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SCSL-04-14-T
(18285 - 18298)

18285

SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber I

Before: Justice Pierre Boutet, Presiding
Justice Bankole Thompson
Justice Benjamin Mutanga Itoe

Registrar: Mr Lovemore Munlo, SC

Date: 25 May 2006

THE PROSECUTOR

-against-

SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

SCSL-2004-14-T

PUBLIC

**FOFANA APPLICATION FOR RIGHT OF
AUDIENCE FOR MR ANDREW IANUZZI**

For the Office of the Prosecutor:

Mr Desmond de Silva, QC
Mr Christopher Staker
Mr James C. Johnson
Mr Joseph Kamara
Ms Nina Jørgensen

For Moinina Fofana:

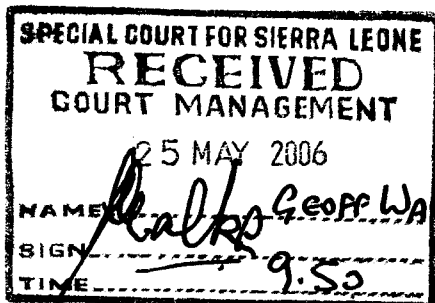
Mr Victor Koppe
Mr Michiel Pestman
Mr Arrow Bockarie
Mr Andrew Ianuzzi

For Samuel Hinga Norman:

Dr Bu-Buakei Jabbi
Mr Alusine Sani Sesay
Ms Clare DaSilva
Mr Kingsley Belle

For Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams
Mr Ansu Lansana
Mr Martin Michael



INTRODUCTION

1. Counsel for the Second Accused, Mr Moinina Fofana, (the “Defence”) hereby submits its ‘Application for Right of Audience for Mr Andrew Ianuzzi’ (the “Application”). The Application is made pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the “Rules”) and invokes the inherent jurisdiction of the Chamber.
2. For the reasons outlined below, the Defence seeks leave of the Chamber to grant to Mr Andrew Ianuzzi—currently a legal assistant for the Defence—a qualified right of audience before the Chamber for the duration of the CDF defence case. The Defence notes at the outset that this is not an application to have Mr Ianuzzi acknowledged as counsel (court-appointed or otherwise), a matter admittedly governed by the Rules. Rather, the Defence merely requests that the Chamber grant Mr Ianuzzi a right of audience to make submissions and lead witnesses under the supervision of existing court-appointed counsel. It is submitted that the allocation of responsibilities among individual members of any defence team is within the discretion of lead counsel, based on the qualifications of those individual members and subject to the endorsement by the Chamber pursuant to its inherent powers as a court-of-law.
3. The Defence submits that Mr Ianuzzi—a lawyer called to the bar of the State of New York—is capable of undertaking the requested responsibilities, as he has already demonstrated. Further, the Defence notes that the authorisation hereby sought reflects the express wishes of both Mr Fofana and lead counsel for the Defence. Therefore, and for the further reasons set forth below, the Defence respectfully requests that the instant Application be granted as soon as possible so that the Defence may organize its affairs accordingly.

SUBMISSIONS

4. Mr Ianuzzi joined the Defence in November 2005 as a legal assistant¹. Since that time, he has made meaningful contributions to the strategy, advocacy, investigation, and

¹ See Résumé of Andrew Ianuzzi, attached hereto as Appendix A. Mr Ianuzzi is a graduate of Columbia University (B.A. 1996) and Brooklyn Law School (J.D. 2002). He was admitted to practice law in the State of New York in July 2003. Prior to joining the Defence, Mr Ianuzzi served as a law clerk to the Honourable Steven M. Gold, United States Magistrate Judge for the United States District Court for the Eastern District of

administration of Mr Fofana's defence case². Indeed, he has made submissions before the Chamber on at least two occasions³.

5. As noted above, this is not a motion for assignment of counsel pursuant to the Rules, but rather it is simply an application for an acknowledgment of a limited right of audience pursuant to the Chamber's inherent powers. Mr Ianuzzi is not counsel for the Defence, as that term is defined by the Rules⁴. However, he is a lawyer, and he is in a position to greatly assist court-appointed counsel for the Defence in the presentation of oral submissions and the leading of witnesses pursuant to the Defence's current strategy. It should be noted that the Application does not seek to confer on Mr Ianuzzi the privileges of counsel including the right to take decisions on behalf of the Defence or to bill at a higher rate of pay for his services, issues which appear to be of some concern to the Principal Defender, who has unfairly accused Mr Ianuzzi of, *inter alia*, attempting to "undermine the integrity and authority of the Defence Office"⁵.
6. The Defence submits that it is the prerogative of lead counsel to apportion legal work among team members in line with their qualifications and contributions to date. There is nothing in the Rules to contradict this, and the Office of the Prosecutor enjoys a similar strategic freedom with respect to its personnel⁶. It is submitted that the doctrine of equality of arms should not deprive the Defence of the same level of flexibility in the conduct of its case.

New York. Following his clerkship, Mr Ianuzzi joined the litigation department of White & Case LLP, an international law firm based in New York City, where he practiced as an associate lawyer for one year. Mr Ianuzzi has appeared before the Supreme Court of the State of New York and the United States Immigration Court in New York.

² Mr Ianuzzi has played an integral part in all aspects of the case, including but not limited to the following tasks: drafting written submissions, outlining oral submissions, preparing senior counsel for cross-examination and examination-in-chief, researching various areas of international criminal law, participating in strategic planning, meeting with and taking instructions from Mr Fofana on a regular basis, investigating and interviewing potential witnesses in Sierra Leone and abroad, supervising the work of two investigators, liaising with the Defence Office on administrative matters, conducting day-to-day case management, and—on a few occasions—making oral submissions before the Trial Chamber. Mr Ianuzzi is *au fait* with all the relevant facts of the case, familiar with the constitutive documents of the Special Court, and seized of the relevant legal concepts, principles, and jurisprudence governing international criminal law. He has earned the trust and confidence of his client, teammates, and colleagues. Naturally, he would like to play a more central role in the case, and Mr Fofana and the Defence are convinced of both his ability and commitment to the case.

³ See *Prosecutor v. Norman et al.*, SCSL-2004-14-T, Trial Transcripts, 25 November 2005 and 11 January 2006.

⁴ Rule 44(A) sets forth the qualifications for "counsel" and Rule 45(C) lists the requirements for the positions of "lead" or "duty counsel".

⁵ See 29 November 2005 letter from Vincent Nmehielle to Victor Koppe, attached hereto as Appendix B.

⁶ Upon information and belief, at least two individuals with roughly Mr Ianuzzi's level of experience have made submissions for the Prosecution before the Chamber in the CDF case.

7. Further, the Defence submits that the ‘Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone’ (the “Code of Conduct”) contemplates a right of audience for individuals admitted to practice law in their own jurisdictions. Article 1 of the Code of Conduct defines “Defence Counsel”, presumably with a right of audience, to include “any legal assistant admitted to practice in a State”⁷. Indeed, upon information and belief, the International Criminal Tribunal for the Former Yugoslavia (the “ICTY”) recognizes a position of legal associate, which acknowledges the right of audience of an attorney called to the bar of his own state but who is not counsel before the ICTY.
8. The Defence further submits that the proposed arrangement would be in the best interests of Mr Fofana. With the imminent commencement of the Fofana defence phase of the CDF case, it will be vastly advantageous to the Defence to have an additional team member with an acknowledged right of audience before the Chamber. Because of his level of involvement in and knowledge of the case, there are times when Mr Ianuzzi is the most appropriate member of the Defence to address the Chamber, whether with respect to a motion he authored, a witness he investigated and proofed, or a matter of case management and trial preparation with which he is typically the most informed member of the team. Further, when Counsel from Amsterdam are not in Freetown, Mr Bockarie’s responsibility for proofing and leading consecutive defence witnesses would be greatly assuaged by way of an alternating arrangement with Mr Ianuzzi. Simply put, based on Mr Ianuzzi’s level of experience and involvement to date, it would be appropriate and in the best interests of Mr Fofana to grant him such right.
9. The Defence submits that at this crucial stage of the proceedings, it requires the flexibility to apportion work effectively among its membership commensurate with their experience and duties undertaken to date and not to be held to artificial titles or overly restrictive or strained interpretations of the Rules. As a general matter, the Defence submits that it is in

⁷ Code of Conduct at 5. In that regard, the Defence submits that the public comments of the Principal Defender indicating that Mr Ianuzzi should not enjoy a right of audience before the Chamber were both inaccurate and obstructive. See *Prosecutor v. Norman et al.*, SCSL-2004-14-T, Trial Transcript, 25 November 2005, at 16-17.

CONCLUSION

10. For the foregoing reasons, the Defence respectfully requests the Chamber to grant its Application as soon as possible.

COUNSEL FOR MOININA FOFANA

M.

Victor Koppe

Victor Koppe

memo from Vincent Nmehielle to the Defence attached hereto as Appendix C. Inexplicably, the Principal Defender has refused to consider the merits of Mr Ianuzzi's elevation to counsel pursuant to Rule 45(F) despite several requests to do so by lead counsel and despite the fact that there is precedent for such elevation at the Special Court. N.B. Ms Sareta Ashraph was elevated to the position of counsel for the Sesay Defence Team pursuant to Rule 45(F).

APPENDIX A

Résumé of Andrew Ianuzzi

ANDREW IANUZZI

125 Jomo Kenyatta Road
 Freetown, Sierra Leone
 +232 (0)76 959 969
 ianuzzi@un.org

ADMISSION

Member of the Bar of the State of New York

Called in 2003

EDUCATION

Brooklyn Law School, Brooklyn, New York

J.D., *cum laude*, 2002

Columbia College, New York, New York

B.A., 1996

PROFESSIONAL EXPERIENCE**Special Court for Sierra Leone**

Freetown, Sierra Leone

As a member of an international legal team handling the defense of an accused former civil militia commander, I attend trial sessions and hearings, draft written submissions, outline oral submissions, prepare senior counsel for cross-examination and examination-in-chief, research various areas of international criminal law, participate in strategic planning, meet with and take instructions from our client, investigate and interview potential witnesses in Sierra Leone and abroad, supervise the work of two investigators, liaise with the Defence Office on administrative matters, conduct day-to-day case management, and—with leave of the Trial Chamber—make oral submissions.

Legal Assistant

2004 – present

White & Case LLP

New York, New York

As an associate in the litigation department of a large international law firm, I worked on a variety of civil actions including bankruptcy, intellectual property, anti-trust, and immigration cases. My major responsibilities included researching various legal issues and drafting a variety of legal documents including memoranda, court pleadings and motions, and correspondence with clients and opposing counsel. Additionally, I was the attorney of record on two successful asylum cases before the United States Immigration Court. I am currently on a leave of absence.

Associate Attorney

2003 – 2004

United States District Court, EDNY

Brooklyn, New York

As a law clerk and courtroom deputy to the Honorable Steven M. Gold, a United States Magistrate Judge, I conducted legal research on a variety of civil and criminal issues, wrote legal memoranda and draft-opinions, participated in settlement conferences, and managed the paperwork and files generated by our caseload.

Law Clerk

2002 – 2003

Metropolitan Health & Human Rights Foundation

New York, New York

Co-founded a non-profit charitable foundation, which raises money for legal and medical relief efforts in Africa, particularly Sierra Leone.

Vice-President

2004 – present

International Institute for Human Rights **Participant**
Strasbourg, France 2000
 Attended the annual study session on human rights and international humanitarian law.

Cravath, Swaine & Moore **Legal Assistant**
New York, New York 1999
 Assisted with case management and trial preparation on a variety of criminal and civil litigations.

MetroPaint **General Partner**
New York, New York 1998 – 1999
 As a co-founder of a commercial painting company, hired and supervised independent contractors, negotiated bids with general contractors, purchased supplies, and painted.

American School of Tangier **Teacher**
Tangier, Morocco 1996 – 1998
 Taught English, mathematics, science, history and art to sixth-grade students. Supervised the dormitory and assisted with the athletic and dramatic programs.

INTERNSHIPS

Law Offices of Stacey Grey **Legal Intern**
New York, New York 2002
 Assisted a civil-rights lawyer with legal research, drafting, discovery, trial preparation, client interviews, and administrative aspects of her practice. Drafted a successful opposition to a motion to dismiss the lawsuit of a New York state inmate.

Brooklyn Legal Services Corp. **Legal Intern**
Brooklyn, New York 2001 – 2002
 Assisted immigrants with their applications and cases for asylum in the United States including the preparation of immigration forms and supporting legal memoranda.

Kings County Supreme Court **Legal Intern**
Brooklyn, New York 2001
 Assisted the law clerk of a New York criminal court judge with legal research, drafting, and the review of grand jury minutes for challenges to the sufficiency of indictments.

Foundation for Human Rights Initiative **Legal Intern**
Kampala, Uganda 2001
 Conducted extensive research on the death penalty in Uganda including interviews with police, prison officials, court officials, former inmates, and other aid workers. Traveled to protected camps in northern Uganda to document human rights violations.

Legal Aid Society – Capital Division **Legal Intern**
New York, New York 2000 – 2001
 Assisted a small team of lawyers, psychologists, and investigators with legal research, drafting, and administrative tasks associated with the representation of a New York State defendant facing capital charges. Our case resulted in a sentence of life imprisonment rather than the death penalty—a victory for the team as our client's guilt was all but conceded.

APPENDIX B

29 November 2005 letter from Vincent Nmehielle to Victor Koppe



SPECIAL COURT FOR SIERRA LEONE
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OFFICE OF THE PRINCIPAL DEFENDER

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29 November 2005

Victor Koppe
 BÖHLER, FRANKEN, KOPPE, WIJNGARDEEN
 Advocaten
 Keizersgracht 560-562, 1017
 Amsterdam, 1017 EM, Holland

Dear Mr. Koppe:

I am in receipt of a letter apparently written by you but appeared to have been signed by someone else of 28 November 2005 addressing my memorandum dated 25 November 2005 to the Honourable Justice Boutet, Presiding Judge, Trial Chamber 1. I have a number of concerns about your letter that I feel compelled to bring to your attention.

First, I am surprised to learn that as lead counsel with many years of legal practice experience, you would equate your standing to have audience before the Court to that of a junior member of the bar, irrespective of the requirements established by Rule 45 of the *Rules of Procedure and Evidence*. In this vein, I was especially concerned that you would suggest to a member of your legal team to "make inquiries with the Chamber" despite the Rules on the issue of audience. Such conduct would appear to be inconsistent with the requirements of Articles 9 and 28 of the *Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone*.

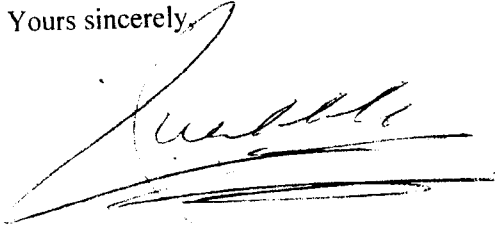
Secondly, I am quite concerned at your suggestion that the Judges of the Court who have adopted Rules authorizing the Principal Defender to require of counsel certain legal practice experience to have standing to defend accused persons should totally disregard such Rules and the authority that come with them.

Thirdly, unlike you, a Court-appointed counsel who is a "contractor," Andrew Ianuzzi, a legal assistant, is not the same kind of contractor in the sense that he is not counsel. In any event, all members of the defence teams are answerable to the Defence Office in accordance with the legal services contract and by operation of the various rules applicable before the Court.

Fourth and finally, contrary to the final paragraph in your letter regarding the appointment of Mr. Ianuzzi as co-counsel under Rule 45(F), not "Rule 44(F)," I indicated to you that he was not qualified to be appointed co-counsel according to the Rules and that you should refer to them. I stress that Mr. Ianuzzi does not have the right of audience before the Court and as such does not have standing to seek leave of the Court to grant him audience, whether by inquiring of Chambers or in open court.

In closing, Mr. Januzzi, who has only two and half years post-admission experience, should operate like all other legal assistants by assisting counsel in the preparation of their case, taking of notes for counsel during trial, bringing issues to the attention of Counsel and the like. He should not clamour to lead a senior Court-Appointed counsel in the team in the person of Mr. Arrow Bockarie. As Principal Defender with the mandate under the Rules, I would not tolerate on the part of counsel or legal assistants any deliberate attempt to circumvent the Rules and to undermine the integrity and authority of the Defence Office or, for that matter, any other organ of the Court. I expect lead counsel for all defence teams to ensure that all members of their team comply with the applicable Rules and traditions of the legal profession.

Yours sincerely,



Vincent O. Nmhielle
Principal Defender

Cc: Justice Pierre Boutet
Justice Benjamin Itoe
Justice Bankole Thompson
Lovemore G. Munlo, Registrar

APPENDIX C

5 May 2006 memo from Vincent Nmehielle to the Defence




PECIAL COURT FOR SIERRA LEONE
 JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
 OFFICE OF THE PRINCIPAL DEFENDER

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INTEROFFICE MEMORANDUM

To: Victor Koppe, Michiel Pestman, and Arrow Bockarie, Court-Appointed Counsel.

From: Vincent O. Nmehielle, Principal Defender 

Cc: Lovemore G. Munlo SC, Registrar; Elizabeth Nahamya, Deputy Principal Defender; Charles Jalloh, Legal Advisor; Lansana Dumbuya, Duty Counsel - CDF; Roza Salibekova, Legal Officer - CDF.

Date: 5 May 2006.

Subject: Re: Memo on the Assignment of Counsel Pursuant to Rule 45(F).

Dear Messrs. Koppe, Pestman and Bockarie:

Thank you for your memo dated 3rd May 2006 in which you requested that I assign Mr. Andrew Ianuzzi, who is currently a legal assistant, as co-counsel for the Fofana Defence Team under Rule 45(F) of the *Rules of Procedure and Evidence of the Special Court for Sierra Leone*.

As you know, my office is mandated under Rule 45(C) to maintain a list of “*highly qualified* criminal defence counsel” whom I believe “are appropriate to act as duty counsel or to lead the defence or appeal of an accused”. Among other things, under Rule 45(C), counsel must be not only be able to speak fluent English and be admitted to the bar of a state, counsel must also “have at least 7 years’ relevant experience.” Rule 45(F) provides for the exception, as you correctly noted, to the effect that “the Principal Defender may, in *exceptional circumstances*, assign as co-counsel individuals with less than five years admission to the bar of a state” (my emphasis).

You advanced two primary reasons to support your request for Mr. Ianuzzi’s appointment as co-counsel. First, that it will be “vastly advantageous” to your team to have an additional team member in Freetown with a right of audience before the Court. Secondly, that Mr. Bockarie, one of the co-lead counsel, will be greatly assisted by Mr. Ianuzzi with witness issues during the absence of international counsel from Freetown.

In my opinion as Principal Defender, Mr. Ianuzzi, who has only about 3 years experience at the New York Bar, is not qualified for appointment as co-counsel in view of the fact that we currently have 3 senior counsel in the Fofana Defence team, one of whom (Mr. Bockarie) resides within Sierra Leone. In addition, I am yet to be convinced that Mr. Ianuzzi cannot assist Mr. Bockarie with witness issues under the status quo, especially given the conditions

of supervision that you would attach to his ability to appear before the Court. In other words, aside from convenience, you have not demonstrated any exceptional circumstances warranting Mr. Ianuzzi's appointment as co-counsel to the Fofana legal team.

I wish to note that you, Mr. Pestman, as assigned counsel, undertook in your legal services contract with the Defence Office to be available for the duration of the trial; and any excused absence must therefore be dealt with under the current configuration of the team, except if you are unilaterally seeking to modify your undertakings in the contract. I will not condone a situation where Counsel fail to live up to their availability undertaking and then use the under exceptional circumstances clause of the Rules to seek the appointment of Counsel, who under the Rules and the circumstances, is clearly unqualified.

Furthermore, I draw your attention to the fact that I have clarified my position on this issue in the past. In fact, in a memo from Mr. Victor Koppe dated 28th November 2005, he proposed that Mr. Ianuzzi be appointed as co-counsel. As I indicated to Mr. Koppe in my reply dated 29th November 2005, he had not demonstrated any exceptional circumstances warranting the addition of a legal assistant like Mr. Ianuzzi to the Fofana Defence team as co-counsel.

In any event, because counsel members of the Fofana team are Court-Appointed, it is outside my jurisdiction to appoint any counsel to join a Court-Appointed team. You may, therefore, wish to consider submitting your request to the Judges of Trial Chamber 1; as such appointment will require a court order. I cannot, under the circumstances, approach the Trial Chamber with your proposal, as I would have normally done in cases of additional counsel to a Court-appointed team that have merit.

Should you have any questions on this matter, please do not hesitate to let me know.

Kind regards