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SCSL-03-01-T
(29616 - 29623)

29616



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: 3 August 2010

Case No.: SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEONE	
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THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC, WITH CONFIDENTIAL ANNEX A

**DEFENCE REPLY TO PROSECUTION RESPONSE TO
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
Ms. Sigall Horovitz

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. This is the Defence Reply to the Prosecution's Response to the Urgent Defence *Motion to Stay the Evidence Pending Disclosure of the Statement of Naomi Campbell*.¹ This Reply is filed within the expedited time limits as ordered by the Trial Chamber on 2 August 2010.²
2. The Defence submits that the Prosecution is attempting to circumvent its disclosure and notice obligations, having failed to take the necessary and available legal steps to ensure that a statement was taken from Naomi Campbell and provided to the Defence before her testimony commenced.
3. The Trial Chamber should grant the Defence Motion to stay the hearing of the evidence of Naomi Campbell until the Prosecution fulfils its Rule 66 obligations which impact on the fair trial rights of the Accused under Article 17.

II. Submissions

Obligations of Rule 66 Are Not Discretionary

4. The plain language of Rule 66 states that the Prosecution shall disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify. A statement must be taken before it can be served on the Defence. There is no exception for witnesses who are uncooperative or subpoenaed. Therefore in order to satisfy this Rule, the Prosecution must take a statement(s) from all witnesses it intends to call to testify.
5. The fact that Naomi Campbell has been uncooperative before and after the issuance of the subpoena³ does not remove the burden from the Prosecution to take a statement and serve it on the Defence if they want to call Naomi Campbell as a witness. The Prosecution could and should have requested a subpoena from the Trial Chamber to compel Naomi Campbell to submit to an interview. Then the Prosecution would have been able to fulfil its obligations and protect the fair trial rights of the Accused.

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1023, Urgent Defence Motion for Stay of Evidence Pending Disclosure of the Statement of Naomi Campbell, 30 July 2010 (“**Motion**”); *Prosecutor v. Taylor*, SCSL-03-01-T-1032, Prosecution Response to Urgent Defence Motion for Stay of Evidence Pending Disclosure of the Statement of Naomi Campbell, 3 August 2010 (“**Response**”).

² *Prosecutor v. Taylor*, SCSL-03-01-T-1026, Order for Expedited Filing, 2 August 2010.

³ Response, paras. 2 and 8.

6. The Prosecution cites language from *Prosecutor v. Brima et al*, which states that witness statements that are in the possession of the Prosecution must be disclosed.⁴ Of course, this is true, but it does not detract from the Prosecution's obligation to take a statement in order to fulfil its obligations in the first place. The fact that the Prosecution have been unable to take a witness statement from Naomi Campbell is not a justification to derogate the rights of the Accused as enshrined in Article 17.
7. The Trial Chamber cannot find that it is within the discretion or goodwill of the Prosecution to determine whether or not to take a statement from a witness that they intend to call to testify. To so find would completely undermine the purpose of Rule 66 disclosure, which is to give the Defence and the Accused adequate notice of the charges against him in order to properly prepare for cross-examination and the defence case in general.
8. The Defence cannot properly prepare for cross-examination based on speculation from the Prosecution as to what they believe Naomi Campbell is likely to say. The problem with such speculation was exemplified today, when the Defence received Rule 68 disclosure from the Prosecution that was contrary to their initial summary of Naomi Campbell's evidence.⁵
9. The Prosecution's reliance on the *Niyitegeka* Appeal Judgement is not useful.⁶ In that case the Defence complaint related to the form of the statement disclosed, which is different than the instant case where there is a complete lack of disclosure.

Naomi Campbell is not a Court witness

10. The Trial Chamber is not calling Naomi Campbell as a court witness.⁷ Had the Trial Chamber wanted to call Naomi Campbell as a witness it could have done so pursuant to Rule 85(A). The Trial Chamber issued a subpoena to Naomi Campbell at the Prosecution's request. The Prosecution have chosen to call Naomi Campbell to give evidence and thus it is incumbent upon them to fulfil their responsibilities; they could have opted not to call her and to rely on the evidence of Mia Farrow and Carole White instead. Thus the Prosecution bears

⁴ Response, para. 5.

⁵ See Rule 68 disclosure and summary in Confidential Annex A.

⁶ Response, para. 7. The fact that the original statements were not available to the Defence and thus could not be disclosed is not the same as this situation wherein the Prosecution have not served the Defence with any statements, original or otherwise.

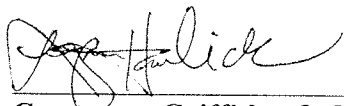
⁷ Response, para. 2.

the full responsibility of all matters relating to her testimony, including the Rule 66 obligation to serve a witness statement on the Defence.

III. Conclusion

11. The Trial Chamber must stay the hearing of the evidence of Naomi Campbell until the Prosecution is able to fulfill its Rule 66 obligations and protect the Article 17 rights of the Accused.

Respectfully Submitted,



for

Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 3rd Day of August 2010
The Hague, The Netherlands

Table of Authorities

SCSL

Prosecutor v. Taylor, SCSL-03-01-T-1023, Urgent Defence Motion for Stay of Evidence Pending Disclosure of the Statement of Naomi Campbell, 30 July 2010

Prosecutor v. Taylor, SCSL-03-01-T-1026, Order for Expedited Filing, 2 August 2010

Prosecutor v. Taylor, SCSL-03-01-T-1032, Prosecution Response to Urgent Defence Motion for Stay of Evidence Pending Disclosure of the Statement of Naomi Campbell, 3 August 2010



SPECIAL COURT FOR SIERRA LEONE

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CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

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Document Index Number: **1036**

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Indictment

Response

Reply

Correspondence

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Public with confidential Annex A Defence reply to Prosecution response to urgent Defence motion for stay of evidence pending disclosure of the statement of Naomi Campbell

Name of Officer:

Alhassan Fornah

Signed: