

SCSL-05-02

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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER I

Before: Hon. Justice Pierre Boutet
Single Judge of Trial Chamber I

Registrar: Robin Vincent

Date: 21st of September 2005

Independent Counsel **Against** **MARGARET FOMBA BRIMA**
NENEH BINTA BAH JALLOH
ESTER KAMARA
(Case No. SCSL-2005-02)

ANIFA KAMARA
(Case No. SCSL-2005-03)

SENTENCING JUDGEMENT IN CONTEMPT PROCEEDINGS

The Independent Counsel:

Bintu Alhadi-Tejan-Jallow

The Principal Defender:

Vincent Nmehielle

Defence Counsel for Margaret Fomba Brima:

Haddijatou Kah-Jallow

Defence Counsel for Neneh Binta Bah Jalloh:

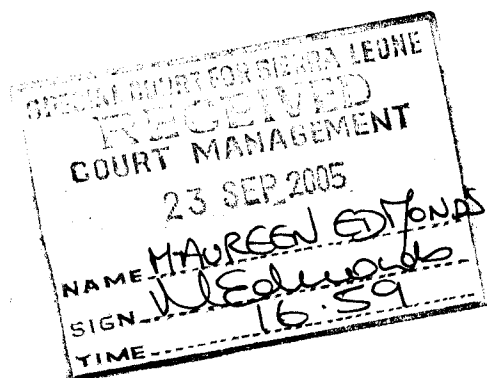
Amadu Koroma

Defence Counsel for Ester Kamara:

Glenna Thompson

Defence Counsel for Anifa Kamara:

C.A. Osho Williams



I, HON. JUSTICE PIERRE BOUTET, acting as Single Judge of Trial Chamber I pursuant to the *Order Designating a Judge for Contempt Proceedings* of the 2nd of May, 2005;¹

MINDFUL of the *Decision on the Report of the Independent Counsel Pursuant to Rules 77(C)(iii) and (D)* filed by Trial Chamber II on the 29th of April 2005 and the corrigendum thereto of the 2nd of May 2005 ("Decision");

MINDFUL, in particular, of the *Order in Lieu of the Indictment* against Margaret Fomba Brima, Neneh Binta Bah Jallow, Anifa Kamara and Ester Kamara ("Contemnors"), as contained in the aforementioned Decision;

CONSIDERING that Margaret Fomba Brima, Neneh Binta Bah Jallow and Ester Kamara entered a guilty plea to the charge against them as contained in the *Order in Lieu of the Indictment* on the 27th of July 2005;

NOTING the *Findings and Scheduling Order Pursuant to Rule 62* of the 27th of July 2005 in which I entered a finding of guilt against Margaret Fomba Brima, Neneh Binta Bah Jallow and Ester Kamara on the charge against them after being satisfied that all of the conditions of Rule 62 of the Rules of Procedure and Evidence of the Special Court ("Rules") had been satisfied;

NOTING the *Order For Severance And Scheduling Order* of the 27th of July 2005 which ordered the severance of the case of the *Independent Counsel against Anifa Kamara*² from the present case;

CONSIDERING that on the 21st of September 2005, Anifa Kamara entered a guilty plea to the charge against her as contained in the *Order in Lieu of the Indictment*;

¹ See also *Independent Counsel v. Brima Samura*, SCSL-05-01 and *Independent Counsel v. Margaret Fomba Brima et al.*, SCSL-2005-02, Order Assigning a Case to a Trial Chamber, 2 May 2005.

² *Independent Counsel v. Anifa Kamara*, SCSL-05-03.

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NOTING the *Findings and Scheduling Order Pursuant to Rule 62* of the 21st of September 2005 in which I entered a finding of guilt against Anifa Kamara on the charge against her after being satisfied that all of the conditions of Rule 62 of the Rules had been satisfied;

NOTING FURTHER that the matters against all four Contemnors were then adjourned for a sentencing hearing later on the 21st of September 2005;

CONSIDERING the oral submissions on sentence made by the Independent Counsel, Defence Counsel for all of the Contemnors and the Principal Defender;

MINDFUL OF Article 19(2) of the Statute of the Special Court for Sierra Leone ("Statute") and Rules 54, 77, and 101 of the Rules.

