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SCSL-11-02-A
(007 – 033)

007

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 Kamanda
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

Date filed: 22 October 2012

Case No. SCSL-11-02-A

The Independent Counsel

-V-

Hassan Papa Bangura
Samuel Kargbo
Santigie Borbor Kanu
Brima Bazzy Kamara

PUBLIC

NOTICE OF APPEAL IN RESPECT OF SANTIGIE BORBOR KANU

Independent Counsel:
Mr. Robert L. Herbst
Mr. Mohammed Bangura

Counsel for the Accused:
Mr. Melron Nicol-Wilson
Chief Charles A. Taku
Mr. Kevin A. Metzger
Mr. A.F. Serry Kamal

Office of the Principal Defender:
Mrs. Claire Carlton-Hanciles

SPECIAL COURT FOR SIERRA LEONE
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1. This Notice of Appeal against the Judgement on 25 September 2012 and Sentencing Judgement on 11 October 2012 of Justice Teresa Doherty (sitting as a Single Judge of Trial Chamber II) in the case against Hassan Papa Bangura and others, SCSL-11-02-T, is filed on behalf of Santigie Borbor Kanu ("Kanu") pursuant to Article 20 of the Statute of the Special Court for Sierra Leone ("the Statute") and Rule 108(B) of the Rules of Procedure and Evidence ("the Rules"). The Judgement[1] was delivered at The Hague on 25 September and filed on 1 October 2012 and the Sentencing Judgement was delivered in Freetown on 11 October 2012 and filed on 16 October 2012.[2]

2. Santigie Kanu was convicted after a trial lasting some 5 weeks over two sessions of scheduled hearing at the Special Court for Sierra Leone ("SCSL") sitting with a video link connection to Kigali, Rwanda, of two Counts of Contempt of the Special Court consequent upon the Judgement mentioned in paragraph 1 above.

3. Count 1 related to a charge of knowingly and wilfully interfering with the Special Court's administration of Justice by offering to bribe a witness who has given testimony before a Chamber in violation of Rule 77(A)(iv) while Count 2 related to the same charge, particularised as having been committed by otherwise interfering with a witness who has given testimony before a Chamber.

4. The Prosecutor first filed a motion before the Office of the President of the Special Court on 17 December 2010 alleging intimidation, bribery of and interference with witnesses who gave evidence in the Prosecutor v. Alex Tamba Brima et al. ("AFRC") case before the Special Court.[3] That motion having been dismissed, the Prosecutor then filed the motion before Trial Chamber II.[4] The Trial Chamber directed the Registrar to appoint an independent counsel to investigate these allegations pursuant to Rule 77(C)(iii).[5]

5. On 24 May 2011 Trial Chamber II issued a decision on the report of the Independent Counsel and directed that Independent Counsel prosecute the four Accused.[6] This decision assigned the hearing of the case to Justice Teresa Doherty and annexed an "Order in lieu of Indictment, charging the four Accused."

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[1] Prosecutor v. Bangura et al, SCSL-11-02-T-66, Judgement 25 September 2012.
[2] SCSL-11-02-T-71
[3] SCSL-04-16-ES-682.
[4] SCSL-04-16-ES-684.
[5] SCSL-04-16-ES-691.
[6] SCSL-04-16-ES-694.

6. On 15 July 2011 the four Accused appeared before Justice Doherty to answer the charges laid against them in the Order in Lieu of Indictment. Santigie Kanu pleaded not guilty to all counts as did Hassan Papa Bangura and Brima Bazzy Kamara, while Samuel Kargbo pleaded guilty to all counts preferred against him. The latter had entered into a plea agreement with the Independent Counsel and gave evidence for the prosecution.

7. On 17 August 2011 a motion was filed requesting an extension of time to file preliminary motions.[7] This motion was summarily dismissed by the Single Judge on 23 August 2011 on the basis, inter alia, that she had not given Liberty to the Defence to apply in respect of timing on any preliminary matters.[8] Counsel for Kanu then filed a further motion, on 25 August 2011, for permission to file a motion for extension of time in which reference was made to the transcript of 15 July 2011 supporting the contention in his previous motion which relied on the phrase "liberty to apply".[9] This motion too was dismissed by the Single Judge on 29 August 2012.[10]

8. On 15 May 2012, Independent Counsel filed the "Prosecutor's Additional Submissions Pursuant to the Scheduling Order of 1 May 2012"[11] and, on 17 May 2012 he filed the "Prosecutor's Pre-Trial Brief and Filings Pursuant to the Scheduling Order of 1 May 2012."[12] In his submissions, Independent Counsel, inter alia, sought a subpoena to direct the attendance at the hearings of Andrew Daniels, Esq. and Claire Carlton-Hanciles, the Principal Defender.[13] Following submissions filed on behalf of all three of the Accused persons who were contesting the case against them,[14] and after the trial was already under way, the Single Judge issued an interim decision on 18 June 2012 finding that the lawyer-client privilege provided by Rule 97 was not absolute, directing a subpoena to be issued to the said Andrew Daniels, Esq.; and requesting an Amicus Curiae brief on the application of Rule 97 to the Principal Defender to be filed by Professor William Schabas.[15]

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[7] SCSL-11-02-PT-11.
[8] SCSL-11-02-PT-12, in particular at page 2 of the document in the paragraph dealing with further consideration.
[9] SCSL-11-02-PT-13.
[10] SCSL-11-02-PT-14.
[11] SCSL-11-02-PT-16.
[12] SCSL-11-02-PT-17.
[13] SCSL-11-02-PT-17, paras. 41-52.
[14] SCSL-11-02-PT-18; SCSL-11-02-PT-19; SCSL-11-02-PT-20.
[15] SCSL-11-02-T-27.

9. At the Pre-Trial conference on 16 June 2012, submissions were made on behalf of the Accused, Kanu, challenging the jurisdiction of the Single Judge, to the effect that the Trial Chamber was functus officio at the time the proceedings were commenced and thus Rule 77(A)(iv) could not properly form the basis of an Indictment.[16] The Single Judge issued an oral decision dismissing the motion.[17]

10. The trial then commenced and the first session was heard in Freetown and Kigali between 20 June and 4 July 2012, with the Prosecution case concluding in that session.

