

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2005-01&02

TRIAL CHAMBER I

Before: Judge Pierre Boutet

Registrar: Robin Vincent

Date filed: May 3, 2005

THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

URGENT JOINT DEFENCE MOTION ON STAY OF THE CONTEMPT PROCEEDINGS

Office of the Prosecutor:

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Lesley Taylor

Defence Counsel for Kanu:

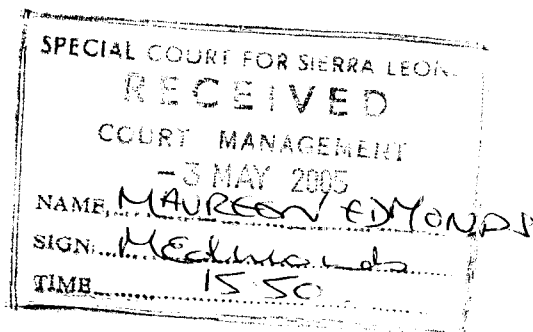
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I INTRODUCTION

1. On 29 April, Trial Chamber II filed its “Decision on the Report of Independent Counsel Pursuant to Rules 77(C)(iii) and 77(D) of the Rules of Procedure and Evidence”, in the case against the three AFRC Accused, and on 2 May 2005, the Trial Chamber filed its “Corrigendum to the Decision on the Report of the Independent Counsel Pursuant to Rules 77(C)(iii) and 77(D) of the Rules of Procedure and Evidence” (together referred to as “**Decision**”).
2. In the abovementioned Decision, Trial Chamber II referred the contempt of court proceedings in the abovementioned case (“**case**”) to the honorable Trial Chamber I to further deal with the contempt of court proceedings against the five alleged contemnors.
3. Given the fact that Trial Chamber II referred the case to Trial Chamber I, the Defence herewith submits this Motion to Trial Chamber I in order to obtain a stay of the contempt of court proceedings, on the basis of the following arguments.

II STANDING BEFORE THIS TRIAL CHAMBER AND ADMISSIBILITY OF MOTION

4. Before addressing the substance of the Motion, the Defence holds the opinion that it has locus standi to submit this Motion before this Trial Chamber.
5. In the first place, the Decision by Trial Chamber II was rendered in the context of the pending criminal case before the SCSL in the case against the three AFRC Accused. Accordingly, it can be held that their interests are involved since the initiated contempt of court proceedings are intertwined with the criminal case itself. This observation alone justifies the conclusion that the rights of the Accused pursuant article 17 of the Statute of the SCSL are involved. Particularly, attention is drawn to the following. On the 3rd of May on behalf of the SCSL a press release was issued concerning the Decision, explaining their findings, the

persons allegedly involved as well as the fact that these findings were made by Trial Chamber II in the context of the AFRC case, at least with respect to the Accused Mr. Brima. This press release is attached as **Exhibit 1** to this Motion. As a consequence the perception on part of prosecution witnesses and potential Defence witnesses could be negatively influenced, causing prejudice to the Accused persons in terms of the preservation of their fair trial rights pending the contempt of court proceedings in the event of the AFRC case continuing whilst the contempt proceedings remain unresolved. Especially the right of the Accused persons to hear witnesses Article 17(3), is at stake in such a convergence of proceedings. Since Trial Chamber II did not suspend the AFRC trial on the merits pending the outcome of the contempt proceeding, the Defence holds it justified that the honorable Trial Chamber I suspends the contempt of court proceedings as long as the Appeals Chamber has not addressed the Appeal of the Defence against the Decision. Accordingly, the Accused persons in this case should be endowed *locus standi* as regards the current request for a stay.

6. In the second place, and in the alternative, the Defence submits that the Accused are directly affected by the Decision, and therefore have a standing before this Trial Chamber in these proceedings.
7. The investigator for Alex Tamba Brima has been suspended by Trial Chamber II following the Interim Order of 10 March 2005. The Defence thus contends that this on its own already provides a basis for the standing of the Accused Brima before this Trial Chamber. As a Defence investigator can be seen as an essential part of the Defence team, especially in the realm of international criminal cases, a suspension of such a member affects the abilities of the Defence and Accused persons to effectively participate in the pending criminal trial.
8. The Defence moreover contends, with regard to three of the four women implicated, namely the wives of the respective Accused, that these proceedings directly affect the rights of the Accused, including the right to a public hearing

pursuant to article 14 ICCPR and article 6 ECHR in presence of also their family members.

9. Based upon the interim measures imposed by the honorable Trial Chamber II, these relatives of the Accused persons were not allowed to attend the trial for the last six weeks. Although the wives were able to visit the clients in the Detention Facility, they were prohibited from entering the public gallery to follow the proceedings against their respective husbands. This not only affects the rights of the women, but also directly affects the right of the Accused to a “fair and public hearing” as enshrined in Article 17(2) of the Statute. Arguably, such a situation also affects the right to a family life as laid down in Article 17(1) of the International Convention on Civil and Political Rights.¹ It is the Defence submission that the right to a family life also extends to the right of family members to follow the proceedings against her husband, and consequently, the right of the Accused person to have his family follow the judicial proceedings against him.

10. The Defence therefore respectfully submits that the Accused persons have an independent *locus standi* both with respect to the contempt of court proceedings regarding the suspend investigator and the exclusion of their spouses from the public gallery.

III SUMMARY OF THE PROCEEDINGS

Complaint by Witness TF1-023

11. On 10 March 2005 Prosecution Witness TF1-023 made an oral complaint before Trial Chamber II alleging that on the preceding day as she was on her way home in a Court vehicle with blacked-out windows, two ladies made remarks that they had seen her and called her name. The witness went on to say that they had now

¹ The text of this sub-Article reads as follows: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

come together to daggers drawn, although she did not know what they meant by that.²

12. The Prosecution made an oral application in support of the witness's claim.³ The Defence made oral submissions in response to the complaint by Witness TF1-023.⁴

Decision on Complaint

13. On 10 March 2005, the Trial Chamber made an oral decision pursuant to Rule 77(C)(iii) of the Rules, *inter alia*, directing the Registrar to appoint an independent counsel to investigate the complaint against the four women mentioned in said decision and the investigator of the Defence team for the Accused Brima and to report back to the Trial Chamber as to whether there are sufficient grounds for instigating contempt proceedings against any of them.⁵ On this same day, the Trial Chamber made an Interim Order suspending the investigator from the Brima Defence team from Court and from his duties, and prohibiting the four women from entering the public gallery pending the investigation and hearing of the matter.

Independent Counsel

14. On March 11, 2005, the Registrar appointed Mr. Louis Tumwesige as Independent Counsel, to conduct an independent investigation into the matter and to submit a report of his findings to the Trial Chamber, pursuant to the decision by the Trial Chamber. On 16 March 2005, the Independent Counsel submitted his report to Trial Chamber II.⁶ The content of this confidential report was not disclosed to the Defence.

² Transcript, 10 March 2005, p. 3, lines 17 – 21, and p. 4, lines 2 – 5.

³ Transcript, 10 March 2005, p. 6, line 1 to p. 8, line 13.

⁴ Transcript, 10 March 2005, p. 8, line 17 to p. 11, line 8 (arguments made on behalf of Accused Brima); Transcript, 10 March 2005, p. p. 11, line 17 – p. 12, line 14 (arguments made on behalf of Accused Kanu); and Transcript, 10 March 2005, p. p. 12, line 17 to p. 14, line 29 (arguments made on behalf of Accused Kamara).

⁵ Transcript, 10 March 2005, p. 15, line 2 to p. 16, line 13.

⁶ See Impugned Decision, p. 3.

Appeal against Decision on Complaint

15. On 11 March 2005, the Defence filed its “Confidential Joint Defence Notice of Appeal” and the “Confidential Joint Defence Appeal Motion Pursuant to Rule 77(J) on Both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii).” In addition thereto, the Defence filed on 14 March 2005 its “Confidential Additional Joint Defence Appeal Submissions Pertaining to Joint Defence Appeal Motion Pursuant to Rule 77(J) on Both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii)”; the “Confidential Joint Defence Index of Record to Appeal Motion of March 11, 2005 and Additional Appeal Submissions of March 14, 2005” and the “Confidential Joint Defence Index of Record to Appeal Motion of March 11, 2005 and Additional Appeal Submissions of March 14, 2005.”

16. On 4 April 2005, the Prosecution responded in its “Confidential Prosecution Response to the ‘Joint Defence Notice of Appeal’,” to which the Defence replied in its “Confidential Joint Defence Reply to Prosecution Response to the ‘Joint Defence Notice of Appeal’” on April 11, 2005.

17. On 6 April 2005, Justice Emmanuel Ayoola of the honorable Appeals Chamber gave its “Order under Rule 117(A),” in which he appointed Justice King, Justice Robertson and himself to decide on the appeal, stating that there will be no oral hearing on this matter.

Defence Request for Disclosure of Report

18. On 4 April 2005, the Defence filed its “Confidential Joint Defence Request for Disclosure of Independent Investigator’s Report on Contempt of Court Proceedings and Request for Stay of Proceedings.” On 14 April 2005, the Prosecution filed its “Prosecution Response to Joint Defence Request for Disclosure of Independent Investigator’s Report on Contempt of Court Proceedings and Request for Stay of Proceedings.” In reply thereto the Defence

filed on 19 April 2005 its “Confidential Joint Defence Reply on Prosecution Response to Defence Request for Disclosure of Independent Investigator’s Report on Contempt of Court Proceedings and Request for Stay of Procedure.”

Leave to Appeal against Ruling of 5 April 2005

19. On 5 April 2005, the Defence made an oral request for an adjournment of the proceedings, which the Trial Chamber in a unanimous decision denied.⁷ The Defence filed on 8 April 2005 a “Joint Defence Application for Leave to Appeal against the Ruling of Trial Chamber II of 5 April 2005.” The Prosecution responded hereto on 14 April 2005 in its “Prosecution Response to Joint Defence Application for Leave to Appeal against the Ruling of Trial Chamber II of 5 April 2005.” In reply thereto, the Defence filed the “Confidential Joint Defence Reply to Prosecution Response to Joint Defence Application for Leave to Appeal against the Ruling of Trial Chamber II of 5 April 2005” on 19 April 2005.

Decision

20. On 29 April 2005, Trial Chamber II took the aforementioned Decision, referring the instant case to Trial Chamber I to further deal with the contempt of court proceedings.
21. On 3 May 2005, the Defence filed its “Joint Defence Notice of Appeal against Decision on Independent Counsel,” the “Joint Defence Appeal against Decision on the Report of Independent Counsel Pursuant to Rules 77(C)(iii) and 77(D) of the Rules of Procedure and Evidence of 29 April 2005 by Trial Chamber II,” and the “Joint Defence Index of Record on Appeal Concerning Decision on Independent Counsel.”
22. To date, no decisions have been rendered by the honorable Trial Chamber II and the Appeals Chamber on either of these Defence Motions.

⁷ Transcript, 5 April 2005, p. 25, line 17 to p. 27, line 12.

IV SUBSTANCE OF THE MOTION

4.1 Other Pending Motions on this Issue

23. In the context of the substance of this Motion, and referring to Section III above, it should be stressed that, as mentioned in paragraph 21 above, none of the relevant Motions on this field has been resolved to date.

24. Particularly, attention should be paid to two motions pending before Trial Chamber II,⁸ and two motions pending before the Appeals Chamber of the Special Court.⁹

25. In the first place, the Defence respectfully submits that the referral by Trial Chamber II of the Decision to Trial Chamber I, without awaiting the outcome of the pending proceedings before the Appeals Chamber, is premature. The Defence has a right under Rule 77(J) to appeal from both the oral decision taken on 10 March 2005 and the written Decision of 29 and 30 April 2005, and to refer this matter to another Trial Chamber without awaiting the Appeals Chamber proceedings thus *de facto* negates the right of the Accused to an interlocutory appeal under Rule 77(J) of the Rules. Moreover this referral without waiting the outcome of said motions, may cause prejudice to the Accused persons since, as illustrated in Section II of this Motion, the contempt proceedings can seriously influence the perception of (prosecution) witnesses and, in a negative way, infringe fair trial rights of the Accused persons

26. Moreover, Trial Chamber II, by not resolving the two pending motions concerning the underlying issue, but instead referring this matter to Trial Chamber I to adjudicate upon this issue, in its effect infringes the right of the Defence to

⁸ Concerning a request for disclosure of the report of the Independent Counsel and a request for leave to appeal from the oral ruling of Trial Chamber II of 5 April 2005, respectively referred to in paras. 18 and 19 above.

⁹ An appeal against the oral decision of Trial Chamber II of 10 March 2005, and an appeal against the Decision, both under Rule 77(J) of the Rules, respectively referred to in paras. 15 – 16 and 21 above.

bring forward motions under Rule 73. For the motions the Defence brought forward under this Rule have not been adjudicated upon by the Trial Chamber II, before it took the Decision and referred the issue to the honorable Trial Chamber I.

27. After all, the situation still lies before the honorable Appeals Chamber in that, whilst continuing the contempt proceedings, the Appeals Chamber could eventually declare null and void both the Decision on the interim measures as well as the current Decision. In such a situation legally unsound situation could emerge that the Decision is virtually already effectuated in a legal sense whilst the Appeals Chamber comes to a different judgment. It is clear that such a situation causes serious prejudice to the Accused persons, but also to the integrity of the judicial system. This argument, in itself, justifies suspension of the Decision by your honorable Trial Chamber until the moment the Appeals Chamber has give its final word on the legitimacy of the start of the contempt of court proceedings.

28. The Defence thus holds that continuation of the contempt of court proceedings before Trial Chamber I would result in an infringement of the rights of the Accused, and thus respectfully requests the honorable Trial Chamber to grant a stay of these proceedings until the Appeals Court has dealt with these issues.

4.2 Lead Counsel May Be Heard as Witness in Current Proceedings: conflict of proceedings

29. An additional judicial complication pertains to the fact Lead Counsel for the Accused Brima may be heard as a witness in the contempt of court proceedings currently before Trial Chamber I. After all, Lead Counsel for Mr. Brima has direct information on certain important events which could shed light on the assessment of Trial Chamber II.

