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SCSL-03-01-T
(23903 - 23906)

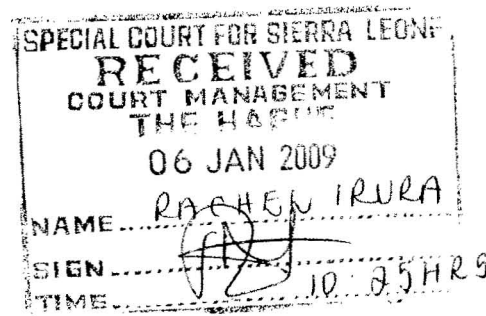
23903

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 6 January 2009



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**NOTICE OF CHANGE IN WITNESS STATUS SHOULD THE TRIAL CHAMBER GRANT
THE PROSECUTION MOTION TO CALL ADDITIONAL WITNESS**

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

Defence Counsel for Charles Taylor:
Mr. Courtenay Griffiths Q.C.
Mr. Andrew Cayley
Mr. Terry Munyard
Mr. Morris Anyah

I. INTRODUCTION

1. On 1 December 2008 the Prosecution filed “Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the Alternative, for Admission of Solemn Declaration” (“Motion”).¹ In the Motion the Prosecution seeks leave to add the witness, Tariq Malik, to the Prosecution’s witness list and, if leave is granted, seeks an order authorising disclosure of his Solemn Declaration.² The Prosecution indicated that should the Trial Chamber grant the Prosecution’s request, that the Prosecution seeks leave to have the Declaration admitted into evidence pursuant to Rules 89(C) and Rule 92*bis* or in the alternative under Rule 89(C) alone.³
2. On 8 December 2008, the Defence filed “Defence Objection to Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the alternative, for Admission of Solemn Declaration” (“Objection”).⁴ In the Objection the Defence does not oppose the addition of Mr Malik to the Prosecution’s witness list; rather the Defence concurs that it is “in the interests of justice” to add Mr Malik to the witness list.⁵ However, the Defence submits that the rights of the Accused would be unfairly prejudiced if the evidence were admitted under Rules 89(C) and Rule 92*bis* absent the opportunity for cross-examination.⁶
3. Following a review of the evidence presented to date, should the Trial Chamber grant the Prosecution motion for leave to add Mr. Malik as a witness, the Prosecution now wishes to call Mr Malik to give evidence *viva voce* rather than pursuant to Rule 92*bis*. In view of this change, the Prosecution wishes to give the Chamber and Defence fair notice in order to assist all parties in relation to case preparation.
4. This Trial Chamber has found that notice of a change in evidence presentation is sufficient as:

¹ *Prosecutor v Taylor*, SCSL-03-01-T-683, “Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the alternative, for Admission of Solemn Declaration”, 1 December 2008.

² *Ibid.*, para 2 and Annex A, Solemn Declaration of Tariq Malik, dated 1 December 2008.

³ *Ibid.*

⁴ *Prosecutor v Taylor*, SCSL-03-01-T-689, “Defence Objection to Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the Alternative, for Admission of Solemn Declaration”, 8 December 2008.

⁵ *Ibid.*, paras 3, 6 -7 and 16.

⁶ *Ibid.*, paras 3 and 8-11, 13 and 17.

- a. "Rule 73bis of the Rules of Procedure and Evidence does not obligate the Prosecution to file an indication of the method of presentation of evidence"; and
- b. "it falls within the discretion of the Prosecution to present its case through live witness testimony and that the Defence will not thereby suffer any prejudice since it will have the right to cross-examine each witness."⁷

II. NO UNFAIR PREJUDICE

5. Should the Trial Chamber grant leave to call Mr Malik, the Defence and the Accused will not suffer any undue prejudice by the proposed change in the mode of presentation of this witness's evidence. Notably Mr Malik will be available for cross-examination.

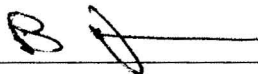
V. NOTICE & CONCLUSION

6. The Prosecution hereby notifies the Court that should the Trial Chamber grant leave to call Mr Malik, Mr Malik will give evidence *viva voce*. The Prosecution, therefore, will not seek the admission of the witness' evidence under Rule 92bis. Further, the Prosecution would respectfully draw the Trial Chamber's attention to the fact that Mr Malik and The Prosecutor (who will have carriage of this witness) are currently in The Hague and thus the Prosecution are in a position to proceed with this witness, should the Trial Chamber grant leave to call Mr Malik.

Filed in The Hague,

6 January 2009

For the Prosecution



Brenda J. Hollis
Principal Trial Attorney

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-576, "Decision on Public Prosecution Notice of Change in Witness Status or in the *alternative Motion for Leave to Change Witness Status*," 5 September 2008, p.2. See also *Prosecutor v. Taylor*, SCSL-03-01-T-607, "Decision on Prosecution Motion for Leave to Call TF1-160 to Give Evidence-in-Chief & Cross Examination Viva Voce" 26 September 2008.

LIST OF AUTHORITIES**SCSL*****Prosecutor v. Taylor, SCSL-03-01-T***

Prosecutor v. Taylor, SCSL-03-01-T-576, “Decision on Public Prosecution Notice of Change in Witness Status or in the alternative Motion for Leave to Change Witness Status,” 5 September 2008

Prosecutor v. Taylor, SCSL-03-01-T-607, “Decision on Prosecution Motion for Leave to Call TF1-160 to Give Evidence-in-Chief & Cross Examination Viva Voce” 26 September 2008

Prosecutor v. Taylor, SCSL-03-01-PT-683, “Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the Alternative, for Admission of Solemn Declaration”, 1 December 2008

Prosecutor v. Taylor, SCSL-03-01-T-689, “Defence Objection to Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the Alternative, for Admission of Solemn Declaration”, 8 December 2008.