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SPECIAL COURT FOR SIERRA LEONE

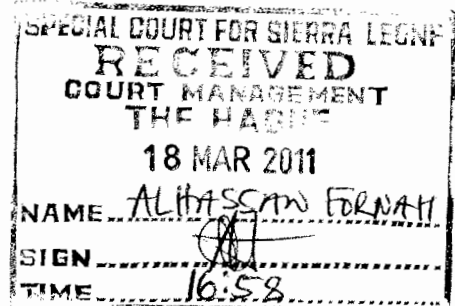
TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding Judge
Justice Richard Lussick
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Binta Mansaray

Case No.: SCSL-04-16-ES

Date: 18 March 2011



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

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

Office of the Prosecutor:

Brenda J. Hollis
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Counsel for Suspected Persons:

A. F. Serry Kamal

Office of the Principal Defender:

Claire Carlton-Hanciles

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Public with Confidential Annexes Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 31 January 2011 (“Motion”)¹ and the Corrigendum thereto, filed on 1 February 2011;²

NOTING the “Public with Confidential Annex Submission of the Registrar Pursuant to Rule 33(B) Regarding the Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 10 February 2011 (“Registrar’s Submission”);³

RECALLING the Trial Chamber’s “Order for Extension of Time”, dated 9 February 2011,⁴ wherein the Trial Chamber granted a Defence request for an extension of time for the filing of the Defence response;⁵

NOTING the “Confidential, with Annexes I and II Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 21 February 2011 (“Response”);⁶

NOTING ALSO the “Confidential Prosecution Reply to Confidential, with Annexes I and II Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone” (“Reply”), filed on 28 February 2011;⁷

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 54, 75 and 77 of the Rules of Procedure and Evidence (“Rules”);

HEREBY DECIDES AS FOLLOWS, based solely on the written submissions of the parties, pursuant to Rule 73(A) of the Rules;

I. SUBMISSIONS

Motion

1. The Prosecution submits that it has received information that Samuel Kargbo, aka Sammy Ragga (“Ragga”), contacted at least one Prosecution Witness (TF1-334) and is attempting to contact

¹ SCSL-04-16-ES -684.

² SCSL-04-16-ES -685.

³ SCSL-04-16-ES -688.

⁴ SCSL-04-16-ES -687.

⁵ SCSL-04-16-ES -686.

⁶ SCSL-04-16-ES -689.

⁷ SCSL-04-16-ES -690.

other Prosecution witnesses⁸ to bribe, intimidate or interfere with these witnesses or attempt to do so in order to persuade the witnesses to lie and recant their testimony before the Court in the hope that this will result in the release of the three AFRC convicted prisoners Brima, Kamara and Kanu⁹ from prison in Rwanda (“AFRC convicts”).¹⁰ Ragga told TFI-334 that the AFRC convicts would pay money to Prosecution witnesses to lie and change their testimony. Further, he told him that a lawyer from Ghana would talk to Prosecution witnesses on behalf of one or more of the AFRC convicts in order to convince the witnesses to recant their testimony.¹¹ Ragga said that these contacts were being made on the advice of Counsel representing the AFRC convicts, who told the convicts that if they could get key witnesses to recant their testimony, they could be released from prison or have their terms reduced.¹² Ragga told the witness that the AFRC convicts would reward him financially if he recanted his testimony, that the convicts had sufficient funds for “the project” and that Ragga also expected to benefit financially from “the deal”.¹³ Contacts with at least one Prosecution witness (TFI-334) persisted even after the witness refused the offer of money in exchange for recantation.¹⁴

2. The information also indicates that Hassan Papa Bangura, aka Bomblast (“Bomblast”), a former member of the AFRC, also contacted at least one Prosecution witness (TFI-334), and is apparently working with Ragga to contact, bribe and intimidate former Prosecution witnesses.¹⁵

3. According to information received by the Prosecution, the AFRC convict Brima Bazy Kamara, aka Bazy (“Kamara”), also attempted to talk to at least one Prosecution witness (TFI-334), and that AFRC convict Santigie Borbor Kanu, aka 55 (“Kanu”) did talk to a Prosecution witness (TFI-334). Kanu indicated to the Prosecution witness that the AFRC convicts were counting on his assistance, which the witness took to mean that Kanu wanted him to lie and change his testimony. The information indicates that the AFRC convicts may also be attempting to, or already have, contacted other Prosecution witnesses.¹⁶

⁸ Witnesses who testified for the prosecution in the case of *The Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T.

⁹ The three prisoners, Alex Tamba Brima, Santigie Borbor Kanu and Brima Bazy Kamara were all convicted on 20 June 2007 by the Special Court, of war crimes and crimes against humanity in the case of *The Prosecutor v. Brima et al*, SCSL-04-16-T and are currently serving prison sentences in Kigali, Rwanda.

¹⁰ Motion, para. 7.

¹¹ Motion, para. 9.

¹² Motion, para. 11.

¹³ Motion, para. 10.

¹⁴ Motion, para. 9 and Confidential Annex B.

¹⁵ Motion, para. 8 and Confidential Annex B.

¹⁶ Motion, para. 10 and Confidential Annex B.

4. The Prosecution therefore submits that, in light of this information, there is “reason to believe” that Ragga, Bomblast, Kanu, Kamara, and other persons not yet identified have engaged in contemptuous conduct in violation of Rules 77(A) and/or (B).¹⁷ This conduct includes:

- (i) disclosure of information, including the identity of at least two protected Prosecution witnesses (TFL-334 and TFL-033) to third parties in knowing violation of the applicable protective measures orders, contrary to Rule 77(A)(ii);¹⁸
- (ii) threatening, intimidating, offering bribes to and/or “otherwise interfering” with Prosecution witnesses, contrary to Rule 77(A)(iv) and/or Rule 77(B);¹⁹
- (iii) knowing and wilful interference with the administration of justice through breach of protective measures orders in violation of Rule 77(A)(iv).²⁰

5. The Prosecution therefore requests that the Trial Chamber, pursuant to Rule 77(C)(iii), appoint experienced independent Counsel to urgently investigate this possible contempt of the Special Court.²¹

6. The Prosecution submits, as additional and potentially relevant information, a Memorandum which reports an alleged contact of former Prosecution witnesses²² by one of the RUF convicts.²³ Finally, the Prosecution requests that, pending an investigation into the alleged conduct, the phone privileges of the AFRC convicts be suspended, or in the alternative, restricted and closely monitored to prevent the types of contact detailed above.²⁴

Registrar’s Submission

7. The Registrar submits, in relation to the Prosecution Memorandum at Confidential Annex C of the Motion, that after the Prosecution reported the incident involving the RUF convict to the Registrar, the Registrar responded on 11 October 2010, indicating that the allegations were being taken very seriously. It also informed the Prosecution of the two immediate steps that the Registrar had taken to follow up on these allegations, namely, that it had instructed WVS to investigate the allegations and informed various high-level Rwandan officials in the Prisons Service, including the Commissioner, General Rwandan Prisons Services, and the Director of Operations and Procedures,

¹⁷ Motion, para. 31.

¹⁸ Motion, paras 1, 16, 22, 32.

¹⁹ Motion, paras 1, 16, 23-26, 32.

²⁰ Motion, paras 27-28, 32.

²¹ Motion, paras 1, 32.

²² Several witnesses that testified for the Prosecution in the case of *The Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T, were allegedly threatened by one of the persons convicted by the Special Court in that trial.

²³ Motion, para. 29, referring to Memorandum, Confidential Annex C to the Motion.

²⁴ Motion, para. 30.

Rwanda Prisons Services, of these allegations and how seriously they were being taken.²⁵ The Registrar also submitted that since October 2010, it had been in constant communication with the Commissioner General.²⁶ The WVS investigation report is contained in Confidential Annex A to the Registrar's Submission.

