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SCSL-03-01-A
(2691-2696)

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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: 16 October 2012

THE PROSECUTOR

Against

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

PUBLIC

**PROSECUTION REPLY TO DEFENCE RESPONSE TO 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

SPECIAL COURT FOR SIERRA LEONE	
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I. INTRODUCTION

1. The Prosecution files this Reply to the “Defence Response to Urgent Prosecution Motion Regarding the Defence’s Failure to Comply with the Practice Direction”¹ on an expedited basis pursuant to the Pre-Hearing Judge’s Order.² The provision of a Microsoft Word version of the filing at issue may assist the Pre-Hearing Judge in determining the length of the filing.³ However, neither this version nor the response explain why only the Defence Rule 111 submissions converted to an 11.5 typeface as explained below. Nor do they give an accurate page count of the version that was actually served. The “Urgent Prosecution Motion Regarding the Defence’s Failure to Comply with the Practice Direction”⁴ was not unfounded and the Prosecution did not act with wilful misconduct for the reasons set out below.

II. SUBMISSIONS

2. The Motion was filed after having requested the Defence, through an *ex parte* email, to clarify whether the typeface of its Rule 111 submissions was in accordance with the Practice Direction.⁵ Defence Counsel did not respond in any manner to the Prosecution email, sent within office hours, which requested a response by the end of the day. No response was received on Thursday evening or Friday morning either. The Response provides no explanation about this lack of reply. As explained in the Motion, the failure to receive a prompt response necessitated the filing of the Motion since the outcome of the issue could have an impact on the amount of pages available to the Defence for its Rule 112 submissions.⁶

¹ SCSL-03-01-A-1337, 15 October 2012 (Response).

² Scheduling Order for Response and Reply Regarding the “Urgent Prosecution Motion Regarding the Defence’s Failure to Comply with the Practice Direction”, SCSL-03-01-A-1336, 12 October 2012.

³ The Defence provide no justification for its request that the electronic “read-only” versions of their submissions not be made available to the Prosecution (Response, para. 5). The Prosecution therefore declined the Defence’s invitation to be present when the electronic versions were handed over to the Chamber’s Representative since this would have no import for the Prosecution unless the electronic versions were also made available to it.

⁴ SCSL-03-01-A-1335, 12 October 2012 (Motion).

⁵ See Motion, para. 3 and Annex “A”; Response, para. 7. The Practice Direction referred to is the 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).

⁶ Motion, paras. 1, 3, 6.

3. The Prosecution resorted to a number of measures to try to ascertain if the typeface was compliant before contacting the Defence and subsequently filing the Motion. An initial cursory comparison of the Taylor Appeal⁷ with other documents filed before this Court indicated differences in formatting. The Prosecution then copied excerpts from the PDF version of the filing, made available to it by Court Management, onto Microsoft Word which indicated an 11.5 typeface for the main text and a 9.5 typeface for the footnotes. Copying excerpts in the same manner from other filings, including the Defence's Notice of Appeal, did not have the same result, *i.e.* Microsoft Word indicated the other filings had a 12 typeface for the main text and a 10 typeface for the footnotes.
4. The Prosecution then used a subscription to professional software to convert all six parts of the PDF version of the filing in question, as made available by Court Management, into Microsoft Word documents, the result again being that the typeface of the main text was 11.5 and the footnotes 9.5. In order to check the accuracy of the conversion, a Prosecution filing in PDF and a Chambers filing in PDF were also converted, both of which resulted in a 12 typeface.⁸ The fact that the PDF files of OTP and Chambers filings converted to a 12 typeface while only the Defence filing converted to an 11.5 typeface precluded the possibility that the difference was due to Court Management's scanning or the Prosecution's printer scaling.⁹
5. The Prosecution filed its Rule 111 submissions at 15:55 on 1 October 2012.¹⁰ The Defence filed its original Rule 111 submissions at 16:28 on the same day.¹¹ Court Management scanned and served the Prosecution Rule 111 submissions on the evening of 1 October and the Defence submissions the following day. It is unlikely that Court Management changed the settings of its scanning device overnight.¹² The Prosecution converted both the submissions as originally filed and the corrigendum and received the

⁷ The Prosecution refers to both versions of the Taylor Appeal: the Appellant's Submissions of Charles Ghankay Taylor, SCSL-03-01-A-1326, 1 October 2012 (Defence Filing 1326) and the Corrigendum to *Appellant Submissions of Charles Ghankay Taylor*, SCSL-03-01-A-1331, 8 October 2012 (Corrigendum). See Motion, fn.1.

⁸ The Prosecution files a copy of these results in electronic format as Annex A to this Reply.

⁹ See Response, para. 8.

¹⁰ As per the Court Management stamp on the front page of the Prosecution Appellant's Submission, SCSL-03-01-A-1325, 1 October 2012.

¹¹ As per the Court Management stamp on the front page of Defence Filing 1326.

¹² See Response, para. 8.

same result. In addition, regardless of the manner in which or the reason why the typeface was reduced, if the Defence filing as served is in an 11.5 typeface, that font needs to be converted to a 12 typeface so that an accurate page count can be made in order to establish the pages available for the Defence Rule 112 submissions. If the page limit for the Defence has somehow increased, the Prosecution should receive a corresponding increase in page limit.

6. Faced with these results and combined with the Defence's lack of reply to the email, the Prosecution deemed it necessary to file the Motion before the Pre-Hearing Judge. The Defence's allegations of wilful misconduct¹³ are therefore unfounded.

III. CONCLUSION

7. The Prosecution filed its Motion after analyzing the matter in the manner discussed above and receiving no response from the Defence. Having reviewed the Defence Response, the Prosecution leaves the matter to the Pre-Hearing Judge's determination.

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



Brenda J. Hollis
The Prosecutor

¹³ Response, para. 9.

List of Authorities

SCSL Practice Direction

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

Defence Response to Urgent Prosecution Motion Regarding the Defence’s Failure to Comply with the Practice Direction, SCSL-03-01-A-1337, 15 October 2012

Scheduling Order for Response and Reply Regarding the “Urgent Prosecution Motion Regarding the Defence’s Failure to Comply with the Practice Direction”, SCSL-03-01-A-1336, 12 October 2012

Urgent Prosecution Motion Regarding the Defence’s Failure to Comply with the Practice Direction, SCSL-03-01-A-1335, 12 October 2012

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

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

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

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Public Annex A

Electronic copy of PDF conversion into Word format