

539)

SCSL-04-16-T
(18985-18991)

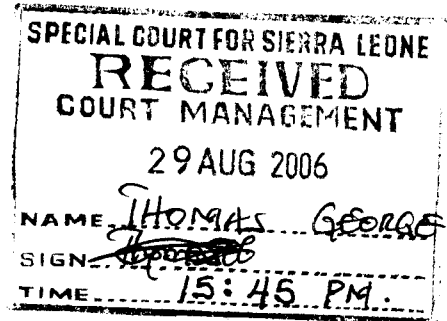
18985

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: 29 August 2006



THE PROSECUTOR

Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-T

PUBLIC

**URGENT PROSECUTION MOTION FOR RELIEF IN RESPECT OF VIOLATIONS OF THE TRIAL
CHAMBER'S ORDER OF 26 APRIL 2006**

Office of the Prosecutor:
Mr. James C. Johnson
Mr. Karim Agha
Ms. Nina Jørgensen

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

Defence Counsel for Brima Bazzy Kamara
Mr. Andrew Daniels
Mr. Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu
Mr. Geert-Jan Alexander Knoops
Ms. Carry Knoops
Mr. Agibola E. Manly-Spain

I. INTRODUCTION

1. The Prosecution hereby moves the Trial Chamber for relief in respect of violations by the Defence of the Court's disclosure order of 26 April 2006.¹
2. The Prosecution requests that this motion be dealt with by the Trial Chamber as a matter of urgency. The Prosecution requests that the Trial Chamber order expedited filings in relation to this motion, such that any Defence response would be filed by 4 September 2006 and any Prosecution reply by 6 September 2006.

II. BACKGROUND

3. On 26 April 2006, the Trial Chamber ordered the Defence to file *inter alia*, the following material on or before 10 May 2006:
 - (a) A list of witnesses which each Defence Team intends to call, including:
 - (i) the order in which the Defence Team intend to call the witnesses;
 - (ii) the name and/or nickname, date of birth (if known), and occupation of each witness;
 - (iii) the language spoken by the witness;
 - (iv) a summary of the facts on which each witness will testify;
 - (v) the points in the Indictment as to which each witness will testify;
 - (vi) the estimated length of time required for each witness;
 - (b) A list of expert witnesses with an indication of when their report will be disclosed to the Prosecution.
4. On 17 May 2006, following the failure of the Defence to comply fully with the 26 April Order, the Trial Chamber ordered the Defence to file their final witness lists pursuant to the 26 April Order on or before 21 August 2006.²
5. On 4 August 2006, the Prosecution sought clarification that the final witness lists were to be disclosed according to the original 26 April Order and the Presiding Judge confirmed that the effect of the 17 May Order was simply to extend the date for compliance and did not alter the nature of the original order.³
6. Also on 4 August 2006, the Prosecution sought clarification as to the order of call of

¹ *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-478, "Order for Disclosure pursuant to Rule 73ter and the Start of the Defence Case", 26 April 2006.

² *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-494, "Decision on Confidential Joint Defence Motion as to Inability to Provide Details of Certain Witnesses on 10 May 2006 and Anticipation Subpoenas *Ad Testificandum*", 17 May 2006

³ *Prosecutor v Brima, Kamara, Kanu*, Transcript, 4 August 2006, p. 4 (draft version).

witnesses after the August recess, especially with regard to the remaining witnesses from the original list of 49 that had not been called. The Prosecution stated its understanding that the original list of 49 pursuant to the 26 April Order were in the order of call in any case. The Defence appeared to agree and stated that it was its intention to call the remaining witness from the original list of 49 first.⁴

7. On 21 August 2006, the Defence for the First and Second Accused filed their Confidential Joint Defence Disclosure of their individual witnesses.⁵ The witness lists provided contain names, pseudonyms, and (with respect to the Second Accused only) aliases. All witnesses are described as testifying to “all counts relevant to the Indictment”. All witnesses are described as testifying to “all counts relevant to the Indictment”.
8. Also on 21 August 2006, the Defence for the Third Accused filed its confidential individual witness list and the common witness list.⁶ These lists comply substantially with the 26 April Order. However, the names of different expert witnesses to those already disclosed with respect to two categories of expert were provided. Furthermore, contrary to the 26 April Order, the Defence have failed to provide the call order for the common witnesses beyond the next 20 witnesses.

II. ARGUMENT

Failure of the First and Second Accused to Provide Summaries

9. The Defence for the First and Second Accused have failed to provide any form of summary with respect to their individual witnesses in clear breach of the 26 April Order. They have not provided any adequate reason for this omission despite having had ample time to comply with the Trial Chamber’s orders. It must be assumed that some form of statement is available for these witnesses in order for them to be listed on a final witness list. A final witness list must be expected to have a degree of permanency; it cannot still be in the form of a provisional or “wish list”.
10. In particular, the Defence does not provide any reason why summaries have not been

⁴ Ibid, pp. 5-6.

⁵ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-530, “Confidential Joint Defence Disclosure of Individual Witnesses for the 1st and 2nd Accused pursuant to the Order of the Trial Chamber II”, 21 August 2006.

⁶ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-534, “Confidential Kanu – Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006”, 21 August 2006.

provided in relation to the alibi witnesses that the First Accused intends to call.

