

077)

SCSL-12-02-A
(442-463)

442



SPECIAL COURT FOR SIERRA LEONE

APPEALS CHAMBER

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

Registrar: Ms. Binta Mansaray

Date filed: 17 June 2013

INDEPENDENT COUNSEL

v.

Prince TAYLOR

Case No. SCSL-2012-02-A

**RESPONDENT INDEPENDENT COUNSEL'S PUBLIC RESPONSE TO APPELLANT'S
APPLICATION FOR ADDITIONAL EVIDENCE PURSUANT TO RULE 115
WITH CONFIDENTIAL ANNEX A**

Office of Independent Counsel:

Mr. William L. Gardner

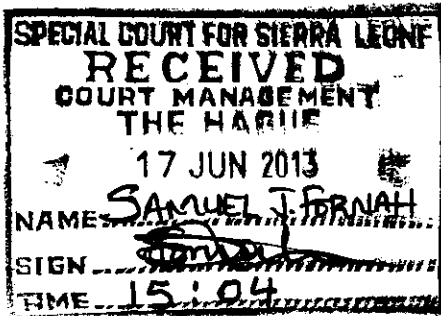
Mr. Benjamin Klein

Defence Counsel for Prince Taylor:

Mr. Rodney Dixon

Office of the Principal Defender:

Ms. Claire Carlton-Hanciles



**Respondent Independent Counsel’s Public Response to Appellant’s
Application for Additional Evidence Pursuant to Rule 115**

I. INTRODUCTION

1. Respondent Independent Counsel (hereinafter, “Respondent”) files this response to Appellant Prince Taylor’s (hereinafter, “Appellant”) Application for Additional Evidence Pursuant to Rule 115¹ (hereinafter, “Motion”) pursuant to Rules 77, 115, and 117 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (hereinafter, “SCSL Rules”).
2. Appellant’s Motion should be summarily dismissed because it fails to satisfy the threshold requirements of Rule 115 of the SCSL Rules. Specifically, Appellant has failed to establish that the evidence at issue: (1) was unavailable at trial; (2) is credible; and (3) renders, or could render, the verdict unsafe. Appellant has also failed to establish that the exclusion of the evidence would result in a miscarriage of justice.

II. BACKGROUND AND PROCEDURAL HISTORY

3. The background and procedural history of this case are detailed in Respondent Independent Counsel’s Submission in Response to Appellant’s Notice of Appeal and Submissions Based on the Grounds of Appeal (hereinafter, “Respondent’s Submission”),² the Appeals Chamber’s Judgment in Contempt Proceedings,³ and the Appeals Chamber’s Order on Re-Filing of Appeal on Behalf of Prince Taylor with

¹ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Appellant’s Application for Additional Evidence Pursuant to Rule 115 (12 June 2013).

² *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Respondent Independent Counsel’s Submission in Response to Appellant’s Notice of Appeal and Submissions Based on the Grounds of Appeal at paras. 4-16 (07 June 2013).

³ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Judgment in Contempt Proceedings at paras. 10-15 (14 May 2013).

Application for the Appeal to Be Filed Out of Time.⁴ Since the filing of Respondent's Submission on 7 June 2013, there have been only two procedural developments: (1) Appellant's filing of his Reply to Respondent Independent Counsel's Submission in Response to Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal⁵ (hereinafter, "Reply") on 12 June 2013; and (2) Appellant's filing of the instant Motion on the same date.

III. STANDARD OF REVIEW FOR RULE 115 MOTIONS

4. Rule 115(A) of the SCSL Rules provides as follows:

A party may apply by motion to the Pre-Hearing Judge to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed. The motion shall also set out in full the reasons and supporting evidence on which the party relies to establish that the proposed additional evidence was not available to it at trial. The motion shall be served on the other party and filed with the Registrar not later than the deadline for filing the submission in reply. Rebuttal material may be presented by any party affected by the motion.

5. The threshold requirements for introducing additional evidence under Rule 115 of the SCSL Rules are twofold:

First, the applicant must demonstrate that the proposed additional evidence tendered on appeal was not available to him at trial in any form, or discoverable through the exercise of due diligence. The applicant's duty to act with reasonable diligence includes making "appropriate use of all mechanisms . . . available under the Statute

⁴ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Order on Re-Filing of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time at p. 2 (04 June 2013).

⁵ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Reply to Respondent Independent Counsel's Submission in Response to Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal (12 June 2013).

and the Rules . . . to bring evidence on behalf of an accused before the Trial Chamber.”

Second, the applicant must show that the evidence is both relevant to a material issue and credible. Evidence is relevant if it relates to findings material to the Trial Chamber’s decision. Evidence is credible if it appears to be reasonably capable of belief or reliance. A finding that evidence is credible demonstrates nothing about the weight to be accorded to such evidence.⁶

6. Once the movant satisfies these requirements, the movant must then demonstrate that the evidence could impact the verdict.⁷ “In other words, the evidence must be such that, considered in the context of the evidence given at trial, it could demonstrate that the conviction was unsafe.”⁸ The party seeking to admit the additional evidence “bears the burden of specifying with clarity the impact the additional evidence could have on the Trial Chamber’s decision.”⁹ Where a party fails to do so, the application may be “rejected without detailed consideration.”¹⁰ As explained in *Independent Counsel v. Bangura*, the SCSL Appeals Chamber has the inherent authority to summarily dismiss unclear, undeveloped, unfounded, and/or unsupported arguments without a reasoned opinion in writing.¹¹
7. Where the evidence at issue was available at trial, admission applies only in the most exceptional circumstances. According to ICTR and ICTY precedent, a Rule 115 movant must “establish that the exclusion of [such evidence] would lead to a miscarriage of justice.”¹² In other words, “it must be demonstrated that had the

⁶ *Prosecutor v. Sesay*, Case No. SCSL-04-15-A, SCSL Appeals Chamber, Decision on Sesay Request to Admit Exhibit MFI-134 from *Prosecutor v. Taylor* at paras. 7-8 (14 Oct. 2009) (footnotes and citations omitted) (alterations in original) (hereinafter, “*Sesay Appeal Decision*”); accord *Prosecutor v. Taylor*, Case No. SCSL-03-01-A, SCSL Appeals Chamber, Decision on Defence Motion to Present Additional Evidence Pursuant to Rule 115 at para. 7 (18 Jan. 2013) (citation omitted).

⁷ *Sesay Appeal Decision* at para. 9 (footnote and citation omitted).

⁸ *Sesay Appeal Decision* at para. 10.

⁹ *Sesay Appeal Decision* at para. 9 (footnote and citation omitted).

¹⁰ *Sesay Appeal Decision* at para. 9 (footnote and citation omitted).

¹¹ *Independent Counsel v. Bangura*, Case No. SCSL-11-02-A, SCSL Appeals Chamber, Judgement in Contempt Proceedings at para. 28 (21 Mar. 2013) (citation omitted) (hereinafter, “*Bangura Appeal Judgment*”).

¹² *Sesay Appeal Decision* at para. 10.

additional evidence been admitted at trial, it *would* have affected the verdict.”¹³ As defined by this Appeals Chamber, a “miscarriage of justice” is “a grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime.”¹⁴

IV. ARGUMENT

A. Appellant Has Failed to Establish that the Evidence at Issue Was Not Available to Him at Trial

8. Appellant has not established—and cannot establish—that the proposed additional evidence “was not available to him at trial in any form.”¹⁵ For the reasons set forth below, Appellant’s “availability” argument should be summarily rejected.

1. *Appellant Deliberately and Voluntarily Chose Not to Call Lawyer X as a Witness at Trial*

9. As a preliminary matter, Respondent offers some context about Lawyer X’s connection to this case. Lawyer X was Eric Koi Senessie’s (hereinafter, “Senessie”) initial defence lawyer for his contempt proceedings.¹⁶ He represented Senessie at his initial appearance.¹⁷ At that time, Lawyer X appeared in the same public courtroom that was subsequently used by the Trial Chamber for the trials of Appellant and Senessie. Lawyer X used his actual name during that hearing. Lawyer X’s representation of Senessie ended in July 2011.¹⁸

¹³ *Sesay* Appeal Decision at para. 10 (emphasis added, citations omitted).

¹⁴ *Bangura* Appeal Judgment at para. 27 (citations omitted).

¹⁵ *Sesay* Appeal Decision at para. 7 (citations omitted).

¹⁶ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Judgment in Contempt Proceedings at paras. 67-68 (11 Feb. 2013) (hereinafter, “Judgement”); see generally *Prosecutor v. Senessie*, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Judgment in Contempt Proceedings (16 Aug. 2012).

¹⁷ Judgment at paras. 72-73.

¹⁸ Judgment at paras. 72-73.

10. By Lawyer X's own admission, Lawyer X and Appellant have been long-time friends. They were friends during Lawyer X's representation of Senessie. And, by Lawyer X's own admission, they remained friends during Appellant's trial.¹⁹
11. When Appellant's case went to trial, Lawyer X decided that he wanted to give evidence *against* his former client—Senessie. In doing so, Lawyer X had the effrontery to ask counsel for Appellant to request that Lawyer X's real name not be publicly disclosed and that he be referred to instead by a pseudonym.²⁰ On the first day of trial, counsel for Appellant made this request pursuant to Rule 75 of the SCSL Rules for "privacy" purposes.²¹ The Trial Chamber granted this request.²²
12. During the 12 January 2013 pretrial hearing, counsel for Appellant stated his intention to call Lawyer X as a witness in this case.²³ At the request of counsel for Appellant, the Trial Chamber began making accommodations for Lawyer X to testify remotely from The Hague.²⁴ Despite the Trial Chamber's efforts to accommodate this request,²⁵ Appellant ultimately elected to close his case without presenting any witness testimony.²⁶ It is not disputed that Appellant deliberately and voluntarily decided not to call Lawyer X as a witness.

¹⁹ See Exhibit D5 at paras. 8, 12.

²⁰ See *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (Confidential Version) at pp. 74-75 (14 Jan. 2013).

²¹ See *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (Confidential Version) at p. 74:18-22 (14 Jan. 2013).

²² *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (Confidential Version) at p. 77:17-24 (14 Jan. 2013). While Respondent did not object to Appellant's request, he remarked that he was "absolutely astounded" by the request. *Id.* at pp. 75:24-25 – 76:1.

²³ See *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at pp. 43-44 (12 Jan. 2013).

²⁴ See *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at pp. 43-45 (12 Jan. 2013).

²⁵ See, e.g., *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 194-95 (14 Jan. 2013).

²⁶ See *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 441:9-19 (16 Jan. 2013); *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 460-61 (17 Jan. 2013); see also *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 618:28 (22 Jan. 2013).

2. *Appellant’s “Availability” Argument Strains Credibility*

13. Appellant’s claim that Lawyer X’s evidence was unavailable at trial strains credibility. Similar to Appellant’s original Rule 115 motion,²⁷ the instant nine-page Motion devotes only one sentence to the issue of availability, contending “that the evidence was *in effect* not available at trial as Lawyer X was not called to testify during the trial[.]”²⁸ It is not clear to Respondent what Appellant means by the phrase “in effect,” but his argument appears to be as follows: because Appellant decided not to call Lawyer X as a trial witness, Lawyer X’s evidence regarding issues not addressed in his written statement should be treated as “not available” for the purposes of Rule 115 of the SCSL Rules.
14. As explained in Section III, *supra*, a movant under Rule 115 of the SCSL Rules must establish that the proposed additional evidence “was not available to him at trial *in any form*[.]”²⁹ The movant has a “duty to act with reasonable diligence” to make “appropriate use of all mechanisms . . . available under the Statute and the Rules . . . to bring evidence on behalf of an accused before the Trial Chamber.”³⁰ Appellant has failed to carry this burden.
15. Appellant easily could have called Lawyer X to testify, *inter alia*, about the three issues identified in the Motion: (1) Senessie’s language skills; (2) Senessie’s understanding about Respondent’s plea offer; and (3) Senessie’s understanding about the “endorsement.”³¹ Appellant also could have requested that Lawyer X address these issues in his written statement, a document that was originally given to

