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SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

Before: Judge Bankole Thompson (Presiding Judge)
Judge Pierre Boutet
Judge Benjamin Itoe

Registrar: Robin Vincent

Date: 1st day of December 2003

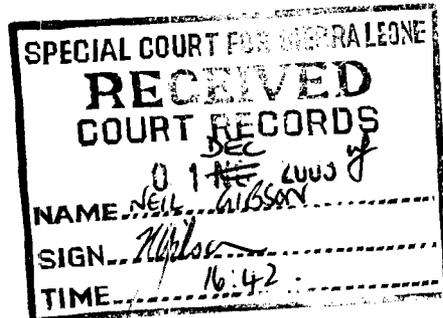
The Prosecutor against

Brima Bazy Kamara
(Case No.SCSL-2003-10-PT)

**DECISION ON THE DEFENCE MOTION FOR EXTENSION OF TIME TO FILE
RESPONSE TO PROSECUTION MOTION FOR JOINDER AND FOR
ADJOURNMENT OF HEARING**

Office of the Prosecutor:
Mr. Luc Côté, Chief of Prosecutions

Defence Counsel:
Ken C. Fleming QC, Lead Counsel



THE SPECIAL COURT FOR SIERRA LEONE (“the Special Court”)

SITTING as the Trial Chamber (hereinafter “the Chamber”), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet and Judge Benjamin Mutanga Itoe;

BEING SEIZED of the Defence Motion for Extension of Time to File a Response to Prosecution Motion for Joinder and for adjournment of Hearing filed on the 13th day of November 2003;

CONSIDERING the Prosecution Motion for Joinder filed on the 9th day of October 2003 (hereinafter “the Motion for Joinder”);

CONSIDERING the Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure rendered on the 23rd day of October 2003 (hereinafter “the Decision on Protective Measures”);

CONSIDERING that the supplementary materials were given to the Defence on the 6th day of November 2003 (hereinafter “the disclosed materials”);

CONSIDERING Rule 7 of the Rules of Procedure and Evidence for the Special Court for Sierra Leone (hereinafter “the Rules”);

NOTING THE SUBMISSIONS OF THE PARTIES:*“The Motion”*

1. The Defence submits that Counsel normally receives documents from the Special Court for Sierra Leone (hereinafter “the Special Court”) by having them forwarded to him by a website belonging to the Bar Association of Queensland, that being the only website with sufficient capacity to receive the necessary volumes of material. In the Defence’s submission, Counsel left Australia on the 5th day of October 2003 having made arrangements to access the aforementioned website externally. Due to defects in the system, Counsel was unable to access the documents sent to him despite attempts made to remedy the situation, and for this reason did not receive the Motion for Joinder sent on the 9th day of October 2003. Counsel annexes a copy of an email received by the Manager of the website as evidence of his attempts.
2. Defence Counsel submits that despite attempts made to open the system during his stay in Freetown for the Appeals hearings between the 31st day of October 2003 and the 6th day of November 2003, he was unable to do so and was told that this was because the system was overloaded. However, Counsel notes that upon his arrival in Freetown he asked the Defence Office whether any documents had been delivered for him in hard copy but there had been none. Furthermore nobody with whom Counsel spoke mentioned the existence of the Motion for Joinder for Kamara.

3. The first time that Defence Counsel opened the email facility into which service had been made and the first time that Counsel was aware of the Motion for Joinder, was on the 11th day of November 2003 when he returned to Australia. Counsel assures the Chamber that he will from now on negotiate a form of appropriate service of documents for when he is outside Australia.
4. Counsel notes that Rule 7(A) of the Rules states that notice "*has been received in the normal course of transmission by... Counsel for the Accused*". In Counsel's submission emphasis should be on the term "received" and following this reading there is no reason for him to seek an extension of time, for the 10 day period under Rule 7(C) of the Rules would run from the 11th day of November 2003. Counsel submits that if emphasis is not on the term "received", then he seeks an extension of time to file a Response to the Motion for Joinder.
5. On an additional matter, Counsel submits that a further reason for requesting an extension of time is that it is necessary for Counsel to consider disclosed materials before a Response can be filed. The Defence were not provided with the disclosed materials until the 6th day of November 2003, the day before Counsel left for Australia. Counsel submits that these materials were left in Sierra Leone so that copies could be made of them so that both the Defendant himself and Co-Counsel could start working on them. These disclosed materials were then forwarded to Lead Counsel by DHL on the 10th day of November 2003.
6. Accordingly Defence Counsel requests that the Trial Chamber decide that the time for filing a Response started on the 6th day of November 2003, the 10th day of November 2003 or the 11th day of November 2003; alternatively that an extension of time be granted for filing the Response to the Motion for Joinder; and furthermore that the hearing of the Motion for Joinder be adjourned.

"The Response"

7. The Prosecution accepts that Defence Counsel did not see the Motion for Joinder until the 11th day of November 2003, regrets that Co-Counsel was not also served with notice of the Motion for Joinder, and urges the Court to serve documents on Co-Counsel in the future.
8. Despite this, the Prosecution submits that it was Counsel's duty to make inquiries when in Freetown at Court Management into any developments on the case since he had last accessed his emails.
9. The Prosecution submits that it should be the duty of the Defence Office to keep Counsel informed of any developments in their cases, especially since many Counsel are based abroad. It is suggested that there should be a system put in place, such as pigeon-holes in the Defence Office, so that members of each defence team, particularly those based in Freetown, can

receive any relevant documents and keep abreast of developments in their client's cases.

