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SCL - 2003 - 01 - I
 (373 - 391)
THE SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE

CASE NO. SCLS-03-1

Before: The Appeals Chamber of the Special Court

Registrar: Robin Vincent

Date Filed 1st October 2003

THE PROSECUTOR

Against

**CHARLES GHANKAY TAYLOR also known as
 CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR - APPLICANT**

**ADDITIONAL SUBMISSIONS FOR AND ON BEHALF OF THE APPLICANT
 HEREIN CHARLES GHANKAY TAYLOR PURSUANT TO RULE 72 G (i) OF
 THE RULES OF PROCEDURE AND EVIDENCE OF THE SPECIAL COURT
 FOR SIERRA LEONE HAVING REGARD TO THE ORDER DATED THE
 19TH SEPTEMBER 2003 OF THE TRIAL CHAMBER OF THE SPECIAL
 COURT FOR SIERRA LEONE DULY SIGNED BY THE PRESIDING JUDGE
 BANKOLE THOMPSON PURSUANT TO RULE 72(E) OF THE RULES OF
 PROCEDURE AND EVIDENCE OF THE SPECIAL COURT FOR SIERRA
 LEONE.**

Office of the Prosecutor:

- Mr. David Crane, Prosecutor
- Mr. Desmond de Silva, QC, Deputy Prosecutor
- Mr. Walter Marcus-Jones, Senior Appellate Counsel
- Mr. Chris Staker, Senior Appellate Counsel
- Mr. Abdul Tejan-Cole, Appellate Counsel
- Ms. Mora Johnson, Appellate Intern
- Luc Côté, Chief of Prosecutions
- Robert Petit, Senior Trial Counsel
- Paul Flynn, Trial Counsel

Applicant's Counsel:

Terence Michael Terry

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|--------------------------------|--------------------|
| SPECIAL COURT FOR SIERRA LEONE | |
| RECEIVED | |
| COURT RECORDS | |
| NAME..... | NEIL GIBSON |
| SIGN..... | <i>Neil Gibson</i> |
| TIME..... | 15:55 |

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SIERRA LEONE DULY SIGNED BY THE PRESIDING JUDGE BANKOLE
THOMPSON PURSUANT TO RULE 72(E) OF THE RULES OF PROCEDURE AND
EVIDENCE OF THE SPECIAL COURT FOR SIERRA LEONE.**

**At the outset Counsel for the Applicant Charles Ghankay Taylor before proceeding to
make the several additional submissions pursuant to Rule 72 G (i) of the Rules of
Procedural and Evidence of the Special Court for Sierra Leone will first of all make the
following prefatory submissions on jurisdiction:-**

It is submitted that “Jurisdiction” means depending on the context either effective authority
OR control by a state OR state officials, over persons OR territory (Executive Jurisdiction)
OR exercise of Judicial Authority by Courts of Law (Judicial Jurisdiction).

Counsel for the Applicant Charles Gankay Taylor submits that it is necessary to understand
this troublesome word “Jurisdiction”.

The expression “Jurisdiction” of a Court may be used in two different senses, a strict sense
and a wider sense.

In its narrow and strict sense, it is submitted that the Jurisdiction of a validly constituted court connotes the limits which are imposed on its power to hear and determine issues between persons seeking to avail themselves of its process by reference:-

- (i) to the subject matter of the issue.
- (ii) to the persons between whom the issue is joined.
- (iii) to the kind of relief sought.
- (iv) any combination of these factors.

In the wider sense it embraces also the settled practice of the Court as to the way in which it will exercise its power to hear and determine issues which fall within its jurisdiction (in the strict sense) OR as to the circumstances in which it will grant a particular kind of relief which it has "Jurisdiction" (in the strict sense) to grant, including its settled practice to refuse to exercise such powers OR to grant such a relief in particular circumstances.

This distinction between the strict and wider meaning of the expression jurisdiction was of limited importance in the case of Superior Courts so long as they did not owe their origin to statute for there was no need to distinguish between non-existence of a power and settled practice not to exercise an existing power.

However in the case of Courts created by statute the Court has **no power** to enlarge its Jurisdiction in the strict sense, but it has power to alter its practice proprio motu within the limits which it imposes on itself by the doctrine of precedence subject, however to any statutory rules regulating and prescribing its practice and procedure made pursuant to any rule making power contained in the Statute. Counsel for the Applicant will rely on what was said by NGULUBE DCJ in MIYANDA v. The High Court 1984 ZR. 62 at 64:- "The term jurisdiction should first be understood. In one sense it is the authority which a court has to decide matters that are litigated before it, in another sense, it is the authority which a Court has to take cognizance of matters presented in a formal way for its decision."

