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SCSL-03-01-T
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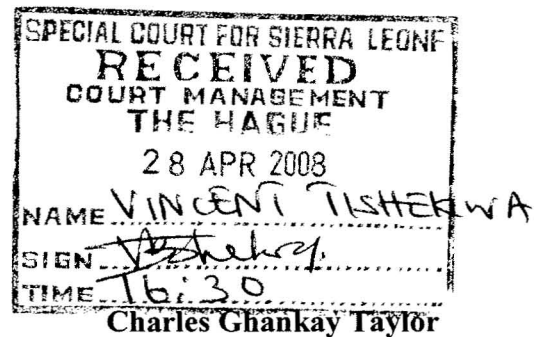
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

Before: Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Mr. Herman von Hebel

Date filed: 28 April 2008



THE PROSECUTOR

Against

Case No. SCSL-03-01-T

PUBLIC WITH CONFIDENTIAL ANNEX B

**URGENT PROSECUTION APPLICATION FOR LEAVE TO APPEAL ORAL DECISIONS REGARDING
ALLOWING QUESTIONS CONCERNING THE LOCATION OF THE FAMILY OF A WITNESS AND
FAILING TO ORDER REDACTION OF THE LOCATIONS**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Julia Baly
Ms. Kirsten Keith

Counsel for the Accused:

Mr. Courtenay Griffiths
Mr. Terry Munyard
Mr. Andrew Cayley
Mr. Morris Anyah

I. INTRODUCTION

1. The Prosecution files this Application pursuant to Rules 54 and 73(B) of the Rules of Procedure and Evidence (“**Rules**”) seeking:
 - i) urgent leave to appeal the Trial Chamber’s three (3) Oral Decisions made on 24 and 28 April 2008:
 - a) Decision permitting questions on basis of credibility
 - b) Decision denying redaction of current locations of witness’ family; and
 - c) Decision denying reconsideration of previous application to redact current locations of witness’ family.¹
2. The application for leave is based on four grounds:
 - i) That the Trial Chamber erred in exercising its discretion when determining that questions asked by Defence concerning the current location of family members were relevant;²
 - ii) The trial Chamber erred in exercising it’s discretion when, having determined that such questions were relevant, it failed to direct that such questions were to be asked in closed or private session;
 - iii) That the Trial Chamber erred in denying the application for the redaction of the locations of witness TF1-334’s family members;³ and
 - iv) That having heard additional information, the Trial Chamber erred in denying a renewed application for the redaction of the information.
3. The Prosecution also requests that the Trial Chamber issue the following urgent interim measures:
 - i) An order redacting the portions of testimony identified in **Annex B**.

II. BACKGROUND

4. On 24 April 2008, during cross examination of witness TF1-334, Counsel asked a series of questions concerning the current location of certain members of the witness’s family. The Prosecution twice objected to the line of questioning on the basis of relevance. The

¹ Taylor Trial Transcript, 24 April, pp. 8528-8529, 8541 and 24 April 2008, pp.6-7 (Draft) – Impugned Decisions are highlighted in **Annex A**. Only a draft version of the transcript dated 28 April 2008 was available at time of filing.

² Taylor Trial Transcript, 24 April 2008, pp. 8528-8529

³ Taylor Trial Transcript, 24 April 2008, pp. 8541

defence responded that the questions were relevant to issues of credibility. Each time the question was allowed.⁴

5. The Defence proceeded to provide the names of the city and roads that the Witness's brother and uncle lived on.⁵ The Prosecution again objected and, after the Chamber ruled the questions admissible made an application for the locations to be "stricken" from the transcript. The Presiding Judge stated that the addresses could not be "stricken" from the record. Prosecution Counsel clarified that the application was for the addresses to be redacted. The Defence objected to the record being "stricken" but had no objection to the addresses of the family members being redacted. The Trial Chamber then heard the witness on the application. He stated:

"As I want to say, I decided to testify in open and testifying in open is related to the AFRC matter in which I testified. I faced a lot of intimidation afterwards and I reported to the WVS. That happened through the accused. They were contacting me indirectly trying to dissuade me from testifying. Even the investigator for Gbao told me that he had now been appointed as investigator for Gbao and during that time a lot of my colleagues used to call me Bastard 334 and I said, "What is this?" And I knew that everybody had known that I was testifying and I was coming to the Court. Then the protection that was with me I said, "Well, it is not working", because I was testifying in closed session and people knew about me. Then I said, "I don't think this closed session thing is working", because I was testifying in closed session then people knew in the AFRC and the RUF trial that I was testifying. Then I said, "Well, I will have to testify in the open now because so that justice should prevail". So, I was not going to hide anything. I was coming in the open to testify because the protective measures that were in place were not working – were not effective. So I only did it for justice, but I cannot do that to the detriment of my family. I don't want my family to be at risk."⁶

6. Having heard the witness, the Trial Chamber deliberated and by majority, the application was refused on the basis:

"that no person has been named, no specific addresses have been given and there is no evidence of specific danger. In the light of this, the majority are of the view that no

⁴ Taylor Trial Transcript, 24 April 2008, pp. 8528-8529; 8532-8534

⁵ Taylor Trial Transcript, 24 April 2008, pp. 8534

⁶ Taylor Trial Transcript, 24 April 2008 p.8540

purpose will be served in making the order as sought.”⁷

7. On 28 April 2008, the Witness informed the Trial Chamber of an alleged security incident involving his brother, whose address was one of the addresses that had been revealed during open session on 24 April 2008. As a result of this information, the Prosecution requested the Trial Chamber to reconsider the previous application seeking to have certain portions of the transcript redacted.
8. The Trial Chamber, by majority and with the same dissent, “considered that given the evidence of the witness of public knowledge of his past appearances and his option to testify openly no useful purpose will be served in reversing the previous decision” and rejected the application.⁸

III. APPLICABLE LAW

9. Rule 73(B) provides that leave to appeal may be granted in exceptional circumstances and to avoid irreparable prejudice to a party. As noted by this Chamber, citing the Appeals Chamber: “the overriding legal consideration in respect of an application for leave to file an interlocutory appeal is that the applicant’s case must reach a level of exceptional circumstances and irreparable prejudice. Nothing short of that will suffice having regard to the restrictive nature of Rule 73(B) of the Rules and the rationale that criminal trials must not be heavily encumbered and consequently unduly delayed by interlocutory appeals.”⁹ However, as recognised by the Appeals Chamber, “the underlying rationale for permitting such appeals is *that certain matters cannot be cured or resolved by final appeal against judgement*”¹⁰ (emphasis added).
10. The two limbs to Rule 73(B) – exceptional circumstances and irreparable prejudice – are conjunctive and both must be satisfied if an application for leave to appeal is to succeed. There is no comprehensive or exhaustive definition of “exceptional circumstances”; what

⁷ Taylor Trial Transcript, 24.4.08, p.8541

⁸ Taylor Trial Transcript. 28.4.08, pp.6-7 (Draft version)

⁹ *Prosecutor v Brima et al*, SCSL-04-16-T-483, “Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal pursuant to Rule 98 of 31 March 2006”, 4 May 2006 p2.

¹⁰ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T-319, “Decision on Prosecution Appeal against the Trial Chamber Decision of August 2004 Refusing Leave to File an Interlocutory Appeal”, 17 January 2005, para. 29; see also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T-357, “Decision on Defence Applications for Leave to Appeal Ruling of the 3rd February 2005 on the Exclusion of Statements of Witness TF1-141”, 28 April 2005, para. 21.

constitutes exceptional circumstances “must necessarily depend on, and vary with, the circumstances of each case.”¹¹ . However, as Trial Chamber I observed:

“Exceptional circumstances” may exist depending upon the particular facts and circumstances, where, for instance the question in relation to which leave to appeal is sought is one of general principle to be decided for the first time, or is a question of public international law importance upon which further argument or decision at the appellate level would be conducive to the interests of justice, or where the course of justice might be interfered with, or is one that raises serious issues of fundamental legal importance to the Special Court for Sierra Leone, in particular, or international criminal law, in general, or some novel and substantial aspect of international criminal law for which no guidance can be derived from national criminal law systems”¹²

IV ARGUMENTS

RELEVANCE OF THE QUESTIONS

11. The Trial Chamber erred in exercising its discretion when it determined that questions concerning the location of family members were relevant. Defence Counsel argued that the questions went to issues of credit. The current whereabouts of members of a witness’s family are, on their face, not relevant to an issue before the Trial Chamber. Before allowing questions that infringe the privacy and possibly the safety and security of witnesses and their families, the Trial Chamber should have required the Defence to show how the current location of the witness’ family members was relevant as to “credit”. The line of questioning subsequently taken by Defence failed to establish the relevance of such questions. No nexus between the credit of the witness and the current whereabouts of his family members was ever demonstrated.
12. It is for the Trial Chamber, in the exercise, of its discretion to determine the relevance of questions. Whilst it is accepted that a broad definition of relevance and an inclusive

¹¹ *Prosecutor v Sesay et al*, SCSL-04-015-T-357, Decision on Defence Application for Leave to Appeal Ruling of the 3rd of February 2005 on the Exclusion of Statement of Witness TF1-141, 28 April 2005, para. 25; *Prosecutor v Brima et al*, SCSL-04-16-T-588, “Decision on Prosecution Application for Leave to Appeal Decision on Confidential Motion to call Evidence in Rebuttal”, 23 November 2006.

¹² *Prosecutor v Sesay et al*, SCSL-04-15-T-839, “Decision on Prosecution’s Application for Leave to Appeal Majority Decision regarding the Objections to the Admissibility of Portions of the Evidence of Witness TF1-371”, 15 October 2007, para 18 and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-357, “Decision on Defence Application for Leave to Appeal Ruling of the 3rd of February, 2005 on the Exclusion of Statement of Witness TF1-141”, 28 April 2005, para. 26.

approach to the admission of evidence is appropriate, there needs to be some limits on questioning, especially questioning that affects the privacy and security of witnesses and their families. It is not sufficient to permit any and all questions as relevant to credit. The current location of family members has no bearing on the credit of a witness. In order to maintain the privacy and security of a witness, the party seeking to elicit such personal and private evidence should be required to demonstrate how the questions go to issues of credit.

FAILURE TO ORDER CLOSED SESSION OR PRIVATE SESSION

13. Having exercised its discretion to allow the questions, over repeated objection from the Prosecution, the Trial Chamber should then have directed that the questions be asked in closed or private session or taken other steps to ensure the privacy and security of the witness was maintained, for instance by requiring the information be written down and sealed in an envelope. Requiring that the questions be put in closed session or private session would not have infringed the Accused's rights under Article 17 of the Statute.¹³
14. Despite the fact that the witness was testifying in open session, it was still incumbent upon the Trial Chamber, of its own motion, to take appropriate measures to safe guard the privacy and security of witnesses (Rule 75 (A)).¹⁴ The current whereabouts of the witness' family is a matter that concerns the privacy and security of the witness and is captured by Rule 75 (A).
15. Rule 75 (C) requires the Chamber to control the manner of questioning to avoid any harassment or intimidation.¹⁵ It is clear that providing the current whereabouts of family

¹³ Jurisprudence of the Special Court for Sierra Leone ("SCSL") establishes that the rights of the Accused are not infringed by the use of closed session testimony. *Prosecutor v Norman et al*, SCSL-04-014-T-274, "Ruling on Motion for Modification of Protective Measures for Witnesses", 18 November 2004, para. 50 noting the closed session testimony does not necessarily detract from the fairness of the trial and *Prosecutor v. Sesay et al.*, SCSL-04-15-T, "Order to Hear the Evidence of Witness TF1-235 in Closed Session", 8 November 2004 at para. 15: "[...] *the right of the accused to a fair and public hearing*, having regard to the provisions of Article 17 (2), *will not be prejudiced* by permitting the witness to testify in closed session.[...]" (emphasis added).

¹⁴ Rule 75 (A) provides: "A Judge or a Chamber may, on its own motion, or at the request of either party, or of the victim or witness concerned, or of the Witnesses and Victims Section, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused."

¹⁵ Rule 75 (C) states: "A Judge or Chamber shall control the manner of questioning to avoid any harassment or intimidation."

members was capable of harassing or intimidating the witness. The Trial Chamber should have been alive to their mandatory responsibility to minimise this risk.

FAILURE TO ORDER REDACTION UPON FIRST APPLICATION BY PROSECUTION

16. The Trial Chamber erred in denying the application for the redaction of the locations of witness TF1-334's family members. The Trial Chamber stated "that no person had been named, no specific addresses had been given and there is no evidence of specific danger." The Trial Chamber erred in reaching this conclusion, which was contrary to the evidence before them.
17. In stating that there was no evidence of specific danger, the Trial Chamber failed to consider the security situation of the witness and his explicit request to the Trial Chamber that his family not be put at risk. Witness TF1-334 explained to the Trial Chamber that after testifying in the AFRC trial he received a lot of intimidation through those accused trying to dissuade him from testifying. He reported these events to WVS. Despite having testified in closed session, it was well known that he had testified and what his pseudonym was. The protective measures that were supposed to protect him were not effective and it was for this reason that he decided to testify openly in the current case. As he stated, he "did it for justice, but *I cannot do that to the detriment of my family*" (emphasis added).¹⁶ In agreeing to testify in open session, this witness did not consent to having his family members placed at risk.
18. In stating that no specific address had been given, the Trial Chamber overlooked the fact that an address had been given on public record for his brother and uncle. The Defence put the name of the city and street location to the witness and asked him to confirm the address. It is difficult to reconcile the reasoning of the Trial Chamber that the name of a street address does not equate with a specific address. A street name is certainly specific in nature.
19. Finally, in stating that no person had been named, the Trial Chamber erred in its reasoning. It is conceded that the names of the witness' family members were not given but the family members were identified by virtue of their relationship to the witness: brother, uncle and daughter.

¹⁶ Taylor Trial Transcript, 24 April 2008, p. 8540

FAILURE TO ORDER REDACTION UPON SECOND APPLICATION BY PROSECUTION

20. The Trial Chamber erred in denying the application to reconsider the previous request for redaction of the current addresses of the witness' family in view of the evidence provided by the witness as to a specific security incident involving the brother of the witness and given before the Trial Chamber on 28 April 2008.
21. The Trial Chamber stated that no useful purpose would be served by redacting the information. In making this statement, the Trial Chamber overlooked the fact that there is every purpose to be achieved in redacting the information from the public record: it prevents this information from remaining on the public record in the future. While damage to the witness' privacy and safety and that of his family has already been done, it is incumbent on the Trial Chamber to take steps to minimise future infringements to witnesses' privacy and security. Redaction of the public trial record, even after the event, could certainly help to achieve this.
22. In reaching their decision on both requests for redaction of the public transcript, the Trial Chamber appear to have failed to consider Rule 75 (A). This Rule, which governs the protection of witnesses and victims, refers to both the security and the privacy of witnesses. Witness TF1-334 had provided specific information concerning not only his own security concerns but also that of his family. The Trial Chamber failed to take into account this evidence and also appear to have ignored the issue of witness' privacy.
23. Redaction of the addresses from the public record could in no way infringe upon the rights of the accused to a fair trial and, in effect, the Defence acknowledged that fact when they indicated that there was no objection to the original Prosecution application for redaction. The Defence subsequently objected to the second Prosecution application for redaction of the public record but their basis for objection was ill-founded.
24. The redactions in question would not diminish the public nature of this trial. Granting the requested redactions would not preclude the public from fully understanding the evidence of this witness including the Defence attacks on his credibility. While the public clearly has an interest to follow the proceedings, to understand the charges and the evidence presented by both sides, there is no public right to know information that infringes on the

privacy or compromises the security of individual who are not themselves even involved in the trial.

25. In reaching their decisions on the issue of redacting the public record, the Trial Chamber erred in fulfilling its obligations to respect the privacy and security of witnesses. As the Chamber has itself recognised, it is obligated “under Articles 16 (4) and 17 (2) of the Statute and Rule 75 (A) of the Rules, to take all appropriate measures to safeguard their privacy and protection.”¹⁷ Thus, it is not only the Prosecution that must exercise due diligence when it comes to issues concerning the protection of witnesses. An onus lies upon the Trial Chamber to take appropriate measures for the protection of witness. This is reflected in the language of Rule 75 (A) which expressly recognises that the Trial Chamber, may by its *own* motion, order appropriate measures to safeguard the privacy and security of witnesses. In denying the Prosecution application, the Trial Chamber erred in the exercise of its discretion under Rule 75 (A).

Exceptional Circumstances

Question is one of general principle to be decided for the first time

26. Where a witness is prepared to testify in open session, the scope and nature of the obligation upon the Trial Chamber to ensure the protection of the privacy and security of the witness is an issue not yet determined by the Court.

Question raises serious issues of fundamental legal importance

27. The Trial Chamber has a clear obligation to protect the security and privacy of witnesses. An issue of fundamental legal importance arises when a witness testifies in open session, and where their privacy and security is compromised by certain questions. The issue for consideration is the extent to which the Trial Chamber is obliged to exercise its discretion to disallow certain questions or to take measures in order to ensure there is minimum risk of compromising the privacy and security of the witness.

¹⁷ *Prosecutor v Brima et al*, SCL-04-16-T-488, “Decision on Joint Defence Application for Protective Measures for witnesses”, 9 May 2006, p.2.

28. A further issue of fundamental legal importance is the extent of the mandatory obligation upon the Trial Chamber to control the manner of questioning so as to avoid harassment or intimidation, pursuant to Rule 75 (C).
29. Issues arising as to the ambit of Rule 75 (A) and 75 (C) and the exercise of discretion under Rule 75 (A) are matters that are likely to increasingly confront this Court and other international courts.

Interests of Justice

30. It is not in the interests of justice that witnesses are deterred from giving evidence on account of their privacy being infringed and their security compromised during the giving of testimony and the consequences this may have on their security and safety afterwards. It is not in the interests of justice that such infringements occur on the basis of relevance to “credibility” when no arguments are provided in support of this basis.

Irreparable prejudice

30. The Prosecution may suffer irreparable prejudice as a result of the Trial Chamber’s decisions on the relevancy of private family information and the failure to redact this evidence from the public record. It is likely that future witnesses could be deterred from testifying if they are required to expose their families by questions that reveal their current locations.¹⁸ Such questions may place witnesses at risk and impact on witnesses and their families’ security and privacy and the course of justice might be interfered with. Such questions can have no legitimate forensic purpose. If witnesses are deterred from giving evidence, the Prosecution is denied the opportunity to present the best evidence in support of its case. This is a matter that cannot be cured on final appeal.

V URGENT INTERIM MEASURES

¹⁸ On 25 February 2008, when granting leave to appeal, Trial Chamber I accepted the prosecution’s argument that witnesses might be reluctant to co-operate if they formed the view that their security might be compromised and that this fact might interfere with the course of justice. And further that such prejudice cannot be repaired or reversed on appeal. See: *Prosecutor v Sesay et al*, SCSL-04-15-T-877, “Confidential Application for Leave to Appeal Decision on the Sesay Defence Motion requesting the lifting of protective Measures in Respect of Certain Prosecution Witnesses”, 12 November 2007, paras. 17-18 and “Decision on Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion requesting the lifting of protective Measures in Respect of Certain Prosecution Witnesses”, 25 February 2008.

31. The Prosecution seeks an urgent interim Order for the redaction of information in Annex A in accordance with Rule 75 (A) and Rule 54 of the Rules. Despite the contested decisions of this Trial Chamber on this matter, the Prosecution is gravely concerned about such private information remaining within the public domain, particularly in light of the evidence given by the witness on 28 April 2008 concerning a security incident.

VI. CONCLUSION

32. The Prosecution submits, on the basis of the above, that it has satisfied the two pronged test of exceptional circumstances and irreparable prejudice required in order to secure leave to appeal.
33. It is fundamentally important that witnesses not be deterred from giving evidence in open session by exposure to questions that jeopardise their privacy and security. Where it is deemed necessary to expose a witness to such questions, it is fundamentally important that protective measures are taken to minimise the risk. Witnesses need to be confident that the Court will exercise its discretion, with due regard to its obligation towards the protection of witnesses privacy and security. Absent such confidence in the Court, witnesses will not come forward to testify and the Court will be denied important evidence.
34. Accordingly, the Prosecution respectfully requests the Trial Chamber to urgently grant the Application for Leave to Appeal and to issue the requested interim measures.

Filed in The Hague,

28 April 2008

For the Prosecution,



Brenda J. Hollis

Senior Trial Attorney

LIST OF AUTHORITIES

SCSL Cases

Prosecutor v. Taylor, Case No. SCSL-03-01-T

Trial Transcripts dated 24 and 28 April 2008

Prosecutor v Brima et al, SCSL-04-16-T

Prosecutor v Brima et al, SCSL-04-16-T-483, “Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal pursuant to Rule 98 of 31 March 2006”, 4 May 2006

Prosecutor v Brima et al, SCSL-04-16-T-488, “Decision on Joint Defence Application for Protective Measures for Defence Witnesses”, 9 May 2006

Prosecutor v Brima et al, SCSL-04-16-T-588, “Decision on Prosecution Application for Leave to Appeal Decision on Confidential Motion to call Evidence in Rebuttal”, 23 November 2006.

Prosecutor v. Norman, Fofana and Kondewa, SCSL-04-14-T

Prosecutor v Norman et al, SCSL-04-014-T-274, “Ruling on Motion for Modification of Protective Measures for Witnesses”, 18 November 2004

Prosecutor v. Norman, Fofana and Kondewa, SCSL-04-14-T-319, “Decision on Prosecution Appeal against the Trial Chamber Decision of August 2004 Refusing Leave to File an Interlocutory Appeal”, 17 January 2005

Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T

Prosecutor v. Sesay et al., SCSL-04-15-T, “Order to Hear the Evidence of Witness TF1-235 in Closed Session”, 8 November 2004

Prosecutor v Sesay et al, SCSL-04-015-T-357, Decision on Defence Application for Leave to Appeal Ruling of the 3rd of February 2005 on the Exclusion of Statement of Witness TF1-141, 28 April 2005

Prosecutor v Sesay et al, SCSL-04-15-T-839, “Decision on Prosecution’s Application for Leave to Appeal Majority Decision regarding the Objections to the Admissibility of Portions of the Evidence of Witness TF1-371”, 15 October 2007

Prosecutor v Sesay et al, SCSL-04-15-T-877, “Confidential Application for Leave to Appeal Decision on the Sesay Defence Motion requesting the lifting of protective Measures in Respect of Certain Prosecution Witnesses”, 12 November 2007

Prosecutor v Sesay et al, SCSL-04-15-T- 1001, “Decision on Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion requesting the lifting of protective Measures in Respect of Certain Prosecution Witnesses”, 25 February 2008.

***Prosecutor v Kamara*, SCSL-03-10-PT**

Prosecutor v Kamara, SCSL-03-10-PT-40, “Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 23 October 2003

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Annex A

Extracts of Transcripts from 24 and 28 April 2008 with Impugned Decisions Highlighted

1 MS ALAGENDRA: Your Honours, can I ask the relevance of
2 this line of questioning; the location of his family members?

3 MR ANYAH: Well, I started off with passports and where he
4 was going to stay and the attendant circumstances of his trip
15:19:30 5 here. I think I have a good faith basis. I am not trying to
6 subject the witness to --

7 PRESIDING JUDGE: Counsel asked the relevance.

8 MR ANYAH: Well, the relevance is - I would put the
9 relevance in the nature of an offer of proof to the Chamber, but
15:19:49 10 I would prefer not to do it in the witness's presence.

11 JUDGE LUSSICK: Well, this is cross-examination. It goes
12 to credit anyway, doesn't it, Mr Anyah?

13 MR ANYAH: Thank you, your Honours:

14 Q. Mr Witness, you have acknowledged you have family a few
15:20:03 15 countries around or a few countries next door to Holland,
16 correct?

17 A. Yes, my Lord.

18 Q. I will not state the country just yet, but you have a
19 sister in one of those countries, correct?

15:20:18 20 A. Yes, my Lord.

21 Q. You have a daughter back home, correct?

22 A. Yes, my Lord.

23 Q. Before you left - by the way she is your only daughter,
24 correct?

15:20:35 25 A. No, I have two.

26 Q. You have two. Are they both in the same country?

27 A. Well, no. The one --

28 MS ALAGENDRA: Your Honours, with all due respect I am
29 still not clear how the location of his family members is going

1 to his credibility.

2 MR ANYAH: Madam President, I cannot respond in one
3 question and put all questions to the witness in a cumulative
4 nature. I have to lay foundation for my cross-examination and it
15:21:12 5 goes to his credibility and that is all I can say at this point.

6 PRESIDING JUDGE: I will allow the question. ||

7 MR ANYAH:

8 Q. Mr witness, you have two daughters and I initially said you
9 had one and you corrected me. The issue is how many do you have
15:21:28 10 back home. It is just one, right?

11 A. The other one too is back home. She is in Guinea, that is
12 West Africa, so I know I have two back home.

13 Q. You have just one daughter in Sierra Leone, correct?

14 A. Yes.

15:21:52 15 Q. When did you arrive in Holland, Mr witness?

16 A. It was last month.

17 Q. What day last month, Mr witness?

18 A. I cannot recall the day, but it was last month. The first
19 week of March or so.

15:22:18 20 Q. You said it was the first week of March, or so. Did you
21 add after that "We came to Holland"? Is that what you said?

22 A. I came with the ones who escorted me from Freetown. I did
23 not just come on my own. I was brought.

24 Q. Did you come with other people who are witnesses in this
15:22:45 25 case? And you don't have to give me names, but just say yes or
26 no.

27 A. I was not concentrating on that. All what they told me was
28 that these are staff. They said we were coming with staff.

29 Nobody told me that these are witnesses. They told me they were

1 to do it.

2 PRESIDING JUDGE: Thank you for that advice.

3 MR ANYAH: Madam President --

4 PRESIDING JUDGE: Mr Anyah, if it is something to do with

15:54:43 5 this application I am afraid the talk has closed.

6 MR ANYAH: Thank you, Madam President.

7 PRESIDING JUDGE: By a majority, with one dissension, the

8 application is refused on the basis that no person has been

9 named, no specific addresses have been given and there is no

15:57:59 10 evidence of specific danger. In the light of this, the majority

11 are of the view that no purpose will be served in making the

12 order as sought.

13 MR ANYAH: May I proceed, Madam President?

14 MADAM PRESIDENT: Please do so, Mr Anyah.

15:58:18 15 MR ANYAH:

16 Q. Mr witness, I was referring to the document at tab number

17 23. Do you have it in front of you?

18 A. Yes, my Lord.

19 MR ANYAH: I wonder if Madam Court Officer could place one

15:58:31 20 on the overhead projector:

21 Q. Mr witness, the Special Court, as you know perhaps from

22 your prior involvement with the Court, has a witnesses and

23 victims section. Are you aware of that?

24 A. Yes, my Lord.

15:59:18 25 Q. That section provided this document to us and it keeps

26 records of amounts spent for each witness. Now, do you see where

27 it says "Subject" it says "Witness Expense Policy, Expenses made

28 on TF1-334"? Do you see that, Mr witness?

29 A. Yes, my Lord.

1 are aware of the provisions or the regulation in WVS that once a
2 witness has taken the stand and his testimony is underway they
3 are not supposed to receive unsupervised phone calls from
4 outside. We are just wondering the circumstances under which
5 this particular phone call came through.

6 MR KOUMJIAN: Your Honour, I would not know that. I am
7 sorry, but I first to be honest am not aware of that rule but
8 secondly I believe we do not know whether or not this phone call
9 was supervised or not. All I know is information relayed to me
10 from WVS and I have not KWIRD about your Honour's particular
11 question.

12 JUDGE SEBUTINDE: Does the Registry know anything about
13 this before we make our ruling?

14 MS MUZIGO-MORRISON: Unfortunately not, your Honour. We
15 would have to conduct investigation and get back to the Chamber.
16 Thank you.

17 JUDGE SEBUTINDE: In any event I think the Presiding Judge
18 will deliver our ruling. Thank you.

19 PRESIDING JUDGE: This is a decision relating to a
20 complaint and an application. The Trial Chamber notes the
21 witness's concerns and notes also that the local authorities have
22 now intervened. We trust they will deal with this and the
23 witness's worries will be put to ease. However, by a majority of
24 the Trial Chamber with the same dissent as before we consider
25 given the evidence of the witness of public knowledge of his past

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1 appearances and his option to testify openly no useful purpose
2 will be served in reversing the previous decision. Accordingly
3 the application is refused. Please proceed.

4 Cross-examination by Mr Anyah continued.

5 MR ANYAH: Thank you Madam President. Good morning,
6 Mr Witness.

7 A. Good morning, my Lord.

8 Q. Mr Witness, when we left off on Friday we were discussing
9 some of the preconditions that the AFRC had during its
10 negotiations with the RUF leading up to the return of Johnny Paul
11 Koroma and Foday Sankoh in late September, seller October 1999 to
12 Freetown. Do you recall that, Mr Witness?

13 A. Yes, my Lord.

14 Q. There is one matter from Friday I would like to go back and
15 revisit and that has to do with the arrest by the West Side Boys
16 of two RUF commanders: Superman also known as Denis Mingo and
17 Mike Lamin. In the first instance would you agree that they were
18 arrested by the West Side Boys?

19 A. Well, yes, after we came back from Liberia it was not only
20 Superman and Mike Lamin. It included also FAT, Five-Five too was
21 among the squad. Santigie Bobby Kanu. They were the people who
22 were arrested including one Ray who they said was the Black Guard
23 commander to Foday Sankoh. He was among that squad.

24 Q. We had a slight?

25 JUDGE SEBUTINDE: Sorry, does this mean Five-Five was also



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CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**
Case Number: **SCSL-03-01-T**
Document Index Number: **490**
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- ☐ Application
- ☐ Order
- ☐ Indictment
- ☐ Motion
- ☒ **Other**
- ☐ Correspondence

Document Title:

PUBLIC WITH CONFIDENTIAL ANNEX B – URGENT PROSECUTION APPLICATION FOR LEAVE TO APPEAL ORAL DECISIONS REGARDING ALLOWING QUESTIONS CONCERNING THE LOCATION OF THE FAMILY OF A WITNESS AND FAILING TO ORDER REDACTION OF THE LOCATIONS

Name of Officer:

Vincent Tishekwa

Signed: