



SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

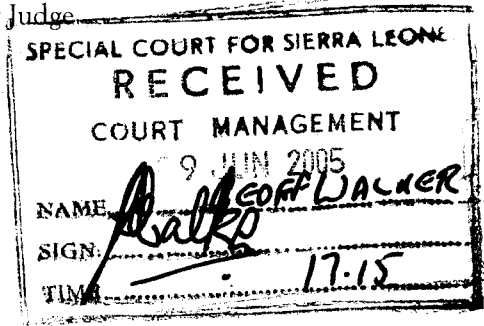
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TRIAL CHAMBER II

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

Registrar: Robin Vincent

Date: 9 June 2005



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

DECISION ON THE EXTREMELY URGENT CONFIDENTIAL JOINT MOTION FOR THE RE-APPOINTMENT OF KEVIN METZGER AND WILBERT HARRIS AS LEAD COUNSEL FOR ALEX TAMBA BRIMA AND BRIMA BAZZY KAMARA AND DECISION ON CROSS MOTION BY DEPUTY PRINCIPAL DEFENDER TO TRIAL CHAMBER II FOR CLARIFICATION OF ITS ORAL ORDER OF 12 MAY 2005

1st Respondent
The Registrar

Defence Counsel for Alex Tamba Brima:
Glenna Thompson
Kojo Graham

2nd Respondent
The Acting Principal Defender

Defence Counsel for Brima Bazy Kamara:
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 Justice Teresa Doherty, presiding, Justice Richard Lussick and Justice Julia Sebutinde;

SEISED of the Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, Pursuant to Articles 17(4)(C) and 17(4)(D) of the Statute of the Special Court for Sierra Leone and Rule 54 of the Rules of Procedure and Evidence and the Inherent Jurisdiction of the Court, filed on 24 May 2005 (“Motion”) on behalf of the Accused Brima and Kamara;

NOTING that the Motion names the Registrar as First Respondent and the Acting Principal Defender as Second Respondent;

NOTING the Defence Office’s Response to the Motion, filed on 30 May 2005 (“Defence Office Response”), which was entitled as “Reply” and which included a Cross Motion by the Principal Defender to Trial Chamber II for Clarification of its Oral Order of 12 May 2005 and its subsequent Decision dated 20 May 2005 (“Cross Motion”);

NOTING FURTHER that this Defence Office Response incorporated statements of the Deputy Principle Defender and a Legal Officer of the Defence Office;

NOTING the Response of the Registrar to the Motion, filed on 31 May 2005 (“Registrar’s Response”);

NOTING the Joint Defence Reply to the Registrar’s Response, filed on 3 June 2005 (“Defence Reply”);

NOTING the Registrar’s Response to the Cross Motion, filed on 6 June 2005;

NOTING the Defence Office’s Reply to the Registrar’s Response to the Cross Motion, filed on 7 June 2005;

NOTING the various corrigenda to the submissions that were filed by the parties;

DECIDES AS FOLLOWS.

I. THE SUBMISSIONS OF THE PARTIES

MOTION

1. Counsel for Alex Tamba Brima and Brima Bazzy Kamara seek the following orders:
 - i. “**In the first place**, based on the foregoing arguments, the Defence herewith respectfully prays the Trial Chamber to order the Registrar to ensure that Mr. Metzger and Mr. Harris are re-assigned as Counsel for Accused persons Brima and Kamara.
 - ii. **In the second place**, an order to the Acting Principal Defender to immediately enter into a legal services contract with Mr. Metzger and Mr. Harris.
 - iii. **In the third place**, that the Justices that re-confirmed the order not to re-appoint as indicated in the letter from the Registrar’s Legal Advisor recluse (sic) themselves from hearing this present Motion.



- iv. **In the fourth place**, an order to declare as null and void the decision of the Registrar not to re-assign Counsel as the decision was made without legal or just cause and therefore ought to be quashed accordingly and set aside.
- v. **In the fifth place**, any other relief the Trial Chamber may deem fit and appropriate in the circumstance”.

2. The Motion purports to set out a chronology of events leading up to this application. Reference is made to the application filed on May 5, 2005, by Lead Counsel for Brima and Kamara wherein the Trial Chamber was requested to: (a) approve the withdrawal of Counsel as Counsel for the accused, (b) not order that Counsel hitherto on record be made Court Appointed Counsel and (c) make any order that the Trial Chamber deems appropriate. Although the responses are recited, no mention is made of the order of the Trial Chamber of 12 May 2005 when the Trial Chamber by a majority decision granted leave to both Counsel to withdraw.

3. The Motion refers to a letter dated May 12, 2005 written by the Accused to the Principal Defender and to subsequent meetings held between the Defence Office and the Accused, but fails to mention that the said letter was not revealed to the Trial Chamber until 16 May 2005, on which day the Trial Chamber ruled:

“This Court read an order on an application. The application was an application to withdraw. That order was made and any letters, correspondence or documents that seek to go behind that decision cannot be countenanced in this Court. The decision has been made”.

4. The Defence submits that the decision of the Registrar refusing the re-appointment of the two Lead Counsel is in breach of the rights of the Accused persons to have counsel of their “own choosing” as provided for in Article 17(4)d of the Statute of the Special Court.

5. The Defence further submits that in matters relating to the assignment of defence counsel, an accused has a right to be consulted regarding his wishes and that the Registrar may only refuse those wishes “on reasonable and valid grounds”. It submits that reasonable and valid grounds are those which may occasion withdrawal, non-appointment or reinstatement of Counsel, including proven incompetence or misconduct, serious violation of the Code of Conduct, or where the name of the Assigned Counsel has been removed from the list kept by the Principal Defender under Rule 45(C) and Article 13 of the Directive on the Assignment of Counsel. The reasons stated in the Registrar’s letter, it is submitted, do not constitute reasonable and valid grounds for not reinstating Lead Counsel.

6. The Defence goes on to argue that, in the absence of duly proven misconduct or incompetence, it is not for the Trial Chamber to stipulate who should represent an accused person. It submits that the former Lead Counsel are familiar with the case and appointment of other Counsel will result in delay.

7. The Defence further submits that an expression of preference or otherwise for Counsel by the Trial Chamber, gives the impression however unintended, of bias and interference with the statutory rights of the Accused persons.

8. The Defence subscribes to the observations and opinions stated by the Hon. Justice Sebutinde in her Memorandum dated 19 May 2005 and claims that the substantive legal issues of ultra vires, perceived judicial impropriety, potential bias and conflict of interest, and the potential compromise of fair and impartial conduct of the trial are so palpable that the other two judges of this Trial Chamber ought to recuse themselves from hearing the present Motion.

9. Finally, the Defence seeks judicial review of the Registrar's decision not to re-assign the two Counsel who withdrew from the case to ensure the observance of due process of law, and prevent improper vexation and oppression in the administration of justice.

DEFENCE OFFICE'S RESPONSE

10. In reply the 2nd Respondent – the Deputy Principal Defender – argues that the Directive on the Assignment of Counsel and Rule 45 imply the Principal Defender's lead role in assigning and replacing counsel and his independent and autonomous decision-making authority. She points out that the Registry is not mentioned in the provisions governing assignment and replacement of counsel, but rather in provisions dealing with administration and servicing. She submits that the Registrar's delegation of the defence duties to the OPD limits the Registrar's role in assigning counsel and he does not have explicit power to review determinations of the Principal Defender. Alternatively, if the Registrar does have implicit power to review the Principal Defender's appointment decisions, then such power is subject to a "reasonable and valid grounds" test.

PRINCIPAL DEFENDER'S CROSS-MOTION

11. The Cross-Motion seeks clarification of the meaning of the word "permit" used in the majority order of the Trial Chamber of 12 May 2005, and whether counsel must actually withdraw if he has only been "permitted to withdraw". The Deputy Principal Defender also seeks guidance on the meaning of "another" as in the phrase "appoint another counsel". She also makes a submission that there is no Rule or Directive disqualifying counsel who has previously withdrawn from the case, and so any disqualification may be perceived as a penalty for complying with the clients' wishes and their local code of ethics.

REGISTRAR'S RESPONSE TO THE MOTION

12. The 1st Respondent, the Registrar, notes that the Counsel in question were, on the 25th May 2005, removed from the List of Qualified Counsel suitable for assignment as Lead Counsel when it was noticed that they were still on the list despite the fact that they had withdrawn from the trial and that the security concerns, which were a major reason which caused them to seek to withdraw, had not been addressed by Counsel in any manner with the Registry.

13. Accordingly, the Registrar submits that there is no basis for the Motion since the Counsel requested by the Accused are not on the List of Qualified Counsel from which they can choose.

14. The Registrar further submits that while the position of Registrar is recognised under Article 16 of the Statute, the position of Principal Defender has no statutory authority and therefore that title and the Defence Office come under the statutory authority of the Registrar and they are subject to his administrative direction, and that includes ensuring that court orders are implemented.

15. Hence the Registrar states that he has sought to ensure that the decision of the Trial Chamber on 12 May wherein it directed another Counsel be appointed by the Principal Defender to represent the accused is complied with. He submits that his action in refusing to allow the acting head of the Defence Office to re-appoint Counsel, is within the responsibility and powers the Registrar has to direct staff under his authority and to ensure that court orders are complied with.

16. The Registrar further submits that the Motion, by seeking to allow the acting head of the Defence Office to re-appoint Counsel in contravention of the Trial Chamber's decision of 12 May, is in reality seeking to ignore and "go behind" the order of the Trial Chamber which allowed Counsel to withdraw from the case, and therefore constitutes an abuse of process.

17. He also submits that statements from the accused that they are now prepared to provide full instructions should be disregarded as they have withdrawn instructions before and may do so again.

18. The Registrar states that the right of the Accused to be assigned Counsel of their choice is not absolute and that he must take into account all surrounding circumstances before deciding whether to accept a request by an accused for counsel. He sees the decision of the Trial Chamber in allowing the two Lead Counsel to withdraw as being based on the fact that Counsel were no longer in a position to properly defend the Accused, and regards the decision as an important matter to take into account to ensure that the Accused are properly represented. In support, he cites para. 60 of the decision:

"We are of the view that Lead Counsel, with their present difficulties, would not be capable of acting in the best interest of their clients. We doubt that they would be able to represent their clients to the best of their ability when, apart from everything else, they are concerned for their own safety and that of their families. Although we are loath to come to a decision which possibly may adversely affect an expeditious trial, we are of the view that the rights of the Accused to be represented by counsel would best be served by appointing counsel able to carry out their duties free of the constraints inhibiting present Lead Counsel".

19. The Registrar argues that the Motion seeks to impose upon him a test of refusal on "reasonable and valid grounds" but that no such test is provided in the Rules or the Directive. However, he submits that if there is such a test, then he relies on the decision of the Trial Chamber allowing Lead Counsel to withdraw because they could not properly represent the Accused.

20. With reference to the Defence submission that there was extra judicial interference in the question of the re-appointment of Counsel, the Registrar states that he has the right under Rule 33(B) to make oral or written representations to Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions. Pursuant to this right, his representations to the Trial Chamber were to seek clarification of its order; he was not seeking to be directed by the Trial Chamber.

21. He refers to the overall authority of the Registrar over the administration and servicing of the Special Court and argues that he is entitled to direct the Principal Defender on the assignment of counsel, which is an administrative matter.

JOINT DEFENCE REPLY TO REGISTRAR'S RESPONSE

22. The Defence reply, which is very strongly worded and, in our view, amounts to a personal attack on the Registrar, restates the Defence argument that the Registrar's direction not to reassign counsel is arbitrary and without legal foundation. The Reply also contains a further prayer for relief that the:

"Motion of 24 May 2005 together with all subsequent responses and replies thereto be made public and heard in open court".

REGISTRAR'S RESPONSE TO CROSS-MOTION

23. The Registrar submits that the cross-motion is being used to extend the arguments of the Deputy Principal Defender and attempts to redefine the clear order of the Trial Chamber of 12 May 2005.

DEFENCE OFFICE'S REPLY TO REGISTRAR'S RESPONSE TO CROSS-MOTION

24. The Defence Office reiterates its mandate under Rule 45 to ensure the rights of the Accused. The new Principal Defender states that he is in a dilemma as to what to do in order to secure the best interests of the accused persons and in the interests of fair trial and justice, and that ultimately, the Defence Office will await the directive of the Trial Chamber in view of the multifarious motions, responses and replies already filed.

II. DELIBERATIONS

Further relief sought in Joint Defence Reply to Registrar's Response that the motions be heard in open Court.

25. We again note that Counsel have made an application for further relief in a Reply. We repeat what was stated by this Trial Chamber in the Decision on Joint Defence Motion on Disclosure of all Original Witness Statements, Interview Notes and Investigators' Notes Pursuant to Rules 66 and/or 68 (4 May 2005): "This is a practice that must be discouraged. A Reply is meant to answer matters raised by the other party in its Response, not to claim additional relief to that sought in the Motion. Obviously the other party, having already filed a Response to the Motion, has no way under the Rules to answer the new prayer, except to apply to the Trial Chamber for leave to do so. In future, the Trial Chamber will not hear claims for additional relief contained in a Reply".

Furthermore, we observe that there has been no submission to support or explain this application for a public hearing. Counsel refers to "security concerns" but ignores the fact that the Lead Counsel, in their original application to withdraw from the case sought to have the facts under seal and ex-parte as well as confidential. In the circumstances, we consider this application vexatious.

Relief sought in the substantive Motion

26. As recited above, the applicants seek four substantive orders. We again note that the chronology recited by the applicants omits fundamental facts, e.g. the order of the Trial Chamber of 12 May 2005, the ruling of 16 May 2005 and a letter of the 17 May 2005 from the Deputy Principal Defender to the Registrar. Without a clear statement that the Court made a ruling on 12 May 2005 granting in full the relief sought by Counsel to withdraw from the case, the Motion implies that the Trial Chamber gave orders to withdraw after and despite a letter from the accused asking for Counsel to be "maintained". Such implication that the Court acted without giving any consideration to the wishes and statements of the accused is improper.

27. Further, the submission fails to recite that the Court on 16 May 2005 recorded that its order had been made and letters, correspondence and documents that sought to go behind the order would not be countenanced.

28. Instead, the submission refers to consequential orders made on 13 May 2005, then to a letter from the Registrar on 19 May 2005 omitting both the ruling of 16 May 2005 and a memorandum from the Deputy Principal Defender to the Registrar on 17 May 2005, (which sought to have the Counsel re-assigned). That memorandum, very improperly in our view, fails to inform the Registrar of the Court's ruling of 16 May 2005.

29. The impression that the Registrar wrote on 19 May 2005 on his own volition or in a vacuum is misleading. We remind Counsel of their duty to the Court to be truthful. We cannot accept that failure to recite these 3 important matters was an oversight. Failure to be truthful is misleading and vexatious.

30. Further, Counsel submits that there was an expression of preference or otherwise for Counsel by Justices of the Trial Chamber. There is no evidence that the Justices made any statement of preference or otherwise and to imply impropriety by the Justices in this way is itself improper.

31. If Counsel seek to base their submission on the reference to the Registrar consulting with the Trial Chamber, then the submission fails to take account of the powers to the Registrar, pursuant to Rule 33B, to make oral or written representations to the Chamber on any issue arising in the context of a specific case which may affect the discharge of his functions. These functions, as the Deputy Principal Defender and the Registrar submit, include the duty to maintain a Defence office pursuant to Rule 45.

Specific Relief

32. (1) We consider it appropriate to first deal with the prayer for relief seeking the following: "That the Justices that reconfirmed the order not to re-appoint as indicated in the letter from the registrar's legal adviser recuse (sic) themselves from hearing this present Motion".

This prayer appears based on a premise that there was:

- a. an order that Counsel not be re-appointed and;
- b. that order was reconfirmed.

There was no order made in this Trial Chamber refusing re-appointment of Counsel per se. The orders sought in the original application were for leave for Counsel to withdraw from the case. The orders were granted in full as sought and additional orders for, *inter alia*, appointment of Lead Counsel were made.

The orders for appointment of other Lead Counsel were based on the mandatory provisions of Rule 45(E) obliging the Principal Defender to "assign another Counsel".

33. Since there was no determination of the issue of re-appointment of counsel, there are no grounds for submitting that any Judge recuse him/herself.

34. (2) That the Trial Chamber order the Registrar to ensure that Mr. Metzger and Mr. Harris are re-assigned as Counsel for Accused persons Brima and Kamara. The Lead Counsel Metzger and Harris applied to withdraw for various reasons of which their personal safety and that of their families was emphasized in oral submission. The Court is, in our view, entitled to assume that in keeping with professional ethics, they informed their respective clients of this decision to apply to withdraw.

35. The statement by the accused Kamara that he "did not know it would force my lead counsel to withdraw" (see Motion, Annex F, para.4) casts doubt upon that basic assumption. This and the statement from the accused Kamara that "I have deemed it fit to give him full instructions to come

back and work on my case with my full support and continued cooperation” (see Motion, Annex F, para. 4) shows the Court that the accused have decided to frustrate the hearing by withdrawing instructions and then, when it suits them, giving instructions. There is no undertaking or clear indication that this pattern of behaviour will not be repeated to avoid interfering with a fair and expeditious hearing. In our earlier decision permitting Lead Counsel to withdraw, we found that the Accused were merely boycotting the trial and obstructing the course of justice. In our view, that is exactly what they are seeking to do in bringing the present Motion. We do not believe that they genuinely wish to be represented by those particular counsel. We believe that their real motive is to cause as much disruption to the Trial as possible.

36. As the Deputy Principal Defender has correctly stated, the duty to assign Counsel in the event of a withdrawal rests in the Principal Defender. However, we do not consider this entirely relevant as Rule 45(E) provides the appointment must be of “another” Counsel. There is no provision for re-assignment of former Counsel in the event that they or their clients, or both, have changed their mind.

37. (3) An Order to the Acting Principal Defender to immediately enter into a legal contract with Messrs Metzger and Harris:

We repeat the foregoing points and stress that there is no provision for re-appointment under Rule 45(E). Whilst the Trial Chamber has a duty to ensure that a trial is fair and expeditious, we do not have the power to interfere with the law relating to privity of contract.

38. (4) An Order to declare the decision of the Registrar not to re-assign Counsel null and void as it was made without legal or just cause.

As the Deputy Principal Defender has conceded in the absence of the Principal Defender, certain obligations to carry out duties fall upon the Registrar. He has a further overall duty to act as principal administrator of the Court.

39. In exercising his duty, the Registrar sought to uphold an order of the Trial Chamber allowing Counsel’s application to withdraw and ordering that another Counsel be assigned in accordance with Rule 45(E).

40. To argue that upholding and implementing a Court Order, made on the application of the parties concerned, is “without legal or just cause” is fallacious.

41. The applicants have stressed the right of the accused to Counsel of their “own choosing” as provided by Article 17(4)(d) and have argued this allows them to have the Counsel they previously refused to instruct and co-operate with re-assigned to them. They submit the Trial Chamber must “ensure that the right [...] is not arbitrarily interfered with [...]”

42. This provision has been considered by various courts, both the International Tribunals and, as stated in the brief by Mr. Knoop, by the European Courts when interpreting Article 6 of the European Convention on Human Rights.

43. The accused in this case have declared themselves indigent and have, in accordance with Article 17(E)(d), a right to have legal assistance assigned.

44. However, the right to have legal assistance does not carry with it an absolute right to any Counsel.

45. As was held in the *Prosecutor v. Martić* by ICTY:

*“the jurisprudence of the International Tribunal and of the International Criminal Tribunal for Rwanda indicates that the right of the indigent accused to counsel of his own choosing may not be unlimited but that, in general, the choice of any accused regarding this Defence Counsel in proceedings before the Tribunals shall be respected; that, in the view of the Chamber, the choice of all accused should be respected unless there exist well-founded reasons not to assign Counsel of choice”.*¹

And in ICTY *Prosecutor v. Knežević*:

*“Contrary to the submission of the Accused and Mr. Drasko Zec, the right of indigent accused to counsel of his own choosing is not without limits; that the decision for the assignment of counsel rests with the Registrar, having to take into consideration the wishes of the accused, unless the Registrar has reasonable and valid grounds not to grant the request.”*²

46. And as stated by Ms. Knoops in paragraph 2 of his brief, the right of an accused to counsel “can be subject to certain restrictions, such restrictions should of course be interpreted in the perspective of the overall right of the accused to have a fair trial.”

47. Mr. Knoops in his brief, does not resile from this restricted right of an accused but instead stresses the concept of equality of arms. However, we repeat our view in the decision on the Confidential Defence Application, quoted above, “that Lead Counsel with their present difficulties would not be capable of acting in the best interests of their clients”.

48. We note the Defence reply that the “circumstances where Counsel previously withdrew his services for stated reasons and circumstances, some of which have changed” (paragraph 8). We have no direct evidence from Counsel that their circumstances have changed, and given that this application emanates from a letter from the accused purportedly written on the same day as the Trial Chamber’s order, we question the bona fides of that statement.

The only change since our decision is that the accused are apparently now willing to give instructions to counsel, but all the other factors we considered in arriving at our decision are still in existence. We cannot escape the conclusion that the two lead counsel were not sincere in their reasons for bringing their motion to withdraw from the case and that they never expected it to succeed.

49. Further, it is unclear on what legal grounds this application is made. The application does not say it is founded on Rule 45(D) and makes no submission that there are exceptional circumstances that would allow the Trial Chamber to exercise its jurisdiction under Rule 45(D).

50. It appears that this application in reality is simply an application to reverse a majority decision given by the Trial Chamber on 12 May 2005 because in that decision all relief prayed for was granted to Counsel. A decision upholding the submissions made and granting the relief prayed for could hardly be appealed. Given the alacrity with which the accused and their Counsel and the Deputy Principal Defender sought to go behind that order and seek to reverse it, causes us to doubt the sincerity of the application to withdraw. By not giving instruction to their Counsel leading to withdrawal of counsel from the case, coupled with an immediate application to re-instate the same Counsel, the accused have seriously delayed and obstructed this trial.

¹ *The Prosecutor v. Martić*, Case No. IT-95-11-PT, Decision on Appeal against Decision of the Registry, 2 August 2002.

² *The Prosecutor v. Knežević*, Case No. IT-95-4-PT, IT-95-8/1-PT, Decision on Accused’s request for Review of Registrar’s Decision as to Assignment of Counsel, 6 September 2002.

51. Moreover, since the Accused had not been coming to court and were not giving instructions to their counsel (although those were not the only reasons why counsel sought to withdraw from the case), we directed under Rule 60(B) that the Accused be represented by Court-appointed counsel (who were already part of the Defence team) and that the Principal Defender assign another lead counsel to each of the Accused. We were satisfied that these were the proper measures to protect the rights of the Accused, in particular their right to be tried without undue delay as enshrined in Article 17(4)(c). We do not have the jurisdiction to revisit that decision, nor do we see any good reason to re-appoint the counsel concerned. In any event, it appears that the said Counsel are not eligible to be reappointed since they are no longer on the list of qualified counsel required to be kept under Rule 45(C).

52. Having held that this Motion is not founded on bona fide motives and seeks to reverse an order granting relief which the Defence itself sought, we consider this Motion to be frivolous and vexatious and for this and the foregoing reasons, we dismiss the motion and refuse the relief prayed for therein.

