

184

SCSL-03-01-PT  
C 4352-4354

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Julia Sebutinde, Presiding Judge  
Justice Richard Lussick  
Justice Teresa Doherty

Registrar: Lovemore G. Munlo, SC

Date: 19 February 2007

Case No.: SCSL-03-1-PT

PROSECUTOR

Against

CHARLES GHANKAY TAYLOR

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DECISION ON DEFENCE APPLICATION FOR SERVICE OF A DISCLOSURE  
STATEMENT PURSUANT TO RULE 68

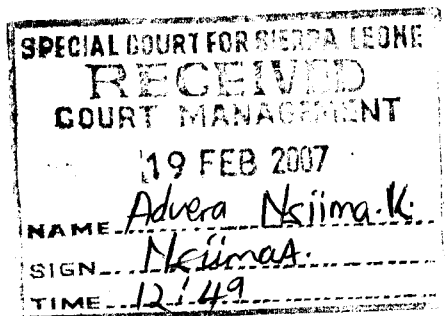
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Office of the Prosecutor:

Brenda Hollis  
Wendy van Tongeren  
Anne Althaus

Defence Counsel for Charles G. Taylor:

Karim A.A. Khan  
Roger Sahota



TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Julia Sebutinde, Presiding Judge, Justice Richard Lussick and Justice Teresa Doherty;

SEISED of the "Defence Application for Service of a Disclosure Statement Pursuant to Rule 68", filed on 25 January 2007 ("Motion") wherein the Defence moves the Trial Chamber for an order that the Prosecution make a disclosure statement in compliance with Rule 68 of the Rules of Procedure and Evidence ("Rules"), identifying the Rule under which each statement, transcript or other material known to the Prosecution is served,<sup>1</sup> on the grounds that:

- (i) thus far the Defence has received 10 disclosure packages from the Prosecution, said to have been served "in accordance with Rules 66 and 68 of the Rules of Procedure and Evidence", in respect of which the Prosecution was obliged to specify the Rule under which each enclosed statement or other witness-related material had been served, but failed to do so for several of the packages;<sup>2</sup>
- (ii) the approach adopted by the Prosecution is erroneous as it should have disclosed to the Defence the existence of all exculpatory material known to the Prosecution as of the date of the Rule 68 statement, and not merely acknowledge the contents of the specific disclosure package in an accompanying statement;<sup>3</sup>

NOTING the "Prosecution Response to 'Defence Application for Service of a Disclosure Statement Pursuant to Rule 68'", filed on 5 February 2007 ("Response") wherein the Prosecution submits that the Motion should be dismissed<sup>4</sup> because:

- (i) a Rule 68 statement need not be in any particular form;<sup>5</sup>
- (ii) the Prosecution has at all times respected the obligations contained in Rules 68 by disclosing exculpatory material;<sup>6</sup>
- (iii) the Defence interpretation of Rule 68 goes beyond the obligations imposed by the Rule;<sup>7</sup>
- (iv) the practice of the Special Court and other international tribunals does not oblige the Prosecution to specifically identify the disclosed material as either inculpatory or exculpatory;<sup>8</sup>
- (v) the purpose of Rule 68 is to ensure that the Defence is aware of the existence of any material in the possession of the Prosecution that the latter deems exculpatory, not to prepare the work of the Defence by analysing such material for the Defence;<sup>9</sup>

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<sup>1</sup> Motion, para. 20.  
<sup>2</sup> Motion, paras 9, 10, 15.  
<sup>3</sup> Motion, para. 14.  
<sup>4</sup> Response, para. 3.  
<sup>5</sup> Response, para. 6.  
<sup>6</sup> Response, para. 10.  
<sup>7</sup> Response, para. 11.  
<sup>8</sup> Response, para. 12.  
<sup>9</sup> Response, para. 15.

(vi) the Prosecution may adopt a more liberal policy from time to time, but - when this is not required by the Rule - cannot be compelled to apply the policy retroactively;<sup>10</sup> and requiring the Prosecution to retrospectively sort disclosure material would put an undue burden on it since the Defence is bound to review such material in any event;<sup>11</sup>

NOTING that the Defence has advised that it does not intend to file a reply;<sup>12</sup>

NOTING that Rule 68(B) states that

*The Prosecutor shall, within 30 days of the initial appearance of the accused, make a statement under this Rule disclosing to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence. The Prosecutor shall be under a continuing obligation to disclose any such exculpatory material.*

NOTING that the Defence concedes that the Prosecution is not required to scrutinise each document served to indicate which parts are served pursuant to Rule 66 or Rule 68, and that the Prosecution has exercised its Rule 68 obligations in good faith at all times;<sup>13</sup>

HOLDING that, in order to comply with Rule 68(B), the statement prescribed therein must disclose to the defence the existence of exculpatory material known to the Prosecutor, but that such statement is not required to be in any particular form;

HOLDING also that there is no obligation upon the Prosecution under Rule 68(B) to identify the material being disclosed to the Defence as exculpatory;<sup>14</sup>

FINDING that the Defence has failed to establish that the Prosecution's disclosure statements are in contravention of Rule 68(B);

HEREBY DISMISSES THE MOTION.

Done at Freetown, Sierra Leone, this 19th day of February 2007.

*Richard Lussick*

Justice Richard Lussick

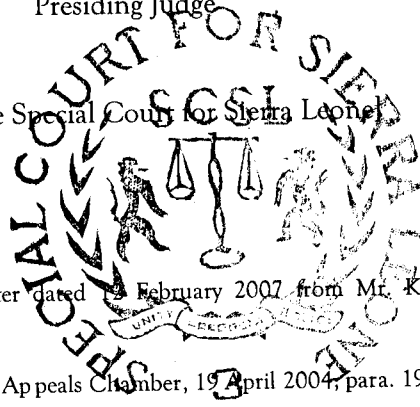
*Julia Sebutinde*

Justice Julia Sebutinde  
Presiding Judge

*Teresa Doherty*

Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]



<sup>10</sup> Response, para. 16.

<sup>11</sup> Response, paras 21-24.

<sup>12</sup> See Document No. SCSL-03-01-PT-179, letter dated 9 February 2007 from Mr. Karim Khan, Defence Counsel, addressed to the Trial Chamber.

<sup>13</sup> Response, para. 15.

<sup>14</sup> See *Prosecutor v. Krstić*, IT-98-33-A, Judgement, Appeals Chamber, 19 April 2004, para. 190.