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THE SPECIAL COURT FOR SIERRA LEONE

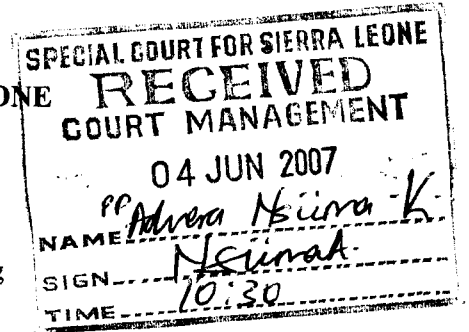
In Trial Chamber II

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

Registrar: Mr. Herman von Hebel, Acting Registrar

Date: 4 June 2007

Case No.: SCSL-2003-01PT



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE APPLICATION FOR LEAVE TO APPEAL THE 29 MAY 2007
"DECISION ON URGENT AND PUBLIC DEFENCE MOTION
REQUESTING LEAVE FOR CHARLES GHANKAY TAYLOR
TO GIVE AN UN-SWORN STATEMENT FROM THE DOCK"**

Office of the Prosecution

Ms. Brenda Hollis
Ms. Wendy van Tongeren
Ms. Ann Sutherland
Ms. Shyamala Alagendra
Mr. Alain Werner
Ms. Leigh Lawrie

Counsel for Charles Taylor

Mr. Karim A. A. Khan

I. Introduction

1. The Defence for Charles Taylor (“Defence”) seek leave to appeal the Trial Chamber’s 29 May 2007 “Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement from the Dock” (“Impugned Decision”).¹
2. The Defence submit that the Trial Chamber’s decision is erroneous because it failed to recognize that the Defence were not asking to make an opening statement following the Prosecution’s opening statement, but rather an unsworn statement.² Furthermore, if Mr. Taylor is not able to give an unsworn statement now, before the presentation of Prosecution evidence, this prejudice can not be cured at a later point in the proceedings.

II. Legal Basis for Appeal

3. The Defence submit that these grounds warrant leave to appeal pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“the Rules”) of the Special Court for Sierra Leone (“SCSL”), which states:

“Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal...”³

The Trial Chamber’s decision in *Prosecutor v. Sesay et al*, held that this two stage test sets a “high threshold” and “is conjunctive and not disjunctive.”⁴ Furthermore, the Trial Chamber held that “‘Exceptional circumstances’ may exist depending upon particular facts and

¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-264, Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement from the Dock, 29 May 2007.

² Impugned Decision, pg. 3.

³ Special Court for Sierra Leone Rules of Procedure and Evidence, as amended on 24 November 2006, Rule 73(B).

⁴ *Prosecutor v. Sesay et al*, SCSL-04-15-T-401, Decision on Application for Leave to Appeal the Ruling (2 April 2005) on Sesay – Motion Seeking Disclosure of the Relationship Between Government Agencies of the United States of America and the Office of the Prosecutor, 15 June 2005, para. 17, citing *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-362, Decision on Application by the Second Accused for Leave for Interlocutory Appeal Against the Majority Decision of the Trial Chamber of 9 December 2004 on Issue of Urgent Concern to the Accused Morris Kallon, 2 May 2005 (“Sesay Appeal Decision”).

circumstances, where, for instance...the course of justice might be interfered with”.⁵ This is in line with the Trial Chamber’s ruling that “[a]n interlocutory appeal ... does not lie as of right, and the conjunctive conditions of “exceptional circumstances” and “irreparable prejudice” must be met before the Trial Chamber’s discretion can be exercised”.⁶

III. Exceptional Circumstances

4. The Defence respectfully submit that it is an exceptional circumstance when the Trial Chamber, in issuing its decision, makes a determination that does not address the request made by the Defence motion. The Defence wish for Mr. Taylor to give an unsworn statement from the dock before the presentation of the Prosecution evidence. The Defence do not, at this point, wish to give an opening statement as provided for by Rule 84 of the Special Court for Sierra Leone’s Rules of Procedure and Evidence (“Rules”).⁷
5. However, in its determinative paragraphs, the Impugned Decision finds it “untenable” to allow the Defence to make an opening statement following the Prosecution opening statement.⁸ The Impugned Decision does not actually comment on the issue at hand – whether or not it is possible for Mr. Taylor to give an unsworn statement following the Prosecution opening, which does not impact the ability of his counsel to give a traditional opening statement before the start of the Defence case.
6. Furthermore, the Defence respectfully submit that Honourable Justice Julia Sebutinde misspoke when she stated during the Pre-Trial Conference on 7 May 2007, regarding the possibility of the Defence making an opening statement following the Prosecution opening statement, that:

⁵ Sesay Appeal Decision, para. 16, citing *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-357, Decision on Application by the Second Accused for Leave Ruling of the 3rd of February, 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005, para. 26.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-PT-164, Joint Decision on Motions On Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence, 23 January 2007 (“Joint Decision”).

⁷ *Prosecutor v. Taylor*, SCSL-03-01-PT-262, Urgent and Public Reply to the “Prosecution’s Response to ‘Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock’, served 26 May 2007”, 28 May 2007, para. 3 (“Reply”). As evident from its Response, the Prosecution seemed to share the same misunderstanding. See *Prosecutor v. Taylor*, SCSL-03-01-PT-256, Prosecution’s Response to ‘Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock’, 25 May 2007, para. 5.

⁸ Impugned Decision, pgs. 3, 4.

“This has not been the practice and, under our Rules, which I think are very clear, each party makes an opening statement when their turn comes, at the beginning of their case [...] That is the practice under the Rules and that is the practice we wish to observe.”⁹

7. In fact, when the RUF case started on 5 July 2004, Mr. Issa Sesay, in effect, gave a short unsworn statement before the Trial Chamber.¹⁰ Yet when the RUF Defence case started on 2 May 2007, counsel for Mr. Issa Sesay gave a traditional opening statement in accordance with Rule 84.
8. The Defence submit that the course of justice will be interfered with if the Trial Chamber does not use its discretion to allow Mr. Taylor to give an unsworn statement from the dock before the presentation of the Prosecution evidence. Indeed, as the Defence previously submitted, allowing Mr. Taylor to give an unsworn statement from the dock is in the interests of justice.¹¹

IV. Irreparable Prejudice

9. Not allowing Mr. Taylor to give an unsworn statement before the presentation of Prosecution evidence would cause irreparable prejudice. The prejudice cannot be rectified later, because the opportunity will have been lost. As the Defence have stated,

“Mr. Taylor would be stifled for too long, and far too unfairly, if he is not allowed to give an unsworn statement subsequent to the Prosecutor’s opening statement. Given the gravity of the allegations, an accused must, in the respectful submission of the Defence, be allowed to state his position, prior to the presentation of evidence, in open court should he request it.”¹²

10. The Defence therefore submit that the prejudice caused by the Impugned Decision meets the threshold of Rule 73(B). As the Appeals Chamber has ruled:

⁹ Impugned Decision, pg. 3 (quoting *Prosecutor v. Taylor*, SCSL-03-01-PT, Transcript of Pre-Trial Conference of 7 May 2007, pg. 38, lns. 24-29).

¹⁰ See *Prosecutor v. Sesay, Kallon, Gbao*, Transcript, 5 July 2004, pgs. 59-71.

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-244, Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock, 18 May 2007, paras. 7-10 (“Motion”).

¹² Motion, para. 12.

“the underlying rationale for permitting such appeals is that certain matters cannot be cured or resolved by final appeal against judgement. However, most interlocutory decisions of a Trial Chamber will be capable of effective remedy in a final appeal where the parties would not be forbidden to challenge the correctness of interlocutory decisions which were not otherwise susceptible to interlocutory appeal in accordance with the Rules”.¹³

11. Given that the prejudice to the Defence can only be effectively remedied at this stage in the proceedings, the present request is clearly in compliance with the underlying rationale for permitting interlocutory appeals.

IV. Conclusion

12. Accordingly, for the reasons adumbrated above the Defence respectfully requests the Trial Chamber to certify the Defence Application for Leave to Appeal the 29 May 2007, “Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement from the Dock”.

Respectfully submitted,



Karim A. A. Khan

Lead Counsel for Mr. Charles Taylor

Dated this 4th of June 2007

¹³ *Prosecutor v. Norman et al.*, SCSL-04-14-T-319, Decision on Prosecution Appeal Against the Trial Chamber Decision of August 2004 Refusing Leave to File an Interlocutory Appeal, Appeals Chamber, 17 January 2005, para. 29.

Table of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-PT-164, Joint Decision on Motions On Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence, 23 January 2007

Prosecutor v. Taylor, SCSL-03-01-PT-244, Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock, 18 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-256, Prosecution's Response to 'Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock', 25 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-262, Urgent and Public Reply to the "Prosecution's Response to 'Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock', served 26 May 2007", 28 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-264, Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement from the Dock, 29 May 2007

Other Special Court Cases

Prosecutor v. Sesay, Kallon, Gbao, SCSL-04-15-T-401, Decision on Application for Leave to Appeal the Ruling (2 April 2005) on Sesay – Motion Seeking Disclosure of the Relationship Between Government Agencies of the United States of America and the Office of the Prosecutor, 15 June 2005

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