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SCSL-11-02-PT
(60-62)

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IN THE SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding

Registrar: Ms. Binta Mansaray

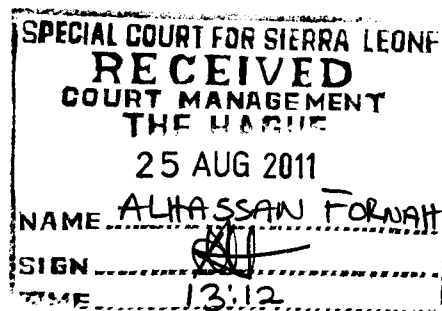
Case No. SCSL-11-02-PT

Date filed: 25 August 2011

The Independent Counsel

-v-

Hassan Papa Bangura
Samuel Kargbo
Santigie Borbor Kanu
Brima Bazzy Kamara



Defence Motion for permission to file a motion for extension of time in which to file
Preliminary Motions

Independent Counsel :
Mr. Robert L. Herbst
Mr. Mohammed Bangura

Counsel for the Accused:
Mr. Melron Nicol-Wilson
Chief Charles A. Taku
Mr. Kevin A. Metzger
Mr. A.F. Serry Kamal

Office of the Principal Defender:
Mrs. Claire Carlton-Hanciles

1. The Defence files this motion pursuant to Rule 7 of the Rules of Procedure and Evidence (“Rules”) and further to the Decision of Justice Doherty of 23rd August 2011 in which the Defence motion for extension of time in which to file any Preliminary motion was dismissed.
2. In said Decision it was stated that Counsel for Kanu has incorrectly stated that “the Defence were also given liberty to apply in respect of timing on any preliminary matters”, as no such leave was given during the initial appearance on 15 July 2011, and therefore such a statement is misleading. Respectfully Counsel for Kanu craves the indulgence of the Trial Chamber as he relied on his notes taken during the initial hearing. Counsel did not intend to mislead the Trial Chamber, he simply relied on his note of the hearing. Having referred to the confidential transcript of the hearing Counsel is reminded that the words “liberty to apply”¹ appear therein at page 63. It was that amendment to the Learned Judges’ “second ruling” that Counsel sought to rely on in the previous motion.
3. While the Decision is accepted, it is nonetheless submitted that there are significant issues which affect these proceedings of a jurisdictional nature which have not hitherto been considered fully by either the Trial Chamber or the Appeal Chamber. Accordingly it is submitted that the jurisprudence itself would benefit from full consideration of the question of whether the Trial Chamber was in fact *functus officio* at the time these proceedings were commenced and whether in those circumstances Rule 77 (A)(iv) could, in law, form the basis for an Indictment.
4. Further, the Defence notes that this case falls within two jurisdictions and is aware that there are records kept of phone calls in Rwanda in relation to telephone calls which is neither in the hands of the Independent Prosecutor or the Defence at present. It has therefore been difficult, logistically to prepare properly, considering that Disclosure was made after Counsel for Kanu left Rwanda although discussions with the Independent Prosecutor had left the Defence with the expectation that it would be served in advance of his departure on July 18. It is hoped that Defence Counsel who has recently travelled to Rwanda will be able to obtain material that will form part of a consolidated preliminary motion. The Defence wishes to expedite matters and save time by filing said consolidation motion if this finds favour with the Honourable Judge rather than seeking permission to make said submissions closer to the time of trial.

¹ Confidential Transcript 15 July 2011, page 63, lines 17-18

5. It is in the light of the matters outlined above that the Defence respectfully urges the Honourable Court to grant permission for a motion on preliminary matters to be filed out of time. It is not believed that any prejudice will be caused to the Prosecution or any other party to these proceedings by the grant of said permission.

Respectfully submitted,



Kevin A. Metzger

Counsel for Santigie Borbor Kanu

Dated 23 August 2011