Flowing from the above submissions, it is respectfully submitted:-

- (a) That a distinction ought to be drawn between the confirmation of the indictment by Judge Bankole Thompson of the 7th March 2003, and the Warrant of Arrest of the same date issued by the same afore-mentioned Judge against the person of the Applicant herein Charles Ghankay Taylor who was at that material time a sitting Head of State and President of the Republic of Liberia, and their respective attendant consequences as a matter of Law.
- (b) That both the Orders confirming the indictment and the consequential Warrant issued on the same date the 7th March 2003 by Judge Bankole Thompson were clearly made 'per incuriam' in circumstances wherein the attention of the said Judge Bankole Thompson was neither drawn to the important ratio decidendi and all the important principles enunciated in the recent celebrated case of Congo v. Belgium.

Counsel for and on behalf of the Applicant herein Charles Ghankay Taylor will now rely on the following additional submissions pursuant to Rule 72 G (i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone for the consideration of the Appeals Chamber. These additional Jurisdictional submissions are framed into 4 (four) main broad categories:-

- (i) Preliminary submissions that go to Jurisdiction of the Special Court for Sierra Leone and in particular a Judge of the Trial Chamber OR the Trial Chamber itself.
- (ii) Submissions relating specifically to the Purported Indictment which was confirmed by Judge Bankole Thompson on the 7th March 2003.
- (iii) Submissions relating specifically to the Purported Warrant of Arrest issued by Judge Bankole Thompson on the 7th March 2003.

- (iv) Submissions relating to criminal immunities against Prosecution of Heads of State.

1. **Preliminary submissions that go to Jurisdiction of the Special Court for Sierra Leone and in particular a Judge of the Trial Chamber**

ACT OF Parliament: need for validation:

Counsel for the Applicant herein submits that an instrument is accepted as an Act only where it has been validated as such in accordance with Constitutional Law. It is further submitted that in countries like Sierra Leone with a written constitution namely Act No. 6 of 1991, an INSTRUMENT as in this instant case Act No. 9 of 2002 the Special Court Agreement 2002, (Ratification) Act, 2002 purporting to be made by Parliament does not rank as an Act of Parliament unless it has undergone the necessary validating procedure.

It is submitted on behalf of the Applicant as a preliminary jurisdiction issue that the procedure by which the Special Court Agreement, 2002 (Ratification) Act 2002 for Sierra Leone came into force OR was passed by Parliament violates and does violence to the express entrenched mandatory Provisions of Section 108(3) of the 1991 Constitution in that the Bill which was a Supplement to the Sierra Leone Gazette Vol. CXXXIII No.11 dated 7th March, 2002 was submitted by Parliament to the President for his assent and became law without it been submitted to and been approved at a Referendum. That being the case it is submitted that Act No. 9 of 2002 – The Special Court Agreement, 2002 (Ratification) Act, 2002 is null and void at its inception.

Counsel for the Applicant further submits that Section 108(3) creates a regime of its own in so far as the Procedure for the alteration of the entrenched provisions of the 1991 Constitution of Sierra Leone is concerned.

2. **Submissions relating specifically to the Purported Indictment which was confirmed by Judge Bankole Thompson of 7th March 2003**

Assuming that the preliminary jurisdictional submissions under ((i) above are overruled by the Appeals Chamber, then by virtue of the combined provisions of Sections 64(1), (2), (3), 66(7) and 66(4), (5) and (6) respectively of the 1991 Constitution of Sierra Leone Act No. 6 of 1991, it is submitted on behalf of the Applicant herein that the Attorney-General and Minister of Justice and the Director of Public Prosecutions of the Republic of Sierra Leone are the only proper persons vested with powers to prosecute persons for alleged offences committed within the jurisdiction of Sierra Leone and under Sierra Leonean law which include alleged crimes committed under Act No. 9 of 2002 – the Special Court Agreement 2002 (Ratification) Act, 2002 - indeed a Sierra Leonean statute creating Sierra Leonean law. Consequently it is submitted that the purported indictment confirmed by Judge Bankole Thompson on the 7th March 2003 comes to nought, is invalid, null and void at its inception on the ground that the said Judge Bankole Thompson lacked jurisdiction and/OR acted in excess of jurisdiction when he proceeded to confirm the said indictment against the person of Charles Ghankay Taylor then sitting Head of State and President of the Republic of Liberia on the 7th of March 2003 which was prepared and brought exparte before the said Judge Bankole Thompson by the Prosecutor David Crane duly signed by the latter in contravention OR violation of the express Constitutional provisions of both Sections 64(1), (2), (3), 66(7) and 66(4), (5) and (6) respectively.

