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SCSL-03-01-T
(34836-34859)

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SPECIAL COURT FOR SIERRA LEONE

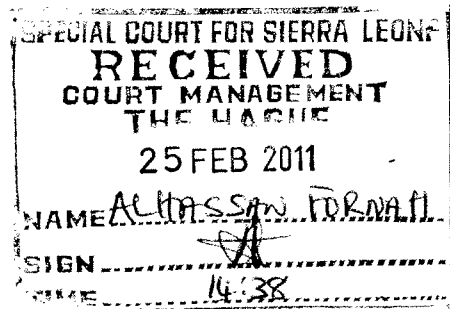
TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding Judge
Justice Richard Lussick
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Binta Mansaray

Case No.: SCSL-03-1-T

Date: 25 February 2011



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A TO E & PUBLIC ANNEX F URGENT PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE SPECIAL COURT FOR SIERRA LEONE AND PUBLIC WITH CONFIDENTIAL ANNEXES A & B URGENT PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE SPECIAL COURT FOR SIERRA LEONE

Office of the Prosecutor:

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James Supuwood

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 3 February 2011 (“First Contempt Motion”);¹

SEISED ALSO of the “Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 7 February 2011 (“Second Contempt Motion”);²

RECALLING the Trial Chamber’s “Order for Expediting Filing on Contempt Motions”, dated 9 February 2011,³ wherein the Trial ordered expedited filing schedules for the responses and replies to the above Motions;

NOTING ALSO the “Confidential, with Annexes A and B Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 11 February 2011 (“Response to First Contempt Motion”);⁴

NOTING ALSO the “Public Prosecution Reply to Confidential Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 14 February 2011 (“Reply to First Contempt Motion”);⁵

NOTING ALSO the “Confidential, with Annexes A-C Defence Response to Second Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 14 February 2011 (“Response to Second Contempt Motion”);⁶

NOTING ALSO the “Prosecution Reply to Confidential Defence Response to Second Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 16 February 2011 (“Reply to Second Contempt Motion”);⁷

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone

¹ SCSL-03-01-T-1185.

² SCSL-03-01-T-1192.

³ SCSL-03-01-T-1198.

⁴ SCSL-03-01-T-1201.

⁵ SCSL-03-01-T-1204.

⁶ SCSL-03-01-T-1205.

⁷ SCSL-03-01-T-1207.

("Statute") and Rules 54, 75 and 77 of the Rules of Procedure and Evidence ("Rules");

HEREBY DECIDES AS FOLLOWS, based solely on the written submissions of the parties, pursuant to Rule 73(A) of the Rules;

I. SUBMISSIONS

First Contempt Motion

1. The Prosecution requests that the Trial Chamber direct the Registrar to appoint experienced independent counsel to urgently investigate possible contempt of the Special Court in relation to, at minimum, four Prosecution witnesses: Mohamed Kabba (TF1-568) ("Kabba"), Aruna Gbonda (TF1-330) ("Gbonda") and two protected witnesses (TFI-585 and TFI-516).⁸
2. The Prosecution alleges that between 26 and 31 January 2011, Kabba, Gbonda and TF1-585 were contacted by telephone and in person by former RUF combatant RUF Eric Koi Senessie ("Senessie"). It further alleges that on 30 January 2011, TFI-585 was contacted simultaneously by Senessie in person and by Prince Taylor by telephone. According to the statements of the witnesses, Senessie told each of them that he had been sent by the Charles Taylor Defence Team to persuade the witnesses to recant their previous sworn testimony, and testify that their previous testimony was given based on the promise of money and relocation. Senessie told Kabba and TF1-585 that the Defence would give a "good cash reward" or "huge financial benefit" to cooperating witnesses. Kabba and TF1-585 then made contact or attempted to make contact with the OTP in order to report this. Kabba and TF1-585 are both subject to protective measures.⁹ Neither received any notification or request from WVS or the Prosecution in relation to the contact made by Senessie and/or Prince Taylor.¹⁰
3. On 30 January 2011, three days after Senessie's initial contact with TFI-585, Senessie attempted to have this witness sign a document declaring that the witness consented to meeting with the Defence. The witness also spoke on the telephone to Prince Taylor, who was instructing Senessie. According to TFI-585, Prince Taylor confirmed that he had sent Senessie to contact this witness, and acknowledged that he had no right to speak to the witness outside the formal channels.¹¹ Senessie also contacted Gbonda in person and on the telephone on 31 January 2001, and told Kabba that

⁸ First Contempt Motion, paras 1, 31.

⁹ First Contempt Motion, paras 10-11.

¹⁰ First Contempt Motion, para. 12.

¹¹ First Contempt Motion, paras 11-12, Confidential Annex D,

Gbonda had agreed to change his testimony. These allegations are supported by the statements of these witnesses as set out in Confidential Annexes B, C and D.¹²

4. The Prosecution submits that Confidential Annexes B, C and D all indicate that Senessie told Kabba, Gbonda and TFI-585 that he was acting on behalf of the Charles Taylor Defence Team. All three witnesses contacted by Senessie state that they feel that these visits pose a threat to their well-being, and two of them specifically state that they now fear for their lives.¹³

5. The Prosecution therefore submits that, in light of this information, there is “reason to believe” that Eric Senessie, Prince Taylor and other persons not yet identified have engaged in contemptuous conduct in violation of Rules 77(A) and/or (B).¹⁴ This conduct includes:

(i) disclosure of the identity of at least two protected Prosecution witnesses (TFI-585 and TFI-516) to third parties including Eric Senessie in knowing violation of the applicable protective measures orders, which falls within the ambit of Rule 77(A)(ii);¹⁵

(ii) intimidation or attempted intimidation of at least three Prosecution witnesses (Kabba, Gbonda, and TFI-585) and attempts to bribe at least two Prosecution witnesses (Kabba and TFI-585), which falls within the ambit of Rule 77(A)(iv) and/or Rule 77(B);¹⁶

(iii) interference or attempted interference with the administration of justice through the violation of a court order - namely, making contact with two Prosecution witnesses (Kabba and TFI-585) in violation of applicable protective measures, and interference with at least three witnesses (Kabba, Gbonda and TFI-585) who had given testimony before the Court;¹⁷

The Prosecution also alleges that this conduct caused all three witnesses to feel afraid.¹⁸

6. The Prosecution therefore requests that the Trial Chamber, pursuant to Rule 77(C)(iii), appoint experienced independent counsel to urgently investigate this possible contempt of the Special Court.¹⁹

¹² First Contempt Motion, paras 11-12.

