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SCSL-03-01-T
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THE SPECIAL COURT FOR SIERRA LEONE

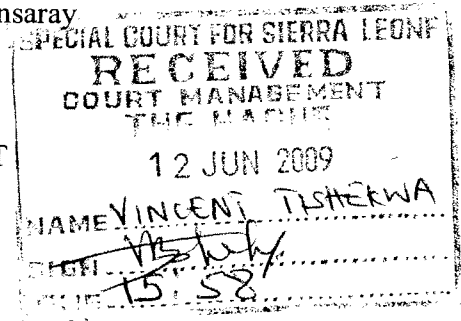
Trial Chamber II

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

Acting Registrar: Ms. Binta Mansaray

Date: 12 June 2009

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC WITH CONFIDENTIAL ANNEXES A AND B

**URGENT DEFENCE MOTION FOR ADJOURNMENT OF TRIAL START-
DATE DUE TO INABILITY TO TAKE INSTRUCTIONS FROM THE
ACCUSED, CHARLES GHANKAY TAYLOR**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Komjian

Counsel for Charles G. Taylor:

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

I. INTRODUCTION

1. This is an Application for an adjournment of the start-date of the Defence case on 29 June 2009. This Application is being brought pursuant to Rule 54 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("Rules") and Article 10 of the Practice Direction on dealing with Documents in The Hague Sub-Office.¹
2. The Defence submits that it is necessary to apply for the adjournment due to the exceptional circumstances as detailed below.

II. FACTUAL BACKGROUND

3. On Wednesday 10 June 2009, the Defence was notified, by email, of the finding of a legionellosis bacterium at the ICC Detention Centre, where the Accused is currently being housed. On the same day, Defence Lead Counsel notified the Trial Chamber that the Defence would not visit the Detention Centre until it was made clear that the Detention Centre was safe to visit.²
4. At the time, one of the Defence's legal assistants was present in the Detention Centre, but a message was sent to her and she was advised to leave and not to return until the officials responsible for the Detention Centre had advised that the Centre was safe to visit.
5. The Accused was subsequently advised by officials at the Detention Centre that it would take twelve (12) days or thereabouts for test results to show whether legionellosis bacteria are, or are not, present in the facility. This is confirmed by a letter of the Acting Registrar, attached as Annex B hereto. Consequently, and due to the possible presence of the legionellosis bacteria at the Detention Centre, no one from the Accused's Defence team has since visited the Detention Centre in order to take instructions from the Accused.

III. ARGUMENT

6. Rule 54 provides that a Trial Chamber may issue such orders as may be necessary for the preparation or conduct of the trial. The Defence submits that it is necessary to

¹ Practice Direction on dealing with Documents in The Hague Sub-Office, 16 January 2008.

² The emails in question are attached as Annex A.

order an adjournment because, in light of the foregoing circumstances, Defence Counsel have been unable to take instructions from the Accused since 10 June 2009 and will be unable to take such instructions for the foreseeable future. In addition, Defence Counsel have been, and are still, unable to prepare the Accused for his testimony.

(A) The Necessity of an Adjournment

7. From the information provided to the Accused and the Acting Registrar, it appears that the Detention Centre will not be declared safe until, at the very least, Wednesday 24 June 2009 (i.e. in twelve days's time). Naturally, the Defence does not know whether the results of the tests will show the presence of the bacteria or not. The Detention Centre may not be declared safe for many weeks, indeed after the 29 June 2009. The Defence does not, of course, wish to engage in speculation as to when the Detention Centre may or may not be declared safe, but it goes without saying that the trial cannot proceed until it is so declared. The Defence also does not wish to delve into what should properly be reserved for expert medical opinion, but it is well-known that Legionnaire's Disease, which results from infection by the legionellosis bacterium, is highly infectious and it is an inescapable fact that no trial can proceed while the Accused is exposed to the legionellosis bacterium. The Defence therefore submits that it must be beyond dispute that the Defence trial date should be adjourned until such time that the Detention Centre is declared safe..
8. Further, the inability of the Defence to take instructions from the Accused impedes the preparation of the Defence case. Article 17(4)(b) of the Statute guarantees the Accused adequate time and facilities to prepare his case. The Accused has the right to communicate and give instructions to his Counsel, which he plainly cannot do while Counsel cannot visit the Detention Centre. The Defence does acknowledge that the Accused does have access to the telephone; however, detailed instructions can only be given in person and the need for such detailed instructions is accentuated by the proximity of the start of the Defence case and the fact that the Accused is the first witness to testify in his own defence. As a consequence of the discovery of this legionellosis bacterium, the Defence will be, at the very least, deprived of

approximately two (2) weeks of instructions. This, while outside of any party's control, does nevertheless infringe the Accused's fair trial rights as protected by the Statute and subsequently necessitates an adjournment.

9. The Trial Chamber should also bear in mind that the lack of certainty as to when the Detention Centre may be safe in itself impedes the Defence in the preparation of its case as it cannot set appropriate deadlines for its team. This also infringes the Accused's statutory rights.

(B) The Length of the Adjournment

10. For the foregoing reasons, it is indisputable there should be an adjournment. The following concerns the appropriate length of an adjournment. At the very least the trial should be adjourned the same number of days as is lost on account of the Detention Centre being unsafe. At the time of writing, it is not known how long this might be. For the sake of certainty, the Defence submits that the start-date should be adjourned to Monday 17 August 2009. In a motion currently before the Appeals Chamber, the Defence has requested a start-date of 15 July 2009.³ It is therefore appropriate for the Defence to submit a date approximately one (1) month after this date – one month being a reasonable amount of time in the circumstances, bearing in mind: (i) the inevitable minimum delay of two weeks; (ii) the very real possibility of further delay; (iii) the time required for the reports requested below to be obtained; (iv) the need to schedule a date that is unlikely to require further adjournment; and (v) the need for all parties to have a date to which they can work.

IV. REMEDIES

11. For all the foregoing reasons, the Defence respectfully submits that the Trial Chamber grants the following relief:

- (i) Expedited filing in accordance with the Practice Direction, subject to the following procedure: the Prosecution should have four (4) days from the date of service of

³ *Prosecutor v. Taylor*, SCSL-03-01-T-786, "Public with Annexes A, B and C Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009", 4 June 2009.

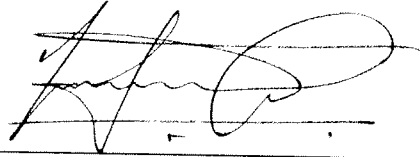
this Motion to file its Response. The Defence should have one (1) day from the date of service of the Prosecution's Response to file its Reply.⁴

- (ii) Adjournment, or an extension of time, of the start-date of the Defence case from 29 June 2009 to 17 August 2009.

Further, the Accused is understandably worried about the discovery of the legionellosis bacterium. The Defence respectfully submits the proposals contained in the Registrar's letter dated 12 June 2009⁵ are insufficient, given the seriousness of this disease, and so the Defence respectfully submits that the Trial Chamber grants the following:

- (iii) A full report from the Registrar outlining the degree of exposure to the bacteria to which the Accused has been subjected and
- (iv) A full medical examination of the Accused undertaken by an independent medical practitioner (not connected to the Special Court or the International Criminal Court) regarding any possible side-effects of this bacteria.

Respectfully Submitted,



For Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 12th Day of June 2009
The Hague, The Netherlands

⁴ Practice Direction on dealing with Documents in The Hague Sub-Office, 16 January 2008, Article 10.

⁵ Annex B.

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List of Authorities

Statute of the Special Court.

Rules of Procedure and Evidence.

Practice Direction on dealing with Documents in The Hague Sub-Office, 16 January 2008 (as amended 25 April 2008).

Prosecutor v. Taylor, SCSL-03-01-T-786, “Public with Annexes A, B and C Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009”, 4 June 2009.



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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T**

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Document Date: **12 JUNE 2009**

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Indictment

Motion

Decision

Correspondence

Document Title:

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ACCUSED, CHARLES GHANKAY TAYLOR**

Name of Officer:

Vincent Tishekwa

Signed: 