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SCSL-2004-16-PT
(5438-5441)

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THE SPECIAL COURT FOR SIERRA LEONE
FREETOWN – SIERRA LEONE

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

Registrar: Robin Vincent
Date filed: 20th May, 2004

THE PROSECUTOR

Against

ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

Case No. SCSL-2004-16-PT

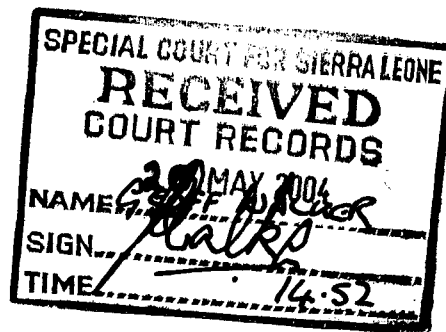
DEFENCE RESPONSE ON BEHALF OF TAMBA ALEX BRIMATO
PROSECUTION'S APPLICATION FOR LEAVE TO FILE AN INTERLOCUTORY
APPEAL AGAINST THE DECISION ON THE "PROSECUTION'S MOTION FOR
CONCURRENT HEARING OF EVIDENCE COMMON TO CASES SCSL-2004-
15-PT AND SCSL-2004-16-PT"

Office of the Prosecutor:

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Defence Counsel:

Mr. Terence Terry – Counsel
For Tamba Alex Brima



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**DEFENCE RESPONSE ON BEHALF OF TAMBA ALEX BRIMATO
PROSECUTION’S APPLICATION FOR LEAVE TO FILE AN
INTERLOCUTORY APPEAL AGAINST THE DECISION ON THE
“PROSECUTION’S MOTION FOR CONCURRENT HEARING OF
EVIDENCE COMMON TO CASES SCSL-2004-15-PT AND SCSL-2004-16-PT”**

The Defence submits that the Prosecution’s Application for leave to file an Interlocutory Appeal against the decision of the Trial Chamber of the Special Court for Sierra Leone on the Prosecution’s Motion for Concurrent hearing of evidence common to cases SCSL-2004-15-PT and SCSL-2004-16-PT should most respectfully be denied and/OR dismissed as the reasons contained therein for the Order prayed for before the Trial Chamber of the Special Court for Sierra Leone are not only unmeritorious but also totally ill founded.

ARGUMENT

Assuming the Trial Chamber of the Special Court for Sierra Leone is inclined to consider the said Application for leave to file an Interlocutory Appeal against the said decision of the Trial Chamber of the Special Court for Sierra Leone of 11th May, 2004, the Defence submits that in any event the reasons canvassed by the Prosecution do not satisfy the litmus test namely, exceptional circumstances as envisaged under Rule 73(B) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone to warrant the grant of leave to the Prosecution to appeal by the Trial Chamber of the Special Court for Sierra Leone.

II ALLEGED ERRORS COMMITTED BY THE TRIAL CHAMBER

Defence submits that once the Trial Chamber takes the view that exceptional circumstances have not been spelt out by the Prosecution to warrant the granting of leave to appeal, the matters referred to under the Rubric II 3 to 6 at page 2 and 7 to 10 at page 3 of the Prosecution's Application for leave to appeal become merely academic and do not and cannot arise.

Under the Rubric III ARGUMENTS FOR INTERLOCUTORY APPEAL at page 3 of the Prosecution's Application for leave to appeal, Defence agrees with the Prosecution that Rule 73(B) provides for interlocutory appeals in exceptional circumstances and to avoid irreparable prejudice to a party, and its appreciation of the position at law regarding the legal standard. Where however Defence part company with the Prosecution is in respect of the several matters alluded to at page 4 under the Rubric 13 to 14 of the Prosecution's Application for leave to appeal as constituting exceptional circumstances. Defence further submits and take the position that the issues mentioned by the Prosecution at page 4 of their Application for leave to appeal cannot and do not amount to irreparable prejudice within the four corners of Rule 73(B) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. Indeed Defence agrees with the Prosecution that protecting the fundamental rights of Accused individuals, includes conducting and concluding the criminal proceedings against them in a timely manner. Equally so the Defence agree with the Prosecution that concluding the trials in a fair and expeditious manner will meet the aims of the international community and above all bring justice in a reasonable time scale to the people of Sierra Leone. Indeed the ex-cathedra statement of the Prosecution that justice is not done in a vacuum is noted.

To be precise defence submits that the totality of the matters relied upon by the Prosecution throughout page 4 of their application for leave to appeal in its attempt to justify the two vital elements of exceptional circumstances and irreparable prejudice are at best untenable on their true reading and purport. To that extent Defence further submits that the matters canvassed at page 4 of the Prosecution's application for leave to appeal do not constitute any basis or support to justify exceptional circumstances and Defence further submits that not holding a concurrent hearing but allowing the

decision to stand without more will certainly not cause irreparable damage to the Prosecution.

The assertion by the Prosecution that as a result of the hardships and risks involved, some witnesses will not appear for the second trial to which they are called to testify is purely speculative and not borne out by the facts of this instant case.

In response to the rubric 17 at page 4 of the Prosecution's application for leave to appeal, the Defence adopts and affirm all the arguments and reasons it has canvassed above to support its position that this is not a proper application for leave to file an interlocutory appeal against the Trial Chamber's decision of 27th January 2004, filed on 3 February 2004.

CONCLUSION

For the foregoing submissions and reasons already canvassed, the Defence most respectfully submits that the Prosecution's Application date 14th May, 2004 for leave to file an Interlocutory Appeal against the decision of the Trial Chamber of the Special Court for Sierra Leone of 11th May, 2004 on the Prosecution Motion for concurrent hearing of evidence common to cases SCSL-2004-15-PT and SCSL-2004-16-PT be dismissed and/OR denied based on the reasons canvassed above.

Done in Freetown this 20th day of May, 2004


Terence M. Terry

Defence Counsel for the Accused

Tamba Alex Brima