051) SCSL-12-02-T (480-535) 480

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before:	Justice Teresa Doherty, Single Judge, Trial Chamber II
Registrar:	Binta Mansaray
Case No.:	SCSL-12-02-T
Date:	Rendered 25 January 2013 Filed 11 February 2013

INDEPENDENT COUNSEL

v.

Prince TAYLOR

PUBLIC

JUDGEMENT IN CONTEMPT PROCEEDINGS

Independent Counsel:
William L. Gardner
Benjamin Klein

Counsel for the Accused:
Rodney Dixon
Claire Carlton-Hanciles
Hassan Sherry

SPECIAL COURT FOR SIERRA LEONE
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I, Justice Teresa Doherty, acting as Single Judge of Trial Chamber II of the Special Court for Sierra Leone ("Special Court");

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rule 77 of the Rules of Procedure and Evidence ("Rules").

RECALLING that on 25 January 2013, I rendered an oral judgement in this matter;

DO HEREBY RENDER the Judgement:

INDICTMENT

1. Prince Taylor ("Taylor" or "the Accused") is charged with:

Count 1: Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 26 and 29 January 2011, in Kailahun Town, Kailahun District, Prince Taylor offered a bribe to Mohamed Kabba, a witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor* in return for recanting his previous testimony in that trial through instructions to Eric Senessie.

Count 2: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 26 and 29 January 2011 and 3 February 2011, in Kailahun Town, Kailahun District, Prince Taylor attempted to influence Mohammed Kabba, a witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, to recant his previous testimony in that trial through instructions to Eric Senessie.

Count 3: Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 3 February 2011, in Kailahun Town, Kailahun District, Prince Taylor offered a bribe and relocation to TFI-274, a witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, in return for recanting his previous testimony in that trial through instructions to Eric Senessie.

Count 4: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 3 February 2011, in Kailahun Town, Kailahun District, Prince Taylor attempted to influence TFI-274, a witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, to recant his previous testimony in that trial through instructions to Eric Senessie.

Count 5: Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 1 February 2011, in Kailahun Town, Kailahun District, Prince Taylor offered a bribe to protected witness TFI-516, a witness who gave testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, in return for recanting his previous testimony in that trial through instructions to Eric Senessie.

Count 6: Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 27 January 2011, in Kailahun Town, Kailahun District, Prince Taylor offered a bribe to protected witness TFI-585, a witness who gave testimony before the Trial Chamber in the proceedings of *Prosecutor v. Taylor*, in return for recanting her previous testimony in that trial directly and through instructions to Eric Senessie.

Count 7: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 27 January 2011, in Kailahun Town, Kailahun District, Prince Taylor attempted to influence protected witness TFI-585, a witness who gave testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, to recant her previous testimony directly and through instructions to Eric Senessie.

Count 8: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 29, 30 and 31 January 2011, in Kailahun Town, Kailahun District, Prince Taylor attempted to influence Aruna Gbonda, a

witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, in return for recanting his previous testimony in that trial through instructions to Eric Senessie.

Count 9: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv), that on or about 26 March 2011 to 6 April 2011, Prince Taylor attempted to influence Eric Senessie, a witness about to give evidence in proceedings before Trial Chamber II, by instructing and otherwise persuading Eric Senessie to give false information to the Independent Counsel appointed by the Registrar on the order of Trial Chamber II.

PROCEDURAL HISTORY and BACKGROUND

2. Following a motion filed by the Prosecutor in the matter of *Prosecutor v. Charles Ghankay Taylor* ("the Charles Taylor Trial"), the Response by the Defence and the Reply, the Trial Chamber issued a direction to the Registrar to appoint an independent investigator into the complaints of five Prosecution witnesses who had given evidence in the Charles Taylor Trial in The Hague ("five complainants"). As a result of that investigation, the Trial Chamber subsequently ruled on 24 May 2011 that an order in lieu of indictment be issued against Eric Koi Senessie ("Senessie") charging him with four counts of knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to four witnesses who had given evidence before the Court on behalf of the Prosecution, and of five counts of knowingly and wilfully interfering with the Special Court's administration of justice by attempting to otherwise interfere with five witnesses who had given evidence before the Court.

3. No order in lieu of indictment was returned against Prince Taylor, although he also had been a subject of the investigation. Senessie was arraigned on 14 June 2011 and entered a plea of not guilty to all counts. His trial proceeded from 8 June to 15 June 2012, and Senessie was found guilty of eight of the nine counts on 21 June 2011.

4. At a sentencing hearing on 4 July 2012, Senessie stated, *inter alia*, that the scheme to have the five witnesses return to The Hague on behalf of the Charles Taylor Defence team to recant

their evidence was instigated by Prince Taylor, who gave instructions and directions to Senessie.[1]

5. On or about August 2012, Independent Counsel applied to a Single Judge of Trial Chamber II for an order that was subsequently issued to the Registrar to conduct further investigations following the statements of Senessie. As a result of those further investigations, supplementary submissions of the independent investigator were filed on 22 August 2012.[2]

6. On 4 October 2012, the Single Judge issued a decision, and an order in lieu of indictment charging Prince Taylor with the nine counts recited above.[3]

7. On 6 October 2012, Prince Taylor ("the Accused"), entered pleas of not guilty on all nine counts.

8. In his pre-trial brief, Independent Counsel stated that he intended to call each of the five persons who complained of interference by Eric Senessie, Eric Senessie himself, and his daughter Jessica Senessie.[4]

9. When the trial opened on 12 January 2013, Independent Counsel stated that the evidence adduced in the Senessie trial of the five complainant witnesses from Kailahun ("Five Complainants"), would be entered by consent, together with the transcripts of the Senessie trial and the deliberation and disposition sections of the ensuing judgment in *Independent Counsel v. Eric Koi Senessie*.

10. Certain facts more particularly referred to hereinafter were admitted by consent. The following sequence of events were admitted or are facts that are not in dispute. These are that i) Eric Koi Senessie met Prince Taylor and Logan Hambrick on an unspecified date in 2006 when Taylor and Hambrick visited the Kailahun area on behalf of the Charles Taylor Defence team with a view to locating potential witnesses; ii) there was no contact between Senessie and the Accused between 2006 and January 2011; iii) In February 2011, the Accused deposited

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[1] *Prosecutor v. Eric* Senessie, SCSL-11-01-T, Transcript 4 July 2012.
[2] SCSL-03-01-T-1321, Confidential – Under Seal Submission of the Supplemental Confidential Report of Independent Counsel, Public with Confidential Annex A, 22 August 2012.
[3] SCSL-12-02-2, Decision on the Confidential – Under Seal Submission of the Supplemental Confidential Report of Independent Counsel,4 October 2012 ("Decision on Supplemental Report").
[4] SCSL-12-02-PT-43, Pretrial Brief of the Independent Counsel, 9 January 2013.

the sum of Le200,000 into the account of Jessica Senessie at the First International Bank (SL), Limited in Kailahun; and iv) that the Accused worked at the Special Court for Sierra Leone as an investigator for the Defence teams of Fofana and of Charles Taylor for a period of seven years, terminating on 30 December 2012.

SUBMISSIONS

Submissions of Independent Counsel

11. Independent Counsel made submissions on the evidence and the law, first addressing the direct evidence that, in his view, "easily" supported findings of guilt beyond a reasonable doubt in respect of each of the nine counts.[5]

12. He submits that the evidence showed, according to Senessie, that the Accused called him (Senessie) and wanted to know if his "brothers" who had given evidence in the Charles Taylor case were still in the Kailahun area. Taylor then asked if Senessie would see if they were willing to go back to The Hague to recant their testimony, because a development had taken place and the Charles Taylor Defence team had plans to re-open the case.[6]

13. Independent Counsel further submits that the Accused made it clear that Senessie should talk to the witnesses to recant their testimony, and the Defence team would help them and relocate them. The Accused phoned a week later, directed Senessie to prepare a document as a guarantee "which he wrote" and read over to the Accused who "gave him the go-ahead to take it to them to sign."

14. The Accused told Senessie, "You have some money. This money is $500. I am sending you Le200,000 now." The Accused asked for a bank account, and the money was wired to Jessica Senessie's account and received the following day. Counsel refers to what transpired thereafter as, the "manipulation stage", where the Accused informed Senessie of the appointment of an independent investigator and told him not to speak to anyone without a lawyer.[7]

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[5] Transcript 17 January 2013, pp 489-490.
[6] Transcript 17 January 2013, pp 489-490.
[7] Transcript 17 January 2013, p. 491.

15. In the weeks following the Accused called Senessie again, telling him not to talk to anyone until "we get our own lawyer."[8] When Senessie informed Taylor of the Independent Investigator's arrival, the Accused advised him not to talk to the Independent Investigator and "not to rely on that Principal Defender".[9]

16. Independent Counsel then outlined Senessie's evidence, including calls from the Accused, his visits to the Accused, what the Accused had advised him about, interviews with the Independent Counsel, and that, as a result, Senessie did not tell the Independent Counsel the truth because of Taylor's directive.[10] This, Counsel submits, is "a crisp, clear, unequivocal, uncontradicted package."[11]

17. Counsel further submits that during this "manipulation period" the Accused made additional payments to Senessie, including: i) Le30,000 when Senessie went to Bo; Le50,000 for transport to bring the so-called sack letter to Freetown; Le50,000 when Senessie went to the first day of trial by way of Le20,000 in cash and Le30,000 in what he described as "the infamous cheque"; Le10,000 of payment from the defendant's father; Le50,000 payment to Senessie's girlfriend in Bo in October 2011; and drinks and cake. Counsel states that this constitutes evidence of manipulation and control.[12]

18. Counsel refers to Senessie and the Accused's first meeting in 2006, "[a]nd all of a sudden, they are best friends and Prince [Taylor] is bringing him to Bo and giving him this money. He wants to keep him on a short leash." Counsel further submits that the Accused advised Senessie to plead not guilty in his trial for contempt of Court. Counsel submits that the totality of the trial evidence, and particularly the evidence of TFI-585, the Court's finding that a phone call was made to the Accused by Senessie, and that TFI-585 spoke to the Accused, who confirmed that he had sent Senessie and what they were doing was "out of the law", are indicative of guilt on the counts relating to the five complainants.[13]

19. Counsel reviewed the cross-examination of Senessie and submitted that there was "endless quibbling and very little impeachment, and what there was, was on very collateral matters, not

[8] Transcript 17 January 2013, p 491.
[9] Transcript 17 January 2013, pp 490-492.
[10] Transcript 17 January 2013, p. 492.
[11] Transcript 17 January 2013, p.492.
[12] Transcript 17 January 2013, p.493.
[13] Transcript 17 January 2013, p. 495.

on the main event."[14] Counsel points particularly to a question posed to Senessie by Defence Counsel, who asked Senessie why he did not tell the Court that he was not the chairman of the RUFP at the time of the sentencing hearing, when in fact he had already been deposed, and why did he not tell everything that was subsequently said in this trial at his sentencing hearing? Senessie explained that it was because he was "brief".[15] This, Independent Counsel submits, is unrealistic, as Senessie had only then decided to tell the truth.

20. Other cross-examination, Independent Counsel submits, were on the "invitation documents",[16] which were made at the request of the Accused. Senessie did not mention the $500 in his affidavit supporting the motion for review to the Appeals Chamber, which Senessie said he was legally advised not to do. A payment of Le20,000 was not mentioned because Senessie said he forgot.[17] The other six sums of money that were not disclosed were for transport, which Counsel submits, are "affirmative evidence of the manipulation and control by the Accused".[18]

21. With regards to the lengthy cross-examination on Lawyer X's statement, Counsel submits that when compared to Senessie's evidence, they "are not that far apart". The cross-examination was "not directly relevant to the credibility of his (*viz* Senessie's) core testimony.[19]

22. Further, Lawyer X knew two things when he was instructed prior to his travel – that he had a "strong relationship" with Prince Taylor and he knew the case because the Principal Defender had sent him the documents before he came.[20] Whilst Lawyer X may not have felt that he pressured Mr Senessie, Senessie felt he was pressured.[21]

23. On reviewing the statement and accompanying documentation of Lawyer X, Counsel submits that Lawyer X owed a duty to Senessie, his client, who is not a sophisticated man, but one in

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[14] Transcript 17 January 2013, p.497.
[15] Transcript 17 January 2013, pp 497-498.
[16] Exhibits J7, J8, and J9.
[17] Transcript 17 January 2013, p. 499.
[18] Transcript 17 January 2013, p. 500.
[19] Transcript 17 January 2013, p.500.
[20] Transcript 17 January 2013, pp 500-501, 502.
[21] Transcript 17 January 2013, p.504.

trouble who had little education and no legal experience. Furthermore, the document referred to as an endorsement, which Senessie signed, did not help his client.[22]

24. Counsel further submits that Lawyer X's itemised extracts from his notes show Senessie saying he will not testify against the Accused and this indicates he was under the influence of the Accused. It does not indicate that Senessie was interested in plea bargaining. Counsel submits that both Lawyer X's paragraph relating to the final lines of the endorsement and the cross-examination show that Senessie was "undoubtedly confused".[23] Senessie said he was baffled he knows Lawyer X as the Accused's "good buddy". Where therefore are the duties that a lawyer owes the client. Counsel referred to the reticence of Lawyer X to communicate with him (Independent Counsel), after Senessie had waived lawyer/client privilege under Rule 97 and agreed that Lawyer X could communicate with Independent Counsel concerning this case.[24]

25. He further submitted that the record shows the five complainants did not contact Senessie on their own initiative, but because the Accused called Senessie to contact them with a view to recanting their evidence, and "[t]his is the most logical and credible explanation there is for what happened in this case."[25]

26. Regarding matters put to Senessie in cross-examination, but without corroborating evidence, Counsel points to the "story" that Senessie conspired with Morris Kallon to "sell witnesses to Charles Taylor to get money to run a political campaign".[26] That the Accused did not appear as a Defence witness in the Senessie trial was accounted for in cross-examination because the Accused "could not come because his statement was not true". He points also to other propositions put to Senessie in cross-examination, including the reason for the payment of the Le200,000.[27]

27. Independent Counsel submits that, "there are several theories of liability" under which the defendant can be convicted. First, the Accused could be liable for the commission of the contempt crime, either as an individual, jointly with another, or through another person such as in joint criminal enterprise. This applies to Count 9 of the indictment which, he submits,

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[22] Transcript 17 January 2013, p.506.
[23] Transcript 17 January 2013, p.507.
[24] Transcript 17 January 2013, pp 509-510.
[25] Transcript 17 January 2013, p.511.
[26] Transcript 17 January 2013, p. 511.
[27] See Exhibit P1, Transcript 17 January 2013, p. 511.

holds the Accused responsible for directing influencing or attempting to influence Senessie, a witness about to give evidence before the Trial Chamber.

28. Second, the Accused could be convicted under counts 1 to 8 as a principal co-perpetrator of the contempt counts and as an accessory. There are at least four forms of accessory liability: aiding and abetting, soliciting, instigating, and ordering. He refers to the Trial Judgment in the case of the *Prosecutor v. Charles Ghankay Taylor*, a finding that these forms of accessory liability are part of customary international law, and refers to three aspects of aiding and abetting: (i) that the Accused provided practical assistance, encouragement, or moral support for the perpetration of the crime; ii) that such practical assistance, encouragement, or moral support had a substantial effect; and iii) that the *mens rea* of such lending of practical assistance, *et cetera*, does not require the intent to commit the crime or the underlying offence. The Accused must have knowledge that his act or his omission assisted the perpetrator.[28]

Submissions of Defence Counsel

29. Defence Counsel submits that the Independent Counsel bears the burden to prove that the Accused is guilty beyond reasonable doubt; that is, that the Accused instructed Senessie to go and bribe and interfere with witnesses. He notes that Independent Counsel relies upon a single witness, and none of the five witnesses who were involved in the earlier case say that the Accused was ever in Kailahun dealing with them.

30. Counsel further submits that the Court must approach this matter from "[t]he point of view of Senessie being a proven liar" "who misled the [Court] the first time around".[29] As Senessie is a proven liar, the Court must consider whether or not he could be telling the truth in the instant case. Evidence on balance is not enough. Senessie is an incredible witness whose evidence cannot be the basis for a conviction. Counsel continued that the entire testimony "falls flat" and that this is not a question of being able to "cherry pick here or there" –

[28] Transcript 17 January 2013, pp 495-497.
[29] Transcript 18 January 2013, pp 523-524.

Senessie's testimony "stands or falls as a whole when it is so riddled with lies, a morass". It is not a question of a mistake or a recollection over the years.[30]

31. Counsel then refers to series of answers given by Senessie in cross-examination to submit that Senessie is a proven liar who gets himself "deeper and deeper into it," twisting to give reasons to justify his lies "like a snake on a stick".[31] By way of illustration, Counsel refers to specific issues put in cross-examination.

32. He first submits that Senessie did not mention in his *allocutus*, or in his application to the Appeals Chamber for review, "about being paid $500"; that he had been given a cheque in the sum of Le30,000 by the Accused and that he stated that he told the Independent Counsel "not to record that, because I didn't have the cheque with me". Counsel argues that this evidence cannot be used to support the Prosecution submission that the Accused "locked down", or controlled, Senessie by way of payment.[32]

33. The fact that there is no reference or statement in the record of interview between Independent Counsel and Senessie concerning the cheque for Le30,000; nor of Senessie's statement that matters relating to the cheque should not be written down by Independent Counsel, Counsel submits, is not a peripheral matter. Senessie would like to try and show that he had always mentioned the cheque, which is not the action of an open and honest person, therefore, Senessie's evidence falls flat on account of that lie in and of itself.[33]

34. Senessie's evidence of a continual pulling or control by Taylor so that Senessie was "like a sheep"; that he did not know that he was committing a crime when approaching the witnesses and his explanation that he was also following his lawyer Mr. Lansana unquestioningly are improbable, illogical and show that Senessie was "hedging his bets".[34]

35. Counsel addressed at length, the conflict between Defence witness Lawyer X's statement and Senessie's evidence concerning that interview:

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[30] Transcript 18 January 2013, pp 525-528.
[31] Transcript 18 January 2013, pp 525-526.
[32] Transcript 18 January 2013, pp 526-527.
[33] Transcript 18 January 2013, pp 532-535.
[34] Transcript 18 January 2013, pp 537-538.

i) the wording of the last part of the endorsement drafted by Lawyer X shows that Senessie wanted "to keep that option open" and it is "simply lying" to say that it was to enable him to "rush back to" Prince Taylor.[35]

ii) Exhibit D5, the statement by Lawyer X, is "totally open and transparent" and the contradictions between it and Senessie's evidence, in particular his portrayal of himself as a person who does not know the law, is "a very blatant and sly way of trying to cover up what he knows is a lie".[36]

iii) Lawyer X's potential conflict because of his prior associations with the Accused was made clear to Senessie;

iv) Senessie said the endorsement was signed under duress, whilst Lawyer X said it was explained and voluntarily signed;[37]

v) on the handling of the offer by Independent Counsel to "plea bargain", which Counsel submitted caused Senessie in his cross-examination to act like "a rabbit in the headlight" at that moment, was an indication of a man who is lying;[38]

vi) the contradiction on the reason for Lawyer X's withdrawal – Senessie said it was because he was busy, whilst Lawyer X said it was because of a conflict of interest;[39]

vii) whether David Bentley was a QC, a Queen's Counsel and whether Lawyer X had said this to Senessie.[40]

36. The evidence as to whether the amendment to the endorsement was Senessie's wording or not; the contradictions as to whether he was advised to plead guilty or not; these are all matters that were put in Counsel's submissions as showing unreliability, lying, or

[35] Transcript 18 January 2013, p. 540.
[36] Transcript 18 January 2013, p. 542.
[37] Transcript 18 January 2013, p. 545.
[38] Transcript 18 January 2013, p. 548.
[39] Transcript 18 January 2013, pp 549-550.
[40] Transcript 18 January 2013, pp 550-551.

contradiction. There can be no basis, Counsel submits, for saying Lawyer X was not a credible and reliable witness. His evidence was admitted by consent.[41]

37. Counsel further submitted to Senessie in cross-examination that how Mr. Lansana was appointed as his Counsel "cannot be true";[42] whether Lawyer X was sacked or withdrew; and whether the sacking was concocted by Senessie, which he is using to blame the Accused.[43]

38. Counsel next submitted that Senessie's explanation for the differences in statements made to Independent Counsel, which were not made at the sentencing hearing or the review application, contained contradictions. Examples given included the preparation of documents for the witnesses to sign; whether witness TFI-274 prepared the documents; what the witnesses said about returning to The Hague; and who Senessie spoke to first, was it Kabbah or TFI-585? He also submitted there were other contradictions; that Senessie did not mention a promised payment of $500 or any of the other payments he subsequently received and did not refer to it in his statement of evidence. Senessie's evidence that he did not know the cheque was unsigned, Counsel submits, cannot be true. Counsel submits that the differences in Senessie's evidence about the witnesses' actions is different to that in his prior statement and to the interview he gave to defending Counsel.[44]

39. Counsel further submits that Independent Counsel's submissions concerning the evidence of TFI-585 are inaccurate. He stresses that the adjudicated facts in the judgement of TFI-585's evidence and the evidence of other witnesses are insufficient to "even remotely" provide a sufficient basis for a finding of guilt.[45]

40. Counsel submitted at length on the jurisprudence of the international tribunals regarding the weight and probative value of evidence that has emanated from witnesses who are not reliable or who have given contradictory evidence in other circumstances and cited several precedents in support.

41. He submitted, firstly, that the Accused is entitled to the right of the presumption of innocence and to have the right to remain silent and not to have any negative inference

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[41] Transcript 18 January 2013, p. 554.
[42] Transcript 18 January 2013, p. 587.
[43] Transcript 18 January 2013, p. 551.
[44] Transcript 18 January 2013, pp 555-569.
[45] Transcript 18 January 2013, p. 577.

drawn from his choice. To exercise this right is undisputed. Secondly, no adverse inference can be drawn from the fact that evidence was not given by the Accused in rebuttal. Thirdly, no accused can be compelled to testify against himself; and that in the present case the Accused chose not to testify, and no adverse evidence can be drawn.

42. He further submits that the approach of the Courts to single witnesses, especially single witnesses who have been found to be dishonest, has "[i]nstilled in the Chambers or a Judge a distrust in the credibility of such witnesses. These matters are always fact sensitive, but a Chamber should not act on the evidence such as of a witness alone". He submits that the individual aspects of evidence cannot be separated out, and the combined effect of all the evidence is to raise doubts about the general credibility of a witness. In the instant case, Counsel submits that Sesay is "a proven liar" and without independent corroboration the testimony must fall.[46]

43. In relation to the character evidence on behalf of the Accused,[47] he submits that they can be used to weigh whether the Accused is a person whose character could be totally relied upon, a man of integrity, or as Independent Counsel stated, "a dishonest man who has manipulated".[48] In relation to the Accused's nonappearance at Senessie's trial, he submits that it is on record that Defence Counsel had said the Accused was not needed. There is no other evidence, so no adverse inference can be drawn, nor can it be implied that Senessie is truthful.[49]

EVIDENCE PRESENTED

Senessie Trial

Evidence admitted from the trial of *Independent Counsel v. Senessie*

44. Evidence was admitted by consent from *Independent Counsel v. Eric Koi Senessie*. In that trial, regarding a conversation with Senessie, TFI-585 stated:

[46] Transcript 18 January 2013, pp 577-580.
[47] See Evidence D6, D7, and D8.
[48] Transcript 18 January 2013, pp 582-586.
[49] Transcript 18 January 2013, pp 589-592.

1) "I said, who sent you? Then he read the entire letter to me, and he said somebody from the Defence had send him. I said who was that person? And he called out the person's name to me." "[Senessie] said he had been sent by Prince Taylor."[50]; and

2) "[Senessie] called [by telephone] the man in my veranda. When he and the man spoke, he told the man that he was with me at my house. Then he gave me the phone. Then I heard a voice. He said oh, he had sent Eric Senessie to me. He said yes. What did you send him for? And he said all that he had told me is true; he sent him. And the other word that he said was - is that it was like they were not supposed to do what they were doing presently. He said it was out of the law, but that they just had to do it. He said he just had to do it because the way this thing has happened, they just had to do it. Then we spoke and I asked him for his number and he said no, I should give him my own number. So I called out my number to him. Then he said he will call me later. Since then I have never heard his voice and got no call from him" "I spoke with him that day. Since then we never spoke.";[51] and

3) in cross examination, when asked if Senessie gave her Prince Taylor's number, TFI-585 answered "[Senessie] did not give [Taylor's phone number] to me at all. He said, the man is a security person and they do not have any single number.";[52] and

4) further in cross examination, "It was Eric Senessie who made the call. He said, Prince, and he gave me the phone. It was then that I spoke with Taylor.";[53] and

5) "It was only when he called and then I answered yes [...] that was the first day I spoke to Prince.";[54] and

6) in a reply to a question that Prince Taylor was not happy to talk, she replied "He was happy. What he told me was that what he was doing - he said what he was doing - or what they was doing, they had no right to do what they was doing. They was not to do it, but they just had to do it. That was the second thing that he told me after he had told me that he had sent Senessie. He said what they was doing they had no right to do, but they just had to do it."[55]; and

7) "And I did not know the individual who directed [Senessie] to approach me with such an issue when, in fact, I had not discussed that with nobody."[56]

45. In its findings, the Court found as follows: That Senessie had come later in the evening, bringing a phone; Senessie made a call and passed the phone to TFI-585; that TFI-585 heard

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[50] Senessie Transcript 11 June 2012, p. 51.
[51] Senessie Transcript, 11 June 2012, pp 51-52.
[52] Senessie Transcript, 11 June 2012, p. 76.
[53] Senessie Transcript, 11 June 2012, p. 76.
[54] Senessie Transcript, 11 June 2012, p. 78.
[55] Senessie Transcript, 11 June 2012, p. 79.
[56] Senessie Transcript, 11 June 2012, p. 80.

a voice on the phone, and that the speaker confirmed that he had sent Senessie and what they were doing was "out of the law"; He asked her for her phone number; She gave him her number and the man undertook to call her, but he did not ever do so again.

46. A further finding is that in cross-examination, TFI-585 stated that it was Senessie who placed the call and that she agreed to speak to Prince Taylor. TFI-585 returned the following day and asked for Prince Taylor's number and for help with use of the Accused's phone, and the finding was that: "I am satisfied on the evidence of all three witnesses that TFI-585 visited the home of the Accused at a date on or about 8 or 9 February 2011 and that a phone call was made to Prince Taylor". This is an adjudicated fact that was not rebutted and that was admitted by consent into evidence.

47. Further evidence from the Senessie trial emanated from Mohamed Kabbah, who said that:

    1) "[Senessie] said that he had come that morning so that we can talk to Prince Taylor. But he tried Prince Taylor's line, but it did not go through."

    2) "The other time that he came, he said he had spoken with Prince Taylor, and Prince Taylor had said that if we wanted him to come, we should make some kind of an invitation letter. So he drafted one letter which he brought on a sheet of paper."

    3) "He did not mention Prince Taylor's name. It was just in that disguised manner. He just said we should sign it so that it would look like we were the reason that Prince Taylor was coming."[57]

48. In cross-examination, when it was put that Senessie informed Kabbah that he was sent by the Charles Taylor Defence team, Kabbah replied "He said Prince Taylor and the other witnesses who came to my house will tell you that he said Prince Taylor. He said Prince Taylor gave him that mission."[58]

49. TFI-274 gave evidence that he had reported to the Witness and Victims Section of the Special Court ("WVS") "that Senessie had told him he was in contact with Prince Taylor, who had instructed Senessie to look for 'us' [the Kailhaun Witnesses]". There was a phone call, but TFI-274 did not recognise the voice. The Accused recalled in Exhibit P1 (a proposed

[57] Senessie Transcript, 11 June 2012, p. 14.
[58] Senessie Transcript, 11 June 2012, pp 36-37.

statement of the Accused that was submitted to the Court as part of the Defence brief) that he had had earlier contact with TFI-274.

Accused Eric Koi Senessie

50. Eric Senessie gave evidence and was strenuously cross examined at length. He gave evidence in Krio, occasionally responding in English. He testified that he had not spoken the truth at his trial, that he was convicted on multiple counts and is now incarcerated, but that he told the truth on the day before sentence.

51. He and his Counsel (Lansana) entered a cooperation agreement with Independent Counsel whereby Independent Counsel would consider supporting any motion relating to his sentence, by implication, in return for giving evidence in this trial.[59]

52. Senessie stated that he first met the Accused in 2006 at his house when Taylor and a lawyer, Logan Hambrick, came to see if he would assist them by becoming a Defence Witness for Charles Taylor. As he was already helping the Prosecution and wanted to remain neutral, he refused. "They gave him a complimentary card,[60] and Taylor wrote his name and number on it. Senessie helped them to identify some witnesses, "my brothers".[61]

53. The next time he heard from Taylor was on 18 January 2011 when Taylor called him. This "baffled" Senessie. Taylor asked Senessie if "my brothers" who had testified at Charles Taylor's trial in The Hague were in Kailahun. Senessie replied that they were and then named them – Aruna Gbonda, Mohamed Beratay Kabbah, TFI-274, TFI-585, and TFI-561 (sic).[62]

54. Taylor went on to tell Senessie to ask "my brothers" to go back to The Hague, because a development had taken place that he wants to discuss with them in Kailahun. The development was that Charles Taylor's Defence team had decided to reopen the case. Taylor then stated that "these people are needed to go back to The Hague to recant their testimony"

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[59] Transcript 14 January 2013 pp 87-89, 93.
[60] Transcript 14 January 2013 p. 94.
[61] Transcript 14 January 2013 p. 94.
[62] It was apparent, and noted for the record by Counsel and the Court, that Senessie was referring to TFI-516. The pseudonym TFI-516 will be used throughout this judgment even if the witness said "561". Transcript 14 January 2013 pp 146-147.

because some witnesses had been given money and promised relocation to an overseas country.[63]

55. On the 25th, Taylor called Senessie again and asked if he had contacted the witnesses. He had not. Senessie undertook to go and asked if there would be any reward for the witnesses as they were complaining Taylor said yes, the Defence would be able to help them and relocate them. This "persuaded" him. He named the witnesses as Aruna Gbonda, Mohamed Beratay Kabbah, TFI-585, TFI-274 and TFI-516 and went first to TFI-585, his niece.[64]

56. TFI-585 asked Senessie if he was sure if these people would help them and he said "nothing goes for nothing". By that he meant that they would not do it for free, there must be a reward. Senessie explained that the idea of the reward was in Taylor's words - his instruction, his directive.[65]

57. TFI-585, said she would meet him at his house. He told Mohammed Kabbah on the 27th and Aruna Gbonda on the 28th. He told them all the same message and they all requested that Taylor come to Kailahun. He conveyed the message, but Taylor said he could not because he was part of the Defence and there was "a barrier" between Defence and the Prosecution. He directed Senessie to tell them to prepare a document as a guarantee. Senessie prepared a document and read it over the phone. Taylor told him to take the document to the witnesses and have them sign it. He wrote the documents, they were read to Taylor who accepted them.[66]

58. On the 30th, he took the document to TFI-585 and read the document, but she refused to sign it because they needed to see Prince Taylor. Senessie told Taylor, who then said to prepare another document. Senessie took this document to Kabbah, who signed it.[67] He did not know TFI-585 had been tape recording him. Senessie said he did not know until he was indicted.[68]

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[63] Transcript 14 January 2013, pp 96-97.
[64] Transcript 14 January 2013 p. 98.
[65] Transcript 14 January 2013, p. 99.
[66] Transcript 14 January 2013, pp 98-100 &102.
[67] Transcript 14 January 2013, p. 100.
[68] Transcript 14 January 2013, pp 100-101.

59. After he met with the witnesses, on the 1st,[69] Taylor called Senessie and said "this arrangement" is $500. Taylor then said he was sending Le200,000 now and to send his bank account. Senessie took his daughter, Jessica's, bank account and gave the information to Taylor. Taylor called Jessica. Jessica went to the bank on the 2nd and withdrew the money. That money was to be used for transportation to visit the witnesses.

60. In February 2011, Taylor called Senessie and said that the arrangement had been exposed, that TFI-274 was not reliable, and that a motion had been filed in The Hague against them. He became worried. Taylor said he would get a "vibrant lawyer", if "there (was) anything".[70]

61. During the 2nd to last week in February, Taylor called Senessie and said that an independent investigator has been appointed to investigate them. Taylor said not to worry, Senessie had not worked for the Court and that they were actually looking at him. If anybody comes to interview Senessie, do not talk until there is a lawyer present. [71]

62. In March, Taylor called again and said the investigator had arrived in Freetown and would interview him in Kailahun, but do not talk to him until they have a lawyer. The investigator came but Senessie refused to talk to him until he had a lawyer, because of what Taylor had told him. There was a lawyer with the Independent Investigator.

63. Senessie then called Taylor to tell him what happened and Taylor said do not listen to anybody, do not trust him, maybe the Principal Defender sent the lawyer, do not trust the Principal Defender, and do not talk to anybody. The Investigator returned to Freetown without seeing Senessie.

64. Two days after the investigator left, Taylor called Senessie and told him to come so he can talk to the independent investigator, so that he would not make a negative report. Taylor told him to get some money and get to Bo. Senessie borrowed Le30,000 for the transport fare and met Taylor that evening in Bo. They went to Taylor's house where Taylor told Senessie, he (Taylor) had gone to be interviewed and that Senessie should also go. Taylor also told Senessie to be careful in answering. He instructed that Senessie should tell the independent investigator that those people contacted him, not that he contacted them, not answer

[69] From context this was 1 February 2011, p. 102.
[70] Transcript 14 January 2013, p. 103.
[71] Transcript 14 January 2013, p. 104.

"allegation questions" and be careful answering questions, so as not to implicate them (Senessie and Taylor).[72]

65. Taylor gave him Le20,000 and took him to the bus station in Bo to go to Freetown. In Freetown, Senessie was interviewed by the independent counsel, but he did not tell him the truth. He told him the ploy to secure his position and Taylor's on Taylor's direction. The Court was to pay Senessie's transport back to Kailahun, but he agreed to an arrangement to have the Court pay it to Taylor and Taylor pay him in Bo. Senessie was "with Taylor when he received my own transportation and gave it to me".[73]

66. When Senessie returned to Kailahun, he received a document from Mr. Akim that he had been indicted on 9 counts. Senessie was worried so he called Taylor. Taylor said he would get him a lawyer.[74]

67. A week later, Taylor called Senessie and told him to come to Bo and that he had contacted a vibrant lawyer for him – Lawyer X. Senessie called Lawyer X who was willing to defend him in his case.

68. Two days later, Senessie and Taylor met in Bo on Taylor's instruction and went to an internet café to write a formal letter to Lawyer X "showing" he is Senessie's defence lawyer. Taylor drafted the letter, typed it out, scanned it, and emailed it to Lawyer X.

69. Taylor and Senessie then discussed being partners at Taylor's workshop as Senessie is "an artist and carver". Taylor asked Senessie for some panel doors. Taylor's brother brought Senessie some boards in Kailahun, Senessie brought Taylor 8 panel doors. Taylor did not pay Senessie completely for the panel doors. He gave Senessie's friend Le50,000 on Senessie's instruction. Senessie carved up to 15 panel doors and sent them to him, but has not received payment up to today.[75]

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[72] Transcript 14 January 2013, p. 108.
[73] Transcript 14 January 2013, pp 108-109.
[74] Transcript 14 January 2013, p. 110.
[75] Transcript 14 January 2013, p. 112.

70. Senessie stated that when he was "invited to attend the court, to appear in court" he was worried. Taylor told him that he should not be worried because his case has "resulted into the *sine die*", which he thought meant the case had died.[76]

71. Prior to his initial appearance he was "still contacting" the Accused. Taylor told him not to meet the Principal Defender who might connive with the Prosecution so that she would be retained and her job prolonged and to contact the Lawyer X. The Accused told Senessie not to come to Freetown, as did Lawyer X. Taylor then said, "I did tell you so". Senessie then stayed in Kailahun until he was "served" to come to Court.[77]

72. Senessie's initial appearance was scheduled on 15 July 2011. He left Kailahun on 12 July and spent the night with Taylor in Bo. Taylor gave him advice about being in Court. On 14 July, Senessie met with Lawyer X at the Court. Lawyer X had told him at the initial appearance he should plead guilty and compromise with the Prosecution. Senessie refused. Senessie entered a not guilty plea and was released on bail.

73. The next day he went to Bo and told Taylor about the Court. Taylor said that Lawyer X had prejudiced the case and that this is professional misconduct and that we should replace him. Senessie said that he did not know "about Court issues" and that Taylor, who worked in the Court for 7 years, would have to help him. Taylor then drafted a "sack letter", which he gave to Senessie. Senessie then wrote it out in his own hand - four A4 papers. It was addressed to the judge, copying the Registrar, Principal Defender, and Lawyer X. Senessie gave the letter to the Principal Defender in the morning, who asked him, 'now that you have sacked your lawyer, who do you want?' Senessie chose lawyer Lansana. Lansana later called Senessie to tell him that the Principal Defender had hired him (Lansana) to be his defence counsel. Before he left for Kailahun, he asked Taylor's father for some money because this was all due to his son, the Accused. Taylor's father gave him Le10,000 and was kind to him.[78]

74. It took until June 2012 before the trial started. He "worried so much" for both himself and Taylor. He spoke with Taylor often asking about the case. This is when Taylor told him the case was almost "*sine die*", which made Senessie believe the case had died. Senessie then asked

[76] Transcript 14 January 2013, p. 113.
[77] Transcript 14 January 2013, pp 113-115.
[78] Transcript 14 January 2013, pp 117-120.

a Justice of the Peace, who told him that "*sine die*" does not mean the case had died, but that it has been adjourned indefinitely. He was unhappy.

