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SCSL-11-02-T  
(242-246)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

**Before:** Justice Teresa Doherty, Presiding Judge  
Single Judge, Trial Chamber II

**Registrar:** Ms. Binta Mansaray

**Case No:** SCSL-11-02-T

**Date filed:** 18<sup>th</sup> July 2012

THE INDEPENDENT COUNSEL

v.

Hassan Papa Bangura  
Samuel Kargbo  
Santigie Borbor Kanu  
Brima Bazzy Kamara

SPECIAL COURT FOR SIERRA LEONE	
<b>RECEIVED</b>	
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THE HAGUE	
18 JUL 2012	
NAME	SAMUEL J. FORNAH
SIGNATURE	<i>[Signature]</i>
TIME	16:50

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MOTION FOR JUDGEMENT OF ACQUITTAL FOR HASSAN PAPA BANGURA

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**Independent Prosecutor**  
Mr. Robert L. Herbst

**Counsel for Bangura:**  
Mr. Melron Nicol-Wilson

**Counsel for Kargbo:**  
Charles A. Taku

**Counsel for Kanu:**  
Mr. Kevin Metzger

**Counsel for Kamara:**  
Mr. A.F. Serry-Kamal

## I. INTRODUCTION

1. The Defence for Hassan Papa Bangura files this Motion pursuant to the Ruling of Justice Doherty, pronounced on the 4<sup>th</sup> July, 2012 regarding the filing of Motions for Judgment of Acquittal in accordance with the provisions of Rule 98 of the Rules of Procedures and Evidence of the Special Court.<sup>1</sup>
2. Mr. Bangura was indicted by the Special Court for Sierra Leone on two counts pursuant to an order in lieu of indictment:<sup>2</sup>
  - a. **Count 1:** Knowingly and willfully interfering with the Special Court's Administration of Justice by offering a bribe to a witness who has given testimony before a Chamber, in violation of Rule 77 (A) (iv).
  - b. **Count 2:** Knowingly and willfully interfering with the Special Court's Administration of Justice by otherwise interfering with a witness who had given testimony before a chamber in violation of Rule 77 (A) (iv).

## II. APPLICABLE LAW

3. Rule 98 of the Rules of Procedures and Evidence of the Special Court for Sierra Leone states as follows:

**“if after the close of the case for the prosecution, there is no evidence capable of supporting a conviction on one or more counts of the indictment, the Trial Chamber shall, by oral decision and after hearing the oral submission so the parties, enter a judgment of acquittal on those counts.”**

4. The Special Court for Sierra Leone, in the case of **The Prosecutor v. Norman et al.**,<sup>3</sup> referred to the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (ICTY) which state that “the Trial Chamber should order the entry of judgment of acquittal, if it finds that the evidence is insufficient to sustain a conviction on that or those charges.”<sup>4</sup> The Special Court Trial Chamber held that “insufficiency of evidence to sustain a conviction as

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<sup>1</sup> The Rules of Procedure and Evidence of the Special Court for Sierra Leone as amended on the 14<sup>th</sup> of May 2005 and 13<sup>th</sup> May 2006.

<sup>2</sup> Prosecutor v. Brima et al, SCSL-04-16-es, appended to Decision on the Report of The Independent Counsel, 24 May 2011.

<sup>3</sup> The Prosecutor v. Sam Hinga Norman, Monina Fofana nad Allieu Kondewa, SCSL-04-14, Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, 21 October 2005.

<sup>4</sup> Ibid.,para.47 (citing Rule 98bis of the ICTY Rules adopted on 19 November 1994)

provider for in the ICTY Rules is not different from there being ‘no evidence capable of supporting a conviction’ as provided for in the Rules of the Special Court for Sierra Leone”.<sup>5</sup>

5. The Honorable Judge Bankole Thompson in the above case held: “Insufficiency of evidence to sustain a conviction prescribed by Rule 98bis of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (ICTR) and that of Special Court for Sierra Leone ‘no evidence capable of supporting the conviction’ are not different in the context.”<sup>6</sup>
6. The Defence for Hassan Papa Bangura shall therefore make reference to the case law of the ICTY and ICTR in support of this Motion.
7. The Trial Chamber of the ICTY held in the case of the Prosecutor v. Slobodan Milosevic (“Milosevic”), that the degree of proof necessary in a Rule 98bis Motion is whether the evidence is insufficient to sustain a conviction and “whether there is evidence (if accepted) upon which a tribunal of fact could be satisfied beyond a reasonable doubt of the guilt of the Accused on the particular charge in question...”. Thus the test is not whether the trier of fact would in fact arrive at a conviction beyond a reasonable doubt on the Prosecution evidence if accepted, but whether it could; or to put it as the Appeals Chamber later did, in the same case, a Trial Chamber should only uphold a Rule 98bis Motion if it is “entitled to conclude that no reasonable trier of fact could find the evidence sufficient to sustain a conviction beyond reasonable doubt”.<sup>7</sup>
8. The Defence for Hassan Papa Bangura submits that the evidence must be such that a reasonable Trier of fact could convict, not that it would or should convict.
9. The attention of the Trial Chamber is also drawn to the case of The Prosecutor v. Bagosora et al., where it was emphasized that:

