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SCSL-11-02-T
(263-279)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Case No.: SCSL-11-02-T

Date filed: 27 July 2012

SPECIAL COURT FOR SIERRA LEONE	
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PROSECUTOR

Against

**Hassan Papa Bangura
Samuel Kargbo
Santigie Borbor Kanu
Brima Bazy Kamara**

**PUBLIC
PROSECUTOR'S BRIEF IN OPPOSITION
TO DEFENCE MOTIONS FOR JUDGMENT OF ACQUITTAL**

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Counsel for the Accused:
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Mr Kevin Metzger
Mr A.F. Serry Kamal

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INTRODUCTION

1. This Brief is respectfully submitted in opposition to the defence motions for acquittal filed by the accused Bangura, Kamara and Kanu after the close of the Prosecutor's case. The motions are utterly meritless and should be denied.
2. The defence submissions share common flaws. They ignore critical evidence adduced in the Prosecutor's case. They nit-pick to attack the credibility of each witness's testimony and the documentary evidence submitted while ignoring the fabric of evidence as a whole, and the myriad ways in which the evidence of the witnesses and documents corroborate each other and demonstrate the guilt of each of the accused. They ignore the long and close relationship between the key witnesses and the accused and the absence of any predilection or motive on the part of the witnesses to incriminate falsely any of the accused.
3. The nature of the charges, their essential elements, and the law applicable to them have been previously described in the Prosecutor's Pre-trial Brief and will not be repeated here. Assuming *arguendo* that Rule 98 motions like these may be filed and heard in contempt proceedings under Rule 77 (an issue we address briefly below, in ¶5), the applicable law is clear. A Rule 98 motion may be granted only if there is "no evidence" capable of supporting a conviction on one or more counts of the indictment. In resolving such a motion, the Court sits not as the trier of fact, but as a judge determining whether a reasonable trier of fact could find evidence sufficient to sustain a conviction beyond a reasonable doubt.

Accordingly, issues of credibility and the minor inconsistencies between witness statements and in court testimony that defence counsel generally search to find in cross examination will for the most part not be addressed in this Brief. We will just note here our respectful submission that no reasonable trier of fact, having sat through their direct and cross-examinations, could possibly find either Mr. Kargbo or Mr. Sesay not credible or their evidence insufficient to convict, either individually or considered together; nor could such trier of fact reasonably ignore or discount the corroborating evidence from (1) Andrew Daniels, Kamara's former lawyer; (2) the "smoking-gun" evidence from the Alagenda email and the MTN prison phone records and prison call log, all of which independently

corroborate the Sesay and Kargbo accounts (and of which the witnesses were unaware when they gave their witness statements and in court testimony); and (3) the Saffa testimony and OTP memoranda, which provide a virtually contemporaneous account of the ongoing criminal scheme as it was unfolding. In short, there could hardly be a more powerful and incriminating fabric of evidence than the record adduced in the Prosecution's case.

4. After we summarize this evidence, we will address each of the three motions in turn. We know the Court has taken detailed notes of the evidence as it came in (since they were often read back during the hearing and the transcript for the most part reflects their accuracy). We have analyzed the hearing record in detail, but because these "no case" motions under Rule 98 are designed to be made and resolved orally, this is neither the time nor the place for summing up the case in its entire detail.
5. It appears to be true that Rule 98 motions have no place in the hearing of contempt cases like this one and should be dismissed out of hand, and we urge the Court to do so. Rule 77(E) provides that Rule 98, like all RPEs in Parts IV to VIII, shall apply only "as appropriate" to these contempt proceedings. It is not appropriate to apply Rule 98 to these contempt proceedings because of the many levels of review of the evidence already conducted prior to this hearing. The sworn statement of Mr. Sesay alone was reviewed by the Trial Chamber, which issued an order appointing the Independent Counsel to investigate. After his investigation and the submission of his report, the Trial Chamber issued an Order in Lieu of Indictment, finding the evidence sufficient to give rise to a reasonable basis to believe that all of the accused may have committed a contempt of court. Pursuant to Rule 47(E), the evidence compiled by the Independent Counsel, all of which was disclosed to defence counsel and essentially adduced in the prosecution's case, was reviewed by the Trial Chamber prior to the issuance of the Order in Lieu of Indictment and found sufficient to amount to the counts of contempt particularized in the Order in Lieu of Indictment. Accordingly, it cannot reasonably be said that there is "no evidence" capable of supporting a conviction for those counts. As defence counsel have conceded in their motions,

and as Rule 98 recites, a motion for judgment of acquittal under that Rule 98 may be granted only when there is “no evidence” capable of supporting a conviction. Since that cannot be true here, our first submission is that these Rule 98 motions should not be heard, determined and denied, but should instead be dismissed out of hand.

SUMMARY OF PROOF

6. Andrew Daniels, Esq., the lawyer from Ghana and the defence lawyer in AFRC trial from 2005 to 2008, who continued to have contact with Kamara and his family (Tr. 393, 395, 418), received a call from Kamara and Tamba Brima in late 2010, telling him that (1) they were contemplating filing a petition for a review of their conviction or sentence (Tr. 393-94), and (2) they had information that some witnesses who had previously given testimony in the trial were prepared to change their testimony (Tr. 401-02). It was clear to Mr. Daniels that Kamara and Brima were talking about the insider witnesses, the most important of which Mr. Daniels knew to be TF1-334, Alimamy Bobson Sesay. (Tr. 402, 417). While Mr. Daniels was not 100% certain, it was likely that Kamara and Brima did mention TF1-334’s name as one of the insider witnesses who was purportedly prepared to change his testimony. (Tr. 415, 416-17).
7. This unimpeachable testimony sets forth the scheme and motive for it. While not mentioning their intent to offer money, what Kamara and Brima were effectively revealing in their conversation with Mr. Daniels was a criminal, contemptuous plan to induce Mr. Sesay and other insider witnesses to recant their testimony, corruptly and in bad faith. All the other evidence in the case demonstrates the steps that all of the accused took to endeavour to carry out that scheme. The prosecution’s evidence clearly proves that Kanu, the third AFRC convict, knowingly and wilfully made himself a part of the scheme, that he and Kamara reached out to Bangura and Mr. Kargbo for assistance in doing so, and that Bangura and Kargbo agreed to become knowing and wilful participants in the unlawful plan.

8. Mr. Sesay and Mr. Kargbo testified, at length and in great detail, to the acts and statements of the accused while participating in this scheme, and specifically to the participation of Kamara, Kanu and Bangura. Their testimony was essentially internally consistent and each corroborated the other in many significant particulars. Separately, they were unshaken. Together, their testimony constitutes an incontrovertible fabric of incriminating evidence that spells out the guilt of all three accused.
9. And last but certainly not least, there is the evidence from the prison phone log and the MTN cell phone records of calls. The MTN phone records in evidence reveal five calls from the Rwanda prison phone call to Bangura's cell phone, 23233810173 (Tr. 454), on 12, 13, 23 and 26 November 2010 and 7 December 2010. (PX P-14, pp. 17, 18, 31 and 34 of 39 and 10 of 10).
10. The MTN phone records also reflect three calls from that same prison cell phone to Mr. Kargbo's cell phone, 033255597 (Tr. 161, 453) beginning shortly after 1 p.m. Rwanda time on 30 November 2010, the day the Alagenda email (PX P-4) reveals was the day Kamara and then Kanu spoke to Mr. Kargbo and Mr. Sesay during their second meeting at PWD Junction while Mr. Kargbo -- at the behest of Kamara and Kanu -- was attempting to persuade Mr. Sesay to agree to their pleas for help by recanting his testimony corruptly for monetary compensation. (PX P-14, p. 39 of 39, calls at 1:09 p.m., 1:37 p.m. and 1:49 p.m. respectively. The prison phone log (PX P-15 and P-15-A) shows that Kamara logged in, in his own handwriting, to make two calls beginning on that same 30 November 2010 date, at 1:11 p.m., the second of which was to 23233285697 (only two digits off from Mr. Kargbo's cell phone number). The phone log also shows that Kanu logged in, also in his own handwriting, immediately below Kamara's name on the same date and did not record the time. Thus, the log shows that Kanu was present and using the phone at just about the time of day both Mr. Sesay and Mr. Kargbo say he was on the phone or getting on the phone with them. (Tr. 996-97, 1011-12, 1015-16, 1021-22, 1026-27, 1049, 1055-60, 1100-01). Much of this evidence comes from Deputy Warden Hillary Sengabo, who also testified that Kamara, Kanu and Brima were permitted to and did make calls together. (Tr. 1046).

