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SCSL-11-02-T
(218-234)

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SPECIAL COURT FOR SIERRA LEONE

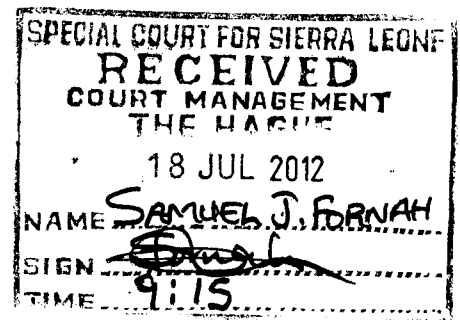
TRIAL CHAMBER II

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

Registrar: Ms. Bintá Mansaray

Case No. SCSL-11-02-T

Date filed: 17 July 2012



The Independent Counsel

-v-

Hassan Papa Bangura
Samuel Kargbo
Santigie Borbor Kanu
Brima Bazzy Kamara

PUBLIC

MOTION ON BEHALF OF SANTIGIE BORBOR KANU FOR JUDGEMENT OF
ACQUITTAL PURSUANT TO RULE 8 OF THE RULES OF EVIDENCE AND RULING OF
JUSTICE DOHERTY ON 4 JULY 2012

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. These submissions are filed in response to the ruling of 4 July 2012 in which Justice Doherty made orders regarding written submissions of Rule 8 submissions from the Defence.
2. The Defendant Santigie Borbor Kanu stands charged with two Counts on the Order in Lieu of Indictment¹ issued at the Hague on 24 May 2011 by Trial Chamber II. For ease of reference the two Counts are reproduced below:

COUNT 1: Knowingly and wilfully 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).

Particulars: On or about 27 November to 16 December 2010, from Mpanga Prison, Rwanda, Santigie Borbor Kanu offered a bribe to protected witness FF1-334, who gave testimony before Trial Chamber II in the proceedings of Prosecutor v. Brima, Kamara and Kanu, in return for recanting his previous testimony in that trial, both directly by telephone on or around 29 November 2010, and through instructions to Samuel Kargbo and Hassan Papa Bangura.

COUNT 2: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given testimony before a Chamber in violation of Rule 77(A)(iv).

Particulars: On or about 27 November 2010 to 16 December 2010, from Mpanga Prison, Rwanda, Santigie Borbor Kanu attempted to influence protected witness TF1-334, who gave testimony before Trial Chamber II in the proceedings of Prosecutor v. Brima, Kamara and Kanu, to recant his previous testimony in that trial both directly by telephone on or around 29 November 2010, and through instructions to Samuel Kargbo, and Hassan Papa Bangura, aka Bomblast.

¹ *Prosecutor v. Brima et al*, SCSL-04-16-ES, appended to Decision on the Report of The Independent Counsel, 24 May 2011.

3. The relevant parts of Rule 77 are reproduced below for ease of reference:

Rule 77: Contempt of the Special Court

(A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice, including any person who:

.....

(iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with a witness who is giving, has give, or is about to give evidence in proceedings before a Chamber, or a potential witness;

4. Rule 77(A) therefore “provides specifically that any person may be punished for contempt for knowingly and wilfully interfering with the administration of justice and the *mens rea* requirement of “knowingly and wilfully” does apply to the conduct complained of herein an forms part of the specific intent for the contempt in this case t be a knowing violation..” of the administration of justice.²
5. Additionally, “..Rule 77(E) provides that the rules of procedure and evidence required throughout contempt proceedings are those contained in the Rules and generally applicable to trial proceedings. The purpose of these provisions is indeed to ensure that proceedings involving allegations of contempt before the Special Court are subjected to the same judicial guarantees and procedures, as they may become appropriate due to the ancillary nature of contempt proceeding, set for the crimes falling within the statutory competence of the special court.”³

² *Independent Counsel v. Brima Samura, SCSL-2005-01, Judgement in Contempt Proceedings, para. 18.*

³ *Ibid, para.17.*

- 6. It is respectfully submitted that “for each criminal contempt, it has to be established that an accused acted with a specific intent to interfere with the administration of justice.”⁴

- 7. It is therefore incumbent on the Prosecution to satisfy the Learned Judge that in each of these contempt allegations:
 - a. Santigie Borbor Kanu either offered a bribe [Count 1], to Mr. Alimamy Bobson Sesay, aka TF1-334 or attempted to influence the same [Count 2]
 - b. That the relevant offer to bribe or attempt to influence was contrary to the Special Court’s administration of justice; and
 - c. The relevant offer to bribe or attempt to influence was knowingly and wilfully committed.⁵

