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SCSL-03-01-T
(24225-24239)

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SPECIAL COURT FOR SIERRA LEONE

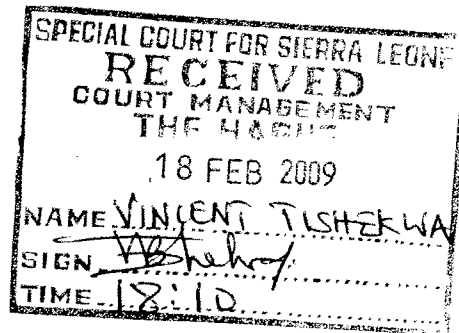
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 18 February 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PROSECUTION MOTION FOR ADMISSION OF LIBERIA SEARCH DOCUMENTS

Office of the Prosecutor:

Brenda J. Hollis
Leigh Lawrie

Defence Counsel for Charles G. Taylor:

Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

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

SEISED of the Prosecution Motion for Admission of Liberia Search Documents, filed on 1 December 2008 (“Motion”);¹

NOTING the Defence Response to Prosecution Motion for Admission of Liberia Search Documents, filed on 8 December 2008 (“Response”);²

NOTING the Prosecution Reply to Defence Response to Prosecution Motion for Admission of Liberia Search Documents, filed on 12 December 2008 (“Reply”);³

NOTING the Prosecution Request for Leave to File Supplemental Argument in Light of the Appeals Chamber Decision on “Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents”, filed on 10 February 2009 (“Supplemental Request”);⁴

RECALLING the Trial Chamber’s Order for Expedited Filing, dated 10 February 2009⁵;

NOTING the Defence Response to Prosecution Request for Leave to File Supplemental Argument in Light of the Appeals Chamber Decision on “Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents”, filed on 13 February 2009 (“Supplemental Response”);⁶

NOTING the Prosecution Reply to Defence Response to Prosecution Request for Leave to File Supplemental Argument in Light of the Appeals Chamber Decision on Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents, filed on 17 February 2009 (“Supplemental Reply”);⁷

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 26bis, 73, 89(C), 92bis of the Rules of Procedure and Evidence (“Rules”);

HEREBY DECIDES AS FOLLOWS.

I. SUBMISSIONS

Motion

1. The Prosecution moves the Trial Chamber to admit into evidence the identified portions of the documents listed in Annex A and provided in Annex B of the Motion, which documents are copies

¹ SCSL03-01-T-681.

² SCSL03-01-T-688.

³ SCSL03-01-T-693.

⁴ SCSL03-01-T-726.

⁵ SCSL03-01-T-727.

⁶ SCSL03-01-T-730.

⁷ SCSL03-01-T-732.

of documents seized by Liberian officials in March 2004 from White Flower, the former residence of the Accused in Monrovia, Liberia ("Taylor Documents").⁸ The application is made pursuant to Rule 89(C) or, in the alternative, Rules 89(C) and 92bis, should the Trial Chamber find that Rule 92bis is also applicable.⁹

2. The Prosecution submits, notwithstanding a decision of the Trial Chamber to the contrary, that the Taylor Documents are admissible under Rule 89(C) alone because: (i) Rule 89(C) is the general rule of evidence and has been used to tender documents without a witness in other proceedings; (ii) Rule 92bis, as amended, now only applies to witness statements and transcripts; and (iii) Rule 92bis does not apply to documents which were not prepared for the purposes of legal proceedings.¹⁰

3. In the alternative, the Prosecution submits that if Rule 92bis applies, then the requirements of Rules 89(C) and 92bis must be satisfied. In support of this alternative submission the Prosecution relies on its arguments put forward in an earlier motion¹¹ and, in this regard, asserts that the Taylor Documents are not public documents and were not prepared for purposes of legal proceedings.¹²

4. In support of its application for admission of the Taylor Documents under Rule 89(C), the Prosecution states that the documents relate to the several forms of liability alleged by the Prosecution in this case and evidence of a consistent pattern of conduct admissible under Rule 93, and also corroborate evidence on the court record¹³. The Prosecution argues that no undue prejudice to the Accused arises from the fact that a document is produced without calling a witness, since the Trial Chamber has discretion under Rule 89(C) to admit any relevant evidence and "the inability of the Defence to cross-examine such witnesses is a matter that goes to the weight of the evidence, not its admissibility".¹⁴

5. In support of its alternative application for admission of the documents under Rules 89(C) and 92bis, the Prosecution submits that the documents are relevant¹⁵, their reliability is susceptible of confirmation¹⁶ and that their admission would cause no undue prejudice to the Accused¹⁷. The Prosecution has also indicated by underlining in Annexes A and B those portions of the documents which go to the acts and conduct of the Accused, assuming that such qualification "is still applicable to documents not prepared for the purposes of legal proceedings"¹⁸. Further, while the Prosecution acknowledges that the documents "do concern acts and conduct of those who might be considered the Accused's immediately proximate subordinates", it claims that "it is in the interests of justice that

⁸ Motion, paras 1, 17.

⁹ Motion, paras 1, 5.

¹⁰ Motion, para 3.

¹¹ See Prosecutor v. Taylor, Case No. SCSL-03-01-T, Prosecution Motion for Admission of Documents of the United Nations & United Nations Bodies, filed on 29 October 2008, paras 14 - 17.

¹² Motion, para 6.

¹³ Motion, para 8.

¹⁴ Motion, para. 10.

¹⁵ Motion, para 12.

¹⁶ Motion, para 13.

¹⁷ Motion, para 14.

¹⁸ Motion, paras 7, 15.

this relevant evidence is brought before the Chamber, and that the Chamber be allowed to assess the appropriate weight to be given to it at the conclusion of the case".¹⁹

Supplemental Request

6. In the light of the recent decision of the Appeals Chamber²⁰ dealing with the tender of documents under Rules 89(C) or 92bis, the Prosecution seeks leave to file a supplemental argument which it submits "focuses on the significance of the testimony of Mr. Tariq Malik²¹ in relation to the admissibility" of (inter alia) the subject documents under Rule 89(C).

7. In the supplemental argument attached to the Supplemental Request, the Prosecution submits that although Mr. Malik did not give any evidence as to the contents of the documents, this is not a requirement for admission, and that evidence of investigative searches can establish that the documents are relevant "because they were found at a scene or obtained from a source related to the case."²² The Prosecution argues that the Appeals Chamber's requirement for the admission of a document under Rule 89(C) - i.e. that the tendering party is required to lay a foundation of the witness's competence to give evidence in relation to that document - has been met in that Tariq Malik established a relation to the documents as the Prosecution Evidence Custodian responsible for receiving documents and for collecting information regarding their seizure or possession prior to their arrival at the Office of the Prosecutor Evidence Unit.²³

Response

8. The Defence opposes the Motion on the grounds that the documents are inadmissible under Rule 89(C) alone and can only be admissible under Rule 89(C) in conjunction with Rule 92bis, under which rules the documents should be excluded because they go to the acts and conduct of the Accused or his alleged subordinates, "and/or their probative value is outweighed by their prejudicial effect"²⁴

9. The Defence points out that although the documents are referred to by the Prosecution as the "Taylor Documents," such documents were allegedly seized after the Accused had left Liberia and after his indictment by the Special Court and, since there is no witness available to testify as to the circumstances in which the documents were purportedly seized, there is no forensic link between Mr Taylor and the Documents. The Defence would require the authenticity of the documents to be tested if they are to be admitted.²⁵

¹⁹ Motion, para. 16.

²⁰ SCSL-03-01-AR73-721, Decision on 'Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents', 6 February 2009 ("Appeals Chamber Decision"); Supplemental Request, para 3.

²¹ *Prosecutor v. Taylor*, Transcript, 19-20 January 2009.

²² Supplemental Request, Annex A, para 2.

²³ Supplemental Request, Annex A, paras 3,4.

²⁴ Response, paras 2, 23.

²⁵ Response, para. 4.

10. The Defence submits specifically that the documents are inadmissible because (i) the fact that the documents were purportedly seized from Charles Taylor's residence, White Flower, in Monrovia, as well as the content of the documents themselves, go to the joint criminal enterprise and superior responsibility modes of liability as charged in the Indictment and "it would be highly prejudicial for such documents to be admitted without a witness who could speak to their contents and authenticity";²⁶ (ii) the Prosecution seeks to admit evidence material to command responsibility or joint criminal enterprise without giving the Defence a genuine opportunity for cross-examination²⁷; (iii) many of the documents are not decipherable and are thus of questionable relevance;²⁸ (iv) no evidence is provided as to who the Liberian officials were that seized the documents and under what conditions the documents were seized, so that there is no clear chain of custody to prove their authenticity or reliability²⁹; and (v) the documents were seized in 2004 and the Accused is prejudiced by the fact that the Prosecution have had possession of these documents for such a long time and have had the chance to introduce them through various witnesses but chose to admit them only now at such a late stage in the trial, without giving the Defence an opportunity to challenge the evidence in cross examination.³⁰

11. In particular, the Defence opposes the admission of Document 4 on grounds of relevance; Documents 1, 2, 3, 5 and 9 on the ground that they are already admitted in evidence; Documents 3, 6, and 11 on the ground that they concern events outside the scope of the Indictment, and all Documents except 7 and 11, on the ground that they are cumulative of other evidence already admitted.³¹

Supplemental Response

12. The Defence opposes the request for leave to file a supplemental argument as well as the argument itself. The Defence submits that the Appeals Chamber Decision does not assist the Prosecution's case because the Appeals Chamber ruled that "[t]he procedural scheme established by Rules 89(C) and 92bis does not allow a party to circumvent the stringency of the latter by simply tendering a document under the former." The Defence says that this principle applies where a nominal witness such as Mr. Malik is brought forward simply as a conduit for the tendering of documents that go to the acts and conduct of the Accused. The Defence further submits that a foundation of a witness's competence to give evidence in relation to a document would form the basis for the witness's cross-examination on the contents of the document. However, in the present case, Mr. Malik can only give evidence of the circumstances in which the documents were obtained and secured by the Prosecution. To then allow the documents to be admitted on such evidence would "clearly defeat the fundamental safeguard in Rule 89(C) or in the alternative Rule 92bis route." The Defence contends that the Trial Chamber ought to exclude the evidence pursuant to Rule 95, since to admit documents that go to the acts and conduct of the Accused through a process that denies the Defence a chance to challenge the evidence would bring the administration of justice into serious disrepute.³²

²⁶ Response, para. 5.

²⁷ Response, paras 6-8.

²⁸ Response, paras 9, 10.

²⁹ Response, paras 13, 15.

³⁰ Response, paras. 15, 18.

³¹ Response, paras 21-22 and Annex B.

³² Supplemental Response, paras 8-13.

Reply

12. The Prosecution disputes the arguments of the Defence,³³ but does acknowledge that should the Trial Chamber find that “the Taylor Documents do contain evidence which might be considered acts and conduct of the Accused (as defined and limited by the jurisprudence), or evidence which goes to a critical element of the Prosecution case and is therefore proximate to the Accused”, then “such information may be redacted from the documents”.³⁴

Supplemental Reply

14. The Prosecution disputes the objections of the Defence to the Supplemental Request³⁵. The Prosecution claims that during Mr. Malik’s testimony a link was established between him and the documents, since he had personal knowledge of how each document came into possession of the Prosecution, and with such a foundation the documents should be admitted under Rule 89(C) in conjunction with his testimony.³⁶ The Prosecution submits that the Appeals Chamber decision does not restrict admission of relevant documents to only those where the party offering the document produces a witness with personal knowledge of the document itself.³⁷ Further, the Prosecution points out that the Defence cites no jurisprudence and offers no arguments to support the claim that admitting documents which go to the acts and conduct of the Accused would violate Rule 95 in that it would bring the administration of justice into disrepute.³⁸

II. APPLICABLE LAW

15. The general rules of evidence are contained in Rule 89, which provides:

Rule 89: General Provisions

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

³³ Reply, paras 4 - 17.

³⁴ Reply, paras 18, 23.

