

SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

THE TRIAL CHAMBER

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

Registrar: Lovemore G. Munlo, SC

Date: 27th of June 2006

PROSECUTOR **Against** **Sam Hinga Norman**
Moinina Fofana
Allieu Kondewa
(Case No.SCSL-04-14-T)

Public Document

**DECISION ON APPLICATION BY COURT APPOINTED COUNSEL FOR THE SECOND
ACCUSED FOR RIGHT OF AUDIENCE FOR MR. IANUZZI**

Office of the Prosecutor:

Desmond de Silva
James Johnson
Joseph Kamara

Court Appointed Counsel for Sam Hinga Norman:

Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Alusine Sani Sesay

Court Appointed Counsel for Moinina Fofana:

Victor Koppe
Arrow Bockarie
Michiel Pestman

Court Appointed Counsel for Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana

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 “Application for Right of Audience for Mr. Andrew Ianuzzi” (“Motion”), filed by Court Appointed Counsel for the Second Accused (“Counsel for Fofana”) on the 25th of May, 2006, where Counsel for Fofana seek leave of The Chamber, under its inherent jurisdiction pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Special Court (“The Rules”), to grant Mr. Andrew Ianuzzi, currently a legal assistant for the Fofana Defence team, a right of audience to make submissions and lead witnesses before The Chamber under the supervision of existing Court Appointed Counsel for Fofana for the duration of the defence case in this trial;

NOTING the “Prosecution Response to Fofana Application for Right of Audience of Mr. Andrew Ianuzzi” (“Response”), filed by the Office of the Prosecutor (“Prosecution”) on the 30th of May 2006, where the Prosecution submit that, should The Chamber allow the Motion, it must be satisfied that the Second Accused has given his fully informed consent to the granting of the Motion, and the Second Accused must provide a written waiver of the right to any subsequent appeal based on an argument that Mr. Ianuzzi was under-qualified to represent him;

NOTING the “Reply to Prosecution Response to Fofana Application for Right of Audience for Mr. Andrew Ianuzzi”, filed by Counsel for Fofana on the 31st of May 2006, where Counsel for Fofana acknowledge the suggestion in the Response as prudent, and submit that it would be advisable for a member of the Principal Defender’s staff to obtain the Second Accused’s written waiver;

CONSIDERING that the right of audience, which involves the right to appear and be heard in court,¹ is an entitlement that is intrinsic to the duty of defence counsel, who are either assigned by the Principal Defender pursuant to Rule 45 of the Rules or appointed by The Chamber;²

NOTING that Mr. Ianuzzi is neither assigned counsel nor court appointed counsel, but a legal assistant answerable to the Defence Office;³

CONSIDERING further that the jurisprudence of international tribunals does not support the granting of the right of audience to legal associates who are not defence counsel;⁴

NOTING that although the present Motion does not seek to have Mr. Ianuzzi appointed as counsel, the relief sought in the Motion is a right inherent to the duties of defence counsel, assigned and appointed;

CONSIDERING that the Motion invokes the inherent jurisdiction of The Chamber pursuant to the general provision contained in Rule 73(A) of the Rules, without specifying how The Chamber’s power to consider the Motion under Rule 73(A) is applicable in this instance;

¹ *Black’s Law Dictionary*, 7th ed., “right of audience”, p. 1325.

² Code of Professional Conduct for Counsel with Right of Audience before the Special Court for Sierra Leone, the 14th of May 2005, amended the 13th of May 2006, Art.14. See also *Prosecutor v. Hinga Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, “Consequential Order on the Role of Court Appointed Counsel,” the 1st of October 2004 [“Consequential Order”].

³ Motion, Appendix B.

⁴ *The Prosecutor v. Vojislav Seselj*, Case No. IT-03-67-PT, “Decision on Appeal Against the Decision of the Registry of 20 January 2006”, the 7th of April 2006, para. 4. See also *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-T, “Reasons for Decision on Assignment of Defence Counsel”, the 22nd of September 2004, para. 5; *Prosecutor v. Vojislav Seselj*, Case No. IT-03-67-PT, “Decision on Request for Order to the Registry”, the 14th of March 2005; Transcript of the 17th of August 1998, *Prosecutor v. Zoran Kupreskic, Mirjan Kupreskic, Vlatko Kupreskic, Drago Josipovic*, Case No. IT-95-16-T, p. 10435.

CONSIDERING that The Chamber has the authority to appoint counsel when it is necessary and in the overall interests of justice;⁵

CONSIDERING further that The Chamber may exercise its inherent jurisdiction to review the administrative decisions of the Principal Defender where such decisions violate the rights of the Accused;⁶

NOTING that the Motion does not request the appointment of counsel nor the review of a decision by the Principal Defender in circumstances involving an alleged violation of the rights of the Accused;

CONSIDERING that the Motion seeks relief that cannot be entertained by The Chamber in the present circumstances;

PURSUANT to Rules 45, 73(A) and 54 of the Rules;

THE CHAMBER DISMISSES the motion as not properly before The Chamber.

Done in Freetown, Sierra Leone, this 27th day of June 2006.

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]

⁵ *Prosecutor v. Hinga Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, “Written Reasons for the Decision on Application by Counsel for the Third Accused to Withdraw from the Case,” the 19th of June 2006; “Consequential Order,” *supra* note 2. The Chamber also has jurisdiction, pursuant to Rule 45 of the Rules, to replace and withdraw assigned counsel under exceptional circumstances.

⁶ *Prosecutor v. Brima*, Case No. SCSL-04-16-PT, “Decision on Applicant’s Motion Against Denial by the Acting Principal Defender to Enter a Legal Service Contract for the Assignment of Counsel”, the 6th of May 2004, para. 39.