



SPECIAL COURT FOR SIERRA LEONE
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Code of Conduct Hearing

THURSDAY, 10 NOVEMBER 2005

DECISION

There are several counts in this matter involving two defence counsel. There will be a unanimous decision in relation to counts one, three and four, which I am authorised by my learned colleagues to read.

There is a majority decision in relation to count two, which will be read by my learned colleague, by Mr Browne-Marke, and a dissenting opinion in relation to the same count.

I will now proceed to read the decision of the disciplinary panel.

This is a disciplinary hearing against Yada Williams and Ibrahim Yillah, herein after referred to as "defendant counsel," alleging that they are guilty of professional misconduct contrary to Articles 5, 7 and 8 in the Code of Professional Conduct for Counsel with the Right of Audience before the Special Court of Sierra Leone, herein after referred to as "the Code".

There had been various legal objections raised. Counsel for Williams disputes the application of the Code, and Counsel for Yillah likewise disputes the application of the Code and further submits that the complainants should have been the judges of Trial Chamber I and not Ms Salibekova.

We will first consider the evidence.

The statements of Sharelle Aitchison, Roza Salibekova, Arrow Bockarie, Brima Sesay, Andrew Ianuzzi, Annemarie Doyle, Mohamed Stevens, Victor Koppe and Maureen Edmonds were tendered into the record by consent. One witness, Kingsley Belle, was cross-examined. Neither defendant counsel gave evidence and neither called evidence on their behalf.

The Evidence against Mr Williams

Count I

I will deal with count one. The evidence against Mr Williams. The complainant Sharelle Aitchison stated that on Thursday, 26 May 2005, after the judges had left Trial Chamber I, Williams approached Rosa Salibekova and herself and had told them he wished to speak to them. She described his tone as, "very aggressive," but low. She and Salibekova moved to where Williams was standing and, Aitchison states, he made accusations about their conduct in court and was pointing at her.



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Aitchison told him to stop and said to him that he laughed at witnesses on "occasions". She moved backwards and she states, "brushed his hand away from me." He then slapped her across the left-hand side of her face. This version of events is corroborated by her colleague, Rosa Salibekova, who states that "Williams was directing his hand towards her breastbone and neck areas. In one movement Sharelle was trying to move away from him by stepping backwards..." Ms Salibekova did not see whether Ms Aitchison touched Williams' hand, but she heard Aitchison say the words, "Take away your hand from me," and then saw Williams, "intentionally slap Sharelle on the left side of her face on her jaw area."

The witness Brima Sesay states he observed Williams calling Salibekova and Aitchison and noted that they were engaged in a conversation. He observed Williams talking aggressively to Aitchison and pointing his hands towards her face. Aitchison told him to "get his hands of her face" - and the "off" was spelt "O-F". "Then I saw Mr Yada Williams slapping Ms Sharelle Aitchison." He then observed Yillah grabbing Williams' hands and trying to restrain him.

Others present in the Chamber at the time did not see the incident, but overheard a heated exchange and heard Aitchison say, "That's assault. You can't do that," in the words of Annemarie Doyle, and, "You have just assaulted me," in the words of Maureen Edmonds.

Kingsley Belle, whose statement was tendered by consent as Document 27, stated that Aitchison pushed Yada's hand, saying, "Take off your hand from my face, you disgusting fellow, who smiles when a witness is testifying." He further said, "Yada Williams equally reacted by pushing her hand back." Then Aitchison said, "You have just assaulted me. I'm going to tell the judges." In cross-examination he stated that Williams talked and pointed his fingers at Aitchison, who said, "Take off your hands from my face you disgusting fellow who smiles when a witness is testifying." He said Williams was not aggressive. He did not see Aitchison pointing her finger, but he did see her pushing Williams' hand, "because Yada was pointing his finger towards her," and she pushed his hand away. He heard her say also, "You have just assaulted me. I'm going to tell the judges."

We had the benefit of a demonstration of how Williams wagged his forefinger of his right hand. I noted it to be a quick up-and-down movement.

Mr Williams elected not to give evidence. We note the statement he made to the judges of Trial Chamber I during a meeting after the incident. A record of that meeting was tendered by consent, Document No. 12. At page 3 of the transcript, Williams states that he approached Aitchison and Salibekova to "express his views" on their actions and appearances in court, and, "that lady," apparently Aitchison, said, "I've seen you laughing at witnesses. That is disgusting," that she became agitated, pushed his hand because he was gesticulating, and he pushed her hand as well. He said, "She pushed me and I pushed her right back. I didn't slap her, I didn't hit her. But when she attacked ~ I mean, when she used whatever force on me ~ I used what I considered was proportionate." He only concedes that he pushed Aitchison's hand and denies



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slapping her on the face. Hence, Williams says it was Aitchison who "attacked him", and he considered that what he used was proportionate force, but limited to pushing Aitchison's hand.

