

1023)

SCSL-03-01-T  
(29544 - 29552)

29544



**THE SPECIAL COURT FOR SIERRA LEONE**

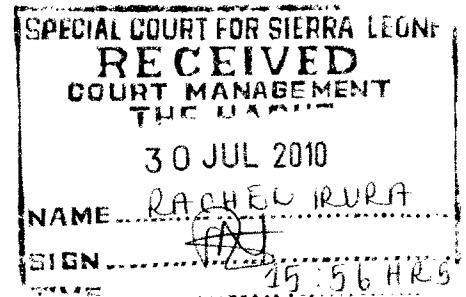
**Trial Chamber II**

**Before:** Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate

**Registrar:** Ms. Binta Mansaray

**Date:** 30 July 2010

**Case No.:** SCSL-03-01-T



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

---

**URGENT DEFENCE MOTION FOR STAY OF EVIDENCE PENDING DISCLOSURE  
OF THE STATEMENT OF NAOMI CAMPBELL**

---

**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Nick Koumjian

**Counsel for Charles G. Taylor:**

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

## I. INTRODUCTION

1. The Defence files this motion (“Motion”) pursuant to Rule(s) 54 and 66(A) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”), requesting the Trial Chamber to stay the evidence of Naomi Campbell scheduled to be heard on 5 August 2010, pending disclosure by the Prosecution to the Defence of the statement of the said witness.
2. The Defence submits that failure by the Prosecution to disclose Naomi Campbell’s statement violates its mandatory statutory obligation, and more importantly, the Accused’s fair trial rights.
3. Given the imminent appearance date, and the urgency of the request, the Defence requests an expedited filing schedule, such that any Response must be filed by Tuesday, 3 August 2010 at noon, and any Reply must be filed by Wednesday, 4 August 2010 at noon, or otherwise as deemed appropriate by the Trial Chamber.

## II. BACKGROUND

4. On 20 May 2010, the Prosecution applied for leave to call three additional witnesses, including, one Naomi Campbell (“the Witness”).<sup>1</sup> On the same day, the Prosecution also separately applied for a Subpoena for Naomi Campbell to attend court.<sup>2</sup>
5. The Motion for leave to call additional witnesses was granted on 29 June 2010,<sup>3</sup> and a Subpoena to Naomi Campbell was issued by the court on 1 July 2010.<sup>4</sup> The subpoena scheduled the witness’ evidence for 29 July 2010.
6. This date was however subsequently changed to 5 August 2010 at the request of Naomi Campbell’s lawyers.<sup>5</sup>
7. Following the issuance of the subpoena, counsel for Naomi Campbell indicated that Ms. Campbell was willing to “comply with the subpoena as a mark of her respect both for [the]

---

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-962, Prosecution Motion to Call Three Additional Witnesses, 20 May 2010.

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-961, Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell, 20 May 2010.

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-993, Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, 29 June 2010.

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-999, Subpoena Ad Testificandum, 1 July 2010.

<sup>5</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 26 July 2010, p. 44534-44537. Also see *Prosecutor v. Taylor*, SCSL-03-01-T-1019, Confidential Request for Protective Measures for Naomi Campbell’s Testimony, 29 July 2010, para. 3 (“Protective Measures Request”)

Trial Chamber and for the rule of law”.<sup>6</sup> Her counsel further indicated that “Ms. Campbell has agreed to comply with the subpoena and to give testimony before this Court”.<sup>7</sup>

8. On 27 July 2010, the Prosecution in an attempt to discharge its disclosure obligations, disclosed what purported to be a witness summary to Defence, *in lieu* of the Witness’ statement. The summary in its entirety reads as follows:

The witness has not spoken to the Prosecution. She is expected to testify as follows:

In September 1997, she was in South Africa where she attended a dinner party hosted by President Nelson Mandela. Those present at the dinner party included the Accused, Mia Farrow and Carole White.

After the dinner party, men came to Ms. Campbell’s lodgings. These men presented Ms Campbell with a gift of a rough diamond or diamonds. These men stated that the gift was from the Accused.

### III. THE LAW

9. Article 17(4) of the Statute of the Special Court, which safeguards the Accused’s fair trial rights provides that:

In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

[...]

(e) to examine or have examined the witnesses against him.

10. Rule 66 of the Rules of Procedure and Evidence, which sets out the Prosecution’s disclosure obligations, where relevant, provides as follows:

(A) Subject to the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall:

---

<sup>6</sup> Protective Measures Request, para. 12.

<sup>7</sup> Protective Measures Request, para. 20.

(i) Within 30 days of the initial appearance of an accused, disclose to the Defence **copies of the statements of all witnesses whom the Prosecutor intends to call to testify** and all evidence to be presented pursuant to Rule 92 *bis* at trial.

(ii) **Continuously disclose to the Defence copies of the statements** of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good cause being shown by the Prosecution (*emphasis added*).

