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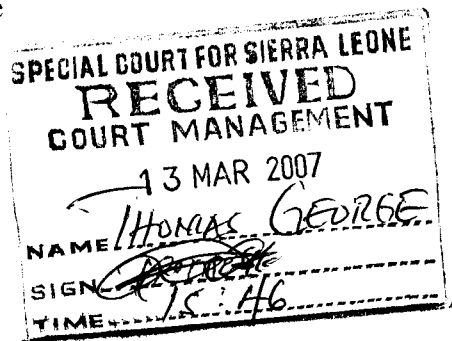
SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber I

Before: Justice Bankole Thompson, Presiding
Justice Benjamin Mutanga Itoe
Justice Pierre Boutet

Registrar: Mr Lovemore Munlo, SC

Date: 10 March 2007



THE PROSECUTOR

-against-

SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

SCSL-2004-14-T

PUBLIC

FOFANA SUBMISSIONS ON THE DEATH OF THE FIRST ACCUSED

Office of the Prosecutor:

Mr Stephen Rapp
Mr James Johnson
Mr Joseph Kamara

Counsel for Mr Norman:

Dr Bu-Buakei Jabbi
Mr John Wesley Hall
Mr Alusine Sani Sesay

Counsel for Mr Fofana:

Mr Victor Koppe
Mr Michiel Pestman
Mr Arrow Bockarie
Mr Steven Powles

Counsel for Mr Kondewa:

Mr Charles Margai
Mr Ansu Lansana
Mr Yada Williams
Ms Susan Wright

I. INTRODUCTION

1. Counsel for Moinina Fofana (the “Defence”) hereby makes its submissions on the “legal and factual issues and/or consequences” resulting from the death of the First Accused, as recently requested by this Trial Chamber.¹

II. SUBMISSIONS

A. The Applicable Law

2. In the case of the death of an accused person facing criminal charges, proceedings shall be terminated upon notification and proof of the death.² The underlying rationale for such a rule is that a criminal court’s personal jurisdiction over an accused person is instantly vitiated upon his death. Upon information and belief, this is the practice before all international criminal tribunals and in most, if not all, municipal jurisdictions.³
3. This Court’s Rules of Procedure and Evidence (the “Rules”) provide, in pertinent part:
 - a. “[A] Trial Chamber may issue such orders [...] as may be necessary [...] for the preparation or conduct of the trial.”⁴
 - b. “In joint trials, each accused shall be accorded the same rights as if he were being tried separately.”⁵
 - c. “The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary [...] to protect the interests of justice.”⁶
4. Article 17(4)(c) affords an accused person the right “[t]o be tried without undue delay”.

¹ *Prosecutor v. Norman et al.*, SCSL-2004-14-T-766, Trial Chamber I, ‘Order for Extended Filing’, 7 March 2007.

² See, e.g., *Prosecutor v. Milosevic*, IT-02-54-T, Trial Chamber, ‘Order Terminating the Proceedings’, 14 March 2006 (where criminal trial proceedings were terminated upon filing by the Registrar of notification and proof of death of the Accused); *Prosecutor v. Mrksic et al.*, IT-95-13, Trial Chamber, ‘Order Terminating Proceedings Against Slavko Dokmanovic’, 15 July 1998 (same); and *United States v. Mollica*, 849 F.2d 723 (2d Cir. 1998) (where criminal appellate proceedings were terminated, trial court conviction vacated, and indictment dismissed upon death of defendant).

³ See generally ARCHBOLD CRIMINAL PLEADING, EVIDENCE & PRACTICE, P.J. Richardson, Ed. (Sweet & Maxwell 2002), §3-202 (Where an accused dies either before or after his trial has commenced, once evidence of the death is provided, the indictment should be declared to have no legal effect and the case closed.)

⁴ Rule 54.

⁵ Rule 82(A).

⁶ Rule 82(B).

B. Notification and Proof of Mr Norman's Death

5. The Office of the Registrar was officially informed of Mr Norman's death on 22 February 2007, and on the following day it filed a certified copy of Mr Norman's death certificate with this Chamber.⁷ Accordingly, the Defence submits that this Chamber has been duly notified of Mr Norman's death and sufficient proof has been provided in support of the notification. In this regard, the Defence further submits that as of 22 February 2007, this Court's jurisdiction over the person of Mr Norman ceased to exist. Proceeding against him therefore should be terminated immediately.

C. The Joint Nature of the CDF Proceedings

6. The cases of Messrs Norman, Fofana, and Kondewa were joined pursuant to Rule 48 and have proceeded on a consolidated indictment since 5 February 2004.⁸ Nevertheless, the Defence submits that the concept of joinder is merely a *procedural* one seeking to promote judicial economy. The provisions of Rule 48 therefore must always be read in conjunction with Rule 82, which protects the *substantive* rights of accused persons such as the right to be tried without undue delay.
7. While the death of a defendant in a joint trial may present certain administrative issues (as indicated above in Section B), it has absolutely no impact on the applicable law or the existing factual record, nor does it affect a trial chamber's ability to apply the former to the latter and arrive at a fair and expeditious decision with regard to the remaining defendants.
8. Pursuant to Rule 82(A), Mr Fofana continues to enjoy "the same rights" which have applied since the day of his arrest, and the factual record of the CDF case remains as it did on 30 November 2006 when the Presiding Judge adjourned the trial proceedings for deliberation.⁹ The death of Mr Norman, although regrettable for a variety of reasons, is simply of no moment to the case against Mr Fofana.

⁷ See *Prosecutor v. Norman et al.*, SCSL-2004-14-T-765, 'Registrar's Submission Pursuant to Rule 33(B) Relating to the Death of Mr Sam Hinga Norman', 6 March 2007, ¶¶ 1 and 4.

⁸ See *Prosecutor v. Fofana*, SCSL-2003-11-PT-093, Trial Chamber I, 'Decision and Order on Prosecution Motions for Joinder', 27 January 2004 and *Prosecutor v. Norman et al.*, SCSL-2004-14-PT-003, 'Indictment', 5 February 2004.

⁹ See *Prosecutor v. Norman et al.*, SCSL-2004-14-T, Trial Transcript, 30 November 2006, at 68:18-21.

III. CONCLUSION

9. Accordingly, the Defence submits that in order to protect the interests of justice—specifically Mr Fofana’s right to be tried without undue delay—this Chamber should (i) immediately order the severance and termination of the proceedings against Mr Norman pursuant to Rules 54 and 82 and the above-cited jurisprudence and (ii) continue with the preparation of the CDF judgement without further delay.

COUNSEL FOR MOININA FOFANA




 Victor Koppe

TABLE OF AUTHORITIES

1. SCSL Rules of Procedure and Evidence: Rules 54 and 82
2. *Prosecutor v. Milosevic*, IT-02-54-T, Trial Chamber, ‘Order Terminating the Proceedings’, 14 March 2006
3. *Prosecutor v. Mrksic et al.*, IT-95-13, Trial Chamber, ‘Order Terminating Proceedings Against Slavko Dokmanovic’, 15 July 1998
4. *United States v. Mollica*, 849 F.2d 723 (2d Cir. 1998)
5. ARCHBOLD CRIMINAL PLEADING, EVIDENCE & PRACTICE, P.J. Richardson, Ed. (Sweet & Maxwell 2002), §3-202