75. Senessie and Lansana prepared for trial, Taylor had said he would be a Defence witness because TFI-585 and TFI-274 had met him before the contempt case – even before the contempt allegation case. Lansana then went to Taylor to take his statement.

76. When shown a document, Exhibit P1, Senessie recognized it as Taylor's statement to Lansana. I note Defence Counsel stated matters in it are in dispute. Senessie discussed this statement with Taylor who asked him to take out certain portions that "would most likely implicate him". Taylor thus asked Senessie to talk to Lansana to take out these portions before it was filed with the Court. Senessie testified that he left Kailahun on the 6th and stopped in Bo, when he talked to Taylor about this. Senessie had a Status Conference on the 8th.[79]

77. Senessie recognized a portion of Exhibit P.1 (p age 8, paragraph 8), referring to contact between TFI-274 and Taylor, that Taylor wanted taken out.

78. Senessie stated that Taylor also wanted page 10, paragraph 4 taken out. It commences "a moment later, I heard the voice of a lady from the other end of the line. This is Prince Taylor speaking. She again identified herself as TFI-585 and I told him outright that I was not supposed to be in contact with her. She persisted and I dropped the line."

79. Lansana did not make these changes because he had already filed documents when Senessie asked him to do so.

80. Before the trial, Taylor assured Senessie he would come to Freetown. He gave Senessie Le10,000 and a cheque for Le30,000. He signed the back of the cheque, but the bank would not cash it because it was not signed on the front. Senessie identified Exhibit J-6 as the cheque.[80]

81. When Senessie was at the guest house in Freetown, awaiting trial, he called Taylor to see if Taylor was coming. Taylor told him that Witness and Victims Section ("WVS") were calling

[79] Transcript 14 January 2013, p. 128.
[80] Transcript 14 January 2013, p. 133.

him; troubling him. The day he was supposed to come to court, Taylor's phone was switched off. Taylor did not come to court that day. Taylor never gave Senessie an explanation as to why he did not come.[81]

82. In cross-examination, Senessie confirmed that he has important positions as a priest with a large congregation and former chairman of the RUFP for Kailahun. Senessie stated he is not the chairman now, because after he came to the Court, and was arrested, they held a convention and he was replaced. Senessie is also the chairman for City A national secondary school which has 2,500 students.

83. Senessie stated that he accepts that he interfered with witnesses, but that the person who sent him is responsible too – Taylor. Senessie stated that he did not go to the Prosecution, because he did not know the law and did not know he had to report to the OTP. Senessie stated he knows lying is bad, but that he did not know talking to a witness to change testimony was bad. Senessie stated that he does know the difference between telling the truth and a lie, he is a mature man.[82]

84. When pressed further about reporting to the OTP that Taylor had approached him to ask witnesses to change their testimony Senessie answered that he did not approach the OTP, because he trusted Taylor, who had worked for the Court for seven years. He did not make any report, because he believed the man who sent him.[83]

85. Senessie confirmed that Taylor had called him on 18 January 2011 to contact the 5 Kailahun witnesses and Senessie continued that Taylor had never said these witnesses gave false testimony, but that "they" needed to go to The Hague to recant their testimony. Senessie clarified that Taylor had said "some" witnesses had given false testimony for favours, but not necessarily the 5 Kailahun witnesses. "'Some' could refer to anybody".[84]

86. In answer to repeated questions on whether he had considered all he would say at his sentencing hearing Senessie said he told the truth at his sentencing hearing on 4 July - that he lied at trial - but told the truth for mercy at sentencing. Senessie stayed awake all night,

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[81] Transcript 14 January 2013, pp 134-135.
[82] Transcript 14 January 2013, pp 140-144.
[83] Transcript 14 January 2013, pp 144-146.
[84] Transcript 14 January 2013, pp 148-149, 150.

praying and decided to tell the truth. When asked if he prepared anything for the hearing, Senessie reiterated that he lay awake and prayed for forgiveness and thought about what he was going to say.[85]

87. Counsel put to Senessie that if he told the whole truth at his *allocutus*, why did he leave out his present evidence that Taylor asked him to tell the witnesses to recant their testimony and only say that Taylor would like to meet them. Senessie appeared confused whether this transcript is from the trial or the sentencing hearing. He then explained that he spoke briefly and that he did not tell the Judge everything and he now can explain everything. He was to repeat this explanation.[86]

88. Senessie said that not all 5 witnesses were "grumbling". TFI-585 and TFI-274 were "grumbling" that the Prosecution did not help them like others and that they should have been relocated, but the Prosecution did not do that, nor look out for their welfare. None of them wanted money, they wanted relocation. Counsel continued by putting that these witnesses did not say at his trial, that they were unhappy with the OTP. Senessie said that is what they told him, they are adults, and can come to Court and say no if they want.[87]

89. Counsel challenged Senessie at length on the version in his trial that the witnesses contacted him for Taylors' phone number which the witnesses denied. He agreed the witnesses were right but that added they were happy to come to him and Taylor but reported him to OTP; "used him". In particular, TFI-585, a relative reported him. Two witnesses, TFI-585 and TFI-274 spoke to Taylor.[88]

90. Regarding Senessie's statement at his Sentencing Hearing that it was TFI-274's idea to prepare a document to invite Taylor to Kailahun, Senessie stated that Taylor said that Senessie should prepare the document. He agreed this was not correct. When asked why he never told the Judge on 4 July that it was Prince Taylor's idea, but instead that it was all TFI-274's idea,

[85] Transcript 14 January 2013, p. 150.
[86] Transcript 14 January 2013, pp 157-160.
[87] Transcript 14 January 2013, pp 162-171.
[88] Transcript 14 January 2013, pp 171-176.

Senessie explained that since TFI-274 supported it, then it was his idea also but not that it was planned by TFI-274. What he said that day was only a brief statement, like his affidavit.[89]

91. I note here there was some confusion regarding the term *allocutus* which Senessie stated was what he said during his trial. However the distinction between evidence in the trial and at sentencing was clarified. Senessie insisted what he said at the sentencing was just brief. When asked a series of questions relating to the sentencing statement Senessie agreed to its contents.

92. Senessie denied that he was in this arrangement to make money stating "the man" "promised it" and that he thought it was a continuation of helping the Court.[90]

93. Senessie said that he was not ready to take the witnesses back to The Hague and that he was doing the 'bidding of the man', because he wanted to help, it was a continuation of the assistance he had been rendering and that 'he knew about the Court'. When asked why he did not "complain", (Counsel did not specify to whom), about contacting the witnesses, Senessie responded that he "worked upon the directives of the man" who was "a member of the Court". He acknowledged that there is a difference in the contact between him and Taylor in 2006 and that in 2011.[91]

94. Senessie said he only asked Taylor why he wanted him to contact the witnesses Taylor said it was to talk to them. Senessie thought he was helping the Court by following Taylor's instruction because it was Taylor's profession and he had been working for the Court for seven years.[92]

95. Senessie answered that at the time he did not question whether what he was doing was wrong, but at his sentencing hearing he realized it was wrong, so he apologised. He began to realize it was wrong when they made a case against him and appointed an independent investigator. Then he knew the thing was bad. Senessie stated that even though he knew the witnesses did the right thing in reporting him, he did not realize he had been doing wrong because he had never been to this Court and did not know the rules and regulations.[93]

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[89] Transcript 14 January 2013, pp 179-183.
[90] Transcript 15 January 2013, p. 198.
[91] Transcript 15 January 2013, pp 199-200.
[92] Transcript 15 January 2013, pp 199-202.
[93] Transcript 15 January 2013, pp 203-205.

96. Senessie again stated he was not in this for the money. He said that Taylor suggested it, the money, he did not request it. Taylor did not pay him except for the Le200,000 that he gave for transport and transferred to Jessica's bank account. Regarding the $500 payment Taylor had promised, Senessie said that he is a poor man, and $500 is big deal but that he would not take '$3 million' if he knew he was breaking the law.[94]

97. Senessie agreed that he did not mention the $500 payment previously, because his statement to the Appeals Chamber was a summary; he discussed this with his lawyer, Lansana, and decided not to include it because there was no witness to it, no evidence, unlike the Le200,000. Senessie explained that he had a receipt from Taylor, with Taylor's signature for the Le200,000, but nothing for the $500, therefore he did not mention the $500 before because he felt that he needed proof.[95]

98. Senessie said that he can not remember clearly if he mentioned the Le20,000 for transport that Taylor had given him to the Independent Counsel, but that he had to tell the whole truth now. Counsel put that Senessie did not mention it in his sentencing hearing, in the annex prepared for the Appeals Chamber or in the interview with Mr. Gardner. Senessie said that many things happened, he made a mistake, and that yesterday in Court was the first time he mentioned it and he should have mentioned it before.[96]

99. Senessie said there were other monies not mentioned before this Trial, as they (*viz* the Accused and Senessie) were friends and Taylor gave him a job and he did not think money was an issue in the case. These were i) Le30,000 he borrowed to get to Bo which Taylor refunded; ii) Le50,000 when they prepared the sack letter for Lawyer X for transportation to bring the document to Freetown to the Principal Defender; iii) Le50,000 to go to the first day of trial, (Le30,000 cheque and Le20,000 cash); iv) Le10,000 from Taylor's father; and v) Le50,000 for Senessie's girlfriend from Taylor in October 2011. No other amount except for drinks and food when he spent the night at Taylor's. Senessie agreed he did not mention these payments before. He only had a receipt for one payment.[97]

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[94] Transcript 15 January 2013, pp 206-210.
[95] Transcript 15 January 2013, pp 210-216.
[96] Transcript 15 January 2013, pp 225-228.
[97] Transcript 15 January 2013, pp 228-237.

100. Senessie said that there was a transaction between Mr. Arnold in the Defence office and Taylor to refund money for his transport to see Independent Counsel and that there is a record of it in the Defence office. Senessie stated that he is telling the truth now, and denied it was with the intent to get Taylor into trouble.[98]

101. Senessie said that none of the witnesses actually said that they were willing to go to The Hague, they showed signs. Nobody showed any sign in wanting to meet Taylor. but they "were after getting Taylor" to come to Kailahun. When that did not happen, they reported to the OTP. They showed signs that were willing, but because they reported him, he realized they were not willing. In two answers Senessie emphasized that the witnesses wanted to meet Taylor notwithstanding an earlier response.[99] He also stated that by his answer that Kabbah said he was willing to go to The Hague, he meant signs from Kabbah, not words. Kabbah and the witnesses wanted Taylor to come. [100]

102. Senessie was challenged on his evidence as to which witness he spoke first, and stated he told Kabbah a week after Taylor's call, but not the "whole story". He first fully explained it to TFI-585.[101]

103. In answer to the questions regarding the affidavit filed in the Appeals Chamber whether TFI-274 or Taylor should prepare the document wanting Taylor to come to Kailahun, Senessie explained that he worked on the directive of Taylor, who said he should prepare the document, and TFI-274 accepted it. Senessie previously said it was TFI-274's idea to prepare the document, but Senessie answered that what he meant was that it was Taylor's idea, but TFI-274 accepted it. He (Senessie) was the "first to bring up that document business with TFI-274", but Taylor told him to prepare it.[102]

104. In response to a lengthy series of questions concerning what transpired between him and Lawyer X, Senessie stated that Lawyer X told him to plead guilty. Lawyer X told him that somebody must have sent him to talk to the witnesses and therefore he should compromise with the Prosecution, plead guilty, and name the person who sent him and tell the truth. He

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[98] Transcript 15 January 2013, p. 238.
[99] Transcript 15 January 2013, pp 239-245.
[100] Transcript 15 January 2013, pp 248-252.
[101] Transcript 15 January 2013, pp 253-254.
[102] Transcript 15 January 2013, p. 260.

did not name Prince Taylor. He explained Taylor was his friend. When asked if there was a professional conflict between Lawyer X and Taylor and that Lawyer X would recommend someone else to represent him, Senessie responded that Lawyer X said he was too busy and would recommend David Bentley to represent him. Bentley was working as a Queen's Counsel. However Senessie stressed he could not remember all the discussion.[103]

105. Senessie said that he had seen an email between Independent Counsel and Lawyer X, dated 5th November. There was possible confusion – the email was shown to him and he stated that he received it while in custody; that the Defence office sent the document to the detention centre. Senessie confirmed, as stated in the email, that he told Independent Counsel that he would not enter a guilty plea, contrary to Lawyer X's advice, and that he wanted to apologize to Lawyer X. He stated that he should have listened to X, but instead took the advice of Taylor and fought the case. Taylor told him not to implicate Taylor or himself and that the case would be most likely dismissed.[104]

106. Counsel questioned Senessie about having his son and daughter testify, even though he was presenting a false case. Counsel then suggested that Senessie was not only merely fighting one case, but had a back-up plan to blame Taylor if it did not work out. Senessie answered that it was when he was sentenced that he realized Taylor had used him.[105]

107. When Counsel put that Lawyer X's evidence would be that he did not tell Senessie to plead guilty before his initial appearance on 15 July, Senessie disagreed, a guilty plea would damage his political career.[106] Counsel put a document to him, "an endorsement" which acknowledged that Lawyer X knew and was friendly with Taylor. Senessie recognized it and said he drafted the 4th paragraph; that Lawyer X said he had to sign it otherwise he would not represent him in Court "that day". Senessie said that there was a bitter argument, that Lawyer X drafted it and paragraphs 1, 2, and 3 were not Senessie's idea. Senessie said he was forced to sign it.[107] He and X were the only people present [108]

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[103] Transcript 15 January 2013, pp 266-279.
[104] Transcript 15 January 2013, pp 280-291.
[105] Transcript 15 January 2013, pp 292-295.
[106] Transcript 15 January 2013, pp 312-313.
[107] Transcript 15 January 2013, pp 296-305.
[108] Transcript 15 January 2013, p. 303.