Response

Length of Motion

8. In its Response, the Defence notes that the Motion itself is nine pages long, and Confidential Annex A, which includes information that is a substantive part of the Motion is another page and a half. The Defence therefore submits that, as the Motion is 11 pages long, it should be dismissed because it exceeds the page limits without the Prosecution having sought leave to do so in advance.²⁷

Jurisdiction

9. The Defence submits that Trial Chamber II does not have jurisdiction over this matter. The Defence argues that the conduct complained of by the Prosecution does not concern either proceedings before a Trial Chamber or the Appeals Chamber, and that therefore Rule 77 is inapplicable. The Defence submits that the Witness and Victims section can adequately evaluate and address any potential threats to or "retaliation" against witnesses who have testified before the Special Court.²⁸ It further submits that just because Trial Chamber II is still convened in the case of *Prosecutor v. Taylor*, and/or because it has previously adjudicated the AFRC case, this does not make it a *de facto* residual trial chamber possessing the jurisdiction to hear allegations of contempt stemming from proceedings that have long since closed and/or are not formally under review.²⁹ The Defence further submits that Rule 54, the general provision which authorizes a trial chamber to issue orders necessary for the purposes of an investigation, only has force during the pre-trial and trial phases of an ongoing proceeding.³⁰

Merits

10. The Defence submits that TF1-334 testified openly in the Taylor trial, and the Trial Chamber (without opposition from the Prosecution) rescinded any applicable protective measures in their entirety. Moreover, it submits that this witness testified openly in the Taylor trial about the fact that he had testified (under the same TFI number) in the AFRC and RUF trials. The Defence therefore

²⁵ Registrar's Submission, paras 5-8.

²⁶ Registrar's Submission, para. 8.

²⁷ Motion, para. 3.

²⁸ Response, paras 4-5.

²⁹ Response, para. 6.

³⁰ Response, para. 6.

submits that neither Kamara or Kanu can be found to be in breach of disclosing this witness' identity to Sammy Ragga and/or Bomblast.³¹

11. The Defence further submits that allegations that the identity of TFI-033 as a witness in the AFRC trial may have been disclosed are too vague to be credible. This witness testified in open session but with the use of a pseudonym and voice distortion as ordered by Trial Chamber I. The Defence submits that to an informed observer of the proceedings such as Sammy Ragga or TF1-334, the information revealed openly during TFI-033's testimony may have been sufficient on its own to reveal his identity. The Defence further argues that there is no indication that Ragga would have known that TFI-033 was a protected witness, such that disclosure of his identity was in violation of a court order.³²

12. The Defence submits that there is no evidence contained in Confidential Annex B of the Motion that Ragga, Bomblast, Kanu, Kamara or anyone else intimidated or attempted to intimidate TF1-334 or TFI-033. TF1-334 voluntarily met with or accepted phone calls from Ragga and Bomblast, and gave Ragga a ride around town in his car on two occasions. The Defence submits that the continued voluntary interaction between TF1-334 and Bomblast is not behaviour typical of someone who feels intimidated, and that had TF1-334 felt intimidated, one would have expected him to contact the Prosecution or WVS to complain immediately, instead of waiting until 9 December 2010. The Defence further submits that there is no indication that anyone ever talked to, much less intimidated or attempted to intimidate TFI-033, and that therefore allegations of intimidation are based solely on the Prosecution's "subjective interpretations of otherwise normal events".³³

13. The Defence disputes the notion that there is any reason to believe that the suspects or any counsel advising the AFRC convicts have offered any Prosecution witness a bribe in exchange for recanting testimony. It submits that the allegations by TF1-334 in relation to the offer of bribes by Ragga are highly speculative, and that no money was actually paid to this witness.³⁴

14. The Defence also alleges that the Prosecution allegations in relation to extensive phone communications between the AFRC convicts and the other suspects and Prosecution witnesses are

³¹ Response, para. 7.

³² Response, para. 8.

³³ Response, paras 9-11, referring to *Prosecutor v. Taylor*, SCSL-03-01-T-1119, Decision on Public with Confidential Annexes A-J and Public Annexes K-0 Defence Motion Requesting an Investigation into Contempt of Court by the Prosecutor and its Investigators, 11 November 2010 ("11 November 2010 Contempt Decision"), para. 102.

³⁴ Response, paras 12-13.

not credible, as the SCSL Prisoner Handbook provides only for telephone contact with the prisoners' families and not with non-family members.³⁵

15. With respect to the Prosecution allegation that there is reason to believe that the suspects have knowingly and wilfully breached court orders by contacting TF1-334 without leave of the court, the Defence acknowledges that Trial Chamber II's rescission of this witness' protective measures in the Taylor trial does not alter the protective measures applicable to him from the first proceedings, including a no-contact provision. The Defence argues however, that "the Prosecution has not shown how a *per se* violation of a court order necessarily interferes with the administration of justice."³⁶

16. The Defence also submits that the information contained in Confidential Annex C of the Motion, in relation to an allegation about an RUF convict, is irrelevant to the present allegations.³⁷ The Defence further submits that the urgent interim measures requested by the Prosecution are not feasible, as the Trial Chamber does not have the authority to issue orders to the Government of Rwanda, which is responsible for supervision of the use of the telephone.³⁸

Reply

Length of Motion

17. The Prosecution agrees that Annex A of the Motion could arguably be said to contain additional information that surpasses the definition of "merely additional information". The Prosecution proposes that rather than dismissing the Motion in its entirety, the Trial Chamber may either (i) consider that the Annex contains no inappropriate information and thus no issue arises; (ii) consider that the information noted by the Prosecution is inappropriate for the Annex, but that if the lines of text were added to the body of the motion do not exceed 10 pages (iii) ignore those portions of Annex A it considers contain more than additional information or (iv) disregard Annex A to the Motion and substitute Annex 2 of the Reply in which the arguably substantive parts have been removed.³⁹

Jurisdiction

18. The Prosecution submits that the Defence arguments in relation to jurisdiction are without merit, arguing that as this Trial Chamber is the only Trial Chamber remaining in the Special Court,

³⁵ Response, para. 14.

³⁶ Response, para. 16.

³⁷ Response, para. 17.

³⁸ Response, para. 18.

³⁹ Reply, para. 13.

accepting the Defence's argument would create a lacuna which provides impunity to prisoners or other individuals for violations of Rule 77 post appeal.⁴⁰

Merits

19. The Prosecution does not dispute that the protective measures of TF1-334 were rescinded. However, it argues that its submissions with respect to the disclosure of information in violation of an order were made with respect to TF1-033 and/or other protective witnesses, and not TF1-334. The Prosecution submits that there is reason to believe that the AFRC convicts had disclosed the identity of TF1-033 to third parties including Ragga, and that Ragga then disclosed this witness' identity to TF1-334 and possibly others not yet identified.⁴¹

20. The Prosecution submits that the Defence's arguments regarding intimidation are without merit, as the jurisprudence of the ICTY indicates that it is immaterial whether the witness was actually intimidated, as long as the conduct was intended to interfere with the Tribunal's due administration of justice.⁴² The Prosecution submits that the conduct gives reason to believe that there was intimidation or "otherwise interfering with a witness", as the conduct was repeated and persistent, made in person and via the telephone on six different days between 26 November and 16 December, and that many individuals, both named and unnamed were involved in the effort to get TF1-334 and others to recant their testimony. It also submits that not only high level commanders but also high-level community leaders, such as the Chairman of the APC party in America, and the Vice President of Sierra Leone had agreed to give assistance.⁴³ The Prosecution further submits that the clear requests made by the suspects were not normal events, nor do they involve "subjective interpretations of otherwise normal events" as alleged by the Defence.⁴⁴

21. The Prosecution submits that the Trial Chamber has previously held that Rules 77(A)(iv) and 77(B) include the offer of a bribe and do not require actual payment of the bribe or completion of the act.⁴⁵ In addition, it submits that by way of Rule 77(B), an attempt to bribe also qualifies as contemptuous conduct. The Prosecution further submits that the Defence's statement that there were no specific allegations as to who was to pay the money is incorrect.⁴⁶

⁴⁰ Reply, para. 3.

⁴¹ Reply, para. 4.

⁴² Reply, para. 5, referring to *Prosecutor v. Brdjanin*, IT-99-36-R77, Decision on Motion for Acquittal Pursuant to Rule 98bis Concerning Allegations against Milka Maglov, 19 March 2004 ("*Brdjanin Decision*"), para. 23.

⁴³ Reply, para. 6.

⁴⁴ Reply, para. 6.

⁴⁵ Reply, para. 7.

⁴⁶ Reply, paras 7-8.

22. In relation to the Defence's assertion that phone contact with the AFRC convicts is limited to family members, evidence from TF1-334 and several other sources indicates that they have been able to make calls to non-family members. The Prosecution submits that, as noted in Annex 1 of the Reply, RUF Convict Issa Sesay made a call to a reporter, and as indicated in Annex C of the Motion, TF1-274 informed investigators that RUF convict Augustine Gbao had called RUF commander Tom Sandy indicating that he would never forgive witnesses "who were responsible for his present predicament".⁴⁷

23. The Prosecution further submits that the urgent interim measures requested by the Prosecution are feasible as the Registrar could make a request to the Government of Rwanda to implement such measures if so directed by the Trial Chamber.⁴⁸

II. APPLICABLE LAW

24. Rule 77 sets out the law and procedure for dealing with contempt of the Special Court. The relevant parts of Rule 77 provide:

Rule 77: Contempt of the Special Court

- (A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice, including any person who:
- (i) being a witness before a Chamber, subject to Rule 90(E) refuses or fails to answer a question;
 - (ii) discloses information relating to proceedings in knowing violation of an order of a Chamber;
 - (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
 - (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;
 - (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or
 - (vi) knowingly assists an accused person to evade the jurisdiction of the Special Court.
- (B) Any incitement or attempt to commit any of the acts punishable under Sub-Rule (A) is punishable as contempt of the Special Court with the same penalties.
- (C) When a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may:

⁴⁷ Reply, para. 9.

⁴⁸ Reply, para. 11.

- (i) deal with the matter summarily itself;
- (ii) refer the matter to the appropriate authorities of Sierra Leone; or
- (iii) direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter.

[...]

- (I) If a counsel is found guilty of contempt of the Special Court pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to appear before the Special Court or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.

25. The Appeals Chamber has stated that the standard of proof in determining whether an independent investigation should be ordered into a matter of contempt is:

[...] not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of “reason to believe” that an offence may have been committed, which is the pre-condition for ordering an independent investigation.⁴⁹

26. Notwithstanding the lower standard of proof, an allegation of contempt must be *credible* enough to provide a Judge or Trial Chamber with “reason to believe” that a person may be in contempt.⁵⁰

27. Furthermore, any alleged misconduct should be brought to the attention of the Trial Chamber without undue delay.⁵¹

III. DELIBERATIONS

Preliminary Issues

1) Length of Motion

28. The Trial Chamber finds that there are two portions of Annex A that contain substantive information that surpasses the “merely additional information” that can properly be placed in an

⁴⁹ *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(I) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005 (“AFRC Appeals Decision”), para. 17.

⁵⁰ *Prosecutor v. Taylor*, SCSL-03-01-T-690, Confidential Decision on Confidential Prosecution Motion For an Investigation by Independent Counsel Into Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 8 December 2008, para. 23, referring to AFRC Appeals Chamber Decision, para. 2. See also 11 November 2010 Contempt Decision, p. 20.

⁵¹ *Prosecutor v. Taylor*, SCSL-03-01-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008, paras 14-15. See also 11 November 2010 Contempt Decision, p. 20.

annex.⁵² However, it finds that if these two portions were removed from Annex A and placed in the body of the Motion, the Motion would not exceed 10 pages. It therefore finds that the Defence argument should be dismissed.