***“in determining whether there is such evidence, the Trial Chamber must assess whether the Prosecution evidence is actually probative of the elements of crimes charged in the indictment”.***<sup>8</sup>

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<sup>5</sup> Ibid para 47

<sup>6</sup> Ibid., supra note 3, Separate and Concurring Opinion by Judge Bankole Thompson, para 11.

<sup>7</sup> The Prosecutor v. Slobodan Milosevic, ICTY, No. IT-02-54-T, Decision on Motion for Judgment of Acquittal, 16 June 2004, para 9. (See also, The Prosecutor v. Jelusic, ICTY, No. IT-96-21-A, Judgment, 5 July 2001, para. 37 and The Prosecutor v. Delalic et al., ICTY, No. IT-96-21-T, Judgment, 20 February 2001, para. 434).

<sup>8</sup> The Prosecutor v. Bagosora et al. ICTR, No. ICTR-98-41-T, Decision on Motions on Judgment of Acquittal, 2 February 2005, para. 10.

### **III. PROSECUTION'S CASE**

#### **EVIDENCE OUTSIDE TIME FRAME**

10. The Defence for Hassan Papa Bangura submits that the temporary jurisdiction of the order in lieu of indictment under which the Accused is charged is 27<sup>th</sup> November to 16<sup>th</sup> December, 2010. It is therefore submitted that any evidence led by the Prosecution outside this timeframe should not be considered by the Trial Chamber.<sup>9</sup>
11. The Defence in accordance with the above mentioned wish to draw the attention of the Trial Chamber that during the examination-in-chief of the Witness Alimamy Bobson Sesay, the Prosecution led evidence of events which allegedly took place after the 16<sup>th</sup> December, 2010.

#### **PROSECUTION WITNESSES**

12. The Prosecution summoned and examined five witnesses to prove its case against the Accused Hassan Papa Bangura.

#### **ANDREW DANIELS**

13. Andrew Daniels' testimony before the Court as well as his cross examination and re-examination did not in any way manner or form mention the name of the Accused in relation to any transaction or discussion.
14. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts Hassan Papa Bangura was adduced during the testimony of Andrew Daniels.

#### **HILLARY SENGABO**

15. Hillary Sengabo's testimony before the Court as well as his cross examination and re-examination did not in any way; manner or form mention the name of the Accused in relation to any transaction or discussion.
16. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts against Hassan Papa Bangura was adduced during the testimony of Hillary Sengabo.

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<sup>9</sup> See Transcript of 27<sup>th</sup> July, 2012, pg 606, line 7-12 in which Counsel for Hassan Papa Bangura drew the attention of the Court to evidence led by the Prosecution outside the relevant time frame.

17. Hillary Sengabo under cross-examination by Defence Counsel for Hassan Papa Bangura stated that the detention facility at Mpanga Prison during the relevant timeframe did not have in place a system for voice recording during telephone conversations.
18. The Defence therefore submits that Mr. Sengabo is therefore not in the position to say what was discussed between the Special Court's Prisoners at Mpanga Prison and Mr. Hassan Papa Bangura.

**ALIMAMY BOBSON SESAY**

19. Mr. Sesay accepted the following during cross examinations by the Defence Counsel for Hassan Papa Bangura
  - a. That Mr. Bangura did not promise to personally give him money in return for him to recant his testimony.<sup>10</sup>
  - b. That Mr. Bangura did not give him any money in return for him recanting his testimony.
  - c. That he was not a protected witness at the time he was asked by Sammy Ragga to recant his testimony and that he was on his own.
20. The Defence also submits that there is an inconsistency between the out-of-court statement by Mr. Sesay in relation to an alleged conversation with Mr. Hassan Papa Bangura and his testimony in Court.<sup>11</sup> This inconsistency creates a doubt and does not in any way provide evidence capable of supporting the conviction on any of the counts on which Mr. Bangura is charged.
21. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts against Hassan Papa Bangura was adduced during the testimony of Mr. Alimamy Bobson Sesay.