11. The Prosecution therefore submits that since the Defence has failed to produce summaries as ordered on 26 April, with the lengthy extension of time granted on 17 May, the Defence should now be required by the Trial Chamber, pursuant to its powers under Rule 73ter and 54, to disclose the statements of all witnesses on the final witness list.
12. If the Trial Chamber is not minded to order the production of statements, the Prosecution requests an order for summaries with respect to *all* witnesses to be disclosed as a matter of urgency and with respect to *all* listed witnesses by the same date.
13. The Prosecution submits that any further or ongoing failure of the Defence to comply with the Court's orders should result in the witnesses for whom summaries have not been provided being dropped from the list and reinstated only upon a showing of good cause.

Expert Witnesses

14. On 10 May 2006, the Defence filed its Confidential Joint Defence Disclosure listing four categories of expert witness and seven names.⁷ The Defence therefore complied with the 26 April Order by disclosing the names of its experts and providing a date by which the reports would be disclosed. Two alternative child soldier experts were listed as well as two alternative forced marriage experts. However, in its list of expert witnesses filed on 21 August, the Defence has named a completely new child soldiers expert and a completely new forced marriage expert, providing a new date for the disclosure of the report of the new child soldiers expert. Furthermore, the Defence has disclosed the report of the new forced marriage expert without providing any notice to the Prosecution of the changes.
15. The Prosecution submits that the Defence cannot be permitted to make these unilateral changes. The Defence should have informed the Court and the Prosecution at the earliest opportunity of the proposed changes. For example, in order for the report of the new forced marriage expert to be filed on 21 August, the Defence must have known of the change for some considerable time. The Prosecution submits that the Defence should be required to demonstrate good cause to add these new experts to its list.

⁷ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-490, "Confidential Joint Defence Disclosure pursuant to Trial Chamber Order of 26 April 2006", 10 May 2006., Annex 2.

Original 49 Witnesses

16. The Prosecution notes that the order of call of the next 20 witnesses for the trial session commencing on 4 September 2006, as filed with the Court on 21 August 2006 and subsequently amended by e-mail on 24 August 2006, includes only four witnesses from the original list of 49 witnesses.⁸ Others appear elsewhere on the final witness lists. This is contrary to the clear understanding of the Prosecution, Defence and Trial Chamber on 4 August 2006. The Prosecution submits that the Defence should be required to follow its original call order. Witnesses from the original 49 who have not been called and who do not appear in the call order for the next twenty witnesses, but who do, however, still appear on the final witness list, should be dropped from the witness list and only reinstated upon a showing of good cause.
17. In addition, any witness from the original provisional witness list of 49 which was filed on 10 May 2006, who does not appear on the final witness list at all, must be assumed to have been dropped from the Defence witness list completely. Such witnesses may only be reinstated upon a showing of good cause.

III. RELIEF SOUGHT

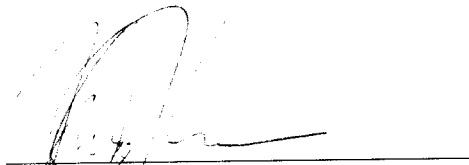
18. The Prosecution seeks the following relief:
- a) That the Trial Chamber order the immediate disclosure of the statements of all witnesses in the individual witness lists of the First and Second Accused;
 - b) Alternatively, that the Trial Chamber order the production of summaries of the testimony of all witnesses in the individual witness lists of the First and Second Accused by 8 September 2006 at the latest, after which date the witnesses for whom summaries have not been produced be dropped from the witness list subject to their reinstatement upon a showing of good cause;
 - c) That the Defence for the First and Second Accused be required to comply with the 26 April Order in full in all other respects by the same date, in particular by providing the call order for all remaining common witnesses;

⁸ While the list filed with the Court on 21 August 2006 contained five names that were on the provisional list of 20 filed 10 May 2006, the defence indicated via e-mail on 24 August 2006 that one witness had already testified. This witness was thus dropped and the list reduced from 20 to 19 witnesses.

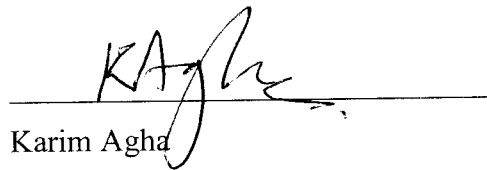
- d) That the Defence be required to show good cause to change its expert witnesses;
- e) That the Defence be required to follow its original call order and that a failure to do so will result in witnesses from the original, provisional list of 49 witnesses being dropped from the final lists;
- f) That any witnesses from the original provisional list of 49 witnesses filed on 10 May 2006, who do not appear on the final lists, no longer be considered as Defence witnesses in this case.

Filed in Freetown,
29 August 2006

For the Prosecution,



James C. Johnson
Chief of Prosecutions



Karim Agha
Senior Trial Attorney

Index of Authorities

Prosecutor v Brima, Kamara, Kanu, SCSL-04-16-T-478, “Order for Disclosure pursuant to Rule 73ter and the Start of the Defence Case”, 26 April 2006.

Prosecutor v Brima, Kamara, Kanu, Transcript, 4 August 2006, p. 4 (draft version).

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-530, “Confidential Joint Defence Disclosure of Individual Witnesses for the 1st and 2nd Accused pursuant to the Order of the Trial Chamber II”, 21 August 2006.

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-534, “Confidential Kanu – Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006”, 21 August 2006.

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-490, “Confidential Joint Defence Disclosure pursuant to Trial Chamber Order of 26 April 2006”, 10 May 2006.

Prosecutor v Brima, Kamara, Kanu, SCSL-04-16-T-494, “Decision on Confidential Joint Defence Motion as to Inability to Provide Details of Certain Witnesses on 10 May 2006 and Anticipation Subpoenas *Ad Testificandum*”, 17 May 2006.