²⁷ See *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, Appellant’s Application for Additional Evidence Pursuant to Rule 115 at para. 3 (12 Apr. 2013).

²⁸ Motion at para. 3 (emphasis added).

²⁹ *Sesay* Appeal Decision at para. 7 (citations omitted, emphasis added).

³⁰ *Sesay* Appeal Decision at para. 7 (citations omitted).

³¹ The endorsement is Trial Exhibit D5c. Counsel for Appellant acknowledges on the record that he deliberately chose not to call Lawyer X and Appellant’s character witnesses as “live witnesses.” *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 610:13-18 (22 Jan. 2013).

Respondent on 13 January 2013 but revised over the course of the trial to respond directly to Senessie’s testimony.³² In fact, the final version of Lawyer X’s written statement, dated 16 January 2013, was finalized and submitted to the Trial Chamber *after* Respondent closed his case.³³ Instead, Appellant elected not to call Lawyer X as a witness at trial or have Lawyer X address what is now being characterized as additional evidence in his written statement.

16. There is yet another reason why Appellant cannot establish that the alleged additional evidence “was not available to him at trial in any form[.]”³⁴ Appellant did not officially rest his case until 22 January 2013—five days after Respondent made his closing submission.³⁵ The reason for this court-approved delay was twofold—to allow Appellant to: (1) enter into evidence responses by two of Appellant’s character witnesses (Michiel Pestman and Andrew Ianuzzi) to the revelation that they had been sanctioned by the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia; and (2) correct evidence related to Lawyer X’s written statement.³⁶ The point here is that after Respondent questioned Lawyer X’s credibility in his closing submission, Appellant had still another opportunity to ask the Trial Chamber to hear Lawyer X’s testimony.

³² Lawyer X’s original written statement dated 13 January 2013 is appended to this filing as Confidential Annex A. Note that this early version of Lawyer X’s written statement, unlike the final version submitted to the Trial Chamber (Exhibit D5), omits a detailed discussion of the endorsement and plea offer. *See* Trial Exhibit D5 at paras. 17-21.

³³ Respondent closed his case on the afternoon of 16 January 2013. *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at p. 438:24-26 (16 Jan. 2013). Shortly thereafter, counsel for Appellant informed the Trial Chamber that Lawyer X would finalize his written statement that evening. *Id.* at p. 441:14-21. Lawyer X’s written statement was entered into evidence the following day. *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at pp. 475-76 (17 Jan. 2013); Trial Exhibit D5. Respondent did not object to Lawyer X’s modifications to his written statement.

³⁴ SCSL Rules, Rule 115.

³⁵ *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 618:28, 623:9-21 (22 Jan. 2013). The Trial Chamber closed the case shortly thereafter. *Id.* at p. 623:22-24.

³⁶ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 608-09, 616-18 (22 Jan. 2013).

17. In summary, Appellant’s failure to timely present the proposed additional evidence is not a question of availability—it is one of oversight. The proposed additional evidence was available to Appellant during trial in *multiple* forms. Appellant is inappropriately invoking Rule 115 of the SCSL Rules because he failed to make “appropriate use of [those] mechanisms.”³⁷ As a result, Appellant’s Motion fails the first threshold requirement and should be dismissed.

B. Appellant Has Failed to Establish That the Evidence at Issue Is Credible

18. Appellant has failed to establish that the proposed additional evidence is credible—another threshold requirement of the Rule 115 test. As explained below as well as in Respondent Submission,³⁸ the Trial Chamber was highly critical of—and ultimately rejected—many of Lawyer X’s central allegations.

