



Case No. SCSL-2003-01-PT

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 21 JUNE 2006
2.18 p.m.
INITIAL APPEARANCE

TRIAL CHAMBER II

Before the Judges:

Richard Lussick, Presiding
Julia Sebutinde
Teresa Doherty

For Chambers:

Mr Simon Meisenberg
Ms Carolyn Buff

For the Registry:

Ms Maureen Edmonds

For the Prosecution:

Ms Brenda Hollis
Mr Christopher Santora
Ms Kirsten Keith

For the Principal Defender:

Mr Vincent Nmeielle

For the accused Charles Ghankay
Taylor:

Mr Karim Khan

1 [cT21JUN06A - EKD]

2 Wednesday, 21 June 2006

3 [Status Conference]

4 [Open session]

14:08:30 5 [The accused not present]

6 [Upon commencing at 2.18 p.m.]

7 PRESIDING JUDGE: Good afternoon. We have the appearances
8 noted by the Prosecution as Brenda J Hollis, Chris Santora and
9 Kirsten Keith. I gather it's Mr Khan for the accused.

14:15:52 10 MR KHAN: It is, Your Honour.

11 PRESIDING JUDGE: I think the first thing, Mr Khan, is do
12 we proceed today or do you lack instructions from your client?

13 MR KHAN: Well, Your Honour, firstly thank you to you and
14 your colleagues for listing this matter for the status

14:16:11 15 conference. Of course, due to no fault of the Trial Chamber, the
16 accused of course is in The Hague without his lawyer, but, far
17 more importantly, without his family. I will come back to that
18 in a moment.

19 But, Your Honour, under Rule 65, of course, in listing the
14:16:29 20 status conference, the Trial Chamber is obligated to review the
21 status of the case and also to allow the accused an opportunity
22 to raise matters in relation to the case. Your Honour, it is my
23 intention, with your leave --

24 PRESIDING JUDGE: That is Rule 65 bis.

14:16:49 25 MR KHAN: Yes, indeed, Your Honour. Your Honour, it is my
26 intention, with your leave, to make a few preliminary
27 observations and then to deal with the issue of the matters
28 listed in the agenda for the status conference today. Your
29 Honour, the difficulty today with the absence of the accused of

1 course is well known. It precipitated from the decision of the
2 President to transfer Mr Taylor to The Hague.

3 Now, Your Honour, you and your colleagues are of course
4 familiar with the urgent defence motion to be heard, and that was
14:17:36 5 dismissed of course as seeking to declaratory or prospective
6 relief and it was held inter alia that the request that President
7 Fernando, as he then was, was part of the administrative and
8 diplomatic functions of the President.

9 Your Honour, the observations I have are these: Of course
14:18:01 10 the politicians have had a right to be heard on this matter in
11 that the Security Council, in the nine-minute meeting a few days
12 ago, issued Resolution 1688. The Defence have not been heard on
13 that matter. Your Honour, regardless of the merits of location,
14 and of course the Defence have not stated any submissions on that
14:18:26 15 point, the decision of the Appeals Chamber, in my respectful
16 submission, made it quite clear that once a decision was issued
17 of course the full panoply of legal safeguards would be put in
18 place. Notwithstanding that, and to take implied in the Appeals
19 Chamber decision, the very day after the President's decision the
14:18:56 20 accused was whisked away to The Hague. And so, in fact, as a
21 matter of legal principle, any observations that the Defence may
22 have wished to make on the issue of venue have been rendered moot
23 by the administrative or diplomatic functions that have taken
24 place thus far. In my respectful submission, the Special Court
14:19:22 25 has with regret lost an important opportunity to define the
26 administrative and diplomatic functions of the President and, in
27 doing so, lost the opportunity to contribute to international
28 procedural law.

29 As far as legal safeguards are concerned, it cannot be

1 right that any decisions of a President are unimpeachable, that
2 they are without challenge, judicial review of course.

3 PRESIDING JUDGE: Obviously you have a right to make those
4 submissions, Mr Khan, but is this the right tribunal?

14:20:00 5 MR KHAN: Your Honour, for the reason I will give at the
6 end, in my submission it is all part of the background tapestry
7 which, in my respectful submission, Your Honours must be alive to
8 in deciding how this case proceeds from here on in.

9 Your Honour, there are safeguards. Rule 23 of the Court's
14:20:17 10 Rules of Procedure and Evidence mandate that the President shall
11 consult the Council of Judges on all major questions or matters
12 relating to the functions of the Special Court. I will pause
13 while you get that to hand.

14 Your Honour, the transfer of this case to The Hague must be
14:20:39 15 one of the major questions relating to the functions of the
16 Special Court and yet it is extremely notable that in the
17 President's decision of 19th June no reference at all is made to
18 that legal safeguard regarding the scrutiny of the President's
19 functions. This comes to my principal concern that in areas of
14:21:08 20 ambiguity or legal uncertainty regarding the scope of rules or
21 procedures, transparency is the safeguard that must be adhered to
22 to ensure due process rights. Backdoor, backroom communications,
23 ex parte communications or extra-judicial liaisons are inimical
24 to the proper administration of justice.

14:21:38 25 Your Honour, this led, in my respectful submission, to the
26 rather unedifying legal possibility of a clash between the
27 diplomatic or administrative functions of the President on the
28 one hand and the legal powers and responsibilities of Your
29 Honours who are charged under the Statute in a fulfillment of

1 your oaths to ensure a fair trial. Your Honour, in my
2 submission, where there is a clash between legal powers and
3 responsibilities and administrative and diplomatic functions,
4 there is only one winner. Legal duties must trump.

14:22:18 5 Your Honour, the law of course protects us all - the
6 victims, the parties, the judges and the administration of
7 justice - and none of these principles, in my submission, can
8 safely be sacrificed on the altar of political expediency. The
9 fact that an airplane was available by donor states really should
14:22:40 10 not offset an order of the Court that an accused be brought
11 before it.

12 In my respectful submission, Your Honours' order of
13 9th June 2006 listing this case for hearing was not a purely
14 administrative function, implied within it was an order of habeas
14:23:02 15 corpus. Your right, as safe guardians of justice to bring the
16 accused before you to inquire not just regarding the preparedness
17 of the parties for trial, but to make inquiry as to his state,
18 his health, his conditions of detention, and, in any national
19 system, if any individual, whether it be a Home Secretary, a
14:23:22 20 Secretary of State, sought to supplant a matter which was sub
21 judice, a matter which was within the province of a judicial
22 body, it would be akin to contempt of court. Of course, Rule 77
23 is there.

24 Your Honour, this is unedifying and it is
14:23:41 25 unnecessary, and it all goes down to the willingness,
26 unfortunately, in my respectful submission, to depart from
27 principle and the clarity of legal rules for achieving an end
28 regardless of the validity of the route by which that end is to
29 be attained.

1 THE INTERPRETER: Your Honours, would I learned attorney go a
2 little bit slower so as to allow the interpreter to keep up with
3 him. We are interpreting for the records.

14:24:13

4 PRESIDING JUDGE: If you just pause there, Mr Khan. The
5 interpreter is interpreting this for the record.

6 MR KHAN: I'm grateful. I apologise for that.

7 PRESIDING JUDGE: Mr Interpreter, have you caught up now?

8 THE INTERPRETER: Yes, Your Honour. Thank you.

9 PRESIDING JUDGE: Go ahead.

14:24:27

10 MR KHAN: Your Honour, I am rushing. I don't want to
11 outstay my welcome. I will be brief.

12 The fact that this matter, in my respectful submission, has
13 been very poorly handled from a legal point of view as far as
14 adherence to legal principle is demonstrated --

14:24:44

15 PRESIDING JUDGE: I hope you're not referring to our Trial
16 Chamber.

17 MR KHAN: Your Honour, none of this is the fault of your
18 Trial Chamber. Your Honour, there is no complaint at all
19 regarding the conduct of you and your colleagues. These are
20 matters that are within the purview of this rather twilight zone
21 that has been characterised as administrative and diplomatic
22 functions of the President, whatever that may mean.

14:24:55

23 This is part of the morass and rather confused
24 responsibilities, one may say, of the Registry. Your Honour, the
25 fact that an accused has been moved precipitously, perhaps
26 because of political or state concerns, is evidenced by the fact
27 that I have not been contacted by anybody from the Registry or
28 from the Court to be even told that my client has arrived safely
29 in The Hague.

14:25:15

1 Your Honour, yesterday I was spoken to by a member of
2 Mr Taylor's family and they asked me whether or not the accused
3 has arrived. I said I don't know, and I turned on the television
4 and I saw my client getting off an airplane from CNN and BBC
14:25:57 5 World Service. Their services are greatly appreciated, but, Your
6 Honour, I should not have to rely upon the international media to
7 inform me of my client's whereabouts.

8 Your Honour, the accused, at his own expense - from the
9 family expense - had arranged for his wife and his sisters and
14:26:19 10 brother-in-law to come to Sierra Leone. He was given no warning
11 of the movement. They are here in this country. They do not
12 have visas for the Netherlands. There is no Dutch embassy in
13 Freetown. There is no Dutch embassy in Liberia. The closest
14 embassies are in Accra and Dakar. There is no procedure in
14:26:45 15 place -- the Registry does not know the route by which visas are
16 to be obtained. It cannot be right that because of backroom
17 discussions and this holy grail of security concerns, which is
18 untried, untested in any judicial body, that an accused can be
19 deprived of the support and solace of his family, an accused, of
14:27:06 20 course, that is declared innocent at this moment in time.

21 Your Honour, the Registry and this Court had three months,
22 the Special Court, three months to put the procedures in place
23 since President Fernando, as he then was, requested that this
24 case be transferred to The Hague. Your Honour, not only are no
14:27:35 25 visas available, not only have I not been told my client has
26 arrived, I have not been able to speak to my client. Nothing
27 could be more serious, in my respectful submission, to the
28 administration of justice than an accused who is whisked away and
29 held, in effect, de facto incommunicado.

1 Your Honour, I left a message today after ringing around as
2 an investigator, some kind of Sherlock Holmes, trying to find a
3 relevant phone number. I left a message finally with the head of
4 the ICC detention facility; he wasn't available. I then, with
14:28:13 5 various assistance, got the number of a member of the
6 Court Management staff, who I won't name, who happens to be in
7 The Hague. I said I need to speak to my client so I could inform
8 Your Honours as to the state of play for today's hearing. None
9 of us, of course, wish to waste Your Honours' time or Court
14:28:31 10 costs. I was told something extremely remarkable, in my
11 submission. I was told that my client was not allowed to receive
12 telephone calls.

13 Your Honour, all of these procedures should have been put
14 in place by the Registry before the transfer of my client. That
14:28:56 15 it was not done so is as startling as it is lamentable. I do ask
16 you and Your Honours in the discharge of your obligations to make
17 the necessary orders regarding the procedures that should be put
18 in place.

19 Your Honour, individuals on a personal level may have
14:29:16 20 difficulties. Of course, one may sympathise with them. But the
21 bottom line is those difficulties are of no legal consequence to
22 the rights of an accused. Your Honour, I would be grateful if
23 you and Your Honours could give the appropriate directions,
24 consistent, in fact, with the Security Council Resolution, that
14:29:37 25 visas be issued to those members of the family that already have
26 security clearance here in Freetown, without delay, so Mr Taylor
27 may meet them.

28 Your Honour, I would be grateful if directions can be given
29 by Your Honours, irrespective of the Registrar's decision, that

1 the Rules of the ICC should apply mutatis mutandis that the
2 accused, Mr Taylor, be allowed to receive calls and make calls in
3 precisely the same way that he was allowed to make and receive
4 calls here in Freetown.

14:30:19 5 Your Honour, my initial motion on venue started, of
6 course -- or mentioned one aspect of discrimination. It cannot
7 be right with all the accused here, from all three trials under
8 way, are permitted to make and receive phone calls and yet, from
9 what I'm told, my client is not. Your Honour, I would ask very
14:30:43 10 seriously that you and your colleagues make those orders to
11 ensure the proper administration of justice.

12 Therefore, rather belatedly --

13 PRESIDING JUDGE: Mr Khan, I am sorry to interrupt. I
14 think this is the appropriate place to mention this. Have you
14:31:01 15 read the Special Court Rules of Detention?

16 MR KHAN: Yes, of course, Your Honour.

17 PRESIDING JUDGE: You will know that the Chief of
18 Detention, acting under the supervision of the Registrar, has
19 control of matters such as telephone calls, et cetera, and that
14:31:19 20 if there is any complaint about the administration of these rules
21 of detention, then the overseer, of the Registrar, is not this
22 Trial Chamber, it is the President.

23 MR KHAN: Yes.

24 PRESIDING JUDGE: I am just wondering what jurisdiction
14:31:42 25 you're referring to that would allow us to order that telephone
26 calls be received by the accused.

27 MR KHAN: Your Honour, you have an inherent power, of
28 course, under Article 17, which was, in fact, alluded to by the
29 Appeals Chamber, to ensure the rights of the accused. One of

1 those rights, in my submission, is not to be discriminated
2 against absent particular features from other accused individuals
3 before the Court; similar individuals should be treated in a
4 similar fashion. Of course, the responsibility lies for these
14:32:11 5 matters with the Registry, but you do have a supervising role.

6 PRESIDING JUDGE: You will recall you made a similar
7 submission in your change of venue motion that the accused was
8 being discriminated against and that was referred to the Appeals
9 Chamber. I don't think there was any ruling one way or the
14:32:40 10 other.

11 MR KHAN: Your Honour is right. There was no consideration
12 at all on the merits. If one can characterise it respectively,
13 with greatest respect, it was very much a holding decision
14 predicated on the finding that it was premature because no
14:32:54 15 decision had been made. That is my reading of that decision.

16 If Your Honour could bear with me for one moment. Under
17 the endorsement pursuant to Rule 64, of course, it has been
18 decided that the detention facilities are going to be run by the
19 Chief of Detention of the ICC on a day-to-day basis. Your
14:33:26 20 Honour, these matters happened extremely quickly. I will, of
21 course, make the necessary contact with the Registry and also
22 with the head of detention unit.

23 Your Honour, I don't need to belabour the point. My final
24 submission, which, perhaps, has taken a little too long, is: for
14:33:51 25 all those reasons, it is not possible for me to proceed to the
26 merits or the substance of today's status conference. I would
27 ask that in addition to the relief already requested, Your
28 Honours schedule, in due course, a status conference in The Hague
29 when you and Your Honours can attend The Hague and hold a proper

1 functioning status hearing.

2 Your Honour, I am most grateful for the indulgence that
3 I've been granted.

14:34:20

4 JUDGE DOHERTY: Mr Khan, before you sit down, you have
5 sought an order from the Court asking for visas to be issued
6 without delay. Could you address on the powers of the Court to
7 issue such directives to a foreign power.

8 MR KHAN: I'm sorry, I missed the first part of that in
9 relation to a foreign power.

14:34:39

10 JUDGE DOHERTY: I am seeking a submission on the power of
11 the Court to direct a foreign power to issue visas without delay.
12 I note the wording of your first application.

14:35:02

13 MR KHAN: Your Honour, I won't go into the equivalent of
14 Rule 54. What I intended, in fact, and it must be my error of
15 speech, is that an order be made by you to the Registry to direct
16 the Registry to take all necessary steps to ensure that the visas
17 of the family members of Mr Taylor are facilitated without any
18 further delay. Your Honour, I do apologise if I wasn't clear.

19 JUDGE DOHERTY: Thank you, Mr Khan.

14:35:22

20 PRESIDING JUDGE: You are relying on the Court's powers
21 under Rule 54 to issue that direction?

14:35:43

22 MR KHAN: And your inherent powers under Article 17 to
23 ensure a fair trial, of course, and fair proceedings. All of
24 these matters go back to Article 17. I have been reminded by
25 Principal Defender, and I'm grateful - perhaps I didn't mention
26 it - it goes back to the Security Council Resolution as well.
27 Unless I can assist further, those are my submissions.

28 PRESIDING JUDGE: Thank you, Mr Khan. Do Prosecution wish
29 to reply?

1 MS HOLLIS: Thank you, Your Honour. Very briefly.

2 In regard to many of the comments made by defence counsel
3 regarding the authority of the President to change the venue of
4 this trial and, as a necessary part of that, to order the
14:36:32 5 transfer of the accused to The Hague, we suggest that those
6 matters have been resolved by the Appeals Chamber in its
7 decision, and that any arguments defence counsel wish to submit
8 to that Chamber, they have the right to do so. We suggest they
9 cannot relitigate those matters before the Trial Chamber which
14:36:51 10 have been determined by the Appeals Chamber. In regard to the
11 points made by defence counsel regarding this transfer yesterday,
12 and the consequences of that transfer in regard to conditions
13 that the accused now faces in The Hague, we would suggest that
14 indeed this Court has the authority to ensure the rights of the
14:37:15 15 accused for a fair trial, regardless of where the accused is.

16 And we would further suggest that one of the points raised by
17 defence counsel would fall within that scope. That is the fact
18 that apparently defence counsel has been denied access to
19 communicate with his client. The Prosecution has no
14:37:40 20 understanding of why that denial was made, under what conditions,
21 but certainly this is something that we believe the Trial Chamber
22 could order the Registrar to ensure that proper access to his
23 client can be had by defence counsel in a very prompt fashion.

24 PRESIDING JUDGE: I am sorry to interrupt, but could you
14:38:05 25 point to any Rule under the Rules of Detention that give us the
26 right to dictate or direct the Registrar in carrying out his
27 responsibilities under those Rules to do one thing or the other?

28 MS HOLLIS: I do not have the Rules of Detention before me,
29 but I believe there is general reference in those Rules to

1 ensuring the accused's right to access by his counsel. But
2 beyond that, even if --

3 PRESIDING JUDGE: That's right, Ms Hollis, there is. But
4 if the Registrar defaults in those obligations, then he is
14:38:47 5 supervised by the President, not by this Trial Chamber.

6 MS HOLLIS: If I may comment, Your Honour. I believe that,
7 as I was going to say, even beyond the Rules of Detention, which
8 are administrative rules or regulations, I believe the Trial
9 Chamber does have the ability to order this access because of the
14:39:08 10 rights guaranteed by the Statute and the Rules of Procedure and
11 Evidence, and I believe that those are paramount. So that you
12 would have the right to direct to the Registrar to inquire into
13 the circumstances of the denial, if it was not he who originated
14 the denial, and to order that proper and prompt access be given.
14:39:30 15 That is one matter that I believe is indeed a very significant
16 fundamental right of the accused.

17 PRESIDING JUDGE: Just to make that clear, the Prosecution
18 has no opposition to Mr Khan's application in that regard,
19 regarding the telephones; is that correct?

14:39:54 20 MS HOLLIS: That's correct, Your Honour. We think, first
21 of all, it would be proper to inquire as to why this denial is in
22 place. I have no knowledge of the circumstances that might have
23 led to it, but proper access and prompt access by defence
24 counsel, we believe, is something you can order.

14:40:09 25 Secondly, however, in regard to an order to the Registrar
26 about issuance of visas to the family, we don't believe that this
27 is a fundamental right of the accused for a fair trial. We
28 believe that, indeed, you may, as the Trial Chamber, express
29 concern if you have concern about the inability of the family to

1 travel, but we do not believe that this would be a proper matter
2 for an order to the Registrar, because we simply do not believe
3 it falls within the fundamental guarantees to the accused for a
4 fair trial.

14:40:47 5 Your Honour, lastly, as to defence counsel's application or
6 his statement that he cannot go forward on substantive matters
7 today, the Prosecution certainly understands that and supports
8 that position. And in regard to the request for a status
9 conference in the near future in The Hague, we also believe that
14:41:08 10 that is an appropriate request and we certainly would have no
11 opposition to that.

12 Thank you, Your Honour.

13 PRESIDING JUDGE: Thank you, Ms Hollis. You have made the
14 Prosecution position quite clear. Do you wish to reply to
14:41:23 15 anything raised there, Mr Khan?

16 MR KHAN: No, Your Honour. The only point perhaps I should
17 have mentioned is my gratitude to the Prosecution. In fact, I
18 had through other sources obtained the phone number of the chief
19 of ICC detention, but it was, in fact, due to the kindness of the
14:41:40 20 Prosecution that I obtained the mobile phone number of the member
21 of Court Management staff that I spoke to. The Prosecution are
22 aware of the person I spoke to, and so that conversation can be
23 verified by them lest there be any confusion.

24 PRESIDING JUDGE: Thank you. Mr Khan, just as matter of
14:43:18 25 interest, how long will you be here in Freetown?

26 MR KHAN: Your Honour, I am sorry I can't answer that
27 question either. I was due to be here until 4th July. Given the
28 sudden movement, I plan, in fact, to seek a travel request to go
29 to The Hague in the next week or so. At least until early next

1 week, Your Honour.

2 PRESIDING JUDGE: All right. Thank you, Mr Khan. I see
3 the Principal Defender sitting there. I presume the final
4 composition of the defence team is being looked at,
14:44:01 5 Mr Principal Defender.

6 MR NMEHIELLE: Yes, Your Honour, I do apologise. I had it
7 in my head that the time here was 2.30 and I am very sorry to
8 have come 15 minutes late.

9 Yes, it is being looked at. In fact, one of the
14:44:16 10 repercussions of the sudden move of the accused person is that we
11 are not able to -- in fact, we are scheduled to meet today to
12 talk about that issue. Unfortunately we won't, but it is being
13 looked at seriously and I am trying to make every necessary
14 logistics possible to possibly go to The Hague and get this going
14:44:36 15 in terms of finalising the team. Yes.

16 PRESIDING JUDGE: Thank you for that, Mr Principal
17 Defender. What we are going to do, Mr Khan, is we would like to
18 discuss the matters raised. We have taken into consideration
19 already everything you have said and the Prosecution. We would
14:44:57 20 now like to discuss it. We will hand down a written decision,
21 but we will do that as expeditiously as possible. We are not
22 talking about a long period of time here. If you are not leaving
23 until next week, that decision will be handed down before then.

24 MR KHAN: Your Honour, I am much obliged. Thank you.

14:45:19 25 PRESIDING JUDGE: We will adjourn this Court.
26 Unfortunately we are not in a position at the moment to fix an
27 exact date for the next status conference, but we will be making
28 some provision for that in our decision when it is handed down.
29 Thank you to the parties and we will adjourn now.

1 [whereupon the Status Conference adjourned at 2.48 p.m.]
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