³⁵ Supplemental Reply, paras.2-11.

³⁶ Ibid., para 5.

³⁷ Ibid., para 10.

³⁸ Ibid., para 11.

- (C) A Chamber may admit any relevant evidence.

16. Rule 92bis is the specific rule relating to alternative proof of facts, that is, proof of facts other than by oral evidence. Rule 92bis provides:

Rule 92bis: Alternative Proof of Facts (amended 14 March 2004 and amended 14 May 2007)

- (A) In addition to the provisions of Rule 92ter, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
- (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

17. The recent ruling of the Appeals Chamber, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’” dated 6 February 2009³⁹ (“Appeals Chamber Decision”), wherein the Appeals Chamber upheld a decision of the Trial Chamber, confirms that:

By its express terms, Rule 92bis applies to information tendered “*in lieu* of oral testimony”. These words must be given their ordinary meaning. Documentary evidence, by its very nature, is tendered *in lieu* of oral testimony.⁴⁰ [...]

[...]

The procedural scheme established by Rules 89(C) and 92bis does not allow a party to circumvent the stringency of the latter rule by simply tendering a document under the former.⁴¹ [...]

[...]

The consequence of this is that any information that does not go to proof of the acts and conduct of the accused not tendered through a witness, should be submitted under Rule 92bis if it is sought to be admitted *in lieu* of oral testimony. For these reasons, we find that the Trial Chamber did not err in law in holding that Rule 92bis exclusively controls the admission of a document submitted *in lieu* of oral testimony and that such document must be channelled through a witness in order to be admissible under Rule 89(C).⁴² [...]

³⁹ SCSL03-01-AR73-721, Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’, 6 February 2009 (“Appeals Chamber Decision”).

⁴⁰ Appeals Chamber Decision, para. 30 (original footnotes omitted).

⁴¹ Appeals Chamber Decision, para. 33 (original footnotes omitted).

⁴² Appeals Chamber Decision, para. 34.

18. The effect of Rule 92bis is to permit the reception of information – assertions of fact (but not opinion) including, but not limited to, written statements and transcripts that do not go to proof of the acts and conduct of the accused – if such facts are relevant and their reliability is “susceptible of confirmation”; proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.⁴³ This leaves open the possibility for the Trial Chamber to determine the reliability issue at the end of the trial in light of the totality of the evidence by deciding whether the information is indeed corroborated by other evidence presented at trial⁴⁴, and what weight, if any, should be attached to it⁴⁵. Simply admitting a document into evidence does not amount to a finding that the evidence is credible⁴⁶.

19. A distinction must be drawn between “the acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible” and “the acts and conduct of the accused as charged in the indictment which establish his responsibility for the acts and conduct of others.” Only written statements which go to proof of the latter acts and conduct are excluded by Rule 92bis⁴⁷.

20. Thus, Rule 92bis excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that the accused planned, instigated, ordered, or committed any of the crimes charged, or aided and abetted in the planning, preparation or execution of such crimes, or that the accused was a superior who actually committed the crimes, or knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or failed to take the necessary and reasonable measures to prevent such crimes or to punish the perpetrators thereof⁴⁸. Where the prosecution alleges that the accused participated in a joint criminal enterprise, Rule 92bis excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that he had participated in that joint criminal enterprise⁴⁹.

⁴³ *Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL-2004-14-AR73, Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005, para 26.

⁴⁴ *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para 30.

⁴⁵ *Prosecutor v. Norman, Fofana & Kondewa*, SCSL-04-14-T, Decision on Prosecution’s Request to Admit Into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), 15 July 2005, p.4; see also *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para 30.

⁴⁶ *Prosecutor v. Norman, Fofana & Kondewa*, SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92bis, 9 October 2006, note 32, para 18; see also *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para 31.

⁴⁷ *Prosecutor v. Galic*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92bis(C)”, 7 June 2002, para 9; see also *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-129 Under Rule 92bis or, in the Alternative, Under Rule 92ter”, 12 March 2008, pp 2,3; see also *Prosecutor v. Taylor*, SCSL-03-1-T, “Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to Inter Alia Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1036 Into Evidence”, 15 July 2008, p 4.

