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SCSL-2003-02-2P-032

(306-309)



SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

Before: Judge Bankole Thompson
Presiding Judge, Trial Chamber
Designated Judge Pursuant to Rule 28 of the Rules

Registrar: Robin Vincent

Date: 23rd May 2003

The Prosecutor Against: Foday Saybana Sankoh aka Popay, aka Pa
(Case No. SCSL-2003-02-PT)

DECISION ON THE PROSECUTOR'S MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS AND FOR NON-PUBLIC DISCLOSURE

Office of the Prosecutor:
Luc Côté, Chief of Prosecution
Brenda Hollis, Senior Trial Counsel

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

RECEIVED

NAME *Bankole Thompson*

SIGNATURE *[Signature]*

DATE *23-5-03* TIME *1:44pm*

THE SPECIAL COURT FOR SIERRA LEONE (“the Court”)

JUDGE BANKOLE THOMPSON, sitting as a single Judge designated Pursuant to Rule 28 of the Rules of Procedure and Evidence (“the Rules”) on behalf of the Trial Chamber;

BEING SEIZED of the Motion by the Office of the Prosecutor for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure (“the Motion”) and of the “Briefs” (Written Submissions) with attachments in support of the said Motion, filed on the 7th April 2003;

CONSIDERING also the Response filed by the Defence Office on behalf of the Accused Foday Saybana Sankoh on 23rd April 2003, to the aforementioned Prosecution Motion (“the Response”);

CONSIDERING the Prosecutor’s Reply filed on 29th April 2003 to the aforesaid Defence Response (“the Reply”);

WHEREAS acting on the Chamber’s Instruction, Court Management Section advised the parties on 29th April 2003 that the Motion, Responses, and Reply would be considered and determined on the “Briefs” (Written Submissions) of the parties **ONLY** pursuant to Rule 73 of the Rules;

COGNISANT OF the Statute of the Court (“the Statute”) particularly Articles 16 and 17 thereof, and specifically Rules 53, 54, 73, and 75 of the Rules;

NOTING THE SUBMISSIONS OF THE PARTIES

The Prosecution Motion:

1. By the aforementioned Motion, the Prosecutor seeks orders for protective measures for persons who fall into three categories (paragraph 16 of the Motion):
 - (a) Witnesses who presently reside in Sierra Leone and who have not affirmatively waived their rights to protective measures;
 - (b) Witnesses who presently reside outside Sierra Leone but in other countries in West Africa or who have relatives in Sierra Leone, and who have not affirmatively waived their rights to protective measures;
 - (c) Witnesses residing outside West Africa who have requested protective measures.
2. By the said Motion, the Prosecutor also requests that the Defence be prohibited from disclosing to the public or media any non-public materials which are provided to them as part of the disclosure process.
3. Further, the Prosecutor requests that the persons categorised in paragraph 16 of the Motion and the prohibition as to non-public disclosure sought in paragraph 17 of the Motion be provided protection and effected respectively by the sought Orders set out below (as contained in paragraph 20 of the Motion):
 - (a) An Order allowing the Prosecution to withhold identifying data of the persons the Prosecution is seeking protection for as set out in paragraph 16 or any other information which could lead to the identity of such a person to the Defence until

- twenty-one days before the witness is to testify at trial; and consequently allowing the Prosecution to disclose any materials provided to the Defence in a redacted form until twenty-one days before the witness is to testify at trial, unless otherwise ordered;
- (b) An Order requiring that the names and any other identifying information concerning all witnesses, be sealed by the Registry and not included in any existing or future records of the Court;
 - (c) An Order permitting the Prosecution to designate a pseudonym for each witness, which was and will be used for pre-trial disclosure and whenever referring to such witness in the Court proceedings, communications and discussions between the parties to the trial, and the public; it is understood that the Defence shall not make an independent determination of the identity of any protected witness or encourage or otherwise aid any person determine the identity of any such persons;
 - (d) An Order that the names and any other identifying information concerning all witnesses described in paragraph 20 (a), be communicated only to the Victims and Witnesses Unit personnel by the Registry or the Prosecution in accordance with the established procedure and only in order to implement protection measures for these individuals;
 - (e) An Order prohibiting the disclosure to the public or the media of the names and any other identifying data or information on file with the Registry, or any other information which could reveal the identity of witnesses and victims, and this order shall remain in effect after the termination of the proceedings in this case;
 - (f) An Order prohibiting the Defence from sharing, discussing or revealing, directly or indirectly, any disclosed non-public materials of any sort, or any information contained in any such documents, to any persons or entity other than the Defence;
 - (g) An Order that the Defence shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, interview report or summary of expected testimony, or any other non-public material, as well as the date of disclosure; and that the Defence shall ensure that the person to whom such information was disclosed follows the order of non-disclosure;
 - (h) An Order requiring the Defence to provide to the Chamber and the Prosecution a designation of all persons working on the defence team who, pursuant to paragraph 20 (f) above, have access to any information referred to in paragraph 20 (a) through 20 (e) above, and requiring the Defence to advise the Chamber and the Prosecution in writing of any changes in the composition of this Defence team;
 - (i) An Order requiring the Defence to ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
 - (j) An Order requiring the Defence to return to the Registry, at the conclusion of the proceedings in this case, all disclosed materials and copies thereof, which have not become part of the public record;

- (k) An Order the Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any protected witnesses or any relative of such 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 parents or guardian of that person 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.

The Defence Response:

4. On behalf of Foday Saybana Sankoh, the Defence Office submits that the Prosecution Motion for the protective measures in relation to the Accused should be dismissed as premature on the grounds that the Accused's initial appearance has not concluded and that the Prosecutor's obligation under Rule 66 of the Rules of Procedure and Evidence has not been triggered. As a result, the Accused will have no means of identifying any witness until he or his counsel receives disclosure from the Prosecution;

The Prosecution Reply:

5. The Prosecution, in its Reply filed on 29th April, 2003 to the Response of the Defence Office in respect of Foday Saybana Sankoh, ultimately confirms that the initial appearance of the Accused cannot be deemed as concluded and suggests that "the Court may deal with pending Motion in a variety of ways, including holding the matter in abeyance until such time as the Initial Appearance is concluded, suspending the Rules relating to responses to Motions, or dismissing the Prosecution Motion as premature" (paragraph 8 of the Reply).

AND HAVING DELIBERATED AS FOLLOWS

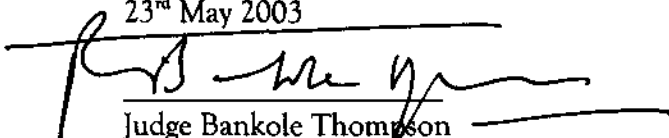
6. Affirming the Parties' recollection of the jurisprudence of this Court that the initial appearance of the Accused has not concluded and that the Prosecutor's obligation under Rule 66 of the Rules has not been triggered, I uphold the parties' common opinion that a substantive decision on the issue of protective measures for witnesses and victims at this stage of the case against the Accused should be deemed premature.

AND BASED ON THE FOREGOING DELIBERATION,

I HEREBY DISMISS THE PROSECUTION'S MOTION as premature, without any prejudice to the Prosecution's right to file the same as may be appropriate in the future.

Done at Freetown

23rd May 2003



Judge Bankole Thompson
Presiding Judge, Trial Chamber
Designated Judge Pursuant to Rule 28 of the Rules