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SCSL-12-02-A
(491-531)

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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:	30 October 2013

THE INDEPENDENT COUNSEL	**Against**	**PRINCE TAYLOR (Case No. SCSL-12-02-A)**

Public

JUDGMENT IN CONTEMPT PROCEEDINGS

Independent Counsel:
Mr. William L. Gardner
Mr. Benjamin Klein

Defence Counsel for Prince Taylor:
Mr. Rodney Dixon

Office of the Principal Defender
Ms. Claire Carlton-Hanciles

SPECIAL COURT FOR SIERRA LEONE
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I. INTRODUCTION

1. The Appeals Chamber of the Special Court for Sierra Leone ("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 20 March 2013,[1] has before it an appeal by Mr. Prince Taylor ("Appellant")[2] from the Judgment in Contempt Proceedings of 25 January 2013 filed on 11 February 2013 ("Trial Judgment");[3] and the Sentencing Judgment of 08 February 2013 filed on 14 February 2013 ("Sentencing Judgment").[4] The respective decisions were rendered by the Single Judge of Trial Chamber II ("Single Judge") in the case of *Independent Counsel v. Prince Taylor*, Case No. SCSL-12-02-T ("*Prince Taylor* case").

A. Order in lieu of Indictment

2. On 4 October 2012, the Single Judge of Trial Chamber II issued her Decision on the Confidential – Under Seal Submission of Supplemental Confidential Report of Independent Counsel ("Decision on Supplemental Report"),[5] finding that there was a *prima facie* case that the Appellant may be in contempt of the Special Court by attempting to have witnesses recant their testimonies through his instructions to Eric Koi Senessie.[6] Annexed to the Decision on Supplemental Report was a Confidential Order in Lieu of Indictment against the Appellant. It charged the Appellant with four Counts of knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to witnesses M. Kabbah, TF1-274, TF1-516 and TF1-585 who had given evidence in proceedings before a Chamber (Counts 1, 3, 5 and 6), four Counts of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with witnesses M. Kabbah, TF1-274, TF1-585 and Aruna Gbonda who had given evidence in proceedings before a Chamber (Counts 2, 4, 7 and 8), and one Count of

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[1] *Independent Counsel v. Prince Taylor*, SCSL-12-02-A-057, Order Assigning Judges to a Case Before the Appeals Chamber, 30 March 2013 [Order Assigning Judges].
[2] *Independent Counsel v. Prince Taylor*, SCSL-12-02-A-053, Notice of Appeal, 22 February 2013 [Notice of Appeal]; SCSL-12-02-A-55, Appellant's Submissions for Appeals Against Conviction and Sentence, 15 March 2013 and SCSL-12-02-A-069, Re-Filing of Appeal on Behalf of Mr. Prince Taylor [Appellant's Submissions] with Application for the Appeal to be Filed Out of Time [Application], 20 May 2013, filed on 21 May 2013.
[3] *Independent Counsel v Prince Taylor*, SCSL-12-02-051, Single Judge, Judgment in Contempt Proceedings, 12 February 2013, [Trial Judgment].
[4] *Independent Counsel v. Prince Taylor*, SCSL-12-02-052, Single Judge, Sentencing Judgment, 15 February 2013 [Sentencing Judgment].
[5] *Independent Counsel v. Prince Taylor*, Public with Confidential Annex A Decision on the Confidential – Under Seal Submission of Supplemental Confidential Report of Independent Counsel, 4 October 2012 [Decision on Supplemental Report].
[6] Decision on Supplemental Report, para. 16.

knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with witness Eric Senessie who was about to give evidence before a Chamber (Count 9), in violation of Rule 77(A)(iv) of the Rules of Procedure and Evidence of the Special Court ("Rules").

3. The Appellant pleaded not guilty to all the charges.

B. Verdict and Sentence

4. The Judgment was rendered by the Single Judge on 25 January 2013 followed by written reasons on 11 February 2013.

5. The Appellant was found guilty on four Counts of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber (Counts 2, 4, 7 and 8); and one Count of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who is about to give evidence before a Chamber (Count 9). He was acquitted on all four Counts of knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to witness who has given evidence in proceedings before a Chamber.[7]

6. The Sentencing Judgment was delivered on 08 February 2013 and filed on 14 February 2013. The Single Judge sentenced the Appellant to a total term of imprisonment of two and a half years.[8]

C. Summary of the Single Judge's Findings

7. The Single Judge found that the Appellant influenced Senessie to refuse to see the Independent Counsel and told him not to implicate both himself and Senessie;[9] that Senessie gave information to the Independent Counsel that was found, by way of evidence in his own trial and in his statements at sentencing, to have been false;[10] and that the Appellant persuaded Senessie to give false information and that he did so knowingly, aware that it would affect the outcome of the Independent Counsel's investigations at the time.[11] The Single Judge accordingly found the Appellant guilty, under Count 9, of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who is about to give evidence in

[7] Trial Judgment, Disposition at pp 54, 55.
[8] Sentencing Judgment, paras 56, 57.
[9] Trial Judgment, para. 194.
[10] Trial Judgment, para. 194.

proceedings before a Chamber (an investigation by Independent Counsel pursuant to a Trial Chamber decision).[12]

8. The Single Judge also found that the Appellant directed Senessie to go to witnesses M. Kabbah, TF1-274, TF1-585 and Aruna Gbonda to persuade them and to inquire whether they could go back to The Hague to change their testimonies; that he did so with the intention of having the witnesses go to The Hague to change their testimonies; that Senessie acted in accordance with that directive and order; and that this amounted to otherwise interfering with the five witnesses.[13] The Single Judge, accordingly, found the Appellant guilty under Counts 2, 4, 7 and 8 of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber.[14]

9. The Single Judge did not find, however, that the evidence was sufficient to support a finding of interference with the administration of justice by offering a bribe to any of the witnesses who had testified in The Hague.[15] The Appellant was accordingly found not guilty on Counts 1, 3, 5 and 6.[16]

D. Filings on Appeal

10. On 22 February 2013, The Appellant filed a Notice of Appeal containing four grounds of appeal against conviction (Grounds 1-4) and two against sentence (Grounds 5 and 6).[17]

11. On 15 March 2013, the Appellant filed Appellant's Submissions for Appeals against Conviction and Sentence, "pursuant to Rule 111, and Rules 77(J) and 108".[18]

12. On 15 March 2013, the Independent Counsel filed Independent Counsel's Urgent Motion for Clarification Regarding the Deadline for Filing Submissions in Response to Appellant's Submissions for Appeals against Conviction and Sentence ("Urgent Motion for Clarification"),[19]

[11] Trial Judgment, paras 195, 199.
[12] Trial Judgment, paras 200, 213.
[13] Trial Judgment, paras 208, 209.
[14] Trial Judgment, paras 209, 213.
[15] Trial Judgment para. 212.
[16] Trial Judgment, para. 214.
[17] Notice of Appeal.
[18] *Independent Counsel v. Prince Taylor*, SCSL-12-02-A-055, Appellant's Submissions for Appeals Against Conviction and Sentence, 15 March 2013, para. 1.
[19] *Independent Counsel v. Prince Taylor*, SCSL-12-02-A-056, Independent Counsel's Urgent Motion for Clarification Regarding the Deadline for Filing Submissions in response to Appellant's Submissions for Appeals against Conviction and Sentence, 15 March 2013, [Urgent Motion for Clarification]; SCSL-12-02-062, Independent Counsel's Re-File of Annex B Pursuant to the Order to Redact, 02 April 2013 [Re-Filing of Annex B].

and the Appellant filed Response to the Independent Counsel's Urgent Motion for Clarification on 25 March 2013 ("Response to Urgent Motion for Clarification").[20]

13. On 02 April 2013, the Independent Counsel filed Respondent Independent Counsel's Submission in Response to Appellant's Submissions for Appeals Against Conviction and Sentence.[21]

14. On 08 April 2013, the Appellant filed Appellant's Reply to Independent Counsel's Submission in Response to Appellant's Submissions for Appeals Against Conviction and Sentence.[22]

15. On 12 April 2013, the Appellant filed Appellant's Application for Additional Evidence Pursuant to Rule 115,[23] to which the Independent Counsel filed Respondent Independent Counsel's Public Response to Appellant's Application for Additional Evidence Pursuant to Rule 115 with Public Annex A and Confidential Annex B on 18 April 2013.[24] On 1 May 2013, the Appellant filed his Reply thereto.[25]

16. On 14 May 2013, the Appeals Chamber rejected the filings on appeal, as they were not properly filed before the Appeals Chamber.[26]

17. On 21 May 2013, the Appellant re-filed the Notice of Appeal and the Submissions based on the Grounds of Appeal along with an Application for the Appeal to be filed out of time, requesting the Appeals Chamber to regard the Notice of Appeal and Submissions to be properly filed, despite being out of time, as well as to extend the time limit for filing the Appeal and to consider the merits of the Appeal in the interest of justice.[27]

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[20] *Independent Counsel v. Prince Taylor*, SCSL-12-02-059. Appellant's Response to the Independent Counsel's Urgent Motion for Clarification Regarding the Deadline for Filing Submissions in Response to Appellant's Submissions for Appeals against Conviction and Sentence, 25 March 2013 [Response to Urgent Motion for Clarification].
[21] *Independent Counsel v. Prince Taylor*, SCSL-12-02-061, Respondent Independent Counsel's Submission in Response to Appellant's Submissions for Appeals against Conviction and Sentence, 29 March 2013, filed 02 April 2013.
[22] *Independent Counsel v. Prince Taylor*, SCSL-12-02-063, Appellant's Reply to Independent Counsel's Submission in Response to Appellant's Submissions for Appeals against Conviction and Sentence, 08 April 2013.
[23] *Independent Counsel v. Prince Taylor*, SCSL-12-02-064, Appellant's Application for Additional Evidence Pursuant to Rule 115, 12 April 2013.
[24] *Independent Counsel v. Prince Taylor*, SCSL-12-02-065, Respondent Independent Counsel's Public Response to Appellant's Application for Additional Evidence Pursuant to Rule 115 With Public Annex A and Confidential Annex B, 12 April 2013..
[25] *Independent Counsel v. Prince Taylor*, SCSL-12-02-066, Appellant's Reply to Independent Counsel's Response to Appellant's Application for Additional Evidence Pursuant to Rule 115, 30 April 2013.
[26] *Independent Counsel v. Prince Taylor*, SCSL-12-02-068, Appeals Chamber, Judgment in Contempt Proceedings, 14 May 2013 [Judgment Rejecting the Appeal].
[27] Application, paras 22, 23.

18. On 22 May 2013, the Independent Counsel filed his Response to the Application, taking no position in relation to the Application and Prince Taylor's non-compliance with the Rules and the 2004 Practice Direction for Certain Appeals Before the Special Court ("2004 Practice Direction").[28]

19. On 4 June 2013, by an Order, the Appeals Chamber granted the extension of time sought to file the Appellant's Submissions, deemed the Appellant's Submissions to have been properly filed within the extended time granted and ordered that the time limits for filing any response or any further filings run from the date of the Order.[29]

20. On 7 June 2013, the Independent Counsel re-filed his Response to the Appellant's Submissions.[30]

21. On 12 June 2013, the Appellant re-filed his Reply to the Independent Counsel's Response.[31] On the same date, the Appellant re-filed his Rule 115 Application.[32]

22. On 17 June 2013, the Independent Counsel re-filed his Response to the Rule 115 Motion[33] and on 24 June 2013, the Appellant re-filed his Reply to the Response to the Rule 115 Motion.[34]

23. On 15 July 2013, the Appeals Chamber dismissed the Rule 115 Motion.[35]

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[28] *The Independent Counsel v. Prince Taylor*, SCSL-12-02-A-071, Respondent Independent Counsel's Response to Appellant's Re-Filing of Appeal on Behalf of Mr. Prince Taylor with Application for the Appeal to be Filed Out of Time, 21 May 2013, filed on 22 May 2013 [Response to Application].

[29] *The Independent Counsel v. Prince Taylor*, SCSL-12-02-A-073, Appeals Chamber, Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Filed Out of Time, 04 June 2013 [Order on Re-Filing], pp 2-3.

[30] *The Independent Counsel v. Prince Taylor*, SCSL-12-02-A-074, Respondent Independent Counsel's Submission in Response to Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal, 7 June 2013 [Independent Counsel's Response].

[31] *The Independent Counsel v. Prince Taylor*, SCSL-12-02-A-075, Appellant's Reply to Independent Counsel's Submission in Response to Appellant's Notice of Appeal and Submissions based on the Grounds of Appeal, 12 June 2013 [Appellant's Reply].

[32] *Independent Counsel v. Prince Taylor*, SCSL-12-02-076, Appellant's Application for Additional Evidence Pursuant to Rule 115, 12 June 2013 [Rule 115 Motion].

[33] *Independent Counsel v. Prince Taylor*, SCSL-12-02-077, Respondent Independent Counsel's Public Response to Appellant's Application for Additional Evidence Pursuant to Rule 115 With Public Annex A, 17 June 2013 [Rule 115 Response].

[34] *Independent Counsel v. Prince Taylor*, SCSL-12-02-078, Appellant's Reply to Independent Counsel's Response to Appellant's Application for Additional Evidence Pursuant to Rule 115, 24 June 2013 [Rule 115 Reply].

[35] *Independent Counsel v. Prince Taylor*, SCSL-12-02-079, Appeals Chamber, Decision on Appellant's Application for Additional Evidence pursuant to Rule 115, 15 July 2013 [Decision on Rule 115 Motion].

II. STANDARD OF REVIEW ON APPEAL

24. The Appeals Chamber recalls that the settled standard of review for appeals against judgments also applies to appeals against convictions for contempt,[36] and that the applicable standards of review on appeal pursuant to Article 20 of the Statute of the Special Court ("Statute") and Rule 106 are already amply stated in several of its decisions.[37] The Appeals Chamber, however, considers it expedient to reiterate the standard of review on appeal in relation to errors of law and fact.

25. Where the appellant alleges an error of law, only arguments relating to errors in law that invalidate the decision of the Trial Chamber would merit consideration. The appellant must provide details of the alleged error and state with precision how the legal error invalidates the decision.[38] In exceptional circumstances, the Appeals Chamber may consider legal issues raised by a party or *proprio motu* although they may not lead to the invalidation of the judgment, if they are nevertheless of general significance to the Special Court's jurisprudence.[39]

26. Where the appellant alleges an error of fact, the Appeals Chamber will not lightly overturn findings of fact reached by a Trial Chamber; to do so, the error of fact must have resulted in a miscarriage of justice.[40] The appellant must provide details of the alleged error and state with precision how the error of fact occasioned a miscarriage of justice. A miscarriage of justice is defined 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."[41] For an error to be one that occasioned a miscarriage of justice it must have been "critical to the verdict reached."[42]

27. Where it is alleged that the Trial Chamber committed an error of fact, the Appeals Chamber will give a margin of deference to the Trial Chamber that received the evidence at trial, because it is the Trial Chamber that is best placed to assess the evidence, including the demeanour of

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[36] *Bangura et al.* Appeal Judgment, *citing Hartmann* Contempt Appeal Judgment, para. 7; *Šešelj* Contempt Appeal Judgment, para. 9; *Jokić* Contempt Appeal Judgment, para. 11; *Marijačić and Rebić* Contempt Appeal Judgment, para. 15.
[37] *See, Sesay et al.* Appeal Judgment, paras 30-35; *Fofana and Kondewa* Appeal Judgment, paras 32-36.
[38] *Sesay et al.* Appeal Judgment,, para. 31 and the references given therein.
[39] *Sesay et al.* Appeal Judgment, para. 31 and the references given therein.
[40] *Sesay et al.* Appeal Judgment, para. 32 and the references given therein.
[41] *Sesay et al.* Appeal Judgment, para. 32 and the references given therein.
[42] *Sesay et al.* Appeal Judgment, para. 32 and the references given therein.

witnesses.[43] The Appeals Chamber will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.[44]

III. GROUNDS OF APPEAL

A. Grounds 1 and 2

1. Submissions of the Parties

28. Under his First Ground of Appeal, the Appellant submits that the Single Judge erred in relying on Senessie's evidence to convict him. In relation to the alleged errors of law, the Appellant argues that the Single Judge erred in her interpretation and application of the relevant jurisprudence and case law pertaining to the assessment of the evidence of a witness like Senessie.[45] The Appellant, while not arguing that corroboration is a legal requirement, submits that the jurisprudence of the international courts establishes that corroboration is essential: (i) when the evidence of a single witness is relied on and when the single witness has been found to be incredible or unreliable in part, as the Single Judge found in respect of Senessie's evidence;[46] and (ii) where the single witness is found unreliable, the evidence of that witness cannot be corroborated by his own evidence.[47] The Appellant further submits that even if the Single Judge did not commit any legal errors, no reasonable Trial Chamber could have evaluated the evidence as the Single Judge did.[48] In relation to the alleged errors of fact, the Appellant submits that in each instance where the Single Judge sought to identify evidence to corroborate Senessie's account, such evidence either originated from Senessie and was thus self-serving or did not directly support Senessie's allegations and was equally consistent with a finding of innocence.[49] He also argues that the Single Judge failed to direct herself to material aspects of the trial record that directly contradicted or undermined Senessie's testimony.[50] In conclusion, the Appellant argues that no reasonable trier of fact applying the standard of proof beyond reasonable doubt could have

[43] *Sesay et al.* Appeal Judgment, para. 32 and the references given therein.
[44] *Sesay et al.* Appeal Judgment, para. 32 and the references given therein.
[45] Appellant's Submissions, paras 26-33.
[46] Appellant's Reply, para. 4 (The Appellant also argues that there is "no international case in which the evidence of a single witness has been the basis for a conviction when that single witness has been previously convicted and found to be a liar and then again found to be lying when giving evidence in a subsequent trial.")
[47] Appellant's Reply, para. 7.
[48] Appellant's Reply, para. 5.
[49] Appellant's Submissions, para. 35, *citing* Trial Judgment, paras 152-158, 164-166, 168-170, 182, 183, 185-195, 201-203, 205-208.
[50] Appellant's Submissions, paras 35-66.

convicted the Appellant on the basis of Senessie's evidence and that the errors committed by the Single Judge occasioned a miscarriage of justice.[51]

29. The Independent Counsel submits that the Appellant has failed to identify under his First Ground any error of law that invalidates the Trial Judgment and that his submissions alleging errors of law should be categorically dismissed.[52] In response to errors of fact raised by the Appellant in the First Ground, the Independent Counsel submits that the Appellant's arguments should be dismissed as unclear, undeveloped, unfounded, unsupported and/or as repetitive of arguments that did not succeed at trial.[53] The Independent Counsel also submits that the Single Judge was careful, reasoned and correct in her assessment and use of Senessie's testimony.[54] He argues that the fact that the Single Judge did not accept all of Senessie's evidence shows that she was careful in assessing issues of credibility.[55] Moreover, the Independent Counsel submits that a Trial Chamber is best placed to assess the evidence, including the demeanour of witnesses and their credibility.[56]

30. Under his Second Ground of Appeal, the Appellant argues that the Single Judge erred in law and fact in her interpretation and application of the fundamental principle that no adverse inference should be drawn from the fact that an accused elected not to testify in his defence.[57] He submits that, although the Single Judge correctly referred to the case law on this point,[58] she proceeded to rely extensively on the lack of any rebuttal evidence from the Appellant to find that Senessie's evidence was credible.[59] The Appellant argues that no reasonable trier of fact could have made these findings in light of the very serious questions and findings about Senessie's credibility and that this error occasioned a miscarriage of justice.[60]

31. In response, the Independent Counsel submits that the Appellant's submission in regard to "error of law" under the Second Ground of Appeal should be summarily dismissed because it is unclear, undeveloped, unfounded and unsupported.[61] He submits that the Appellant presents no evidence in support of his claim that the Single Judge violated his presumption of innocence, offers no jurisprudence in support of his claim and fails to explain why his claim invalidates the Trial

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[51] Appellant's Submissions, para. 67.
[52] Independent Counsel's Response, para. 33.
[53] Independent Counsel's Response, para. 57, *citing Bangura et al.* Appeal Judgment, paras 27, 31.
[54] Independent Counsel's Response, para. 60, *citing* Trial Judgment, paras 145-212.
[55] Independent Counsel's Response, paras 61-63, *citing* Trial Judgment, paras 144, 169, 211, 212.
[56] Independent Counsel's Response, para. 64, *citing Sesay et al.* Appeal Judgment, para. 32; *Munyakazi* Appeal Judgment, para. 8; *Karera* Appeal Judgment, para. 10.
[57] Appellant's Submissions, para. 68.
[58] Appellant's Submissions, para. 69, *citing* Trial Judgment, paras 138, 139.
[59] Appellant's Submissions, para. 69, *citing* Trial Judgment, paras 156, 158, 165-168, 177, 187, 189, 193, 202.
[60] Appellant's Submissions, para. 70.
[61] Independent Counsel's Response, para. 36, *citing Bangura et al.* Appeal Judgment, para. 28.

Judgment.[62] Furthermore, the Independent Counsel argues that the Appellant's contention relating to error of fact regarding the presumption of innocence is vague, unclear, undeveloped, unfounded, unsupported and that the Appellant fails to establish that the alleged error occasioned a miscarriage of justice.[63]

2. Discussion

32. The Appeals Chamber notes that the factual findings underpinning the conviction of the Appellant concern the following issues: (i) payment of 200,000 Leones by the Appellant to Senessie;[64] (ii) "letters of invitation" drafted by Senessie on the Appellant's instruction;[65] (iii) Exhibit P1, being the Appellant's statement;[66] (iv) 30,000 Leones cheque and "other payments" by the Appellant to Senessie;[67] and (v) Senessie's visit to the Appellant and the Appellant's influence on and interference with Senessie as a witness (Count 9).[68] All of the findings pertaining to these issues were based on Senessie's evidence.

33. The Single Judge found that Senessie's evidence in relation to the payment of 200,000 Leones was corroborated by: (i) the fact that the payment was made; (ii) the fact that the date of the payment preceded the date of the "letters of invitation"; and (iii) Exhibit P1 which states that the Appellant "fetched the document".[69] In relation to the "letters of invitation", the Single Judge considered Senessie's evidence to be corroborated by: (i) the transcript of Witness TF1-274's testimony in the *Senessie* trial; (ii) Exhibit P1; (iii) the transcript of Witness Kabbah's testimony in the *Senessie* trial; and (iv) Witness TF1-585's telephone conversation as established in the *Senessie* case.[70] The Single Judge also found that Senessie's evidence regarding visits to the Appellant and the Appellant's interference with Senessie as a witness was corroborated by: (i) the date and time of the 30,000 Leones cheque; and (ii) Senessie's non-attendance at the meeting with the Independent Counsel.[71]

34. The Appeals Chamber recalls that a Trial Chamber may convict an accused on the basis of a single witness, although such evidence must be assessed with the appropriate caution, and care must

[62] Independent Counsel's Response, para. 36.
[63] Independent Counsel's Response, paras 118, 121, *citing* Appellant's Submissions, paras 68-70.
[64] Trial Judgment, paras 140, 164-166, 206.
[65] Trial Judgment, paras 152-157, 158, 164, 201, 203, 205-207.
[66] Trial Judgment, paras 153-155, 164, 201.
[67] Trial Judgment, paras 167-170, 186.
[68] Trial Judgment, paras 186, 194, 195.
[69] Trial Judgment, paras 140, 164-166, 206.
[70] Trial Judgment, paras 152-157, 158, 164, 201, 203, 205-207.
[71] Trial Judgment, paras 186, 194, 195.

