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SCSL-04-14-T
(14416-14419)

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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER I

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

Interim Registrar: Mr. Lovemore Munlo SC

Date: 9th of December 2005

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14-T)

DECISION ON FOFANA MOTION FOR ADJUSTMENT OF STATUS OF COUNSEL

Office of the Prosecutor:

Luc Côté
James Johnson
Kevin Tavener

Court Appointed Counsel for Sam Hinga Norman:

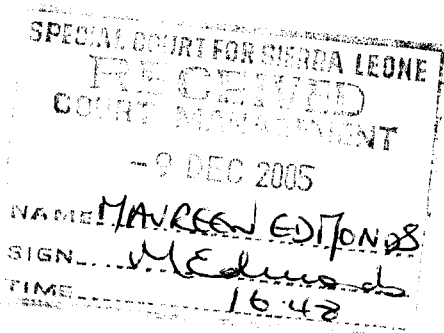
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Clare da Silva (*Legal Assistant*)

Court Appointed Counsel for Moinina Fofana:

Victor Koppe
Arrow Bockarie
Michiel Pestman
Andrew Ianuzzi (*Legal Assistant*)

Court Appointed Counsel for Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana
Martin Michael (*Legal Assistant*)



TRIAL CHAMBER I (“The Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Bankole Thompson, and Hon. Justice Pierre Boutet;

SEIZED of the “Fofana Motion for Adjustment of Status of Counsel” (“Motion”), filed by Court Appointed Counsel for the Second Accused (“Counsel”) on the 17th of March, 2005, where Counsel seek a re-classification of their current status as Court-Appointed Counsel to that of Assigned Counsel, based upon the following grounds:

- i) the material conditions recognized by the Trial Chamber for the change in status have lapsed, and
- ii) maintaining the current status, given such lapse, is inconsistent with the right of the Second Accused to be represented by counsel of his choice;

NOTING the “Response to Fofana Motion for Adjustment of Status of Counsel”, filed by the Prosecution on the 7th of April, 2005, where the Prosecution submit that the adjustment of the status of Counsel is a discretionary matter for the Court and that it would not make any substantive submissions on the matter;

MINDFUL of the “Decision on Motions for Judgment of Acquittal Pursuant to Rule 98” delivered by The Chamber on the 21st of October, 2005;

MINDFUL of the “Order Concerning the Preparation and Presentation of the Defence Case” of the 21st of October, 2005 and of the “Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case” of the 28th of November, 2005;

MINDFUL of the “Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case” of the 7th of December, 2005;

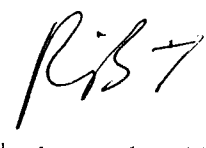
NOTING the “Ruling on the Issue of Non-Appearance of the First Accused Samuel Hinga Norman, the Second Accused Moinina Fofana, and the Third Accused, Allieu Kondewa at the Trial Proceedings”, delivered by The Chamber on the 1st of October, 2004, where The Chamber held that Moinina Fofana (“Second Accused”) had “failed to attend court for no lawful reason, and on the basis of Rule 60 of the Rules, and in the interests of justice, the trial will proceed in [his] absence while ensuring that [his] interests are properly represented in Court by Court Appointed Counsel”, and ordered as follows:

APPOINTS the Assigned Counsel for the Second Accused to represent him in the capacity of Court Appointed Counsel; and

ORDERS that the duty of Court Appointed Counsel will be as set forth in the Consequential Order of the Trial Chamber delivered on 1st of October, 2004;

NOTING the “Consequential Order on the Role of Court Appointed Counsel”, rendered by The Chamber on the 1st of October, 2004, where the Trial Chamber ordered that:

[T]he duty of Court Appointed Counsel will be to represent the case of the First, Second and Third Accused, and in particular, shall:



- a. represent the Accused by investigating and preparing for the testimony of Prosecution witnesses and cross-examining them;
- b. prepare for and examine those witnesses Court Assigned Counsel deem it appropriate to call for his defence;
- c. make all submissions on fact and law that they deem it appropriate to make in the form of oral and written motions before the court;
- d. seek from the Trial Chamber such orders as they consider necessary to enable them to present the Accused's case properly, including the issuance of subpoenas;
- e. discuss with the Accused the conduct of the case, endeavour to obtain his instructions thereon and take account of views expressed by the Accused, while retaining the right to determine what course to follow; and
- f. act throughout in the best interests of the Accused.

CONSIDERING that Rule 26bis of the Rules of Procedure and Evidence of the Special Court ("Rules") requires The Chamber to ensure that the trial proceedings are conducted in a fair and expeditious manner;

CONSIDERING that the minimum guarantees set forth in Article 17(4)(d) of the Statute of the Special Court ("Statute") are fundamental components of the overarching requirement of ensuring a fair trial, and in particular, outline the right of the Accused to a defence, namely, the right:

(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

CONSIDERING that The Chamber appointed Court Appointed Counsel pursuant to Rule 60 of the Rules to represent the Second Accused and designated their duties in the interests of justice in order to ensure the fairness of the trial, being mindful that there was a real prospect that the trial would be disrupted and the integrity of the proceedings undermined if Counsel were not so appointed;

CONSIDERING that the fact that the Second Accused resumed attending Court on the 1st of March, 2005, in the midst of the fourth trial session, having been absent from Court since the 20th of September 2004 (apart from attending on the 23rd of September, 2004), does not demonstrate a material change in the circumstances that led The Chamber to alter the status of Assigned Counsel to Court Appointed Counsel;

NOTING that the Accused left the Court during the Status Conference held on the 25th of November, 2005;

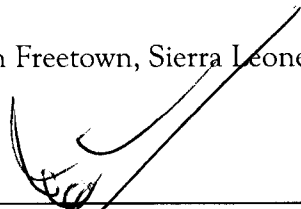
CONSIDERING that, in the existing circumstances, taking into consideration the imminent commencement of the Defence Case on the 17th of January, 2005, representation of the Second Accused by Court Appointed Counsel continues to be in the best interests of justice and in accordance with his fundamental right to a fair and expeditious trial;

MINDFUL OF Article 17 of the Statute and Rules 26bis, 44(B) and 54 of the Rules;

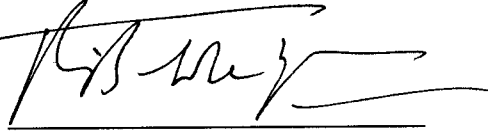
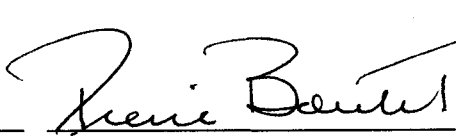
FOR ALL THE ABOVE STATED REASONS THE CHAMBER,

DENIES and DISMISSES the Motion.

Done in Freetown, Sierra Leone, this 9th day of December, 2005



Hon. Justice Benjamin Mutanga Itoe



Hon. Justice Pierre Boutet
Presiding Judge,
Trial Chamber I

Hon. Justice Bankole Thompson

[Seal of the Special Court for Sierra Leone]

