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SCSL-03-01-T
(24102 - 24105)

24102



SPECIAL COURT FOR SIERRA LEONE

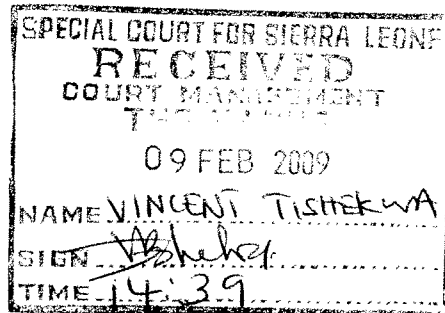
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 9 February 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PROSECUTION MOTION FOR
ADMISSION OF DOCUMENT PURSUANT TO RULE 89(C)

Office of the Prosecutor:

Brenda J. Hollis
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 Document Pursuant to Rule 89(C)", filed on 19 May 2008 ("Motion"),¹ wherein the Prosecution requests the Trial Chamber, in exercise of its discretion, to admit into evidence pursuant to Rule 89(C) of the Rules of Procedure and Evidence ("Rules") United Nations Security Council Resolution 1315 (2000) ("Resolution 1315"), a copy of which is contained in the Annex to the Motion;²

NOTING the "Defence Response to Prosecution Motion for Admission of Document Pursuant to Rule 89(C)", filed on 30 May 2008 ("Response"),³ wherein the Defence objects to the admission of Resolution 1315 on the grounds that, *inter alia*:

- i) Allowing the admission of Resolution 1315 under Rule 89(C) would manifestly prejudice the Accused in that the document goes to proof of the acts and conduct of the Accused;⁴
- ii) Admission of Resolution 1315 should have been sought through Rule 92bis, not 89(C);⁵

NOTING ALSO that the Response was filed out of time, however, considering that the Defence notified the Trial Chamber of a "technical problem" with their email system on the evening of 29 May 2008,⁶ and the Response was filed immediately the following morning, the Trial Chamber, accepting that technical failures sometimes occur, is prepared to consider the contents of the Response;

NOTING ALSO the "Prosecution Reply to 'Defence Response to Prosecution Motion for Admission of Document Pursuant to Rule 89(C)'" , filed on 2 June 2008 ("Reply");⁷

MINDFUL of Rules 89 and 92bis which read as follows:

Rule 89: General Provisions (amended 7 March 2003)

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
- (C) A Chamber may admit any relevant evidence.

¹ SCSL-03-01-T-510 ("Motion").

² Motion, paras 3, 25.

³ SCSL-03-01-T-523 ("Response").

⁴ Response, paras 3, 7.

⁵ Response, paras 6-7.

⁶ Email correspondence from Defence Case Manager to Trial Chamber II Senior Legal Officer, 29 May 2008.

⁷ SCSL-03-01-T-525 ("Reply").

Rule 92bis: Alternative Proof of Facts (amended 14 March 2004 and amended 14 May 2007)

- (A) In addition to the provisions of Rule 92ter, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
- (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

COGNISANT of the recent ruling of the Appeals Chamber, "Decision on 'Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents'" dated 6 February 2009⁸ ("Appeals Chamber Decision"), wherein the Appeals Chamber, upholding a Decision of the Trial Chamber, confirms that:

By its express terms, Rule 92bis applies to information tendered "in lieu of oral testimony". These words must be given their ordinary meaning. Documentary evidence, by its very nature, is tendered in lieu of oral testimony.⁹ [...]

[...]

The procedural scheme established by Rules 89(C) and 92bis does not allow a party to circumvent the stringency of the latter rule by simply tendering a document under the former.¹⁰ [...]

[...]

The consequence of this is that any information that does not go to proof of the acts and conduct of the accused not tendered through a witness, should be submitted under Rule 92bis if it is sought to be admitted in lieu of oral testimony. For these reasons, we find that the Trial Chamber did not err in law in holding that Rule 92bis exclusively controls the admission of a document submitted in lieu of oral testimony and that such document must be channelled through a witness in order to be admissible under Rule 89(C).¹¹ [...]

FINDING that Resolution 1315, being in effect a document tendered by the Prosecution in lieu of oral testimony, should have been tendered under Rule 92bis and is not admissible under Rule 89(C) in the absence of a witness competent to give evidence in relation to that document;¹²

⁸ SCSL-03-01-AR73-721, Decision on 'Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents', 6 February 2009 ("Appeals Chamber Decision").

⁹ Appeals Chamber Decision, para. 30 (original footnotes omitted).

¹⁰ Appeals Chamber Decision, para. 33 (original footnotes omitted).

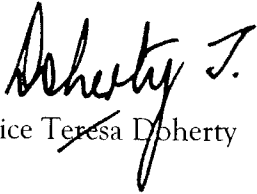
¹¹ Appeals Chamber Decision, para. 34.


¹² Appeals Chamber Decision, para. 40.

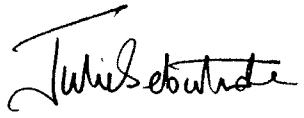
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DENIES the Motion.

Done at The Hague, The Netherlands, this 9th day of February 2009.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

