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SCSL-2004-16-T
(8421 - 8426)

8421

**SPECIAL COURT FOR
SIERRA LEONE**

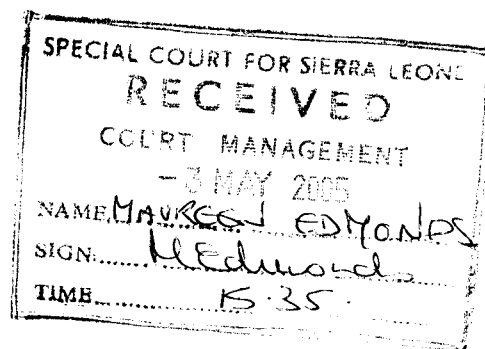
Case No. SCSL-2004-16-T

THE APPEALS CHAMBER

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

Registrar: Robin Vincent

Date filed: 3 May 2005



THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

JOINT DEFENCE NOTICE OF APPEAL ON DECISION ON INDEPENDENT COUNSEL

Office of the Prosecutor:

Luc Coté
Lesley Taylor

Defence Counsel for Brima:

Kevin Metzger
Glenna Thompson
Kojo Graham

Defence Counsel for Kanu:

Geert-Jan A. Knoops, Lead Counsel
Carry J. Knoops, Co-Counsel
A.E. Manly-Spain, Co-Counsel

Defence Counsel for Kamara:

Wilbert Harris
Mohamed Pa-Momo Fofanah

I INTRODUCTION

1. Pursuant to Rule 77(J) of the Rules and para. 1 of the Practice Direction for Certain Appeals before the Special Court, the Defence herewith files its “Joint Defence Notice of Appeal” (“**Notice of Appeal**”).

II SUMMARY OF THE PROCEEDINGS

Complaint by Witness TF1-023

2. On 10 March 2005 Prosecution Witness TF1-023 made an oral complaint before Trial Chamber II alleging that on the preceding day as she was on her way home in a Court vehicle with blacked-out windows, two ladies made remarks that they had seen her and called her name. The witness went on to say that they had now come together to daggers drawn, although she did not know what they meant by that.¹
3. The Prosecution made an oral application in support of the witness’s claim.² The Defence made oral submissions in response to the complaint by Witness TF1-023.³

Decision on Complaint

4. On 10 March 2005, the Trial Chamber made an oral decision pursuant to Rule 77(C)(iii) of the Rules, *inter alia*, directing the Registrar to appoint an independent counsel to investigate the complaint against the four women mentioned in said decision and the investigator of the Defence team for the Accused Brima and to report back to the Trial Chamber as to whether there are

¹ Transcript, 10 March 2005, p. 3, lines 17 – 21, and p. 4, lines 2 – 5.

² Transcript, 10 March 2005, p. 6, line 1 to p. 8, line 13.

³ Transcript, 10 March 2005, p. 8, line 17 to p. 11, line 8 (arguments made on behalf of Accused Brima); Transcript, 10 March 2005, p. p. 11, line 17 – p. 12, line 14 (arguments made on behalf of Accused Kanu); and Transcript, 10 March 2005, p. p. 12, line 17 to p. 14, line 29 (arguments made on behalf of Accused Kamara).

sufficient grounds for instigating contempt proceedings against any of them.⁴ On this same day, the Trial Chamber made an Interim Order suspending the investigator from the Brima Defence team from Court and from his duties, and prohibiting the four women from entering the public gallery pending the investigation and hearing of the matter.

Independent Counsel

5. On March 11, 2005, the Registrar appointed Mr. Louis Tumwesige as Independent Counsel, to conduct an independent investigation into the matter and to submit a report of his findings to the Trial Chamber, pursuant to the decision by the Trial Chamber. On 16 March 2005, the Independent Counsel submitted his report to Trial Chamber II.⁵ The content of this confidential report was not disclosed to the Defence.

Appeal against Decision on Complaint

6. On 11 March 2005, the Defence filed its “Confidential Joint Defence Notice of Appeal” and the “Confidential Joint Defence Appeal Motion Pursuant to Rule 77(J) on Both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii).” In addition thereto, the Defence filed on 14 March 2005 its “Confidential Additional Joint Defence Appeal Submissions Pertaining to Joint Defence Appeal Motion Pursuant to Rule 77(J) on Both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii)”; the “Confidential Joint Defence Index of Record to Appeal Motion of March 11, 2005 and Additional Appeal Submissions of March 14, 2005” and the “Confidential Joint Defence Index of Record to Appeal Motion of March 11, 2005 and Additional Appeal Submissions of March 14, 2005.”
7. On 4 April 2005, the Prosecution responded in its “Confidential Prosecution Response to the ‘Joint Defence Notice of Appeal’,” to which the Defence replied

⁴ Transcript, 10 March 2005, p. 15, line 2 to p. 16, line 13.

