

SCSL-04-16-T
(18114-18116)

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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER II

Before: Justice Richard Lussick, Presiding Judge
Justice Teresa Doherty
Justice Julia Sebutinde

Registrar: Lovemore G. Munlo, SC

Date: 4 May 2006

PROSECUTOR **Against** **Alex Tamba Brima**
Brima Bazy Kamara
Santigie Borbor Kanu
(Case No.SCSL-04-16-T)

**DECISION ON JOINT DEFENCE REQUEST FOR LEAVE TO APPEAL FROM DECISION
ON DEFENCE MOTIONS FOR JUDGEMENT OF ACQUITTAL PURSUANT TO RULE 98
OF 31 MARCH 2006**

Office of the Prosecutor:

Jim Johnson
Karim Agha

Defence Counsel for Alex Tamba Brima:

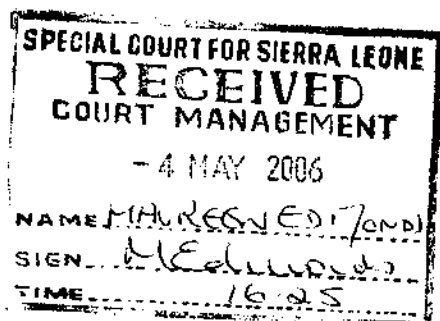
Kojo Graham
Glenna Thompson

Defence Counsel for Brima Bazy Kamara:

Andrew Daniels
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:

Geert-Jan Alexander Knoops
Carry Knoops
Abibola E. Manly-Spain



TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Richard Lussick, presiding, Justice Teresa Doherty and Justice Julia Sebutinde;

SEISED of the Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 of 31 March 2006 ("Motion"), filed on 3 April 2006, in which the Joint Defence seeks leave to appeal from the Trial Chamber's Decision on Defence Motions for Judgement of Acquittal, of 31 March 2006;

NOTING the Prosecution Response to 'Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 of 31 March 2006' ("Response"), filed on 25 April 2006, in which the Prosecution requests that the Trial Chamber dismiss the Joint Defence Motion;

NOTING the Joint Defence Reply to Prosecution Response to Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 of 31 March 2006 ("Reply"), filed on 1 May 2006;

RECALLING the Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98, dated 31 March 2006;¹

NOTING that Rule 73(B) of the Rules of Procedure and Evidence ("Rules") provides that

Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders;

NOTING that Rule 73(B) of the Rules does not confer a general right of appeal, but that leave to appeal may be granted by the Trial Chamber in cases where the conjunctive conditions of exceptional circumstances and irreparable prejudice to a party are satisfied;

ADOPTING the restrictive test applied by Trial Chamber I that: "[T]he overriding legal consideration in respect of an application for leave to file an interlocutory appeal is that the applicant's case must reach a level of exceptional circumstances and irreparable prejudice. Nothing short of that will suffice having regard to the restrictive nature of Rule 73(B) of the Rules and the rationale that criminal trials must not be heavily encumbered and consequently unduly delayed by interlocutory appeals";²

CONSIDERING that the Appeals Chamber has ruled that "In this Court, the procedural assumption is that trials will continue to their conclusion without delay or diversion caused by interlocutory appeals on procedural matters, and that any errors which affect the final judgment will be corrected in due course by this Chamber on appeal";³

¹ *Prosecutor v. Alex Tamba Brima et al.*, Case No. SCSL-04-16-T.

² *Prosecutor v. Sesay et al.*, SCSL-2004-15-PT, Decision on the Prosecutor's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution Motion for Joinder, 13 February 2004.

³ *The Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para. 43.

Jhg.






THE TRIAL CHAMBER FINDS:


- (i) that the decision in *Prosecutor v. Blagojevic et al*⁴ relied upon by the Defence applies to cases where a judgement of acquittal has been entered, and is therefore not pertinent to the present case;
- (ii) that, after careful consideration of the other matters raised by the Defence, the criteria of exceptional circumstances and irreparable prejudice prescribed by Rule 73(B) of the Rules have not been met;

AND DISMISSES THE MOTION.

Done at Freetown, Sierra Leone, this 4th day of May 2006.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde



⁴ *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Decision on Request for Certification of Interlocutory Appeal of the Trial Chamber's Judgement on Motions for Acquittal Pursuant to Rule 98Bis, 23 April 2004, paras. 11, 13.