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SCSL - 04 - 16 - ES
(2021 - 2042)

2021



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

Before: Honorable Justice Jon Kamanda, President

Registrar: Ms. Binta Mansaray

Date filed: 17 December 2010

THE PROSECUTOR

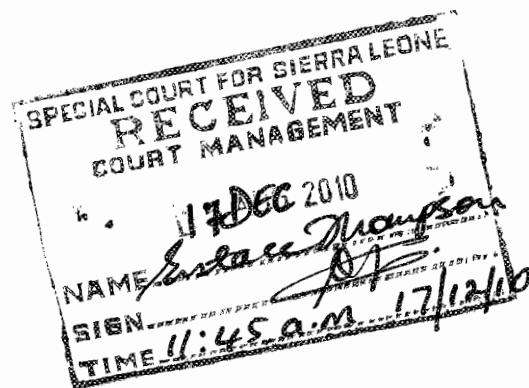
Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-ES

PUBLIC WITH CONFIDENTIAL ANNEXES
URGENT PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT
OF THE SPECIAL COURT FOR SIERRA LEONE

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. James C. Johnson
Ms. Leigh Lawrie



I. INTRODUCTION

1. The Prosecution files this motion pursuant to Rules 54, 73 and 77 of the Rules of Procedure and Evidence (“**Rules**”).
2. Pursuant to Rule 77(C)(iii), the Prosecution requests that the President direct the Registrar to appoint experienced independent counsel to investigate contempt of the Special Court for Sierra Leone (“**the Court**”) in relation to *inter alia* the following conduct:
 - a) disclosure of information, including the identity and other information concerning a protected witness;
 - b) conduct that intimidates, offers a bribe, or otherwise interferes with a witness who has given evidence in proceedings before a Chamber of the Court;
 - c) conduct that violates protective measures orders issued by a Chamber of the Court.
3. This motion is filed on an urgent basis as it concerns allegations of serious conduct that seek to intimidate, bribe or otherwise interfere with a witness(es) that gave evidence before the Court and is conduct that is in breach of protective measures ordered by a Chamber of the Court.

II. APPLICABLE LAW

4. This Court:

“must possess the powers necessary to enable [it] to administer and deliver justice fairly and efficiently. ... The power to investigate and punish what is generically ... described as “contempt of court” can only be used against those whose actions are calculated to obstruct the court’s task of getting at the truth.”¹
5. In accordance with the foregoing, Rule 77 provides this Court with the power to deal with conduct that interferes with its administration of justice. Sub-rule (A) provides a non-exhaustive list of the various forms of contempt that may be punishable under this Rule, including conduct that “discloses information relating to proceedings in knowing violation of an order of a Chamber” and conduct that “threatens, intimidates, causes injury or offers a

¹ *Prosecutor v. Brima et al.*, SCSL-04-16-AR77-315, “Decision on Defence Appeal Motion Pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii)”, 23 June 2005 (“**AFRC Contempt Appeal Decision**”), at para. 2.

bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness.”² Sub-rule (B) further provides that any incitement or attempt to commit any such acts is also punishable as contempt.

6. Where a Judge or Trial Chamber *has reason to believe* that a person may be in contempt of Court, Rule 77(C) (iii) provides that the Judge or Trial Chamber may direct the Registrar to appoint experienced independent counsel to investigate the matter and to report on whether there are sufficient grounds for instigating contempt proceedings.³ The standard to determine whether an independent investigation into contempt should be ordered “is ‘reason to believe’ that an offence may have been committed.” Further, the allegation must be credible.⁴
7. Pursuant to Rule 77 (G), should a person be found to be in contempt of the Special Court pursuant to Rule 77(C)(iii) the maximum penalty shall be a term of imprisonment for seven years or a fine not exceeding 2 million leones, or both. If a counsel is found guilty of contempt of this Court such a finding by the Chamber may also determine that counsel is no longer eligible to appear before the Court or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.
8. According to Rule 54, a Judge or a Trial Chamber “may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the presentation or conduct of the trial.” Orders for interim measures pending an investigation into allegations of contempt are clearly covered under this general Rule.

III. BACKGROUND

9. One of the Prosecution witnesses referred to in this motion is a protected witness and subject to the various protective measures set out in Confidential Annex A.
10. The Prosecution has received information that a Samuel Kargbo, aka Sammy Ragga,⁵ has contacted at least one Prosecution witness, and is attempting to contact other Prosecution

² See Rule 77(A)(ii) and (iv).

³ AFRC Contempt Appeal Decision, para. 17.

⁴ AFRC Contempt Appeal Decision, para. 2.

⁵ Samuel Kargbo, aka Sammy Ragga, has not been a witness before any proceedings in the Special Court.

witnesses, to bribe, intimidate or interfere with these witnesses or attempt to bribe, intimidate or interfere with these witnesses in order to make said witnesses lie and recant their testimony before the Court in the hope that such action will result in the release of the AFRC convicted prisoners from prison in Rwanda (“**AFRC Convicts**”). Ragga, a former member of the AFRC and amongst those convicted in the domestic courts of Sierra Leone in the West Side Boys case, was released from Pademba Road Prison in 2009.

11. Hassan Papa Bangura, aka Bomblast, former member of the AFRC having served as a commander during the Freetown invasion and as second-in-command to Ibrahim Bazy Kamara, also contacted at least one Prosecution witness and is apparently working with Ragga to contact and bribe, intimidate or interfere with, or attempt to bribe, intimidate or interfere with former Prosecution witnesses. According to Ragga, the convicted prisoners will pay money to Prosecution witnesses to lie and change their testimony. According to Ragga, a lawyer from Ghana will travel to Freetown on behalf of one or more of the AFRC Convicts to talk to Prosecution witnesses in order to intimidate, bribe or otherwise interfere with these witnesses to change their sworn testimony. Contacts with at least one Prosecution witness persisted even after the witness declined to engage in such lies or recantation.
12. The information received by the Prosecution is also that AFRC Convict, Brima Bazy Kamara, attempted to talk to at least one Prosecution witness and that AFRC Convict, Santigie Borbor Kanu, did talk to at least one Prosecution witness. The information received by the Prosecution further indicates that they may be attempting to, or already have, contacted other Prosecution witnesses. In one telephone conversation, Convict Kamara told a Prosecution witness that they (the AFRC Convicts) were counting on the witness to assist them. The Prosecution witness took this to mean that Convict Kanu wanted the witness to lie and change his testimony. The Prosecution witness was told by Ragga that the witness would financially benefit and that the Convicts had sufficient funds for this project, and that Ragga also expected to benefit from the deal.
13. Ragga also stated that these contacts were being made on the advice of counsel representing the AFRC Convicts, apparently on a *pro bono* basis or on the basis of undisclosed funding for these supposedly indigent prisoners. The counsel allegedly told the AFRC Convicts that if they could get key witnesses to recant their testimony, the Convicts

could be released from prison or have their term reduced.

14. Full details of the communication with the witness are provided in **Annex B**.

IV. APPLICATION

15. In accordance with Rule 77 (C) (iii), the Prosecution requests that the President, as a Judge of this Court, direct the Registrar to appoint an experienced independent counsel to urgently investigate alleged contemptuous conduct prohibited by:

- a) Rule 77(A)(ii): disclosure of information, including the identity and other information concerning protected witness(es);
- b) Rule 77 (A)(iv): threatens, intimidates, offers a bribe to or otherwise interferes with witness(es) who had given evidence in proceedings before a Chamber; and
- c) Rule 77 (B): any incitement or attempt to commit any of the acts punishable under Sub-Rule (A).

16. The Prosecution refers this matter, which implicates adjudged prisoners post appeals and with no Trial Chamber currently seized of their cases, to the President in his capacity as a Judge with authority under Rule 77 (C) to direct the Registrar to appoint an experienced independent counsel to investigate the matter. The President could, as well, transfer this matter to another appellate judge for action, as Rule 77 (L) contemplates Appeals Chamber judges' disposition of such matters. The Prosecution does not file the motion with the remaining SCSL Trial Chamber as that Trial Chamber is in the post-evidence phase of the Taylor trial and likely fully engaged in directing analysis of evidence in that case, preparing to review Final Trial Briefs and hear closing arguments. In addition, this matter deals with a case that was most recently before the Appeals Chamber. In these circumstances the Prosecution deems it most appropriate to file this Motion with the President, a Judge of the Appeals Chamber.

17. The Prosecution requests that the investigation consider the conduct of:
- a) Samuel Kargbo, aka Sammy Ragga;
 - b) Hassan Papa Bangura, aka Bombblast;
 - c) AFRC Convict Santigie Borbor Kanu, aka 55;

- d) AFRC Convict Ibrahim Bazy Kamara, aka Bazy; and
- e) any other individuals identified by the investigation as engaging in conduct prohibited by Rule 77 (A).

V. ARGUMENT

ORDER FOR INVESTIGATION FOR CONTEMPT OF COURT

18. As stated in Rule 77, this Court possesses an inherent power to ensure that the exercise of its jurisdiction is not frustrated and that its basic judicial functions are safeguarded. The possession of such inherent power is also established by the jurisprudence of this Court⁶ and the International Tribunals.⁷ Indeed, as the Appeals Chamber states:

“witnesses must never be put under any pressure in their choice to give evidence for one party or another or as to what evidence they should give, and must be rigorously protected thereafter from any reprisals.”⁸

19. Contempt of court is an act or omission intended to interfere with the due administration of justice. The threshold required to initiate investigations into contempt under Rule 77(C) is that the Chamber “has reason to believe that a person may be in contempt” [emphasis added]. This standard was confirmed by the Appeals Chamber which noted that:

“the standard is not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of “reason to believe” that an offence may have been committed, which is the pre-condition for ordering an independent

⁶ See the AFRC Appeals Decision cited at foot note 1 above; *Prosecutor v Brima et al*, SCSL-2004-16-T-237, “Decision on the Report of the Independent Counsel pursuant to Rules 77 (C) iii and 77 (D) of the Rules of Procedure and Evidence”, 29 April 2005, page 2; and *Prosecutor v Norman et al*, SCSL-04-14-T-450, “Confidential – Decision on Motion for the Immediate Cessation of Violations of the Orders on Protective Measures for Witnesses and for Contempt”, 25 July 2005, paras. 13-14.

⁷ *Prosecutor v. Marijadic and Rebic*, IT-95-14-R77.2, “Judgement”, 10 March 2006, para. 13:

“[...] it is firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal possesses this inherent power to deal with conduct interfering with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal’s administration of justice. Those who knowingly and wilfully interfere with the Tribunal’s administration of justice in such a way may, therefore, be held in contempt of this Tribunal.”

with reference to: *Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin, 31 January 2000, para. 13; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile against Finding of Contempt, 30 May 2001, para. 36.

⁸ AFRC Contempt Appeal Decision, para. 2.

investigation.”⁹

20. It is important to highlight that the standard required for a request for an investigation into possible contempt of court is reason to believe that a person *may* have engaged in such conduct. There is no requirement that there be a showing that the person *has* engaged in the alleged act, in knowing or willing violation of Rule 77. This applies equally to the proof requirements for knowing violations of an order of the Court, intimidation or other interference with witnesses. The elements of each specific act enumerated under Rule 77(A) and Rule 77(B), including the *mens rea* and *actus reus*, are issues to be developed during the investigation in order to determine whether to proceed against a person or persons for contempt of court.

DISCLOSURE OF INFORMATION IN KNOWING VIOLATION OF AN ORDER OF A CHAMBER (RULE 77(A) (II))

21. The information set out in the **Annex B** provides reason to believe that the investigation, if directed, would reveal that there has been disclosure of the identity of a Prosecution witness, to third party persons including those listed in paragraph 17 above, in knowing violation of the protective measures orders governing the testimony of this witness, and possibly other witnesses, regarding their testimony in the AFRC trial.

INTIMIDATION OF A WITNESS, OFFERS TO BRIBE A WITNESS, OTHER INTERFERENCE WITH A WITNESS (RULE 77(A) (IV))

22. Conduct that amounts to intimidation consists of acts or culpable omissions that are likely to constitute direct, indirect or potential threats to a witness or a potential witness. It must be of a sufficient gravity to be likely to intimidate a witness and is to be evaluated in the context of the circumstances of each particular case. It is not required that the witness was actually intimidated. As found by the ICTY:

“Intimidation of a witness as contempt of court is a crime of conduct, which does not require proof of a result. Whether the witness was actually intimidated is immaterial; the Prosecution need only prove that the conduct in question was intended to interfere with

⁹ AFRC Contempt Appeal Decision, para. 17. This standard was recently acknowledged by the Chamber in its decision SCSL-03-01-T-600, “Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513)”, 19 September 2008 (“September Contempt Decision”), para. 7.

the Tribunal's due administration of justice.”¹⁰

23. There is reason to believe, on the basis of the information set out in **Annex B**, that Samuel Kargbo, aka Sammy Ragga; Hassan Papa Bangura, aka Bomblast; Santigie Borbor Kanu; Ibrahim Bazy Kamara; and other persons not yet identified, including any counsel advising all or any of the AFRC Convicts; may have engaged in conduct that amounts to intimidation and offers to bribe a Prosecution witness(es) who has given evidence before a Chamber and which falls within the ambit of Rule 77(A)(iv).

OTHERWISE INTERFERING WITH A WITNESS (RULE 77(A) (IV))

24. There are various forms of conduct that may give rise to the offence of “otherwise interfering with the witness” including conduct that is of a similar gravity to intimidation that equally seeks “to influence the outcome of a pending case by interfering with a witness or potential witness. [I]t is not necessary for the Prosecution to prove that the witness was actually deterred or influenced.”¹¹ Although the Decision in *Brdjanin* refers to the outcome in a pending case, the Prosecution submits that it is equally applicable where the conduct seeks to reopen a case and thereby influence the outcome of the reopened case.
25. There is reason to believe, on the basis of the information set out in **Annex B**, that Samuel Kargbo, aka Sammy Ragga; Hassan Papa Bangura, aka Bomblast; Santigie Borbor Kanu, aka 55; Ibrahim Bazy Kamara, aka Bazy; and other persons not yet identified, including any counsel advising all or any of the AFRC Convicts, may have engaged in conduct that amounts to interfering with a witness(es) and falls within the ambit of Rule 77(A)(iv).

BREACH OF PROTECTIVE MEASURES ORDERS IN VIOLATION OF RULE 77(A)

26. As considered in the *Samura* Judgement, relying on the findings in the *Milosevic* case, “it is an obvious consequence of refusing to comply with an order of the Chamber that the administration of justice is interfered with.”¹² Rule 77 (A) is a non-exhaustive list of conduct that interferes with the administration of justice. Other conduct that interferes with the administration of justice, such as breaches of court orders, is clearly also captured by this Rule.

¹⁰ *Prosecutor v Brdjanin*, IT-99-36-R77, “Decision on Motion for Acquittal pursuant to Rule 98bis concerning allegations against Milka Maglov”, 19 March, 2004, para. 23.

¹¹ *Ibid*, para. 28.

¹² *Independent Counsel v Samura*, SCSL-05-01-18, “Judgment in Contempt Proceedings”, 26 October 2005, para. 14.

27. The investigation may establish that protective measures orders applicable to this witness, and potentially other witnesses, were breached by directly or indirectly contacting the witnesses without leave of the Court. Such conduct is conduct which interferes with the administration of justice and so constitutes contempt for the purposes of Rule 77 (A).

ADDITIONAL INFORMATION

28. In order to provide additional and potentially relevant information to the President, the Prosecution also includes the attached Memorandum at Confidential Annex C which reports an alleged contact by one of the Convicts in Rwanda. To the knowledge of the Prosecution, the Registrar did investigate the incidents reported in the memorandum and apparently determined that there was not an immediate threat to Prosecution witnesses. The Prosecution notes that these contacts involving the Convicts in Rwanda began shortly after the Convict Issa Sesay returned from The Hague after completing his testimony in the Taylor trial on 23 August 2010. The Prosecution submits that this information is relevant to the current request for an investigation as it also involves questionable and suspicious contacts from the Convicts in Rwanda.

URGENT INTERIM MEASURES

29. The Prosecution requests that, pending an investigation into the alleged conduct, the phone privileges of the AFRC Convicts be suspended, or in the alternative, restricted and closely monitored to prevent the types of contact detailed above. This action is necessary to prevent the possibility of improper conduct in anticipation of and during any investigation ordered.

VI. CONCLUSION

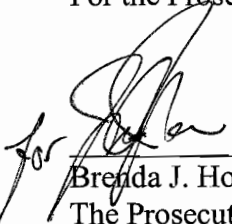
30. The information provided in the attached **Annexes**, establishes that there is reason to believe that the following persons, at a minimum, may have been involved in contemptuous conduct in contravention of Rule 77 (A):
- a) Samuel Kargbo, aka Sammy Ragga;
 - b) Hassan Papa Bangura, aka Bomblast;
 - c) AFRC Convict Santigie Borbor Kanu, aka 55;
 - d) AFRC Convict Ibrahim Bazy Kamara, aka Bazy, and;

- e) Any other individuals identified by the investigation as engaging in conduct prohibited by Rule 77 (A).
31. On the basis of the above, the Prosecution respectfully requests that the President direct the Registrar to appoint an experienced independent counsel to urgently investigate the possible contempt of Court by individuals, including those identified above and others whose identity may be revealed during the investigation, in relation to, *inter alia*, the following conduct:
- a) disclosure of information, including the identity and other information concerning a protected witness;
 - b) conduct that intimidates, offers a bribe, or otherwise interferes with a witness who has given evidence in proceedings before a Chamber of the Court;
 - c) conduct that violates protective measures orders issued by a Chamber of the Court.

Filed in The Hague,

13 December 2010

For the Prosecution,


Brenda J. Hollis
The Prosecutor

INDEX OF AUTHORITIES

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SPECIAL COURT FOR SIERRA LEONE
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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

Pursuant to article _____ of the Directive for the Registry, Court Management Section, this certificate replaces the following confidential document which has been filed in the *Confidential File*.

Case Name: **The Prosecutor vs. Brima et al**

Case Number: **SCSL- SCSL -04 -16 ES**

Document Index Number: **682**

Document's Date: **13 December 2010**

Filing Date: **17 December 2010**

Number of Pages: **10 pages (2033 – 2042)**

Document Type:

- Affidavit
- Decision
- Order
- Indictment
- Motion
- Correspondence: To:
From:

Other

Document Particulars:

**Urgent Prosecution Motion for an Investigation into Contempt of
the Special Court For Sierra Leone.**

Name of Officer:
Signature:

Eustace Thompson