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SCSL-12-02-PT
(233-239)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty,
Single Judge, Trial Chamber II

Registrar: Binta Mansaray

Case No.: SCSL-12-02-PT

Date: 14 November 2012

INDEPENDENT
COUNSEL

v.

Prince TAYLOR

PUBLIC

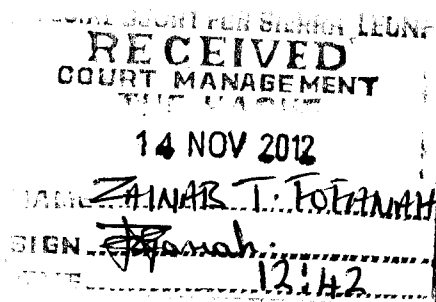
DECISION ON INDEPENDENT COUNSEL'S MOTION FOR *SUBPOENA DUCES TECUM*

Independent Counsel:

William L. Gardner

Counsel for the Accused:

Rodney Dixon



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

SEISED of “Confidential Independent Counsel’s Motion for *Subpoena Duces Tecum*”, filed on 23 October 2012 (“Motion”).¹

NOTING the “Confidential Defence Response on Behalf of Mr. Prince Taylor to Independent Counsel’s Motion for *Subpoena Duces Tecum*”, filed 12 November 2012 (“Response”).²

RECALLING the “Confidential Defence Request on Behalf of Mr Prince Taylor for Access to Documents and for Extension of Time to Respond to Independent Counsel’s Motion for *Subpoena Duces Tecum*”, filed 29 October 2012.³

RECALLING the “Decision on the Defence Requests on Behalf of Mr. Prince Taylor for Access to Documents and for Extension of Time to Respond to Independent Counsel’s Motion for *Subpoena Duces Tecum*”, rendered orally on 2 November 2012 and filed on 7 November 2012.⁴

RECALLING the “Public with Confidential Annexes A and B Defence Motion for Review”, filed before the Single Judge on 23 July 2012 (“Motion for Review of 23 July 2012”)⁵ and in particular the Confidential Annexes A and B annexed thereto.

COGNISANT of the provisions of Article 17 of the Statute (“Statute”) and 8, 54, 73 and 89 of the Rules of Procedure and Evidence (“Rules”).

HEREBY render this decision based only on the written submissions:

SUBMISSIONS

1. Independent Counsel requests that the Trial Chamber, pursuant to Rule 54, issue a *Subpoena Duces Tecum* to the First International Bank (SL), LTD “ordering the production of certain

¹ SCSL-12-02-PT-007.

² SCSL-12-02-PT-015.

³ SCSL-12-02-PT-009.

⁴ SCSL-12-02-PT-013.

⁵ *Prosecutor v. Eric Koi Senessie*, SCSL-11-01-T-022, Public with Confidential Annexes A and B Defence Motion for Review, Trial Chamber, 23 July 2012.

bank records belonging to the Defendant Prince Taylor...and to order the Registrar to take all necessary measures to have the Subpoena served and executed in accordance with Rule 8 of the Special Court for Sierra Leone Rules.”⁶

2. Counsel recites the history leading up to the Motion and submits that the bank records sought concern a key issue in the instant case, that is, monies transferred by the Accused Prince Taylor to Eric Koi Senessie in connection with the Accused’s instruction that Senessie contact former Prosecution witnesses in the *Prosecutor v. Taylor* case with a view to having them recant their trial testimony. Counsel anticipates that this will corroborate a statement made by Senessie⁷ that the Accused transferred 200,000 Leones from his First International Bank (SL), LTD to the First International Bank (SL), LTD of Senessie’s daughter on 1 February 2011.⁸ Counsel states that, as bank records are confidential, the First International Bank (SL), LTD will not release bank account records to anyone other than the account holder without the holder’s written authorisation or a court order.⁹ In the interests of justice, Independent Counsel seeks only a portion of the accounts for the period of 1 January 2011 to 31 July 2012.¹⁰
3. Counsel sets out the relevant Rule and the criteria to be considered by a court as decided by the Special Court for Sierra Leone in the matter of *Prosecutor v. Kanu*.¹¹
4. He submits that the documents are sufficiently identified as they list the name of the bank, the account holder, the type of record requested, and the date range of the records sought. He concedes that he does not have the Accused’s specific bank account but submits that such details are not necessary in order for the First International Bank (SL), LTD to retrieve and produce the requested documents.¹² Independent Counsel further submits that the documents are requested for the preparation and conduct of the trial which accords with Rule 54. He states that he “expects the Defendant’s bank records to establish a financial link

⁶ Motion, para. 1.

⁷ Confidential Annex A.

⁸ Motion, paras 2-3.

⁹ Motion, para. 4.

¹⁰ Motion, para. 5.

¹¹ Motion, paras 6-7.

¹² Motion, para. 8.

between the Defendant and Senessie. Senessie stated in a confidential affidavit dated 23 July 2012 that the Defendant deposited 200,000.00 Sierra Leonean Leones in the bank account of his daughter [named...] on 01 February 2011". The daughter's bank records support this claim.¹³ He therefore expects the Accused's bank account to reveal a corresponding transfer and also "expects such records to reflect additional payments by the Defendant...during the period of January 2011 through July 2011".¹⁴

5. He submits he made reasonable efforts to obtain the requested documents in this case and was informed by the bank that they do not release customer records without the account holder's authorisation or a court order.¹⁵
6. Counsel submits that the documents will not impose an undue burden on the First International Bank (SL), LTD as the bank can use its technological resources to quickly and efficiently produce the requested documents.
7. In conclusion, Independent Counsel seeks the documents, a request to the Registrar to ensure service of the documents, and all documents "responsive to the Subpoena be directed to the attention of the Independent Counsel and delivered to the Registry."¹⁶ He notes that he has filed the Motion confidentially because of the contents of two confidential documents and acknowledges that the court is authorised to change the status of the documents.¹⁷
8. In his Response, Defence Counsel submits that the Motion is moot as the Accused does not have any bank account at the First International Bank LTD and there is nothing in the Motion to support the Independent Counsel's assertion that the Accused has such an account. He further submits that there is no dispute that the Accused made a payment into Senessie's daughter's account on 1 February 2011. The Accused has provided Defence Counsel with a copy of a cash deposit slip in the sum of 200,000 Leones to the account of Eric Senessie's daughter. Counsel states that having reviewed the document upon which the Independent Counsel's Motion is based "it is clear that this is the same transaction referred to

¹³ Motion, para. 9.

¹⁴ Motion, para. 10.

¹⁵ Motion, para. 12.

¹⁶ Motion, paras 14-16.

¹⁷ Motion, para. 17.

in Mr Senessie's affidavit", although the daughter's account does not record that the Accused made the payment. This is because the payment was made in cash. Counsel submits that this transaction can be dealt with as an agreed fact between the parties. He notes that Senessie's affidavit does not allege that any other transactions took place and accordingly there is no basis at all for the Independent Counsel's request for the production of an alleged bank account record. He submits that Counsel "makes an entirely unsupported and generalised assertion that the records sought for production could show 'monies paid by others to the Defendant' and that there is no foundation or any specific details" relevant to the charges in this case.¹⁸

9. In these circumstances he submits that the Motion should be denied.

APPLICABLE LAW

10. Rule 54 of the Rules provides:

At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

DELIBERATIONS

11. It is apparent from Confidential Annex B annexed to the Motion for Review of 23 July 2012 that a cash deposit of 200,000 Leones was made to the account of Eric Senessie's daughter on 1 February 2011. Annex B shows "cash deposit sn45", it does not indicate where the cash deposit emanated from or how it was transferred into Senessie's account. In this regard I note the terminology "cash deposit" is used to refer to other deposits to that account and Annex B is not probative of whether the Accused made a cash transfer or the transfer was made from an account that he held at the First International Bank (SL), LTD.¹⁹

¹⁸ Response, paras 3-4.

¹⁹ Annex B to Motion for Review of 23 July 2012.

12. Whilst Rule 54 empowers a Trial Chamber to issue a subpoena, the power is a discretionary one and the Trial Chamber may only issue subpoenas as “may be necessary”.²⁰
13. In considering the test for the issue of a subpoena, the Appeals Chamber has held that Rule 54 requires the applicant to show that it is necessary to issue a subpoena so as to bring relevant evidence before the court, and that this is satisfied if the applicant shows that the subpoena is likely to elicit evidence material to an issue in the case which cannot be obtained without judicial intervention. The key question is whether the effect that the subpoena will have is necessary to try the case fairly.²¹
14. I agree with Independent Counsel’s submission that “(a) whether the documents requested...are sufficiently identified; (b) whether reasons given to justify the need for the release of the documents are succinctly presented (c) whether reasonable steps were taken by the applicant to obtain the documents; and (d) whether the order, if granted, will be unduly burdensome”²² are the relevant factors when considering a request for the issuing of a subpoena to produce and I apply that criteria to the instant case. I am satisfied that reasonable steps were taken by Independent Counsel to obtain the documents and the order, if granted, will not be unduly burdensome. I also consider that there are sufficient reasons to justify the need for the release of the documents if, in fact, they exist.
15. However, I am concerned that the documents are not sufficiently identified in the light of Defence Counsel’s statement that his client does not have an account at the bank. I note that Independent Counsel does not specify the name of an account, its number or other details but does specify a location of the bank. That location is not the Accused’s home town.
16. If in fact the Accused does not have an account, as Defence Counsel states, then the bank will respond accordingly. I consider it is in the interests of the determination of the truth and a fair trial that even such a confirmation from the bank would assist in narrowing the issues

²⁰ *Prosecutor v. Norman et al.*, SCSL-0414-T, Decision on Interlocutory Appeals Against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, Trial Chamber, 11 September 2006, para. 8.

²¹ *Prosecutor v. Norman et al.*, SCSL-0414-T, Decision on Interlocutory Appeals Against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, Trial Chamber, 11 September 2006, para. 9.

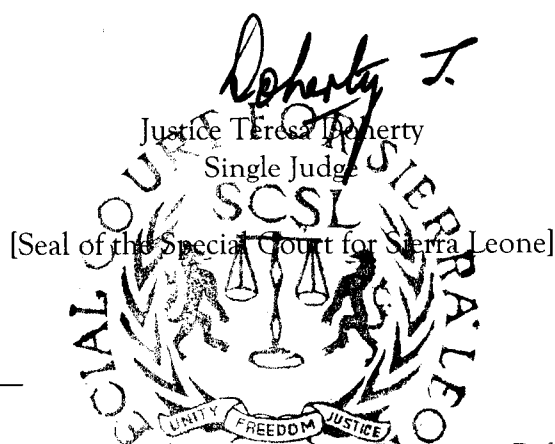
between the parties. Even a statement that the Accused has or does not hold an account would be relevant information pursuant to Rule 89C.

17. Defence Counsel does not argue that the bank statements would not be relevant, he clearly and categorically states that the issue is moot as the Accused does not have any bank account at the First International Bank Ltd. For the purposes of this decision I am assuming that the First International Bank LTD referred to by Defence is the same corporation as the First International Bank (SL), Ltd.

18. I note, as did Defence Counsel, that Independent Counsel's application is for personal account records for the period 1 January 2011 to 31 July 2012²³ but that he subsequently refers to records from the period of January 2011 to July 2011.²⁴ On the grounds of relevance and of upholding the rights of privacy of an account holder at the bank I consider that the relevant period is limited to January 2011 to July 2011.

19. Accordingly, I allow the Motion and issue a Subpoena to the First International Bank (SL), LTD to produce to the court the bank records, if any, of Prince Taylor a resident of Bo for the period 1 January 2011 to 31 July 2011.

Done at The Hague, The Netherlands, this 14th day of November 2012.



²² Motion, para. 7 quoting *Prosecutor v. Kanu*, SCSL-04-16-PT, Kanu - Decision on Defence Motion in Respect of Santigie Borbor Kanu for an Order Under Rule 54 With Respect to Release of Exculpatory Evidence, Trial Chamber, 1 June 2004, para. 31.

²³ Motion, Para. 5.

²⁴ Motion, Para. 10.