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SCSL-03-01-1  
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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
16 JUL 2007	
NAME	HOMAS GEORGE
SIGN	<i>[Signature]</i>
TIME	16:30

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

Registrar: Mr. Herman von Hebel

Case No.: SCSL-03-1-T

Date: 16 July 2007

PROSECUTOR

Against

CHARLES GHANKAY TAYLOR

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DECISION ON DEFENCE APPLICATION FOR LEAVE TO APPEAL  
 THE 29 MAY 2007 'DECISION ON URGENT AND PUBLIC  
 DEFENCE MOTION REQUESTING LEAVE FOR CHARLES GHANKAY TAYLOR  
 TO GIVE AN UN-SWORN STATEMENT FROM THE DOCK'

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Office of the Prosecutor:  
 Brenda Hollis  
 Ann Sutherland

Defence Counsel for Charles G. Taylor:  
 Charles Jalloh, Duty Counsel

**TRIAL CHAMBER II** (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

**SEISED** of the Defence Application for Leave to Appeal the 29 May 2007 ‘Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement from the Dock’, filed on 4 June 2007 (“Motion”), on the grounds that-

- (i) “exceptional circumstances” exist, in that the Trial Chamber in issuing its Decision, did not address the request made by the Defence motion and instead mischaracterised the Accused’s request for an “unsworn statement from the dock” as a request for an “opening statement” under Rule 84 of the Special Court Rules of Procedure and Evidence;<sup>1</sup> and
- (ii) “irreparable prejudice” will be caused to the Defence as the opportunity to give an unsworn statement before the presentation of Prosecution evidence will have been lost, a matter that can not be cured or resolved by final appeal against judgement<sup>2</sup>;

**NOTING** the “Prosecution’s Response to ‘Defence Application for Leave to Appeal the 29 May 2007 ‘Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement form the Dock”, filed on 15 June 2007 (“Response”), wherein the Prosecution opposes the Motion on the grounds that-

- (i) the Defence allegation of an error of law in the impugned decision does not of itself constitute an “exceptional circumstance” under Rule 73(B)<sup>3</sup>; and
- (ii) no “irreparable prejudice” results from the Decision as the Accused will have the opportunity to address the Chamber, either by giving evidence under oath or through the submissions made in the Defence opening statement or proper arguments on issues pursuant to the Rules<sup>4</sup>;

**NOTING** the Defence Reply to “Prosecution’s Response to ‘Defence Application for Leave to Appeal the 29 May 2007 ‘Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement form the Dock”, filed on 6 July 2007 (“Reply”), in accordance with the Trial Chamber’s Order on Urgent and Public Joint Submissions by the Office of the Principal Defender and the Prosecution in Relation to the Re-Commencement of the Trial on 3 July 2007, dated 28 June 2007;<sup>5</sup>

**RECALLING** the Trial Chamber’s “Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement from the Dock”, dated 29 May 2007<sup>6</sup> (“Impugned Decision”) in which the Trial Chamber denied Mr. Taylor leave to give an unsworn statement from the dock after the Prosecutor’s opening statement on 4 June 2007;

**MINDFUL** of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone, and of Rules 26bis, 54, 73 and 84 of the Rules of Procedure and Evidence (“Rules”);

<sup>1</sup> Motion, paras. 4-8.

<sup>2</sup> Motion, paras. 9-11.

<sup>3</sup> Response, paras 10-11.

<sup>4</sup> Response, paras. 11-12.

<sup>5</sup> Document No. SCSL-03-01-T-310.

<sup>6</sup> Document No. SCSL-03-01-PT-264.



NOTING that Rule 73(B) of the Rules provides that:

Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders;

NOTING therefore that Rule 73(B) does not confer a general right of appeal, but that leave to appeal may be granted by the Trial Chamber only in cases where the conjunctive conditions of exceptional circumstances and irreparable prejudice to a party are both satisfied;

CONSIDERING that the overriding legal consideration in respect of an application of this nature is that the applicant's case must reach a level nothing short of exceptional circumstances and irreparable prejudice, having regard to the restrictive nature of Rule 73(B) and the rationale that criminal trials must not be heavily encumbered and, consequently, unduly delayed by interlocutory appeals;<sup>7</sup>


CONSIDERING also that the Appeals Chamber has ruled that:

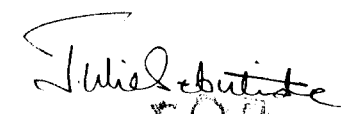
"In this Court, the procedural assumption is that trials will continue to their conclusion without delay or diversion caused by interlocutory appeals on procedural matters, and that any errors which affect the final judgement will be corrected in due course by this Chamber on appeal";<sup>8</sup>


HOLDING that the Trial Chamber's decision not to allow the Accused to make an unsworn statement immediately following the Prosecutor's opening address does not amount to "exceptional circumstances", nor is it capable of causing "irreparable prejudice" to the Accused within the meaning of Rule 73(B) as the Accused will have the opportunity at a later stage to address the Chamber, either by giving evidence under oath or through the submissions made in the Defence opening statement or by proper arguments on issues pursuant to the Rules;

DISMISSES THE MOTION.

Done at Freetown, Sierra Leone, this 16<sup>th</sup> day of July, 2007.

  
Justice Richard Lussick

  
Justice Julia Sebutinde  
Presiding Judge

  
Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]

<sup>7</sup> See *Prosecutor v. Sesay et al.*, SCSL-2004-15-PT, Decision on the Prosecutor's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution Motion for Joinder, 13 February 2004.

<sup>8</sup> See *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para. 43.