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SCSL-2004-16-T
(8400-8411)

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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER II

Before: Judge Teresa Doherty, Presiding Judge
Judge Richard Lussick
Judge Julia Sebutinde

Registrar: Robin Vincent

Date: 29 April 2005

PROSECUTOR **Against** **Alex Tamba Brima**
Brima Bazy Kamara
And
Santigie Borbor Kanu
(Case No.SCSL-04-16-T)

**DECISION ON THE REPORT OF THE INDEPENDENT COUNSEL PURSUANT TO RULES
77(C)iii AND 77(D) OF THE RULES OF PROCEDURE AND EVIDENCE**

Office of the Prosecutor:

Luc Côté
Lesley Taylor
Boi-Tia Stevens

Defence Counsel for Alex Tamba Brima:

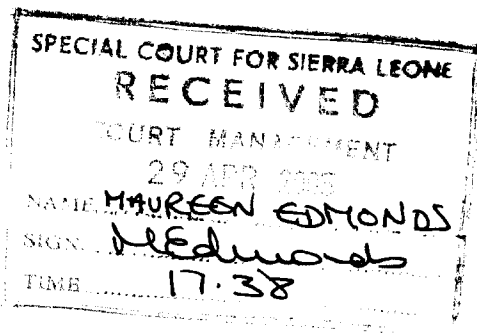
Kevin Metzger
Glenna Thompson
Kojo Graham

Defence Counsel for Brima Bazy Kamara:

Wilbert Harris
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:

Geert-Jan Alexander Knoops
Carry Knoops
Abibola E. Manly-Spain



TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”), composed of Judge Teresa Doherty, presiding, Judge Richard Lussick and Judge Julia Sebutinde;

RECALLING that on 10 March 2005 Witness TF1-023¹ during her evidence in chief in the case of *The Prosecutor v. Alex Tamba Brima et al.*² made an oral complaint³ before the Trial Chamber alleging that on 9 March 2005, as she was leaving the court premises, certain persons called her by name and verbally threatened and intimidated her regarding her testimony in the said case, in contempt of the Special Court and in violation of witness protective matters⁴;

RECALLING that during a closed session of the Court on the same date the Prosecutor made oral submissions⁵ supplementary to and in support of the complaint raised by Witness TF1-023 and submitted to the Trial Chamber the following documents:

- (1) An Interoffice Memorandum dated 09 March 2005 from Atiq Ahmad Shaik, Senior Security Officer, addressed to the Chief of Security, SCSL
- (2) An Incident Report dated 09 March 2005 from J.J.P. Poraj-Wilczynski, Acting Chief of Security;
- (3) A Statement by Samuel Davies⁶ dated 09 March 2005;
- (4) A Statement by Joseph Bassie⁷ dated 09 March 2005;
- (5) A Statement by James Kongormanyi⁸ dated 09 March 2005; and
- (6) A letter date 09 March 2005 by Mr. Metzger addressed to the Principal Defender.

¹ For purposes of the trial Witness TF1-023 is categorised as a Group 1 (witness of fact), Category A (Victim of sexual assault and gender crimes) witness.

² Case No. SCSL-2004-16-T.

³ Un-redacted transcript of 10 March 2005, page 3, line 2 to page 4, line 27.

⁴ *The Prosecutor v. Issa Hassan Sesay*, Case No. SCSL-2003-05-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003, *The Prosecutor v. Morris Kallon*, Case No, SCSL 2003-07-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure Decision on the Prosecutor’s Motion, 23 May 2005; *The Prosecutor v. Augustine Gbao*, Case No SCSL-2003-09-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure Decision on the Prosecutor’s Motion, 23 May 2005; and *The Prosecutor v. Issa Hassan Sesay et al.*, Case No SCSL-04-15-T, Decision on the Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004.

⁵ Un-redacted transcript of 10 March 2005 at page 6, line 1 to page 8, line 13.

⁶ Audio Visual Technician, Communications and Information Technology Section, SCSL, ID No. NSC279.

⁷ Audio Visual Technician, Communications and Information Technology Section, SCSL, ID No. NSC280.

⁸ Security Officer, Special Court Security Staff, ID No. NSS114.

RECALLING the oral submissions in response to the complaint by Witness TF1-023 and to the Prosecution submissions, made by Mr. Kevin Metzger⁹, Defence Counsel for Alex Tamba Brima (Accused) Mr. Geert-Jan Alexander Knoops¹⁰, Defence Counsel for Santigie Borbor Kanu (Accused) and Mr. Wilbert Harris¹¹, Defence Counsel for Brima Bazy Kamara (Accused);

RECALLING that on 10 March 2005 the Trial Chamber in exercise of its inherent power issued an Order¹² pursuant to Rule 77 (C) iii of the Rules of Procedure and Evidence (“the Rules”), *inter alia*, directing the Registrar to appoint an experienced independent counsel to investigate the following persons, namely Margaret Fomba¹³, Neneh Binta Bah¹⁴, Anifa Kamara¹⁵, Ester Kamara¹⁶ and Brima Samura¹⁷, and to report back to the Trial Chamber as to whether there are sufficient grounds for instigating contempt proceedings against any of them;

RECALLING ALSO the Interim Order of the Trial Chamber issued on 10 March 2005 suspending Brima Samura from Court and from his duties as an investigator for the Defence Team and prohibiting Margaret Fomba, Neneh Binta Bah, Anifa Kamara and Ester Kamara from entering the public gallery¹⁸, pending the investigation and hearing of the matter (“Interim Order”);

NOTING that on 11 March 2005 the Registrar pursuant to the Order of the Trial Chamber, appointed Mr. Louis Tumwesige Independent Counsel, to conduct an independent investigation into the matter and to submit a report of his findings to the Trial Chamber;

NOTING that on 16 March 2005 Mr. Louis Tumwesige submitted a report¹⁹ of his findings to the Trial Chamber;

HAVING CONSIDERED carefully the matters disclosed in the said Report the Trial Chamber finds that there are sufficient grounds to proceed against each of the following persons for contempt,

⁹ Un-redacted transcript of 10 March 2005 at page 8, line 17 to page 11, line 8.

¹⁰ Un-redacted transcript of 10 March 2005 at page 11, line 17 to page 12, line 14.

¹¹ Un-redacted transcript of 10 March 2005 at page 12, line 17 to page 14, line 29.

¹² Un-redacted transcript of 10 March 2005 at page 15, line 2 to page 16, line 13.

¹³ Wife of Alex Tamba Brima (Accused).

¹⁴ Wife of Santigie Borbor Kanu (Accused).

¹⁵ Wife of Brima Bazy Kamara (Accused).

¹⁶ Friend of Brima Bazy Kamara (Accused).

¹⁷ Investigator for the Alex Tanba Brima Defence Team.

¹⁸ Un-redacted transcript of 10 March 2005 at page 16, line 5 to 11.

¹⁹ Confidential report to the trial Chamber by Mr. Louis Tumwesige, dated 16 March 2005.

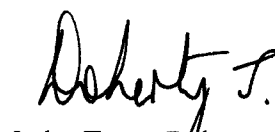
namely, Brima Samura, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara.

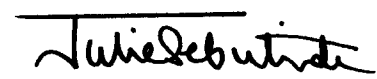
THE TRIAL CHAMBER ACCORDINGLY ISSUES THE FOLLOWING ORDERS:

1. An Order in lieu of Indictment as contained in Annex A of the Schedule hereto is issued in respect of Brima Samura.
2. An Order in lieu of Indictment as contained in Annex B of the Schedule hereto is issued in respect of Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara.
3. The Independent Counsel is directed to prosecute each of the following persons, namely Brima Samura, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara, for contempt in accordance with the respective Orders in lieu of Indictment referred to above.
4. The Trial Chamber's Interim Order of 10 March 2005 with regard to each of the following persons, namely Brima Samura, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara shall remain in force until the final judgment in the respective contempt proceedings is delivered.
5. In accordance with Rule 77(D) of the Rules, Trial Chamber II hereby assigns the contempt proceedings pursuant to the Orders in lieu of Indictment referred to above, to Trial Chamber I.
6. The present Decision, including its Annexes A and B, are to be served on the parties today, if necessary after 4 p.m.

Done at Freetown this 29th day of April 2005


Judge Richard Lussick


Judge Teresa Doherty
Presiding Judge


Judge Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

ANNEX A

THE SPECIAL COURT FOR SIERRA LEONE

The Prosecutor
Against
Brima Samara

ORDER IN LIEU OF INDICTMENT

The Charge

The Independent Counsel, Special Court for Sierra Leone, under Rule 77 (C) iii of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (The Rules) charges Brima Samara with contempt of the Special Court, in violation of Rule 77 (A) ii of the said Rules.

The Particulars

On 09 March 2005 at the premises of the Special Court for Sierra Leone, Brima Samara knowingly and wilfully interfered with the Special Court's administration of justice by disclosing information relating to proceeding, viz. the name and identity of protected witness TF1-023, to Margaret Fomba Brima and Neneh Binta Bah Jalloh, in knowing violation of an order of a Trial Chamber.

Case Summary

1. The Accused Brima Samara, born on 09 May 1971, living at 19 C Waterside Road, Upper Tengbeh Town, Freetown, was on 01 December 2004 appointed as an investigator on the Defence team for the Accused Alex Tamba Brima in the case of the Prosecutor v. Alex Tamba Brima, et al²⁰

²⁰ Case No. SCSL-2004-16-T

and by the virtue of his association with the said Defence team had access to confidential information relating to the name and identity of Witness TF1-023.

2. On 09 March 2005, a witness known by the pseudonym TF1-023 testified for the first time before Trial Chamber II in the said case. In that trial Witness TF1-023 was categorised as a “Group 1 (witness of fact), Category A (victim of sexual assault and gender crimes)” witness. By virtue of that category, Witness TF1-023 enjoyed certain protective measures ordered by the Special Court²¹ including the following, namely:

“.....

- (i) All witnesses shall be referred to by pseudonyms at all times during the course of proceedings where during the hearing or in documents, including the transcript of the proceedings;
- (ii) The names, addresses, whereabouts and any other identifying information of witnesses shall be sealed and not included in any of the public records of the Special Court;
- (iii) To the extent that the names, addresses, whereabouts or other identifying data concerning witnesses are contained in existing public documents of the Special Court, that information shall be expunged from those documents;
- (iv) All documents of the Special Court identifying witnesses shall not be disclosed to the public or media;
- (v) The Defence shall refrain from sharing, discussing or revealing directly or indirectly, any disclosed non-public materials of any sort, or any information contained in any such document, to any person other than the Defence.

²¹ The Prosecutor v. Issa Hassan Sesay, Case No. SCSL-2003-05-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; The Prosecutor v. Morris Kallon, case No. SCSL-2003-07-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; Prosecutor v. Augustine Gbao, Case No. SCSL-2003-09-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003 and The Prosecutor v. Issa Hassan Sesay et al, Case No. SCSL-04-15-T, Decision on the Prosecution Motion for Modification of Protective Measures for Witnesses, 05 July 2004.


- (vi) The Defence shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, interview report or summary of expected testimony, or other non-public material, as well as the date of disclosure; and the defence shall ensure that the person to whom such information was disclosed follows the order for non-disclosure;
- (vii) The Defence shall provide to the Registrar and to the Defence Office a designation of all persons working on the Defence team who...have access to any information referred to...above, and requiring the Defence to advise the Registrar and the Defence Office in writing of any changes in the composition of this Defence team.....”