⁵ See Impugned Decision, p. 3.

in its “Confidential Joint Defence Reply to Prosecution Response to the ‘Joint Defence Notice of Appeal’” on April 11, 2005.

8. On 6 April 2005, Justice Emmanuel Ayoola of the honorable Appeals Chamber gave its “Order under Rule 117(A),” in which he appointed Justice King, Justice Robertson and himself to decide on the appeal, stating that there will be no oral hearing on this matter.

Defence Request for Disclosure of Report

9. On 4 April 2005, the Defence filed its “Confidential Joint Defence Request for Disclosure of Independent Investigator’s Report on Contempt of Court Proceedings and Request for Stay of Proceedings.” On 14 April 2005, the Prosecution filed its “Prosecution Response to Joint Defence Request for Disclosure of Independent Investigator’s Report on Contempt of Court Proceedings and Request for Stay of Proceedings.” In reply thereto the Defence filed on 19 April 2005 its “Confidential Joint Defence Reply on Prosecution Response to Defence Request for Disclosure of Independent Investigator’s Report on Contempt of Court Proceedings and Request for Stay of Procedure.”

Leave to Appeal against Ruling of 5 April 2005

10. On 5 April 2005, the Defence made an oral request for an adjournment of the proceedings, which the Trial Chamber in a unanimous decision denied.⁶ The Defence filed on 8 April 2005 a “Joint Defence Application for Leave to Appeal against the Ruling of Trial Chamber II of 5 April 2005.” The Prosecution responded hereto on 14 April 2005 in its “Prosecution Response to Joint Defence Application for Leave to Appeal against the Ruling of Trial Chamber II of 5 April 2005.” In reply thereto, the Defence filed the “Confidential Joint Defence Reply to Prosecution Response to Joint Defence Application for Leave to Appeal against the Ruling of Trial Chamber II of 5 April 2005” on 19 April 2005.

⁶ Transcript, 5 April 2005, p. 25, line 17 to p. 27, line 12.

Impugned Decision

11. On 29 April, Trial Chamber II filed its “Decision on the Report of Independent Counsel Pursuant to Rules 77(C)(iii) and 77(D) of the Rules of Procedure and Evidence”, and on 2 May 2005, the Trial Chamber filed its “Corrigendum to the Decision on the Report of the Independent Counsel Pursuant to Rules 77(C)(iii) and 77(D) of the Rules of Procedure and Evidence” (together referred to as “**Impugned Decision**”). It is against this Impugned Decision that the Defence appeals through this Notice of Appeal.

III APPEAL GROUNDS

3.1 First Appeal Ground

12. Error in law and/or fact due to erroneously finding that there are “sufficient grounds” to institute proceedings against the investigator of the Brima Defence team and the four women, without disclosing the material upon which the Trial Chamber made its Impugned Decision, namely the report of the Independent Counsel.

3.2 Second Appeal Ground

13. Error in law and/or fact due to the fact that the Trial Chamber made its Impugned Decision without first deciding on the several Defence motions referred to under paras. 6 – 9 above, the decisions on which motions are closely intertwined with the *ratione materiae* of the contempt of court assessment.

3.3 Third Appeal Ground

14. Error in law and/or fact due to the fact that the Impugned Decision does not provide any arguments as to why it considers that “there are sufficient grounds to proceed against” the aforementioned five persons.⁷

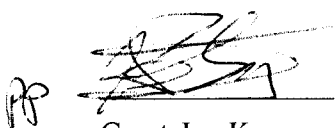
IV RELIEF SOUGHT

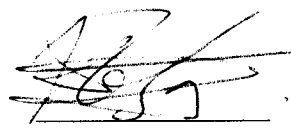
15. Therefore, the Defence respectfully prays the honorable Appeals Chamber to:

- (i) Grant the appeal and reverse the Impugned Decision, i.e., to declare null and void the Impugned Decision;
- (ii) Render any other decision the honorable Appeals Chamber deems appropriate.

Respectfully submitted,

On May 3, 2005


Geert-Jan Knoop


Kevin Metzger


Wilbert Harris

⁷ See p. 3 of the Impugned Decision.