutor Against Sesay*, SCSL-2003-05-PT, "Decision on the Defence Motion Requesting the Suspension of Delays for Filing Preliminary Motions or new Request for an Extension of Delays", 7 November 2003.

the Court rejected the Defence arguments that certain practical difficulties preventing a prompt reply justify an extension of time, holding that these do constitute ‘exceptional circumstances or good cause’.

5. The Prosecution denies that any of the arguments raised by the Defence in its response constitute “exceptional circumstances or good cause” justifying the granting of an extension of time by the Court.
6. The Prosecution notes that while defence counsel, as admitted by him in paragraphs 4 and 5 of the Response, was informed on the morning of 1 May 2004 about the existence of the Prosecution Motion, he nonetheless, as mentioned in paragraph 6 of the Response, failed to familiarize himself with its content until 4 May 2004. The Prosecution submits that the phenomenon of orders requiring motions to be filed in relatively short time periods, is inherent to the work of international criminal tribunals. This is the reason that the Accused persons are represented by a team of defence counsel, and that local counsel are among the members of this team. It is also noted that the existence of internal tension between defence co-counsel, a matter alluded to by defence counsel in paragraph 4 of the Response, is of no relevance to the issue at hand and should be resolved within the defence team. Certainly, such matters cannot constitute “exceptional circumstances or good cause”.
7. The Prosecution submits that defence counsel’s attempt, in paragraph 7 of the Response, to base his request for an extension of time on the fact that the material relied upon by the Prosecution in its Motion was “confusing in the extreme”, is without foundation. Defence counsel makes reference to the *Tadic* case as an example of this “confusing” material.⁴ The Prosecution asserts that this is completely unreasonable, as the paragraph referred to from the *Tadic* case, was inserted in the Motion in support of the Prosecution argument pertaining to the principle of equality of arms.⁵ This paragraph is widely cited in international law cases as instructive on the principle of equality of arms, a well established principle of international law, which any international lawyer should be familiar with and which certainly should not be found “confusing” by an international lawyer. The Prosecution finds this to be especially puzzling in light of the fact that this

⁴ *Prosecutor v. Tadic*, IT-94-01, Judgement, 15 July 1999, para. 48, was referred in footnote 14 of Prosecution Motion. See annex 4 to Prosecution Motion.

⁵ See text attached to footnote 14 of Prosecution Motion.

exact same authority was cited in, and annexed to, the Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution Motions for Joinder, dated 3 February 2004, with relation to the principle of equality of arms.⁶ Furthermore, the principle of equality of arms was an issue which was specifically addressed by the very same defence counsel who wrote the Response subject matter to this Reply, in paragraph 14 of the Defence Response to the Prosecutor's Application for Leave to Appeal, dated 9 February 2004.⁷

8. In any event, it is the Prosecution's submission that even if defence counsel finds the material relied upon by the Prosecution in its Motion to be "confusing in the extreme", this does not constitute "exceptional circumstances or good cause" justifying the granting of an extension of time by the Court.
9. In addition, the Prosecution asserts that the fact that Defence for co-Accused Kanu, as well as Defence for Kallon and Defence for Sesay, co-Accused in the RUF trial, managed to prepare and file a Response to the Prosecution Motion in a timely fashion, demonstrates that the time given by the Trial Chamber to respond to the Prosecution Motion was indeed sufficient to achieve this end.
10. The Prosecution submits, that the references made by defence counsel, in paragraphs 8 through 11 of the Response, to materials disclosed by the Prosecution, are irrelevant to the issue at hand, and certainly do not constitute "exceptional circumstances or good cause" justifying the granting of an extension of time by the Court. Moreover, as these materials were disclosed pursuant to the Court's Order, dated 1 April 2004, defence counsel should have been expecting their arrival into his possession, and certainly should not have been surprised or confused by their arrival. In any event, the Prosecution submits that even if defence counsel was surprised and confused by these materials, this does not constitute "exceptional circumstances or good cause" justifying the granting of an extension of time by the Court.

⁶ See 'Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution Motions for Joinder', dated 3 February 2004, para. 21, especially footnote 7 and attached text.

⁷ See 'Response of Kamara to the Prosecutor's Application for Leave to Appeal', dated 9 February 2004, para. 14.

Granting Prosecution Motion would not have the result of a joint trial

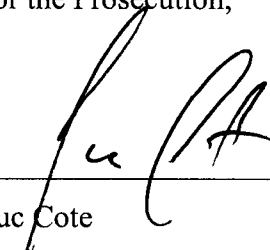
11. The Prosecution denies the Defence argument that the Motion requests a joint trial. The Prosecution reaffirms that its Motion merely requests is the joining of the physical occurrence during the course of which all 'crime base' evidence that is common to both trials will be heard. This evidence will not directly implicate any of the Accused individuals in the commission of crimes, in contrast to the situation of a joint trial. Furthermore, it is 56% of the witnesses whose evidence is requested to be concurrently presented, whereas in the situation of a joint trial - all evidence is presented concurrently.
12. The Prosecution stresses that in the event its Motion is not granted, this common 'crime base' evidence will be presented twice in the exact same form, once in each trial, causing the unnecessary prolongation of each trial.

IV. CONCLUSION


13. The Prosecution reaffirms that it is in the overall interest of justice and in the best interest of the Accused to grant the Prosecution Motion thereby promoting the expedition nature of the proceedings, as stated in its Motion.
14. For the foregoing reasons the Prosecution respectfully requests that the Trial Chamber grant its Motion and dismiss the Defence Response.

Freetown, 7 May 2004

For the Prosecution,



Luc Cote



Robert Petit