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SCSL-03-01-A
(2667-2674)

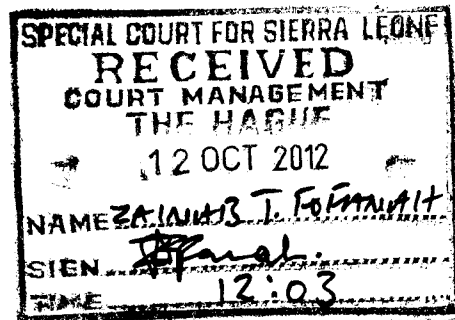
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR

IN THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Pre-Hearing Judge
Registrar: Ms. Binta Mansaray
Date filed: 12 October 2012



THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR
(Case No. SCSL-03-01-A)

PUBLIC

**URGENT PROSECUTION MOTION REGARDING THE DEFENCE'S FAILURE TO COMPLY
WITH THE PRACTICE DIRECTION**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Mr. James Pace

Defence Counsel for the Accused:

Mr. Morris Anyah
Mr. Eugene O'Sullivan
Mr. Christopher Gosnell
Ms. Kate Gibson
Ms. Magda Karagiannakis

I. INTRODUCTION

1. The Prosecution files this Motion seeking an Order from the Pre-Hearing Judge instructing the Defence to re-file its Rule 111 Submissions¹ or for the Pre-Hearing Judge to clarify the number of pages the Defence has available for its Rule 112 submissions, as the Rule 111 submissions are not in compliance with the “Practice Direction on dealing with Documents in The Hague - Sub-Office”.² These submissions violate Article 4(G) of the Practice Direction requiring that all documents filed before the Court be in a “12 point” typeface. This violation could have serious implications on the page limit available to the Defence for its Rule 112 submissions.

II. BACKGROUND

2. On 7 August 2012, the Pre-Hearing Judge granted an extension of two hundred (200) pages in total for both the Appellant's and Respondent's submissions, “so that the Appellant's Submissions and Respondent's Submissions together must not exceed four hundred (400) pages or one hundred and twenty thousand (120,000) words, whichever is greater.”³ On 21 August 2012, the Appeals Chamber extended the deadline for the filing of the parties' Rule 111 submissions but the page limits for the filing of Respondent's Submissions issued by the Chamber through the Pre-Hearing Judge's Decision remained unchanged.⁴ On 1 October 2012, the parties filed their Rule 111 Appellant's Submissions

¹ *i.e.* whichever of the two versions of the Appellant's Submissions the Chamber orders to be authoritative. *See* Prosecution Motion Seeking an Order Instructing which Version of Mr. Taylor's Submissions is Authoritative, SCSL-03-01-A-1333, 9 October 2012. The two versions in question are: Appellant's Submissions of Charles Ghankay Taylor, SCSL-03-01-A-1326, 1 October 2012 (Defence Filing 1326) and Corrigendum to *Appellant Submissions of Charles Ghankay Taylor*, SCSL-03-01-A-1331, 8 October 2012 (Corrigendum). The submissions are contained in Annex A to the Corrigendum.

² Special Court for Sierra Leone “Practice Direction on dealing with Documents in The Hague - Sub-Office”, adopted on 16 January 2008, amended 25 April 2008 (Practice Direction). This is rendered applicable by Article 26 of the Special Court for Sierra Leone “Practice Direction on the Structure of Grounds of Appeal before the Special Court” adopted on 1 July 2011, amended 23 May 2012 (Practice Direction on the Structure of Grounds of Appeal).

³ Decision on Prosecution and Defence Motions for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, SCSL-03-01-A-1315, 7 August 2012, para. 31 (iv)

⁴ Decision on Defence Motion for Reconsideration or Review of “Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113” and Final Order on Extension of Time for Filing Submissions, SCSL-03-01-A-1320, 21 August 2012, pp. 3-4.

with the Appeals Chamber.⁵ Exactly one week after filing Mr. Taylor's Rule 111 Appellant's Submissions, the Defence filed a Corrigendum thereto.⁶

III. SUBMISSIONS

3. Article 4 of the Practice Direction regulates the format of *all* documents filed before the Court. Article 4(G) requires that the "typeface shall be 12 point." This applies to the parties' submissions on appeal.⁷ The Prosecution noticed that the Defence Rule 111 Submissions violate this requirement and, via email, requested the Defence to confirm this.⁸ No reply has been received as yet thereby necessitating this Motion.
4. The Prosecution noted the typeface of the Defence's Rule 111 Submissions main text is 11.5 rather than the required 12. The fact this is 0.5 less than what is required indicates that this was a deliberate flaunting of the Practice Direction in an attempt to reduce the page number for the Rule 111 submissions, thereby making more pages available for the Defence's Rule 112 submissions. Apart from the fact this does not comply with the Practice Direction, it indicates a clear effort to circumvent the Court-ordered limit imposed (which already constituted a 200-page extension on that provided for in the Practice Direction).⁹ The Defence could have filed a further motion for extension of page limits rather than taking the matter into its own hands without giving notice to the Court or the Prosecution that it had done so.
5. The Prosecution also notes that the typeface for footnotes in the Defence's Rule 111 submissions (a 9.5 typeface) is less than that usually used in filings before this Court. Although this does not seem to be regulated by the Practice Direction, it would also have serious implications on the page count.¹⁰

⁵ Prosecution Appellant's Submission, SCSL-03-01-A-1325, 1 October 2012; Defence Filing 1326.

⁶ Corrigendum.

⁷ See Article 26 of the Practice Direction on the Structure of Grounds of Appeal.

⁸ See Annex A "11 October 2012 Email".

⁹ See Practice Direction, Article 6 (E)(i)(ii).

¹⁰ Article 6(F) of the Practice Direction provides that "Headings, footnotes and quotations count towards the word and page limits set out in the present article. Any appendices or authorities do not count towards the page limit."

6. In view of the implications this issue may have on the page limit available to the Defence in its Rule 112 Submissions, the Prosecution requests that the Pre-Hearing Judge order the Defence to re-file its Rule 111 submissions in conformity with the Practice Direction. Alternatively, the Pre-Hearing Judge may choose to determine the amount of pages available to the Defence for its Rule 112 Submissions having regard to the difference a 0.5 typeface makes over 310 pages of submissions. Given the potential impact on the amount of pages available to the Defence for its Rule 112 Submissions, the Prosecution requests that the Pre-Hearing Judge make the relevant Order on an expedited basis to alleviate any further delay the Defence may claim.
7. The Prosecution notes that it too is faced with the same page limit imposed by the Pre-Hearing Judge and therefore the Defence's practice would unfairly prejudice the Prosecution should it not be rectified. In this regard, it must be noted that the cumulative effect of the irregularities in the Defence pleadings¹¹ has further delayed the Prosecution's ability to meet its filing obligations in an orderly, timely manner. The Prosecution further notes that the Practice Direction on the Structure of Grounds of Appeal allows a designated Pre-Hearing Judge or the Appeals Chamber to decide upon an appropriate sanction in its discretion where a party fails to comply with the requirements laid down therein.¹²

IV. RELIEF REQUESTED

8. The Prosecution requests that the Pre-Hearing Judge, on an expedited basis, order the Defence to re-file its Rule 111 submissions in conformity with the Practice Direction. Alternatively, the Prosecution requests the Pre-Hearing Judge to clarify the number of pages the Defence has available for its Rule 112 submissions, after using the 12 typeface to recalculate the number of pages the Defence has used in its Rule 111 submissions.

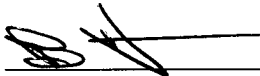
¹¹ Also including the filing of a Corrigendum one week after the filing of the original version of the Defence Rule 111 Submissions and the lack of a book of authorities conforming to that required (*See* Prosecution Motion Seeking Clarification of the Practice Direction on the Structure of Grounds of Appeal before the Special Court, SCSL-03-01-A-1327, 3 October 2012).

¹² Practice Direction on the Structure of Grounds of Appeal, Article 29. The Prosecution notes that the language "an appropriate sanction, *which can include*" (emphasis added) implies that the list set out therein is not exhaustive and empowers the Judge or Chamber to impose any sanction they deem appropriate.

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The Prosecution requests the Pre-Hearing Judge to sanction Defence Counsel as she deems fit.

Filed in The Hague, The Netherlands
For the Prosecution,
12 October 2012



Brenda J. Hollis
The Prosecutor

List of Authorities

SCSL Practice Directions

Special Court for Sierra Leone “Practice Direction on the Structure of Grounds of Appeal before the Special Court” adopted on 1 July 2011, amended 23 May 2012

Special Court for Sierra Leone “Practice Direction on dealing with Documents in The Hague - Sub-Office”, adopted on 16 January 2008, amended 25 April 2008

SCSL Filings

Prosecution Motion Seeking an Order Instructing which Version of Mr. Taylor’s Submissions is Authoritative, SCSL-03-01-A-1333, 9 October 2012.

Corrigendum to *Appellant Submissions of Charles Ghankay Taylor*, SCSL-03-01-A-1331, 8 October 2012

Prosecution Motion seeking Clarification of the Practice Direction on the Structure of Grounds of Appeal before the Special Court, SCSL-03-01-A-1327, 3 October 2012.

Prosecution Appellant’s Submission, SCSL-03-01-A-1325, 1 October 2012

Appellant’s Submissions of Charles Ghankay Taylor, SCSL-03-01-A-1326, 1 October 2012

Decision on Defence Motion for Reconsideration or Review of “Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113” and Final Order on Extension of Time for Filing Submissions, SCSL-03-01-A-1320, 21 August 2012

Decision on Prosecution and Defence Motions for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, SCSL-03-01-A-1315, 7 August 2012

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Public Annex A

11 October 2012 Email

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Ruth Mary Hackler/SCSL

11/10/2012 15:43

To

cc

bcc

Subject Mr. Taylor's Appellant's Submission

Dear Mr. Anyah,

It appears to the Prosecution that Mr. Taylor's Appellant Submissions may not be in compliance with the Practice Direction regarding font size. As we only have a PDF version of the submission, we are unable to determine whether it uses a 12-point Times New Roman font as required or if it is in 11.5-point font. Could you please check your Word version and let us know by the end of the day?

Thank you,
Ruth Mary Hackler
Sr. Case File Manager / Assoc. Legal Officer
Office of the Prosecutor
Ext.