It is submitted that the provisions of Sections 64(1), (2), (3), 66(7) and 66(4), (5) and (6) respectively of the 1991 Constitution of the Republic of Sierra Leone Act No. 6 of 1991 have not been expressly repealed. Put mildly it is further submitted that those provisions of the said 1991 Constitution of Sierra Leone create a regime of their own and the purported “Prosecutor” in the name of David Crane is alien to the aforementioned relevant provisions of the 1991 Constitution of the Republic of Sierra Leone for the purposes of instituting and prosecuting offences allegedly committed within the jurisdiction of Sierra Leone.

Assuming without conceding that the Special Court Agreement, 2002 (Ratification) Act, 2002 is valid under the laws of the land, it is further submitted that even under that very Act to wit Part IX-MISCELLANEOUS, Section 47 under Part IX Miscellaneous has not been complied with and to that extent no regulations have yet been made by the Attorney-General and Minister of Justice to give effect to the said Act. See letter dated the 26th day of September, 2003 written by the Applicant's Counsel Terence Michael Terry addressed to the Clerk of Parliament and reply from the Clerk of Parliament also dated the 26th day of September 2003 addressed to the Applicant's Counsel Terence Michael Terry. The said letters are hereby attached as **Index of Attachments ONE and TWO respectively.**

3. **Submissions relating specifically to the Purported Warrant of Arrest issued by Judge Bankole Thompson on the 7th March 2003.**

As regards the Purported Warrant of Arrest issued by Judge Bankole Thompson on the 7th of March, 2003, the Applicant herein will rely on all the issues raised which go to jurisdiction in the Motion of the 23rd day of July, 2003 and his Reply of the 30th day of July, 2003 accordingly.

Furthermore the Applicant will rely on the following additional submissions on jurisdiction for the consideration of the Appeals Chamber under the above heading 3:-

It is submitted that once the Appeals Chamber hold that as matter of law the submissions canvassed on behalf of the Applicant to the effect that the Prosecutor is not empowered to initiate Criminal Proceedings in the jurisdiction of Sierra Leone for the reasons already postulated above, it follows as a necessary corollary that his Lordship Judge Bankole Thompson acted in excess of jurisdiction in embarking as he did in issuing the Purported Warrant of Arrest on the 7th of March 2003 against the person of Charles Ghankay Taylor then sitting Head of State and President of the Republic of Liberia, the provisions of Rule 47 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone notwithstanding.

It is further submitted that the issuance of the Purported Warrant of Arrest by Judge Bankole Thompson on the 7th March 2003 as aforesaid which resulted in a botch service in the territory of the Republic of Ghana tantamounted to a violation of the sovereignty of the Republic of Ghana over which the Special Court had no authority to so do either by its own statute OR any other law for that matter. Consequently, the issuance of the Warrant of Arrest by Judge Bankole Thompson on the 7th of March, 2003 had no legal basis whatsoever and ought with respect to be cancelled and/OR set aside and declared null and void at its inception.

It is further submitted by Counsel for the Applicant that the Warrant of Arrest of the 7th of March 2003 which inadvertently and without jurisdiction turned out to be an international arrest warrant against President Charles Ghankay Taylor, violates a fundamental principle of international law providing for immunity from Criminal proceedings from foreign criminal jurisdictions of an incumbent Head of State as recognized by the jurisprudence of the International Court of Justice.

It is further submitted by Counsel for the Applicant that an arrest warrant of a Head of State issued by a foreign jurisdiction is also inconsistent with the internationally recognized principle that foreign judicial powers or authority may not be exercised on the territory of another state. It is contended on behalf of the Applicant therefore that the arrest warrant of Charles Ghankay Taylor violates customary international law and impugns the honour and reputation of the Presidency and the sovereignty of both the Republics of Liberia and Ghana respectively.

It is further submitted by Counsel for the Applicant that the Special Court for Sierra Leone cannot impose legal obligations on states that are not a party to the Agreement between Sierra Leone and The United Nations of 16th January 2002. Moreover it is submitted that The Special Court for Sierra Leone is not an organ of the United Nations and is not established as an International Criminal Court with Chapter Seven (7) Powers.

4. **Submissions relating to criminal immunities against Prosecution of Heads of State.**

The immunity accorded to Heads of State against criminal proceedings in accordance with international customary law.

It is submitted that following the decision of CONGO VS. BELGIUM, it is now beyond doubt that a Head of State enjoys immunity from foreign jurisdictions and inviolability whether the Head of State is on foreign territory on an official mission as was the position in this instant case when an attempt was made to effect service albeit unsuccessfully on the Applicant herein in Accra, Ghana OR while in office. Furthermore Counsel for the Applicant herein respectfully request the Appeals Chamber to graciously consider whether Sierra Leone through the aegis of the Special Court for Sierra Leone could legitimately invoke universal jurisdiction and then, in case of an affirmative answer to this question for the Appeals Chamber to decide upon the question of whether the Applicant herein Charles Ghankay Taylor the sitting Head of State and President of the Republic of Liberia at the time of the issuance of both the aforementioned Indictment and Warrant of Arrest was entitled to immunity from criminal prosecution and punishment. Counsel for the Applicant however further submit that it has been persuasively argued by some renowned scholars in international law that the International Court of Justice in the celebrated case of Congo v. Belgium should have proceeded in this manner. See the separate opinions of a number of Judges namely:- (President Guillaume, Judges Ranjeva, Higgins, Kooijmans, Buergenthal, Rezek) – See President Guillaume’s Separate Opinion, paras 1-17; Judge Ranjeva’s Opinion, paras 1-12; Judges Higgins, Kooijmans, Buergenthal’s Joint Separate Opinion, paras 2-18; Judge Rezek’s Opinion, paras 3-11; Ad hoc Judge van den Wyngaert, paras 4 and 7 as well as by Judge ad hoc van den Wyngaert in her Dissenting Opinion. To that extent it is submitted that the International Court Justice with respect missed a golden opportunity to cast light on a difficult and topical legal issue and it is hereby submitted that this matter is now squarely before the Appeals Chamber for its determination.

To summarise, therefore it is submitted most of the additional jurisdictional submissions above mentioned cover matters which touch and concern violation of certain entrenched provisions of the 1991 Constitution of the Republic of Sierra Leone Act No.6 of 1991 relating to the actual procedure adopted in bringing into force the Special Court Agreement 2002 (Ratification) Act, 2002. Also certain provisions of the Special Court Agreement, 2002 (Ratification) Act, 2002 which have been alluded to above it has been submitted contravene and/OR are inconsistent with the provisions of the 1991 Constitution of Sierra Leone regarding certain powers vested on "the Prosecutor" without first amending vital provisions of the 1991 Constitution, and thereby rendering the confirmation of the indictment *ex parte* and the consequential Warrant of Arrest of the same day the 7th March 2003 invalid, bad in Law null and void at their inception.

In the light of the several above additional jurisdictional submissions, Counsel for the Applicant herein Charles Ghankay Taylor submits that the respective submissions either taken individually and/OR cumulatively have raised serious Constitutional questions warranting interpretation which is only the Supreme Court of Sierra Leone is empowered under the 1991 Constitution to pronounce upon them by way of its interpretation. The Constitutional questions which Counsel for the Applicant respectfully submit now arise for the interpretation of the Supreme Court of Sierra Leone are as follows:-

- (1) Whether OR not the procedure by which the Special Court Agreement, 2002 (Ratification) Act, 2002 came into force and was passed by Parliament violates and does violence to the express entrenched mandatory provisions of Section 108(3) of the 1991 Constitution in that the Bill which was a supplement to the Sierra Leone Gazette Vol. CXXXIII No. 11 dated 7th March, 2002 was submitted by Parliament to the President for his assent and became law without it been submitted to and been approved at a Referendum?
- (2) Are any other persons (inclusive of the "Prosecutor" of the Special Court for Sierra Leone other than the Attorney-General and Minister of Justice and the Director of Public Prosecutions empowered under the 1991

Constitution of Sierra Leone to initiate proceedings for alleged criminal offences committed in the jurisdiction of Sierra Leone?

If the answer to that question is in the negative, can it be said that the Indictment so confirmed by Judge Bankole Thompson on the 7th of March 2003 as a result of an application by the purported Prosecutor of the Special Court for Sierra Leone was therefore invalid, null and void at its inception in the light of the combined effect of the provisions of Sections 64(1), (2), (3), 66(7) and 66(4), (5) and (6) respectively of the 1991 Constitution of the Republic of Sierra Leone Act No. 6 of 1991?

- (3) Can it be said that the issuance of the Warrant of Arrest by Judge Bankole Thompson of the 7th of March 2003 has no legal basis whatsoever under the 1991 Constitution of Sierra Leone and is contrary to customary international law and as recognized by the jurisprudence of the International Court of Justice and further that the botch service of the said Warrant of Arrest in the territory of the Republic of Ghana tantamounted to a violation of the Sovereignty of the Republic of Ghana over which the Special Court for Sierra Leone had no authority to effect abroad either by its own statute OR under any other law?

In the light of the aforementioned Constitutional questions which it is respectfully submitted warrant interpretation by the Supreme Court function, Counsel for the Applicant graciously and most respectfully request the Appeals Chamber of the Special Court for Sierra Leone to stay its proceedings forthwith and remit the aforementioned three (3) Constitutional questions so framed on behalf of the Applicant herein for appropriate interpretation and/OR construction within the four corners of the 1991 Constitution.

Counsel for the Applicant do pray that the Appeals Chamber do grant an Order for the entire file presently before the Trial Chamber inclusive of the respective written arguments of all the parties to be brought before the Appeals Chamber on OR before the actual oral hearing of the matter.

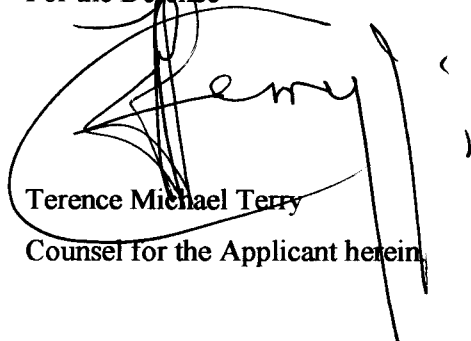
Defence submits that although the respective submissions from both the Prosecution and the Defence have so far been in writing, but that due to the fact that the issues so far canvassed for and on behalf of the Applicant raise matters of Public and Constitutional importance, the Appeals Chamber in its wisdom should most respectfully and exceptionally proceed to allow both the Prosecution and the Defence to supplement their written submissions where need be by oral submissions, subject to time limits to be fixed if it is so graciously inclined.

CONCLUSION

The Applicant herein prays that the Appeals Chamber uphold the several above submissions canvassed on his behalf by his Counsel and most respectfully proceed to give the necessary directions and consequential Orders arising thereto.

Done in Freetown this 26th day of September 2003

For the Defence



Terence Michael Terry
Counsel for the Applicant herein

**THE SPECIAL COURT FOR SIERRA LEONE
FREETOWN – SIERRA LEONE**

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Registrar: Robin Vincent

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19TH SEPTEMBER 2003 OF THE TRIAL CHAMBER OF THE SPECIAL
COURT FOR SIERRA LEONE DULY SIGNED BY THE PRESIDING JUDGE
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- Ms. Mora Johnson, Appellate Intern
- Luc Côté, Chief of Prosecutions
- Robert Petit, Senior Trial Counsel
- Paul Flynn, Trial Counsel

Applicant's Counsel:

Terence Michael Terry

Prosecutor Against CHARLES GHANKAY TAYLOR SCSL-2003-031

APPLICANT'S INDEX OF ATTACHMENTS

1. Letter dated the 26th day of September 2003 written by the Applicant's Counsel Terence Michael Terry and addressed to the Clerk of Parliament.
2. Reply from the Clerk of Parliament also dated the 26th day of September 2003 addressed to the Applicant's Counsel Terence Michael Terry.

INDEX OF ATTACHMENTS

INDEX OF ATTACHMENT - ONE

TERENCE TERRY

Barrister-at-Law & Solicitor
Marong House, 4th Floor
11 Charlotte Street
Freetown, Sierra Leone

26th September, 2003.

J. A. Carpenter
Clerk of Parliament
Parliament Building
Tower Hill
Freetown.

Dear Sir,

I wish to kindly enquire from you as to whether the Attorney-General and Minister of Justice has taken the necessary steps to make regulations to give effect to the Special Court Agreement 2002 (Ratification) Act 2002 pursuant to Section 47 of the said Act.

Yours faithfully,



Terence M. Terry.

INDEX OF ATTACHMENT - TWO



HR/SF/175/1

Clerk of Parliament
Parliament Building
O.A. U. Drive, Tower Hill
Freetown

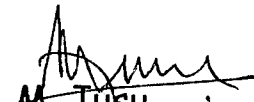
26th September, 2003

Mr. Terence Terry
Barrister-at-Law & Solicitor
Marong House , 4th Floor
11 Charllotte Street
Freetown :

Dear Sir,

**REGULATIONS RELATING TO THE SPECIAL COURT
(RATIFICATION) AGREEMENT ACT, 2002 (IN ACCORDANCE WITH
SECTION 47 OF THE SAID-ACT .**

I am directed to refer to your letter dated 26th September, 2003 relative to the above topic and to inform you that the Attorney-General and Minister of Justice has not made regulations to give effect to the afore-mentioned Agreement as provided for in Section 47 of the said-Act.


M. Jusu

For : Clerk of Parliament .