

**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown – Sierra Leone

Before: Hon. Justice Richard Lussick, Presiding  
Hon. Justice Teresa Doherty  
Hon. Justice Julia Sebutinde  
Registrar: Mr. Lovemore G. Munlo SC  
Date filed: 7 July 2006

**THE PROSECUTOR**

**Against**

**Alex Tamba Brima**  
**Brima Bazy Kamara**  
**Santigie Borbor Kanu**

Case No. SCSL-04-16-T

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**PUBLIC**

**PROSECUTION MOTION FOR RELIEF IN RESPECT OF VIOLATIONS OF RULE 67**

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Office of the Prosecutor:  
Mr. Christopher Staker  
Mr. Karim Agha  
Ms. Melissa Pack  
Mr. Charles Hardaway

Defence Counsel for Alex Tamba Brima  
Mr. Kojo Graham  
Ms. Glenna Thompson

Defence Counsel for Brima Bazy Kamara  
Mr. Andrew Daniels  
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Defence Counsel for Santigie Borbor Kanu  
Mr. Geert-Jan Alexander Knoops  
Ms. Carry Knoops  
Mr. Abibola E. Manly-Spain

SPECIAL COURT FOR SIERRA LEONE  
**RECEIVED**  
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- 7 JUL 2006  
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## I. INTRODUCTION

1. On 22 March 2004, the Defence for the Third Accused filed a Pre-Trial Brief<sup>1</sup> setting out a defence of alibi for the period from April to September 2000.<sup>2</sup> On 17 February 2005 the Defence for the First Accused filed a Pre-Trial Brief,<sup>3</sup> which mentioned a possible defence of alibi for the period from February to July 1998, but did not contain any details of this defence.<sup>4</sup>
2. No further details of any alibi defence were subsequently provided to the Prosecution by the Defence for the First or Third Accused, either before or since the commencement of trial.
3. On 25 May 2006 the Defence for the First Accused submitted a summary of the First Accused's testimony.<sup>5</sup> The summary did not include any reference to a defence of alibi.
4. On 5 June 2006 the First Accused began testifying on his own behalf. In the course of his testimony, evidence was presented of alibis for himself and the Third Accused.
5. The Defence for the First and Third Accused are in breach of Rule 67. Rule 67(A)(ii) requires the Defence to notify the Prosecution of any defence of alibi it plans to present, including the place or places the Accused is claimed to have been during the alleged crimes and the names and addresses of witnesses and any other evidence the Accused intend to rely on in presenting the defence. There has been no notification, formal or otherwise, of these alibi defences by the First or Third Accused. Therefore, the Prosecution seeks an order from the Trial Chamber requiring their compliance with Rule 67.

## II. APPLICABLE LAW

6. Rule 67(A)(ii) states that the Defence shall notify the Prosecutor of its intent to enter the defence of alibi as early as reasonably practicable and in any event prior to the commencement of the trial:

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<sup>1</sup> *Prosecutor v. Kanu*, SCSL-16-39, "Kanu – Defense Pre-Trial Brief and Notification of Defenses Pursuant to Rule 67(A)(ii)(a) and (b)," 22 March 2004.

<sup>2</sup> *Id.* at para. 30-36.

<sup>3</sup> *Prosecutor v. Brima et al.*, SCSL-16-145, "Defence Pre-Trial Brief for Tamba Alex Brima," 17 February 2005.

<sup>4</sup> *Id.* at para. 11.

<sup>5</sup> *Prosecutor v. Brima et al.*, SCSL-16-504, "Confidential Defence Disclosure Pursuant to Trial Chamber's Order of 17 May 2006," 25 May 2006.

in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.

7. The purpose of Rule 67(A)(ii)(a) is to enable the Prosecution to test the evidence relied upon by the Accused in support of the alibi defence.<sup>6</sup> The Rule “allows the Prosecution to organize its evidence and to prepare its case prior to the commencement of trial on the merits.”<sup>7</sup>
8. In *Ndayambaje*, the ICTR Trial Chamber noted that the obligations under the rule are clear and unambiguous.<sup>8</sup> The Trial Chamber went on to describe the criteria which must be met in order for the Defence to meet its obligations under Rule 67:

The Defence is required to, as early as reasonably practicable and in any event prior to the commencement of the trial, notify the Prosecution of its intention to enter the defence of alibi, and in that notice, the Defence is obliged to specify the names and addresses of witnesses on which the accused intends to rely to establish the alibi.<sup>9</sup>

### III. REVELATIONS IN FIRST ACCUSED’S TESTIMONY

9. It is apparent from the testimony of the First Accused that the Defence for the First Accused is bringing forth the defence of alibi. Given that the evidence of the First Accused also provides an alibi for the Third Accused, it is reasonable to anticipate that the Defence for the Third Accused will also raise an alibi defence as part of its case.

#### *In Relation to the First Accused*

10. The First Accused has testified in relation to himself that:
  - a) He was not in Kono District until July 1998. Instead, he was in Kailahun District under arrest by the RUF.<sup>10</sup>
  - b) He was not in Bombali District until September 1998. Instead, he was in his home village Yarya in Kono District.<sup>11</sup>

<sup>6</sup> *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, “Decision on Jerome Bicomumpaka’s Notice of Alibi,” Trial Chamber, 7 July 2005, para. 3.

<sup>7</sup> *Prosecutor v. Rutaganda*, ICTR-96-3-A, “Judgment,” Appeals Chamber, 26 May 2003, para. 241.

<sup>8</sup> *Prosecutor v. Ndayambaje et al.*, ICTR-96-8-T, “Decision on the Confidential Prosecutor’s Motion to be Served with Particulars of Alibi Pursuant to Rule 67(A)(ii)(a),” Trial Chamber, 1 March 2005, para 27.

<sup>9</sup> *Id.*

<sup>10</sup> AFRC Trial Transcripts: page 41, 8 June 2006; page 7, 12 June 2006.

- c) He was not in Freetown during the January 1999 invasion. Instead, he was with the Third Accused and Woyo en route from Goba Water to Makeni.<sup>12</sup>

***In Relation to the Third Accused***

11. The First Accused has testified in relation to the Third Accused:
- a) That the Third Accused was not present in Freetown during the January 1999 invasion.<sup>13</sup>
  - b) That the Third Accused instead escaped from captivity in Goba Water and was en route to Makeni during the Freetown invasion.<sup>14</sup>

**IV. SUBMISSIONS AS REGARDS THE DEFENCE OF ALIBI**

***The First Accused's Submissions***

12. On 17 February 2005 the Defence for the First Accused filed a Pre-Trial Brief.<sup>15</sup> In the Pre-Trial Brief, the First Accused specifically pleaded alibi in respect to the period between February and July 1998 when he claims he was held in custody by the RUF.<sup>16</sup> The brief does not specify where the First Accused claims to have been during this time, nor does it provide names and addresses of any witnesses or other evidence upon which the Defence relies to establish this alibi.<sup>17</sup> The most the brief offers is that, "the Defence will seek to call evidence, if required, to show that Mr. Brima was held in custody by the RUF between February and July 1998."<sup>18</sup>
13. There is no alibi referred to in the Pre-Trial Brief of the First Accused in respect of the period from July to September 1998, during which the First Accused now claims in his oral testimony to have been in Yarya. There is no alibi set out in the Pre-Trial Brief for the period during the 1999 Freetown invasion, during which the First Accused now claims in his oral testimony to have been en route from Goba Water to Makeni. Not only

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<sup>11</sup> AFRC Trial Transcript: pages 17, 42, 50, 12 June 2006.

<sup>12</sup> AFRC Trial Transcript: pages 27-31, 15 June 2006.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Prosecutor v. Brima et al.*, SCSL-16-145, "Defence Pre-Trial Brief for Tamba Alex Brima," 17 February 2005.

<sup>16</sup> *Id.* at para 11.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

were these alibis were not pleaded in the Pre-Trial Brief, they were never put to any Prosecution witness in cross-examination.

### ***The Third Accused's Submissions***

14. On 22 March 2004, the Defence for the Third Accused filed a Pre-Trial Brief.<sup>19</sup> In the Pre-Trial Brief, the Third Accused offered a general alibi that he was not in any of the villages mentioned within the indictment.<sup>20</sup> The Brief does not specify where the Third Accused claims to have been during this time, nor does it provide names and addresses of any witnesses or other evidence upon which the Defence relies to establish this alibi.<sup>21</sup>
15. The Pre-Trial Brief also referred to an alibi in relation to Counts 14-17 of the Indictment.<sup>22</sup> This alibi was limited to the period between 15 April 2000 – 15 September 2000. This section of the Pre-Trial Brief does contain names of witnesses and evidence.<sup>23</sup>
16. No mention was made in the Pre-Trial Brief of any alibi for the period during the 1999 Freetown invasion, during which the First Accused now claims that the Third Accused was en route from Goba Water to Makeni. Nor was this alibi ever put to any Prosecution witness in cross-examination by the Defence for the First or Third Accused.
17. No details of any defence of alibi for any Accused were provided to the Prosecution subsequent to the filing of the Pre-Trial Briefs, either before or after the commencement of the trial.

### **V. BREACH OF RULE 67**

18. Both Accused are in breach of Rule 67(A)(ii). The evidence offered by the First Accused during his testimony includes alibis for both the First and Third Accused, far exceeding what was contained in the Pre-Trial Briefs.

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<sup>19</sup> *Prosecutor v. Kamu*, SCSL-16-39, “Kanu – Defense Pre-Trial Brief and Notification of Defenses Pursuant to Rule 67(A)(ii)(a) and (b),” 22 March 2004.

<sup>20</sup> *Id.* at para. 28.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at para.30.

<sup>23</sup> *Id.* at para. 30-36.

19. This evidence is just coming to light during the Defence case of the First Accused, well after the commencement of trial. It is clear that the Defence must have been aware of its intention to present this alibi evidence, yet it did not notify the Prosecution as early as was reasonably practicable. To this day, the Prosecution has not received any notification from the Defence about its intention to raise any alibi defence, aside from what was presented in the Pre-Trial Briefs.
20. The First Accused has offered no notice of alibi for the period from July to September 1998 when the First Accused now claims he was in Yarya or for the period during the 1999 Freetown invasion, when the First Accused now claims he was en route from Goba Water to Makeni. The partial notification provided in the Pre-Trial Brief for the period from February to July 1998 does not satisfy the clear requirements of Rule 67. There was no list of witnesses nor details of evidence in support of the defence of alibi.
21. The Third Accused has offered no notice of alibi for the period during the 1999 Freetown invasion, when the First Accused now claims the Third Accused was en route from Goba Water to Makeni.
22. At the very least, the First Accused could and should have provided clear details of the alibi defences upon which he relies in the filing of his witness summary. The summary of testimony goes no further than stating that the First Accused will testify that he was not in direct command of AFRC/RUF forces during these time periods.<sup>24</sup> This is not sufficient to fulfill the obligations described in Rule 67(A)(ii).
23. The Prosecution notes that presumably the Defence for each Accused has been acting on the instructions of their respective clients.

## VI. CONCLUSION

24. The Prosecution submits that the Defence for the First Accused is in breach of its obligations under Rule 67(A)(ii). If it is the intention of the Defence for the Third

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<sup>24</sup> *Prosecutor v. Brima et al.*, SCSL-16-504, “Confidential Defence Disclosure Pursuant to Trial Chamber’s Order of 17 May 2006,” 25 May 2006.

Accused to rely on the evidence of the First Accused referred to in paragraph 11 above, or to present any further evidence to similar effect, then it is submitted that the Defence for the Third Accused is also in breach of its obligations under Rule 67(A)(ii).

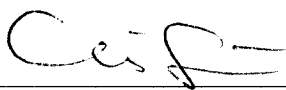
25. The Prosecution seeks the notification to which it is entitled under Rule 67(A)(ii) including formal notification by the Defence of:

- 1) any alibi defence(s) they intend to advance; and
- 2) the place or places at which the Accused claim to have been present at the time of the alleged crimes; and
- 3) the names and addresses of all witnesses upon whom the Accused intend to rely to establish any alibi; and
- 4) any other evidence upon which the Accused intend to rely to establish any alibi.

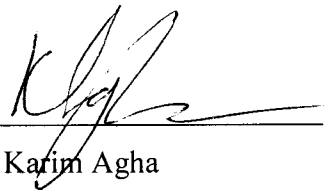
26. The Prosecution also seeks an order that the Defence for all of the Accused in this case shall be permitted to call only those witnesses who do not testify to alibi evidence until such a time as the Prosecutor has received the required notice and has had sufficient time to conduct a full and complete investigation of the alibi witnesses and evidence.

Filed in Freetown,  
7 July 2006

For the Prosecution,



Mr. Christopher Staker  
Acting Prosecutor



Mr. Karim Agha  
Senior Trial Attorney

**Index of Authorities**

1. AFRC Trial Transcripts: page 41, 8 June 2006 – page 7, 12 June 2006.
2. AFRC Trial Transcript: pages 17, 42, 50, 12 June 2006.
3. AFRC Trial Transcript: pages 27-31, 15 June 2006.
4. *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, “Decision on Jerome Bicomumpaka’s Notice of Alibi,” Trial Chamber, 7 July 2005.
5. *Prosecutor v. Brima et al.*, SCSL-16-145, “Defence Pre-Trial Brief for Tamba Alex Brima,” 17 February 2005.
6. *Prosecutor v. Brima et al.*, SCSL-16-504, “Confidential Defence Disclosure Pursuant to Trial Chamber’s Order of 17 May 2006,” 25 May 2006.
7. *Prosecutor v. Kanu*, SCSL-16-39, “Kanu – Defense Pre-Trial Brief and Notification of Defenses Pursuant to Rule 67(A)(ii)(a) and (b),” 22 March 2004.
8. *Prosecutor v. Ndayambaje et al.*, ICTR-96-8-T, “Decision on the Confidential Prosecutor’s Motion to be Served with Particulars of Alibi Pursuant to Rule 67(A)(ii)(a),” Trial Chamber, 1 March 2005.
9. *Prosecutor v. Rutaganda*, ICTR-96-3-A, “Judgment,” Appeals Chamber, 26 May 2003.