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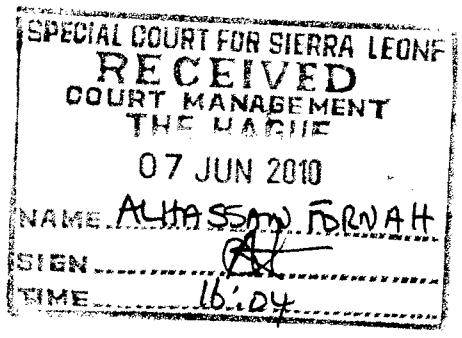
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 7 June 2010



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION MOTION TO CALL THREE
ADDITIONAL WITNESSES**

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Sigall Horovitz

Counsel for the Accused:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. On 20 May 2010 the Prosecution filed a motion to call three additional witnesses by reopening its case or alternatively, in rebuttal (“**Motion**”). The Defence filed its response on 31 May 2010 (“**Response**”). The Prosecution hereby replies to the Defence Response.¹ The Prosecution relies on the arguments presented in its Motion, in addition to the following points in reply to the Defence Response.

II. ARGUMENTS

Applicable Legal Standard

2. The jurisprudence of this Chamber provides that a party may reopen its case when certain circumstances are present.² The Defence argues that the Special Court’s Rules of Procedure and Evidence (“**Rules**”) do not provide for such a procedure and that the Court has never before granted such permission to the Prosecutor without basis. The power of a Trial Chamber to allow a party to reopen its case for newly discovered evidence is inherent in order for the Trial Chamber to fulfil its mandate to reach a judgment that serves the interests of justice. Further, while Rule 85 provides that the order of evidence shall be presented as Prosecution evidence, Defence evidence, and Prosecution rebuttal, the rule explicitly states that this is the order of presentation “unless otherwise directed by the Trial Chamber in the interests of justice.”

Probative Value

3. The evidence of the proposed witnesses is probative and relevant to an important issue in dispute in this case. In January, this Trial Chamber held that Mia Farrow’s declaration “purports to deal with a central issue in the Prosecution’s case.”³ According to the plain reading of this ruling, the Chamber considered that the issue which the declaration purports

¹ The unprofessional and unfounded Defence accusations of bad faith on the part of the Prosecution in bringing this motion are undeserving of comment.

² *Prosecutor v. Brima et al.*, SCSL-04-16-T-560, “Decision on Confidential Prosecution Motion to Reopen the Prosecution Case to Present an Additional prosecution Witness”, 28 September 2006 (“**AFRC Reopening Decision**”), paras. 15, 17, 18.

³ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33348. It is recalled that the Prosecution intended to use the declaration both for impeachment purposes and for establishing the guilt of the Accused.

to deal with, i.e. *the Accused's possession of diamonds in September 1997*, is central to the Prosecution case, and not that the declaration deals with a “purportedly central issue” as the Defence suggests.⁴ In fact, the possession of diamonds by the Accused goes to a central aspect of the Prosecution case, which is “that the accused is responsible for the development and execution of a plan that caused the death and destruction in Sierra Leone. That plan, formulated by the accused and others, was to take political and physical control of Sierra Leone in order to exploit its abundant natural resources and to establish a friendly or subordinate government there to facilitate that exploitation ... What had meaning in this conflict were diamonds.”⁵

4. Sierra Leone's diamonds are the natural resources at the heart of this case. The evidence of the Accused's pursuit and acquisition of diamonds from Sierra Leone has pervaded the Prosecution case, including evidence that the AFRC/RUF Junta provided diamonds to the Accused in 1997 and received arms, ammunition and other support in return. Placed in the context of the totality of evidence in this trial to date, the Accused's gift of rough diamonds to Naomi Campbell at this particular time, September 1997, is critical. The anticipated testimony supports Prosecution evidence that the Accused was receiving diamonds from the AFRC/RUF Junta during the Indictment period. It logically suggests that the Accused intentionally took rough diamonds on a trip in which he had planned stopovers in Libya and Burkina Faso. It supports his connection to the delivery of a huge supply of arms and ammunition to the AFRC/RUF Junta at the Magburaka airfield in October 1997 as the Prosecution has presented evidence that these arms were flown from Burkina Faso and likely were of Libyan origin. Further, the Accused testified that on this trip to South Africa, he received US\$500,000 from the Libyan government.⁶ The significance of the evidence is further magnified by the fact that the Accused in his testimony denied any linkage to any diamond business and categorically stated he had never possessed any diamonds other than in his own personal jewellery.⁷

⁴ Response, para. 15.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 4 June 2007, pp. 30, 59 (Prosecution Opening Statement); see also SCSL-03-01-T-327, Public Prosecution Notification of Filing of Amended Case Summary, 3 August 2007, para. 42.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 1 December 2009, pp. 32792-4.

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 26 November 2009, p. 32602.

5. The Defence incorrectly alleges that “no reasonable trier of fact could make a link between this diamond exchange and the Accused’s support for the rebels in Sierra Leone”.⁸ However, that argument ignores (i) the timing of this incident in South Africa, (ii) the evidence that before this Accused’s trip the Junta had provided the Accused with diamonds to be used to purchase arms and ammunition for the AFRC/RUF Junta, and (iii) that after the Accused’s trip which included stops in countries associated with provision of arms and ammunition to Charles Taylor, the Junta did receive arms and ammunition from Burkina Faso. Moreover, it is only logical to infer that the Accused lied about this gift in his testimony precisely because they came from the RUF/AFRC Junta.
6. In addition, the Defence mischaracterizes the Prosecutor’s arguments in support of using the declaration of Mia Farrow. At no point did the Prosecutor say that the evidence did not go directly to prove guilt, but rather she argued the general proposition that evidence need not directly prove guilt in order to be used in cross examining a witness.⁹ The Prosecutor certainly did not say that the declaration was “circumstantial and inferential and only indirectly relevant” as the Defence claims.¹⁰ Rather, the Prosecutor explained in detail why the declaration is relevant to prove the guilt of the Accused.¹¹
7. As discussed above, the Defence argument that the proposed evidence is “tangential and highly speculative” must be rejected. The statements given by Carole White and Mia Farrow unambiguously demonstrate that their evidence will establish that the Accused possessed rough diamonds in September 1997. Ms. White will provide direct evidence of the Accused’s possession of diamonds, based on his comments during the dinner and the subsequent visit and statements of the men who brought the gift to Ms. Campbell.
8. In the light of the above, the Defence argument at paragraph 3 must be rejected.¹²

Due Diligence

9. The Defence assertion that the Prosecution should somehow have anticipated that the Accused had given away a diamond/s to Ms. Campbell while he was in South Africa is

⁸ Response, para. 14.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33345 (lines 3-5).

¹⁰ Response, para. 16.

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33344-5.

¹² Response, para. 3.

without merit. The law does not expect the Prosecution to be omniscient. There was no reason for the Prosecution to have suspected or investigated whether Charles Taylor gifted diamonds in South Africa in September 1997. This event was only brought to the Prosecution's attention in June 2009. The Prosecution does not claim, as the Defence is trying to allege,¹³ that it was ignorant of the Accused's trip to South Africa. The relevant point for the required showing of due diligence is this: It cannot be said that the Prosecution should have reasonably concluded that the Accused would have gifted diamonds on this trip so as to investigate all possible diamond recipients. Thus the Defence arguments in paragraphs 8-11 of its Response must be rejected.

10. It is also recalled that after receiving the Rule 70 information about the Accused's gift, the Prosecution made several attempts to obtain the cooperation of Ms. Campbell but was informed by her counsel that she would not consent to speak to the Prosecution. After repeated attempts, counsel for Ms. Campbell stopped responding to Prosecution communications. Once the Prosecution obtained the evidence of a direct eyewitness to these events, Ms. Carole White, it was clear the Prosecution would need to reopen its case to present this important evidence. The Prosecution has diligently sought to do so and has sought the assistance of the Trial Chamber to obtain the evidence of Ms. Campbell. Thus the Defence arguments in paragraphs 12-13 of its Response must be rejected.

Probative Value of the Evidence is Not Substantially Outweighed by Need to Ensure a Fair Trial

11. The Prosecution reiterates its arguments that the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial. The examination of the witnesses on this particular issue would not be lengthy. Contrary to the Defence arguments, it will not require prolonged investigation to challenge this evidence. The Defence has already presented evidence that the Accused never possessed diamonds other than personal jewellery, and has been on notice of this contrary evidence since 4 December 2009.¹⁴ The Defence has had continuous and ready access to the Accused, the one individual who

¹³ Response, para. 10.

¹⁴ Strictly Confidential Letter from Brenda Hollis to Courtenay Griffiths entitled "Fresh Evidence to be used in Cross Examination of the Accused", 4 December 2009. Annexed to this letter was the Declaration of Mia Farrow, dated 9 November 2009 ("**Declaration of Mia Farrow**"). Also annexed to the letter was a list of the disclosed materials, which indicated that the Declaration of Mia Farrow will be used by the Prosecution not only for impeachment purposes but also for proof of guilt.

knows best what additional evidence the Defence may present to counter the testimony of these witnesses, and, of course, the Accused was on notice of the occurrence of this event since the time of the event. In addition, the fact that Mia Farrow's declaration contains comments about the Accused not being welcome at Nelson Mandela's dinner¹⁵ is not the sort of prejudice the Chamber should consider when deciding whether to grant the Prosecution Motion. If the Trial Chamber finds such evidence irrelevant, it can simply order that this line of questioning not be pursued when Ms. Farrow testifies.

12. Finally, despite the Defence suggestion, the likelihood that the proposed witnesses will appear before the Chamber is not part of the test for reopening the case.¹⁶ Nonetheless, the Prosecution notes that Ms. White and Ms. Farrow have agreed to testify. Even if the requested subpoena for Ms. Campbell is denied, reopening the Prosecution case in order to hear the evidence of Ms. White and Ms. Farrow regarding the central issue of *the Accused's possession of diamond/s in South Africa in September 1997*, would nonetheless be justified.

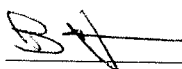
III. CONCLUSION

13. For the reasons given in its Motion and in this Reply, the Prosecution seeks leave to call three additional witnesses, Naomi Campbell, Carole White and Mia Farrow, by reopening its case, or alternatively, in rebuttal.

Filed in The Hague,

7 June 2010,

For the Prosecution,



Brenda J. Hollis,
The Prosecutor

¹⁵ Response, para. 20.

¹⁶ Response, para. 24.

INDEX OF AUTHORITIES

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Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-327, Public Prosecution Notification of Filing of Amended Case Summary, 3 August 2007.

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