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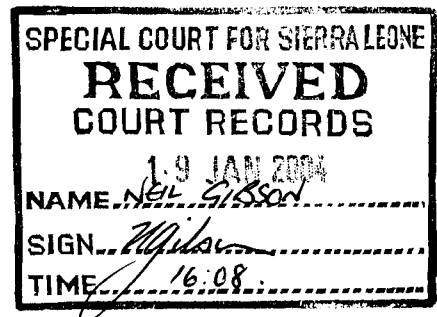
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SC SL - 2003 - 06 - Pt
 (1769 - 1778)
SPECIAL COURT FOR SIERRA LEONE
 FREETOWN - SIERRA LEONE

Before: Trial Chamber of the Special Court for Sierra Leone
 OR the designated Judge

Registrar: Robin Vincent

Date Filed: 19th January 2004



BETWEEN:

- TAMBA ALEX BRIMA - APPLICANT
- DETAINEE AT THE SPECIAL COURT
- DETENTION CENTRE
- JOMO KENYATTA ROAD
- NEW ENGLAND
- FREETOWN
- AND
- SYLVAIN ROY - 1ST RESPONDENT
- ACTING PRINCIPAL DEFENDER
- SPECIAL COURT FOR SIERRA LEONE
- JOMO KENYATTA ROAD
- NEW ENGLAND
- FREETOWN
- AND
- THE REGISTRAR OF THE SPECIAL COURT FOR - 2ND RESPONDENT
- SIERRA LEONE, MR.ROBIN VINCENT
- JOMO KENYATTA ROAD
- NEW ENGLAND
- FREETOWN
- AND
- THE DEPUTY REGISTRAR OF THE SPECIAL COURT
- FOR SIERRA LEONE, MR. ROBERT KIRKWOOD - 3RD RESPONDENT
- JOMO KENYATTA ROAD, NEW ENGLAND, FREETOWN

APPLICANT'S REPLY TO THE 1ST RESPONDENT'S RESPONSE TO APPLICANT'S MOTION FOR DENIAL BY THE ACTING PRINCIPAL DEFENDER TO ENTER A LEGAL SERVICE CONTRACT (AGREEMENT) FOR THE ASSIGNMENT OF COUNSEL FOR AND ON BEHALF OF THE ACCUSED TAMBA ALEX BRIMA THE APPLICANT HEREIN PURSUANT TO RULE 72(B) (IV) OF THE RULES OF PROCEDURE AND EVIDENCE OF THE SPECIAL COURT FOR SIERRA LEONE AND PURSUANT TO ARTICLE 12(A) - OF THE DIRECTIVE ON THE ASSIGNMENT OF COUNSEL OF THE SPECIAL COURT FOR SIERRA LEONE, AND UNDER THE INHERENT JURISDICTION OF THE TRIAL CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE.

Respondents:

Mr. Sylvain Roy, Acting Principal Defender
 Mr. Robin Vincent, Registrar
 Mr. Robert Kirkwood, Deputy Registrar

Applicant's Counsel:

Terence Michael Terry

**SPECIAL COURT FOR SIERRA LEONE
FREETOWN – SIERRA LEONE**

Before: Trial Chamber of the Special Court for Sierra Leone
OR the designated Judge

Registrar: Robin Vincent

Date Filed: 19th January 2004

BETWEEN:

TAMBA ALEX BRIMA DETAINEE AT THE SPECIAL COURT DETENTION CENTRE JOMO KENYATTA ROAD NEW ENGLAND FREETOWN	-	APPLICANT
AND SYLVAIN ROY ACTING PRINCIPAL DEFENDER SPECIAL COURT FOR SIERRA LEONE JOMO KENYATTA ROAD NEW ENGLAND FREETOWN	-	1 ST RESPONDENT
AND THE REGISTRAR OF THE SPECIAL COURT FOR SIERRA LEONE, MR.ROBIN VINCENT JOMO KENYATTA ROAD NEW ENGLAND FREETOWN	-	2 ND RESPONDENT
AND THE DEPUTY REGISTRAR OF THE SPECIAL COURT FOR SIERRA LEONE, MR. ROBERT KIRKWOOD - JOMO KENYATTA ROAD, NEW ENGLAND, FREETOWN	-	3 RD RESPONDENT

APPLICANT’S REPLY TO THE 1ST RESPONDENT’S RESPONSE TO APPLICANT’S MOTION FOR DENIAL BY THE ACTING PRINCIPAL DEFENDER TO ENTER A LEGAL SERVICE CONTRACT (AGREEMENTS) FOR THE ASSIGNMENT OF COUNSEL FOR AND ON BEHALF OF THE ACCUSED TAMBA ALEX BRIMA THE APPLICANT HEREIN PURSUANT TO RULE 72(B) (IV) OF THE RULES OF PROCEDURE AND EVIDENCE OF THE SPECIAL COURT FOR SIERRA LEONE AND PURSUANT TO ARTICLE 12(A) – OF THE DIRECTIVE ON THE ASSIGNMENT OF COUNSEL OF THE SPECIAL COURT FOR SIERRA LEONE, AND UNDER THE INHERENT JURISDICTION OF THE TRIAL CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE.