⁴⁸ *Galic*, *ibid.*, para 10; see also Prosecution’s Second Amended Indictment (“Indictment”), paras 33, 34.

⁴⁹ *Galic*, *ibid.*, para 10, see also Indictment, para 33.

21. The “conduct” of an accused person necessarily includes his relevant state of mind, so that a written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that state of mind is not admissible under Rule 92bis⁵⁰.

22. Where the evidence is “so pivotal to the prosecution case, and where the person whose acts and conduct the written statement describes is so proximate to the accused, the Trial Chamber may decide that it would not be fair to the accused to permit the evidence to be given in written form.”⁵¹

III. DELIBERATIONS

23. It is convenient to deal firstly with the Prosecution’s Supplemental Request. The Trial Chamber is of the view that it is appropriate to grant leave to file the supplemental argument so that it can be considered along with the Prosecution’s other submissions in support of the present Motion. Such leave is therefore granted. The Trial Chamber will now consider the merits of the supplemental argument that the subject documents should be admitted under Rule 89(C) through the testimony of Tariq Malik.

24. It is common ground that Mr. Malik was unable to give any evidence relevant to the contents of the subject documents. His evidence was limited to what he had been told about the circumstances in which the documents had come into possession of Prosecution Evidence Unit and how they were organised and maintained within the Unit. That evidence was not objected to and is now a matter of record.

25. However, in the opinion of the Trial Chamber, the Prosecution failed to lay a satisfactory foundation for the documents themselves to be tendered through Mr. Malik under Rule 89(C). As the Appeals Chamber has pointed out,⁵² “information can be admitted as part of the oral testimony of a witness, provided it is relevant, without the restraint of rules of evidence relating to admissibility of hearsay evidence and secondary evidence, subject to the power of the Court pursuant to Rule 95 to exclude evidence that would bring the administration of justice into disrepute”. What the Prosecution is seeking to tender is in effect the information contained in the documents, not the documents as objects of the processing structure of the Prosecution’s Evidence Unit. Mr. Malik, as has been said, could not give any relevant evidence of the contents of the documents, and so the documents cannot be admitted under Rule 89(C). In the absence of any oral testimony to prove the information contained in the documents, the only recourse open to the Prosecution if it wishes to tender the information contained in the documents, is to submit the documents under Rule 92bis. The Trial Chamber therefore dismisses the Prosecution’s supplemental argument.

⁵⁰ *Galic*, *ibid.*, para 11.

⁵¹ *Galic*, *ibid.*, para 13. See also *Prosecutor v. Brdanin & Talic*, IT-99-36-T, “Confidential Decision on the Admission of Rule 92bis Statements”, 1 May 2002, at para 14.

⁵² Appeals Chamber Decision, para 33.




26. Dealing now with the Prosecution's submissions in the Motion for the documents to be admitted under Rule 89(C), the Trial Chamber finds that the documents must be channelled through a witness competent to give evidence in relation to the documents in order to be admissible under Rule 89(C)⁵³. The said documents were tendered in lieu oral testimony and therefore should have been tendered under Rule 92bis⁵⁴. Accordingly, the Prosecution application pursuant to Rule 89(C) must fail.

27. Turning now to the Prosecution's alternative application, the Trial Chamber will consider the admissibility of each of the documents under Rule 92bis.

28. Tab 1 in Annex B is a blank sheet of stationery entitled "Combined Junta and R.U. F. Forces of the Republic of Sierra-Leone", with the address "Randall Street, Zone 2, P.O. Box 5261". The Prosecution tenders this as evidence of joint criminal enterprise, including plurality of persons; aiding and abetting, and superior authority. This document could have been printed by any person at any time. However, these are matters which go to weight. Bearing in mind the location from which the document is alleged to have been seized, the document is relevant and admissible under Rule 92bis.

29. The document in Tab 2 is a picture ID card of one Jean Michel Sore, allegedly a name assumed by the Accused. The document bears a stamp of the Burkina Faso immigration authorities. The Prosecution alleges that this is in fact a photograph of Mr. Taylor under an assumed name and seeks to tender this as proof of the individual criminal responsibility of the Accused, being evidence of his links to Burkina Faso, and also of joint criminal enterprise, including the existence of agreement and plurality of persons. In the absence of the original, the Trial Chamber cannot ascertain from the copy whether the photograph is in fact that of Mr. Taylor or simply someone who looks like him. Assuming, however, that it is a photograph of the Accused as alleged by the Prosecution, this evidence goes to the acts and conduct of the Accused and is not admissible.

30. The document in Tab 3 entitled "Situation Report and Recommendation" from Lieutenant General Samuel G. Varney to His Excellency Charles G. Taylor, dated 30 September 1994 relates to the combat operations in and around Gbarnga, and although such matters are outside the temporal and geographic scope of the Indictment, the document is tendered by the Prosecution as being relevant to the individual criminal responsibility of the Accused as evidence of command structure and superior authority. The document clearly goes to proof of the acts and conduct of the Accused in that it can be inferred from the document that the Accused required his generals to report directly to him and that he was the authority who supplied arms and ammunition to the NPFL forces. The document is therefore not admissible under Rule 92bis.

31. The document in Tab 4, which is a Republic of Liberia Ministry of Foreign Affairs list of Government officials accompanying The President and Mrs. Taylor on an official visit to Republic of France, from 28 September to 1 October 1998, is said by the Prosecution to be relevant to the individual criminal responsibility of the Accused as evidence of command

⁵³ Appeals Chamber Decision, para 34.

⁵⁴ Appeals Chamber Decision, para 34; see also *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Prosecution Motion for Admission of Document Pursuant to Rule 89(C), 9 Feb. 2009, p3.

structure and superior authority. The Prosecution concedes that the part of the first page naming the Accused goes to the acts and conduct of the Accused⁵⁵. The Trial Chamber considers that other parts of that document also fall into that category. For instance, the recital at the top of the first page names both the Accused and his wife. His wife's name also appears again on that page. The Trial Chamber considers that inferences going to the acts and conduct of the Accused can be drawn from the appearance of his wife's name on the document. Were the recital to be redacted together with the names of the Accused and his wife, the document would have no relevance. The Trial Chamber accordingly finds that the document is not admissible under Rule 92bis.

32. The document in Tab 5 is a Memo from U-50 to U-52 dated April 12, 1999, selecting 13 listed security personnel to escort and protect Charles Taylor to the Republic of South Africa and Libya from 15th to 20th April 1999. The Prosecution tenders this document as evidence of the individual criminal responsibility of the Accused in that it is relevant to command structure, superior authority, joint criminal enterprise, and ongoing links to Libya. The Prosecution concedes that the part of the document naming the Accused goes to his acts and conduct⁵⁶. The Trial Chamber agrees; moreover, redaction of the reference to the Accused would render the document without sense and irrelevant. The Trial Chamber therefore finds that the document is not admissible under Rule 92bis.

33. The document in Tab 6 is a "Deployment Report to Charles G. Taylor Jr., ATU Commander" from "The Office of the S-3 ATU Base" dated 6 May 1999 relating to deployments by the BMI border patrol team to areas previously occupied by Anti Terrorist Unit personnel. The Prosecution claims that this document is relevant to the individual criminal responsibility of the Accused as evidence of command structure and superior authority. The Trial Chamber is of the view that the fact that a document was seized from the former residence of the Accused does not necessarily make the document relevant. This document is concerned with matters outside the geographical scope of the Indictment and does not contain any evidence relevant to the Indictment. It is therefore irrelevant and not admissible.


34. The document in Tab 7 is a copy of a Pen Tab Steno Book. The Prosecution tenders only an extract which reads: "Calls/Messages - 08/2/2000, Johnny Paul Koroma's wife is here/wishes to say goodbye to Chief. They leave by 12 noon today." This is tendered by the Prosecution as relevant to the individual criminal responsibility of the Accused as evidence of command structure and superior responsibility, and also to joint criminal enterprise. The Trial Chamber finds that this evidence is so pivotal to the Prosecution's case that it would be unfair to the Accused to allow it to be given in written form, particularly when there is no opportunity for cross-examination⁵⁷. Therefore, the Trial Chamber, in the exercise of its discretion, refuses to admit the document into evidence.