Cross Motion

53. The Deputy Principal Defender has filed a Cross-Motion in response to the Defence Motion. We again repeat, a response or reply should not be used as a vehicle to seek further relief. The Acting Principal Defender seeks clarification of the majority order of 12 May 2005 and asks if “permit to withdraw” means Counsel are required to withdraw and if “another” Counsel means Counsel other than those who withdrew.

54. The application then argues that there is no provisions disqualifying counsel who have previously withdrawn and suggests the “disqualification may be perceived as a penalty”. In our opinion, this is a speculative statement implying an unspecified party has been subjected to some form of penalty and is made without foundation.

55. The then Principal Defender, Ms. Monasebian, sought clarification of the order and appointment of other Counsel in open Court on 12 May 2005 and accepted the replies of Hon. Justice Lussick and the Presiding Judge. For the benefit of the Deputy Principal Defender, when the Trial Chamber permits counsel to withdraw from the case, it is the duty of the Principal Defender under Rule 45(E) to assign **another** counsel to the indigent accused. The word “another” is defined in the Paperback Oxford English dictionary as meaning: “1. one more. 2. different from the one already mentioned”.

56. If the Deputy Principal Defender is still in doubt as to the meaning of the orders we made in court on the 12 May 2005, we would draw her attention to the transcript of that date, page, 4 lines 11 to 21, where the following exchange took place:

“JUDGE LUSSICK: We’ll be relying on you, Ms. Monasebian, to **appoint two new lead counsel in accordance with the order**. But we are very confident that the co-counsel can carry the case in the meantime, as they have been doing for long sessions in any event.

Ms. MONASEBIAN: And they are permitted to, that’s right.

JUDGE LUSSICK: Certainly, yes. We are well aware they are permitted to do that.

Ms. MONASEBIAN: Yes, yes. Thank you for that clarification and that just leads me to know that **we have to assign other people in due course**. Thank you for that, Your Honours.”

57. We have added emphasis in places in the hope that it will aid the Deputy Principal Defender's understanding. Certainly, the Principal Defender at the time had no difficulty in knowing what her duty was and accepted that new lead counsel would need to be appointed.

58. The other matter raised in the Deputy Principal Defender's Cross-Motion is as follows:

"The Defence Office seeks an order offering guidance as to the application of the word "permit" to withdraw used in the majority Order of the Court of 12 May 2005 and its subsequent Decision dated 20 May 2005. Must Counsel necessarily be required to withdraw if he is only "permitted to withdraw"?"

59. If the Deputy Principal Defender is putting this to the Trial Chamber as a hypothetical question then we would inform her that the Trial Chamber does not make findings on hypotheses. If, on other hand, she is suggesting that the two lead counsel brought a Motion to withdraw from the case when they had no intention of doing so if the motion were granted, then we would view that as a serious impropriety.

60. We refer to the Registrar's Reply to the Motion and agree with his submissions on the law. We find that in implementing the orders of this Trial Chamber, the Registrar has acted within his authority and power.

61. Looking at the history of this case since we made our order on the 12 May 2005, it seems to us as though the Deputy Principal Defender has gone out of her way to undermine our decision. Almost a month has gone by and she has not made any attempt to appoint new lead counsel. It appears she is unwilling to do her job, and unwilling to follow the directions of the Registrar, who has overall authority over the administration of the Special Court and, in particular, over the assignment of counsel, which is an administrative matter.

62. We noted the Cross Motion sought clarification only and having made those clarifications no orders are required.

FOR ALL THE ABOVE REASONS

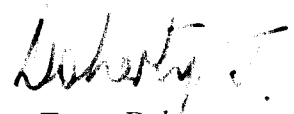
the Trial Chamber dismisses the Motion.

Hon. Justice Julia Sebutinde will deliver a separate dissenting opinion.

Done at Freetown this 9th day of June 2005.


Justice Richard Lussick




Justice Teresa Doherty
Presiding Judge

[Seal of the Special Court for Sierra Leone]