

TRIAL CHAMBER I (“the Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet and Hon. Justice Benjamin Mutanga Itoe;

SEIZED OF the Registrar’s Submissions Pursuant to Rule 33(B) Relating to the Death of Mr. Samuel Hinga Norman that was filed on the 6th of March 2007;

CONSIDERING that the Chamber was informed of the death of the First Accused Samuel Hinga Norman on the 22nd of February 2007 and that a copy of his death certificate was filed by the Registrar on the 23rd of February 2007;

NOTING this Chamber’s Order for Extended Filing filed on the 7th of March 2007 in which the Chamber indicated that “it is in the interests of justice that submissions or any other initiatives by the Prosecution and each of the Defence Teams are necessary in order to contribute to a resolution of the legal and factual issues and or consequences that have arisen or are likely to arise in the judicial determination of the case against the Accused Persons as a result of the death of the First Accused Samuel Hinga Norman”;

CONSIDERING the Fofana Submissions on the Death of the First Accused filed by Court Appointed Counsel for the Accused Moinina Fofana (“Defence for Fofana”) on the 13th of March 2007 (“Fofana Submissions”);

CONSIDERING the Prosecution Submissions Pursuant to Order for Extended Filing filed by the Office of the Prosecutor (“Prosecution”) on the 16th of March 2007 (“Prosecution Submissions”);

CONSIDERING the Kondewa Submissions on the Death of the First Accused, Samuel Hinga Norman also filed by Court Appointed Counsel for the Accused Allieu Kondewa (“Defence for Kondewa”) on the 16th of March 2007 (“Kondewa Submissions”);

CONSIDERING the Norman Defence Team Submissions on His Death filed by Court Appointed Counsel for the Accused Samuel Hinga Norman (“Defence for Norman”) on the 22nd of March 2007 pursuant to this Chamber’s Decision on Norman Motion for Extension of time issued on the 16th of March 2007 (“Norman Submissions”);

NOTING also the Further Fofana Submissions on the Death of the First Accused filed by the Defence for Fofana on the 29th of March 2007;

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the Special Court;

THE CHAMBER ISSUES THE FOLLOWING DECISION:

I. SUBMISSIONS OF THE PARTIES

A. Prosecution Submissions

1. The Prosecution submits that the Chamber continues to maintain jurisdiction over the proceedings with respect to all three accused persons and that it is in the interests of justice that the Chamber does not automatically terminate the proceedings against Norman without first analyzing the evidence that has been adduced before the Chamber.¹

2. The Prosecution opines that the Chamber should consider all the evidence in the case and make findings of fact, not for the purpose of issuing a verdict against Norman, but in order to issue a final determination against the two remaining Accused. It submits that is only by considering the evidence as a whole that the Chamber will get to the truth of the allegations in relation to all of the Accused.²

3. The Prosecution further submits that the Chamber should issue findings of fact with respect to the elements of the crime, the crime bases and the modes of liability with respect to Norman, without issuing a final verdict on either his guilt or innocence.³

B. Fofana Submissions

4. Defence for Fofana submits that a criminal court's personal jurisdiction over an accused person is instantly vitiated upon his death and that proceedings shall thus be immediately terminated upon notification and proof of the death. The Defence asserts that as of the 22nd of

¹ Prosecution Submissions, para 11.

² *Ibid.*, paras 12, 21 and 27.

³ *Ibid.*, para 28.

February 2007, the Court's jurisdiction over Norman ceased to exist and proceedings should therefore be terminated immediately.⁴

5. As regards the other Accused, Defence submits that the death of Norman has absolutely no impact on the applicable law or the existing factual record, which remains as it was on the 30th of November 2006 when the trial was adjourned.⁵

6. In the Further Fofana Submissions on the Death of the First Accused, Defence states that it has no objection to the delivery of a judgement with regard to Norman, as long as this does not impact on Fofana's right under Article 17(4)(c) of the Statute of the Special Court to be tried without undue delay.

C. Kondewa Submissions

7. Defence for Kondewa submits that, on the death of an accused person, the Special Court ceases to have jurisdiction over that accused person.⁶

8. The Defence concludes that in the absence of any provision in the Statute or the Rules that allows for the continuance of proceedings against an accused after his death, the case against Norman ought to be abated.⁷

D. Norman Submissions

9. Defence for Norman submits that it is important to distinguish at which stage of the trial or appellate proceedings that the death of an accused occurred.⁸ Defence observes that there is virtually no case law, either internationally or domestically, where an accused dies post-trial and pre-judgement and the Rules do not contain a provision that is directly relevant.⁹

10. The Defence submits that the severance of the evidence against Norman would be incompatible with the rights of the accused and that an accused person who has fully undergone

⁴ Fofana Submissions, paras 2 and 5.

⁵ *Ibid.*, paras 7-8.

⁶ Kondewa Submissions, para 7.

⁷ *Ibid.*, para 16.

⁸ Norman Submissions, para 16.

⁹ *Ibid.*, para 23.

trial and closed his case is entitled to judgement under Article 18 of the Statute and Rules 87 and 88 of the Rules.¹⁰

11. Defence opines that Norman should obtain a verdict one way or the other. Even if he is convicted, “which is highly improbably in view of the quality of his defence”, the Defence submits that he would not be prejudiced in terms of post-verdict processes since records of proceedings are kept.¹¹ Defence also emphasises that the family of Norman want a verdict to be delivered in his case.¹²

II. DELIBERATIONS

1. Effect of Death

12. This Chamber notes that the case of *Prosecution v. Norman, Fofana and Kondewa* was closed on the 30th of November, 2006, at which point the Chamber adjourned the proceedings until the pronouncement of its judgement in the matter. The Accused Norman died while undergoing medical treatment on the 22nd of February 2007. According to the records, the judgement in this case is still pending.

