

SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 22nd of June 2006

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

ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

Public Document

WRITTEN REASONS ON DECISION ON THE PRINCIPAL DEFENDER'S MOTION
FOR A REVIEW OF THE REGISTRAR'S DECISION TO INSTALL
SURVEILLANCE CAMERAS IN THE DETENTION FACILITY

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TRIAL CHAMBER I ("Trial Chamber I") 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;

SEISED OF the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility of the Special Court for Sierra Leone, filed by the Principal Defender of the Defence Office ("Principal Defender") on the 31st January 2006 ("Motion");

MINDFUL of the fact that this Motion seeks a judicial review of the Registrar's decision to install surveillance cameras in the Detention Facility of the Special Court for Sierra Leone;

MINDFUL of the Interim Registrar's[1] Response to the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility of the Special Court for Sierra Leone filed on the 8th of February 2006 ("Response");

CONSIDERING the Reply to the Interim Registrar's Response to the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility of the Special Court for Sierra Leone filed by the Principal Defender on the 14th of February 2006 ("Reply");

MINDFUL of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("Statute"), Rule 45 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("Rules") and Rules 3, 41 and 44 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court for Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone ("Rules of Detention");

CONSIDERING this Chamber's Decision on the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility filed on the 6th of April 2006 which stated that a comprehensive reasoned written Decision would be published in due course;

THE CHAMBER NOW ISSUES THE FOLLOWING REASONED DECISION:

I. BACKGROUND

This Motion was filed by the Principal Defender on behalf of all of the detainees currently in detention at the Special Court for Sierra Leone. This Decision, however, concerns only those Accused in the cases of Prosecutor v. Sam Hinga Norman, Moinina Fofana and Allieu

Kondewa and Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao which are proceeding before this Trial Chamber.

On the 22nd of September 2005, the Registrar of the Special Court authorised the installation of security cameras within the visitation areas of the Detention Facility at the Special Court. The cameras have no capability to pick up or record any audio.[2] Legal visits will be excluded from the surveillance monitoring as they will occur in three separate cubicles in the visitation area.[3]

When the detainees were informed of the decision to install the surveillance equipment,[4] the Principal Defender wrote to the Registrar asserting that the installation violated the rights of the Accused under Article 17 of the Statute.[5] The then Registrar, Robin Vincent, responded that he believed that the video surveillance cameras were consistent with the Rules of Detention and did not breach Article 17. He stated that the installation would be completed as planned.[6]

The Principal Defender sought review of the Registrar's decision by the President of the Special Court. As Court Management Service deemed it an administrative matter, they did not accept filing of the application and it was thereafter sent by the Principal Defender via an interoffice memorandum.[7] The then Interim Registrar, Lovemore Munlo, responded to the application[8] and the Principal Defender replied to the Registrar's Response.[9]

In response to the Principal Defender's request, the President stated that he could not consider the application as he was not properly seized of it since it had not been "sought by way of a proper application made through the Court Management Section".[10] The Principal Defender wrote back to the President and urged him to consider the application on its merits since it was addressed to him in his "administrative capacity" and could therefore not have been filed with Court Management. The President responded by noting that the application was made pursuant to his inherent jurisdiction which is part of his judicial power. The President also stated that if the Principal Defender thought that the matter fell within the jurisdiction of the Trial Chamber, then they should not make an application to the President invoking his inherent jurisdiction.[11]

II. THE SUBMISSIONS OF THE PARTIES

The Principal Defender now seeks a review by the Trial Chamber of the then Registrar's decision authorising the installation of the video surveillance cameras in the visitation area of the Detention Facility on the basis that the video surveillance will violate the detainees' right to a fair trial under Article 17(4) of the Statute. The Principal Defender also argues that the video surveillance is inconsistent with Rules 24 and 41(B) of the Rules of Detention.[12]

In his Response, the Registrar preliminarily submits that the Principal Defender lacks standing to bring this Motion before the Trial Chamber and that it should therefore be dismissed. The Registrar argues that the installation of the video surveillance in no way breaches the fair trial rights of the detainees protected by Article 17 and that the Trial Chamber therefore has no jurisdiction over this matter. He also submits that the acts were lawfully carried out in accordance with the Rules of Detention and were based on legitimate security concerns.[13]

In his Reply, the Principal Defender asserts that he has standing before the Court.[14] He then addresses the specific arguments of the Registrar regarding the impact of the video surveillance on the rights of the accused and the security incidents.

III. LOCUS STANDI OF THE PRINCIPAL DEFENDER

Before addressing the issues raised in this Motion, the Chamber deems it necessary to examine the preliminary issue raised by the Registrar regarding the authority of the Principal Defender to file this Motion.

The Chamber wishes to emphasise that all of the Accused in the two trial proceedings before this Trial Chamber are represented by teams of Defence Counsel either assigned by the Defence Office or appointed by the Court. It is important to mention that while there have been some changes in the composition of these teams, the defence teams have represented all the Accused since the trials commenced in June and July 2004.

As this Trial Chamber stated in its Written Reasons for the Decision on Application for Counsel for the Third Accused to Withdraw from the Case filed on the 20th of June 2006 , a proper interpretation of the Rules makes it apparent that the role of the Principal Defender, once permanent Counsel have been assigned to represent the Accused Persons, is essentially an administrative one.[15]

This view of the law is supported by this statement in the Decision dated the 8th of December 2005 by the Appeals Chamber of this Court on this issue in the case of the Prosecutor v. Brima, Kamara and Kanu:

As a creation of the Registrar, the Defence Office and at its head, the Principal Defender, remain under the administrative authority of the Registrar. Although the Defence Office is given the main responsibility for ensuring the rights of the accused by accomplishing the functions mentioned [in paras 81-82] above, it is supposed to exercise its duty under the administrative authority of the Registrar who, notably, is in charge of recruiting its staff, including the Principal Defender, in accordance with his general responsibility on administration pursuant to Article 16(1) of the Statute.[16]

... The delegation given by the Registrar to the Defence Office is therefore limited to certain aspects of the Registrar's responsibility for ensuring the rights of the accused under the Statute, namely the administrative aspect of the task, which includes notably, assignment, payment, withdrawn and replacement of Counsel. On his part, the Registrar still keeps the responsibility for ensuring certain aspects of the rights of the Accused, notably as regards their rights in detention pursuant to Rule 33(C).[17] [Emphasis added.]

In clarifying the role of the Defence Office, this Chamber stated emphatically as follows in our Decision dated the 20th of June 2006 which we earlier referred to: