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SCSL-12-02-A
(421-432)

SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER OF THE SPECIAL COURT

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

Registrar: Ms. Binta Mansaray

Date filed: 12 June 2013

THE INDEPENDENT COUNSEL

v.

PRINCE TAYLOR

(Case No. SCSL-12-02-A)

PUBLIC

APPELLANT'S REPLY TO INDEPENDENT COUNSEL'S SUBMISSION IN RESPONSE TO APPELLANT'S NOTICE OF APPEAL AND SUBMISSIONS BASED ON THE GROUNDS OF APPEAL

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

Counsel for Prince Taylor:
Mr. Rodney Dixon

Principal Defender
Ms. Claire Carlton-Hanciles

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Introduction

1. The Appellant files this Reply to the Independent Counsel's Submission in Response to Appellant's Notice of Appeal and Submissions based on the Grounds of Appeal filed on 7 June 2013, and received by the Appellant on 10 June 2013 ("the Response"). This Reply is filed pursuant to Rule 77, Rule 117, and Article I.4 of the Practice Direction for Certain Appeals Before the Special Court (30 September 2004) and in accordance with the Appeals Chamber's Order of 4 June 2013 in which the Appeals Chamber deemed the Appeal to have been properly filed within the extended time granted and ordered that the time limits for making any further filings would run from the date of this Order.[1]

2. An overarching claim made in the Response is that the Appellant has merely sought to substitute the Trial Chamber's findings with his interpretation of the evidence and has not established that the Chamber committed any errors which invalidated the judgment and/or occasioned a miscarriage of justice. The Independent Counsel has missed the main point of the Appeal. The Appellant's clear submission is that no reasonable Trial Chamber could have convicted Mr. Taylor on the basis of Mr. Senessie's evidence. The Appellant has identified a number of specific errors in the Chamber's reasoning and findings to support this submission and explained why no reasonable trier of fact could have evaluated the evidence as the Trial Chamber did. Each of these findings was critical to the Trial Chamber reaching its guilty verdict. As stressed in the Appellant's Notice and Submissions, these findings have occasioned a miscarriage of justice because a reasonable Trial Chamber would not have made these findings and would have acquitted Mr. Taylor. The Appellant submits that the Appeals Chamber must therefore overturn the findings and verdict of the Trial Chamber.

3. The Appellant has not repeated the same arguments he made at trial or simply asked the Appeals Chamber to adopt his interpretation of the evidence. On the contrary, the Appellant has set out a number of fundamental legal and factual errors made by the Trial Chamber which, in the Appellant's submission, render the convictions unsafe.

[1] *Independent Counsel v Prince Taylor*, SCSL-12-02-A, Appeals Chamber, Order on Re-Filing of Appeal on behalf of Prince Taylor with Application for the Appeal to be Filed Out of Time, 4 June 2013.

The Appellant submits that it would amount to a miscarriage of justice were the convictions to remain on the basis of the reasoning and findings of the Trial Chamber.

Corroboration and inconsistencies

4. The Independent Counsel has completely misunderstood the Appellant's argument on corroboration.[2] The Appellant does not submit that corroboration is a legal requirement to rely on the evidence of a single witness. The Appellant's submission is that the jurisprudence of international courts establishes that corroboration is essential when the evidence of a single witness is relied on *and when that single witness has been found to be incredible and unreliable in part*, as the Trial Chamber found in respect of Mr. Senessie's evidence.[3] Moreover, Mr. Senessie has been found to be liar in his own trial and has been convicted by the SCSL as a result. There is no international case in which the evidence of a single witness has been the basis for a conviction when that single witness has been previously convicted and found to be a lair, and then again found to be lying when giving evidence in a subsequent trial.

5. The Appellant's submission is that the Trial Chamber failed to identify the proper legal requirements and misapplied these legal requirements when assessing Mr. Senessie's evidence. If the correct legal approach had been adopted, the Trial Chamber would not have relied on Mr. Senessie's evidence to convict the Appellant when it was uncorroborated. The errors are thus both errors of law and of fact. Even if the Trial Chamber did not commit any legal errors, the Appellant submits that no reasonable Trial Chamber could have evaluated the evidence as the Trial Chamber did. It is for this reason that the Appellant has submitted that the Trial Chamber has erred by (i) relying on Mr. Senessie's evidence without any corroboration, (ii) finding that his evidence was corroborated when no such corroboration existed, (iii) not taking into account fundamental inconsistencies in the evidence, and (iv) by not giving sufficient weight to the inconsistencies it did identify. Contrary to the Respondent's claim[4], the Appellant has certainly identified very specific inconsistencies that the Trial Chamber disregarded in its Judgment.[5]

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[2] Response, paras. 24-26.
[3] Appellant's Submissions Based on the Grounds of Appeal, 21 May 2013 ("Appellant's Submissions") paras. 24-34.
[4] Response, paras. 31-32.
[5] Appellant's Submissions, paras 24-67.

6. Indeed, the Respondent has responded in detail to each of these errors in the Response.[6] Each of them was critical to the Chamber's finding of guilt. As set out in the Appellant's detailed submissions, no reasonable Trial Chamber would have committed these errors and made the findings relied on by the Trial Chamber to convict the Appellant.

7. The Appellant will not repeat his submissions here, and highlights the following inaccuracies in the Response:

   - The Appellant is not merely repeating his arguments at trial in respect of the payment of Le200,000 and other payments.[7] He has clearly pleaded that no reasonable Trial Chamber could rely on Mr. Senessie's uncorroborated evidence about this payment (and others) to convict the Appellant when he was disbelieved about related payments that were allegedly part of the same transaction, and when he had lied to the Chamber about what he told the Independent Counsel about a payment by cheque for Le30,000, and in light of his prior conviction, incentive to lie, and all of the other inconsistencies within his evidence and with the other evidence in the trial.

   - There were "six other payments"[8], as listed by the Trial Chamber in his Judgement.[9]

   - A key point about the letters of invitation, completely overlooked by the Independent Counsel, is that TFI-274 does not claim in his evidence to have agreed with the "idea" of the letters.[10] In other words, Mr. Senessie's own explanation for the contradiction between his testimony at trial and that at his sentencing judgment is directly undermined by the evidence of TFI-274. In these circumstances, no reasonable trier of fact could have convicted the Appellant on the basis of Mr. Senessie's evidence that it was the Appellant who prepared the letters.

   - It is wrong for the Independent Counsel to claim that the Appellant for the "first time on appeal" states that Exhibit P1 is not his statement and should not

[6] Response, paras 66-117.
[7] Response paras 66-81.
[8] Response, para. 76.
[9] Judgement in Contempt Proceedings, para. 167.
[10] Response, paras 82-91.

be relied on by the Chamber to convict the Appellant.[11] The Defence made it absolutely clear at trial that P1 could not be regarded as a statement made by the Appellant.[12]

- The Appellant's point about corroboration in circumstances where a witness is found unreliable – a common sense one – is that the evidence of a single witness cannot be corroborated by the evidence of that same witness. There must be independent evidence of corroboration.[13] The Appellant's submission is that the five Prosecution witnesses do not corroborate Mr. Senessie's claim that he was instructed by the Appellant; on the contrary, their evidence contradicts that of Mr. Senessie in key respects, which should have been taken into account by the Trial Chamber.[14]

Adverse inferences from no Defence evidence

8. The Independent Counsel has mischaracterised Ground 2. The Appellant's submission is that in repeatedly relying on a lack of defence evidence to rebut Mr. Senessie's allegations, to find him credible, the Trial Chamber has in effect drawn an adverse inference against the Defendant for not testifying. No reasonable trier of fact could have found Mr. Senessie to be credible merely because his evidence had not been rebutted by the Defence. The Appellant's submission is thus not "unclear" or "undeveloped".[15]

Lawyer X

9. The Independent Counsel is simply wrong now to claim that the evidence of Lawyer X was not admitted as **agreed** evidence without the need to call Lawyer X to testify.[16] At no point did the Independent Counsel state on the record that he disagreed with the contents of Lawyer X's statement. If he had done so, the Defence would have called Lawyer X to testify. In other words, the only reason the Defence did not call Lawyer X as a live witness is because his evidence was agreed.

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[11] Response, paras 87 and 99-102.
[12] Appellant's Submissions, paras 58-61.
[13] Response, paras 92-98, 103-109.
[14] See full submissions on these points in Appellant's submissions, paras 53-58 and for Count 9 at paras 62-65.
[15] Response, paras 34-38.
[16] Response, paras. 41-48.

10. This was the very point the Defence made for the record when Lawyer X's statement was admitted – that it was admitted by agreement and that the Independent Counsel could not dispute it after its admission without giving Lawyer X a fair opportunity to answer in evidence any challenges to it that the Independent Counsel may wish to make.[17] It is most significant that none of the references to the transcripts cited by the Independent Counsel in his Response show that he stated for the record that he disputed the evidence of Lawyer X. On the contrary, the Defence made it plain that if he wished to do so, he should state as much for the record so that Lawyer X could then be called to give evidence and be cross-examined: "*Going in as agreed evidence carries the consequences of exactly that. It's agreed. He [the Independent Counsel] can't now in any way dispute it or try to put a gloss on it which fairly should be put to the witness, so your Honour could see the witness's response to decide on the relative weight to give to that evidence*".[18] The Independent Counsel did not respond at any stage by stating that he would challenge the credibility and reliability of Lawyer X's evidence. However, he now goes so far as to suggest that Lawyer's X credibility is "tarnished".[19] If the Independent Counsel had ever suggested that at trial, the Defence would without question have called Lawyer X to testify in person.

11. The Independent Counsel is also wrong to claim that the Trial Chamber acknowledged that there was disagreement over the content of Lawyer X's witness statement. The transcript references given by the Independent Counsel to support this assertion are all references to discussions about the character witnesses, and not Lawyer X.[20] The Appeals Chamber is respectfully urged to review all of the transcript references cited by the Independent Counsel as they do not support any of his claims. The Trial Chamber clearly accepted that Lawyer X's evidence was agreed and admitted as agreed evidence.[21] Furthermore the Appellant certainly did object to the Respondent challenging Lawyer X's testimony in his closing speech.[22]

12. Just as evidence was admitted in the Independent Counsel's case by agreement, such as the evidence of the five Prosecution witnesses from Mr. Senessie's trial and the cheque for Le30,000, the evidence of Lawyer X was admitted on the same basis by

[17] Transcript of 17 January 2012, pp. 461-462 and 472. Also see Transcript of 14 January 2013, p. 73.
[18] Transcript of 17 January 2012, pp. 461-462. Also see Transcripts of 17 January 2013, pp. 468-476, 504-505, 508-509 and of 18 January 2013, pp. 520-523.
[19] Response, paras. 116.
[20] Response, para. 46, fnt 104.
[21] Transcript of 18 January 2013, p. 522
[22] Appellant's Submissions, para. 78. See Transcripts of 17 January 2013, pp. 461-462, 468-476, 504-505, 508-509 and of 18 January 2013, pp. 520-523.

agreement in the defence case. The Independent Counsel cannot now say that he challenges any part of the substance of Lawyer X's statement. It is as though Lawyer X testified in court and was not cross-examined at all by the Independent Counsel. Of course, the parties are free to interpret the evidence that is on the record, but that is obviously different to disputing it. Just as the Defence could not attack the credibility of the five Prosecution witnesses having agreed to the admission of their evidence, the Independent Counsel cannot ignore that he elected not to challenge Lawyer X's evidence in cross-examination. It would be as if the Defence agreed to the admission of the cheque for Le30,000 (for example) but then claimed in the closing speech that it could be a forgery. The Independent Counsel was obliged to place clearly on the record that he challenged and disputed the contents of Lawyer X's statement - he did not do so for the record at any time.

13. The Appellant submits that he has established that the Trial Chamber erred by making findings about Lawyer X's evidence which had no foundation in his evidence (or any other evidence in the trial) and which should not have been made without providing Lawyer X will an opportunity to respond to the issues concerned. Had the Defence known that the Trial Chamber would make such findings that went beyond the evidence of Lawyer X, the Defence would have called Lawyer to testify in person.

14. It is for this reason that the Appellant has with this Reply filed an application pursuant to Rule 115 for Lawyer X to testify before the Appeals Chamber to provide additional evidence. He is able to provide evidence relevant to the Trial Chamber's findings that could not have been adduced at the trial as his evidence was admitted by agreement. He will state, for example, that there was no problem with language interpretation between Lawyer X and Mr. Senessie (even Mr. Senessie did not claim that there was such a barrier), that there could be no misunderstanding that Lawyer X was not advising Mr. Senessie to plead guilty and that Lawyer X did not require Mr. Senessie to sign the endorsement to continue to represent him.

15. Furthermore, the Independent Counsel is simply wrong to claim that Lawyer X "was not aware that he had a conflict in representing Senessie before he even boarding a plane to Sierra Leone for Senessie's initial appearance".[23] Lawyer X stated in his statement that before he travelled to Freetown, having spoken with Independent Counsel he was aware of a potential conflict and consulted with the Principal

[23] Response, para. 48 and also see Response, para. 112.

Defender on the best course of action. It was decided he should travel to Freetown to meet Mr. Senessie.[24] Independent Counsel's submissions are permeated with such inaccuracies. The Appeals Chamber is respectfully requested to check each reference in the Response before any reliance can be placed on it.

16. The Appellant's submission is that no reasonable Trial Chamber could have "resolved"[25] the stark contradictions (and there are numerous) between Lawyer's X evidence and that of Mr. Senessie in favour of finding that Mr. Senessie's evidence could still be relied on to convict the Appellant.[26] It is not possible, for example, to find that Lawyer X instructed Mr. Senessie to plead guilty (and that they argued about this matter at length) when the agreed evidence from Lawyer X is unquestionably that he did not do so. This ground of appeal must also be considered in light of each of the other errors committed by the Trial Chamber in failing to take account of all of the other significant shortcomings in Mr. Senessie's evidence. In light of all of these errors, the Appellant submits that no reasonable trier of fact could have convicted the Appellant.

Character evidence

17. The Independent Counsel has misinterpreted this ground of appeal.[27] Under Ground 4, the Appellant submits that the Trial Chamber erred in its approach to character evidence. It was wrong to state that the Defence was asking the Chamber to preclude itself from fully considering the evidence at trial. The Defence requested the Chamber to take the character evidence into account along with all other evidence presented at trial. The Chamber could not have done so when it misconstrued the approach that it was being asked to adopt. It erred because it did not take character evidence into account at all, and its Judgement does not show that it did.

[24] D5, paras 12-13.
[25] Response, paras. 110-117.
[26] These arguments are set out in full in the Appellant's Submissions at paras 71-80. The Appellant respectfully requests the Appeals Chamber closely to review the evidence of Mr Senessie about Lawyer X and compare it with the evidence of Lawyer X (D5), together with considering the defence closing submissions on this topic (Transcript of 18 January 2013, pp. 538-554).
[27] Response, paras 51-56.

Oral hearing

18. The Independent Counsel has given no reasons at all to support his general assertion that "this case can and should be decided without an oral hearing".[28] This unsubstantiated assertion should be rejected. The Independent Counsel has not addressed any of the reasons given by the Appellant in support of an oral hearing.

19. The trial record is lengthy and complex. The grounds of appeal require a thorough review of the evidence as whole, and the marked conflicts in the evidence relied on to convict the Appellant. An oral hearing would provide the Appeals Chamber with a means of ensuring that all relevant aspects of the record could be highlighted with argument from the parties.

Independent Counsel's 'Final Remarks'

20. The Independent Counsel concludes his Response by seeking to provide a justification for upholding the convictions. He argues that the Trial Chamber's conclusion must be right because the witnesses could never have been approached by Mr. Senessie acting alone, they must have been approached by Mr. Senessie acting under Mr. Taylor's instructions: this "is what happened".[29] It is quite wrong to argue that the explanation of Mr. Senessie acting *without* Mr. Taylor's instructions should be discounted as there is no evidence to support it. This misguided reasoning pervaded the entire trial proceedings and is reflected in the Chamber's erroneous findings. There is plainly no burden on the defence to prove an explanation that is consistent with the Appellant's innocence. The Independent Counsel was required to prove beyond reasonable doubt that the Appellant *did* instruct Mr. Senessie. This allegation cannot be proved by merely arguing that there is no evidence to the contrary. Rather, the Independent Counsel was required to exclude all other explanations beyond reasonable doubt based on the evidence at trial. The allegation of being instructed to commit offences was Mr. Senessie's, and his alone. Proof of this allegation beyond reasonable doubt depends on whether a conviction can safely be based on Mr. Senessie's evidence.

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[28] Response, para. 142.
[29] Response, para. 147.

21. In this regard, the Independent Counsel again wrongly asserts that the five Prosecution witnesses "all stated that Mr. Senessie approached them on behalf of the Appellant".[30] This conveys the misleading impression that the witnesses knew or had verified that the Appellant had instructed Mr. Senessie to approach them, when all that the witnesses had in fact stated in their testimony was that Mr. Senessie *told them* that the Appellant wanted to meet them. These accounts are thus entirely consistent an innocent explanation that Mr. Senessie was acting without instruction and using the Appellant's name to lend credibility to his approach to the witnesses. In any event, the Independent Counsel is required to prove that the Appellant did instruct Mr. Senessie and he cannot do so based on the testimony of the five Prosecution witnesses as none of them can say whether the Appellant was in fact behind the contact or not.

22. The Independent Counsel is also wrong to offer a "further explanation of how or why this situation developed" based on evidence that was not even led at the trial. He refers to the evidence of the Appellant's father, Mr. Joe Ben Taylor that was given at the sentencing hearing. This is an *ex-post facto* attempt to justify the conviction that is wholly inappropriate for the Independent Counsel to make in the appeal proceedings. Evidence that was led at the sentencing hearing cannot be taken into account for the purposes of determining guilt or innocence. At no point in its Judgment did the Trial Chamber find that the Appellant should be convicted because he was trying to "create" employment for himself by contacting the witnesses. It is misconceived to argue that this "is what the Trial Chamber saw and that is why its Judgement in this case is so carefully considered and fully supported".[31]

23. The fundamental point is that even if this is what the Trial Chamber and the Independent Counsel "thought" might be "what happened", that is irrelevant in the proper and fair prosecution and trial of the Appellant. The Appellant can only be convicted on the basis that the evidence at trial proves his guilt beyond reasonable doubt, and never on the basis of what the Chamber thinks might be the most plausible explanation for what occurred. The serious deficiencies in the evidence, and particularly Mr. Senessie's evidence, cannot be overlooked because unsubstantiated explanations exist that may justify a conviction. To approach the evidence on this basis would be to undermine the cornerstone principles of fair and just criminal trials.

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[30] Response, para. 146.
[31] Response, para. 148.

Conclusion

24. The Appellant submits that the Independent Counsel has relied on overly technical reasons to seek to reject the appeal. He has advanced no objections of any substance and merit, and has for the most part misunderstood and mischaracterised the Appellant's grounds of appeal with numerous inaccurate and erroneous submissions. The Appeals Chamber is respectfully requested to grant the Appellant's grounds of appeal for the reasons contained in the Notice of Appeal, the Appellant's Submissions and this Reply.

Dated 12th June 2013

Rodney Dixon
Counsel for Mr. Prince Taylor

Index of Authorities

1. ***Independent Counsel v Prince Taylor, SCSL-2012-02-A***

Appellant's Notice of Appeal, SCSL-12-02-A, 21 May 2013

Appellant's Submissions based on Grounds of Appeal, SCSL-12-02-A, 21 May 2013

Independent Counsel's Response to Notice of Appeal and Appellant's Submissions, SCSL-12-02-A, 7 June 2013

Appeals Chamber's Order on Re-Filing of Appeal on behalf of Prince Taylor with Application for the Appeal to be Filed Out of Time, 4 June 2013

2. ***SCSL Documents:***

SCSL, Rules of Procedure and Evidence

SCSL, Practice Direction on Filing Documents before the Special Court, 27 February 2003 (last amended 16 January 2008).

SCSL, Practice Direction for Certain Appeals before the Special Court, 30 September 2004