

SCSL-2003-02-I-38-020 225

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(225-228)

**SPECIAL COURT FOR SIERRA LEONE**

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Before: Judge Bankole Thompson

Registry: Mr. Robin Vincent

Decision of: 17<sup>th</sup> of April, 2003

**THE PROSECUTOR**

**Against**

**FODAY SAYBANA SANKOH also known as POPAY**

**also known as PAPA also known as PA**

CASE NO. SCSL - 2003 - 02 - I

**DECISION ON THE PROSECUTION MOTION TO ALLOW DISCLOSURE TO  
THE REGISTRY AND TO KEEP DISCLOSED MATERIALS UNDER SEAL  
UNTIL APPROPRIATE PROTECTIVE MEASURES ARE IN PLACE**

The Office of the Prosecutor:  
Mr. Luc Cote'  
Mr. Jim Johnson  
Mr. Nicholas Browne-Marke

The Defence Office:  
Mr. John R.W.D. Jones  
Mrs. Claire Carlton-Hanciles  
Mr. Ibrahim Yillah  
Ms. Haddijatu Kah-Jallow

SPECIAL COURT FOR SIERRA LEONE	
COURT RECORDS	
RECEIVED	
NAME	<i>Justice Thompson</i>
SIGNATURE	<i>[Signature]</i>
DATE	17-4-03 TIME 11:20am

**THE SPECIAL COURT FOR SIERRA LEONE (the Court),**

**SITTING AS** Judge Bankole Thompson, designated by the President of the Special Court according to Rule 28 of the Rules of Procedure and Evidence (“the Rules”);

**BEING SEIZED** of the Extremely Urgent Prosecution Motion to Allow Disclosure to the Registry and to Keep Disclosed Material Under Seal Until Appropriate Protective Measures are in Place of the 7<sup>th</sup> of April 2003, filed on the 9<sup>th</sup> of April, 2003 (“the Prosecution Motion for Disclosure”) and the supporting materials attached thereto;

**CONSIDERING** the Response of the Defence Office to the Prosecution Motion for Disclosure of the 15<sup>th</sup> of April, 2003 (“the Defence Response”);

**CONSIDERING** that the Prosecution is satisfied with the Defence Response and does not intend to reply thereto;

**CONSIDERING** the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure of the 7<sup>th</sup> of April, 2003, filed on the 9<sup>th</sup> of April, 2003, seeking an order for the implementation of several protective measures for witnesses and victims and for the protection of the confidentiality of all non-public materials disclosed to the Defence;

**CONSIDERING** the Order for Physiological and Psychiatric Examination of Foday Saybana Sankoh (“the Accused”) of the 15<sup>th</sup> of March, 2003 (“the Order for Medical Examination”), disposing, *inter alia*, for the preparation of a report on the physiological and psychiatric examination of the Accused;

**CONSIDERING** the Report on the Physiological and Psychiatric Examination of the Accused on the 20<sup>th</sup> of March, 2003 (“the Medical Report”);

**CONSIDERING** the Order for Further Physiological and Psychiatric Examination of the Accused of the 21<sup>st</sup> of March, 2003 (“the Order for Further Medical Examination”);

**WHEREAS** the Court decided to deliberate on the Prosecution Motion for Disclosure solely on the basis of the parties’ briefs;

**CONSIDERING** Rules 7, 54, 61, 66, 73 and 74 *bis* of the Rules;

**SUBMISSIONS OF THE PARTIES**

***The Prosecution***

1. From an abundance of caution, the Prosecution submitted that the first day of the initial appearance of the Accused, the 15<sup>th</sup> of March, 2003, was the beginning date of the disclosure obligations pursuant to Rule 66 (A)(i) of the Rules. Consequently, the Prosecution identified the 14<sup>th</sup> of April, 2003 as the expiration date of its disclosure obligations pursuant to Rule 66 (A)(i).
2. Pending deliberation and appropriate ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, the Prosecution requests:
  - (a) an Order allowing the Prosecution to make the disclosure pursuant to Rule 66 (A)(i)

to the Registry;

- (b) an Order to the Registry to keep the disclosed material under seal until orders for appropriate measures for witnesses, victims and non-public materials have been issued.

### ***The Defence***

3. In its response the Defence argues that the proceedings in the case of the Accused are currently suspended pursuant to the provisions contained into the Court Order for Medical Examination and the Order for Further Medical Examination.

4. Furthermore, the Defence argues that, citing previous rulings rendered by this Court in the cases of other indictees, the period of the disclosure pursuant to Rule 66 (A)(i) should run from the conclusion of the initial appearance of an accused.

### **AFTER HAVING DELIBERATED**

5. In its Order for Further Medical Examination of the Accused, following the Medical Report on the Accused and the parties' oral observations at the initial appearance of the Accused of the 21<sup>st</sup> of March, 2003, the Court ruled that the Accused be submitted to a further and final physiological and psychiatric examination with a view to determine if the Accused is fit to plead and to stand trial.

6. This order clearly suspends *sine die* the continuing of the initial appearance of the Accused. The proceedings will resume as soon as it become feasible to determine the medical status of the Accused and, in particular, to establish his fitness to enter a plea on the charges brought against him on the indictment.

7. This provision is confirmed by the rejection of the Prosecution oral submission at the initial appearance of the Accused on the 21<sup>st</sup> of March, 2003 for a plea of not guilty to be entered on behalf of the Accused contained in the same Order for Further Medical Examination.

8. To date, the physiological and psychiatric examinations of the Accused as ordered in the Order for Further Medical Examination are not yet completed. The order instructs the Registrar, after consultation with the Prosecution and the Defence, to undertake all necessary measures for its appropriate execution.

9. In its Scheduling Order of the 11<sup>th</sup> of April, 2003 in the case of the *Prosecutor vs. Samuel Hinga Norman*, case n. SCSL-2003-08-I, as well as in the similar orders rendered on the 10<sup>th</sup> of April, 2003 in the cases of *Prosecutor vs. Issa Sesay*, case n. SCSL-2003-05-I, the *Prosecutor vs. Alex Tamba Brima*, case n. SCSL-2003-06-I and the *Prosecutor vs. Morris Kallon*, case n. SCSL-2003-07-I, the Court deemed, *inter alia* and as correctly indicated in the Defence Response, that the beginning date of the Prosecution's disclosure obligations pursuant to Rule 66 (A)(i) shall run from the date of conclusion of the initial appearance of an accused.

10. The Court therefore hereby confirms that the initial appearance of the Accused has not been concluded, pending fulfillment of the provisions contained in the Order for Further Medical Examination of the Accused and subsequent deliberations. Consequently, the Prosecution's requests contained in the Prosecution Motion for Disclosure are deemed premature and shall not be ruled upon until the initial appearance of the Accused shall have been concluded.

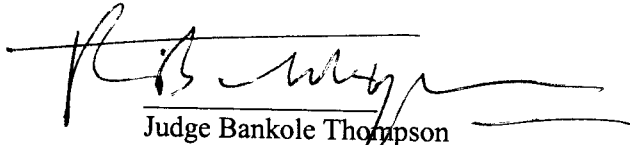
**FOR THESE REASONS, THE COURT:**

**DENIES** the Prosecution Motion for Disclosure in its entirety,

**CONFIRMS** the Order for Further Medical Examination of the Accused and, in particular, urges the Registrar to undertake the appropriate execution of the physiological and psychiatric examination of the Accused.

The Court will dispose on the scheduling of the time limits of the Prosecution's disclosure obligations pursuant to Rule 66 (A)(i) with appropriate order, if necessary.

Done in Freetown, Sierra Leone this 17<sup>th</sup> day of April, 2003

  
Judge Bankole Thompson  
Designated Judge



Seal of the Special Court for Sierra Leone