3. On 09 March 2005 during the morning session Brima Samura was in the Well of Court room No. 2 where Witness TF1-023 was testifying, and later spoke to certain women from the public gallery on two different occasions. The first incident arose at about 10.00a.m. when in the Well of the Court one of the accused persons (Brima Bazy Kamara) whispered to Ms. Claire Carlton Hanciles of the Defence Office that a key Defence witness who had promised to come was actually in the gallery and that the Defence teams should talk to that witness. Ms. Claire Carlton Hanciles in turn alerted Mr. Kevin Metzger, Defence Counsel for Alex Tamba Brima, who in turn instructed his legal assistant Mr. Osman Keh Kamara and investigator Brima Samura to contact a key Defence witness who happened to be in the public gallery at the time. On this occasion both Mr. Osman keh Kamara and Brima Samura left the Well of the Court and met with and spoke to a certain woman believed to be the key Defence witness, outside the public gallery. On that occasion Brima Samura handed Osman Keh Kamara a written note of three pages which the latter then took back into the Well of the Court and passed to Mr. Metzger.


4. Later on towards noon, Brima Samura was in the public gallery of Court room No. 2 where he spoke to Margaret Fomba Brima, wife of the Accused Alex Tamba Brima and Neneh Binta Bah Jalloh, wife of the Accused Santigie Borbor Kanu and asked to meet them outside the public gallery because he had something important to tell them. The two women met Brima Samura outside of the public gallery and as they spoke Brima Samura disclosed the identity of Witness TF1-023 to these women in knowing violation of the witness' protective measures ordered by the Trial Chamber. In the course of their conversation with Brima Samura the women expressed surprise that Witness TF1-023 was testifying before the Court in the said trial. The women said to Brima Samura that they knew where the witness was resident and that they were going to attack her house.

5. Later on that day as Witness TF1-023 was being escorted from the court premises by personnel from the Witness Protection Services of the Special Court in a vehicle with tinted windows, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara shouted out the witness' name and told her in Krio that they knew she was testifying in the trial and that she was being conveyed in the vehicle. The women then uttered words in Krio whose effect was to threaten and intimidate the witness as a result of the testimony she had given and was yet to give in to the Court. The threats uttered by the named women became possible only through Brima Samura's disclosure of the witness' identity to Margaret Fomba Brima and Neneh Binta Bah Jalloh. The incident happened at about 1.30 p.m. on 09 March 2005 on the premises of the Special Court, near the Generator house, towards the exit gate as Witness TF1-023 was leaving the Court premises.

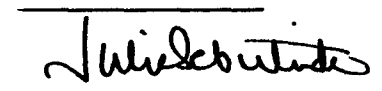
Done in Freetown, Sierra Leone, this 29 day of April, 2005



Judge Richard Lussick



Judge Teresa Doherty
Presiding Judge



Judge Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

ANNEX B**THE SPECIAL COURT FOR SIERRA LEONE****The Prosecutor****Against****Margaret Fomba Brima
Neneh Binta Bah Jalloh
Anifa Kamara
Ester Kamara**

ORDER IN LIEU OF INDICTMENT

The Charge

The Independent Counsel, Special Court for Sierra Leone, under Rule 77 (C) iii of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (The Rules) jointly charges Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara with contempt of the Special Court, in violation of Rule 77 (A) iv of the said Rules.

The Particulars

On 09 March 2005 at the premises of the Special Court for Sierra Leone, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara knowingly and wilfully interfered with the Special Court's administration of justice by threatening and intimidating protected witness TF1-023, who had testified and was continuing to testify in a proceeding before the Trial Chamber.

Case Summary

1. The Accused Margaret Fomba Brima, living at 47 C Waterside Road, Tengbeh Town, Freetown, is the wife of the Accused Alex Tamba Brima in the case of Prosecutor v. Alex Tamba Brima et al²² and was in the public gallery of Courtroom No. 2 on 09 March 2005 when Witness TF1-023 testified before the Trial Chamber.
2. The Accused Neneh Binta Nah Jalloh, living at 26 John Street, Freetown, is the wife of the Accused Santigie Borbor Kanu in the case of the Prosecutor v. Alex Tamba Brima, et al and was in the public gallery of Courtroom No. 2 on 09 March 2005 when Witness TF1-023 testified before the Trial Chamber.
3. The Accused Anifa Kamara, living at 3 Patton Street, Freetown, is the wife of the Accused Brima Bazy Kamara in the case of the Prosecutor v. Alex Tamba Brima, et al and was in the public gallery of Courtroom No. 2 on 09 March 2005 when Witness TF1-023 testified before the Trial Chamber.
4. The Accused Ester Kamara, living at 5 William Street, Freetown, is a friend of the Accused Brima Bazy Kamara in the case of the Prosecutor v. Alex Tamba Brima, et al and was in the public gallery of Courtroom No. 2 on 09 March 2005 when Witness TF1-023 testified before the Trial Chamber.
5. On 09 March 2005, a witness known by the pseudonym TF1-023 testified for the first time before Trial Chamber II in the said case. In that trial Witness TF1-023 was categorised as a “Group 1 (witness of fact), Category A (victim of sexual assault and gender crimes)” witness. By virtue of that category, Witness TF1-023 enjoyed certain protective measures ordered by the Special Court²³ including the following, namely:

