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SCSL-03-01-T
(32305-32311)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

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

Registrar: Binta Mansaray

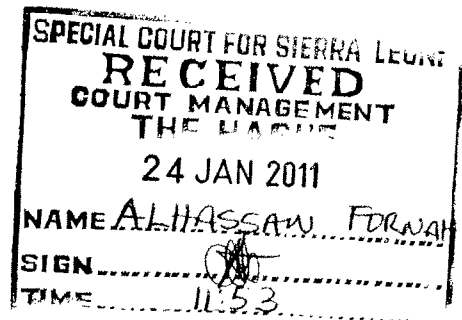
Case No.: SCSL-03-1-T

Date: 24 January 2011

PROSECUTOR

v.

Charles Ghankay TAYLOR



DECISION ON PUBLIC WITH ANNEXES A-H AND CONFIDENTIAL ANNEXES I-J DEFENCE
MOTION TO RECALL FOUR PROSECUTION WITNESSES AND TO HEAR EVIDENCE FROM THE
CHIEF OF WVS REGARDING RELOCATION OF PROSECUTION WITNESSES

Office of the Prosecutor:

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Counsel for the Accused:

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Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);
 SEISED of the “Public with Confidential Annexes A-H and Confidential Annexes I-J Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses”, filed on 17 December 2010 (“Motion”),¹ wherein the Defence requests the Trial Chamber to recall four Prosecution witnesses for further cross-examination in relation to the limited issue of the circumstances of their recent or impending relocations,² and further requests that pursuant to Rule 85(A)(iv) of the Rules of Procedure and Evidence (“Rules”) the Trial Chamber order Mr. Saleem Vahidy, Chief of the Witnesses and Victims Section (“WVS”), to testify³ on the basis that;

- (i) the purpose of the proposed testimony is to enable the Trial Chamber to more fully assess the credibility of the insider linkage witnesses, and to understand the Prosecution’s *modus operandi* in relation to the recruitment and inducement of witnesses;⁴
- (ii) as the Defence wishes to cross-examine these witnesses on matters that have only come to light this does not constitute the re-opening of the Defence case
- (iii) information pertaining to the relocation of these witnesses was not available to the Defence when they were cross-examined during the Prosecution case, and the Registry subsequently refused to disclose the information;⁵
- (iv) good cause exists given that the Defence is in possession of new information pertaining to the recent relocation of these witnesses and could not have obtained it before;⁶
- (v) as the recalling of the witnesses and Mr. Vahidy will take only approximately a week, and the Accused does not consider recalling these witnesses undue delay judicial economy is a secondary concern given the compelling circumstances;⁷

¹ SCSL03-01-T-1142.

² Motion, paras 1, 5, 28.

³ Motion, paras 1, 5, 28.

⁴ Motion, para. 18.

⁵ Motion, para. 3.

⁶ Motion, para. 22.

⁷ Motion, paras 23-25.

- (vi) refusal of the Trial Chamber to hear this evidence would be a clear violation of the Accused's right to a fair trial under Article 17 of the Statute of the Special Court ("Statute");⁸

NOTING that the Defence further requests that the Trial Chamber urgently issue an interim order prohibiting the parties and Mr. Vahidy from communicating with any of the recall witnesses before they appear in court, given the contentious nature of their anticipated evidence and alleged malfeasance of one of the parties;⁹

NOTING the "Public with Confidential Annex A Prosecution Response to Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses", filed on 10 January 2011 ("Response"),¹⁰ wherein the Prosecution opposes the Motion, submitting that:

- (i) it is untimely as it comes after the deadline of 24 September 2010 set by the Trial Chamber for the Defence to file any remaining motions, and as the Defence has been seized of this issue since the first Prosecution witness was called in January 2008 but waited until January 2009 to raise the issue with the Registry and did not pursue it again until October 2010;¹¹
- (ii) it amounts to a request to re-open the Defence case, and, as promises or disbursements to witnesses after their testimony are irrelevant the Defence has failed to address or meet the test for re-opening and has shown no compelling circumstances for re-opening the case, and such a re-opening would fly in the face of judicial economy;¹²
- (iii) the Motion defeats the purpose of the protective measures regime as the provision of information about the whereabouts of witnesses who have been relocated would result in an increased risk to those witnesses and any dependants;¹³

NOTING FURTHER the "Submission of the Registrar Pursuant to Rule 33(B) Regarding the Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS

⁸ Motion, para. 28.

⁹ Motion, paras 26-28.

¹⁰ SCSL-03-01-T-1147.

¹¹ Response, paras 3-5.

¹² Response, 6-13.

¹³ Response, para. 14.




Regarding Relocation of Prosecution Witnesses”, filed on 11 January 2011 (“Registrar’s Submission”), wherein the Registrar submits that;

- (i) the allegations that the WVS has been complicit in the Prosecution’s use of relocation as an inducement for witness cooperation and/or testimony, made solely on the basis of a statement by a Defence investigator, are unfounded and extremely serious;¹⁴
- (ii) had the Defence exercised due diligence, and legitimately considered the issue to be of such a serious nature, the matter should have been brought to the attention of the Trial Chamber before the close of the Defence case, as the Motion in fact contains the same information requested by the Defence from WVS on 4 October 2010;¹⁵
- (iii) compelling the Registry to disclose sensitive information about relocation will compromise the confidentiality attached to these relocations and therefore adversely impact and jeopardize safety and security measures taken for witnesses who are at risk on account of their testimonies,¹⁶ and that
- (iv) if the Trial Chamber decides that these threat assessments be made available, the Registrar requests that they be kept strictly confidential;¹⁷

NOTING ALSO the “Public with Annexes A and B Defence Reply to Prosecution Response to and Registrar’s Submissions Re Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence From the Chief of WVS Regarding Relocation of Prosecution Witnesses”, filed on 17 January 2011 (“Reply”);¹⁸

COGNISANT of the provisions of Articles 16 and 17 of the Statute and Rules 34, 54, 73(A) and 85 of the Rules;

RECALLING that on 13 September 2010, the Trial Chamber ordered the Defence to file all remaining motions by 24 September 2010;¹⁹

¹⁴ Registrar’s Submission, paras 4-6.

