



**SPECIAL COURT FOR SIERRA LEONE**

**IN THE APPEALS CHAMBER**

**Before:** Justice Emmanuel Ayoola, Presiding  
Justice Renate Winter  
Justice Jon Moadeh Kamanda

**Registrar:** Ms. Binta Mansaray

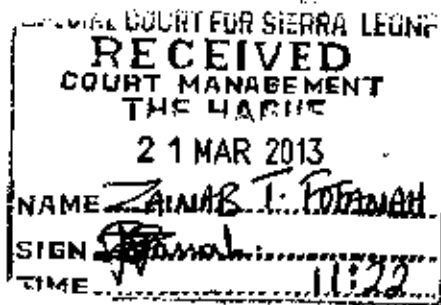
**Date:** 21 March 2013

<b>THE INDEPENDENT COUNSEL</b>	<b>Against</b>	<b>HASSAN PAPA BANGURA SAMUEL KARGBO SANTIGIE BORBOR KANU BRIMA BAZZY KAMARA (Case No. SCSL-11-02-A)</b>
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Public  
**JUDGMENT IN CONTEMPT PROCEEDINGS**

**Independent Counsel:**

Mr. Robert L. Herbst



Case No. SCSL-11-02-A

**Defence Counsel for Bangura**

Mr. Melron Nicol-Wilson

**Defence Counsel for Kargbo**

Mr. Charles A. Taku

**Defence Counsel for Kanu**

Mr. Kevin Metzger

**Defence Counsel for Kamara**

Mr. Abdul Serry Kamal

**Principal Defender**

Ms Claire Carlton-Hanciles

21 March 2013

## I. INTRODUCTION

1. The Appeals Chamber of the Special Court for Sierra Leone (“Appeals Chamber” and “Special Court”), composed of Justice Emmanuel Ayoola, Presiding, Justice Renate Winter and Justice Jon M. Kamanda, sitting in accord with the President’s “Order Assigning Judges to a Case Before the Appeals Chamber” of 23 October 2012,<sup>1</sup> is seized of appeals by Samuel Kargbo, (*aka* Sammy Ragga),<sup>2</sup> Santigie Borbor Kanu<sup>3</sup> and Brima Bazy Kamara,<sup>4</sup> from the Judgment of 25 September 2012, filed on 1 October 2012 (“Trial Judgment”),<sup>5</sup> and the Sentencing Judgment of 11 October 2012, filed on 16 October 2012 (“Sentencing Judgment”),<sup>6</sup> rendered by the Single Judge of Trial Chamber II (“Single Judge”) in the case of *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, Case No. SCSL-11-02-A (“*Bangura et al.*,” Case).

### A. Order in lieu of Indictment

2. By the Order in lieu of Indictment, attached to the Decision on the Report of the Independent Counsel of 24 May 2011,<sup>7</sup> Hassan Papa Bangura, (*aka* Bomblast), Samuel Kargbo, (*aka* Sammy Ragga), Santigie Borbor Kanu and Brima Bazy Kamara were charged with one count of knowingly and wilfully interfering with the Special Court’s administration of justice by offering a bribe to a witness who has given testimony before a Chamber, in violation of Rule 77(A)(iv) of the Rules of Procedure and Evidence of the Special Court, (“Rules”), (Count 1), and one count of knowingly and wilfully interfering with the Special Court’s administration of justice by otherwise interfering with a witness who has given testimony before a Chamber, in violation of Rule 77(A)(iv), (Count 2).<sup>8</sup> In addition, Kamara was charged pursuant to Rule 77 (A)(ii) with one count of knowingly and wilfully interfering with the Special Court’s administration of justice by disclosing information relating to proceedings in knowing violation of an order of a Chamber,

<sup>1</sup> *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL-11-02-A-077, Order Assigning Judges to a Case Before the Appeals Chamber, 23 October 2012 [Order Assigning Judges].

<sup>2</sup> *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL 2011-02-A-073, Notice of Partial Appeal of Samuel Kargbo, 19 October 2012 [Kargbo Appeal].

<sup>3</sup> *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL-11-02-A-074, Notice of Appeal in respect of Santigie Borbor Kanu, 22 October 2012 [Kanu Appeal].

<sup>4</sup> *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL-11-02-A-076, Notice of Appeal in respect of Brima Bazy Kamara, 22 October 2012, filed on 23 October 2012 [Kamara Appeal].

<sup>5</sup> *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, Transcript, 25 September 2012; *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL-11-02-T-66, Judgment in Contempt Proceedings, 25 September 2012, Filed 1 October 2012 [Trial Judgment].

<sup>6</sup> *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, Sentencing Judgment, Transcript, 11 October 2012; *Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL-11-02-T-071, Sentencing Judgment in Contempt Proceedings, 11 October 2012, filed on 16 October 2012 [Sentencing Judgment].

<sup>7</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-ES-694, Trial Chamber, Decision on the Report of the Independent Counsel, 24 May 2011 [*Brima et al.*, Decision on the Report].

<sup>8</sup> *Brima et al.*, Decision on the Report, p. 3 and Annex A: Order in lieu of Indictment, pp. 1-4.





(Count 3).<sup>9</sup> Kargbo entered into a plea agreement with the Independent Counsel in which he agreed to: (i) plead guilty to the charges in the Order in lieu of Indictment; (ii) continue to cooperate; and (iii) be available as a witness to provide truthful testimony at trial.<sup>10</sup>

3. On 15 July 2011 Kargbo pleaded guilty,<sup>11</sup> while Bangura, Kanu and Kamara pleaded not guilty in relation to all the Counts with which they were charged.<sup>12</sup>

**B. Verdict and Sentence**

4. The Single Judge ascertained that Kargbo's guilty plea was entered voluntarily, freely, unequivocally and with full information of the implication of the plea.<sup>13</sup> After considering the statement of witness TFI-334 and the statement of Kargbo, the Single Judge found that the evidence showed two aspects of persuasion:

(1) the offer of money in order that a witness would recant their evidence in order to affect the outcome of a verdict of the Court ... (2) that, over and above the bribery, there was active, persistent persuasion.<sup>14</sup>

5. The Single Judge therefore found that there was sufficient evidence to find beyond reasonable doubt that Kargbo knowingly and wilfully interfered with the Court's administration of justice by offering a bribe to and otherwise interfering with a witness.<sup>15</sup> Accordingly, the Single Judge found him guilty on both Counts 1 and 2,<sup>16</sup> and released him on bail pending sentencing.<sup>17</sup> The Single Judge ruled that "it is in the interests of justice that Samuel Kargbo be sentenced following the trial of his co-accused ..."<sup>18</sup>

6. On 25 September 2012, the Single Judge delivered the Trial Judgment in the case,<sup>19</sup> followed by written reasons on 1 October 2012.<sup>20</sup>

7. The Single Judge found Bangura and Kanu guilty on Count 1 of offering a bribe to TFI-334, a witness who has given testimony before a Chamber.<sup>21</sup> Kamara was found not guilty on Count 1.<sup>22</sup>

<sup>9</sup> *Brima et al.*, Decision on the Report, p. 3 and Annex A: Order in lieu of Indictment, pp. 4, 20-22.

<sup>10</sup> *Bangura et al.*, Transcript, 15 July 2011, pp. 3-4.

<sup>11</sup> *Bangura et al.*, Transcript, 15 July 2011, pp. 17, 18.

<sup>12</sup> *Bangura et al.*, Transcript, 15 July 2011, pp. 9, 10, 13, 15, 18, 19.

