Case No. SCSL-2004-14-T THE PROSECUTOR OF

THE SPECIAL COURT

V.

SAM HINGA NORMAN MOININA FOFANA ALLIEU KONDEWA

FRIDAY, 21 OCTOBER 2005

12.10 P.M. DECISION

TRIAL CHAMBER I

Before the Judges: Pierre Boutet, Presiding

Bankole Thompson

Benjamin Mutanga Itoe

For Chambers: Ms Sharelle Aitchison

Ms Roza Salibekova

For the Registry: Ms Maureen Edmonds

For the Prosecution: Mr James C Johnson

Mr Mohamed Bangura

Ms Nina Jorgensen

Mr Mohamed Stevens (intern)

For the Principal Defender: Ms Claire Carlton-Hanciles

Ms Elizabeth Nahamya

For the accused Sam Hinga

Norman:

Dr Bu-Buakei Jabbi

Mr Kingsley Belle (legal

Ms Claire da Silva (legal

assistant)
assistant)

For the accused Moinina Fofana: Mr Arrow Bockarie

Mr Andrew Ianuzzi

For the accused Allieu Kondewa: Mr Charles Margai Mr Yada Williams 21 OCTOBER 2005 OPEN SESSION

	1	Friday, 21 October 2005
	2	[CDF210CT05A - EKD]
	3	[Decision]
	4	[Open session]
	5	[The accused Fofana and Kondewa present]
	6	[The accused Norman not present]
	7	[Upon commencing at 12.10 p.m.]
	8	PRESIDING JUDGE: Good morning, Prosecution and good
	9	morning, Defence counsel. For the record I would like to
	10	indicate first that we were ready to proceed at 12.00 noon
as	11	exactly, but for reasons that seem to be beyond control of us
time	12	a Chamber the accused persons were not brought in Court in
	13	as we had expected.
	14	We are now prepared to deliver our unanimous decision on
	15	the motions that have been filed for judgment of acquittal
the	16	pursuant to Rule 98 of the Rules of Procedure and Evidence of
read	17	Special Court. I will not read the entire decision but will
at	18	only extracts of that decision. I should inform the parties
now	19	this particular moment that the decision in its entirety has
	20	been filed with the Registrar and it will be available to you

	21	when this session is terminated.
	22	The Trial Chamber of the Special Court for Sierra Leone
	23	composed of Honourable Justice Pierre Boutet, Presiding Judge
	24	Honourable Justice Bankole Thompson and Honourable Justice
	25	Benjamin Mutanga Itoe;
	26	Mindful of the provisions of the Statute of the
	27	Special Court for Sierra Leone;
February	28	Mindful of the consolidated indictment dated 4th
	29	2004 filed by the Prosecution against Samuel Hinga Norman,

21 OCTOBER 2005

	1	Moinina Fofana and Allieu Kondewa;
	2	Mindful of the fact that the Prosecution closed its case
	3	against these three accused persons on 14th July 2005 there
getting	4	seems to be an indication in the audience that are you
if	5	the sound in the gallery? Yes or no? No. Can we be informed
yes.	6	this technical problem has been solved? The Court officer,
	7	MS EDMONDS: There is a slight problem but it will be
	8	sorted out very quickly.
	9	PRESIDING JUDGE: You can hear me now? Thank you. So I
	10	was in the reading of the introduction.
	11	Mindful of the fact that the Prosecution closed its case
	12	against these three accused persons on 14th July 2005;
court	13	Mindful of the written motions of acquittal filed by
	14	appointed counsel for Norman on 3rd August 2005 and by court
2005;	15	appointed counsel for Fofana and for Kondewa on 4th August
	16	Mindful of the written submission by the Prosecution in
2005;	17	response to each motion of acquittal filed on 18th August
	18	Mindful of the provisions of the Rules of Procedure and
98	19	Evidence of the Special Court, and in particular those of Rule
	20	as was amended on 14th May 2005;

on	21	Mindful of the provisions of international instruments
relating	22	international humanitarian law, and in particular those
	23	to armed conflicts, war crimes and crimes against humanity;
	24	Mindful of all submissions made by the parties on 20th
the	25	September 2005, after a Chamber deliberation hereby renders
	26	following decision:
	27	Procedural History. Samuel Hinga Norman, Moinina Fofana
are	28	and Allieu Kondewa, the three accused persons in this case,
	29	jointly indicted and are being jointly tried on an eight-count

21 OCTOBER 2005

	1	indictment that alleges offences relating to crimes against
	2	humanity, violations of Article 3 common to the Geneva
	3	Conventions and of Addition Protocol II and other serious
	4	violations of international humanitarian law in violation of
	5	Articles 2, 3 and 4 of the Statute of the Special Court for
	6	Sierra Leone.
	7	On 14th July 2005 the Prosecution, after calling 75
case.	8	witnesses, three of which were expert witnesses, closed its
team	9	Immediately thereafter and in open court each Defence
motion	10	for each of the accused indicated its intention to file a
the	11	of acquittal in accordance with the provisions of Rule 98 of
	12	Rules of Procedure and Evidence of the Special Court.
	13	This was, as ordered by the Court, done by written
	14	submissions filed by each of the Defence teams within the
	15	prescribed time limits. The Prosecution, in turn, and in
the	16	writing, replied to each motion of acquittal and this within
	17	prescribed time limits as well.
Procedure	18	Applicable Standard Under Rule 98 of the Rules of
am	19	and Evidence of the Special Court. Again I emphasise that I

now	20	only reading some extract of the decision. I will be quoting
	21	from paragraph 34 of that decision. We have expanded on the
So	22	meaning and what we understood to be the standard applicable.
the	23	this is paragraph 34, which is title "Applicable Standard of
	24	Rules of Procedure and Evidence of the Special Court."
for	25	In our considered opinion, Rule 98 defines the standard
	26	determining the merits or otherwise of a motion of acquittal.
	27	Guided by the contextual approach to the Rule, we do emphasise
in	28	that in its plain and ordinary meaning it is limited in scope
on	29	the sense that it does not envisage a judicial pronouncement

NORMAN ET AL

21 OCTOBER 2005

Page 5

the	1	the guilt or the innocence of the accused at this stage. But
observe,	2	Rule envisages, as an appropriate legal standard we do
	3	is one that limits and restricts a tribunal only to a
	4	determination as to whether the evidence adduced by the
	5	Prosecution at the close of its case is such as is legally
counts	6	capable of supporting a conviction on one or more of the
	7	in the indictment.
	8	In fact, in interpreting this new version of a simply
the	9	drafted rule, and giving it its natural and ordinary meaning,
	10	Chamber is of the opinion that the evidence adduced by the
attain	11	Prosecution does not, within its present context, need to
but	12	the threshold of the required proof beyond reasonable doubt,
	13	rather, shall only be such as is capable of supporting a
	14	conviction. We stress here in our opinion the standard is not

OPEN SESSION

16 rather such as "could" support a conviction.

15

but

Disposition. For the foregoing reasons, the Chamber

pursuant to Rule 98 first finds no merit in the motion of each

accused, namely Sam Hinga Norman, Moinina Fofana and Allieu

Kondewa, for a decision of acquittal in respect of one or more

whether the evidence is such as should support a conviction,

	21	counts in the indictment, and accordingly dismisses the said
	22	motions.
further	23	Two, notwithstanding the above finding, the Chamber
	24	finds, in respect of particular allegations contained in each
	25	count on the indictment, as follows:
	26	One, that there is no evidence capable of supporting a
	27	conviction against the accused in respect of the offence of
2(a)	28	murder as a crime against humanity, punishable under Article
to	29	of the Statute, and murder as a violation of Article 3 commor

