

I. INTRODUCTION

1. Mr. Karim Khan, as lead defence counsel for the Accused, filed 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.’”¹ The Prosecution files its response pursuant to Rule 7 of the Rules of Procedure and Evidence (“Rules”).
2. The Defence Application advances two grounds in support of its submission, principally asserting: (1) that the Trial Chamber’s decision is erroneous because it failed to recognise that the Defence were not asking to make an opening statement, but rather an unsworn statement; and (2) that if the Accused is not able to give an unsworn statement now, before the presentation of Prosecution evidence, this prejudice cannot be cured at a later point in the proceedings.² The Defence 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.”³
3. For the reasons that follow, the Prosecution respectfully submits that the Application fails to meet the threshold requirements for leave to appeal and the Application, therefore, should be denied.

II. TEST FOR GRANTING LEAVE TO APPEAL

4. Rule 73(B) does not confer a general right of appeal, but provides that leave to appeal may be granted by the Trial Chamber only in cases where the conjunctive conditions of exceptional circumstances and irreparable prejudice to a party are both satisfied.⁴

¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-276, 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” (“Application”), filed on 4 June 2007. Prosecution received electronic copy of same on 5 June 2006 and hard copy on 6 June 2007.

² Application, para. 2.

³ Application, para. 4.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-PT-249, Decision on Defence Application for Leave to Appeal the 25 April 2007 “Decision on Defence Motion Requesting Reconsideration of ‘Joint Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence, Dated 23 January’” (“Reconsideration Decision”), filed 22 May 2007, page 2. See also *Prosecutor v. Sesay et al.*, SCSL-04-15-T-362, Decision on Application by the Second Accused for Leave for

5. This Trial Chamber previously considered that:

the overriding legal consideration in respect of an application of this nature is that the applicant's case must reach a level nothing short of exceptional circumstances and irreparable prejudice, having regard to the restrictive nature of Rule 73(B) and the rationale that criminal trials must not be heavily encumbered and, consequently, unduly delayed by interlocutory appeals.⁵

6. Further, the Appeals Chamber has ruled that:

In this Court, the procedural assumption is that trials will continue to their conclusion without delay or diversion caused by interlocutory appeals on procedural matters, and that any errors which affect the final judgement will be corrected in due course by this Chamber on appeal.⁶

A. Exceptional circumstances

7. According to the jurisprudence of the Court, no comprehensive or exhaustive definition of "exceptional circumstances" exists; it depends on, and varies with, the circumstances of each case.⁷ Exceptional circumstances may exist where, for instance:

"...the question in relation to which leave to appeal is sought is one of general principle to be decided for the first time ... is one that raises serious issues of fundamental legal importance to the Special Court for Sierra Leone, in particular, or international criminal law, in general, ..."⁸

8. The existence of "exceptional circumstances" is not confined to situations where the proposed appeal point is one of general principle or fundamental importance. In determining whether or not "exceptional circumstances"

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, para. 17 (iv).

⁵ Reconsideration Decision, page 3, citing *Prosecutor v. Sesay et al.*, SCSL-04-15-PT-14, Decision on the Prosecutions Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution's Motion for Joinder, 13 February 2004. See also *Prosecutor v. Brima et al.*, SCSL-04-16-T-483, Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 of 31 March 2006, 4 May 2006, page 2; *Prosecutor v. Sesay et al.*, Decision on Prosecution Application for Leave to File an Interlocutory Appeal Against Decision on Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT, 1 June 2004, para. 21.

⁶ Reconsideration Decision, page 3, citing *Prosecutor v. Norman et al.*, SCSL-04-14-AR73, Decision on Amendment of the Consolidated Indictment, App. Ch., 16 May 2005, para. 43.

⁷ *Prosecutor v. Sesay et al.*, Decision on Defence Applications for Leave to Appeal Ruling of the 3rd of February, 2005 on the Exclusion of Statements of Witness TF1-141 ("*Sesay Decision*"), 28 April 2005, para. 25.

⁸ *Sesay Decision*, para. 26.

exist, the Court should consider the realities of the particular situation, and the practical consequences of granting or not granting leave to appeal in a particular case.

B. Irreparable prejudice

9. “Irreparable prejudice” exists where the matter “cannot be cured or resolved by final appeal against judgement.”⁹

III. SUBMISSIONS

10. The Defence assertion that the Decision fails to consider “the issue at hand”¹⁰ does not meet the threshold requirement for “exceptional circumstances.” The Prosecution submits that the fact that a party seeking to bring an interlocutory appeal alleges an error of law in the impugned decision does not of itself constitute an exceptional circumstance for the purposes of Rule 73(B).¹¹
11. In the original Defence Motion¹² the Accused set out the grounds on which he sought to make an unsworn statement¹³ and the Prosecution set out in its response the basis on which it opposed the Defence Motion.¹⁴ The Prosecution adopts the arguments made in the Response regarding the fact that the Accused’s request to make an unsworn statement is without foundation. Further, the denial of the request for the Accused to address the

⁹ *Prosecutor v. Norman et al*, SCSL-03-01-319, Decision on Prosecution Appeal Against the Trial Chamber’s Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal, 17 January 2005.

¹⁰ Application, para. 5.

¹¹ “[T]he probability of an erroneous ruling by the Chamber does not, of itself, constitute “exceptional circumstances” for the purpose of Rule 73(B) application”: see *Prosecutor v. Norman et al*. SCSL-04-14-T-669, Decision on Application by First Accused for Leave to Appeal Against the Decision on their Motion for Extension of Time to Documents pursuant to Rule 92bis,” 18 July 2006. *Prosecutor v. Norman et al*. SCSL-04-14-T-643, Decision on Motions by the First and Second Accused for Leave to Appeal the Chamber’s Decision on their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone,” 28 June 2006, para. 11; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-401, Decision on Application for Leave to Appeal the Ruling (2nd May 2005) On Sesay Motion Seeking Disclosure of the Relationship Between Governmental Agencies of the United States of America and the Office of the Prosecutor, 15 June 2005, para. 20.

¹² *Prosecutor v. Taylor*, SCSL-03-01-PT-244, Defence Motion Requesting Leave For Charles Ghankay Taylor To Give An Unsworn Statement From The Dock, filed on an urgent basis on 18 May 2007 (“Defence Motion”).

¹³ Defence Motion, paras. 4, 7, 8 & (.

¹⁴ *Prosecutor v. Taylor*, SCSL-03-01-PT-244, Prosecution’s Response to “Defence Motion Requesting Leave For Charles Ghankay Taylor To Give An Unsworn Statement From The Dock”, filed on 25 May 2007 (“Response”).

Trial Chamber at this point in the trial, either via an unsworn statement or an opening statement, does not affect his right to a fair trial. No irreparable prejudice results from the Decision. The Accused will have the opportunity to address the Chamber, either himself giving evidence under oath, or his legal representatives or himself acting as counsel, making an opening statement or proper arguments on issues, pursuant to the Rules. He has no right to more.

12. The Accused has not met the applicable test set out above. The Accused has failed to show that exceptional circumstances exist and that irreparable prejudice would result by denial of the opportunity to address the Trial Chamber at this point in the proceedings, either through an unsworn statement or an opening statement.

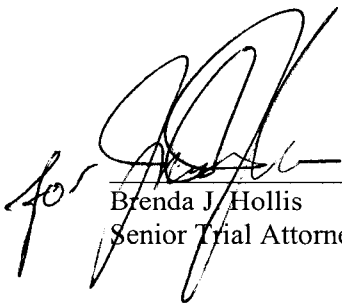
IV. CONCLUSION

13. For the reasons stated above, the Prosecution respectfully requests that the Trial Chamber deny the Application.

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15 June 2007

For the Prosecution,



Brenda J. Hollis
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LIST OF AUTHORITIES

SCSL*Prosecutor v. Taylor – SCSL-03-01*

Prosecutor v. Taylor, SCSL-03-01-PT-244, Defence Motion Requesting Leave For Charles Ghankay Taylor To Give An Unsworn Statement From The Dock, filed on an urgent basis on 18 May 2007.

Prosecutor v. Taylor, SCSL-03-01-PT-244, Prosecution's Response to "Defence Motion Requesting Leave For Charles Ghankay Taylor To Give An Unsworn Statement From The Dock", filed on 25 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-276, 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", filed on 4 June 2007.

Prosecutor v. Taylor, SCSL-03-01-PT-249, Decision on Defence Application for Leave to Appeal the 25 April 2007 "Decision on Defence Motion Requesting Reconsideration of 'Joint Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence, Dated 23 January", filed 22 May 2007.

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Prosecutor v. Brima et al., SCSL-04-16-T-483, “Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 of 31 March 2006”, 4 May 2006.

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Prosecutor v. Norman et al. SCSL-04-14-T-669, Decision on Application by First Accused for Leave to Appeal Against the Decision on their Motion for Extension of Time to Documents pursuant to Rule 92bis,” 18 July 2006.