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SCSL-03-01-T
(32410-32416)

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THE SPECIAL COURT FOR SIERRA LEONE

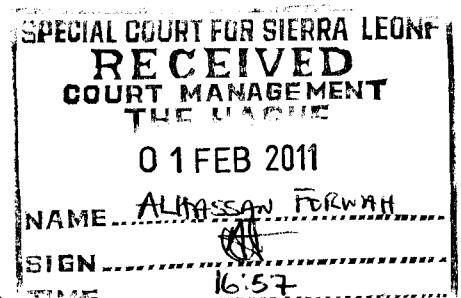
Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 1 February 2011

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION
SEEKING LEAVE TO APPEAL THE DECISION ON DEFENCE REQUEST
FOR A STATUS CONFERENCE PURSUANT TO RULE 65BIS AND DEFENCE MOTION
FOR STAY OF PROCEEDINGS PENDING RESOLUTION OF OUTSTANDING ISSUES**

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood
Ms. Logan Hambrick, Legal Assistant

I. INTRODUCTION

1. This is the Defence Reply to the Prosecution Response¹ to the Defence *Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues*.²
2. Assuming its usual position of moral superiority, the Prosecution in paragraph 2 of its Response chastises the Defence for its “impertinent” challenge to a decision which the Defence submits is flawed in law and principle. This attempt to distract the Trial Chamber from the real and significant issues at hand in the Motion is misplaced and shows the great lengths the Prosecution will go to belittle the genuine concerns of the Defence about the integrity and fundamental fairness of the proceedings. It cannot be said that by seeking leave to appeal a decision of the Trial Chamber in accordance with the procedure laid out in the Rules of Procedure and Evidence of this Court (Rule 73(B)), the Defence is “asserting that it is free to ignore orders and deadlines of the Trial Chamber”.³ Rather the decision by the Defence to seek leave to appeal a decision which detrimentally affects its client and which amounts to exceptional circumstances resulting in irreparable prejudice was properly lodged before the Trial Chamber.

II. PROCEDURAL HISTORY

3. The procedural history highlighted in paragraphs 3-4 of the Response shows that the Defence made every effort to adhere to the Scheduling Order set by the Trial

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1172, Prosecution Response to Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 27 January 2011 (“**Response**”).

² *Prosecutor v. Taylor*, SCSL-03-01-T-1155, Public with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 14 January 2011 (“**Motion**”), seeking leave to appeal *Prosecutor v. Taylor*, SCSL-03-01-T-1154, Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 12 January 2011 (“**Decision**”), which dismissed *Prosecutor v. Taylor*, SCSL-03-01-T-1144, Urgent and Public Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 10 January 2011 (“**Motion for Stay of Proceedings**”).

³ Response, para. 2.

Chamber on 22 October 2010. Indeed, the time frame allocated was reasonable and realistic when proposed by the Defence and set by the Trial Chamber. However, when the Defence was faced with a number of events arising *ex improviso*,⁴ rather than attempt to postpone the submission of its Final Brief, the Defence made every effort to deal with events within the contemplated time frame.⁵ Only when it was faced with the revelations in the Cables,⁶ on top of the cumulative effect of effort invested in addressing the other then-outstanding motions, certification requests and appeals, did the Defence request the Trial Chamber to revise the Scheduling Order. The Prosecution's suggestion that the Defence somehow acted in an untoward manner by filing its request for a stay or an extension only four days before the final brief deadline⁷ is unfair. It completely ignores the well-documented fact that the Defence attempted to file motions during the Judicial Recess and was denied by the Registrar and the President of the Court; the Defence conscientiously filed its Motion for Stay on the first day back from the recess.⁸

4. The Prosecution's retrospective analysis at paragraph 5 of the Response, regarding the subsequent dismissal of many of the then-outstanding issues, does not change the fact that the substance of the issues was and remains relevant to fundamental issues affecting the integrity and impartiality of the proceedings. It should also be noted that the Defence has sought leave to appeal the Trial Chamber's decisions with respect to the recall of witnesses on the issue of relocation and with respect to an investigation into US Government sources within the Trial Chamber, the Prosecution and the Registry.⁹

⁴ Response, para. 4,

⁵ This is evident from the Defence's pre-Wikileaks position that the Defence would not seek an extension of time based on the Contempt Appeal alone, which is noted at paragraph 4 of the Response.

⁶ Exhibits D-481 and D-482.

⁷ Response, para. 4.

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T-1143, Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables, 10 January 2011, para. 6.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T-1178, Defence Motion Seeking Leave to Appeal the Decision on Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry, 31 January 2011; *Prosecutor v. Taylor*, SCSL-03-01-T-1173, Defence Motion Seeking Leave to Appeal the Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 27 January 2011.

