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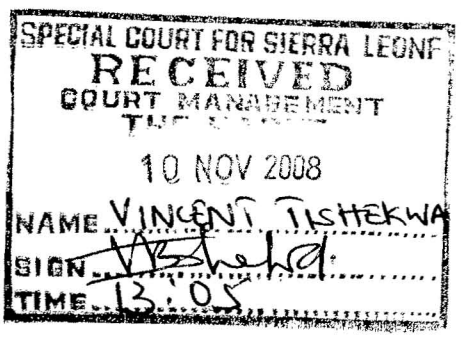
SCSL-03-01-T
(22073-22079)

22073

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

APPEALS CHAMBER

Before:	Justice Renate Winter, Presiding Justice Emmanuel Ayoola Justice Raja Fernando Justice Jon M. Kamanda Justice George Gelaga King
Registrar:	Herman von Hebel
Date filed:	10 November 2008



THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION REPLY TO DEFENCE RESPONSE TO NOTICE OF APPEAL AND SUBMISSIONS REGARDING THE DECISION CONCERNING PROTECTIVE MEASURES FOR WITNESS TF1-062

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I. INTRODUCTION

1. The Prosecution files this Reply[1] to the *"Public Defence Response to Prosecution Notice of Appeal and Submissions Regarding the Decision concerning Protective Measures for Witness TF1-062"*.[2]

2. The Response is without merit as discussed below.

II. ARGUMENT

Factual & Procedural History

3. At base, the Defence submissions are fundamentally flawed as at no time do they consider and, as a result, address the fact that the RUF Decision[3] does not exist in a vacuum. Rather, it is a decision which has been interpreted and implemented by Trial Chamber I, the Chamber which issued it, to provide protections to those persons the Defence argue are not covered by the Decision.

4. Accordingly, the Defence focus in paragraphs 4 and 5 of the Response is of no assistance in resolving the issue before this Chamber. The Defence focus on the absence of a particularized list of Group I witnesses, including TF1-062, attached to either the Renewed Motion[4] or the RUF Decision erroneously ignores the submissions in the Prosecution's Renewed Motion which incorporate by reference the list of 266 witnesses filed on 26 April 2004. It is this list which refers to TF1-062. Indeed, the Defence also erroneously ignore that it is this list which is referred to in paragraph 2 of the Renewed Motion, "... on 26 April [it had] filed a Prosecution Witness List of 266 witnesses" and so in the motion provided "an overview of the reasons for the protective measures sought **for those witnesses**." Therefore, the

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[1] This Reply is filed pursuant to Practice Direction for Certain Appeals Before the Special Court, 30 September 2004 ("**Practice Direction**"), para. 13 which provides that "[t]he appellant may file a reply within four days of the filing of the response."
[2] *Prosecutor v. Taylor,* SCSL-03-01-T-660, "Public Defence Response to Prosecution Notice of Appeal and Submissions Regarding the Decision concerning Protective Measures for Witness TF1-062", 6 November 2008 ("**Response**").
[3] As defined at para. 4 and footnote 9 of *Prosecutor v. Taylor,* SCSL-03-01-T-651, "Public Prosecution Notice of Appeal and Submissions Regarding the Decision concerning Protective Measures for Witness TF1-062", 30 October 2008 ("**Appeal**").
[4] As defined at para. 19 and footnote 33 of Appeal.

Defence focus is fundamentally flawed as it excludes vital information which was incorporated by reference in these filings.

5. Further, contrary to the Defence assertions, Trial Chamber II was not required "to rely heavily on inference" in order to conclude that TF1-062 is a protected witness.[5] Reference to footnote 6 of the RUF Decision and to the implementation of that Decision by Trial Chamber I in the RUF Trial[6] would have made clear that general Category 1 witnesses were included in the protective orders issued. While TF1-062 did not testify in the RUF Trial, witnesses who were also classified within general Group I did so testify subject to the protections provided in the RUF Decision. Examples of these witnesses are noted in Annex C of the TF1-215 Application[7]. Therefore, in the face of the above facts, it was not "within the Chamber's discretion to find that TF1-062 was not subject to any order for protective measures."[8] To find otherwise, is to negate the interpretation and application of the RUF Decision by the Chamber that issued it.

Standard of Review

6. As noted above, the RUF Decision is one which has been interpreted and implemented on many occasions; in respect of general Group I witnesses as well as of witnesses identified within this Group as Category 1A, 1B or 1C. Therefore, the RUF Decision's history removes any arguable ambiguity.[9] Indeed, the deference which the Defence argue the Appeals Chamber should accord Trial Chamber II's decision regarding TF1-062, should in actual fact be accorded to the practice of Trial Chamber I regarding that Chamber's implementation of its own decision. On this basis, it is apparent that it was not reasonably open to Trial Chamber II to depart from Trial Chamber I's application of the RUF Decision, and that this Trial Chamber's departure abused its discretion. Contrary to the Defence claim, this was not an example of two judges coming to different conclusions based on the same facts.[10] Rather, Trial

[5] Response, para. 5.
[6] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T (**"RUF Trial"**).
[7] As defined at para. 9 and footnote 20 of the Appeal.
[8] Response, para. 5.
[9] *Ibid*, para. 8.
[10] *Ibid.*

Chamber II ignored or overruled Trial Chamber I's decision that general Group 1 witnesses would receive protections. Such a conclusion and outcome is evidence that Trial Chamber II's decision was "so unreasonable as to force the conclusion that the Trial Chamber failed to exercise its discretion judiciously."[11]

Interpretation & Application of Rule 75(F)

7. The Defence argument regarding the requirements of Rule 75(F) is without merit.[12] The existence and extent of the RUF Decision was clear from footnote 6 and from the Decision's application to witnesses in the RUF Trial. Therefore, when the RUF Decision is viewed in context, the situation concerns an order that was issued and implemented, not an "alleged order". Its operation is not in doubt with regard to general Group 1 witnesses, listed on the Witness List of 26 April and incorporated by reference in the Renewed Motion. Accordingly, the RUF Decision does cover TF1-062, and on this basis the mandatory protections of Rule 75(F) must be applied, absent a proper showing to the contrary by the Defence.

8. For the reasons set out above, therefore, the Defence argument in paragraph 12 is erroneous. The effect of the decision of Trial Chamber II did, in effect, nullify or effectively rescind existing protective measures without proper showing by the Defence.

CDF Decision and CDF Testimony

9. The criticisms of the CDF Decision[13] made by the Defence at paragraphs 13 to 15 of the Response, mirror those it makes in respect of the RUF Decision. However, such criticisms disregard the significance of the similarities between the RUF and CDF Decisions, both in terms of drafting and of implementation by Trial Chamber I. Both decisions grant basic protective measures of screen and pseudonym to general Group I witnesses. In the CDF Trial[14] this is demonstrated by the application of such

[11] *Ibid*, para. 9 citing *Prosecutor v. Sesay et al.*, SCSL-04-15-T, "Decision on Prosecution Motion regarding the Objection to the Admissibility of Portions of Evidence of Witness TF1-371", 13 December 2007, para. 10.
[12] Response, para. 11.
[13] As defined in footnote 5 of the Appeal.
[14] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T ("**CDF Trial**").

measures to TF1-062 (then testifying as TF2-022) during his testimony, and to many other similarly situated witnesses in the CDF Trial. In the face of such facts, to suggest that "Trial Chamber I made a mistake in allowing [TF2-022] the benefit of protective measures when testifying" and that Trial Chamber I "implemented something that [they had] not ordered"[15] is not only erroneous but illogical.

10. The Prosecution also notes that the Defence conclusion in paragraph 14 of the Response that it "implicitly recognised the possibility that [TF1-062] was not properly covered by an order for protective measures" in the CDF Trial by re-applying for measures for this witness in the RUF Trial is erroneous. The conclusion ignores the obvious confusion that might arise by a witness testifying in different trials using different pseudonyms. The simple approach is to make a new application for measures using the pseudonym of the witness relevant to the particular trial.

The RUF Decision

11. The Defence arguments regarding the alleged deficiencies of the RUF Decision set out at paragraphs 17 to 22 of the Response effectively repeat the arguments made earlier in the Response at paragraphs 4 to 5. Accordingly, the Prosecution refers to its arguments set out above at paragraphs 3 to 6.

12. The Defence alternative argument set out in paragraph 23 of the Response is unclear. Therefore, in reply, the Prosecution can only state that, had the RUF Decision rescinded, varied or augmented the CDF Decision, Trial Chamber I would have been required to comply with the provisions of Rules 75(H) to (J). However, no reference is made to such procedure in the RUF Decision. Further, the Defence assertion that the measures ordered in the RUF Decision applied to that case alone is without legal merit as it ignores the plain language of Rule 75(F).

[15] See Response, para. 15.

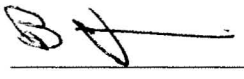
IV. CONCLUSION

13. On the basis of the above submissions and those set out in the Appeal, the Decision[16] should be set aside. The Trial Chamber should be ordered to hear the testimony of TF1-062 subject to the protective measures which were in place for the witness during his testimony in the AFRC and CDF Trials.

Filed in The Hague,

10 November 2008

For the Prosecution,



Brenda J. Hollis
Principal Trial Attorney

[16] As defined in footnote 3 of the Appeal.

INDEX OF AUTHORITIES

A. ORDERS, DECISIONS AND JUDGEMENTS

Prosecutor v. Sesay et al., SCSL-04-15-T

1. *Prosecutor v. Sesay et al.*, SCSL-04-15-T, "Decision on Prosecution Motion regarding the Objection to the Admissibility of Portions of Evidence of Witness TF1-371", 13 December 2007

Prosecutor v. Taylor, SCSL-03-1 -T

2. *Prosecutor v. Taylor*, SCSL-03-01-T-651, "Public Prosecution Notice of Appeal and Submissions Regarding the Decision concerning Protective Measures for Witness TF1-062", 30 October 2008

3. *Prosecutor v. Taylor*, SCSL-03-01-T-660, "Public Defence Response to Prosecution Notice of Appeal and Submissions Regarding the Decision concerning Protective Measures for Witness TF1-062", 6 November 2008

B. RULES OF PROCEDURE AND EVIDENCE AND PRACTICE DIRECTIONS

1. Practice Direction for Certain Appeals Before the Special Court of 20 September 2004.