2) Jurisdiction

29. The Defence submits that the Trial Chamber does not have jurisdiction over this matter as the conduct complained of does not concern “proceedings”. The President of the Special Court, in determining that he did not have jurisdiction over the matter, has held that “the framework of Rule 77(C) to (I) [. . .] envisages that proceedings under the Rule are to be conducted before Trial Chambers or judges thereof”.⁵³ The President’s decision is exemplified by Rule 77(A)(iv), which prohibits (inter alia) conduct that intimidates, offers a bribe, or otherwise interferes with a witness who has given evidence in proceedings before a Chamber, and by Rule 77(D), which provides that “proceedings under Sub-Rule (C)(iii) above may be assigned to be heard by a single judge of any Trial Chamber or a Trial Chamber”. Moreover, as Trial Chamber II is the only Trial Chamber remaining in the Special Court, it follows that it must have jurisdiction to deal with contempt of court in cases that have already been completed, otherwise such offences could be committed with impunity. Accordingly, the Trial Chamber finds that it has jurisdiction over the Motion.

Merits

Allegation of disclosure of information in knowing violation of an order of a Chamber (Rule 77(A)(ii))

30. The information contained in TF1-334’s statement is that Ragga called and met with him several times during the period from 26 November to 3 December 2010.⁵⁴ When Ragga met with the witness on 1 December 2010, Ragga asked him for the whereabouts of TF1-033 (using his actual name), saying that TF1-033 was one of the people that the convicts in Rwanda would like to talk to in respect to his testimony.⁵⁵

⁵² These two sections are the following: (i) “Sammy Ragga, as stated in Confidential Annex B, also sought the whereabouts of [TF1-033], indicating that he wanted to talk to him in respect of this testimony” (Confidential Annex A to the Motion, p. 14) and (ii) “The Prosecution has received no notice of any request to contact protected Prosecution witnesses who testified in the AFRC Case”. (Confidential Annex A to the Motion, p. 15).

⁵³ *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-ES-683, Decision on Public with Confidential Annexes Urgent Prosecution Motion into Contempt of the Special Court for Sierra Leone, 10 January 2011, para. 11.

⁵⁴ Confidential Annex B, pp. 1-3.

⁵⁵ Confidential Annex B, p. 3.

31. The Trial Chamber recalls that the Prosecution does not dispute that TF1-334, although originally protected by measures ordered by Trial Chamber I,⁵⁶ opted to rescind these measures and testified openly under his own name in the case of *Prosecutor v. Taylor*.⁵⁷

32. The Trial Chamber recalls that TFI-033 is subject to protective measures ordered by the Trial Chamber protecting his name and other identifying information from disclosure to the public and media.⁵⁸ Accordingly, based on the information before it, the Trial Chamber has reason to believe that a person or persons may be in contempt of the Special Court by disclosing to third parties, including TF1-334, the identity of witness TFI-033 in violation of protective measures ordered by the Trial Chamber.

Allegations of Offering a Bribe to a Witness, Intimidation and other Interference with Witnesses (Rule 77(A)(iv))

33. The information contained in TFI-334's statement is that Ragga called and met with him several times during the period from 26 November to 3 December 2010. Ragga told him that he had received a call from the AFRC convicts in Rwanda and that they wanted him to talk to the witness in order to persuade the witness to recant his testimony.⁵⁹ The witness said he was not interested in recanting his testimony, and Ragga tried to convince him by telling him, "this was something I will have gain financial benefit from as the guys were ready to give me money".⁶⁰

34. During the witness's meeting with Ragga on 27 November 2010, Ragga made a call, and then passed the phone to the witness, saying that Bomblast was on the phone. The witness spoke with the person on the phone, who told the witness to cooperate with the convicts in Rwanda.⁶¹

35. On 29 November 2010, while the witness was with Ragga, Ragga received a call which he said was from Kamara, and attempted to pass the phone to the witness, who said he did not want to talk to Kamara. Ragga later received a phone call from a person he identified as Kanu. The witness spoke

⁵⁶ Prosecution Reply, para. 6, referring to *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004 ("5 July 2004 Sesay Protective Measures Decision"); *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, List of Protective Measures Received from Trial Chamber I and Other Information Filed Pursuant to Scheduling Order of 28 January 2005, 1 February 2005.

