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SCSL-03-01-T
(32435-32439)

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THE SPECIAL COURT FOR SIERRA LEONE

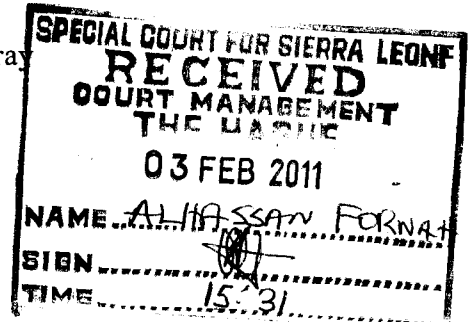
Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 3 February 2010

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION SEEKING LEAVE TO
APPEAL THE DECISION ON DEFENCE MOTION TO RECALL FOUR PROSECUTION
WITNESSES AND TO HEAR EVIDENCE FROM THE CHIEF OF WVS REGARDING
RELOCATION OF PROSECUTION WITNESSES**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Leigh Lawrie

Counsel for Charles G. Taylor:

Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. This is the Defence Reply to the Prosecution Response¹ to the Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses.²
2. The Defence has considered the Prosecution Response and is left with the unwavering conviction that it only serves to reinforce why the relief sought by the Defence Appeal should be granted.

II. SUBMISSIONS

Exceptional Circumstances

3. The Response repeats the Prosecution's old chestnut that the Defence's grounds of appeal do not constitute exceptional circumstances,³ somewhat overlooking the fact that the Defence pleads exceptional circumstances in a different section of the Application.⁴ There is thus no need to address this further, though the Defence notes arguments made under this topic in a previous filing, and incorporates them as set out therein.⁵

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1181, Prosecution Response to Defence Motion Seeking Leave to Appeal the Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Witnesses, 2 February 2011 (“**Response**”).

² *Prosecutor v. Taylor*, SCSL-03-01-T-1173, Defence Motion Seeking Leave to Appeal the Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Witnesses, 24 January 2011 (“**Application**”). The procedural history includes *Prosecutor v. Taylor*, SCSL-03-01-T-1167, Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Witnesses, 24 January 2011 (“**Decision**”).

³ Response, paras. 3 and 4. The Prosecution has run such an argument many times before, despite having advanced the opposite viewpoint when it suits its purpose to do so. See: *Prosecutor v. Taylor*, SCSL-03-01-T-1129, Defence reply to Prosecution response to Defence motion seeking leave to appeal the decision on the Defence motion requesting an investigation into contempt of court by the office of the Prosecution and its investigators, 3 December 2010, paras. 2-4 (“**Investigation Reply**”).

⁴ The Response highlights paras. 2, 3, 4 and 9 of the Application as being exceptional circumstances which, as it puts it, focus on the merits; though the Application pleads exceptional circumstances, clearly headed, under paras. 9-14.

⁵ Investigation Reply, paras. 2-4.

4. In the same light, it is noteworthy that the Response hardly addresses the main focus of the Application, which is the issue of the Motion being time-barred,⁶ despite it being the decisive factor in the Trial Chamber's rejection of the Motion. And it is not the case that lack of quantity is made up for with quality since the Response fails to grasp the Defence's argument that the Trial Chamber's dismissal of the Motion for lack of new information, despite new information having been presented, is inherently unjust. Instead, the Prosecution seems to think the Defence argument was based on the fact it found this basis for the Decision "startling",⁷ suggesting the Prosecution has either failed to read the Application thoroughly, or is being deliberately disingenuous. Either way, it is difficult to take the Response seriously as a coherent argument.
5. The same applies to the Response's argument regarding Abu Keita.⁸ The thrust of the Defence's contention with Keita is that, despite testifying openly, suggesting there were no or very few security concerns, he has gone public demanding relocation. Seen in that context, the Prosecution assertion that "the article shows... a man afraid for his safety and that of his family because he testified against Charles Taylor" is nonsense. For the article does not show that at all. It shows a man who testified openly, and unafraid to inculcate the Accused before the world, without any protective measures,⁹ and who then, months later, felt he was not being given what he had been promised. He was happy for his name to be used in court, and he was happy for his name to be used upon speaking to the press in September 2009.¹⁰ This is not a man "afraid for his safety"; rather it justifies the Defence's concern that Keita was promised relocation in exchange for his testimony. Prosecution attempts to spin the

⁶ Application, para. 2 and paras. 9-12; Response para. 5. The original Defence Motion is *Prosecutor v. Taylor*, SCSL-03-01-T-1142, Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 17 December 2010.

⁷ Response, para. 5.

⁸ Response, para. 7.

⁹ It was certainly no problem for Abu Keita to have testified under pseudonym if he had so wished, or if the Prosecution had so recommended. If there were any security concerns whatsoever, then Keita would have testified, at the very least, under pseudonym.

¹⁰ Exhibit D-468.

story otherwise are suited more to the field of tabloid journalism than to a respectable court of law.

Irreparable Prejudice

6. That the Decision cannot be remediable on final appeal is obvious and need not be gone into in any detail; the Trial Chamber needs little advice regarding the weakness of the Response's arguments under this head. The Defence simply highlights one such example of the poverty of the Prosecution's position. The argument that somehow the issue at bar is comparable with the "Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payment to Witnesses" is puzzling.¹¹ It shows the desperation of the Response that it is forced to stoop to introduce such patently incompatible authorities. This Application concerns putting new information to use in the cross-examination of witnesses; that motion had nothing to do with such new information, but was rather a request for an investigation. There is no worthwhile similarity between the two.

III. CONCLUSION AND RELIEF REQUESTED

7. The Defence has met the conjunctive requirements for leave to appeal and thus leave must be granted.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 3rd Day of February 2011,
The Hague, The Netherlands

¹¹ Response, para. 14, citing: *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1185, "Decision on Sesay Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses", 25 June 2008.

Table of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-1181, Prosecution Response to Defence Motion Seeking Leave to Appeal the Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Witnesses, 2 February 2011

Prosecutor v. Taylor, SCSL-03-01-T-1173, Defence Motion Seeking Leave to Appeal the Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Witnesses, 24 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1167, Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Witnesses, 24 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1142, Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 17 December 2010

Prosecutor v. Taylor, SCSL-03-01-T-1129, Defence reply to Prosecution response to Defence motion seeking leave to appeal the decision on the Defence motion requesting an investigation into contempt of court by the office of the Prosecution and its investigators, 3 December 2010

Prosecutor v. Sesay et al.

Prosecutor v. Sesay et al., SCSL-04-15-T-1185, "Decision on Sesay Motion to Request the Trial Chamber to Hear Evidence Concerning the Prosecution's Witness Management Unit and its Payments to Witnesses", 25 June 2008