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SCSL-2004-14-T
(10089 - 10093)

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IN THE SPECIAL COURT OF SIERRA LEONE

Case No. SCSL-04-14-T

**Before: Judge Benjamin Mutanga Itoe, Presiding Judge
Judge Bankole Thompson
Judge Pierre Boutet**

Registrar: Robin Vincent

Date: 1 November 2004

PROSECUTOR

V

CHIEF SAM HINGA NORMAN

**DEFENCE REPLY TO PROSECUTION MOTION FOR THE IMMEDIATE
CESSATION OF VIOLATIONS OF THE ORDERS ON PROTECTIVE
MEASURES FOR WITNESSES AND FOR CONTEMPT**

Office of the Prosecutor

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James Johnson
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Court Appointed Counsel for Norman

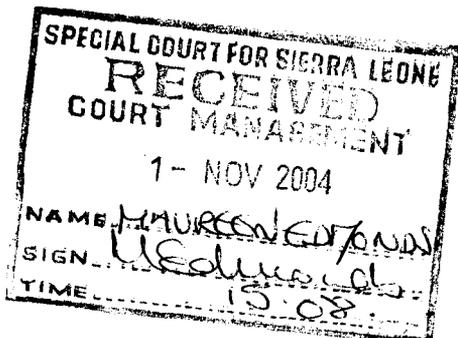
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I. BACKGROUND

1. On 25 October 2004 the Prosecution filed the “Motion for the Immediate Cessation of Violations of the Orders on Protective Measures for Witnesses and for Contempt.”
2. The Prosecution alleges that the First Accused has acted in violation of the Trial Chamber’s “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses” (Decision on Protective Measures), 8 June 2004, and is engaging in a conduct that is aimed to intimidate potential witnesses by virtue of a letter allegedly written by the First Accused dated 13 October 2004 and annexed to the Prosecution’s Motion.
3. In its Motion, the Prosecution prays the Court to: issue an order requesting the First Accused to immediately cease any violation of the Decision on Protective Measures; to order any necessary measures to prevent the first Accused from committing such violations in the future; and if it so finds, to declare the First Accused in contempt for intimidation of a potential witness or make any appropriate ruling under Rule 77.

II. DEFENCE’S SUBMISSIONS

4. Based on the said letter dated 13 October 2004 the Defence submits:
 - a. that the First Accused has not acted in violation of the Decision on Protective Measures;
 - b. that the First Accused has not engaged and is not engaging in a conduct that intimidates or is aimed to intimidate a potential witness or a potential Prosecution witness or any witness;

- c. that the First Accused has not thereby committed contempt of the Special Court by knowingly and/or wilfully interfering with its administration of justice or otherwise.

5. The Defence further submits:

- a. that the said Witness Protection Measures are applicable to witnesses and potential witnesses under the terms of Rules 34, 69, 75 and 79 of the Rules of Procedure and Evidence;
- b. that the addressee of the said letter is not a witness or a potential witness for the Prosecution and to the best of Defence information the said addressee is not included either on the "Witness List" filed by the Prosecution on 26 April 2004 nor on the "Modified Witness List" filed on 5 May 2004, nor on the "Revised Witness List of core and back-up witnesses" filed on 7 October 2004;
- c. that the said letter of the First Accused does not make an independent determination of the identity of any protected witness or Prosecution Witness nor does it disclose the identity of any Prosecution Witness to the public or the media nor does it otherwise aid any person to attempt to do so as prohibited in Orders c) and e) of the Decision on Protective Measures or any otherwise.
- d. that nowhere in the said letter is the addressee referred to as a Prosecution Witness or a potential Prosecution Witness but only as a "Prosecution AGENT" or a "member of the ... SCSL PROSECUTION TEAM", which is no basis for the Prosecution's allegation that the First Accused "believes" or "identifies" the addressee as a Prosecution Witness.

6. The Defence submits moreover:

- a. that far from engaging in intimidating conduct in violation of the Decision on Protective Measures, the First Accused by his said letter was requesting the addressee of the letter "to please be in readiness to be available at any time the CDF Defence Team considers your suitability to testify in court

relative to activities that may be to your knowledge” and “with the sole understanding that we should all do our very Best in revealing the truth” (emphasis added) in the ongoing CDF trials;

- b. that neither in the portions of the said letter cited in paragraph 21 of the Prosecution Motion nor in any other parts of the letter can the language of the said letter be said to be remotely intimidating to the addressee nor an interference with him or with the Court’s administration of justice whether knowingly or wilfully or otherwise.

7. The Defence finally submits:

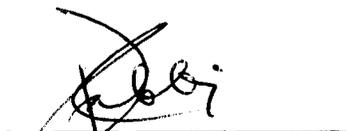
- a. that the First Accused has not thereby committed contempt of the Special Court by knowingly and/or wilfully interfering with its administration of justice or otherwise;
- b. that the Prosecution’s prayer that the Court, without more, declare the First Accused in contempt for intimidation of a potential witness is utterly unwarranted and, in any case, is not even in accordance with the prior indictment procedure set out in Rule 77 (C) (iii) of the Rules of Procedure and Evidence;
- c. that in all the circumstances, there has been no *prima facie* showing by the Prosecution of a reason for the Court to believe that the First Accused may be in contempt of the Special Court.

CONCLUSION

8. Based on the foregoing, the Defence requests the Court to dismiss the Prosecution’s Motion in its entirety.

Done in Freetown, 1 November 2004

For the Defence,

A handwritten signature in black ink, appearing to be 'Jabbi', written over a horizontal line.

Dr Bu Buakei Jabbi