In reply to the 1st Respondent’s response filed on 16th January 2004, it is submitted that the purported undated response of the alleged 1st Respondent is not signed by him personally, but clearly by one who is not a party to the above proceedings namely

Ibrahim Yillah nor does the said party who has signed same got sufficient interest to file same and he being a stranger to the above proceedings has therefore no locus standi to sign any document relating to any response from the alleged 1st Respondent herein. Moreover it is further submitted that there is no evidence before the Trial Chamber of the Special Court for Sierra Leone so far which reveal OR constitute a Power of Attorney duly filed according to law to have accorded to the said Ibrahim Yillah the necessary authority to act on behalf of the alleged 1st Respondent while the latter was out of the jurisdiction of Sierra Leone. On that alone it is submitted that the response of the alleged 1st Respondent is null and void at its inception, and with respect ought to be set aside in limine by the Trial Chamber of the Special Court for Sierra Leone.

But assuming without conceding that the said Trial Chamber holds otherwise and do take the position that it could properly proceed to hear and determine the merits of the response of the alleged 1st Respondent notwithstanding the serious and fundamental defect referred to in the immediate proceeding paragraph of this reply, then and only then will the Applicant herein seek to rely upon the below mentioned submissions:-

In reply to 2 2.1 under the caption Background, it is submitted that there is no evidence before the Trial Chamber of the Special Court for Sierra Leone that the alleged 1st Respondent was appointed Acting Principal Defender, and even assuming that he was so appointed, it is submitted that there is nothing before the said Trial Chamber to suggest in the remotest possible way that he was so mandated under Rule 45 of the Rules of Procedure and Evidence of the Special Court. The alleged 1st Respondent as Acting Principal Defender concedes the point that he is not Principal Defender and to that extent it is most respectfully submitted that Orders 1 to 6 as prayed for in the Motion dated the 18th day of December 2003 ought with respect to be graciously granted by the said Trial Chamber. The fact that Counsel for the Applicant herein did not see it fit to question the alleged authority OR mandate of the Acting Principal Defender prior to his letter of 12th December 2003 is not of moment and that fact alone cannot be relied upon by the alleged 1st Respondent for the purpose of justifying the alleged Acting Principal Defender's status.

In so far as the matters referred to under 2.3 at page 2 of the alleged 1st Respondent response under the caption Background are concerned, the Applicant herein will adopt

and rely on the pertinent several submissions contained in the Motion of the 18th December 2003 filed herein on behalf of the Applicant herein and in particular the series of correspondence contained as Appendixes relied upon in support of the Motion herein.

Reference to the Role of the Defence Office and Rule 45 of the Rules of Procedure of the Special Court for Sierra Leone refer to the Principal Defender who heads the Defence Office and there it is submitted that by the use of the mandatory word “shall”, under Rule 45(c) no other person, OR creature is envisaged under that particular Rule 45(c) – indeed a further reason to grant the said Orders as prayed for in the Motion herein of the 18th December 2003.

Contrary to what is postulated under 2.5 at page 3 of the Response of the alleged 1st Respondent, it is submitted that there is no onus on Counsel for the Applicant to satisfy the Acting Principal Defender that he OR she is fit and able to fully represent the accused for the duration of the trial for the simple reason that there is no such creature OR person referred to as Acting Principal Defender to be found in the Statute of the Special Court for Sierra Leone, the Rules of Procedure and Evidence of the Special Court for Sierra Leone OR any Directive on the Assignment of Counsel. In this connection the submissions of the 1st Respondent with respect tantamount to him arrogating to himself powers not contemplated under any provision of the said Statute, rule, OR directive as the case may be.

Again Reliance under the Directive on Assignment of Counsel with regard to Article 14(c) does not take the case of the alleged 1st Respondent any step further on the ground that the “Principal Defender” has not been appointed to the position of Principal Defender till date. Furthermore judicial notice ought with respect to be taken of the fact that Counsel for the Applicant has appeared in proceedings involving Ex-President Charles Ghankay Taylor, before the Appeals Chamber and the issue of any conflict of interest be it then OR otherwise was not raised by that body who is better placed to do so than the purported Acting Principal Defender. That aside the said Ex-President Charles Ghankay Taylor has only raised a procedural bar which goes to jurisdiction, and subject to the ruling of the Appeals Chamber Counsel will only then be in a position to advise himself accordingly. But for now no conflict of

interest can arise when Ex-President Charles Ghankay Taylor has not submitted to the jurisdiction of the Special Courts, has not taken his plea to the charges nor has defence Counsel for the Applicant perused any documents by way of disclosure which may have included among other witness statement regarding Ex-President Charles Ghankay Taylor's case. To that extent the 1st Respondent submission in this regard is premature and does not now arise.

Under 2.7 at page 3 paragraph 4 of the Response of the 1st Respondent, Article 19 of the said Directive mentions not Acting Defender but Principal Defender and as such on the true reading and construction of the said Article 19 it clearly does not envisage Acting Principal Defender – indeed a creature OR person unknown to the law, the Rules of Practice and Evidence of the Special Court for Sierra Leone and/OR any directive on assignment of Counsel for that matter.

Again any reliance by the 1st Respondent on Article 22 of the Directive on assignment of Counsel is equally flawed based on the following grounds namely:-

- (1) Firstly, the issue of Provisional Assignment Agreement of Counsel by the Registrar on the 14th day of April 2003 has now become purely academic, and it can therefore be pervasively argued that it has expired by the effusion of time.
- (2) Secondly, based on the other alternative issue namely a Legal Services Contract as envisaged under the provisions of the said Article 22 of the Directive on Assignment of Counsel, it is submitted that the interpretation OR application of a Legal Service Contract can only arise if there is one properly in existence. So far it is submitted that on the facts of this instant case no Legal Services Agreement has been entered into PR concluded with Counsel for the Applicant herein, and therefore its application OR interpretation for the moment is not only premature, but again purely academic and does not arise. It is therefore submitted that the facts and circumstances of this instant case do not warrant raising and rely on the principles enunciated under the Scott v. Avery Clause for the reasons just

canvasses and to that extent reliance on Article is of no moment and inapplicable to the facts herein.

- (3) Thirdly, there is the added factor to be surmounted by the 1st and 2nd Respondents namely that the provisions of Article 22 contemplated a Public Defender who on the 2nd Respondent's admission is yet to be appointed, and on the facts of this instant case the first Respondent is allegedly Sylvain Roy is the Acting and not the substantive holder of the position of Public Defender.

Assuming that the Registrar the 2nd Respondent and the 1st Respondent are right in holding the view that Counsel for the Applicant relied upon an unsigned directive to construe that the said Article 16(c) of the Directive on Assignment of Counsel which does not exist, it is submitted in reply that if we take that argument of both the 1st and 2nd Respondents to its logical conclusion, then it follows is it not that any powers purportedly exercised by the 1st Respondent Sylvain Roy since his purported appointment on the 7th July 2003 to the 2nd October, 2003 were clearly unsupportable by any validly signed directive by the 1st Respondent the said Registrar of the Special Court for Sierra Leone. This argument again lends support for the grant of the declaratory orders sought in the Motion dated the 18th December 2003 and particularly so as the alleged signed said Directive or Assignment of Counsel does not expressly provide for its retrospective operation OR can be deemed by necessary implication to give it retrospective effect.

Over and above all that, it is further submitted that the provisions of Article 16(c) of the said Directive on Assignment of Counsel contemplates a Public Defender and NOT, emphasis mine an Acting Public Defender.

In Reply to 4.1 at page 5 of the Response of the alleged 1st Respondent, Counsel for the Applicant submits that the motion herein is properly before the said Trial Chamber, and for the alleged 1st Respondent to rely upon a curious reasoning proffered under Rule 72 begs the issue. It is further submitted that the reasoning canvassed under last paragraph at page 5 of the alleged response of the 1st Respondent is untenable again for the simple reason that it begs the issue and does not reflect the

true position based on the facts and circumstances of this instant case. To that extent therefore Rule 72(B) (IV) was properly invoked.

It is further submitted that in any event this is a proper case where the inherent jurisdiction of the said Trial Chamber can be exercised based on the special facts of this case and its duty to do “substantial justice” to the accused person who initially was granted Provisional Assignment for his Counsel the latter having acted for at approximately 9 months.

Again Reliance on Article 14(c) by the alleged 1st Respondent is again premature for the reasons contained in Counsel for the Applicant’s letters of the 11th November and 17th December 2003 which are herewith adopted by reference.

Reference to In the Prosecutor .v. Morris Kallon a decision delivered 17th July 2003 is distinguishable on its facts and clearly it is submitted is inapplicable to the facts of the instant case. It is further submitted that the procedure spelt out in Article 14(c) of the said Directive is again not of moment for the reasons canvassed above relating to the Applicant’s reply to the response relating to Article 14(c) and they are herewith accordingly adopted.

Again reference at the last paragraph of page 7 of the Alleged 1st Respondent’s response is at best premature and it amounts at best to speculating on the outcome of the said Motion of Joinder already filed by the Prosecution as such a decision has not yet been delivered by the said Trial Chamber. Such a stance only discloses with the greatest respect the fallacy and absurdity in the thought process of the alleged 1st Respondent herein, and might in proper circumstances border on contempt proceedings against the person of the alleged 1st Respondent.

Under 4.4 at pages 8 to 9, it is submitted that the respective cases relied upon therein by the 1st Respondent relating to decisions of ICTR, ICTY are clearly distinguishable on their own special facts and have no bearing to the instant case. Moreover our said Trial Chamber in certain ex cathedra statements have rightly pointed to the fact that it is going to develop its own jurisprudence and will not necessarily OR on all occasions slavishly follow sister Tribunal decisions not directly in point.

In reply to 4.5 at page 9 of the Response of alleged 1st Respondent, the Applicant will rely on the series of correspondence between his defence Counsel and the alleged Acting Principal Defender which culminated in the latter's letter of the 17th day of December 2003. Here again the alleged 1st Respondent in his response at page 9 under 4.5 missed the point when he sought to rely on the said Article 13(D) of the said Directive for the simple reason that it refers to the Principal Defender and not the Acting Principal Defender and furthermore by the use of the word "may" that particular Article 13(D) of the said Directive only gives the Principal Defender and NOT the Acting Principal a discretion within the parameters of the said Directive.

It is further submitted that contrary to what is stated by the alleged 1st Respondent, nowhere, under the provisions of Rule 45(c) of the said Rules of Procedure of the Special Court for Sierra Leone does it provide that the exercise of discretion is within the administrative powers conferred on an Acting Principal Defender. The person referred to therein is the Principal Defender and I submit rightly so.

It is submitted further that reference to reasonable doubts existing OR likely to exist as to fitness and availability of Counsel to conduct the particular accused's defence is not borne out by the facts of this instant case, and it is submitted with respect that such a veiled suggestion is a figment of the imagination of the alleged 1st Respondent bordering on an abuse of power, abuse of process, discriminating at best and contrary to all known canons of fundamental fairness based on the special facts and circumstances of this instant case.

In reply to 4.6 to be found at page 10 of the alleged response of the 1st Respondent, it is submitted that Counsel for the Applicant never personally signed for nor received the Directive allegedly served as it is abundantly clear ex facie from the very proof of Service Form relied upon by the alleged 1st Respondent that Counsel for the Applicant did not personally receive in his office the document referred to as Proof of Service Form - Nothing more nothing less.

For the alleged 1st Respondent to assert that the Applicant's affidavit annexed to the Applicant's Motion is confusing in some respect without descending into meaningful and worth while particulars ought with respect to be ignored and not accorded any weight whatsoever by the said Trial Chamber.

ORAL HEARING:-

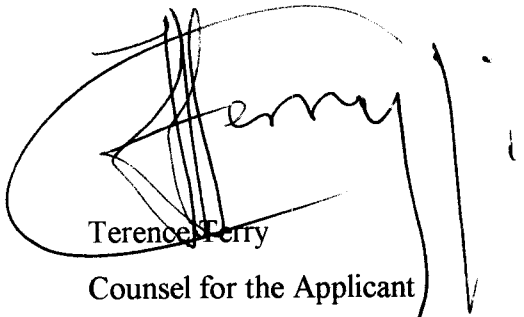
Unlike the alleged 1st Respondent, Counsel for the Applicant is not competent to suggest that the Applicant's Motion and the response herein can be resolved by written decision. That is a matter entirely for the said Trial Chamber. All Counsel can submit for the consideration of the said Trial Chamber is to graciously request for it to grant an Oral hearing based on the following reasons:-

- (i) That some of the declaratory orders sought touch and concern the important issue of "status".
- (ii) That some of the questions raised are of public importance and do raise the question of interpretation of statute, the said Rules of Procedure and the Directive on Assignment of Counsel.
- (iii) That the said Trial Chamber may in its wisdom seek some clarification on one OR two matters that may warrant further elucidation and to that extent an oral hearing may be of some advantage and in the interest of all concerned.
- (iv) That the said Trial Chamber may well come to the conclusion that the "interest of Justice" do require an Oral Hearing and that embarking upon the latter course will also accord substantial Justice to all the parties concerned in arriving at a final determination of all the issues before it.

It is submitted therefore that the said Trial Chamber do graciously consider to grant all the Parties herein an Oral hearing based on the aforesaid 4 reasons.

CONCLUSION:-

The Applicant most respectfully submits that for the several reasons raised and articulated in the said Motion herein and its reply to the alleged 1st Respondent's response, that the Applicant's Motion dated the 18th December 2003 and the Orders prayed for therein be graciously granted by the said Trial Chamber.



Terence Perry
Counsel for the Applicant

Dated the 19th day of January 2004.