108. In answer to questions whether, Lawyer X thought it was Taylor who sent Senessie to the witnesses, Senessie replied that Lawyer X did not know it was Taylor, but may have presumed it was Taylor, because the Independent Investigator interviewed them both. Lawyer X then said to compromise with the Prosecution and explain who sent him, to which Senessie said no.[109]

109. Lawyer X explained to Senessie that X and Taylor worked on the Fofana case, that Taylor was his investigator, and that Taylor was his friend but he did not recall if Lawyer X spoke of withdrawing. Senessie stated that he only came to know that from the typed document that Lawyer X drafted that there was a potential conflict of interest and professional problem. Senessie persisted that he refused to sign the document, until the final paragraph stating he will reflect on the matter was written. No other discussions about it took place on 14 July. Senessie further stated that he wrote the last paragraph "word for word". There were no more discussions about it after the initial appearance. Lawyer X went to London and told Senessie he contacted David Bentley to represent him, as he had court settings and would not be able to come. [110]

110. He re-iterated that Prince Taylor assisted him to write the "sack letter" which was brought to the Principal Defender. Senessie stated that he had never spoken with Lansana before going to the Principal Defender and did not know his office, but that he did know Lansana because they were in the PMDC together. He denied they were close, and restated they were in the same party - both were party members. Lansana was also from Kailahun. Senessie wanted him as his lawyer, because they were from the same area and Kailahun lawyers help each other. Senessie thought about choosing Charles Margai, but did not because he is a politician.[111]

111. Despite persistent cross-examination, Senessie was firm that he never told Lawyer X he was going to sack him, because he did not know he could sack a lawyer and was calling Lawyer X to still be his lawyer. Taylor instructed Senessie to sack Lawyer X. Senessie stated that Taylor directed him to attach the "sack letter", dated 30 August, to the document he signed on 14

[109] Transcript 15 January 2013, p. 318-321.
[110] Transcript 16 January 2013, pp 325-328.
[111] Transcript 16 January 2013, pp 328-332.

July. He trusted Taylor because he knew about the Court and he regarded this as a good thing. Senessie stated that the words in the letter were written by Taylor.[112]

112. Senessie re-stated that he had never discussed his case with Lansana prior to 30 August. Senessie met with Taylor on 29 August in Bo and then took the letter to the Principal Defender on 30 August. The Principal Defender then asked why he was firing Lawyer X and who he wanted as a lawyer, and Senessie gave her a reason and said Lansana. Senessie further stated that the sack letter was written at Taylor's direction, it was not under duress, but he signed because he thought Taylor was leading him on "the right path", he was a "blind man", he "just followed".[113]

113. When asked how he would respond to potential evidence that would show that Lawyer X was happy to walk away from his case on 14 July, because of professional conflicts Senessie stated that Lawyer X was pushing himself away from the case and he wrote it in the document that he showed Senessie. He said that he was busy and recommended Bentley. Senessie would have been happy to keep Lawyer X and that was why he refused to sign the document. Senessie further stated that when he explained the case to Lawyer X, Lawyer X said he would not be able to help because of the professional relationship between him and Taylor. Lawyer X was "pushing himself away from this case".[114]

114. Counsel put that Lawyer X told him that he and Taylor had a professional relationship hence the suggestion of Bentley. Senessie persisted that Lawyer X said he was busy; he explained about his professional relationship. Senessie explained that he first read about the professional relationship in the document after Lawyer X wrote it. Then he thought that maybe it was because Lawyer X thought Taylor was involved; he felt that Lawyer X was pulling away from the case. It was not discussed, it was just Senessie's thoughts on what Lawyer X was doing. He knew Prince Taylor told him not to implicate him so did not ask Lawyer X about Prince Taylor or mention his name.[115]

115. Senessie did not hire Lansana because Taylor told him to. Senessie said that Lawyer X did not know he was going to sack him before he did, because he did not tell him, nor did he tell

[112] Transcript 16 January 2013, pp 333-335.
[113] Transcript 16 January 2013, pp 335-348.
[114] Transcript 16 January 2013, pp 348-353.
[115] Transcript 16 January 2013, pp 353-362.

Bentley. When questioned that sacking Lawyer X was just a ploy by Senessie to get local lawyers involved, as Lawyer X and Bentley were both happy to step aside, Senessie answered that he did not have that intention, but that it was Taylor's idea to change the lawyer, because Lawyer X "destroyed the case". Taylor drafted the letter that was not Senessie's idea. Senessie denied that he had made up that Lawyer X wanted him to plead guilty in order to get local lawyers involved.[116]

116. Senessie was cross-examined on his initial evidence that the agreement with Independent Counsel was that Independent Counsel would support any motion, and conceded that he made a mistake, he forgot that it was to "consider" any motion. Counsel persisted in asking why he made the mistake and Senessie answered that humans make mistakes, no other reason. Senessie clarified that it is not written it is an oral agreement. Lansana is still his lawyer, the Independent Counsel and Lansana spoke when he (Senessie) was present when a motion for a reduction in sentence was discussed. He then considered it when he heard it, but it was not his idea.[117]

117. Senessie answered that he did not come to the Court on 4 July 2012 to tell the truth about Prince Taylor knowing that his sentence could be reduced. He did not have that intention. He had seen Independent Counsel's recommendations. He thought they would give him five years, but he was fortunate to get two years. He insisted that he wanted to tell the truth. Counsel asked if he knew that generally, if someone pleads guilty, they get a lower sentence. Senessie answered that he did not. Counsel put that he was lying because the statement that he signed on 14 July, included that Independent Counsel would be inclined to recommend to the Special Court a noncustodial sentence if he entered a guilty plea and assisted the Prosecution. Senessie repeated that in his life, he did not know these things until he got to this Court.[118]

118. Senessie was questioned about the cheque which he persisted that Taylor gave him was for "petty things" when going to trial. Senessie did not recognise that Taylor had not signed the front and it was not until he got to the bank that he found out they would not cash it, even though Taylor signed the back. He had not looked at it and did not check it and he trusted

[116] Transcript 16 January 2013, pp 362-367.
[117] Transcript 16 January 2013, pp 368-371.
[118] Transcript 16 January 2013, pp 371-375.

Taylor. The cheque was in his front shirt pocket and he went straight to the Commercial Bank when he arrived and that is when they told him he had not signed it.[119]

119. It was put that Taylor gave him an unsigned cheque for carvings which he would sign when the carvings were delivered. Senessie refuted this stating that Le30,000 is not money someone would give him for carvings and it was not correct that on delivery of the carved panels Prince Taylor would sign and give the cheque to Senessie's girlfriend. He gave Taylor 8 panel doors and that was how he paid his girlfriend Le50,000. Senessie carved 16 panels and Taylor has not paid him the money up to now.[120]

120. In a long series of questions about giving the cheque to Independent Counsel Senessie replied that he was "informed" about it at the first interview, but did not give it to Independent Counsel because he did not have it there. So he told Counsel "not to include it in any document". His child brought the cheque from Kailahun. Senessie could not recall the date of this meeting but thought it was in November 2012, then he gave Independent Counsel the cheque in January 2013. Senessie continued by saying several times that he informed Independent Counsel of the cheque, but told him not to write it down because he wanted proof. They had interviews near the detention centre. There was a series of questions about the date of the relevant interview. Senessie persisted that he did not have the cheque with him so there was no proof and he told Independent Counsel not to write about it. Senessie replied he told Independent Counsel everything and when his child finds the cheque, it will be brought at the resumption of the court. Senessie said that the day Independent Counsel came back, his daughter, Jessica gave Counsel the cheque.

121. It was put to Senessie that there was no reference to the cheque in the disclosed record of interview. That, Senessie replied, was because he (Senessie) said it should not be there.[121]

122. On the day Taylor gave him the cheque, Senessie said that they discussed Taylor's testimony at Senessie's trial. Senessie demanded that Taylor agree to testify but Taylor did not come. Taylor was "unhappy" about the summary statement, but said he was "happy" to come and testify. Senessie said that Taylor asked him to remove portions of the statement, then offered

[119] Transcript 16 January 2013, pp 375.
[120] Transcript 16 January 2013, pp 375-378.
[121] Transcript 16 January 2013, pp 378-386.

him Le10,000 and the cheque. Senessie said that Taylor removed certain things from the statement and asked that Lansana remove them, but he did not grumble, he did it willingly. Lansana said the document was filed and it was too late. Senessie called the Accused. He did not come. Senessie said that Taylor may have thought that the statement must be accurate, but did not tell Senessie. He just took a pen and underlined parts and instructed Senessie to have Lansana remove them, he did not grumble. He did not say the statement had to be accurate and be changed.[122]

123. Senessie denied saying he needed Taylor's help or confessing that he (Senessie) only had started the scheme to have witnesses recant. He denied that had been in contact with RUF leaders in prison or that he needed money from Charles Taylor to run for elections as RUFP or that he "confessed" this to the Accused and said he needed help to testify. Senessie said that Edward Collins delivers messages from the RUF prisoners, he is the party leader now, but would deliver messages in open session meetings, not privately. He denied that the Accused refused to testify on his behalf and tell lies.[123]

124. When asked why he did not order Taylor to come to Court if he (Taylor) was such a crucial witness, Senessie answered he did not know, his Defence Counsel could answer that question as he thought Lansana was doing the correct thing. Senessie thought that Taylor did not come because he did not want them to "ask" questions that would implicate "himself". They had exonerated him from the case; if he became a witness it shows he knows something. Senessie had not taken out the portions from the statement Taylor wanted removed so this was "fair for him not to come".[124]

125. In answer to questions regarding the invitation documents from the five complainants inviting Taylor to come to Kailahun, Senessie agreed that on Taylor's instruction he had them delivered to Taylor in Bo and then Taylor handed them over to the Independent Counsel. Senessie knew this because Taylor told him that and he trusted him. He wanted to protect Taylor. Taylor also told Senessie not to use them in trial because it would implicate Taylor. Senessie first sent him these documents on his instruction not to get his attention or to get money from the Defence team. Taylor told him the Defence team would relocate his brothers

[122] Transcript 16 January 2013, pp 387-395.
[123] Transcript 16 January 2013, pp 395-398.
[124] Transcript 16 January 2013, pp 399-401.

and give them money. Taylor promised him payment of $500 and Le200,000 for transport money. Senessie denied several time that he demanded Le200,000 to bring the documents so Taylor could see them and re-iterated it was for transport to meet witnesses. Taylor suggested sending the Le200,000.[125]

126. In answer to further questions about the meeting with Lawyer X on 14 July, Senessie said that there was no other proposed draft. He wanted to plead not guilty and not implicate Prince Taylor in the last paragraph (of the endorsement). He wanted to discuss with Taylor and that is why he said he would reflect on the matter so the original was deleted. It was when he consulted Taylor, that Taylor said to sack Lawyer X. There had been a version of the draft that stated "I wish to plead not guilty and to not implicate Prince Taylor". He then wrote the last paragraph himself, on a piece of paper. He did not remember the other paragraph, until reminded by Counsel. Counsel put that Senessie added the portion about reflecting upon his decision, in order keep an option open to plead guilty in the future and take up an offer from Independent Counsel. Senessie said that he wanted to consult Taylor, who then told him to sack Lawyer X and plead not guilty, so that is what he continued to do. The various answers to the various questions on the content of the original 4th paragraph were confusing and at variance with each other.[126]

127. Senessie said that the reason he wanted to delete the part that said "I will not implicate Prince Taylor" was because he thought it might implicate Taylor. He denied he lied during his testimony in order to get a reduction of sentence by implicating the Accused.[127]

128. In answer to questions from the bench Senessie stated the cost of travel from Kailahun to Bo involved hiring a motorbike to Kenema, then boarding a vehicle to Bo. This costs about Le30,000 from Kailahun to Kenema and the vehicle from Kenema to Bo is Le5,000. This is for one way.

129. Senessie stated that the cost from Kailahun to Kenema is Le30,000 one-way and sometimes Le25,000 one-way. The cost of the vehicle from Kenema to Bo is Le5,000 to Le10,000 one-way.

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[125] Transcript 16 January 2013, pp 402-409.
[126] Transcript 16 January 2013, pp 409-423.
[127] Transcript 16 January 2013, pp 424-428.

Defence Evidence

Statement from Senessie's former Defence Counsel

130. The Accused elected not to give evidence, which is his right, but tendered into evidence a statement from Lawyer X, Senessie's former Defence Counsel. In his statement, Lawyer X said he is a barrister and had been involved with the Special Court since 2003, including representing Morris Kallon and Momoh Fofana. Taylor was also engaged with the Fofana Defence team as an investigator. He found Taylor to be an asset to the team and completely trustworthy and straightforward.

131. Upon completion of the trial phase of the Fofana case, Lawyer X recommended Taylor to the Charles Taylor Defence team, who subsequently hired him. Lawyer X had intermittent contact with Taylor, about once or twice a year, and they had contact on Facebook. Taylor and Logan Hambrick had contacted Lawyer X in May 2011 to represent Senessie at the contempt trial. Lawyer X was due to travel to Freetown on 13 July 2011 to represent Senessie at his initial appearance on the 15th. Prior to his departure, Lawyer X spoke with Independent Counsel, who informed Lawyer X that if Senessie would plead guilty and give evidence against Taylor, he would consider recommending a noncustodial sentence.

132. Lawyer X felt there was a sense of conflict and of tension in his giving Senessie fair and impartial advice, due to his friendship with Taylor and because Taylor had recommended he represent Senessie. He consulted with the Principal Defender and decided to travel to Freetown and make a decision thereafter. He met Senessie on 14 July and advised him of the Independent Counsel's offer and informed him of his potential difficulty in representing him, that is, Senessie.

133. He also felt that he should obtain an endorsement in order to represent Senessie. He refers in his statement to the instructions that Senessie gave him. Lawyer X states that he did not force Senessie to sign the endorsement under duress, but that Senessie did have some reservations about signing it. The last paragraph was drafted in order to allow Senessie the chance to think over Gardner's offer. There was an alternative version of the paragraph, which would have stated that Senessie did not want to plead guilty nor implicate Taylor.

134. Lawyer X recommended David Bentley to represent Senessie instead, but he subsequently received a sack letter from Senessie. David Bentley is not a Queen's Counsel, and he did not tell Senessie that Bentley was a QC or Queen's Counsel. He did not advise Senessie to plead either guilty or not guilty.

135. Attached to his statement admitted as Exhibit D5 are handwritten notes from him. They are not dated and are somewhat difficult to read, as they were copies and handwritten. They appear to cover four separate events, i) his contact with Independent Counsel, ii) his instructions and discussions with Senessie, iii) his notes of the hearing, and iv) his notes for bail.

APPLICABLE LAW

136. Rule 77(A) of the Rules states in relevant part:

> The Special Court, in the exercise of its inherent power, may punish for contempt any persons who knowingly and wilfully interefers with its administration of justice, including any person who: [...]
>
> (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness.

DELIBERATIONS

137. The Defence has raised several issues of law and evidence. First, the Accused has elected to remain silent and not give evidence. Counsel submits no adverse inference can be drawn from this and refers to several precedents.

138. There is no doubt that the onus of proving guilt beyond reasonable doubt remains on the Prosecution throughout the trial. Whilst not categorically stated in Article 17 of the Statute, it is implied by Article 17(4)(g) and Rule 85(C) of the Rules. As stated in *Prosecutor v. Charles Ghankay Taylor*, there is no burden on an accused to prove his innocence.[128] Article 17(4)(g) of the Statute provides that no accused shall be compelled to testify against himself or confess guilt. Rule 85(C) states that an accused may give evidence "if he chooses to do so".

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[128] *Prosecutor v Charles Ghankay Taylor*, SCSL-03-01-T-1283, Judgement, 18 May 2012, para. 180. ("Taylor Trial Judgement").

139. No inference, adverse or otherwise, can flow from the election to remain silent as stated in *Prosecutor v. Gbao*:

> In reaching such a conclusion, "the Special Court" has acknowledged the fact that the Accused is entitled, before international criminal tribunals, to such fundamental rights as the presumption of innocence, the right to remain silent and to not have any negative inference drawn from his choice to exercise this right, and consequently, the Prosecution has the burden of proving that the Accused is guilty beyond reasonable doubt, in compliance with Rule 87(A), and the Defence does not have to prove the Accused's innocence.[129]

140. In the course of the cross-examination of Eric Senessie, propositions, which will be referred within the assessment of evidence, were put to him in relation to aspects of his evidence, *e.g.*, the intended use for the payment of Le200,000. Since I do not have direct evidence from the Defence on such propositions, it follows that Senessie's replies and evidence are unrebutted. That, however, is subject to Counsel's submission that Senessies's evidence is that of a "proven liar" – it is "so riddled with lies" and contradictions and inconsistencies both in evidence and between prior testimony and statements that there cannot be a question of the Court being able to "cherry pick" "here or there" but the entire evidence "falls flat", it "falls as a whole".[130]

141. In support of this submission, Counsel refers to the jurisprudence of the International Criminal Tribunal for the former Yugoslavia ("ICTY"). I have not been referred to, nor have I been able to find in my own research, a precedent that states that a court may or shall disregard an entire testimony for reasons of credibility and/or reliability. Counsel refers to the *Prosecutor v. Limaj*, where the Trial Chamber considered the weight of evidence of a witness who was found to have worked at a police station where there were numerous evidentiary records of alleged detention, torture and mistreatment, which "raised serious doubts about his general credibility".[131] But his total evidence was not rejected out of hand, instead the Chamber held that this raised serious doubts about his general credibility. "As a consequence, the Chamber has not been prepared to accept as reliable the evidence of Dragan Jašovic which

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[129] *Prosecutor v. Gbao*, SCSL-03-09-PT-048, Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 10 October 2003, para. 50. ("Gbao Decision")

[130] Find footnote

[131] *Prosecutor v. Limaj*. ICTY-XX-XXXX-T, Judgement, 30 Novemeber 2005, para. 27 ("Limaj Trial Judgement").

is based on information 'gained' by him from persons he interviewed, and regards the other evidence of this witness with the utmost caution."[132] It was not excluded in toto.

142. The Appeals Chamber of the ICTY, when considering the evidence of a witness who misidentified 2 of 6 attackers, and the submission that her evidence was "so unreliable and inconsistent that no reasonable trial chamber could have accepted it as a basis to convict"[133] held in *Prosecutor v. Kupreškić et al*, that "[i]t is of course open to a Trial Chamber, and indeed any tribunal of fact, to reject part of a witness' testimony and accept the rest".[134] The ICTY Appeals Chamber further held that "[t]he jurisprudence of this Tribunal confirms that it is not unreasonable for a tribunal of fact to accept some, but reject other parts of a witness's testimony."[135]

143. Likewise, in *Prosecutor v. Sesay et al*, the Trial Chamber held:

> The Chamber may accept or reject the evidence of a witness in whole or in part, and may find a witness to be credible and reliable about certain aspects of their testimony and not credible or reliable with respect to others [...] The Chamber is of the view that the 'mere existence of inconsistencies in the testimony of a witness does not undermine the witness's credibility.'[136]

144. In the instant case, I do not consider it just or appropriate to reject Senessie's evidence in its entirety but will assess issues of credibility and weigh inconsistencies in detail.

145. Defence Counsel has tendered into evidence three character references from lawyers for whom the Accused has worked, whilst at the Special Court, which vouch for his integrity and honesty. I have asked both Counsel to address on how these references are to be handled, *e.g.*, are they evidence of a prior consistent pattern of behaviour, although it is common ground that Rule 92 is not applicable.

146. Having considered the submissions, I do not consider that they are probative of the innocence or guilt of the Accused or that they are persuasive that, because the Accused has

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[132] Limaj Trial Judgement, para. 27.
[133] *Prosecutor v. Kupreškic et al*, IT-95-16-A, Appeal Judgement, 23 October 2001, para. 327. ("Kupreškic Appeal Judgement").
[134] Kupreškic Appeal Judgement, para. 332.
[135] Kupreškic Appeal Judgement, para. 333.
[136] *Prosecutor v. Sesay et al*, SCSL-04-15-T-1234, Judgement, 2 March 2009, paras 488-489, quoting *Prosecutor v. Brima et al*, SCSL-04-16-A-675, Appeal Judgement, para. 120. Kupreškic Appeal Judgement, paras 327, 332 -333.

acted in an honest and upright manner in the past, I should assume he could not do anything wrong and, therefore preclude myself from fully considering and weighing the evidence adduced in this trial.

147. I have also raised the question whether the Accused and Senessie could be considered as accomplices and, if so, if there is any particular evidentiary consideration. Defence Counsel submits that "special and extra caution must be exercised because of the prior conviction". There is no specific rule in the Rules of the SCSL on the assessment and considerations to be applied to accomplice evidence – if indeed they are accomplices – but caution in assessing evidence of "insider" witnesses who could be considered potential accomplices, has been applied in prior hearings. I will bear in mind the need for caution in assessing Senessie's evidence.

148. The parties have submitted a series of agreed facts. As held in the Taylor Trial Judgement:

> There is no provision in the Rules pertaining to agreed facts. Nonetheless, it follows from the very nature of adversarial proceedings that the parties may stipulate to any fact on which they reach consensus. Before relying on these agreed facts as indicated in this judgement, the Trial Chamber has subjected them, as all other evidence, "to the tests of relevance, probative value and reliability". [137]

149. I have applied the foregoing evidentiary jurisprudence to the testimony adduced in the trial. The depositions in the *Independent Counsel v. Senessie* were admitted by consent, and the depositions and the adjudicated facts show that Senessie was found guilty of eight counts. I accordingly find that Senessie was convicted of the following:

a) Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to Mohamed Kabbah, "a witness who had given evidence in proceedings before the Trial Chamber in *The Prosecutor v. Taylor* in violation of Rule 77(A)(iv)";

b) Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with Mohammed Kabba, a witness who had given testimony in proceedings before the Trial Chamber in *The Prosecutor v. Taylor* in violation of Rule 77(A)(iv);

[137] Taylor Trial Judgement, para. 211.

c) Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to TFI-274, a witness who had given testimony in proceedings before the Trial Chamber in *The Prosecutor v. Taylor* in violation of Rule 77(A)(iv);

d) Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with TFI-274, a witness who had given testimony in proceedings before the Trial Chamber in *The Prosecutor v. Taylor* in violation of Rule 77(A)(iv);

e) Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to TFI-516, a witness who had given testimony in proceedings before the Trial Chamber in *The Prosecutor v. Taylor* in violation of Rule 77(A)(iv);

f) Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to TFI-585, a witness who had given testimony in proceedings before the Trial Chamber in *The Prosecutor v. Taylor* in violation of Rule 77(A)(iv);

g) Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with TFI-585, a witness who had given testimony in proceedings before the Trial Chamber in *The Prosecutor v. Taylor* in violation of Rule 77(A)(iv); and

h) Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with Aruna Gbonda, a witness who had given testimony in proceedings before the Trial Chamber in *The Prosecutor v. Taylor* in violation of Rule 77(A)(iv).

150. What is now in dispute before me is whether the Accused had any role in the events that led up to those findings of fact and findings of guilt, and if he had, what that role was. Senessie has conceded that his evidence that the five complainants in Kailahun approached him saying

that they wanted to see Taylor is not truthful, and I therefore disregard it, despite the Trial Transcript being entered as an exhibit.

151. I note the Defence submission that the record shows Senessie was untruthful in his trial, something he has conceded, both at his sentencing hearing and in his affidavit to the Appeals Chamber. Senessie denied being untruthful at sentencing and to the Appeals Chamber, but said he was "brief" in the latter. I therefore look to the evidence adduced in this trial and make findings on that evidence.

152. TFI-585 stated that Senessie read a proposed letter to her and she asked who sent him. He responded he had been sent by Taylor. Senessie subsequently made a phone call on his cell phone whilst standing on her veranda. She heard Senessie say "Prince", and then gave her the phone, and she spoke to the person identified as Taylor. He confirmed he had sent Eric Senessie and all that Senessie said was true and "it was like they are not supposed to do what they are doing presently". He said, "it was out of the law" and they "just had to do it". He then refused to give her his phone number. He did not phone her back.

153. In his proposed statement to Mr. Lansana, Exhibit P1, the Accused is recorded to have said the following: "Sometime in December 2010 I had a call from an unknown number, and the caller spoke to me in Mende. The caller later disclosed her name and identity to be", and he named witness TFI-585. "She wanted to meet with me, but I refused her request. Upon her disclosure of being a protected Prosecution witness, I dropped the line."

154. He also said in that document that Senessie contacted him in February 2011. Senessie informed him that "his brothers" were urging him to give a contact number. He told Senessie not to give his contact, and a moment later he heard the voice of a lady who identified herself as TFI-585, and he told her that he was not supposed to be in contact with her. He dropped the line when she persisted.[138]

155. I note that this unsworn and unchallenged statement was not put to TFI-585 in either the Senessie trial or this trial. In the Senessie trial, on the evidence of three witnesses, the Court was satisfied that TFI-585 visited the home of Senessie on or about 8 and 9 February 2011

[138] Senessie Transcript 11 June 2012, p. 52.

and that a phone call was made to Prince Taylor. The speaker confirmed he had sent Senessie and that what they were doing was "out of the law".[139]

156. That evidence, as an adjudicated fact, has not been rebutted, and I find that TFI-585 did speak to Taylor and that he did say that he had sent Eric Senessie, and he did say that what they were doing was out of the law.

157. Mohamed Kabbah also stated that Senessie came to him stating he had been given a mission by Prince Taylor to talk to them and that "we can talk to Prince Taylor". Senessie tried Taylor's line, but it did not go through.[140] Senessie mentioned Taylor again to Kabbah, stating that Taylor told him that if the witnesses wanted him (Taylor) to come, "we should make a kind of invitation letter". The letter did not mention Taylor's name. It was in "that disguised manner" so it will look like we were the reason that Prince Taylor was coming.[141]

158. I again note that Kabbah has not been challenged on this evidence and it has not been rebutted. The findings in relation to Kabbah's evidence have been admitted as adjudicated facts and not rebutted. Accordingly, I find that Kabbah was visited by Senessie on 2 and 3 February and asked to consider previous offers made to him in attempts to persuade him to bring Prince Taylor to Kailahun.

159. I will deal with the letter later in this decision. As noted in his evidence, Senessie conceded that he had not told the truth in his original trial. He said both in chief and in cross-examination that this was a ploy to protect himself and Taylor. He stated also that what was said at his sentencing hearing was true, but that it was brief. In cross-examination, he insisted that he was brief in both the sentencing hearing and the affidavit to the Appeals Chamber. He adduced further facts in his testimony, and when challenged in cross-examination on his failure to mention such items as the cheque for Le 30,000, he replied he did not have evidence, therefore, he did not inform the Independent Counsel of it.

160. It is clear, and I find, that Senessie did lie in his trial, but he admitted this in *allocutus* and he admitted it in the affidavit to the Appeals Chamber. Questions of weight and credibility on

[139] Senessie Transcript 11 June 2012, p. 52.
[140] Senessie Transcript 11 June 2012, pp 9, 11, 14.
[141] Senessie, Transcript 11 June 2011, p. 14

his evidence will be addressed in relation to individual items, including the fact that certain matters were adduced after the *allocutus* and the sentencing.

161. In his evidence-in-chief, he noted that he and Taylor first met in 2006 with Logan Hambrick, a Defence lawyer. That appears to be uncontested, and I find accordingly that Taylor and Senessie had contact in 2006.[142]

162. He next heard from Taylor in January 2011, when Taylor called him. He was surprised, and Taylor asked about "his brothers" who had testified in the Charles Taylor trial in The Hague. These were named as Aruna Gbonda, Mohamed Beratay Kabbah, TFI-274, TFI-585, and TFI-516. Taylor asked him if he would ask these people to go back The Hague following "a development"; that he, (Taylor), wanted to discuss with the witnesses in Kailahun. Taylor stated that these people are needed to go back to The Hague to recant their testimony.

163. Senessie duly contacted the witnesses Gbonda, Beratay, Kabbah, TFI-274, TFI-585, and TFI-516. They all requested Taylor to come to Kailahun. Taylor told him to prepare a document for the witnesses to sign, inviting him to Kailahun. This Senessie did, and Taylor instructed him to have the witness sign it.[143]

164. Senessie was cross-examined strenuously on his prior testimony that the witnesses first approached him for Taylor's phone number. He was also examined at length on his original version that the document was drafted by TFI-274. He basically gave the same answer to several variations of that question. This was to the effect that TFI-274 agreed with the letter, and therefore it was his idea; that he did contact Taylor, and that Taylor agreed with the letter, and therefore they "adopted it". There is no doubt that a document was drafted inviting Taylor to come to Kailahun. It has been put in evidence as an exhibit. Two copies of it have been signed. In Exhibit P1, the Accused stated he inquired if TFI-274 had given Senessie any documents. In cross-examination it was put to Senessie that the Le200,000 paid by Taylor to Senessie through his daughter's bank account was demanded from Taylor to allow Senessie to travel to Bo with the documents. Senessie denied this on each occasion and said the money was for transport, by which I understand is to locate the witnesses in Kailahun.

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[142] Transcript 14 January 2013, p. 94.
[143] Transcript 14 January 2013, pp 98-100.

165. The proposition that the Le200,000 was to arrange transport for Senessie to bring the documents has not been adduced, and therefore Senessie's evidence is not rebutted. However, it does show that the documents were conveyed to Taylor by Senessie, and clearly indicates to me that Taylor had some interest in them. They were subsequently given to Independent Counsel by Taylor. From the cross-examination and the answers thereto, I find that Senessie did not anticipate or intend that Taylor give this document to the Independent Counsel.

166. The date of payment of Le200,000 was 1 February 2011, the invitation documents are dated 10 February 2011. Since the proposition that the Le200,000 was to arrange transport for documents has not been adduced, and the evidence has not been rebutted, I find that the Le200,000 were to arrange transport for Senessie to locate witnesses.

167. Senessie gave further evidence of payments given to him by Taylor that was not adduced in his own trial, nor referred to in his sentencing statement, nor in the affidavit to the Appeals Chamber. In chief, he mentioned Le30,000 for his fare to meet Taylor in Bo; Le50,000 paid to a friend by Taylor on Senessie's instructions; Le10,000 given by Taylor before Senessie came to Freetown to see Independent Counsel; and a cheque for Le30,000 before he came to Freetown for his initial appearance. In cross-examination, Senessie referred to further payments and gave a more precise explanation. He answered that he borrowed Le30,000 to travel to Bo, which Taylor refunded. This has not been challenged. Le50,000 was paid when they prepared the sack letter for Lawyer X to enable Senessie to bring that document to the Principal Defender. Le50,000 was paid for his "petty needs" on the first day of the trial – Le30,000 was in the form of a cheque and Le20,000 in cash. There was a payment for Le10,000 from Taylor's father. Le50,000 was paid to Senessie's girlfriend in October 2011 at Senessie's request, and Taylor made various payments for drinks and food.

168. Senessie agreed that he did not mention these payments before. His explanation was that he only had a receipt for one payment. He agreed that Taylor received a refund of money from the Special Court for his (Senessie's) transport costs and that Taylor gave it to him. He was asked to explain why he did not mention the payments before, and insisted that he had only a receipt for one payment. He referred several times to needing a receipt for evidence. He refuted a proposition put by Defence counsel that part of these payments related to carvings that he made for Taylor and stated that Le30,000 would not cover the cost of carving panels.

He had not been paid for any of the 16 panels he supplied to Taylor. I note that it is not in dispute that Taylor had a carpentry business. Again I note that the propositions have been put to Senessie by the Defence counsel, but that Senessie has not agreed to them and this aspect of his evidence has not been rebutted.

169. I find his explanation for not telling Independent Counsel in his record of interview about the Le30,000 cheque unconvincing, and I do not accept it. I do, however, accept that there was a cheque from Taylor, as Taylor has acknowledged through his Defence counsel that it is his signature or initials on the back of the cheque. I do accept that Senessie may not have realised it was not signed at the front and the implications of that non-signing. Senessie does not, from the evidence before me, have a bank account himself, and there is no evidence that he deals regularly or often with cheques. I do accept that he would not have realised that it could not have been cashed. I also accept that it was not enough to be a payment or part payment for carvings.

170. I find accordingly that the payments were made to Senessie by Taylor and the effect of these payments was to keep Senessie close to Taylor.

171. Throughout his evidence-in-chief and his replies in cross-examination, Senessie insisted he turned to Taylor as "his consultant and instructor" and that he relied on Taylor's experience and knowledge of the Court over a seven-year period. He depended on him for advice. He was eventually to agree with Defence counsel that this gave an impression of him as being sheep-like in following, unchallenged, Taylor's every direction.

172. Defence counsel has put in evidence a statement by lawyer X concerning the meeting with Senessie on 14 July 2011, prior to his arraignment on 15 July 2011. There was a very considerable amount of cross-examination about the content of that meeting. The instructions given by Senessie and the advice and words of Lawyer X have been put in cross-examination at considerable length and with several variations on the same issue.

173. I note for purposes of record that Senessie waived lawyer/client privilege provided in Rule 97 to permit Independent Counsel to interview Lawyer X in the course of his investigation into the role of the Accused and his interaction with the Five Complainants from Kailahun. Instead, Lawyer X has now become a witness for the Defence against his former client. The

evidence of Lawyer X and the line of questioning of Senessie do not go to the role of the Accused or the evidence of the five complainants. Clearly this line of questioning was intended to seriously undermine the credibility of Senessie. Having reread and considered the cross-examination and evidence again in depth, I come to the view submitted by Independent Counsel to ask why, when it was so obvious to Lawyer X that he had a potential professional conflict, did he come to the Special Court for the purpose of defending what could well be a potential conflict situation?

174. I am satisfied that Lawyer X had the disclosures. This follows a question I asked. Lawyer X must have been alerted to the alleged involvement or the matters that were put in relation to the Accused, and given his admiration for the Accused, this must have presented a potential conflict. Senessie says in his evidence, which was adduced only in cross-examination, that he and Lawyer X were alone in the room when the interview took place. This is also borne out by X's statement. I note, therefore, that there was no interpreter present and, although it is not categorically stated, it must follow that the record of interview was conducted in English.

175. Senessie says he was never in a court. This I accept, as it has not been rebutted or challenged. According to his evidence, he had been told several times by the Accused that the case was "*sine die*" or close to being dismissed. Again this evidence has not been rebutted or challenged, other than to challenge the entire credibility of Senessie's evidence.

176. The first item in exhibit D5B, (Lawyer X's handwritten notes), relate to his conversation with Independent Counsel. Lawyer X was surely obliged to put the offers of compromise made to him by Gardner to Senessie, and I have no doubt from both the evidence of Lawyer X and Senessie, that he fulfilled that professional obligation. Whether he actually advised Senessie to accept this proposal is in dispute. But given the obligation to advise, and to advise a client to consider it, I accept that Senessie may well have interpreted this as advice to plead guilty. In any event, it is clear from both parties that Senessie refused any offer and insisted on pleading not guilty.

177. As noted earlier, Senessie has given his evidence in this Court in Krio with an interpreter. He has said he can read and write, but that he never went to university or higher education; hence, his competency in English, particularly legal English, is unclear to me. He said in

evidence that Lawyer X had put a draft on a computer of what became the endorsement he signed. Lawyer X turned the computer and showed it to him. This has not been rebutted, and given the fact that there is no draft of this exhibit of the endorsement in exhibit D5B, I accept that evidence. Senessie said he signed the endorsement under duress. He insists he drafted the fourth paragraph, in which he said he intended to plead not guilty but would reflect further. Lawyer X says that he drafted paragraph 4 himself. Clearly from both sides, the original paragraph 4 was changed. Given the terminology used in the present paragraph 4, I am of the view that Lawyer X drafted the words on Senessie's instructions.

178. Senessie said he was forced to sign the endorsement and that it was "under duress". "Duress" and "force" are strong words implying physical or psychological pressure. I do not believe that Lawyer X used physical or psychological force, but this situation must be seen in context. Senessie knows he is facing a Court the next day. He has been advised, he says, by the Accused, a man who he knows has seven years' experience with the Special Court, to plead not guilty. He is dependent on Lawyer X for legal advice. Lawyer X makes it clear he cannot continue on the case or appear unless Senessie signed a waiver acknowledging that Lawyer X had a professional relationship and a friendship with the Accused, causing Lawyer X a potential conflict. Senessie had little choice if he was to be represented the next day.

179. There is nowhere in this evidence or in the questions put by Defence Counsel that leads me to find that Senessie was told he could get another lawyer at short notice. I accept that he felt that he had no alternative but to sign. Lawyer X did offer him an alternative: David Bentley, however, David Bentley was not there in Freetown with him, and the arraignment was the next day in Freetown.

180. Defence counsel has put emphasis also on Senessie's reference to Bentley as a QC, when in fact he was not, and cross-examined Senessie strenuously on the point. In my view, the intent of all this evidence and cross-examination is to undermine Senessie's credibility and to point to him as an unreliable witness.