11. On 18 July 2012 a motion for Judgement of Acquittal was filed on behalf of Kanu and motions were filed on behalf of the other co-accused.[18] Independent Counsel filed a brief in opposition to these motions on 30 July 2012[19] and the Single Judge rendered a decision dismissing all the motions for Judgement of Acquittal on 13 August 2012.[20] On 14 August the Single Judge issued a scheduling order for recommencement of the trial in Kigali on 21 August 2012.[21]

12. On 15 August 2012 the single Judge issued a decision[22] dismissing Kanu's motion requesting permission to instruct a handwriting expert.[23] Two further motions by Counsel for Kanu seeking a change to the wording of the Decision of 15 August 2012[24] were dismissed.[25] While it is contended on behalf of Kanu that the Decision of 15 June 2012 failed to acknowledge the fact that Kanu's case had contested Mr. Sengabo's opinion evidence as regards the Accused's handwriting, it is not intended here to include this as a separate ground of appeal.

13. On 21 August 2012 the proceedings reopened in Kigali with a video link to Freetown. Defence evidence was heard and closing submissions were made on behalf of all parties during the period up to and including 6 September 2012.

[16] Transcript 16 June 2012, pp. 24-25.
[17] Transcript 16 June 2012, pp. 38-40.
[18] SCSL-11-02-T-35; SCSL-02-T-36; SCSL-11-02-T-37.
[19] SCSL-11-02-T-41.
[20] SCSL-11-02-T-45.
[21] SCSL-11-02-T-46.
[22] SCSL-11-02-T-48.
[23] SCSL-11-02-T-42, 03 August 2012.
[24] SCSL-11-02-T-50; SCSL-11-02-T-52.
[25] SCSL-11-02-T-60.

14. Additional Closing submissions were filed on behalf of the Accused Kanu on 11 September 2012,[26] and on25 September 2012 the Learned Judge delivered Judgement convicting Kanu on both the counts he faced, Bangura on both the counts he faced and Kamara on counts 2 and 3, at the Hague, with a video link to Freetown and Kigali. This Judgement was filed on 1 October 2012.[27]

15. Following a sentencing hearing in Freetown, with a video link to Kigali, on 8 October 2012 when the Single Judge heard submissions on sentencing from all parties, the Sentencing Judgement was delivered orally, three days later, on 11 October and filed on 16 October 2012.[28]

16. The Accused were sentenced as follows: Hassan Papa Bangura was sentenced to 18 months' imprisonment each count 1 and count 2, with both sentences to be served concurrently.[29] Samuel Kargbo was sentenced to a period of 18 months' imprisonment each on count 1 and count 2, with the whole period being suspended for a period of 2 years from 11 October 2012.[30] Santigie Borbor Kanu was sentenced to two years' imprisonment each on count 1 and count 2, from which was deducted a period of two weeks, therefore to serve one year and 50 weeks.[31]Brima Bazzy Kamara was similarly sentenced to two years' imprisonment each on count 2 and count 3, from which was deducted a period of two weeks, therefore to serve one year and 50 weeks.[32] In the case of Kanu and Kamara the sentences were to run concurrently to each other, but consecutively to their "present" sentence,[33] while Bangura's sentences were to be served concurrently.[34]

17. Santigie Borbor Kanu now appeals against the Judgement and Sentencing Judgement on the grounds that are set out below and respectfully invites the Appeals Chamber to reverse the convictions entered against him by the Single Judge.

18. For the avoidance of doubt it is submitted that each error of law alleged in this Notice of Appeal invalidates the decision of the Single Judge and that each procedural error, or the cumulative effect of these which affect the fairness of the trial, thereby occasioning a miscarriage of justice also invalidates the decision of the Single Judge.

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[26] SCSL-11-02-T-61.
[27] SCSL-11-02-T-66.
[28] SCSL-11-02-T-71.
[29] Ibid, para 101, p.33.
[30] Ibid.
[31] Ibid.
[32] Ibid, pp. 33-34
[33] Ibid, pp.33 and 34.
[34] Ibid, p.33.

Additionally it is submitted that each error of fact alleged herein, either individually and/or cumulatively, has given rise to a miscarriage of justice in that no reasonable Trier of fact would have rendered the particular finding of fact beyond reasonable doubt. [35]

19. Unless otherwise specifically stated, the relief sought in relation to each error of procedure, law or fact below is a reversal of the relevant finding(s) of the Single Judge, and/or the quashing of any resulting convictions.

20. This Notice of Appeal, as presently advised, represents the totality of the grounds being pursued on appeal by Santigie Borbor Kanu. Should circumstances arise which lead to the emergence of additional grounds by way of the emergence of new evidence or as a result of the identification of other errors of fact, law and/or procedure between the filing of this notice and any hearing convened pursuant to Rule 109(B) or within the meaning of Rule 114 of the Rules the Appellant seeks hereby to respectfully reserve the right to vary and/or amend this Notice.

Jurisdiction

21. It is respectfully submitted that the Trial Chamber erred pursuant to Rule 106(A) (a) and/or (b) when it concluded in its 24 May 2011 decision that it had jurisdiction to try the matter and instruct the Registrar to appoint an experienced independent counsel to investigate the allegations.[36] This is submitted to be a procedural error and/or an error of law which invalidates the decision against Kanu.

> **Ground 1**: The Trial Chamber erred in law when it concluded that it had jurisdiction to try this matter and instructed the Registrar to appoint an experienced independent counsel to investigate the allegations.

22. It is also respectfully submitted that the Trial Chamber erred pursuant to Rule 106(A)(a) and/or (b)when it concluded in its 24 May 2011 decision,[37] that it had jurisdiction to try the matter consequent upon consideration of the Confidential and

[35] Article 20 of the Statute for the Special Court of Sierra Leone; Rule 106 of the Rules; Prosecutor v Sesay et al., SCSL-04-15-A-1321, Judgement 26 October 2009, paras. 30-35 and Prosecutor v. Fofana et al., SCSL-04-14-A, Judgement, 28 May 2008, paras. 32-36.
[36] SCSL-11-02-ES-691, para. 37, 38 and 41.
[37] SCSL-04-16-ES-691.

Under Seal "Report of the Independent Counsel, Robert L. Herbst, appointed pursuant to the Decision of 18 March 2011" dated 11 May 2011.[38] That decision led to the issue of an Order in lieu of an Indictment against the Applicant, Kanu and his co-accused.

> **Ground 2**: The Trial Chamber erred in law when it concluded that it had jurisdiction to try this matter and consequently issued an Order in Lieu of Indictment.