be taken to guard against the exercise of an underlying motive on the part of the witness.[72] Corroboration of evidence is not a legal requirement[73] and a Trial Chamber enjoys discretion to use uncorroborated evidence, to decide whether corroboration is necessary in the circumstances, and to rely on uncorroborated, but otherwise credible, witness testimony.[74] Therefore, any appeal based on the absence of corroboration must be against the weight which a Trial Chamber attaches to the evidence in question.[75] Nonetheless, should a Chamber consider that a witness's evidence is to be approached with caution and/or require corroboration by other reliable evidence, it is bound to abide itself by the required caution or corroboration.[76]

35. In the case at hand, the Single Judge considered Senessie's evidence as accomplice or "insider" evidence, and for that reason the Single Judge undertook to "bear in mind the need for caution in assessing Senessie's evidence."[77] The Appeals Chamber has previously held that if after evaluation of evidence of an accomplice the Trial Chamber comes to the conclusion that the witness is nonetheless credible and his evidence reliable, the Trial Chamber can rely on it to enter a conviction.[78] In assessing the reliability of accomplice evidence, the main consideration for the Trial Chamber should be whether or not the accomplice had an ulterior motive to testify as he did.[79] Whilst it is safe for a Trial Chamber to look for corroboration in such circumstances, it may convict on the basis of the evidence of a single witness, even an accomplice, provided such evidence is viewed with caution.[80]

36. The Appeals Chamber, however, notes that Senessie was not only an accomplice witness, but also a witness who lied under oath in his own trial and was disbelieved and convicted by the same Single Judge for the same incidents that the Appellant was later convicted of in the present case, as well as for offering bribes to five Prosecution witnesses.[81] In particular, in Senessie's own trial, the Single Judge found that Senessie had given false testimony on a number of key issues

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[72] *Fofana and Kondewa* Appeal Judgment, para. 199, *citing Kordić and Čerkez* Appeal Judgment, para. 274.
[73] *Fofana and Kondewa* Appeal Judgment, para. 199; *See* also, *D. Milošević* Appeal Judgment, para. 215 and the references cited therein; *Mrkšić and Šljivančanin* Appeal Judgment, para. 264 and the references cited therein; *Kordić and Čerkez* Appeal Judgment, para. 274 and references cited therein; *Kunarac et al.* Appeal Judgment, para. 268; *Kupreškić et al.* Appeal Judgment, para. 33 and the references given therein; *Aleksovski* Appeal Judgment, para. 62; *Tadić* Appeal Judgment, para. 65.
[74] *Sesay et al.* Appeal Judgment, para. 221; *See* also, *D. Milošević* Appeal Judgment, para. 215 and the references cited therein.
[75] *Fofana and Kondewa* Appeal Judgment, para. 199, *citing Kordić and Čerkez* Appeal Judgment, para. 274; *Sesay et al.* Appeal Judgment, para. 221; *See* also, *Kunarac et al.* Appeal Judgment, para. 268; *Kupreškić et al.* Appeal Judgment, para. 220.
[76] *Sesay et al.* Appeal Judgment, para. 221.
[77] Trial Judgment, para. 147.
[78] *Brima et al.* Appeal Judgment, para. 128.
[79] *Brima et al.* Appeal Judgment, para. 128.
[80] *Brima et al.* Appeal Judgment, para. 129.
[81] *See*, e.g., *Senessie* Trial Judgment, paras 61, 71, 96; *Senessie* Sentencing Judgment, para. 19.

including his evidence on the contacts with the Prosecution witnesses and so-called "letters of invitation", and the Single Judge considered Senessie's evidence a "serious abuse of an accused's right to speak on his own behalf at trial".[82] The Single Judge therefore rejected Senessie's testimony in its entirety and convicted him of interfering with the Special Court's administration of justice by offering bribes to the witnesses and interfering with them. In contrast, in the Appellant's trial, the Single Judge relied almost exclusively on Senessie's evidence in relation to the very issues set out above, in convicting the Appellant of otherwise interfering with the witnesses.

37. The Appeals Chamber also notes that nowhere in the Trial Judgment did the Single Judge refer to the Special Court's jurisprudence on the issue of false testimony and its effect on witness credibility. When discussing the Appellant's submission that Senessie's evidence was that of a "proven liar", the Single Judge stated that "I have not been referred to, nor have I been able to find in my own research, a precedent that states that a court *may* or shall disregard an entire testimony for reasons of credibility and/or reliability".[83] The Single Judge concluded that she did not "consider it just or appropriate to reject Senessie's evidence in its entirety, but will assess issues of credibility and weigh inconsistencies in detail".[84]

38. However, it is the Special Court's settled jurisprudence that false testimony must be distinguished from questions of credibility that may arise from a witness's contradictory or inconsistent testimony.[85] As a matter of law, a Trial Chamber is not required to reject the entirety of a witness's evidence should it be apparent that the witness lied while testifying under solemn declaration.[86] A Trial Chamber *may* decide, however, in its exercise of discretion, to entirely disregard the evidence of a witness deemed unworthy of belief, or it may find portions of the testimony believable and decide to rely on the evidence it determines to be credible, *using necessary caution.*[87] While some Trial Chambers have found evidence of witnesses who have lied not to be credible and rejected it in its entirety, others have elected to accept portions of the witness's testimony, approaching it with caution and/or requiring corroboration.[88]

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[82] *Senessie* Sentencing Judgment, para. 19.
[83] Trial Judgment, paras 140, 141 (emphasis added).
[84] Trial Judgment, para. 144.
[85] *Sesay et al.* Appeal Judgment, para. 208.
[86] *Sesay et al.* Appeal Judgment, paras 217-219, 259.
[87] *Sesay et al.* Appeal Judgment, para. 259, *citing Seromba* Trial Judgment, para. 92; *Nahimana et al.* Trial Judgment, para. 551; *Nahimana et al.* Appeals Judgment, para. 820; *Nshogoza* Trial Judgment, paras 65-67; *Zigiranyirazo* Trial Judgment, paras 337-344; *Kordić and Čerkez* Trial Judgment, paras 629-630; *Kordić and Čerkez* Appeal Judgment, paras 254-267, 292-293; *Naletilić and Martinović* Appeal Judgment, para. 175; *Limaj et al* Trial Judgment para. 26
[88] *Sesay et al.* Appeal Judgment, para. 219, *citing Seromba* Trial Judgment, para. 92 (finding one witness not credible "as he admits having lied before the Chamber."); *Nahimana et al* Trial Judgment, para. 551 (finding that a witness "lied repeatedly" and rejecting her testimony in its entirety), upheld on appeal, *Nahimana et al.* Appeal Judgment, para.

39. In view of the jurisprudence discussed above, and given the Single Judge's previous finding that Senessie had lied under oath about the very incidents that are at issue in the present case, the Appeals Chamber, Justice Winter dissenting, considers that the Single Judge should have applied additional caution in assessing the evidence adduced from Senessie in this case. Such caution was necessary in addition to that required by virtue of Senessie's status as an accomplice or "insider" witness. Accordingly, the Appeals Chamber will look at the factual findings underpinning the Appellant's conviction and consider whether it was safe to enter a conviction on the basis of Senessie's evidence and any corroborating evidence.

(a) 200,000 Leones payment

40. As a preliminary matter, the Appeals Chamber notes that, following his trial, Senessie gave four separate accounts of what he claimed was the truth. First, at his sentencing hearing, on 4 July 2012, Senessie admitted that he had committed the offences of bribing and interfering with the witnesses and, for the first time, blamed the Appellant for instructing him to do so.[89] In his *allocutus*, during the sentencing hearing, Senessie never mentioned the payment of 200,000 Leones or any other payment.[90] Second, after being sentenced, Senessie filed before the Appeals Chamber an affidavit that he signed, attached to his Motion for Review.[91] This is where Senessie mentioned the payment of 200,000 Leones for the first time.[92] Third, Senessie conducted an interview with the Independent Counsel on 30 October – 1 November 2012.[93] Finally, Senessie testified in the trial against the Appellant.[94] In the course of his testimony in the Appellant's case, Senessie stated for the first time that there was an arrangement that the Appellant would pay him 500 United States Dollars and that 200,000 Leones that was paid was part of such an arrangement.[95] The Single Judge found Senessie's evidence on 500 United States Dollars not to be credible.[96] However, she did

820; *Nshogoza* Trial Judgment, paras 65-67 (Where the Trial Chamber considered a witness' evidence with particular care in view of his prior criminal record and that he admitted to lying under oath before the Appeals Chamber; *Zigiranyirazo* Trial Judgment, paras 337-344 (where the Trial Chamber declined to accept his uncorroborated testimony who acknowledged to have given false testimony to the Rwandan authorities."); *Kordić and Čerkez* Trial Judgment, paras 629-630, upheld on appeal: *Kordić and Čerkez* Appeal Judgment, paras 254-267; *Naletilić and Martinović* Appeal Judgment, para. 175 ("In the Appeals Chamber's view, the fact that, at trial, Witness [...] admitted to having lied on the two aforementioned occasions and to having committed the crimes mentioned above fails to demonstrate that the Trial Chamber erred in its assessment of the overall credibility of the witness in spite of these admissions."); *Limaj et al.* Trial Judgment para. 26.

[89] *Senessie* Transcript of 4 July 2012, pp 3-7.

[90] *Senessie* Transcript of 4 July 2012.

[91] *Senessie*, SCSL-11-01-REV-025, Public with Confidential Annexes A and B Defence Motion for Review, 10 August 2012 (*Senessie* Motion for Review).

[92] *Senessie* Motion for Review, Annex A, Affidavit, paras 11, 12.

[93] *See*, Transcript, 16 January 2013, pp 225, 226.

[94] Transcript, 14-16 January 2013.

[95] Transcript, 14 January 2013, p. 102; 15 January 2013, p. 209.

[96] Trial Judgment, para. 211.

accept Senessie's explanation that the reason he did not mention the 200,000 Leones in his *allocutus* was because he was "brief".[97] At the same time, the Single Judge also accepted Senessie's explanation that he was "brief" in the affidavit submitted to the Appeals Chamber, where he did mention the 200,000 Leones for the first time.[98]

41. The mere fact that a payment of 200,000 Leones was made was never disputed during the trial. What was disputed was the purpose of such a payment. To reach the conclusion that the purpose of the 200,000 Leones payment was to arrange transport for Senessie to locate the witnesses, and, ultimately, to make the witnesses recant their testimonies, the Single Judge drew inferences from: (i) the Appellant's interest in receiving the so-called "letters of invitation" (letters purporting to show the witnesses' alleged invitation to the Appellant to talk to them);[99] and (ii) the date of the payments preceding the date of the "letters of invitation".[100] The Single Judge also relied on the Appellant not adducing any evidence to rebut Senessie's evidence.[101]

42. The Appeals Chamber recalls that when it comes to an inference drawn from circumstantial evidence to establish a fact that is material to the conviction or sentence, such an inference cannot be upheld on appeal if another reasonable conclusion consistent with the non-existence of that fact was also open on that evidence, given that such inference should be the only reasonable one.[102] It is, therefore, permissible to base a conviction on circumstantial evidence, provided that the only reasonable inference to be drawn from such evidence leads only to the guilt of the accused.[103] The Appeals Chamber previously held that where such evidence is capable of any other reasonable inference it is not reliable for the purposes of convicting an accused.[104]

43. Regarding the Appellant's interest in receiving the letters, the Appellant never disputed that that he did pay 200,000 Leones to Senessie. The Appellant offered this fact for agreement at the beginning of the case and offered the payslip to be given to the Independent Counsel.[105] The Appellant put to Senessie that the payment was made to cover the costs of transporting the letters to