⁵⁷ Prosecution Reply, para. 6, referring to *Prosecutor v. Taylor*, SCSL-03-01-T-472, Decision on Confidential and Urgent Defence Motion to Rescind or Vary Protective Measures for Prosecution Witness TF1-334, 14 April 2008; *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 16 April 2008, p. 7848.

⁵⁸ 5 July 2004 Sesay Protective Measures Decision.

⁵⁹ Confidential Annex B, p. 1.

⁶⁰ Confidential Annex B, p. 2.

⁶¹ Confidential Annex B, p. 1.

to this person, who told the witness he was counting on him to assist them, and explained that they were “putting modalities in place to compensate” him if he rendered the assistance.⁶²

36. The information contained in the statement of the Prosecution investigator is that on 16 December 2010, TF1-334 informed him that Bomblast and Ragga had met with him and told him they were going to meet with a lawyer who was acting on behalf of the AFRC convicts in Rwanda to contact witnesses to get them to recant their testimonies. During the meeting, Bomblast asked TF1-334 how much money he wanted for the deal, and TF1-334 responded that “this is a big deal; you decide what you want to give me”.⁶³ Bomblast and Ragga met with TF1-334 again later that day, and told him they had spoken to Kamara and Kanu and that the convicts had promised that modalities were being put in place to ensure that the witness received what had been promised earlier. Bomblast also told TF1-334 that he should not be afraid of helping the convicts, and that “if there is anybody that TF1-334 should be afraid of should be them; but as long as they have given him the go ahead he should do so without fear”.⁶⁴

37. Although there is no evidence that money was actually provided to TF1-334, the Trial Chamber has reason to believe that a person or persons, may be in contempt by offering a bribe to Witness TF1-334 who had given evidence in proceedings before the Trial Chamber, in order to urge him to recant his prior testimony, contrary to Rule 77(A)(iv) of the Rules.

38. The Trial Chamber recalls that the ICTY has held that “intimidation of a witness as contempt of court is a crime of conduct, which does not require proof of a result. Whether the witness was actually intimidated is immaterial; the Prosecution need only prove that the conduct in question was intended to interfere with the Tribunal’s due administration of justice”.⁶⁵ On the basis of the information disclosed in Annex B the Trial Chamber has reason to believe that a person or persons, including Ragga and Bomblast may be in contempt of the Special Court by intimidating a witness and thus influence the outcome of the AFRC case in violation of Rule 77(A)(iv) and Rule 77(B).

39. The Trial Chamber recalls that the ICTY has held that the offence of “otherwise interfering with a witness” can encompass conduct of a similar gravity to intimidation that “seeks to influence

⁶² Confidential Annex B, p. 2.

⁶³ Confidential Annex B.

⁶⁴ Confidential Annex B.

⁶⁵ *Brdjanin Decision*, para. 23.

the outcome of a pending case by interfering with a witness or potential witness” and that “it is not necessary for the Prosecution to prove that the witness was actually deterred or influenced”.⁶⁶

40. According to the information contained in the statement of TF1-334 and the Prosecution investigator, Ragga persistently contacted TF1-334 via telephone and in person, over the course of six days, alleging that he had been sent by the AFRC convicts to persuade the witness to agree to recant his prior testimony. He further tried to persuade TF1-334 to cooperate by telling him that a lawyer from Ghana would come to visit him. Ragga further told TF1-334 that the Chairman of the APC party in America had been informed about the matter and he in turn requested the Vice-President to “render some assistance in helping the convicts out of jail in Rwanda.” The Vice-President of Sierra Leone allegedly promised “to give assistance within his reach.” Ragga tried to further persuade the witness to make up his mind by having him speak with Bomblast, Kanu and Kamara.

