

SCSL - 2004 - 16 - T
(14598 - 14677)

SPECIAL COURT FOR SIERRA LEONE
CASE NO. SCSL-2004-16-T

Before: Justice A. Raja N. Fernando, Presiding
Justice Emmanuel Ayoola
Justice George Gelaga King
Justice Geoffrey Robertson, QC
Justice Renate Winter

Registrar: Robin Vincent

Date Filed: 9 September, 2005

THE PROSECUTOR Against ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
And
SANTIGIE BORBOR KANU

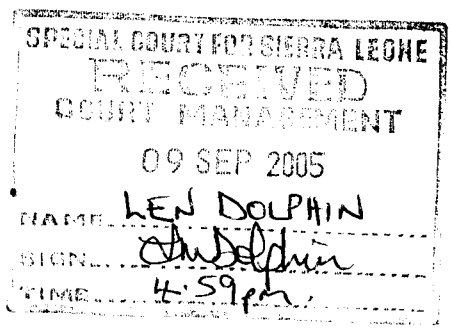
**DEFENCE RESPONSE TO BRIMA-KAMARA DEFENSE APPEAL MOTION
PURSUANT TO ARTICLE II OF THE PRACTICE DIRECTION FOR CERTAIN
APPEALS BEFORE THE SPECIAL COURT**

First Respondent
The Registrar

Defense Counsel for Brima
Kojo Graham
Glenna Thompson

Second Respondent
The Principal Defender

Defense Counsel for Kamara
Andrew K Daniels
Mohammed Pa-Momo Fofanah



I INTRODUCTION

On 30 May 2005, the substantive Principal Defender was appointed. On 9 June 2005, Trial Chamber II rendered its majority decision “Decision on the Extremely Urgent and Confidential Joint Motion for the Reappointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara and the Cross Motion by the Deputy Principal Defender to the Trial Chamber II for clarification of its oral Order of 12th May 2005,” which will be referred to as the ‘Impugned Decision’. On 11 July 2005, Justice Sebutinde issued her Dissenting Opinion to the Impugned Decision (“Dissenting Opinion”).

On 14 July 2005, the Defence, on behalf of Accused Alex Tamba Brima and Brima Bazzy Kamara, filed an Application seeking leave to make an interlocutory appeal against the impugned decision. The Application, which had omitted the Principal Defender as one of the parties, was rectified on 15 July 2005, when the Defence filed its corrigendum to their Application. On 22 July 2005, the Defence Office submitted its response to the Defence Motion for Leave to Appeal.

On 5 August 2005, the Trial Chamber gave its decision “Decision on the Brima-Kamara Application For Leave to Appeal From Decision On the Reappointment of Kevin Metzger and Wilbert Harris as Lead Counsel. On 2 September 2005, the Defence Counsel for Brima-Kamara filed a Motion “Brima-Kamara Defence Appeal Pursuant to Article II of the Practice Direction for Certain Appeals before the Special Court.”

II BACKGROUND

The Second Respondent wishes to present the background to what transpired on 16 and 17 May 2005. Briefly, on Thursday, 12 May 2005, after the Ruling, Ms. Claire Carlton- Hanciles, the Duty Counsel for the AFRC communicated the Order to the Accused persons, who had not been present in court that day. On the same day, the Accused expressed their views in writing to the Principal Defender in a hand-written letter dated 12 May 2005. The Detainees stated that “they have

now deemed it fit to give full instructions to their assigned Counsel as there was a good relationship existing between them and they have confidence and believe in them as Lead Counsel. The letter also stated that they wanted their trial to end without undue delay. Furthermore, the accused Persons had heard some information concerning the contempt proceedings.”¹ On 16 May 2005, Ms. Claire Hanciles made an effort to meet with the Honourable Justices of Trial Chamber II but was unable to be given audience. She decided to send the letter to the Trial Chamber, via e-mail to Mr. Laucci, then the most Senior Legal Officer in the absence of the substantive Senior Legal Officer, who was away. Later in the day during 16 May 2005, Ms. Carlton-Hanciles presented the matter before the court. Ms. Hanciles, attempted to inform the Trial Chamber as shown below:

Ms. Carlton-Hanciles: [--] on the second issue, Your Honour, the Defence Office received a communication from two of the detainees with regards to a decision which was rendered by the honourable court with instructions that a copy be served on Chambers. Your honours, I have the document with me, here. I ----

PRESIDING JUDGE: Ms. Carlton-Hanciles, before you go any further, this Court read an order on an application. The application was an application to withdraw. The order was made and any letters, correspondence or documents that seek to go behind that decision cannot be countenanced in this court. The decision was made.²

After the hearing Ms Carlton-Hanciles went to the Registrar to inform him about the Accused persons’ letter. Both herself and the First Respondent discussed the

¹ Ms. Carlton-Hanciles Submission dated 27 May 2005 attached to the Defence Response, dated 30 May 2005, to the Defence Motion on Re-Assignment (SCSL Doc. No.----) Response

² T. 16 May 2005

issue. The First Respondent appeared amenable to having Counsel re-assigned but asked the Defence Office to put it in writing. Although, the Principal Defender was still around, the matter was passed on to the Deputy Principal Defender to handle. Thus, when Duty Counsel, Ms. Carlton-Hanciles informed the Deputy Principal Defender about the need for a memorandum, she abided and wrote one dated 17 May 2005.³ The memorandum, which was simply a follow-up of what was discussed with the Registrar. It was copied to the Prosecutor as well as the Judges although prior to formally sending it to the Judges. The Deputy Principal Defender consulted with the Registrar whether, it should be sent directly to the Trial Chamber or not. It was left to the First Respondent to exercise his discretion as to either send the memorandum directly to the honourable Justices or to have the Defence Office transmit it.⁴ A telephonic confirmation was given by the First Respondent to have the memorandum transmitted to the Judges. However, during the process of scanning the document, mechanical problems were encountered, which interfered with the transmission process. Thus, the document could not be sent on the very day, i.e. 17 May 2005.

Nevertheless, it was re-sent to the First Respondent⁵ as well as the Honourable Judges on 18 May 2005 via e-mail to Mr. Laucci, Legal Officer in Chambers, who received it and responded that the Judges had already received it.⁶ Thus, the

³ The memorandum was referred to in Ms. Hanciles Submission but was erroneously omitted to be attached. A copy of the 17 May 2005 Memorandum is hereto attached

ATTACHMENT A

⁴ Email from the Deputy Principal Defender to First Respondent Dated 17 May 2005 -

ATTACHMENT B

⁵ E-mail dated 18 May 2005 from the Deputy Principal Defender to the Registrar

ATTACHMENT C

⁶ Laucci E-mails dated 18 May 2005

ATTACHMENT D

17 May 2005 Memorandum was effectively received by the First Respondent and the Honourable Justices on 18 May 2005. There was negligible time lapse between the time the Judges received it from the First Respondent and the time the Deputy Principal Defender sent it to Chambers. At this point time the matter was still at a consultative stage. The Defence follow-up of the meeting held earlier between the Registrar⁷

The Second Respondent notes the Presiding Judge's Comment which is appended to the Leave to Appeal Decision.⁸ Although the document is neither a dissenting or separate opinion but a comment, whose status in such a decision is unknown, the facts stated therein as they pertain to the Defence Office cannot be left hanging. As explained above and as demonstrated by the emails to the Registrar, it was anticipated that the Registrar would first view the memorandum and decide if it should be forwarded to the Judges.⁹

As a precursor to the discussion of the grounds of appeal, the Second Respondent submits that the Chamber held an erroneous view when it interpreted the omission of some facts as being omission of fundamental facts.¹⁰ The Second Respondent contends that fair trial calls for an opportunity for each party to present its case. In conformity with the adversarial procedure, each party will accentuate the facts which best supports its case. Moreover, there is no requirement for the mandatory inclusion of certain facts to support a motion brought under Rule 54 of the Rules. The Trial Chamber on the other hand could lay out all the facts while determining the matter.

⁷ Refer to and Ms. Carlton-Hanciles (Submission attached to the Defence First Submission Document).

⁸ Comment appended to the Decision for Leave to Appeal dated 5 August 2005

⁹ Ibid.

¹⁰ Para 26 Impugned Decision

III GROUND OF THE APPEAL

The Defence Office supports the grounds tendered in the Brima-Kamara Appeal Motion Pursuant to Article II of the Practical Direction for Certain Appeals before The Special Court as follows:

1 Error in law and/or fact due to denial of statutory rights of Accused to have Counsel of his own “choosing” as provided for in Article 17 (4) (d) of the Special Court Statute

The Second Respondent submits that the Impugned Decision, which considered a motion filed by Accused Alex Tamba Brima and Brima Bazzy Kamara relates to extraordinary crucial issues on the rights of an accused person to a fair trial. Specifically, the accused persons’ motion hinged upon Article 17 of the Statute of the Special Court, particularly Article 17(4) (c) and (d) which provide as follows:

Article 17: Rights of the Accused

[--] In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

[--]

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interest of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

[--]

The assignment has a bearing on the work of the Defence Office as headed by the Principal Defender.

The Second Respondent submits that the provisions of Article 17 (4) (d) should be construed in the mandatory nature in which they were couched. It is his view that, although the jurisprudence on this matter indicates that the Accused persons’

right to counsel of his own choosing is not absolute, the Accused person's motion for re-assignment of counsel can be distinguished from the cited case, the Impugned Decision relied on cases which restricted the mandatory right to counsel of one's own choosing. The Impugned decision stated "however, the right to have legal assistance does not carry with it an absolute right to counsel."¹¹ The Trial Chamber cites two ICTY cases in support of this view, one of which was *The Prosecutor v. Knězevic*.¹² As observed in *Brima et al*, those cases involved accused persons who had requested the change/withdrawal of Counsel.¹³ On the contrary, in the present case, although the accused had reserved limited instructions for their Counsel, they still wanted to keep them because of the good working relationship and their knowledge of the case.¹⁴ Noticeably also, in those cases the accused persons' did not ask for re-assignment of withdrawn counsel. The Second Respondent argues that since the Accused persons had not requested the withdrawal of their counsel, there should be no impediment to having them re-assigned.

The Second Respondent, just like the Trial Chamber¹⁵ drew some guidance from the Knoops Brief attached to the Defence submission.¹⁶ Most of the arguments presented by the learned Professor are based on the interpretation of Article 6 (3) (C) of the European Convention of Human Rights which is an *ipsissima verba* reproduction of our Article 17 (4) (d) of The Statute of the Special Court for

¹¹ Para 45, Impugned Decision

¹² Ibid.

¹³ *Brima et al*, Paragraph 121 – 124

¹⁴ Accused Persons Letter dated 12 May 2005

¹⁵ Para 45, Impugned Decision.

¹⁶ Defence Response dated 30 May 2005 (Doc SCSL II)

Sierra Leone; and the celebrated case of *Mayzit v. Russia*¹⁷. The Knoops Brief made the following points:

- a. That the Court should give a high degree of respect to the Accused's choice of Counsel on either assignment or re-assignment of Counsel.
- b. That in choosing professional Counsel, restrictions imposed on the accused should not be interpreted to the disadvantage of the accused, because that will go against the principle of "equality of arms". Regarding this point, Professor Knoops stated, "In light of these circumstances, a denial of the reassignment of the requested lead counsel could be tantamount to a violation of the principle of equality of arms. After all, reassignment of lead counsel other than the proposed lead counsel, Mr. Metzger and Mr. Harris, could be seen as prejudicial to the mentioned accused, in that, inter alia, procedurally, these defendants would be put into a disadvantage as opposed to the position of the prosecution vis-à-vis the preparation of the examinations in chief and cross-examinations of witnesses."¹⁸ In its reference to the Knoops Brief, the Trial Chamber did not discuss the conclusions made by Prof Knoops on the issue of assignment of counsel, except a reference to the equality of arms in (b) above.
- c. That the wishes of the accused regarding his choice of Counsel should only be varied when there are relevant and sufficient grounds for holding that this is necessary "in the interest of Justice." Professor Knoops concluded, "The current application to reassign mentioned Lead Counsel may justify the qualification that such reassignment serves the interest of justice, at least from the perspective of the accused, which perspective should have an overriding value in this issue."
- d. That responsibility for conducting the Defence of his case is on the accused and his proposed Counsel – it is up to them to enter into a (renewed) legal representation in terms of legal representation and the way it is to be presented

¹⁷ Para 8 Knoops Brief – Para 42 Impugned Decision

¹⁸ Knoops Brief, Para 8

in Court.

- e. That case law of the European Court of Human Rights (ECHR) makes no distinction between assignment and re-assignment - it seems to treat both as the same.¹⁹

Professor Knoops finally concluded that, ‘in view of the important function for the accused, Mr. Brima and Mr. Kamara, to reassign their lead counsel in the overall context of the complex AFRC case, considering the stage of the proceedings in this case, and the advancement of the examination in chief, it is fair to conclude that the current application for reassignment finds support in the case law of the ECHR.’²⁰ He stated further that, the case law of the ECHR does not make a distinction between assignment and reassignment as such in the context of the criteria for Article 6 Section 3 (C)[---].”²¹

The Second Respondent is cognizant of the fact that the Honourable Justices are not obliged to provide reasons for all matters raised. However, it is submitted that in this particular case, the conclusions in the Knoops Brief were glaringly supportive of the accused’s request, which should have positively impacted the decision taken by the Honourable Justices.

The Second Respondent also submits that in relation to Article 17 4 (d) of the Statute and Article 2 (a) of the Directive of Counsel and in light of the persistent requests by the accused for the re-assignment of their counsel, the First Respondent couldn’t have complied with the said articles. Neither can it be said that he acted in the interests of justice. The Second Respondent contends that if

¹⁹ Knoops Brief, Para 8

²⁰ Knoops Brief para 18

²¹ Ibid.

the withdrawn Counsel fulfills the criteria for eligibility to be placed on the list of qualified Counsel, have a good rapport with their client, and knowledgeable about their cases, they should have been re-assigned considering the stage at which the case has reached. This would be done in the interests of justice.

2 Error in law and/or fact due to the refusal to order Acting Principal to enter into a legal services contract on the grounds of privity of contract²²

On this Ground, the Second Respondent submits that the Trial Chamber could have exercised its inherent jurisdiction. In the *Brima et al*, Trial Chamber I invoked its inherent jurisdiction to entertain the motion of the accused on the ground of denial of request for assignment of counsel within the context of Article 17 (4) d of the Statue in the overall interests of justice, and to prevent a violation of the rights of the accused.²³ The Second Respondent subscribes to the view that the Trial Chamber's earlier decision on withdrawal of Counsel impacted upon the Legal Services Contracts existing between the Principal Defender's Office and the withdrawn Counsel. The Second Respondent also finds guidance in the Dissenting Opinion.

3 Error in law and/or fact due to the Trial Chambers denial of an order for a public hearing of the application²⁴

On the issue of public hearing, Second Respondent submits that "The right to public trial is guaranteed by a variety of reasons, but the primary purpose is to assure that a defendant receives fair trial and is "not unjustly condemned".²⁵

²² Ground 2

²³ *Brima* Decision, 6 June 2004; *The Prosecutor v. Hinga Norman et al*, 1 March 2005 (SCSL Doc 356) (Separate and Concurring Opinion of Hon. Justice Pierre Boutet), Para 10, P 6

²⁴ Ground 3

²⁵ *Hackett v. State* 266 Ind.103, 109,360 N. E. 2^d 1000, 1004 (1977)

Although, the motion is not a hearing per se, it was brought during the process of trial and fits within the precincts of Article 17(2) of the Statute of Special Court. Additionally, the Defence subscribes to the Dissenting Opinion, specifically paragraph 35, and agrees that the right of an accused to a public hearing is not limited to the conduct of the main trial, but also to interlocutory applications and motions filed by the parties to the trial. However, in paragraph 25 of the Impugned Decision, the Chamber refused to grant a public hearing because Counsel had made an application for further relief in a reply. The facts indicate that the application for a public hearing was particularly made upon the discovery that the 1st Respondent had in fact de-listed both the Messrs. Harris and Metzger from the eligible roll Counsel for the Special Court.²⁶ The assertion that the request for a public hearing should not have been made within a reply is erroneous because the right to a fair and public hearing is a fundamental right which cannot be derogated from by a practice and hence does not constitute claiming additional relief.²⁷

Hence, when the accused persons requested the Trial Chamber to hold a public hearing, pursuant to Article 17(2) of the Statute of the Special Court, it was for no reason other than an assertion of their Statutory right. It is contended that by deploying a practice to derogate a statutory right to a fair hearing, the Trial Chamber failed to ensure the rights of the Accused Persons to a fair and public hearing under Article 17(2) of the Statute.

The Second Respondent argues that no impediment should have interfered with the accused persons' rights to a fair and public hearing under Article 17 (2). Article 17(2) of the Statute of the Special Court subjects the rights to public

²⁶ Para 25, Dissenting Opinion; Paras 34 and 35. See also Joint Defence Response to First Respondent's Reply – SCSL Doc. No. 296, 3rd June 2005

²⁷ Para 25 of the Impugned Decision

hearing “to measures ordered by the Special Court for the protection of victims and witnesses.”²⁸ Pursuant to Rule 75 of the Rules of Procedure and Evidence, the Court can also close proceedings. The Second Respondent submits that the provisions on the protection of victims and witnesses are not applicable to this motion. In addition, Rule 73(A) of the Rules which provides, *inter alia*, that the Trial Chamber shall rule on such motions based solely on the arguments of the parties unless it is decided to hear the parties in open court. Although the provisions in both sections are mandatory, Article 17 2 (d) should prevail over Rule 73 (a) of the Rules.

Additionally, the Second Respondent is of the opinion that the Trial Chamber erred in law in denying the Accused persons their right to a fair and public hearing, pursuant to Article 17 (2), on the ground that their outgoing Counsel had sought to have facts under seal and *ex parte*. The Second Respondent argues that the action of Counsel should not have been considered at all in matters relating to the Accused persons’ right to a fair and public hearing. The Accused persons’ right to a public hearing should not have been compromised by virtue of their Counsel’s action.

4 Error in law and/or fact due to an erroneous perception of the Original Motion as a Rule 45 (E) application and Error in law and/or fact due to the Trial Chamber’s consideration of the Original Motion as an application for review of its earlier Rule 45 (E) decision²⁹

²⁸ See also *Kendrick v. State*, it was held that a trial court has the power to close proceedings in certain limited circumstances, “it may make limited restrictions on the defendants’ right to a public trial if the restrictions are “related to a legitimate purpose furthering the integrity of the judicial process, so long as there is a sufficient record supporting the judges exercise of that discretion.”

²⁹ Grounds 4 & 5

The Second Respondent supports the Defence submissions presented in Grounds 4 and 5. He submits that the Trial Chamber failed to differentiate between the accused persons' motion and counsel's withdrawal motion.

It is argued that the Trial Chamber erroneously perceived the joint motion for the Re-appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, filed pursuant to Article 17 (4) (d) of the Statute of the Special Court and Rule 54, as a Request for review of an earlier motion for withdrawal by the former Counsel. In taking this position, the Trial Chamber throughout the impugned decision points out deficiencies of not adhering to their Order. The Chamber did not give regard to another aspect to the issue, namely the accused person's request to have their withdrawn Counsel re-assigned. Moreover, this was the same stance advanced by the First Respondent. That is, they failed to differentiate between the withdrawal motion by Counsel and the accused persons' request for the re-assignment of their withdrawn counsel.³⁰

The Trial Chamber also erred in law and /or fact in holding that the accused persons' motion was 'vexatious and frivolous.' In the Impugned Decision at paragraph 52, it was held that the motion was not founded on a *bona fida* motive and seeks to reverse an order granting relief, which the Defence itself sought. The Second Respondent posits that the accused genuinely wanted to have their counsel re-assigned as expressed in the letters attached to the motion. The accused did not base their motion on any motive. Rather, the motion filed on their behalf of the accused persons' was filed pursuant to the legal grounds under Rules 54, 73 (a) of the Rules of Procedure and Evidence, and inherent jurisdiction of the Court. Hence, the issue of motive should not arise. Moreover, the Defence in their reply, submitted that "the Defence motion merely seeks re-assignment without

³⁰ Paras 16,18 of the Impugned Decision; *contra* See paras 50-51 of the Dissenting opinion of Justice Sebutinde

interfering with the courts decision.³¹ There was no challenge to the existing order of withdrawal and re-assignment of counsel.

5 Error in law and/or fact due to the Trial Chamber's decision that "Counsel are not eligible to be reappointed since they are no longer on the list of qualified Counsel required to be kept under the Rule 45 (C)."³²

The Second Respondent is of the view that as the head of the Defence Office, he should discharge his duties and functions in guaranteeing the rights of the accused persons independently without any undue interference. He is vested with the power to compile, maintain, place counsel on the list of qualified counsel and to remove counsel who, do not qualified by virtue of Rule 45 of the Rules and Article 13 (A),(B),(E) and (F) of the Directive on the Assignment of Defence Counsel. This view is supported by Honourable Justice Boutet in the *Prosecutor v Hinga Norman et al*, where he expressed the view that the role of assignment, withdrawal and replacement of counsel is 'essentially a role and function of the Principal Defender.'³³ However, the Impugned Decision in Paragraphs 12 and 13 gave judicial endorsement to the First Respondent's view that he has the power to remove counsel from the list; moreover, on the basis of "security concerns." The Second Respondent subscribes to the view that removal from the list is a serious matter and must be done after having given the chance to the Lawyer concerned to defend himself. In the present case, the reason which formed the basis for the removal Counsel Metzger and Counsel Harris were not even prescribed by the Rules nor the Directive on the Assignment of Counsel. This was compounded by

³¹ Paragraph 11 of the Defence Response to the 1st Respondent's Reply (Doc No 296); 3rd June 2005

³² Ground 6

³³ The Prosecutor v. Hinga Norman, Separate and Concurring Opinion of Honorable Justice Pierre Boutet on Request for Withdrawal of Motion As Court Approved Counsel for the First Accused; 1 March 2005, Para 4, p 4 (SCSL Doc. No. 356)

Chamber could have made such an order. The Second Respondent is of the opinion that since the Trial Chamber did not stipulate any time frame, it unfairly reproached the Deputy Principal Defender of undermining a court order.⁴⁰ With all due respects, if the Trial Chamber had inquired, a lot had been done.⁴¹

Regarding another related statement in the Impugned Decision, in paragraphs 56 – 57, attention is drawn to the fact that the then Principal Defender Ms. Monasebian had sought clarification on the Order to Assign Counsel. The Second Respondent submits with due respect, that the Trial Chamber erroneously held failed that there was no change in the circumstances. At the time the oral decision was issued, the then Principal Defender had not been seized of the accused person's letter requesting that their withdrawn counsel be re-assigned. The Second Respondent also submits that in matters where there are changed circumstances, a party can approach the Trial Chamber for either a reconsideration, a clarification or an interpretation of the decision.

Although this is a procedure that is not specifically stipulated in the rules, Trial Chambers and Appeals Chambers of the *ad hoc* international tribunals have resorted to this procedure to avoid a miscarriage of justice.⁴² In the *Prosecutor v. Theoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*⁴³, Trial Chamber 1 of the ICTR held; “The Chamber has the

⁴⁰ See Paras 39 - 52

⁴¹ Emails and Other Documents Attached

⁴² *Ferdinand Nahimana, Jean Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, ICTR – 99- 52-A, “Decision on Jean Bosco’s Barayagwiza’s Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 4 February 2005, P 2

⁴³ ICTR-98-41-T, Para 17 on Maitre Paul Skolinki’s Application for Reconsideration of the Chamber’s Decision to Instruct the Registrar to Assign him as Lead Counsel for Gratién Kabiligi; 24 March 2005

the fact that the act of removal, of Counsel from the List of Qualified Counsel on 25 May 2005, was done without a Court order and when the matter was sub-judice.

Although the Acting Registrar, Mr. Kirkwood had requested the Deputy Principal Defender's to strike counsel off the list, she had declined as the matter was, *inter alia*, sub-judice.³⁴ Thus, when the Acting Registrar finally struck counsel off the list, it was done without the consent and despite the legal advice from the Defence Office. With all due respect, the Second Respondent submits that it is not within the power of the Registrar to remove names of counsel from the List and more so without established just cause. The First Respondent's view that "security concerns" formed "just cause" would not hold as the "security concerns" of the withdrawn counsel were not even established nor investigated. There was no willingness on the part of the First Respondent to even attempt to carry out any investigations. Rather, the First Respondent stated "[--] to date there has been no approach to court to discuss these issues nor any determination made that the court is even able to meet those security concerns, and if it could, how long it would take to investigate and implement any recommended security measures."³⁵

6 The Trial Chamber erred in law and/or fact due its ruling that 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."³⁶

With respect to the ground on extra judicial interference in re-appointment of Counsel by Honourable Justices Teresa Doherty and Richard Lussick, the Principal Defender supports the Defence in principle.³⁷

³⁴ 26 May 2005 Letter to Mr. Kirkwood

³⁵ Para 3 of First Respondent's Response (SCSL Doc. No. 290)

³⁶ Ground 7 of the Motion for Appeal

The Trial Chamber erred in endorsing the general submissions of the First Respondent concerning his administrative role. As already discussed, the Trial Chamber had endorsed the First Respondent's arguments including the view that the Principal Defender has no statutory authority and the title comes under the authority of the Registrar; and that staff in the Principal Defender's Office should be subject to his administrative direction. With all due respect, this interpretation does entirely represent the correct position of the Rules, particularly in relation to matters that are covered by Rule 45 and the Directive on the Assignment of Counsel.

The Second Respondent posits that where a matter involves legal interpretation of the functions mandated to his office, he should make that determination. On the other hand, it is the view of the Principal Defender should have a latitude of independence in exercising the administrative powers conferred upon him by the Rules. Furthermore, the Second Respondent opinionates that by endorsing the views of the Registrar concerning the assignment and matters ancillary to it, as provided under Article 17 (4) d of the Statute and Rule 45 of the Rules, the Trial Chamber permitted him to usurp the powers vested in the Defence Office. As already pointed out, this would jeopardize the rights of an accused to fair trial.

2 Arguments on the Cross-Motion

The Impugned Decision in paragraph 61 commented that the Deputy Principal Defender "has gone out of her way to undermine an order of the Trial Chamber or of "being unwilling to do her job or to follow the directions of the Registrar". This view presupposes that there were certain fixed time frames within which the Trial Chamber expected the Principal Defender to have assigned new counsel to the accused persons. In fact this is not the case. In its earlier decision of 12 May 2005 and its subsequent reasons rendered on the 23 May 2005, the Trial Chamber did not stipulate any time frame within which it expected the Second Respondent to assign new counsel for the accused Brima and Kamara even though the Trial

accused persons. Thus, the Second Respondent is not obligated to carry out his functions “under the direction of the Registrar.” In fact, these functions should be exercised independently of the Registrar. Any attempt to interfere with these functions would tantamount to an infringement upon the rights of the accused persons because there would no longer be an independent watchdog for their rights. However, in practice, a consultative process is envisaged and should be encouraged. Additionally, it must be noted that the Office of the Principal Defender was designed to act autonomously and independently when handling issues relating to assignment of counsel.

The Second Respondent proffers that it is a misnomer for the First Respondent to arbitrarily take over the duties of the Defence Office. If the Second Respondent is absent, it would be expedient for the next senior official of the Defence Office, to step into the shoes of Acting Principal Defender in an acting capacity. In this case, the Deputy Principal Defender did exactly that until the issue of re-assignment of withdrawn counsel arose. This is what happened until the issue of re-assignment of withdrawn Counsel arose. At the time the accused persons made their request, the then Principal Defender, Ms. Simone Monasebian was on her way out and the new Principal Defender’s arrival was eminent. There was no formal conferment of authority on the officer in charge. However, such a vacuum should not have been allowed to occur as it may compromise the right of the accused persons. This is adequately supported by Trial Chamber I in the case of *Brima et al*;

“In view of the very nature and functioning of public or private services, it is, and should always be envisaged, that the substantive holder of the position is not expected to be there at all times. In order to ensure a proper functioning and a continuity of services with a view to avoiding a disruption in the administrative machinery, the administration envisages and recognizes the concept of “Acting Officials” in the absence of their substantive holders”³⁹

³⁹ Brima Decision of 6 June 2004

IV ADDITIONAL GROUNDS AND ARGUMENTS SUBMITTED BY DEFENCE OFFICE

1 Interference of the Registrar into the functions and responsibilities of the Defence Office

The Second Respondent agrees with views expressed in the Dissenting Opinion, which spell out the origins of the Defence Office.³⁸ The Defence Office, headed by the Second Respondent, was mandated under Rule 45 of the Rules, and vested with legal duties to assign Counsel and other related matters. This mandate is an effort to implement some of the provisions of Article 17, concerning the rights of the accused or suspected persons, particularly, Article 17(4)(d) of the Statute. Practically, the Defence Office has the responsibility of compiling and maintaining the List of Qualified Counsel under Rule 45 (c) of the Rules of Procedure and Evidence; placement of Counsel on that List if they meet the criteria stipulated in Rule 45(C) of the Rules and to deal with matters pertaining to the removal and withdrawal of Counsel. As such, the Second Respondent is better positioned to deal with matters pertaining to the right of the accused, which is principally the domain of the Principal Defender.

The Second Respondent further argues that, while the First Respondent is expected to exercise administrative and financial oversight over the Defence Office and to give it logistical and other administrative support he should not assume the function of the Defence Office or to veto the decision of its officials, made in pursuance of their mandate. The Second Respondent contends that the assignment of Counsel, withdrawal of Counsel and removal of Counsel from the List of Qualified Counsel maintained by the Principal Defender, and not merely administrative functions but also legal ones that affect the fundamental rights of

³⁷ Ground 7 of the Motion for Appeal

³⁸ Dissenting Opinion

authority to reconsider its decisions if satisfied that the underlying factual premise has changed substantially in a way that alters the original outcome.”

The Second Respondent adduced the view that although the matter was for clarification, the same principles applied to a reconsideration motion may be applied to a motion for clarification in the interests of justice. The success of a Motion for Clarification, Interpretation or Review depends upon the willingness of the Trial Chamber to resort to its inherent jurisdiction. However, fear of failure should not be a determinant factor in forging the rights of the accused persons to fair trial.

3 Integrity of process of Determining the Non Re-Assignment of Counsel was Flawed

The Second Respondent argues that overall, the issues involved in this appeal hinge on fair trial. In this regard, he is of the view that the integrity of the process of determining the re-assignment of counsel was so flawed as to erode the tenets of fair trial. The Impugned Decision in Paragraph 60 refers to the First Respondent’s reply to the Principal Defender’s Cross-Motion for clarification of 6 June 2005, which in turn incorporated the First Respondent’s response to the Defence Motion contains a number of erroneous interpretations of the law and fact.

Firstly, the consultation between the Registrar and the Trial Chamber was conceived to be under Rule 33, but contrary to Rule 33, the First Respondent did not notify the accused nor their counsel about his consultation with the Trial Chamber yet the matter at hand was very crucial to their rights. Secondly, the First Respondent’s reply to the accused person’s motion in paragraph 18 states that, “the Registrar’s representation to chambers in the case of the withdrawal of counsel, was to clarify and inform himself of the view of the Trial Chamber”⁴⁴ on

⁴⁴ Emphasis added by the Second Respondent

the order it made and was pursuant to his powers. Under Rule 33 B, he was not seeking to be directed by Trial Chamber”⁴⁵ The Second Respondent is in agreement with the Dissenting Opinion of Honourable Justice Sebutinde on this matter. He submits that what the First Respondent had before him was a request from the accused for Re-assignment of the withdrawn Counsel and not the “withdrawal of counsel” as such. Had it been the latter, then there was no need to approach the Trial Chamber.

Finally, the fact Impugned Decision did not refer or consider the Brima et al decision which falls squarely within the contextual setting of the present case, in arriving at their decision raises concerns. Despite the fact that, a Trial Chamber is not obliged to follow the decisions of another Trial Chamber except those of its Appellate Chamber, Trial Chamber 2 could have availed itself of the said precedent. In so doing, it would not only have contributed to the uniformity of jurisprudence on certain matters in the Special Court, particularly matters concerning assignment of counsel, but also would have contributed significantly to the advance of the rights of the accused to a fair trial.

4 Breach of Article 17 (1) on Equality before the Court

The Second Respondent submits that although the motion was considered upon brief the Trial Chamber overly leaned to the First Respondent’s submissions to the detriment of fairness. The Impugned decision, in paragraph 32, holds that there was not an order refusing re-appointment of counsel *per se*. The Orders sought in the original application were for leave of counsel to withdraw from their case. Firstly, the inconsistent manner in which the Chamber interpreted the Law impacted on fair trial. For instance, in paragraph 32, of the Impugned Decision it was held that “the Orders for appointment of other Lead Counsel were based on

⁴⁵ The Majority Decision in paragraph r 60 endorsed this interpretation

the mandatory provisions of Rule 45 (E) obliging the Principal Defender to ‘assign another counsel’.

The Second Respondent notes with interest that a contrary standard of interpretation was applied by the Chamber in its discussion of the issues concerning choice of counsel. In Paragraphs 41 and 42 of the Impugned Decision the Trial Chamber failed to strictly construe 17(4) d. The Chamber opted to take a view, which supported a derogation from the mandatory provision therein contained to deny the accused persons the re-assignment of their counsel. The Second Respondent contends that the Trial Chamber misdirected itself in endorsing the first Respondent’s view *en masse*. One of which, casts doubt on the use of “reasonable and valid” grounds test.

In the Impugned decision, the Honourable Justices, whilst discussing whether the accused had absolute rights to choice of counsel, referred to two cases; one of which was *The Prosecutor v. Knezevic*. It referred to the need to take into consideration the accused persons’ wishes, unless the Registrar has reasonable and valid grounds not to grant the request. However, there was no elaboration on the applicability of the “reasonable and valid grounds” test. Although a Trial Chamber is not obliged to answer all questions in a motion or a judgment,⁴⁶ nonetheless in this case, if the Chamber had properly addressed its mind to the matter before it, it would have found that the role of the Registrar to assign counsel under the ICTR and ICTY Rules is parallel to that of the Principal Defender under Rules of Procedure and Evidence of the Special Court. In this regard, the Registrars in ICTR and ICTY do in fact consider the wishes of the accused persons, and this should be the guide post of the Principal Defender.

Additionally, concerning the Acting Registrar’s action of striking off counsel from List of Qualified Counsel, whilst the matter was sub-judice, the Trial

⁴⁶ Prosecutor v. Bragoljuls Kunarac et al. Case No. IT-96-23 & IT-96-23/1-A, Appeals Chamber Judgement, 12 June 2002, at Para 42.

Chamber stated that “In any event it appears that the said counsel are not eligible to be re-appointed since they are no longer on the list of qualified counsel required to be kept under Rule 45 (C).”⁴⁷ The Trial Chamber did not evaluate the Acting Registrar’s action. In effect the Honourable Justices made a decision affecting the accused persons’ fundamental rights based on a legal irregularity.

V CONCLUSION

If the totality of all these circumstances is considered the resultant effect is that it would adversely affect the rights of the accused persons to a fair trial. To this end, the Second Respondent respectfully requests the Appeals Chamber to give direction on the role of the Defence Office in view of its mandate pursuant to Rule 45; and its interaction with the First Respondent with regard to the assignment and re-assignment of counsel for the accused persons.

RELIEF SOUGHT

- 1 The Second Respondent supports the Relief sought by the Defence Brima-Kamara Defense Appeal Motion; and
- 2 The Second Respondent respectfully requests the Appeals Chamber ensures that the rights of the accused persons to a fair trial are upheld.

 **PRINCIPAL DEFENDER**

SIGNED ON THIS 9TH DAY OF SEPTEMBER 2005

⁴⁷ Para 51 Impugned Decision

TABLE OF AUTHORITIES

Special Court of Sierra Leone

Prosecution v. Brima et al; 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 order of 12 May 2005 (Impugned Decision)

Brima- Decision on Applicant's Motion against Denial by the Acting Principal Defender to order a Legal Services Contract for the Assignment of Counsel, 6 May 2004

Principal Defender's Cross Motion for Clarification on the Confidential Joint Defence Application for Withdrawal by Counsel for First and Second Accused and on the Request for Further Representation by counsel for Kanu

Dissenting Opinion of the Honourable Justice Sebutinde for the Majority 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 the Deputy Principal Defender to Trail Chamber II for Clarification of its oral order of 12 May 2005-09-09

European Court for Human Rights (for supporting submission)

Mayzit v. Russia, ECHR, 20 January 2005

Ferdinand Nahimana, Jean Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor, ICTR – 99- 52-A, "Decision on Jean Bosco's Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 4 February 2005

Prosecutor v. Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva; ICTR-98-41-T, Para 17 on Maitre Paul Skolinki's Application for Reconsideration of the Chamber's Decision to Instruct the Registrar to Assign him as Lead Counsel for Gratien Kabiligi

Prosecutor v. Bragoljuls Kunarac et al. Case No. IT-96-23 & IT-96-23/1-A, Appeals Chamber Judgement, 12 June 2002

Secondary Sources

G. J. Alexander Knoops
Professor of International Criminal Law

Utrecht University, The Netherlands: Memorandum predicting response and/or amicus curiae letter of the Principal Defender with respect to the Re-Assignment of Counsel in the case of Mr Brima and Mr Kamara based on case law of the European Court of Human Rights, 26 May 2005

Smith, Bailey & Gunn
Modern English Legal System. 4th Edition.

The Constitution of Sierra Leone 1991

Other Sources

Attachment A- Interoffice Memorandum by the Deputy Principal Defender, Elizabeth Nahamya, dated 17 May 2005 to the Registrar, Robin Vincent

Attachment B- Emails from the Deputy Principal Defender to the First Respondent dated 17 May 2005

Attachment C- Emails dated 18 May 2005 the Deputy Principal Defender to the Registrar

Attachment C(1)- Interoffice Memorandum by the Principal Defender to the Registrar dated 19 May 2005

Attachment D- Laucci E-mails dated 18 May 2005

Attachment E- Knoops Brief

Attachment F- 26 May letter from the Deputy Principal Defender(DPD) to Mr Kirkwood

Attachment G- E-mails from Mr Kirkwood dating 21, 28, 23 May 2005 on misconduct issue to the DPD

Attachment H- E-mails from the DPD to Mr Kirkwood on misconduct issue

Attachment I- Subject on assignment 23 May 2005 to Mr Robin Vincent

Attachment J- E-mails dated 21 & 25 from the DPD (Glenna Thompson issue)

Attachment K- Proposed letter to Glenna Thompson 25 May 2005

Attachment L- E-mail from Mr Kevin Macguire 26 May 2005 on the striking off of Counsel from the List of Qualified Counsel

Attachment M- Letter dated 26 May 2005 from DPD to Mr Kirkwood on the matter of striking off

Attachment N- Letter dated 26 May from Glenna Thompson on assignment

Attachment O- E-mails sent to Counsel in search of Lead Counsel 21 & 23 May 2005

Attachment P- E-mails dated 27 May 2005 Mr Kirkwood to DPD

Attachment Q- E-mails dated 27 May 2005 on Counsel's willingness to return

Attachment R- E-mails dated 28 May 2005 on progress on the assignment of Counsel

Attachment S- Mr Vincent Nmechille's, Principal Defender, memo of 13c June on performance

Attachment T- Letter dated 21 May 2005 from Ms Claire Hanciles to DPD on detention visits



SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER

JOMO KENYATTA ROAD - FREETOWN
 PHONE: +232 22 29 7210 FAX: +232 22 29 7299
 EMAIL:SCSL-DEFENCE@UN.ORG

INTEROFFICE MEMORANDUM

To:	Robin Vincent Registrar
From:	Elizabeth Nahamya <i>ENahamya</i> Deputy Principal Defender
CC:	Honourable Justices of Trial Chambers II Ms. Leslie Taylor Senior Legal Office OTP.
Date:	17 MAY 2005
Subject:	RE-APPOINTMENT OF MR. KEVIN METZGER AND WILBERT HARRIS AS LEAD COUNSEL

Dear Robin,

On 12 May 2005, Trial Chamber II issued its majority ruling granting leave to Mr. Kevin Metzger and Mr. Wilbert Harris to withdraw as Counsel representing Alex Tamba Brima and Ibrahim Bazy Kamara.

The Chamber ordered that the case should proceed with the Co-Counsel in the two Teams. However concerning Lead Counsel, the Presiding Justice, Honourable Theresa Doherty, whilst addressing the Principal Defender's intervention, stated " Ms. Monasebian it is not the prerogative to say who is Lead Counsel.[--]."¹ She was supported by Honourable Justice Lussick, who stated "we'll be relying on you, Ms. Monasebian, to appoint two new Lead Counsel in accordance with the order."²

Thus, on 12 May 2005, the Defence Office communicated the Court Order to the Accused persons through the Legal Officer/Duty Counsel responsible for the case, Ms. Carlton-Hanciles. She also presented them with a list maintained by the Principal Defender's Office of Criminal Defence Counsel qualified to be appointed to indigent Accused, pursuant to Rule 45 of the Rules of Procedure and Evidence of the Special Court.

