



Case No. SCSL 2011-01-T
THE INDEPENDENT PROSECUTOR
-V-
ERIC KOI SENESSIE

Before the Judge:	Justice Teresa Doherty
For Chambers:	Elizabeth Budnitz
For the Registry:	Elaine-Bola Clarkson Thomas Alpha
For WVS:	Tamba D. Sammie
For the Prosecution:	William Gardner
For the Accused: Eric Koi Senessie:	Ansu B. Lansana
For the Principal Defender:	Claire Carlton-Hanciles

1 [Thursday, 5 July 2012]

2 [Open session]

3 [Accused present]

4 [Upon resuming at 11.55 a.m.]

11:55:27 5 JUSTICE DOHERTY: Before I take appearances, I apologise
6 sincerely for the delay. I'm sure counsel knows that I always
7 insist on them being on time and I should do exactly the same
8 myself. It was not deliberate. We were finalising the decision.

9 MR LANSANA: That's understandable.

11:55:46 10 JUSTICE DOHERTY: Thank you, Mr Lansana. Mr Lansana I'll
11 take your appearance. I note you're the only one here with us,
12 but I put it on record.

13 MR LANSANA: As it please Your Honour. Your Honour,
14 AB Lansana for the accused.

11:56:02 15 JUSTICE DOHERTY: Thank you.

16 THE COURT OFFICER: Your Honour, Court Management has been
17 contacted by Mr Bill Gardner. He wants us to put him on phone
18 link and the Registrar has been informed and she gives her
19 approval, and we have made arrangements for that. And if Your
11:56:21 20 Honour would give the approval, the AV people will do the
21 connection.

22 JUSTICE DOHERTY: Of course. I have no problem with that,
23 as Mr Gardner is a counsel in this matter, and he's entitled to
24 both appearance and/or representation. So the connection can be
11:56:39 25 made.

26 THE COURT OFFICER: Very well, Your Honour. If Your Honour
27 would just give a few minutes, about two or so minutes for the
28 connection to be done.

29 JUSTICE DOHERTY: I would add it is a public decision, and

1 therefore it's an added reason.

2 THE COURT OFFICER: Very well, Your Honour. Your Honour,
3 I'm informed the connection has been made with Mr Bill Gardner.

4 JUSTICE DOHERTY: Mr Gardner, if you can hear us, I will
11:57:50 5 note your appearance by way of link. This is a matter of the
6 Independent Counsel and Eric Koi Senessie for decision on
7 sentence.

8 In considering my decision in this matter, I have taken
9 account of the sentencing recommendations of the Independent
11:58:16 10 Counsel filed on 26 June 2012; the public amicus curiae brief
11 filed by the office of the Prosecutor on 25 June 2012; of the
12 response to counsel's sentencing recommendation by Defence
13 counsel filed on 2 July 2012. I've also very seriously
14 considered the submissions and the words of the defendant Eric
11:58:54 15 Senessie, on allocutus, made on 4 July 2012; and the further
16 submissions of counsel for Eric Senessie, Mr Lansana, and counsel
17 on behalf of the Independent Counsel. I have also borne in mind
18 the provisions of articles 17 and 19 of the Statute of the
19 Special Court for Sierra Leone and the Rules 77, 101.

11:59:24 20 Eric Senessie was convicted of eight counts of contempt of
21 the Special Court by knowingly and willfully interfering with
22 Special Court administration of justice. These were four counts
23 of offering a bribe to four individual persons who had given
24 evidence before this Court, and four counts of knowingly and
11:59:48 25 willfully interfering with the Special Court administration by
26 attempting to otherwise interfere with the same persons who had
27 given evidence before the Court.

28 The defendant, and all of the victims, all lived in the
29 same Kailahun area. All of the victims had given evidence in the

1 case of the Prosecutor v. Charles Taylor in The Hague on various
2 dates in 2008. I find after a trial that Eric Senessie was
3 guilty of eight of the nine counts for which he was indicted.

4 Independent Counsel has submitted that Senessie should be
12:00:28 5 sentenced to a term of five to seven years, and also to pay the
6 maximum fine permitted by Rule 77, that is, 2 million leones. It
7 is acknowledged by Independent Counsel and by Defence counsel
8 that the fine provided in Rule 77 was increased from 2 million to
9 20 million leones following a plenary of the judges in May 2012.
12:00:59 10 It has been submitted, and I agree, that the amendment to Rule 77
11 was made after the date when these offences occurred and cannot
12 have a retrospective application to them.