5. Also at paragraph 5, the Prosecution posits that the Accused has waived his right to file a final brief. This is not an issue ripe for adjudication in the present motion, nor is it an accurate representation of either the Trial Chamber or the Defence's position as stated at the Status Conference on 20 January 2011.
6. In short, the procedural history makes it evident that the Defence's request for a stay of proceedings was legitimate and was neither dilatory nor disingenuous.

III. SUBMISSIONS

7. Much of the Prosecution Response, especially that at paragraph 16, is an argument going to the merit's of the Defence's Motion for Stay, rather than the instant motion seeking leave to appeal. Perhaps the Prosecution is making up for its inability to respond to the original motion. In any event, the Prosecution's arguments at paragraph 16 should not be considered by the Trial Chamber at this stage.

Exceptional Circumstances

8. At paragraph 7 of its Response, the Prosecution argues that given that the Defence labeled its Motion for Stay as "Urgent", the swift and conclusory denial of the Motion cannot amount to exceptional circumstances. Certainly, the Defence assumed, indeed requested, the Trial Chamber to act expeditiously given the short time frame before final briefs were due. The Defence did not anticipate that the Trial Chamber would choose not to order an expedited filing schedule for responses and replies, which would have allowed the parties to thoroughly indicate and develop their respective positions.¹⁰ Rule 7bis, referred to by the Prosecution, was only applicable to one aspect of the Motion for Stay (the alternative request for an extension of time) but not to the core request for a stay of proceedings. Furthermore, in the Motion, the Defence's argument was not focused on the amount of time the Trial Chamber took to reach its conclusion, but rather the fact that the resulting decision showed that the

¹⁰ The Defence notes that the Trial Chamber can, of its own initiative, order expedited filing schedules, even where a filing is not labeled "urgent". *Prosecutor v. Taylor*, SCSL-03-01-T-1176, Order for Expedited Filing, 31 January 2011.

Trial Chamber had not adequately considered all of the pertinent issues, perhaps in its haste to issue a decision.¹¹

9. The Defence notes that in paragraphs 7 and 8 of its Response, the Prosecution unduly focuses on the Defence's alternative request for an extension of time, conveniently ignoring the Defence's primary request for a stay of proceedings. This mischaracterization undermines the force of the Defence's argument.
10. The Prosecution's reliance on decisions by the ICTY Trial Chamber in *Popovic et al* with regard to the Trial Chamber's discretion under the SCSL's Rule 73(B) is inapposite as the standard for leave to appeal at the ICTY is framed in terms of "fairness and expeditiousness" rather than "exceptional circumstances and irreparable prejudice".
11. At paragraphs 9 and 11, the Prosecution attempts to sever the impugned Decision from the underlying facts and circumstances which premised the original Motion for Stay. This creates a false dichotomy. Furthermore, the subsequent dismissal of the Recall Motion and the Contempt Appeal does not lead to the conclusion suggested by the Prosecution (that they did not raise issues of fundamental importance. Rather, the Recall Motion was dismissed primarily on the basis of timing and the Contempt Appeal was dismissed primarily on the basis that the Appeals Chamber cannot review the Trial Chamber's non-judicial decisions made under Rule 77(C)(iii).
12. At paragraph 12, the Prosecution conveniently relegates crucial matters of credibility and contempt to matters which are collateral and ancillary to the proceedings. Such an argument can only suggest that the Prosecution is trying to minimize any damage done to it with respect to matters affecting the credibility of its witnesses and alleged contemptuous nature of its investigations and prosecution.

Irreparable Prejudice

13. Irreparable prejudice arising from a refusal the Defence's Motion for Stay is self-evident, as more time cannot be given to file the final brief at the appeals stage. Such prejudice is not brought about by the Accused, but would be brought by the Trial Chamber's dismissal of the Motion of Stay and this instant request for leave to appeal. The Defence has adequately laid out its position with respect to the

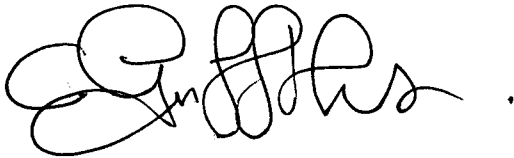
¹¹ Motion, para. 2.

sufficiency of ancillary filings. Contrary to the Prosecution's stated opinion at paragraph 15, the fact that the Accused could respond to the Prosecution's brief and/or make final arguments as scheduled is not the same as the Accused having sufficient time and a complete set of evidence from which to argue its final written submissions.

IV. CONCLUSION AND RELIEF REQUESTED

14. Consequently, the Defence request for leave to appeal meets the conjunctive requirements for leave to appeal and thus leave should be granted.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 1st Day of February 2011,
The Hague, The Netherlands

Table of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-1178, Defence Motion Seeking Leave to Appeal the Decision on Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry, 31 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1176, Order for Expedited Filing, 31 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1173, Defence Motion Seeking Leave to Appeal the Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 27 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1172, Prosecution Response to Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 27 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1155, Public with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 14 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1154, Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 12 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1144, Urgent and Public Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 10 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1143, Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables, 10 January 2011