



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

FRIDAY, 11 FEBRUARY 2011  
11.30 A.M.  
PROCEEDINGS

TRIAL CHAMBER II

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Before the Judges:

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

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu

For the Registry:

Ms Fidelma Donlon  
Ms Rachel Irura  
Mr Alhassan Fornah

For the Prosecution:

Ms Brenda J Hollis  
Ms Leigh Lawrie  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munyard

From the Office of the Principal  
Defender: Ms Claire Carlton-Hanciles

1 Friday, 11 February 2011

2 [Open session]

3 [In the absence of the accused]

4 [Upon commencing at 11.35 a.m.]

11:38:07 5 PRESIDING JUDGE: Good morning. We have a few preliminary  
6 matters before we reach the scheduled agenda item, and I will,  
7 before alluding to those, take appearances. Ms Hollis?

8 MS HOLLIS: Good morning, Madam President, your Honours,  
9 opposing counsel. This morning for the Prosecution,  
11:38:30 10 Brenda J Hollis, Leigh Lawrie, and we are joined by our case  
11 manager, Maja Dimitrova.

12 PRESIDING JUDGE: Defence?

13 MR MUNYARD: Good morning, Madam President, your Honours,  
14 counsel opposite. For the Defence this morning, myself,  
11:38:47 15 Terry Munyard, also present is Courtenay Griffiths QC, and  
16 Claire Carlton-Hanciles, the Principal Defender.  
17 Madam President, Mr Taylor is not here, he's waived his right to  
18 appear. There is, on this occasion, a proper formal document and  
19 it was in the hands of your senior legal officer.

11:39:13 20 PRESIDING JUDGE: Thank you, Mr Munyard, we have indeed  
21 seen that document and we note the voluntary waiver, and  
22 accordingly, in light of the provisions of rule 60, the Court  
23 will proceed in the absence of the accused.

24 As I indicated there are two preliminary matters. One is  
11:39:25 25 the direction to Mr Griffiths to appear this morning. And he has  
26 been directed to attend to apologise for his behaviour on 8  
27 February. And the second is the Defence request for ancillary  
28 relief. I will deal with the first matter.

29 MR MUNYARD: Madam President, again I rise. We are

1 cognizant of the court's order of Wednesday. Looking at that  
2 order dated Wednesday, 9 February 2011, it's timed as having been  
3 received by Court Management at 1 minute before 4 o'clock on  
4 Wednesday afternoon. We received it about 40 minutes later. It  
11:40:18 5 is the view of the Defence that this is so serious a matter that  
6 it is something on which we feel that Mr Griffiths needs  
7 representation before the Court. May I simply and briefly remind  
8 you of what you said in that order?

9 You quoted the transcript of Tuesday's hearing where you  
11:40:44 10 said this, Madam President:

11 "Mr Griffiths, please sit down and remain as directed by  
12 the Court. If you continue to remain on your feet and present -  
13 prevent counsel for the Prosecution speaking by doing so, then I  
14 will be obliged to consider that your conduct is verging on a  
11:41:00 15 contempt."

16 You then go on to say, in the order of Wednesday, you go on  
17 to say that by a majority, justice Sebutinde dissenting, you  
18 direct Mr Griffiths to attend today, which of course he has done,  
19 and you warn him that unless he apologises for his behaviour on 8  
11:41:23 20 February, the Trial Chamber may impose sanctions pursuant to  
21 rule 46 of the Rules of Procedure and Evidence and looking at  
22 rule 46 of the latest revision of the Rules of Procedure and  
23 Evidence of the Special Court for Sierra Leone, 46(A), and that's  
24 the only one I'm intending to quote from, 46(A) reads:

11:41:49 25 "A Chamber may, after a warning, impose sanctions against  
26 or refuse audience to a counsel if, in its opinion, his conduct  
27 remains offensive or abusive, obstructs the proceedings or is  
28 otherwise contrary to the interests of justice."

29 Now, in our submission, by your words, Madam President, on

1 Tuesday where you say, "I will obliged to consider that your  
2 conduct is verging on a contempt," and by ordering Mr Griffiths  
3 to appear today, and saying, unless he apologises, the Court may  
4 impose sanctions pursuant to the rule I've just cited, there is  
11:42:36 5 clearly been a prima facie view taken by the majority, I'll put  
6 it, that's how I read it in any event, a prima facie view taken  
7 by the majority of the Trial Chamber that Mr Griffiths either is  
8 in contempt or is liable to be sanctioned or refused right of  
9 audience under rule 46.

11:43:02 10 Those, you don't need me to say, are extremely serious  
11 matters. They are punitive in nature, they must depend upon a  
12 judicial hearing and an understanding of both sides of the  
13 argument, and there must, in our submission, be proper and  
14 careful consideration given to the argument on the merits of any  
11:43:34 15 possible contempt or breach of the code of conduct.

16 In those circumstances, we have endeavoured in the very  
17 short notice that we've had, just over a day, to obtain  
18 representation for Mr Griffiths by properly experienced counsel,  
19 someone who has experience not just in domestic jurisdictions,  
11:43:57 20 but also in the jurisdictions of these tribunals, by which I mean  
21 the ad hoc or the one permanent international criminal justice  
22 tribunals so that he can be properly, effectively and carefully  
23 represented.

24 And we would invite the Court, because we haven't been able  
11:44:16 25 to get such a suitably qualified lawyer in this very brief period  
26 of time, between late Wednesday afternoon and this morning, we  
27 would invite the Court to adjourn this matter for two weeks, for  
28 it to be heard, and in that time we anticipate we will be able to  
29 get suitably qualified counsel to represent Mr Griffiths.

1 Can I say one final thing on this? Lest anybody should  
2 think that Mr Griffiths should be represented by a member of the  
3 Defence team, we don't think that would be at all proper for two  
4 obvious and profound reasons. One is that there is a general  
11:44:57 5 principle of legal practice that you do not represent somebody  
6 that you are a member of the same team as; it would be akin to a  
7 lawyer attempting to represent a member of their family. That is  
8 not, in our practice, ever considered appropriate. And we  
9 certainly don't think it would be right for us to appear for  
11:45:16 10 Mr Griffiths in the circumstances. That's a general principle of  
11 practice.

12 But there is another reason here, and that is that the  
13 Court will have undoubtedly noticed that on Tuesday, Mr Griffiths  
14 was the only Defence counsel present. It was our collective  
11:45:34 15 view, as a team, that we should not attend the proceedings and  
16 when I say should not attend the proceedings, I don't mean by  
17 that that we were withdrawing our services as counsel, nor indeed  
18 was Mr Griffiths, but simply not being present at Tuesday's  
19 proceedings, and of course those of Wednesday. So for those two  
11:45:56 20 reasons, we don't think it at all appropriate for any of us to  
21 seek to represent him and we do invite the Court to allow us  
22 proper time and we hope that a two-week adjournment would not be  
23 an unreasonable adjournment to obtain the services of somebody  
24 suitably experienced and we think we are fairly confident that we  
11:46:17 25 can do that in two weeks' time.

26 PRESIDING JUDGE: Allow me to confer, Mr Munyard.

27 MR MUNYARD: Certainly.

28 [Trial Chamber confers]

29 PRESIDING JUDGE: Ms Hollis, this is strictly a matter

1 between the Presiding Judge and Mr Griffiths as represented by  
2 Mr Munyard, but if there is anything that would be of assistance  
3 to the Court that you wish to say, I will take it into account.

4 MS HOLLIS: Thank you, Madam President.

11:47:22 5 What we would suggest, your Honours, is a careful review of  
6 rule 46, your order, and rule 77. And your order makes no  
7 mention of rule 77, which is contempt. Your order refers to rule  
8 46. Counsel referred you only to one provision of rule 46 but if  
9 you look at the entire rule, you will see there is nothing in the

11:47:50 10 rule that allows a hearing on the matter. There is nothing in  
11 the rule that allows representation on the matter. The only  
12 thing in the rule that deals with the ability of the counsel to  
13 take any action, assuming sanctions were imposed, is rule 46(H)  
14 which indicates that decisions under sub-rules (A) to (C) may be

11:48:19 15 appealed with leave from the Chamber. So the Defence are  
16 conflating the protections of rule 77 with the plain language of  
17 rule 46, which is a key and critical rule to allow your Honours  
18 to maintain control over the proceedings and control over the  
19 conduct of counsel. And we suggest that your Honours have every

11:48:43 20 right to ask for an apology from this counsel for his conduct,  
21 and then, depending upon what action might follow, should no  
22 apology be forthcoming, perhaps the provisions of rule 46(H)  
23 would apply. But no right to a hearing, no right to  
24 representation, and we suggest no right to a delay.

11:49:09 25 Thank you, Madam President.

26 MR MUNYARD: Madam President, would you allow me one  
27 response on the law, not on the facts, of course? The fact that  
28 the rule cited in your order, rule 46, does not contain  
29 provisions for a hearing or representation, does not prevent the

1 Court, within its inherent powers to regulate its own  
2 proceedings, allowing such course of action to follow. And  
3 secondly, although rule 77 is not mentioned in the order, in your  
4 order you have quoted your own words, "that I consider that your  
11:49:48 5 conduct is verging on a contempt," which brings in at the very  
6 least the fact that the Court was considering its own rules  
7 relating to contempt. I accept that there is nothing in the  
8 order about rule 77 but the implication is there. Thank you.

9 JUDGE LUSSICK: Mr Munyard, just to clarify the position,  
11:50:13 10 you may be aware that some time ago Mr Griffiths was in a similar  
11 pickle, if you like, and the court asked for an apology which it  
12 got. But on this occasion, are you saying that Mr Griffiths has  
13 no intention of apologising and that's why you're bringing in  
14 outside counsel?

11:50:35 15 MR MUNYARD: Your Honour, on this occasion, I would submit  
16 that the facts and the circumstances are wholly different. You  
17 may recall that I came into court on the last occasion, I didn't  
18 speak but I came into court with Mr Griffiths on the last  
19 occasion. Like last Tuesday I wasn't present during that part of  
11:51:01 20 the hearing when the behaviour complained of took place but  
21 I familiarised myself with it. On the last occasion, I believe  
22 your Honour is referring to August the 12th, 2010, on that  
23 occasion, I familiarised myself with what had gone on and just as  
24 I have with what went on this Tuesday and in my submission, the  
11:51:26 25 situation is very different, and, indeed, does require full  
26 consideration on its merits. I'm not saying at this stage one  
27 way or another what Mr Griffiths's ultimate position will be but  
28 it does require full and careful consideration on its merits.

29 JUDGE LUSSICK: Well, I'm still not 100 per cent sure of

1 where this is going, Mr Munyard. The Court has asked for an  
2 apology, instead of getting one, you're saying that overseas  
3 counsel has to be in to argue Mr Griffiths's case.

4 MR MUNYARD: With respect, your Honour, not overseas,  
11:52:12 5 counsel with some experience.

6 JUDGE LUSSICK: Can I say outside counsel must be brought  
7 in.

8 MR MUNYARD: Yes.

9 JUDGE LUSSICK: Can I understand from that, then, that no  
11:52:24 10 apology will be forthcoming; is that correct?

11 MR MUNYARD: At this stage, I'm saying that we believe that  
12 there are merits in arguing this matter before the Court and  
13 making submissions to the Court as to the conduct complained of  
14 on Tuesday. And until the merits of those arguments can be  
11:52:45 15 properly ventilated, we are not in a position to resolve the  
16 matter one way or the other. Your Honour is - your Honour  
17 Justice Lussick, is, if I may say so, pushing me to give an  
18 answer one way or the other when in fact I'm saying we've not yet  
19 reached that stage. And I'm inviting the Court to adjourn the  
11:53:09 20 matter so that the merits can be properly aired before the entire  
21 Bench.

22 JUDGE SEBUTINDE: I would like to say something on this  
23 issue. As both parties know clearly, I am not party to the  
24 directive summoning counsel. I did not state my reasons, but one  
11:53:35 25 of the reasons that gave me the mind, if you like, not to bring  
26 this matter up at this stage was precisely what has happened now,  
27 that the disciplinary proceeding is now taking over or taking us  
28 away from the trial. My own view was that the disciplinary  
29 proceeding of counsel, Mr Griffiths, should be subordinated to

1 the main proceedings of the trial. Why do I say this? Because  
2 the two are separate. And for me, the delay of the trial should  
3 not emanate from an ancillary proceeding and I still see it in  
4 this way: That we are sitting at a crucial stage of the  
11:54:31 5 proceedings, towards the closure, where there is an important  
6 application for leave to appeal. It is a very, very crucial  
7 application that could fundamentally affect this trial and the  
8 work that we've done in three and a half years and now we are  
9 veering off into a side proceeding that deals with counsel's  
11:54:59 10 conduct. I think that this is sad.

11 You, on the Defence side, are asking for a stay. I'm not  
12 sure if you're asking for a stay of the trial or whether you're  
13 asking for a stay of the disciplinary proceedings. My view is,  
14 of course, you're entitled to ask whatever you want to ask for  
11:55:21 15 the disciplinary proceedings, but in your view, is this fair to  
16 delay the main proceedings of the trial? I want to hear from  
17 both sides because in my view, the two can continue parallel.  
18 This trial can continue, we can continue to adjudicate, and make  
19 decisions that take the trial forward without holding it back,  
11:55:46 20 and at the same time you can have your disciplinary proceedings  
21 and due process on the side. I would like to hear what the  
22 parties think, starting with you, Mr Munyard.

23 MR MUNYARD: Certainly, your Honour. Madam President, the  
24 position of the Defence is entirely consonant with that that's  
11:56:09 25 just been enunciated by Justice Sebutinde. We also wish to deal  
26 with these disciplinary proceedings in a completely separate way  
27 and I'm asking for a two-week adjournment of them so they can be  
28 dealt with, as it were completely collateral, to the rest of the  
29 trial proceedings. And I hope that answers Justice Sebutinde's

1 question. We are not asking for a stay of these proceedings, we  
2 are asking for an adjournment of them. I have not, on behalf of  
3 the Defence this morning, addressed at all the second issue on  
4 the agenda for today.

11:56:48 5 PRESIDING JUDGE: We will come to that in due course,  
6 Mr Munyard. I should say that in my view, and I made it clear in  
7 the directive, that Mr Griffiths, on the day, was refused  
8 permission to withdraw and he was subsequently directed to sit  
9 down and he left in defiance of those two directions or orders.  
11:57:11 10 However, I do see merit in the fact that he has a right to be  
11 heard and a right to have his views taken into account. I agree  
12 there is no clear procedural mechanism laid down in the rule.  
13 However, there is an overriding right in any person or counsel to  
14 be heard fully in a matter that may lead to a disciplinary or may  
11:57:43 15 not - I am not making any conclusions - he was requested to give  
16 a apology and similarly, as you have alluded to it would have  
17 been dealt with as in August, you have given me the date.  
18 However, I see merit in your application and I will defer this  
19 matter for two weeks. I will now - sorry.

11:58:10 20 MR MUNYARD: We are very grateful for that,  
21 Madam President.

22 PRESIDING JUDGE: Now, that means I have to set a date.  
23 Today is Friday, the 11th. Two weeks is a period, I presume  
24 calendar weeks, of 14 days. What date do you have in mind?

11:58:25 25 MR MUNYARD: That would be the 25th, if I've got my sums  
26 correct.

27 PRESIDING JUDGE: I have been helpfully reminded by our  
28 senior legal officer that there are Special Tribunal for Lebanon  
29 hearings possibly scheduled. I will therefore provisionally set

1 it for the 25th. I will seek assistance of our Registry and  
2 staff to ensure that that date is available, and if it is not,  
3 the parties will be informed accordingly.

4 MR MUNYARD: Certainly.

11:59:07 5 PRESIDING JUDGE: This matter is therefore - I have not  
6 lost sight of the fact, Mr Munyard, that it is imperative to have  
7 this dealt with expeditiously as it involves a right of  
8 appearance. I will now move to the second item on the agenda,  
9 which is the application by counsel for the Prosecution - for the  
11:59:33 10 Defence, and I quote, "A request for ancillary relief in  
11 conjunction with the Defence motion seek leave to appeal."

12 We note, my learned colleagues and I, that the Defence at  
13 paragraph 5 of that document requests the Trial Chamber to stay  
14 the proceedings pending resolution of the motion for  
11:59:52 15 certification, and further on, in the same paragraph, refers to  
16 "and/or related decisions by the Appeals Chamber."

17 There is some ambiguity and I would ask you first to  
18 clarify what exactly you are seeking before I invite a reply by  
19 the Prosecution.

12:00:10 20 MR MUNYARD: Very well, thank you, Madam President. What  
21 we are seeking by our motion seeking ancillary relief in the form  
22 of a stay is first and foremost an order from this Court that  
23 until such time as either you refuse leave or, if you grant  
24 leave, the Appeals Chamber decides - reaches its decision and  
12:00:43 25 indeed if it reaches a decision in our favour, any timetable it  
26 then sets down, that we are asking the Court not to proceed to  
27 close the case because, as your Honours will be aware, rule 87(A)  
28 provides, "After presentation of closing arguments, the Presiding  
29 Judge shall declare the hearing closed."

1 And so if this Court at this stage declared the hearing  
2 closed, then we would be shut out, as it were, from attempting to  
3 pursue effectively an appeal to the Appeals Chamber. We are  
4 simply asking the Court to put on hold any closing of the case  
12:01:33 5 until such time as either the leave to appeal has been disposed  
6 of or the appeal itself has been disposed of.

7 PRESIDING JUDGE: Let me rephrase and clarify, please.  
8 It's close of the case, any closing of the case be deferred until  
9 the leave is disposed of. Does that mean, if the leave is not  
12:02:03 10 granted, then there will be closure, or in the alternative, if it  
11 is granted, until the Appeal Chamber rules, is that what you're  
12 saying? Because I'm still what confused.

13 MR MUNYARD: Well, what I'm asking the Court to do is not  
14 to close the case until all outstanding matters in relation to an  
12:02:30 15 appeal against the majority decision not to certify the final  
16 brief of the Defence has been resolved. Madam President, does  
17 that make it clear?

18 PRESIDING JUDGE: It makes it clear to me. I'll just -

19 JUDGE LUSSICK: I'm still not clear. I have a little  
12:02:50 20 confusion here. Are you saying that you will await the decision  
21 on the motion for leave to appeal, or are you asking that if that  
22 motion is granted, you're asking the case not to be closed until  
23 the substantive appeal has been dealt with by the Appeals  
24 Chamber?

12:03:12 25 MR MUNYARD: Yes.

26 JUDGE LUSSICK: I see. Thank you, Mr Munyard.

27 MR MUNYARD: Put very simply we want nothing done that will  
28 close the case until the final decisions have been made by either  
29 the Trial Chamber or the Appeal Chamber on that particular issue,

1 the final brief.

2 PRESIDING JUDGE: Before I invite a reply by the  
3 Prosecution, because they have had no opportunity to comment on  
4 this, I note that you make the submission on one of the premises  
12:03:41 5 is that if it's closed, it will effectively close the hearing and  
6 you will be, I quote, "Shut out effectively." Are you saying  
7 that if, and I again stress the "if" there was leave to appeal  
8 and the Appeal Chamber directed the admission of the document,  
9 that either this Trial Chamber or the Appeal Chamber could not  
12:04:07 10 reopen the case? Because the wording is a procedural matter,  
11 Mr Munyard, and any court has an inherent jurisdiction to review  
12 a procedural matter in the light of - after events.

13 MR MUNYARD: Yes, Madam President, I accept that. What we  
14 are doing is asking you not to put yourselves in a position at  
12:04:31 15 this stage where you have to reconsider and possibly reopen  
16 proceedings. We are asking for a purely procedural approach to  
17 this, which we think is the most practical approach, which is not  
18 to close any doors at the moment, so that if you did close them  
19 and then the Appeals Chamber so ruled, you'd have to open them  
12:04:52 20 again. We are simply asking you not to take any further steps in  
21 closing the case until this matter of the final brief has been  
22 resolved.

23 PRESIDING JUDGE: As an ancillary question on this issue,  
24 you are - have been directed to file your reply by Monday at  
12:05:13 25 1600, you have seen the response, it's already been filed.

26 MR MUNYARD: Yes.

27 PRESIDING JUDGE: Do you intend to file a reply?

28 MR MUNYARD: Well, in the light of the fact that in their  
29 submissions, the Prosecution in their response yesterday on the

1 10th of February, say that they take no position as to whether or  
2 not we have met the rule 73(B) test, irreparable damage,  
3 et cetera, we also note that the Prosecution, in their  
4 conclusion, say that they think the matter may benefit from  
12:05:49 5 appellate resolution at this time, and in those circumstances,  
6 Madam President, although I haven't reached a final decision on  
7 this this morning, I think it's probably unlikely that we would  
8 be putting in any reply to the Prosecution response. I'm sure  
9 I could let you have an answer to that later today, if you needed  
12:06:15 10 it, but the order for expedited filing deals with - gives us only  
11 one more working day in any event, so I can't give you a definite  
12 answer, but I think it's unlikely.

13 [Trial Chamber confers]

14 PRESIDING JUDGE: Ms Hollis, the matter before the Court  
12:06:52 15 now is the written request by the Defence for ancillary relief in  
16 conjunction with the Defence motion, et cetera, filed on the 9th.  
17 I would invite your reply to that, and you've also heard counsel  
18 remark on the position concerning a reply to the appeal leave  
19 application.

12:07:17 20 MS HOLLIS: Thank you, Madam President. The Prosecution  
21 views this Defence request as really dealing with two different  
22 issues. The first issue is, very clearly stated, a request for a  
23 stay of proceedings until there is a decision on the outstanding  
24 motion, either through your Honours determining you will not  
12:07:45 25 grant appeal or through final resolution by the Appeals Chamber.  
26 But secondly, also what is either a request or an assertion that  
27 the decision relating to the filing of the final written brief by  
28 the Defence also preserves some right for them to then make oral  
29 argument.

1 As to the first part of the request, based on the  
2 outstanding motion, the Prosecution is of the view that your  
3 Honours may well determine it is appropriate for the smooth  
4 functioning of the proceedings to postpone closing the hearing  
12:08:35 5 until the motion is decided, either by your Honours or on appeal.  
6 However, that is a decision for your Honours to make within your  
7 inherent discretion to manage trial proceedings.

8 And we suggest there is no doubt that the Trial Chamber has  
9 inherent discretion to determine matters relating to the  
12:09:04 10 management of the trial proceedings. And so it would be for your  
11 Honours to exercise your sound discretion and determine if you  
12 would, indeed, grant the first part of this request for ancillary  
13 relief. And there are multiple cases that speak to your Honours'  
14 inherent discretion in this matter. The Prlic decision on 13  
12:09:30 15 November 2006, at paragraph 14, an ICTY decision, speaks to that.  
16 Also an ICTY decision, the Seselj decision on 12 February 2008,  
17 speaks to the inherent discretion of your Honours in managing  
18 your trial proceedings.

19 However, we would suggest to you that should you determine  
12:10:01 20 that the close of the hearing will await a final decision on this  
21 pending motion, either through your Honours or on appeal, that  
22 the delay should only be for purposes of that motion being  
23 determined. It should not be allowed that the Defence would use  
24 such a postponement of the close to begin filing more motions on  
12:10:27 25 different issues. We would not be in support of that and we  
26 would suggest it would be improper and we ask that you not allow  
27 that.

28 As to the second part of the request, which relates to this  
29 request or assertion that, somehow, there is a remaining right of

1 oral argument in this case, we would suggest that that is an  
2 unfounded request or assertion and that there should be no  
3 allowance of a final closing argument by the Defence, other than  
4 should they elect today to give a scheduled rebuttal to the  
12:11:13 5 Prosecution final oral submissions.

6 We suggest to your Honours that the motion conflates the  
7 issue relating to its untimely filing of a final brief with the  
8 right to an accused to file or present a closing argument. These  
9 two opportunities for the accused are independent of each other,  
12:11:40 10 and the making of final oral submissions is in no way reliant on  
11 filing a final trial brief. Nothing has precluded this accused,  
12 through his counsel, from making oral submissions to your Honours  
13 on the dates scheduled for such submissions. As to the 9th of  
14 February, it is very clear that the failure to make oral  
12:12:10 15 submissions on that date were the wilful, knowing, conscious  
16 choices of the accused as relayed to you through his Defence  
17 counsel.

18 There is no fair trial right that is at issue in this  
19 regard. We are facing this issue because this accused and his  
12:12:34 20 counsel refused to accept binding orders of the Court and,  
21 instead, attempted to assert their control over the proceedings,  
22 to impose their scheduling dates, to impose their conditions on  
23 the proceedings. That is not the reality of the way that  
24 criminal proceedings do or should function. The reality is the  
12:13:01 25 accused has wilfully and knowingly waived his opportunity to make  
26 final oral submissions to the chamber.

27 And if we look at some of the facts, this willing and  
28 knowing waiver becomes very clear. If we recall, on 3 February,  
29 at 1659 hours, was when the Defence filed its final brief, in

1 excess of 800 pages. It is the understanding of the Prosecution  
2 that on Friday, the 4th of February, 2011, after it had processed  
3 this lengthy filing, Court Management provided the final brief to  
4 the Trial Chamber at approximately 1455 hours. The following  
12:13:51 5 duty day, Monday, 7 February, at approximately 1538 hours, this  
6 Trial Chamber issued its decision as to whether it would accept  
7 the final trial brief.

8 Thus, contrary to Lead Defence counsel's dramatic  
9 misrepresentations it was the accused, through his Defence  
12:14:15 10 counsel, who filed his final trial brief at the 11th hour and  
11 indeed in reality, your Honours gave your decision at 11.01.

12 On 8 February, the day before the Defence was scheduled to  
13 present oral argument, if the accused through his counsel elected  
14 to do so, Lead Defence counsel and the accused appeared in court.

12:14:40 15 And on that date, Mr Griffiths made it clear to the Court that  
16 based on written instruction from the accused, he would not take  
17 part in the oral proceedings. Lead counsel stated it was the  
18 intention of both himself and Mr Taylor, in fact, to leave the  
19 Court.

12:14:59 20 Now, Mr Taylor did - or Mr Griffiths did leave the Court  
21 after an exchange with the Presiding Judge. But after he left  
22 the Court he spoke to the press and, in speaking to the press, he  
23 told them, as we understand it, we have decided not to  
24 participate in these closing arguments. Now, he went on to say  
12:15:25 25 because, "As far as we are concerned, it is a complete farce."

26 But the point here is, he said, "We have decided not to  
27 participate in these closing arguments." Based on these  
28 comments, both inside and outside the courtroom, it is clear that  
29 the Defence, on instruction from the accused, had made the

1 decision not to present closing argument as scheduled by this  
2 Trial Chamber.

3 JUDGE SEBUTINDE: Ms Hollis, sorry to interrupt, but do you  
4 not think that either you are relitigating issues have already  
12:16:01 5 been settled by the Chamber, or alternatively, issues that should  
6 be canvassed before the Appeals Chamber? Because I think what we  
7 are dealing with now is the impending or, yes, the pending leave  
8 to appeal decision and whether or not the order to close should  
9 come at the end, with a determination of that decision, or  
10 alternatively with a determination of the Appeals Chamber  
11 decision if we decide to send it upstairs to appeal. That is all  
12 we are dealing with today. We are not dealing with the merits of  
13 the would-be appeal because that should be argued before the  
14 Appeals Chamber.

12:16:43 15 MS HOLLIS: Thank you, your Honour.

16 JUDGE SEBUTINDE: I think, listening to you for the last  
17 five minutes, everything that you're saying has nothing to do  
18 with the issue that we are dealing with now.

19 MS HOLLIS: May I respond?

12:16:57 20 JUDGE SEBUTINDE: Yes, please.

21 MS HOLLIS: Madam Justice, it has everything to do with the  
22 motion that is before you, which the Prosecution was not given  
23 the opportunity to respond to in writing, but was requested to  
24 respond to here orally. And a part of that motion indicates that  
12:17:13 25 they want a stay in order to preserve their right to make oral  
26 submissions. We have the right, I would suggest, to respond to  
27 that part of their motion. And all of what I have been saying is  
28 relevant to that part of the motion because it gives evidence of  
29 waiver of any opportunity to make oral argument. It is for that

1 reason that the Prosecution is dealing with these matters, not to  
2 relitigate any other issue, but pertaining to waiver in respect  
3 to their either request or assertion that they are able to  
4 preserve their right to an oral argument. It is for that reason  
12:17:57 5 that the Prosecution is making these comments, Madam Justice, not  
6 for any other reason.

7 The Defence counsel's statement that they had decided not  
8 to participate in the closing arguments was borne out on 9  
9 February when they chose not to come to court to make closing  
12:18:23 10 argument on the date that had been scheduled for such argument by  
11 the Trial Chamber.

12 Now, today, perhaps, they will avail themselves of the  
13 opportunity to respond to the Prosecution oral argument. We do  
14 not know what that decision will be. But as to their oral  
12:18:43 15 argument scheduled for 9 February we suggest they have no right  
16 to preserve because there has been a wilful, knowing and  
17 conscious waiver. And it is a wilful, knowing and conscious  
18 waiver by an accused who is an articulate, accomplished, former  
19 Head of State. It is not a waiver of a misguided, uneducated  
12:19:06 20 person who is perhaps being misled by counsel. This is a  
21 knowing, wilful waiver by an accused who has the ability to make  
22 such a waiver, and it should be deemed as such.

23 The apparent position that oral argument must be preserved  
24 because there is some type of conditions that must be met before  
12:19:46 25 they orally argue, we would suggest, is not a basis for granting  
26 such a preservation of a waived right. Because counsel have no  
27 right to impose conditions on a Trial Chamber. Indeed, it is the  
28 orders of the Trial Chamber that prevail.

29 So, your Honours, in relation to this second portion of

1 this motion, what we suggest to you is that there has been a  
2 willing and knowing waiver, and your Honours should not allow the  
3 accused to now come forward at a later date with the benefit of a  
4 much-longer time and reflection to make an oral argument that he  
12:20:39 5 has so knowingly and wilfully waived.

6 Those are the positions that we take on the Defence motion,  
7 and if I may be given one minute, simply to provide information  
8 that may be of assistance to the Court in relation to  
9 Justice Sebutinde's question relating to the effective  
12:21:11 10 characterisation of the conflict on Article 3 offences. And  
11 I would simply, for Your Honours' assistance and perhaps benefit,  
12 indicate that you may consider the Special Court Appeals Chamber  
13 decision in Prosecutor v Fofanah of assistance. That is a  
14 filing, a decision, dated 25 May 2004, and, in particular,  
12:21:44 15 paragraphs 18 through 27, also discuss the question that  
16 Justice Sebutinde had raised.

17 The Prosecution has no further comments unless there are  
18 questions.

19 PRESIDING JUDGE: I have no questions. Allow me to confer.

12:22:04 20 [Trial Chamber confers ]

21 PRESIDING JUDGE: The Trial Chamber has heard the  
22 respective submissions of Defence counsel and the responses by  
23 Prosecution counsel in relation to this preliminary application  
24 for ancillary relief.

12:24:20 25 I am instructed and authorised by my learned colleagues to  
26 inform the parties that, by a majority, Justice Lussick  
27 dissenting, the Trial Chamber will grant leave to appeal the  
28 decision, reasons for that decision will be put in writing and  
29 published today.

1 I will also direct, in the light of that decision, that the  
2 Defence expeditiously as possible file their leave to appeal, if  
3 they so decide - excuse me, their appeal, I correct myself, I'm  
4 grateful for that, their appeal as expeditiously as possible, and  
12:25:17 5 that if they so decide to pursue it.

6 In the light of the submissions, the Trial Chamber will  
7 stand over the proceedings until the Appeal Chamber have  
8 delivered their verdict.

9 Accordingly, this hearing is adjourned sine die.

12:25:44 10 MR MUNYARD: Madam President, before the Court leaves, can  
11 I assure you that we will do everything in our power to be as  
12 expeditious as possible. We do not want the trial lasting a  
13 day longer than it needs to. And hollow though those words may  
14 sound in the light of events over the past three years, they are  
12:26:07 15 nevertheless genuine. And I'm grateful for your decision.

16 PRESIDING JUDGE: Thank you.

17 [Whereupon the proceedings adjourned sine die  
18 at 12.25 p.m.]

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