13 In his sentencing recommendations, the Independent Counsel
14 annexes an article in which the history of contempt proceedings
12:01:25 15 in the international tribunals is examined and commented upon. I
16 am of the view that there is no doubt that this tribunal has
17 inherent jurisdiction to punish persons found guilty of contempt
18 by, inter alia, attempting to bribe them, or otherwise interfere
19 with witnesses, in an attempt to have them recant their evidence.

12:01:51 20 In its comprehensive amicus brief, the office of the
21 Prosecutor reminds me of the duties under article 19 of the
22 Statute to have recourse to the practice regarding prison
23 sentencing in the international criminal tribunal in Rwanda and
24 the national Courts of Sierra Leone. No information or
12:02:17 25 submission in relation to the national Courts of Sierra Leone was
26 made. The amicus curiae submits that in cases of contempt, a
27 sentence must adequately serve the purpose of retribution and
28 deterrence.

29 I accept that the Special Court for Sierra Leone has stated

1 that retribution and deterrence are the factors most in mind when
2 sentencing for war crimes and crimes against humanity. This has
3 been confirmed by the Appeals Chamber. However, in the instant
4 case, Senessie was not convicted of crimes against humanity, war
12:03:05 5 crimes, or crimes against international humanitarian law, but of
6 the crime of contempt. In these circumstances, I consider that
7 rehabilitation is also a matter that I am entitled to consider,
8 and I do consider it when sentencing in this case.

9 In its amicus brief, the office of the Prosecutor reminds
12:03:32 10 me of the duty charged in articles 19 and Rule 101 to take into
11 consideration, "The gravity of the offence, the circumstances of
12 the contempt, and the other aggravating and mitigating
13 circumstances when imposing an adequate sentence." But it
14 further states that a Judge's discretion is not limited to
12:04:01 15 considering these factors alone, and there is a greater
16 discretion given to give factors of particular cases - in a
17 particular case.

18 Amicus has also referred to sentences that have been
19 imposed in other tribunals, as well as the Special Court, and
12:04:23 20 submits that the chambers of those tribunals have considered the
21 gravity of the crime as the most determinative factor in choosing
22 penalty to impose, as matters of contempt "strike at the very
23 heart of the criminal justice system" and "warrant a significant
24 term of imprisonment". The amicus points out the history of
12:04:59 25 sentences imposed in contempt cases in the tribunal and notes
26 there are only two cases where noncustodial sentences were
27 imposed, and that those cases turned on their particular facts.
28 She emphasises that the gravity of the offence, including the
29 position of the contemtor, motive, and the continued and

1 repeated nature of the offences, are matters to be considered in
2 assessing gravity.

3 The amicus brief also outlined several aggravating and
4 mitigating circumstances considered in other tribunals.

12:05:45 5 Independent Counsel submits that the precedents outlined by the
6 amicus curiae indicate that a starting point for a sentencing
7 benchmark is approximately one year's imprisonment, but submits
8 further that in virtually all of those cases, they were far less
9 egregious facts than the facts in the instant case.

12:06:15 10 Independent Counsel submits that the factors I'm obliged to
11 consider under Rule 101 of the Rules, include any aggravating
12 circumstances and any mitigating circumstances, and that
13 mitigating circumstances include a substantial cooperation with
14 the Prosecutor, which is specifically provided for in 101. And
12:06:39 15 he submits that there was no mitigating circumstances whatsoever

16 in this case, but instead that there are three aggravating
17 circumstances: (1) that the contempt arose from, and is
18 inextricably linked, to the Charles Taylor case, which the
19 convicting Trial Chamber found involved some of the most heinous

12:07:07 20 and brutal crimes recorded in human history; that Senesie
21 perjured himself at trial and likely suborned the perjury of
22 others; and (3) he concealed the complete truth of the
23 involvement of others in the offence. Independent Counsel
24 submits that the defendant did not act alone, but worked with and
12:07:37 25 on behalf of someone else, or more than one other person. The
26 Independent Counsel submits that notwithstanding these
27 aggravating circumstances, it warrants a maximum penalty, but
28 some degree of mercy and regard for the defendant's family
29 warrant a reduction from the seven years maximum to a five- to

1 seven-years term of imprisonment. Defence counsel submit that is
2 what amounts to an appropriate sentence will not necessarily be
3 determined by the number of years imposed, but by a reasoned
4 approach which sets out the basis upon which the penalty is
12:08:28 5 imposed. He submits that Independent Counsel's recommendation of
6 a heavy punishment is too harsh. Defence counsel points to the
7 variations of sentencing between tribunals and sets out the
8 following mitigating circumstances: (1) that the offences were
9 inchoate rather than substantive in nature, and submits that
12:09:02 10 although convicted of offering a bribe, no amounts of money were
11 stated and no actual bribes were offered. He also points to the
12 defendant's background and submits that the defendant could not
13 bring money as a bribe.

