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SCSL-11-02-T
(392-400)

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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: 11th September 2012

The Independent Counsel

V.

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

PUBLIC

ADDITIONAL CLOSING SUBMISSIONS FOR HASSAN PAPA BANGURA

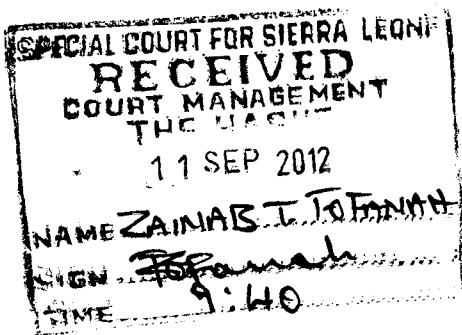
Independent Prosecutor
Mr. Robert L. Herbst

Counsel for Bangura:
Mr. Melron Nicol-Wilson

Counsel for Kargbo:
Charles A. Taku

Counsel for Kanu:
Mr. Kevin Metzger

Counsel for Kamara:
Mr. A.F. Serry-Kamal



INTRODUCTION

1. Pursuant to Rule 86 of the Rules of Procedure and Evidence (The Rules) of the Special Court for Sierra Leone (SCSL) as amended¹ the Defence for Hassan Papa Bangura files this written closing argument in addition to its oral closing argument delivered on the 6th of September 2012.

BACKGROUND

2. Mr. Hassan Papa Bangura was indicted by the Special Court by virtue of an order in lieu of indictment on the following counts:
 - a. **Count 1:** Knowingly and willfully 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 27th November, 2010 to 3rd December, 2010 in Freetown, Hassan Papa Bangura offered a bribe to Protected Witness TF1-334, who gave testimony before Trial Chamber II in the proceedings of Prosecutor v. Brima, Kamara and Kanu, in return for recanting his testimony in that trial.

- b. **Count 2:** Knowingly and willfully interfering with the Special Court's Administration of Justice by otherwise interfering with a witness who had given testimony before a Chamber in violation of Rule 77 (A) (iv).

Particulars: On or about 27th November, 2010 to 16th December, 2010 in Freetown, Hassan Papa Bangura 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 testimony.

THE PRESUMPTION OF INNOCENCE AND PROOF OF GUILT BEYOND A REASONABLE DOUBT

3. Mr. Hassan Papa Bangura pleaded Not Guilty to all the charges levied against him in the indictment.
4. It is a cardinal principle of International Criminal Justice that an Accused Person is presumed innocent until he is proven guilty.²
5. In **Woolmington V DPP**³ **Viscount Sankey LC** had this to say:
"Throughout the web of English Criminal Law one golden thread is always to be seen, that is duty of the Prosecution to prove the Prisoner's guilt subject to.....the defence of insanity and subject also to any statutory exception".

¹ See Rule 86(b) of The Rules of Procedure and Evidence of the Special Court for Sierra Leone.

² See the provisions of the Statutes of the International Criminal Tribunal for Yugoslavia (Article 21 (3)), the International Criminal Tribunal for Rwanda (Article 20 (3)) and the International Criminal Court (Article 66). See also *Salabiaku V France* (1988) 13 EHRP 379

³ (1935) AC 462, 461

6. In **McIntosh V Lord Advocate**⁴, the learned judge said:

“The more serious the crime and the greater the public interest in securing convictions of the guilty, the more important the constitutional protections of the Accused become. The starting point of any balancing inquiry where constitutional rights are concerned must be that the public interest in ensuring that innocent people are not convicted and subject to the ignominy and heavy sentence, massively outweighs the public interest in ensuring that a particular criminal is brought to book.....hence the presumption of innocence which serves not only to protect a particular individual on trial but to maintain public confidence in the enduring integrity and security of the legal system”.

7. The Prosecution is bound in law to prove the case alleged against the Accused beyond reasonable doubt. In the English Case Law of **Miller V Minister of Pension**⁵, Lord Denning explained that the expression “proof beyond reasonable doubt” should be understood as follows:

“It need not reach certainty but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect a community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence, of course it is possible, but not in the least probably, the case is proved beyond reasonable doubt, but nothing short of that will suffice”.