It is clear from all the evidence that the defendant counsel initiated a discussion and a conversation between Williams and Aitchison and Salibekova. This led to a conversation in which Williams criticised the two legal officers. We note that the Aitchison, Salibekova and Sesay versions of events have not been challenged in cross-examination and, other than his statement to the judges, Williams has not given rebuttal evidence. It is clear there was physical contact between Williams and Aitchison. That is consistent in all versions. It is the nature of that contact which is in issue. We have no doubt Williams was wagging his finger at Aitchison. He himself refers to "gesticulating". Having seen the demonstration by Mr Belle, we find that the finger wagging was of an aggressive manner. Mr Macaulay says that Williams' version of sequence of events shows that Aitchison struck Williams first. He relies on Aitchison's own statement that she moved backwards and brushed Williams' hand away. We consider that that statement must be seen in the light of the preceding statements, as we find he was wagging his finger at her in an aggressive manner. We find Aitchison was moving backwards as Williams wagged his finger and hand at her in an aggressive manner.

Aitchison said that then Williams struck her on the face. Williams says he pushed her. In submission, Mr Macaulay of counsel says that Williams had a right to defend himself when attacked and that whatever force he used in pushing was reasonable and proportionate in the circumstances. He relies on the case of *R v Williams (1987)*, All England Law Reports at 411.

We find that there was a contact between Williams and Aitchison. It is in the statement; it is conceded in counsel's submissions and it is corroborated by those witnesses who heard Aitchison say words to the effect that she was assaulted.

The majority of this Panel finds Williams did strike Aitchison on the face and struck her with force. We do not consider the striking to be proportionate to Aitchison's attempt to repel the wagging finger. Williams had initiated this conversation. He was aggressive. We have seen the small space in which the parties stood. Aitchison was stepping backwards. We do not find any need for Williams to take the action he did, and do not consider it a reasonable and proportionate reaction towards a person who was moving away from an aggressive situation.

It has not been disputed or challenged that Sharelle Aitchison is a staff member of the Special Court. This is apparent from the transcript of the discussion with the judges of Trial Chamber I and from Williams' description of her position and work within the Trial Chamber.

We are of the unanimous view Williams acted in an abusive and threatening manner towards Sharelle Aitchison, a staff member of the Special Court, by wagging his finger, pushing her hand and slapping her and this contravenes his duties under Article 7 of the Code, which obliges counsel to act courteously and respectfully towards all persons, including Special Court staff members.



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Count IV

I will now move to Count 4.

Ms Salibekova alleged that Mr Williams was verbally abusive to her and thereby contravenes Articles 5(i) and 5(iii), Article 7 and Article 8(B) of the Code.

We have already found that Mr Williams initiated the conversation between himself and Ms Aitchison and Ms Salibekova; that Aitchison and Salibekova, at his directive, left their positions and went to speak with him. We have found that he had spoken in an aggressive tone and that he wagged his finger at Ms Aitchison. Ms Salibekova's statement is that she was standing beside Aitchison and she says, "I got the impression that this verbal assault was directed at both Ms Aitchison and myself, although he was facing Ms Aitchison directly and pointing towards her."

Mr Williams, in his statement to the judges of Trial Chamber I says he and Yillah had "gone to have a word with them," and he had "observed them". In other places he refers to "they" and to "them". It is quite clear to us that he intended to address Salibekova as well as Aitchison. It is clear from other witness statements that when he spoke, Ms Salibekova was present and was being addressed by Williams.

It has not been disputed in evidence or in submissions that Ms Salibekova is a member of staff of the Special Court. That is apparent from the work she was undertaking in the Trial Chamber and from the addresses before the judges of Trial Chamber I.

We consider that Mr Williams was aggressive in his tone and manner when he was obliged to act courteously towards all persons, including staff members of the Special Court. In submission, Mr Macaulay adopts his earlier submission. He further refers to the terminology and quotes the terminology "verbally abused" as stated in the count and in the statement of complaint. He submits that there was no abuse.

We consider the tone and manner amounts to abusive behaviour and contravenes a duty to act courteously to a staff member. Accordingly, we consider that Mr Williams has contravened Article 7 of the Code of Conduct. Having made this finding, we do not consider it necessary to make any findings under Articles 8(B) or 5.

Counts against Mr Yillah – Count III

I now move to the counts against Mr Yillah.

Ms Aitchison and Ms Salibekova allege that Mr Yillah was in breach of Article 5(i) and Article 8 of the Code by making false statements to the judges of the Trial Chamber.



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As we have noted, statements and documents were tendered by consent, Mr Yillah elected not to give evidence and did not cross-examine any of the persons making statements.

Mr Michael made detailed submissions on the facts and on the law on Yillah's behalf.

The evidence relating to Mr Yillah's statement and role in the incident that founded this count is in the transcript of the meeting of 26th May 2005 of the Chambers of Justice Boutet. Page 5 and 6 of that transcript include statements made by Mr Yillah. He said, "Then Williams sent his hands..." he later referred to an outburst by Aitchison at page 7 and is critical "of the other lady there," by which we assume he means Ms Salibekova.

We consider this is insufficient evidence to make a finding that Mr Yillah made a false statement to the judges and accordingly we make no findings of breach of the Code against him. Having done so, we do not consider it necessary to rule on the legal submissions made by Mr Michael in relation to the provisions of the Code.

Accordingly, we find to counts 1 and 4 made out against Mr Williams and we dismiss the counts against Mr Yillah.

I will now invite my colleague to read the majority opinion in relation to the other count against Mr Williams.

Majority Decision on Section 5 and counts against Mr Williams in this regard

This is the majority opinion on Sections 5(i) and (iii) under Article 8(B) of the Code of Conduct.

It is our considered opinion that Articles 5(i), 5(iii) and 8(B) do not apply to these allegations. Article 5(i) clearly applies to counsel in his dealings with his client. Thus it states that, "Counsel should act with competence, honesty, skill, professionalism and with the preparation reasonably necessary for the case." It has not been suggested that during these proceedings that the incident had anything to do with the case in which Mr Williams and Mr Yillah were engaged in. Nor has it been suggested that they were incompetent, dishonest, unprofessional and unprepared in any way in connection with that case. Neither has it been canvassed that the lack of integrity and the manner in which they went about their clients' affairs to such an extent that they brought the administration of justice into disrepute by their actions. When juxtaposed with 5(ii) it becomes quite apparent that the behaviour described in this Article is that which relates to counsel acting as counsel in dealing with his client's affairs. We do not therefore think that the allegations that Messrs Williams and Yillah made false statements to the judges of the Trial Chamber falls for determination under this Article. In arriving at this conclusion, we have also taken into consideration the substance of the allegation. It seems to us that the proof of the allegation depends on this belief of what Messrs Williams and Yillah said in the presence of the judges as the version of what transpired in the Trial Chamber after the trial judges had retired. It also involves disbelieving the ocular demonstration given by Mr



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Belle. If disbelief of one's defence were to lead in all cases to a charge of perjury or the like, it seems to us that in all cases where accused persons are convicted of crimes, they would also be liable to be punished for perjury as well, in that they had lied in the defence because the jury, as the case may be, did not believe their story. We think that if, for instance, there had been a closed circuit recording of Mr Williams slapping and Mr Williams insisted that he had not done so, there would be incontrovertible evidence that he had told a lie about what happened. It appears to us that a finding Mr Williams lied about the incident could only be based on a finding that the Panel disbelieved his evidence and believed the evidence of the complainants, and in so believing Mr Williams ought to be subjected to an additional punishment. This is one reason why we do not think a case has been proved against both Mr Williams and Mr Yillah in respect of Article 8(B).

Notwithstanding the above, we are of the view also that the behaviour prescribed in that Article 8(B) is the behaviour of counsel in court when handling his client's case. Clearly counsel calling a witness to testify as to the events of a particular day, knowing fully well that that witness has no knowledge of such event, will be guilty of contravening the Article. So, also, will be counsel who proffers a false affidavit in the proceedings. The reference to counsel or his team in the same sub-clause makes the position clearer. In the light of Justice Boutet's adjuration at the end of the informal hearing in the chambers, can it be properly said that the Special Court judges were deceived or knowingly or recklessly misled by Messrs Williams and Yillah? We think not. We therefore hold that a case has not been made out against Mr Williams in the case of Article 8(B).

Dissenting Opinion Justice Doherty

I have a dissenting opinion on that count which I will now read. Count 2 alleges that Mr Williams made a false statement to the judges of Trial Chamber I following the incident on 26 May 2005. The facts in tender document number 12 at pages 3 and 4 records Williams said to the judges that Aitchison pushed his hand because he was gesticulating and he "pushed her hand as well." He "pushed her right back." He then said, "I did not slap her and I did not hit her." I find that that is an incorrect version. He did slap her and when he told the judges of Trial Chamber I, he tried to deceive the judges or to recklessly mislead them.

Counsel for Mr Williams, Mr Macaulay, submits that Article 5 of the Code relates only to the relationship between counsel and his client. He compares the provisions of Article 5 with Article 10 of the Code of Conduct in the International Criminal Tribunal of Yugoslavia. I note that Article 5 is entitled "Competence, Independence and Integrity" and it is in the section of the Code entitled "Obligations of counsel". Neither of these titles refers to a duty between counsel and client. Article 5(i) refers to, "with the preparation reasonably necessary for the case" and this clause is conjunctive with an obligation to act competently and with honesty, skill and professionalism.



