

968)

SCSL-03-01-T
(28955 - 28965)

28955



THE SPECIAL COURT FOR SIERRA LEONE

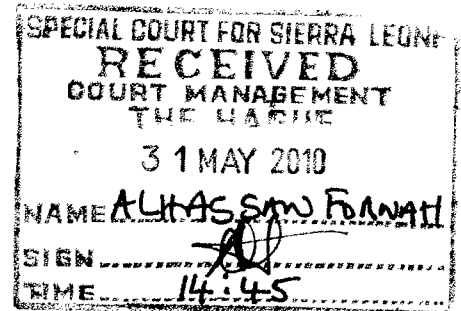
Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 31 May 2010

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC, WITH ANNEX A

**DEFENCE RESPONSE TO PROSECUTION
MOTION FOR THE ISSUANCE OF A SUBPOENA TO NAOMI CAMPBELL**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nick Koumjian
Ms. Sigall Horovitz

Counsel for Charles G. Taylor:

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 for the Issuance of a Subpoena to Naomi Campbell*.¹ The Prosecution asserts that Naomi Campbell can provide evidence that she was given rough diamonds by the Accused in September 1997 in South Africa. The Prosecution submits that this evidence concerns a central issue in the case and therefore a subpoena is necessary to bring an unwilling witness, Naomi Campbell, to court.²
2. The Trial Chamber should refrain from exercising its discretion and issuing a subpoena for several reasons. Most importantly, Naomi Campbell's evidence is of low probative value and is tangential to the real issues in the case. Secondly, the evidence that Naomi Campbell could put before the court is obtainable elsewhere.³ Thirdly, the Prosecution must be aware that Naomi Campbell will likely be a hostile witness and should not be allowed to subpoena her as such. Finally, the Trial Chamber should be cautious about issuing an order that may not be enforceable.
3. As the SCSL Appeals Chamber has confirmed, subpoenas should be "used sparingly"⁴ and only if necessary to try the case fairly.⁵ The Defence contends that Naomi Campbell's only utility would be to bring unwarranted media attention to the proceedings, it cannot be said that her testimony is necessary to try the case fairly.

II. Submissions

There is No Legitimate Forensic Purpose for Naomi Campbell's Evidence

4. The Prosecution has failed to show a legitimate forensic purpose for Naomi Campbell's anticipated evidence, in large part because they have never spoken to or interviewed her about her trip to South Africa in 1997 and the alleged gift of a diamond from Mr. Taylor. The Prosecution is certainly not aided by the public statements Naomi Campbell has made

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-961, Public Prosecution Motion for the Issuance of a Subpoena, 20 May 2010 ("Motion").

² Motion, paras. 1-3.

³ The Prosecution has requested to call Naomi Campbell along with Mia Farrow and Carole White, both of whom are capable of providing evidence similar to that of Naomi Campbell should they come to testify. See *Prosecutor v. Taylor*, SCSL-03-01-T-692, Prosecution Motion to Call Three Additional Witnesses, 20 May 2010 ("Motion to Reopen").

⁴ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-AR73-688, Decision on Interlocutory Appeals Against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, 11 September 2006, para. 10 ("CDF Subpoena Appeal Decision").

⁵ CDF Subpoena Appeal Decision, para. 9.

when questioned about the incident. In fact, her public statements are contrary to the Prosecution's position. When pressed by ABC News, Naomi Campbell stated, "I didn't receive a diamond and I'm not going to speak about that".⁶ Naomi Campbell's remarks show that there is not a "good chance" that her anticipated evidence would be of "material assistance" to the Prosecution case.⁷

5. In view of Naomi Campbell's public statement above, the Prosecution Motion for a subpoena is premised on the assumption that she would say something different if she came to testify. Presumably, this misplaced hope is based on the statements of Mia Farrow and Carole White⁸ who were also present at a dinner hosted by Nelson Mandela and attended by Mr. Taylor and Naomi Campbell. Carole White says she overheard Mr. Taylor say he would give Naomi Campbell a diamond and that later in the night three unknown men appeared and gave Naomi Campbell five to eight gray pebbles, or rough diamonds. Mia Farrow says that at breakfast the next morning, Naomi Campbell told her that she had been presented with a large diamond said to be from Mr. Taylor.
6. However, the Appeals Chamber has made it clear that "an applicant cannot rely on speculative hopes that a witness' evidence might expand during his testimony in order to justify a request for a subpoena".⁹ Therefore, the Prosecution cannot rely on its hopes that if Naomi Campbell came to testify, she would state that she received a gift of diamonds from Mr. Taylor.¹⁰ Thus, the request to issue a subpoena must be denied.
7. Even if Naomi Campbell testified that she received a diamond from Mr. Taylor, there is still little probative value in such evidence. The Defence relies on its submissions in its *Response to the Prosecution's Motion to Call Three Additional Witnesses*, filed simultaneously with this Response, at paragraphs 14-19 in this regard.¹¹ The Defence submits that no reasonable

⁶ "Naomi Campbell Explodes After ABC News 'Blood Diamond' Questions", ABC News, Anna Schecter and Brian Ross, 22 April 2010, available at <http://abcnews.go.com/Blotter/naomi-campbell-outburst-abc-news-blood-diamond-questions/story?id=10365701>. [Annex A]

⁷ Motion, para. 13.

⁸ Motion to Reopen, Confidential Annexes A and B.

⁹ CDF Subpoena Appeal Decision, para. 22.

¹⁰ Note that the Appeals Chamber has acknowledged that when an applicant has been unable to interview a witness, "the test will have to be applied in a reasonably liberal way", but that ought not be taken to mean that the subpoena can be used as a "fishing expedition". CDF Subpoena Appeal Decision, para. 26.

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Defence Response to Prosecution's Motion to Call Three Additional Witnesses, 31 May 2010.

trier of fact could make a link between this alleged diamond exchange and the Accused's support for the rebels in Sierra Leone as alleged in the Indictment.

8. Jurisprudence from the ICTR makes it clear that in considering whether the prospective testimony will materially assist the applicant, it is not enough that the information requested will be helpful or convenient; it must be of substantial or considerable assistance in relation to a clearly identified issue that is relevant to the trial.¹²
9. Furthermore, the Defence notes that a Trial Chamber of the ICTR has refused to issue a subpoena for matters of only "contextual significance" or matters that are of collateral and indirect relevance that would not assist the Trial Chamber in determining core issues of the trial.¹³ In order to maintain the focus of the present trial, which centers on Mr. Taylor's possession of diamonds that are clearly from Sierra Leone, and used in aid or support of the Sierra Leonean rebels, the Prosecution request for a subpoena must be denied.

Naomi Campbell's Evidence is Obtainable Elsewhere

10. The Trial Chamber should not issue a subpoena if the information sought can reasonably be obtained elsewhere.¹⁴ For instance, an ICTR Trial Chamber has denied issuing a subpoena where the witnesses to be subpoenaed were not the only ones said to have attended a meeting in question.¹⁵
11. Likewise, a subpoena should not be issued for Naomi Campbell where both Mia Farrow and more especially, her agent Carole White, are in a position to relay all of the allegedly pertinent information. According to Prosecution's interview notes of Carole White, she was present at the dinner with Naomi Campbell and allegedly heard Mr. Taylor say he would give Naomi Campbell a diamond. Then Carole White was present when two or three people came

¹² *Prosecutor v. Bizimungu et al*, ICTR-99-50-T, Decision on Jerome-Clement Bicamumpaka's Request for a Subpoena, 26 September 2007, para. 5; *Prosecutor v. Bizimungu et al*, ICTR-99-50-T, Decision on Jerome-Clement Bicamumpaka's Request for a Subpoena, 23 January 2008, para. 6; *Prosecutor v. Karemera et al*, ICTR-98-44-T, Decision on Joseph Nzirorera's Motions for Subpoena to Leon Mugesera and President Paul Kagame, 19 February 2008, para. 13; *Prosecutor v. Bizimungu et al*, ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion to Subpoena Witness RWU, 19 May 2008, para. 5.