I. SUBMISSIONS OF THE PARTIES

1. The Independent Counsel submitted that while there has been a serious violation of the Rules of the Court that needs to be addressed, the Contemnors have pleaded guilty and are under the stress of having their husbands or friend on trial before the Special Court. She therefore recommended a conditional discharge, which would mean that the Contemnors will not be punished provided that they do not commit any other offence in the future. The Independent Counsel suggested that they must be bound to keep the peace and be of good behaviour for the period of one year.

2. The Principal Defender submitted that while he does not make light of any seeming disrespect to the Orders of the Court, the Contemnors have cooperated with the Court by pleading guilty. He suggested that their guilty pleas are a mitigating circumstance as they have, by such a plea, expedited the trial proceedings. He implored the Court to temper justice with mercy in its cautioning of the Contemnors.

3. Counsel for the Contemnor Margaret Fomba Brima submitted that Ms. Brima is a loving and dedicated wife and mother of four children. As a result of her husband's

detention, she is now the sole bread-winner. Counsel stated that Ms. Brima has always visited her husband in detention and has always conducted herself appropriately. She has never been charged with a crime or appeared in Court before. Counsel emphasized that Ms. Brima's dedication to her husband drove her to commit a wrong, the ramifications of which she did not fully comprehend at the time. She has since demonstrated, it was suggested, profound remorse and she is unequivocal that she would not repeat that action again. Counsel relied on international authorities noting that significant weight ought to be given to the plea of guilty as a mitigating factor since she has saved the Court both time and resources. Finally, Counsel requested that Ms. Brima be allowed to attend proceedings in her husband's trial again.

4. Counsel for Neneh Binta Bah Jalloh submitted that his client was truly sorry for her deeds from the initial stages of the contempt proceedings and that she had not fully appreciated the consequences of what she had been doing. Ms. Bah Jalloh has been married to the Accused Mr. Kanu since 1986 and she has been caring for their two children alone since her husband's incarceration. Counsel stated that Ms. Bah Jalloh has repeatedly stated that this type of incident will not happen again.

5. Counsel for Ester Kamara submitted that her client is a single mother of two children who is undergoing training to become a hairdresser. She stated that this is the first time Ms. Kamara has had any dealings with the law and this incident is totally out of her character. Counsel explained that Ms. Kamara has provided close support to the Accused Bazy Kamara's family and that emotions were highly charged at the start of the AFRC trial. Further, she submitted that Ms. Kamara did not appreciate the Rules of the Court or the seriousness of the actions of the Contemnors but that she now understands the protective measures regime and that witnesses are not to be interfered with. Counsel indicated that Ms. Kamara conveys her apologies to the Court and to the Witness and appreciates how traumatic their actions would have been for the Witness. She entered a plea of guilt as soon as she understood what it entailed and has accepted her full responsibility in the incident. Further, Counsel stated that Ms. Kamara has already been

punished as her name has been broadcast and published and she has had this case hanging over her head.

6. Margaret Fomba Brima, Neneh Bah Jalloh and Ester Kamara each made a statement personally to the Court indicating that they are sorry and assure the Court that this act will not be repeated again. This Court accepts their apologies in this respect.

7. Counsel for Anifa Kamara submitted that his client immediately entered a plea of guilty once she understood that ignorance of the law is not an excuse. She assured her Counsel that it would not happen again and wanted to convey her apologies to the Witness. Counsel highlighted that Ms. Kamara's husband is on trial and that the couple have one child together. The stress of his trial has affected both her and their son.

8. Anifa Kamara personally expressed to the Court that she is sorry and will never do it again.

II. RELEVANT LEGAL PRINCIPLES

9. Rule 77 of the Rules set out a regime to be followed in cases of contempt of court before the Special Court relating to a defined list of acts.

10. Paragraph (A) of the Rule states that:

The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice...

11. As this provision notes, the basis for this Rule is the inherent power of the Special Court to deal with cases of contempt before it. Indeed, it is well-established that courts have an inherent jurisdiction to ensure that its administration of justice is not

obstructed, prejudiced or abused.³ The Appeals Chamber of the International Tribunal for the Former Yugoslavia (“ICTY”) stated in the *Tadic* case:

A power in the Tribunal to punish conduct which tends to obstruct, prejudice or abuse its administration of justice is a necessity in order to ensure that its exercise of jurisdiction which is expressly given to it by its Statute is not frustrated and that its basic judicial functions are safeguarded. Thus the power to deal with contempt is clearly within its inherent jurisdiction.⁴

12. As a result, Rule 77 does not, and was not intended to, limit the Special Court’s inherent contempt of court powers.

13. In the case before me, Trial Chamber II of the Special Court issued an *Order In Lieu of Indictment* against Margaret Fomba Brima, Neneh Binta Bah Jalloh, Anifa Kamara and Ester Kamara and directed independent counsel to prosecute the matter pursuant to Rule 77(C)(iii).

14. Paragraph (G) of Rule 77 sets out the “maximum penalty that may be imposed on a person found to be in contempt of the Special Court... pursuant to Sub-Rule (C)(iii) shall be a term of imprisonment for seven years or a fine not exceeding 2 million leones, or both.”

15. With regard to sentencing principles that are to be applied by the Trial Chamber, Article 19(2) of the Statute states:

In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

³ The subsistence and the nature of this power in International Tribunals have been previously recognized by various decisions of the ICTY and the ICTR. In addition to *Tadic* below, see also, for instance *Prosecutor v. Aleksovski*, IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, May 30, 2001; *Prosecutor v. Blaskic*, IT-95-14-AR108bis, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997; See, more recently, *Prosecutor v. Kamuhanda*, Case No. ICTR-99-54A-A, Oral Decision (Rule 115 and Contempt of False Testimony), 19 May 2005. See also M. Bohlander, “International Criminal Tribunals and Their Power to Punish Contempt and False Testimony”, *Criminal Law Forum*, 2001, p. 91-118.

⁴ *Prosecutor v. Tadic*, IT-94-1, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 18.

16. Rule 101(B), which is applicable to contempt proceedings as appropriate in accordance with Rule 77(E), further elaborates that:

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as:

- (i) Any aggravating circumstances;
- (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
- (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

17. As I have noted, the Rules are silent regarding the minimum penalty that may be imposed on a person who either pleads guilty or is found guilty after trial of contempt of court under Rule 77(C)(iii). I therefore find that I may exercise my inherent power with regard to contempt cases to determine the appropriate sentence for the Contemnors in this case in light of all the considerations outlined above.

18. I am mindful that the ICTY has, on occasion, imposed sentences that are variations on those sentences specifically described in Rule 77. In that respect, the Trial Chamber in the *Aleksovski* case suspended the payment of a portion of the fine for one year on the condition that Mr. Nobile not be found in contempt of the Tribunal again within that period.⁵ The Appeals Chamber in *Tadic* stated that it would provide a direction to “the Registrar to consider striking the Respondent off the list [of assigned counsel] and reporting his conduct as found by the Appeals Chamber to the professional body to which he belongs.” Since it found that the Registrar would necessarily do this “in the reasonable exercise of her power”, the Appeals Chamber took this into account when determining the appropriate sentence and ordered a fine.⁶

⁵ *Prosecutor v. Alekovski*, IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 22. The finding of guilt was overturned on appeal.

⁶ *Prosecutor v. Tadic*, *supra* note 4 para. 172.

19. I consider in light of the above that the Rules provide that certain punishments may be imposed by setting out a maximum penalty without however prescribing any minimum punishment. Therefore, I find that I have the inherent power to impose a sentence other than a fine or imprisonment and that, consequently, a sentence such as a conditional discharge could be imposed subject to the particular circumstances of the case.

III. SENTENCING OF THE CONTEMNORS

20. The Independent Counsel prosecuting the contempt proceedings, the Principal Defender and Defence Counsel for each of the Contemnors have made a joint submission before the Court that the fit and proper sentence for the Contemnors in the circumstances of the case is a conditional discharge. All Counsel for the Defence have urged this Court to temper justice with mercy.

21. In determining the appropriate sentence to be imposed against the four Contemnors, I must first consider the gravity of the offence.

22. The Contemnors are the wives and friend of the three Accused in the case of the *Prosecutor v. Brima, Kamara and Kanu*.⁷, referred to as the AFRC trial, which is currently ongoing before Trial Chamber II of the Special Court. On the 9th of March 2005, a witness known by the pseudonym TF1-023 testified for the first time in the case of the *Prosecutor v. Brima et al.*

23. The Contemnors have admitted that on the 9th of March 2005 after having attended trial proceedings, they saw a vehicle with tinted windows and, knowing that it was transporting a protected witness, called out the first name of the witness and told her in Krio that they knew she was testifying. They also uttered words in Krio whose effect was to threaten and intimidate the witness for testifying.

⁷ *Prosecutor v. Brima et al.*, SCSL-04-16-T.
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24. In that trial, Witness TF1-023 was categorised as a Group 1 (witness of fact), Category A (victim of sexual assault and gender crimes) witness. By virtue of that category, Witness TF1-023 enjoyed certain protective measures ordered by the Special Court including:

- i. All witnesses shall be referred to by pseudonyms at all times during the course of proceedings where during the hearing or in documents, including the transcript of the proceedings;
- ii. The names, addresses, whereabouts and any other identifying information of witnesses shall be sealed and not included in any of the public records of the Special Court;
- iii. To the extent that the names, addresses, whereabouts or other identifying data concerning witnesses are contained in existing public documents of the Special Court, that information shall be expunged from those documents;
- iv. All documents of the Special Court identifying witnesses shall not be disclosed to the public or media;
- v. The Defence shall refrain from sharing, discussing or revealing directly or indirectly, any disclosed non-public materials of any sort, or any information contained in any such document, to any person other than the Defence;
- vi. The Defence shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, interview report or summary of expected testimony, or other non-public material, as well as the date of disclosure; and the defence shall ensure that the person to whom such information was disclosed follows the order for non-disclosure.
- vii. The Defence shall provide to the Registrar and to the Defence Office a designation of all persons working on the Defence team who...have access to any information referred to...above, and requiring the Defence to advise the Registrar and the Defence Office in writing of any changes in the composition of this Defence team...⁸

⁸ *Prosecutor v. Sesay*, SCSL-2003-05-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Kallon*, SCSL-2003-07-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Gbao*, SCSL-2003-09-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Sesay*, SCSL-2003-05-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Kallon*, SCSL-2003-07-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Gbao*, SCSL-2003-09-PT, Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003.

25. As she was classified as a Category A witness, witness TF1-023 testified in Court behind a screen that prevented her from being seen by the public gallery and her voice was distorted in the public gallery.

26. The actions of the Contemnors on the 9th of March 2005 did constitute contempt of court in that they revealed the identity and threatened the security of a protected witness and this has been clearly acknowledged by the guilty pleas of all the Contemnors, pleas that have been accepted by this Court.

27. When dealing with the protection of victims and witnesses, this Court has repeatedly stated that:

The Republic of Sierra Leone is a relatively small community where people are bound to and in fact know and identify themselves very easily thereby increasing the danger of risk of a recruitment of hostilities against potential witnesses and victims and their families if they are identified by the indictees or their sympathisers as those whose testimony would incriminate them, or in due course and more still, the indictees who they support out there⁹.

28. This Court has also recognized that, unlike the other international criminal tribunals, the Special Court for Sierra Leone has the unique feature of “being located in Sierra Leone where the offences charged against the Accused are alleged to have been committed and that this fact has a substantial impact on the security considerations for victims and witnesses.”¹⁰

Disclosure, 23 May 2003 and *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Decision on the Prosecution Motion for Modification of Protective Measures for Witnesses, 05 July 2004.

⁹ *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and Urgent Request for Interim Measures until Appropriate Protective Measures are in Place, 10 October 2003, para. 24. See also, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Order on Protective Measures for Additional Witnesses, 24 November 2004.

¹⁰ See for example *Prosecutor v. Gbao*, SCSL-2003-09-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure, 10 October 2003 (“*Gbao* Protective Measures Decision”), paras. 21-25; see also *Prosecutor v. Norman et al.*, SCSL-2004-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004, para. 29. See also, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Order on Protective Measures for Additional Witnesses, 24 November 2004

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29. Any breach or violation of these measures, either by revealing the identification of witnesses or in any other way, is considered and seen as very serious. It is important, therefore, that you Contemnors, and the public at large, understand the absolute necessity of respecting this Court's orders on protective measures.

30. This being said, it would appear from the facts of this case that there was no forethought in the actions of the Contemnors. As their Counsel have emphasized, the Contemnors are the wives and friend of the three Accused in the case of the *Prosecutor v. Brima et al.* and they are obviously very emotionally involved in the trial process. Their actions, however, clearly had the effect of making witness TF1-023 feel concerned and threatened.

31. According to the information available and as stated by Counsel for these Contemnors, none of the Contemnors have any previous criminal convictions in Sierra Leone nor in the Special Court. For all of them, this is their first brush with the law and none of them has even appeared in Court before this incident.

32. All of the Contemnors have entered pleas of guilty thereby avoiding the necessity of a trial. This facilitated and expedited the proceedings as was suggested by the Principal Defender in his submissions. I also note that the Contemnors Ester Kamara and Anifa Kamara appeared voluntarily before the Special Court even without having been previously served with the *Order in Lieu of Indictment* against them.

33. Rule 101(B) provides that I am to consider all mitigating factors upon determining the appropriate sentence. I accept the general principle in sentencing for criminal offences that a guilty plea is to be considered a mitigating factor. Indeed, this has also been reflected in the established jurisprudence of other international criminal tribunals.¹¹

¹¹ See, for instance, *Prosecutor v. Blaskic*, IT-95-14, Judgment, TC, 3 March 2000, para. 777; *Prosecutor v. Simic*, IT-95-9/2, Judgment, TC, 17 October 2002, paras 84-85; and *Prosecutor v. Plavsic*, IT-00-39 & 40/1, Judgment, TC, 27 February 2003, paras 66-81. In particular, in *Blaskic*, cited above, the Trial Chamber held that a guilty plea "may it itself constitute a factor substantially mitigating the sentence".

34. I am satisfied that the Contemnors have demonstrated remorse for their actions that have been found to constitute contempt of court by pleading guilty. All of the Contemnors, both personally and through their Counsel, have expressed their apologies to the Court and the Witness that was threatened and have assured the Court that they would not commit such an act again in the future.

35. In light of all of the above factors, I have come to the conclusion that the appropriate sentence for all of the Contemnors in this case would carry a sentence that is neither a fine nor imprisonment, but rather another form of sentence. I am satisfied, as I have stated earlier, that I have the inherent power to impose a conditional discharge as suggested and recommended by all of the Parties in this matter given that the Rules define only the maximum sentence that may be imposed and do not preclude the imposition of such a sentence by a Trial Chamber.

36. I should add for a better and complete understanding that the conditional discharge will be deemed not to constitute a criminal conviction for the offence of contempt of court. The Contemnors will be required to fully respect all of the conditions, set out below, for their probation which will be for a duration of one year from today's date. If any of the Contemnors fail to respect these conditions, her discharge will be converted automatically to a criminal conviction and the Special Court may then impose any other sentence that could have been imposed if the Contemnor had been convicted at the time of the imposition of the conditional discharge.

I THEREFORE ORDER AS FOLLOWS:

37. Having accepted the guilty plea from the Contemnors, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Ester Kamara and Anifa Kamara, and having found these contemnors guilty of the charge that had been laid against them, I hereby sentence the said



Contemnors, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Ester Kamara and Anifa Kamara, to a conditional discharge, and considering that in all the aforesaid circumstances, a conditional discharge as described would be an appropriate sentence, I impose the following conditions;

38. The Contemnors shall serve a period of probation to commence on today's date, the 21st of September 2005, and to end in one year on the 20th of September 2006;

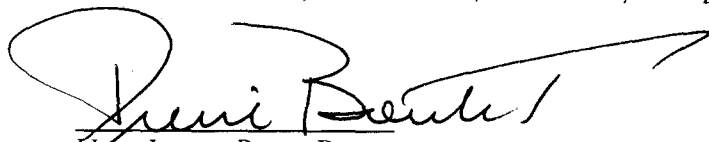
39. During their period of probation, the Contemnors, Margaret Fomba Brima, Neneh Binta Bah Jalloh, Ester Kamara and Anifa Kamara, shall respect the following conditions:

1. To keep the peace and be of good behaviour;
2. Not to reveal the identity of Prosecution Witness TF1-023 to any persons whatsoever;
3. Not to seek to obtain the identity or location of any Prosecution witness before the Special Court for Sierra Leone;
4. Not to communicate, directly or indirectly, with any Prosecution witness before the Special Court for Sierra Leone;
5. Not to take part in any action that threatens either directly or indirectly a witness before the Special Court for Sierra Leone;
6. To respect all conditions imposed by the Special Court for Sierra Leone in the public gallery of the Court; and
7. To respect all conditions imposed by the Detention Services Unit of the Special Court for Sierra Leone.



40. I further order that any failure by any of the said Contemnors to comply with these conditions is to operate as a suspension of the probation and a revocation of the conditional discharge.

Done in Freetown, Sierra Leone, this 21st day of September 2005



Hon. Justice Pierre Boutet
Single Judge of Trial Chamber I

