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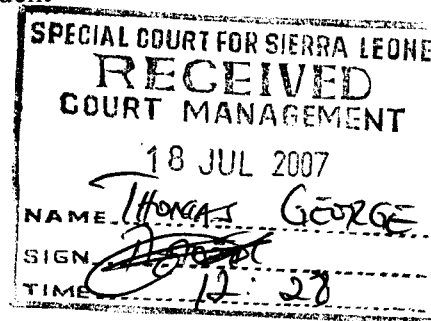
**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown – Sierra Leone

IN THE APPEALS CHAMBER

Before: Hon. Justice George Gelaga King, President  
Hon. Justice Emmanuel Ayoola  
Hon. Justice A. Raja N. Fernando  
Hon. Justice Renate Winter  
Hon. Justice Geoffrey Robertson, QC

Registrar: Mr Herman Von Hebel

Date filed: 18 July 2007



**THE PROSECUTOR**

**Against**

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

Case No. SCSL-04-16-T

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**PUBLIC**

**PROSECUTION'S RESPONSE TO URGENT JOINT DEFENCE REQUEST FOR EXTENSION OF TIME-LIMIT PURSUANT TO RULE 116 FOR FILING OF NOTICE OF APPEAL AND APPEAL SUBMISSIONS**

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Office of the Prosecutor:  
Dr. Christopher Staker  
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Mr. Chile Eboe-Osuji

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

Defence Counsel for Brima Bassy Kamara  
Mr. Andrew Daniels  
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Defence Counsel for Santigie Borbor Kanu  
Mr. Geert-Jan Alexander Knoops  
Ms. Carry Knoops  
Mr. Agibola E. Manley-Spain

## Introduction

1. On 13 July 2007, Document SCSL-16-620, entitled “Urgent Joint Defence Request for Extension of Time-Limit Pursuant to Rule 116 for Filing of Notice of Appeal and Appeal Submissions”, was filed with Court Management.
2. The Prosecution submits that Document SCSL-16-620 is not a motion that has been validly filed in any proceedings before the Special Court, and that the Appeals Chamber should therefore decline to entertain it or should dismiss it for lack of jurisdiction (see paragraphs 3-6 below). Alternatively, if the Appeals Chamber were to decide that Document SCSL-16-620 is a validly filed motion before the Appeals Chamber, it should be dismissed on its merits (see paragraphs 7 to 21 below).

## Document SCSL-16-620 is not a validly filed motion

3. Document SCSL-16-620 purports to be a motion addressed to the Appeals Chamber in “Case No. SCSL-2004-16-A”. However, the document was filed by Court Management as a document in Case No. SCSL-2004-16-T, *Prosecutor v. Alex Tamba Brima, Brima Bazy Kamara and Santigie Borbor Kanu* (the “**AFRC case**”). The Prosecution submits that Document SCSL-16-620 is not a motion that has been validly filed in any proceedings before the Special Court, for two reasons.
4. First, it is submitted that the Appeals Chamber is not presently seized of any appeal in the AFRC case, and that there is at present therefore no “Case No. SCSL-2004-16-A” pending before the Special Court. The AFRC case is presently before Trial Chamber II. The sentencing judgement in that case is due to be given on 19 July 2007.<sup>1</sup> Within 14 days of the sentence being pronounced

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<sup>1</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, “Scheduling Order for Sentencing Hearing and Judgement”, Trial Chamber, 10 July 2007.

by the Trial Chamber, any of the parties may file a notice of appeal against the judgement or sentence, pursuant to Rule 108 of the Rules of Procedure and Evidence (“**Rules**”). The Prosecution submits that it is upon the filing of a notice of appeal pursuant to Rule 108 of the Rules that the Appeals Chamber becomes seized of an appeal in a case. Unless and until that occurs, the Prosecution position is that there are no proceedings in the AFRC case presently before the Appeals Chamber, and the Appeals Chamber cannot entertain motions in non-existent proceedings.

5. Secondly, paragraph 10 of Document SCSL-16-620 indicates that the signatories of that document, Mr Knoops, Mr Metzger and Mr Harris, “are not yet assigned to the three convicted persons”.<sup>2</sup> From paragraphs 19 and 20 of Document SCSL-16-620, it appears that the three signatories of that document have not yet decided whether they are even willing to be assigned as Defence counsel in any appeal in this case, due to outstanding issues with the Defence Office in respect of the terms of their proposed contracts. The Prosecution submits that even if the Appeals Chamber were seized of an appeal in this case, which it is not, it could still not entertain motions filed by persons who have not been validly assigned or appointed to represent the Convicted Persons in this case, and indeed, who may ultimately never be so assigned. A motion purported to be filed on behalf of the Defence by a person who is not in fact a legal representative of one of the Convicted Persons is not a validly filed motion.
6. As Document SCSL-16-620 is not a validly filed motion in proceedings before the Appeals Chamber, it is submitted that the Appeals Chamber should decline to entertain it, or should dismiss it for lack of jurisdiction.

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<sup>2</sup> It is noted, however, that Geert-Jan Alexander Knoops is to the Prosecution’s knowledge still assigned as counsel to Santigie Borbor Kanu. Document SCSL-16-620 indicates however that he has not yet been contracted to provide legal services in connection with any appeal in this case.

**Alternatively, the request in Document SCSL-16-620 should not be granted**

7. In the event that the Appeals Chamber were to decide that Document SCSL-16-620 is a validly filed motion that the Appeals Chamber has the power to entertain, the Prosecution submits that it should be rejected by the Appeals Chamber.
8. Rule 116 provides that “The Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause”. The Prosecution submits that Document SCSL-16-620 does not establish the existence of “good cause” for the granting of the extension of time that it requests.
9. Document SCSL-16-620 first requests that the time limit for the filing of any notice of appeal in this case should only begin to run “from the signing of a contract by counsel for the three convicted persons with the Defence Office as to the appeals phase”.<sup>3</sup> The Prosecution submits that no good cause for this request has been established at this stage.
10. Paragraphs 17-24 of Document SCSL-16-620 refer to the state of negotiations between Mr Metzger, Mr Harris and Mr Knoops on the one hand, and the Defence Office on the other hand. These paragraphs argue that provisional assignments of lead counsel for the appellate phase in this case are not likely to be made until after the sentencing judgement has been given. Paragraph 10 of Document SCSL-16-620 states that the three signatories of the document “might theoretically be” assigned as counsel for the Convicted Persons only after the expiration of the deadline for the notice of appeal. That paragraph, and paragraphs 21-23, of Document SCSL-16-620 argue that there would be a violation of Article 17(4)(d) of the Statute of the Special Court if the appellate deadlines continued to run while the Convicted Persons do not formally have counsel for the appellate phase.

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<sup>3</sup> Document SCSL-16-620, para. 25(i).

11. However, paragraphs 20-21 of Document SCSL-16-620 indicate that Mr Metzger, Mr Harris and Mr Knoops are not yet certain whether they will even be willing to be assigned as permanent counsel for the appeals phase as the specific terms of the contract that the Defence Office will offer them are not yet clear. The Prosecution submits that the processes of the Special Court cannot be held up indefinitely while individual lawyers decide whether or not they are willing to act as Defence counsel and while they negotiate with the Defence Office over the terms of proposed contracts.<sup>4</sup>
12. Article 9(B) of the Special Court's Directive on the Assignment of Counsel provides that the Principal Defender may assign counsel provisionally. The Prosecution submits that no good reason has been shown why in principle provisionally assigned counsel could not adequately represent the Convicted Persons in this case pending the assignment of permanent counsel for any appellate phase. Should any specific problems arise for the Defence in the future, the Defence will be at liberty to raise such problems at the relevant time. However, it cannot simply be assumed that provisional counsel are unable to represent convicted persons effectively, and that all time limits must be suspended until Mr Metzger, Mr Harris and Mr Knoops have finished negotiating with the Defence Office, and have decided whether or not they are willing to accept the terms offered by the Defence Office.
13. The Prosecution submits that once Defence counsel have been assigned or appointed for any appeal in this case (either provisionally or permanently), Defence counsel can, if it deems it necessary, at that point raise any issue of prejudice to the Defence caused by any delays in the appointment of Defence

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<sup>4</sup> As the Appeals Chamber of the Special Court has affirmed, "the right to counsel of the Accused's own choosing is not absolute, especially in the case of indigent accused, and ... the conditions of exercise of this right are set up by the Directive": Prosecutor v. *Brima, Kamara and Kanu*, SCSL-2004-16-AR73, "Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazy Kamara", Appeals Chamber, 8 December 2005, para. 89.

counsel. It would be possible, for instance, for Defence counsel to initiate appellate proceedings by filing a notice of appeal, but to seek leave to supplement the notice of appeal at a later stage if Defence counsel consider that delays in their appointment prevented a full notice of appeal being filed within the time limit. Defence counsel could at that point also file any motion seeking any further relief that Defence counsel may consider necessary as a result of delays in their appointment. At that point, the precise circumstances and length of any delays in the appointment of Defence counsel will be known, and the Prosecution can respond to, and the Appeals Chamber can decide, any such requests on the basis of full knowledge of the relevant circumstances. The Prosecution submits that it would not be appropriate at this stage for all time limits simply to be suspended indefinitely, on the basis of what “might theoretically be”.<sup>5</sup> Rather, decisions of a Chamber should be based on what the situation actually is. Any decision of the Appeals Chamber should therefore be made only once the situation is known.

14. The Prosecution notes that even if Defence counsel were not assigned for the purposes of the appeal until after the deadline for the filing of notices of appeal has expired, it would still be possible for the Defence to file a motion to have the deadline extended *ex post facto*. The Appeals Chamber would be bound to grant such a motion if failure to do so would violate the rights of the Convicted Persons under Article 17 of the Special Court’s Statute. The Prosecution therefore submits that at this stage there is no reason for granting the request that the time limit for the filing of any notice of appeal be suspended. The Prosecution reserves its position on any future requests for extensions of time that may be made by the Defence.
  
15. Document SCSL-16-620 secondly requests that the time limit for the filing of any Defence notice of appeal in this case should be extended to four months.

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<sup>5</sup> Document SCSL-16-620, para. 10.

The Prosecution submits that no good cause for this request has been established.

16. Rule 108 provides that any notice of appeal must be filed within 14 days from receipt of the full judgement and sentence in a case. The request, if granted, would result in the time limit for any notices of appeal being extended to **over eight times** the normal time limit (from 14 days to some 120 days). The Prosecution submits that no basis is given in Document SCSL-16-620 that could justify an extension of this magnitude.
  
17. Paragraphs 11-13 of Document SCSL-16-620 argue that there is good cause for the requested extension of time because two of the Convicted Persons are expected to be assigned new lead counsel for the appeal. It is stated that Mr Kevin Metzger is expected to be the new lead counsel for Brima, and Mr Wilbert Harris the new lead counsel for Kamara. However, both Mr Metzger and Mr Harris were previously Defence counsel for Brima and Kamara respectively before withdrawing during the course of the Prosecution case. They therefore have knowledge of the Indictment, the pre-trial brief, the opening statements, and all witness statements that were disclosed up until the point at which they withdrew. Furthermore, both Mr Metzger and Mr Harris were actually present when a number of Prosecution witnesses gave evidence. Furthermore, from the information provided in Document SCSL-16-620, it appears that both Brima and Kamara will be retaining the same co-counsel (Ms Glenna Thompson and Mr Mohamed Pa-Momo Fofanah respectively), both of whom were present throughout the entirety of the case before the Trial Chamber. The Prosecution submits that in the circumstances, the return of Mr Metzger and Mr Harris does not constitute good cause for an extension of time, and in particular, does not constitute good cause for an extension of anywhere near the magnitude requested by the Defence.

