

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

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

Registrar: Mr. Robin Vincent

Date filed: 7 March 2005

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU**

CASE NO. SCSL – 2004 – 16 – ~~T~~

**PROSECUTION RESPONSE TO RENEWED DEFENCE MOTION FOR
DEFECTS IN THE FORM OF THE INDICTMENT AND APPLICATION
FOR EXTENSION OF TIME (IF APPLICABLE)**

Office of the Prosecutor:
Luc Coté
Lesley Taylor

Defence Counsel for Brima:
Kevin Metzger
Glenna Thompson

SPECIAL COURT FOR SIERRA LEONE	
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NAME	NEIL GIBSON
SIGN	<i>[Signature]</i>
TIME	14:00

Prosecutor against Tamba Brima et al., Case No. SCSL-2004-16-~~KT~~

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I. BACKGROUND

1. On 1 March 2005 the Accused Brima filed a Motion for Defects in the Form of the Indictment (“the original motion”).
2. On 3 March 2005 the Prosecution filed its Prosecution Response to Defence Motion for Defects in the Form of the Indictment (“the original prosecution response”).
3. On 3 March 2005 the Decision on the Defence Motion for Defects in the Form of the Indictment, dated 2 March 2005 (“the Decision”), was served upon the parties.

4. On 4 March the Accused Brima filed a Renewed Motion for Defects in the Form of the Indictment and Application for Extension of Time (If Applicable) (“the renewed motion”).
5. The renewed motion seeks a reconsideration of the Decision or, alternatively, a referral of the renewed motion to the Appeals Chamber pursuant to Rule 72 (F). The Defence advances the following grounds (as summarized by the Prosecution) in support of that relief:
 - i. A failure by the Defence to articulate the proper basis for the relief sought in the original motion;
 - ii. The obligation of continuous disclosure imposed upon the Prosecution by Rule 66(A)(ii);
 - iii. A triggering of the right on the part of the Defence to file preliminary motions pursuant to Rule 72(A) consequent upon the service of the Further Consolidated Amended Indictment;
 - iv. The non-compliance with the decision in *The Prosecutor v Issa Hassan Sesay*, Decision and Order on the Defence Preliminary Motion for Defects in the Form of the Indictment, Case No. SCSL-2003-05-PT, 13 October 2003 “the Sesay Indictment Decision”); and
 - v. An apparent breach of Rule 4, amounting to non-compliance with the Rules pursuant to Rule 5, resulting from fact that the Order of The President authorising Judge Sebutinde to exercise her functions away from the seat of the Special Court postdates the Decision.
6. The Defence also seeks, in the alternative, an extension of time for the filing of the renewed motion based upon the right of the Accused to a fair trial.

II. ARGUMENT

7. The Prosecution submits that the renewed motion was filed in contravention of Rules 72(A), 50 (B)(iii), 72(C) and 72(D). The Prosecution further argues that the renewed motion seeks inappropriate relief. The Prosecution also argues that the articulated grounds are entirely without merit. The Prosecution submits that the renewed motion should be dismissed in its entirety.

The Renewed Motion Seeks Inappropriate Relief

8. The renewed motion, like the original motion, concerns objections based on alleged defects in the form of the indictment and is therefore a preliminary motion within the terms of Rule 72(B). Rule 72(C) provides that objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Trial Chamber. The renewed motion does not seek leave of the Trial Chamber to bring a second motion concerning alleged defects in the form of the indictment. Indeed other than saying that any omission by the Defence to refer the Trial Chamber to the proper basis for the motion “is regretted”¹, the renewed motion does not articulate any explanation for the failure to include the three new grounds asserted in the renewed motion in the original motion². In fact the majority of the renewed motion is a repetition of the original motion³. As such, the renewed motion fails to identify why the Defence should be allowed by the Trial Chamber to file a second preliminary motion concerning alleged defects in the form of the indictment, especially one filed the afternoon before the commencement of trial.

9. Rule 72(D) establishes that the Trial Chamber shall, subject to Rules 72(E) and 72(F), dispose of preliminary motions before the trial and that such decisions

¹ Paragraph 2 of the renewed motion.

² In this respect it is to be noted that the current legal team for the Accused has been retained since August/September 2004. See transcript of Status Conference, 1 March 2005, p 8.

³ Paragraphs 11-19 of the renewed motion.

shall not be subject to interlocutory appeal. The Prosecution submits that implicit in the combination of Rule 72(C) and Rule 72(D) is that the Trial Chamber is without the power to “reconsider” a previous decision on a preliminary motion.

10. The renewed motion argues further that should the Trial Chamber not be inclined to “reconsider” the Decision, that it refer the renewed motion to the Appeals Chamber pursuant to Rule 72(F) in view of the alleged “breach” of Rule 4 and non-compliance with the Rules pursuant to Rule 5. The Prosecution argues below that there has been no such “breach” or non-compliance (see paragraphs 25-28).
11. In any event, Rule 72(F) grants the Trial Chamber the power to refer a preliminary motion to a bench of at least three Appeals Chamber Judges if, in the opinion of the Trial Chamber, the preliminary motion raises an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.
12. The renewed motion does not advance any argument directed towards convincing the Trial Chamber that the matters contained therein would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, particularly in light of the dismissal of the original motion.
13. Finally, the renewed motion seeks an extension of time for filing if necessary⁴. Other than a mere reference to the right of the Accused to a fair trial⁵, the renewed motion makes no argument why such extension of time should be granted. The Decision established that the original motion was filed in contravention of Rules 72(A) and 50(B)(iii). The Prosecution submits that the renewed motion was filed in contravention of Rules 72(A), 50 (B)(iii), 72(C)

⁴ Paragraph 2 of the renewed motion asserts that the correct construction of Rules 66(A)(ii) and 72(A), (B)(ii) and (F) mean that no such extension of time is required.

⁵ Paragraph 6 of the renewed motion.

and 72(D). The Prosecution submits that in such circumstances the mere recitation of fair trial rights is insufficient to found an application for extension of time for filing.

The Articulated Grounds of the Renewed Motion are Without Merit

14. The renewed motion notes its regret that the original motion omitted the “proper basis” for the objection as to alleged defects in the form of the indictment. The renewed motion then identifies three grounds not articulated in the original motion (identified by the Prosecution in paragraph 5 ii-iv above) before repeating, verbatim, the original motion. It is therefore unclear whether the “proper basis” is comprised of the three new grounds, the grounds articulated in the original motion, or the combination of both.
15. The Prosecution reiterates that the renewed motion fails to identify why the “proper basis” was not argued in the original motion in circumstances where the facts founding the three new grounds did not alter between 1 March 2005 (the date of the original motion) and 4 March 2005 (the date of the renewed motion). Putting the specific effect of Rule 72(C) momentarily aside, the Rules of Procedure and Evidence do not contemplate multiple motions concerning the same issue.
16. To the extent that the renewed motion relies upon the grounds of the original motion, the Prosecution relies upon its arguments in the original prosecution response. The Prosecution arguments to the three new grounds follow immediately hereafter.

The Irrelevance of Rule 66(A)(ii)

17. Neither Rule 72(A) nor Rule 50(B)(iii) refers to Rule 66(A)(ii). The reference is to Rule 66(A)(i). The obligation of continuous disclosure imposed upon the Prosecution by Rule 66(A)(ii) is irrelevant to the determination of time limits established by Rules 72(A) and 50(B).

18. It is clear that the statements which fall within the ambit of Rule 66(A)(i) are those in the possession of the Prosecution as at the time of the initial appearance of an accused either under Rule 61 or Rule 50(B). That is because it is these materials which are the factual basis upon which an indictment, or an amendment of an indictment rests. Additional materials disclosed subsequently pursuant to Rule 66(A)(ii) have no bearing upon the form of the indictment. Rather, they are relevant to the proof of the matters pleaded therein.

19. Accordingly, the Prosecution submits that the Rule 66(A)(ii) continuing obligation does not, as a matter of logic or statutory construction, defeat the time limits established in Rule 72(A) or Rule 50(B)(iii).

