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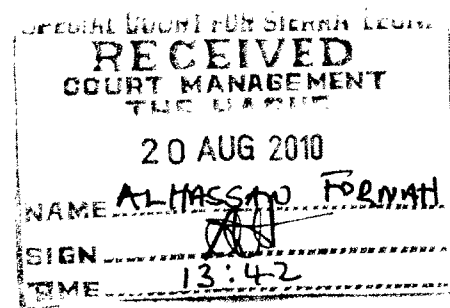
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 20 August 2010



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION URGENT APPLICATION FOR
LEAVE TO APPEAL DECISION EXCLUDING THE USE OF CUSTODIAL STATEMENT OF ISSA SESAY**

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Kathryn Howarth

Counsel for the Accused:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. The Prosecution files this Reply to the “Defence Response to Prosecution Urgent Application for Leave to Appeal Decision Excluding the Use of Custodial Statement of Issa Sesay” (“**Response**”).¹

II. ARGUMENT

2. The Response is largely irrelevant to the issues to be addressed in a motion for leave to appeal in that it deals in large part, first with the merits of the original decision, and secondly, with the merits of the potential arguments at the appeal stage. Notably, it’s not until half way down the penultimate page of the Response, that the Defence addresses the substance of the leave to appeal application – the issues of “exceptional circumstances” and “irreparable prejudice”.
3. As regards the Defence argument in relation to “exceptional circumstances” the Defence points to the fact that the testimony of Issa Sesay in relation to his own trial before Trial Chamber I is available for use in cross-examination in these proceedings.² However, the Defence entirely fails to address the Prosecution argument – that the first custodial statement made by Issa Sesay contains dramatic contradictions in relation to issues which go to the heart of the Trial Chamber’s ability to assess the credibility of Issa Sesay’s evidence in relation to central issues in this case. These issues include: the role of Charles Taylor in relation to the RUF, his relationship with senior members of the RUF, and the delivery of diamonds to Charles Taylor by persons including Issa Sesay, in return for the supply of arms and ammunition to the RUF.³ It is only by putting the contradictory assertions contained in the first custodial statement that the Prosecution can test the credibility of Issa Sesay’s evidence in relation to these central issues in this case. It is for this reason that “exceptional circumstances” arise. The Prosecution cannot achieve the same result by putting the testimony of Issa Sesay in cross-examination in the RUF case because Issa Sesay did not make the same contradictory assertions in relation to these

¹ *Prosecutor v Taylor*, “Defence Response to Prosecution Urgent Application for Leave to Appeal Decision Excluding the Use of Custodial Statement of Issa Sesay”, 19 August 2010.

² Response, para. 18.

³ *Prosecutor v Taylor*, “Public Urgent Application for Leave to Appeal Decision Excluding the Use of Custodial Statement of Issa Sesay”, 16 August 2010, paras. 14-16.

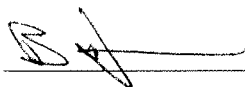
central issues in his RUF testimony – indeed in that testimony Issa Sesay appeared to deliberately avoid implicating in any way the Accused in this case. The Defence therefore fails to address the argument made by the Prosecution as to why the course of justice would be interfered with and “exceptional circumstances” arise.

4. As regards the Defence argument that no fundamental issues of legal importance arise, it is notable that the Defence fail to point to any jurisprudence in relation to the issues identified by the Prosecution. The Defence rely on paragraphs 20, 14 and 15 of the Response. Paragraph 15 of the Response discusses judicial notice but the issue of judicial notice does not arise in the circumstances of this application for leave to appeal.
5. In relation to the issue of “irreparable prejudice” the Defence again relies upon the fact that the Prosecution can utilise the testimony of Issa Sesay in the RUF case in cross-examination in these proceedings.⁴ In this regard the Prosecution relies on the argument set out in paragraph 3 above. Moreover, the Defence again omits to respond to the Prosecution argument that there is no remedy available and the undesirability and unlikelihood of the Appeal Chamber allowing the re-opening of the case for cross-examination of Issa Sesay on his first custodial statement should the Appeals Chamber ultimately find that the Trial Chamber erred.

III. CONCLUSION

6. For the reasons given above the Defence arguments as set out in the Response should be rejected. The Prosecution has satisfied the appropriate legal standard for the Trial Chamber to grant leave to appeal.

Filed in The Hague,
20 August 2010,
For the Prosecution,



Brenda J. Hollis
The Prosecutor

⁴ Response, para. 21.

INDEX OF AUTHORITIES

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Prosecutor v. Taylor

Prosecutor v Taylor, SCSL-03-01-T-1055, “Defence Response to Prosecution Urgent Application for Leave to Appeal Decision Excluding the Use of Custodial Statement of Issa Sesay”, 19 August 2010.

Prosecutor v Taylor, SCSL-03-01-T-1050, “Public Urgent Application for Leave to Appeal Decision Excluding the Use of Custodial Statement of Issa Sesay”, 16 August 2010