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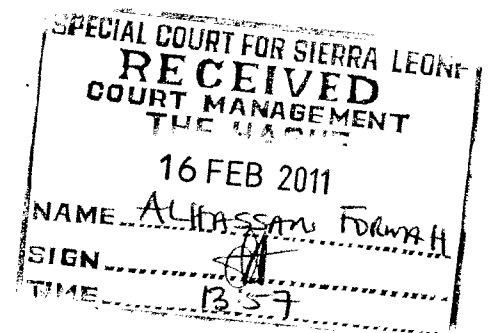
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 16 February 2011



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION REPLY TO CONFIDENTIAL DEFENCE RESPONSE TO SECOND URGENT
PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE SPECIAL COURT FOR
SIERRA LEONE**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Ruth Mary Hackler
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Mr. Courtenay Griffiths, Q.C.
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Mr. James Supuwood

I. INTRODUCTION

1. The Prosecution files this reply to the “Confidential Defence Response to Second Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone” (“**Response**”)¹ in accordance with the Trial Chamber’s expedited filing schedule.² The Motion at issue here³ is the second filing containing allegations relating to contemptuous conduct toward Prosecution witnesses by Eric Koi Senesie (or Senessie) and others not yet identified.

II. SUBMISSIONS

2. The Defence argument in paragraph 2 of its Response is without merit. The Prosecution has proffered credible and specific allegations of contemptuous conduct contravening Rules 77(A) and/or (B) which meets the reason to believe standard. Further, when considered alongside the Related Contempt Motion,⁴ the allegations show a concerted course of action being taken against Prosecution witnesses which is of a serious nature to warrant an investigation under Rule 77(C)(iii).
3. The Defence’s malicious assertion as fact of DAF’s motive for reporting improper conduct to the Prosecution⁵ is unsubstantiated and a deliberate attempt to distract from the real issue: namely, the alleged contemptuous conduct engaged in by Senesie, an anonymous alleged Defence Team member, and others not yet identified.
4. Contrary to the Defence argument at paragraph 5 of the Response, it is irrelevant whether the witnesses who are the subjects of these related contempt motions are known to each other. Moreover, whether these witnesses knew the others had testified for the Prosecution is pure speculation on the part of the Defence. The pre-condition for ordering an investigation has been met: there is reason to believe Senesie identified protected witness

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1205, Confidential, with Annexes A-C Defence Response to Second Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (“**Response**”), 14 February 2011.

² *Prosecutor v. Taylor*, SCSL-03-01-T-1198, Order for Expedited Filing on Contempt Motions, 9 February 2011.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-1192, Public with Confidential Annexes A & B – Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, (“**Motion**”), 7 February 2011.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-1185, Public with Confidential Annexes A to E & Public Annex F – Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (“**Related Contempt Motion**”), 3 February 2011.

⁵ Response, para. 3.

TF1-585 to DAF in violation of protective measures.⁶ At this initiating stage, there is no required showing that a person has engaged in the alleged act in knowing or willful violation of Rule 77, only that there is reason to believe he may have engaged in such conduct.⁷ Whether this was done knowingly and willfully is an issue to be developed during the investigation, if one is so ordered.

5. Clearly the Prosecution is not privy to the Defence's internal work product referred to in paragraph 6 of the Response. Address disclosure allegation to the side, there is still reason to believe Senesie, in identifying himself as a 'contact person' for the Charles Taylor Defence team,⁸ violated the protective measure in place for DAF which requires Defence Counsel to make a written request for permission to contact any Prosecution witness and then await that witness' consent to such contact.⁹
6. In paragraphs 7 and 9 of the Response, the Defence tries to taint DAF's credibility because he previously reported being approached in a manner similar to the present allegations. In May 2009, DAF reported to the Prosecution that he had been contacted by an individual representing himself as working for the Defence and tasked with asking DAF to reverse his evidence.¹⁰ In spite of Lead Defence Counsel's prompt disavowal of any Defence authorization to make such contact with DAF,¹¹ it is quite "curious" to the Prosecution that one month later, the Defence sent an email to WVS requesting permission to formally contact four witnesses, including DAF.¹² The Defence's unfounded and self-serving assertion that it was "aware that DAF (and others) might want to recant testimony given before the Trial Chamber"¹³ is worthy of no belief.
7. This, in addition to the allegations set forth in the Motion, shows a disturbing pattern: individuals holding themselves out as *de facto* agents of the Defence team and as acting on its behalf initiating improper contact with Prosecution witnesses in an effort to influence

⁶ Motion, paras. 13 and 18 and Confidential Annex A, para. 3 regarding protective measure (g).

⁷ *Prosecutor v. Brima et. al.*, SCSL-04-16-AR77-315, Decision on Defence Appeal Motion pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order pursuant to Rule 77(C)(iii), ("AFRC Appeals Decision"), 23 June 2005, para. 17.

⁸ Motion, Confidential Annex B.

⁹ Motion, Confidential Annex A, para. 1, protective measure (o).

¹⁰ Response, Annex A.

¹¹ Response, Annex B.

¹² Response, Annex C, dated 25 June 2009.

¹³ Response, para. 9.

them to change their testimony, violating protective measures. The information provided establishes reason to believe such conduct occurred in violation of Rule 77 and an investigation should be ordered.

8. Regarding paragraph 8 of the Response, in May of 2009, the Prosecution was of the view that the averments – denials – of Defence Counsel, as an officer of the Court, were to be given respect. However, the Prosecution is no longer of that view, in light of subsequent conduct by some members of the Defence team and of this seemingly emergent pattern of improper contacts with Prosecution witnesses in an attempt to harass, intimidate or bribe them carried out by individuals holding themselves out as *de facto* agents of the Defence and as acting on behalf of the Defence.

Bribe Allegations

9. In response to the Defence arguments at paragraphs 10 and 11 of the Response, Joseph Saffa's declaration contains DAF's first-hand account of Senesie's unauthorized contact with him and representations that he made, including who sent him and why. There is no requirement that the offered bribe be paid. Under Rules 77(A)(iv) and 77(B), contemptuous conduct includes the *offer* of a bribe to a witness who has given evidence¹⁴ and does not require actual completion of the act, i.e. payment of the bribe. What is quite clear is that Senesie specifically told DAF that the Defence would pay him money and send him to an overseas country if he agreed to recant his testimony. Moreover, the similarities in the offers of reward detailed in the Related Contempt Motion corroborate the bribery allegations related by DAF and meet the reason to believe standard required to initiate an investigation.
10. As stated in Confidential Annex B of the Motion, the Defence team member who spoke to DAF used future tense when he said he *may like* to speak to DAF. The use of future tense is consistent with the explanation that he did not have enough credit in his phone and would call the following day. The Defence argument at paragraph 12 of the Response is therefore erroneous.

¹⁴ Emphasis added.

Violations of Court Orders

11. In response to the arguments at paragraph 13 of the Response, there is reason to believe Senesie contacted DAF in knowing and willful violation of a court order, particularly given that he represented himself as an agent for the Defence team to the witness. At this stage, there is no required showing that a person has engaged in the alleged act in knowing or willful violation of Rule 77, only that there is reason to believe he may have engaged in such conduct.¹⁵ Whether this was done knowingly and willfully is an issue to be developed during the investigation, if one is so ordered.
12. The Prosecution has pled with precision in light of the extremely serious allegations of contempt. In the aggregate,¹⁶ a consistent pattern has emerged which corroborates the individual accounts and gives reason to believe contemptuous conduct occurred in contravention of Rules 77(A) and/or (B). The pattern established that (1) Senesie represented himself as acting on behalf of the Charles Taylor Defence team; (2) Senesie contacted Prosecution witnesses, including protected witnesses, repeatedly and without following established procedure; (3) Senesie revealed the name of a protected witness to other witnesses; (4) Senesie asked the witnesses to recant their testimony, offering bribes to three of the four witnesses in exchange; and (5) Senesie put two of the witnesses on the telephone with individuals he represented to them as members of the Charles Taylor Defence team, including Prince Taylor. These incidents occurred within days of each other and were all promptly reported to the Prosecution and by the Prosecution to the Trial Chamber. The similarities indicate this contact was not coincidental and give reason to believe they were part of a concerted effort to improperly attempt to bribe, harass or intimidate Prosecution witnesses to change their testimony. This interferes with the administration of justice and warrants an urgent investigation.

Urgent Interim Measures Are Reasonable

13. The Prosecution adopts by reference its submissions in paragraphs 14 and 15 of its 14

¹⁵ AFRC Appeals Decision, para. 17.

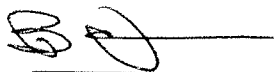
¹⁶ See the allegations in the Motion as well as the Related Contempt Motion.

February Reply¹⁷ in response to paragraph 15 of the Response. The Prosecution reiterates its request that the Trial Chamber order interim measures as set out in paragraph 27 of its Motion.

III. CONCLUSION

14. The Defence trivializes the self-evident serious allegations of contemptuous conduct by urging the Trial Chamber against ordering an investigation even if it has reason to believe a person is in contempt. The Court has both an obligation to ensure that witnesses who testified before it are not subject to unauthorized contact, harassment, intimidation or attempted bribery once they return to their communities, and an interest in upholding the integrity of its own proceedings.
15. The information provided in the Motion provides reason to believe that Senesie, an anonymous alleged Defence Team member, and others not yet identified may have been involved in contemptuous conduct in violation of Rules 77(A) and 77(B), including:
 - (a) disclosure of information in violation of protective measures issued by this Court, including the identity and other information concerning at least one protected witness;
 - (b) attempted bribery or other interference with at least one Prosecution witness; and
 - (c) interference with the administration of justice through the violation of court orders.
16. The Defence assertions to discredit these allegations all fail, as set forth above. Accordingly, pursuant to Rule 77(C)(iii), the Prosecution requests that the Trial Chamber direct the Registrar to appoint experienced independent counsel to urgently investigate the possible contempt of this Court.

Filed in The Hague,
16 February 2011
For the Prosecution,



Brenda J. Hollis
The Prosecutor

¹⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-1204, Public Prosecution Reply to Confidential Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (“14 February Reply”), 14 February 2011.

INDEX OF AUTHORITIES**SCSL Cases**

SCSL Rules of Evidence and Procedure

Prosecutor v. Taylor, Case No. SCSL-03-01-T

Prosecutor v. Taylor, SCSL-03-01-T-1205, Confidential, with Annexes A-C Defence Response to Second Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 14 February 2011.

Prosecutor v. Taylor, SCSL-03-01-T-1204, Public Prosecution Reply to Confidential Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 14 February 2011.

Prosecutor v. Taylor, SCSL-03-01-T-1198, Order for Expedited Filing on Contempt Motions, 9 February 2011.

Prosecutor v. Taylor, SCSL-03-01-T-1192, Public with Confidential Annexes A & B – Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 7 February 2011.

Prosecutor v. Taylor, SCSL-03-01-T-1185, Public with Confidential Annexes A to E & Public Annex F – Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 3 February 2011.

Prosecutor v. Brima et al., Case No. SCSL-04-16-T

Prosecutor v. Brima et. al., SCSL-04-16-AR77-315, Decision on Defence Appeal Motion pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order pursuant to Rule 77(C)(iii), 23 June 2005.