18. Paragraphs 14-15 of Document SCSL-16-620 rely on a decision of the Appeals Chamber of the ICTY in the *Kupreškić* case. It is submitted that that decision of the ICTY Appeals Chamber does not suggest that extensions of time should automatically be granted where there is a change of counsel,<sup>6</sup> or that extensions of time should be readily granted. In the *Kupreškić* case, following a change of counsel on appeal, the Appeals Chamber granted an extension of time of *two months* (as opposed to the *four months* requested in Document SCSL-16-620). A reason for granting the extension in the *Kupreškić* case was that the new counsel was “experiencing difficulty in obtaining the case papers”, a circumstance that Document SCSL-16-620 does not invoke. Furthermore, there was no suggestion that the new counsel in the *Kupreškić* case had the same prior knowledge of that case as Mr Metzger and Mr Harris have of the AFRC case. It is therefore submitted that the *Kupreškić* case does not support the argument that a four month extension of time should now be granted in the AFRC case.
19. Paragraph 12 of Document SCSL-16-620 submits that the time limits in appeal proceedings under the Rules of the Special Court are substantially shorter than the corresponding time limits under the Rules of the ICTY and ICTR. The Prosecution submits that this cannot be a basis for justifying extensions of time in appeal proceedings before the Special Court. The time limits in the Rules of the Special Court are shorter for a reason, namely that it is expected that appeals before the Special Court will be more expeditious than appeals before the ICTY and ICTR. While extensions of time may be granted where good cause for this is established, the shortness of the normal time limits cannot of itself be invoked as good cause for an extension of time.

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<sup>6</sup> Compare Prosecutor v. *Delalić et al. (Čelebići case)*, IT-96-21-T, “Decision on Motion by Esad Landžo Pursuant to Rule 73”, Trial Chamber, 1 September 1997, para. 17 (indicating that whether a change of counsel justifies an extension of time “is a question of fact to be determined in accordance with the facts of each case”).

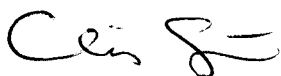


20. In the event that the Appeals Chamber decides to consider the substance of Document SCSL-16-620, the Prosecution therefore submits that at this stage, no good cause has been shown for any extensions of time.
21. Paragraph 16 of Document SCSL-16-620 appears to acknowledge that the circumstances invoked for an extension of time do not apply to the Kanu Defence, but requests that any extended time limits should apply to the Kanu Defence also. The Prosecution agrees that if any time limits were extended, the extensions should apply to all parties, including the Prosecution. This would prevent the appeal proceedings from becoming fragmented, with notices of appeal and appeal briefs being filed by different parties on different days.

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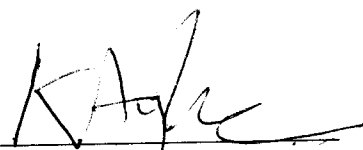
18 July 2007

For the Prosecution,



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Christopher Staker  
Deputy Prosecutor



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Karim Agha  
Senior Appeals Counsel

## **Index of Authorities**

### SCSL Cases

Prosecutor v. *Brima, Kamara and Kanu*, SCSL-04-16-T, “Scheduling Order for Sentencing Hearing and Judgement”, Trial Chamber, 10 July 2007

Prosecutor v. *Brima, Kamara and Kanu*, SCSL-2004-16-AR73, “Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara”, Appeals Chamber, 8 December 2005

### ICTY Cases

Prosecutor v. *Delalić et al. (Čelebići case)*, IT-96-21-T, “Decision on Motion by Esad Landžo Pursuant to Rule 73”, Trial Chamber, 1 September 1997