8. The Trial Chamber must determine in respect of each of the counts charged against Mr. Hassan Papa Bangura, whether it is satisfied beyond reasonable doubt, on the basis of the whole of the evidence, that every element of that crime and the forms of liability charged in the indictment has been established.
9. If at the conclusion of the proceedings there is any doubt that the Prosecution has established a case against Mr. Bangura, he is entitled to the benefit of doubt and he must be acquitted.
10. In a Joint-Trial, it is the duty of the Trial Chamber to consider the case against each Accused separately and to consider each count in the indictment separately.

ELEMENTS OF THE OFFENCE

11. For the completion of liability under the Criminal Law two elements must be established which is referred to in Latin as: *actus non facit reum nisi mens sit rea* (an act does not make a person guilty unless he has a guilty mind).
12. The Prosecution must therefore not only establish that a wrongful act was done but that the act was done with the required guilty mind.

⁴ (2001) 3WLR 107, Lord Bingham of Cornhill referred to the Judgment of Sachs J. in the State V Coetzee (1997) 2LRC 593 where the significance of this presumption was explained

⁵ (1947) All ER 372

MENS REA

13. The *mens rea* required for the offences for which Mr. Bangura has been indicted is “knowingly and willfully interfering with the Special Court administration of justice”.
14. In one of the leading common law cases, Lord Goddard said that “the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind”.
15. The requirement for the *mens rea* element of crimes has acquired the status of *jus cogens* as it is provided for in all international tribunals and legal systems.
16. The issue of *mens rea* was explained in the Tadic Appeal decision of July 1999. According to the Appeals Chamber “the basic assumption must be that in international law as in most national systems, the foundation of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts and transactions in which he had not personally engage or in some other way participated.
17. “Knowingly and willfully interfering with the Special Court Administration of Justice” connotes knowledge that one acted deliberately and with an intention to commit a criminal act.
18. The ordinary meaning of the term ‘willful’ as defined in the concise Oxford English Dictionary means “intentional or deliberate”.
19. The question that the Trial Chamber must ask in determining whether Mr. Bangura has the required *mens rea* for the completion of the offences for which he is charged is whether he acted intentionally or deliberately. His acts must be proven to be deliberate and not accidental.
20. In his testimony on the 3rd of September, 2012 Hassan Papa Bangura stated that he has no knowledge about proceedings before the Special Court as he never participated in the process, he also stated that he never attended any outreach programs organized by the Special Court and never understood the concept of a protected witness prior to the indictment been proffered against him.⁶
21. This evidence in chief was not challenged by the Prosecutor during the cross examination of Mr. Bangura. Therefore whatever wrong is alleged to have been committed by Mr. Bangura would have been done accidentally and not deliberately.
22. Mr. Bangura further stated in his evidence in chief that he only knew about what Mr. Samuel Kargbo went to see Lawyer Mansaray about when they got to the office of Lawyer Mansaray. It is therefore submitted that he has no guilty mind prior to visiting the office of Lawyer Mansaray and even during the said visit.

⁶ See Transcript of 3 September 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 17-21 of pp 2013, lines 14-20, 24-29 of pp 2005, lines 6-12 of pp 2014 and lines 16-21 of pp 2015

ACTUS REUS**PROSECUTION WITNESSES**

23. The Prosecution summoned and examined five witnesses to prove its case against the Accused Hassan Papa Bangura.

ANDREW DANIELS

24. Andrew Daniels' testimony before the Court as well as his cross examination and re-examination did not in any way manner or form mention the name of the Accused in relation to any transaction or discussion.
25. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts Hassan Papa Bangura was adduced during the testimony of Andrew Daniels.

HILLARY SENGABO

26. Hillary Sengabo's testimony before the Court as well as his cross examination and re-examination did not in any way; manner or form mention the name of the Accused in relation to any transaction or discussion.
27. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts against Hassan Papa Bangura was adduced during the testimony of Hillary Sengabo.
28. Hillary Sengabo under cross-examination by Defence Counsel for Hassan Papa Bangura stated that the detention facility at Mpanga Prison during the relevant time frame did not have in place a system for voice recording during telephone conversations.
29. The Defence therefore submits that Mr. Sengabo is therefore not in the position to say what was discussed between the Special Court's Prisoners at Mpanga Prison and Mr. Hassan Papa Bangura.

ALIMAMY BOBSON SESAY

30. Mr. Sesay accepted to the following during cross examinations by the Defence Counsel for Hassan Papa Bangura
- a. That Mr. Bangura did not promise to personally give him money in return for him to recant his testimony.⁷
 - b. That Mr. Bangura did not give him any money in return for him recanting his testimony.⁸
 - c. That he was not a Protected Witness at the time he was asked by Sammy Ragga to recant his testimony and that he was on his own.

⁷ See Transcript of 26th June, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 8-11 of pp 556

⁸ See Transcript of 26th June, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 9-12 of pp 556

31. The Defence also submits that there is an inconsistency between the out-of-court statement by Mr. Sesay in relation to an alleged conversation with Mr. Hassan Papa Bangura and his testimony in Court.⁹ This inconsistency creates a doubt and does not in any way provide evidence capable of supporting the conviction on any of the count on which Mr. Bangura is charged.
32. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts against Hassan Papa Bangura was adduced during the testimony of Mr. Alimamy Bobson Sesay.

SAMUEL KARGBO A.K.A SAMMY RAGGA

33. Mr. Kargbo is a Co-Accused of Mr. Hassan Papa Bangura who in addition to pleading guilty to the Counts in the order in lieu of indictment has also signed a confidential Plea Bargaining Agreement with the Independent Counsel.
34. In accordance with the aforementioned agreement, Mr. Kargbo agreed to cooperate with the Independent Counsel and to appear as a witness in return for a recommendation from the Independent Counsel on leniency by the Trial Chamber in sentencing him.
35. Mr. Kargbo accepted the following during his testimony and cross-examination in Court:
 - a. That no one told him to tell Alimamy Bobson Sesay to tell a lie by means of recanting his testimony.
 - b. That he cannot remember what Mr. Hassan Papa Bangura said to 334 at Sweissy after they had the meeting with Lawyer Mansaray at his Chambers.
 - c. That he did not hear what Hassan Papa Bangura said to Alimamy Bobson Sesay while he was speaking to Alimamy Bobson Sesay using his own mobile phone.¹⁰
 - d. That Hassan Papa Bangura did not offer a bribe to Alimamy Bobson Sesay.¹¹
 - e. That Hassan Papa Bangura did not give a bribe to Alimamy Bobson Sesay.¹²
 - f. The witness under cross-examination by Defence Counsel for Hassan Papa Bangura said that he is unemployed¹³ but under cross-examination by Defence Counsel for Santigie Borbor Kanu, the witness said he is a gold dealer.
 - g. The witness under cross-examination by Defence Counsel for Hassan Papa Bangura said he never told the Independent Counsel that he wanted protection.¹⁴ Whereas under cross-examination by Defense Counsel for Brima Bazy Kamara, the witness said he told the Independent Counsel that he needed protection.

⁹ See Transcript of 26th June, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 2-29 of pp 561

¹⁰ See Transcript of 21st June, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 24-29 of pp 174

¹¹ See Transcript of 21st June, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 4-22 of pp 176

¹² Ibid,

¹³ See Transcript of 21st June, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 5-8 at pp 171

¹⁴ See Transcript of 21st June, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 4-19 of pp 168

- h. The witness under cross-examination by Defence Counsel for Hassan Papa Bangura also accepted that he is an ex-convict.
36. The evidence of this witness is shrouded with a lot of doubt and therefore not capable of supporting any of the Count in the order in lieu or indictment against Mr. Hassan Papa Bangura.
37. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts against Hassan Papa Bangura was adduced during the testimony of Samuel Kargbo.

JOSEPH SAFFA

38. Joseph Saffa is a Senior Investigator of the Special Court for Sierra Leone attached to the Office of the Prosecutor. He gave evidence and produced documents in relation to his contacts with witness Alimamy Bobson Sesay during the investigation case leading to the Contempt Proceedings.
39. Under cross-examination by Defence Counsel for Hassan Papa Bangura, Mr. Saffa stated that Alimamy Bobson Sesay never told him nor did he make a statement that Hassan Papa Bangura enquired from him if the sum of Ten Thousand United States Dollars would be sufficient for him to recant his testimony.
40. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts against Hassan Papa Bangura was adduced during the testimony of Joseph Saffa.