- 8. This is not a case where consideration has to be given to knowledge of an order of the court as in *Alekowski*.⁶ It is however submitted that the Prosecution nevertheless has to prove that Mr. Kanu either had actual knowledge, was recklessly indifferent or was wilfully blind to any attempt to interfere with the Special Court’s administration of justice. Clearly, mere negligence would be insufficient to make out the case against him.⁷

Required Standard of Proof

- 9. In *Independent Counsel v. Brima Samura*, it was decided that the standard of proof required to establish the commission of an offence of contempt of court is that of proof beyond reasonable doubt, that as Part IV to VII of the Rules are applicable to contempt

⁴ *Prosecutor v. Brdjanin, Case No. 1T- 99-36-R77, Decision on Motion for Acquittal Pursuant to Rule 8bis, 19 March 2004, para. 16.*
⁵ *Independent Counsel v. Brima Samura, SCSL-2005-01, Judgement in Contempt Proceedings, para. 21, See also Brdjanin, supra note 4, paras 36-41..*
⁶ *Prosecutor v. Alekowski, IT- 95-14/1-AR77, May 30,2001.*
⁷ *Id, para. 45.*

proceedings, and that Rule 87, contained in Part VI of the Rules provides that a finding of guilt may only be reached when the court is satisfied that guilt has been proved beyond reasonable doubt.⁸

10. Accordingly the Independent Counsel will have to satisfy the Learned Trial Judge of the guilt of Mr. Kanu, beyond reasonable doubt before a finding of guilt can be made in relation to either of the two charges levied against Mr. Kanu in this case.

Prosecution Case

11. The Prosecution has relied on the evidence of 5 witnesses to prove the case against Mr. Kanu. In brief the Prosecution Case is that there was 'established persistent contact' with Mr. Sesay over the period specified in the Order in Lieu of Indictment by the Accused, offering the former monetary compensation and otherwise persuading him to recant the testimony he had given against them in the special court trial which resulted in their conviction and imprisonment in Rwanda, with the specific intent to interfere with the administration of justice.⁹
12. As against Mr. Kanu, the Prosecution alleged that on or about 26 and 27 November 2010, Mr. Sesay received a call from, and then met with Mr. Kargbo, the second Accused, who related that he had received a call from the AFRC convicts in Rwanda and had been requested to approach Mr. Sesay about recanting his testimony to help them get their sentences reduced.¹⁰ It is further alleged that on or about Monday, 2 November 2010, Mr. Kargbo again called and met with Mr. Sesay in order to urge the former to comply with the request to recant. witnesses and evidence pertinent to this motion for judgement of acquittal shall be examined below.

⁸ *Independent Counsel v. Brima Samura, SCSL-2005-01*, Judgement in Contempt Proceedings, para. 28.

⁹ *Prosecutor v. Hassan Papa Bangura et al, SCS-2011-02-PT*, Prosecutor's Pre-Trial Brief and Filings pursuant to Scheduling Order of 1 May 2012, 16 May 2012, para.14.

¹⁰ *Ibid*, para.20

Evidence

Samuel Kargbo¹¹ aka Sammy Ragga

13. Mr Kargbo was the first witness called by the Prosecution on 21 June 2012, due to Mr. Alimamy Bobson Sesay being taken ill when he was due to be called. During his Examination in Chief, Mr. Kargbo stated that he recalled Bazzy Kamara telephoning him from Mpanga Prison in late November/early December of 2010.¹² During the course of that conversation it was apparent that Mr. Kargbo had only spoken with Mr. Kamara.¹³ In spite of the above Mr. Kargbo went on to testify that when he contacted Mr. Sesay he told the latter that Bazzy, Five Five had asked Mr. Kargbo to speak to him about recanting his evidence.¹⁴ It is worth noting that Mr. Kargbo testified that on this first occasion he was told by Mr. Sesay that it would be a contempt of court if he were to recant his evidence.¹⁵ It is also worth noting that the witness stated in the course of Examination in Chief that both the third and fourth Accused told him they would give him money as well as Mr. Sesay.¹⁶ It is submitted on behalf of Mr. Kanu that these last two matters amount to inconsistencies in his evidence that significantly affect the credibility of this witness in that there is no corroborative evidence of these claims and they appeared to be answers, to questions put by Prosecuting Counsel, which attempted to embroider, or bolster, false evidence from Mr. Kargbo.
14. In his testimony about the 'PWD call' Mr. Kargbo did not provide the court with a date. His evidence was to the effect that he received a call from the third Accused in this case, 'Bazzy', who wanted to speak to Mr. Sesay, but the latter refused.¹⁷ He stated that 'Bazzy' called later and then passed the phone to 'Five Five' and then to 'Gullit' with all of them imploring him to speak with Mr. Sesay, whereupon he did pass the phone to Mr. Sesay, who went some distance away to conduct his conversation.¹⁸ In

¹¹ Mr Kargbo commenced his evidence on 21 June 2012.

¹² Transcript of proceedings, p.118, lines 7-12.

¹³ *Ibid.*, p.118, line 7 to p.120, line 5; cf also in cross-examination page 201, lines 24-26 & page 204 line 21 to page 205 line 7.

¹⁴ *Ibid.*, page 120, lines 21-27.

¹⁵ *Ibid.*, page 121, lines 1-3. This was confirmed in Cross Examination – page 230, lines 12-18; page 240, lines 9-11.

¹⁶ *Ibid.*, page 141, lines 18-19; page 157, lines 1-7; page 217, lines 23-25.

¹⁷ *Ibid.*, page 125, lines 1-5.

¹⁸ *Ibid.*, page 128, lines 8-24.

answer to a clarification question from the Independent Counsel, Mr. Kargbo said that the phone was being passed from one of the Rwanda convicts to another, each time with the speaker saying, before he passed it, unto whom he was going to pass the phone.¹⁹

15. As regards Mr. Kargbo's evidence about the meeting with Mr. Mansaray, there is no corroborative evidence that Mr. Kanu spoke to Mr Mansaray, or that the former had given specific instructions to the latter that were consistent with a plan to interfere with the Special Court's administration of justice. The Prosecution has chosen neither to call Mr. Mansaray as a witness, nor to have him indicted in this case, a stance which, it is submitted, must mean that no criminality is attributed to him and that the Prosecution accepts that whatever was discussed in his presence cannot be a material part of the 'criminal plan' it alleges against Mr. Kanu and others. There is no further mention of Mr. Kanu in relation to a later incident in which it is claimed by the witness that Mr. Kamara called him from Mpanga prison and asked him not to tell anyone who should enquire that the two of them had communicated by telephone.²⁰

16. On the question of Count 2, the evidence led by the Prosecution through this witness amounted to a discussion between this witness and the second Accused.²¹ At no stage does the witness state that he heard those words from Mr. Kanu or that he was informed that Mr. Kanu had directed that those words be uttered to him, or even that he had asked that any communication be made to Mr. Sesay which involved a threat to the latter's well-being. When questioned on this point by Mr. Nicol-Wilson, Mr. Kargbo accepted that he could not remember whether 'Bomb Blast' had issued the threat relied on by the Prosecution.²² Certainly there was no question of Mr. Kanu being involved.²³ It is therefore submitted on behalf of Mr. Kanu that there is no evidence against him in respect of Count 2 of the Order in Lieu of Indictment.

¹⁹ *Ibid.*, page 129, lines 16-19; page 130, lines 6-11, by way of example.

²⁰ *Ibid.*, page 159, lines 10-19.

²¹ *Ibid.*, page 158, lines 20-23.

²² *Ibid.*, page 178, lines 17-28.

²³ *Ibid.*, page 263, line 26 to page 264, line 20.

17. In answers to questions by Mr. Nicol-Wilson, the witness denied speaking to the Independent Counsel about protection²⁴, despite that having been documented in Rule 66 disclosures by the Prosecution Counsel. When cross examined by Counsel for Mr. Kanu, the witness however agreed that he had told the Independent Counsel that if he 'had protection' he could reveal information.²⁵
18. He further stated that he was unemployed and had been so since 2010,²⁶ whereas in answering questions from Counsel for Mr. Kanu he stated that he had been running a successful business trading Gold.²⁷ He further expanded on the timescale of this business in cross examination by Mr. Serry Kamal, when he stated that he only stopped trading in Gold in June or July of 2011.²⁸
19. Mr Kargbo conceded to Mr. Nicol-Wilson that he had not heard what 'Bomb Blast' said to Mr. Sesay, although his testimony hitherto had been that the telephone was on loudspeaker.²⁹
20. During cross examination by Counsel for Mr. Kanu, Mr. Kargbo admitted that he had not seen or Spoken to the Accused, Kanu, in a long time. It appears that the last time he spoke with this Accused was in 2000 when they had been arrested on allegations of treason.³⁰ This contrasts with evidence from Alimamy Bobson Sesay about the time that Mr. Kargbo was arrested and further undermines the credibility of this witness.

