

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-14-PT
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

7 NOVEMBER 2004

Before the Judges:

Bankole Thompson (Presiding)
Benjamin Mutanga Itoe
Pierre Boutet

For the Registry:

Ms. Maureen Edmonds

For the Prosecution:

Mr. Luc Côte
Mr. Charles Caruso

For the Accused Sam Hinga Norman:

Mr. Timothy Owen
Ms. Quincy Whitaker

For the Accused Moinina Fofana:

Mr. James Oury
Mr. Stephen Powles
Mr. Nicol-Wilson

For the Accused Allieu Kondewa:

(Absent)

1 MR. PRESIDENT: Representation, please.

2 MS. WHITAKER: Good morning, your Honours. My name's Quincy Whitaker. I appear with *(inaudible)* Tim
3 Owen, *(inaudible)* for Mr. Norman.

4 MR. OURY: I'm with my friends on behalf of Mr. Kallon, Mr. Nicol-Wilson and Mr. Powles.

5 MR. COTE: On the prosecution side, my name is Luc Cote; and I'm with Mr. Charles Caruso.

6 MR. PRESIDENT: Counsel, we would, if you so desire, wish that you can make any statements you wish to
7 make in addition to your written submissions; that is, if it is your will. Otherwise, we have these
8 motions before us and it would seem to me that we need to give you the opportunity to make any
9 statements in addition to your written submissions - probably short statements, but if you don't want to
10 exercise the privilege, that is fine. Do you intend to do that, defence?

11 MS. WHITAKER: No, your Honour, thank you.

12 MR. PRESIDENT: Prosecution?

13 MR. COTE: No statement.

14 MR. PRESIDENT: Learned counsel, I wish to make a brief statement. We judges of the Trial Chamber had
15 been looking forward with great expectation to this opportunity so as to listen attentively and be
16 guided by your learned and creative arguments on the issues raised in the two motions of which we
17 are still technically seized, but the substantive deliberations of which we have been, as it were,
18 judicially jettisoned. As our anticipation intensified daily, last Wednesday evening dampened both our
19 anticipation and enthusiasm for this session when we were handed copies of a decision of the
20 Appeals Chamber on that day disposing of the same issues which were before our Chamber. In
21 effect, we were given a *judicial fait accompli*. A passage found at paragraph 3 of the said decision
22 delivered by Justice Robertson, Presiding Judge, corroborates my evaluation of the situation as a
23 *judicial fait accompli*. It reads, and I quote:

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25 "In view of the course we adopt, applications made in the Trial Chamber raising issues as to
26 the lawfulness of Rules 72 and 73 will serve no useful purpose."

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28 Let me emphasise that since we as judges subscribe to and practise the doctrine of judicial collegiality
29 and we uphold the principle of judicial hierarchy, we find ourselves in a position where we are bound
30 by the authoritative pronouncements of a higher tribunal of appellate jurisdiction. As I am sure you
31 will appreciate, an emanation of our cherished and long-revered doctrine of *stari decisis*, except if we
32 can distinguish such rulings or restrict their scope.

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34 Having therefore been dispossessed or deprived of jurisdiction to pronounce on these issues, and
35 since, I believe you will appreciate, we cannot act in vein, we here express our profound gratitude to
36 you for contributing so richly and creatively to the evolving jurisprudence of the Special Court.

37 We hope that we will in due course have the opportunity of benefiting from your professional learning

1 and expertise in the law. In the light of what I have already stated, we hereby dismiss all the motions.
2 I believe my learned brothers also wish to make brief statements.

3 JUDGE BOUTET: I would like to thank my brother and colleague Judge Bankole Thomson, Presiding Judge
4 of the Trial Chamber, for allowing me to make a brief statement this morning about this very important
5 and serious matter. I would also like to thank him for the statement that he just delivered on behalf of
6 the Trial Chamber as a whole.

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8 I would like to let the record show that I wholeheartedly and entirely subscribe to his statement and
9 I would also like to make the following observations with respect to the decision rendered by the
10 Appeals Chamber on Wednesday, 5 November 2003.

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12 In the said decision the Appeals Chamber did make reference to discussions that had taken place
13 during the plenary session in August in London where, and I quote:

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15 "At this meeting the judges unanimously decided to amend Rule 72 by removing the
16 discretion to refer preliminary motions once the Trial Chamber had determined that they
17 raised a serious issue relating to jurisdiction."

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19 Although, as the record would show, I did support that some amendments be made to Rule 72 to
20 clarify the language of that rule, I did not support the amendment introduced at that time when such
21 amendments were effectively removing the discretion that the Trial Chamber had to make a
22 determination upon the matter with which it was seized; namely, preliminary motions that did raise a
23 serious issue relating to jurisdiction. Therefore, for the record, I would like the comment at page 7 of
24 the decision by the Appeals Chamber to be described as inaccurate in that it purports to indicate
25 unanimity, when it was majority.

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27 Further, at the special plenary meeting held in Freetown on the evening of Thursday, 31 October
28 2003, I clearly indicated and asked that the record was to show that although I proposed amendments
29 that would allow the Appeals Chamber to sit with a quorum of less than five judges, I then reiterated
30 my strong objection to the amendment that had modified Rule 72 to remove the jurisdiction of the Trial
31 Chamber to dispose of the merit of the very motions that were consequently removing the right of
32 appeal from such decision. Thank you, Mr. Presiding Judge.

33 MR. PRESIDENT: Thank you.

34 JUDGE ITOE: I would like, in the strictest of our legal traditions and practices, to say that I concur with the
35 decision pronounced by the Presiding Judge and associate myself with the sentiments expressed in
36 the statements which preceded it as well as the statement which has been read by my learned
37 brother, Judge Boutet.

1 MS. WHITAKER: Can I say behalf of Chief Norman, we are profoundly grateful for the sentiments that have
2 been expressed by the Chamber today and that we share your Honours' disappointment that you
3 were dispossessed of this important issue and we would have welcomed your wisdom and learning
4 on this issue.

5 MR. PRESIDENT: We thank you.

6 SPEAKER: Your Honour, I join my learned friend on behalf of Mr. Kallon, to thank you for this opportunity.
7 We share the disappointment and we look forward very much to appearing before you in the future.
8 Thank you.

9 MR. PRESIDENT: Much appreciated.

10 MR. COTE: And on this particular issue I share completely what was said by both defence attorneys in this
11 case.

12 MR. PRESIDENT: It is appreciated. This court is adjourned sine die.

13 [Whereupon the Appeals Chamber adjourned *sine die*]

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