¹³ First Contempt Motion, paras 13-14.

¹⁴ First Contempt Motion, paras 15, 30.

¹⁵ First Contempt Motion, paras 1, 19, 30.

¹⁶ First Contempt Motion, paras 1, 20-23, 30.

¹⁷ First Contempt Motion, paras 24-28, 30.

¹⁸ First Contempt Motion, para. 22.

7. The Prosecution also requests that, as an urgent interim measure, the Trial Chamber order the Defence team not to discuss with Eric Senessie and/or Prince Taylor anything associated with this request or resulting investigation.²⁰

Response to First Contempt Motion

8. The Defence opposes the Motion, submitting that all of the allegations of contemptuous conduct contained in the Motion are baseless and do not provide the Chamber with a credible reason to believe that contempt may have occurred, and that the Motion is nothing more than an attempt to scare the Defence from their investigations.²¹

9. The Defence submits that the allegations of contempt are generally not credible. It contends that Eric Senessie has never been tasked by the Taylor Defence team to work as part of it, or to work on its behalf to contact Prosecution witnesses. Further, it submits that at the time of the alleged misconduct in January 2011, Prince Taylor was no longer a member of the Taylor Defence Team. The Defence therefore submits that it is not in a position to know whether either or both of these two individuals contacted Prosecution witnesses in January 2011 on their own accord, and indicates that it has in good faith complied with the Prosecution's request that it not contact or communicate with either of Senessie or Prince Taylor pending the resolution of this issue.²²

10. The Defence submits that the information provided by the complainants in Confidential Annexes B, C, and D does not provide reason to believe that an investigation would reveal that there has been disclosure of the identity of at least two protected witnesses to third parties, including Eric Senessie. Instead, it is reasonable to believe that Senessie knew the identity of these individuals as Prosecution witnesses via other means, as the information on record makes it clear that Senessie was closely connected to RUF combatants, particularly in Kailahun District and assisted the Prosecution in conducting investigations in Kailahun and is familiar with the Prosecution and its witnesses, absent any connection to the Defence Team.²³ If further alleges that it is reasonable to believe that as TFI-585 and TFI-516 were both radio operators now based in Kailahun, they already knew that the other was a Prosecution witness.²⁴

¹⁹ First Contempt Motion, paras 1, 31.

²⁰ First Contempt Motion, para. 29.

²¹ Response to First Contempt Motion, paras 2, 14.

²² Response to First Contempt Motion, para. 4.

²³ Response to First Contempt Motion, para. 5.

²⁴ Response to First Contempt Motion, paras 4-6.

11. The Defence also disputes the notion that the Defence team offered any Prosecution witness a bribe in exchange for recanting his or her testimony. The Defence submits that the allegations of bribery are not sufficiently specific to be credible, as all that TFI-585 and Kabba were told is that they would be “rewarded monetarily”, with no indication of who would pay the money, the source of the money, or what the amount would be, and that, as such, these allegations are “highly speculative”. Further, the Defence submits that there was no allegation that any money was actually given to either of these two witnesses.²⁵

12. The Defence further submits that the allegations of intimidation are based on the complainants’ “subjective interpretation of otherwise normal events” and do not satisfy the reason to believe standard. It further argues that in any event, Gbonda acknowledged that Senessie did not use any direct threat, and that TFI-585 acknowledged that Senessie “has not openly expressed any threats”. It further submits that, as none of the witnesses met with Prince Taylor, and only one alleges to have spoken to him, the allegations pertaining to his direct and indirect contact with Prosecution witnesses are hearsay and cannot be deemed sufficiently credible to warrant investigation.²⁶

13. Finally, the Defence submits that the urgent interim measure requested by the Prosecution is unreasonable, as it does not allow either Prince Taylor or Eric Senessie to respond on the merits. It therefore reserves that right to rebut the factual allegations as proffered by the Prosecution if the Defence is allowed to contact either or them.²⁷

Reply to First Contempt Motion

14. The Prosecution submits in reply that the Defence denial of involvement in the alleged contact is not relevant to whether an investigation should be initiated as Rule 77(a) applies to “any person who knowingly or wilfully interferes”, whether a member of the Defence team or not.²⁸

15. The Prosecution further submits that contrary to the Defence’s submissions, the allegations of contempt are specific in that each witness was very clear that Senessie told them he was contacting them on behalf of the Charles Taylor Defence team. Further, while the Defence denies that Senessie was ever tasked to be part of its team, two of the witnesses stated that they had seen Senessie in Kailahun on previous occasions with Defence team members looking for Defence witnesses. Further, the Prosecution submits that although his formal tenure had ended, Prince Taylor continued to

²⁵ Response to First Contempt Motion, paras 7-8.
²⁶ Response to First Contempt Motion, paras 9-10.
²⁷ Response to First Contempt Motion, para. 11.
²⁸ Reply to First Contempt Motion, para. 2.

represent himself as an active member of the Defence team and he had a continuing obligation to observe the standards and orders of the court.²⁹

16. The Prosecution further submits that, contrary to the Defence's submission, the allegations of offering a bribe are not highly speculative, but instead concern specific offers of a bribe which were independently reported, and the similarities between the accounts of Mohamed Kabba and TF1-585 corroborate each other and meet the reason to believe standard.³⁰

17. The Prosecution submits that the Defence's suggestion that Senessie's conduct does not constitute intimidation ignores the reality on the ground in Sierra Leone, where Prosecution witnesses live in the midst of former members of the RUF who view these witnesses as traitors, that Senessie holds a position of influence in his district, and that these incidents occurred far from Freetown and the protection of the court. It further submits that the conduct was of sufficient gravity to be likely to intimidate a witness, and that even though, according to the legal test, it is immaterial whether the witness was actually intimidated, the facts establish in this case that there is reason to believe they were.³¹

18. Finally, the Prosecution submits that the urgent interim measures are reasonable.³²

Second Contempt Motion

19. The Prosecution requests that the Trial Chamber direct the Registrar to appoint experienced independent counsel to urgently investigate possible contempt of the Special Court in relation to, at minimum, two Prosecution witnesses: Dauda Aruna Fornie (TF1-274) ("DAF") and protected witness TFI-585. It adopts by reference all allegations and submissions made in the First Contempt Motion, and submits that the contact and conduct described in this motion generally corroborates the allegations made in the First Contempt Motion and further demonstrates a concerted course of action against Prosecution witnesses by alleged Defence "contacts" and/or team members.³³

20. The Prosecution alleges that Eric Senessie first approached DAF on 2 February 2011, and again approached him the next day identifying himself as a "contact person for the Charles Taylor Defence Team". Senessie told DAF that he had been tasked with convincing certain Prosecution witnesses to recant their testimony and testify that their previous sworn testimony was given based on a promise of

²⁹ Reply to First Contempt Motion, paras 4-5, 8.