<sup>13</sup> *Bangura et al.*, Transcript, 15 July 2011, pp. 17, 18.

<sup>14</sup> *Bangura et al.*, Transcript, 15 July 2011, pp. 30-33.

<sup>15</sup> *Bangura et al.*, Transcript, 15 July 2011, p. 33.

<sup>16</sup> *Bangura et al.*, Transcript, 15 July 2011, pp. 33, 34.

<sup>17</sup> *Bangura et al.*, Transcript, 15 July 2011, p. 58.

<sup>18</sup> *Bangura et al.*, SCSL-11-02-PT-024, Scheduling Order for the Conduct of the Trial, 1 June 2012.

<sup>19</sup> *Bangura et al.*, Transcript, 25 September 2012.

<sup>20</sup> Trial Judgment.

<sup>21</sup> *Bangura et al.*, Transcript, 25 September 2012, pp. 2511, 2512; Trial Judgment, pp. 182, 183.

8. The Single Judge also found all three Accused guilty on Count 2 of otherwise interfering with TF1-334, a witness who has given testimony before a Chamber.<sup>23</sup>

9. Kamara was also found guilty on Count 3 of disclosing the identity of protected witness TF1-033, in knowing violation of an order of the Chamber.<sup>24</sup>

10. The Sentencing Judgment was delivered on 11 October 2012, followed by written reasons on 16 October 2012.<sup>25</sup> Bangura was sentenced to 18 months imprisonment for each of the two counts on which he was convicted to be served concurrently.<sup>26</sup> The Single Judge also ordered that the period he served on remand and a notional period for the human rights abuses he suffered whilst he was incarcerated without trial be deducted from his sentence, and, that he serve an effective sentence of 12 months' imprisonment.<sup>27</sup> Kargbo was sentenced to 18 months imprisonment for each of the two counts on which he was convicted to be served concurrently.<sup>28</sup> His entire sentence was suspended by the Single Judge in light of his guilty plea, his cooperation with the Special Court, his acceptance of wrongdoing and his honest admission of that wrongdoing, provided that he be of good behaviour for a period of two years from the date of the Sentencing Judgment.<sup>29</sup> The Single Judge also released him from the terms and conditions of his bail.<sup>30</sup>

11. Kanu was sentenced to two years imprisonment for each of the two counts on which he was convicted. The Single Judge set his effective sentence at 1 year and 50 weeks imprisonment on each Count,<sup>31</sup> to be served concurrently, but consecutively on his existing sentence.<sup>32</sup> Kamara was sentenced to two years imprisonment for each of the two counts on which he was convicted.<sup>33</sup> The Single Judge set his effective sentence at 1 year and 50 weeks imprisonment on each Count,<sup>34</sup> to be served concurrently but consecutively on his existing sentence.

### C. Summary of the Trial Judgment

12. The Single Judge found Bangura guilty of knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to witness TF1-334, who has given

<sup>22</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2512; Trial Judgment, para. 685 and pp. 182, 183.

<sup>23</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2511; Trial Judgment, p. 182.

<sup>24</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2512; Trial Judgment, pp. 182, 183.

<sup>25</sup> Sentencing Judgment.

<sup>26</sup> *Bangura et al.*, Transcript, 11 October 2012, pp 2618, 2619; Sentencing Judgment, paras 91, 101.

<sup>27</sup> *Bangura et al.*, Transcript, 11 October 2012, p. 2619; Sentencing Judgment, para. 91.

<sup>28</sup> *Bangura et al.*, Transcript, 11 October 2012, p. 2619; Sentencing Judgment, paras 92, 101.

<sup>29</sup> *Bangura et al.*, Transcript, 11 October 2012, p. 2619; Sentencing Judgment, paras 92, 101.

<sup>30</sup> *Bangura et al.*, Transcript, 11 October 2012, p. 2619; Sentencing Judgment, para. 92.

<sup>31</sup> *Bangura et al.*, Transcript, 11 October 2012, p. 2624; Sentencing Judgment, paras 100, 101.

<sup>32</sup> *Bangura et al.*, Transcript, 11 October 2012, p. 2620; Sentencing Judgment, paras 93, 101.

<sup>33</sup> *Bangura et al.*, Transcript, 11 October 2012, p. 2620; Sentencing Judgment, para. 94, 101.

testimony before a Chamber, in violation of Rule 77(A)(iv) of the Rules of Procedure and Evidence.<sup>35</sup> The Single Judge also found him guilty of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with witness TF1-334 who has given testimony before a Chamber, in violation of Rule 77(A)(iv).<sup>36</sup>

13. The Single Judge found, *inter alia* that: on 30 November and early December 2010, Bangura contacted witness TF1-334 and put pressure on him to cooperate with "the men in Rwanda" and to "remember that the Special Court did not do anything for him";<sup>37</sup> Bangura put pressure on Kargbo and that he did so because of his superior position in relation to both men;<sup>38</sup> Bangura knowing TF1-334 was a witness in the *AFRC* trial discussed money with him to change his evidence on a date in late November 2010. (between 27 November and 3 December); the discussion clearly conveyed an offer that money would be forthcoming if TF1-334 agreed and changed his evidence.<sup>39</sup> Further, the Single Judge found that Bangura knew that the intention was to have witness TF1-334 change his evidence given in the *AFRC* trial and that Bangura knew this would change the outcome of the conviction and/or sentence.<sup>40</sup> In relation to the occasion of offering the money to TF1-334 during the trip to the lawyer Mansaray, the Single Judge found that the event occurred outside the indictment period of Count 1 (offering a bribe), but within the indictment period of Count 2 (otherwise interfering with the witness).<sup>41</sup>

14. The Single Judge found Kanu guilty of knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to witness TF1-334, in violation of Rule 77(A)(iv) of the Rules of Procedure and Evidence<sup>42</sup> and of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with witness TF1-334 who has given testimony before a Chamber, in violation of Rule 77(A)(iv).<sup>43</sup>

15. The Single Judge found Kanu's words clearly conveyed to TF1-334 that he was to revisit his evidence; that talk of finance being put in place and modalities being arranged clearly indicated a willingness to pay TF1-334; and, an intention to influence him.<sup>44</sup> The statements and offer of a

<sup>34</sup> *Bangura et al.*, Transcript, 11 October 2012, p. 2625; Sentencing Judgment, paras 100, 101.

<sup>35</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2511; Trial Judgment, p. 182.

<sup>36</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2511; Trial Judgment, p. 182.

<sup>37</sup> Trial Judgment, paras 669, 681, 683.

<sup>38</sup> Trial Judgment, paras 681, 622.

<sup>39</sup> Trial Judgment, para. 681.

<sup>40</sup> Trial Judgment, paras 669, 680.

<sup>41</sup> Trial Judgment, para. 678.

<sup>42</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2511; Trial Judgment, p. 182.

<sup>43</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2511; Trial Judgment, p. 182.

<sup>44</sup> Trial Judgment, para. 664.

bribe, as found by the Single Judge, were made with the clear intent and knowledge that it could change a Court decision and thereby interfere with the Court's administration of justice.<sup>45</sup>

16. Kamara was found not guilty of knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to witness TF1-334, who has given testimony before a Chamber.<sup>46</sup> However, the Single Judge found Kamara guilty of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with witness TF1-334 who has given testimony before a Chamber, in violation of Rule 77(A)(iv).<sup>47</sup> Furthermore, the Single Judge found Kamara guilty of knowingly and wilfully interfering with the Special Court's administration of justice by disclosing the identity of protected witness TF1-033, in knowing violation of an order of the Chamber, and in violation of Rule 77(A)(ii).<sup>48</sup>

17. The Single Judge having found the evidence that Kamara talked of money inconclusive found that Count 1 (offering a bribe) was not proved beyond reasonable doubt.<sup>49</sup> However, she found that on 30 November 2010, Kamara and Kanu spoke to Kargbo and that the subject of that conversation was whether Kargbo had spoken to TF1-334 about changing his evidence.<sup>50</sup> It was also found that the pressure from Kamara and Kanu to Kargbo, who, in turn, continued to put pressure on TF1-334 to conform to the request to change his testimony, continued and that this included a call on 7 December 2010.<sup>51</sup> The Single Judge also found that Kamara instructed others to pressure TF1-334 to help and to influence TF1-334 and that he did so with the clear knowledge and intention of having TF1-334 change his evidence and achieve a change in a Court decision.<sup>52</sup> It was found that Kamara, knowingly and wilfully, interfered with a witness through his instructions to Bangura and Kargbo, with the intent to interfere with the Special Court's administration of justice, instructions that Bangura and Kargbo carried out.<sup>53</sup> It was also established that Kamara knew of Bangura's superior position from their years in the army together.<sup>54</sup> Further, the Single Judge found that Kamara gave Kargbo the name of a protected witness TF1-033, whom he knew or must have known was a protected witness during the trial.<sup>55</sup> Thus, the Single Judge found Kamara guilty of knowingly and wilfully disclosing information relating to the proceedings in knowing violation of a

<sup>45</sup> Trial Judgment, para. 664.

<sup>46</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2512; Trial Judgment, para. 685 and pp. 182, 183.

<sup>47</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2512; Trial Judgment, pp. 182, 183.

<sup>48</sup> *Bangura et al.*, Transcript, 25 September 2012, p. 2512; Trial Judgment, pp. 182, 183.

<sup>49</sup> Trial Judgment, para. 685.

<sup>50</sup> Trial Judgment, para. 656.

<sup>51</sup> Trial Judgment, para. 674.

<sup>52</sup> Trial Judgment, para. 684.

<sup>53</sup> Trial Judgment, para. 684.

<sup>54</sup> Trial Judgment, para. 622.

<sup>55</sup> Trial Judgment, para. 673.





Court's order, by revealing the identity of TF1-033 to Kargbo on or about 29 November – 1 December 2010.<sup>56</sup>

#### **D. Notices and Grounds of Appeal**

18. On 19 October 2012, Kargbo filed his "Notice of Partial Appeal".<sup>57</sup> He does not appeal either the conviction or the sentence, but submits that the Single Judge erred: (i) "in failing to provide an adequate reasoned opinion, or any, on a factual and legal matter appropriately brought to its attention in the course of the proceedings and at the end of the trial";<sup>58</sup> (ii) "in law in not according due weight to the severity of the threats against Samuel Kargbo and members of his family as a result of his co-operation and testimony against co-accused";<sup>59</sup> and (iii) "in failing to comply with Article 21 and Rule 75 of the Rules... in making appropriate orders of protective measures in favour of Samuel Kargbo".<sup>60</sup>

19. On 23 October 2012, Kamara filed his Notice of Appeal.<sup>61</sup> His Grounds of Appeal are not clearly set out in the Notice of Appeal. However, he appeals his conviction and sentence which he describes as "being inordinately high taking into account it would run consecutively with [his] sentence".<sup>62</sup>

20. On 23 October 2012, Kanu filed his Notice of Appeal<sup>63</sup> against conviction and sentence containing twenty seven Grounds, which is remarkable for its non-compliance with the relevant Practice Direction,<sup>64</sup> both in form and contents. On 30 October 2012, the Appeals Chamber issued Decision on Bangura's Motion for Extension of Time to File Grounds of Appeal with Annex A – Notice of Appeal, granting Bangura an extension of time of 3 days from the Decision to re-file his Notice and Grounds of Appeal.<sup>65</sup> Bangura did not file a proper Notice of Appeal within the extended time granted by the Appeals Chamber.

<sup>56</sup> Trial Judgment, para. 673.

<sup>57</sup> Kargbo Appeal.

<sup>58</sup> Kargbo Appeal, p. 5 (para. E)1)).

<sup>59</sup> Kargbo Appeal, p. 5 (para. E)2)).

<sup>60</sup> Kargbo Appeal, p. 5 (para. E)3)).

<sup>61</sup> Kamara Appeal.

<sup>62</sup> Kamara Appeal, para. 25.

<sup>63</sup> Kanu Appeal.

<sup>64</sup> Practice Direction for Certain Appeals Before the Special Court, 30 September 2004 [2004 Practice Direction].

<sup>65</sup> *Bangura et al.*, SCSL-11-02-A-078, Appeals Chamber, Decision on Bangura's Motion for Extension of Time to File Grounds of Appeal with Annex A – Notice of Appeal, 30 October 2012 [Decision on Bangura's Motion for Extension of Time].

21. On 31 October 2012, the Independent Counsel filed his Response to the Appellants' notices and grounds of appeal.<sup>66</sup> The Independent Counsel's Response was filed out of time with respect to Kargbo's appeal, but the Independent Counsel did not seek an extension of the deadline for filing same.<sup>67</sup>

22. On 8 November 2012, with leave of the Appeals Chamber,<sup>68</sup> the Independent Counsel filed a Corrected Response to the Parties' Notices of Appeal and Submissions, with an annex containing the corrected signature page of the Prosecutor's Response.<sup>69</sup>

23. On 19 November 2012, with leave of the Appeals Chamber,<sup>70</sup> Kanu filed his Reply thereto.<sup>71</sup>

## II. STANDARD OF REVIEW ON APPEAL

24. The Appeals Chamber adopts the opinion that the "settled standard of review for appeals against judgments also applies to appeals against convictions for contempt",<sup>72</sup> and recalls the applicable standards of review on appeal pursuant to Article 20 of the Statute of the Special Court, ("Statute") and Rule 106 already amply stated in several of its decisions.<sup>73</sup>

25. Since much of Kanu's Appeal turns on the alleged errors of fact, the Appeals Chamber considers it expedient to state, once again, the standard of review on appeal in relation to errors of

<sup>66</sup> *Bangura et al.*, SCSL-11-02-A-079, Prosecutor's Response to Partial Notice of Appeal and Submissions of Samuel Kargbo and to Notices of Appeal and Submissions of Hassan Papa Bangura, Santigie Borbor Kanu and Brima Bazy Kamara, 31 October 2012 [Independent Counsel Response of 31 October].

<sup>67</sup> Article I.3, 2004 Practice Direction.

<sup>68</sup> *Bangura et al.*, SCSL-11-02-A-082, Appeals Chamber, Decision on Prosecution Motion for Leave to Substitute Correct Final Signature Page of Prosecutor's Response to Partial Notice of Appeal and Submissions of Samuel Kargbo and to Notices of Appeal and Submissions of Hassan Papa Bangura, Santigie Bobor Kanu and Brima Bazy Kamara, with Annex Containing Corrected Prosecutor's Response, 8 November 2012 [Decision on Motion to Substitute Final Page of Independent Counsel's Response of 31 October].

