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SCSL-12-02-PT  
(352-362)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty,  
Single Judge, Trial Chamber II

Registrar: Binta Mansaray

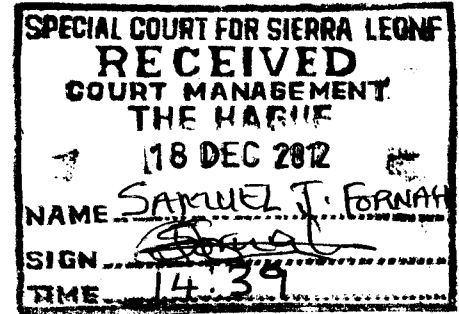
Case No.: SCSL-12-02-PT

Date: 18 December 2012

INDEPENDENT  
COUNSEL

v.

Prince TAYLOR



PUBLIC

DECISION ON DEFENCE MOTION ON BEHALF OF MR. PRINCE TAYLOR FOR BAIL PURSUANT TO  
RULE 65 WITH *PUBLIC* ANNEXES 1-4 AND *CONFIDENTIAL* ANNEX 5

Independent Counsel:  
William L. Gardner

Counsel for the Accused:  
Rodney Dixon

I, Justice Teresa Doherty, acting as Single Judge of Trial Chamber II of the Special Court for Sierra Leone ("Special Court");

**SEISED** of "Defence Motion on Behalf of Mr. Prince Taylor for Bail Pursuant to Rule 65 with *Public Annexes 1-4 and Confidential Annex 5*", filed on 25 October 2012 ("Motion").<sup>1</sup>

**FURTHER SEISED** of the "Addendum to Defence Motion for Bail", filed on 31 October 2012 ("Addendum").<sup>2</sup>

**NOTING** the "Independent Counsel's Response to Defence Motion on Behalf of Mr. Prince Taylor for Bail Pursuant to Rule 65" filed on 2 November 2012 ("Response").<sup>3</sup>

**NOTING** the "Defence Reply to Independent Counsel's Response to Defence Motion for Bail" filed on 6 November 2012 ("Reply").<sup>4</sup>

**RECALLING** the "Direction to Registrar Pursuant to Rule 33 Arising from Defence Motion on Behalf of Mr. Prince Taylor for Bail Pursuant to Rule 65 with *Public Annexes 1-4 and Confidential Annex 5*" filed on 8 November 2012.<sup>5</sup>

**NOTING** the "Submissions made by the Government of the Republic of Sierra Leone Under Rule 65(B) of the Rules of Procedure and Evidence" filed on 30 November 2012 ("Government Submission").<sup>6</sup>

**NOTING** the further submissions of Defence Counsel and Independent Counsel on the Government Submission made by e-mail on 6 December 2012 at the invitation of the Single Judge.

**COGNISANT** of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rules 65, 67, 73 and 85 of the Rules of Procedure and Evidence ("Rules").

**HEREBY** render this decision based only on the written submissions of the parties:

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<sup>1</sup> SCSL-12-02-PT-008.

<sup>2</sup> SCSL-12-02-PT-010.

<sup>3</sup> SCSL-12-02-PT-011.

<sup>4</sup> SCSL-12-02-PT-012.

<sup>5</sup> SCSL-12-02-PT-014.

<sup>6</sup> SCSL-12-02-PT-023.

SUBMISSIONSMotion

1. The Accused, Prince Taylor, applies for bail pending trial and submits that this should be granted because:
  - 1) he is a person of good character who is presumed innocent,
  - 2) there is no basis to believe that he is a flight risk,
  - 3) he has lived in Bo, Sierra Leone all his life and has dependent family and an elderly father in need of "constant care",
  - 4) he has property, a business and assets in Bo, and
  - 5) he further submits that he has no contact with any witnesses,<sup>7</sup> has never been in trouble,<sup>8</sup> and has no reason to fail to comply with any orders of the court.<sup>9</sup>
2. Counsel submits that, in law, the court must be satisfied that an accused will appear for trial and that the presumption of innocence is a central consideration, which is to be balanced with the public interest. Bail should only be refused if that presumption is outweighed by the public interest, and in the instant case Taylor poses no threat to any witness<sup>10</sup> and has no current valid passport.<sup>11</sup> In support of his application, Taylor annexes a personal undertaking to conform to all conditions and to appear for trial together with references from both the Paramount Chief and Chief of his local division.
3. In the Addendum, filed on 31 October 2012, Taylor submits two references from Defence Counsel for whom he worked as an investigator in trials at the Special Court for Sierra Leone. Both vouch for his honesty and integrity.

Response

4. Independent Counsel "firmly opposes" the application for bail and submits that the Accused is a flight risk because of "the exceptional strength and seriousness of the case against him". He further submits that Taylor's seven years experience as an investigator for the Defence teams has brought with it experience of travel to countries which have porous borders with

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<sup>7</sup> Motion, paras 3,5,12.

<sup>8</sup> Motion, para. 4.

<sup>9</sup> Motion, para. 4.

<sup>10</sup> Motion, para. 5.

<sup>11</sup> Motion, para. 7

Sierra Leone.<sup>12</sup> Independent Counsel notes that Taylor does not reveal his defence in the instant case and does not explain his non-appearance as a witness in the hearing of *Prosecutor v. Eric Koi Senessie* when he was listed as a witness for the defence.

5. Counsel submits that Taylor's non-appearance indicates that he has a "capacity for deceit" which, coupled with his travel experience heightened the Accused's risk of flight and non-appearance at trial.<sup>13</sup>
6. Counsel also points out that the Court must rely on the Government of Sierra Leone to execute its orders and refers to the Court's concerns, stated in the earlier cases of *Fofana* and *Sesay*, of the Governments' ability to monitor persons on bail or apprehend a defendant on bail.<sup>14</sup>
7. Counsel also submits that the facts that Taylor presents, such as his property ownership and business, are unsubstantiated and are without detail. Further the address Taylor gives for his property is at variance with that given by his supporting referee.<sup>15</sup> On these several grounds Independent Counsel opposes the application.

#### Reply

8. Defence Counsel replies in detail to each of the submissions of Independent Counsel and submits that there is no evidence that the Accused is a flight risk. The "strength" of the case which Independent Counsel relies on is based on the allegations by one person.<sup>16</sup>
9. He further submits that the Accused's failure to testify in the *Prosecutor v. Senessie* matter is the only reason put forward for the purported "capacity for deceit" and an adverse inference cannot be drawn from the Accused's non-appearance in the light of counsel for Senessie's explanation to the hearing court.<sup>17</sup> He notes that the Accused's past travel was undertaken as work and that in itself is not a reason to refuse bail. Likewise "porous borders" between Sierra Leone and countries the Accused worked in does not mean that the Accused constitutes a flight risk.<sup>18</sup>

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<sup>12</sup> Response, paras 1,8,12,19.

<sup>13</sup> Response, paras 19, 23.

<sup>14</sup> Response, para. 21.

<sup>15</sup> Response, para. 25.

<sup>16</sup> Reply, para. 3.

<sup>17</sup> Reply, paras 5-7.

<sup>18</sup> Reply, paras 8-10.

10. Counsel argues that the Court's earlier findings about the Government of Sierra Leone's capacity to monitor and re-apprehend defendants is not relevant to this Accused and are not comparable as the defendants referred to in those decisions were charged with crimes against humanity and war crimes.<sup>19</sup> Counsel re-states that the Accused has a settled life style and explains that he owns two properties in Bo, hence the two properties named in the course of the Motion. He refers to the Accused's standing in the community and in the views of those who employed him as an investigator in two Special Court for Sierra Leone trials. He emphasises both the dependency of the Accused's family on him and their support of him.

#### Submission of Government of Sierra Leone

11. The State submits that:

“the issue of granting of bail is entirely or solely based on the criteria as set out or provided for under rule 65 of the Rules. While it is up to the Prosecution to prove bail should not be granted, the State submits that it is not opposed to bail.

That the State is not opposed to bail in the circumstance. The State would aver that the Police may not have full proof adequate facilities but will provide necessary facilities to monitor conditions of bail in this specific case. The fact is that challenges may still exist.

The State would aver that facilities to monitor border post crossing is a huge challenge and it is not also full proof but may aver that they ensure that modalities be put in place to monitor border crossing in this instant case.”<sup>20</sup>

#### Further Submissions by Counsel

12. In an email dated 6 December 2012, Defence Counsel stated:

“In accordance with Justice Doherty's order in respect of any further submissions, the Defence encloses herewith a letter from Mr. David Sesay, Assistant Inspector-General of Police Southern Region Bo, as forecast in my email of 3 December. The Defence submits that this statement reinforces the Government's assurances in respect of Mr. Taylor's particular case that the Government will provide the necessary facilities and modalities to monitor Mr. Taylor's bail conditions, if granted. The undertakings of the police in Bo demonstrate that concrete steps can and will be taken on the ground to enforce and monitor Mr. Taylor's bail conditions.<sup>21</sup> The Defence understands that such undertakings from the Government and the police have not been provided before in any other case in which bail was opposed by the Prosecution. The Defence submits that in the circumstances of this case, Mr. Taylor presents no flight risk, and

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<sup>19</sup> Reply, para. 11.

<sup>20</sup> Government Submission, pp 2-3.

<sup>21</sup> See Annex A.

that the undertakings of the Government and the police in Bo provide the necessary guarantees to the Chamber to grant bail.”

13. In an email dated 6 December 2012, Independent Counsel stated:

“Ultimately, the Court can only grant bail under Rule 65(B) of the Special Court for Sierra Leone Rules of Procedure and Evidence ‘if it is satisfied that the accused will appear for trial,’ and the Government has not offered that assurance. Although the Assistant Inspector-General of Police has indicated that steps will be taken to monitor Mr. Taylor, such efforts do not offer the required assurance of the Defendant’s appearance at trial. Bail conditions are not the issue; risk of flight is. The Government has acknowledged that its borders are not adequately monitored: ‘facilities to monitor border post crossing is (sic) a huge challenge and it is also not full proof (sic). . . .’ The Liberian border alone can be reached in far less than half the 24 hour proposed monitoring period. Given Mr. Taylor’s motivations for flight, the Government’s admission weighs heavily in favor of detention.”

#### APPLICABLE LAW

14. Rule 65 of the Rules states in relevant part:

(A) Once detained, an accused shall not be granted bail except upon an order of a judge or Trial Chamber.

(B) Bail may be ordered by a Judge or a trial Chamber after hearing the State to which the accused seeks to be released and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(D) The Judge or Trial Chamber may impose such conditions upon the granting of bail to the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused at trial and the protection of others.

15. In *Prosecutor v. Fofana*, the Appeals Chamber stated:

[I]t is a precondition to any grant of bail that the applicant must satisfy the court that he will appear for trial and will not endanger witnesses or any other potential victim (including himself). Absent legislation to the contrary, the burden of proving a proposition in a court room rests upon the party obliged to assert it, and the language of Rule 65(B) (note the force of “only”) confirms that the burden lies squarely on the applicant.<sup>22</sup>

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<sup>22</sup> *Prosecutor v. Fofana*, SCSL04-14-AR65, Appeal Against Decision Refusing Bail, 11 March 2005, para. 34.

DELIBERATIONS

16. Rule 65 makes clear that bail is not a right, as it provides that it shall not be granted "except upon an order of a Judge or Trial Chamber". The discretion vested in the Judge or Trial Chamber may only be exercised if the Judge is satisfied that an accused will appear for trial and will not pose a danger to any victim, witness or other person.<sup>23</sup>
17. As noted above, Rule 65 charges the court with considering two issues *viz.* interference with a witness, victim or other person and that the Accused will appear for trial.
18. Defence Counsel points to the fact that the main witness referred to by Independent Counsel, Eric Senessie, is in detention and I accept that there is no evidence that he might be interfered with directly. There have been no submissions or evidence relating to the possibility of indirect interference or of any other vulnerable witness, victim or person.
19. Defence Counsel stresses the presumption of innocence, but I agree and adopt the view of the ICTY that the presumption of innocence enshrined in Article 17 of the Statute is not determinative in deciding motions for provisional release.<sup>24</sup> The criteria I must and do address in the instant case is whether the Accused will appear for trial as I have accepted that there is no evidence of risk to any victim, witness or other person if the Accused is released. In considering that matter I bear in mind, as the Appeals Chamber indicated in *Prosecutor v. Fofana*, the actual situation prevailing in Sierra Leone.
20. Independent Counsel notes, *inter alia*, that the Accused has a "capacity for deceit" and cites in support of that submission his failure to reveal his defence and to appear as a witness in the case of *Prosecutor v. Senessie* after having been listed for the Defence.
21. There is no obligation for an accused to say anything in his own defence, the obligation to prove a case against a person beyond reasonable doubt does not move from the Prosecution. Article 17(3) states that the accused shall be presumed innocent and, Article 17(4)(g) states that he shall not be compelled to testify against himself. Rule 85(C) of the Rules permits an accused to give evidence "if he so desires". The only procedural obligation on the Defence, in relation to the evidence it is intended to adduce, is to notify the Prosecutor of any intent to enter a defence of alibi or any special defence such as diminished responsibility pursuant to

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<sup>23</sup> Rule 65(B).

<sup>24</sup> *Prosecutor v. Milutinovic*, IT-05-87-AR65.2, Decision on Interlocutory Appeal of Denial of Provisional Release During the Winter Recess, 14 December 2006, para. 12.

Rule 67(A)(ii). A failure to give information about his defence cannot be held against an accused.

22. The Accused did not explain why, having been listed as a witness in the *Prosecutor v. Senessie* trial, he did not appear to give evidence. Defence Counsel quotes Senessie's Counsel, Mr. Lansana's, remarks to the court in the course of the hearing, but these are neither confirmed nor denied by the Accused himself. This is of particular concern. Given the emphasis that Independent Counsel put on the Accused's non-appearance as a behavioural precedent and a ground for alleging the Accused is deceitful I would have anticipated that the Accused would give an explanation in rebuttal. He did not, and when referring to Counsel for Senessie's remarks in court, he gives no indication that he had been consulted and agreed to them. I must assume, because there is no evidence to the contrary that the Accused agreed to appear as a witness. Counsel's professional ethics would preclude him from naming the Accused as a witness without the Accused's agreement. Without evidence for the Accused's non-appearance I am not able to determine his reasons and am, therefore, left with the fact that the Accused was named as a witness in a trial in this court, but failed to appear. This conveys to me a disregard for his undertakings to the court. The Accused presents a statement from a police officer in the Bo area stating he (the police officer) would know where to search for the Accused in the event of non-appearance. This does not actually give a degree of assurance that the Accused intends to and will appear.
23. Independent Counsel stresses the objection that the Accused is a flight risk and supports his submission on several grounds. Independent Counsel submits that a ground for considering the Accused a flight risk is the "exceptional strength and seriousness of the case against him". Defence responds that the allegations against the Accused emanate from one person and points to Senessie's mendacity in the course of his trial. Obviously I will not speculate on what evidence will be adduced at trial and it would be improper to attempt to speculate or assess either its content or what strength it has. It is a basic premise of any criminal proceeding that a Prosecutor will not initiate proceedings unless he/she is satisfied that there is sufficient evidence to achieve a conviction. The fact that evidence is to be adduced does not automatically constitute a bar to the granting of bail pending trial.
24. Independent Counsel submits that the Accused's seven years of work with defence teams in the Special Court have given him experience of travel. Defence responds that the Accused's passport has expired. I do not find either of these submissions probative that the Accused will



or will not appear at trial. An application can be made for a new passport and an expired passport can be submitted in support of the application. The fact that the Accused has travelled and is familiar with the mechanics of travel does not automatically indicate or imply that he has an intent to use this knowledge to travel.

25. There appears to be common ground that the borders of Sierra Leone are porous. The submission of Principal State Counsel on behalf of the Government of Sierra Leone concedes that monitoring the borders of the country is "a huge challenge" but that they would ensure that modalities are in place but do not explain how that will be achieved. The porous nature of the country's borders is a particular concern. The Government undertakes to monitor border posts. However there are ways of crossing a border other than using recognised official border crossings. It would be naïve of me to ignore the evidence adduced and accepted in other trials in the Special Court for Sierra Leone that the border can be crossed without detection.
26. I weigh my stated concerns about the Accused's prior failure to appear and ease of crossing the border into a country or countries where the Accused has worked before with the known facts about the Accused personally. Two counsels who have worked with him over several years in the past vouch for his honesty. These were cases other than the *Prosecutor v. Taylor* trial and it was witnesses in *Prosecutor v. Taylor* who laid complaints that led to the allegations herein. His local chiefs state that they know him and that he is a person of standing in the community. The inherent dispute on the two addresses given has been explained by Defence Counsel who states the Accused owns two properties. I note title is disputed by Independent Counsel. The Accused has lived in his home town for his lifetime and is known to the police and authorities there.
27. In balancing the conflicting submissions, I note the independent support for the honesty and integrity of the Accused (but note that the references do not relate to the trial giving rise to the instant allegations) and the stability of his background confirmed independently by persons in authority as opposed to the ease with which a person can leave the jurisdiction, the realistic limitations of the Government authorities to prevent such crossings, a matter which the Appeals Chamber put weight on, coupled with the Accused's prior failure to appear in the Special Court. In my view the assurances given are not sufficient to overcome the facts relevant to the Accused and in this circumstance I consider there is a risk of non-appearance and refuse bail pending trial pursuant to Rule 65.

Done at The Hague, The Netherlands, this 18th day of December 2012.



Justice Teresa Doherty

Single Judge

[Seal of the Special Court for Sierra Leone]



FROM: MR. DAVID S. SESAY (ASSISTANT INSPECTOR GENERAL OF POLICE) – SOUTH REGION – BO

TO: THE DIRECTOR OF PROSECUTION SPECIAL COURT – FREETOWN- SIERRA LEONE.

**SUBJECT: REQUEST**

Dear Sir,

I am kindly requesting that in the event of bail granted to Mr. Taylor to reside in Bo, I can state as the Assistant Inspector General of Police in charge of the Southern Region that his bail conditions could be enforced and monitored by the Local Police Commander in Bo West Station by him reporting each day to the Police Station at a specific time to sign that he was in attendance.

The Local Unit Commander Bo west Police Station could report to the Special Court immediately if he did not attend to sign at the Police Station.

The Police in Bo would be able immediately to search for him at his home and in Bo and make enquiries with his family and friends so that Police could apprehend him.

The Police in Bo could be able to implement a request from the Special Court to arrest Mr. Taylor.

Best regards,

DAVID S. SESAY (A.I.G)

*[Handwritten signature]*  
.....  
*[Handwritten signature]*

ASSISTANT INSPECTOR GENERAL OF POLICE – SOUTHERN REGION – BO