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SCSL-04-16-T  
(19328-19330)

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: 22 November 2006

THE PROSECUTOR

Against

Alex Tamba Brima  
Brima Bazzy Kamara  
Santigie Borbor Kanu

Case No. SCSL-04-16-T

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PUBLIC

PROSECUTION REPLY TO KANU RESPONSE TO PROSECUTION APPLICATION FOR LEAVE TO  
APPEAL DECISION ON CONFIDENTIAL MOTION TO CALL EVIDENCE IN REBUTTAL

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Office of the Prosecutor:  
Mr. Christopher Staker  
Mr. Karim Agha

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. Abibola E. Manly-Spain

SPECIAL COURT FOR SIERRA LEONE  
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NAME Adura Njima K.  
SIGN Njima  
TIME 14:58

1. On 17 November 2006, the Prosecution filed an application for leave to appeal (“**Prosecution Motion**”) against the Trial Chamber’s Decision on Confidential Motion to Call Evidence in Rebuttal (“**Decision**”) of 14 November 2006.<sup>1</sup> The Defence for the Third Accused responded on 21 November 2006 (the “**Defence Response**”). The Prosecution now files this reply to the Defence Response.
2. The Prosecution submits that the Defence Response raises no issue that has not been dealt with in the Prosecution application for leave to appeal.
3. The Defence Response suggests that even if the Trial Chamber did err in the exercise of its discretion in deciding not to allow rebuttal evidence, this does not amount to “exceptional circumstances” for the purposes of Rule 73(B). However, the Prosecution does not suggest that an error by the Trial Chamber in the exercise of a discretion will of itself amount to “exceptional circumstances”. For the reasons set out in the Prosecution Motion, it is submitted that there are other factors, which considered cumulatively, amount to exceptional circumstances.
4. The Defence Response argues that, contrary to the position taken by the Prosecution, there was no general principle of law involved in the Decision, and that the Decision turned on the facts specific to this particular case. The Prosecution submits that this is not correct. As in any legal system, judicial decisions and judgements which apply general principles to the facts of specific cases can be of general importance in defining and clarifying the scope of the general principles themselves. Even if the Decision itself did not acknowledge that it dealt with an important issue of principle, for the reasons given in the Motion, it did. Furthermore, the Decision is a judicial precedent that can be expected to be referred to in the future by the Special Court and other courts and tribunals. Unless corrected on appeal, the Decision will stand as the law of the Special Court on rebuttal evidence.
5. A Trial Chamber has an overriding obligation to search for the truth. In order to determine the truth, it needs to have all relevant and probative evidence before it. In certain circumstances, evidence that is relevant and probative may be excluded, in order for instance to protect the rights of the Accused in cases where the Prosecution has failed

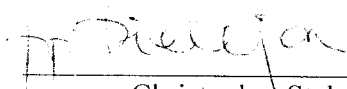
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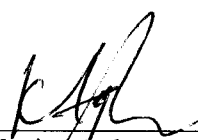
<sup>1</sup> *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-582, “Decision on Confidential Motion to Call Evidence in Rebuttal”, 14 November 2006.

to comply with obligations under the Rules. However, in this case, it is the Defence and not the Prosecution that was in breach of the Rules, in failing to give the Prosecution the requisite notice of an intended alibi defence. A decision that relevant and probative evidence can be excluded, to the advantage of the Accused and to the prejudice of the Prosecution case, as a consequence of a breach of the Rules by the Defence, is a decision which clearly has important consequences for the scope of rebuttal evidence in general, as well as for the fundamental duty of the court to establish the truth.

6. The Prosecution Motion deals with other circumstances which, viewed cumulatively, constitute “exceptional circumstances” for the purposes of Rule 73(B).
7. The Prosecution submits that it has satisfied the requirements under Rule 73(B) for leave to appeal to be granted.

Done in Freetown,  
22 November 2006  
For the Prosecution,

  
\_\_\_\_\_  
Christopher Staker  
Acting Prosecutor

  
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Karim Agha  
Senior Trial Attorney