10. The Prosecution concurs with the Defence's interpretation of Rule 7(A) of the Rules that Counsel received notice of the Motion for Joinder on the 11th day of November 2003, and thus contends that the Defence does not need an extension of time to file a Response to that Motion.
11. However, the Prosecution contests the Defence's submission that the date scheduled for the hearing of the Motion for Joinder should be postponed, submitting that the Defence has not offered cause for such postponement.
12. In relation to the date at which disclosure was made, the Prosecution submits that it was made on the 6th day of November 2003. This was because having been contacted by the Prosecution shortly after the Decision on Protective Measures, Counsel had requested that the disclosed material be held for him in Freetown until his arrival.
13. The Prosecution submits that there should not be an adjournment of the hearing on the Motion for Joinder because Counsel has had ample time to prepare, having received the Motion on the 11th day of November 2003. Moreover, the Prosecution submits that that Co-Counsel and the team's legal assistant have had time to prepare for a hearing even if the disclosed material has not been in Lead Counsel's possession. The Prosecution also submits that since Counsel states that they would be in a position to file preliminary motions by the 27th day of November 2003, they would by the 25th day of November 2003 have familiarised themselves with the material such that they could also deal with the joinder issue at a hearing.
14. The Prosecution argues that the Defence does not need to decide whether or not the indictment will be challenged before the Motion for Joinder is determined, for this is speculative and is not an issue on which the Motion for Joinder will turn.
15. In addition, the Prosecution argues that the hearing on the Motion for Joinder is discretionary following Rule 73 of the Rules, and hence that if Counsel is unable to attend that the matter could be decided on written submissions. Alternatively Co-Counsel could represent the Accused. Alternatively again the Prosecution suggest that the other parties being heard on that date should go forward as scheduled, and the Accused's hearing could be scheduled for another date.
16. The Prosecution further submits that given that the hearing on the Motion for Joinder has already been postponed until the 2nd and 3rd days of December 2003 that here is no reason for an extension of time.
17. The Defence filed no Reply.

AFTER HAVING DELIBERATED AS FOLLOWS:

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18. The Court notes that according to Rule 7(A) of the Rules, “...the time prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission...” It is important in the interests of expediency and fairness that the same rules apply to the serving of a document via electronic transmission and in hard copy format. In the opinion of the Chamber, the ordinary rules guiding the reception of documents during office hours are also applicable to the transmission of materials by email. Therefore the time at which a document is deemed to have been received is the time at which it is received in the party’s inbox, or equivalent, rather than either the time at which it is sent by the Court Management Section, or the time at which Counsel actually checks that inbox.
19. However, in addition to the existing procedure, it is understood that the Defence Office will now ensure that two members of every defence team are made aware of the existence of a served document if electronic filing is the chosen method of service for Lead Counsel. Assigned Counsel will now be contacted by telephone by a Legal Officer of the Defence Team each day that a document is filed, to ensure that the parties are notified. Thus the time at which Defence teams will be deemed to have received documents is the time at which one of the Defence teams’ offices first receives notification. In addition, all Associate Counsel with an email account will be served copies of any documents issued relating to their client’s cases.
20. At the time of the serving of the Motion for Joinder in the instant case the Defence Office policy of notifying two members of the Defence team had not been adopted, and thus only one person, Lead Counsel, was served with the Motion for Joinder. The Chamber also considers the fact that the Special Court had not up until this time considered this matter and issued guidance as to the meaning of the term “received” in relation to electronic service. Guided by such considerations, the Chamber deems that in this case the Motion for Joinder was received by the Defence on the 11th day of November 2003, and the deadline for the submission of a Response pursuant to Rule 7 of the Rules is 10 days after this time.
21. Now that the Special Court has given guidance on the correct procedure, motions brought in the future which raise the same issues will likely be denied. There should be no reason for such matters to arise again given that Associate Counsel will now be contacted. Nevertheless parties will also be expected to make every effort to ensure that they are able to receive documents by email, whether this is done by changing services or by appointing another person to check their accounts.
22. As regards the matter of Disclosure, the Chamber agrees with the Defence’s proposition that it is necessary for Defence Counsel to consider the disclosed materials in order to make an informed Response to the Motion for Joinder. However, the date at which Defence Counsel received the disclosed materials is no longer relevant given that the time of receipt of the

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Motion for Joinder is deemed to be the 11th day of November 2003 which day is after either of the dates upon which the Defence is claiming to have received Disclosure.

CONSIDERING ALSO that the Defence filed a Response to the Motion for Joinder on the 18th day of November 2003;

HEREBY GRANTS the Defence Request that the time of receipt of the Motion for Joinder be the 11th day of November 2003;

REFUSES the Application for Extension of time;

AND REFUSES the Defence Application for an adjournment of the hearings of the Motion for Joinder as this question is now moot.

Done in Freetown, this 1st day of December 2003



Judge Pierre Boutet
The Trial Chamber