11. None of these phone records or logs were available to Mr. Sesay or Mr. Kargbo when they gave their statements, or even to the OTP investigators or the Independent Counsel when they received those statements during their respective investigations. Similarly, neither Mr. Sesay nor Mr. Kargbo knew about the incriminating conversation Kamara had with Mr. Daniels, his former lawyer, that effectively corroborates their testimony and explains the motive for the accuseds' corrupt scheme. Yet this testimonial and documentary evidence fits the Kargbo and Sesay evidence like a glove.
12. Mr. Kargbo has pleaded guilty to both counts of the Order in Lieu of Indictment, acknowledging his own culpability. He then testified pursuant to a plea agreement requiring him to testify truthfully, and making the single Judge the arbiter of whether he has done so when it comes to sentencing. It is ludicrous to contend that Mr. Kargbo pleaded guilty, thus opening himself to seven years' incarceration, and made this all up out of whole cloth, simply to get some money out of WVS, or that he chose to falsely implicate the three accused, all of whom he has known for many years, with whom he has never quarrelled, and about whom he had never previously uttered a negative word.
13. There are two sources of sworn evidence by Mr. Kargbo: his 6 May 2011 sworn statement in evidence as an attachment to his plea agreement, Prosecution Exhibit ("PX") P-1, and his in court testimony under oath over three days 21-23 June 2012. The sworn statement was rendered more than a year before his in-court testimony but they are generally consistent and are further consistent in essential particulars with the statements and testimony of Mr. Sesay, and with the other evidence in the case, including the documentary evidence discussed above and the virtually contemporaneous memoranda prepared by Inv. Saffa and his OTP colleagues of the information being reported by Mr. Sesay as the plot unfolded.
14. Similarly, there are two sources of sworn evidence from Mr. Sesay, his sworn statement (PX P-3) and his in-court testimony over four days, given without the usual opportunity to prepare because of difficulties with which the Court is familiar. (Tr. 481, 697-98).

15. The sworn statements and in court testimony of both Mr. Kargbo and Mr. Sesay made clear the close relationships they had with each other and Bangura leading up to these events, with no bad blood or malice between them, and to the close relationships of many years standing that those three had with all three Rwanda convicts. (PX P-1, P-3; Tr. 123-24, 159-60, 179, 240-41, 291, 435-38, 451-52, 526-28, 558-60, 626-28, 674). These close relationships plausibly explain why the Rwanda convicts would turn to Bangura and Mr. Kargbo to approach Mr. Sesay, and why Bangura and Kargbo agreed to participate in the corrupt and contemptuous plan knowingly and wilfully. Their long and close association also explains why Mr. Kargbo and Mr. Sesay would have no difficulty recognizing the voices of Kamara and Kanu although they had no spoken in some years. (Tr. 451-52, 674).
16. The evidence from Mr. Sesay and Mr. Kargbo has been summarized in the Prosecutor's Pre-trial Brief and in the opening statement and need not be repeated in full detail here, as their evidence went in essentially as described.
17. Kamara told Mr. Kargbo that the lawyers had stated that the only way the Rwanda convicts could get their convictions squashed or their sentences reduced was to get Mr. Sesay to recant his testimony (Tr. 119; PX P-1). This evidence has the ring of truth in light of Mr. Daniels's testimony that he was waiting to be contacted by the Principal Defender for assignment to represent the Rwanda convicts in an application for review (Tr. 421).
18. Mr. Kargbo was first contacted by Kamara, who asked him to talk to Mr. Sesay so that he could change his statement as evidence before the Special Court. (Tr. 118-29, 244-45; PX P-1). During a subsequent phone call in which Kamara, Kanu and Tamba Brima were together, Kamara told Mr. Kargbo that he was expecting Mr. Kargbo and other comrades who were together in the war to assist the three Rwanda convicts by talking to Mr. Sesay to change his testimony (before the Special Court). (PX P-1). Kamara said he would be in a position to offer Mr. Sesay financial benefit – money -- to change his evidence. (PX P-1; Tr. 119).