¹ Transcript of 12 May 2005, page 4, lines 8-9

² ibid, p. 4, lines 11-12

In response, the accused persons, on the same day, to wit, 12 May 2005, sent a letter to the Defence Office expressing their sentiments towards their Counsel and stating that it was mainly due to the contempt proceedings that they withdrew full instructions and gave their Counsel only limited instructions. However, in light of the Trial Chamber's ruling, they wish to maintain their Lead Counsel. Consequently, they now deem it necessary to maintain their Counsel and give them full instructions to act on their behalf. The accused underscored the fact that they wanted continuity and speedy trial and would be willing to return to court, at some stage, with their counsel on board. A copy of that letter has already been transmitted to you electronically.

The Principal Defender's Office wishes to add to the voices of the Accused persons to have their old Lead Counsel re-appointed and also spell out certain facts peculiar to these two Defence Teams.

1. Both Teams have already had change of Lead Counsel. In the Alex Tamba Brima, it was due to the death of Mr. Terry Terence and for Kamara, it was due to the withdrawal of Mr. Ken Fleming. These changes disrupted the evidence gathering and trial preparation as it happened during the Pre-Trial stage. The change also had financial implications, which the two recently withdrawn Lead Counsel have managed, *albeit*, with a lot of constraints. If new Lead Counsel were to be appointed, they would bring with them their teams and the existing funds would not sustain them.
2. Mr. Metzger and Mr. Harris have both shown willingness to be re-appointed since their clients have now given them full instructions. Regarding security issues, they have informed the Principal Defender's Office that this is a matter that could be investigated and if necessary, be brought to the attention of the relevant Security Agencies both within and outside the court. Bearing in mind that reasonable steps can be taken to address this concern, Counsel are willing to continue with the case.
3. The Defence Office is wary of bringing in new Counsel in light of the possible delay and financial constraints involved at this trial stage. Any newly appointed Lead Counsel would require time to get acquainted with these cases. Furthermore, they would not be obliged to keep the existing teams.

For the above reasons, the Defence Office has carefully considered the ramifications of appointing a new lead Counsel in these two particular cases and finds that it may be more problematic to appoint new Lead Counsel. Thus the Office wishes to appoint afresh the old Lead Counsel.

Regards.

ATTACHMENT B

14627

Elizabeth Nahamya/SCSL

05/17/2005 07:14 PM

To Robin Vincent/SCSL@SCSL

cc Claire Carlton-Hanciles/SCSL@SCSL

bcc Elizabeth Nahamya/SCSL@SCSL

Subject MEMO ON THE RE-APPOINTMENT OF MR. METZGER
AND MR. HARRIS

Dear Robin,

Please find attached hereto a memo from the Defence Office on the above subject.
We have not taken the liberty to send to the Judges yet although we have copied them. We leave it to
your own discretion.
Regards.



AFRC LEAD COUNSEL.doc

2

Elizabeth Nahamya/SCSL

05/18/2005 09:35 AM

To Robin Vincent/SCSL

cc Claire Carlton-Hanciles/SCSL@SCSL

bcc

Subject MEMO ON THE RE-APPOINTMENT OF MR.METZGER
AND HARRIS AS LEAD COUNSEL

Dear Robin,

Here is the copy which was signed and scanned yesterday but could not come out quickly enough for us to send it to you.

Regards.

----- Forwarded by Elizabeth Nahamya/SCSL on 05/18/2005 09:30 AM -----



"ENAHAMYA"

<nahamya@scsl>

05/17/2005 06:39 PM

To <nahamya@un.org>

cc

Subject Adobe Acrobat file sent from Digital Sender - SCSL

Please open the attached document.
This document was sent to you using an HP Digital Sender.

Sent by: ENAHAMYA <nahamya@scsl>
Number of pages: 2
Document type: B/W Document
Attachment File Format: Adobe PDF

To view this document you need to use the Adobe Acrobat Reader.
For free copy of the Acrobat reader please visit:

<http://www.adobe.com>

For more information on the HP Digital Sender please visit:



<http://www.digitalsender.hp.com> Adobe_Ac.pdf

(3)

ATTACHMENT C-1

Elizabeth Nahomya/SCSL

05/19/2005 03:42 PM

To Robin Vincent/SCSL@SCSL

cc Kevin Maguire/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL

bcc

Subject RE; RE-ASSIGNMENT OF MR. METZGER AND HARRIS

Dear Robin,

I know that you are very busy but I must let you know about the urgency of the matter for reassignment of the above mentioned Counsel.

It's imperative that I obtain your written direction concerning this matter as the Accused persons have only Co-Counsel and no Lead Counsel. The accused are concerned about the outcome and I cannot sit by quietly without any communication from our Office.

As you are aware, by virtue of the Directive on the Assignment of Defence Counsel, the Principal Defender, must inform the Accused whether or not his request for assignment of Counsel has been granted or denied and why.

Thus, pursuant to our conversation this morning with you and Ms. Carlton, when you indicated that the two mentioned Counsel shall not be re-assigned as the Judges are not inclined to have them appointed, I need your reasons so that I can fulfill my statutory duty to the Accused.

Let me make a last minute appeal that you reconsider your position not to appoint the two Counsel. At this point in time, it is more prudent to re-appoint them as it will curb any delay in the proceedings and would ensure that the rights of the Accused are fully adhered to as provided under Article 17 of the Statute.

Thank you for your anticipated quick response to this letter. I hope that you will have a good trip.

Regards,

Elizabeth.

ATTACHMENT D

14630

Elizabeth Nahamya/SCSL
05/18/2005 09:55 AM

To Cyril Laucci/SCSL@SCSL
cc
bcc
Subject Fw: MEMO ON THE RE-APPOINTMENT OF MR.METZGER
AND HARRIS AS LEAD COUNSEL

Dear Cyril,

Please download the attached Memo, which was addressed to the Registrar but copied to the Honourable Justices as well.

Thank you.



<http://www.digitalsender.hp.com> Adobe_Ac.pdf

Cyril Laucci
05/16/2005 09:27 AM

To: Claire Carlton-Hanciles/SCSL@SCSL
cc:
Subject: Re: Fw: From Claire

Sorry Claire,
I saw the Judges before they entered the Courtroom and refused to meet you, considering that everything should be said in open court.
Cyril.
Claire Carlton-Hanciles/SCSL



Claire
Carlton-Hanciles/SCSL
16/05/2005 08:56

To: Cyril Laucci/SCSL@SCSL, Emma O'Meally/SCSL@SCSL
cc: Elizabeth Nahamya/SCSL@SCSL
Subject: Fw: From Claire

Dear Cyril,

I received this document on Saturday from the three accused persons in the AFRC trial for onward transmission to their Lawyers as well as Chambers. I sent it to both Lawyers as well. I am now forwarding it to Chambers as well as the response I received from Mr. Kevin Metzger. As the Officer in Charge of the Defence Office right now, the Deputy Principal Defender (presently the Acting Head of the Defence Office) who is sick requested me to say a few words on this to the Judges hopefully before they go to Court this morning. I implore you to let me hear from you as soon as reasonably practicable.

Regards,
Claire.



Document.pdf

----- Forwarded by Claire Carlton-Hanciles/SCSL on 05/16/2005 08:46 AM -----



Metzkey@aol.com
05/14/2005 09:41 PM

To: stanleyj@un.org
cc: carlton-hanciles@un.org
Subject: Re: From Claire

Jacquinn/Claire,

I have already stated that if my client instructs me to attend Court and is prepared to give me (or to continue to give me) instructions on his case then I would not be professionally embarrassed. The security issues are still present, but I have been assured that these can be investigated and dealt with and providing reasonable steps are taken, I can deal with this.

I don't know if there is anything more that I can usefully add. As I see the situation, the letter from the Clients came after the ruling and therefore technically the matter has to be referred back to the Chamber who can view it in one of two ways:

(a) firstly that the ruling 'allows' lead counsel to withdraw - and therefore if the conditions which led to them seeking to withdraw no longer exist there would be no bar to their returning

or

(b) that the ruling is an order withdrawing lead counsel from the case and asking for new lead counsel to be found. In this case the Court may not be content for us to be re-instated.


Either way, it is a matter now for you and the Chamber. As you well know, being placed in the position where we had to make the submission left one with a bitter taste, but at the end of the day one always has to consider one's own integrity. My concerns for the lay client remain and my commitment to

putting forward his best defence unwavering.

Sincerely,

Kevin

Cyril Laucci/SCSL
05/18/2005 10:05 AM

To Elizabeth Nahamya/SCSL@SCSL
cc
bcc
Subject Re: Fw: MEMO ON THE RE-APPOINTMENT OF
MR.METZGER AND HARRIS AS LEAD COUNSEL 

Thanks Elizabeth,
Has it been copied to the Judges already or do you want me to transmit them the memo?
Cyril.
Elizabeth Nahamya/SCSL

Elizabeth Nahamya/SCSL
18/05/2005 09:55

To Cyril Laucci/SCSL@SCSL
cc
Subject Fw: MEMO ON THE RE-APPOINTMENT OF MR.METZGER
AND HARRIS AS LEAD COUNSEL

Dear Cyril,

Please download the attached Memo, which was addressed to the Registrar but copied to the Honourable Justices as well.


Thank you.



<http://www.digitalsender.hp.com> Adobe_Ac.pdf

14634


Elizabeth Nahamya/SCSL
05/18/2005 12:09 PM

To Cyril Laucci/SCSL@SCSL
cc
bcc
Subject Re: Fw: MEMO ON THE RE-APPOINTMENT OF
MR.METZGER AND HARRIS AS LEAD COUNSEL 

Please download and give the Judges a copy. Thanks.


14635

Cyril Laucci/SCSL
05/18/2005 12:22 PM

To Elizabeth Nahamya/SCSL@SCSL
cc
bcc
Subject Re: Fw: MEMO ON THE RE-APPOINTMENT OF
MR.METZGER AND HARRIS AS LEAD COUNSEL 

The Judges have been served with that document already.
See you.
Elizabeth Nahamya/SCSL


Elizabeth Nahamya/SCSL
18/05/2005 12:09

To Cyril Laucci/SCSL@SCSL
cc
Subject Re: Fw: MEMO ON THE RE-APPOINTMENT OF
MR.METZGER AND HARRIS AS LEAD COUNSEL 

Please download and give the Judges a copy. Thanks.


14636

Cyril Laucci/SCSL
05/18/2005 12:22 PM

To Elizabeth Nahamya/SCSL@SCSL
cc
bcc
Subject Re: Fw: MEMO ON THE RE-APPOINTMENT OF
MR.METZGER AND HARRIS AS LEAD COUNSEL 

The Judges have been served with that document already.
See you.
Elizabeth Nahamya/SCSL

Elizabeth Nahamya/SCSL
18/05/2005 12:09

To Cyril Laucci/SCSL@SCSL
cc
Subject Re: Fw: MEMO ON THE RE-APPOINTMENT OF
MR.METZGER AND HARRIS AS LEAD COUNSEL 

Please download and give the Judges a copy. Thanks.

Written submissions on ECHR case law pertaining to Principal Defender's response with respect to the motion to reassign lead counsel in the case of Mr. Brima and Mr. Kamara

Introduction

I herewith submit a brief pertaining to legal submissions on the issue of the right to have legal assistance of one's own choosing based upon case law of the European Court of Human Rights (ECHR). This brief is submitted in view of the current matter with respect to the defense application in the case of Mr. Brima and Mr. Kamara to reassign their lead counsel Mr. Metzger and Mr. Harris.

The drafting of this memorandum presumes the applicability of the case law of the ECHR, which case law has actually proven to have direct effect on the decision and judgments of the ICTY and the ICTR. Now that these human rights provisions of the European Convention of Human Rights are de facto enshrined within the Statute of the Special Court for Sierra Leone, it is fair to say that the case law of the ECHR has standing before the SCSL.

Relevant Provision

1. The relevant provision in the European Convention of Human Rights is Article 6 Section 3 (C), which provides:

Everyone charged with a criminal offence has the following minimum rights:...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require....

General Aspects of Case Law of the ECHR regarding Article 6 Section 3 (C)

2. In spite of the ECHR having acknowledged that this right 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. More specifically, the ECHR has held in *Mayzit v. Russia*, para 65 (20 January 2005) that this right can not be interpreted as an absolute right.
3. One may question, though, whether in the case of Mr. Brima and Mr. Kamara, restrictions akin to those imposed by the TC decision (not to reassign the mentioned lead counsel) fulfill the requirements as set forth by the ECHR case law.
4. In *Mayzit v. Russia* the applicant requested to be represented by his own mother and sister, both lay persons, the mother too old and fragile to be effective and the sister not often available, instead of court-appointed counsel. The domestic court ruled that the applicant could not choose his relatives to represent him. Despite the fact that no violation of Article 6 Section 3 (C) was found by the ECHR, the

right to choose one's own counsel is not significantly curtailed, on the contrary, it has asserted the right to choose any professional counsel to represent him.

Overall Criterion for Assessment of Article 6 Section 3 (C)

5. As can be derived from *Mayzit v. Russia*, the overall criterion to assess compliance with Article 6 Section 3 (C) relates to a determination of the defense position of the accused as a whole. This was clearly set forth by the ECHR in the following way:

Considering the applicant's defense as a whole, the Court notes that he was given an ample opportunity to present his own case. The restriction imposed on the applicant's choice of representation was limited to excluding his mother and sister on the grounds cited above. The applicant could have chosen any advocate to represent him but apparently made no effort to do so. (para 70)

Consequences for the Interpretation of Article 6 Section 3 (C)

6. As a consequence, when it concerns a choice for professional counsel, any restrictions to be imposed on the accused should not be interpreted extensively, i.e., to the disadvantage of the accused. Rather, these restrictions should be confined to the criterion of whether the choice of professional counsel to the accused would be contrary to the interests of justice.
7. In this respect reference can be made to the judgment of the ECHR of 25 January 2005 in *Mayzit v. Russia* (see above) in which judgment in para 64 the court clearly assesses that "in examining questions under Article 6 Section 3(c) the Court takes account of the treatment of the defence as a whole rather than the position of the accused taken in isolation, with particular regard to the principle of equality of arms as included in the concept of a fair hearing."
8. In the instant case, this criterion emerges in view of both the advanced stage of the proceedings, and the previous relationship between Mr. Brima and Mr. Kamara with their lead counsel in terms of confidence. In light of these circumstances, a denial of the reassignment of the requested lead counsel could be tantamount to a violation of the principle of equality of arms. After all, reassignment of lead counsel other than the proposed lead counsel, Mr. Metzger and Mr. Harris, could be seen as prejudicial to the mentioned accused, in that, inter alia, procedurally, these defendants would be put into a disadvantage as opposed to the position of the prosecution vis-à-vis the preparation of the examinations in chief and cross-examinations of witnesses.

Additional Criteria for Assessment of Compliance with Article 6 Section 3(C)

9. In addition to the mentioned overall criterion and the implications thereof for the manner to interpret said provision, the ECHR appears to take additional factors into consideration.

10. Two of these additional criteria appear in para 66 of the *Mayzit v. Russia* judgment, where the ECHR took into account that “when appointing defense counsel the national courts must certainly have regard to the defendant’s wishes. However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interest of justice.”
11. By way of conclusion, two criteria can be derived from said para 66, which seem also to be applicable to the instant case.
 - i. The emphasis on taking note of the defendant’s wishes, with respect to which criterion the ECHR as such does not make a distinction between an assignment of counsel and a reassignment of counsel (such as the case here).
 - ii. Those defendant’s wishes can only be set aside when there are relevant and sufficient grounds based on the overall criterion of “the interests of justice.” The current application to reassign mentioned lead counsel may justify the qualification that such reassignment serves the interest of justice, at least from the perspective of the accused, which perspective should have an overriding value in this issue.
12. It should be stressed that the second criterion (interest of justice) is to be interpreted in view of the first criterion (defendant’s wishes) and these wishes, even if they relate to a reassignment of the previous lead counsel, should be respected as much as possible, in order to preserve another important principle of the ECHR case law, to which principle this memorandum arrives now.

Principle of Effective Participation as a Third Additional Factor

13. This principle, i.e. that of effective participation and representation during the international or domestic criminal trial (*see* for this principle para 49 of judgment in *Lagerblom v. Sweden*, 14 January 2003), may be seen as a third additional factor which should be taken into consideration when determining the scope of Article 6 Section 3(C) of the European Convention of Human Rights. It is to be believed that this principle can only be best served when having regard to the defendant’s wishes, with respect to the reassignment of the lead counsel. Therefore, this principle reinforces the above-mentioned arguments and other principles as set forth by the ECHR.
14. In this respect, attention should be paid to the ECHR judgment of 14 January 2003, *Lagerblom v. Sweden*, where the court in para 66 holds that

... although the conduct of the defense is essentially a matter between the accused and his counsel, the competent national authorities are required to intervene if a failure by public defense counsel to provide effective representation is manifest or sufficiently brought to their attention some other way.

Preservation of Relationship between Accused and Counsel as a Restrictive Factor to the Position of Judicial and National Authorities

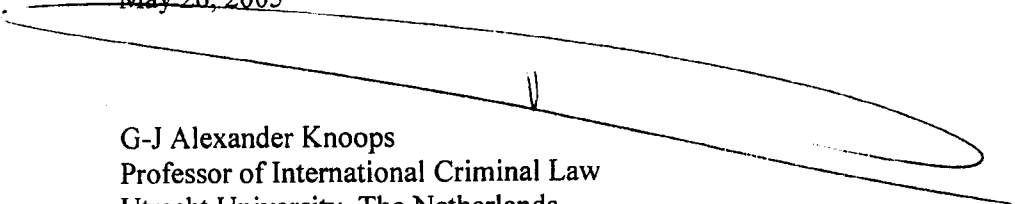
15. Notably, the ECHR acknowledges the fact that the conduct of the defense is essentially and primarily an issue between the accused and his counsel, which indicates that no decisive power is to be attributed to the judicial or national authorities as far as the relationship between the accused and his counsel is concerned. In *Mayzit v. Russia*, the ECHR in para 78 additionally held that “the accused must have the opportunity to organize his defense in an appropriate way and without restriction as to the possibility to put all relevant defense arguments before the trial court and thus to influence the outcome of the proceedings.” As a consequence, this organizational argument also may imply that the accused’s choice for a certain counsel should be respected as much as possible, even when this choice would amount to a reassignment of counsel which was previously allowed to withdraw. In the absence of any specific circumstances pertaining to the professional behavior and competence of the particular counsel, one may question whether any other interpretation would fall within the term “without restriction” as referred to by the ECHR.
16. In the instant case, one may observe that the issue is not that the proposed lead counsel did not provide effective representation as meant by the ECHR in para 56. Accordingly, there would be no legal obstacle for the requested reassignment.
17. Moreover, now that the ECHR has held in *Lagerblom v. Sweden* in said para 56 that “a state cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes.” This emphasizes the restricted leeway of judicial and national authorities to intervene in such relationship. If it is to be accepted that the judicial and national authorities cannot be held responsible for the way the defense as such operates, this implies that it is primarily the responsibility of the accused and his proposed counsel themselves to enter into a (renewed) legal relationship in terms of legal representation and the way it is to be presented in court.

Conclusion

18. In para 77 of the ECHR judgment in *Mayzit v. Russia*, the court held that Article 6 Section 3 (C) and the guarantees enshrined therein “must be interpreted in the light of the function which they have in the overall context of the proceedings.” In view of the important function for the accused, Mr. Brima and Mr. Kamara, to reassign their lead counsel in the overall context of the complex AFRC case, considering the stage of the proceedings in this case, and the advancement of the examination in chief, it is fair to conclude that the current application for reassignment finds support in the case law of the ECHR. Finally, the case law of the ECHR does not make a distinction between assignment and reassignment as such in the context of the criteria for Article 6 Section 3 (C) as laid out in this document.

19. These are my humble submissions in the hope that they may contribute to the interests of justice.

May 26, 2005



G-J Alexander Knoops
Professor of International Criminal Law
Utrecht University, The Netherlands

14642

Elizabeth Nahamya/SCSL

05/20/2005 10:08 AM

To Robert Kirkwood/SCSL@SCSL

cc Claire Carlton-Hanciles/SCSL@SCSL

bcc

Subject MEETING

Dear Robert,
Fese has just informed about a meeting with you and Kevin.

I tried calling you but there was no response.

I wanted to ascertain the agenda and what , if anything was needed from my end before I come for the meeting.

Regards.

Elizabeth.

(5)

Elizabeth Nahamya/SCSL

05/20/2005 07:19 PM

To: Robert Kirkwood/SCSL@SCSL

cc: Robin Vincent/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL

bcc:

Subject: UP-DATE ON ASSIGNMENT OF COUNSEL

Dear Robert,

My apologies for sending this note at this moment as I was busy attending to pressing Defence Office work.

As I informed you at the meeting held in your office today, I was in the process of re-contacting the accused when I received a call from Fese Hamilton setting up the appointment.

Following that meeting in which you requested me to appraise you on the steps being taken by the Defence Office to assign Defence Counsel for Brima and Kamara, I wish to state that the Office has taken all reasonable steps to contact the accused in order for them to choose their respective lead Counsel from the List of qualified Counsel, pursuant to Rule 45 of the Rules of Procedure and Evidence.

Today, the Defence Office again made contact with the accused. I and Mrs Claire Carlton-Hanciles, the Duty Counsel responsible for the Kamara and Brima cases, visited the Detention Facility with a view to having them peruse the List of qualified Counsel and choose their respective Lead Counsel.

The Accused refused to look at that List and stated that they still stood by their letter to the Principal Defender dated 12 May 2005.

In fact they posed more questions than we had answers for and expressed the view that they were relying upon the Defence Office to do its best to get their previous Counsel back.

Regards.

Elizabeth.

(6)



Robert Kirkwood/SCSL

05/21/2005 11:31 AM

To Elizabeth Nahamya/SCSL@SCSL
cc Claire Carlton-Hanciles/SCSL@SCSL, Robin
Vincent/SCSL@SCSL, Kevin
Maguire/SCSL@SCSL
Subject Re: UP-DATE ON ASSIGNMENT OF
COUNSEL

Elizabeth

Thank you for that. I would be grateful for your written assessment of the issues surrounding the potential reappointment of Metzger and Harris. As we discussed both have some question marks against their conduct and as you know the Directive on the appointment of Counsel (article 13 (vi) states that counsel must "have no record of professional or other misconduct...". The test to be applied here is whether or not the Bar Council of England and Wales would consider the activities for which they have been admonished as misconduct. I would grateful for your view as urgently as possible.

Thank you.

Robert.

Robert Kirkwood
Deputy Registrar
Special Court for Sierra Leone
Tel: +39 0831257015
Cell: + 232 76653691
Elizabeth Nahamya/SCSL

Elizabeth
Nahamya/SCSL
05/20/2005 07:19 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL
Subject UP-DATE ON ASSIGNMENT OF COUNSEL

Dear Robert,

⑦

14645


Elizabeth Nahamya/SCSL

05/23/2005 11:42 AM

To Robert Kirkwood/SCSL@SCSL

cc Claire Carlton-Hanciles/SCSL@SCSL, Robin Vincent/SCSL@SCSL

bcc NmehielleV@law.wits.ac.za; Metzkey@aol.com; wilbertaharris@hotmail.com

Subject Requested advice on the Issue of misconduct 

Dear Mr. Kirkwood,

If you recall, I told you when you invited me to an impromptu meeting of which no agenda was given, that I have no intentions of commenting on any alleged misconduct as per your request without being provided with all the facts. In fact, I was surprised about your statement and asked you if there was any information that I was not aware of. Incidentally, I only informed you that I will respond to Kevin's letter written to me by the Registrar, which letter did not mention any alleged misconduct.

Could you please put in me in a proper perspective concerning this allegation misconduct of the said Counsel, so that I am able to properly respond? As a lawyer I must state for the record that the Defence Office cannot be in the business of hypothetical trials of a given counsel in their home Bar. Some home Bars have fair processes and some do not but in any event only where there is a complaint in that home Bar can the Defence Office opine on that. There is no complaint against Mr. Harris and Mr. Metzger in their home Bar to my knowledge, nor has the Trial Chamber issued any complaint regarding them. Furthermore, I have not personally witnessed any misconduct. Of course, I agree that we must insure that only fit counsel appear before the SCSL, but so far, there is no document from the Trial Chamber or their home Bar attesting to a complaint against them and in absence of such, I can not opine as you wish.

Also, I have seen Justice Sebutinde's letter in which an excerpt containing some comments about Mr. Metzger and Mr. Harris' demeanor or conduct appear. Can I, please, have a copy of that document which has yet to be given to me, although you seek my advise on this matter. I cannot tell from that letter whether the Registrar is referring to in or out of court conduct and what conduct exactly. Misconduct can be anything such as perjury, a finding of drunken driving in the court or obstruction of justice among other things, exactly what does the Registry allege is the misconduct of counsel?

I also note that any one charged with misconduct is entitled to a fair trial and the opportunity to respond to said charges. I hope this answers your concerns.

Regards,
Elizabeth Nahamya

Robert Kirkwood/SCSL

My apologies for sending this note at this moment as I was busy attending to pressing Defence Office work.

As I informed you at the meeting held in your office today, I was in the process of re-contacting the accused when I received a call from Fese Hamilton setting up the appointment.

Following that meeting in which you requested me to appraise you on the steps being taken by the Defence Office to assign Defence Counsel for Brima and Kamara, I wish to state that the Office has taken all reasonable steps to contact the accused in order for them to choose their respective lead Counsel from the List of qualified Counsel, pursuant to Rule 45 of the Rules of Procedure and Evidence.

Today, the Defence Office again made contact with the accused. I and Mrs Claire Carlton-Hanciles, the Duty Counsel responsible for the Kamara and Brima cases, visited the Detention Facility with a view to having them peruse the List of qualified Counsel and choose their respective Lead Counsel.


The Accused refused to look at that List and stated that they still stood by their letter to the Principal Defender dated 12 May 2005.

In fact they posed more questions than we had answers for and expressed the view that they were relying upon the Defence Office to do its best to get their previous Counsel back.

Regards.

Elizabeth.

Elizabeth Nahamya/SCSL
05/23/2005 03:38 PM

To Robert Kirkwood/SCSL@SCSL
cc Claire Carlton-Hanciles/SCSL@SCSL, Robin
Vincent/SCSL@SCSL, Kevin Maguire/SCSL@SCSL
bcc
Subject Re: Requested advice on the Issue of misconduct 

Dear Mr. Kirkwood,

Dear Robert,

Of course, I have relevant transcripts and will bring them along. I was also in court but the issue is whether what is contained therein amounts to "misconduct."

I was copied the Sebutinde memo but what I want is what Robin received from the Trial Chamber after he contacted the Judges.


See you at 4pm.

Regards.

Robert Kirkwood/SCSL



Robert Kirkwood/SCSL
05/23/2005 12:37 PM

To Elizabeth Nahamya/SCSL@SCSL
cc Claire Carlton-Hanciles/SCSL@SCSL, Robin
Vincent/SCSL@SCSL, Kevin Maguire/SCSL@SCSL
Subject Re: Requested advice on the Issue of misconduct 

Elizabeth,

Regrettably your email does not answer my concerns nor my instructions. You know this better than me; you have a duty to ensure that the Directive is complied with and that requires in this case that you read the transcripts regarding matters of fact that transpired in court-not allegations but facts. The issue of whether the UK Bar is not yet aware of these issues is not relevant - the conduct of counsel is governed by the standards set by the Bar when practicing at SCSL. Can you confirm that you have not received justice Sebutinde's letter as I believe you were on the mailing list?

It seems that your advice is that since you are personally unaware of any issues of misconduct that have been addressed in court they can be readmitted to the list.

In the interests of the accused we need to resolve these issues today and so I would like to meet with you and Kevin at 1600hrs today in my office.

Regards,

Robert.

Robert Kirkwood
Deputy Registrar
Special Court for Sierra Leone

14648

Elizabeth Nahamya/SCSL

Elizabeth Nahamya/SCSL

05/26/2005 03:32 PM

To: Robert Kirkwood/SCSL@SCSL

cc: Robin Vincent/SCSL@SCSL

Subject: WITHDRAWAL OF MR. METZGER AND MR. WILBERT
HARRIS FROM THE LIST OF QUALIFIED COUNSEL

Robert,

Here is my response to your order to me to withdraw Mr. Kevin Metzger and Wilbert Harris from the List of Qualified Counsel.



LetterOnWithdraw.doc

I am forwarding you the progress on Glenna.

She will be available on Monday at 11 am because tomorrow, she will be busy at the University.

Regards.

10

14649

Elizabeth Nahamya/SCSL

05/23/2005 10:50 AM

To Robin Vincent/SCSL@SCSL

cc Robert Kirkwood/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL

bcc

Subject PROGRESS ON ASSIGNMENT OF COUNSEL

Dear Robin,

In line with the Court Order of 12 May 2005, the Defence Office, has already started the process of contacting Counsel on the List kept by the Defence. We are yet to hear from them.

However, we are continuing our efforts to locate suitable Lawyers and we shall keep you posted.

Regards.

Elizabeth.

14650

Robert Kirkwood/SCSL



Robert Kirkwood/SCSL

05/21/2005 11:31 AM

To Elizabeth Nahamya/SCSL@SCSL
cc Claire Carlton-Hanciles/SCSL@SCSL, Robin
Vincent/SCSL@SCSL, Kevin
Maguire/SCSL@SCSL
Subject Re: UP-DATE ON ASSIGNMENT OF
COUNSEL

Elizabeth

Thank you for that. I would be grateful for your written assessment of the issues surrounding the potential reappointment of Metzger and Harris. As we discussed both have some question marks against their conduct and as you know the Directive on the appointment of Counsel (article 13 (vi) states that counsel must "have no record of professional or other misconduct...". The test to be applied here is whether or not the Bar Counsel of England and Wales would consider the activities for which they have been admonished as misconduct. I would grateful for your view as urgently as possible.

Thank you.

Robert.

Robert Kirkwood
Deputy Registrar
Special Court for Sierra Leone
Tel: +39 0831257015
Cell: + 232 76653691
Elizabeth Nahamya/SCSL

UP-DATE ON THE ASSIGNMENT OF
COUNSEL

Elizabeth
Nahamya/SCSL
05/20/2005 07:19 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL
Subject UP-DATE ON ASSIGNMENT OF COUNSEL

PTD

Dear Robert,

My apologies for sending this note at this moment as I was busy attending to pressing Defence Office work.

As I informed you at the meeting held in your office today, I was in the process of re-contacting the accused when I received a call from Fese Hamilton setting up the appointment.

Following that meeting in which you requested me to appraise you on the steps being taken by the Defence Office to assign Defence Counsel for Brima and Kamara, I wish to state that the Office has taken all reasonable steps to contact the accused in order for them to choose their respective lead Counsel from the List of qualified Counsel, pursuant to Rule 45 of the Rules of Procedure and Evidence.

Today, the Defence Office again made contact with the accused. I and Mrs Claire Carlton-Hanciles, the Duty Counsel responsible for the Kamara and Brima cases, visited the Detention Facility with a view to having them peruse the List of qualified Counsel and choose their respective Lead Counsel.

The Accused refused to look at that List and stated that they still stood by their letter to the Principal Defender dated 12 May 2005.

In fact they posed more questions than we had answers for and expressed the view that they were relying upon the Defence Office to do its best to get their previous Counsel back.

Regards.

Elizabeth.

11

14652


Elizabeth Nahamya/SCSL

05/24/2005 08:28 PM

To Robert Kirkwood/SCSL@SCSL

cc Kevin Maguire/SCSL@SCSL, Robin Vincent/SCSL@SCSL,
SCSL Defence-Brima/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL

bcc

Subject Re: Assignment of Glenna Thompson as Lead Counsel in
Brima 

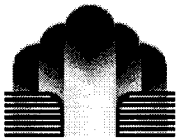
Robert,

Glenna is in receipt of the P-11 , which she needs to fill in and return to the Defence Office.

She informed Legal Officer/Duty Counsel in the Brima case, Ms. Claire Hanciles that she would like to take a few days to reflect about it. She also needs her client's cooperation.

Regards.

Robert Kirkwood/SCSL



Robert Kirkwood/SCSL

05/24/2005 05:19 PM

To Elizabeth Nahamya/SCSL@SCSL

cc Robin Vincent/SCSL@SCSL, Kevin Maguire/SCSL@SCSL

Subject Assignment of Glenna Thompson as Lead Counsel in Brima

Elizabeth,

As discussed please be advised that Robin is pleased to have Glenna Thompson assigned as lead council in the Brima case and he would like that to proceed as quickly as possible. Please advise what steps have been taken since Glenna's acceptance last night.

Thanks,

Robert.

Robert Kirkwood
Deputy Registrar
Special Court for Sierra Leone
Tel: +39 0831257015
Cell: + 232 76653691

(12)

Elizabeth Nahamya/SCSL

05/25/2005 02:50 PM

To: Robert Kirkwood/SCSL@SCSL

cc: Robin Vincent/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL, Sylvia
Pyne-Caulker/SCSL@SCSL

bcc:

Subject: YOUR VISIT TO MY OFFICE THIS AFTERNOON

Robert,

I want to note that you came into my office, whilst I was in an unplanned meeting with both former Lead Counsel, Mr. Kevin Metzger and Claire Carlton Hanciles.

As I informed Mr. Joseph Poraj, the former Lead Counsel for Brima was here to hand over all materials in his possession, which pertains to the case as he was in Freetown for family reasons.

I find it really disturbing that you came in my office for the very first time since I joined the Court and only stood at the entrance, stared at all of us and said nothing with only a grim on your face.

Considering the capacity you occupy in this Court, I find this act very intimidating and insulting. I am at a loss as to whether my honest opinion on the appointment of Counsel to Brima and Kamara either has anything to do with it or will not bring me into variance with any of you my superiors.

I have taken opportunity to copy those who witnessed the said event as well as the Registrar, who although was absent should be informed about it.

Regards.

14654

12

Elizabeth Nahamya/SCSL
05/25/2005 01:37 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL, Kevin Maguire/SCSL@SCSL,
Claire Carlton-Hanciles/SCSL@SCSL
bcc
Subject Fw: Lead Counsel

Robert

This is the progress made on the issue of appointing Glenna as Lead Counsel as per Court Order. I will send you an appraisal later on the appointment of Lead Counsel to Kamara.

Regards,

Elizabeth.

----- Forwarded by Elizabeth Nahamya/SCSL on 05/25/2005 01:28 PM -----

SCSL Defence-Brima/SCSL
05/25/2005 01:11 PM

To Elizabeth Nahamya/SCSL@SCSL
cc Claire Carlton-Hanciles/SCSL@SCSL
Subject Lead Counsel

Dear Elizabeth,

As per our earlier conversation, I have no objections in principle to stepping into the role of Lead Counsel. However, I will necessarily have to discuss this with the Client. Furthermore, as we have filed a motion on the instructions of the Client, I think it will be prudent and indeed 'tidier' if this is settled once and for all after the issues raised in the motion have been determined.

Of course, till then, I shall continue to act and do my best in the Client's interest.

Regards,

Glenna

14655

13



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER

PHONE: +39 0831 257210 or +232 22 297210 or +1 212 963 9915 Ext:178 7210
FAX: +39 0831 257299 OR +232 22 297299 OR +1 212 963 9915 EXT: 178 7299

25th May 2005.

Dear Glenna,

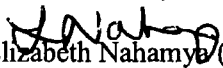
RE: YOUR PROPOSED ASSIGNMENT AS LEAD COUNSEL.

Our conversation on the above subject matter refers.

I hereby offer you the position of Lead Counsel in the Alex Tamba Brima Defence team, in which you currently represent the accused as Co- Counsel.

I would appreciate it if I hear from you as soon as reasonably practicable.

Yours faithfully


Elizabeth Nahamyah (Mrs)
Deputy Principal Defender


C: The Registrar SCSL

The Deputy Registrar SCSL

(9)

Tel: +39 0831257015
Cell: + 232 76653691
Elizabeth Nahamya/SCSL

Elizabeth Nahamya/SCSL
05/23/2005 11:42 AM

To: Robert Kirkwood/SCSL@SCSL
cc: Claire Carlton-Hanciles/SCSL@SCSL, Robin
Vincent/SCSL@SCSL
Subject: Requested advice on the Issue of misconduct 

Dear Mr. Kirkwood,
If you recall, I told you when you invited me to an impromptu meeting of which no agenda was given, that I have no intentions of commenting on any alleged misconduct as per your request without being provided with all the facts. In fact, I was surprised about your statement and asked you if there was any information that I was not aware of. Incidentally, I only informed you that I will respond to Kevin's letter written to me by the Registrar, which letter did not mention any alleged misconduct.

Could you please put in me in a proper perspective concerning this allegation misconduct of the said Counsel, so that I am able to properly respond? As a lawyer I must state for the record that the Defence Office cannot be in the business of hypothetical trials of a given counsel in their home Bar. Some home Bars have fair processes and some do not but in any event only where there is a complaint in that home Bar can the Defence Office opine on that. There is no complaint against Mr. Harris and Mr. Metzger in their home Bar to my knowledge, nor has the Trial Chamber issued any complaint regarding them. Furthermore, I have not personally witnessed any misconduct. Of course, I agree that we must insure that only fit counsel appear before the SCSL, but so far, there is no document from the Trial Chamber or their home Bar attesting to a complaint against them and in absence of such, I can not opine as you wish.

Also, I have seen Justice Sebutinde's letter in which an excerpt containing some comments about Mr. Metzger and Mr. Harris' demeanor or conduct appear. Can I, please, have a copy of that document which has yet to be given to me, although you seek my advise on this matter. I cannot tell from that letter whether the Registrar is referring to in or out of court conduct and what conduct exactly. Misconduct can be anything such as perjury, a finding of drunken driving in the court or or obstruction of justice among other things, exactly what does the Registry allege is the misconduct of counsel?

I also note that any one charged with misconduct is entitled to a fair trial and the opportunity to respond to said charges. I hope this answers your concerns.

Regards,
Elizabeth Nahamya

(13)

Elizabeth Nahamya/SCSL
05/25/2005 05:01 PM

To Robert Kirkwood/SCSL@SCSL
cc Claire Carlton-Hanciles/SCSL@SCSL, Harbir Singh/SCSL@SCSL, Kevin Maguire/SCSL@SCSL, Robin Vincent/SCSL@SCSL, Sylvia Pyne-Caulker/SCSL@SCSL, Temitayo Faulkner/SCSL@SCSL, Jeanne-Wendy Woodroffe/SCSL@SCSL

bcc

Subject Re: YOUR VISIT TO MY OFFICE THIS AFTERNOON

Dear Mr. Kirkwood,

Thank you for your concerns about my health but as I explained to Ms. Faulkner in Personnel this morning, although I will have to go home to see my physician at some point, I have had to re-schedule my travel due to exigencies of duty, particularly to attend to Office matters and also in light of the impending arrival of the Principal Defender on 29 May 2005. When the Principal Defender arrives and I hand over to him, I will take my ORB. I will still be travelling soon for the intended purpose, anyway and will process my ORB as required.

It's unfortunate that you have indicated that we have our differences over the way I have handled the Registrar's instruction with regards to assignment of Counsel Issues. I am amazed to say the least because administratively, I have done and endeavoured to do my best to get the Lawyers appointed. You are in receipt of my e-mail concerning the progress on the assignment of Counsel. In fact even before your visit, I had called in the Co-Counsel in the Brima and Fofana Teams and discussed the matter further with them.

Concerning the appointment of Glenna as Lead Counsel, even though she has indicated her willingness to be assigned as Lead Counsel, the process must be followed and I am following it. You can also see her own reaction in her e-mail where she states:-

As per our earlier conversation, I have no objections in principle to stepping into the role of Lead Counsel. However, I will necessarily have to discuss this with the Client. Furthermore, as we have filed a motion on the instructions of the Client, I think it will be prudent and indeed 'tidier' if this is settled once and for all after the issues raised in the motion have been determined.

Of course, till then, I shall continue to act and do my best in the Client's interest.

Regards,

Glenna.....

In fact, I have also contacted all Counsel as directed and I have only a few responses. It must be noted that from experience the Defence Office had had a couple of months to search for the replacement Counsel as experienced before in the very cases that we are dealing with. For instance, after the death of Mr. Terence Terry and Ken Fleming's withdrawal respectively, the Defence Office spent two months to search for Lead Counsel.

Fortunately, in the instant case, Glenna, who is already knowledgeable about the case, and who

has offered to come on board as Lead Counsel has also communicated her concerns. There are issues surrounding the accused persons acceptance of her new role. Mrs. Claire Carlton-Hanciles will be sending you an update on her visit to the Detention Facility yesterday. Thus, as I am already working on Court Order for the re-appointment of counsel, I need more time to do things properly. Thus, I could not appoint Glenna as ordered at the close of day yesterday.

Regards.

Robert Kirkwood/SCSL



Robert Kirkwood/SCSL

05/25/2005 03:30 PM

To Elizabeth Nahamya/SCSL@SCSL

cc Claire Carlton-Hanciles/SCSL@SCSL, Robin Vincent/SCSL@SCSL, Sylvia Pyne-Caulker/SCSL@SCSL, Kevin Maguire/SCSL@SCSL, Harbir Singh/SCSL@SCSL

Subject Re: YOUR VISIT TO MY OFFICE THIS AFTERNOON

Elizabeth,

This is an extraordinary thing to say. I came to your office to confirm whether or not you were leaving for medical treatment as you had advised me on Monday. To say I said nothing is therefore false. Why on earth would you be disturbed and insulted that I was enquiring after your health? We have our differences over the way you have handled the Registrar's instruction and the order of the court but this was furthest from my mind when I came to see you. The significance of it being my first visit escapes me - whenever Robin has been away in the past I have been dealing with Simone. I have copied the Chief of Personnel so that he is aware of your concerns.

Robert Kirkwood
Deputy Registrar
Special Court for Sierra Leone
Tel: +39 0831257015
Cell: + 232 76653691
Elizabeth Nahamya/SCSL

Elizabeth Nahamya/SCSL

05/25/2005 02:50 PM

To Robert Kirkwood/SCSL@SCSL

cc Robin Vincent/SCSL@SCSL, Claire Carlton-Hanciles/SCSL@SCSL, Sylvia Pyne-Caulker/SCSL@SCSL

Subject YOUR VISIT TO MY OFFICE THIS AFTERNOON

Robert,

I want to note that you came into my office, whilst I was in an unplanned meeting with both former Lead Counsel, Mr. Kevin Metzger and Claire Carlton Hanciles.

As I informed Mr. Joseph Poraj, the former Lead Counsel for Brima was here to hand over all materials in

his possession, which pertains to the case as he was in Freetown for family reasons.

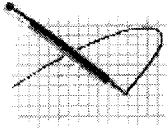
I find it really disturbing that you came in my office for the very first time since I joined the Court and only stood at the entrance, stared at all of us and said nothing with only a grim on your face.

Considering the capacity you occupy in this Court, I find this act very intimidating and insulting. I am at a loss as to whether my honest opinion on the appointment of Counsel to Brima and Kamara either has anything to do with it or will not bring me into variance with any of you my superiors.

I have taken opportunity to copy those who witnessed the said event as well as the Registrar, who although was absent should be informed about it.

Regards.

14660



Kevin Maguire/SCSL

05/26/2005 09:37 AM

To Elizabeth Nahamya/SCSL@SCSL

cc Robert Kirkwood/SCSL@SCSL, Robin
Vincent/SCSL@SCSL

Subject LIST OF QUALIFIED COUNSEL

Dear Elizabeth,

Please find attached a directive from Robert Kirkwood the Acting Registrar.

Please confirm with Robert and myself that you have complied with this directive.

KEVIN MAGUIRE

Legal Adviser to the Registrar

Special Court for Sierra Leone

Phone: +232 22 29 7215

Email: maguirek@un.org



- defence.pdf

14661

Elizabeth Nahamya/SCSL
05/26/2005 03:32 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL
bcc Claire Carlton-Hanciles/SCSL@SCSL
Subject WITHDRAWAL OF MR. METZGER AND MR. WILBERT
HARRIS FROM THE LIST OF QUALIFIED COUNSEL

Robert,

Here is my response to your order to me to withdraw Mr. Kevin Metzger and Wilbert Harris from the List of Qualified Counsel.



LetterOnWithdraw.doc

I am forwarding you the progress on Glenna.

She will be available on Monday at 11 am because tomorrow, she will be busy at the University.

Regards.



14662

**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER**

JOMO KENYATTA ROAD - FREETOWN
PHONE: +232 22 29 7210 FAX: +232 22 29 7001
EMAIL:SCSL-DEFENCE@UN.ORG

INTEROFFICE MEMORANDUM

To: Mr. Robert Kirkwood
Deputy Registrar
From: Ms. Elizabeth Nahamya
Deputy Principal Defender
Date: 26 May 2005
Subject: WITHDRAWAL OF COUNSEL KEVIN METZGER AND WILBERT HARRIS
FROM THE LIST OF QUALIFIED ASSIGNED COUNSEL

Dear Mr. Kirkwood,

Thank you for your letter. Firstly, the matter of re-appointment or non-re-appointment of Counsel is now a judicial matter that is currently the subject of an Extremely Urgent motion filed by Co-Counsel on behalf of the Accused. Secondly, the Principal Defender is named in the motion as the Second Respondent so I would wait for the outcome.

Considering the issue of withdrawal of Counsel, the power to appoint and withdraw under Article 17 and Rule 45, as well as, the relevant provisions of the Directive on the Assignment of Defence Counsel, has been vested with the Principal Defender under the Rules to be exercised in certain instances. Article 16 of the Statute referred to in your letter primarily stipulates the Registry's responsibility for administrative purposes.

Regarding your order to me to withdraw Mr. Kevin Metzger and Mr. Wilbert Harris from the List of Qualified Counsel, the Trial Chamber's Order dated 12 May 2005 and the Decision rendering its reasons issued subsequently on 20 May 2005, did not make a judicial Order instructing the removal of Kevin Metzger and Wilbert Harris. Thus absent a judicial Order to that effect or absent any adjudicated disciplinary findings against Counsel, I cannot remove them from the List. The matter is again a judicial matter that must be decided by Lawyers and Judges.

As to your contention that security concerns should be used as the basis to withdraw Counsel from the List of Qualified Counsel, this may be a basis for withdraw from a case under particular circumstances. In fact, the Trial Chamber II in its Decision noted that security concerns would be considered on a case by case basis.¹ It is, therefore, not a basis for a blanket withdrawal from all cases on the List of Qualified Counsel. The Defence Office, having heard from both Counsel that they are willing to return and have the threats against them investigated as well as following reasonable steps for their security steps, would leave no basis for withdrawal from the said List.

¹ Decision on The Confidential Joint Defence Application for Withdrawal by Counsel for Brima and Kamara and On Request for Further representation by Counsel for Kanu, 20 May 2005

Furthermore, with due respects, I find it troubling that the Registrar's earlier basis for telling Judges that Mr. Metzger and Mr. Harris should not be appointed was only "both Counsel's performance and demeanour" and not security.² This was confirmed to me and Ms. Claire Carlton-Hanciles, Legal/Duty Counsel in the AFRC case on 19 May 2005, when you told us that if appointed, the two Counsels will be refused audience by the Judges.

Finally, if you read the "Principal Defender's Ex Parte Submission Regarding Issues Pertaining to Withdraw of Counsel" dated and filed on 5 May 2005,³ as well as the submission by the Prosecutor entitled "Prosecution Submission In Response to Application by Defence Counsel to Withdraw from the Case,"⁴ you will see that Counsel was willing to continue despite security concerns under certain conditions, that is, being referred to as Amicus Counsel. Although the court has not agreed to refer to them as such, I note that both Counsel Metzger and Harris are willing to return now that they have been re-instructed by their clients.

Lastly, in a letter from Mr. Ralph Zacklin, Assistant Secretary-General for Legal Affairs to Robin Vincent dated 11 February 2005, it is pointed out therein that "while the Defence Office technically falls within the Registry, they operate independently from other organs." This is buttressed by the power establishing the Defence Office by the Registrar under Rule 45, which gives the Defence Office specific roles.

For all these and other reasons this matter must be dealt with judicially with Judges and Lawyers in the Defense Office and not by officials of the Registry. Thus, both you and I must wait until this matter is adjudicated by the Trial Chamber lest we prejudice the most important rights of an Accused to a fair trial with qualified Counsel of his own choosing,

Principally, I will not be a party to any proceeding whilst the matter of assignment is right before the Court regarding the fundamental rights of the Accused persons to choose counsels of their own choice, in respect of which the Defence Office was established to ensure their rights under Rule 45 of the Rules.

Albeit, the Registrar is at liberty to decide what action to take as despite my own legal and professional standpoint, he is an Officer superior to me. Please do not force me to act against my conscience as a Lawyer.

² Handwritten notes addressed to Judge Doherty by the Registrar, Robin Vincent inscribed upon the Deputy Defender's memo on Re-appointment of Mr. Kevin Metzger and Wilbert Harris as Lead Counsel dated 17 May 2005

³ "Principal Defender's Confidential Ex Parte Submissions Regarding Issues Pertaining to Withdrawal of Counsel," dated 5 May 2005

⁴ Dated 5 May 2005

STRIKING OFF COUNSEL FROM
THE LIST

14664

Elizabeth Nahamya/SCSL
05/27/2005 07:16 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL
bcc
Subject Fw: LIST OF QUALIFIED COUNSEL

Concerning this letter below, to which I responded on the same day, I have received another e-mail form you dated 26 May 2004 in which you state as follows: _

"Elizabeth,

Your concerns are duly noted and should judicial review overturn my order it is something I am prepared to accept full responsibility for. The order stands as of the date that it was issued to you and therefore Messrs. Harris and Metzger are no longer eligible for consideration. Your refusal to carry out a direct instruction is regrettable though I note that you regard it as a matter of conscience.

I would be grateful if you could advise on what date you sent an electronic request to all counsel on the list so that they may indicate their interest and availability and furthermore what deadline you gave them for reply.

On a related matter, I have not seen anywhere Wilbert Harris's decision to return to Sierra Leone. I have seen Kevin Metzger's e-mail saying he discussed it with him but surely there must have been direct contact prior to the motion confirming his desire to return. I would be grateful for a copy of this communication.

Regards,

Robert."

I wish to state that I have not received a Judicial Order to strike off Counsel Metzger and Counsel Harris from the List of Qualified Counsel as per Rules of the Directive on The Assignment of Defence Counsel.

You state that you are willing to take responsibility for the withdrawal of their names from the List of Qualified Counsel but under Rule 45 of the Rules, that responsibility falls under the purview of the Principal Defender. If I get a judicial Order to that effect, I will definitely abide.

I also wish to state that I understand the rights of the Registry and will never interfere with the Registrar's Authority.

However, Rule 45 and the Directive on the Assignment of Counsel has clear guidelines on withdrawal from the List of Qualified Counsel, which were promulgated in concert with the Judges of the Honourable Court.

Finally, it must not be forgotten that the Defence Office is not only answerable to the Registrar but also to the Judges of the respective Trial Chambers. Thus, Rule 45 must operate.

In respect of the standing order to appoint Lead Counsel as I informed you during the various meetings you called on this matter as well as your e-mails to me, I am doing my best to comply with this order. I only wish to remind you that its not something that could be achieved overnight as Counsel need to re-organize their Diaries in order to be able to participate in the Trial. I will continue with my efforts to ensure that the Order is complied with.

Elizabeth..

----- Forwarded by Elizabeth Nahamya/SCSL on 05/27/2005 06:51 PM -----

Glenna Thompson LL.M (Lon)
Barrister and Solicitor
Browne - Marke & Co Solicitors

(14)

14665

Mrs Elizabeth Nahamya,
Deputy Principal Defender,
Special Court for Sierra Leone,
New England

26th May 2005

Dear Elizabeth,


Re: Assignment as Lead Counsel

Thank you for your letter of yesterday's date.

As per our earlier conversation, I have no objections in principle to stepping into the role of Lead Counsel. However, I will necessarily have to discuss this with the Client. Furthermore, as the Client had instructed us to file a motion for the reinstatement of his former Lead Counsel, I think it will be prudent and indeed 'tidier' if this matter was settled once and for all after the determination of the issues raised in that motion.

Of course till then, I continue to act and do my best before the Trial Chamber in the Client's interest.

Yours sincerely,


Glenna Thompson (Ms)

32 Bathurst Street, Freetown, Sierra Leone Tel: 229110/ 226339 Fax: 227379
Email: gem982002@yahoo.co.uk; glennathompson@sierratel.sl

PROGRESS ON THE ASSIGNMENT
OF COUNSEL 14666

Elizabeth Nahamya/SCSL

05/27/2005 05:36 PM

To Robert Kirkwood/SCSL@SCSL

cc Robin Vincent/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL

bcc

Subject Fw: AVAILABILITY FOR POSITION OF LEAD COUNSEL

Robert,

Here is the List as requested. Please note that as I informed you, I had already separately sent e-mails to some Counsel.

----- Forwarded by Elizabeth Nahamya/SCSL on 05/27/2005 05:31 PM -----

Elizabeth Nahamya/SCSL

05/23/2005 09:47 PM

To Bethlyons@aol.com;johnernestleigh@yahoo.com;info@mac
guill.ie;james.mcguill@-macguill.ie;maosaadvocate@yahoo.
com;alexandra.marcilevideotron.ca;johnmayer@blueyonder.
co.uk;litigate@africaonline.co.ke;nyaberico@yahoo.com;nze
yipc@yahoo.fr;kogetto@wanachi.com;,
MNB@Qanet.Gem;jwwambua@gt.co.ke;irbtad@aol.com;lesl
ie.cuthbert@mccormacks.co.uk;

cc

Subject AVAILABILITY FOR POSITION OF LEAD COUNSEL

Dear Counsel,

In an on-going trial at the Special Court for Sierra Leone, vacancies for Lead Counsel in two Defence Teams have arisen.

We need to ascertain your availability within six weeks of the date of this e-mail. Accordingly, please indicate your status as soon as possible.

Regards.

Elizabeth Nahamya
Defence Office

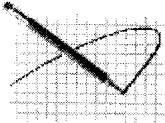
PROGRESS ON ASSIGNMENT
OF COUNSEL
14667

Elizabeth Nahamya/SCSL
05/27/2005 06:00 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL
bcc Claire Carlton-Hanciles/SCSL@SCSL
Subject Fw: YOUR AVAILABILITY

Robert,

I am sending you those I sent prior to the meeting at which you told me to send a global e-mail to all.
----- Forwarded by Elizabeth Nahamya/SCSL on 05/27/2005 05:58 PM -----



Elizabeth Nahamya/SCSL

05/21/2005 10:02 PM

To tlamin@aol.com
cc
Subject YOUR AVAILABILITY

Dear Mr. Lmabert Tamin,

I am just requesting you to indicate your availability to handle a case before the Special Court for Sierra Leone, if required.

Kindly send me your indication.

Regards.
Elizabeth Nahamya
Deputy Principal Defender

14668
PROGRESS ON THE
ASSIGNMENT OF
COUNSEL

Elizabeth Nahamya/SCSL
05/27/2005 06:02 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL
bcc Claire Carlton-Hanciles/SCSL@SCSL
Subject Fw: YOUR AVAILABILITY

Robert,

This is another one sent separately.

----- Forwarded by Elizabeth Nahamya/SCSL on 05/27/2005 06:01 PM -----



Elizabeth Nahamya/SCSL
05/21/2005 10:06 PM

To c.trebelli@peeters-partnerslaw.be
cc
Subject YOUR AVAILABILITY

Dear Mr. Tiribelli,

I am just requesting you to indicate your availability to handle a case before the Special Court for Sierra Leone, if required.

Kindly send me your indication.

Regards.
Elizabeth Nahamya
Deputy Principal Defender

PROGRESS ON THE ASSIGNMENT
OF COUNSEL

14669

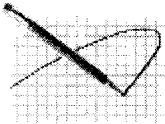
Elizabeth Nahamya/SCSL
05/27/2005 06:04 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL
bcc Claire Carlton-Hanciles/SCSL@SCSL
Subject Fw: YOUR AVAILABILITY

Robert,

As I informed you, here is another one sent separately prior to the global ones being sent.

----- Forwarded by Elizabeth Nahamya/SCSL on 05/27/2005 06:02 PM -----



Elizabeth Nahamya/SCSL
05/21/2005 10:12 PM

To FiloJones2000@yahoo.com
cc
Subject YOUR AVAILABILITY

Dear Mr. Filo Jones,

I am just requesting you to indicate your availability to handle a case before the Special Court for Sierra Leone, if required.

Kindly send me your indication.

Regards.
Elizabeth Nahamya
Deputy Principal Defender

14670
PROGRESS ON THE
ASSIGNMENT OF
COUNSEL

Elizabeth Nahamya/SCSL
05/27/2005 06:06 PM

To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL
bcc
Subject Fw: YOUR AVAILABILITY

Robert,

More of those I sent out prior to your direction on the time limit.
----- Forwarded by Elizabeth Nahamya/SCSL on 05/27/2005 06:05 PM -----

Elizabeth Nahamya/SCSL

05/21/2005 09:46 PM

To mbaru@gmail
cc
Subject YOUR AVAILABILITY

Dear Madam,

I am just requesting you to indicate your availability to handle a case before the Special Court for Sierra Leone, if required.

Kindly send me your indication.

Regards.
Elizabeth Nahamya
Deputy Principal Defender

14671
COUNSEL'S INDICATION OF WILLINGNESS
TO RETURN

Elizabeth Nahamya/SCSL
05/27/2005 07:24 PM

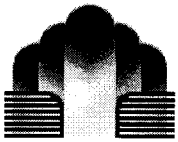
To Robert Kirkwood/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL, wilbertaharris@hotmail.com
bcc
Subject Re: WITHDRAWAL OF MR. METZGER AND MR. WILBERT
HARRIS FROM THE LIST OF QUALIFIED
COUNSEL-----STATEMENT ON WILBERT HARRIS'S
RETURN TO FREETOWN

Robert,

Mr. Harris has spoken to me and Ms. C. Carlton-Hanciles about his desire to return to Freetown to continue with the case as Lead Counsel and has also confirmed the e-mail sent by Kevin on his behalf.

Elizabeth.

Robert Kirkwood/SCSL



Robert Kirkwood/SCSL
05/26/2005 05:33 PM

To Elizabeth Nahamya/SCSL@SCSL
cc Robin Vincent/SCSL@SCSL, Kevin Maguire/SCSL@SCSL
Subject Re: WITHDRAWAL OF MR. METZGER AND MR. WILBERT
HARRIS FROM THE LIST OF QUALIFIED COUNSEL

Elizabeth,

Your concerns are duly noted and should judicial review overturn my order it is something I am prepared to accept full responsibility for. The order stands as of the date that it was issued to you and therefore Messrs. Harris and Metzger are no longer eligible for consideration. Your refusal to carry out a direct instruction is regrettable though I note that you regard it as a matter of conscience.

I would be grateful if you could advise on what date you sent an electronic request to all counsel on the list so that they may indicate their interest and availability and furthermore what deadline you gave them for reply.

On a related matter, I have not seen anywhere Wilbert Harris's decision to return to Sierra Leone. I have seen Kevin Metzger's email saying he discussed it with him but surely there must have been direct contact prior to the motion confirming his desire to return. I would be grateful for a copy of this communication.

Regards,

Robert.

Robert Kirkwood
Deputy Registrar
Special Court for Sierra Leone
Tel: +39 0831257015
Cell: + 232 76653691

Elizabeth Nahamya/SCSL

05/27/2005 07:24 PM

To Robert Kirkwood/SCSL@SCSL

cc Robin Vincent/SCSL@SCSL, wilbertaharris@hotmail.com

bcc

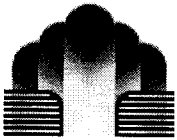
Subject Re: WITHDRAWAL OF MR. METZGER AND MR. WILBERT HARRIS FROM THE LIST OF QUALIFIED COUNSEL-----STATEMENT ON WILBERT HARRIS'S RETURN TO FREETOWN

Robert,

Mr. Harris has spoken to me and Ms. C. Carlton-Hanciles about his desire to return to Freetown to continue with the case as Lead Counsel and has also confirmed the e-mail sent by Kevin on his behalf.

Elizabeth.

Robert Kirkwood/SCSL



Robert Kirkwood/SCSL

05/26/2005 05:33 PM

To Elizabeth Nahamya/SCSL@SCSL

cc Robin Vincent/SCSL@SCSL, Kevin Maguire/SCSL@SCSL

Subject Re: WITHDRAWAL OF MR. METZGER AND MR. WILBERT HARRIS FROM THE LIST OF QUALIFIED COUNSEL

Elizabeth,

Your concerns are duly noted and should judicial review overturn my order it is something I am prepared to accept full responsibility for. The order stands as of the date that it was issued to you and therefore Messrs. Harris and Metzger are no longer eligible for consideration. Your refusal to carry out a direct instruction is regrettable though I note that you regard it as a matter of conscience.

I would be grateful if you could advise on what date you sent an electronic request to all counsel on the list so that they may indicate their interest and availability and furthermore what deadline you gave them for reply.

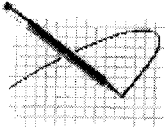
On a related matter, I have not seen anywhere Wilbert Harris's decision to return to Sierra Leone. I have seen Kevin Metzger's email saying he discussed it with him but surely there must have been direct contact prior to the motion confirming his desire to return. I would be grateful for a copy of this communication.

Regards,

Robert.

Robert Kirkwood
Deputy Registrar
Special Court for Sierra Leone
Tel: +39 0831257015
Cell: + 232 76653691

14673
PROGRESS ON THE
ASSIGNMENT OF COUNSEL



Elizabeth Nahomya/SCSL

05/28/2005 07:43 PM

To Robert Kirkwood/SCSL@SCSL

cc Robin Vincent/SCSL@SCSL

bcc

Subject LEAD COUNSEL UPDATE FOR SANTIGIE BORBOR
KAMARA

Dear Robert,

In response to your letter hereto attached, I have already sent you several updates on Glenna, who has an appointment with you at 11am on Monday 30 May 2005.

Concerning Lead Counsel for Kamara, I have got one positive response from Mr. Adedamola Aderemi, Brit/Nigerian Counsel with 24 yrs experience.

He will send his full documents soon but he says that he will be able to come on 13 June, if appointed and will need a short time to familiarize himself with the case files.

Regards,
Elizabeth.



- defence.pdf



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7210
FAX: +39 0831 257299 OR +232 22 297299 OR +1 212 963 9915 EXT: 178
7299

INTEROFFICE MEMORANDUM

To: Mr. Robin Vincent, Registrar
 From: Vincent O. Nmhielle, Principal Defender
 Cc: Honorable Judges of Trial Chamber II
 Date: 13 June 2005

Subject: Matters Arising from the Decision on the Extremely Urgent Confidential Joint Motion for the Reappointment of Kevin Metzger and Wilbert Harris as Lead Counsel For Alex Tamba Brima And Brima Bazzy Kamara and Decision on Cross Motion by the Deputy Principal Defender to Trial Chamber II for Clarification of its Oral Order of 12 May 2005 (Hereinafter Trial Chamber II Majority Motion Decision Of 9 June 2005)

Dear Robin,

I have been served with the Trial Chamber II Motion Decision of 9 June 2005 in respect of the above captioned subject. Please permit me a first opportunity to address and to clarify certain issues in the said decision as they pertain to the Office of the Principal Defender, particularly relating to the actions of the Deputy Principal Defender in the performance of her duties. The said majority decision of Honourable Judges of Trial Chamber II, *inter alia*, opines "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** (emphasis is mine). It appears that she is unwilling to do her job, and unwilling to follow 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."¹

Please permit me to say that the Honourable Judges' above opinion seems to have been expressed without all the facts being made available to the Chamber. As I understand it and from my review of the records in the process of assuming the Office of the Principal Defender, there was no deliberate decision on the part of the Deputy Principal Decision to undermine the Chamber's decision. In fact, the Deputy Principal Defender, as an officer of the Special Court, cannot undermine the decision of the Trial Chamber. The Deputy Principal Defender rather performed her duties in the circumstances she found herself to protect the interest of

¹ Trial Chamber II Majority Motion Decision of 9 June 2005, ¶ 61.



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7299**

the accused persons under Article 17 of Statute of the Special Court and as mandated the Office of the Principal Defender under Rule 45 of the Rules of Procedure and Evidence of the Special Court. Her efforts in supporting the reappointment of the original counsel in the matter were indeed aimed at nothing but the expediency and integrity of the entire process.

The facts really do not support that the Deputy Principal Defender “made no attempt to appoint new lead counsel.” Communication between the Registry and the Deputy Defender clearly indicate steps that the Deputy Principal Defender took regarding the issue of appointing new counsel for the accused persons in the matter (See Attached Emails). As you clearly know, the appointment of counsel involves not just the Office of the Principal Defender but also the consent of the accused persons, whose cooperation is very vital. And in this particular matter the accused persons refused to countenance the List of Qualified Counsel for purposes of choosing new counsel (See Attached Memo from Deputy Principal Defender to Registrar of 17 May 2005). To ensure the inclusion of new qualified counsel on the list, the Deputy Principal Defender, as directed by the Registry, sent out global emails, announcing the opening of lead counsel positions and requesting counsel to apply (See Attached Emails).

Similarly, the Deputy Principal Defender could not have been “unwilling to do her job, and unwilling to follow the directions of the Registrar” in view of the above actions that she took, which actions were indeed following directives of the Registrar. It may be worth noting that many directives may be subject to some legal evaluation on the basis of which the Office of the Principal Defender could advise the Registry and doing so does not amount to an unwillingness to do one’s job or unwillingness to follow the Registrar’s directive. In fact, the Deputy Principal Defender would not be doing her job if she does not legally evaluate every directive on the basis of which she then advises the Registry as it pertains to the Defence of the accused persons. Thus, the Deputy Defender’s filing of a Cross Motion for the clarification of the Trial Chamber’s oral order of 12 May 2005 was nothing but protecting the interest of the accused person’s under the Court’s Statute and under the Rules of the Special Court.

Again, we should not forget that counsel for the accused persons were also churning out motions to further the interest of their clients and the Office of the Principal Defender cannot stop them from taking any legally valid action in that regard. That is why when I came on the scene as the Principal Defender that I thought I should await the decision of the Honourable Judges of Trial Chamber II so that I can proceed with dealing with this issue in a manner that allows a fresh start.

I have since the decision on the Motion held consultations with the accused persons concerned on the way forward and they have assured me of their willingness to choose new lead counsel, but would rather appreciate it if more notices for counsel are circulated to allow new names to be added to the list of qualified counsel, which is on-going. I have thus initiated requests to



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7210**

**FAX: +39 0831 257299 OR +232 22 297299 OR +1 212 963 9915 EXT: 178
7299**

counsel across the globe, in addition to earlier requests made by the Deputy Principal Defender, to apply to be listed to enable the accused persons make new choices. Until we are able to have new lead counsel assigned to the accused persons, the current co-counsel can hold the forth even though it is not going to be easy for them. I am hoping that we can expedite this process.

The purpose of this memo is to reiterate the point that I made on my first meeting with you on Friday 10 June 2005 that whatever actions the Deputy Principal Defender took regarding the issue of reassignment of Counsel in the instant matter were not done to either undermine Trial Chamber II or the Office of the Registrar. They were rather actions in the performance of the Defence Office's duties, which are protected under Rule 45 of the Rules of the Special Court. The performance of those duties, should not in my view result in any negative repercussion on the Deputy Principal Defender or a mischaracterization of her actions. While the Defence Office is still technically part of the Registry, it is required to function independently in carrying out its mandate, a position which you avowedly support. That independence may at times result in some disagreements with the Registry, which disagreements ought to be a healthy one in furtherance of the Special Court's overall mandate as impacted by the mandate of the various organs and units of the Court. I am hoping that by this memo, we can resolve this matter amicably and proceed with the business of the court's process in accordance with the Statute of the Court and the Court's Rules.

Thank you for your kind attention and consideration in this regard.



SPECIAL COURT FOR SIERRA LEONE
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24th May 2005.

The Deputy Principal Defender,

Dear Madam,

**RE: MY VISIT TO THE DETENTION FACILITY TO VISIT BOTH
ACCUSED ALEX TAMBA BRIMA AND IBRAHIM BAZZY KAMARA.**

In accordance with my duties as Duty Counsel I visited the two detainees today and informed them that the Office in compliance with the Court Order was looking out for qualified Lead Counsel who are to replace both Messrs. Kevin Metzger as well as Wilbert Harris.

The two Detainees were very unhappy about the said steps that this Office is taking and lambasted the Office as to the fact that they had written us a letter to have their Counsel reappointed but they really fail to see why that has not been done by our Office. They refused to hear me out with regards to the fact that We had an Order to comply with.

I was also intimated that they were expecting to see their lawyers at 2:00 during the Lunch break from Court during which said meeting their concerns would be discussed and certain instructions given to them. They implored me also to reiterate their wishes as per their Letter to the Principal Defender dated the 12th of May 2005.

They infact decided not to say anything to me any more form then on and from their faces the impression I gathered is that they had doubts about me on this issue.

Regards.