¹³ *Prosecutor v. Bagosora et al*, ICTR-98-41-T, Decision on Request for Subpoenas of United Nations Officials, 6 October 2006, para. 17.

¹⁴ *Prosecutor v. Ndindiyimana et al*, ICTR-00-56-T, Decision on the Prosecutor's Motion for a Subpoena, 6 October 2006, para. 13; *Prosecutor v. Karemera et al*, ICTR-98-44-T, Decision on Joseph Nzirorera's Motions for Subpoena to Leon Mugesera and President Paul Kagame, 19 February 2008, para. 13.

¹⁵ *Prosecutor v. Karemera et al*, No. ICTR-98-44-T, Decision on Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZ1, NZ2, and NZ3, 12 July 2006, para. 14.

to Naomi Campbell's room and gave her five to eight gray pebbles, which she assumed to be rough diamonds.¹⁶ Given the foregoing, there is little more that Naomi Campbell could add in order to satisfy the Prosecution's suggestion that Mr. Taylor (or at least his entourage) was in possession of diamonds while on a trip to South Africa.

12. Additionally, during its case in chief, the Prosecution presented evidence that Mr. Taylor was in possession of diamonds, so Naomi Campbell (nor the other two additional witnesses) is necessary to refute Mr. Taylor's claims that he did not personally possess rough diamonds.¹⁷
13. Since other sources are available without resort to the coercive powers of the court, the request for a subpoena should be denied.¹⁸

The Prosecution Should Not be Allowed to Call a Knowingly Hostile Witness

14. Before a subpoena should be issued, it must be at least reasonably likely that an order would produce the degree of cooperation needed.¹⁹ Naomi Campbell has shunned Prosecution attempts to contact her and has publicly stated that she does not want to be involved in the trial.²⁰ Her reluctance to be a part of the proceedings is evident. It is highly unlikely that an order by the court would produce the degree of cooperation needed from her.

The Trial Chamber Should Not Issue Orders that May Not Be Implemented

15. In view of the SCSL's institutional arrangements and its lack of so-called Chapter VII powers under the United Nations Charter, it is highly likely that a subpoena issued by the Special Court may not be implemented by the necessary States' judicial processes, thus undermining the general power of the Court. Pursuant to Rule 8(C), the Special Court may request the voluntary cooperation of States to provide assistance, but this assistance is not guaranteed. The United Nations Security Council Resolution 1688 (adopted 16 June 2006), relied on by the Prosecution, despite being a Chapter VII resolution, does not provide the required guarantee. The Resolution does not oblige member states to cooperate with the

¹⁶ Motion to Reopen, Confidential Annex B.

¹⁷ See, ex, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 2 September 2008, p. 15156-15161 (including details of the size of the diamond package and the conversation Mr. Taylor had with Issa Sesay when Sesay allegedly gave Mr. Taylor diamonds in 2000).

¹⁸ CDF Appeal Decision, para. 28.

¹⁹ *Prosecutor v. Karemera et al*, ICTR-98-44-T, Decision on Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZ1, NZ2, and NZ3, 12 July 2006, para. 10.

²⁰ Motion, paras. 14-16, 18.

Court. It merely “encourages” States to make witnesses available. The Prosecution has not provided any assurances that if a subpoena is issued, it would be enforced.

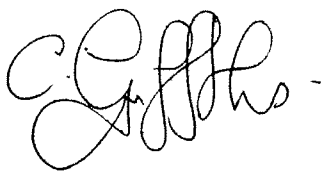
16. The Prosecution has previously acknowledged that the SCSL Rule 54, which is essentially identical to the equivalent rules of the ICTR and ICTY, is not supported by the enforcement mechanisms found in Article 28 of the ICTR Statute and Article 29 of the ICTY Statute concerning State co-operation and judicial assistance and which are generally invoked when subpoenas are sought and issued at these tribunals.²¹ Therefore, subpoenas issued by the Special Court are on significantly weaker legal footing when it comes to enforcement.

17. The Defence notes that the Special Court has only issued one subpoena for a witness residing outside Sierra Leone. However in that case, the witness had already indicated that he would comply with a subpoena if one were issued.²² In the present case, Naomi Campbell has made it clear that she is not willing to appear.

III. Conclusion

18. For all the foregoing reasons, the Trial Chamber should refuse to issue a subpoena for Naomi Campbell because it is unlikely to be implemented or to elicit evidence material to an issue in the case which cannot be obtained without judicial intervention.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
 Dated this 31st Day of May 2010
 The Hague, The Netherlands

²¹ *Prosecutor v. Taylor*, SCSL-03-01-T-419, Confidential Prosecution Motion for a Subpoena Ad Testificandum, 15 February 2008, para. 9, citing *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-617, Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena Ad Testificandum to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, 13 June 2006, para. 27.

²² *Ibid*, paras. 13 and 14.

Table of Authorities

SCSL Cases

Prosecutor v. Taylor, SCSL-03-01-T-419, Confidential Prosecution Motion for a Subpoena Ad Testificandum, 15 February 2008

Prosecutor v. Taylor, SCSL-03-01-T-961, Public Prosecution Motion for the Issuance of a Subpoena, 20 May 2010

Prosecutor v. Taylor, SCSL-03-01-T-692, Prosecution Motion to Call Three Additional Witnesses, 20 May 2010

Prosecutor v. Taylor, SCSL-03-01-T, Defence Response to Prosecution's Motion to Call Three Additional Witnesses, 31 May 2010

Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-14-T-617, Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, 13 June 2006

Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-14-AR73-688, Decision on Interlocutory Appeals Against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, 11 September 2006

SCSL Transcripts

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 2 September 2008, p. 15156-15161

ICTR

Prosecutor v. Bagosora et al, ICTR-98-41-T, Decision on Request for Subpoenas of United Nations Officials, 6 October 2006

<http://www.ictr.org/ENGLISH/cases/Bagosora/decisions/061006b.htm>

Prosecutor v. Bizimungu et al, ICTR-99-50-T, Decision on Jerome-Clement Bicamumpaka's Request for a Subpoena, 26 September 2007

<http://www.ictr.org/ENGLISH/cases/Bizimungu/decisions/070926.pdf>

Prosecutor v. Bizimungu et al, ICTR-99-50-T, Decision on Jerome-Clement Bicamumpaka's Request for a Subpoena, 23 January 2008

<http://www.ictr.org/ENGLISH/cases/Bizimungu/decisions/080123b.pdf>

Prosecutor v. Bizimungu et al, ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion to Subpoena Witness RWU, 19 May 2008

<http://www.ictr.org/ENGLISH/cases/Bizimungu/decisions/080519.pdf>

Prosecutor v. Karemera et al, ICTR-98-44-T, Decision on Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZ1, NZ2, and NZ3, 12 July 2006
<http://www.ictr.org/ENGLISH/cases/Karemera/decisions/120706.htm>

Prosecutor v. Karemera et al, ICTR-98-44-T, Decision on Joseph Nzirorera's Motions for Subpoena to Leon Mugesera and President Paul Kagame, 19 February 2008
<http://www.ictr.org/ENGLISH/cases/Karemera/decisions/080219.pdf>

Prosecutor v. Ndindiyimana et al, ICTR-00-56-T, Decision on the Prosecutor's Motion for a Subpoena, 6 October 2006
<http://www.ictr.org/ENGLISH/cases/Ndindiyimana/decisions/061006.htm>

Annex A



28964

Naomi Campbell Explodes After ABC News 'Blood Diamond' Questions

Fashion Model Denies Allegations She Took 'Huge' Uncut Gem from African Despot Charles Taylor but Refuses to Cooperate in 'Crimes Against Humanity' Trial

By ANNA SCHECTER and BRIAN ROSS

Apr. 22, 2010 —

Allegations that fashion model Naomi Campbell was given a "blood diamond" by the deposed African despot Charles Taylor have become center stage at Taylor's trial for crimes against humanity and led to another one of Campbell's infamous outbursts of anger.

"I didn't receive a diamond and I'm not going to speak about that," Campbell told ABC News before walking out of an interview and punching the camera in a producer's hand when pressed on the details.

The Campbell interview will be included in reports on the case to be broadcast this evening on World News with Diane Sawyer and Nightline.

Prosecutors in the Hague for the UN-backed Special Court for Sierra Leone say Campbell has refused their requests to be interviewed about the allegations that they say could help directly link Taylor, the former president of Liberia, to the possession of uncut diamonds used to fuel a campaign of terror in Sierra Leone between 1997 and 2001.

Campbell would not answer questions about her alleged refusal to cooperate with the international criminal tribunal. Her London-based lawyer also declined to comment.

Taylor is accused of orchestrating bloody massacres in which thousands were killed or maimed by amputation, leading to the phrase "blood diamonds."

"The diamonds made possible the continuation of the conflict but they also profoundly profited Charles Taylor," said former chief prosecutor Steven Rapp, who is now the United States Ambassador at Large for War Crimes.

Campbell's alleged receipt of a "blood diamond" first surfaced after actress Mia Farrow told prosecutors she heard Campbell describe a "huge diamond" she had received from Taylor.

"You don't forget when a girlfriend tells you she was given a huge diamond in the middle of the night," Farrow told ABC News.

Farrow said she and Campbell were both guests at the home of South African president Nelson Mandela, where Taylor was also visiting.

She said Campbell described in detail a middle of the night visit from two of Taylor's men.

"She said during the night, some men had knocked at her door and she, half asleep, had opened the

door and it was representatives of President Charles Taylor and that they had given her a huge diamond," Farrow told ABC News. "We were like, 'oh my gosh.'"

28965

Naomi Campbell

Prosecutors say the event is significant because it directly links Taylor to such uncut diamonds. One of the allegations in the case is that Taylor was in South Africa at the time to buy weapons for the Sierra Leone rebels with "blood diamonds."

Under cross examination at the trial, Taylor repeatedly denied he had a large quantity of diamonds or that he sent one to Naomi Campbell.

"Total nonsense," Taylor testified when asked if "that diamond that you sent Naomi Campbell was one of the diamonds that you had been given by the junta in Sierra Leone."

"And those diamonds, along with money given to you by the junta were to be used to procure weapons for the junta?," the prosecutor, Brenda Hollis, then asked.

"Totally incorrect," replied Taylor.

Prosecutors had hoped Campbell could rebut Taylor's denials.

Despite Campbell's refusal to help prosecutors, and her denial to ABC News that she received a diamond from Taylor, actress Farrow says "there's no doubt in my mind" of what happened.

"All I thought was gosh, what an amazing life Naomi Campbell has. Probably lots of men are always giving her diamonds and she said she was going to give it to Nelson Mandela's children's charity and I thought no more about it," Farrow said.

The donor relations manager for the Nelson Mandela Children's Fund, Mpake Pule, said there is no record the charity received a diamond from Campbell. She did make cash contributions of \$50,000 that year and the year after, the charity officer said.

The Taylor trial has been underway for almost three years in the Hague.

Witnesses have included former Taylor deputies and some 50 victims of the terror campaign from Sierra Leone.

Taylor has strongly denied the prosecution's accusations that he "orchestrated" the atrocities in Sierra Leone.

"I resent that characterization of me," he testified. "It is false, it is malicious."

[Click Here for the Blotter Homepage.](#)

Copyright © 2010 ABC News Internet Ventures