¹⁵ Registrar’s Submission, para. 7.

¹⁶ Registrar’s Submission, paras.15-18.

¹⁷ Registrar’s Submission, para. 19.

¹⁸ SCSL-03-01-T-1159.

¹⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 13 September 2010, p. 48323.





CONSIDERING that while the Defence first contacted the Chief of WVS for information regarding post-testimony benefits of certain witnesses in January 2009, it only followed up this issue in October 2010;

FINDING that the Defence could have, with due diligence, brought this issue to the attention of the Trial Chamber prior to the deadline set for the filing of motions of 24 September 2010, or in any event, before the close of its case on 12 November 2010;

FINDING therefore that the Motion is untimely as it was filed after the deadline set by the Trial Chamber for the filing of additional motions, and the Defence has presented no new information that would justify its filing of the motion after this deadline;

RECALLING further that this Trial Chamber has previously held that before leave to recall a witness can be granted to a party, a Trial Chamber must consider whether the party has demonstrated that good cause exists to justify recalling the witness, and in so doing, should take into account the purpose of the proposed testimony; the party's justification for not cross-examining witnesses on these matters when they originally testified; the right of the accused to be tried without undue delay; judicial economy,²⁰ and whether the failure to cross-examine the witness would violate the fair-trial rights of the accused;²¹

RECALLING further that this Trial Chamber has held that leave to recall a witness should only be granted in the most compelling circumstances;²²

CONSIDERING that Article 16(4) of the Statute provides:

The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children. [emphasis added]

CONSIDERING ALSO that Rule 34(A) of the Rules further clarifies the role of the WVS, providing:

²⁰ *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Decision on Joint Defence Motion for Leave to Recall Witness TF1-023, 25 October 2005 ("AFRC Recall Decision"), paras 13-15. See also *Prosecutor v. Bagosora*, ICTR-98-41-T, Decision on the Prosecution Motion to Recall Witness Nyanjwa ("First Bagosora Recall Decision"), 29 September 2004, para. 6; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, para. 2; *Prosecutor v. Gotovina et al.*, Decision on Prosecution Motion to Recall Marko Rajčić, 24 April 2009, para. 10.

²¹ AFRC Recall Decision, paras 22-24.

²² AFRC Recall Decision, para. 16, First Bagosora Recall Decision, para. 6.

(A) The Registrar shall set up a Witnesses and Victims Section which, in accordance with the Statute, the Agreement and the Rules, and in consultation with the Office of the Prosecutor, for Prosecution witnesses, and the Defence Office, for Defence witnesses, shall, amongst other things, perform the following functions with respect to all witnesses, victims who appear before the Special Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

- (i) Recommend to the Special Court the adoption of protective and security measures for them;
- (ii) Provide them with adequate protective measures and security arrangements and develop *long and short-term plans* for their protection and support; [*emphasis added*]
- (iii) Ensure that they receive relevant support, counselling and other appropriate assistance, including medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault and crimes against children.

CONSIDERING that relocation is a “long term” measure for the protection of a witness and is a non-judicial measure that may be ordered by the Registrar pursuant to Article 16 of the Statute and Rule 34 of the Rules;

CONSIDERING that although the witnesses that the Defence seeks to recall are all “insider” witnesses, and that information regarding post-testimony benefits, including the hope of relocation, may have an impact on their credibility,²³ the Defence had ample opportunity to raise issues of relocation during the cross-examination of the four witnesses in question and in any event before the Defence closed its case;

CONSIDERING MOREOVER that the disclosure of sensitive information relating to the relocation of the concerned witnesses could jeopardise the safety of the witnesses and or their dependants;

CONSIDERING that the Trial Chamber has no intention of calling Mr. Vahidy as a witness of the court, as such discretion should only be “carefully and sparingly exercised”,²⁴ and is not warranted in the circumstances;

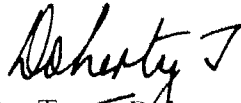
CONSIDERING further that the request to call Mr. Vahidy is in effect a request to re-open the Defence case, for which the Defence has not sought leave;

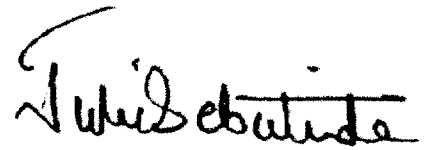
²³ *Prosecutor v. Martić*, IT-95-11-T, Trial Judgement, 12 June 2007, paras 36-38.
²⁴ *R. v John Marcus Roberts*, (1985) 80 Cr. App. R. 89.

HEREBY DISMISSES THE MOTION.

Done at The Hague, The Netherlands, this 24th day of January 2011.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


Justice Julia Sebutinde