³⁰ Reply to First Contempt Motion, para. 9.

³¹ Reply to First Contempt Motion, paras 10-14.

³² Reply to First Contempt Motion, para. 14.

³³ Second Contempt Motion, paras 1, 2, 29.

“some token”. Senessie also told DAF that the Defence would pay and relocate him if he were to recant his testimony. Senessie then called an unnamed individual who he identified as another Defence Team Member, who spoke briefly with DAF and said he would call back the following day. DAF contacted the Prosecution before any further contact could be made. The Prosecution also alleges that Senessie told DAF that he had already spoken to other witnesses including TFI-585 and Mohamed Kabba and that they had agreed to cooperate with the Defence.³⁴

21. The Prosecution further submits that the signed declaration contained at Confidential Annex B in large part corroborates the statements and declaration at Confidential Annexes B-E of the First Contempt Motion.³⁵

22. The Prosecution therefore submits that, in light of this information, there is “reason to believe” that Eric Senessie, Prince Taylor and other persons not yet identified have engaged in contemptuous conduct in violation of Rules 77(A) and/or (B).³⁶ This conduct includes:

- (i) disclosure of the identity of at least one protected Prosecution witness (TFI-585) to third parties including Eric Senessie in knowing violation of the applicable protective measures orders, disclosure by Senessie of the identity of this protected witness to another witness, DAF, and possible disclosure of DAF’s contact information and address, which conduct falls within the ambit of Rule 77(A)(ii);³⁷
- (ii) attempts to bribe at least one Prosecution witness and/or to otherwise interfere, or attempt to interfere with at least one witness, which falls within the ambit of Rule 77(A)(iv) and/or Rule 77(B);³⁸
- (iii) violation of court ordered protective measures prohibiting direct contact by the Defence Team with certain protected witnesses, which falls within the ambit of Rule 77(A) as it constitutes an interference with the administration of justice;³⁹

The Prosecution therefore requests that the Trial Chamber, pursuant to Rule 77(C)(iii), appoint experienced independent counsel to urgently investigate this possible contempt of the Special Court.⁴⁰

³⁴ Second Contempt Motion, paras 11-13.

³⁵ Second Contempt Motion, paras 10, 16.

³⁶ Second Contempt Motion, paras 14, 17, 28.

³⁷ Second Contempt Motion, paras 1, 18, 28.

³⁸ Second Contempt Motion, paras 1, 19-21, 28.

³⁹ Second Contempt Motion, paras 1, 23-26, 28.

⁴⁰ Second Contempt Motion, paras 1, 29.

23. The Prosecution also reiterates its request from the First Contempt Motion that, as an interim measure, the Trial Chamber order the Defence team not to discuss with Eric Senessie and/or Prince Taylor anything associated with this request or resulting investigation.⁴¹

Response to Second Contempt Motion

24. The Defence opposes the Second Contempt Motion and submits that all of the allegations of contemptuous conduct are incredibly vague, and that the Prosecution has therefore failed to provide credible reason to believe that Senessie or any unnamed member of the Taylor Defence Team has knowingly or willingly interfered with the administration of justice such that an investigation should be launched under Rule 77(C)(iii).⁴² Further, or in the alternative, the Defence submits that DAF is attempting to pressure the Prosecution into providing him with money and relocation.⁴³

25. The Defence submits that it is highly likely that all of the insider RUF radio operators know each other, and that they all know the others testified on behalf of the Prosecution. Therefore, the Prosecution allegation that Senessie disclosed the identity of Prosecution witness TFI-585 to DAF is not plausible. It further submits that the Prosecution has not shown that Senessie knew that TFI-585 was a protected witness and thus that he would be violating a court order by discussing this witness's status with another witness.⁴⁴

26. The Defence further submits that there is no basis for the inference that the contact and address information for DAF have been disclosed in violation of a court order, and in particular notes that the Declaration in Confidential Annex B to the Second Contempt Motion indicates that DAF was approached outside of his home.⁴⁵

27. Further, the Defence indicates that in a previous incident, DAF made unsubstantiated allegations that the Defence had attempted to contact him to recant his testimony, and that the Defence had also previously complied with the procedures for contacting Defence witnesses by contacting WVS to see if witnesses (including DAF) would be willing to meet with the Defence.⁴⁶

28. The Defence submits that the allegations that the Defence team offered DAF a bribe are vague, based solely on hearsay, and cannot be deemed credible. It further submits that the Prosecution has not shown that Senessie knew of the no-contact provision of the court order or that he knowingly or

⁴¹ Second Contempt Motion, para. 27.

⁴² Response to Second Contempt Motion, paras 2, 16.

⁴³ Response to Second Contempt Motion, para. 3.

⁴⁴ Response to Second Contempt Motion, para. 5.

⁴⁵ Response to Second Contempt Motion, para. 6.

⁴⁶ Response to Second Contempt Motion, paras 7-9.

wilfully violated it.⁴⁷ It further reiterates the argument it made in its Response to the First Contempt Motion that the urgent interim relief requested is unreasonable.⁴⁸

Reply to Second Contempt Motion

29. In reply, the Prosecution submits that it is irrelevant whether the witnesses who are the subjects of these related motions are known to each other. Further, it submits that at the initiating stage, there is no required showing that a person has engaged in the alleged act in knowing or wilful violation of Rule 77, only that there is reason to believe that he may have engaged in such conduct.⁴⁹

30. The Prosecution argues that the Declaration in Confidential Annex B of the Second Contempt Motion contains DAF's first-hand account of Senessie's unauthorized contact with him and representations made to him, including who sent him and why. There is no requirement that the offered bribe be paid, as contemptuous conduct includes the offer of a bribe.⁵⁰

31. Finally, the Prosecution argues that it has pled with precision in light of the extremely serious allegations of contempt, and that in the aggregate, a consistent pattern has emerged which corroborates the individual accounts and gives reason to believe contemptuous conduct occurred in contravention of Rules 77(A) and/or (B).⁵¹

32. The Prosecution reiterates its request that the Trial Chamber order the Defence team not to discuss with Eric Senessie and/or Prince Taylor anything associated with this request or resulting investigation.⁵²

II. APPLICABLE LAW

33. Rule 77 sets out the law and procedure for dealing with contempt of the Special Court. The relevant parts of Rule 77 provide:

Rule 77: Contempt of the Special Court

- (A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice, including any person who:

⁴⁷ Response to Second Contempt Motion, paras 10, 14.

