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SCSL-11-02-PT
(63-66)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Single Judge

Registrar: Binta Mansaray

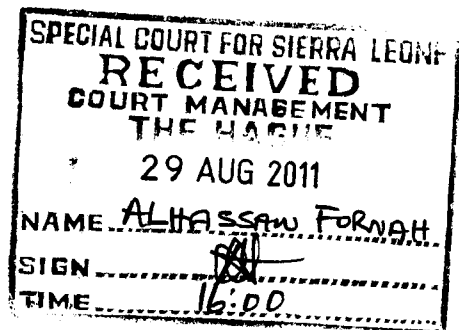
Case No.: SCSL-2011-02-PT

Date: 29 August 2011

PROSECUTOR

v.

Hassan Papa BANGURA
Samuel KARGBO
Santigie Borbor KANU
Brima Bazy KAMARA



DECISION ON DEFENCE MOTION FOR PERMISSION TO FILE A MOTION FOR
EXTENSION OF TIME IN WHICH TO FILE PRELIMINARY MOTIONS

Independent Counsel:

Robert L. Herbst
Mohamed Sahid Bangura

Counsel for Bangura:

Melron Nicol Wilson

Counsel for Kargbo:

Charles Taku

Counsel for Kanu:

Kevin Metzger

Counsel for Kamara

Abdul F. Serry Kamal

I, Justice Teresa Doherty, acting as Single Judge of Trial Chamber II of the Special Court (“Special Court”);

SEISED of the “Defence Motion for Permission to File a Motion for Extension of Time in which to File Preliminary Motions”, filed on 25 August 2011 (“Motion”);¹ wherein the Defence for Kanu (“Defence”) requests that I grant permission for a preliminary motion pursuant to Rule 72 of the Rules of Procedure and Evidence (“Rules”) to be filed out of time on the grounds (i) that it has been logistically difficult as disclosure was made after Counsel for Kanu left Rwanda² (ii) that the preliminary motion would address a significant issue of a jurisdictional nature that has not yet been addressed by the Special Court, apparently, whether the Trial Chamber was *functus officio* when these proceedings were commenced;³ (iii) that no prejudice would be caused to the Prosecution or the Co-Accused if such permission were granted;⁴

NOTING that the Independent Counsel has not yet filed a Response to this motion;

RECALLING that Rule 7bis of the Rules provides that “a motion for an extension of time may be disposed of without giving the other party the opportunity to respond if a Judge or Chamber is of the opinion that no prejudice will be caused to the other party”;

FINDING that in the circumstances, as the issues are clear, no prejudice would be caused to the Independent Counsel if this motion were decided without giving him an opportunity to respond;

NOTING AGAIN that any preliminary motions by the parties were due to be filed by 15 August 2011;

RECALLING my “Decision on Defence Motion for Extension of Time”, rendered on 23 August 2011,⁵ in which I dismissed a Defence request for an extension of time in which to file preliminary motions on the basis that the Defence had provided no valid grounds for such an extension;

RECALLING the Trial Chamber II “Decision on Public with Confidential Annexes Prosecution Motion for an Investigation into Contempt of Special Court for Sierra Leone”, dated 18 March 2011,

¹ SCSL-11-02-PT-013.

² Motion, para. 4.

³ Motion, para. 3.

⁴ Motion, para. 5.

⁵ *Prosecutor v. Bangura, Kargbo, Kanu and Kamara*, SCSL-2011-02-PT, Decision on Defence Motion for Extension of Time, 23 August 2011 [“23 August Decision”].

wherein it was held, *inter alia*, that Trial Chamber II has jurisdiction to deal with contempt of court in cases that have already been completed;⁶

NOTING AND ACCEPTING the Defence explanation that it did not intend to mislead the court in its previous motion, filed on 17 August 2011;⁷

CONSIDERING that the Defence has simply reiterated the same grounds for an extension of time as it relied upon in its original motion;

CONSIDERING therefore that the Defence is effectively requesting a reconsideration of the 23 August Decision;

RECALLING that it is within the inherent jurisdiction of the court to reconsider one of its own decisions only where there is a clear error of reasoning⁸ or new material circumstances,⁹ and that the decision to reconsider is a discretionary one;¹⁰

FINDING that the Defence has not demonstrated that either of these requirements have been satisfied;

FOR THE ABOVE REASONS

DISMISSES the Motion.

⁶ Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-ES, Decision on Public with Confidential Annexes Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 18 March 2011.

⁷ SCSL-11-02-PT-011.

⁸ *Prosecutor v. Taylor*, SCSL-03-01-595, Decision on Public with Confidential Annexes B and E Urgent Prosecution Application for Reconsideration of Oral Decision Regarding Protective Measures for Witness TF1-215 or in the Alternative Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TF1-215, 15 September 2008, p. 4; *Prosecutor v. Taylor*, SCSL-03-01-PT-125, Decision on Defence Motion to Set Aside and/or Reconsider Trial Chamber's 'Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure' dated 13 September 2006, 5 October 2006, para. 24. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14, Decision on Prosecution Appeal against the Trial Chamber's decision of 2 August 2004 refusing Leave to File an Interlocutory Appeal, 17 January 2005, paras 31, 35.

⁹ *Prosecutor v. Prlić et al.*, IT-04-74-T, Decision on Petković Defence Motion for Reconsideration of Certification to Appeal Order of 22 April 2009, p. 4; *Prosecutor v. Galić*, IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 3 and 4; *Prosecutor v. Renzaho*, ICTR-97-31-I, Decision on Renzaho's Motion to Reconsider the Decision on Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 9 November 2005, paras 20-21. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T-507, Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 7 December 2005, paras 13-14.

¹⁰ *Prosecutor v. Delić et al.*, IT-96-21-Abis, Judgment on Sentence Appeal, 8 April 2003, para. 48.

Done at The Hague, The Netherlands, this 29th day of August 2011.

Justice Teresa Doherty
Single Judge

