

022.)

SCSL-11-02-PT
(135-142)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding Judge
Single Judge, Trial Chamber II

Registrar: Ms. Binta Mansaray

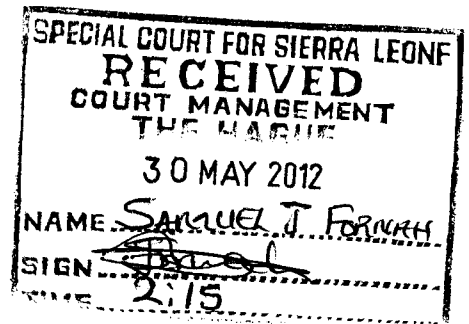
Case No. SCSL-11-02-PT

Date Filed: 30th May, 2012

The Independent Counsel

-v-

Hassan Papa Bangura
Samuel Kargbo
Santigie Borbor Kanu
Brima Bazzy Kamara



DEFENCE PRE-TRIAL BRIEF OF HASSAN PAPA BANGURA

Independent Counsel:
Mr. Robert L. Herbst

Counsel for Bangura:
Mr. Melron Nicol-Wilson

Counsel for Kargbo:
Charles A. Taku

Counsel for Kanu:
Mr. Kevin A. Metzger

Counsel for Kamara
Mr. A. F. Serry Kamal

INTRODUCTION

1. Pursuant to the Scheduling Order of the 1st of May, 2012, the Defence for Hassan Papa Bangura files this Defence Pre-Trial Brief.

THE PRESUMPTION OF INNOCENCE AND PROOF OF GUILT BEYOND A REASONABLE DOUBT

2. Mr.Hassan Papa Bangura pleaded Not Guilty to all the charges levied against him in the indictment.
3. It is a cardinal principle of International Criminal Justice that an Accused Person is presumed innocent until he is proven guilty.¹
4. In **Woolmington V DPP**² Viscount Sankey LC had this to say:

“Throughout the web of English Criminal Law one golden thread is always to be seen, that is duty of the Prosecution to prove the Prisoner’s guilt subject to.....the defence of insanity and subject also to any statutory exception”.

5. In **McIntosh V Lord Advocate**³, the learned judge said:

“The more serious the crime and the greater the public interest in securing convictions of the guilty, the more important the constitutional protections of the Accused become. The starting point of any balancing inquiry where constitutional rights are concern must be that the public interest in ensuring that innocent people are not convicted and subject to the ignominy and heavy sentence, massively outweighs the public interest in ensuring that a particular criminal is brought to book.....hence the presumption of innocence which serves not only to protect a particular individual on trial but to maintain public confidence in the enduring integrity and security of the legal system”.

6. The Prosecution is bound in law to prove the case alleged against the Accused beyond reasonable doubt. In the English Case Law of **Miller V Minister of Pension**⁴, Lord Denning explained that the expression “proof beyond reasonable doubt” should be understood as follows:

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¹ See the provisions of the Statutes of the International Criminal Tribunal for Yugoslavia (Article 21 (3)), the International Criminal Tribunal for Rwanda (Article 20 (3)) and the International Criminal Court (Article 66). See also *Salabiaku V France* (1988) 13 EHRP 379

² (1935) AC 462, 461

³ (2001) 3WLR 107, Lord Bingham of Cornhill referred to the Judgement of Sachs J. in the *State V Coetzee* (1997) 2LRC 593 where the significance of this presumption was explained.

⁴ (1947) ALL ER 372

“It need not reach certainty but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect a community if it admitted fanciful possibilities to deflect the cause of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence, of course it is possible, but not in the least probably, the case is proved beyond reasonable doubt, but nothing short of that will suffice”.

7. The Trial Chamber must determine in respect of each of the count charged against Mr. Hassan Papa Bangura, whether it is satisfied beyond reasonable doubt, on the basis of the whole of the evidence, that every element of that crime and the forms of liability charged in the indictment has been established.
8. If at the conclusion of the proceedings there is any doubt that the Prosecution has established a case against Mr. Bangura, he is entitled to the benefit of doubt and he must be acquitted.
9. In a Joint-Trial, it is the duty of the Trial Chamber to consider the case against each Accused separately and to consider each count in the indictment separately.

STATEMENT OF THE NATURE OF MR. BANGURA’S DEFENCE

10. As a matter of fact and law Mr. Bangura assert that he is not guilty of the following allegations as set out in the indictment:
 - a. **Count 1:** Knowingly and willfully interfering with the Special Court’s Administration of Justice by offering a bribe to a witness who has given testimony before a Chamber, in violation of Rule 77 (A) (iv).
 - b. **Count 2:** Knowingly and willfully interfering with the Special Court’s Administration of Justice by otherwise interfering with a witness who had given testimony before a chamber in violation of Rule 77 (A) (iv).

STATEMENT OF MATTERS NOT IN DISPUTE

11. Mr. Bangura has agreed to the following matters:
 - a. That he received a call from Mr. Bazy Kamara in Rwanda requesting that he wants to speak to Samuel Kargbo.

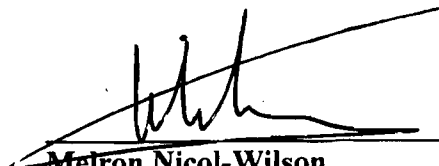
- b. That on or about the 16th of December 2010, he drove in a car together with Samuel Kargbo and TF1-334 to the office of Lawyer Ibrahim Mansaray.

12. MATTERS WITH WHICH MR. HASSAN PAPA BANGURA TAKES ISSUES IN THE PROSECUTION PRE-TRIAL BRIEF

- a. Other than the factual matters agreed upon in paragraph 11 of this Defence Pre-Trial Brief, no admission are made as to the truth or accuracy of the factual allegation made in the indictment or the Prosecution Pre-Trial Brief. Mr. Bangura challenges all these matters and allegations and other outstanding matters in this case. He contest the truth and accuracy of all factual allegations made by the Prosecution in the indictment and the Prosecution Pre-Trial Brief, including the admissibility, authenticity, probative value or any weight which may be attached to any of the exhibits the Prosecution intends to proffer, and he rejects the legal assessment of those factual allegations made by the Prosecution. Consequently, the Prosecution is put to strict proof of the each and every element of fact relied upon by the Prosecution as against Mr. Bangura.
- b. Mr. Bangura asserts that he did not offer a bribe or attempted to influence TF1-334 in return for the recanting of his testimony nor did he interfere with the Special Court's Administration of Justice in any way, manner or form.

Mr. Bangura has pleaded not guilty, he asserts that he is not guilty and he puts the Prosecution to proof of its case.

Respectfully Submitted By:



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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the *Confidential* Case File.

Case Name: **Independent Counsel – v- Hassan Papa Bangura et al**
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Defence pre-trial brief of Hassan Papa Bngura

Name of Officer:

Samuel Fornah

Signed: 