

**SPECIAL COURT FOR SIERRA LEONE**  
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**THE TRIAL CHAMBER**

**Before:** Judge Benjamin Mutanga Itoe  
**Registrar:** Robin Vincent  
**Date:** 5 March 2004  
**PROSECUTOR** **Against** **Moinina Fofana**  
(Case No.SCSL-04-14-PT)

**PROVISIONAL RULING ON DEFENCE MOTION FOR RELEASE ON BAIL**

**Office of the Prosecutor:**

Luc Côté  
Charles Caruso

**Defence Counsel for Moinina Fofana:**

Michiel Pestman  
Arrow John Bockarie

**I, JUDGE BENJAMIN MUTANGA ITOE** of the Trial Chamber of the Special Court for Sierra Leone (“Special Court”);

**SEIZED** of the Application for Bail Pursuant to Rule 65 filed on 27 January 2004 (“Motion”) on behalf of Moinina Fofana (“Accused Applicant”);

**SITTING** for an oral hearing of the Motion;

**NOTING THE SUBMISSIONS OF THE PARTIES:**

1. At the beginning of arguments to sustain this motion for the release on bail of Moinina Fofana under Rule 65 of the Rules of Procedure and Evidence, his Learned Counsel, Mr. Pestman, indicated to the Court that he wanted oral evidence to be taken from a witness who was present in Court. This witness, according to the Learned Counsel, was to testify to the good character of the Accused/Applicant and to show that he will appear for trial if released.

2. The Chamber wished to know why the Applicant's Counsel did not submit such evidence in the form of an affidavit. Learned Counsel, Mr Pestman, said it was because the said witness was only discovered recently and that her availability to give evidence was only confirmed this morning to the Prosecution.

3. The Prosecution in reply, objected to the application for oral testimony from that witness whose background they are not aware of. However, the Prosecution conceded the possibility of the case being adjourned for affidavit evidence of the said witness to be filed before the matter is heard on the adjourned date.

4. Mr. Pestman insisted that the matter can be part heard today with the recording of the evidence of the said witness and thereafter, adjourned to a later date. He further urged the Court, even if she had to file an affidavit, to, in addition, rule in favour of recording her oral testimony in open Court.

5. In the light of the above The Chamber is of the opinion that the Prosecution has not been given adequate notice, prior to the making and hearing of this application to take oral evidence from the witness in issue during today's hearing.

6. Consequently this application cannot stand and the Court **ORDERS** as follows:
- i. That Learned Counsel for the Applicant ensures that a sworn affidavit of that witness is filed in the Registry on or before Tuesday, the 9th of March, 2004;
  - ii. That the said affidavit be served on the Prosecution on or before Thursday, the 11th of March, 2004;
  - iii. That the Prosecution reserves a right of reply to the affidavit so filed;
  - iv. That the matter is adjourned for hearing to Wednesday, the 17th of March, 2004;
  - v. That this Order be carried out.

Done at Freetown this 5th of March 2004

Judge Benjamin Mutanga Itoe

[Seal of the Special Court]