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SCSL-11-02-A
(001-006)

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SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding Judge
Justice Emmanuel Ayoola
Justice George Gelaga King
Justice Renate Winter
Justice Jon M. Kamanda
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

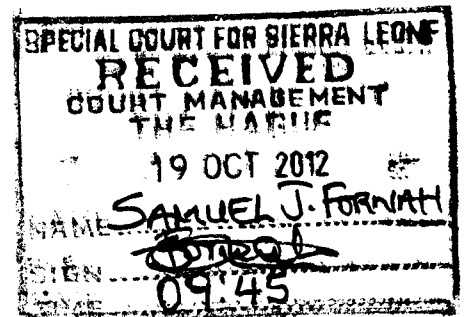
Case No: SCSL-11-02-A

Date filed: 19 October 2012

THE INDEPENDENT COUNSEL

v.

Samuel Kargbo



PUBLIC

NOTICE OF PARTIAL APPEAL OF SAMUEL KARGBO

Independent Prosecutor

Mr. Robert L. Herbst

Counsel for Kargbo:

Mr. Charles A. Taku

**NOTICE OF PARTIAL APPEAL OF SAMUEL KARGBO PURSUANT TO ARTICLE 20
(A) THE STATUTE AND RULE 108 OF THE RULES OF PROCEDURE AND
EVIDENCE OF THE SPECIAL COURT FOR SIERRA LEONE.**

A) BRIEF INTRODUCTION.

- B) Mr. Samuel Kargbo respectfully files this notice and grounds of appeal and seeks the reliefs found at paragraph hereunder at paragraph F.
- I) On the Independent Prosecutor filed an order in lieu of indictment against Hassan Papa Bangura alias Bomb Blast, Samuel Kargbo alias Sammy Ragga, Borbor Khanu alias "55" and Bazzy Kamara.
- II) On the ¹15 of July 2011, Mr. Samuel Kargbo pleaded guilty to two counts of contempt contrary to and punishable under Rule² 77 (A) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. The Hon Justice Teresa Doherty sitting as a single Judge of Trial Chamber II of the Special Court found his guilty plea sincere and unequivocal and found him guilty as charged. His sentencing was deferred.
- III) On the 11 October 2012, Mr. Samuel Kargbo was sentenced to 18 months imprisonment on each of the counts in which he was found guilty, both sentences were ordered to run concurrently and suspended for two years.
- IV) The Court made no specific orders of protective measures. This omission leaves Mr. Kargbo vulnerable and unprotected despite significant information submitted to the Court on the basis of which specific protective measures should have been ordered.

¹ See Transcript of 15 of July 2011

² See Rule 77 (A) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone

V) Mr. Kargbo does not challenge his sentence which is not subject of this appeal as such. He however challenges the failure of the trial judge to grant him appropriate protective measures due to all vulnerable witnesses that come to testify before the Special Court for Sierra Leone.

VI) This matter is appropriately submitted to the Appeals Chamber due to the fact that the Hon Teresa Doherty is now functus officio.

VII) Additionally it concerns statutorily important questions of law and thus, meet the standards of appellate review or intervention.

C) LEGAL BASIS OF THE APPEAL.

- a) This appeal is brought pursuant to Article³ 20 (A) of the Statute of the Special Court and Rule 108 of the Rule 108 of the Rules of Procedure and Evidence. The factual legal and factual grounds on which this appeal is premised are set out hereunder.
- b) Article⁴ 21 of the Statute and Rule 75 of the Special Court mandate a Trial Chamber to assess the risks to witnesses that testify before the Court and to order adequate protective measures it deems necessary and sufficient in the circumstances.
- c) Article⁵ 22 mandates reasoned opinion on matters and law and fact submitted before the court at the end of the trial.

D) FACTUAL BASIS OF THE APPEAL

VIII) During the plea proceedings on the 15 July 2011 the Independent Prosecutor informed the Court that he would be calling Mr Samuel Kargbo as a prosecution

³ See Article 20 (A) of the Statute of the Special Court and Rule 108 of the Rule 108 of the Rules of Procedure and Evidence

⁴ See Article 21 of the Statute and Rule 75 of the Special Court

⁵ Article 22 of the Statute of the Special Court for Sierra Leone

witness in the case against co-accused, Hassan Papa Bangura alias Bomb Blast, Borbor Khanu alias "55" and Bazzy Kamara.

- IX) Mr. Samuel Kargbo applied for bail at pages of the transcript of the 15 July 2011 pending sentencing. Expressing safety fears for his safety and that of members of his family due to the nature of his co-operation with the Independent Prosecutor and the nature of his testimony, Mr. Samuel Kargbo through his counsel made an oral application at pages of the transcript of 15 July 2011 for the Hon Judge to order measures of protection in his favour.
- X) The court at page of the transcript of 15 July 2011 referred the matter to the Registrar and the Witness Protection Section (WVS) for action. Although Mr. Kargbo brought to the attention of the Court that WVS effectively placed him on the witness protection programme, there is no record that the protective measures provided by WVSS were communicated to the court to enable the court to make orders of protection consistent to article⁶ 21 of the Statute and Rule 75 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.
- XI) In his sentencing brief, Mr. Samuel Kargbo submitted confidential annexes SK 1-6 in which serious allegations of threats to him and his family were brought to the attention of the Hon. Court. The Hon Justice Teresa Doherty acknowledged reading these confidential annexes during sentencing⁷ on the 11 October 2012.
- XII) After sentencing, and before the court adjourned and became functus official, counsel for Mr. Samuel Kargbo informed the Court that Mr Samuel Kargbo had come under threats after testifying against co-accused. He gave notice to the Court that he was

⁶ See article 21 of the Statute and Rule 75 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone

⁷ See Transcript and the Sentencing Judgement of 11 October 2012

going to bring the matter to the appropriate competent jurisdiction for redress after consulting the Independent Prosecutor.

XIII) Considering the matter serious, The Hon. Justice Teresa Doherty warned members of the public that there would be serious consequences if any one threatened or tampered with any witness that had testified before the Special Court. No formal order of Protection was made.

XIV) Again, Mr. Samuel Kargbo does not contest the sentence he received after pleading guilty to two counts of the order in lieu of the indictment. However, considering the fact that his well founded fears of threats to his life as well as credible allegations of such threats were brought before to the attention of the court were not comprehensively addressed or at all, Mr. Samuel Kargbo respectfully submits these three grounds of appeal for the consideration and redress:

E) GROUNDS OF APPEAL.

- 1) The Court erred in failing to provide an adequate reasoned opinion or any on a factual and legal matter appropriately brought to its attention in the course of the proceedings and at the end of the trial.
- 2) The Court erred in law in not according due weight to the severity of the threats against Mr. Samuel Kargbo and members of his family as a result of his co-operation and testimony against co-accused.
- 3) The Court further erred in failing to comply with article⁸ 21 and rule 75 of the Rules of Procedure and Evidence in making appropriate orders of protective measures in favour of Mr. Samuel Kargbo.

⁸ See article 21 and rule 75 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone

F) RELIEF SOUGHT:

Mr. Samuel Kargbo respectfully urges the Appeals Chamber to:

- i) Remit the matter to the Hon Teresa Doherty to make orders of protection that are commensurate with the threats alleged by Mr. Samuel Kargbo before the Court and to WVS pursuant to article⁹ 21 of the Statute and rule 75 of the Rules of Procedure and Evidence, or
- ii) Make such orders that are appropriate and sufficient for the effective and efficient protection of Mr. Samuel Kargbo on the basis of the information provided on the records and such further information that it may require from WVS and Mr. Samuel Kargbo pursuant to article and rule of the Rules of Procedure and Evidence.

Dated at Freetown Sierra Leone, this 19th day of October 2012.

Signed: 

Chief Charles A. Taku,

Counsel for Mr. Samuel Kargbo.

⁹ See article 21 of the Statute and rule 75 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone