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SCSL-2003-02-I-2P-021
(229-236)

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THE SPECIAL COURT FOR SIERRA LEONE

Before: Judge Bankole Thompson
Designated Judge

Registrar: Robin Vincent

Date filed: 23 April 2003

THE PROSECUTOR

v.

**FODAY SAYBANA SANKOH also known as POPAY
also known as PAPA also known as PA**

Case No. SCSL-2003-02-PT

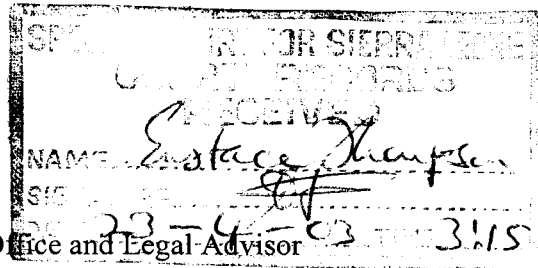
**RESPONSE OF DEFENCE OFFICE TO
"PROSECUTION MOTION FOR IMMEDIATE
PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS
AND FOR NON-PUBLIC DISCLOSURE"**

Office of the Prosecutor

Luc Côté, Chief of Prosecutions
Brenda J. Hollis, Senior Trial Counsel

Defence Office

John R.W.D. Jones, Acting Chief of Defence Office and Legal Advisor
Claire Carlton-Hanciles, Defence Associate
Ibrahim Yillah, Defence Associate
Haddijatu Kah-Jallow, Defence Associate
Sam Scratch, Defence Intern



I. INTRODUCTION

1. On 9 April 2003, the *Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure* dated 7 April 2003 (the “**Prosecution Motion**”) was filed by the Court Records Office and subsequently served on the Defence. The Prosecution Motion requested a Judge or Chamber to issue eleven (11) protective measures.
2. In a communication dated 17 April 2003 from the Chambers, copied to the Defence Office, the Defence was notified that, due to the different dates on which the Prosecution Motion was served on the Parties, “*the time limit for the filing of the Defence Response to the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure is 23 April 2003*”.
3. The Defence Office on behalf of accused Foday Saybana Sankoh herewith files its response without prejudice to the position that might be taken by his assigned counsel once such counsel is assigned. The Defence Office submits that Mr. Sankoh’s initial appearance has not concluded and therefore any further proceedings such as disclosure or motions for protective measures for witnesses are premature.
4. With respect to the Prosecution’s motion for protective measures, the Defence Office submits that, since Mr. Sankoh’s initial appearance has not concluded, the Prosecutor’s disclosure obligation under Rule 66 of the Rules of Procedure and Evidence has not been triggered. As a result, there is no need to seek protective measures as the Accused will have no means of identifying any witness until he or his counsel receives disclosure from the Prosecutor.
5. In support of this position the Defence Office relies upon this Court’s *Decision on the Prosecution Motion to Allow Disclosure to the Registry and to Keep Disclosed*

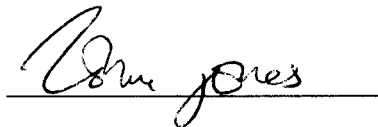
*Materials Under Seal Until Appropriate Protective Measures Are in Place*¹ dated 17 April, 2003 held (at paragraph 10) that,

“The Court therefore hereby confirms that the initial appearance of the Accused has not been concluded, pending fulfilment 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”.

- 6. The Defence Office therefore submits that the Prosecution Motion for protective measures in relation to Foday Sankoy should be dismissed as premature.

Dated this 23rd day of April, 2003

DEFENCE OFFICE



John R.W.D. Jones, Acting Chief of Defence Office and Legal Advisor

Claire Carlton-Hanciles, Defence Associate

Ibrahim Yillah, Defence Associate

Haddijatu Kah-Jallow, Defence Associate

Sam Scratch, Defence Intern

¹ Attached as Annex A.

ANNEX A

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 – 17 April 2003 per
Judge Bankole Thompson



SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

Before: Judge Bankole Thompson

Registry: Mr. Robin Vincent

Decision of: 17th 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
CERTIFIED TRUE COPY OF THE ORIGINAL
SEEN BY ME
NAME *Musa D. Kamara*
SIGNATURE *Musa D. Kamara* DATE *17/04/03*

SPECIAL COURT FOR SIERRA LEONE
COURT RECORDS
RECEIVED
NAME *Justice Thompson*
SIGNATURE *[Signature]*
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 7th of April 2003, filed on the 9th 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 15th 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 7th of April, 2003, filed on the 9th 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 15th 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 20th of March, 2003 (“the Medical Report”);

CONSIDERING the Order for Further Physiological and Psychiatric Examination of the Accused of the 21st 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 15th 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 14th 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 21st 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 21st 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 11th 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 10th 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.

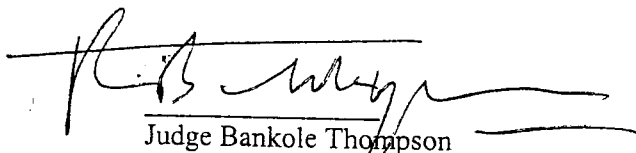
FOR THESE REASONS, THE COURT:

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 17th day of April, 2003


Judge Bankole Thompson
Designated Judge



Seal of the Special Court for Sierra Leone

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SEEN BY ME
NAME *Abdullah D. Kamara*
SIGNATURE *Abdullah D. Kamara* DATE *17/04/03*