23. It is further submitted in this regard that the Single Judge erred in rejecting Defence submissions at the pre-trial conference hearing that the Trial Chamber was *functus officio* and ought therefore not to have issued an Order in Lieu of Indictment and directed the Independent Counsel to Prosecute Mr. Kanu.[39] In this regard it is submitted that this was a procedural error which invalidates the decision.

> **Ground 3**: The Learned Judge erred in law when she rejected the Defence submissions that the Trial Chamber was *functus officio* and ought therefore not to have ordered an investigation or to have issued an Order in Lieu of Indictment and directed the Independent Counsel to prosecute Mr. Kanu.

24. Having issued a decision on the report of the Independent Counsel, the Trial Chamber did not direct pursuant to Rule 48(B) that the Accused persons should be tried together. In the circumstances it is submitted that this was a procedural error which invalidates Mr. Kanu's conviction, particularly as the Prosecution presented the case on a joint enterprise basis. It can be clearly seen from questions put by the Independent Counsel that the Prosecution's case was shifting throughout; even during the cross-examination of Hamid Kamara, the Independent Counsel suggested that he was present at the birth of the conspiracy in a bar in Wilberforce despite never having adduced that evidence.[40]

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[38] SCSL-04-16-ES-693.
[39] Transcript 16 June 2012, pp.38-40
[40] Transcript 5 September 2012, p.2294, line 9 to p.2303,line 20; cross-examination and submissions relating to this specific line of questioning by the Independent Counsel.

Ground 4: The Learned Judge erred in law and or in procedure in allowing a joint trial of the Accused in this case in the absence of a direction from the Trial Chamber pursuant to Rule 48(B) that the Accused persons should be tried together.

Duplicity

25. In all the circumstances of the case, it is submitted that Counts one and two as preferred against Kanu had the tendency to fall foul of the rule against duplicity as they were not charged in the alternative. The Prosecution put Count 1 on the basis that Mr. Kanu had offered a bribe to Mr. Sesay in order for him to recant his testimony while Count 2 alleged that he had otherwise interfered with the same witness (Mr. Sesay). The timeframe for both Counts was the same; 27 November 2010 to 16 December 2010. It is respectfully submitted that Independent Counsel never set out in cogently coherent terms in what way Mr. Kanu was said to have "otherwise interfered with" Mr. Sesay in a manner other than that alleged in Count 1. The Defence were unable to deal with this matter as a preliminary point because the Learned Judge rejected two Defence motions for an extension of time in order to file submissions on preliminary matters. Furthermore the Independent Counsel failed to fully particularise Count 2 and sufficiently distinguish it from Count 1. In this regard issue is taken with the Learned Judge's decision to reject the submissions made in support of a motion for judgement of acquittal, particularly in respect of Count 2. The refusal to permit an extension of time prevented the Defence from filing submissions regarding the validity of the Indictment and allowed a trial to continue with an Indictment that fell foul of the rule against duplicity.

Ground 5: The Learned Judge erred in law when she rejected the Defence application for an extension of time in which to file preliminary motions.

Ground 6: The Learned Judge erred in law when she rejected the Defence motion for judgement of acquittal at the conclusion of the prosecution case with specific reference to Count 2.

Privilege

26. Decision to grant subpoena to the Independent Counsel in respect of Andrew Daniels. It is respectfully submitted that The Learned Judge wrongly granted the subpoena requested by the Independent Counsel in respect of Andrew Daniels pursuant to Rule 106(A)(a) and/or (b) and that she erred in concluding that the rule in respect of client/lawyer privilege did not attach to Mr. Daniels conversations with Mr. Kamara and Mr. Brima. In effect this ruling affected Kanu in that it allowed the Prosecutor to use evidence of discussion between Mr. Daniels, Kamara and Brima as evidence supporting a joint plan to commit this offence, thus inserting the principles relating to conspiracy and joint criminal enterprise into this case despite the fact that the Indictment was not drawn to cover this extended criminality. It is submitted that this amounts to an error in law which invalidates the single judge's decision.

> **Ground 7**: The Learned Judge erred in law when she granted a subpoena to the Independent Counsel in respect of Andrew Daniels after concluding that his communications with Mr. Tamba Alex Brima and Mr. Brima Bazzy Kamara were not covered by the rule in respect of client/lawyer privilege.

27. Decision to allow Samuel Kargbo, an erstwhile Defendant convicted upon his own confession, remain in court while other evidence was called. This decision was taken despite the directions given by the Learned Judge in paragraph 3(i) of the 1 May Scheduling order in which it was directed that "*...the court...shall deliver its decision on sentence of the said Samuel Kargbo prior to the opening of the prosecution case against Hassan Papa Bangura, Santigie Borbor Kanu and Brima Bazzy Kamara.*"[41] Respectfully, there are no provisions under the Rules which permit a convicted person to remain in court during the trial process. Accordingly, an analysis of Rules 100 and 102 do not provide for the situation that obtained in this case.

28. Additionally, Rule 90(D) specifically provides that a witness who has not yet testified may not be present without leave of the Trial Chamber when the testimony of another witness is given. Although in this case that situation did not arise because Mr. Kargbo, in the circumstances of Mr. Sesay's ill-health, was the first witness called by the Prosecution. Nevertheless the effect of the decisions to permit Mr. Kargbo to be

[41] SCSL-11-02-PT-15, Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73 Bis and Order for Submissions, para 3(i).

sentenced at the end of the Trial against the others and that he may remain in court should Mr. Sesay have been called first as well as right throughout the other evidence in this case is not, respectfully, supported by either the Rules or precedent.

29. It is respectfully submitted pursuant to Rule 106 (A) (a) and/or (b) that the Learned Judge erred in allowing Mr. Kargbo to remain in Court during other testimony in the case and that this is both an error of law and a procedural error which, taken cumulatively with other grounds put forward in this notice, calls into question the Learned Judge's findings of fact in respect of Samuel Kargbo's evidence and invalidates the Single Judge's decision.

> **Ground 8**: The Learned Judge erred in law and procedure by allowing Samuel Kargbo to remain in court throughout the duration of evidence in this case, despite the fact that he had pleaded guilty and stood convicted on his own admission on 15 July 2011.

Motion for Judgement of Acquittal

30. It is respectfully submitted that the Learned Judge erred in declining to accede to the motion for Judgement of Acquittal filed on behalf of Mr. Kanu at the conclusion of the Prosecutor's case.[42] It is submitted that, on a proper assessment of the evidence, there was no or no sufficient evidence upon which a reasonable Trier of fact, properly directed could conclude that there was a case against Mr. Kanu on either Count 1 or Count 2 of the Order in Lieu of Indictment. It is respectfully submitted that this is open to challenge on all limbs under Rule 106.

> **Ground 9**: The Learned Judge erred in law when she rejected the Defence motion for Judgement of Acquittal filed on behalf of Mr. Kanu at the conclusion of the Prosecutor's case.

Handwriting Expert

31. Refusal to grant permission for handwriting expert.[43] The Prosecution witness Sengabo claimed that his familiarity with Kanu's handwriting enabled him to identify the handwriting and signature in respect of the 30 November telephone call that was

[42] SCSL-11-02-T-45, Decision on Judgement of Acquittal
[43] SCSL-11-02-T-66, para. 278, where the Learned Judge discusses how she rteviewed the evidence on this issue.

entered on the log.[44] Sengabo testified that the three numbers written on 30 November were by the same person. Whilst he agreed that he is not a graphologist or handwriting expert he believed they were written by Kanu because his name is written in the space before the numbers. It is respectfully submitted that this is not a sufficient basis upon which to accept his opinion evidence. The effect of this was that the Learned Judge, although she ruled that she did not have to decide who had altered or 'bolded over' the entries, was able to accept this evidence against the Appellant's interest. Respectfully this made her earlier decision not to allow the Defence to instruct a handwriting expert unfair to the Appellant. Sengabo accepted that the signatures on entries for 26 and 30 November are similar (not the same) and states that there is a slight difference with 30 November signature.[45] It is submitted that this decision is open to challenge under all limbs of Rule 106(A), particularly in view of the Learned Judge's conclusions on the handwriting evidence.

> **Ground 10**: The Single Judge erred in law in failing to grant permission to the Appellant to instruct a handwriting expert. The effect of this decision was exacerbated by the Single Judge's eventual findings when reviewing the evidence.

Testimony of witness

32. At Paragraph 81 of the Judgement, the Learned Judge states that "...the official interpretation is the interpretation on record to be considered by the Court.". It is respectfully submitted that this amounts to a finding by the Single Judge which is inconsistent with the provisions of Rule 81 when considered in juxtaposition with Rule 85 of the Rules. It is respectfully submitted that while Rule 81(A) charges the Registrar with a duty to "*...cause to be made and preserve a full and accurate record of all proceedings...*" it does not go so far as to say that the evidence given by the witness is in fact the interpretation of that evidence. Rule 85 provides a framework for the adduction of evidence in proceedings, but also does not specifically define exactly what it is that is the evidence in the case.

33. Accordingly it is submitted on behalf of Mr. Kanu that the Learned Judge was wrong to state the matter as she did in paragraph 81 of her judgement; that it therefore

[44] Transcript 4 July 2012, pp. 1011, 1013-1016, 1019
[45] Ibid, pp. 1080-1081.

amounted to a misdirection to herself in law which was of great importance considering that during his evidence there were occasions when the Learned Judge formed an opinion that he was being evasive, whereas it is submitted, that these issues arose as a result of the interpretation to and from the English language. The case for Mr. Kanu is that where there is an issue about interpretation, then the Court must consider the evidence of the witness by an appraisal of the question and answer in the language used by the witness.

> **Ground 11**: The Learned Judge erred in law or, alternatively made a procedural error by effectively finding that in the event of a conflict the official interpretation is the interpretation on record to be considered by the Court.

Defects in Indictment

34. In paragraph 78 of her Judgement the Single Judge commented that there had been no application by the Defence to amend the Indictment by reason of defects.[46] This, it is submitted amounts to a reversal of the burden of proof which is impermissible and, if sustained, is capable of invalidating the Learned Judge's decision on this matter. In this regard the Appellant places reliance on the Learned Judge's refusal to allow an extension of time in which to file preliminary motions pursuant to Rule 72 of the Rules in her Decisions of 23 August and 29 August 2012.[47] It is respectfully submitted that this amounts to an incorrect application of the burden of proof which would render invalid all findings based on it and has the potential of invalidating the convictions against the Appellant in view of the position taken by the Single Judge on which party was obliged to make an application for amendment of the Indictment, particularly in the light of the joint criminal enterprise or conspiracy, factor introduced by the prosecution.

> **Ground 12**: The Single Judge erred in law by disregarding the principle that the burden of proof of the offences charged always remains with the prosecution.

[46] Prosecutor v. Bangura et al, SCSL-11-02-T-66, Judgement, 25 September, p27, para. 78.
[47] SCSL-11-02-PT-12; SCSL-11-02-PT-14.

Sesay, Perpetrator or victim of earlier incident

35. It is respectfully submitted that the Learned Judge erred in finding, on the issue of a bad relationship between Mr. Kanu and Mr. Sesay, that Mr. Sesay was the victim and not the perpetrator. It is respectfully submitted that this finding indicated a misunderstanding of the factual situation and the way in which the Defence put forward the evidence and thus falls foul of Rule 106(A)(c). This evidence tends, rather, to support the Defence contention that it was Mr. Sesay who bore a grudge against the Appellant. This is submitted to be an error in fact or fact handling that occasioned a miscarriage of justice and invalidates the conviction.

> **Ground 13**: The Single Judge erred in fact in concluding, on the issue of a bad relationship between the Appellant and Mr. Sesay, that Mr. Sesay was the victim and not the perpetrator.

Alleged Manipulation of Prison Call Record/Log Book

36. In her deliberations in respect of the allegation by the Appellant of manipulation of the prison log book, Exhibit P.15, by Mr. Sengabo and the Independent Counsel as regards entries on 30 November 2012 the Learned Judge concluded that it detracted from the Appellant's credibility.[48]

37. It is respectfully submitted that this finding is open to criticism by the Appellant on the grounds that the Learned Judge had fallen into error in so concluding. In effect, what the Appellant was saying was that he had not made or created the relevant entry, that he had not seen it "bolded over" before the record was submitted in evidence and that therefore it must have been done by someone else subsequent to the time the record was created. He had seen the Independent Counsel and Mr. Sengabo together when the former came to Kigali for the trial and whereas Mr. Sengabo used to accompany them back to the Kigali Central Prison where they were kept during trial sessions, this ceased to happen. Therefore when he was asked about how come the entry, or parts thereof had been "bolded over" he said it was a manipulation, which could only have been done by those in control of the book.