181. I do not consider it goes that far. It presents a picture of a person for whom English was not the first or even second language, facing a difficult personal situation and being presented

with a potential conflict on the part of the man who was sent to advise him. I do not reject Senessie's evidence on the basis of the conflicting evidence between Lawyer X and Senessie.

182. Senessie has also been cross-examined on how he came to appoint Lansana, and it has been put to him that his version that he appoint someone he had never met before is not credible. I note that he had not met Lawyer X before either. He said that X was recommended by the Accused, and that has not been in issue on the evidence before me. In fact, I note is also in Lawyer X's statement.[144]

183. Given Senessie's explanation that Lansana was in the same political party as himself; that he was a fellow National; that Lansana knew Kailahun; and given his experience with Lawyer X, I accept that he decided, as he said in evidence, to rely on a local lawyer. The Defence submissions are that these two matters show that Senessie is not a credible, reliable witness who, already a proven liar, cannot be believed on anything on his evidence. I am not prepared to disregard his entire evidence for these two reasons.

184. Senessie has given repeated and detailed evidence of the Accused's instructions, advice, and his reliance upon them. He has stressed, and it is not in dispute, that the Accused worked for the Special Court for seven years.

185. Senessie was challenged on what the Accused actually said to him and the influence it had had on him. It's been put to Senessie that he and the Accused were business partners, and the visits to Bo were in pursuance of that business relationship. It has also been put he is presenting himself as a person who followed the Accused's instructions like a sheep. Senessie agreed that he was like a sheep. I am satisfied on the evidence that Senessie visited Bo once on the invitation of the Accused, when a business partnership or working relationship was discussed, but that the visit was also to do with the witnesses from Kailahun; that Senessie visited the Accused once prior to going to meet the independent investigator in Freetown; that he was given advice in the course of that visit; and that he experienced kindness from the Accused's father.

186. I find that Senessie also visited Bo and stayed with the Accused en route to his trial in June 2012. I make these findings on the evidence of Senessie, and they are corroborated, in the

[144] Exhibit D5.

case of the visit when he was on his way to face trial, by the dating and timing of the cheque for Le30,000 that has been shown, but was not signed.

187. In relation to the challenge in cross-examination that he was like a sheep, Senessie's evidence, which was not adduced in his original trial, showed that the visits to Bo and the advice from the Accused followed calls from the Accused to him. I am satisfied on the evidence in Exhibit P1, on Senessie's evidence and TFI-274's evidence that Senessie did not take the documents to Bo and did not use the Le200,000 for the purpose of taking the documents to Bo. However, I do find that he went to Bo and visited the Accused, on more than one occasion. I find on his unchallenged evidence that he was received kindly by the Accused's father and stayed at the Accused's home.

188. It was put to him strongly that it was the carving business, in conjunction with the Accused's carpentry business, that brought him there. I accept and find on Senessie's evidence given in reply to those questions that, whilst there was an element of business and that he did carve panels, that there were also discussions about this case during the visits.

189. The use of terms such as "*sine die*", which I accept Senessie thought meant the case had died, indicate to me and corroborate the evidence of Senessie that he was influenced by the Accused and accepted the Accused's advice. I do so because the term "*sine die*" is a legal term that is not readily used by people from a non-legal background, and Senessie himself misinterpreted it. The Accused is from such a legal background and would have, I accept, given reassurances that because of the delays in having the actual hearing, that the case was likely to be dismissed and was, as it indeed was, "*sine die*". But the word adjourned was missing, as Senessie found when he questioned a JP, a justice of the peace, and was told the meaning of the term.

190. I find there were other visits and there were phone calls. In the course of these, Senessie was assured and cajoled into a false sense of security that the case would not happen and that it would be dismissed. Given that Senessie had not been in a Court before, I accept his evidence that these terms came from somebody who had knowledge of Court terminology.

191. I note that there is no evidence that he had been in touch with a lawyer between the sacking of Lawyer X and the appointment of Lansana. He said he was told by the Accused. No other

person is named or suggested or referred to in the course of evidence, and no other names were put to him. I find that the terms such as "*sine die*" came into the conversations that he had with the Accused.

192. I find that there were such conversations, and I find they related to this case. I accept both his evidence and the submission that he was sheep-like, and, as a sheep, he was following the Accused. In particular, he liaised and talked with the Accused concerning the interview with the Independent Counsel. He says he refused to talk to the Independent Counsel because of what the Accused told him.

193. It is undisputed that Senessie did refuse to talk to the Independent Counsel when he came to Kailahun. His evidence, adduced in cross-examination, was that the Accused warned him against taking advice from the Principal Defender's lawyer because she would "connive". That has not been challenged or rebutted.

194. I find the Accused did influence Senessie to refuse to see the Independent Counsel and that the Accused told him not to implicate them both. Senessie gave information to the Independent Counsel that has been found, by way of evidence in his own trial and in his statements at sentencing, to have been false. The question is: did the Accused influence, instruct, or otherwise persuade him to do this?

195. I find the Accused did persuade Eric Senessie to give false information. I find this on the evidence of Senessie, which, whilst strongly challenged, was clear and unequivocal and has been borne out and corroborated by his nonattendance at a meeting with the Independent Counsel.

196. As discussed in my earlier decision, the "Decision on the Confidential – Under Seal Submission of Supplemental Confidential Report of Independent Counsel", Rule 77(A)(iv) states that a person may be punished for contempt if he is found to have knowingly and wilfully interfered with a witness who is about to give evidence in proceedings, or a potential witness.[145]

[145] Decision on Supplemental Report, para. 8.

197. The term "proceedings" is not defined in Rule 77 or Rule 2 of the Rules. As the procedure provided by Rule 77(C)(iii) had been initiated by way of a motion, followed by a Trial Chamber decisions, and the investigation implemented by that decision, I held that this investigative procedure constituted a "proceeding" and therefore Senessie was, at that time, a potential witness. There has been no argument or submission in this trial that has challenged or otherwise caused me to revisit that interpretation and I continue to be of the view that the investigative procedure carried out by Independent Counsel was pursuant to an order of the Trial Chamber and was a "proceeding" within the provisions of Rule 77(A)(iv).[146]

198. The Accused was aware of the appointment of Independent Counsel - Senessie's evidence shows that the Accused alerted Senessie to the original motion filed by the Prosecutor.

199. I find the Accused intended that Senessie avoid the Independent Counsel and subsequently to mislead the Independent Counsel by false information and that he did so knowingly, aware that it would likely affect the outcome of those investigations.

200. Accordingly, I find the Accused has interfered with a person who was about to give evidence to an investigation by Independent Counsel, and I find him guilty of Count 9.

201. I now turn to the documents that were signed. Senessie testified that the Accused wanted an invitation to Kailahun. Mohamed Kabbah also stated that Senessie told him the Accused wanted "a kind of invitation letter". Kabbah signed it. It was addressed to Taylor. It reads as follows: "Dear Mr Prince Taylor, I want to take this opportunity to inform you that you are warmly welcome to meet in Kailahun for a privilege discussion about a certain issue which I thought wisely to call your attention for the development of this nation, though you may not know me in person." It then says, "my name is Mohamed Kabbah, Sierra Leonean resident in Kailahun. With much reliance cooperation I hope you may not have any doubt of meeting me." In Agreed Fact 4, three such letters were admitted as exhibits J7, J8, and J9. Two are signed and one is unsigned. I note that each letter is addressed to Prince Taylor. In the evidence of Eric Senessie and in Exhibit P1, the Accused's statement, it is shown that these were sent to the Accused. In fact, as I have noted, the Accused put to Senessie in cross-

[146] 14 October 2012 Decision, para. 17.

examination that the Le200,000 was for Senessie's transport to come and bring the documents to Bo.

202. I find that the Accused received those documents and intended to receive those documents. I look at the wording of the documents. They use words such as "privilege", a possible legal term, "reliance" and "cooperation", and I ask, rhetorically, if these are terms that come readily to a person of Senessie's education and background. I find that although Senessie was a drafter, he was not the sole author. He says he consulted with the Accused. That has been strongly challenged, but not rebutted.

203. I find that he did consult with Prince Taylor on this invitation. I find that Prince Taylor instigated the drafting of this invitation. I find that Prince Taylor received the documents and that he wanted to receive the documents. I find that Senessie's version of that sending of the document and the drafting is corroborated by the evidence of TFI-274 and of Exhibit P1.[147]

204. I now turn to the counts of relating to otherwise interfering with witnesses. I consider that the *actus reus* of these events must relate to actions of the Accused at the time of the interference that has been found in *Independent Counsel v. Senessie* as facts and that have been admitted as adjudicated facts. The thrust of the cross-examination of Senessie was to show that Senessie was unreliable and incredible, and, that having conceded that he already lied at his own trial, that none of his evidence can be believed; that it must all fall, including what he now says really happened at the time the witnesses were approached and instructed.

205. I have not accepted that legally all his evidence must be disregarded. I find that some facts are clearly and unequivocally established and corroborated. I find on the evidence that the Accused spoke to Senessie and asked him to locate witnesses who went to The Hague. I find that the Accused told Senessie there had been a development in The Hague. I find the Accused asked him to ascertain whether the witnesses would return to The Hague to change their testimony. I find this on the evidence of Senessie, Kabbah, and TFI-585. I find that the Accused called Senessie again a week after his initial call to ascertain if he had located the witnesses.

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[147] As noted in the outline of evidence, the Accused objected to part of the contents of Exhibit P1. No note has been taken or reliance placed upon the disputed portions.

206. I find he sent Le200,000 to facilitate transport for location and travel to find witnesses. I find Senessie's version is corroborated by the date of the bank transfer, which was made on 1 February 2011, as compared to the proposition put to Senessie, that it was payment for his travels with the documents – letters of invitation – since the letters of invitation were dated later *viz* on 10 February 2011. I find he instructed the letters to be drafted and signed. I have already found that the letters were sent to him. I again state that this is apparent from Senessie's evidence, and it is corroborated by Exhibit P1, in which the Accused stated that he fetched the document.

207. I can find no clear explanation for him wanting that document other than that he wanted to facilitate meeting the witnesses. I find that all of these directions and the instructions to Senessie, which are uncontested from the five witnesses' evidence that was admitted, were carried out by Senessie, and I find that they were entirely at the direction and behest of the Accused.

208. The proposition put to Senessie very strongly in cross-examination, that Senessie thought of this scheme as a means to get money for a political campaign, is without foundation or evidence, and I disregard it. I find that the Accused directed Senessie to go to the witnesses and to persuade them and to inquire that they could go back to The Hague to change their testimony. I find that Senessie did this with the intention of having the witnesses go to The Hague to change their testimony and that Senessie acted in accordance with that directive and order.

209. I find that the Accused's instruction and his intention were to persuade the witnesses to change their testimony and that this amounts to otherwise interfering with the five witnesses.

210. I turn to assessing, again having considered the entire evidence, the evidence of payment in particular.

211. I have found as fact that there were various payments: a refund of travel money; a payment for transportation to find the complainant witnesses; petty cash for his own use when he went to Freetown; $500 has been made an issue, and it has been stated by Senessie that that was promised to him. I find his evidence on this not to be corroborated and not to be credible. But in any event, I find that if there had been such a promise, it was a promise of a payment

to Senessie personally and not to the witnesses. All the other payments were to Senessie personally. There is no evidence that any payment was accompanied by an instruction to pay the witnesses.

212. Senessie said he told the complainant witnesses they would get something if they conformed to the request to return to The Hague. The term he used at least twice in his evidence is "nothing is for nothing",[148] but I can find no evidence that that promise to pay something came out of the words that Senessie has attributed to the Accused. The witnesses mentioned relocation was discussed. Senessie stated in his evidence in chief that the Accused said they could be relocated.[149] I cannot identify in the evidence before me that the Accused offered any relocation in clear terms or instructed Senessie to make an offer of relocation. Senessie's evidence in chief is not sufficiently reliable to cause me to find that the Accused gave such clear and unequivocal instructions. Accordingly, I do not consider there is sufficient evidence to base a finding of interference with the administration of justice by offering a bribe to any of the five witnesses who had given evidence in The Hague.

DISPOSITION

213. I find Prince Taylor GUILTY of:

Count 2: knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);

Count 4: knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);

Count 7: knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);

[148] Transcript 14 January 2013, p. 99.
[149] Transcript 14 January 2013, pp 98-99.

Count 8: knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);

Count 9: knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

214. I find Prince Taylor NOT-GUILTY of:

Count 1: knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);

Count 3: knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);

Count 5: knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv);

Count 6: knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Done in Freetown, Sierra Leone, this 25th day of January 2013.

Filed in The Hague this 11th day of February 2013.

Doherty J.

Justice Teresa Doherty
Single Judge

[Seal of the Special Court for Sierra Leone]