35. The document in Tab 8 is a copy of a Gregg Ruled Green Tint Steno Book with "U-176 - Col. Beer, chief for highway patrol" hand-written on front cover. The Prosecution tenders only pages ERN 00029068, 00029069 (but only that part related to the entry for July 23, 2000), 00029070,

⁵⁵ Motion, para 7; Annex A to the Motion, p.2.

⁵⁶ Motion, para 7; Annex A to the Motion, p.3.

⁵⁷ *Galic*, para 13; see also *Prosecutor v. Taylor*, SCSL03-1-T, Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to Inter Alia Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 Into Evidence, 15 July 2008, p.4.


00029071, 00029074, 00029076, 00029082(second half of page only, commencing "Friday Bull Dog..." to end of page), 00029083(first 6 lines only), 00029084(last 4 lines), 00029085(first 7 lines), 00029086, 00029087(last entry dated Oct. 25, 2000) and 00029089(middle entry dated Nov. 1, 2000). The pages sought to be admitted into evidence are records of supplies, including arms and ammunition, to various persons including alleged subordinates of the Accused. The Prosecution claims that the evidence is relevant to the individual criminal responsibility of the Accused as proof of command structure and superior authority, and that it is also relevant to joint criminal enterprise, including plurality of persons. The Trial Chamber, for the same reason given in the previous paragraph, exercises its discretion to refuse to admit these pages into evidence,

36. The document in Tab 9 is a copy of a letter from President Kabbah to President Taylor, with a covering letter from a Sierra Leonean ambassador. The Prosecution claims that the document is relevant to: the individual criminal responsibility of the Accused, i.e. intent, knowledge and awareness; joint criminal enterprise, including plurality of persons; and command structure and superior authority. The Prosecution concedes that the second paragraph of President Kabbah's letter goes to the acts and conduct of the Accused. The Trial Chamber finds, in fact, that a substantial portion of the letter falls into that category; the second and third paragraphs on the second page unquestionably go to the acts and conduct of the Accused. It is pointless redacting those paragraphs as it would render the letter, and the covering letter as well, senseless and irrelevant. The Trial Chamber finds therefore that the document (that is, President Kabbah's letter and the covering letter) are not admissible.

37. There are 3 documents in Tab 10. The Prosecution acknowledges that 2 of those documents, letters dated March 2, 2001 and February 26, 2001, go to acts and conduct of the Accused. The Trial Chamber agrees and, in addition, finds that the third document, which is an attachment to the letter dated February 26, 2001, also goes to the acts and conduct of the Accused. The Trial Chamber therefore finds that all 3 documents are inadmissible.

38. The document in Tab 11 is an undated hand-written document purporting to grant immunity from civil and criminal proceedings against all persons, officials, respective warring factions and combatants within the jurisdiction of Liberia from all acts and/or crimes committed by them during the civil war during the period Dec.1989 to Aug 2003. 6 names are written below this purported grant of immunity, although the document does not bear any signatures. The Prosecution tenders this document as being relevant to the individual criminal responsibility of the Accused as proof of command structure, superior authority; Rule 93 evidence, intent, knowledge, awareness, and reasonable foreseeability. The Trial Chamber rejects the objections of the Defence that the original is not available for inspection, parts of the handwriting are illegible and such evidence falls outside the scope of the Indictment. The Trial finds that the document is admissible under Rule 92bis.

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FOR THE ABOVE REASONS, the Trial Chamber:

DISMISSES the Prosecution application for admission of the documents under Rule 89(C);

GRANTS the Prosecution's alternative application in part and

ORDERS that:

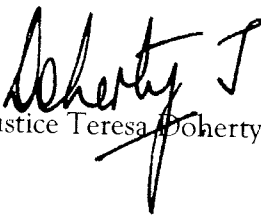
(i) the blank sheet of stationery entitled "Combined Junta and R.U.F. Forces of the Republic of Sierra - Leone" showing the address "Randall Street, Zone 2, P.O. Box 5261" and identified by the ERN number 00028837 is admitted into evidence as Prosecution Exhibit P-291;


(ii) the handwritten document regarding immunity described above and identified by the ERN number 00028939 is admitted into evidence as Prosecution Exhibit P-292; and

DISMISSES the Prosecution application for admission into evidence of the remaining documents.