The Irrelevance of the Filing of the Further Amended Consolidated Indictment

20. The renewed motion argues that the filing of the Further Amended Consolidated Indictment triggered a right of the Defence to file objections to the form of that Indictment pursuant to Rule 72(A). The renewed motion further argues that there was no order relating to procedural matters following the filing of the Further Consolidated Amended Indictment.

21. The renewed motion fails to refer to Rule 50. The Decision on the Prosecution Application to Further Amend the Consolidated Indictment by Withdrawing Counts 15-18 dated 15 February 2005 made it clear that the Indictment was amended by leave pursuant to Rule 50(A). Rule 50(B) sets out certain procedural requirements consequent upon the amendment of an indictment, but only if the amended indictment includes new charges. The Further Amended Consolidated Indictment contains no new charges. Rather it contains four fewer charges. Indeed, save for the withdrawal of Counts 15-18, the Further Amended Consolidated Indictment is identical to the Amended Consolidated

Indictment in respect of which Judge Boutet ordered time limits for filing preliminary motions on 17 May 2004⁶.

22. Consequently the procedure envisioned by Rule 50(B) does not apply and the filing of the Further Amended Consolidated Indictment on 18 February 2005 did not trigger a right of the Defence to file preliminary motions in respect of it.

The Irrelevance of the Sesay Indictment Decision

23. The renewed motion states that the Further Amended Consolidated Indictment fails to comply with the Sesay Indictment Decision because it contains no amendments as recommended by Trial Chamber I in that decision. The renewed motion does not specify what amendments should be made.
24. The only successful Defence submission in the Sesay Indictment Decision concerned the use of the phrase “*but not limited to those events*”, which was found to be impermissibly broad and also objectionable in not specifying the precise allegations against the Accused⁷. The challenge to the form of the indictment was, in every other particular, dismissed.
25. The phrase “*but not limited to those events*” does not appear in the Further Consolidated Amended Indictment. It is therefore difficult to ascertain what amendments to the Further Consolidated Amended Indictment the renewed motion argues should be made with reference to the Sesay Indictment Decision.
26. The Prosecution submits that the renewed motion exhibits a non-comprehension of the Sesay Indictment Decision and that no challenge to the form of the Further Consolidated Amended Indictment can be successfully based upon it.

⁶ See Transcript of Further Initial Appearance, 17 May 2004, page 24.

⁷ *The Prosecutor v Issa Hassan Sesay*, Decision and Order on the Defence Preliminary Motion for Defects in the Form of the Indictment, Case No. SCSL-2003-05-PT, 13 October 2003, paragraph 33.

The Alleged Non-Compliance with Rule 4

27. The renewed motion alleges a “breach” of Rule 4 amounting to non-compliance to the Rules pursuant to Rule 5 in that the Order Pursuant to Rule 4 authorising Judge Sebutinde to exercise her functions away from the seat of the Special Court postdates the date of the Decision.
28. This submission is mistaken. The Order Pursuant to Rule 4 does not postdate the Decision.
29. The Order Pursuant to Rule 4 is dated 2 March 2005 and authorises Judge Sebutinde to exercise her functions away from the seat of the Special Court between 2 March 2005 and 6 March 2005. The Decision is dated 2 March 2004.
30. The Prosecution submits that there has been no “breach” of Rule 4 and the objection on the ground of non-compliance with the Rules made pursuant to Rule 5 is without factual foundation. As such the Prosecution does not address the lack of evidence in the renewed motion to show material prejudice to the Defence necessary for relief to be granted pursuant to Rule 5. Further, the Prosecution reiterates its previous argument that this ground cannot found a referral to the Appeals Chamber pursuant to Rule 72(F).

III. CONCLUSION

31. For the reasons outlined above, the Prosecution submits that the renewed motion was filed in contravention of Rules 72(A), 50 (B)(iii), 72(C) and 72(D). The Prosecution further submits that the renewed motion seeks inappropriate relief and that the articulated grounds are entirely without merit. The Prosecution respectfully submits that the renewed motion be dismissed in its entirety.

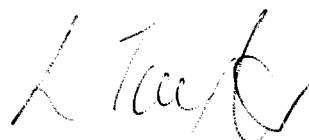
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Filed at Freetown

7 March 2005



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