

SCSL - 2004 - 14 - T

(7458 - 7462)



SPECIAL COURT FOR SIERRA LEONE

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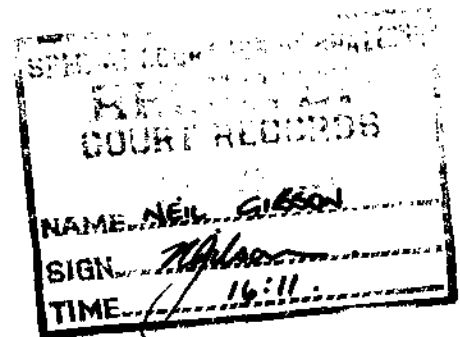
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THE TRIAL CHAMBER

Before: Judge Benjamin Mutanga Itoe, Presiding Judge
Judge Bankole Thompson
Judge Pierre Boutet

Registrar: Robin Vincent

Date: 14 June 2004



PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14- T)

CONSEQUENTIAL ORDER ON ASSIGNMENT AND ROLE OF STANDBY COUNSEL

Office of the Prosecutor:

Luc Côté
James Johnson

Defence Counsel for Sam Hinga Norman:

James Jenkins-Johnston

Defence Counsel for Moinina Fofana:

Michiel Pestman

Defence Counsel for Allieu Kondewa

Charles Margai

THE TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Judge Benjamin Muranga Itoe, Presiding Judge, Judge Bankole Thompson, and Judge Pierre Boutet;

NOTING a letter filed by Samuel Hinga Norman ("Accused") addressed to The Principal Defender of the Special Court for Sierra Leone dated the 3rd of June 2004, indicating his intention to defend himself from that date;

NOTING that the Trial Chamber, having received a copy of the aforesaid letter, called upon the Accused during the trial session on the 3rd of June 2004, to confirm that this was his letter and that he had prepared this voluntarily, and upon receiving an affirmative answer from the Accused, the Court admitted the letter into the trial record as Exhibit 1;

NOTING that during the trial session on the 3rd of June 2004, Counsel for the Accused responded to the Court that they accepted the Accused's request for self-representation;

NOTING the "Decision on the Application of Samuel Hinga Norman for Self Representation Under Article 17(4)(d) of the Statute of the Special Court" ("Decision") delivered by the Trial Chamber on the 8th of June 2004, where the Trial Chamber held that the Accused has a right to self-representation, but that such a right is qualified and not absolute and can be derogated from should the interests of justice dictate, and ordered, in conclusion, as follows:

That the right to self-representation solicited in this case by the 1st Accused, Samuel Hinga Norman, can only be exercised with the assistance of counsel to be assigned to the trial and in whatever capacity they are assigned or designated, stand-by or otherwise, without prejudice to the Registrar's discretion to designate, if the 1st Accused so expresses this desire, Members of his former Defence Team, and this, in accordance with the provisions of Article 17(4)(d) of the Statute of the Special Court, The Rules of Procedure and Evidence, and of the provisions of the Directive for the Assignment of Counsel promulgated by the Registrar of the Special Court on the 3rd of October, 2003;¹

NOTING a letter filed by the Accused addressed to the Principal Defender of the Special Court for Sierra Leone on the 9th of June 2004, admitted in evidence as Exhibit 2, whereby the Accused informed the Trial Chamber that he had discussed the Decision of the Trial Chamber with the Principal Defender, and stated that if the Decision meant that his right of self representation could be exercised with the assistance of counsel of his own choosing, preferably "counsel in the interest of justice", "amicus counsel", "standby counsel", he requested the Principal Defender to contact all members of his "defence team", national and international, to arrive at the Special Court as soon as possible and to continue assisting him as counsel, namely, "counsel in the interest of justice", "amicus counsel", "standby counsel", and that should such counsel not agree to this, that the Principal Defender notify him so that he could provide further instruction as to the composition of his team of legal assistance;

NOTING that the said letter was verified by the Accused at the trial session on the 10th of June 2004, and that the Accused was advised by the Trial Chamber that Standby Counsel would be assigned to him, whereupon the Accused advised that it was his right to choose his own counsel;

NOTING that the Registrar advised the Trial Chamber at the trial session on the 10th of June 2004 that he had made enquiries about a suitable Standby Counsel and had identified one lawyer, who

¹ Para. 32.

would arrive in Freetown on the 14th of June 2004, and be briefed by the Principal Defender, and he supplied the Trial Chamber and the parties with a curriculum vitae of this lawyer;

NOTING that former Counsel for Norman, Mr. Tejan-Sie, advised the Trial Chamber at the trial session on the 10th of June 2004 that he had not had the opportunity to consult with his former client to discuss whether or not his Defence team could be appointed as Standby Counsel for the Accused;

NOTING Article 17(4)(d) of the Statute of the Special Court for Sierra Leone ("Statute") which provides that:

4. In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

d. To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

CONSIDERING that the right to self-representation is not absolute and that the interests of justice may require the assignment of legal assistance;

CONSIDERING that the right to counsel and the right to self-representation do not exclude each other;

CONSIDERING that the CDF trial involves multiple defendants and that the rights of each accused person must be fully respected at all times throughout the trial process;

CONSIDERING that the right of the Accused to self-representation must be balanced against the right to a fair and expeditious trial;

CONSIDERING that it is in the overall interests of justice to assign a Standby Counsel to assist the Accused, in the exercise of his right to self-representation;

CONSIDERING that Standby Counsel will provide legal assistance to the Accused and ensure the safeguard to his right to a fair and expeditious trial;²

CONSIDERING that a counsel-client privilege applies to any communications and correspondence between the Accused and Standby Counsel;

CONSIDERING that Standby Counsel, in providing assistance to the Accused, shall be subject to "the relevant provisions of the Agreement, the Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Special Court, the Headquarters agreement, the Code of Professional Conduct and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel", as provided in Rule 44(B) of the Rules;

² *Prosecutor v. Vojislav Seselj*, Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Seselj With His Defence, 9 May 2003, para. 28.



CONSIDERING that the Accused's right to self-representation and the appointment of Standby Counsel includes the right of the Accused to obtain legal advice from counsel of his own choosing;

FOR THE FOREGOING REASONS;

PURSUANT TO Rule 54 of the Rules, the Trial Chamber;

HEREBY ORDERS that Standby Counsel are to be assigned to the Accused to assist him in the exercise of his right to self-representation and for the purposes of these proceedings;

FURTHER ORDERS that the role of Standby Counsel, be strictly defined as follows:

1. To assist the Accused in the exercise of his right to self-representation;
2. To assist the Accused in the preparation and presentation of his case during the trial phase, whenever requested to do so by the Accused;
3. To actively guide the Accused through the procedures of the trial in accordance with the Statute and the Rules;
4. To investigate relevant facts and law, identify possible defences and suggest steps to be taken by the Accused;
5. To receive all Court documents, filings and disclosed materials that are received by or sent to the Accused;
6. To be present in the courtroom during the proceedings;
7. To offer legal advice to the Accused;
8. To address the Court whenever requested to do so by the Accused or by the Trial Chamber;
9. To put questions to witnesses on behalf of the Accused if called upon to do so by the Trial Chamber, in particular to sensitive or protected witnesses, or in the event of abusive conduct by the Accused, without depriving the Accused of his right to control the content of the examination;
10. To be actively engaged in the substantive preparation of the case and to participate in the proceedings, and to be prepared to take over representation of the Accused should the Accused engage in disruptive conduct or conduct requiring his removal from the courtroom as outlined in Rule 80(B) in the Rules of Procedure and Evidence;

Cas. No. SCSL04-14-PT

4.

14 June 2004

11. To assemble and present information relevant to all the stages of the proceedings;
12. To refrain from conduct that may directly or indirectly impact adversely on the exercise of the Accused's right of self representation;

DECIDES

- (1) that these functions of the Standby Counsel shall be performed under the supervision of the Trial Chamber;
- (2) that Standby Counsel will immediately assist the Accused;
- (3) that the Accused shall conduct his Defence without delay and will conform to the dates set for Trial decided by the Special Court so as not to delay the proceedings;

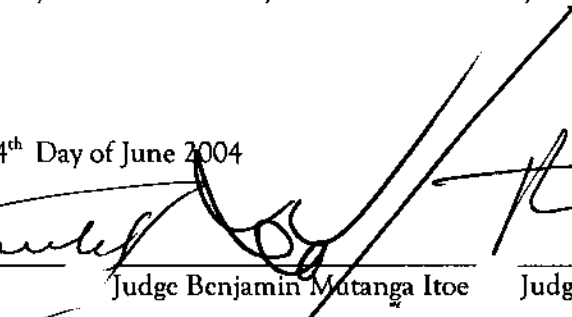
ORDERS the Registrar to assign Standby Counsel for the assistance of the Accused;

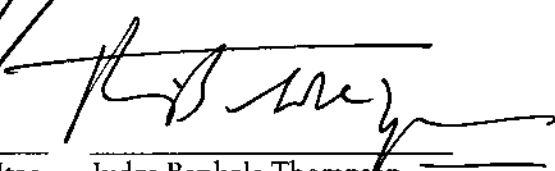
FURTHER ORDERS the Registrar, in consultation with the Principal Defender, to immediately assign on a temporary basis a member of the Defence Office, pending the assignment and effective presence at the proceedings of the Standby Defence Team, to assist the Accused as Standby Counsel;

STATES that this Order may be modified at any time should necessity arise.

Done at Freetown this 14th Day of June 2004


Judge Pierre Boutet


Judge Benjamin Mutanga Itoe


Judge Bankole Thompson

Presiding Judge,
Trial Chamber

