

SCSL-04-14-T
(10866-10869)

**SPECIAL COURT FOR SIERRA LEONE
APPEALS CHAMBER**

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

Registrar: Robin Vincent

Date: 23 November 2004

THE PROSECUTOR

-Against-

SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA

CASE NO. SCSL-2004-14-T

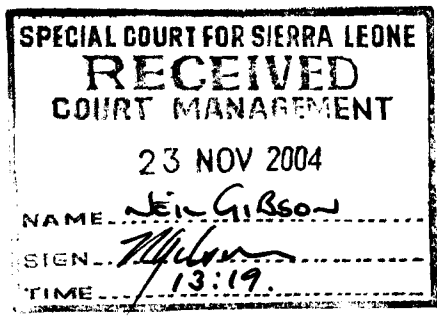
**FOFANA REPLY IN SUPPORT OF NOTICE OF APPEAL
AND SUBMISSIONS AGAINST THE "DECISION ON
APPLICATION FOR BAIL PURSUANT TO RULE 65"**

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REPLY

1. The Defence for the Second Accused, Mr. Moinina Fofana, (the “Defence”) hereby files its Reply in Support of the Notice of Appeal and Submissions Against the “Decision on Application for Bail Pursuant to Rule 65”, delivered by the Trial Chamber on 5 August 2004.

Summary of Proceedings

2. On 27 January 2004, the Defence filed its Application for Bail Pursuant to Rule 65 (the “Bail Application”).
3. On 9 February 2004, the Office of the Prosecutor (the “Prosecution”) filed its Response to Defence Application for Bail Pursuant to Rule 65.
4. On 16 February 2004, the Prosecution filed its Reply to the Prosecution Response to the Application for Bail Pursuant to Rule 65.
5. On 17 March 2004, a hearing was held before the Trial Chamber.
6. On 5 August 2004, the Trial Chamber, by Hon. Judge Benjamin Mutanga Itoe, issued its Fofana Decision on Application for Bail Pursuant to Rule 65 (the “Decision”) refusing bail to the Second Accused.
7. On 27 August 2004, in the Moinina Fofana Application for Leave to Appeal Against Refusal of Bail (the “Leave Application”), the Defence sought leave to appeal against the Decision pursuant to Rule 73(B) of the Rules of Procedure and Evidence of the Special Court (the “Rules”).
8. On 8 September 2004, the Prosecution filed its Response to the Application.
9. On 13 September 2004, the Defence filed its Moinina Fofana Reply to Prosecution’s Response Application for Leave to Appeal Against Refusal of Bail.
10. On 5 November 2004, in the “Decision on Application for Leave to Appeal Bail Decision”, the Defence was granted leave to appeal.
11. On 12 November 2004, the Defence filed its Notice of Appeal and Submissions Against the Decision.
12. On 18 November 2004, the Prosecution filed its Response to Fofana Notice of Appeal and Submissions Against the Decision (the “Response”).

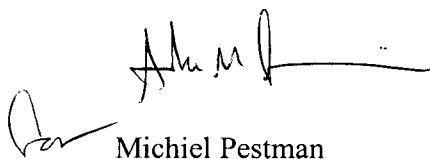
SUBMISSIONS

13. The Defence hereby reiterates and incorporates by reference the submissions set forth at paragraphs 16 through 36 of its Notice of Appeal and Submissions Against the Decision (the “Notice”), filed on 12 November 2004. The Defence further directs the Trial Chamber’s attention to the jurisprudence cited in the Defence Index of Authorities appended to the Notice. By way of reply, the Defence stands on these previous submissions.
14. Additionally, the Defence hereby requests the benefit of an oral argument and hearing before this Chamber so that it may call as a witnesses Ms. Frances Fortune in order to address the Prosecution’s contention that “the Accused has not actually produced a *single* person who can commit to even a purely *reporting* role should the Accused fail to meet his bail conditions”¹. The Defence vigorously disputes this assertion and stands by its submission that Ms Fortune’s testimony is highly relevant and, therefore, admissible under Rule 89(C).
15. Accordingly, the Defence submits that a hearing is required so that this Chamber may properly evaluate the relevant and important evidence disregarded by the Trial Chamber, namely Ms. Fortune’s Declaration. The Defence submits the assurances contained therein are sufficient—in conjunction with the additional legal, moral and material guarantees proposed by the Defence in its initial Bail Application²—to ensure Mr. Fofana’s appearance at trial. In the interest of fairness, the Defence should be given the opportunity to present all available evidence before a final decision is taken by this Chamber.

CONCLUSION

16. For the reasons outlined above, the Defence respectfully requests the Appeal Chamber to annul the Decision of the Trial Chamber and to grant Mr. Fofana’s application for bail. In the alternative, the Defence respectfully requests oral argument and hearing on the matter so that the Trial Chamber may properly evaluate the available relevant evidence before taking its decision.

COUNSEL FOR MOININA FOFANA


 Michiel Pestman

¹ *Prosecution Response*, para. 21 (emphasis in original).

² The Defence stands by its submission that Judge Itoe’s summary dismissal of the proposed conditions presented in the Bail Application amounts to an abuse of discretion. *See Notice*, paras. 23-26.

**INDEX OF DOCUMENTS NECESSARY
FOR THE DECISION IN APPEAL**

1. Defence, "Application for Bail Pursuant to Rule 65", 27 January 2004.
2. Prosecution, "Response to Defence Application for Bail Pursuant to Rule 65", 9 February 2004.
3. Prosecution, "Reply to the Prosecution Response to the Application for Bail Pursuant to Rule 65", 16 February 2004.
4. Trial Chamber, "Fofana Decision on Application for Bail Pursuant to Rule 65", 5 August 2004.
5. Defence, "Moinina Fofana Application for Leave to Appeal Against Refusal of Bail", 27 August 2004.
6. Prosecution, "Response to Moinina Fofana Application for Leave to Appeal Against Refusal of Bail", 8 September 2004.
7. Defence, "Moinina Fofana Reply to Prosecution's Response to Application for Leave to Appeal Against Refusal of Bail", 13 September 2004.
8. Trial Chamber, "Decision on Application for Leave to Appeal Bail Decision", 5 November 2004.
9. Defence, "Affirmation of Frances Fortune", 11 November 2004.
10. Defence, "Moinina Fofana Notice of Appeal and Submissions Against 'Decision on Application for Bail Pursuant to Rule 65'", 12 November 2004.
11. Prosecution, "Response to Fofana Notice of Appeal and Submissions Against the 'Decision on Application for Bail Pursuant to Rule 65'", 18 November 2004.