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SCSL-11-02-PT
(151-156)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty
Single Judge of Trial Chamber II

Registrar: Binta Mansaray

Case No.: SCSL-2011-02-PT

Date: 1 June 2012

The Independent Counsel

v.

Hassan Papa BANGURA
Samuel KARGBO
Santigie Borbor KANU
Brima Bazy KAMARA

SPECIAL COURT FOR SIERRA LEONE	
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COURT MANAGEMENT THE HAGUE	
01 JUN 2012	
NAME	SAMUEL J. FORNATH
SIGN	
TIME	16:50

SCHEDULING ORDER FOR THE CONDUCT OF THE TRIAL

Independent Counsel:
Robert L. Herbst

Counsel for Bangura:
Melron Nicol Wilson
Counsel for Kargbo:
Charles Taku
Counsel for Kanu:
Kevin Metzger
Counsel for Kamara:
Abdul Serry Kamal

I, Justice Teresa Doherty, acting as Single Judge of Trial Chamber II of the Special Court for Sierra Leone (“Special Court”);

RECALLING that Samuel Kargbo appeared before this Court on 15 July 2011, pleaded guilty and was convicted on all counts, and was remanded for sentencing on bail subject to conditions;

RECALLING that the Accused Santigie Borbor Kanu and Brima Bazzy Kamara appeared before the Court on 15 July 2011 and pleaded not guilty to all counts and were remanded in custody pending hearing;

RECALLING that the Accused Hassan Papa Bangura appeared before the court on 15 July 2011 and pleaded not guilty to all counts and was remanded on bail subject to conditions pending hearing;

RECALLING that on 1 May 2012, I issued a Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73bis and Order for Submissions (“the Scheduling Order”);¹

RECALLING the Scheduling Order of 1 May 2012 wherein I directed that the parties file submissions on propositions for the conduct of the trial;

RECALLING that the Scheduling Order directed the parties to file the aforementioned submissions within fourteen days of the Order;

NOTING that the Independent Counsel filed the Prosecutor’s Additional Submissions Pursuant to Scheduling Order of 1 May 2012 on 15 May 2012;²

NOTING that Counsel for Samuel Kargbo filed submissions pursuant to Rule 100 and referred to the Scheduling Order pursuant to Rule 73bis and Order for Submissions on 21 May 2012;³

NOTING that Counsel for Accused Santigie Borbor Kanu and Hassan Papa Bangura filed submissions outside of the time limit set by the Scheduling Order and did not conform with the provisions of Article 12 of the Practice Direction on Filing Documents before the Special Court for Sierra Leone (“the Practice Direction”);

NOTING further that Counsel for Accused Brima Bazzy Kamara did not file any submissions pursuant to the Scheduling Order; and

RECALLING the Provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“the Statute”) and Rules 73, 77, 100 and 101 of the Rules of Procedure and Evidence of this Court (hereinafter “the Rules”).

I. BACKGROUND and PARTIES’ SUBMISSIONS

1. In a Scheduling Order dated 1 May 2012, I directed the parties to file, within fourteen days of the order, submissions on propositions for the conduct of the trial.⁴ The Independent

¹ SCSL-2011-02-PT-015.

² SCSL-2011-02-PT-016.

³ SCSL-2011-02-PT-018.

⁴ SCSL-2011-02-PT-015.

Counsel's submissions, filed on 15 May 2012, were filed within the time limit prescribed by order.⁵ The submissions of Defence Counsel for Samuel Kargbo contained submissions pursuant to Rule 101 and submissions concerning the conduct of the trial and were not timely filed. Likewise, submissions on behalf of Hassan Papa Bangura and Santigie Kanu were not timely filed, nor were they filed with a late filing notice as provided by Article 12 of the Practice Direction. There was, therefore, no application before the Court to admit the documents. Only Counsel for Kanu explained a possible reason for delay.⁶ Defence Counsel for Kanu submits that, at the time of the Scheduling Order, he "was not instructed as the contract for the Defence of Mr. Kanu was ... not in force at the time of the order". He does not specify when the contract was renewed but clearly it was prior to 12 May 2012 when he travelled to Rwanda to consult with his client. There was therefore sufficient opportunity for Defence Counsel to seek an extension for the filing of his submissions before expiry of the time limit prescribed by the Court. For these reasons, the Independent Counsel's submissions on the conduct of trial will be considered, while Defence submissions on the conduct of the trial will not.

2. The Court directed, inter alia, that the parties file submissions, when the Court should sentence Mr. Kargbo.⁷ At issue is whether the sentence against Mr. Kargbo shall be pronounced prior to the opening of the Prosecution's case against his co-accused Hassan Papa Bangura, Santigie Borbor Kanu, and Brima Bazzy Kamara, or at the end of their trial.
3. In its submission, the Independent Counsel requests that Mr. Kargbo's sentencing be deferred until after the trial of Mr. Kargbo's three co-accused. The Independent Counsel states that "[i]n Mr. Kargbo's plea agreement, we agreed to recommend that his sentencing be deferred until the conclusion of all trial proceedings against the co-accused to permit (a) Mr. Kargbo to fully perform his obligations under the terms of his plea agreement, (b) the Prosecution to fully evaluate the extent of that performance, and (c) the parties to make sentencing recommendations to the Court at a time when all the facts are available with respect to that performance."⁸ The Independent Counsel also notes that at the 15 July 2011 hearing, the Prosecution and Defence jointly sought deferral of the sentencing and sentencing submissions, and that the Court ruled that the filing of the Prosecution's brief on sentencing

⁵ SCSL-2011-02-PT-016.