²² Case No. SCSL-04-16-T.

²³ The Prosecutor v. Issa Hassan Sesay, Case No. SCSL-2003-05-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; The Prosecutor v. Morris Kallon, Case No. SCSL-2003-07-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; Prosecutor v. Augustine Gbao, Case No. SCSL-2003-09-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003 and The Prosecutor v. Issa Hassan Sesay et al, Case No. SCSL-04-15-T, Decision on the Prosecution Motion for Modification of Protective Measures for Witnesses, 05 July 2004.

“.....


- i. All witnesses shall be referred to by pseudonyms at all times during the course of proceedings where during the hearing or in documents, including the transcript of the proceedings;
- ii. The names, addresses, whereabouts and any other identifying information of witnesses shall be sealed and not included in any of the public records of the Special Court;
- iii. To the extent that the names, addresses, whereabouts or other identifying data concerning witnesses are contained in existing public documents of the Special Court, that information shall be expunged from those documents;
- iv. All documents of the Special Court identifying witnesses shall not be disclosed to the public or media;
- v. The Defence shall refrain from sharing, discussing or revealing directly or indirectly, any disclosed non-public materials of any sort, or any information contained in any such document, to any person other than the Defence;
- vi. The Defence shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, interview report or summary of expected testimony, or other non-public material, as well as the date of disclosure; and the defence shall ensure that the person to whom such information was disclosed follows the order for non-disclosure.
- vii. The Defence shall provide to the Registrar and to the Defence Office a designation of all persons working on the Defence team who...have access to any information referred to...above, and requiring the Defence to advise the Registrar and the Defence Office in writing of any changes in the composition of this Defence team.....”

6. On 09 March 2005 while in the public gallery of Court room No. 2, Brima Samura, an investigator attached to the Defence team for the Accused Alex Tamba Brima spoke to Margaret Fomba Brima and Neneh Binta Bah Jalloh, and asked to meet them outside the public gallery because he had something important to tell them. The two women met Brima Samura outside the public gallery and as they spoke Brima Samura disclosed the identity of Witness TF1-023 to these women in knowing violation of the witness' protective orders. In the course of their conversation with Brima Samura the women expressed surprise that Witness TF1-023 was testifying before the

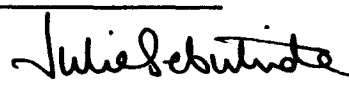
court in the said trial. The women said to Brima Samura that they knew where the witness was resident and that they were going to attack her at her house.

7. Later on that day as Witness TF1-023 was being escorted from the court premises by personnel from the Witness Protection Services of the Special Court in a vehicle with tinted windows, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara shouted out the witness' name and told her in Krio that they knew she was testifying in the trial and that she was being conveyed in the vehicle. The women then uttered words in Krio whose effect was to threaten and intimidate the witness as a result of the testimony she had given and was yet to give in to the court. The threats uttered by the named women became possible only through Brima Samura's disclosure of the witness' identity to Margaret Fomba and Neneh Binta Bah Jalloh. The incident happened at about 1.30 p.m. on 09 March 2005 on the premises of the Special Court, near the Generator house, towards the exit gate as the witness was leaving the Court premises.

Done in Freetown, Sierra Leone, this 29 day of April, 2005


Judge Richard Lussick


Judge Teresa Doherty
Presiding Judge


Judge Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