14 In relation to the conviction for interfering with
12:09:25 15 Prosecution witnesses, Defence counsel submits that there were
16 not any recantations of the testimony. Defence counsel also
17 submitted that the offences had an element of entrapment and
18 points in particular to the actions of witness TF1-585, who
19 procured a mobile phone for, in his submission, the sole purpose
12:09:56 20 of recording Senessi'e's voice.

21 Defence also submits that the accused has been of good
22 comportment throughout the trial; appeared when ordered to do so;
23 has a good reputation in the Kailahun community; is a family man
24 with two wives and eight children; is a farmer; a pastor of the
12:10:23 25 new evangelical church which has approximately 300 to 400
26 members; and is chairman of the RUF, the political party in the
27 Kailahun District.

28 Defence counsel stresses the defendant's work as a
29 peacemaker during the end of the war and his assistance to

1 officers of the Special Court for Sierra Leone, both Prosecution
2 and Defence, in assisting to find witnesses in the past trials
3 held in the Court.

4 In allocutus, the defendant spoke on his own behalf and
12:11:13 5 stated that he had never thought to undermine the justice of the
6 Court. He referred to his assistance rendered to both Defence
7 and Prosecution counsel when they looked for witnesses, and in
8 particular he acknowledged that he has made a mistake. He said
9 that he realised that he had been misled by others and that he
12:11:44 10 was not the only one who was involved. But he is standing now to
11 pay the price of having taken action at the behest of another
12 person. He acknowledged that he was approached by Prince Taylor,
13 who told him "of certain developments that took place in The
14 Hague." However, he also restated that TF1-274 was a person who
12:12:18 15 prepared the document to be sent to Prince Taylor. He hid the
16 truth because Taylor told him not to incriminate Taylor. But if
17 there was a charge, they would acquit the case. He stated that
18 he was used. He again spoke of his position as a family man; an
19 evangelist; a member of the tribal authority of the Luawa
12:12:56 20 Chieftdom; and chairman of a national secondary school committee.
21 He emphasised that he was sorry that the Prosecution would not
22 concede any mitigation on his side.

23 Further oral submissions were made by Defence counsel and
24 by counsel on behalf of the Independent Counsel. Mr Lansana
12:13:19 25 emphasised Senessie's own words that "it was better late than
26 never" to make this statement and restated his submissions
27 concerning entrapment and the comparisons to other decisions of
28 the international tribunal. Mr Lansana further emphasised
29 Senessie's prior good behaviour and standing in the community and

1 the effect a custodial sentence would have on his family.

2 Mr Herbst on behalf of the Independent Counsel sought to
3 distinguish entrapment, in the instant case, from the principles
4 applied in other jurisdictions. He rebutted the submission that
12:14:07 5 the crimes could not be considered inchoate because no bribe was
6 actually given and no recantation was made. He acknowledged the
7 hardship to the family, but indicated that the submissions showed
8 Senessie's family would have support within the community.

9 These were the matters put before me and which I
10 considered.

11 I consider that one of the most distinguishing features of
12 this case were the number of former witnesses who were approached
13 by Senessie with a view to having them recant their evidence. I
14 do not put any weight on Senessie's evidence and submission that
12:14:51 15 the witnesses themselves made it known that they had testified in
16 The Hague. As I have already noted in judgment, whether a person
17 publicises the fact that they gave evidence in a trial is in no
18 way an invitation to others to seek to have them change their
19 testimony. I do not accept that deliberate entrapment was used
12:15:20 20 to bring the defendant before the Court. The first approaches
21 and offers and persuasions to recant evidence had been made,
22 particularly in the case of TF1-585, before 585 recorded all that
23 was said by the defendant. I consider that this is not
24 entrapment. It is a collection of evidence after the offence has
12:15:51 25 been instigated.

26 Likewise, I do not accept that the offences were inchoate
27 rather than substantive. Clearly bribes of money and possible
28 relocation were offered. The fact that they were not paid and
29 that the defendant himself could not pay them, does not detract

1 from the fact that the elements of the offences were proved.

2 Likewise, the fact that each of the victims stood their ground

3 and refused to recant does not mean that the crime is either

4 inchoate or less serious. I consider, in particular, the

12:16:36 5 aggravating factors in this case include the multiple victims who

6 were approached. I have not been referred to any precedent

7 involving five victims who were offered bribes and interfered

8 with to recant testimony. This shows a determination and a

9 planning on the part of the defendant to achieve his aims.