#### IV. ARGUMENT

11. Rule 66 of the Rules imposes a very clear obligation on the Prosecution. It imposes a mandatory obligation on the Prosecution to disclose to the Defence the statement of the witnesses they intend to call against the Accused. Implicit in this obligation is the obligation on the Prosecution to obtain a statement from any witness it intends to call.
12. The obligation on the Prosecution to obtain and disclose a witness' statement to the Defence is not a mere legal nicety. It is designed to safeguard the Accused's fair trial rights guaranteed under Article 17(4) of the Statute of the Court, as well as Rule 66(A) of the Rules; for it is only through such disclosure that the Accused is informed adequately of the material details of the nature and cause of the charges against him and thus be in a position to adequately prepare his defence. The Accused's entire confrontational rights are predicated on such disclosure.
13. It is a well-established principle that the Prosecution must know its case prior to the start of the trial. The Prosecution cannot be permitted to mould its case against the accused as the trial progresses.<sup>8</sup> Indeed, the entire principle of notice is founded on the basis that the Prosecution is clear as to its case against an accused person. Further to the Indictment and all the other ancillary accusatory documents, the Prosecution must be in a position to reliably inform the Accused of what a witness is likely to say when testifying. Only if adequate and timely notice is given will the Accused be able to properly prepare for cross-examination as envisaged by Article 17. Rule 66 therefore takes the notice requirement a step further from the notice provided through the Indictment and other ancillary accusatory documents. It

---

<sup>8</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-T, Judgement, 20 June 2007, para. 80

requires that the Accused, through the disclosure of a statement, be forewarned of the evidence that each respective witness is going to bring against him.

14. In the present case, the Prosecution has given notice that they intend to call a witness, Naomi Campbell, to testify, yet they have not spoken to her. They however go on to say that the witness is expected to testify that she received a gift of either a rough diamond or diamonds, plural; an issue that has been adjudged to be a “central issue” in the Prosecution’s case.<sup>9</sup> The Prosecution however does not explain the basis on which they expect the witness to so testify. If anything, information in the public domain on this allegation is quite to the contrary. Naomi Campbell has been quoted in the public media as having denied receiving [a] diamond(s) from the Accused.<sup>10</sup>
15. Two possibilities arise. Firstly, that the Prosecution has got information on Naomi Campbell’s evidence from her counsel or otherwise, which it is deliberately withholding. The Defence submits that if the Prosecution has received information directly or indirectly from the witness that this is what she will say in her testimony, it is incumbent upon them to disclose that information to the Defence, consistent with its disclosure obligations. Failure to disclose the information, whether or not in the form of a proper statement,<sup>11</sup> would amount to a violation of its mandatory statutory obligation and the Accused’s fair trial rights. ICTR case law suggests that even where proper statements are not taken and/or disclosed the “will-say” statements that are served on the Defence must be clear enough to cover the scope of the proposed testimony. Thus, “will-say” statements must be “full and comprehensive, not in the sense of giving all the details, but at least laying out the scope of what the witness is expected to cover in clear terms”.<sup>12</sup> As the summary provided by the Prosecution regarding Naomi

<sup>9</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-996, Decision on Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell, 30 June 2010, p. 5.

<sup>10</sup> See *Prosecutor v. Taylor*, SCSL-03-01-T-968, Defence Response to Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell, 31 May 2010, para. 4 (citing ABC News interview in which Naomi Campbell was asked about whether she received such a diamond and she said, “I didn’t receive a diamond and I’m not going to talk about that”).

<sup>11</sup> A witness statement has been defined by Trial Chamber II as any statement or declaration made by a witness in relation to an event he or she witnessed and recorded in any form by an official in the course of an investigation. Facts contained in an investigator’s interview notes which constitute statements made by a witness in the course of an investigation come within the meaning of witness statements under Rule 66(A)(ii). See *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-T, Decision on Joint Defence Motion on Disclosure of all Original Witness Statements, Interview Notes, and Investigator’s Notes Pursuant to Rule 66 and/or 68, 4 May 2005, para. 16.

<sup>12</sup> *Prosecutor v. Nyiramasuhuko et al*, IT-98-42-T, Decision on Pauline Nyiramasuhuko’s Extremely Urgent Motion for Exclusion of Evidence or Subsidiarily for Further Disclosure Regarding Witness DEDE’s Expected Testimony, 19 September 2006, para. 7.

Campbell's anticipated testimony is not based on any information obtained from her, it can neither be full nor comprehensive.

16. If the Prosecution, on the other hand, has not spoken to the witness as they profess in the summary that has been disclosed, then its notice to the Defence of the Witness' anticipated evidence is entirely based on conjecture and that would defeat the entire principle of notice upon which the Accused's fair rights are founded. It would be the ultimate mockery to the principle of notice and a flagrant disregard of the Accused's confrontational rights that a Prosecution should be allowed to bring evidence against an accused person that it is itself not aware of. Such a proposition has no basis in law or in logic. As stated earlier, the Prosecution must to know its case before it brings it to the Accused.
17. It does not suffice that other witnesses the Prosecution intends to call, namely Mia Farrow and Carole White, allege that Naomi Campbell told them that she received [a] diamond(s) from the Accused where the Witness herself has publicly denied such allegations. For purposes of putting the Accused on notice under Rule 66, thus enabling him to adequately prepare to confront the Witness, the evidence has to come from the Naomi Campbell herself.
18. Furthermore, the fact that Naomi Campbell's evidence was secured through a Subpoena does not absolve the Prosecution of its disclosure obligations vis-à-vis the Accused's fair trial rights, in particular the notice requirement and the attendant confrontational rights. While, admittedly, the Prosecution could not be compelled to disclose what they do not have,<sup>13</sup> that is however no license for dereliction of duty.
19. Since the issuance of a Subpoena against Naomi Campbell and the indication by her counsel of her willingness to cooperate with the court, there was nothing to stop the Prosecution from obtaining a statement from her so that they could properly fulfill their statutory obligations and afford the Accused his due rights under Article 17 of the Statute. Alternatively, there was nothing to stop them from obtaining the appropriate relief from the court to ensure that they could get a statement from the Witness.<sup>14</sup>

---

<sup>13</sup> The principle of *nemo tenetur ad impossibile*.

<sup>14</sup> A decision from Trial Chamber I makes it clear that a subpoena could be sought and issued in relation to investigations as well as court appearances and testimony. The Prosecution should have also requested a subpoena to interview Naomi Campbell, which would have then put them in a position to provide adequate notice to the Defence of her anticipated testimony. See, *Prosecutor v. Norman, Kondewa, Fofana*, SCSL-04-14-T, Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, 13 June 2006, para. 28.

20. Rather than proactively pursuing an interview with Naomi Campbell since the issuance of the subpoena and the indication from her counsel that she was willing to cooperate with the court, the Prosecution has chosen simply to speculate as to the content of her anticipated testimony, thus keeping the Accused in the dark, in violation its statutory obligation and the Accused's fair trial rights. The Defence submits that such breach of duty, in the interests of justice, should not be condoned. Condoning such conduct would violate the Accused's fair trial rights. The court cannot compromise the rights of the accused based on speculation.
21. Consequently, until such time as the Prosecution takes appropriate steps to remedy its breach, the evidence of Naomi Campbell must be stayed. Such an extension of time, rather than the complete exclusion of the evidence, it has previously been held, is the appropriate remedy.<sup>15</sup>
22. Furthermore, given the urgency of the matter, the Defence urges the Trial Chamber to exercise its discretion and issue an order for expedited filings.

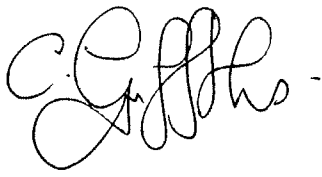
#### V. CONCLUSION

23. Given that the Prosecution has failed to comply with its disclosure obligations under Rule 66, thus jeopardising the Accused's fair trial rights under Article 17 of the Statute, the Defence respectfully requests the Trial Chamber to stay the hearing of the evidence of Naomi Campbell scheduled for 5 August 2010, until such a time as the Prosecution would have obtained and disclosed to the Defence a statement of Naomi Campbell's anticipated evidence.
24. Further, given the imminence of the scheduled date for the hearing of the evidence of Naomi Campbell, the Defence requests an order for an expedited filing schedule such that any Response must be filed by Tuesday, 3 August 2010 at noon, and any Reply must be filed by Wednesday, 4 August 2010 at noon, or otherwise as deemed appropriate by the Trial Chamber.

---

<sup>15</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-T, Decision on Objection to Question Put by Defence in Cross Examination of Witness TF1-227, 15 June 2005, paras. 40, 43; *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-2004-15-T, Decision on Defence Motion for an Order Directing the Prosecution to Effect Reasonably Consistent Disclosure, 18 May 2006, p. 4.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'C. Griffiths'.

---

**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**  
Dated this 30<sup>th</sup> day of July 2010  
The Hague, The Netherlands



## **Table of Authorities**

### **SCSL**

*Prosecutor v. Taylor*, SCSL-03-01-T-996, Decision on Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell, 30 June 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-968, Defence Response to Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell, 31 May 2010

*Prosecutor v. Norman, Kondewa, Fofana*, SCSL-04-14-T, Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena ad Testificandum to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, 13 June 2006

*Prosecutor v. Sesay, Kallon, Gbao*, SCSL-2004-15-T, Decision on Defence Motion for an Order Directing the Prosecution to Effect Reasonably Consistent Disclosure, 18 May 2006

*Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-T, Decision on Objection to Question Put by Defence in Cross Examination of Witness TF1-227, 15 June 2005

*Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-T, Decision on Joint Defence Motion on Disclosure of all Original Witness Statements, Interview Notes, and Investigator's Notes Pursuant to Rule 66 and/or 68, 4 May 2005

### **ICTR**

*Prosecutor v. Nyiramasuhuko et al.*, IT-98-42-T, Decision on Pauline Nyiramasuhuko's Extremely Urgent Motion for Exclusion of Evidence or Subsidiarily for Further Disclosure Regarding Witness DEDE's Expected Testimony, 19 September 2006

<http://www.unictr.org/Portals/0/Case/English/Nyira/decisions/190906.pdf>