[97] Trial Judgment, para 159; Transcript, 15 January 2013, p. 213.
[98] Trial Judgmnet, paras 151, 159.
[99] Trial Judgment, para. 165.
[100] Trial Judgment, para. 166.
[101] Trial Judgment, paras 140, 165, 166.
[102] *Fofana and Kondewa* Appeal Judgment, paras 200, 202; *D. Milošević* Appeal Judgment, para. 20 *citing Čelebići* Appeal Judgement, para. 458 and *Karera* Appeal Judgment, para. 34; *Ntagerura et al.* Appeal Judgment, para. 399;
[103] *Fofana and Kondewa* Appeal Judgment, paras. 198, 200; In *Sesay et al.* Justice Bankole Thompson held: "[w]here the Prosecution's case is substantially based on circumstantial evidence, in order to convict the evidence must be such as to satisfy the Court that the facts proven are not only consistent with the guilt of the Accused, but also are such as to be inconsistent with any other reasonable conclusion. In effect, the finger of guilt must point decisively at the Accused and no one else." (*Sesay et al* Trial Judgment, Separate and Concurring Opinion of Justice Bankole Thompson Filed Pursuant to Article 18 of the Statute, para. 50, at p. 711, footnotes omitted)
[104] *Fofana and Kondewa* Appeal Judgment, para. 200.

him.[106] In relation to that, the Single Judge found: "Since I do not have direct evidence from the Defence on such propositions, it follows that Senessie's replies and evidence are unrebutted."[107] Likewise, the Single Judge concluded that "since the proposition that the Le 200,000 was to arrange transport for documents has not been adduced, and the evidence has not been rebutted"[108] the 200,000 Leones was "to arrange transport for Senessie to locate witnesses."[109]

44. The Appeals Chamber first notes that there is no direct evidence, either from the Appellant or from the Independent Counsel, as to the exact purpose of the 200,000 Leones. In his affidavit to the Appeals Chamber, where he mentioned this payment for the first time, Senessie did not state what the purpose of such payment was.[110] In his testimony before the Single Judge, Senessie stated that he himself used this amount "as transportation to visit the witnesses"[111] and that the Appellant gave him this money "as transportation."[112] The Single Judge found that Senessie said "the money was for transport, *by which I understand* is to locate the witnesses in Kailahun."[113] However, the Appeals Chamber notes that by that time, that is before the payment was made, Senessie had already located the witnesses and met with them, as found by the Single Judge in the *Senessie* case.[114] The Appeals Chamber further notes that the Appellant, as a former Defence investigator, could have had a legitimate interest in receiving the documents, once he was informed of their existence, because they related to the case he worked on. Therefore, the Appeals Chamber, Justice Winter dissenting, finds that the inference that the Appellant wanted to receive the letters to use them for unlawful purposes was not the only reasonable inference for the purpose of convicting the Appellant. Moreover, the Appeals Chamber, Justice Winter dissenting, finds that such inference could not be supported by the Appellant's failure to rebut Senessie's vague evidence, as the burden of proof remains at all times on the Prosecution.

45. Regarding the date of the payment (1 February 2011) preceding the date indicated on the letters (10 February 2011), the Appeals Chamber notes that another reasonable inference, available from the trial record, is that Senessie could have informed the Appellant that he had the letters after he first met with the witnesses at the end of January 2011. The Prosecution witnesses in the *Senessie* case testified that when Senessie met them at the end of January 2011, he already had the

[105] *See*, e.g., Transcript, 18 January 2013, p. 566.
[106] *See*, e.g., Transcript, 16 January 2013, p. 408.
[107] Trial Judgment, para. 140.
[108] Trial Judgment, para. 166.
[109] Trial Judgment, para. 166.
[110] *Senessie* Motion for Review, Annex A, Affidavit.
[111] Transcript, 14 January 2013, p. 102 ("It was the money that I was using as transportation to visit the witnesses").
[112] Transcript, 15 January 2013, p. 209.
[113] Trial Judgment, para. 164 (emphasis added).
[114] *Senessie* Trial Judgment, paras 11, 19, 24, 25, 44, 45, 48, 62.

letters with him and tried to persuade the witnesses to sign them.[115] It is, therefore, clear that Senessie already "located" the witnesses, had the letters and discussed them with the witnesses even before the payment was made on 1 February. The Appeals Chamber, Justice Winter dissenting, finds that the inference that the payment of 200,000 Leones of 1 February 2011 was to locate the witnesses, produce the letters and make them recant their testimonies was not the only reasonable inference.

(b) "Letters of Invitation"

46. Turning to the "letters of invitation", the Single Judge found that Senessie was a drafter, but not the sole author of the letters, that he consulted with the Appellant and that this had been "strongly challenged, but not rebutted".[116] The Single Judge subsequently found that Senessie consulted the Appellant in relation to the letters and that the Appellant instigated the drafting of the letters.[117] The Single Judge also found that Senessie's version of the drafting and sending of the document was corroborated by the evidence of **TF1-274** in the *Senessie* trial and Exhibit P1 (both admitted into evidence from the *Senessie* trial by consent, along with the evidence of the remaining four complainant-witnesses from the *Senessie* case).[118] In addition, the Single Judge relied on a statement of M. Kabbah and an adjudicated fact from the *Senessie* case.[119]

(i) TF1-274

47. The Appeals Chamber notes that in his *allocutus* at his sentencing hearing on 4 July 2012, Senessie stated that it was Witness TF1-274's idea to invite the Appellant and that it was Witness TF1-274 who gave him the document to be sent to the Appellant.[120] The Appeals Chamber also notes that the Single Judge accepted that Senessie was truthful at his sentencing hearing, although "brief".[121] However, in the affidavit submitted to the Appeals Chamber, Senessie did not mention Witness TF1-274 at all in relation to the letters. Instead, he stated that it was TF1-585 who suggested talking to the Appellant and inviting him to come to Kailahun for discussions and that, after his discussions with TF1-585, Senessie called the Appellant who then instructed him to prepare an invitation for them to sign "as guarantee, because he did not have any right to talk to Prosecution witnesses".[122] At the Appellant's trial, Senessie first stated that he could say it was

[115] *Senessie* Trial Judgment, paras 11, 19, 24, 25, 44, 45, 48, 62.
[116] Trial Judgment, para. 202.
[117] Trial Judgment, para. 203.
[118] Trial Judgment, para. 203.
[119] Trial Judgment, paras 155-158.
[120] Transcript, 4 July 2012, pp 4, 5.
[121] Trial Judgment, paras 151, 159.
[122] *Senessie* Motion for Review, Annex A, Affidavit, paras 8, 9.

TF1-274's idea, because he (TF1-274) supported it,[123] but subsequently denied that it was TF1-274's idea and argued that it was the Appellant's idea to draft the letter.[124] The Single Judge found that Senessie basically gave the same answer each time, "to the effect that TF1-274 agreed with the letter and therefore it was his idea; that he did contact Taylor and that Taylor agreed with the letter, and therefore they 'adopted it'."[125] The Single Judge also found that Senessie's version of drafting and sending the document was corroborated by the evidence of TF1-274 and Exhibit P1.

48. However, the Appeals Chamber notes that in the *Senessie* Judgment the Single Judge rejected Senessie's evidence and accepted TF1-274's evidence. In that case, the Single Judge first noted that TF1-274 described as a "black lie" a proposition that was put by the Senessie Defence that TF1-274 had initiated the contact, that he was the one who wanted to speak to Prince Taylor and that he had requested the information from the Senessie.[126] The Single Judge then noted that TF1-274 denied calling Prince Taylor[127] and found Senessie's "attempt to portray conversation with TF1-274 as not credible."[128] The Single Judge also found that TF1-274 was "clear and unshaken in his evidence on these points [Senessie urging TF1-274 to reconsider, making various arguments and "agitating"]."[129] Therefore, the Appeals Chamber, Justice Winter dissenting, considers that TF1-274's evidence does not corroborate Senessie's evidence.

(ii) M. Kabbah

49. The Single Judge also found that Kabbah's statement that Senessie told him that he (Senessie) had been given a mission by the Appellant to talk to the witnesses and that the Appellant told him to make an "invitation letter" had not been challenged or rebutted.[130] However, the Appeals Chamber, Justice Winter dissenting, finds that it is not clear why Kabbah's statement would need to be rebutted, since it was not disputed that those were Senessie's words and Kabbah himself could not confirm the fact that was in dispute, i.e. whether the Appellant actually told Senessie what Senessie claimed he was told by the Appellant.[131]

[123] Transcript, 14 January 2013, p. 177.
[124] Transcript, 15 January 2013, p. 258.
[125] Trial Judgment, para. 164.
[126] *Senessie* Trial Judgment, para.86.
[127] *Senessie* Trial Judgment, para.86.
[128] *Senessie* Trial Judgment, para.96.
[129] *Senessie* Trial Judgment, para.97.

(iii) Exhibit P1

50. In relation to Exhibit P1, the Appeals Chamber notes that the Single Judge referred to Exhibit P1 as an "unsworn and unchallenged statement"[132] of the Appellant to Mr. Lansana, Senessie's Defence Counsel, and proceeded to refer to its contents as reflecting what the Appellant said.[133] As a preliminary matter, the Appeals Chamber notes that this Exhibit was challenged by the Appellant both in relation to being his statement and the truth of its contents.[134] The Appeals Chamber further notes that Exhibit P1 is a filing made by Senessie's Defence Counsel, Mr. Lansana, on behalf of Senessie for the purposes of defence in the *Senessie* case. It purported to outline the evidence the Appellant would give if he was called as a Defence witness for Senessie. It is not sworn and it is not signed by the Appellant. The Appellant never testified in the *Senessie* case. In his own trial, the Appellant exercised his right to remain silent and did not testify. He denied, as already noted, through his Defence Counsel, that what is outlined in Exhibit P1 was his statement.

51. Considering that: (i) Exhibit P1 was prepared by Senessie's Defence Counsel as part of the Senessie Defence; (ii) Exhibit P1 was not sworn and was never signed by the Appellant; (iii) the Appellant chose to exercise his right to remain silent and not to testify, and the content of Exhibit P1 could not be put to the Appellant and he could not be either directly examined or cross-examined on the content of that Exhibit; (iv) Exhibit P1 was drafted by Mr. Lansana and he was never called to testify about either the contents of the Exhibit or the preparation of that document; (v) it is not unusual for the parties to the proceedings to prepare a draft statement of a potential witness and only subsequently to send it or show it to the potential witness who is either going to sign it if he/she agrees with it, or modify it and sign it, or refuse to sign it altogether if he/she does not agree with it; the Appeals Chamber, Justice Winter dissenting, opines that the inference drawn by the Single Judge that Exhibit P1 was indeed the Appellant's statement was not the only reasonable

[130] Trial Judgment, paras 157, 158.
[131] Senessie Trial Judgment, paras 6-20.
[132] Trial Judgment, para. 155.
[133] Trial Judgment, paras 153-155, 164, 201 and 206 ("proposed statement [of the Appellant] to Mr. Lansana"; "the Accused is recorded to have said..."; "He also said in that document that Senessie..."; "He told Senessie..."; "He told her [TF1-585]..."; "In Exhibit P1, the Accused stated..."; "In Exhibit P1, the Accused's statement,..."; "by Exhibit P1, in which the Accused stated...").
[134] Transcript, 16 January 2013, pp 433-435 (Mr. Dixon: Your Honour, I have no objection to it being an exhibit, because it is an official Court filing and it is a document that was shown to Mr Senessie and he commented on it. So your Honour should have it in order to assess the evidence of the witness. It could well be a document that's referred to in the - properly referred to in the speeches as well. But I would object if it is to be tendered as a statement of Mr Taylor. In other words, if my friend is going to rely upon it once it's in evidence as evidence that this is what Mr Taylor said, then I would object to it being an exhibit for that purpose. So it can be an exhibit for the purpose of the record of what the witness was shown and his comments on it, but it can't be admitted for the truth of its contents.)

inference. The Appeals Chamber, therefore, Justice Winter dissenting, considers that Exhibit P1 could not corroborate Senessie's vague evidence.

(iv) Telephone conversation with TF1-585 (adjudicated fact)

52. The Deliberation and Disposition sections of the *Senessie* Trial Judgment, as well as the evidence of five complainant witnesses from Kailahun and the transcripts from the Senessie trial, were admitted into evidence in the Appellant's trial by consent.[135] The Single Judge found in the Appellant's case that because TF1-585's statement that a "speaker" over the phone confirmed that he had sent Senessie and that what they were doing was "out of the law" (an adjudicated fact from the *Senessie* case) had not been rebutted, TF1-585 did speak to the Appellant, i.e. the Single Judge found that the Appellant was the "speaker".[136] The Single Judge referred to her finding in the *Senessie* Trial Judgment, based on evidence of three witnesses, that TF1-585 visited Senessie's home on or about 8 or 9 February 2011 and that "a phone call was made to Prince Taylor."[137]

53. In accordance with Rule 94(B) of the Rules, a Chamber may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Special Court relating to the matter at issue in the current proceedings. The Appeals Chamber first notes that under the Special Court's jurisprudence, an adjudicated fact, with its presumption of accuracy is a piece of evidence like any other and it can be argued by the parties in their closing briefs and weighed against the evidence as a whole during deliberations.[138] In this regard, during the trial, the Appellant did argue to the contrary and submitted, referring to TF1-585's testimony in some detail, that TF1-585 never stated that she actually talked to the Appellant and that there was no evidence led about the voice recognition, or any other evidence to prove beyond reasonable doubt that it was the Appellant on the other end of the telephone.[139] The Appellant submitted during the trial that TF1-585's knowledge, as well as the knowledge of other witnesses, about whom they were talking to was based exclusively on who Senessie had told them was on the telephone and that there was nothing else to prove it actually was the Appellant.[140] The Appellant did, therefore, challenge the veracity of the Single Judge's finding from the *Senessie* case that TF1-585 talked to the Appellant, admitted into evidence as an adjudicated fact.

[135] Trial Judgment, para. 9.
[136] Trial Judgment, paras 155, 156.
[137] *Senessie* Trial Judgment, para. 41.
[138] *Charles Taylor* Appeal Judgment, para. 116.
[139] Transcript, 18 January 2013, pp 572-574.
[140] Transcript, 18 January 2013, p. 574.

54. The Appeals Chamber also notes that the above mentioned adjudicated fact from the *Senessie* trial directly concerned the Appellant's acts and conduct, the material facts that the Prosecution needed to prove beyond reasonable doubt in the case against the Appellant. As noted by the Appeals Chamber in *Fofana and Kondewa*, "the purpose of judicial notice under Rule 94 is judicial economy...and...a balance should be struck between judicial economy and the right of the accused to a fair trial."[141] The Appeals Chamber, Justice Winter dissenting, supports the view of the *ICTR* and *ICTY* Appeals Chambers pertaining to the issue of whether or not judicial notice should be taken of adjudicated facts from another trial relating to the acts and conduct of the accused in a current trial, and if so, whether it can be used to establish the responsibility of the accused. In *Karemera et al.* the *ICTR* Appeals Chamber held that judicial notice should not be taken of adjudicated facts relating to the acts, conduct and mental state of the accused.[142] The *Karemera et al.* Appeals Chamber further held:

> There are two reasons that this category of facts warrants complete exclusion, while other facts bearing less directly on the accused's criminal responsibility are left to the Trial Chamber's discretion. First, this interpretation of Rule 94(B) strikes a balance between the procedural rights of the Accused and the interest of expediency that is consistent with the one expressly struck in Rule 92 *bis*, which governs the proof of facts other than by oral evidence—another procedural mechanism adopted largely for the same purpose as was Rule 94. Second, there is also a reliability concern — namely, *there is reason to be particularly sceptical of facts adjudicated in other cases when they bear specifically on the actions, omissions, or mental state of an individual not on trial in those cases. As a general matter, the defendants in those other cases would have had significantly less incentive to contest those facts than they would facts related to their own actions; indeed, in some cases such defendants might affirmatively choose to allow blame to fall on another.*[143]

55. The *ICTY* Appeals Chamber added that when an accused is charged with crimes committed by others, while it is possible to take judicial notice of adjudicated facts regarding the existence of such crimes, the *actus reus* and *mens rea* supporting the responsibility of the accused for the crimes in question must be proven by other means than judicial notice.[144]

56. In *Sesay et al.*, the Trial Chamber accepted this approach and held that one of the legal criteria that must be met for a proposed fact to be considered an adjudicated fact susceptible of being judicially noticed at the discretion of the Trial Chamber is that the fact must not go to proof of the acts, conduct or mental state of the accused.[145]

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[141] *Fofana* Appeal Decision on Judicial Notice, para. 22, *quoting Simić et al.* Decision on Judicial Notice, p.3.
[142] *Karemera et al.* Appeal Decision on Adjudicated Facts, para. 50.
[143] *Karemera et al.* Appeal Decision on Adjudicated Facts, para. 51 (internal references omitted; emphasis added)
[144] *D. Milošević* Appeal Decision on Adjudicated Facts, para. 16 (internal references omitted).
[145] *Sesay et al.* Decision on Adjudicated Facts, para. 19, *citing Karemera et al.* Appeal Decision on Adjudicated Facts.

57. The Appeals Chamber, therefore, finds, Justice Winter dissenting, that the Single Judge, should not have accepted this finding as an adjudicated fact or, at least, she could not have relied on such adjudicated fact as proof of the Appellant's *actus reus* and/or *mens rea*. In addition, the Appeals Chamber has examined the *Senessie* Trial Judgment and the transcripts from the *Senessie* trial and could not find a single instance where witnesses stated that they themselves knew that TF1-585 talked to the Appellant through sources other than Senessie, for example by voice recognition by the witness, telephone number recognition by the witness or call listings provided by the telephone company; their knowledge came solely from what Senessie told them.

(c) 30,000 Leones cheque and "other payments" by the Appellant to Senessie

58. The Single Judge accepted that there was a 30,000 Leones cheque from the Appellant and found that this payment, as well as some other payments mentioned by Senessie, was made to Senessie by the Appellant, the effect of which was to keep Senessie close to him.[146]

59. The Appeals Chamber will consider the accuracy of some of the Single Judge's findings. The Single Judge found that Senessie, when challenged in cross-examination on his failure to mention the items such as the 30,000 Leones cheque in his testimony, sentencing hearing and the affidavit to the Appeals Chamber, "replied he did not have evidence, therefore, *he did not inform* the Independent Counsel of it."[147] The Single Judge concluded that she found "his explanation *for not telling Independent Counsel* in his record of interview about Le 30,000 unconvincing, and I do not accept it".[148] However, the Appeals Chamber has examined the trial record and found that Senessie repeatedly testified that he *had told* the Independent Counsel about the 30,000 Leones cheque during his interview on 30 October – 1 November 2012, but had asked the Independent Counsel not to record this:[149]

> A. That is what I'm telling you. I said I told him. I told him that this man gave me a cheque, but the cheque is missing. He wanted to write it, so that he would submit it to you but I said no. Because I want to give you - whatever I say, I would like to have it as proof. So I stopped him. That was like a privileged discussion. There was no need to disclose it when I told him that I would give him the cheque. If he did not see it, he won't be able to disclose it.
>
> Q. Mr Senessie, there's no privilege. You can't use that as another one of your defences in relation to this conversation -

[146] Trial Judgment, paras 167-170.
[147] Trial Judgment, para. 159 (emphasis added).
[148] Trial Judgment, para. 169 (emphasis added).
[149] Transcript, 16 January 2013, pp 378-390.

> A. I told him. I told him. I informed him about the cheque. I informed him. I stopped him that he should not take it for granted because it has not been found. I informed him.[150]
>
> (...)
>
> A. I just informed him, I said, that man gave me a cheque. I said I have the cheque but did not cash it. I told him exactly what happened. I said, but I do not have the cheque. My child has taken it away, but when they find it, I'll give it to you so that you can submit it to the Court as proof of what - as proof that what I'm saying is true. I explain. But that was a long privilege discussion. We spent almost about - first, I was there for two hours, I went for lunch and I came back. The following day I came. It is a long - it was a long discussion. So he has picked what he felt was vital to the Court.[151]

60. The Independent Counsel stated for the record that he was not told by Senessie about this cheque at all, that "there is no way I could have left out something like that, Your Honour, it just wouldn't happen" and that "that is exactly the kind of thing that I would have written down had I been told..."[152] It is, therefore, not the case, as found by the Single Judge, that Senessie's evidence was that he did not inform the Independent Counsel of this cheque and that Senessie gave an explanation for that failure. Rather, Senessie was persistent in his evidence that he did inform the Independent Counsel of this cheque, asked him not to record it and that, in effect, the Independent Counsel obeyed, thus, insinuating that the Independent Counsel decided to leave out this fact from the record and then lied to the Court when he said that he would have never left out such information from the record had he been told. In the Appeals Chamber's opinion, Justice Winter dissenting, this can hardly be seen as exercising necessary caution when relying on the evidence of a witness who is not only an accomplice witness, but has also previously given false testimony in relation to the incidents under consideration in the present case.

(d) Senessie's visit to the Appellant and the Appellant's influence on and interference with Senessie as a witness (Count 9)

61. The Single Judge found on Senessie's evidence that the Appellant influenced Senessie to refuse to see the Independent Counsel, that he told Senessie not to implicate them both and that he persuaded Senessie to give false information.[153] The Single Judge found Senessie's evidence to be corroborated by Senessie's non-attendance at the meeting with the Independent Counsel.[154]

[150] Transcript, 16 January 2013, p. 382.
[151] Transcript, 16 January 2013, pp 384, 385.
[152] Transcript, 17 January 2013, pp 453, 456.
[153] Trial Judgment, paras 194, 195-200.
[154] Trial Judgment, paras 186, 195.

62. In addition, the Single Judge found on Senessie's evidence that "terms such as '*sine die*' came into the conversations that he [Senessie] had with the Accused", that these terms came from somebody who had knowledge of the Court terminology and that "no other person is named or suggested or referred to in the course of evidence, and no other names were put to him."[155] The trial record, however, shows that the Appellant *did* put to Senessie questions regarding his knowledge and use of legal terms and that Senessie answered that he gained legal terminology knowledge when he "came to this Court" and that if "I say anything about a law term, it's within the detention where I am that I heard it, because I'm reading widely all the papers that I receive".[156]

63. Furthermore, the Single Judge found that Senessie was "sheep-like, and, as a sheep, he was following the Accused."[157] The proposition that Senessie acted like a sheep was a rhetorical question put to Senessie by the Defence during cross-examination, suggesting that it could not be true since he was a priest and a political leader in his community, as well as the chairman of the national secondary school.[158] The trial record also shows that Senessie testified on making "ploys" during his trial, saying that:

> "A ploy is not a lie. A ploy is to gain advantage of anything. It's cunning. To gain an advantageous position. A ploy is not a lie."
>
> "Well, grammatically, what I stated a little about a ploy, a ploy and a lie are not the same. A ploy is a sort of trickery that you do to gain an advantageous position or a cunning way that can enable you to gain advantage."[159]

64. Considering Senessie's position in the society, as well as his testimony on making ploys to gain an advantageous position, the Appeals Chamber opines, Justice Winter dissenting, that the inference that he was "sheep-like" in following the Appellant was not the only reasonable inference that could have been drawn.

65. The Appeals Chamber, therefore, finds, Justice Winter dissenting, that Senessie's failure to attend the meeting with the Independent Counsel could not corroborate Senessie's evidence that the Appellant instructed him not to attend the meeting.

3. Conclusion

66. For the foregoing reasons, the Appeals Chamber finds, Justice Winter dissenting, that no reasonable trier of fact could have placed decisive weight on Senessie's evidence in convicting the

[155] Trial Judgment, paras 190 and 191.
[156] Transcript, 16 January 2013, pp 343, 344, 347.
[157] Trial Judgment, para. 192.
[158] *See*, e.g., Transcript, 14 January 2013, pp 135-140; 15 January 2013, pp 311-315.

Appellant and reverses the Appellant's conviction for contempt. As a result, the Appeals Chamber finds, Justice Winter dissenting, that it need not consider the Appellant's remaining Grounds of Appeal.

IV. DISPOSITION

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

PURSUANT TO Article 20 of the Statute and Rules 77(K), 106, 117(A) and 118 of the Rules;

NOTING the written submissions of the Parties;

BY MAJORITY;

GRANTS, Justice Winter dissenting, Grounds 1 and 2 of the Appeal; **REVERSES**, Justice Winter dissenting, the Appellant's conviction for contempt; and **ENTERS**, Justice Winter dissenting, a verdict of acquittal;

DISMISSES, Justice Winter dissenting, as moot the Appellant's remaining Grounds of Appeal; and

ORDERS that the Judgment be enforced immediately pursuant to Rule 99(A) of the Rules.

Issued on this 30th day of October 2013 at The Hague, The Netherlands.

Justice Emmanuel Ayoola

Justice Jon M. Kamanda

Presiding

Justice Winter appends a Dissenting Opinion.

[Seal of the Special Court for Sierra Leone]

[159] Transcript, 15 January 2013, pp 314-315.

V. DISSENTING OPINION OF JUSTICE RENATE WINTER

1. I fundamentally dissent from the Majority's conclusion that "no reasonable trier of fact could have placed decisive weight on Senessie's evidence in convicting the Appellant" and the consequent reversal of the Appellant's convictions for interfering with the Special Court's administration of justice by interfering with witnesses.[160] In its Judgment, the Majority does not consider the reasonableness of the Single Judge's findings and conclusions in light of the totality of the evidence, as it should in accordance with this Court's consistent jurisprudence. Instead, it:

> i) misinterprets the law applicable to the assessment of evidence;
>
> ii) misrepresents and misinterprets the trial record and the Single Judge's reasoning in reaching her conclusions;
>
> iii) searches the trial record for alternative interpretations of the evidence, obviously as a *de novo* review; and
>
> iv) substitutes its own evaluation of the evidence for that of the Single Judge in matters that are best left for the Single Judge as trier of fact to decide. This is contrary to the well established jurisprudence of the SCSL and other international tribunals.

2. This Appeals Chamber is tasked with applying the standards of review to determine if legal, factual or procedural errors were committed and whether these errors occasioned a miscarriage of justice and/or invalidated the Trial Judgment. This was not the Majority's approach and the errors of the Majority as listed above are compounded by the fact that the Majority, while finding "errors" in the Single Judge's assessment, failed to explain how any of those "errors" occasioned a miscarriage of justice and/or invalidated the Trial Judgment.

A. Alleged Legal Errors

3. I strongly disagree with the Majority's conclusion that, as a legal matter, "the Single Judge should have applied additional caution in assessing the evidence adduced from Senessie" because, in addition to being an "insider" witness, he was also a witness who lied under oath in his own trial on issues related to the charges against the Appellant.[161] The jurisprudence referenced by the Majority[162] does not in fact support that conclusion. There is nothing in the jurisprudence that establishes different degrees of caution that should be applied to "insider" witnesses, to witnesses who have been untruthful in the past, to witnesses who were convicted in other trials while giving

[160] Appeal Judgment, para. 66.
[161] Appeal Judgment, paras 36, 39.
[162] Appeal Judgment, paras 34-39.

false testimony or to witnesses falling within several of these categories. Nowhere in the jurisprudence or literature could I find such a "hierarchy of caution". The jurisprudence referenced by the Majority only requires that *caution, not different layers of caution*, be exercised. The Majority further errs by not specifying what *additional caution* is demanded of a trier of fact by that term, as no explanation is given to the meaning of *additional caution* nor is any reasoning provided on how it should be applied.

4. I also cannot accept the Majority's conclusion that the Single Judge failed to refer to the Special Court's jurisprudence on the issue of false testimony and its bearing on witness credibility.[163] The Single Judge repeatedly noted that Senessie had been untruthful, that the law did not oblige her to dismiss his entire testimony on that basis and that she would thus assess his credibility and the reliability of his evidence on a case-by-case basis.[164] This is legally correct, and her deliberations and reasoning further show that she was fully aware that Senessie's untruthfulness had an impact on his credibility and on the reliability of his evidence, as she repeatedly addressed this issue.[165] The Majority is apparently aware that it has found an "error" where none exists, as it then constructs a *sui generis* remedy that does not bear any relation to the standards of review on appeal or the alleged "error", and does not correct the alleged "error". The "error" then serves only to provide a flimsy justification for the Majority's rejection of the Single Judge's assessment of the evidence and its own erroneous *de novo* review of the trial record.

B. Inaccurate Representation of the Trial Record

5. I strongly disagree with the Majority's discussions and conclusions on the Single Judge's factual findings since those discussions and conclusions misrepresent the trial record, the evidence and the Single Judge's reasoning. Moreover, I do not agree with the Majority's representation of the factual findings underpinning the Appellant's conviction as it fails to address many of the Single Judge's findings pertaining to the Appellant's liability for interfering with Senessie.[166]

6. First, the Majority's insinuation that the Single Judge reversed the burden of proof[167] is based either on its erroneous interpretation of her reasoning or a complete disregard for her reasoning. In reality, the Single Judge's reasoning consistently shows that her findings were based

[163] Appeal Judgment, paras 37, 38.
[164] Trial Judgment, paras 140-144.
[165] In her deliberations the Single Judge addressed on several occasions the fact that Senessie had previously been untruthful and that his credibility and the reliability of his evidence were being challenged at all times due to those lies. In this regard see Trial Judgment, paras 151, 159, 160, 174, 175, 180, 204, 205.
[166] *See infra* para. 16, fn. 32.
[167] Appeal Judgment, para.44 *See* also Appeal Judgment, para. 41, 49, 52.

on a careful and cautious analysis of all the available evidence and that she provided a reasoned opinion for why she accepted or rejected evidence at all times.[168] If the Single Judge's reasoning would have been properly addressed, the Majority could not have come to the conclusions it did.

7. Second, the Majority misrepresents the evidence when it unreasonably rejects the Single Judge's finding that the Appellant gave Senessie 200,000 Leones to pay for Senessie's transport to meet the witnesses.[169] The Majority states that this finding was based on an inference derived solely from circumstantial evidence. I fail to see how the Majority could make that statement. The Single Judge relied on the direct testimony of Senessie supported by the direct evidence of the transfer of money from the Appellant's account to Senessie's daughter's account and the date of that transfer, the letters of invitation, the undisputed evidence of the dates contained in those letters, and incidental additional corroborating circumstantial evidence in reaching her factual conclusion.[170]

8. Third, the Majority's reasoning and discussion regarding Exhibit P1 shows a lack of understanding of how the Single Judge assessed and used Exhibit P1. When accepting Exhibit P1 into evidence, the Single Judge noted that matters in it were in dispute,[171] and, in her deliberations, she expressly explained that no note had been taken or reliance placed upon the disputed portions of Exhibit P1.[172] Rather, she used the undisputed portions of this exhibit, namely the portions where the Appellant denied any wrongdoing, as *exculpatory evidence*.[173] The Majority fails to realise and

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[168] The Single Judge carefully assessed the evidence from Senessie's trial, Senessie's evidence-in-chief, the propositions made by the Appellant in cross-examination, Senessie's responses to these propositions and the documentary evidence adduced in the Appellant's trial, and throughout her deliberations she repeatedly provided a reasoned opinion for accepting and/or rejecting evidence. For example, in her assessment of the payment of 200,000 Leones made to Senessie by the Appellant, the Single Judge assessed all the available evidence and explained that she accepted Senessie's account that this money was given to pay for his transport to meet the witnesses because it was supported by the fact that the bank transfer was made on 1 February 2011, prior to the date the letters of invitation were signed, and that this supported Senessie's account that the money was to be used to contact the witnesses instead of the Appellant's proposition that the money was given to pay for the delivery of the documents that, according to the Appellant, were already in Senessie's possession. Contrary to the Majority's insinuation, the Single Judge's conclusion on the payment of 200,000 Leones was not based on the lack of rebuttal evidence. In this regard *see* Trial Judgment, para. 206 and *compare* to Appeal Judgment, para. 44.

[169] Appeal Judgment, para. 44. *See* also Appeal Judgment, paras 40-45.

[170] The trial record shows that Senessie was cross-examined by the Defence on the purpose of this paymentand that he explained that the money was given to pay for his "transportation in Kailahun town to meet the witnesses. In this regard *see* Trial Transcript, 16 January 2013, p. 408.

[171] Trial Judgment, para. 76. *Cf.* Appellant's Submissions, para. 61. The Defence erroneously argues the Single Judge stated that Exhibit P1 was not challenged since the Single Judge did note this exhibit was challenged and placed no reliance on the challenged portions.

[172] Trial Judgment, para. 203, fn. 147.

[173] Exhibit P1 was first addressed by the Single Judge in her assessment of a telephone conversation that took place between TF1-585 and Taylor. In her assessment the Single Judge first noted TF1-585's evidence that she spoke to Taylor over the phone and that he informed her that he had sent Senessie and that what they were doing was out of the law. The Single Judge then noted the content of Exhibit P1 which portrayed the Appellant's denial of any wrong doing during his interactions with TF1-585 and Senessie. The Single Judge weighed this evidence against the evidence of TF1-585 but chose to accept TF1-585's evidence since, in the Senessie trial, the Single Judge found TF1-585's evidence to be supported by the evidence of two other witnesses. The Single Judge concluded that that evidence, as an adjudicated fact, has not been rebutted, and found that TF1-585 did speak to the Appellant and that he did say that he

acknowledge this, preferring instead to again find an error where none exists. Nor does the Majority explain how the Single Judge's reliance on Exhibit P1 occasioned a miscarriage of justice. In my view, the Majority's conclusion that the use of an exhibit as exculpatory evidence in favour of an accused can amount to an error occasioning a miscarriage of justice to his/her detriment is illogical and not to be endorsed. Likewise, where the content of an exhibit is in accordance with the propositions made by an appellant at trial, reliance on that content cannot occasion a miscarriage of justice.

9. Fourth, the Majority's discussion of the adjudicated facts admitted from the *Senessie* Trial misrepresents the Single Judge's assessment of the evidence and focuses on issues not raised by any of the Parties on appeal. Instead of addressing this issue as a legal matter, the Majority should have addressed it as a factual matter in light of the adversarial nature of proceedings before the Special Court. The root of the Majority's confusion is apparent when it states that the adjudicated fact was "challenged". The *admission* of the adjudicated fact was not challenged by the Appellant. These facts were introduced by agreement of the parties at trial.[174] What must be addressed then is whether the Single Judge erred in her assessment of the reliability of evidence the admission of which had been agreed to by the Parties.[175] However, the Majority relies on the fact that the

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had sent Eric Senessie, and he did say that what they were doing was out of the law. The Single Judge's approach shows that Exhibit P1 was used as *exculpatory* evidence. *See* Trial Judgment, paras 152-156.
Exhibit P1 was also used by the Single Judge in her assessment of the evidence pertaining to the payment of 200,000 Leones and the drafting of the invitation letters. In this assessment the content of Exhibit P1 was only considered truthful insofar as it was compatible with propositions made by the Appellant at trial and was used to support the Appellant's proposition. On this issue, the Single Judge first noted Senessie's evidence that the Appellant provided him with 200,000 Leones to pay for his transport to meet the five witnesses. She also noted that in cross-examination it was put to Senessie that the 200,000 Leones paid by the Appellant to Senessie through his daughter's bank account was demanded from the Appellant to allow Senessie to travel to Bo with the documents. She further noted the content of Exhibit P1, where the Appellant stated that he inquired if TF1-274 had given Senessie any documents and considered that this statement supported the Defence's proposition at trial that money was given to Senessie to pay for his transport to bring to the Appellant the invitation letters that, according to him, were already in Senessie's possession. The Single Judge also considered that to this extent, both Exhibit P1 and the Appellant's proposition at trial, despite *contradicting* Senessie's evidence regarding the reasons for the payment of 200,000 Leones and the drafting of the invitation letters, demonstrated that the Appellant had an interest in receiving the documents. It was only to this extent, the Appellant's desire to receive the documents, that Exhibit P1, in line with the Appellant's proposition at trial, was found to support Senessie's evidence. *See* Trial Judgment, paras 162-166, 187, 201-203, 206.

[174] The trial record shows that the parties stipulated to the admission into evidence of all the information and the Court's deliberations and disposition sections of the *Senessie* Judgment. Trial Transcript, 12 January 2013, p. 34. The Parties requested that said information be treated *as final adjudicated facts*. On that occasion the Single Judge directed herself to Defence Counsel and noted that *the parameters of these facts are quite well clearly delineated* and that *unless there is some other dispute, I am going to treat it in that way*. Trial Transcript, 12 January 2013, p. 34 (emphasis added). Defence Counsel agreed to those facts stating that there is *no need to hear those witnesses again* and that the Independent Counsel could remove them from his list of witnesses. Trial Transcript, 12 January 2013, pp 35, 36 (emphasis added). The Defence thus accepted the evidence and findings from the Senessie trial as adjudicated facts fully aware that that evidence and findings pertained to Taylor's role (*actus reus*) and his mental state (*mens rea*) and it did not object to the admission of this evidence as adjudicated facts despite the Single Judge providing it the opportunity to do so.

[175] At trial, Defence Counsel explicitly informed the Single Judge that TF1-585's evidence, which was set out in the adjudicated facts, would not need to be cross-examined, that he accepted her evidence and that she would not need to be

accuracy of the adjudicated fact was challenged, albeit merely by assertion,[176] and then incongruously focuses on whether it is an error of law to rely on *unrebutted* adjudicated facts that were admitted by the agreement of the Parties and which go to the acts and conduct of an accused (*actus reus*) or his mental state (*mens rea*).[177] The Majority has taken upon itself to raise, *proprio motu*, arguments in favour of the Appellant to find that errors were allegedly committed by the Single Judge where no errors or prejudice has been alleged by any party at trial or on appeal.[178]

10. Finally, the Majority misrepresents the Single Judge's assessment of the evidence regarding the cheque for 30,000 Leones and other payments the Appellant made to Senessie. In its discussion the Majority takes the Single Judge's words out of context and it references incorrect paragraphs of the Trial Judgment. The Majority's discussion thus insinuates that the Single Judge misrepresented Senessie's evidence and the Majority then resorts to the trial transcripts to identify the "correct" evidence. However, a simple reading of the Trial Judgment shows that Senessie's evidence, as identified by the Majority in the trial transcripts, is set out in the exact same manner in the evidence section of the Trial Judgment and those paragraphs reference precisely the same pages of the transcripts that were mentioned by the Majority. The Majority surprisingly failed to observe this obvious fact and thus erroneously focused its entire discussion on its unsupported belief that the Single Judge misrepresented Senessie's evidence.[179] The Majority's inaccurate analysis of the Trial

called as a witness in this trial. In his own words, there is "*no need to hear those witnesses again*" and the Independent Counsel, who had listed her as a witness, could remove her and the other complainant witnesses from his list of witnesses. Trial Transcript, 12 January 2013, pp 35, 36 (emphasis added).

[176] In its Judgment the Majority references the Appellant's challenges to the Single Judge's finding, admitted as an adjudicated fact from the Senessie trial, that TF1-585 spoke to Taylor on the telephone and goes on to find that challenges were made. However, this was never an issue as the Single Judge expressly noted that there was contradictory evidence to the finding admitted from the Senessie trial and before relying on that adjudicated fact she subjected it, "as all other evidence, to the tests of relevance, probative value, and reliability." In this regard see Trial Judgment, paras 153-155; Trial Transcript, 25 January 2013, p. 672.

[177] Appeal Judgment, para. 57. *See* also Appeal Judgment, paras 54-56.

[178] At trial, Defence Counsel urged the Single Judge to go through the trial record of the Senessie trial and examine it thoroughly as it constitutes the agreed adjudicated facts. Trial Transcript, 18 January 2013, p. 559. On appeal, the Appellant does not challenge the Single Judge's reliance on adjudicated facts on issues that go to his role (*actus reus*) or his mental state (*mens rea*). The Appellant is best positioned to allege any violation of fair trial rights and to make claims that he suffered irreparable prejudice, but on appeal, he merely questions the probative and corroborative value of the evidence admitted from Senessie's trial. However, he does so by misrepresenting that evidence and the findings from the Senessie trial and by ignoring the Single Judge's reasoning in making her findings, much like the Majority has done in its reasoning.

[179] *See* Appeal Judgment, paras 58-60. The Majority states that Senessie's evidence given during cross-examination is set out in paragraph 159 of the Trial Judgment but this paragraph does not pertain to Senessie's evidence and pertains instead to the Single Judge's deliberations on his evidence. In its belief that the Single Judge misrepresented Senessie's evidence, the Majority resorts to the trial transcripts to identify Senessie's responses given in cross-examination on the cheque for 30,000 Leones, but that evidence is already set out in exactly the same manner at paragraphs 120 and 121 of the Trial Judgment. Moreover, the footnotes in paragraphs 120 and 121 of the Trial Judgment reference the very same pages of the transcripts relied on by the Majority. *Compare* Appeal Judgment, para. 59, fns 148-150 *and* Trial Judgment, paras 120, 121, fns 119-121. In paragraphs 120 and 121 of the Trial Judgment, the Single Judge noted that Senessie was thoroughly cross-examined by Defence Counsel regarding the cheque for 30,000 Leones and that Defence Counsel put to Senessie that there was no reference to the cheque in the disclosed record of the interview. Senessie replied that this was because he told the Independent Counsel that it should not be there. In paragraph 169 of the Trial

Judgment has prevented it from correctly understanding the trial record and the Single Judge's reasoning and allowed it to find error where there was none. Accordingly, the Majority not only fails to address the reasonableness of the Single Judge's conclusion and reasoning, but it fails to see the cautious approach taken by the Single Judge, who analysed all the available evidence and rejected aspects of Senessie's evidence which she found to be incredible and accepted other aspects of his evidence which she concluded, based on all of the evidence in the case, both direct, documentary and circumstantial, were reliable beyond a reasonable doubt.

C. The Majority's Erroneous Evaluation of the Evidence

11. As mentioned above, the Majority never defined the meaning of *additional caution*. It seems to have accepted the Appellant's submission that the law requires that the evidence of a witness like Senessie can only corroborate other independent and reliable evidence or must be corroborated in the material particulars by such other evidence,[180] which is not the law according to international jurisprudence.[181] Despite the Majority's claim that it would "look at the factual findings underpinning the Appellant's conviction and consider whether it was safe to enter a conviction on the basis of Senessie's evidence and any corroborating evidence"[182] and its conclusion that "no reasonable trier of fact could have placed decisive weight on Senessie's evidence in convicting the Appellant,"[183] the Majority does not actually address the reasonableness of the Single Judge's reliance on Senessie's evidence and whether other evidence reasonably supports his evidence. Instead, the Majority, urged by the Appellant, blindly ventures into the trial record to craft other "reasonable" inferences that could be drawn from the evidence found to support Senessie's account

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Judgment, the Single Judge found Senessie's explanation for the absence of any mention of this payment on the record to be unconvincing.She did not believe Senessie's account that he had previously informed the Independent Counsel of this payment and that he told the Independent Counsel not to take note of this evidence. Instead, the Single Judge accepted the Independent Counsel's statement that he would not have left out something like that, that it just wouldn't happen because that is exactly the kind of thing that he would have written down had he been told. Accordingly, when the Single Judge states in paragraph 159 that Senessie had not previously mentioned these payments, including the cheque for 30,000 Leones, it is because she rejected his testimony that he had previously mentioned the payment of 30,000 Leones to the Independent Counsel. Accordingly, she considered that none of these payments had previously been mentioned. She was not ignoring Senessie's evidence given in cross-examination but in fact rejecting this aspect of his evidence because she found it to be incredible. Nevertheless, the cheque did in fact exist and was admitted into evidence and she still needed to address Senessie's testimony regarding the reasons why this cheque was provided to him in order to determine if this aspect of his testimony was credible and reliable. She found that it was and provided a reasoned opinion for accepting that aspect of his testimony and her reasoning is ignored by the Majority (*See* Trial Judgment, paras 169, 186).

[180] Appellant's Submissions, paras 28, 29.

[181] *Brima et al* Appeal Judgment, para. 129. *See* also *Fofana and Kondewa* Appeal Judgment, para. 199. The Special Court's jurisprudence, as well as that of other international tribunals, does not require the corroboration of evidence. A Chamber may therefore rely on the direct testimony which is uncorroborated, even that of an accomplice witness, to reach its conclusions.

[182] Appeal Judgment, para. 39.

[183] Appeal Judgment, para. 66.

and incorrectly evaluates that evidence.[184] The findings it addresses are not in fact inferences, and the alternative inferences it finds are in fact unreasonable.

12. Contrary to the Majority's understanding, the Trial Judgment shows that several of the inferences addressed by the Majority were not inferences at all but conclusions based on a combination of direct and circumstantial evidence. In light of this, the Majority's statement, that inferences drawn from circumstantial evidence to establish a fact that is material to an accused's conviction must be the only reasonable inference,[185] is not applicable to this situation as the trier of fact made findings based on the direct evidence, assessed in light of other direct and circumstantial evidence. The Appellant's conviction was not established exclusively, or even primarily, on the basis of the circumstantial evidence. This case is about direct and not circumstantial evidence and the Majority's reasoning fails to acknowledge it.

13. Ignoring the existence of direct evidence, the Majority addresses possibilities of other reasonable inferences that could be drawn from the circumstantial evidence and I strongly disagree with its approach, its findings and its evaluation of the evidence. It is necessary to consider the evidence as a whole and neither the Appellant nor the Majority does this. Having reviewed the Single Judge's analysis of the totality of the evidence and her conclusion that the Appellant was involved in the scheme to interfere with witnesses and that he influenced Senessie to lie to the Court in order to cover the Appellant's tracks, I not only must conclude that this was a reasonable conclusion to be drawn from the evidence but that it was the only reasonable conclusion that could be drawn.[186]

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[184] *See e.g.*, Appeal Judgment, paras 42-45, 51, 61-64.

[185] Appeal Judgment, para. 42.

[186] The Appellant's case is that Senessie decided to interfere with the witnesses all by himself and that he came up with a back-up plan to blame the Appellant in case he was discovered (*see* Trial Judgment, para. 106). Senessie then contacted these witnesses and began implicating the Appellant from the very beginning by mentioning the Appellant's name during his interactions with the witnesses just in case Senessie's actions were ever found out and he had to face trial. Senessie even went as far as calling an unidentified accomplice on the telephone, whom he referred to as the Appellant, and told that person to inform TF1-585 that he was the Appellant, that he had sent Senessie to speak to her, and that what they were doing was illegal (although it is unclear why and entirely illogical that Senessie would have his accomplice tell TF1-585 that what Senessie was doing was illegal if Senessie originally did not want to get caught interfering with the witnesses). At the same time, Senessie was contacting the Appellant and telling him that these witnesses wanted to meet him and that they had drafted invitation letters addressed to him. At the mere mention that these witnesses wanted to speak to him, and without consultation with the Charles Taylor Defence team, the Appellant then transferred a substantial amount of money from his own account to Senessie so that Senessie could deliver the letters of invitation to him. Senessie decided to draft these letters with legal terminology so that, if need be, the Appellant could be implicated for this. Later, when the scheme was discovered and an investigation began, Senessie decided not to meet with the Independent Counsel but prior to this he met with the Appellant so that in the future he would be able to say that he received instructions from the accused not to meet with the Independent Counsel. Senessie then met with the Appellant again on his way to trial and convinced him to give Senessie a cheque for 30,000 Leones to pay for carvings. Senessie would have done this at that time so that he could then say that the Appellant was giving him money while he was on trial. Shortly thereafter, Senessie was informed by his former Defence Counsel, Lawyer X, that

14. In its evaluation of the evidence, the Majority also erred in relation to the corroborative value of the evidence relied on by the Single Judge because it misunderstands her assessment of the evidence.[187] Having reviewed the evidence, I find the evidence of TF1-274 from Senessie's trial and Senessie's evidence adduced during the Appellant's trial to be compatible.[188]

15. Moreover, the Majority erred in addressing the corroborative value of the adjudicated facts by simply referring to that evidence as hearsay evidence emanating from Senessie.[189] The Majority reveals its blinkered and fragmented assessment of the evidence. In the Majority's view, apparently, the fact that Senessie told the witnesses that the Appellant had sent him is factually irrelevant. I do not agree and accept that the Single Judge reasonably assessed this evidence. The Single Judge fully and properly recognised that the evidence emanated from Senessie, but considered that the fact that Senessie told the witnesses in February 2011 the same thing he testified in court in January 2013 had bearing on the credibility and reliability of Senessie's evidence.

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if he pleaded guilty to the charges and testified against the Appellant, the Independent Counsel would consider recommending a non-custodial sentence. At this stage Senessie could have implemented his backup plan and blamed the Appellant for everything but instead he pleaded not guilty and contested the charges. He sacked his lawyer and appointed another lawyer to represent him. He asked the Appellant to be a witness in his case and actually expected him to testify so he had his lawyer draft a statement that was to be signed by the Appellant. His Defence strategy failed and Senessie was convicted and only thereafter did he decide to implement his long-laid backup plan to blame the Appellant in order to reduce his sentence knowing that there would be no guarantees. The Appellant's case, thus, was that Senessie was a criminal mastermind who designed this elaborate plan and then took calculated steps to implement it while implicating the Appellant from the very beginning. This whole plan of interfering with the witnesses would have been put in action by Senessie so that he could get money for a political campaign (in this regard *see* Trial Judgment, para. 208) although it is unclear where any money would have come from. The Single Judge heard Senessie in his own trial and again at the Appellant's trial and she did not find him to be this criminal mastermind. Moreover, she did not find that all of the evidence adduced in the Appellant's trial supported the Appellant's case. Instead, she found that the whole of the evidence, including the documentary evidence which clearly links the Appellant to Senessie at the time of the events and that money was being given by the Appellant to Senessie, supports the Independent Counsel's case and establishes that the Appellant was involved in the scheme to interfere with the complainant witnesses and that he also interfered with and influenced Senessie. The alternative interpretations proposed by the Appellant and by the Majority are only compatible with the Appellant's innocence if one is to ignore the direct evidence provided in this case and draw inferences from the documentary evidence to support the wholly-unreasonable sequence of events set out above.

[187] *See e.g.*, Appeal Judgment, paras 47, 48, 61-65.

[188] In Senessie's trial, the Single Judge found that Senessie met with TF1-274 on 2 and 3 February 2011 and that, while Senessie testified about the invitation letters, she had no evidence of the content of the those letters, but found that if it was given, it was given after the approach by Senessie to TF1-274. The Single Judge also noted that TF1-274 was not questioned about a document being sent to the Appellant in Bo or that he was agitated when he thought Senessie had not delivered it. Furthermore, in Senessie's trial, TF1-274 denied having initiated any contact with Senessie and reported Senessie to the Court. In the Appellant's trial, Senessie testified at length regarding his meeting with TF1-274 and clarified his prior testimony explaining that TF1-274 did not draft the documents and that he, Senessie, was responsible for this. I find that TF1-274's evidence, that he met with Senessie on 2 and 3 February 2011, corroborates Senessie's evidence that he did not use the 200,000 Leones paid on February 1 to transport the invitation letters to the Appellant in Bo, but that he used it instead to meet the witnesses. Moreover, in relation to the Single Judge's findings regarding the drafting of the invitation letters, I find that it is precisely the fact that TF1-274's account differs from Senessie's account that makes them compatible. It is TF1-274's denial of any wrongdoing and rejection of Senessie's approaches that supports Senessie's testimony that TF1-274 was not responsible for the drafting of the letter but that Senessie himself drafted the letter. *See Senessie* Trial Judgment, paras 81, 86, 90, 94, 96, 97. *See* also Trial Judgment, paras 90, 103.

[189] Appeal Judgment, paras 49, 57.

16. Finally, I disagree with the Majority's evaluation of the evidence pertaining to the Single Judge's findings that Senessie was sheep-like and that he was being influenced by the Appellant to lie to the Independent Counsel and to the Court in order to not implicate the Appellant in the scheme to interfere with the complainant witnesses. The Majority has merely substituted its own opinion for the Single Judge's assessment of the totality of the evidence in a situation where the Single Judge is clearly better suited to evaluate the behaviour of a person in front of her during trial.[190] Moreover, the Majority ignores and fails to address the numerous findings made by the Single Judge in support of her conclusion that Senessie was sheep-like and that he was being influenced by the Appellant and following his advice.[191] In addition, the Majority resorts to the trial transcripts to try to find support for its conclusions, but the evidence it refers to in reality only further supports the Single Judge's finding, not the Majority's view.[192]

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[190] Appeal Judgment, paras 63-65. The Majority finds that the Single Judge's inference that Senessie was sheep-like is not the only reasonable inference that can be drawn from the evidence. In its assessment the Majority refers to Senessie's position as a priest and political leader in his community and to Senessie's testimony about making ploys to gain an advantageous position. However, the Majority draws its conclusions on Senessie's demeanour and his personality by simply analysing transcripts and ignores the fact that the Single Judge was there in person when Senessie testified both in his own trial and in the Appellant's trial. The Majority's conclusion also ignores the fact that the Single Judge is fully capable of determining aspects of Senessie's evidence which are truthful from aspects which are not since during Senessie's trial she assessed his evidence and correctly determined that he was lying.

[191] The Single Judge found that Senessie visited Bo on the Appellant's invitation, when a business partnership or working relationship was discussed, but that the visit was also to do with the witnesses in Kailahun that had been interfered with. This visit occurred prior to Senessie going to meet the independent investigator in Freetown and he was given advice in the course of that visit.The Single Judge found that the Appellant was aware of the appointment of the Independent Counsel and that Senessie liaised and talked with him concerning Senessie's interview with the Independent Counsel and that the Appellant influenced Senessie to refuse to see the Independent Counsel and told him not to implicate them both. Senessie then gave information to the Independent Counsel that has been found to have been false. The Single Judge found that Senessie also stayed with the Appellant en route to his trial. She further found that Senessie's evidence that he stayed with the Appellant on the way to his trial is supported by the dating and timing of the cheque for 30,000 Leones that he received from the Appellant. The Single Judge found that there were other visits and phone calls in the course of which Senessie was assured and cajoled into a false sense of security that the case would not happen and that it would be dismissed. *See* Trial Judgment, paras 185, 186, 188, 190-194, 198. The Single Judge's reasoning and findings are not addressed by the Majority. Accordingly, no error or unreasonableness is shown in her findings. Instead, the Majority limits itself to evaluating portions of the evidence and drawing its own conclusions.

[192] Appeal Judgment, para. 62. The Majority states that the Single Judge's conclusion that the term *sine die* came from the Appellant is erroneous since she relied on no other person being named or suggested or referred to in the course of the evidence and no other names being put to Senessie by the Appellant to reach her conclusion. The Majority states that this is incorrect because Defence Counsel cross-examined Senessie on his legal knowledge and resorts to the trial transcripts to provide that evidence. I do not accept the Majority's conclusion that the Single Judge ignored this evidence and that she misrepresented the trial record, but even if I did, I do not find that it would render her finding unreasonable. The actual content of the evidence referenced by the Majority shows that all the legal knowledge Senessie possessed was acquired while he was in detention. The Single Judge's finding does not pertain to Senessie's current knowledge of legal matters but rather to Senessie's legal knowledge at the time that he was being interfered with by the Appellant. The evidence referenced by the Majority does not shed any light on Senessie's legal knowledge at that time and it is therefore not relevant to the Single Judge's finding. The Single Judge was not required to reference every piece of evidence on record when making her findings but only the evidence that is relevant to the finding being made. Accordingly, I do not find that the Single Judge misrepresented the evidence by not mentioning this evidence as the content of this evidence does not go to the issue on which she was making a finding. Moreover, if the Majority considers the Single Judge's reasoning to be incredible in light of this evidence it certainly does not explain how this evidence contradicts her finding and how it renders her finding unreasonable.

D. Grounds of Appeal 3 to 6

17. The Majority, having granted the Appellant's Grounds of Appeal 1 and 2, concluded that it would be unnecessary to address the Appellant's other grounds of appeal.[193] As I have dissented from the Majority, I now turn to my assessment of those Grounds and find that they should be dismissed in their entirety. First, the submissions in the Appellant's Ground 3 fail to raise any error that would occasion a miscarriage of justice.[194] Second, the submissions in his Ground 4 misrepresent the trial record and are undeveloped.[195] Finally, the submission in his Grounds 5 and 6 are summarily dismissed as they do not meet the standards of review.[196]

E. Conclusion

18. Much like the man who murdered his parents and then asked the court for leniency because he was an orphan; the Appellant who was convicted of interfering with the course of justice for paying the principal witness against him to lie in the witness's own criminal trial, now argues that the witness cannot be believed when he testifies against the Appellant because he has been proven to be a liar.

19. As the Appellant's arguments are wholly unreasonable, and his inferences more than unlikely, the weakness of the Appellant's case has led the Majority to make negative remarks against the Single Judge and the Independent Counsel to bolster its opinion. By misstating and misapplying the law, the facts of the case, the reasoning of the Single Judge and the standards of review, the Majority has committed a series of errors in substituting its own evaluation of the evidence for that of the Single Judge.

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[193] Appeal Judgment, para. 66.

[194] In his Ground 3, the Appellant makes several submissions pertaining to contradictions between Senessie's evidence and the evidence of his former Defence Counsel, Lawyer X. *See* Appellant's Submissions, paras 71-80. The Single Judge, however, found that the "evidence of Lawyer X and the line of questioning of Senessie do not go to the role of [the Appellant] or the evidence of the five complainants." Trial Judgment, para. 173. Accordingly, this evidence was not relied on for the Appellant's convictions and any errors in the Single Judge's assessment, if any were to be found, would not occasion a miscarriage of justice.

[195] The Appellant argues that the Single Judge's approach to the character evidence provided by three international lawyers was wrong as a matter of law since she should have assessed this evidence together with all the evidence in the trial, which resulted in the Single Judge attaching no weight at all to this evidence. *See* Appellant's Submissions, paras 81-84. The Appellant misrepresents the trial record as the Single Judge assessed this evidence and deemed that it was not probative of Taylor's innocence or guilt. Trial Judgment, para. 147. An accused's culpability is determined by his criminal conduct and not by his character and the Single Judge's finding is therefore correct. In addition, the Defence's argument that no weight was attached to this evidence is incorrect as the Single Judge determined the existence of a mitigating factor on the basis of this evidence. Sentencing Judgment, para. 51.

[196] The following defects were found in the submissions in Grounds 5 and 6: i) several submissions are mere repetitions of arguments presented during the sentencing hearing and already addressed by the Single Judge; ii) several submissions are undeveloped and fail to identify the prejudice iii) several submissions attempt to substitute the Appellant's own evaluation of the evidence for that of the Single Judge; and (iv) several submissions misrepresent the Single Judge's reasoning and the trial record.

20. The Majority has decided that it would have ruled differently but its reasoning at the end of the day only concentrates on whether "necessary caution" or "additional caution" was exercised by the Single Judge in her assessment of the evidence provided by a witness who has given false testimony before the Court. The Majority does not distinguish, however, between "necessary caution," a term defined by the Court's jurisprudence,[197] and "additional caution," which is a term not defined by the Majority or by the jurisprudence of the international tribunals.

21. Taking into consideration that the Single Judge stated from the very beginning and reiterated it numerous times, that Senessie failed as a generally credible witness and that she therefore examined each and every statement of the witness in question for reliability, I conclude that the Single Judge not only used "necessary caution" but "excessive caution", which I define as "more than sufficient caution." I am thus unable to endorse either the Majority's analysis of law and facts or its conclusion and would affirm the Appellant's conviction in every respect.

Justice Renate Winter

[Seal of the Special Court for Sierra Leone]

[197] *See Sesay et al.* Appeal Judgment, para. 259. *See* also *Kordić and Čerkez* Trial Judgment, paras 629, 630; *Kordić and Čerkez* Appeal Judgment, paras 254-267, 292, 293; Naletilić and Martinović Appeal Judgment, para. 175.

VI. GLOSSARY

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