<sup>69</sup> *Bangura et al.*, SCSL-11-02-A-083, Prosecutor's Corrected Response to Partial Notice of Appeal and Submissions of Samuel Kargbo and to Notices of Appeal and Submissions of Hassan Papa Bangura, Santigie Bobor Kanu and Brima Bazy Kamara, with Annex Containing Corrected Prosecutor's Response, 8 November 2012 [Independent Counsel Response].

<sup>70</sup> *Bangura et al.*, SCSL-11-02-A-086, Appeals Chamber, Decision on Kanu Application for Extension of Time to Reply to Prosecutor's Corrected Response to Notice of Appeal, 19 November 2012 [Decision on Kanu Application for Extension of Time].

<sup>71</sup> *Bangura et al.*, SCSL-11-02-A-087, Kanu Reply to Prosecutor's Corrected Response to Notice of Appeal, 19 November 2012 [Kanu Reply].

<sup>72</sup> See, *In the Case Against Florence Hartmann*, IT-02-54-R77.5-A, Appeals Chamber, Judgment, 19 July 2011, para. 7 [Hartmann Contempt Appeal Judgment]; *In the Case Against Vojislav Šešelj*, IT-03-67-R77.2-A, Appeals Chamber, Judgment, 19 May 2012, para. 9 [Šešelj Contempt Appeal Judgment]; *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Appeals Chamber, Judgment, 9 May 200, para.11 [Blagojević and Jokić Contempt Appeal Judgment]; *Prosecutor v. Marijačić and Rebić*, IT-95-14-R77.2-A, Appeals Chamber, Judgment, 27 September 2006, para.15 [Marijačić and Rebić Contempt Appeal Judgment].



fact. Likewise, the Appeals Chamber will reiterate the standard of review on appeal in relation to defective submissions.

#### A. Errors of Fact

26. The Appeals Chamber will not lightly overturn findings of fact reached by a Trial Chamber.<sup>74</sup> It will give a margin of deference to the Trial Chamber that received the evidence at trial, as the Trial Chamber is best-placed to assess the evidence, including the demeanour of witnesses.<sup>75</sup> The Appeals Chamber has adopted the statement of general principle that:

[T]he task of hearing, assessing, and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of evidence is “wholly erroneous” may the Appeals Chamber substitute its own finding for that of the Trial Chamber.<sup>76</sup>

27. The Appeals Chamber will only interfere with the Trial Chamber’s factual findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.<sup>77</sup> An appellant alleging an error of fact must provide details of the alleged error and state with precision how the error of fact occasioned a miscarriage of justice.<sup>78</sup> The Appeals Chamber has defined a miscarriage of justice as “a grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime.”<sup>79</sup> For an error to be one that occasioned a miscarriage of justice, it must have been critical to the verdict reached.<sup>80</sup>

#### B. Defective Submissions

28. The Appeals Chamber has an inherent discretion to find that any of the Parties’ submissions do not merit a reasoned opinion in writing and summarily dismiss arguments that are evidently unfounded. For the Appeals Chamber to be able to assess a Party’s arguments, the Party should set

<sup>73</sup> See, *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-A-1321, Appeal Judgment, 26 October 2009, paras 30-35 [*Sesay et al.*, Appeal Judgment]; *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A-829, Appeals Chamber, Judgment, 28 May 2008, paras 32-36. [*Fofana and Kondewa* Appeal Judgment].

<sup>74</sup> *Sesay et al.*, Appeal Judgment, para. 32; *Fofana and Kondewa* Appeal Judgment, para. 33.

<sup>75</sup> *Sesay et al.*, Appeal Judgment, para. 32; *Fofana and Kondewa* Appeal Judgment, para. 33.

<sup>76</sup> *Sesay et al.*, Appeal Judgment, para. 32, quoting *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Appeals Chamber, Judgment, 23 October 2001, para. 30 [*Kupreškić et al.*, Appeal Judgment]; *Fofana and Kondewa* Appeal Judgment, para. 34.

<sup>77</sup> *Sesay et al.*, Appeal Judgment, para. 32; *Fofana and Kondewa* Appeal Judgment, para. 33.

<sup>78</sup> *Sesay et al.*, Appeal Judgment, para. 32.

<sup>79</sup> *Sesay et al.*, Appeal Judgment, para. 32.

<sup>80</sup> *Sesay et al.*, Appeal Judgment, para. 32.

out his/her Grounds of Appeal clearly, logically and exhaustively.<sup>81</sup> Accordingly, submissions that are obscure, contradictory, vague or that suffer from other formal and manifest insufficiencies may, on that basis, be summarily dismissed without detailed reasoning.<sup>82</sup> The Appeals Chamber hereby reiterates some examples of defective submissions.

29. As a general rule, where an appellant's references to the Trial Judgment or the evidence are missing, vague or incorrect, the Appeals Chamber may summarily dismiss the ground of appeal or reject submissions advanced in support thereof.<sup>83</sup> The Appeals Chamber will, as a general rule, summarily dismiss undeveloped arguments and alleged errors, as well as submissions where the appellant fails to articulate the precise error committed by the Trial Chamber.<sup>84</sup>

30. Where the Appeals Chamber finds that an appellant merely asserts that the Trial Chamber failed to consider relevant evidence, without showing that no reasonable trier of fact, based on the totality of the evidence, could have reached the same conclusion as the Trial Chamber did, or without showing that the Trial Chamber completely disregarded the evidence, it will, as a general rule, summarily dismiss that alleged error or argument.<sup>85</sup>

31. As a general rule, mere assertions that the Trial Chamber erred in its evaluation of the evidence, such as submissions that the Trial Chamber failed to give sufficient weight to certain evidence, or should have interpreted evidence in a particular manner, are liable to be summarily dismissed.<sup>86</sup> Similarly, where an appellant merely seeks to substitute his/her own evaluation of the evidence for that of the Trial Chamber, such submissions may be dismissed without detailed reasoning.<sup>87</sup> An appellant must address the evidence the Trial Chamber relied on and explain why no reasonable trier of fact, based on the evidence, could have evaluated the evidence as the Trial Chamber did.<sup>88</sup>

32. Where the Appeals Chamber considers that an appellant fails to explain how the alleged factual error had an effect on the conclusions in the Trial Judgment, it will summarily dismiss the ground alleging error or reject any argument in support thereof.<sup>89</sup>

<sup>81</sup> *Sesay et al.* Appeal Judgment, para. 36.

<sup>82</sup> *Sesay et al.* Appeal Judgment, para. 36.

<sup>83</sup> *Sesay et al.* Appeal Judgment, para. 38.

<sup>84</sup> *Sesay et al.* Appeal Judgment, para. 43.


<sup>85</sup> *Sesay et al.* Appeal Judgment, para. 39.


<sup>86</sup> *Sesay et al.* Appeal Judgment, para. 40.

<sup>87</sup> *Sesay et al.* Appeal Judgment, para. 40.

<sup>88</sup> *Sesay et al.* Appeal Judgment, para. 40.

<sup>89</sup> *Sesay et al.* Appeal Judgment, para. 41.



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33. The Appeals Chamber will, as a general rule, summarily dismiss submissions that merely repeat arguments that did not succeed at trial, unless it is shown that their rejection by the Trial Chamber constituted an error warranting the intervention of the Appeals Chamber.<sup>90</sup>

### III. APPLICABLE LAW

#### A. Provisions Governing Appeal Proceedings in Contempt Cases

34. In accordance with Rule 117(B) of the Rules, in appeals pursuant to Rule 77, all time limits and other procedural requirements not otherwise provided for in the Rules shall be fixed by a Practice Direction.

35. Article I.1 of the 2004 Practice Direction provides that the appellant shall file and serve upon the other parties, in accordance with the Rules, a written Notice of Appeal in accordance with the prescribed form containing:

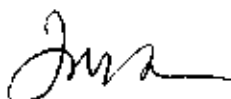
- a) the precise title and date of filing the appealed decision;
- b) a summary of the proceedings before the Judge or Trial Chamber relating to the appealed decision;
- c) the specific provision of the Rules pursuant to which the appeal is filed;
- d) the grounds on which the appeal is made;
- e) the relief sought.

36. In accordance with Article I.2 of the 2004 Practice Direction, the appellant's submissions based on the grounds of appeal shall be filed on the same day as the Notice of Appeal and may be filed as part of the same document or as a separate document, as long as it is clearly delineated which filing or part of the filing constitutes grounds and which filing or part of the filing constitutes submissions based on those grounds.

37. Pursuant to Article I.3 of the 2004 Practice Direction, the opposite party shall file a response within ten days of the filing of the appeal. Such a response shall clearly state whether or not the appeal is opposed and the grounds thereof. It shall further set out any objection to the applicability of the provision of the Rules relied upon by the appellant as the basis for the appeal. The appellant may, pursuant to Article I.4 of the 2004 Practice Direction, file a reply within 5 days of the filing of the response.

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<sup>90</sup> *Sesay et al.* Appeal Judgment, para. 42 and the references given therein.



38. In accordance with Article I.5 of the 2004 Practice Direction, the Appeals Chamber may thereafter decide the appeal without further submissions from the parties and without an oral hearing unless otherwise directed by the Presiding Judge.

39. Where a party fails to comply with the requirements laid down in the 2004 Practice Direction, or where the wording of a filing is unclear or ambiguous, a bench of three Judges of the Appeals Chamber may, in its discretion, and pursuant to Article VII.21, decide on an appropriate sanction, which can include an order for clarification or re-filing. The Appeals Chamber may also reject a filing or dismiss submissions therein.

#### IV. GROUNDS OF APPEAL

##### A. Kargbo Appeal

##### 1. Submissions of the Parties

40. In his Appeal, Kargbo does not challenge his sentence, but complains about a failure of the Single Judge to grant him appropriate protective measures, despite the fact that “serious allegations of threats to him and his family were brought to the attention of the Hon. Court”.<sup>91</sup> He relies, as the legal basis of its appeal, on Articles 21 and 22 of the Statute, dealing with review proceedings and enforcement of sentences respectively, and Rule 75 of the Rules, which deals with measures for protection of victims and witnesses.<sup>92</sup>

41. He submits that the Single Judge erred: (i) in failing to provide an adequate reasoned opinion, or any, on a factual and legal matter appropriately brought to its attention in the course of the proceedings and at the end of the trial;<sup>93</sup> (ii) in law in not according due weight to the severity of the threats against Samuel Kargbo and members of his family as a result of his co-operation and testimony against co-accused;<sup>94</sup> and (iii) in failing to comply with Article 21 and Rule 75 of the Rules in making appropriate orders of protective measures in favour of Samuel Kargbo.<sup>95</sup>

42. He requests the Appeals Chamber to: (i) “remit the matter to the Hon Teresa Doherty to make orders of protection that are commensurate with the threats alleged by Samuel Kargbo before the Court and to WVS pursuant to Article 21 of the Statute and Rule 75 of the Rules...”<sup>96</sup> or,

<sup>91</sup> Kargbo Appeal, p. 3 (para. B) V) and p. 4 (para. D)XI).

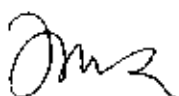
<sup>92</sup> Kargbo Appeal, p. 3 (para. C) b) and c)).

<sup>93</sup> Kargbo Appeal, p. 5 (para. E)1).

<sup>94</sup> Kargbo Appeal, p. 5 (para. E)2)).

<sup>95</sup> Kargbo Appeal, p. 5 (para. E)3)).

<sup>96</sup> Kargbo Appeal, p. 6 (para. F)i).





alternatively, (ii) “make such orders that are appropriate and sufficient for the effective and efficient protection of Samuel Kargbo on the basis of the information provided on the records and such further information that it may require from WVS and Samuel Kargbo pursuant to article and rule [sic] of the Rules...”<sup>97</sup>

43. As the Independent Counsel’s Response with respect to Kargbo’s Appeal was filed out of time and the Independent Counsel did not seek an extension of the deadline for filing his Response, the Appeals Chamber declines to consider the Independent Counsel’s Response to Kargbo’s Appeal.

## 2. Discussion

44. Rule 77(E) of the Rules of Procedure and Evidence of the Special Court (“Rules”) provides:

The rules of procedure and evidence in Parts IV to VIII shall apply, as appropriate, to proceedings under this Rule

45. In Part VII of the Rules, Rule 106(A) provides:

Pursuant to Article 20 of the Statute, the Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the following grounds:

- (a) A procedural error;
- (b) An error on a question on law invalidating the decision;
- (c) An error of fact which has occasioned a miscarriage of justice.

46. Kargbo having pleaded guilty, his appeal, discerned from his grounds of appeal, concerns the granting of protective measures in his favour. The Appeals Chamber, therefore, notes that his appeal does not fall within the appellate jurisdiction of the Appeals Chamber as stated in Rule 106(A), his appeal not being an appeal either against conviction or against sentence. The purported appeal is, therefore, incompetent.

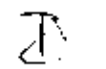
## 3. Conclusion

47. For the foregoing reasons, Kargbo’s Appeal is dismissed in its entirety.

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<sup>97</sup> Kargbo Appeal, p. 6 (para. F(ii)).





## B. Kamara Appeal

### 1. Discussion

48. The Appeals Chamber notes with dismay that in blatant disregard of the 2004 Practice Direction for Certain Appeals, Kamara complies neither with Article 1.1 which stipulates that the Notice of Appeal must contain “the grounds on which the appeal is made” nor, consequentially, with Article 1.2 which provides that the appellant must “clearly delineate[] which filing or part of the filing constitutes grounds and which part of the filing constitutes submissions based on those grounds”. In accordance with Article VII.21 of the 2004 Practice Direction, the Appeals Chamber could dismiss the Appeal on this basis alone. Notwithstanding that the Independent Counsel did not raise an objection pertaining to the non-compliance in his Response, the Appeals Chamber is unable to overlook the fundamental flaw in the Notice of Appeal brought about by the manifest non-compliance with the 2004 Practice Direction.

49. A Party is expected to set out his/her Grounds of Appeal clearly, logically and exhaustively.<sup>98</sup> For the Appeals Chamber to attempt to proceed to consider the merits of Kamara’s purported Appeal will lead to an invidious situation in which the Appeals Chamber would virtually be drafting the Notice of Appeal for Kamara and, in the process, second-guessing which submissions relate to what grounds; and determining the classification of the grounds of appeal prescribed in Rule 106(A). The Appeals Chamber declines to undertake such unwelcome exercise.

### 2. Conclusion

50. For the foregoing reasons, Kamara’s Appeal is dismissed in its entirety.

## C. Kanu Appeal

51. Kanu filed 27 grounds of appeal pertaining to his conviction and 3 grounds pertaining to sentencing. Kanu requests the Appeals Chamber to reverse the findings of guilt and convictions entered against him, to vacate the Judgment and issue a Judgment of Acquittal.<sup>99</sup>

<sup>98</sup> *Sesay et al.* Appeal Judgment, para. 36; *Prosecutor v Brima, Kamara and Kanu*, SCSL-04-16-A, Appeals Chamber, Judgment, 22 February 2008, para. 34 [*Brima et al.* Appeal Judgment].

<sup>99</sup> Kanu Appeal, para. 94.

## 1. Discussion

52. At the threshold it is worth noting that the Appeals Chamber has discretion to dismiss submissions that do not merit a reasoned opinion in writing and to summarily dismiss arguments that are evidently unfounded. The Appeals Chamber cannot effectively and efficiently carry out its appellate functions without focused submissions by the Parties. The Appeals Chamber has had cause to state on several occasions, and it bears repetition, that: in order for the Appeals Chamber to assess a Party's arguments, the Party is expected to set out his Grounds of Appeal clearly, logically and exhaustively.<sup>100</sup> Accordingly, submissions that are obscure, contradictory, vague or suffer from other formal and obvious insufficiencies may be, on that basis, summarily dismissed without detailed reasoning.<sup>101</sup> Several, if not all, of the grounds of appeal relied on by Kanu suffer from this flaw. From this perspective the Appeals Chamber proceeded to scrutinise Kanu's grounds of appeal.

53. In Grounds 1, 2, and 3, Kanu purports to raise a jurisdictional issue. In Grounds 1 and 2 he complains that the Trial Chamber erred in law in concluding that it had jurisdiction to try this matter and instructed the Registrar to appoint an experienced Independent Counsel to investigate the allegations and issued an Order in Lieu of Indictment.<sup>102</sup> As an addendum to Grounds 1 and 2, in Ground 3 Kanu complains that the Single Judge "erred in law when she rejected the Defence submissions that the Trial Chamber was *functus officio* and ought therefore not to have ordered an investigation (...)"<sup>103</sup>

54. Initially Kanu's submissions are silent on what the errors consisted of but as contained in his Reply to the Prosecutor's Response it is that "there was no justice being administered at the time of the alleged offences. The Trial Chamber's work was concluded as was that of the Appeals Chamber and therefore any discussion or enquiry even if it related to the potential for a witness to recant the testimony he had given could not have been interfering with the administration of justice."<sup>104</sup>

55. The Appeals Chamber opines that the submission in Reply is misconceived, as it is not at all a jurisdictional issue that has thereby been raised. At best, and without so deciding, the Appeals Chamber considers, that such issue, for whatever it is worth, if anything at all, is one of defence as indicating that he did not commit any offence. However, in particular with regard to Ground 3, Kanu did not proffer argument in support of his contention that the Single Judge erred in law in

<sup>100</sup> See para. 28, citing *Sesay et al.* Appeal Judgment, para. 36.

<sup>101</sup> *Sesay et al.* Appeal Judgment, para. 36.

<sup>102</sup> Kanu Appeal, Grounds 1 and 2, paras 21, 22.

<sup>103</sup> Kanu Appeal, Ground 3, para. 23.

<sup>104</sup> Kanu Reply, para. 2.

rejecting his alleged submissions, with the result that the Ground also remains undeveloped. For these reasons the Appeals Chamber rejects Grounds 1 -3.

56. In his Ground 4, Kanu argues that the Single Judge erred in law or in procedure in allowing a joint trial of the Accused in the absence of a direction from the Trial Chamber pursuant to Rule 48(B).<sup>105</sup> He also submits that this was a procedural error invalidating his conviction “particularly as the Prosecution presented the case on a joint criminal enterprise basis” and that “the Prosecution’s case was shifting throughout.”<sup>106</sup> However, he did not show in what respect Rule 48(B) made it mandatory to direct joint trial when, according to Rule 48(A), persons “accused of the same or different crimes committed in the same transaction may be jointly indicted and tried.” In the result, Kanu failed to show what the alleged error consisted of.

57. Under Grounds 5 and 6 under submissions titled “Duplicity”, Kanu’s Grounds of Appeal are, respectively, that the Single Judge erred in law when she rejected the Defence application for an extension of time in which to file preliminary motions;<sup>107</sup> and that she erred in law when she rejected the Defence motion for Judgement of Acquittal at the conclusion of the Prosecution case with specific reference to Count 2.<sup>108</sup> In a combined submission, Kanu proceeds to argue that Counts 1 and 2 of the Indictment “had *the tendency* to fall foul of the rule against duplicity as they were not charged in the alternative”<sup>109</sup> and proffers the information that “the Defence were unable to deal with this matter as a preliminary point because the Learned Judge rejected two Defence motions for an extension of time in order to file submissions on preliminary matters.”<sup>110</sup> He rounds up his submissions by arguing that the Independent Counsel “failed to particularise Count 2 to sufficiently distinguish it from Count 1”,<sup>111</sup> and “[i]n this regard issue is taken with the Learned Judge’s decision to reject the submission made in support of a motion for judgment of acquittal, particularly in respect of Count 2.”<sup>112</sup>

58. It is evident, in the Appeals Chamber’s opinion, that the submissions bear no relationship to Grounds 5 and 6 with the result that there was a total absence of submission on what Kanu conceived to be the errors of law complained of in the grounds of appeal.

<sup>105</sup> Kanu Appeal, Ground 4, para. 24.

<sup>106</sup> Kanu Appeal, Ground 4, para. 24.

<sup>107</sup> Kanu Appeal, Ground 5, para. 25.

<sup>108</sup> Kanu Appeal, Ground 6, para. 25.

<sup>109</sup> Kanu Appeal, Grounds 5 and 6, para. 25 (emphasis added).

<sup>110</sup> Kanu Appeal, Grounds 5 and 6, para. 25.

<sup>111</sup> Kanu Appeal, Grounds 5 and 6, para. 25.

<sup>112</sup> Kanu Appeal, Grounds 5 and 6, para. 25.







59. In Ground 7 Kanu complains that the Single Judge erred in law “when she granted a *subpoena* to the Independent Counsel in respect of Andrew Daniels after concluding that his communications with Mr. Tamba Alex Brima and Mr. Brima Bazzy Kamara were not covered by the rule in respect of client/lawyer privilege.”<sup>113</sup> However, rather than render submissions to show what the alleged error in law consisted of, there being no indication that a client/lawyer relationship existed between Andrew Daniel’s (presumably, a lawyer) and Kanu, Kanu proceeds to argue that this ruling affected him “in that it allowed the Prosecutor to use evidence of discussion between Mr. Daniels, Kamara and Brima as evidence supporting a joint plan to commit this offence (...)”<sup>114</sup> and that “this amounts to an error in law which invalidates the single judge’s decision”.<sup>115</sup> Besides, there was no submission in support of the bare assertion by Kanu that the Single Judge “erred in concluding that the rule in respect of client/lawyer privilege did not attach to Mr. Daniel’s conversations with Mr. Kamara and Mr. Brima.”<sup>116</sup> The Appeals Chamber opines that the essence of submissions in support of a ground of appeal is to show, for consideration of the appellate tribunal, the reason or reasons why the party appealing contends that there has been an error, be it of fact or of law. A ground of appeal alleging error, if unsupported by any reasoning, remains undeveloped and would not qualify for consideration by the Appeals Chamber.

60. Under Ground 8, Kanu argues that the Single Judge erred in law and procedure by allowing Kargbo to remain in Court throughout the duration of evidence in this case, despite the fact that he had pleaded guilty and stood convicted on his own admission on 15 July 2011.<sup>117</sup> However, he fails to support the ground with any submission that shows in what respect such error has occurred and cites to no law or principle of law prohibiting a witness from staying in court after he has given evidence.

61. Kanu complains in Ground 9 that the Single Judge erred in law when she rejected his motion for Judgment of Acquittal.<sup>118</sup> He argues that there was no, or no sufficient evidence upon which a reasonable trier of fact, properly directed could conclude that there was a case against Kanu on either Count 1 or 2.<sup>119</sup> He also submits that “this is open to challenge on all limbs under Rule 106”.<sup>120</sup> There were no reasons or arguments given in support of the assertion which formed the core of his complaint that “there was no, or no sufficient evidence” to justify the conclusion arrived

<sup>113</sup> Kanu Appeal, Ground 7.

<sup>114</sup> Kanu Appeal, Ground 7, para. 26.

<sup>115</sup> Kanu Appeal, Ground 7, para. 26.

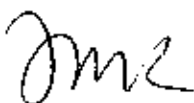
<sup>116</sup> Kanu Appeal, Ground 7, para. 26.

<sup>117</sup> Kanu Appeal, Ground 8, paras 27-29.

<sup>118</sup> Kanu Appeal, Ground 9.

<sup>119</sup> Kanu Appeal, Ground 9, para. 30.

<sup>120</sup> Kanu Appeal, Ground 9, para. 30.





at by the Single Judge. For this reason the ground of appeal remains undeveloped and provides no basis for its consideration by the Appeals Chamber.

62. The complaint in Ground 10 is that the Single Judge erred in law in failing to grant permission to the appellant to instruct a handwriting expert.<sup>121</sup> Assuming that there was a refusal by the Single Judge to grant permission for a handwriting expert as alleged in paragraph 31 of the Kanu Notice of Appeal, Kanu fails to develop any argument to support that such exercise of discretion was erroneous. Moreover, assuming that the basis of his contention is that it was a matter of obligation for the Single Judge to grant “permission for handwriting expert” he has failed to indicate what principle of law or by what statute the obligation arose. It would appear that Kanu fell into error in confusing matters pertaining, more appropriately, to evaluation of evidence by the Single Judge with the manner of exercise of power by the Single Judge to grant or not to grant the alleged permission. Be that as it may, the ground of appeal remains undeveloped and is rejected for that reason.

63. Kanu submits in his Ground 11 that the Single Judge “erred in law, or alternatively made a procedural error, by effectively finding that in the event of conflict the official interpretation is the interpretation on record to be considered by the Court”.<sup>122</sup> Kanu did not show how the “finding” by the Judge amounted to an error and the Appeals Chamber cannot find any error, both in terms of law and of commonsense.

64. In Ground 12, Kanu complains that the Single Judge erred in law by disregarding the principle that the burden of proof of the offences charged always remains with the prosecution.<sup>123</sup> However, he proceeds to submit, as basis of his ground of appeal, that the Single Judge’s comments that “there had been no application by the Defence to amend the Indictment by reason of defects” amounted to an impermissible reversal of the burden of proof.<sup>124</sup> Kanu submits that he places reliance in this regard on the “[l]earned Judge’s refusal to allow an extension of time in which to file preliminary motions pursuant to Rule 72”.<sup>125</sup> The Appeals Chamber notes that burden of proof is the burden that rests on a party to prove essential facts on which its case rests. In a criminal case it is the burden that rests on the prosecution to prove the allegations in the indictment, while it is for the defence to adduce evidence, if it wishes, not to prove any fact beyond a reasonable doubt, but such as if believed may raise a reasonable doubt. The Appeals Chamber opines that had Kanu


<sup>121</sup> Kanu Appeal, Ground 10.

<sup>122</sup> Kanu Appeal, Ground 11, paras 32, 33.

<sup>123</sup> Kanu Appeal, Ground 12.

<sup>124</sup> Kanu Appeal, Ground 12, para. 34.

<sup>125</sup> Kanu Appeal, Ground 12, para. 34.





adverted to the meaning of ‘burden of proof’ he would have realised that the comment by the Judge on which the ground rested is not at all related to the principle of burden of proof.

65. Kanu’s complaint in Ground 13 is that the Single Judge “erred in fact in concluding, on the issue of a bad relationship between the Appellant and Mr. Sesay, that Mr. Sesay was the victim and not the perpetrator.”<sup>126</sup> However, his argument in support of the ground, which is that the “finding indicated a misunderstanding of the factual situation and the way in which the defence put forward the evidence”,<sup>127</sup> without stating what the “factual situation” consisted of and what “the way in which the defence put forward the evidence” represents, makes his submission more of a riddle rather than argument. The result in the Judgment of the Appeals Chamber is that the Ground remains undeveloped and difficult to understand.

66. Turning to Ground 14, Kanu’s complaint is that the Single Judge erred in law or in fact in concluding that an allegation by the Appellant that Exhibit P15 had been manipulated by Mr. Sengabo and the Independent Counsel detracted from his credibility.<sup>128</sup> Kanu suggested in his submission that the Single Judge was entitled to dismiss his “allegation as pure speculation” rather than “something which ‘seriously detracts’ from his credibility.”<sup>129</sup> In the opinion of the Appeals Chamber, ascribing credibility to the evidence of a witness is at the discretion of the trial judge.<sup>130</sup> Nothing useful has been advanced in Kanu’s submission to persuade the Appeals Chamber to interfere with the Single Judge’s perception of the credibility of Kanu.

67. Ground 15 reads as follows: “The Single Judge erred in fact in concluding that neither Kargbo nor Sesay identified the date for the meeting and phone call other than late November or early December.”<sup>131</sup> The substance of Kanu’s submission in support of this ground of appeal is that “the Learned Judge erred in fact in the assessment of [this] evidence by failing to take into account Mr. Sesay’s answer in cross-examination that it was he who had given the date to the Investigator, Mr. Saffa, and that at the time of making the statement that was the time ‘this thing happened.’”<sup>132</sup> He submits that it was an error that has occasioned a miscarriage of justice and invalidates the conviction in the Single Judge’s finding that Mr. Sesay had not identified “the date of the meeting and phone call.”<sup>133</sup> The Appeals Chamber holds that the fundamental flaw in the submission of

<sup>126</sup> Kanu Appeal, Ground 13.

<sup>127</sup> Kanu Appeal, Ground 13, para. 35.

<sup>128</sup> Kanu Appeal, Ground 14.

<sup>129</sup> Kanu Appeal, Ground 14, para. 40.

<sup>130</sup> *Sesay et al.* Appeal Judgment, para. 200.

<sup>131</sup> Kanu Appeal, Ground 15.

<sup>132</sup> Kanu Appeal, Ground 15, para. 44, citing *Bangura et al.*, Transcript, 27 June 2012, pp. 667, 669.

<sup>133</sup> Kanu Appeal, Ground 15, para. 45.

Kanu is that, even if it is assumed that there was an error of fact, there was nothing in the submission to indicate in what manner the error was such that has occasioned a miscarriage of justice and invalidates the conviction, having regard, particularly, to the ample demonstration of the fact in Independent Counsel's Response that the finding by the Single Judge in relation to the material date was amply supported by the evidence she found credible.<sup>134</sup>

68. In regard to Ground 16 in which the contention of Kanu is that the Judge "erred in fact in holding that there was a conflict between Kamara and Kanu's evidence as regards telephone calls on 30 November 2012",<sup>135</sup> the Appeals Chamber finds no difficulty in agreeing with the Independent Counsel in his submission that the issue is inconsequential.<sup>136</sup> There was nothing in Kanu's submission to show how it could have amounted to a miscarriage of justice or that it was an error that invalidates his conviction.

69. The Appeals Chamber notes that Kanu's Grounds 17, 18, 19, 20, 21, 22, 23, 24 and 25 in substance relate to evaluation of evidence by the Single Judge. All that Kanu tried to do was to lay hold of snippets from the Trial Judgment and describe them as errors of fact, relying on submissions that would, more appropriately, have been addressed to the Single Judge at trial. Besides, in respect of these grounds, Kanu was content merely to assert that the alleged errors either occasioned a miscarriage of justice or invalidated the conviction, or both, without demonstrating how such conclusion would reasonably follow.

70. The Appeals Chamber feels no hesitation in rejecting these grounds of appeal.

71. Kanu's Ground 26 reads: "The Single Judge erred in law and fact when she found the Appellant guilty on both counts of the Indictment on the same set of facts, without distinguishing which act was the basis of the finding for each count."<sup>137</sup> In support of this ground of appeal, Kanu's submission is that although the Single Judge summarises her reasons for finding Kanu guilty, the reasons given by the Single Judge apply equally to both counts of the Indictment which, he submits, "ought properly to have been viewed as mutually exclusive in the circumstances of the case".<sup>138</sup> In a brief but well-reasoned response the Independent Counsel explains the position as follows: "The Single Judge clearly found that Kanu's request to 334 that he recount or revisit his testimony in the AFRC trial, which disturbed 334, constituted the unlawful interference charged in

<sup>134</sup> Independent Counsel Response, para. 38.

<sup>135</sup> Kanu Appeal, Ground 16.

<sup>136</sup> Independent Counsel Response, para. 39.

<sup>137</sup> Kanu Appeal, Ground 26.

<sup>138</sup> Kanu Appeal, Ground 26, para. 84.

Count 2, while his offer to pay 334 constituted the unlawful interference charged in Count 1.”<sup>139</sup> The substance of Kanu’s complaint, in the final analysis, is about the format of the Trial Judgment. In the opinion of the Appeals Chamber, granted that a judgment should lend itself to easy, and not tedious, reading, when a judgment upon careful reading contains all that it should, the format remains a question of style which cannot be relied on as basis for determining the factual or legal correctness of the judgment. In this case, Kanu fails to articulate what the error, either of fact or of law consists of or how there has been a miscarriage of justice. Be that as it may, the Appeals Chamber finds no difficulty in accepting the Independent Counsel’s submission that the ground lacks merit.

72. In Ground 27, Kanu complains that the Single Judge erred in law and/or in fact in determining that the principles in *R v. Turnbull* apply, *simpliciter*, to identification and recognition of a voice.<sup>140</sup> He submits that there is authority in the English courts that more care should be taken when the recognition relied on relates to voice<sup>141</sup> and that this is especially so when there has been lapse in time since the identifying witness has heard the voice of the party purporting to be recognised and secondly when the transmission of the voice is over a long distance telephone call.<sup>142</sup> In respect of this ground, as in several others noted in this Judgment, Kanu fails to provide details of the alleged errors and to state how the alleged legal error invalidates the decision.

73. In relation to sentencing, Kanu submits that: (i) the sentence of 1 year and 50 months imposed is harsh and excessive in all the circumstances of the case (Sentence Ground 1);<sup>143</sup> (ii) the Single Judge did not sufficiently take into account Kanu’s mitigation when imposing sentence on him (Sentence Ground 2);<sup>144</sup> and (iii) there was significant disparity in the sentence imposed on Kanu as opposed to that imposed on his co-accused Hassan Papa Bangura (Sentence Ground 3).<sup>145</sup>

74. Kanu fails not only to demonstrate, but even to address any mitigating factors which it claims the Single Judge failed to take into account. The Appeals Chamber, therefore, rejects his grounds of appeal relating to sentences.

<sup>139</sup> Independent Counsel Response, para. 50.

<sup>140</sup> Kanu Appeal, Ground 27, paras 85-87.

<sup>141</sup> Kanu Appeal, Ground 27, para. 86, citing *R v Flynn and St. John* [2008]EWCA Crim 970;[2008] 2 Cr.pp R. 266.

<sup>142</sup> Kanu Appeal, Ground 27, para. 86.

<sup>143</sup> Kanu Appeal, Sentence Ground 1, para. 90, citing *Šešelj Contempt Appeal Judgment*.

<sup>144</sup> Kanu Appeal, Sentence Ground 2, para. 91, citing Kanu Sentencing Brief and oral submissions.

<sup>145</sup> Kanu Appeal, Sentence Ground 3, paras 92, 93.

2. Conclusion

75. The Appeals Chamber could have summarily dismissed Kanu’s grounds of appeal in their entirety but, however, has chosen to give reasons for rejection of several of them to serve as a reminder to Counsel regarding the acceptable standard of presentation of submissions on appeal and to guide Counsel who need to get conversant with formulating grounds of appeal and arguing appeals before the Appeals Chamber.

76. Be that as it may, for the reasons given all the grounds of appeal relied on by Kanu are rejected. In the result Kanu’s Appeal is dismissed.

**V. DISPOSITION**

For the foregoing reasons, **THE APPEALS CHAMBER,**

**PURSUANT TO** Article 20 of the Statue and Rules 77, 106, 117 and 118 of the Rules;

**NOTING** the written submissions of the Parties;

**DISMISSES** all the Grounds of Appeal advanced by Defence for Samuel Kargbo, Brima Bazzy Kamara and Santigie Borbor Kanu;

**AFFIRMS** the sentences imposed on Samuel Kargbo, Brima Bazzy Kamara and Santigie Borbor Kanu by the Single Judge, and;

**ORDERS** that the Judgment be enforced immediately pursuant to Rule 102 of the Rules.

Issued on 21 March 2013 at The Hague, The Netherlands

  
Justice Renate Winter

  
Justice Emmanuel Ayoola

  
Justice Jon M. Kamanda



## VI. GLOSSARY

### A. Cases Cited

#### I. Special Court for Sierra Leone

*Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, Transcript, 25 September 2012 [*Bangura et al.*, Transcript, 25 September 2012]; *Bangura et al.*, SCSL-11-02-T-66, Single Judge, Judgement in Contempt Proceedings, 25 September 2012, Filed 1 October 2012 [Trial Judgment].

*Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL 2011-02-T, Sentencing Judgment, Transcript, 11 October 2012 [*Bangura et al.*, Transcript, 11 October 2012]; *Bangura et al.*, SCSL 2011-02-T-071, Single Judge, Sentencing Judgment in Contempt Proceedings, 11 October 2012, filed on 16 October 2012 [Sentencing Judgment].

*Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL 2011-02-A-073, Notice of Partial Appeal of Samuel Kargbo, 19 October 2012 [Kargbo Appeal].

*Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL-11-02-A-074, Notice of Appeal in respect of Santigie Borbor Kanu, 22 October 2012 [Kanu Appeal].

*Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL-11-02-A-076, Notice of Appeal in respect of Brima Bazzy Kamara, 22 October 2012, filed on 23 October 2012 [Kamara Appeal].

*Independent Counsel v. Bangura, Kargbo, Kanu and Kamara*, SCSL-11-02-A-077, President of the Special Court, Order Assigning Judges to a Case Before the Appeals Chamber, 23 October 2012 [Order Assigning Judges].

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