19. Appellant repeats a familiar argument in his Motion: Senessie’s testimony “could not have been accepted in whole or in any part[.]”³⁹ He made a similar argument in his appeals brief, claiming that Senessie’s testimony “was profoundly flawed and altogether incredible and unreliable,” and that *any* findings premised on his testimony were necessarily erroneous.⁴⁰ Counsel for Appellant sang this refrain at trial.⁴¹

20. The Trial Chamber acknowledged but ultimately rejected Appellant’s “fails as a whole” argument, concluding that it was neither “just [n]or appropriate to reject Senessie’s evidence in its entirety.”⁴² Instead, the Trial Chamber elected to “assess issues of credibility and weigh inconsistencies in detail,”⁴³ “bear[ing] in mind the

³⁷ *Sesay* Appeal Decision at para. 7 (citations omitted).

³⁸ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Respondent’s Submission at paras. 48, 110-12 (07 June 2013).

³⁹ Motion at para. 12.

⁴⁰ See *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Appellant’s Notice of Appeal and Submissions Based on the Grounds of Appeal at para. 1 (20 May 2013)

⁴¹ See, e.g., *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at p. 525:18-29 (18 Jan. 2013).

⁴² Judgement at para. 144.

⁴³ Judgement at para. 144.

need for caution in assessing Senessie’s evidence.”⁴⁴ Accordingly, “questions of weight and credibility on [Senessie’s] evidence [were] addressed in relation to individual items, including the fact that certain matters were adduced after the *allocutus* and the sentencing.”⁴⁵

21. Respondent submits that the Trial Chamber was careful, calibrated, and—most importantly—correct in its assessment of and reliance on Senessie’s testimony. The Trial Chamber evaluated Senessie’s testimony in detail, reviewing his statements in the context of the evidence presented at trial as well as that admitted by consent from the *Senessie* trial.⁴⁶ And, as a result of this assessment, the Trial Chamber made detailed findings regarding the conduct of the accused.⁴⁷
22. As explained in Respondent’s Submission, both the Trial Chamber and Respondent were critical of the allegations contained in Lawyer X’s written statement.⁴⁸ One of Lawyer X’s most incredible allegations was his assertion that he was not aware that he had a professional conflict in representing Senessie before he boarded the plane to Sierra Leone for Senessie’s initial appearance.⁴⁹ Not surprisingly, the Trial Chamber made the same observation in its Judgment:

Having reread and considered the cross-examination and evidence again in depth, I come to the view submitted by Independent Counsel to ask why, when it was so obvious to Lawyer X that he had a potential professional conflict, did he come to the Special Court for the purpose of defending what could well be a potential conflict situation?⁵⁰

⁴⁴ Judgment at para. 147.

⁴⁵ Judgment at para. 160.

⁴⁶ See Judgment at paras. 145-212.

⁴⁷ See Judgment at paras. 191-212.

⁴⁸ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Respondent’s Submission at paras. 48, 110-12 (07 June 2012).

⁴⁹ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript at pp. 501-04, 507-08 (17 Jan. 2013).

⁵⁰ Judgment at para. 173 (emphasis added).

23. It is unsurprising that, in light of the professional conflict issue and other questionable statements made by Lawyer X, the Trial Chamber chose to believe much of Senessie’s testimony over that of Lawyer X.⁵¹ As stated by the Trial Chamber: “I do not reject Senessie’s evidence on the basis of the conflicting evidence between Lawyer X and Senessie.”⁵²
24. Appellant’s Motion assumes, without argument, that Lawyer X’s additional evidence is credible.⁵³ Respondent submits that this is a tenuous, unjustified, and—ultimately—fatal position given the Trial Chamber’s previous findings regarding Lawyer X’s allegations. As a result, the Appeals Chamber should dismiss the Motion.

C. Appellant Has Failed to Establish That the Exclusion of the Additional Evidence Would Result in a Miscarriage of Justice

25. As explained in Section III, *supra*, where the evidence at issue was available at trial, admission applies only in the most exceptional circumstances. The movant must “establish that the exclusion of [such evidence] would lead to a miscarriage of justice.”⁵⁴ Appellant has failed to carry this burden.
26. Appellant erroneously suggests that to exclude the proposed additional evidence “would result in a miscarriage of justice as the evidence of Senessie would stand . . .

⁵¹ See Judgement at para. 35(iv) (“Senessie said the endorsement[, Trial Exhibit D5c,] was signed under duress, whilst Lawyer X said it was explained and voluntarily signed”); *id.* at paras. 178-79 (accepting Senessie’s testimony that Lawyer X pressured him to sign an endorsement (Trial Exhibit D5c) despite Lawyer X’s statements to the contrary); *id.* at para. 176 (declining to accept Lawyer X’s statement that he did not advise Senessie to plead guilty in light of Senessie’s statements to the contrary); *id.* at paras. 180-81 (declining to accept Lawyer X’s statement that he did not characterize lawyer David Bentley as a “Queen’s Counsel” or “QC” in light of Senessie’s statements to the contrary); *see also* Trial Exhibit D5.

⁵² See Judgement at para. 181.

⁵³ See Motion at para. 19 (“The additional evidence is thus plainly relevant and is credible, there being no reason to find that it is not reasonably capable of belief or reliance[.]”). Appellant’s original Rule 115 motion made the same unsubstantiated, conclusory allegation. See *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, Appellant’s Application for Additional Evidence Pursuant to Rule 115 at para. 19 (12 Apr. 2013).

⁵⁴ *Sesay* Appeal Decision at para. 10.

and remain the sole basis for the Appellant’s conviction.”⁵⁵ For reasons that are not readily apparent to Respondent, Appellant fails to acknowledge here—as he did in his various appellate submissions—that other evidence corroborates Senessie’s testimony and buttresses the Trial Chamber’s verdict. Moreover, Appellant has failed to demonstrate that the Trial Chamber’s findings regarding such evidence would be affected by proposed additional evidence.

27. For instance, during the pretrial hearing for this case, the parties stipulated to “the admission into evidence of all the information and the Court’s deliberations and disposition sections of its judgment in *Prosecutor v. Senessie*” and requested “that said information be treated as final adjudicated facts.”⁵⁶ As noted by the Trial Chamber, that request included the Trial Chamber’s finding in *Senessie* that Appellant told TFI-585 that he sent Senessie and that their actions were “out of the law.”⁵⁷ As stated in the Judgement: “That evidence, as an adjudicated fact, has not been rebutted, and I find that TFI-585 did speak to Taylor and that he did say that he had sent Eric Senessie, and he did say that what they were doing was out of the law.”⁵⁸ The Trial Chamber based this finding “on the evidence of three witnesses,” including Senessie.⁵⁹ Respondent submits that there can be no miscarriage of justice where there is independent evidence of Appellant’s guilt apart from the testimony of Senessie.
28. Appellant’s statement also ignores the Trial Chamber’s findings with respect to the evidence of other prosecution witnesses from the Charles Taylor trial. For instance, the Trial Chamber found that Senessie’s statements regarding certain invitation letters

⁵⁵ Motion at para. 18. Appellant fails to cite any sources in support of his claim that “it would amount to a miscarriage of justice if [the proposed additional evidence] were to be excluded and not taken into consideration (as has been recognised in the case law of the SCSL and other international courts).” *Id.* at para. 3.

⁵⁶ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript at p. 34:12-16 (12 Jan. 2013).

⁵⁷ Judgement at para. 155 (citation omitted).

⁵⁸ Judgement at para. 156.

⁵⁹ Judgement at para. 155.

addressed to Appellant were corroborated by the evidence of witness TFI-274.⁶⁰ The Trial Chamber made a similar conclusion with respect to Appellant's written statement (Trial Exhibit P1).⁶¹

29. Appellant has failed to establish that had the proposed additional evidence been admitted at trial, it would have affected the verdict or otherwise resulted in a miscarriage of justice.⁶² Accordingly, the Appeals Chamber should reject Appellant's unsubstantiated "miscarriage of justice" argument and dismiss the Motion.

D. Appellant Has Mischaracterized Respondent's Position Regarding Lawyer X's Evidence

30. As a final matter, Respondent feels compelled to address Appellant's repeated mischaracterization of his position regarding Lawyer X's written statement. On appeal, Appellant has improperly referred to Lawyer X's statement as "agreed" evidence, insinuating that Respondent "agreed" with the content contained therein.⁶³ These insinuations are false and offensive.
31. Prior to moving for the admission into evidence of Lawyer X's written statement, Respondent placed Appellant on notice that he did not agree with all of the content contained therein. Appellant, in turn, placed the Trial Chamber on notice that

⁶⁰ Judgement at para. 203.

⁶¹ See Judgement at para. 203.

⁶² See Appeal Decision at para. 10 (emphasis added, citations omitted).

⁶³ See Motion at para.3 (stating that "Lawyer X was not called to testify during the trial, his evidence having been agreed and admitted"); *id.* at para. 13 (stating that "Lawyer X's evidence was admitted by agreement" and referring to Lawyer X's statement as "agreed evidence"); see also *Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal at para. 10 (20 May 2013) ("All of the evidence relied on by the Defence for Mr. Taylor was agreed by the Independent Counsel and thus admitted in written form as *uncontested* evidence." (emphasis added)); Reply at para. 9 (referring to Lawyer X's statement as "agreed."); *id.* at para. 10 (claiming that since Lawyer X's statement "was admitted by agreement . . . Independent Counsel could not dispute it after its admission"); *id.* at para. 16 (referring to "the agreed evidence from Lawyer X").

Respondent did not agree with all of the assertions contained in Lawyer X's written statement.⁶⁴

32. While Respondent did not object to Appellant's motion to admit Lawyer X's written statement into evidence, Respondent never stated—let alone suggested—that he agreed with the content contained therein. The record unequivocally demonstrates that Appellant was aware that Respondent disagreed with certain allegations in Lawyer X's written statement prior to moving for its admission.⁶⁵ The record also reveals that the Trial Chamber was aware of Respondent's intent to comment on Lawyer X's written statement and the parties' "argument" over the content of that statement.⁶⁶ Appellant never moved at trial to strike any of Respondent's comments about Lawyer X's written statement and the Trial Chamber did not reject any of those comments.
33. Appellant mistakenly assumes in this Motion—as he did in his appeal submissions—that just because a written witness statement is admitted into evidence, that statement cannot be challenged. Appellant has yet to provide any evidence in support of this incredible claim.⁶⁷

⁶⁴ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at pp. 461-62 (17 Jan. 2013) (counsel for Appellant's statements informing the Trial Chamber that Respondent intends to challenge the content of Lawyer X's written statement in his closing submission); *see also id.* 462:13 (Trial Chamber's statement advising counsel for Appellant that "[t]here could be issues of interpretations" regarding Lawyer X's written statement).

⁶⁵ *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at pp. 461-62 (17 Jan. 2013).

⁶⁶ *Independent Counsel v. Taylor*, Case No. SCSL-12-02-T, SCSL Trial Chamber, Hearing Transcript at p. 474:2-7 (17 Jan. 2013) ("I will tell you that the six page D [Lawyer X's written statement] – whatever number it's going to be – in my closing, I'm going to go through this paragraph by paragraph."); *id.* at pp. 483-84 (Trial Chamber acknowledges that the content of the witness statements was not "agreed" to as suggested by counsel for Appellant and could be commented on by the parties in their closing submissions); *see also id.* at pp. 500:5–511:1 (Respondent's comments on Lawyer X's written statement).

⁶⁷ *See Independent Counsel v. Taylor*, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Respondent's Submission at para. 47 (stating the same).

VI. CONCLUSION

34. For all of the reasons stated herein, Respondent respectfully requests that the Appeals Chamber dismiss Appellant's Motion in its entirety.

Respectfully Submitted,

WL Gardner

William L. Gardner
Independent Counsel

INDEX OF AUTHORITIES

Special Court for Sierra Leone Decisions, Filings, and Transcripts

Independent Counsel v. Bangura, Case No. SCSL-11-02-A

Independent Counsel v. Bangura, Case No. SCSL-11-02-A, SCSL Appeals Chamber, Judgement in Contempt Proceedings (21 Mar. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Appellant's Application for Additional Evidence Pursuant to Rule 115 (12 June 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Reply to Respondent Independent Counsel's Submission in Response to Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal (12 June 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Respondent Independent Counsel's Submission in Response to Appellant's Notice of Appeal and Submissions Based on the Grounds of Appeal (07 June 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Order on Refiling of Appeal on Behalf of Prince Taylor with Application for the Appeal to Be Filed Out of Time (04 June 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Re-Filing of Appeal on Behalf of Mr. Prince Taylor with Application for the Appeal to Be Filed Out of Time (21 May 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Judgment in Contempt Proceedings (14 May 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Appellant's Application for Additional Evidence Pursuant to Rule 115 (14 Apr. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Reply to Independent Counsel's Submission in Response to Appellant's Submissions for Appeals Against Conviction and Sentence (08 Apr. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Respondent Independent Counsel's Submission in Response to Appellant's Submissions for Appeals Against Conviction and Sentence (02 Apr. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-A, SCSL Appeals Chamber, Appellant's Submissions for Appeals Against Conviction and Sentence (15 Mar. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Judgement in Contempt Proceedings (11 Feb. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (22 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (18 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (17 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (16 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Trial Transcript (14 Jan. 2013)

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Pretrial Hearing Transcript (12 Jan. 2013)

Prosecutor v. Senessie, Case No. SCSL-2011-01-T

Prosecutor v. Senessie, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Judgement in Contempt Proceedings (16 Aug. 2012)

Prosecutor v. Sesay, Case No. SCSL-04-15-A

Prosecutor v. Sesay, Case No. SCSL-04-15-A, SCSL Appeals Chamber, Decision on Sesay Request to Admit Exhibit MFI-134 from *Prosecutor v. Taylor* (14 Oct. 2009)

Prosecutor v. Taylor, Case No. SCSL-03-1-A

Prosecutor v. Taylor, Case No. SCSL-03-01-A, SCSL Appeals Chamber, Decision on Defence Motion to Present Additional Evidence Pursuant to Rule 115 (18 Jan. 2013)

Special Court for Sierra Leone Trial Exhibits

Independent Counsel v. Taylor, Case No. SCSL-12-02-T

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit D5

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit D5c

Independent Counsel v. Taylor, Case No. SCSL-12-02-T, SCSL Trial Chamber, Exhibit P1

Special Court for Sierra Leone Statute and Rules

Special Court of Sierra Leone Rules of Procedure and Evidence



SPECIAL COURT FOR SIERRA LEONE
BINCKHORSTLAAN 400 • 2516 BL DEN HAAG • THE NETHERLANDS
PHONE: +31 70 515 9701 or +31 70 515 (+Ext 9725

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- Prince Taylor**

Case Number: **SCSL-12-02-A**

Document **Index Number: 077**

Document Date: **17 June, 2013**

Filing Date: **17 June, 2013**

Document Type: Confidential

Number of Pages: **22**, Number from: **459-463**

- Application
- Indictment
- Response
- Submission
- Correspondence

Document Title:

Public with Confidential, Respondent Independent Counsel's public response to Appellant's application for additional evidence pursuant to Rule 115

Name of Officer:

Samuel J. Fornah

Signed.