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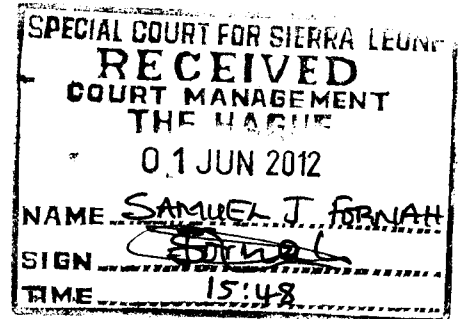
SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding

Registrar: Ms. Binta Mansaray

Date filed: 1st June 2012



Independent Counsel

Against

**Hassan Papa Bangura
Samuel Kargbo
Santige Borbor Kanu
Brima Bazzy Kamara**

Case No. SCSL-11-02-PT

PUBLIC

DEFENCE PRE-TRIAL BRIEF ON BEHALF OF BRIMA BAZZY KAMARA

Independent Counsel:

Mr. Robert L Herbst

Mr. Mohamed Bangura

Counsel for the Accused:

Mr. 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

INTRODUCTION

1. This pre-trial brief is filed on behalf of Brima Bazzy Kamara pursuant to the Scheduling Order of 1st May, 2012.¹
2. Counsel notes that the Defence is required pursuant to Scheduling Order to file a Statement of Admitted Facts and Law, if any by the 1st of June 2012. Counsel also notes that pursuant to Rule 73 *bis* F the trial chamber or judge designated from among its members may order the defence to file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues, within a time limit set by the Trial Chamber or the said Judge, and before the date set for the trial. Not having been so ordered by the designated judge, the defence for Mr. Kamara by this pre-trial defence brief seeks to set out the case for the Defendant Brima Bazzy Kamara and the factual and legal issues disputed by the accused. The Defence is quite cognisant of its rights conferred by Rule 73 *ter* of the Rules of Procedure and Evidence of the Special Court and does not waive those rights in any way shape or form.

BACKGROUND

3. On the 10th of January, 2011 the President of the Special Court for Sierra Leone dismissed the Public with Confidential Annexes Urgent Prosecution Motion for an

¹ SCSL 11-02-PT 67-69

Investigation into Contempt of the Special Court for Sierra Leone which had been filed by the Office of the Prosecution (OTP).²

4. Recalling the Trial Chambers “Decision on Public with Confidential Annexes Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone,” dated 18th March 2011 wherein the Trial Chamber directed the Registrar to appoint an experienced Independent Counsel to investigate the allegations that a person or persons including Ragga, Bomblast, Kanu and Kamara may be in Contempt of the Special Court³ and to report to the trial chamber as to whether there are sufficient grounds for investigating contempt proceedings.
5. The Registrar appointed Robert L. Herbst as Independent Counsel (“Independent Counsel”) on 23 March 2011.
6. The Independent Counsel Robert Herbst reported his findings and by the Decision on the Report of the Independent Counsel dated 24th May 2011, the Independent Counsel was directed to Prosecute Hassan Papa Bangura (aka Ragga), Santigie Borbor Kanu and Brima Bazy Kamara for contempt proceedings pursuant to the Order in Lieu of Indictment⁴ to Justice Theresa Doherty, in accordance with Rule 77(D) of the Rules

² *Prosecution v. Brima et al.*, SCSL-04-16-ES, Decision on Public with Annexes Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone ; *Prosecutor v. Bangura et al*, SCSL-11-02-PT

³ 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, pp15/16.

⁴ Decision on the Report of the Independent Counsel, SCSL-04-16-ES, 24 May 2011.

and the Registrar was directed to serve the Decision and the Order in Lieu of Indictment on Hassan Papa Bangura (aka Bomblast), Samuel Kargbo (aka Sammy Ragga), Santigie Borbor Kanu and Brima Bazy Kamara.

CHARGES

7. Brima Bazy Kamara, resident of Mpanga Prison Rwanda is charged in Count 1 of knowingly and willfully interfering with the Special Court's administration of justice by offering a bribe to a witness that had testified against him in violation of Rule 77(A) (iv). In Count 2 he is charged with knowingly and willfully interfering with the Special Courts administration of Justice by otherwise interfering with a witness who had testified against him also in violation of Rule 77(A)(iv). Finally in Count 3 Mr. Kamara is charged with knowingly and willfully interfering with the Special Court's administration of justice by disclosing information relating to proceedings in knowing violation of an order of the court and Rule 77(A) (ii).⁵

8. The particulars of each of these counts generally allege that on or about November 27 2010 to 16 December 2010 from his prison cell, Mr. Kamara knowingly and intentionally offered a bribe to a protected witness through another person, attempted to influence a protected witness and finally disclosed the confidential information of a protected witness to Samuel Kargbo.⁶

⁵ Order in Lieu of Indictment annexed to the Decision on the Report of the Independent Counsel, SCSL-04-16-ES, 24 May 2011

⁶ Order in Lieu of Indictment annexed to the Decision on the Report of the Independent Counsel, SCSL-04-16-ES, 24 May 2011

9. On the 15 July, 2012 Brima Bazy Kamara was, via video link proceedings, arraigned before Trial Chamber II, Justice Theresa Doherty as Designated Judge presiding together with the other Defendants in this case and he pleaded not guilty to all the charges brought against him.

ADMISSIONS BY THE ACCUSED BRIMA BAZZY KAMARA

10. That the accused Brima Bazy Kamara was a member of the AFRC regime and that he and the accused Santigie Borbor Kanu and Alex Tamba Brima were convicted of Human Rights violations, war crimes etc before Trial Chamber II of the Special Court and were sentenced to a very long terms of imprisonment. That he and other Special Court for Sierra Leone convicts are serving their sentences at Mpanga Prison in Rwanda. That they have access to a telephone line – presently No. 250788966848. Mr. Kamara asserts that he was an enlisted member of the RSLAF. Hassan Papa Bangura (aka Bomblast) is his friend. Samuel Kargo aka Ragga and TFI 334 were at Pademba Road Prisons during the time Brima Bazy Kamara was incarcerated at the Special Court Detention Centre.
11. That the accused Brima Bazy Kamara admits that during the early days at Mpanga Prison he received telephone calls from and made calls to Hassan Papa Bangura.
12. The accused Brima Bazy Bangura admits that in November 2011 Mr. Ibrahim Mansaray was appointed pro bono counsel for the SCSL prisoners at Mpanga Prison.

13. The accused Brima Bazy Kamara further admits that Andrew Daniels was counsel in the AFRC trial in Trial Chamber II but he was counsel for Alex Tamba Brima. He was hoping to be assigned as counsel for the prisoners at Mpanga Prison but that did not happen.

STATEMENT OF LAW

14. Counsel for Brima Bazy Kamara agrees with the general statement of the applicable law laid bare by the Independent Counsel in his pre-trial brief.⁷

STATEMENT OF CONTESTED MATTERS OF FACT AND LAW

15. Brima Bazy Kamara denies all the three charges brought against him. He denies ever speaking to TF1 334 or asking any person to speak to TF1 334 on his behalf. The relationship between TF1 334 and him has never been cordial. The accused will prove that whilst in custody at Pademba Road Prisons, TF1 334 was taken to OTP on numerous occasions and later agreed to testify and did testify at the AFRC trial. Much of his testimony against the accused herein, Brima Bazy Kamara, was tainted not having been with him in the various crime scenes that he testified to being at with Brima Bazy Kamara.
16. The accused Brima Bazy Kamara denies telephoning the accused Samuel Kargbo alias Sammy Ragga between November 27 and December 16, 2011. Bazy denies offering any bribe to Sammy Ragga or anyone else for that matter. He also denies

⁷ SCSL-11-02-PT pp75-78

sending anybody to offer a bribe or promise a bribe to any witness, before, during or after his trial. The allegations made against him were concocted by the alleged witnesses for purely personal reasons or personal gain. TF1-334 and Sammy Ragga are very close friends. There was a time in 2010 that they lived together and were inseparable.

17. With regard to the testimony of Mrs. Claire Hanciles, Mr. Ibrahim Mansaray and Mr Andrew Daniel, the accused will be asserting the legal professional privilege or lawyer client privilege a sacrosanct privilege that is rarely abrogated by Courts and then only in exigent circumstances . This privilege is the benchmark of the judicial system as it enables and empowers those seeking legal advice to speak freely without fear of disclosure. All conversations with these three attorneys were very much within the framework of that privilege and the sanctity of that privilege must be upheld.
18. Furthermore the accused Brima Bazy Kamara denies disclosing the real name of TF1 033 to Sammy Ragga or anyone else.
19. The accused Brima Bazy Kamra contends that on a proper interpretation Rule 77 is found in Part VI of the Rules of Procedure and Evidence under the Rubric Proceedings before the trial chambers. At the time it was alleged that the offences were committed, there was no trial chamber sitting. There were no proceedings in progress. The Trial Chamber No II which tried the case against Brima Kanu and Kamara had become *functus officio*. The appeal against the Trial Chamber II had

functus officio. It is not surprising that the prior OTP motion to the Court of Appeal was dismissed.

REQUEST FOR RECIPROCAL DISCLOSURE

20. Indeed the statements in paragraph 89 of the Prosecutors Pre-Trial Brief and Filings Pursuant to the Scheduling Order of 1 May, 2012 are correct. It was not possible to make any reciprocal disclosure because the respective contracts of counsel representing the accuseds including counsel for Brima Bazzy Kamara were terminated and they were reinstated on or about about 1 May, 2012.

GENERAL

21. Brima Bazzy Kamara after careful consideration most likely will testify. His defence team is hampered however by the fact that all consultations have to be over the telephone and most of the time the line to Rwanda is extremely bad. To assist counsel to properly carry out his brief efficiently, he ought to be able to meet his client or contact him in sufficient time before the trial of this matter.

Dated in Freetown, Sierra Leone this 1st day of June 2012.

Submitted by Counsel for Brima Bazzy Kamara


A. F. Serry-Kamal