41. On the basis of the repeated and persistent attempts to persuade TF1-334 to recant his testimony, the Trial Chamber has reason to believe that a person or persons, including Ragga, Bomblast and Kanu, may be in contempt by “otherwise interfering” with witnesses by urging them to recant their testimony, and thus to influence the outcome of the AFRC case, in violation of Rules 77(A)(iv) and 77(B).

42. However, there is not sufficient evidence in Confidential Annex B for the Trial Chamber to have reason to believe that TF1-033 was in fact contacted by Ragga or any other of the suspects, nor that he was offered a bribe, threatened or intimidated.

Allegation of Violation of Court Order Prohibiting Direct or Indirect Contact with Protected witnesses (Rule 77(A)(iv))

43. The Prosecution alleges that, in contacting witness TF1-334, Ragga, Bomblast, Kamara and Kanu violated court ordered protective measures prohibiting contact by the Defence Team with certain protected Prosecution witnesses, which falls within the ambit of Rule 77(A) as it constitutes an interference with the administration of justice.

44. The Trial Chamber notes that the only protective measure prohibiting contact with Prosecution witnesses is one that specifically prohibits contact by *Defence Counsel* without leave of the Trial

⁶⁶ *Brdjanin* Decision, para. 28. See also *Prosecutor v. Taylor*, SCSL-03-01-T-1218, Decision on the Public with Confidential Annexes A-E and Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 25 February 2011, para. 43.

Chamber,⁶⁷ and that there is no protective measure prohibiting contact with witnesses by other persons. The Trial Chamber finds that there is not sufficient evidence to give it reason to believe that any of the suspects were acting on behalf of Defence Counsel, and therefore no reason to believe that this protective measure has been violated.

Urgent Interim Measure

45. The Trial Chamber finds that the urgent interim measure requested by the Prosecution, namely that the phone privileges of Kanu and Kamara be suspended, or in the alternative, restricted and closely monitored, is not appropriate at this stage of the proceedings, as the Registrar is already in contact with the prison authorities in Rwanda.

FOR THE ABOVE REASONS

GRANTS THE MOTION in part;

DIRECTS the Registrar, pursuant to Rule 77(C)(iii) of the Rules, to appoint an experienced independent counsel to investigate the allegations that a person or persons, including Ragga, Bomblast, Kanu and Kamara may be in contempt of the Special Court by:

- (i) disclosing information relating to proceedings in knowing violation of an order of a Chamber⁶⁸ by revealing the identity of protected witness TF1-033 to third parties, contrary to Rule 77(A)(ii);
- (ii) offering a bribe to witness TF1-334, who has given evidence in proceedings before the Trial Chamber, contrary to Rules 77(A)(iv) and Rule 77(B) of the Rules.
- (iii) intimidating and “otherwise interfering with” witness TF1-334, who has given evidence in proceedings before the Trial Chamber, by attempting to compel him to recant his testimony, contrary to Rules 77(A)(iv) and Rule 77(B) of the Rules;

FURTHER DIRECTS that, pursuant to Rule 77(C)(iii) of the Rules, the independent counsel appointed by the Registrar should report back to the Trial Chamber as to whether there are sufficient


⁶⁷ 5 July 2004 Sesay Protective Measures Decision, provision (o), which provides that “The Defence Counsel shall make a written request to the Trial Chamber or Judge thereof, for permission to contact any Prosecution witness who is a protected witness or any relative of such person, and such request shall be timely served on the Prosecution. At the direction of the Trial Chamber or a Judge thereof, the Prosecution shall contact the protected person and ask for his or her consent, or the parent’s or guardian’s consent if that person is under the age of 18, to an interview by the Defence and shall undertake the necessary arrangements to facilitate such contact”.

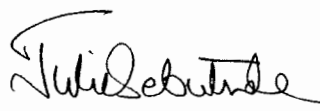
⁶⁸ 5 July 2004 Sesay Protective Measures Decision.

grounds for instigating contempt proceedings; any report produced by the independent Counsel in this regard should be kept under seal by the Registrar and distributed only to the Trial Chamber.

Done at The Hague, The Netherlands, this 18th of March 2011.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


Justice Julia Sebutinde