19. Mr. Kargbo's first contact with Mr. Sesay came in late November 2010, first calling him to say he had something important to discuss, in person, not on the phone. (Tr. 119-20, PX P-1, Tr. 439, 775, PX P-3).
20. Their first meeting occurred the next day, driving to Newton, during which Mr Kargbo put the Rwanda convicts' proposal to Mr. Sesay, asking him to help them by changing his testimony before the Special Court because their lawyers had told them that the only way to get their convictions squashed or their sentences reduced was to get some key witnesses, especially Mr. Sesay, to change their testimony. Mr. Kargbo said it would be financially rewarding – there would be money and financial support raised by the men in Rwanda. When Mr. Sesay wanted nothing to do with it, saying it was not possible and he did not want to have any contact with the Rwanda convicts, Mr. Kargbo persisted. Mr. Kargbo spoke to Bangura on his cell phone, and put Mr. Sesay on with Bangura, who told Mr. Sesay that he, Bangura, wanted Mr. Sesay to cooperate with those men in Rwanda and help them. Bangura asked Mr. Sesay what was going on (i.e., whether he was going to do it), and Mr. Sesay said he had heard the message, was considering it and would think about it. . (Tr. 120-21, 124, 175, 187-88, 230, 232, PX P-1; Tr. 439-41, 443-45, 447-48, 572-75, 775, 810, PX P-3).
21. Mr. Kargbo knew, when he tried to persuade Mr. Sesay to recant his testimony for money, that it was a crime to do so, and that he was assisting the Rwanda convicts in committing an offense before the Special Court. (Tr. 187-88, 230, 232). Obviously, so did all of the accused. There is not one instance in this entire record of anyone suggesting to Mr. Kargbo or Mr. Sesay that the recantations being sought were based on genuine beliefs that Mr. Sesay had given false testimony which in good conscience should be changed. No one ever discussed with Mr. Sesay the truth or falsity of any of the evidence he had given in the AFRC trial. Instead, the request was based on their all being brothers, on the need for the Rwanda convicts to get out from under their convictions and long sentences, and on the promise of financial reward. Not once, in any of the long days of cross examination of these two key witnesses, did any of the three defence

lawyers ask either one whether the truth or falsity of Mr. Sesay's evidence had ever been mentioned to him.

22. Mr. Kargbo had a second meeting with Mr. Sesay in which he drove Mr. Kargbo to PWD junction and again raised the subject of Mr. Sesay's recanting his testimony in return for money. This was the meeting in which Kamara called Mr. Kargbo on his cell phone, found out Mr. Sesay was with him, asked to speak to Mr. Sesay, was rebuffed, and then called back with Mr. Kanu on the line, with Mr. Kargbo repeatedly and persistently begging Mr. Sesay to cooperate, to help the men in Rwanda, and to get on the phone to speak to them. Kamara told Mr. Kargbo that they wanted to beg Mr. Sesay to help them, and when Mr. Sesay got on the line, Kanu pleaded with him to help them as a brother, telling him they were putting things in place financially, that they had sent Mr. Kargbo to Mr. Sesay to talk to him for them, that they were relying on him, that their lawyers had advised them that this was the only way to be released or to reduce their prison terms. When Mr. Kargbo got the phone back, he told Kamara and Kanu that he had sent their message to Mr. Sesay, and Kamara and Kanu told Mr. Kargbo that they would give the money to both Mr. Sesay and Mr. Kargbo, and Mr. Kargbo thereafter persisted in trying to persuade Mr. Sesay to change his testimony. (Tr. 124-26, 128, 133, 138, 141, 228-29, PX P-1; Tr. 448-51, 655, 669, 670, 673-79, 777, 811, PX P-3).
23. This was also the meeting where Kamara asked Mr. Kargbo to ask Mr. Sesay about the whereabouts of TF1-033 (by his real name or acronym), who was also a witness against the three Rwanda convicts, and whom they also wanted to contact to convince to recant his testimony, but whom Mr. Kargbo did not know. He did not know that TF1-033 had testified against the three Rwanda convicts at the AFRC trial before Kamara informed him of that during this conversation. When asked about TF1-033's whereabouts, Mr. Sesay told Mr. Kargbo that TF1-033 used to live somewhere around Clinetown but that he had not seen TF1-033 in a long time and did not know if he still lived there, which Mr. Kargbo related to Kamara. (Tr. 131-33, PX P-1; Tr. 509-11, PX P-3, P-5). This is the evidentiary basis for the additional count against Kamara in the Order in Lieu of Indictment.