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However, I do not consider it necessary to give a ruling on the interpretation of Article 5(i) as my finding is that counsel had deceived or recklessly misled the judges of Special Court Trial Chamber I. This then brings me to the further argument of Mr Macaulay that there was no proceeding taking place in the Chambers, a submission he supports by referring to Justice Boutet's interoffice memorandum to the then Deputy Registrar, and therefore the judges at that meeting did not constitute a court or an organ of the court.

I do not see any merit in the submission that there must be a formal hearing of the judges in court to constitute either the Special Court or an organ of the Special Court. The judges had taken a recess from the Trial Chamber to deliberate. They convened in Chambers as judges of Trial Chamber I and the Chamber meeting was an extension of the trial. They dealt with Aitchison's complaint as an issue arising in the chamber. This is stated at page 2, lines 7 to 9, when they say, "We want to meet with you to discuss an issue that we have been told happened in court." It is clear to me that they dealt with it as judges of the Trial Chamber I and not in any personal capacity or as a group at a social occasion. They remained an organ of the court and were entitled not to be deceived or misled when conducting that inquiry. To hold otherwise would mean that a counsel could make false statements relating to Trial Chamber issues to judges outside of the actual trial chamber with impunity. I do not consider that proper, professional conduct of a counsel. Williams could have remained silent. Article 30(iii) of the Code envisages such a situation and at this investigatory stage I consider that that right should also apply. I find that Williams deceived the judges of Trial Chamber I and in doing so acted in contrary to Article 8(B) of the Code. That is my dissenting opinion.

Accordingly, we find that count 1 and 4 are made out against Mr. Williams and dismiss the counts against Mr Yillah.

Having made that decision we will now take submissions or any matters that either counsel wish to put before the Panel concerning the sanction provisions of counsel and the issue of costs which we had already indicated would be addressed.

Sentence

I am again authorised by my fellow panellists to read out our decision.

We consider that this was a most serious breach of professional misconduct. It was a physical assault on a staff member who was avoiding an aggressive situation inside a court and it is behaviour that cannot be condoned or made little of. Mr Williams remarked to the judges of Trial Chamber I about his height and actions. He was well aware that he was intimidating. To hit any staff member, but particularly a woman shows aggression and gender bias and is totally unacceptable. Counsel is acting in an international court and must accept that he is working in a multicultural environment. He must be prepared to adapt and learn tolerances of the differences of those who work in international environs. In saying this, we in no way suggest



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that this type of behaviour is in any way acceptable in a national jurisdiction, be it a customary court in a village through to the Supreme Court.

We have considered all the sanctions open to this panel. I am of the view that this is so serious that it warrants permanent refusal of audience before the Special Court. The panel has considered that sanction. The panel has the duty to show to the public that the profession is one of integrity and transparency, that the profession maintains a standard it expects of others. However, the majority of the panel, whilst concurring that this is an extremely serious breach of professional misconduct, and having given serious thought to the sanction of refusal of audience, have also given weight to Mr Williams's apology, his acceptance of the panel's decision, and his obvious realisation of the serious implications of his actions. Panel members in weighing up the sanction of refusal of audience have also in mind the right of the accused under Article 17 of the Statute at this stage of the hearing against the accused that Mr Williams represents. In the light of these several considerations, the panel imposes the following sanctions: One, a public reprimand; and, two, a fine of 1 million leones.

Costs. Article 37(C), it is submitted by all counsel, is mandatory. It is our unanimous view that the number of counts that Mr Williams was found guilty of should not lead to some proportional reduction in the costs. There was a finding of a breach of professional misconduct and that ipso facto leads to the liability for costs under Article 34(C). Further, we see no merit in Mr Macaulay saying that he explained his absence on the 12th of October. We received his letter of the 11th of October on the 12th as the panel was about to be convened. Mr Williams himself should have informed the panel well before the 11th of his counsel's unavailability and sought to have alternative arrangements made. This, in fact, was what was done by Mr Macaulay when there was a proposed date of 8 October 2005 set. We consider and order that reasonable costs of all the days of the hearing be borne by counsel. Costs relating to Mr Yillah. We again order that reasonable costs be reimbursed to Mr Yillah in respect of 12, 19 and 20 of October and 10 November. We do not make an order for costs of 14 September as Mr Yillah was represented by a member of the office of the Principal Defender of the Special Court on that date. Mr Williams you've heard what the panel has found.

MR WILLIAMS: Yes, My Lady.

We are publicly reprimanding you for your behaviour. We also have indicated the serious view that we have taken of this action.