⁴⁸ Response to Second Contempt Motion, para. 15.

⁴⁹ Reply to Second Contempt Motion, paras 4, 11.

⁵⁰ Reply to Second Contempt Motion, para. 9.

⁵¹ Reply to Second Contempt Motion, para. 4, para. 12.

⁵² Reply to Second Contempt Motion, para. 13.

- (i) being a witness before a Chamber, subject to Rule 90(E) refuses or fails to answer a question;
 - (ii) discloses information relating to proceedings in knowing violation of an order of a Chamber;
 - (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
 - (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;
 - (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or
 - (vi) knowingly assists an accused person to evade the jurisdiction of the Special Court.
- (B) Any incitement or attempt to commit any of the acts punishable under Sub-Rule (A) is punishable as contempt of the Special Court with the same penalties.
- (C) When a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may:
- (i) deal with the matter summarily itself;
 - (ii) refer the matter to the appropriate authorities of Sierra Leone; or
 - (iii) direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter.
- [...]
- (I) If a counsel is found guilty of contempt of the Special Court pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to appear before the Special Court or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.

34. The Appeals Chamber has stated that the standard of proof in determining whether an independent investigation should be ordered into a matter of contempt is:

[...] not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of “reason to believe” that an offence may have been committed, which is the pre-condition for ordering an independent investigation.⁵³

35. Notwithstanding the lower standard of proof, an allegation of contempt must be *credible* enough to provide a Judge or Trial Chamber with “reason to believe” that a person may be in contempt.⁵⁴

⁵³ *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005 (“AFRC Appeals Decision”), para. 17.

⁵⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-690, Confidential Decision on Confidential Prosecution Motion For an Investigation by Independent Counsel Into Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 8

36. Furthermore, any alleged misconduct should be brought to the attention of the Trial Chamber without undue delay.⁵⁵

III. DELIBERATIONS

First Contempt Motion

Allegation of disclosure of information in knowing violation of an order of a Chamber (Rule 77(A)(ii))

37. The information contained in the statements of Mohamed Kabba, Aruna Gbonda and TF1-585⁵⁶ is that Eric Senessie approached each of these witnesses during the period from 26 to 31 January 2011, purporting to act on behalf of the Charles Taylor Defence Team. Senessie told Kabba and TFL-585 that he had been sent by the Charles Taylor Defence team to persuade four Prosecution witnesses, namely Gbonda, Kabba, TFL-585 and TF1-516 (using their actual names) to change their testimony.⁵⁷

38. TF1-585 also claims that while she was talking to Senessie, a call came through on Senessie’s phone from Prince Taylor, and that Senessie passed the phone to TF1-585. Prince Taylor confirmed that he worked for the Charles Taylor Defence team and that he had told Senessie to contact TFL-585.

39. The Trial Chamber recalls that Mohamed Kabba and Aruna Gbonda, although originally protected by measures ordered by this court,⁵⁸ opted to rescind these measures and testified openly

December 2008, para. 23, referring to AFRC Appeals Chamber Decision, para. 2. See also *Prosecutor v. Taylor*, SCSL-03-01-T-1119, Decision on Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Prosecutor and its Investigators, 11 November 2010 (“Contempt Decision”), para. 20.

⁵⁵ *Prosecutor v. Taylor*, SCSL-03-01-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008, paras 14-15. See also Contempt Decision, para. 20.

⁵⁶ Confidential Annexes B, C, and D of the First Contempt Motion, respectively.

⁵⁷ Confidential Annexes B and D of the First Contempt Motion.

⁵⁸ **Mohamed Kabba** - *Prosecutor v. Taylor*, SCSL-03-01-T-215, Decision on Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and on Public Urgent Prosecution Motion for Leave to Substitute a Supplemented Witness List as Annex A(4) of the Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure Filed on 8 March 2007 and on Public Urgent Prosecution Request for Interim Measures, 26 March 2007 (“March 2007 Protective Measures Decision”), referring to and granting the protective measures set out in provisions (a) through (m) of the *Prosecutor v. Taylor*, SCSL-03-01-T-99, Decision on Confidential Prosecution Motion for Immediate Protective Measure for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, 5 May 2006 (“May 2006 Protective Measures Decision”). **Arunda Gbonda** - *Prosecutor v. Taylor*, SCSL-03-01-T-180, Decision on

under their own names.⁵⁹ It cannot therefore be validly argued that their identities were disclosed in violation of a protective measures order.

40. However, the Trial Chamber recalls that both TFI-585 and TFI-516 are subject to protective measures ordered by the Trial Chamber protecting their names and other identifying information from disclosure to the public and media,⁶⁰ and other measures protecting their identities.⁶¹ Accordingly, based on the information before it, the Trial Chamber has reason to believe that a person or persons may be in contempt of the Special Court by disclosing to the public the identity of these two witnesses in violation of protective measures ordered by the Trial Chamber.

Allegations of Offering a Bribe to a Witness, Intimidation/Threats and other Interference with Witnesses (Rule 77(A)(iv))

41. The information contained in the statements of Gbonda, Kabba and TFI-585⁶² alleges that Senessie told each of them that he had been sent by the Defence team to persuade four Prosecution Witnesses, namely Gbonda, Kabba, TFI-585 and TFI-516, to recant their prior testimony and to explain to the judges in The Hague that their prior testimony was all lies and that the witnesses were motivated to lie because of the promises of financial reward and relocation made but not fulfilled by

Prosecution Motion for Modification of Protective Measures of Witnesses, 5 July 2004 ("2004 Sesay Protective Measures Decision"); *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T Transcripts 14 March 2006, p. 18, ordering that the testimony be heard entirely in closed session, but that portions of the witness's testimony that may not reveal his identity or endanger his or his family's safety be made public after a proper and careful review by the Court Management Section.

⁵⁹ **Mohamed Kabba** - *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 12 September 2008, pp. 16084-16085, rescinding the protective measures set out in provisions (a) through (m) of the May 2006 Protective Measures Decision; **Aruna Gbonda** - *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 19 February 2008, p. 4233 - testifying openly and the Prosecution did not expressly retain any of the previously granted protective measures.