²⁴ *Ibid.*, page 168, lines 4-19 & 16, line 10.

²⁵ *Ibid.*, page 235, lines 4-24, in particular down to page 237 line 5.

²⁶ *Ibid.*, page 170, lines 17-20.

²⁷ *Ibid.*, page 195, line 22 to page 200, line 23, during which the witness gives a mathematically impossible explanation about the purchase price of a kilo of gold, at page 17 lines 21-23; page 228, lines 15-18.

²⁸ *Ibid.*, page 302, lines 15-27.

²⁹ *Ibid.*, page 173, line 19 to page 174, line 11.

³⁰ *Ibid.*, page 203, lines 18-20.

21. A further example of the inconsistencies in Mr. Kargbo's evidence can be seen from his apparent inability to reconcile what he said in his statement about not having spoken to Mr. Kanu personally as regards Mr. Sesay recanting his statement and his evidence in which he insists that Mr. Kanu had done so.³¹
22. The witness agreed, finally, in cross examination that Mr. Kanu did not speak to him about Mr. Sesay recanting.³²
23. It is worth noting that, despite giving the impression in his evidence that he was not short of money, the witness was provided with food and the sum of one hundred and twelve thousand Leones [Le.112,000.00] on weekly basis from WVS once he had agreed to co-operate with the prosecution. It is submitted that this acted as motivation to assist the Prosecution in bringing home its case against Mr. Kanu and may well account for the otherwise inexplicable inconsistencies in his evidence.³³
24. Finally, Mr. Kargbo clearly stated in Cross examination that no one had told him to ask Mr. Sesay to tell lies when asking the latter to recant his testimony.³⁴
25. It is therefore submitted on behalf of Mr. Kanu that taking the evidence of Mr. Kargbo, with all its inconsistencies and lack of corroboration, falls short of making a case out against Mr. Kanu on either of the counts in the Order in Lieu of Indictment which this Accused faces.

³¹ *Ibid.*, page 224, lines 17-29; page 226, lines 12-21.

³² *Ibid.*, page 245, line 9 to 253, line 29 - this reference includes the evidence of Samuel Kargbo on the 'PWD' call.

³³ *Ibid.*, page 270, line 22 to page 275, line 18.

³⁴ *Ibid.*, page 285, lines 12-26.

Alimamy Bobson Sesay³⁵ Aka Witness TFI-334

26. Mr Sesay made it clear at the start of his testimony that he wished to give his evidence openly and, as he had done in the Charles Taylor Case asked for any vestiges of his status as a protected witness to be rescinded.³⁶ The Learned Trial Judge accordingly rescinded formerly existing protective measures in so far as they applied to the present trial.³⁷
27. Mr. Sesay testified that the witness Kargbo told him that ‘Bazzy and Five Five’ wanted to speak to him when they first met. This was after being pressed by the Independent Counsel to give details of those who contacted Samuel Kargbo and in direct contrast to his statement in which he had referred to the AFRC convicts.³⁸
28. In respect of the ‘PWD’ telephone call the witness testified that Mr. Kargbo told him, after the latter had first spoken to ‘Bazzy’, that ‘they’ would call again in 15 minutes.³⁹ According to Mr. Sesay, when the phone was handed to him, it was Mr. Kanu on the line.⁴⁰ It is respectfully submitted that the content of the conversation related in evidence is different from, and inconsistent with, Mr. Sesay’s December statement. In the statement there is no mention of Mr. Kanu mentioning that they had spoken to lawyers.⁴¹ It is worth noting that there is a conflict between the testimonies of Mr. Kargbo and Mer Sesay in that the former says he passed the phone after speaking to ‘Bazzy’, while the latter stated that it was ‘Five Five’ on the phone when he received the handset. Mr. Sesay further mentioned that Sammy had shown him the telephone number to show that it was an international number, something which had not been mentioned in his statement and which the Defence suggests is an artifice designed to lend credence to his evidence.

³⁵ Mr. Sesay commenced his evidence on 25 June 2012.

