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SCSL-03-01-T
(14490-14492)

14490



SPECIAL COURT FOR SIERRA LEONE

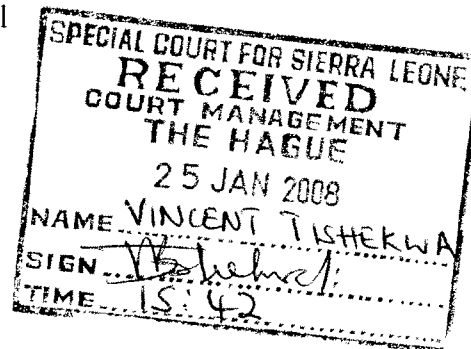
TRIAL CHAMBER II

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

Registrar: Mr. Herman von Hebel

Case No.: SCSL-03-1-T

Date: 25 January 2008



PROSECUTOR

v.

Charles Ghanky TAYLOR

DECISION ON PROSECUTION MOTION FOR ADMISSION OF PART OF THE PRIOR EVIDENCE
OF TF1-362 & TF1-371 PURSUANT TO RULE 92 *ter*

Office of the Prosecutor:

Brenda Hollis
Nicolas Koumjian
Leigh Lawrie

Defence Counsel for Charles G. Taylor:

Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Prosecution Motion for Admission of Part of the Prior Evidence of TF1-362 & TF1-371 Pursuant to Rule 92ter,” filed on 14 December 2007 (“Motion”),¹ wherein the Prosecution requests the Trial Chamber to admit into evidence portions of prior trial transcripts and related exhibits given by Witnesses TF1-362² and TF1-371³ and to limit examination-in-chief and cross-examination of the two witnesses to “relevant questions not unduly cumulative to the testimony in the prior trial transcripts,”⁴ and submits that the underlying purpose of Rule 92ter required that an objecting party show “good cause” for any objections raised to the admission of evidence raised under this Rule;⁵

NOTING the “Defence Response to Prosecution Motion for Admission of Part of the Prior Evidence of TF1-362 & TF1-271 Pursuant to Rule 92ter,” filed on 14 January 2008 (“Response”),⁶ wherein the Defence objects to the admission of prior trial transcripts and related exhibits of Witnesses TF1-362 and TF1-371 and requests that both TF1-362 and TF1-371 testify on all aspects of their statements *viva voce*⁷ with no limits imposed on cross-examination;⁸

NOTING the “Reply to Defence Response to Prosecution Motion for Admission of Part of the Prior Evidence of TF1-362 & TF1-371 Pursuant to Rule 92ter,” filed on 18 January 2008 (“Reply”),⁹ wherein the Prosecution submits that requiring the Defence to show good cause for its objection under Rule 92ter would ensure that proceedings are not unilaterally obstructed¹⁰ and that the judicious use of the Rules regarding the various methods of evidence presentation is a valid prosecutorial concern;¹¹

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and of Rules 89 and 92ter of the Rules of Procedure and Evidence (“Rules”);

NOTING that Rule 92ter of the Rules relates to the admission of prior witness statements or trial transcripts into evidence and provides as follows:

With the agreement of the parties, a Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

¹ SCSL03-01-T-375.

² Excerpts of testimony of Witness TF1-362 from transcripts of 20, 22, 25 and 26 April 2005, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL04-15-T, as contained in Annex A to the Motion; RUF Exhibit No.25, as contained in Annex B to the Motion.

³ Excerpts of testimony of Witness TF1-371 from transcripts of 20, 21, 24, 28, 31 July 2006 and 1, 2 August 2006, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL04-15-T, as contained in Annex C to the Motion; RUF Exhibit Nos. 6, 9, 32 (in part), 33 (in part), 35 (in part), 36 (in part), 39, 40, 81, 82, 83, 84B, 137, 144, 185-189, as contained in Annex D to the Motion.

⁴ Motion, para. 19.

⁵ Motion, para. 14.

⁶ SCSL03-01-T-391. By Decision SCSL03-01-392, the Chamber extended the time limits for filing of the Response.

⁷ Response, para. 5.

⁸ Response, para. 13-15.

⁹ SCSL03-01-T-395. By Decision SCSL03-01-392, the Chamber extended the time limits for filing of the Reply.

¹⁰ Reply, para. 5.

¹¹ Reply, para. 8.

- (i) the witness is present in court;
- (ii) the witness is available for cross-examination and any questioning by the Judges; and
- (iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

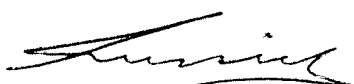
RECALLING the Order of the Trial Chamber, delivered orally by the Presiding Judge in open court on 24 January 2008, whereby the Motion was denied with written reasons to be published;

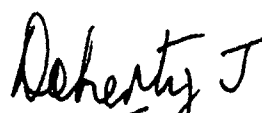
CONSIDERING that the agreement of the Parties is a condition precedent to admission of evidence under Rule 92^{ter} of the Rules and, in this case, such agreement does not exist;

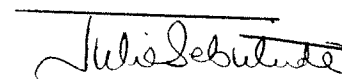
HOLDING that to grant the request of the Prosecution without the agreement of the Defence would be inconsistent with the rights of the Accused under Article 17 of the Statute;

HEREBY DENIES THE MOTION.

Done at The Hague, The Netherlands, this 25th day of January 2008.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


Justice Julia Sebutinde