TESTIMONY OF DEFENCE WITNESS

HASSAN PAPA BANGURA

41. Mr. Hassan Papa Bangura being a Christian elected to testify under oath in his own defence between 3rd and 4th September, 2012, pursuant to Rule 85(C) of the Rules.
42. In addition to an oral application made by Counsel for Mr. Bangura, the accused in his examination-in-chief reaffirmed that he never received a call from Bazy Kamara to pursue issues of review, rather he received a call from Alex Tamba Brima to accompany Samuel Kargbo to visit Lawyer Mansaray at his Robert Street office and solicit his legal advice as to the meaning of a review.¹⁵
43. He testified that he communicated Mr. Mansaray's legal advice to Alex Tamba Brima and the issue of review was laid to rest.¹⁶

¹⁵ See Transcript of 3rd September, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 26-29 at pp 2028, lines 16-18 at pp 2029, lines 15-18 at pp 2046

¹⁶ See Transcript of 3rd September, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 6-11 at pp 2037

44. Mr. Bangura further testified that he never knew about the concept of Witness Protection or who was a Protected Witness as he had never participated in SCSL activities were he would have possibly learnt about the concept of Witness Protection.¹⁷
45. He described his relationship with each of the Co-accused as cordial and also that of witness Alimamy Bobson Sesay and considered the latter to be a very close friend.¹⁸
46. He vehemently denied the issue of calling Samuel Kargbo to talk to witness Alimamy Bobson Sesay in a bid to persuade him to recant or otherwise assist the convicts in Rwanda prison and had he wanted to talk to Alimamy Bobson Sesay, he would have called him on his cell phone.¹⁹
47. Mr. Bangura stated that he never gave or offered a bribe to witness Alimamy Bobson Sesay while they were on their way to see Mr. Mansaray²⁰ and this allegation by Alimamy Bobson Sesay could hardly be corroborated by Samuel Kargbo whom Alimamy Bobson Sesay said was present when Mr. Bangura made that offer.

TESTIMONY OF OTHER DEFENCE WITNESS

IBRAHIM BAZZY KAMARA

48. Mr. Ibrahim Bazy Kamara testified in his own defence between 21st and 27th August 2012.
49. Under cross-examination by the Independent Prosecutor, Mr Kamara testified that he never called Mr. Bangura and instructed him to go and see Lawyer Mansaray and discussed issues of review as²¹ he had not been contemplating such actions.
50. Further, Bazy Kamara testified that he never contacted Mr. Bangura and asked him to contact witnesses who testified before the SCSL during the AFRC trials.

SANTGIE BORBOR KANU

51. Mr. Santigie Borbor Kanu testified in his own defence between 28th August and 2nd September 2012.
52. Mr. Kanu testified that he never called Mr. Bangura and discussed issues of review and that he had never personally called him but rather they speak occasionally after Alex Tamba Brima had called him.

¹⁷ See Transcript of 3rd September, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 17-21 of pp 2013, lines 14-20, 24-29 of pp 2005, lines 6-12 of pp 2014 and lines 16-21 of pp 2015

¹⁸ See Transcript of 3rd September, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 4-29 at pp 2011 and lines 2-4 at pp 2012

¹⁹ See Transcript of 3rd September, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 28-29 at pp2047 and lines 1-4 at 2048

²⁰ See Transcript of 3rd September, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 22-27 at pp2030

²¹ See Transcript of 28th August, 2012, Case No. SCSL 2011-02-T, Independent Counsel V Hassan Papa Bangura et al, lines 18-24 at pp 1563


EVIDENCE OUTSIDE TIME FRAME

- 53. The Defence for Hassan Papa Bangura submits that the temporary jurisdiction of the order in lieu of indictment under which the Accused is charged is 27th November to 16th December, 2010. It is therefore submitted that any evidence led by the Prosecution outside this timeframe should not be considered by the Trial Chamber.
- 54. The Defence in accordance with the above mentioned wish to draw the attention of the Trial Chamber that during the examination-in-chief of the Witness Alimamy Bobson Sesay, the Prosecution led evidence of events which allegedly took place after the 16th December, 2010.

CONCLUSION

- 55. In view of the foregoing the Defence for Hassan Papa Bangura craves the indulgence of the Court to render a verdict of not guilty for all the counts in the indictment against Mr. Hassan Papa Bangura.

Respectfully Submitted By:


Melron Nicol-Wilson
Counsel for Hassan Papa Bangura