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SCSL-11-02-T
(300-302)

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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

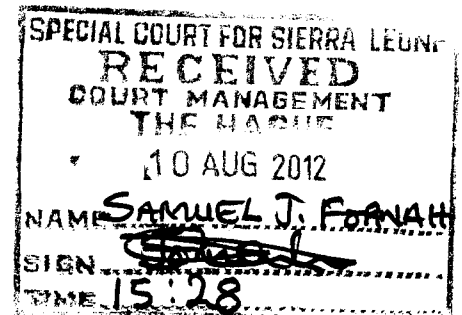
Case No. SCSL-11-02-T

Date filed: 10 August 2012

The Independent Counsel

-V-

Hassan Papa Bangura
Samuel Kargbo
Santigie Borbor Kanu
Brima Bazy Kamara



PUBLIC
URGENT DEFENCE RESPONSE TO PROSECUTOR'S BRIEF IN OPPOSITION TO
KANU'S URGENT DEFENCE APPLICATION FOR PERMISSION TO INSTRUCT
HANDWRITING EXPERT

Independent Counsel:
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Mrs. Claire Carlton-Hanciles

1. This Response is respectfully submitted consequent upon the Prosecutor's Brief in opposition to Kanu's Urgent Defence Application For Permission to Instruct Handwriting Expert dated 6 August 2012 and filed on 8 August 2012.
2. It is respectfully submitted that the Prosecution has no *locus standi* in the Defence application. Moreover the Court will have noted that the statement of Mr. Sengabo was served on the Defence a matter of minutes before the said witness was called to give evidence. It is apparent that the Prosecution had no intention of serving a statement before calling the witness, until he was required to do so by the Learned Judge.
3. The Defendant, Kanu, has fair trial rights that are enshrined in Article 17 of the Statute of the Special Court for Sierra Leone. It is respectfully submitted that he is entitled to call an expert witness to rebut the evidence called by the Prosecution¹.
4. While the Prosecution may not be aware of arrangements relating to the Defence of Mr. Kanu, it should be borne in mind that, financial constraints apart, enquiries have to be made to identify an expert that would be available to deal with these matters at short notice. The Prosecutor complains that the application does not comply with RPE 94bis², in terms of the amount of notice required prior to the date on which the expert is expected to testify, whereas it fails to take into account that the case against Mr. Kanu has shifted since the service of disclosure under RPE 66 and that its approach to a putative Defence witness³ during the currency of this trial. Furthermore the Prosecutor, interviewed and obtained a copy of a statement taken from said witness as well as other material procured by the Defence through this witness. Having so interfered with the witness that the Defence were no longer able to call him⁴, the Prosecution chose to call Mr. Sengabo as its own witness.

¹ Article 17.4(e)

² Prosecutor's Brief in Opposition to Kanu's Urgent Defence Application for Permission to Instruct Handwriting Expert, paragraph 3.

³ Hillary Sengabo.

⁴ The Defence cannot be expected to call a witness who, having been interviewed by the Prosecution would now need to be cross examined.

5. It should further be noted that, technically, the prosecution had not complied with RPE 66(A)(i) in either calling or providing a witness statement from Mr. Sengabo. The Defence was prepared to proceed despite this and did not ask for any extra time. In the circumstances therefore it ill behoves the Prosecutor to object to Mr. Kanu seeking to rebut the opinion evidence of Mr. Sengabo.
6. It is respectfully submitted that the fact that the Defence is seeking permission to instruct a handwriting expert should be sufficient to enable the Prosecutor to deduce that said application was made on the instructions of the Defendant. Furthermore, it may not have escaped the attention of all concerned that Mr. Sengabo was cross-examined about this matter in such a manner as to make it obvious that his opinion was not accepted by the Defence.
7. Finally, the Annexes were filed in order to keep the details of the Handwriting expert, her modus operandi and the terms under which she would accept instructions, from the general public. It is respectfully submitted that it is usual for such details to remain confidential, until at least permission has been granted and thereafter, if the witness is called relevant material will be served on the other parties.
8. Accordingly the Defence humbly requests the Honourable Court to discount and or disregard the Prosecutor's submissions on this matter.

Respectfully submitted,



Kevin A. Metzger

Counsel for Santigie Borbor Kanu

Dated 10 August 2012