12:17:03 10 Further, his persistence in approaching each of the witnesses

11 after being rebuffed also contributes to that image of

12 persistence.

13 I accept that Senessie is a leader in his community, but

14 that leadership in this case was abused. Leaders must lead by

12:17:28 15 example, not by saying one thing and doing another. His duty

16 was, as he now very properly acknowledges, to uphold the justice

17 system and not to abuse his own position to erode it.

18 I also consider very serious the defendant's accusations

19 levied against four of the victims in which he accused them of

12:18:01 20 plotting against him and his brothers during the war, in such a

21 way that led to the death of two of his brothers. As I noted,

22 this was not put to the witness and I consider it a serious abuse

23 of the accused's right to speak on his own behalf in a trial.

24 Likewise, his evidence that five of the complainants

12:18:34 25 colluded together in order to achieve their own ends using him as

26 a victim was without foundation and was a serious accusation.

27 I accept that Senessie has now realised the errors of his

28 ways, and it is commendable that even at this late hour he has

29 acknowledged his offences and shown sincere remorse. On his

1 side, I accept that he is and was a senior member of the
2 community, a leader of the RUF, in the church and as a committee
3 member of the school board. These are all important and notable
4 positions. However, as I've already noted, they carry with them
12:19:26 5 responsibility not to abuse the positions and not to break the
6 law.

7 I also accept Senessie assisted the Prosecution and the
8 Defence in their investigations and searches for witnesses in the
9 Kailahun area. Likewise, this has two sides: He knew the
12:19:48 10 witnesses who could and did give evidence and subsequently used
11 that knowledge and experience to commit the crimes for which he
12 was convicted.

13 I have not been informed of any prior convictions of the
14 defendant, so the defendant comes before this Court as a first
12:20:11 15 offender.

16 Senessie did not cooperate with the Prosecution within the
17 meaning of Rule 101, and it is only now that he has shown remorse
18 and concedes his role in these crimes. As stated, I accept that
19 remorse, but obviously it would have benefitted him even more if
12:20:38 20 he had acknowledged his involvement at the beginning of this
21 investigation and avoided a trial.

22 I do not fully accept that the relationship between his
23 family and the family of TF1-585 will be completely destroyed,
24 but it is a factor I have given weight to. The extended family
12:21:08 25 is a large one; it is not solely dependent on two individuals.

26 I re-state that the number of offences and the persistence
27 of the defendant are two of the most notable factors in this case
28 and therefore, in my view, warrant sentences of imprisonment.

29 I do not consider a noncustodial sentence and/or a fine

1 appropriate; however, I have allowed for the remorse that the
2 defendant has shown. In his own words, with which I agree, it is
3 better late than never, and therefore I have reconsidered and I
4 impose the following penalties in each count: For count 1, two
12:22:04 5 years' imprisonment; count 2, two years' imprisonment; count 3,
6 two years' imprisonment; count 4, two years' imprisonment; count
7 7, two years' imprisonment; count 9, two years' imprisonment.

8 Each term is to be served concurrently, and the period in
9 remand is to be deducted from the substantive sentence.

12:22:34 10 Mr Senessie, did you hear what I said?

11 DEFENDANT: I heard it, my Lord. You are quite loud and
12 clear.

13 JUSTICE DOHERTY: Your own words yesterday were very
14 persuasive and have led to what would have been a more serious
12:22:52 15 sentence. But for each of these counts, I am imposing a term of
16 imprisonment of two years. They will be served concurrently.
17 That means you will serve two years less the period you have been
18 waiting for this decision.

19 Do you understand?

12:23:12 20 DEFENDANT: Yes, my Lord.

21 JUSTICE DOHERTY: Thank you.

22 MR LANSANA: Your Honour, I must say about your sentencing
23 decision and at this stage, since I have nothing else before this
24 Trial Chamber in my professional capacity, I would use this
12:23:39 25 opportunity to thank you very much for your patience, your very
26 strict level of objectivity, and I wish you all the best in the
27 future.

28 JUSTICE DOHERTY: Thank you very much, Mr Lansana. I must
29 acknowledge that you and Mr Gardner were exceptionally

1 professional and very dedicated in the case, and I must
2 acknowledge that high level of professionalism.

3 I would say that I'm never happy to have to send anyone to
4 prison, but justice has to be acknowledged and done.

12:24:19

5 MR LANSANA: That's the hazard of the trade.

6 JUSTICE DOHERTY: If there's nothing else, I will adjourn
7 Court and we will set a date for the other trial. Please adjourn
8 Court.

9 [The court adjourned at 12.30 p.m.]

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