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SCSL-11-01-REV
(297-302)

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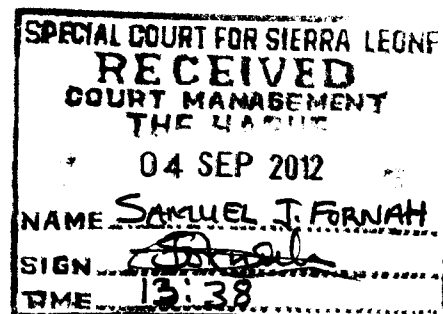
SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding Judge
Justice Emmanuel Ayoola
Justice George Gelaga King
Justice Renate Winter
Justice Jon M. Kamanda
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

Date: 4 September 2012



**THE INDEPENDENT
PROSECUTOR**

Against

**ERIC KOI SENESSIE
(Case No. SCSL 11-01-REV)**

Public

DECISION ON DEFENCE MOTION FOR REVIEW

Independent Prosecutor:

Mr. William Gardner

Defence Counsel for the Accused

Mr. Ansu B. Lansana

Office of the Principal Defender

Ms Claire Carlton-Hanciles

I. INTRODUCTION

1. **THE APPEALS CHAMBER** of the Special Court for Sierra Leone (“Special Court”) is seized of a “Defence Motion for Review” filed on 10 August 2012 (“Motion for Review”).¹

2. The Applicant, Mr Eric Senessie (“Senessie”), was convicted on 21 June 2012 by a Single Judge of Trial Chamber II of eight counts of contempt of court, pursuant to Rule 77(A) of the Rules of Procedure and Evidence of the Special Court (“Rules”). Specifically, Senessie was convicted of (i) four counts of offering a bribe to persons who had given evidence before the Special Court, and (ii) four counts of knowingly and wilfully interfering with the Special Court’s administration of justice by attempting to otherwise interfere with persons who had given evidence before the Court.² On 5 July 2012, the Single Judge sentenced Senessie to two years imprisonment.³ On 12 July 2012, the Single Judge issued the written Sentencing Judgment.⁴ On 16 August 2012, the Single Judge issued the written Judgment.⁵

3. The Motion for Review states that “the Defence has deemed it wise to waive its right of appeal and, instead, avail of Rule 120 which provides for an application for review.”⁶

II. APPLICABLE LAW

4. The Appeals Chamber notes that the Motion for Review presents a matter of first impression, as this is the first occasion on which the Appeals Chamber has considered an application for review of a final judgment pursuant to Article 21 of the Statute of the Special Court (“Statute”).

5. Article 21(1) of the Statute and Rule 120 of the Rules provide:

¹ *Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-REV-025, Defence Motion for Review, 10 August 2012. The Motion for Review was initially filed with the Single Judge, Trial Chamber II, on 23 July 2012, but the prayer for relief contained in that Motion was made to the Appeals Chamber. On 9 August 2012, the Single Judge granted leave to the Defence to amend and re-file the motion with the appropriate Chamber (*Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T, Order on Public and Confidential Annexes A and B Defence Motion for Review, 9 August 2012). The Defence re-filed the Motion for Review with the Appeals Chamber on 10 August 2012.

² *Independent Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T, Transcript 21 June 2012 [*Senessie* Transcript 21 June 2012].

³ *Independent Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T, Transcript 5 July 2012 [*Senessie* Transcript 5 July 2012].

⁴ *Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T-020, Sentencing Judgment, 12 July 2012 [*Senessie* Sentencing Judgment].

⁵ *Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-T-027, Judgment in Contempt Proceedings, 16 August 2012 [*Senessie* Trial Judgment].

⁶ Motion for Review, para. 12.

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person ... may submit an application for review of the judgement.

6. Article 21(2) of the Statute and Rule 121 of the Rules provide:

An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

- (a) Reconvene the Trial Chamber;
- (b) Retain jurisdiction over the matter.

7. Pursuant to Article 21(2), the Appeals Chamber will first conduct a preliminary review of a Article 21 application to determine whether it meets the conditions set out in Article 21(1) and whether further proceedings may be warranted under Article 21(2) (a) or (b).⁷ To establish that an application for review is meritorious, the moving party must first identify its alleged fact and show that the alleged fact: (i) is new; (ii) was discovered; (iii) was not known at the time of the original proceedings; and (iv) if proved, could have been a decisive factor in reaching the original decision. These criteria are cumulative, that is, they must each be met.

III. SUBMISSIONS OF THE PARTIES

8. In the Motion for Review, the Defence requests “a Review of the Applicant’s case in the light of new facts discovered, which said facts were not known to the Chamber at the time of the proceedings before it.”⁸ The Defence submits that “had such facts been known to the Chamber before or during the proceedings, they would have proved a decisive factor in determining the Trial Chamber’s verdict and/or sentence.”⁹ Accordingly, the Defence requests that “the matter be reviewed with a view to either reducing the penalty meted out to the Applicant viz. the 2 years imprisonment or asking that he pays a fine instead of serving a custodial sentence”.¹⁰

9. The Motion for Review does not clearly identify the alleged “new facts” on which the Defence relies for the purpose of its application for review. The Defence submits that the alleged “new facts” were put forward in Senessie’s allocutus of 4 July 2012 and repeated in an affidavit sworn by Senessie on 23 July 2012, annexed to the Motion for Review. These statements contradict Senessie’s sworn testimony given at his trial and relate to Senessie’s relationship with Mr. Prince

⁷ All references to Article 21(1) and 21(2) of the Statute refer as well to Rules 120 and 121, respectively.

⁸ Motion for Review, para. 1.

⁹ Motion for Review, para. 15.

Taylor at the time of the relevant events and the effect that Prince Taylor had on Senessie's actions.¹¹

10. The Defence concedes that Senessie was aware of everything contained in these statements at the time he testified, under oath, at the trial proceedings leading to his conviction on 21 June 2012.¹² The Defence submits, however, that “had such facts been known to the Chamber before or during the proceedings, they would have proved a decisive factor in determining the Trial Chamber’s verdict and/or sentence.”¹³ In particular, the Defence contends that Senessie acted as “an innocent agent for Prince Taylor”,¹⁴ and that the “undue influence” that Prince Taylor exerted over Senessie considerably contributed to Senessie’s actions.¹⁵

11. On 13 August 2012, the Independent Counsel filed his Response to the Defence Motion for Review.¹⁶ The Independent Counsel submits that both the Independent Counsel and Defence Counsel elicited testimony from witnesses at trial regarding Prince Taylor’s involvement in Senessie’s actions, and that several witnesses specifically testified that Prince Taylor sent Senessie to confront them.¹⁷ The Independent Counsel argues that Senessie’s acknowledgement of this fact at the 4 July 2012 sentencing hearing should not be construed as a “new fact”, but rather as corroborating evidence of a fact that was already disclosed at trial.¹⁸ The Independent Counsel also submits that, even assuming that the first two criteria for review proceedings have been satisfied, the Defence has not met the burden of showing that the alleged “new fact” would have decisively affected the Court’s Judgment.¹⁹

IV. ANALYSIS

12. The Appeals Chamber considers that review proceedings under Article 21 are, by their very nature, extraordinary and exceptional because they allow for the re-opening of a closed case. The finality of judgments will not be lightly disturbed. Where the moving party shows that all the criteria under Article 21(1) are met, review of the final judgment may be merited to prevent a

¹⁰ Motion for Review, para. 24.

¹¹ See Motion for Review, paras. 10, 23.

¹² Motion for Review, para. 15. The Defence concedes that these considerations “seemingly disqualify the Applicant [from review proceedings] in the sense that the facts constituting his revelations were known to him at the time of the original proceedings, and he withheld them and made no disclosure thereof during the proceedings (para. 15).

¹³ Motion for Review, para. 15.

¹⁴ Motion for Review, para. 19.

¹⁵ Motion for Review, para. 24.

¹⁶ *Prosecutor v. Eric Koi Senessie*, SCSL-2011-01-REV-026, Independent Counsel’s Response to Defence Motion for Review, 13 August 2012 [Independent Counsel’s Response].

¹⁷ Independent Counsel’s Response, para. 8.

¹⁸ Independent Counsel’s Response, para. 9.

¹⁹ Independent Counsel’s Response, paras. 12-15.

miscarriage of justice. Conversely, review proceedings are not an opportunity for a party to reargue its case or change the position it unsuccessfully put forward at trial.

13. Contrary to his testimony in Court, Senessie admitted during his allocution and in his subsequent sworn written statement that he contacted the Prosecution witnesses as charged.²⁰ Senessie further admitted that he “bears responsibility for his actions.”²¹ Finally, Senessie suggests that he “injudiciously withheld these facts from his Counsel and the Chamber in the vain hope of protecting himself and Prince Taylor.”²² For the purpose of this application, we need not determine what the “facts” actually are. Senessie knows and has always known the facts of his involvement in these crimes. What is clear is that whatever the facts known to Senessie might be:

- i. they are not “new” to Senessie;
- ii. Senessie has not “discovered” any facts since the time of his trial;
- iii. the only thing that “was not known” to Senessie at the time of the proceeding before the Single Judge was that the Judge would not believe his trial testimony and would convict him on the strength of the Prosecution witnesses’ evidence which she found to be credible beyond a reasonable doubt.²³

14. The Defence concedes that all of the alleged “new facts” it puts forward in the application were known to the Single Judge during the sentencing proceedings and were taken into account in the determination of Senessie’s sentence.²⁴ The Defence further concedes that all of the alleged “new facts” were known to Senessie at the time of the trial proceedings.²⁵ The Defence has failed to show that there are any “new facts” which were discovered and were not known at the time of the original proceedings, as required by Article 21(1) of the Statute and Rule 120 of the Rules. Accordingly, the Appeals Chamber concludes that the Motion for Review is unfounded pursuant to Article 21(2) of the Statute and Rule 121 of the Rules.

²⁰ Motion for Review, para. 10.

²¹ Motion for Review, para. 20.

²² Motion for Review, para. 20.

²³ *Senessie* Trial Judgment, paras. 19, 20 (counts 1 and 2); paras. 43, 44 (counts 7 and 8); paras. 61, 62 (count 9); paras. 73, 74 (count 6); para. 97 (count 3); para. 98 (count 4). *See also*, *Senessie* Transcript 21 June 2012, pp. 8, 16, 17, 22, 26, 33 and 34.

²⁴ Motion for Review, paras. 10-11. *See also* *Senessie* Sentencing Judgment, paras 12, 13.

²⁵ Motion for Review, para. 15.

V. DISPOSITION

15. On the basis of the foregoing, the Appeals Chamber **DISMISSES** the Defence Motion for Review in its entirety.

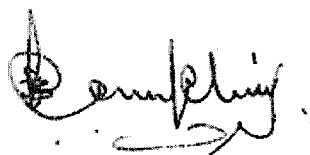
Done in The Hague, The Netherlands, this 4th day of September 2012.



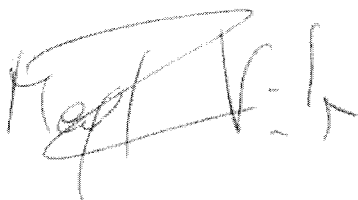
Justice Shireen Avis Fisher
Presiding



Justice Emmanuel Ayoola



Justice George Gelaga King



Justice Renate Winter



Justice Jon Kamanda

