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SCSL-11-02-T
(401-405)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Single Judge

Registrar: Binta Mansaray

Case No.: SCSL-2011-02-T

Date: 11 September 2012

INDEPENDENT COUNSEL

v.

Hassan Papa BANGURA
Samuel KARGBO
Santigie Borbor KANU
Brima Bazy KAMARA

PUBLIC

DECISION ON DEFENCE REQUEST FOR CORRECTION TO DECISION ON URGENT DEFENCE
APPLICATION FOR PERMISSION TO INSTRUCT HANDWRITING EXPERT PURSUANT TO RULE 54

Independent Counsel:
Robert Herbst

Counsel for Bangura:
Melron Nicol Wilson
Counsel for Kargbo:
Charles Taku
Counsel for Kanu:
Kevin Metzger
Counsel for Kamara:
Abdul Serry Kamal

SPECIAL COURT FOR SIERRA LEONE
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I, Justice Teresa Doherty, Single Judge of the Special Court for Sierra Leone (“Special Court”)

SEISED of the Defence Motion the “Defence Request for Correction to Decision on Urgent Defence Application for Permission to Instruct Handwriting Expert Pursuant to Rule 54,” dated 22 August 2012 (“Motion”);¹

RECALLING the “Order for Expedited Filing” dated 23 August 2012;²

NOTING the oral Response of the Independent Counsel made on 30 August 2012,³ and the oral Reply of Counsel for Santigie Borbor Kanu also made on 30 August 2012;⁴

RECALLING the “Decision on Urgent Defence Request for Judicial Notice to be Taken of a Fact and for Correction to Decision on Urgent Defence Application for Permission to Instruct Handwriting Expert,” dated 21 August 2012 (“Decision of 21 August 2012”);⁵

RECALLING the “Urgent Defence Request for Judicial Notice to be Taken of a Fact and for Correction to Decision on Urgent Defence Application for Permission to Instruct Handwriting Expert,” dated 17 August 2012;⁶

RECALLING FURTHER the “Decision on Urgent Defence Application for Permission to Instruct Handwriting Expert,” dated 15 August 2012 (“Original Decision”);⁷

RECALLING the “Urgent Defence Response to Prosecutor’s Brief in Opposition to Kanu’s Urgent Defence Application for Permission to Instruct Handwriting Expert,” dated 10 August 2012;⁸

RECALLING the “Prosecutor’s Brief in Opposition to Kanu’s Urgent Defence Application for Permission to Instruct Handwriting Expert,” filed on 8 August 2012;⁹

RECALLING FURTHER the “Public with Confidential Annexes Urgent Defence Application for Permission to Instruct Handwriting Expert,” filed on 6 August 2012;¹⁰

COGNISANT of Article 17 of the Statute of the Special Court for Sierra Leone (“the Statute”) and Rules 54, 73 and 94 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“the Rules”);

HEREBY render this decision based only on the written and oral submissions:

¹ SCSL-11-02-T-52.

² SCSL-11-02-T-54.

³ Transcript 30 August 2012, pp. 1805-1809.

⁴ Transcript 30 August 2012, pp. 1811-1820.

⁵ SCSL-11-02-T-51.

⁶ SCSL-11-02-T-50.

⁷ SCSL-11-02-T-48.

⁸ SCSL-11-02-T-44.

⁹ SCSL-11-02-T-43.

¹⁰ SCSL-11-02-T-42.

PROCEDURAL BACKGROUND

1. On 6 August 2012, Defence Counsel for Santigie Borbor Kanu filed an urgent Defence motion seeking permission to instruct a handwriting expert.¹¹ In his Response, Independent Counsel opposed the motion¹² and, following a Reply from Defence Counsel,¹³ the Single Judge issued the Original Decision on 15 August 2012.¹⁴ The Original Decision refused the application, and referred to the evidence adduced by Mr. Hillary Sengabo, including questions put to him and his answers.¹⁵
2. The Original Decision included at paragraph 8 the statement that “[a]t no point in the course of cross-examination was it put to Sengabo that any of the signatures ascribed to Kanu by Sengabo in Exhibit P15 were not those of the Accused Kanu.”¹⁶
3. Counsel for Kanu subsequently filed his “Urgent Defence Request for Judicial Notice to be Taken of a Fact and for Correction to Decision on Urgent Defence Application for Permission to Instruct Handwriting Expert,” in which he asked for a review of the evidence and for the Single Judge to take judicial notice that “the part of the transcript cited in paragraph 8 of the decision is inaccurate...”¹⁷ and that the statement in paragraph 8 was “erroneous.”¹⁸ Counsel relied on Rule 94 in support of his application.
4. On 21 August 2012 the Motion was refused on the grounds, *inter alia*, that Rule 94 did not apply, as questions put in cross-examination are not matters of common knowledge, nor adjudicated facts or documentary evidence. The Decision of 21 August 2012 also noted that the request did not specify which part of the transcript cited was inaccurate.¹⁹
5. It is noted that there was no citation at paragraph 8 of the Original Decision and the footnote referred to by Defence Counsel was an example of questions put to Witness Sengabo and is not inaccurate.²⁰

SUBMISSIONS

6. Counsel in the Motion submits that the motion of 17 August 2012 seeking correction of the Original Decision was not requesting a change to the transcript but “was rather aimed at inviting correction to [a] portion of the Judgment” as “it fails to take into account that it was suggested to

¹¹ SCSL-11-02-T-42.

¹² SCSL-11-02-T-43.

¹³ SCSL-11-02-T-44.

¹⁴ See Original Decision.

¹⁵ Original Decision, paras 9-18.

¹⁶ Original Decision, para. 8.

¹⁷ SCSL-11-02-T-50, paras 4.

¹⁸ SCSL-11-02-T-50, paras 3.

¹⁹ See Decision of 21 August 2012.

²⁰ SCSL-11-02-T-50, para. 4, citing Original Decision, footnote 16.

Mr. Sengabo in cross-examination on behalf of Mr. Kanu that a signature he referred to on 30 November was completely different to other signatures” and “the clear import of the questions asked by Counsel for Kanu amounted to disputing the signature on the phone record for 30 November 2011.”²¹

7. In his oral Response, Independent Counsel submits that the sentence objected to is “completely accurate” and “absolutely right.” He notes that it was affirmed again in paragraph 15 of the Decision of 21 August 2012 which paragraph was not challenged.²² After reviewing the transcripts on the various questions and answers, Counsel notes that “Mr. Metzger is careful never to submit to the witness that the November 30 signature is not Kanu’s” and “suggesting the signatures are different is not suggesting that the one of the 30th is not Mr. Kanu’s.” On these grounds he submits that the motion is “utterly meritless.”²³
8. In his oral Reply, Defence Counsel submits that the motion is made pursuant to Rule 54 to consider the language used in paragraph 8 (of the Original Motion) because “the language of paragraph 8 does not properly reflect the situation, which paragraph 15, incidentally, does.” He submits that the word “dispute” in the English language has “very many synonyms” and is used for arguing or an argument and that the transcript of 4 July 2012 shows that as Counsel on behalf of Kanu he “disputed,” “contested,” “challenged” and “questioned” Sengabo.²⁴ He referred to differences in the form to be taken in cross-examination, and stated that to seek to impugn Sengabo in the witness box after he had spoken to Sengabo with a view to his being a witness for the Defence would not have been proper under his Code of Professional Conduct.²⁵ He submits that:

“the initial application that was made did not make itself clear enough ... to note that it was the ruling itself that the Defence was asking to be reconsidered in the terms of that one sentence in paragraph 8, this was to make clear that that is what the position was and to make it clear that what the Defence for Kanu had done could not be said to be not disputing the

²¹ SCSL-11-02-T-52, para. 3.

²² Transcript 30 August 2012, p. 1805.

²³ Transcript 30 August 2012, p. 1808-1809.

²⁴ Transcript 30 August 2012, p. 1811-1812.

²⁵ Transcript 30 August 2012, pp. 1812-1814.

signature”²⁶ ... and “what was done in this case is disputing the correctness of the identification of Sengabo....”²⁷

He relies on his motion that “the clear import of the questions asked by Counsel for Kanu amounted to disputing the signature on the phone record for 30 November 2011.”

DELIBERATIONS

9. Counsel for Kanu states that he relies on Rule 54 to amend the paragraph of the Original Decision because Rule 54 has already been used in this case.²⁸ In the example cited by Counsel, Rule 54 was used to correct a typographical error in an unrelated decision. There was no typographical error to be corrected in paragraph 8 of the Original Decision. What Counsel is, in effect, asking the Court to do is to rule that, by the questions asked, he actually put to Sengabo that the signature was not Kanu’s at all.
10. If that is “the import” or “dispute” then it is a matter to be dealt with by way of submission on the evidence. It cannot be dealt with by trying to change the evidence adduced and recorded in the transcript.
11. Having failed to achieve an amendment to the Original Decision by reference to Rule 94, Counsel is now going behind the Decision of 21 August 2012 by seeking to use Rule 54. This is not an appropriate use of Rule 54, which allows a Court to issue orders for, *inter alia*, the conduct of a trial. What is being sought to be done amounts to an attempt to have the Court make a discrete finding and to go behind an order already made.
12. I agree with Independent Counsel that this application is meritless. I have already noted in the Decision of 21 August 2012 that this is an inappropriate subject for a motion. I consider both this Motion and the motion of 17 August 2012 to be frivolous.

Done at The Hague, The Netherlands, this 11th day of September 2012.

Doherty J.

Justice Teresa Doherty
Single Judge



²⁶ Transcript 30 August 2012, pp. 1817-1818.

²⁷ Transcript 30.8.2012 P. 1818.

²⁸ Transcript 30 August 2012 p. 1820.