⁶⁰ **TFI-585** - *Prosecutor v. Taylor*, SCSL-03-01-T-383, Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, 10 January 2008 ("January 2008 Protective Measures Decision") referring to and granting provisions (a) through (m) of the May 2006 Protective Measures Decision, provision (g). **TFI-516** - *Prosecutor v. Taylor*, SCSL-03-01-T-120, Decision on Urgent Prosecution Motion for Protective Measures for Witnesses and for Non-Public Disclosure, 15 September 2006, referring to and granting the measures contained in the May 2006 Protective Measures Decision, provision (g), and *Prosecutor v. Taylor*, SCSL-03-01-T-125, Decision on Defence Motion to Set Aside and/or Reconsider Trial Chamber's 'Decision on Urgent Prosecution Motion for Witnesses and for Non-Public Disclosure dated 15 September 2006, 5 October 2006 which reaffirmed its previous decision granting protective measures.

⁶¹ **TFI-585** - *Prosecutor v. Taylor*, SCSL-03-01-T-498, Public Decision on Confidential and Urgent Prosecution Motion for Additional Protective Measures for Witnesses TFI-375, TFI-401, TFI-542, TFI-455, TFI-567, TFI-585 and TFI-590 and on Public and Confidential Prosecution Motion for Leave to Substitute Confidential Prosecution Urgent Prosecution Motion SCSL-03-01-T-1435 with Amended Motion, 7 May 2008 ("May 2008 Protective Measures Decision"), which granted TFI-585 trial protective measures such as pseudonym, screen and voice distortion. **TFI-516** - *Prosecutor v. Taylor*, SCSL-03-01-T-437, Decision on Confidential Prosecution Motion for Additional Protective Measures for the Trial Proceedings of Witnesses TFI-515, 516, 385, 539, 567, 388 and 390, 13 March 2008, granting trial protective measures including a pseudonym, and *Prosecutor v. Taylor*, SCSL-03-01-T-455, Corrigendum on Decision on Confidential Prosecution Motion for Additional Protective Measures for the Trial Proceedings of Witnesses TFI-515, 516, 385, 539, 567, 388 and 390, 4 April 2008 clarifying that screen and facial distortion were ordered for TFI-516, not voice distortion.

⁶² Confidential Annexes B, C and D of the First Contempt Motion

the Prosecution. In addition, TFI-585 and Kabba each state that Senessie promised each of them a “huge financial reward” if they agreed to recant their prior testimony.⁶³

42. Although there is no evidence that money was actually provided to any of these witnesses, the Trial Chamber has reason to believe that a person or persons, including Senessie, may be in contempt by offering a bribe to Witnesses Kabba and TFI-585 who had given evidence in proceedings before the Trial Chamber, in order to urge them to recant their prior testimony, contrary to Rule 77(A)(iv) of the Rules.

43. The Trial Chamber recalls that the ICTY has held that the offence of “otherwise interfering with a witness” can encompass conduct of a similar gravity to intimidation that “seeks to influence the outcome of a pending case by interfering with a witness or potential witness” and that “it is not necessary for the Prosecution to prove that the witness was actually deterred or influenced”.⁶⁴

44. According to the information contained in the statements of Gbonda, Kabba and TFI-585, Senessie contacted each of the Prosecution witnesses separately and on more than one occasion, alleging that he had been sent by the Defence team to persuade them to agree to recant their prior testimony. In each case Senessie actually urged the witness to recant their prior testimony and to explain to the judges in The Hague that their prior testimony was not true and to state that the witnesses were motivated to lie because of the false promises of financial reward and relocation made by the Prosecution. Senessie returned several times to each of the witnesses urging them to “make their minds up quickly”. Senessie further tried to persuade Kabba to cooperate by telling him that he had already spoken to TFI-585 and Gbonda and that Gbonda had already agreed to cooperate. Senessie further told Kabba that the Taylor Defence team had also sent someone to Liberia to meet with other Prosecution witnesses to persuade them too to recant their prior testimony, explaining that “the reason the defence was taking this approach is that they were finding ways to acquit Taylor of the charges against him or at least mitigate his sentence upon conviction.” In the case of TFI-585, Senessie tried to further persuade this witness to make up her mind by getting Prince Taylor to personally speak to her on the phone and to confirm that indeed Senessie was acting on behalf of the Defence team.. The Trial Chamber therefore has reason to believe that a person or persons, including Senessie, may be in contempt by attempting to “otherwise interfere” with witnesses by urging them to recant their testimony, and thus to influence the outcome of the Charles Taylor case, in violation of Rules 77(A)(iv) and 77(B).

⁶³ Confidential Annexes B and D of the First Contempt Motion.

⁶⁴ *Prosecutor v. Brdjanin*, IT-99-36-R77, Decision on Motion for Acquittal pursuant to Rule 98bis concerning allegations against Mikla Maglov, 19 March 2004 (“*Brdjanin Decision*”), para. 28.

45. The Trial Chamber, however, has no reason to believe that Senessie threatened or intimidated any of the witnesses, contrary to Rule 77(A)(iv) of the Rules, particularly as both Gbonda and TFI-585 indicated that he did not make any actual threats.⁶⁵ In our view, it is not sufficient for the witnesses to simply state that “they are frightened for their lives” after a visit from Senessie.

Allegation of Violation of Court Order Prohibiting Direct Contact by the Defence with Protected witnesses (Rule 77(A)(iv))

46. The Prosecution alleges that, in contacting witnesses Kabba and TFI-585, Senessie violated court ordered protective measures prohibiting direct contact by the Defence Team with certain protected witnesses, which falls within the ambit of Rule 77(A) as it constitutes an interference with the administration of justice

47. The Trial Chamber accepts the Defence contentions that Senessie has never worked for the Defence Team and that at the time of the allegations Prince Taylor was no longer a member of the Defence Team. Neither of these contentions has been contested by the Prosecution. Accordingly, notwithstanding what was told to the witnesses Kabba, Gbonda and TFI-585 by these two persons, the Trial Chamber has no reason to believe that either Senessie or Prince Taylor was acting on behalf of, or in accordance with instructions from, the Defence Team in contacting the witnesses.

48. Therefore, Senessie’s and Prince Taylor’s contacts with witnesses Kabba and TFI-585 do not constitute a violation of the provisions of the protective measures order applicable to these witnesses,⁶⁶ which prohibits the Defence from directly or indirectly contacting any protected Prosecution witness without seeking leave of the Prosecution or the Trial Chamber. Hence, in relation to this contact, the Trial Chamber does not have reason to believe that a person may be in contempt.

Conclusion

49. On the basis of the information contained in Confidential Annexes B, C and D to the First Contempt Motion, the Trial Chamber has reason to believe that a person or persons, including Eric Senessie and/or Prince Taylor, may be in contempt of the Special Court for:

⁶⁵ Confidential Annexes C and D of the First Contempt Motion.

⁶⁶ TFI-585 - January 2008 Protective Measures Decision, referring to and granting Provision (m) of the May 2006 Protective Measures Decision. Mohammed Kabba - March 2007 Protective Measures Decision, referring to and granting Provision (m) of the May 2006 Protective Measures Decision. Provision (m) of the May 2006 Protective Measures Decision states that “the Defence shall not directly or indirectly contact any protected witness except with the written consent of the Prosecution or leave of the court”.

- (i) disclosing information relating to proceedings in knowing violation of an order of a Chamber, by revealing the identity of protected witnesses TF1-516 and TF1-585 to third parties, contrary to Rule 77(A)(ii) of the Rules;
- (ii) offering a bribe to witnesses Kabba and TF1-585 who have given evidence in proceedings before the Trial Chamber, in return for recanting their previous testimony, contrary to Rules 77(A)(iv) and 77(B) of the Rules;
- (iii) “otherwise interfering with” with witnesses Gbonda, Kabba and TF1-585, who have given evidence in proceedings before the Trial Chamber, by attempting to compel them to recant their previous testimony, contrary to Rule 77(A)(iv) and 77(B) of the Rules;

Second Contempt Motion

Allegation of disclosure of information in knowing violation of an order of a Chamber (Rule 77(A)(ii))

50. The Prosecution investigator⁶⁷ alleges in his statement that Senessie approached DAF on 2 and 3 February 2011, and that DAF also spoke briefly to an individual identified by Senessie as an “unnamed Defence Team member” on the telephone.

51. The Trial Chamber recalls that, although originally protected by measures ordered by this court,⁶⁸ DAF opted to rescind these measures and testified openly under his own name.⁶⁹ It cannot therefore be validly argued that his identity was disclosed in violation of a protective measures order.

52. The Trial Chamber notes that the investigator’s statement indicates that Senessie approached DAF for the first time “in Kailahun Town”, and that he met him the second time “at a small entertainment place near the Police station”.⁷⁰ It is not alleged that Senessie met DAF at his home, or contacted him on the telephone, or initiated the second meeting. There is therefore no reason to believe that there may have been a breach of the provisions of the applicable protective measures

⁶⁷ Confidential Annex B of the Second Contempt Motion,

⁶⁸ 2004 Sesay Protective Measures Decision.

⁶⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 1 December 2008, pp. 21290-1, rescinding provisions (a), (d)-(f), and (i) of the 2004 Sesay Protective Measures Decision.

⁷⁰ Confidential Annex B of the Second Contempt Motion.

order relating to the disclosure of his address and contact information.⁷¹ Accordingly, the Trial Chamber has no reason to believe that any person may be in contempt in relation to this allegation.

53. The Prosecution investigator also alleges in his statement that Senessie told DAF that he had already spoken to some other Prosecution witnesses including Kabba and TF1-585 (using their actual names), and that they had agreed to cooperate with the Defence.⁷² As previously indicated, TF1-585 is subject to protective measures orders of the Trial Chamber providing that her name and any other identifying information should not be disclosed,⁷³ and granting other measures protecting her identity.⁷⁴ The Trial Chamber finds that, although the statement of the investigator is based on hearsay, given the similarity between the information contained in this statement, and the information contained in the statements of Kabba, Gbonda and TF1-585, and given the geographic and temporal proximity of the events described, that the statement of the investigator is sufficiently credible for the Trial Chamber to have reason to believe that a person or persons may be in contempt of the Special Court by disclosing the identity of these witnesses in violation of an order of the Trial Chamber.

Allegations of Offers to Bribe a Witness, Intimidation/Threats and other Interference with Witnesses (Rule 77(A)(iv))

54. The statement of the Prosecution investigator⁷⁵ alleges that Senessie approached DAF and told him there would be a financial reward for him if he recanted his testimony and that he would be rewarded with relocation overseas by the Defence team. Although there is no evidence that money was actually provided to DAF, the Trial Chamber finds, for the reasons given in the preceding paragraph, that this information is sufficiently credible to provide reason to believe that a person or persons, including Senessie, may be in contempt by offering a bribe to DAF, who gave evidence in proceedings before the Trial Chamber, in return for recanting his testimony, contrary to Rules 77(A)(iv) and 77(B).

55. The Trial Chamber recalls that the ICTY has held that “otherwise interfering with a witness” can encompass conduct of a similar gravity to intimidation that “seeks to influence the outcome of a pending case by interfering with a witness or potential witness” and that “it is not necessary for the

⁷¹ 2004 Sesay Protective Measures Decision, provisions (b) and (j).

⁷² Confidential Annex B of the Second Contempt Motion.

⁷³ January 2008 Protective Measures Decision, referring to and granting provisions (a) through (m) of the May 2006 Protective Measures Decision, provision (g).

⁷⁴ May 2008 Protective Measures Decision.

⁷⁵ Confidential Annex B of the Second Contempt Motion,

Prosecution to prove that the witness was actually deterred or influenced”.⁷⁶ On the basis of the information contained in the Prosecution investigator’s statement that Senessie told him, falsely, that TF1-585 and Kabba had agreed to cooperate with the Defence, that Senessie attempted to contact the witness repeatedly and followed up with the phone called to the unnamed person he identified as a member of the Defence team, the Trial Chamber has reason to believe that a person or persons, including Senessie, may be in contempt by attempting to “otherwise interfere” with witness DAF, in order to compel him to change his testimony, and thus to influence the outcome of the Charles Taylor case, contrary to Rules 77(A)(iv) and 77(B).

Allegation of Violation of Court Order Prohibiting Direct Contact by the Defence with Protected witnesses (Rule 77(A)(iv))

56. The Prosecution alleges that Senessie, in contacting the witness DAF, violated court ordered protective measures prohibiting direct contact by the Defence Team with certain protected witnesses, which falls within the ambit of Rule 77(A) as it constitutes an interference with the administration of justice

57. As stated earlier, the Trial Chamber accepts the Defence contention that Senessie has never worked for the Defence Team, although he may have purported to be acting on its behalf. Further, while the unnamed person that DAF spoke to on the phone was referred to by Senessie as a member of the Defence Team, he was not identified, and there is not enough information to conclude that he was in fact a member of the Defence Team. There is therefore no reason to believe that Senessie or the other unnamed individual were acting on behalf of or in accordance with instructions from the Defence Team in contacting DAF.

58. Accordingly, the Trial Chamber has no reason to believe that Senessie’s contact with DAF constituted a violation of the provisions of the protective measures order applicable to this witness,⁷⁷ which prohibits the Defence from directly or indirectly contacting any protected Prosecution witness without seeking leave of the Prosecution or the Trial Chamber.

⁷⁶ *Brdjanin* Decision, para. 28.

⁷⁷ 2004 Sesay Protective Measures Decision, provision (o) which states that “Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any Prosecution witness who is a protected witness or any relative of such a person, and such request shall be timely served on the Prosecution. At the direction of the Trial Chamber or a Judge thereof, the Prosecution shall contact the protected person and ask for his or her consent or the parent or guardian’s informed consent if that person is under the age of 18, to an interview by the Defence, and shall undertake the necessary arrangements to facilitate such contact”.

Conclusion

59. On the basis of the information contained in Confidential Annexes B to the Second Contempt Motion, the Trial Chamber therefore has reason to believe that a person or persons, including Eric Senessie, may be in contempt of the Special Court for:

- (i) disclosing information relating to proceedings in knowing violation of an order of a Chamber, contrary to Rule 77(A)(ii), by revealing the identity of protected witness TF1-585 to third parties;
- (ii) offering a bribe to witness DAF, who had given evidence in proceedings before the Trial Chamber, in return for recanting his testimony, contrary to Rules 77(A)(iv) and 77(B) of the Rules.
- (iii) "otherwise interfering with" witness DAF, who had given evidence in proceedings before the Trial Chamber, by attempting to compel him to recant his testimony in exchange of a bribe, contrary to Rules 77(A)(iv) and 77(B) of the Rules.

Urgent Interim Measure

60. The Trial Chamber grants the Prosecution's request for the urgent interim measure, and in order to protect integrity of the investigation, orders both parties not to contact Senessie, Prince Taylor or witnesses Aruna Gbonda, Mohammed Kabba, Dauda Aruna Fornie (DAF), TF1-516 and TF1-585 pending the outcome of the investigation.

FOR THE ABOVE REASONS

GRANTS THE MOTIONS in part;

DIRECTS the Registrar, pursuant to Rule 77(C)(iii) of the Rules, to appoint an experienced independent counsel to investigate the allegations that a person or persons, including Eric Senessie and/or Prince Taylor, may be in contempt of the Special Court by:

- (i) disclosing information relating to proceedings in knowing violation of an order of a Chamber⁷⁸ by revealing the identity of protected witnesses TF1-516 and TF1-585 to third parties, contrary to Rule 77(A)(ii);

⁷⁸ See the relevant Protective Measures Decisions, supra 58, 60 and 61.

(ii) offering a bribe to witnesses Mohammed Kabba, TF1-585 and Dauda Aruna Fornie (DAF), who have given evidence in proceedings before the Trial Chamber, contrary to Rules 77(A)(iv) and Rule 77(B) of the Rules.

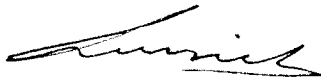
(iii) “otherwise interfering with” witnesses Aruna Gbonda, Mohammed Kabba, TF1-585 and Dauda Aruna Fornie (DAF), who have given evidence in proceedings before the Trial Chamber, by attempting to compel them to recant their testimonies, contrary to Rules 77(A)(iv) and Rule 77(B) of the Rules;

FURTHER DIRECTS that, pursuant to Rule 77(C)(iii) of the Rules, the independent counsel appointed by the Registrar should report back to the Trial Chamber as to whether there are sufficient grounds for instigating contempt proceedings; any report produced by the independent counsel in this regard should be kept under seal by the Registrar and distributed only to the Trial Chamber;

ORDERS the Parties not to contact Eric Senessie, Prince Taylor or witnesses Aruna Gbonda, Mohammed Kabba, Dauda Aruna Fornie (DAF), TF1-516 and TF1-585 pending the outcome of the investigation.

Justice Sebutinde appends a Partially Dissenting Opinion.

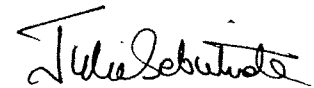
Done at The Hague, The Netherlands, this 25th day of February 2011.



Justice Richard Lussick



Justice Teresa Doherty
Presiding Judge



Justice Julia Sebutinde



**PARTIALLY DISSENTING OPINION OF JUDGE JULIA SEBUTINDE ON THE
PROSECUTION'S SECOND CONTEMPT MOTION**

Introduction:

1. I write this partly Dissenting opinion because, while I agree with the Trial Chamber's findings, conclusions and orders in relation to the First Contempt Motion, I am not satisfied that the Prosecution has sufficiently substantiated the allegations in its Second Contempt Motion in accordance with the required standard of proof. My reasons are articulated below.

The standard of proof:

2. The standard of proof in determining whether a Chamber should order an independent investigation into an alleged contempt of Court under Rule 77 is:

[...] not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of "reason to believe" that an offence may have been committed, which is the pre-condition for ordering an independent investigation.⁷⁹

In addition, this Trial Chamber has held that an allegation of contempt "must be *credible* enough to provide a Judge or Chamber with "reason to believe" that a person may be in contempt".⁸⁰ Needless to add, the onus is upon the party alleging contempt (in this case the Prosecution) to support those allegations with *credible* evidence or information providing the Chamber with reason to believe that a person may be in contempt of the Court. I have endeavoured to measure the Prosecution allegations and supporting information in the Second Contempt Motion against the above standard. In my opinion, the information set before the Trial Chamber in support of those allegations is not *credible* enough to provide me with reason to believe that a person may be in contempt the Court. My reasons are as follows:

Confidential Annex B:

3. The contemptuous conduct complained of by the Prosecution in its Second Contempt Motion has been accurately rehearsed in the Trial Chambers Decision to which this Opinion is

⁷⁹ *Prosecutor v. Brima, Kamara and Kanu*, SCSL04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005 ("AFRC Appeals Decision"), para. 17.