30. Accordingly, there is a likelihood that his potential testifying before Trial Chamber I may interfere with Counsel's confidentiality obligations under the applicable Code of Conduct. Furthermore, on the face of it, the investigator for Brima was ostensibly acting under the instructions of his legal supervisors and in furtherance of his role in the team. It is also for this reason that the Defence, and more particularly the Defence for the Accused Brima, respectfully requests the honorable Trial Chamber to grant the Defence request for a stay of the contempt of court proceedings until the legal aspects of this matter have finally been dealt with by the Appeals Chamber.

31. In view of the fact that the Defence teams in the AFRC are closely interwoven in terms of defence preparation and presentation, the argument as set forth in paragraph 29 above, also counts for the Defence in the case of Mr. Kanu and Mr. Kamara.

V RELIEF SOUGHT

32. It is for these reasons that the Defence respectfully prays the honorable Trial Chamber I to grant a stay of the contempt of court proceedings until the pending motions on this issue (mentioned above) are dealt with by the Appeals Chamber, particularly the appeal against the interim measures, and in any event the appeal against the Decision, and/or any decision the honorable Trial Chamber I will deem appropriate.

Respectfully submitted,

On May 3, 2005


Geert-Jan Knoops


Kevin Metzger



Wilbert Harris

EXHIBIT 1



SCSL-Broadcast
03/05/2005 09:43

To: Allison Cooper/SCSL@SCSL
cc: (bcc: SCSL Defence-Kanu/SCSL)
Subject: Trial Chamber issues order to indict five people for contempt of Court - Press Release

PRESS RELEASE

Freetown, Sierra Leone, 03 May 2005

Trial Chamber issues order to indict five people for contempt of Court

On Friday, 29 April 2005 the Trial Chamber II consisting of Justice Teresa Doherty (Presiding), Judge Richard Lussick and Judge Julia Sebutinde issued a decision ordering the prosecution of five individuals for contempt of court for allegedly revealing the identity of, and threatening a protected witness.

Under the Rules of the Special Court, contempt proceedings may be initiated when a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court. If there are sufficient grounds to proceed, the Chamber may issue an order in lieu of an indictment and direct an independent counsel to prosecute the matter.

In the present case, one individual named Brima Samura, is charged with contempt of Court under Rules 77 (A) ii which states:

“The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and willfully interferes with its administration of justice including any person who: [...] discloses information relating to proceedings in knowing violation of an order of a Chamber.”

Four other individuals named Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara have been charged under Rule 77 (A) (iv) which states:

“The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice including any person who [...] threatens, intimates, causes any injury or offers a bribe to, or otherwise interferes with a witness who is giving, has given, or is about to give evidence in the proceedings before a Chamber, or a potential witness.”

The order in lieu of an indictment alleges that on 9 March 2005 while in the public gallery of Court Room II, Brima Samura, an investigator attached to the Defence team for the accused Alex Tamba Brima spoke to Margaret Fomba Brima and Neneh Binta Bah Jalloh and asked to meet them outside the public gallery because he had something important to tell them. It also alleges the two women met Brima Samura outside the public gallery and he revealed to them the name of witness TF1-023 in knowing violation of a witness protective order. The women said they knew where the witness was resident and that they were going to attack her house.

The order in lieu of an indictment further alleges that later in the day, while witness TF1-023 was being escorted from the court premises by the Special Court’s Witnesses and Victims Services, the four women shouted out the witness’s name and told her in Krio that they knew

she was testifying in the trial and that they knew she was in the vehicle. The four women then uttered words in Krio whose effect was to threaten and intimidate the witness as a result of her testimony.

The decision containing the order in lieu of an indictment notes that the witness complained to Trial Chamber II about the incident on 10 March 2005. Her complaints were supported by the Prosecution during a closed session.

On 10 March 2005, Trial Chamber II under Rule 77 (C) (iii) ordered the Registrar to appoint an experienced independent counsel to investigate the five persons and report back to the Trial Chamber as to whether there were sufficient grounds for initiating contempt proceedings.

Also on 10 March 2005, Brima Samura was suspended from his duties as an investigator and the four women were prohibited from entering the public gallery pending the outcome of the investigation.

On 11 March 2005, the Registrar appointed an independent investigator, who reported his findings to the Trial Chamber II on 16 March 2005. Having considered that report, Trial Chamber II found that there were sufficient grounds to proceed against each of the five persons for contempt.

Through the services of the Special Court's Registry, an independent Senior Trial Attorney has been appointed to prosecute the matter.

Under Rule 77 (G) of the Special Court's Rules of Procedure and Evidence the maximum penalty for contempt of court can arise to imprisonment for seven years or a fine not exceeding 2 million leones, or both.

The Proceedings will be heard at the Special Court by a Judge of Trial Chamber I.

#END

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