13. The first issue that arises for determination in these circumstances is that of the legal effect of the death of the First Accused on the proceedings against him. In this regard, the Chamber agrees with the submissions of the Defence for Fofana and the Defence for Kondewa that from the moment of his death, the Chamber lost its jurisdiction *ratione personae* against the Accused Norman. In effect, the event of death extinguished the Court’s jurisdiction *vis-à-vis* the First Accused.

14. In this regard, we would like to reiterate here that the responsibility in a criminal matter is, in law, individual and personalised because the main components of a criminal action which include the indictment, the conviction or an acquittal as the case may be, and the sentence in the event of a conviction, are inextricably linked to, and enforceable only against the person or the individual who is alleged to have committed the crime or crimes for which he is prosecuted.

¹⁰ *Ibid.*, paras 25-26.

¹¹ *Ibid.*, para 27.

¹² *Ibid.*, para 28.

15. This established legal principle, as was restated by Hon. Justice McDermid in the Canadian case of *R. v. Ssenyonga*,¹³ and which we also reiterate here, is that the death of an accused person before the end of a criminal trial abates the trial. In the case of *US v. Lay, Skilling and Causey*,¹⁴ on a similar issue, two former Chief Executive Officers of Enron Corporation were indicted on different counts of fraud and related charges. Tried jointly, they were eventually found guilty. Lay died prior to his sentencing. The Court held that the rule of abatement equally applies to cases in which an Accused, such as Lay, dies prior to the entry of a judgement. We find merit in this legal doctrine particularly in the instant case where we consider that the criminal trial is, pending the delivery of the judgement, still on course until when the verdict is pronounced.

16. In fact, very much unlike the legal situation where there may, in certain cases, be a hereditary right of a surviving successor or successors to pursue civil proceedings commenced by or against a litigant who subsequently dies before judgement is delivered, a judgement in criminal proceedings does not, and cannot constitute, nor can it confer a successional or testamentary right because it is indeed the exclusive legal privilege and prerogative attached to the persona or the individual who was the subject matter of the Prosecution that stands abated following his death.

17. The Chamber therefore notes that this legal position is quite consistent with the fundamental principle of individual criminal responsibility, the right of the Accused to a fair trial and the right to an appeal, if convicted. It is, therefore, the Chamber's view that the submission of Counsel for the First Accused that a verdict should be rendered in respect of the guilt or innocence of the First Accused is misconceived on the grounds that if the deceased First Accused were convicted of the crimes alleged against him, he would by reason of death, be unable to exercise effectively his right of appeal against conviction and would be unable to properly instruct counsel as to the conduct of his trial or appeal. It is immaterial whether the records are still available.

18. Based on the foregoing reasoning, the Chamber finds significantly that there can be no further proceedings in respect of the Accused Norman, such proceedings or process having been

¹³ *R. v. Ssenyonga*, [1993] O.J. No. 3273 (Ont. Ct. J.-Gen. Div.).

¹⁴ S.D. Texas Houston Div, 7th July 2004.

frustrated by the doctrine of extinguishment or abatement. Hence, the Chamber rules that the proceedings against Accused Norman are legally terminated effective the date of death.

2. Consequential Issues

19. Given the joint nature of this trial, however, the Chamber must also consider the impact of the death of the Accused Norman on the other two Accused with whom he was jointly charged and tried.

20. As already noted, the entirety of the trial proceedings against the three Accused were completed before the death of the Accused Norman. The trial proceedings were conducted in full respect of the right to a fair trial of each of the Accused.

21. On the issue of the legal effect of the death of Norman on the case against the other two Accused, the Chamber finds that it is neither possible nor desirable to separate the evidence presented at the trial against the Accused Norman from the entire evidentiary record.

22. There being no objection to this approach from the Parties, the Chamber holds that it must render its verdict against the two remaining Accused on the basis of the entire evidentiary record before it.

23. On the consequential issue of protective measures, the Chamber rules that its protective measures orders made during the trial proceedings shall remain in force, regardless of the termination of the proceedings against the deceased Accused Norman.

III. DISPOSITION

THE CHAMBER HEREBY ORDERS THAT:

1. The trial proceedings against the Accused Samuel Hinga Norman are hereby terminated by reason of his death;

2. The Indictment shall be endorsed accordingly with such evidence of death, to wit, the certified copy of the post mortem report;¹⁵
3. The Judgement of the Chamber in relation to the two remaining Accused persons will be based on the evidence that was adduced on the record by all the Parties up to when the entire case for the Defence was closed; and
4. All orders for protective measures issued by the Chamber in these proceedings shall remain in force until further ordered.

Annexed as Appendix I to this Decision is the aforementioned Death Certificate of the First Accused, Samuel Hinga Norman.

Done at Freetown, Sierra Leone, this 21st day of May 2007.

Hon. Justice Benjamin Mutanga Itoe

Hon. Justice Bankole Thompson
Presiding Judge
Trial Chamber I

Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]

¹⁵ See Peter Murphy (Ed.), *Blackstone's Criminal Practice*, (Oxford: Oxford University Press, 2003), p. 1401, which summarises the law in these terms: "Where the accused dies before the trial is completed, found evidence should be given, and endorsed upon the indictment. This may for example, be the evidence of the officer in the case that he has seen and identified the remains of the man named in the indictment. If such evidence is not available, then other evidence such as a certified copy of the entry in the register of deaths will suffice."