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SCSL-04-16-ES
(2043-2047)

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SPECIAL COURT FOR SIERRA LEONE

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THE PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE

Before: Hon. Justice Jon Moadeh Kamanda, President

Registrar: Binta Mansaray, Registrar

Date: 10 January 2011

THE PROSECUTOR

Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu
(Case No. SCSL-04-16-ES)

**DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES URGENT
PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF
THE SPECIAL COURT FOR SIERRA LEONE**

Office of the Prosecutor

Ms. Brenda Hollis

Mr. James C. Johnson

Ms. Leigh Lawrie

SPECIAL COURT FOR SIERRA LEONE
RECEIVED
COURT MANAGEMENT

10 JAN 2011

NAME Fransess Ngabuh-Smart

SIGN [Signature]

TIME 11:00

I, **Hon. Justice Jon Moadeh Kamanda**, President of the Special Court for Sierra Leone (“Special Court”),

SEISED of the “Public with Confidential Annexes Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone” filed by the Prosecution on 17 December 2010 (“Motion”); wherein the Prosecution requests that I direct the Registrar to appoint an experienced independent counsel to investigate an allegation of contempt pursuant to Rule 77(C)(iii) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”);

CONSIDERING the Statute of the Special Court (“Statute”) and the Rules;

HEREBY issue this Decision on the Motion based solely on the written submissions of the Prosecution;

1. On 17 December 2010, the Prosecution filed the Motion pursuant to Rules 54, 73 and 77 of the Rules. The Motion concerns allegations of intimidation, bribery or other interference with witnesses that gave evidence before the Special Court in the Case of *Prosecutor v. Brima, Kamara and Kanu* (“AFRC” Case), and conduct in breach of protective measures ordered by a Trial Chamber of the Court.¹
2. The specific conduct complained about by the Prosecution includes: (a) disclosure of information, including the identity and other information concerning a protected witness prohibited by Rule 77(A)(ii); (b) conduct that intimidates, offers a bribe, or otherwise interferes with a witness who has given evidence in proceedings before a Chamber of the Court prohibited by Rule 77(A)(iv); and (c) conduct that violates protective measures orders issued by a Chamber of the Court.

¹ Motion, para. 3.

3. The Prosecution submits that certain individuals including one Samuel Kargbo (aka Sammy Ragga), and one Hassan Papa Bangura (aka Bomblast), both former members of the AFRC, and AFRC Special Court convicted persons Brima Bazzy Kamara and Santigie Borbor Kanu have contacted or attempted to contact at least one protected Prosecution witness who gave evidence in the proceedings in the AFRC case. The Prosecution submits that the witnesses were contacted so as to bribe, intimidate or interfere with them, or to attempt to do the same, in order to “make said witnesses lie and recant their testimony before the Court in the hope that such action will result in the release of the AFRC convicted prisoners from Rwanda”.²
4. The Prosecution requests that I, as President and Judge of this Court direct the Registrar pursuant to Rule 77(C)(iii), to appoint experienced independent counsel to investigate the alleged contemptuous conduct prohibited by Rule 77 of the Rules.
5. From what the Prosecution states in paragraph 16 of their Motion, it is clear to them that these proceedings are a matter for the Trial Chamber. The rationale for bringing the proceedings before me as President according to the Prosecution are that :
 - (a) No Trial Chamber is presently seised of their cases
 - (b) I could, as well, transfer this matter to another appellate judge for action
 - (c) The remaining Special Court Trial Chamber is in the post-evidence phase of the Taylor trial and likely fully engaged in directing analysis of evidence in that case, preparing to review Final Trial Briefs, and hear closing arguments
 - (d) This matter deals with a case most recently before the Appeals Chamber.

² Motion, paras 9-13.

6. None of the above reasons is authority for bringing these proceedings within the jurisdiction of the President merely by virtue of him/her being a judge.
7. Without deliberation on the merits of the Motion, I consider that I do not have jurisdiction to determine the Motion, for the following reasons:
8. Rule 77 appearing in the Chapter headed Part VI - "PROCEEDINGS BEFORE TRIAL CHAMBERS" sets out, in careful, coherent, chronological order, the procedure at every stage from the time the allegation is made, to the final appeal against conviction or acquittal.
9. Sub-Rules A to I deal with contempt proceedings before Trial Chambers or a single Judge of a Trial Chamber. Sub-rule J moves us forward to the Appeal stage. It comes into play after the final decision of conviction or acquittal (under sub-rules D, E and F), and after sentencing (as provided for by sub-rules G, H and I). It provides for a direct appeal before a three judge Appeal bench under sub-rule K, composed of Judges of the Appeals Chamber of which, I am the Presiding Judge, pursuant to Article 12(3) of the Statute. The said Article 12(3) also provides that "The presiding judge of the Appeals Chamber shall be the President of the Special Court".
10. Sub-Rule L sets out the procedure in the unlikely event of contempt committed during proceedings before the Appeals Chamber or a judge of the Appeals Chamber. The Rules must be construed in their context and according to the purpose they serve in the Special Court. Those Rules envisage the involvement of an Appeals Chamber Judge in contempt proceedings in two scenarios: (i) in appeals from final contempt decisions pursuant to Sub-Rule J; or (ii) in a case of contempt occurring during proceedings before the Appeals Chamber or a Judge of the Appeals Chamber under Sub-Rule L. In the latter case, it can be dealt with

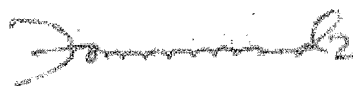
summarily, or referred to a Trial Chamber for proceedings in accordance with Sub-Rules (C) to (I).

11. The framework of Rule 77(C) to (I) therefore envisages that proceedings under the Rule are to be conducted before Trial Chambers or judges thereof. Pursuant to Article 12(2) of the Statute "Each Judge shall serve only in the Chamber to which he or she has been appointed" and pursuant to Article 12(3) "...The presiding judge of the Appeals Chamber shall be the President of the Special Court".

12. I therefore have no jurisdiction to entertain the Motion.

13. In consequence, I **FIND** that the Motion is not properly before me and **DISMISS** it in its entirety.

Done in Freetown, this 10th day of January 2011.



Hon. Justice Jon Moadeh Kamanda
President

