

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Teresa Doherty, presiding, Justice Richard Lussick and Justice Julia Sebutinde;

SEISED of the Kanu-Defence Motion For the Temporary Provisional Release to Allow the Accused to Visit his Mother's Grave, filed on 7 September 2005 and the Kanu-Defence Additional Documents To Motion for Temporary Provisional Release to Allow the Accused to Visit his Mother's Grave, filed on 9 September 2005 ("the Motion");

CONSIDERING the Prosecution Response to the Kanu-Defence Motion For the Temporary Provisional Release to Allow the Accused to Visit his Mother's Grave, filed on 13 September 2005 ("the Response");

CONSIDERING also the Kanu-Defence Reply to Prosecution Response to the Kanu-Defence Motion For the Temporary Provisional Release to Allow the Accused to visit his Mother's Grave, filed on 15 September 2005 ("the Reply");

MINDFUL of the Order For a Written Representation From the Registrar Pursuant to Rule 33 on Security Measures for a Potential Temporary Release of the Accused Kanu issued by Justice Teresa Doherty, Presiding Judge on 23 September 2005 ("Order");

CONSIDERING also the Registrar's Representations on the Motion of the Accused Kanu for Temporary Provisional Release, filed on 30 September 2005, the Confidential Registrar's Supplementary representations on the Motion of the Accused Kanu for Temporary Provisional Release, filed on 30 September and the Corrigendum to Registrar's Representations on the Motion of the Accused Kanu for Temporary Provisional Release, filed on 6 October 2005 ("the Registrar's Representations");

MINDFUL of the provisions of Article 17 of the Statute of the Special Court ("Statute"), Rules 64 and 65 of the Rules of Procedure and Evidence of the Special Court ("Rules") and Rules 3 and 61 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Special Court for Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone ("Detention Rules");

HEREBY DECIDES AS FOLLOWS based solely on the written submissions of the parties pursuant to Rule 73(A) of the Rules.

I. BACKGROUND

1. On 24 June 2005 the Defence approached the Registrar requesting that the Accused Santigie Borbor Kanu be permitted to visit his ailing mother. Although the accused was not granted permission to leave the Detention Unit of the Special Court, the Registrar instead made arrangements for Mr. Kanu's mother to visit her son at the Detention Unit on 26 June 2005. In July 2005 the Defence made a second request to the Registrar for the accused Kanu to visit his mother as her health was deteriorating and she was no longer able to travel to the Detention Unit to see her son. Mr. Kanu did not get a response to this request. On 2 September 2005 Mr. Kanu's mother passed away and the accused was informed accordingly. Upon receipt of the news, Mr. Kanu requested the Registrar for permission to attend his mother's funeral. The Registrar declined the request on the grounds that "in view of the risk assessment made in respect of the security arrangements which would need to be in place to ensure both his custodial status and his safety, it is not recommended that he be allowed out of the Detention Facility." Accordingly the accused Kanu did not attend his mother's funeral which took place on 2 September 2005.




2. Following his inability to attend his mother's funeral, the Accused Santigie Borbor Kanu filed this Motion requesting for "temporary provisional release" from custody to enable him to visit the grave of his late mother in order to pay his last respects as he was unable to attend the funeral.

II. SUBMISSIONS OF THE PARTIES

Motion

3. Mr. Knoops, Counsel for the Accused, filed the motion for temporary provisional release on bail pursuant to Rule 65(A) of the Rules and argued that "if released, the accused will appear for his trial and will not pose a danger to any victim, witness or other person and will abide by any other condition set by the Court."

4. The Defence for Kanu maintains that the refusal by the Registrar to allow the Accused Kanu to attend his mother's funeral on the 2 September 2005 was a violation of his right to private life and right to family as enshrined in Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR). Mr. Knoops relied on the Decisions of the International Tribunal for the former Yugoslavia (ICTY) in the *Prosecutor v. Blagoje Simic*¹ and the *Prosecutor v. Dusan Fustar*² and the Decision of the European Court of Human Rights in *Ploski v. Poland*³. Mr. Knoops observed however, that since the funeral has already taken place it is too late for the accused Kanu to apply for judicial review of the Registrar's decision.

5. Mr. Knoops argued further that if the accused Kanu is granted a temporary provisional release from custody to visit his late mother's grave in order to pay his last respects, it will partly compensate him for the violation of his right to a private and family life. Counsel argued further that Mr. Kanu's right to visit his mother's grave should outweigh any need for security measures that the Registrar may have to put in place. Counsel proposed that "any potential security risks relating to Mr. Kanu's custodial status and safety could be circumvented by having two security officers accompany the accused, and even having the accused handcuffed to one of the officers. In that way, return to the Detention facility on that same day would have been guaranteed..."

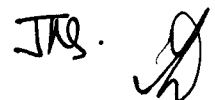
Response

6. The Prosecution submitted that whilst they are in principle not opposed to Mr. Kanu visiting his late mother's grave in order to pay his respects, a determination of whether he should be granted temporary provisional release under Rule 65(B) should depend on the particular circumstances of the case and the release on bail should only be granted if the Trial Chamber is satisfied that the accused will re-appear for the remainder of his trial and that if released he will not pose a danger to any witness or victim or any other person.

¹ *The Prosecutor v. Simic*, Case No. IT-95-9-A, Decision on Motion of Blagoje Simic pursuant to Rule 65 (1) for Provisional release for a Fixed Period to Attend Memorial Services of His Father, ICTY Appeals Chamber, 21 October 2004.

² *The Prosecutor v. Fustar*, Case No. IT-02-650PT, Decision on Defendant Dusan Fustar's Emergency Motion Seeking a temporary Provisional release to Attend the 40th Day Memorial of his Father's death, ICTY Trial Chamber, 11 July 2003.

³ *Ploski v. Poland*, Judgement, European Court of Human Rights, 12 November 2002 (26761/95-202, ECHR 729) para.39

7. The Prosecution further submitted that Mr. Kanu's request should only be granted if the necessary security measures are put into place and that in the circumstances the Registrar is the proper functionary to assess the security concerns and to advise the Trial Chamber accordingly.

Reply

8. The Defence concedes that Mr. Kanu's application for temporary provisional release should be determined upon its own merits.

Registrar's Representations

9. Pursuant to the Trial Chamber's Order of 22 September 2005 the Registrar submitted that the Motion is improperly filed under Rule 65(A) of the Rules. In reality the application is not one for temporary provisional release of Mr. Kanu from the custody and detention of the court but rather is for special measures of detention under Rule 64 of the Rules. The Registrar further submitted that under Rule 64 of the Rules the Trial Chamber has no authority to order special measures of detention as that power is vested solely in the Registrar subject to the approval of the President of the Special Court.

10. The Registrar further submitted that in exercising his discretion under Rule 64 of the Rules he would need to take into account the particular circumstances of the situation, including the security and good order of the Detention Facility, the health and safety of the accused and the rights and fundamental freedoms of the accused.

11. The Registrar submitted that a decision for special detention measures pursuant to Rule 64 of the Rules is not subject to judicial review by the Trial Chamber unless it impacts significantly upon Mr. Kanu's statutory rights to a fair trial pursuant to Article 17 of the Statute, which in this instance is not the case.

III. DELIBERATIONS

12. The provisions of Rule 65 of the Rules under which the Motion was filed provide for the conditional release on bail of an accused person from the custody and detention of the court pending his trial. However, the Motion before us does not seek permission to release Mr. Kanu from the custody and detention of the court whilst visiting his mother's grave. Quite to the contrary, Mr. Knoops suggests that

"any potential security risks relating to Mr. Kanu's custodial status and safety could be circumvented by having two security officers accompany the accused, and even having the accused handcuffed to one of the officers. In that way, return to the Detention facility on that same day would have been guaranteed."

We therefore agree with the submissions of the Registrar that the Motion is misconceived and wrongly filed under Rule 65 of the Rules. In reality Mr. Kanu's application is one for an order for special measures of detention outside the Detention Facility under Rule 64 of the Rules. In that regard we also agree that the proper functionary to make such an order is the Registrar with the approval of the President of the Special Court.

13. Furthermore, since the Motion does not call upon the Trial Chamber to review a decision or order of the Registrar in this regard, the Trial Chamber finds no valid reason to usurp or interfere with the Registrar's powers under Rule 64 of the Rules.

FOR THE ABOVE REASONS the motion is dismissed.

Done at Freetown this 18th day of October 2005.

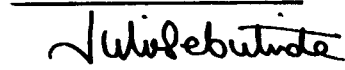


Justice Richard Lussick



Justice Teresa Doherty

Presiding Judge



Justice Julia Sebutinde

