

SCSL-05-03
(1-5)



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 BRIMA SAMURA
(Case No. SCSL-05-01)

Independent Counsel Against MARGARET FOMBA BRIMA
NENEH BINTA BAH JALLOH
ESTER KAMARA
(Case No. SCSL-05-02)

Independent Counsel Against ANIFA KAMARA
(Case No. SCSL-05-03)

**DECISION ON DEFENCE MOTION ON STAY OF THE CONTEMPT
PROCEEDINGS**

The Independent Counsel

Bintu Alhadi-Tejan-Jallow

The Principal Defender

Vincent Nmehielle

Office of the Prosecutor:

Luc Coté

Lesley Taylor

Defence Counsel for Brima Samura:

Wilbert Harris

Defence Counsel for Margaret Fomba Brima:

Haddijatou Kah-Jallow

Defence Counsel for Neneh Binta Bah Jalloh:

Amadu Koroma

Defence Counsel for Anifa Kamara:

C.A. Osho Williams

Defence Counsel for Ester Kamara:

Glenna Thompson

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

SEIZED of the *Urgent Joint Defence Motion on Stay of the Contempt Proceedings* ("Motion"), filed jointly by the Defence for all the Accused in the case *Prosecutor v. Brima et al.*, Case No. SCSL-04-16 ("AFRC Case") on the 3rd of May, 2005;

NOTING that the Office of the Prosecutor ("Prosecution") filed in the AFRC Case on the 12th of May, 2005 a document bearing document number SCSL-04-16-T-261 and entitled *Prosecution Response to Urgent Joint Defence Motion on Stay of the Contempt Proceedings*, indicating that such document was filed in response to a motion involving the cases *Independent Counsel v. Brima Samura*, Case No. SCSL-05-01, and *Independent Counsel v. Margaret Fomba Brima et al.*, Case No. SCSL-05-02 ("Contempt Proceedings");

NOTING the *Joint Defence Reply to Prosecution Response to Urgent Defence Motion on Stay of the Contempt Proceedings* filed on the 17th of May, 2005;

NOTING the *Order on Filing of Document* issued by Trial Chamber II in the AFRC Case on the 9th of June, 2005;

NOTING the *Order on Filing* issued on the 10th of June, 2005;

HAVING RECEIVED the *Prosecution Response to Urgent Joint Defence Motion on Stay of the Contempt Proceedings* on the 14th of June, 2005;

NOTING the *Order for Severance and Scheduling Order* issued on the 27th of July, 2005;

CONSIDERING that, the Defence for all Accused in the AFRC case jointly submit, *inter alia*, that they possess an independent *locus standi* for the filing and admissibility of the Motion in the Contempt Proceedings in that the interest of all the Accused in the AFRC

¹ See also *Independent Counsel v. Brima Samura*, Case No. SCSL-05-01 and *Independent Counsel v. Margaret Fomba Brima et al.*, Case No. SCSL-2005-02, *Order Assigning Cases to a Trial Chamber*, 2 May 2005.

case are involved and intertwined with the said proceedings and, therefore, seek that the Contempt Proceedings be stayed until other motions pending in the AFRC Case are dealt with and determined;²

CONSIDERING that the Prosecution submit, *inter alia*, that the Defence for the AFRC Case is a third party to the Contempt Proceedings and, therefore, it has no standing to apply for a stay of such proceedings;

CONSIDERING that a stay of proceedings could be ordered when it is in the primary interest of a party of such proceedings as the subsistence and continuation of judicial proceedings would ensure the judicial protection of an accused’s rights and legal guarantees;³

NOTING that during the hearing held on the 4th of May, 2005, I have already made clear my intention of not granting any staying of the Contempt Proceedings.⁴

NOTING that Decisions were recently rendered by both Trial Chamber II and the Appeals Chamber on the pending motions and the appeals referred to by the Defence in support of the Motion,⁵ and that all these Decisions reiterate and confirm the position that

² In particular, the Defence further preliminarily submit that both the suspension of a Defence Investigator, namely Brima Samura, and the exclusion from the court proceedings of the wives of the Accused, namely Margaret Fomba Brima, Neneh Binta Bah Jallow and Anifa Kamara following an interim order by Trial Chamber II issued on the 10th of March, 2005 directly affects the right of the Accused in the AFRC case and warrant their standings in the Contempt Proceedings. see Motion, paras 4-10 and 23-28.

³ See also *Prosecutor v. Foday Sankoh*, Case No. SCSL-03-02-PT, Ruling on the Motion-for a Stay Proceedings Filed by the Applicant, 22 July 2003.

⁴ *Independent Counsel v. Brima Samura*, Case No. SCSL-05-01 and *Independent Counsel v. Margaret Fomba Brima et al.*, Case No. SCSL-2005-02, Transcripts, 4 May 2005, p. 33, at lines 18-24.

⁵ *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Decision on Joint Defence Application for Leave to Appeal against the Ruling of Trial Chamber II of 5 April 2005, 15 June 2005; *Id.*, Decision on Confidential Defence Request for Disclosure of Independent Investigator’s Report on Contempt of Court Proceedings and Request for Stay of Proceedings, 30 June 2005; *Id.*, Case No. SCSL-04-16-AR77, Decision on Defence Appeal Motion pursuant to Rule 77(J) on Both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005; and *Id.*, Decision on Joint Defence Appeal Against the Decision on the Report of the Independent Counsel Pursuant to Rule 77(C)(iii) and 77(D), 17 August 2005. No stay of the AFRC proceedings, it has to be noted, has been previously ordered by either Trial Chamber II or the Appeals Chamber for any of these pending motions and appeals.

the present Contempt Proceedings have no bearing on the AFRC Case nor on any of the Accused therein;⁶

CONSIDERING that a professional or personal nexus between the Accused in the AFRC Case and all the alleged contemnors in these Contempt Proceedings in not of itself a sufficient basis to characterize these proceedings as being part of the proceedings in the AFRC Case;

CONSIDERING that a fair and expeditious determination of the contempt matters primarily requires avoiding any undue delay and, consequently, that the Contempt Proceedings in the interest of justice shall be proceeded with in the paramount interest of the alleged contemnors;

PURSUANT to Rules 2, 73, 74 and 77 of the Rules;

I FIND as follows:

- 1. that the Contempt Proceedings constitutes Proceedings that are distinct and different from the proceedings in the AFRC Case; and
- 2. that the Defence for the Accused in the AFRC Case does not possess the necessary *locus standi* to file the Motion;

and, accordingly,

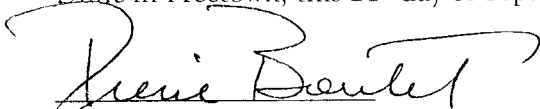
⁶ See *Id.*, Case No. SCSL-04-16-T, Decision on Joint Defence Application for Leave to Appeal against the Ruling of Trial Chamber II of 5 April 2005, 15 June 2005, para. 16, in these terms:

“We re-state our view that the possible contempt proceedings have no bearing on this trial. None of the accused has been the subject of investigation for alleged contempt.”

See also *Id.*, Case No. SCSL-04-16-AR77, Decision on Defence Appeal Motion pursuant to Rule 77(j) on Both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005, para. 33.

I DISMISS the Motion on these preliminary grounds.

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


Hon. Justice Pierre Boutet