24. After some additional meetings between Mr. Kargbo and Mr. Sesay, in which recanting his testimony for money was again the subject of discussion, Kamara told Mr. Kargbo that he wanted Bangura and him to go to the office of Lawyer Mansaray, and on 16 December 2010, they did. They happened upon Mr. Sesay, who drove them to Mr. Mansaray's office. This was the occasion in which, in the car on the way over, Bangura asked Mr. Sesay how much money he wanted to recant his testimony, and Mr. Sesay did not specify an amount, but indicated that what he was being asked to do would warrant a substantial amount of money, the \$10,000 mentioned by Bangura being insufficient. Bangura told Mr. Sesay that the Special Court had not done anything for him, so if those men want to find a way for money to come in, Mr. Sesay should accept it so that he, Mr. Kargbo and Mr. Bangura would all have something (i.e., would make money from the deal). Bangura also received a call from Mr. Mansaray asking where they were, indicating that Mr. Mansaray had Bangura's cell phone number. (Tr. 142, PX P-1; Tr. 508-09, 514-16, 521-22, 584-88, 707, PX P-3, P-5, P-6).
25. When Bangura and Mr. Kargbo went up to see Mr. Mansaray, Mr. Kargbo told him that Kamara had said he would be in a position to offer Mr. Sesay financial benefit so Mr. Sesay could change his testimony before the Special Court, and that Kamara wanted Bangura and Mr. Kargbo to help. When asked by Mr. Mansaray if they would be in a position to convince Mr. Sesay to recant his evidence, Mr. Kargbo replied that Mr. Sesay was his younger "brother" and Mr. Kargbo would be able to persuade him. When Mr. Mansaray said it would be very difficult for Mr. Sesay to go back to the Court to recant his evidence, Mr. Kargbo told him that Kamara had told Mr. Kargbo that Kamara would put modalities in place to have enough money to convince Mr. Sesay to do it, and Mr. Mansaray replied that if that were true, Bangura and Mr. Kargbo should go ahead and convince Mr. Sesay to do it, and that he wanted to be paid as well. (Tr. 142-43, 156-57, PX P-1).
26. After meeting with Mr. Mansaray, Bangura and Mr. Kargbo returned to the Sweissy area, where they met Mr. Sesay again, and told him that Mr. Mansaray would be coordinating the mission, and that they had spoken with Kamara and

Kanu who had promised that they were putting everything (i.e., the money) in place; and where Bangura told Mr. Sesay that he should not be afraid to render assistance to the men in Rwanda, and that if he were to be afraid of anyone it is Bangura and Mr. Kargbo, but that he need not fear if he cooperated. (Tr. 158-59, 178, PX P-1; Tr. 522, 588-93, PX P-10).