38. Furthermore, in this regard, it is submitted that the Learned Judge took into account an irrelevant factor in that she supported her conclusion by stating that "*...this*

[48] SCSL-11-02-T-66, para. 612.

evidence was not put to Sengabo..." Respectfully, this is an example of "*The Rule in Brown v. Dunne*" which the Learned Judges refers to in her Judgement.[49]

39. In this particular instance it is submitted that the Learned Judge failed to take into account Counsel's submissions that having listed Mr. Sengabo as a witness for the Defence[50] it would have been improper to have made such a suggestion to him. In effect the Appellant had been asked to speculate by the Independent Counsel as to how the entry came to be "bolded over".

40. It is respectfully submitted that the Learned Judge was entitled to dismiss this allegation as pure speculation, but that she was wrong to treat it as something which 'seriously detracts from' Mr. Kanu's credibility, or at the highest as a mildly aggravating factor when she came to deal with sentence. [51]

41. This is an error in law or fact in which the Appellant contends that the Learned Judge wrongly utilised this finding in coming to a conclusion about his guilt in these offences which, it is submitted has occasioned a miscarriage of justice. This error, viewed in conjunction with all the other errors submitted in this notice of appeal, invalidates this conclusion and occasions a miscarriage of justice.

> **Ground 14**: The Single Judge erred in law or fact in concluding that an allegation by the Appellant that Exhibit P.15 had been manipulated by Mr. Sengabo and the Independent Counsel detracted from his capability.

Evidence in relation to 29 November 2010

42. The Appellant takes issue with the failure to deal with cross-examination of Mr. Sesay on behalf of Mr. Kanu about 29 November 2011, wherein Mr. Sesay accepted that the date cited in his statement was correct. Reliance is placed on Rule 106(A)(c).

43. Thus this was an error in the factual aspect of the case which has a tendency to bring about a miscarriage of justice. At paragraph 635 of the Judgement filed on 1 October 2012, the Learned Judge found that "*Neither Sesay or Kargbo identified the date for*

[49] SCSL-11-02-T-66, para.75, in which the Learned Judge accepts that there is no precedent for its use in the Intrnational Tribunals.
[50] Cf. Defence Pre-Trial Brief; SCSL-11-02-PT-21, para. 28, in which Mr. Sengabo is listed as a putative Defence witness.
[51] SCSL-11-02-T-71, paras. 67 & 93; where the judge does use this feature as an aggravating factor.

the meeting and phone call...", but in dealing with the evidence above, she accepts that Sesay had given dates that were in his statement.

44. Paragraph 636 deals with the call at 'PWD' but there is no mention of the date of 29 November as stated by Sesay in his statement. There is neither reference to submissions made on behalf of the Appellant on this matter nor cross-examination by the Appellant's Counsel of Mr. Sesay. It is respectfully submitted therefore that the Learned Judge erred in fact in the assessment of this evidence by failing to take into account Mr. Sesay's answer in cross-examination that it was he who had given the date to the Investigator, Mr. Saffa, and that at the time of making the statement that was the time "this thing happened".[52]

45. It is therefore respectfully submitted, in view of the evidence, that no reasonable Trier of fact could have properly concluded that Mr. Sesay had not identified the date of the meeting and phone call as found by the Learned Judge. This error has occasioned a miscarriage of justice and invalidates the convictions.

> **Ground 15**: The Single Judge erred in fact in concluding that neither Kargbo nor Sesay identified the date for the meeting and phone call other than late November or early December.

Perceived conflict between evidence of Kanu and Kamara

46. Finding of conflict between evidence of Kanu and Kamara regarding the 'Pastor Eddie' 30 November telephone conversation.[53] It is respectfully submitted that this was a misinterpretation of the way the case was put on behalf of this Appellant. The Learned Judge commented that it was not "*...put to Sesay that Eddie, V-Boy, Manga and others were present when he was with Kargbo and the calls were received from Kamara and Kanu on Kargbo's phone.*"[54] This statement respectfully fails to take into account that it was the Appellant's case that he had never spoken to Sesay. Mr. Kanu in his evidence stated that he may have been called in to speak to others. He could not recall the date, but recalled that he had spoken to "Pastor Eddie".[55] It was never a positive part of the Appellant's case that he had spoken to a number of people on Mr. Kargbo's phone. In fact it was the Appellant's case that he had not

[52] Transcript, 27 June 2012, p.667, line 27 to p.669, line12.
[53] SCSL-11-02-T-66, para. 647.
[54] SCSL-11-02-T-66, para. 645
[55] SCSL-11-02-T-66; cf para. 312, where the judge is recounting Mr. Kamara's evidence on who Kanu spoke to.

spoken to Mr. Kargbo at all since he had been in Mpanga prison apart from, perhaps, to say hello on one occasion. It is submitted that the conclusion drawn by the Learned Judge was one that could not have been properly based on a true assessment of the evidence in this case and that it amounts to an error of fact that has occasioned a miscarriage of justice which invalidates the convictions.

> **Ground 16**: The Single Judge erred in fact by concluding that there was a conflict between Kamara and Kanu's evidence as regards telephone calls on 30 November 2012.

The issue of "Bolding Over"

47. In Paragraph 612 of the Judgement, the Learned Judge found, in respect of Mr. Kanu's claim that the "bolding over" of entries in the prison log book as "...evidence of a conspiracy to manipulate evidence to incriminate Kanu totally without foundation and it seriously detracts from his credibility."

48. The Judge based this finding, *inter alia*, on the fact that this was not put to Mr. Sengabo and because Defence Counsel had met with Sengabo and seen the prison phone call records, but Independent Counsel did not see Sengabo until a later date, and that Kanu's premise is based on allegedly seeing Sengabo with the Independent Counsel. [56]

49. It is respectfully submitted that the Learned Judge was wrong to use this claim by Kanu in the consideration of his credibility. In effect the Appellant's evidence was that he had not written the entries and when he was asked how the entry came about he gave an answer.

50. It is respectfully submitted that the Appellant was invited to speculate and did so. Ordinarily it would not be permitted for a party to ask a question that invites speculation, but in this instance the Learned Judge used Mr. Kanu's speculation as evidence that affected his credibility.

51. It is respectfully submitted that this lead to an erroneous finding of fact which has occasioned a miscarriage of justice.

> **Ground 17**: The Single judge misdirected herself on the law, leading to an error of fact when she concluded that the Appellant's speculation about how entries came to be

[56] SCSL-11-02-T-66, para. 612.

"bolded over" in the prison call log seriously detracted from his credibility.

Sesay's previous incident with Kanu

52. In paragraph 613 of the Judgement the Single Judge stated that "*...It is not apparent from the evidence or the submissions how an insult levied at Kanu by TF1-334 would motivate TF1-334 to make false allegations against Kanu some 10 years later. If there was a motive of revenge I think it would normally emanate from the injured party. ... I find Kanu's allegations and defence without merit and draw no implications from it.*"[57]

53. It is respectfully submitted that the Learned Judge failed to fully assess and/or examine the evidence given by the Appellant in relation to this issue. In effect Mr. Kanu was saying that there had been a serious incident during which the witness Sesay had abused his mother and shot at him when he went to reclaim a motor vehicle that had been kept at Kabassa Lodge and that this incident had resulted in Mr. Sesay being arrested and sent to Pademba Road prison where he spent a number of years.[58] In terms therefore the defence case was that Mr. Sesay was aggrieved that as a result of his dispute with the Appellant and his actions during the incident complained of he was incarcerated at Pademba Road Prison without charge for a significant period of time.

54. It is submitted that no reasonable Trier of fact would have come to the conclusion that the Learned Judge reached which invalidates the conclusion and occasions a miscarriage of justice.

Ground 18: The Single Judge erred in fact in concluding that the witness Sesay had no motive of revenge against the Appellant as he was not the injured party. In thus concluding the Single Judge failed to appreciate the way in which this evidence was introduced by the Defence in such a significant manner that it inevitably occasions a miscarriage of justice as she could not properly and/or fairly resolve an issue of fact by reason of the said misapprehension.

[57] SCSL-11-02-T-66, para. 613.
[58] Transcript, 28 August 2012, pp. 1545-1554; 1558-1559.

The Registrar's communication with the convicts in Rwanda

55. In paragraph 624 of the Judgement, the Learned Judge noted that "*...discussions on the terms and implementation of the Rules of the Special Court are legal and on the evidence before me, do not imply any criminal activity.*"[59] In so noting the Learned Judge stated that despite "*...Kanu's emphatic denials, it is apparent from his own exhibit that the issue of review under the provisions of Rule 120-122 were discussed. Kanu insisted that he did not receive copies of the Rules as indicated in this exhibit.*"

56. Respectfully the Exhibit shows that the Registrar was aware that the prisoners in Rwanda had not received the copies of the rules previously sent, which were therefore sent again with this letter.

57. The 2 July 2010 letter from the Registrar, clearly indicates that discussions had taken place prior to the writing of the letter and that discussions about review proceedings were limited to entitlement to financial or legal aid beyond the appeal stage.[60]

58. Whilst the Learned Judge makes it clear that any such discussions did not imply criminal activity it is submitted that in considering the matter the Learned Judge misdirected herself as to fact in a manner that could occasion a miscarriage of justice as it affects the way in which she assesses the Appellant's credibility.

> **Ground 19**: The Single Judge wrongly concluded that the defence exhibit referred to in paragraph 624 of the Judgement the issue of review under the provisions of Rule 120-122 were discussed in such a manner that it indicated that it was on the Appellant's mind that formed the basis of the 'criminal' plan.

The evidence of Andrew Daniels

59. As regards the witness Mr. Andrew Daniels, the Learned Judge concluded that his interaction with Brima and Kamara did not imply or prove any criminal activity or mens rea on their part.[61] She concluded however, in paragraph 626, that it clearly indicated that in late 2010 review of conviction or sentence and the provisions of Rules 120-122 were in the minds of both Accused.

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[59] SCSL-11-02-T-66, para. 624.
[60] SCSL-11-02-T-57, letter from the Registrar, Binta Mansaray to S.Kanu, filed as a confidential document.
[61] SCSL-11-02-T-66, para. 625-626.

60. Accepting that Brima was not an accused person, and that Daniels' evidence was that he did not speak to Kanu it is respectfully submitted that this conclusion calls into question the process by which the Learned Judge reached it. Respectfully, particularly as this was not charged as a conspiracy and in view of submissions outlined above, it is the Appellant's case that a reasonable Trier of fact could not properly have come to this conclusion.

> **Ground 20**: The Single Judge wrongly concluded that the evidence of Mr. Andrew Daniels clearly indicated that in late 2010 review of conviction or sentence and the provisions of Rules 120-122 was on the Appellant's mind that formed the basis of the 'criminal' plan

Calls to Bangura and Hamid Kamara (Keh For Keh)

61. In paragraph 628 of the Judgement, the Learned Judge concludes that the MTN "*...record shows an increase in calls to the numbers identified by the Accused as those of Bangura and Keh For Keh in early, mid and late November 2010.*"

62. It is submitted that this conclusion is not borne out by the record itself, although the Independent Counsel did make submissions to that effect on various occasions.[62] The MTN call record exhibited in this case provided details of calls over a period of about 1 month. In the period from November 1 to November 30 2010 Mr. Bangura's number was called 5 times and the number attributed to Mr. Hamid Kamara (Keh For Keh) was called 12 times. It is difficult to see, bearing in mind the time frame how it could properly be asserted that the record show an increase in calls to their numbers.

63. Considering the evidence from all the Defendants who gave evidence in their own case, the Appellant submits that a correct assessment of the makers of these calls would lead a reasonable tribunal to the conclusion that Mr. Kanu did not make any of these calls. There was no independent evidence of the content of those calls.

64. Mindful of the counts against the Appellant on the Order in Lieu of Indictment and previous submissions that this was not charged as a conspiracy, but a substantive offence, it is respectfully submitted that the Prosecution could not have discharged its burden of proof beyond reasonable doubt that the Appellant was (i) involved in

[62] It should be noted that this assumption was not put to Bangura in cross-examination by the Independent Counsel; in particular cf. Transcript, 3 September 2012, pp. 2083-2087; 2094; 2111-2115.

discussions concerning Sesay recanting his evidence or (ii) that any of the calls concerned were as a result of the so-called 'contemptuous plan'.

65. Ultimately, the Learned Judge concludes that she does "*...not accept Kanu's denials in the face of the overwhelming evidence of his co-accused, Kargbo and Sesay, and that Kanu spoke to Kargbo.*"[63] The Appellant respectfully takes issue with this finding of fact and submits that a thorough assessment of all the evidence concerning these telephone calls does not enable a reasonable Trier of fact to conclude beyond reasonable doubt that he was involved in any of these calls in a manner that supports a guilty verdict on any of these charges.

66. It is respectfully submitted therefore that there has been an error of fact, on a proper application of the standard of proof, which has occasioned a miscarriage of justice.