³⁶ *Transcript, page 429, lines 5-14 & line 20 to page 430, line 1.*

³⁷ *Ibid., page 431, line 27 to 432, line 11, 25 June 2012.*

³⁸ *Ibid., page 444, lines 7-15; cf also, Exhibit P3, statement of Alimamy Bobson Sesay dated 9 December 2010, confidential annex 1 to Prosecutor’s rule 66 disclosures, para. 2.*

³⁹ *Ibid., page 449, lines 1-4.*

⁴⁰ *Ibid., page 449, lines 10-24.*

⁴¹ *Exhibit P3, Statement of Alimamy Bobson Sesay dated December 2012, confidential annex 1 to Prosecutors rule 66 disclosures, page 2., para. 3.*

29. A further matter relied on by the defence in this motion is the date of the alleged telephone call during which Mr. Sesay states that he spoke to Mr. Kanu. In his December statement, Mr. Sesay clearly states that it occurred on Monday the 29th November 2010. This was confirmed as accurate in cross examination⁴² and through the evidence of Mr. Saffa. The date is problematic for the Prosecution as there are no calls on the list of calls recorded by MTN, the service Provider.⁴³ It is respectfully submitted that if the witness has purported to give accurate evidence about the date then this is not simply a question of a mistaken date, but an example of a situation where independent evidence, uninfluenced by the Prosecution witnesses, provides firm evidence that the Prosecution account of events is so wrong, and arguably false, that it supports the Defence contention that the witnesses have lied about the call and the contents thereof to support the tale they have chosen to spin for their own purposes.
30. Evidence was adduced from the witness about his telephone conversation with Ms Alegendra, said to have occurred on 30 December 2010. The Prosecution chose not to call Ms. Alegendra, but wished to adduce the email⁴⁴ she had written on the aforementioned date in order to suggest that the calls recorded by MTN, showed the call that Mr. Sesay had given evidence about. It is respectfully submitted that, in the absence of evidence asserting the accuracy of the record of date and time on the email, the Prosecution cannot rely on the document as supporting supplementary evidence for Mr. Sesay in relation to the date of the alleged call.
31. The witness gave evidence that he was offered \$10,000 by Mr. Bangura, the second Accused while he was driving them to meet Lawyer Mansaray.⁴⁵ This was something that he had not said to any of the investigators and he had not previously included it in

⁴² Transcript, evidence of Alimamy Bobson Sesay, page 668, line 2 to page 669, line 12.

⁴³ Prosecution Exhibit P14.

⁴⁴ This email was the subject of submissions and on 25 June 2012, the Learned Trial Judge refused to admit the document during the evidence of Mr. Sesay, finding that it offended against Rule 92[bis], transcript, page 479, lines 17-22. It was admitted as Exhibit P4 on 28 June 2012, cf page 750, line 19 and page 753, lines 26-28 in which the Learned Judge classifies it as being hearsay.

⁴⁵ Evidence of Alimamy Bobson Sesay, examination in chief, 26 June, 2012.

a statement to the Prosecution. He states that he had signed a further statement⁴⁶, which was never served on the defence and which the Prosecution says never happened.

32. The witness agreed that he was given the opportunity to read each page of his statement of December 2010 before signing it and to amend same if he wished. Mr. Sesay did not amend any part of the statement.⁴⁷ He confirmed that the statement was true and that he did not make any 'false statement'.⁴⁸

33. Mr. Sesay sought to explain the changes between the unsigned statement of 1 & 3 December 2010⁴⁹ and 9 December 2010.⁵⁰ By way of explanation or elaboration, he stated, *inter alia*, that:

- a. In respect of the date of Mr. Kargbo's release from prison, that was an error by either the statement taker or himself which he corrected.⁵¹
- b. The words 'recount' and 'recant' were not introduced by himself, but by the statement taker.⁵²
- c. Although he had not been asked to lie specifically by either Mr. Kargbo or anyone in Rwanda, he understood that they wanted him to lie.⁵³
- d. When Mr. Kargbo first told him that the men in Rwanda wanted him to change his testimony he did not say that this would amount to a contempt of court as he was unaware of the legal implications at that stage.⁵⁴
- e. In one of his 'statements' he had mentioned that Mr. Kanu told him they had talked to their lawyers, although this does not appear in Exhibit P3.⁵⁵

⁴⁶ Transcript, evidence of Alimamy Bobson Sesay, 27 June 2012, page 31, line 19 to 32, line 16. This evidence caused the Learned judge to invite the Independent Counsel to make enquiries of the OTP at page 633, lines 10-17 etc.

⁴⁷ Ibid., page 637, line 20 to page 638, line 29.

⁴⁸ Ibid., page 643, lines 23-24.

⁴⁹ Prosecution Exhibit P7.

⁵⁰ Prosecution Exhibit P3.

⁵¹ Transcript, evidence of Alimamy Bobson Sesay, 27 June 2012, page 646, lines 4-7; page 647, lines 1-2.

⁵² Ibid., page 648, lines 5-9. As clarified by the Learned Judge.

⁵³ Ibid., page 652, line 10 to page 656, line 8.

⁵⁴ Ibid., page 670, line 27 to page 671, line 9.

⁵⁵ Ibid., page 677, line 22 to page 67, line 22.

Further, or in the alternative he had given that answer to the Independent Counsel when giving evidence in chief .

- f. He recalled when giving evidence that Mr. Kargbo had shown him an international number, although this was not in his original statement.⁵⁶
 - g. By the time he spoke to 'Mustapha' of the OTP the conversations with Mr. Kargbo and others had already taken place.⁵⁷
 - h. He accepted that he had not told anyone at the OTP about the 'offer' of \$10,000.⁵⁸
 - i. He agreed that he intended going to France before the contempt hearing and that he wanted the Court to provide him with a ticket and assist with getting a valid visa.⁵⁹ The Defence contends that this amounts to good motivation for the witness to give false evidence against Mr. Kanu and others.
34. In cross examination the witness testified that some time had elapsed between his discussion with 'Mustapha' and the call to Shaymala. He stated that the 'PWD' incident had occurred by the time that he spoke to 'Mustapha'.⁶⁰ While there is some room for him to manoeuvre, it is respectfully submitted that the effect of his evidence is that the PWD incident had occurred some time before he spoke to Ms. Alegendra.⁶¹
35. It is submitted that the testimony of this witness is so riddled with inconsistencies, both within itself and compared with other witnesses such as Mr. Kargbo and Mr. Saffa, that it lacks credibility and ought not to be used as the bulwark of a flawed case against Mr. Kanu. His evasiveness can be exemplified by the way that Mr. Sesay answered many

⁵⁶ *Ibid.*, page 681, lines 5-25.

⁵⁷ *Ibid.*, page 682, line 14 to page 684, line 21.

⁵⁸ *Ibid.*, page 712, lines 21-23.

⁵⁹ *Ibid.*, page 730, lines 6-13 & 25-27.

⁶⁰ *Ibid.*, page 686 line 28 to page 687, line 2.

⁶¹ *Ibid.*, page 686, line 6 to page 687, line 22. Mr. Sesay said that the period was within two weeks or so. After the Independent Counsel interposed an objection a further attempt was made to clarify the witness' answers which appear at page 695, lines 5 to page 696, line 20.

questions from Defence Counsel, including the last question put to him in cross examination by Counsel for Mr Kanu.⁶²

Andrew Daniels⁶³

36. Mr. Daniels was the erstwhile lawyer for Brima Bazzy Kamara, the fourth defendant in this case, during his trial in the AFRC section of the Special Court trials relating to those who bore the greatest responsibility for atrocities committed during the civil Conflict in Sierra Leone as per its mandate. He gave evidence about his communications with Mr. Kamara, after the AFRC trial, and leading up to these allegations.
37. The evidence called by the Prosecution from this witness does not greatly assist the case against the Accused Kanu, if at all. Mr. Daniels testimony makes it clear that he did not speak to Mr. Kanu at all during the material, or relevant, period. While Mr. Daniels also spoke to Mr. Tamba Brima, one of the convicted AFRC⁶⁴ prisoners in Rwanda, he did not speak to Mr. Kanu.⁶⁵ He was certainly not aware that there was a criminal plan as alleged by the Prosecution and was not alleged to be a participant in such plan. It was his understanding, from the third Accused that ‘they’ were considering filing a petition either before the President of the Special Court, or to the Court itself for a review of their sentence or conviction.⁶⁶
38. Despite the efforts of the Independent Counsel to sway his witness, Mr. Daniels was steadfast in saying that ‘the name 334’ was not mentioned as one of those prepared to change his testimony.⁶⁷ Furthermore, it would appear that the Independent Counsel

⁶² *Ibid.*, page 737, lines 8-16. Further examples are found at Pages 774, lines 14-16; 786, line 29 to 787, line 7; 790, lines 25-29; 791, lines 3-9.

⁶³ Mr. Andrew Daniels, former Counsel for Ibrahim Bazzy Kamara, in the AFRC trial at the Special Court, gave evidence on 25 June 2012.

⁶⁴ Armed Forces Revolutionary Council.

⁶⁵ Transcript of *Prosecutor v Bangura et al*, SCSL-11-T, evidence 25 June 2012, page 419 lines 3- 9

⁶⁶ *Ibid.*, page 420, lines 8-16; 421, lines 5-12

⁶⁷ *Ibid.*, page 417, lines 1-5.

sought to fit Mr. Daniels' evidence into the version of events the Prosecution wished to rely on as its case in eliciting evidence about his trip to Freetown in December 2010.⁶⁸

Joseph Saffa

39. Mr. Saffa is an investigator attached to the Office of the Prosecutor at the Special Court [OTP]. He gave evidence about contact between Alimamy Bobson Sesay and the OTP and his involvement in taking the statement of Mr. Sesay that was served on the Defence for the purposes of the present trial.
40. Mr. Saffa's evidence, it is respectfully submitted, makes it clear that proper procedures were not followed in the taking of Mr. Sesay's witness statement.⁶⁹ The procedure that this witness described means that the Defence has lost the opportunity of examining the first hand account taken from Mr. Sesay.
41. Despite the above, Mr. Saffa's evidence reveals significant inconsistencies in Mr. Sesay's evidence and fails to explain why a further statement was not taken from the latter in order to deal with further issues, such as driving Kargbo and Bangura to the lawyer's office or the amount of money that he was offered.

Hillary Sengabo

42. Mr. Sengabo is the Deputy Director of Mpanga Prison and the Liaison between the Rwanda Correctional Services and the Special Court for Sierra Leone. He was a witness due to be called by the Defence, but the Independent Prosecutor saw fit to approach, interview and obtain a statement taken from him by the Defence.

⁶⁸ *Ibid.*, pages 417, line 28 to 418, line 12.

⁶⁹ It would appear that the original note was handwritten, then typed up on a computer. The original note was then lost or thrown away Page 900, line 2 to page 903, line 9. The witness also appeared to make arbitrary decisions as to what should be included or excluded from the statement – Page 843, line 29 to page 844, line 3.

43. It appears that the purpose of this action by the Prosecution was to introduce evidence of the system in place at Mpanga Prison for the use of telephone services by the convicted persons. The Prosecution also relied on manual records kept at Mpanga prison to support its allegation that Mr. Kargbo was called by Messrs Kamara and Kanu on 30 November 2010. In this regard, the prosecution introduced opinion evidence from Mr. Kargbo as to the writing and signature in respect of an entry on 30 November 2010. On the strength of this evidence the Prosecution seeks to show that a call was made to a telephone number that does not exist on the MTN logs, but submits that this was a call to Mr. Kargbo's phone which, it says, was then passed on to Mr. Sesay during the 'PWD' incident.
44. It is respectfully submitted that for the reasons which are stated earlier in this submission, this evidence does not support the case against Mr. Kanu.⁷⁰

Summary of submissions in support of Judgement of Acquittal

45. As regards Count 1 it is respectfully submitted that there is no evidence capable of supporting the allegation made by the Independent Counsel that Mr. Kanu knowingly and wilfully interfered with the Special Court's administration of justice by offering a bribe to Alimamy Bobson Sesay in the manner alleged, or at all.
46. In relation to Count 2 it is also respectfully submitted that there is no evidence capable of supporting the allegation made by the Independent Counsel that Mr. Kanu knowingly or wilfully interfered with the Special Court's administration of justice by otherwise interfering with Alimamy Bobson Sesay.
47. For the reasons which are elucidated above it is respectfully submitted that there is no evidence capable of supporting either of the counts on the Order in lieu of Indictment levied against Mr. Kanu by the Independent Counsel. Accordingly, the Defence moves,

⁷⁰ *Supra.*, paragraphs 34, 35 & 37.

pursuant to Rule 98 for Judgement of Acquittal in respect of the Defendant, Santigie,
Borbor Kanu

Respectfully submitted,



Kevin A. Metzger

Counsel for Santigie Borbor Kanu

Dated 17 July 2012