⁸⁰ *Prosecutor v. Taylor*, SCSL03-01-T-690, Confidential Decision on Confidential Prosecution Motion For an Investigation by Independent Counsel Into Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 8 December 2008, para. 23, referring to AFRC Appeals Chamber Decision, para. 2.

attached. The Prosecution relies solely on a confidential statement of one of its investigators to support all of its allegations in the Second Contempt Motion.⁸¹ In this regard, I note the Prosecution submissions in paragraph 2 of the Second Contempt Motion where it purportedly “adopts by reference all allegations and submissions” in the First Contempt Motion. In my view, this general or wholesale “adoption by reference” of “all allegations and submissions” from one Motion into another, serves no practical or meaningful purpose. Apart from attempting to draw parallels or similarities between the allegations in each of the two Motions, the allegations and submissions in the First Contempt Motion do not confirm or “corroborate” (in a legal sense) the specific allegations contained in the Second Contempt Motion. In fact one major point of departure between the statements supporting the First Contempt Motion and the statement of DAF as recounted by the investigator in the second Contempt Motion is that all three witnesses (Kabba, Gbonda and TFI-585) quote Senessie as telling each of them that he was sent to speak to “four Prosecution witnesses” whom they name as “Kabba, Gbonda, TFI-585 and TFI-216”. Curiously, none of these witnesses mention DAF as being included amongst the witnesses that Senessie sets out to contact. In contrast, in the Second Contempt Motion, DAF quotes Senessie as contacting witnesses “Kabba, TFI-585, DAF and Jinnah Kpundeh.” This is a different set of persons the last of whom did not even testify for the Prosecution. In my view, the statements in the First Contempt Motion cannot, strictly speaking, be said to “corroborate” the investigator’s statement in the Second Contempt Motion.

4. Furthermore, it is my considered opinion that the investigator’s statement in Confidential Annex B to the Second Contempt Motion carries very little or no weight for the reasons given below.

(i) The statement is not affirmed.

5. Firstly, although the Prosecution refers to the investigator’s statement as “a declaration,” it is not a declaration in a legal sense as it is not accompanied by an affirmation by the author. It is in fact an ordinary statement that cannot carry the same weight, for example, as the statements supporting the Prosecution allegations in the First Motion.⁸² Each of these statements is accompanied by an affirmation signed by the author confirming that the author has not wilfully or knowingly made any false declaration and understands the legal consequences of stating falsehoods in their statement.

(ii) The investigator does not state the source of his information

⁸¹ Confidential Annex B to the Second Motion.

⁸² See Confidential Annexes B,C,D and E to the First Contempt Motion.

6. Secondly, apart from stating in paragraph 2 of his statement that he “received a call on Thursday 4 February 2011 from Dauda Aruna Fornie (DAF) who said that he was calling from Kailahun Town, Kailahun District”, the investigator does not disclose the source of the rest of the information contained in that statement. This is in contrast for example, to the statement of another investigator in Confidential Annex E to the First Contempt Motion where that investigator expressly states the source of his information. In the Second Contempt Motion the investigator does not expressly state that this information was given to him by DAF. The Trial Chamber is merely expected to make this assumption. This being ‘a declaration’ upon which the Prosecution solely relies to support its allegations, it is a serious omission for the declarant not to reveal the source of his information, and this further casts doubt on the veracity of the statement.

(iii) Some of the investigator’s statements are based on uncorroborated hearsay.

7. Thirdly, assuming *arguendo*, that the information recounted by the investigator was in fact provided by DAF, a lot of the statements contained in the investigator’s statement are based upon hearsay whereby the investigator is relating what a third or fourth party allegedly told DAF. In my view, this kind of hearsay statement carries very little or no weight unless corroborated, more especially so in a contempt proceeding where the Trial Chamber relies entirely on statements. I note that the Prosecution did not attach a statement or declaration from DAF himself, another serious omission. This is in contrast, for example, to the investigator’s statement in Confidential Annex E to the First Contempt Motion which is corroborated by the statement of a witness in Confidential Annex B of that Motion. Had the Prosecution attached the statement of DAF himself, that statement might have contained first-hand information and might have corroborated the investigator’s hearsay statements. All the above factors undermine the veracity of the investigator’s statement rendering it of little or no weight with the result that Prosecution allegations in the Second Contempt Motion are insufficiently supported.

Other considerations affecting the credibility of the complaint by Witness TFI-274 (DAF):

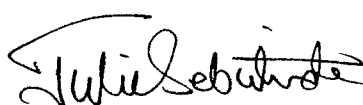
8. Again assuming *arguendo*, that the information recounted by the investigator in the statement was in fact provided by DAF, this is curiously, not the first time that the witness TFI-274 Dauda Aruna Fornie has complained to the Prosecution alleging threats to his life or violation of his protective measures by third parties. It is in fact the third time since giving his testimony. As the Defence rightly observes in paragraph 7 of its Response to Second Motion, in May 2009, DAF

complained to the Prosecution that the Defence had sent someone to DAF to ask the latter to “reverse his testimony”. On that first occasion, the Prosecution after establishing that the Defence had in fact not sent anybody to DAF as alleged, abandoned the complaint and did not pursue it any further.

9. On a second occasion in October 2010, DAF joined other witnesses in another case in complaining to the Prosecution about alleged interference and threats from third parties. This occasion is referred to in another Prosecution Motion pending before the Trial Chamber, to which the Taylor Defence is not a party.⁸³ According to the Prosecution, the allegations made by this witness on this second occasion were referred by the Prosecution to the Registrar who in turn investigated them and determined that “*there was not an immediate threat to Prosecution witnesses*”.⁸⁴ Whilst pleadings in another case may ordinarily not be relevant to the instant case, in this case they may serve to illustrate a pattern of conduct in relation to Witness TFI-274 in so far as he seems to be given to making unsubstantiated complaints to the Prosecution about ‘being interfered with’. It may well be, as the Defence suggests in paragraph 3 of its Response to Second Contempt Motion, that this witness in repeatedly making these allegations is motivated by questionable considerations.

10. For all the above reasons, I find the Prosecution allegations in the Second Contempt Motion insufficiently supported would dismiss the said Motion in its entirety and exclude Witness TFI-274 Dauda Aruna Fornie (DAF) from the investigation ordered by the Trial Chamber.

Done at The Hague, The Netherlands, this 25th day of February 2011.



Justice Julia Sebutinde



⁸³ See the *Prosecutor v. Alex Tamba Brima et al.* SCSL-04-16-ES-684, Public with Confidential Annexes Prosecution Motion for an Investigation into Contempt of the special Court for Sierra Leone, 31 January 2011. See also the *Prosecutor v. Alex Tamba Brima et al.* SCSL-04-16-ES-688, Public with Confidential Annex Submissions of the registrar Pursuant to Rule 33(B) Regarding the Prosecution Motion for an Investigation into Contempt of the special Court for Sierra Leone, 10 February 2011

⁸⁴ *Ibid.*, para 29.