⁶ SCSL-2011-02-PT-018.

⁷ SCSL-2011-02-PT-015.

⁸ SCSL-2011-02-PT-016.

be deferred until four weeks before the date set by the Registrar for sentencing, with the Defence's reply to be filed one week thereafter.⁹

4. The Independent Counsel further indicates that he has no objections to the propositions in the Scheduling Order for the hearing of the evidence in the trial.

II. THE APPLICABLE LAW

5. Rule 77(A) of the Rules of Procedure and Evidence provides that:

The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice ...

The basis for this Rule is the inherent power of the Special Court to deal with cases of contempt before it.¹⁰

6. Rule 100 of the Rules of Procedure and Evidence provides that:

(A) If the Trial Chamber convicts the accused or the accused enters a guilty plea, the Prosecutor shall submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence no more than 7 days after such conviction or guilty plea. The defendant shall thereafter, but no more than 7 days after the Prosecution's filing, submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

(B) Where the accused has entered a guilty plea, the Trial Chamber shall hear submissions of the parties at a sentencing hearing. Where the accused has been convicted by a Trial Chamber, the Trial Chamber may hear submissions of the parties at a sentencing hearing

(C) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102(B).¹¹

7. Article 19(2) of the Statute provides that:

In imposing sentences, the Trial Chamber shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.¹²

⁹ SCSL-2011-02-PT-016.

¹⁰ *Independent Counsel v. Margaret Fomba Brima, Neneh Binta Bah Jalloh, Ester Kamara and Anifa Kamara*, SCSL-2005-02-32 and SCSL-2005-02-03-32, Sentencing Judgement in Contempt Proceedings, 21 September 2005.

¹¹ Rule 100 of the Rules of Procedure and Evidence. The Trial Chamber notes that Rule 102(B) of the Rules of Procedure and Evidence provides for a situation in which the convicted person has been provisionally released, which is not the case with Samuel Kargbo.

8. Rule 101(B), which is applicable to contempt proceedings pursuant to Rule 77(E), further states that:

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19 (2) of the Statute, as well as such factors as

- (i) Any aggravating circumstances;
- (ii) Any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
- (iii) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9 (3) of the Statute.

III. DELIBERATIONS

9. The Statute and Rules are silent as to the timing of the sentencing of an accused who pleads guilty to a charge and the submissions of Counsel do not refer to any decision binding on the Court.
10. It is noted that jurisprudence of the United Kingdom emphasises that in cases in which there are co-accused, one of whom pleads guilty and the others not guilty, normal practice is to adjourn sentencing of the former until after the trial of the latter. Separate sentencing may lead to disparity in the ways in which accused are treated. Furthermore, the Judge may hear in the course of the trial evidence indicating the role of each accused, which may be relevant to the sentencing.¹³
11. The Court also recalls that it is obliged by Rule 101(B) to take account of an accused's "substantial cooperation with the Prosecutor by the convicted person before or after conviction" as a mitigating factor when considering sentence.¹⁴
12. I therefore find, given the particular circumstances of the case, that it is in the interests of justice that Samuel Kargbo be sentenced following the trial of his co-accused, Hassan Papa Bangura, Santigie Borbor Kanu, and Brima Bazzy Kamara.

¹² Article 19 (2) of the Statute.

¹³ See *Payne* (1950) 1 All ER 102; *Weekes* (1980) 74 Cr App R 161. Though the Court in *Payne* distinguished this finding from cases in which the accused pleads guilty and then gives evidence for the Prosecution, the practice of sentencing a co-accused after the trial of their co-accused has been upheld in other cases. See *Weekes* (1980) 74 Cr App R 161. See also *Potter*, 15 September 1977 unreported; *Woods* 25 October 1977 unreported. See Blackstone's Criminal Practice 2002, D11.31-D11.32.

¹⁴ Rule 101 (B) of the Rules. See also *Independent Counsel v. Margaret Fomba Brima, Neneh Binta Bah Jalloh, Ester Kamara and Anifa Kamara*, SCSL-2005-02-32 and SCSL-2005-02-03-32, Sentencing Judgement in Contempt Proceedings, 21 September 2005, paras 16.

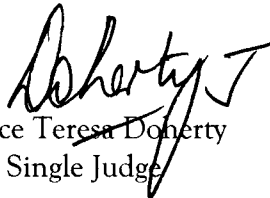
I DIRECT THAT:

13. The sentencing of Samuel Kargbo be deferred until the end of the trial of Hassan Papa Bangura, Santigie Borbor Kanu and Brima Bazzy Kamara.

I FURTHER DIRECT THAT:

14. Scheduling of the Trial shall be as follows:
- a. A Pre-Trial Conference shall be held on Saturday 16 June 2012 at 9.30 a.m. in Freetown.
 - b. The Trial shall commence on Monday 18 June 2012 at 9.30 a.m. in Freetown.
 - c. The Court will sit on Monday 25 June 2012 at 2.00 p.m. in Kigali, Rwanda and will continue hearings in Kigali all of Tuesday 26 June and Wednesday 27 June 2012.
 - d. The Court will resume hearings on Friday 29 June 2012 at 9.30 a.m. in Freetown.

Done at The Hague, The Netherlands, this 1st day of June 2012.


Justice Teresa Doherty
Single Judge