> **Ground 21**: The Single Judge erred in fact in concluding that the Appellant was either involved in telephone calls with Bangura or Hamid Kamara or was privy to the content of such calls to the extent that it would enable a reasonable tribunal, properly directed, to conclude that he was guilty of the charges on the Order in Lieu of Indictment.

Finding of fact that Kanu spoke to Sesay

67. In Paragraph 664 of the Judgement the Learned Judge makes a finding of fact that the Appellant spoke to Sesay and urged the latter to "*...cooperate to have them released.*" The Learned Judge clearly relied on the evidence of Mr. Kargbo in coming to her conclusions about the Appellant's contact with the latter.

68. Respectfully, Kargbo's evidence was inconsistent with itself as well as with that of Sesay. Counsel raised abundant support for this contention in the Appellant's motion for Judgement of Acquittal.[64]

69. It is therefore submitted that the Learned Judge failed properly to take clear lies and the inconsistencies alleged into consideration when assessing the evidence of the said witness.

70. While it is accepted that a reasonable tribunal would have had to assess all the evidence surrounding the claim by Mr. Sesay that the Appellant had spoken to him on

[63] SCSL-11-02-T-66, para. 656.
[64] SCSL-11-02-T, 17 July 2012, paras. 16-25; 33.

the telephone with a view to the former recanting his evidence, it is respectfully submitted that there was insufficient evidence for a reasonable Trier of fact to conclude beyond reasonable doubt that the evidence adduced pointed to the Appellants guilt. The appellant relies on submissions regarding the inconsistencies and inaccuracies in Mr. Sesay's evidence put forward in the Motion for Judgment of Acquittal.[65]

71. The Appellant places further reliance on what, it is submitted, is inconsistent fact handling by the Learned Judge in respect of this witness. In paragraph 632 of the Judgement, the Learned Judge concludes that Mr. Sesay's "*...temperament did not convey attempts to cover up, exaggerate or fabricate evidence.*", yet in paragraph 678 the Judge concludes, in relation to Mr. Sesay's claim that Bangura had offered him $10,000, that his evidence was not credible.

72. Respectfully it is submitted that the Learned Judge failed to use a consistent standard when assessing the evidence of this witness, in particular, but also in general.

> **Ground 22**: The Single Judge erred in fact, such that it amounted to a miscarriage of justice when she accepted the evidence of Mr. Sesay as regards his alleged telephone conversation with the Appellant when he was with Mr. Kargbo at PWD compound. The conclusion reached on this evidence was not one that a reasonable tribunal, properly directed, could reach on the evidence.

The 'Alagendra' email

73. In paragraph 639 the Learned Judge notes that the "Alagendra" email is hearsay then goes on to say that Saffa was not asked either in chief or in cross-examination where this date, 29 November came from.

74. In respect of this paragraph of the Judgement, the Appellant contend that there are two matters of grave concern; firstly that the Prosecution provided no independent evidence of the accuracy of the computer as to date and time and secondly that the Learned Judge failed to properly assess the evidence of Mr. Saffa.

75. In relation to the date on the hearsay document it is respectfully submitted that in the absence of evidence from the maker of the document it was incumbent on the Crown

[65] SCSL-11-02-T, 17 July 2012, paras. 26-35.

to either provide the metadata or to call independent evidence of the accuracy of the date thereon. At no time did the Defence concede that the information contained in this document was accurate and it was the Prosecution's decision not to call evidence to support it. Respectfully the Appellant submits that the Prosecution failed to discharge its burden of proving the accuracy of the information contained in this email.

76. Regarding the Learned Judge's conclusion on the evidence of Messrs. Saffa and Sesay on this point, it is respectfully submitted that Mr. Saffa's evidence was clear, to the effect that the date of 29 November 2010 had been provided by the witness Sesay. In stating that Mr. Saffa was not "*...asked in cross examination.*"[66] about this matter, it is respectfully submitted that the Learned Judge effectively reversed the burden of proof in a manner that is impermissible in law.

77. Mr. Sesay gave evidence that this was the date that he had given to Mr. Saffa when the former took his statement.[67] This has been discussed above, but it is submitted that the effect of the combination of the evidence of these two witnesses is that there was clarity about where the date "*came from*" and that accordingly the Learned Judge erred in law and/or fact in concluding as she did in a manner that occasions a miscarriage of justice and invalidates the Appellant's conviction.

> **Ground 23**: The Single Judge erred in law and/or fact in concluding that she could not identify the origin of the date of November 29, 2010 given for the call in which the Appellant is said to have spoken to Mr. Sesay. The basis put forward for this conclusion is tantamount to impermissibly reversing the burden of proof.

Kanu never spoke to Sesay

78. In paragraph 647 the Learned Judge records, in relation to the evidence of Sesay, that it was "*..not put to him that Kanu never spoke or that the phone call never occurred.*" It is respectfully submitted that in this regard the Learned Judge allowed herself to fall into error because the Appellant's Counsel did suggest to Mr. Sesay that it was

[66] SCSL-11-02-T-66, para. 639.
[67] Cf., supra.

not Mr. Kanu who was on the line to him, furthermore, it was also suggested to Mr. Sesay that the Appellant had never spoken to him since he had been in Rwanda.[68].

79. This error is submitted to be an error of fact or law arising from a serious misapprehension of the evidence given and the questions asked of Mr. Sesay in cross-examination. The effect of this error is that it has occasioned a miscarriage of justice and invalidates the Appellant's conviction in this case.

> **Ground 24**: The Single Judge erred in fact and law when she concluded that it was never put to Mr. Sesay that the Appellant had never spoken to him or that the phone call never occurred.

Finding of fact that Kanu's call 'distressed' Sesay

80. In paragraph 656 of the Judgement the Learned Judge states in respect of the Appellant's conversation with Sesay, "*This, according to Kargbo, caused Sesay's face to change so that Kargbo knew he was upset. I find this call distressed and disturbed Sesay sufficiently for him to make a contemporaneous report to Shymala Alagendra, Prosecution attorney in the AFRC case, and to subsequently report it to Saffa.*"

81. It is respectfully submitted that this finding was based on a misstatement of the evidence; at no time during that part of his cross-examination by Counsel for the Appellant did Mr. Sesay give evidence to that effect.[69] In fact, the evidence adduced by the Independent Counsel in examination in chief from Mr. Kargbo was that it was when he told Mr. Sesay, on an earlier occasion than the "PWD" call that "those men are saying we should help them" and after the latter had spoken to "Papa" that his countenance changed.[70]

82. It would therefore appear that the Learned Judge has unfortunately conflated the evidence of Messrs. Kargbo and Sesay and concluded, with respect, erroneously that it was after speaking to the Appellant that Mr. Sesay's countenance changed. In light of the actual evidence, it is submitted that the conclusion drawn from that misapprehension is invalidated as is all that flows from it. Clearly, on the evidence the conversation referred to by Mr. Kargbo occurred on a previous occasion, some 3

[68] Transcript, 27 June 2012, p.674, lines 14-15; p.675, lines 5-6.
[69] Transcript, 25 June 2012, p. 449-451.
[70] Transcript, 21 June 2012, p. 121, lines 5-13;p.122, lines14 -20.

days before the alleged "PWD" call and therefore, subject to the accuracy of the date of the "Alagendra email" and contact with Ms. Alagendra could hardly be described as contemporaneous or caused by the alleged conversation with the Appellant in the manner elucidated by the Learned Judge.

83. The error is further compounded in paragraph 664 of the Judgement, which it is submitted goes to the very heart of the Appellant's conviction.[71] Accordingly it is submitted that this was an error of fact which arose out of a conflation of the evidence that occasions a miscarriage of justice and therefore invalidates the Appellant's conviction.

> **Ground 25**: The Single Judge erred in fact when she concluded on the evidence that Mr. Sesay's alleged conversation with the Appellant distressed and disturbed him sufficiently for him to make a contemporaneous report to Shaymala Alagendra, Prosecution attorney in the AFRC case and to subsequently report it to Saffa.

Paragraph 664 Finding

84. In paragraph 664 the Learned Judge summarises her reasons for finding the Appellant guilty. It is respectfully submitted that a close inspection of this paragraph reveals the difficulty posed by two counts on the Indictment dealing with the same facts, without being alternatives. It is respectfully submitted that the reasons given in this paragraph apply equally to count 1 and count 2 but that the two counts ought properly to have been viewed as mutually exclusive in the circumstances of this case. The explanation for this finding contains errors of fact and law that invalidate the conviction and occasion a miscarriage of justice.

> **Ground 26**: The Single Judge erred in law and fact when she found the Appellant guilty on both counts of the Indictment on the same set of facts, without distinguishing which act was the basis of the finding for which count.

[71] SCSL-11-02-T-66, para. 664; in which the Learned Judge repeats the finding that Sesay was upset and distressed.

Identification by voice

85. In Paragraph 660 the Learned Judge makes a finding in relation to voice recognition by reference to her own ruling in the case of *Prosecutor v. Senessie*.[72]

86. It is respectfully submitted that there is authority in the English courts that more care should be taken when the recognition relied on relates to voice.[73] It is further submitted on behalf of the Appellant that his is especially so when there has been a significant lapse in time since the identifying witness has heard the voice of the party purporting to be recognised and secondly when the transmission of the voice is over a long distance telephone call.

87. Accordingly the Appellant submits that this decision amounts to an error of law and/or fact which invalidates his conviction and occasions a miscarriage of justice.

> **Ground 27**: The Single Judge erred in law and/or fact in determining that the principles in *R v. Turnbull*[74] apply, *simpliciter*, to identification and recognition of a voice.

Sentence

88. On 11 October 2012 the Appellant was sentenced to two years' imprisonment from which is deducted a period of 2 weeks, to serve one year and 50 weeks on Count1 and Count 2 with the sentence to run concurrently to each other but consecutively to his present sentence.[75] The other Accused were sentenced in the manner described in paragraph 16 above.

89. The relief sought in the Grounds which appear below is a quashing of the sentences imposed as a result of the matters raised in this appeal and the imposition of a new and appropriate sentence should the Appellant's appeal against conviction be dismissed.

Sentence imposed excessive

90. It is respectfully submitted that the sentences imposed were unduly harsh and excessive in all the circumstances of the case. The Appellant submits that precedent in the International Tribunals in respect of sentencing suggest that a sentence of two

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[72] SCSL-11-01-T-27, para. 31.
[73] *R v Flynn & St. John*,[2008]EWCA Crim 970; [2008] 2 Cr.App. R. 266.
[74] 1976 2 All. E. R.
[75] SCSL-11-02-T-71, para. 101.

years' imprisonment is reserved for the very serious cases where, as in the *Seselj*[76] case there has been serious contumacious behaviour on multiple previous occasions.

> **Sentence Ground 1**: The sentence of 1 year and 50 months imposed is harsh and excessive in all the circumstances of the case.

Insufficient Regard taken of Mitigation

91. The Appellant submits that the Single Judge paid no, or no sufficient attention to the mitigation put forward on his behalf when considering the appropriate sentence. IN this regard the Appellant relies on the Sentencing brief filed on his behalf as well as oral submissions made to the Learned Judge on 08 October 2012.

> **Sentence Ground 2**: The Single Judge did not sufficiently take into account the Appellant's mitigation when imposing sentence on him.

Disparity

92. It is submitted that when considering the sentence imposed on his co-accused, Hassan Papa Bangura, there was disparity in both the sentence imposed and the sentencing process employed by the Learned Judge.

93. The Appellant submits that the Learned Judge gave weight to a previous period in custody, without charge, which Mr. Bangura served while she was aware the this Appellant's history was similar. Furthermore, while accepting the principle from the *Haraqija* case[77] that a person who induces "*...another person's contemptuous conduct...*"[78] warrants a heavier sentence than his co-accused, it is submitted that the difference between the sentences of Mr.Bangura and the Appellant are greater than that which was employed in the aforementioned case.

> **Sentence Ground 3:** There was significant disparity in the sentence imposed on the Appellant as opposed to that imposed on his co-accused Hassan Papa Bangura.

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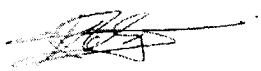
[76] *The Prosecutor v. Seselj*, IT-03-67-R77.4
[77] *The Prosecutor v. Astrit Haraqija and Bajrush Morina*, IT-04-84-R77.4
[78] SCSL-11-02-T-71, para. 80

Conclusion

94. For all the reasons detailed in this Notice of Appeal, the Appellant, Santigie Borbor Kanu, respectfully invites the Appeals Chamber to reverse the findings of guilt and convictions entered against him, to vacate the judgement and issue a Judgement of Acquittal.

Respectfully submitted,



Kevin A. Metzger

Counsel for Santigie Borbor Kanu

Dated 22 October 2012