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SCSL-03-01-T
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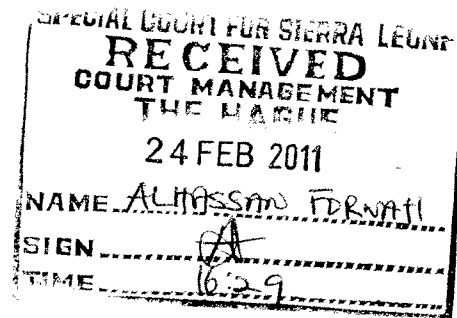
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

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: 24 February 2011



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC WITH CONFIDENTIAL ANNEXES A & B

**URGENT PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE
SPECIAL COURT FOR SIERRA LEONE**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Mohamed A. Bangura
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Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood
Ms. Logan Hambrick

I. INTRODUCTION

1. The Prosecution files this motion pursuant to Rules 54, 73 and 77 of the Rules of Procedure and Evidence (“**Rules**”) to request that the Trial Chamber direct the Registrar to appoint experienced independent counsel to urgently investigate possible contempt of the Special Court for Sierra Leone (“**the Court**”) in relation to, at minimum, one protected Prosecution witness, TF1-516.¹ Such allegedly contemptuous conduct includes:
 - (a) disclosure of information in violation of protective measures issued by this Court, including identifying information concerning TF1-516;
 - (b) attempted bribery, or other interference with TF1-516; and/or
 - (c) interference with the administration of justice through the violation of court orders.²
2. The Prosecution adopts by reference all allegations and submissions in the 3 February and 7 February Contempt Motions.³ The contact and conduct described herein further demonstrate the existence of an *on-going* concerted course of action against Prosecution witnesses by alleged Defence agents and/or team members. To date, allegations of contemptuous conduct concerning five Prosecution witnesses all linked to alleged Defence agent Eric Senesie (or Senessie) and person(s) identified as Defence Team member(s) have now been reported to the Prosecution and this Court.⁴ Accordingly, this motion is filed on an urgent basis and the Prosecution requests an expedited filing schedule.
3. The Prosecution has endeavoured to bring these serious allegations to the Trial Chamber’s prompt attention. The Prosecution was first made aware that TF1-516 may be targeted as part of a concerted course of action against Prosecution witnesses on 27 January 2011.⁵ Prosecution investigators then travelled to take TF1-516’s statement. The finalized and signed statement was provided to the Prosecution team in The Hague on 23 February 2011. Therefore, this motion is now being filed at the earliest opportunity.

¹ The witness’s identity and relevant applicable protective measures ordered by this Court are more fully set out in **Confidential Annex A**.

² Full details of this conduct are provided in **Confidential Annex B**.

³ *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 (“**3 February Contempt Motion**”); *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 (“**7 February Contempt Motion**”).

⁴ Allegations of contemptuous contact and/or conduct in relation to five witnesses were the subject of the 3 February and 7 February Contempt Motions (i.e. TF1-568, TF1-330, TF1-585, TF1-516 and TF1-274). Conduct relating to TF1-516 is again the subject of the current motion.

⁵ 3 February Contempt Motion, para. 2; Confidential Annexes A, p. 1 & E.

4. The Prosecution underlines that notwithstanding the serious nature of the allegations, as contempt is an ancillary and collateral matter, any resulting filings and/or investigation should not result in any delay to the current proceedings.

II. APPLICABLE LAW

5. This Court:

“must possess the powers necessary to enable [it] to administer and deliver justice fairly and efficiently. ... The power to investigate and punish what is generically ... described as “contempt of court” can only be used against those whose actions are calculated to obstruct the court’s task of getting at the truth.”⁶

6. In accordance with the foregoing, Rule 77 provides this Court with the power to deal with conduct that interferes with its administration of justice. The possession of such inherent power is also established by the jurisprudence of this Court⁷ and the International Tribunals.⁸
7. Rule 77(A) provides a non-exhaustive list of the forms of contempt that may be punishable under Rule 77, including disclosure of “information relating to proceedings in knowing violation of an order of a Chamber”⁹ and conduct that “threatens, intimidates, causes injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness.”¹⁰ Rule 77(B) further provides that any incitement or attempt to commit any such acts is also punishable as contempt.
8. In order to initiate investigations into contempt under Rule 77(C), a Chamber must have “*reason to believe* that a person may be in contempt.”¹¹ This standard is *reason to believe*

⁶ *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 (“**AFRC Appeals Decision**”), para. 2.

⁷ See the AFRC Appeals Decision, para. 2; *Prosecutor v Brima et al*, SCSL-2004-16-T, “Decision on the Report of the Independent Counsel pursuant to Rules 77 (C) iii and 77 (D) of the Rules of Procedure and Evidence”, 29 April 2005, page 2; and *Prosecutor v Norman et al*, SCSL-04-14-T-450, Confidential – Decision on Motion for the Immediate Cessation of Violations of the Orders on Protective Measures for Witnesses and for Contempt, 25 July 2005, paras. 13-14.

⁸ See for example *Prosecutor v. Marijacic and Rebic*, IT-95-14-R77.2, Judgement, 10 March 2006, para. 13, referring to *Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin, 31 January 2000, para. 13; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile against Finding of Contempt, 30 May 2001, para. 36.

⁹ See Rule 77(A)(ii).

¹⁰ See Rule 77(A)(iv).

¹¹ AFRC Appeals Decision, para. 17 (emphasis added). The Appeals Chamber stated that this standard is a different and lower standard than that of a *prima facie* case. See also *Prosecutor v. Taylor*, SCSL-03-01-T-600, Confidential

that a person *may* have knowingly and wilfully, and/or with reckless indifference,¹² engaged in such conduct. There is no required showing that the person *has* engaged in the alleged act. The elements of each specific act enumerated under Rule 77(A) and Rule 77(B), including *mens rea* and *actus reus*, are issues to be developed during the investigation in order to determine whether to proceed against a person or persons for contempt of court. Further, an allegation must be credible and a party has a duty to bring alleged misconduct to the attention of the Trial Chamber without undue delay.¹³ Finally, when the standard for an investigation has been met, the Chamber may issue, under the general powers granted in Rule 54, “such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the presentation or conduct of the trial.”

9. Finally, when the standard for an investigation has been met, the Chamber may issue, under the general powers granted in Rule 54, “such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the presentation or conduct of the trial.”

III. BACKGROUND

10. The facts recounted below are a summary of the alleged contemptuous conduct engaged in by Eric Senesie in relation to protected Prosecution witness TF1-516. The allegations set out below and in **Confidential Annex B** should be considered in conjunction with the allegations regarding contemptuous conduct relating to TF1-516 contained in the 3 February Contempt Motion.¹⁴
11. Eric Senesie contacted TF1-516 on 1 February 2011. Senesie held himself out as an agent of the Taylor Defence team, telling TF1-516 he was working for the Taylor Defence Team.

Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008 (“**September 2008 Contempt Decision**”), para. 7.

¹² Although the Prosecution need only demonstrate reason to believe at this stage, it notes that the *mens rea* for a contempt finding includes “willful blindness to the existence of [an] order, or reckless indifference to the consequences of the act by which the order is violated.” *In the Case Against Florence Hartmann*, IT-02-54-R77.5, Judgement on Allegations of Contempt, 14 September 2009, para. 22, citing *Prosecutor v. Aleksovski*, IT-95-14/1-AR77, Judgement on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 54; *Prosecutor v. Milosević*, Contempt Proceedings Against Kosta Bulatović, IT-02-54-R77.4, Decision on Contempt of the Tribunal, 13 May 2005; *Prosecutor v. Nshogoza*, ICTR-07-91-T, Judgement, 7 July 2009, paras. 188-9.

¹³ AFRC Appeals Decision, para. 2; September Contempt Decision, para. 16.

¹⁴ 3 February Contempt Motion, para. 19; Confidential Annexes B-D.

Senesie told TF1-516 that if TF1-516 agreed to recant his sworn testimony before this Chamber, the Taylor Defence Team would give the witness money. TF1-516 made clear he was not interested in cooperating. Despite TF1-516's clear statement that he was not interested in meeting with the Taylor Defence team, Senesie told TF1-516 that he would be coming back and in the meantime, TF1-516 should further consider the proposal. TF1-516 told Senesie that he would not recant his sworn and truthful testimony.

IV. ARGUMENT

12. There is "reason to believe" that Eric Senesie engaged in contemptuous conduct in violation of Rules 77(A) and/or 77(B).¹⁵ In addition to the detailed allegations set out in **Confidential Annex B**, the Prosecution also highlights the following matters.
13. First, as set out above, the Prosecution has reported the allegedly contemptuous conduct in a timely manner.¹⁶ Further, the signed statement contained at **Confidential Annex B** is based on the first hand account of Senesie's allegedly contemptuous contact and conduct. This account also, in large part, corroborates those accounts set out in the 3 February and 7 February Contempt Motions, particularly those accounts previously alleging contemptuous conduct in relation to TF1-516.¹⁷ Moreover, TF1-516's account also corroborates previous information regarding the tactics employed, the bribes suggested, the information disclosed and the motivations underlying Senesie's conduct.¹⁸ Finally, this statement was made under affirmation, thus TF1-516 acknowledged and understands the implications of giving false information.
14. Consequently, the evidentiary threshold for the "reason to believe" standard has been met. The allegedly contemptuous conduct engaged in by Eric Senesie and others not yet identified is set out below.

¹⁵ This Chamber previously considered the following factors relevant in determining, in its discretion, whether the "low evidentiary threshold" required by the "reason to believe" standard under Rule 77(A) was satisfied: September 2008 Contempt Decision, paras. 15-18, 25 (the length of time elapsed between the conduct and the witness report to the Prosecution and in turn, the length of time between the witness report and the filing of the motion requesting an investigation); para. 24 (whether a link is tenuous or direct; whether based on hearsay; consistencies between statements regarding the same or similar conduct); paras. 30, 34 (whether protective measures were in place at the time of the alleged conduct); para. 31 (whether intimidation amounts to more than mere advice or discussion); and para. 35 (conduct must arise out of the witness's testimony in the proceedings).

¹⁶ See para. 3, *supra*.

¹⁷ 3 February Contempt Motion, Confidential Annex B, pp. 1-2; Confidential Annex D, p. 2.

¹⁸ 3 February Contempt Motion, paras. 9-14, 17; Confidential Annexes B-E; 7 February Contempt Motion, paras. 10-13, 16; Confidential Annex B.

DISCLOSURE OF INFORMATION IN KNOWING VIOLATION OF AN ORDER (RULE 77(A)(II))

15. The information set out above, in **Confidential Annex B** and in the 3 February Contempt Motion¹⁹ provides reason to believe that the investigation, if directed, would reveal that the identity of TF1-516, a protected Prosecution witness, was disclosed to third parties, including Eric Senesie, in willful and knowing violation of, and/or with reckless indifference to, applicable protective measures orders.²⁰ Further, as previously alleged, there is also reason to believe that Eric Senesie thereafter willfully and knowingly, and/or recklessly, disclosed the identity of TF1-516 as a witness to at least three other individuals in violation of the applicable protective measures.²¹ Therefore, the allegations give reason to believe that the identity of TF1-516 has been disclosed in violation of the protective measures ordered. This conduct falls within the ambit of Rule 77(A)(ii).

OFFERS TO BRIBE AN/OR OTHER INTERFERENCE WITH A WITNESS (RULE 77(A)(IV) & RULE 77(B))

16. There is also reason to believe, on the basis of the information set out above and in **Confidential Annex B** that Eric Senesie attempted to bribe TF1-516; and/or otherwise interfered, or attempted to interfere, with TF1-516 in relation to his sworn testimony before this Court.²² This conduct falls within the ambit of Rules 77(A)(iv) and/or 77(B).
17. In addition to bribery, Rule 77(A)(iv) also encompasses various forms of conduct which might be categorized as “otherwise interfering with a witness.” Such conduct, including that of a similar gravity to intimidation, seeks “to influence the outcome of a pending case by interfering with a witness or potential witness. [...] It is not necessary for the Prosecution to prove that the witness was actually deterred or influenced.”²³
18. In exchange for the recantation of sworn testimony, Senesie told TF1-516 he would be rewarded monetarily. Thus there is reason to believe that attempts were made to bribe TF1-516, and/or otherwise interfere with this witness in violation of Rules 77(A)(iv) and/or 77(B).

¹⁹ 3 February Contempt Motion, para. 19; Confidential Annexes B-D.

²⁰ The protective measures applicable to TF1-585 and TF1-274 are set out in **Confidential Annex A**.

²¹ 3 February Contempt Motion, para. 19; Confidential Annexes B-D.

²² TF1-516 testified in the Taylor trial from 7 to 16 April 2008.

²³ *Prosecutor v. Brđanin*, IT-99-36-R77, “Decision on Motion for Acquittal pursuant to Rule 98bis concerning allegations against Milka Maglov”, 19 March 2004, para. 28.

VIOLATION OF COURT ORDERS (RULE 77(A))

19. There is reason to believe, based on the information contained in **Confidential Annex B**, that Eric Senesie and/or others not yet identified violated court ordered protective measures forbidding direct *and indirect* contact by the Defence Team with TF1-516.²⁴ Therefore, Senesie and others not yet identified interfered with the administration of justice contrary to Rules 77(A) and/ 77(B).
20. The *Samura* Judgement confirmed that “it is an obvious consequence of refusing to comply with an order of the Chamber that the administration of justice is interfered with.”²⁵ Therefore, breaches of certain types of protective measures orders not necessarily encompassed under Rule 77(A)(ii)²⁶ are nevertheless encompassed by Rule 77(A).²⁷
21. TF1-516 was contacted once by Senesie and another meeting was promised. Such contact, absent permission of the Court and/or the witness via the Prosecution, violates the protective measures applicable to TF1-516.²⁸ To the extent the Prosecution ever considered it adequate for the Defence to seek to contact witnesses through WVS rather than the Prosecution, the Prosecution is no longer of that view. Where the applicable protective measure in place requires contact to be made through the Prosecution or by Court order that is the procedure which should be followed. In any event, there is no indication that WVS was used as a conduit to obtain consent from this witness. Therefore, the alleged direct contact by Senesie with TF1-516 in violation of court ordered protective measures falls within the ambit of Rules 77(A) and/or 77(B).

URGENT INTERIM MEASURE

22. Pending an investigation into the alleged contemptuous conduct, the Prosecution reiterates its request that this Trial Chamber order the Defence Team not to discuss with Eric Senesie and/or Prince Taylor anything associated with this request or resulting investigation.

²⁴ See the applicable protective measures as set out in **Confidential Annex A**

²⁵ *Independent Counsel v. Samura*, SCSL-05-01-18, Judgement in Contempt Proceedings, 26 October 2005 (“**Samura Judgement**”), para. 26 referring to *Prosecutor v. Milosević*, IT-02-54-R77.4, Contempt Proceedings against Kosta Bulatovic, Decision on Contempt of the Tribunal, 13 May 2005, para. 17.

²⁶ Rule 77(A)(ii) only encompasses the disclosure of information in knowing violation of an order of the Chamber.

²⁷ As noted in the *Samura* Judgement, Rule 77(A) is descriptive but not exhaustive of the acts which might be considered contempt (para. 16). The Prosecution acknowledges that disclosure of witness information in violation of court orders falls specifically under Rule 77(A)(ii), however, other violations of court orders, particularly other court-ordered protective measures relating to the formal procedures by which contact can be made with a Prosecution witness by the Defence may fall under Rule 77(A) generally.

²⁸ **Confidential Annex A.**

Senesie and Taylor are those thus far specifically implicated in the allegedly contemptuous conduct set out in this motion and the 3 February and 7 February Contempt Motions. Senesie is allegedly acting on behalf of the Accused and/or his Defence Team, and his alleged contact on the Defence Team is Prince Taylor. Therefore, communication and contact between Senesie and Prince Taylor and the Defence Team is possible, if not probable, and an interim order forbidding discussion is necessary to prevent the possibility of improper conduct in anticipation of, and during, any investigation ordered.

V. CONCLUSION

23. On the basis of the above and the information provided in the attached confidential annexes, there is reason to believe that Eric Senesie and others not yet identified may have been involved in contemptuous conduct in contravention 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;
 - (b) attempted bribery or other interference with Prosecution witness; and
 - (c) interference with the administration of justice through the violation of court orders.
24. Accordingly, pursuant to Rule 77(C)(iii) the Prosecution requests that the Trial Chamber direct the Registrar to appoint an experienced independent counsel to urgently investigate the above described possible contempt of this Court.

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



Brenda J. Hollis
The Prosecutor

INDEX OF AUTHORITIES

SCSL

Rules of Evidence and Procedure, as amended on 28 May 2010

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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**
Case Number: **SCSL-03-01-T**
Document Index Number: **1215**
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- Application
- Order
- Indictment
- Other
- Motion**
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Document Title:

Public with confidential Annexes A and B urgent prosecution motion for an investigation into contempt of the Special Court for Sierra Leone

Name of Officer:

Alhassan Fornah

Signed: 