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<sup>10</sup> Transcript of 26<sup>th</sup> June, 2012 pg 556, lines 8-11

<sup>11</sup> Ibid pg 561, line 2-29

**SAMUEL KARGBO A.K.A SAMMY RAGGA**

22. Mr. Kargbo is a Co-Accused of Mr. Hassan Papa Bangura who in addition to pleading guilty to the Counts in the order in lieu of indictment has also signed a confidential pleads bargaining agreement with the Independent Counsel.
23. In accordance with the aforementioned agreement, Mr. Kargbo agreed to cooperate with the Independent Counsel and to appear as a witness in return for a recommendation from the Independent Counsel on leniency by the Trial Chamber in sentencing him.
24. Mr. Kargbo accepted the following during his testimony and cross-examination in Court:
  - a. That no one told him to tell Alimamy Bobson Sesay to tell a lie by means of recanting his testimony.
  - b. That he cannot remember what Mr. Hassan Papa Bangura said to 334 at Sweissy after they had the meeting with Lawyer Mansaray at his Chambers.
  - c. That he did not hear what Hassan Papa Bangura said to Alimamy Bobson Sesay while he was speaking to Alimamy Bobson Sesay using his own mobile phone.<sup>12</sup>
  - d. That Hassan Papa Bangura did not offer a bribe to Alimamy Bobson Sesay.<sup>13</sup>
  - e. That Hassan Papa Bangura did not give a bribe to Alimamy Bobson Sesay.<sup>14</sup>
  - f. The witness under cross-examination by Defence Counsel for Hassan Papa Bangura said that he is unemployed but under cross-examination by Defence Counsel for Santigie Borbor Kanu, the witness said he is a gold dealer.
  - g. The witness under cross-examination by Defence Counsel for Hassan Papa Bangura said he never told the Independent Counsel that he wanted protection<sup>15</sup>. Whereas under cross-examination by Defense Counsel for Brima Bazy Kamara, the witness said he told the Independent Counsel that he needed protection.
  - h. The witness under cross-examination by Defence Counsel for Hassan Papa Bangura also accepted that he is an ex-convict.

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<sup>12</sup> Transcript of 21<sup>st</sup> June, 2012, pg 174, lines 24-29

<sup>13</sup> Ibid., pg 176, lines 4 – 22

<sup>14</sup> Ibid.,

<sup>15</sup> Ibid., pg168, lines 4-19

25. The evidence of this witness is shrouded with a lot of doubt and therefore not capable of supporting any of the Count in the order in lieu or indictment against Mr. Hassan Papa Bangura.
26. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts against Hassan Papa Bangura was adduced during the testimony of Samuel Kargbo.

**JOSEPH SAFFA**

27. Joseph Saffa is a Senior Investigator of the Special Court for Sierra Leone attached to the Office of the Prosecutor. He gave evidence and produced documents in relation to his contacts with witness Alimamy Bobson Sesay during the investigation case leading to the Contempt Proceedings.
28. Under cross-examination by Defence Counsel for Hassan Papa Bangura, Mr. Saffa stated that Alimamy Bobson Sesay never told him nor did he make a statement that Hassan Papa Bangura enquired from him if the sum of Ten Thousand United States Dollars would be sufficient for him to recant his testimony.
29. It is therefore submitted that no evidence capable of supporting a conviction of any of the two counts against Hassan Papa Bangura was adduced during the testimony of Joseph Saffa.

**IV. ARGUMENTS RELATING TO SPECIFIC COUNTS IN THE ORDER IN LIEU OF INDICTMENT**

**COUNT I – Knowingly and willfully interfering with the Special Court Administration of Justice by offering a bribe to a witness who had given testimony before a Chamber.**

30. The Prosecution has failed to produce any evidence that Hassan Papa Bangura offered a bribe to Alimamy Bobson Sesay.

**COUNT II – Knowingly and willfully interfering with the Special Court Administration of Justice by otherwise interfering with a witness who had given testimony before a Chamber.**

31. The Prosecution has failed to produce any evidence that Hassan Papa Bangura knowingly and willfully interfered with Alimamy Bobson Sesay.

**V. APPLICATION**

32. From the foregoing it is submitted that Hassan Papa Bangura should be acquitted of Count I & II in the order in lieu of indictment due to the complete absent of evidence and the lack of sufficient evidence presented by the Prosecution relating to the specified Counts in the indictment as highlighted above.
33. The Defence for Hassan Papa Bangura therefore submits that a Judgment of Acquittal pursuant to Rule 98 of the Rules of Procedures and Evidence of the Special Court.

**Respectfully Submitted By:**



**Melron Nicol-Wilson**  
**Counsel for Hassan Papa Bangura**