27. In March 2011, Kamara contacted Mr. Kargbo again, telling him that if he is questioned about the topic of Mr. Sesay recanting his statement or whether Mr. Kargbo and Kamara had talked on the phone, Mr. Kargbo should deny knowing anything about it, and Kamara would send money to Mr. Serry-Kamal to give to Mr. Kargbo. (Tr. 159, PX P-1).
28. Mr. Sesay also testified that on or about 8 or 9 June 2012, Bangura approached him at Sweissy, where Bangura said that this case was coming up, he had seen Mr. Sesay's statement and there are areas where Mr. Sesay had involved Bangura like the communication in Newton and when he and Mr. Kargbo went to the lawyer, and Bangura told Mr. Sesay that he was Bangura's man, his brother, and asked Mr. Sesay to help him as a brother (Tr. 524, 597-98); and that on or about 15 June 2012, after WVS had called him and he came to the WVS office and was with Mr. Akinbobola, Bangura called him and asked to meet that day. (Tr. 524-25).
29. The prosecution evidence clearly demonstrates that each of the three accuseds offered Mr. Sesay monetary compensation and otherwise attempted to persuade him to recant the testimony he had given against the accuseds Kamara and Kanu 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. There is overwhelming credible evidence of joint enterprise in this effort to corrupt TF1-334 as a witness who had given important insider testimony against the Rwanda convicts at their trial.
30. The prosecution evidence also clearly demonstrates that, during one such contact, Mr. Kargbo asked Mr. Sesay for the whereabouts of TF1-033 by his real name, having been asked to make that inquiry by Kamara. Because Kamara was present at the trial and knew that TF1-033 was a protected witness who had given

testimony against the Rwanda convicts at their trial, and whom they also wanted to influence to recant his testimony, Kamara knowingly and wilfully interfering with the administration of justice by disclosing TF1-033's identity as a witness in that trial to Mr. Kargbo.

31. The testimony of Mr. Sesay and Mr. Kargbo, standing alone, would be sufficient to convict beyond a reasonable doubt. Together, their evidence provides overwhelming evidence of guilt. And, as outlined above, their accounts are corroborated by other witnesses and documentary evidence.

BANGURA MOTION

32. Bangura's motion simply does not address the prosecution's evidence; rather, it emphasizes what it (often inaccurately) perceives as gaps or (minor) inconsistencies or credibility issues in the case. It also ignores the fact that the prosecution's case alleges a criminal and corrupt joint enterprise among all the accused to interfere with the Special Court's administration of justice by offering a bribe to Mr. Sesay and by otherwise interfering with Mr. Sesay and other witnesses, to induce them to recant his important testimony against the AFRC convicts in the AFRC trial.
33. Bangura's argument that the Court may consider only evidence within the time frame 27 November to 16 December 2010 is not supported by any citation of authority and is without merit. Evidence of acts both before and after the time frame charged in an indictment generally may be admitted for multiple purposes to help prove up the charged criminal scheme during the alleged time frame, including background, to provide context, and to prove pattern, knowledge or intent,. Because no citation accompanies the argument, we will merely cite portions of the RUF and AFRC trial judgments (¶480 and ¶¶37-38 respectively) supporting the proposition that the admission of evidence outside the temporal scope of the indictment does not encroach upon the fundamental legal principle that the accused can only be convicted of those crimes charged in the Indictment. Even if *arguendo* Bangura's argument were not meritless, the prosecution's case

contains sufficient evidence of acts within the time frame alleged to require that the accused's motion be denied.

34. Bangura's motion is based on the false premise that because (1) the accused never actually gave money to Mr. Sesay, (2) Bangura did not promise Mr. Sesay that the money would be coming out of Bangura's own pocket, and (3) Mr. Sesay may not have been a protected witness at the time he was asked to recant his testimony, Bangura may not be convicted. Bangura also points to an alleged inconsistency between his witness statement and his in court testimony as to whether Bangura called Mr. Kargbo or Mr. Kargbo called Bangura during Mr. Kargbo's first meeting with Mr. Sesay, rather than focusing on the powerfully incriminating substance of all of the statements Bangura made to Mr. Kargbo and Mr. Sesay during the course of the criminal scheme. Bangura also focuses irrelevantly on what Mr. Kargbo may not have heard or remembered, rather than on what he and Mr. Sesay did hear, remember and testify to under oath both in their statements and in court.
35. These include (1) Bangura's call to Mr. Kargbo during his first meeting with Mr. Sesay, in which he (a) asked Mr. Sesay if Mr. Kargbo had explained everything (i.e., the plan and request that he recant) to him, and (b) told Mr. Sesay to do it to help the men in Rwanda; (2) Bangura's questioning of Mr. Sesay on the drive to Mr. Mansaray's office of how much money he wanted out of the deal (for his recantation of testimony); (3) Bangura's mention of the figure of \$10,000; (4) Bangura's statement that the Special Court had not done anything for Mr. Sesay and his suggestion that Mr. Sesay do what the men in Rwanda wanted and take their money so that he, Mr. Kargbo and Bangura would all make money; and (5) Bangura's statements to Mr. Sesay after the Mansaray meeting that (a) Mr. Mansaray was coordinating the mission, (b) they had spoken to Kamara and Kanu who had promised that they were putting everything in place, and (c) Mr. Sesay should not be afraid to cooperate with the request to recant, that if there were anyone to fear it would be Bangura and Mr. Kargbo, but Mr. Sesay need have no fear if he cooperated.

KANU MOTION

36. Kanu's motion shares the same flaws as the other motions. It fails to contend fully and fairly with the prosecution's evidence and relies on alleged (and minor) testimonial inconsistencies and credibility matters not cognizable in a "no case" motion, since the court must look at the evidence in the light most favourable to the prosecution in resolving such motions. There is no real credibility contest here on this evidentiary record, but we will address all such issues and point out all the reasons why the prosecution witnesses are credible at the appropriate time, in our final (hopefully oral) summation at the close of all the evidence.
37. With respect to Count 2, Kanu mistakenly suggests that that Count is limited to the threat made by Bangura to Mr. Sesay on 16 December 2010. But Rule 77(A)(iv) is not limited to threats. It extends to anyone who "otherwise interferes" or attempts to interfere with a witness who has given testimony to a Trial Chamber in a prior proceeding. Accordingly, Mr. Kanu and the other accused committed the contempt charged in Count 2, without regard to the offer of money, when they approached Mr. Sesay, or caused him to be approached, and attempted to persuade him to change his testimony, simply to help them "as a brother" to void their convictions or to reduce their sentences, as that request necessarily involved a deliberate interference with the Court's administration of justice, for the reasons set forth in ¶21 above.
38. Kanu ignores or misapprehends the incriminating fabric of evidence against him. Both Mr. Kargbo and Mr. Sesay testified to the calls made from the Rwanda prison by Kamara and Kanu on 30 November 2010. In fact, Mr. Kargbo testified to conversations with Kanu as well as Kamara on prior and subsequent occasions as well, discussing the contemptuous plan. But there is no getting around the Kargbo-Sesay testimony that Mr. Kamara called first, asked to speak to Mr. Sesay to beg him to assist all three Rwanda convicts by recanting, and when rebuffed, said he would go get Kanu and call back to speak to Mr. Sesay; when they did call back, Kamara begged Mr. Kargbo to prevail upon Mr. Sesay to get on the line so that "they" could beg Mr. Sesay to help them; and when Mr. Sesay finally agreed to take the phone, it was Kanu who was doing the begging. It was Kanu who

asked for Mr. Sesay's help as a brother. It was Kanu who said they had gotten advice from their lawyers that the recantation by Mr. Sesay and other similar witnesses was the only way for the three Rwanda convicts to be released or to have their prison terms reduced. It was Kanu who told Mr. Sesay that the Rwanda convicts were trying to work out their modalities and put things in place financially. It was Kanu who pleaded with Mr. Sesay to cooperate with them, to help them. And it was Kanu who said they would be relying on him.

39. There is also no getting around the Alagenda email, the phone records and phone log, which make clear that Kanu's plea to Mr. Sesay occurred on 30 November rather than 29 November 2010, which was a mistake made in the witness statement because Mr. Saffa did not have the Alagenda email before him when he was taking Mr. Sesay's statement. (Tr. 881-82). As Mr. Sengabo testified, all three Rwanda convicts were permitted to, and did, make telephone calls together, and the cell phone speakerphone made it possible for more than one of them to be a party to the conversation at the same time. (Tr. 1046, 1090). Kanu was indisputably with Kamara when they made the second call to Mr. Kargbo and Mr. Sesay on 30 November, as the prison log and MTN records prove, at just about the time the prosecution witnesses, who had no access to that documentary evidence, said the conversation occurred, once the time difference between Freetown and Mpanga is taken into account.
40. There was also evidence from Mr. Kargbo that Kanu was on the line for earlier and later discussions about the unlawful plan: an early contact when Kamara enlisted Mr. Kargbo's help for the three Rwanda convicts in getting Mr. Sesay to change his testimony before the Special Court (PX P-1); and a number of occasions when he spoke to Kanu as well as Kamara and/or Brima about the plan, including the convicts' intention to compensate Mr. Kargbo as well as Mr. Sesay. (Tr. 201, 204-05, 216-17, 220, 222, 225, 245-49, 253, 255, 262-63). Mr. Sesay also testified that Mr. Kargbo told him several times that it was Kanu as well as Kamara who had called him and asked him to talk to Mr. Sesay about changing his testimony, and about the whereabouts of TF1-033. (Tr. 444, 447-48, 508-09, 515). Mr. Mansaray also told Bangura and Mr. Kargbo that he was representing

Kanu as well as Kamara and asked if Bangura and Mr. Kargbo were the people those men sent (Tr. 142-43, 156-57). That also strongly suggests Kanu's knowledge and active participation in the contemptuous criminal enterprise.

KAMARA MOTION

41. The prosecution evidence summarized in Kamara's motion alone suffices to require denial of his motion on Counts 1 and 2, as it establishes that Kamara asked Mr. Kargbo to assist the three Rwanda convicts to get out of prison by asking Mr. Sesay to recant his testimony before the Special Court, and that Kamara proposed to raise funds and give them to Mr. Sesay to compensate him for such recantation. (Kamara Motion, ¶¶6-7). While Kamara contends that the phone records do not show any calls to Mr. Kargbo's cell phone in November or December 2010 (Kamara Motion, ¶¶8-9), that is simply not true, as noted above. While it is true that not all the calls made by Kamara and the other Rwanda convicts to Mr. Kargbo appear to be contained in the MTN phone records, there are several plausible possible explanations for that, including access by the convicts to other phones, and their ability to call other friends or relatives who could facilitate calls from Kamara and the others to Mr. Kargbo without his number showing up on the MTN prison phone record. As Mr. Sengabo noted, there was at the time a lack of effective oversight over the convicts' calls by the prison staff.
42. Kamara talked to Mr. Daniels, Mr. Kargbo and Bangura about the plan, and wanted very much to talk to Mr. Sesay about it. Kamara's name and statements are all over this record.
43. Kamara's motion does not specifically address the evidence proving Count 3, but the testimony of Mr. Kargbo and Mr. Sesay summarized above in ¶23 clearly establishes Kamara revelation to Mr. Kargbo for the first time of the real name or acronym of TF1-033 and the fact that TF1-033, who was indisputably a protected witness, had testified against the Rwanda convicts in the AFRC trial.
44. Kamara's motion for judgment of acquittal, like that of the other accused, clearly lacks merit and should be denied.

CONCLUSION

45. Kamara, Kanu, and Bangura, acting jointly and in concert with Mr. Kargbo, intended to, attempted to and did offer money to and otherwise interfered with Mr. Sesay, a witness who had given important evidence at the AFRC trial, in order to persuade him to change his testimony, so as to provide support for a petition to Review the Special Court's Judgement(s) against Kamara, Kanu and Brima, all with a knowing and willful state of mind and with specific intent to interfere with the administration of justice.
46. Kamara knowingly and willfully interfered with the Special Court's administration of justice by disclosing confidential information relating to its proceedings in knowing violation of a previous order of the Court, by revealing the identity of protected witness TF1-033 to Mr. Kargbo.

Respectfully submitted,



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Dated: 27 July 2012