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SCSL-12-02-A
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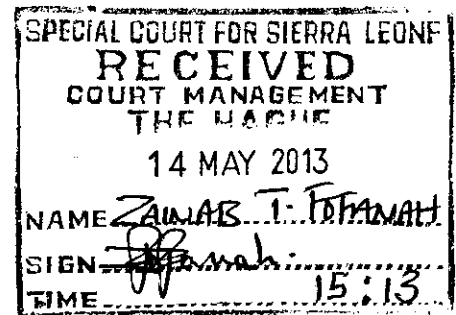
SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Justice Emmanuel Ayoola, Presiding
Justice Renate Winter
Justice Jon Moadeh Kamanda

Registrar: Ms. Binta Mansaray

Date: 14 May 2013



**THE INDEPENDENT
COUNSEL**

Against

**PRINCE TAYLOR
(Case No. SCSL-12-02-A)**

Public

JUDGMENT IN CONTEMPT PROCEEDINGS

Independent Counsel:
Mr. William L. Gardner
Mr. Benjamin Klein

Defence Counsel for Prince Taylor
Mr. Rodney Dixon
Principal Defender
Ms Claire Carlton-Hanciles

I. INTRODUCTION

1. The Appeals Chamber of the Special Court for Sierra Leone (“Special Court”), composed of Justice Emmanuel Ayoola, Presiding, Justice Renate Winter and Justice Jon M. Kamanda, sitting in accord with the President’s “Order Assigning Judges to a Case Before the Appeals Chamber” of 20 March 2013,¹ is in receipt of an appeal by Mr. Prince Taylor (“Appellant”),² from the Judgment in Contempt Proceedings of 25 January 2013 filed on 11 February 2013 (“Trial Judgment”),³ and the Sentencing Judgment of 08 February 2013 filed on 14 February 2013 (“Sentencing Judgment”);⁴ rendered by the Single Judge of Trial Chamber II (“Single Judge”) in the case of *Independent Counsel v. Prince Taylor*, Case No. SCSL-12-02-A (“Prince Taylor” Case).

A. Order in lieu of Indictment

2. On 4 October 2012, the Single Judge of Trial Chamber II issued Decision on the Confidential – Under Seal Submission of Supplemental Confidential Report of Independent Counsel (“Decision on Supplemental Report”),⁵ finding that there is a *prima facie* case that Prince Taylor may be in contempt of the Special Court by attempting to have witnesses recant their testimonies through his instructions to Eric Koi Senessie.⁶ Annexed to the Decision on Supplemental Report was Confidential Order in Lieu of Indictment against Prince Taylor. It charged the Appellant with four Counts of knowingly and wilfully interfering with the Special Court’s administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber (Counts 2, 4, 7 and 8), four Counts of knowingly and wilfully interfering with the Special Court’s administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber (Counts 1, 3, 5 and 6) and one Count of

¹ *Independent Counsel v. Prince Taylor*, SCSL-12-02-A-057, Order Assigning Judges to a Case Before the Appeals Chamber, 30 March 2013 [Order Assigning Judges].

² *Independent Counsel v. Prince Taylor*, SCSL-12-02-A-053, Notice of Appeal, 22 February 2013 [Notice of Appeal], SCSL-12-02-A-55, Appellant’s Submissions for Appeals Against Conviction and Sentence, 18 March 2013 [Appellant’s Submissions].

³ *Independent Counsel v. Prince Taylor*, SCSL-12-02-051, Judgment in Contempt Proceedings, 12 February 2013, [Judgment].

⁴ *Independent Counsel v. Prince Taylor*, SCSL-12-02-052, Sentencing Judgment, 15 February 2013 [Sentencing Judgment].

⁵ *Independent Counsel v. Prince Taylor*, Public with Confidential Annex A Decision on the Confidential – Under Seal Submission of Supplemental Confidential Report of Independent Counsel, 4 October 2012 [*Prince Taylor*, Decision on Supplemental Report].

⁶ *Prince Taylor*, Decision on Supplemental Report, para. 16.

knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who is about to give evidence before a Chamber (Count 9), in violation of Rule 77(A)(iv) of the Rules of Procedure and Evidence of the Special Court ("Rules").

3. The Appellant pleaded not guilty to all the charges.

B. Verdict and Sentence

4. The Judgment was rendered by the Single Judge on 25 January 2013 followed by written reasons on 11 February 2013.

5. The Appellant was found guilty on four Counts of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, (Counts 2, 4, 7 and 8); and one Count of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who is about to give evidence before a Chamber, (Count 9). He was acquitted on all four Counts of knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to witness who has given evidence in proceedings before a Chamber.⁷

6. The Sentencing Judgment was delivered on 08 February 2013 and filed on 14 February 2013. The Single Judge sentenced the Appellant to a total term of imprisonment of two and a half years.⁸

C. Summary of the Single Judge's Findings

7. The Single Judge found that the Appellant influenced Senessie to refuse to see the Independent Counsel and told him not to implicate them both;⁹ that Senessie gave information to the Independent Counsel that was found, by way of evidence in his own trial and in his statements at sentencing to have been false;¹⁰ that the Appellant persuaded Senessie to give false information and that he did so knowingly, aware that it would affect the outcome of the Independent Counsel's investigations at the time.¹¹ The Single Judge accordingly found the Appellant guilty under Count 9 of knowingly and wilfully interfering with the Special Court's administration of justice by

⁷Judgment, Disposition at pp 54, 55.

⁸ Sentencing Judgment, paras 56, 57.

⁹ Judgment, para. 194.

¹⁰ Judgment, para. 194.

¹¹ Judgment, paras 195, 199.

otherwise interfering with a witness who is about to give evidence in proceedings before a Chamber (an investigation by Independent Counsel pursuant to a Trial Chamber decision).¹²

8. The Single Judge also found that the Appellant directed Senessie to go to the five witnesses to persuade them and to inquire whether they could go back to The Hague to change their testimonies; that he did so with the intention of having the witnesses go to The Hague to change their testimonies; that Senessie acted in accordance with that directive and order; and that this amounted to otherwise interfering with the five witnesses.¹³ The Single Judge accordingly found the Appellant guilty under Counts 2, 4, 7 and 8 of knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber.¹⁴

9. The Single Judge did not find however that the evidence was sufficient to support a finding of interference with the administration of justice by offering a bribe to any of the five witnesses who had testified in The Hague.¹⁵ The Appellant was accordingly found not guilty on Counts 1, 3, 5 and 6.¹⁶

D. Filings on Appeal

10. On 22 February 2013, The Appellant filed a Notice of Appeal outlining four grounds of appeal against conviction (Grounds 1-4) and two against sentence (Grounds 5 and 6). In conclusion at its paragraph 35 thereof, the Notice of Appeal states that "[t]he full arguments in support of each ground will be set out in the Appellant's submissions".

11. On 15 March 2013, the Appellant filed Appellant's Submissions for Appeals against Conviction and Sentence, "pursuant to Rule 111, and Rules 77(j) and 108".¹⁷

12. On 15 March 2013, the Independent Counsel filed Independent Counsel's Urgent Motion for Clarification Regarding the Deadline for Filing Submissions in Response to Appellant's Submissions for Appeals against Conviction and Sentence ("Urgent Motion for Clarification"),¹⁸

¹² Judgment, paras 200, 213.

¹³ Judgment, paras 208, 209.

¹⁴ Judgment, paras 209, 213.

¹⁵ Judgment para. 212.

¹⁶ Judgment, para. 214.

¹⁷ Appellant's Submissions, para. 1.

¹⁸ *Independent Counsel v. Prince Taylor*, SCSL-12-02-056, Independent Counsel's Urgent Motion for Clarification Regarding the Deadline for Filing Submissions in response to Appellant's Submissions for Appeals against Conviction and Sentence, 15 March 2013, [Urgent Motion for Clarification]; SCSL-12-02-062, Independent Counsel's Re-File of Annex B Pursuant to the Order to Redact, 02 April 2013 [Re-Filing of Annex B].

and the Appellant filed Response to the Independent Counsel's Urgent Motion for Clarification on 25 March 2013 ("Response to Urgent Motion for Clarification").¹⁹

13. On 02 April 2013 however, the Independent Counsel filed Respondent Independent Counsel's Submission in Response to Appellant's Submissions for Appeals Against Conviction and Sentence ("Response to Appellant's Submissions").²⁰

14. On 08 April 2013, the Appellant filed Appellant's Reply to Independent Counsel's Submission in Response to Appellant's Submissions for Appeals Against Conviction and Sentence ("Reply").²¹

15. On 12 April 2013, the Appellant filed Appellant's Application for Additional Evidence Pursuant to Rule 115 ("Rule 115 Motion"),²² to which the Independent Counsel filed Respondent Independent Counsel's Public Response to Appellant's Application for Additional Evidence Pursuant to Rule 115 with Public Annex A and Confidential Annex B on 18 April 2013 ("Response to Rule 115 Motion").²³ On 1 May 2013, the Appellant filed his reply thereto.²⁴

II. APPLICABLE PROVISIONS

16. The applicable Rules and Practice Directions are as follows:

(a) Rules:

17. Pursuant to Rule 108(B) of the Rules, in appeals pursuant to Rule 77, the notice and grounds of appeal shall be filed within seven days of the receipt of the decision.

18. In accordance with Rule 117(B) of the Rules, in appeals pursuant to Rule 77, all time limits and other procedural requirements not otherwise provided for in the Rules shall be fixed by a Practice Direction.

¹⁹ *Independent Counsel v. Prince Taylor*, SCSL-12-02-059, Appellant's response to the Independent Counsel's Urgent Motion for Clarification Regarding the Deadline for Filing Submissions in response to Appellant's Submissions for Appeals against Conviction and Sentence, 25 March 2013, [Response to Urgent Motion for Clarification].

²⁰ *Independent Counsel v. Prince Taylor*, SCSL-12-02-061, Respondent Independent Counsel's Submission in Response to Appellant's Submissions for Appeals against Conviction and Sentence, 29 March 2013, filed 02 April 2013 [Response to Appellant's Submissions].

²¹ *Independent Counsel v. Prince Taylor*, SCSL-12-02-063, Appellant's Reply to Independent Counsel's Submission in Response to Appellant's Submissions for Appeals against Conviction and Sentence, 08 April 2013 [Reply].

²² *Independent Counsel v. Prince Taylor*, SCSL-12-02-064, Appellant's Application for Additional Evidence Pursuant to Rule 115, 12 April 2013 [Rule 115 Motion].

²³ *Independent Counsel v. Prince Taylor*, SCSL-12-02-065, Respondent Independent Counsel's Public Response to Appellant's Application for Additional Evidence Pursuant to Rule 115 With Public Annex A and Confidential Annex B, 12 April 2013 [Response to Rule 115 Motion].

(b) Practice Directions

19. Article I.1 of the Practice Direction for Certain Appeals (2004), provides that the appellant shall file and serve upon the other parties, in accordance with the Rules, a written Notice of Appeal in accordance with the prescribed form containing:

- a) the precise title and date of filing the appealed decision;
- b) a summary of the proceedings before the Judge or Trial Chamber relating to the appealed decision;
- c) the specific provision of the Rules pursuant to which the appeal is filed;
- d) the grounds on which the appeal is made;
- e) the relief sought.

20. Article I.2 thereof provides that the appellant's submissions based on the grounds of appeal shall be filed on the same day as the Notice of Appeal and may be filed as part of the same document or as a separate document, as long as it is clearly delineated which filing or part of the filing constitutes grounds and which filing or part of the filing constitutes submissions based on those grounds.

21. Pursuant to Article I.3 thereof, the opposite party shall file a response within ten days of the filing of the appeal. Such a response shall clearly state whether or not the appeal is opposed and the grounds thereof. It shall further set out any objection to the applicability of the provision of the Rules relied upon by the appellant as the basis for the appeal. The appellant may, pursuant to Article I.4 thereof, file a reply within 5 days of the filing of the response.

22. Where a party fails to comply with the requirements laid down in this Practice Direction, or where the wording of a filing is unclear or ambiguous, the Appeals Chamber may, in its discretion, and pursuant to Article VII.21 thereof decide on an appropriate sanction, which can include an order for clarification or re-filing. The Appeals Chamber may also reject a filing or dismiss submissions therein.

23. The provisions contained in Article 12 of the Practice Direction on Filing Documents Before the Special Court for Sierra Leone (2003, as amended) and the Practice Direction on Dealing with Documents in The Hague Sub-Office (2008, as amended) are identical and are also applicable. The said Article 12 contains a procedure for "Late Filing" and reads:

²⁴ *Independent Counsel v. Prince Taylor*, SCSL-12-02-066, Appellant's Reply to Independent Counsel's Response to

A document may be filed outside the time limits set out in the Rules ... In such cases, the Party, State, organization or person filing the document shall indicate the reason for the delay on the relevant Court Management Section Form. A Late Filing Form shall be completed by the Court Management Section and served with the document. The Judge or Chamber before which such document is filed shall decide whether to accept the document despite its late filing.

III. THE APPEAL

24. The Notice of Appeal was filed on 22 February 2013 unaccompanied by the submissions based on the grounds of appeal as required by Rule 108(B) and Article 1.2 of the Practice Direction for Certain Appeals. The Appellant later filed his "Submissions" on 15 March 2013, three weeks after filing his Notice of Appeal. The Appeal was therefore filed out of the applicable time limits in the Rules and Practice Direction.

25. The Appeals Chamber notes that the Independent Counsel does not raise an objection pertaining to the Appellant's filings outside the time limits prescribed by the Rules and the Practice Direction for Certain Appeals either in his Response to the Urgent Motion for Clarification or in his Response to Appellant's Submissions. The Independent Counsel's objections relate to form rather than to compliance with time limits for filing and he complains that the Appellant's submissions fail to comply with certain provisions of applicable Practice Directions regarding table of contents, documents and authorities that should accompany the submissions.²⁵

26. Notwithstanding the non-compliance with Article 1.2 of the Practice Direction for Certain Appeals, the Appellant may have a remedy pursuant to Article VII.21 of same, whereby the Appeals Chamber may, in its discretion, decide on an appropriate sanction, which can include an order for clarification or re-filing, rejection of a filing or dismissal of submissions therein. The condition to be fulfilled so as to enable the Appeals Chamber to exercise its discretion whether to accept or reject a filing under Article V11.21 is contained in Article 12 of the two Practice Directions on Filing Documents Before the Special Court for Sierra Leone and on Dealing with Documents in The Hague Sub-Office referred to above.

27. In other words, the Appellant must have filed his "late" appeal submissions together with the relevant Court Management Form indicating the reason for the delay, thereby enabling the

Appellant's Application for Additional Evidence Pursuant to Rule 115, 30 April 2013 [Reply to Rule 115 Motion].

²⁵ Urgent Motion for Clarification, paras 6-9. The Independent Counsel submits that the Appellant's submissions failed to comply with provisions of applicable Practice Directions, namely, Article 7(B) of the Practice Direction on Filing

Court Management Section to serve the document with a late filing form. Only then can “[t]he Judge or Chamber before which such document is filed ... decide whether to accept the document despite its late filing”.

28. In the present case, the Appellant has not fulfilled the conditions necessary for the Appeals Chamber to exercise its discretion under Article VII.21 of the Practice Direction for Certain Appeals. The Appellant has also not sought an extension of time within which to file his appeal submissions under Rule 116. There is thus no proper appeal filed before the Appeals Chamber and the Appeal is therefore rejected in its entirety.

29. In consequence, the Rule 115 Motion, Response to Rule 115 Motion and Reply thereto which were filed out of time under any of the applicable provisions have also lapsed.

IV. DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER,**

PURSUANT TO Article 20 of the Statute and Rules 77, 106, 117 and 118 of the Rules;

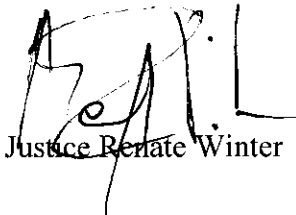
HOLDS that the Appeal is not properly before the Appeals Chamber;

REJECTS the filings on Appeal;

HOLDS that in consequence the Rule 115 Motion has also lapsed;

AFFIRMS that as the appeal is not properly before the court, the judgment and sentence of the Trial Chamber remain unaltered.

Issued on 14 May 2013 at The Hague, The Netherlands


Justice Renate Winter


Justice Emmanuel Ayoola


Justice Jon M. Kamanda

Documents Before the Special Court for Sierra Leone, [2003 as amended] and Paragraphs 6(a), 15-21 of the Practice Direction on the Structure of Grounds of Appeal Before the Special Court, [2011 as amended].