Page 6

21 OCTOBER 2005

punishable	1	the Geneva Conventions and of Additional Protocol II,
	2	under Article 3(a) of the Statute, in respect of the following
	3	areas:
	4	(i) Panguma near Tongo Field, as charged in paragraph
	5	25(a) in the indictment;
	6	(ii) Sembehun near Tongo Field, as charged in 25(a) of
	7	indictment;
	8	(iii) Kebi Town in Bo District, as charged in paragraph
	9	25(d) of the indictment;
25(d)	10	(iv) Mongere in Bo District, as charged in paragraph
	11	of the indictment;
25(d)	12	(v) Kpeyama in Bo District, as charged in paragraph
	13	on the indictment;
	14	(vi) Bylago in Moyamba District, as charged in
	15	paragraph 25(e) of the indictment;
	16	(vii) Sembehun in Moyamba District, as charged in
	17	paragraph 25(e) of the indictment;
	18	(viii) Gbangbatoke in Moyamba District, as charged in
	19	paragraph 25(e) of the indictment;
	20	(ix) Makose in Bonthe District, as charged in paragraph
	21	25(f) of the indictment;
	22	(x) Jembeh, as charged in paragraph 25(g) of the

	23	indictment;
	24	(xi) Gumahun, as charged in paragraph 25(g) of the
	25	indictment;
	26	(xii) Gerihun, as charged in paragraph 25(g) of the
	27	indictment;.
paragraph	28	And, (xiii) Bo-Matotoka Highway, as charged in
	29	25(g) on the indictment.

21 OCTOBER 2005 OPEN SESSION

	1	Two, that there is no evidence capable of supporting a
	2	conviction against the accused in respect of the offence of
	3	inhumane acts as crimes against humanity, punishable under
violation	4	Article 2(i) of the Statute, and cruel treatment as a
Additional	5	of Article 3 common to the Geneva Conventions and of
	6	Protocol II, punishable under Article 3 of the Statute, in
	7	respect of Blama, as charged in paragraph 26(a) of the
	8	indictment.
	9	Three, that there is no evidence capable of supporting a
	10	conviction against the accused in respect of the offence of
	11	pillage as a violation of Article 3 common to the Geneva
	12	Conventions, and of Additional Protocol II, punishable under
in	13	Article 3(f) of the Statute in respect of Mobayeh, as charged
	14	paragraph 27 of the indictment.
	15	Consequently, in light of the findings dismissing the
	16	motions, pursuant to Rule 85, each of the accused person is
	17	hereby put to his election to call evidence, if he so desires.
has	18	Before we conclude I should mention that there is, and
Honourable	19	been filed as well, a separate concurring opinion of
	20	Justice Bankole Thompson, and that separate concurring opinion
	21	will not be read in Court at this moment but has been filed as

	22	well with the decision of the Court. I should again reiterate
	23	that this is a unanimous decision of the Trial Chamber.
at	24	That concludes this phase of the decision and the trial
	25	this particular moment. We have issued today and it is being
time	26	filed as well a scheduling order that will take place some
	27	next week for a first meeting. So you will be notified. As I
filed	28	say, this is available at this particular time; it has been
much.	29	with the Registrar as we came into Court. Thank you very

21 OCTOBER 2005

	1	Yes, Mr Prosecutor.
are	2	MR JOHNSON: Yes, Your Honour, by "scheduled meeting"
	3	you referring to a pre-defence conference under Rule
	4	PRESIDING JUDGE: A status conference first, and then we
question,	5	will be followed, and you will see in the document in
	6	the order in question, that a pre-trial conference is indeed
	7	being scheduled later on.
	8	MR JOHNSON: Okay, thank you, Your Honour.
and	9	JUDGE ITOE: The order is detailed enough, Mr Johnson,
	10	when you see it you will see how you proceed.
	11	MR JOHNSON: Thank you, Your Honour.
	12	PRESIDING JUDGE: Thank you.
p.m.]	13	[Whereupon the Hearing adjourned at 12.25
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