Justice Sebutinde appends a partially dissenting opinion.

Done at The Hague, The Netherlands, this 18th day of February 2009.


Justice Teresa Boherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde



PARTLY DISSENTING OPINION OF JUSTICE JULIA SEBUTINDE

1. I agree in the main, with the decision not to admit in evidence the documents that the Trial Chamber has rejected. I do, however, disagree with the Majority decision to admit the documents in Tab 1 and Tab 11 of Annex B to the Motion.⁵⁸ In my view, none of the documents referred to in this Motion should be admitted in evidence without giving the Accused an opportunity to challenge their contents in cross-examination⁵⁹, given their alleged contentious origin. To do so would, in the words of Rule 95, “bring the administration of justice into serious disrepute”.
2. Regarding their origin, the Prosecution submits in paragraph 9 of the Motion that these documents are “copies of the original documents seized by Liberian officials pursuant to a search warrant from the residence of the Accused in Monrovia in March 2004. Since this seizure, the original documents have remained in the custody of the Liberian authorities and stored at the Temple of Justice in Monrovia.”⁶⁰ The Prosecution allude to a declaration of the Chief of Evidence Unit of the Special Court regarding proof of origin, but append no such declaration to the Motion,⁶¹ nor does the Motion show how the Prosecution came into possession of copies of these documents. It is in the context of this alleged origin that the Prosecution requests the Trial Chamber to admit the documents described as “the Taylor Documents”. The Prosecution itself asserts that these documents are tendered in proof of Mr. Taylor’s “individual criminal responsibility,” in particular, that they are “relevant to Joint Criminal Enterprise including plurality of persons; aiding and abetting and superior authority” as charged in paragraphs 33 and 34 of the Indictment”, or are proof of Mr. Taylor’s “intent, knowledge, awareness or reasonable foresee ability” of the alleged crimes,⁶² all of which aspects, in my view, go directly to the acts and conduct of the Accused.⁶³
3. Furthermore, the fact that these documents were allegedly retrieved from Mr. Taylor’s residence intrinsically links the documents to the Accused. Accordingly, the Trial Chamber in assessing the admissibility of these documents into evidence pursuant to Rule 92bis cannot ignore their alleged origin. Given that the Defence contest the timing and circumstances of the purported seizure of the documents;⁶⁴ the absence of an indication by the Prosecution of a clear chain of custody of the documents; coupled with their purported link to the Accused, I am of the considered opinion that it would be highly prejudicial to the Accused for the Trial Chamber to admit any of these documents in evidence without giving the Defence an

⁵⁸ See Decision, paras. 21, 31 and the Orders.

⁵⁹ In this regard I agree with the findings of the Trial Chamber in paragraph 25 of the Decision regarding the evidence of Witness Tariq Malik.

⁶⁰ Motion, para. 9

⁶¹ Ibid. para 9

⁶² See Annex B to the Motion

⁶³ The phrase ‘acts and conduct of the accused’ has been defined to include “any act or conduct which the Prosecution seeks to rely upon to establish that the accused was a superior to those who actually may have committed the crimes, or that the accused knew or had reason to know that the crimes were being committed.” See Prosecutor v. Oric, IT-03-68-T, Decision on Defence Motion for the Admission of the witness Statement of Avdo Husejnovic Pursuant to Rule 92bis, 15 September 2005

⁶⁴ Response, paras. 4-12

JL

opportunity to challenge this evidence in cross examination. To do so would in my view, bring the administration of justice into serious disrepute.

4. For all the above reasons I would not admit any of the "Taylor Documents" and would dismiss this Motion in its entirety.

Julia Sebutinde

Justice Julia Sebutinde

