

Case No. SCSL-2003-01-A
THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

Thursday, 25 October 2012
9.30 a.m.
STATUS CONFERENCE

APPEALS CHAMBER

Before the Judges: Justice Shireen Fisher, Presiding

For Chambers: Mr Kevin Hughes

For the Registry: Ms Elaine Bola-Clarkson
Ms Zainab Fofanah
Ms Rachel Irura

For the Prosecution: Ms Brenda J Hollis
Mr Nicholas Koumjian
Ms Ruth Mary Hackler

For the accused Charles Ghankay Taylor: Mr Morris Anyah
Ms Magda Karagiannakis
Mr Michael Herz
Ms Szilvia Csevar
Ms Yael Vlas Gvirsman
Mr Isaac Ip
Ms Alexandra Popov

1 Thursday, 25 October 2012

2 [Status Conference]

3 [Open Session]

4 [Accused not present]

09:32:40 5 [Upon commencing at 9.32 a.m.]

6 THE REGISTRAR: The Special Court for Sierra Leone is
7 sitting in an open session for a Status Conference in the case of
8 the Prosecutor versus Charles Ghankay Taylor,
9 Justice Shireen Fisher presiding.

09:33:11 10 PRESIDING JUDGE: I'll take appearances.

11 MS HOLLIS: Good morning, Your Honour, opposing counsel.
12 For the Prosecution this morning Nick Koumjian,
13 Ruth Mary Hackler, and myself, Brenda J. Hollis.

14 PRESIDING JUDGE: And for the Defence.

09:33:26 15 MR ANYAH: Good morning, Madam President. Good morning
16 counsel for the Prosecution. Appearing for the Defence this
17 morning myself Morris Anyah, to my immediate left is
18 Ms Magda Karagiannakis, a lecturer at La Trobe University Law
19 School in Melbourne. Behind us are legal assistants Ms Yael Vlas
09:33:53 20 Gvirsman, Mr Michael Herz, Ms Szilvia Csevar, Ms Alexandra Popov,
21 and Mr Isaac Ip. Thank you.

22 PRESIDING JUDGE: Mr Anyah, two questions for you if I may.
23 First of all, I understand Mr Taylor will not be joining us and
24 has executed a waiver; is that correct?

09:34:14 25 MR ANYAH: Yes, that is correct, Madam President.

26 PRESIDING JUDGE: Did you want me to repeat that for the
27 record?

28 THE REGISTRAR: Your Honour, this has been captured on the
29 record.

1 PRESIDING JUDGE: Okay. Thank you.

2 THE REGISTRAR: You do not have to repeat it.

09:34:46 3 PRESIDING JUDGE: So Mr Taylor will not be joining us. I
4 have accepted his waiver. I'm a bit disappointed, however,
5 because this is his proceeding so it would have been appropriate,
6 I think, had he been here, but there is no obligation on him to
7 come. I assume he will get the record of this proceeding; is
8 that correct?

9 MR ANYAH: That is correct, Madam President.

09:35:00 10 PRESIDING JUDGE: And the lady you introduced in your
11 second seat, she is not part of your Defence team?

12 MR ANYAH: Her name has appeared on all pleadings,
13 Magda Karagiannakis. She is our expert legal consultant.

14 PRESIDING JUDGE: I see. That's fine then. Thank you.

09:35:14 15 Okay. I called the Status Conference, and I assume you all
16 got my order on it because you're here, in order to go over
17 what -- some of the outstanding motions and also to see how we
18 could move the case along and answer any questions that you all
19 may be having regarding the progress of the case.

09:35:31 20 Now, Ms Hollis, I see you're standing up. Is there
21 something you wanted to say before we begin?

22 MS HOLLIS: Yes, Your Honour. And before we go into the
23 outstanding motions and the additional issues to be discussed
24 today, I believe it is right that I apologise to the members of
09:35:46 25 the Defence and to the Court for prematurely attributing to
26 Defence misconduct the anomaly that we found in relation to their
27 Rule 111 submissions.

28 PRESIDING JUDGE: Mm-hmm.

29 MS HOLLIS: We do not know what has caused this anomaly,

1 which is evident to us only in the Defence filing, and thus it
2 was premature for me to ascribe the cause of it to Defence
3 misconduct. So again I think it is right that at this time I do
4 apologise to the members of the Defence and to the Court for
09:36:22 5 prematurely ascribing whatever the cause is to Defence
6 misconduct.

7 PRESIDING JUDGE: Okay. I understand your apology, but let
8 me understand what has precipitated it. Are you now satisfied
9 that the document meets the requirements for the font?

09:36:41 10 MS HOLLIS: No, we are not. We simply believe that -- I
11 believe that I was premature in attributing whatever the reason
12 is to Defence misconduct. We simply don't have enough
13 information to know why it appears that way and why it appears
14 that way only in the Defence document. So for that reason I
09:37:01 15 believe what I did was premature and I apologise for it.

16 PRESIDING JUDGE: Okay. Well, we'll get to that in a
17 minute. Let's take these in chronological order. The first
18 matter that we have that's outstanding as far as my records show
19 is a motion filed on the Prosecution on the 9th of October, 2012,
09:37:21 20 asking which version of Mr Taylor's submissions is authoritative,
21 to which there is no response. Is that right, Mr Anyah?

22 MR ANYAH: That is correct. We have not filed a response.

23 PRESIDING JUDGE: Okay. And my question for you,
24 Ms Hollis, and this is a Status Conference so you can all sit
09:37:39 25 down as long as you can reach your various microphones.

26 My question for you is: I don't understand why this is a
27 question. You're not objecting to the corrigendum. The Court
28 accepted the corrigendum, has not indicated that it has any
29 difficulty with it. It's the last filing in time. I'm assuming

1 you didn't want -- don't want to use as authoritative the filing
2 where the mergers were messed up and the footnotes were wrong.
3 So I don't understand the question.

09:38:17

4 MS HOLLIS: The question, Your Honour is because we have
5 not received the ruling that the corrigendum is accepted and is
6 the authoritative version. Now, if that ruling was made, we for
7 some reason don't have it.

8 PRESIDING JUDGE: Okay.

09:38:30

9 MS HOLLIS: So we were faced with two and as we understand
10 it, the submissions, the arguments in the corrigendum will be
11 authoritative, but the attachments, because this was clarified in
12 our e-mail consultations, the attachments to the original filing
13 will become a part of the corrigendum.

14 PRESIDING JUDGE: Okay. So --

09:38:49

15 MS HOLLIS: Because there was uncertainties and we had not
16 received your decision on that, we raised it because there are --
17 there may be differences and we didn't have time to compare it
18 word-for-word, paragraph by paragraph.

09:39:06

19 PRESIDING JUDGE: All right. Is it the practice of the
20 court every time a corrigendum is issued to issue an order
21 accepting it?

09:39:27

22 MS HOLLIS: Where there are differences, where there is
23 also a -- what I understand to have been an offer of an ex parte
24 attachment, then we were -- we were expecting there would be an
25 order. I certainly take it that you have now accepted the
26 corrigendum. We simply were not aware of that and that's why we
27 filed that, to be sure we were responding to the version that was
28 the authoritative version.

29 PRESIDING JUDGE: Okay. Is there any doubt in your mind

1 that they're identical?

2 MS HOLLIS: We haven't checked, so I don't know. You know,
3 we had -- when he received the corrigendum for the judgement, we
4 actually went through it paragraph by paragraph to see if there
09:39:59 5 were differences because of course even if there is one paragraph
6 different or sentences that differ in paragraphs it could have an
7 impact on how we respond. So we wanted to be sure we only had to
8 deal with the submissions in the corrigendum so that was why --

9 PRESIDING JUDGE: You expected the Court to go through and
09:40:18 10 compare to see if they were word-for-word?

11 MS HOLLIS: Once you accept the corrigendum it doesn't
12 matter if they are because the corrigendum becomes the
13 authoritative version.

14 PRESIDING JUDGE: But it would have been filed out of time
09:40:28 15 then. Okay.

16 MS HOLLIS: Because of all those uncertainties, that's why
17 we filed it. We want to be sure we are responding to the version
18 that is the authoritative version, Your Honour.

19 PRESIDING JUDGE: Have the two of you discussed this
09:40:48 20 particular motion before coming in here today?

21 MS HOLLIS: We had an exchange of e-mails on it, and what
22 the Defence has informed us is that the submissions in the
23 corrigendum are authoritative but they would continue to rely on
24 the annexes in the original filing. At least --

09:41:06 25 PRESIDING JUDGE: [Overlapping speakers]

26 MS HOLLIS: -- that's my understanding of the exchange.
27 Yes. As long as we have clarity we're -- we're satisfied.

28 PRESIDING JUDGE: Okay. I guess I don't understand why
29 when you had a question about this you didn't speak to each other

1 initially to ascertain whether they were identical in every
2 respect except for the clerical errors that were -- that were
3 corrected. I don't understand why this is a motion for the
4 Court. What you're doing is putting the burden on the Court to
09:41:37 5 say that they are identical, that the filing was made within the
6 time-frame, when you could have ascertained that among the two of
7 you I would assume.

8 Mr Anyah?

9 MR ANYAH: May I make a few observations? The motion
09:41:54 10 Your Honour speaks about --

11 PRESIDING JUDGE: You can sit down.

12 MR ANYAH: I prefer to stand if it please the Court.

13 PRESIDING JUDGE: I would prefer you sit down. Please sit
14 down. Thank you.

09:42:02 15 MR ANYAH: The motion, Madam President, the Court speaks
16 about, if you look at paragraph 5 of that motion dated the 9th of
17 October, CMS 1333, the Prosecution in that paragraph
18 acknowledges, it says: The Prosecution does not object to the
19 corrigendum filed on 8th October to replace the Rule 111
09:42:26 20 submission filed on the 1st of October.

21 PRESIDING JUDGE: I did read that.

22 MR ANYAH: So this is saying that they do not object to our
23 corrigendum. In the same breath, the Prosecution is asking the
24 Court to clarify which is authoritative. Now, I have been
09:42:41 25 practising before this Court for five years --

26 PRESIDING JUDGE: Mr Anyah. Mr Anyah, I think those were
27 the questions that I've already directed to the Prosecution to
28 the Prosecution. Do you have something to add?

29 MR ANYAH: Yes.

1 PRESIDING JUDGE: All right.

2 MR ANYAH: I am putting on the record our observations
3 vis-à-vis some of the questions you posed to the Prosecution.

09:42:59

4 PRESIDING JUDGE: The questions that I posed to the
5 Prosecution have been answered by the Prosecution. Do you have
6 any additional issue to add?

7 MR ANYAH: Yes. We have a different observation vis-à-vis
8 some of the answers given by the Prosecution. For example,
9 learned counsel opposite said our corrigendum alluded to some
10 ex parte annex [overlapping speakers] --

09:43:16

11 PRESIDING JUDGE: I was going to get to that.

12 MR ANYAH: And that is not the case. There was no --

09:43:30

13 PRESIDING JUDGE: Well, let's clarify that. I'll clarify
14 that in a minute. But I think we all agree that there was no
15 objection to the corrigendum, that there was no allegation that
16 they were not identical except for the clerical error, and that
17 there is no established practice in the Court to accept by order
18 a corrigendum. My question is why if there was any question at
19 all between the two of you, you did not sit down together and
20 clarify for one another what you were doing, that they were
21 identical?

09:43:48

22 MR ANYAH: The answer is simple.

23 PRESIDING JUDGE: Why did you not do that?

09:44:00

24 MR ANYAH: The Prosecution never intimated to me or
25 contacted us to say they had concerns or doubts about which was
26 version was authoritative.

27 PRESIDING JUDGE: But you got the motion; right?

28 MR ANYAH: We received the motion.

29 PRESIDING JUDGE: Okay. Did you have a telephone?

1 MR ANYAH: Yes, we did, but we did not file a response.

2 PRESIDING JUDGE: I understand you didn't file a response
3 but you're in the same building, much to the consternation of our
4 host here, and we have you in the same building so that you can
09:44:27 5 get in the elevator, go to each other's office, and resolve these
6 issues and you're not doing it.

7 MR ANYAH: Madam President, all of the motions filed by the
8 Prosecution after the 1st of October, which were several, they
9 never sought to approach us first to resolve any of the issues in
09:44:42 10 this [Overlapping speakers].

11 PRESIDING JUDGE: Okay. Nor did you seek to approach them
12 --

13 MR ANYAH: But --

14 PRESIDING JUDGE: -- when you received it; is that correct?

09:44:46 15 MR ANYAH: But the question arises --

16 PRESIDING JUDGE: Is that correct --

17 MR ANYAH: But the question arises from them.

18 PRESIDING JUDGE: -- Mr Anyah?

19 MR ANYAH: The question arises from them.

09:44:52 20 PRESIDING JUDGE: Mr Anyah --

21 MR ANYAH: They have a question --

22 PRESIDING JUDGE: -- I'll let you ask your question, but
23 you answer mine first. Is it correct that you never tried to
24 contact them?

09:45:01 25 MR ANYAH: No, we did not.

26 PRESIDING JUDGE: Thank you. Now, what was your question?

27 MR ANYAH: No, the point I'm making is the Prosecution had
28 some questions about our filing on the 1st of October. Now,
29 common sense indicates that they will contact us if they have any

1 questions and I would be willing to respond. They did not
2 contact us. We received the motions from CMS.

3 PRESIDING JUDGE: I see. I understand your position.

4 All right. Is it fair to say, however, that between the
09:45:20 5 two of you that you did consult but you did not consult in person
6 prior to this proceeding; is that right? You exchanged e-mails.

7 MR ANYAH: That is correct.

8 MS HOLLIS: That is correct.

9 PRESIDING JUDGE: Okay. And just for clarification, in the
09:45:33 10 future if I have an order that says consult, I expect more than
11 an exchange of e-mails. I expect talking face-to-face. Okay?
12 Is everybody clear on that?

13 MS HOLLIS: Your Honour, we gave the option to the Defence
14 to meet face-to-face and they concluded that e-mail exchanges
09:45:51 15 were sufficient.

16 PRESIDING JUDGE: Okay. They're not. I was not clear
17 enough in my order to indicate that and so I can understand why
18 there might be some confusion, but from now on if I say consult -
19 and I expect you to consult before you file any more of these
09:46:06 20 motions - I mean face to face with the principals. Anybody have
21 any questions about that? Okay.

22 So can I take it that you have satisfied one another that
23 the last filing which is the corrigendum is the official filing
24 from which everybody is going to work and that they are
09:46:28 25 essentially identical and no one's asserting that they got an
26 extra week by filing a corrigendum? Is that -- am I -- is that
27 correct, Ms Hollis?

28 MS HOLLIS: We don't know if they're identical. We're not
29 raising any issue of an extra week, but what is important to us

1 is the corrigendum that we must respond to. So it's the
2 contents --

3 PRESIDING JUDGE: And you're satisfied that is --

4 MS HOLLIS: Yes.

09:46:50 5 PRESIDING JUDGE: All right. And Mr Anyah, you're
6 satisfied as well as that that's the document from which your
7 office is going to be working and the references that will be
8 made in the future will be to that document?

9 MR ANYAH: That is correct as far as the main brief is
09:47:05 10 concerned.

11 PRESIDING JUDGE: Okay. Now let's talk about this ex parte
12 filing. What's that all about? Ms Hollis, you're the one that
13 raised.

14 MS HOLLIS: I did, and I raised erroneously. The ex parte
09:47:17 15 filing was in relation to the 11.5 font.

16 PRESIDING JUDGE: Okay. We're moving on to that one.

17 Okay. As a preliminary matter let me ask a couple of
18 questions. Did you consult in some manner about this before
19 coming in here today?

09:47:38 20 Ms Hollis.

21 MS HOLLIS: Consult about?

22 PRESIDING JUDGE: Consistent with my order that prior to
23 coming in today that the parties would consult with one another
24 in advance of the Status Conference with the goal of reaching an
09:47:51 25 amicable resolution of the motions.

26 MS HOLLIS: We did have an e-mail exchange that dealt with
27 the outstanding motions that dealt with other matters, although
28 neither one of us were brought forward "other matters," and we
29 did have an e-mail exchange in relation to additional issues that

1 might be raised. So we did have that exchange.

2 PRESIDING JUDGE: And -- and were your discussions about
3 the font in any way helpful toward resolving the issue?

4 MS HOLLIS: No.

09:48:21 5 PRESIDING JUDGE: Okay.

6 MS HOLLIS: With the exception, of course, Your Honour,
7 that we do withdraw, and as I have apologised for, what we
8 consider to be premature accusations of misconduct leading to
9 whatever caused this anomaly.

09:48:37 10 PRESIDING JUDGE: Okay. And as I understood your apology,
11 what you're apologising for and what you're withdrawing is the
12 accusation that this was a -- what's done is a matter of
13 misconduct. You're not withdrawing your motion.

14 MS HOLLIS: That's correct. We simply don't know enough to
09:48:53 15 make such an accusation.

16 PRESIDING JUDGE: Okay. Let me just -- let me just see if
17 I truly understand what's going on here.

18 MR ANYAH: Madam President.

19 PRESIDING JUDGE: Yes.

09:49:04 20 MR ANYAH: May I make an observation in relation to the
21 exchanges between me and counsel opposite?

22 PRESIDING JUDGE: Yes.

23 MR ANYAH: Because --

24 PRESIDING JUDGE: The ones that were preliminary to today's
09:49:13 25 hearing?

26 MR ANYAH: Yes, that is correct.

27 PRESIDING JUDGE: Yes, go ahead.

28 MR ANYAH: Because this might streamline the issues.

29 Ms Hollis wrote me an e-mail on Friday the 19th. That was

1 the day your scheduling order came out.

2 PRESIDING JUDGE: Uh-huh.

3 MR ANYAH: And I understood Ms Hollis in the e-mail to say,
4 in respect of the font issue, that the Prosecution accepts the
09:49:34 5 Defence's word that our font size in our brief was 12 typeface.
6 The e-mail is here. I can read the relevant section to you,
7 Madam President.

8 PRESIDING JUDGE: No, thank you.

9 MR ANYAH: Okay.

09:49:50 10 PRESIDING JUDGE: I don't want to hear your e-mail. But
11 your understanding was the motion was resolved?

12 MR ANYAH: No. They accepted that we submitted or, in the
13 language of Ms Hollis, offered a brief to the court management
14 section that was in 12 point typeface.

09:50:03 15 PRESIDING JUDGE: Right.

16 MR ANYAH: Where the dispute remains, as I understood the
17 e-mail, was that the Prosecution deems the version they received
18 from CMS, not what we offered to CMS, to appear to be in a
19 smaller font typeface, namely 11.5. This is where I see the
09:50:28 20 issues remain alive on the basis of Ms Hollis' e-mail. It's
21 crystal clear here in the e-mail that they have said that they
22 accept our word that what we submitted was in 12 point font.

23 PRESIDING JUDGE: Why do they have to accept your word?
24 Why can't you exchange electronic versions of your briefs?

09:50:49 25 MR ANYAH: We have submitted the brief to the Court.

26 PRESIDING JUDGE: I understand, but why can't --

27 MR ANYAH: But the word version --

28 PRESIDING JUDGE: Just answer my question. Why can you not
29 exchange them? Wouldn't it be easier for both of you.

1 MR ANYAH: It would be easier. You're absolutely right.

2 PRESIDING JUDGE: Okay.

3 MR ANYAH: But not when a party starts out alleging
4 misconduct without consulting us. That's not how it should be
09:51:08 5 done and that's what happened here.

6 PRESIDING JUDGE: I agree that that is not how it should be
7 done. But I also would point out that the response to that is
8 not how that should have been done. But let me -- let me just
9 make sure I understand this. Okay. This all started -- let me
09:51:28 10 go through and then you can correct me.

11 This all started when the Prosecution when looking at the
12 brief of the Defence as it was filed through our court system,
13 which is the most awkward way I have ever seen of getting any
14 filing that one has to rely on that's more than two pages, in
09:51:46 15 looking at that, you -- the Prosecution concluded that part of
16 that at least did not comply with the Rules because it was 11.5
17 font and not 12 font, and likewise the footnotes why 9.5 and not
18 10. And as a consequence of that, the Prosecutor wrote an e-mail
19 in a rather demanding fashion requiring the Defence within a
09:52:14 20 certain period of time to respond as to that allegation. The
21 Defence failed to respond to the allegation. The Prosecution
22 filed a motion having gone through several proceedings trying to
23 get the document into a form that could be verified as to the
24 font size.

09:52:38 25 To that there was a response by the Defence. The response
26 by the Defence -- first of all, the -- the issue itself, I think,
27 was handled but peculiarly. Again, you're in the same building.
28 Go down and say, Can I take a look at it. This is what it looks
29 like to me. I understand after five years of trial there is not

1 a lot of goodwill left here but there is a lot of
2 professionalism. Both of you have pointed out how many years of
3 experience you've all had, so I'm hoping that we can get through
4 this last lap on your professionalism we can't get through it on
09:53:18 5 goodwill.

6 Okay. So that didn't happen. So instead in the response,
7 Mr Anyah, you stated without requesting the Court for any kind of
8 ex parte relief or in camera review, you stated that you were
9 going to give the electronic document to my senior legal officer
09:53:38 10 without permission of the Court, without a request to the Court.
11 when my senior legal officer quite properly refused that since it
12 had to do with an issue in contest, there was a notification,
13 there was a response, there was a filing that had the CD from the
14 Prosecution, but there was only one of them filed so it wasn't
09:54:02 15 provided to the Defence, the Defence refused service of the
16 response. There was a request for surrebuttal there was a
17 request to reply to the surrebuttal. There was a request to
18 reply to the surrebuttal. There are about 30 pages of documents.

19 My question to you is: what possible point in any of your
09:54:22 20 appeals is being advanced by the time and the effort that has
21 been put into this by the registry, by the Court, and by your
22 offices? what point of appeal does this address? How is this
23 going to help our Court, and why didn't you sit down and look at
24 it and see what the font size was? what -- what are we doing
09:54:44 25 here? I mean, you're the ones that are complaining you don't
26 have enough time to do your briefs, but you're wasting all of
27 this time for all of these people on this when all it takes is a
28 ride in the elevator up or down.

29 MR ANYAH: Madam President.

1 PRESIDING JUDGE: I'll start with the Prosecutor because
2 it's her motion.

3 MS HOLLIS: Thank you, Madam President.

09:55:08

4 First of all, Madam President, we did not ride down in the
5 elevator. Counsel have schedules. We have schedules. But we
6 did send an e-mail, and we would suggest that it was not a
7 demanding e-mail, and if I may just remind us that it said:

09:55:31

8 "It appears to the Prosecution that Mr Taylor's appellant
9 submissions may not be in compliance with the practice direction
10 regarding font size. As we only have a PDF version of the
11 submission, we are unable to determine whether it uses a 12 point
12 Times New Roman font as required or if it is in 11.5 point font.
13 Could you please check your word version and let us know by the
14 end of the day."

09:55:58

15 PRESIDING JUDGE: Okay.

16 MS HOLLIS: So then contrary to what Defence counsel has
17 told you, we did ask for some explanation or assistance in
18 resolving this. They did not reply.

19 PRESIDING JUDGE: That was it.

09:56:16

20 MS HOLLIS: And that is --

21 PRESIDING JUDGE: That was it.

22 MS HOLLIS: [Overlapping speakers]

23 PRESIDING JUDGE: [Overlapping speakers] an e-mail. That
24 was all.

09:56:16

25 MS HOLLIS: And what we are advancing here, Your Honour, is
26 to ensure that if either through technical means or otherwise
27 there is a format that allows more in the Defence filings than we
28 would be allowed, that we simply know that so that either their
29 filings are adjusted accordingly or we get more filing pages or

1 words as well. That's the issue that we're facing --

2 PRESIDING JUDGE: I understand the issue.

3 MS HOLLIS: -- because we understand for both parties there
4 is a lot to cover. So that's -- that's the reason.

09:56:52 5 PRESIDING JUDGE: I just don't understand why it wasn't
6 resolved without the Court having to get involved in it. I truly
7 do not understand that because it's a simple matter of looking at
8 the font size on the original version.

9 Let me ask both of you this -- well, okay. One other
09:57:05 10 question for the Prosecution. Why was this urgent? Why was this
11 an urgent motion? My first question is why is it a motion at
12 all, but my second question is why is it an urgent motion? You
13 have two months to respond to work out how many pages you have
14 left.

09:57:22 15 MS HOLLIS: It's urgent because it impacts the filing times
16 down -- down the road. We need to know how many pages are going
17 to be left so that we can better plan our work.

18 PRESIDING JUDGE: Of course.

19 MS HOLLIS: So that's the reason we wanted it resolved now.
09:57:40 20 If we wait until they file and then they're -- they're over, if
21 it's -- if they've gotten additional pages, then they've already
22 filed, so --

23 PRESIDING JUDGE: But you had two months in which to have
24 this resolved before you had to submit your final --

09:57:52 25 MS HOLLIS: Well --

26 PRESIDING JUDGE: -- the remainder of your 400 pages.

27 MS HOLLIS: At the time we filed it we also had the
28 expedited filing schedule which made the issue more important as
29 to those which we are responding to in our minds at least. So

1 those were the reasons that motivated us for -- for good or for
2 ill. Those are the reasons that motivated us to file it as
3 urgent and to file it at all.

4 PRESIDING JUDGE: Okay. All right.

09:58:22 5 And Mr Anyah, you have indicated that the reason you did
6 not want to give the Prosecution simply the word version was
7 because you felt that they would somehow have a tactical
8 advantage if they had it? I don't understand that argument.

9 MR ANYAH: Madam President, I would be happy to answer
09:58:44 10 Your Honour's question. Do I have the right to respond to what
11 learned counsel said in response to your questions?

12 PRESIDING JUDGE: Why don't you just answer my question and
13 then I'll give you an opportunity at the conclusion to add
14 anything you might want to add, okay?

09:58:56 15 MR ANYAH: My reference to tactical advantage involves
16 fundamental fairness. Somebody who makes an allegation against
17 us of serious misconduct should not have the benefit of the word
18 version of our brief. Now you can convert a PDF version of a
19 brief into word all you want. If it is a lengthy document and if
09:59:19 20 there are formatting issues, you will not have an identical
21 version to the word version. You will still have formatting
22 problems in using what you've converted to word.

23 PRESIDING JUDGE: Right. Which is why having the word
24 version would have resolved the whole issue, would it not?

09:59:30 25 MR ANYAH: Yes. But they get to make the accusation. In
26 order to exonerate ourselves we have to give them our word
27 version when we don't have their word version of their brief.

28 PRESIDING JUDGE: And how is this helping Mr Taylor's case
29 exactly?

1 MR ANYAH: It's helping him because we have to declare our
2 good name. We're his lawyers.

3 PRESIDING JUDGE: Your good name?

09:59:50

4 MR ANYAH: Our good name. We stand on his behalf before
5 the Court. If we have no credibility, his case has no
6 credibility.

7 PRESIDING JUDGE: And you think these filings add to your
8 credibility?

09:59:58

9 MR ANYAH: Well, they get to the truth. We've given the
10 Court our word version. At least the Court is in a position to
11 determine if we cheated or not as alleged.

12 PRESIDING JUDGE: Okay.

13 MR ANYAH: May I --

10:00:09

14 PRESIDING JUDGE: Do you -- do you see any problem in the
15 mutual exchange of word versions with a courtesy copy to the
16 Court to assist all of us in getting the best out of both of your
17 briefs?

18 MR ANYAH: It is not our preferred way of proceeding at
19 this point. [Overlapping speakers].

10:00:23

20 PRESIDING JUDGE: Do you see any problem with it?

21 MR ANYAH: Well, if to the extent the Court makes a ruling,
22 before the Prosecution gets our word version, saying that the
23 Defence did not cheat, then we're content. But we need a ruling
24 from the Court. This issue's still alive. They have not
25 withdrawn their motion. We need a ruling from the Court, because
26 my colleagues all over The Hague and elsewhere have read that
27 four counsel for Mr Taylor got together, deliberately planned to
28 reduce the font size of a legal brief by .5 per cent or by .5
29 points.

1 PRESIDING JUDGE: AS I understand the apology of the
2 Prosecutor, she has withdrawn any allegation as premature of
3 misconduct on your part. She has simply raised as a technical
4 matter that that's what it appears to be. My question to you is
10:01:08 5 what is the prejudice to you of a mutual exchange of word version
6 electronic briefs with a courtesy copy to the Court for the
7 purpose of assisting all of us in getting our work done more
8 expeditiously and helping us understand your arguments more
9 easily? what prejudice does that have to Mr Taylor?

10:01:31 10 MR ANYAH: We are not opposed to an exchange of the word
11 versions of the respective briefs so long as the Court pronounces
12 first on this issue. The Court should pronounce and then we will
13 be happy to exchange briefs.

14 PRESIDING JUDGE: There are two separate issues, Mr Anyah.
10:01:46 15 There are two separate issues. You decided that the sanction for
16 the motion was that they would never see your word version. I
17 haven't decided that. The issue is have you come up with
18 anything that would be of prejudicial -- would be prejudicial to
19 your client by exchanging, as I have suggested, the word
10:02:06 20 versions?

21 MR ANYAH: In some ways, yes.

22 PRESIDING JUDGE: why?

23 MR ANYAH: We -- we do not need to see the Prosecution's
24 word version. we don't need it. we can respond to that brief
10:02:15 25 without it. Our brief we believe is more complicated and complex
26 than theirs and they benefit more by receiving our word version
27 than we do. we don't need theirs.

28 PRESIDING JUDGE: Okay. And how about if we require that
29 all future submissions in addition to the 111, the 112, the 113,

1 and the 115, if such a thing will ever be filed, will also
2 provide a courtesy copy for the Court and an exchange of
3 electronic documents for ease and expediency in answering and
4 understanding?

10:02:50 5 Yes, yours is more complicated. Now, her response will
6 probably be more complicated than yours will need to be because
7 of the numbers of appeal grounds. Do you see any prejudice to
8 your client in doing that simple thing of exchanging word
9 versions, electronic versions identical to those filed with the
10:03:14 10 Court on both sides?

11 MR ANYAH: The practice direction on documents in The Hague
12 requires word versions to be served on CMS only in relation to
13 filings by the Chamber, not the parties.

14 PRESIDING JUDGE: But the practice direction also says that
10:03:32 15 I can circumvent that as the pre-hearing Judge.

16 MR ANYAH: Of course.

17 PRESIDING JUDGE: And that's what I'm asking you. Do you
18 see any prejudice to your client in my doing that?

19 MR ANYAH: We have no objections to that.

10:03:49 20 PRESIDING JUDGE: Okay. All right.

21 And let me ask the Prosecution: Do you have any objections
22 to our issuing an order requiring that the 111, 112, 113 and 115
23 filings include in addition to the proper filing with CMS a
24 courtesy copy to one another and to the Court?

10:04:10 25 MS HOLLIS: Your Honour, we have never been asked to
26 provide such a document. We have always been very happy to do so
27 if we were asked. And, Your Honour, you are absolutely right
28 that a matter that is and was of concern to us is consuming much
29 more time than need be, and the only way to really resolve it is

1 apparently through technical means that will take additional
2 time.

3 Your Honour, what we would like to do at this time, if
4 we're allowed to do so to avoid further waste of time, is to
10:04:47 5 withdraw our motion. Our concerns were valid. We explained in
6 our reply why they were valid, but quite honestly, they are not
7 worth continued time. We have what we have. We will deal with
8 what we have. And so perhaps the best way to deal with it will
9 be for us to withdraw our motion if Your Honour would allow us to
10:05:12 10 do so.

11 PRESIDING JUDGE: Any objection?

12 MR ANYAH: Madam President, I will state our views for the
13 record. Obviously the Prosecution wishes to withdraw their
14 motion. Your Honour will make a ruling on that. I do not accept
10:05:25 15 at face value the insinuation that there is something irregular
16 about our brief. When you look at the word version we have
17 provided the Court and you hold it against the version received
18 and served by CMS, they are identical. There has been no
19 manipulation. They run to the same number of pages. The same
10:05:47 20 text appears on each page. Where the Prosecution gets this idea
21 from, we have no idea.

22 Now, the Prosecution has not indicated what software it
23 used to analyse our brief, compare it to other filings of the
24 Court. The Prosecution has not indicated which specific
10:06:05 25 pleadings previously filed with the Court it has compared our
26 brief before. We are all proceeding on an erroneous assumption
27 by the Prosecution at face value that there is something
28 irregular with our brief. There is nothing irregular with our
29 brief.

1 PRESIDING JUDGE: Okay. Now, Mr Anyah, wouldn't you
2 acknowledge, however, that your original filing of your original
3 brief was highly irregular? The footnotes were wrong, the
4 pagination was wrong. In the process of merging it got screwed
10:06:30 5 up; right?

6 MR ANYAH: The paragraph numbering was in error. Some
7 footnotes were in error. We filed a corrigendum. It was not
8 irregular. We did not miss the filing deadline. The contents
9 were submitted in good faith and there was no manipulation. We
10:06:47 10 filed a corrigendum. On our own initiative we filed a
11 corrigendum.

12 PRESIDING JUDGE: But you knew very well that the Court had
13 already determined we needed -- that the numbers were wrong.

14 MR ANYAH: Before I heard that --

10:07:00 15 PRESIDING JUDGE: But my point -- my point.

16 MR ANYAH: Before I heard that the Court had picked up on
17 the numbering issues, we have people here who will swear an
18 affidavit that from the day following our filing we were working
19 on a corrigendum. We know our professional duties.

10:07:13 20 PRESIDING JUDGE: I raise this only to suggest that
21 difficulties occur when you're using computers; right? There was
22 obviously a merging error. You found it. We found it. You
23 corrected it. It's fine. But the point is that when you're
24 using computers and you have several people drafting things,
10:07:30 25 mistakes can happen that are nobody's fault, but they happen;
26 right? And that doesn't -- that's not an insult to anybody.
27 That's simply a fact of life.

28 MR ANYAH: Mistakes happen with computers all the time, but
29 to extrapolate from a scanned pdf version served by CMS. You

1 know, what these -- what the Prosecution has done is to take a
2 document scanned by CMS, served through e-mail, and then to
3 examine it forensically with software which is unknown to us -
4 the version, the name, all unknown to us - and to come out and
10:08:09 5 make the allegation that of all the documents filed previously,
6 for some reason the Defence's type font appears to be smaller
7 when we've provided the Court with the easy way out: we have our
8 brief in the Court's hands in word version, in electronic
9 version; it can be checked to see if we have played with the
10:08:28 10 scaling, with the formatting, with the font size, and this issue
11 goes away. And now they wish to withdraw their motion, filed on
12 the 12th of October, and it's the 25th of October, and we've
13 spent two weeks filing motions about this.

14 PRESIDING JUDGE: which could have been avoided had you
10:08:46 15 simply called up and said come and take a look at the electronic
16 version.

17 MR ANYAH: Madam President.

18 PRESIDING JUDGE: Yes.

19 MR ANYAH: Madam President.

10:08:52 20 PRESIDING JUDGE: Just answer the question.

21 MR ANYAH: No reasonable Defence counsel would respond to
22 that e-mail by the Prosecution's case manager. No reasonable
23 counsel, Defence or Prosecution. They give -- they write me an
24 e-mail at 3.40 something p.m. telling me to respond before close
10:09:08 25 of business, asking me --

26 PRESIDING JUDGE: Okay. Okay. I understand.

27 MR ANYAH: -- like a little errand person to go and check
28 my brief and to report back to them.

29 PRESIDING JUDGE: I understand.

1 MR ANYAH: That, I would not have responded. Not at all.
2 Ms Hollis has known me since 1999. She could call me up,
3 "Morris, let's go have a coffee."

10:09:27

4 PRESIDING JUDGE: From now on "Morris, let's go have a
5 coffee" is the proper procedure for this Court on any other
6 filing issues, okay? It's the "Morris, let's go have a cup of
7 coffee process"; right? Yes?

8 Mr Anyah.

9 MR ANYAH: It takes two to follow that protocol.

10:09:41

10 PRESIDING JUDGE: Ms Hollis?

11 MS HOLLIS: We're fine to do that, but I do want to
12 reiterate that we did reach out to the Defence before we filed
13 anything.

10:09:54

14 PRESIDING JUDGE: I know. You don't have to reiterate
15 anything. I've got the original iteration down.

16 Okay. Well, in the course of all of this, Mr Anyah, the
17 Chambers wanted to point out to you that, in fact, there may be
18 an irregularity in your pleadings, in your brief. However, it's
19 in your favour. You might want to check what the appropriate
20 margins are because I think you've cheated yourself out of some
21 space. But again, I'm not sure about that because we don't have
22 the electronic version, but I would suggest you go back and take
23 a look and see if perhaps you have a few more pages coming to
24 you. Okay?

10:10:31

25 MR ANYAH: Thank you, Madam President.

10:10:47

26 PRESIDING JUDGE: All right. The next thing I want to talk
27 about, and this was raised by the Prosecution but I'm raising it
28 on my own, and would have any way, and that's the 115 motion.
29 When are we going to see the 115 motion.

1 Mr Anyah?

2 MR ANYAH: Ms Hollis raised this in her e-mails to me on
3 the 19th, and I will make some observations about this issue.
4 When we filed our notice of appeal on the 19th, paragraph 104, we
10:11:33 5 said we would file a Rule 115 motion in respect of three grounds
6 of appeal. When we filed our appellant's brief --

7 PRESIDING JUDGE: I'm sorry, go back again. What did you
8 just say?

9 MR ANYAH: When we filed our notice of appeal on the 19th
10:11:51 10 of July --

11 PRESIDING JUDGE: Yes.

12 MR ANYAH: -- 2012.

13 PRESIDING JUDGE: Yes.

14 MR ANYAH: We said in paragraph 104 --

10:11:58 15 PRESIDING JUDGE: Yes.

16 MR ANYAH: -- that we would move under Rule 115 to present
17 additional evidence in respect of three grounds of appeal.

18 PRESIDING JUDGE: You said eight a minute ago.

19 MR ANYAH: Okay. I was mistaken.

10:12:07 20 PRESIDING JUDGE: Okay.

21 MR ANYAH: I meant three.

22 PRESIDING JUDGE: Mistakes happen.

23 MR ANYAH: 36, 37, and 38. In our appellant's submission
24 Rule 111 on the 1st of October, in paragraph 16 we made a similar
10:12:22 25 representation --

26 PRESIDING JUDGE: Yes.

27 MR ANYAH: -- in respect of more grounds of appeal.

28 PRESIDING JUDGE: Eight more.

29 MR ANYAH: Yes. In our corrigendum of course naturally we

1 repeated the same assertion. This was a reservation of rights as
2 we saw it. At least some indication to the Chamber of what was
3 forthcoming.

4 PRESIDING JUDGE: All right.

10:12:41 5 MR ANYAH: Now, there are no surprises here. In some of
6 the decisions of the Chamber, it is clear, at least to us, that
7 the Chamber is concerned about how to manage the case vis-à-vis
8 any potential 115 motions we file. Madam President, you have
9 indicated in different ways, in different orders or decisions
10:13:09 10 that you do have some concerns about how we're proceeding with
11 this. In an order from the 4th of October, you wrote - this is
12 CMS 1328, paragraph 4:

13 "A party has no right to intentionally delay the filing of
14 Rule 115 motions in order to lengthen the proceedings or limit
10:13:32 15 the time available to the opposing party to identify rebuttal
16 material."

17 PRESIDING JUDGE: Do you disagree with that statement? Do
18 you think a party does have a right to do that?

19 MR ANYAH: No party has a right to deliberately flaunt the
10:13:47 20 Rules or deliberately and intentionally extend proceedings. So
21 that is fundamentally clear.

22 PRESIDING JUDGE: Okay. So you would agree with me that --

23 MR ANYAH: The difference is that it suggests that perhaps
24 we're engaging in such conduct in this case, and that's where we
10:13:59 25 disagree because, Madam President, it is more appropriate to say
26 that the Defence has identified sources with evidence that we
27 believe falls under Rule 115 and that is not the same as saying
28 we have that evidence in our possession at the moment. So we are
29 not deliberately delaying filing a motion when we have the

1 evidence in our possession. We are making due diligent efforts
2 to obtain the evidence.

3 Now, let me go through the Rule because this is important.

10:14:38

4 PRESIDING JUDGE: No. No. No, Mr Anyah, we'll get to the
5 rule in a minute. Let me just get some clarification on what you
6 just said. Your notice of July 19th which you quite rightly
7 clarify for us in terms of your motion to recuse, set out
8 specific evidence that you were seeking to admit, albeit in
9 fairly general terms, but your point was that you had additional
10 evidence that would qualify under Rule 115. Are you saying that
11 you still do not actually have that evidence?

10:15:07

12 MR ANYAH: Madam President, I'm looking at your words, and
13 you say your notice of 19 July or July 19th. That was our notice
14 of appeal. Our notice of appeal in paragraph 104 does not say we
15 have additional evidence.

10:15:28

16 PRESIDING JUDGE: But then subsequently we asked you for
17 clarification in connection with the motion for recusal --

18 MR ANYAH: Yes.

10:15:40

19 PRESIDING JUDGE: -- in which you did outline the kinds of
20 evidence that you were hoping to produce for the Court. Are
21 you --

22 MR ANYAH: Madam President, I have it here.

23 PRESIDING JUDGE: Okay. Are you --

24 MR ANYAH: CMS 1319.

10:15:46

25 PRESIDING JUDGE: I know what you said then. I'm asking
26 you: Are you saying that you do not have that evidence?

27 MR ANYAH: Well, as of this time we're still making due
28 diligent efforts to obtain it. And Madam President --

29 PRESIDING JUDGE: Mr Anyah --

1 MR ANYAH: -- let me --

2 PRESIDING JUDGE: Mr Anyah, okay. Here's my skepticism,
3 all right: This case has been going on now with the Defence team
4 that you were a part of since July of 2007. You were given full
10:16:19 5 opportunities to thoroughly investigate the evidence in the case.
6 It is now October of 2012 and you're telling me that you still
7 have to investigate evidence? There has been a judgement.

8 You're saying that there is evidence that has -- that is apparent
9 to you only since that judgement, which is May 31st. After five
10:16:47 10 years of investigation and trial, you're saying that you still
11 have to investigate additional evidence and you don't have it,
12 and we're within weeks of concluding the filings in the appeal
13 case? I just don't understand.

14 MR ANYAH: Well, it's simple, Madam President. You asked
10:17:09 15 us to make a proffer. Our proffer involves a former Judge of the
16 Special Court, Judge El Hadji Malick Sow.

17 PRESIDING JUDGE: It does indeed.

18 MR ANYAH: Now, all of us know that before you seek to
19 obtain testimony from a former Judge there are various steps you
10:17:28 20 go through. There are legal ramifications. You have to do your
21 research. And what we seek to elicit information from the Judge
22 about occurred on the 26th of April of this year. So it is not
23 something that we knew beforehand during the course of this case,
24 and we are diligently pursuing all avenues to obtain the evidence
10:17:47 25 we need, but we must do so thoroughly, and we must do so with
26 respect for judicial principles that we value.

27 PRESIDING JUDGE: And you must do so expeditiously.

28 MR ANYAH: Yes, and we are doing that.

29 PRESIDING JUDGE: And what have you done in terms of his

1 immunity? The last I checked with the UN there had been no
2 request for immunity waivers.

3 MR ANYAH: Madam President, with all due respect, I cannot
4 sit in front of opposing counsel in a Status Conference and speak
10:18:19 5 publicly about our Defence strategy and the legal mechanisms
6 we're using to obtain the evidence we need. And incidentally I
7 should point out that in the practice of the Special Court
8 there's been only one other case where such motions have been
9 filed, the Sesay case. And if Your Honour looks at the precedent
10:18:36 10 in this instance of the Special Court, Your Honour will find that
11 in Sesay the two Defence accused, the two accused who moved under
12 Rule 115 for additional evidence, did so on the last possible day
13 given them in the Rule. Now Issa Sesay --

14 PRESIDING JUDGE: And did they succeed? Did they succeed?

10:18:57 15 MR ANYAH: Well, the issue is when they moved for it.

16 PRESIDING JUDGE: Did they succeed?

17 MR ANYAH: They did not succeed.

18 PRESIDING JUDGE: Okay.

19 MR ANYAH: But they moved for it consistent with the Rule,
10:19:06 20 consistent with our Rule 115.

21 PRESIDING JUDGE: Your interpretation of that Rule.

22 MR ANYAH: Well, the Rule says a party has until the day of
23 the filing of the submissions and reply to move for additional
24 evidence. This is what happened in Sesay. Issa Sesay filed his
10:19:22 25 request on the 29th of June, 2009, and the same thing was filed
26 by Augustine Gbao. Sesay's request had to be filed because he
27 filed it before the entire Appeals Chamber and not before the
28 pre-hearing Judge. But the two of them, the only precedent of
29 the Special Court that we have, they filed on the day replies

1 were due, the 29th of June, 2009. So I don't see why there
2 should be a different Rule for Charles Taylor and a different
3 Rule for Issa Sesay and Augustine Gbao when the Special Court has
4 only one Rules of Procedure.

10:19:59 5 PRESIDING JUDGE: First of all, I've never heard a
6 submission by counsel referred to as a precedent. Of course he
7 had the right to file it when he filed it, and unfortunately from
8 his perspective it was not a successful motion. I would prefer
9 for the benefit of your client that we get this motion before us
10:20:26 10 so that we have plenty of time to schedule it for both sides to
11 hear it, to look at the evidence, and to hear it.

12 Now, I see no reason if you have that evidence now why you
13 can't file the 115. I understand your interpretation of the
14 Rule. I disagree with it, but I understand it. I am not trying
10:20:53 15 to undermine your Defence. I do, however, not appreciate the
16 fact that you are still in trial tactic mode. We're in the
17 appeal now. And it's not a question of letting the other side
18 know what your tactics are. It's a question of letting the Court
19 know and the parties know how we can schedule this most
10:21:17 20 efficiently for your benefit and your client's benefit as well as
21 the Prosecution as well as the Court. If you've got the stuff,
22 if you've got the evidence, let's here it. We want to hear it.
23 We want to be -- or at least we want to hear what you've got so
24 we can decide whether we should hear it.

10:21:35 25 MR ANYAH: Madam President, I should indicate just to be
26 clear before I am said to have limited our options on this issue,
27 when we say we are in the process of due diligently pursuing
28 additional evidence, it is not limited to Justice Sow's evidence.
29 They are sources of information that come to light after

1 particular filings that we have to pursue, and by that I mean
2 there could be other sources of testimonial evidence besides
3 Justice Sow, and that is why in relation to our Rule 111
4 submissions we have expanded the scope of what grounds of appeal
10:22:16 5 we intend to provide evidence in relation to. So I want to be
6 clear that I'm not not just speaking about
7 His Honour Justice Sow's evidence.

8 Now in relation to your observation that it is to my
9 client's benefit to move expeditiously, we say that, yes, but the
10:22:36 10 flip side of the coin of expeditiousness is fairness, and we need
11 sufficient time to diligently pursue this evidence in the proper
12 way and to bring it before the Court in a proper manner.

13 PRESIDING JUDGE: Let's talk about the other eight. Do you
14 have additional evidence on the other eight grounds that you're
10:22:55 15 prepared to file 115 motion on?

16 MR ANYAH: Not presently but hopefully in the next two
17 weeks we intend to have that evidence.

18 PRESIDING JUDGE: Okay. Can you file the motion then in
19 the next two weeks at the conclusion of the two-week period?

10:23:10 20 MR ANYAH: I do not know until I speak with the potential
21 witnesses. I do not know that all the requirements of 115 will
22 be met until I speak with them. So for me to sit here and say I
23 can do something when it's all contingent on interviews and other
24 legal processes, I cannot say that.

10:23:32 25 PRESIDING JUDGE: All right. But your plan is that you
26 will attempt to get your interviews and whatever else you need to
27 do to be prepared for your 115 motion on the other eight grounds
28 within the next two weeks; is that right? Am I hearing that
29 correctly?

1 MR ANYAH: We are hopeful. We will pursue it as vigorously
2 and as diligently as we can. We're hopeful.

3 PRESIDING JUDGE: Okay. So just to recap where we stand on
4 the 115 motion: On the eight grounds that you gave notice of in
10:24:07 5 your appeal brief, you are hopeful that you will know and have
6 sufficient information to file a 115 motion at the conclusion of
7 two weeks. On the three grounds of which you gave notice on
8 July 19th, you will -- you will be ready when to file 115?

9 MR ANYAH: I do not know.

10:24:35 10 PRESIDING JUDGE: Okay.

11 MR ANYAH: Madam President, it depends on what the evidence
12 is. If we pursue it and it doesn't assist our client's case we
13 may not file a 115 motion. We have this flexibility. We have --
14 we have to consider our strategy. We give notice in good faith.

10:24:55 15 PRESIDING JUDGE: Okay. And I am taking you in good faith
16 when you say that at this point either on the three grounds
17 noticed on July 19th or the eight grounds noticed with your
18 brief, you do not at this time have sufficient information to
19 file 115 motions? That is your good faith proffer?

10:25:26 20 MR ANYAH: Yes, that is correct.

21 PRESIDING JUDGE: And as to the eight grounds, you are
22 optimistic you will know one way or the other at the end of two
23 weeks?

24 MR ANYAH: I say two weeks, but it could be three, and the
10:25:39 25 reasons for that have to do with my travel schedule. As I sit
26 here now and consider the return date of the trip I have planned,
27 it exceeds the two-week window, and I don't want to say two weeks
28 and I'm not back after two weeks and Your Honour said I said in
29 open court that I would provide something in two weeks.

1 PRESIDING JUDGE: Okay. Two to three weeks.

2 MR ANYAH: Yes. I would have an idea of if we are going
3 forward with the motion.

10:26:12

4 PRESIDING JUDGE: And you don't have any idea on the other
5 three grounds when you might be ready?

6 MR ANYAH: No, not at this time.

10:26:36

7 PRESIDING JUDGE: And I did note with pleasure, actually,
8 that both of you agreed on one thing, and that was that my
9 interpretation of the need to have responses filed before the 115
10 should be considered was wrong and therefore that the filing of
11 responses is not a condition precedent to filing the 115 motion.
12 Thank you. I'm glad we have an agreement on something.

10:27:10

13 Okay. Looking now at the requests that you've made for
14 additional issues to look at. To finish off the 115 issue as it
15 was raised by the Prosecution, you are essentially asking whether
16 or not the Defence intends to comply with the Rule in its 115
17 motion?

10:27:31

18 MS HOLLIS: We want to be sure that we're -- that when the
19 motion is filed, the evidence that will be presented is a part of
20 that motion, whether it's an offer of proof, whether it's a
21 statement, whether it's a document, and that we're not faced with
22 some general what we hope we'll get or generally what people will
23 say but a comprehensive inclusion of the evidence that they are
24 seeking to have admitted, because without that we cannot even do
25 what we believe we need to do in order to respond to that 115
26 motion without knowing what it covers. We don't know how to
27 respond as to whether they've met the requirements or not, and to
28 expedite matters, the sooner we know what it is, the sooner we
29 can begin our own brain storming and investigating to see how we

1 might rebut it if we feel we need to.

2 PRESIDING JUDGE: But isn't it --

3 MS HOLLIS: But we believe it should be a complete
4 inclusion of this is the evidence we will present, and that's why
10:28:25 5 we wanted clarity on that.

6 PRESIDING JUDGE: Okay. But aren't you simply asking that
7 they comply with the Rule because isn't that exactly what the
8 Rule says?

9 MS HOLLIS: Well, that's how we interpret the Rule, but
10:28:38 10 there have been differences of interpretation in other matters as
11 well.

12 PRESIDING JUDGE: Okay. Mr Anyah, do you interpret the
13 Rule similarly to the Prosecutor?

14 MR ANYAH: Both the Rule and the relevant provision of the
10:28:48 15 practice direction dealing with additional evidence are pretty
16 clear. They delineate what we must satisfy. And it's either we
17 do it or we don't have the evidence --

18 PRESIDING JUDGE: Okay. I'm just asking as matter of
19 interpretation do you agree with the Prosecutor?

10:29:11 20 MR ANYAH: I'm just trying to read what Ms Hollis said. If
21 Ms Hollis is saying that we must present the entirety of what
22 additional evidence we have in a complete fashion so that they
23 have the opportunity to investigate and provide rebuttal
24 evidence, that is consistent with our understanding of the Rule.

10:29:32 25 PRESIDING JUDGE: Okay. Thank you. Good. Another
26 agreement.

27 Okay. Let's take a look now, Mr Anyah, at some of your --
28 your issues.

29 "Whether or not there is compliance with paragraph 16 of

1 the practice direction on the structure grounds of appeal before
2 the Special Court requires the parties to file, as reference
3 material, within the book of authorities relevant pages of the
4 judgement and sentencing judgement in the Taylor case."

10:30:04 5 Now, did you do that in your book of authorities?

6 MR ANYAH: No, Madam President.

7 PRESIDING JUDGE: Okay. Did the Prosecution do that in its
8 book of authorities?

9 MS HOLLIS: No.

10:30:16 10 PRESIDING JUDGE: Did the Court ask anybody to amend their
11 book of authorities to include that?

12 MR ANYAH: well, we have --

13 MS HOLLIS: No.

14 MR ANYAH: -- an order from Your Honour saying we should
10:30:26 15 file an amended book of authorities on the 31st of October.

16 PRESIDING JUDGE: That's true.

17 MR ANYAH: And it is with this in mind that I raise the
18 question --

19 PRESIDING JUDGE: I said --

10:30:34 20 MR ANYAH: -- because if you read paragraph 16 it does not
21 explicitly exclude from materials belonging to the Special Court
22 archives, if you will, the judgement or the sentencing judgement.
23 And that's why we raised the question.

24 PRESIDING JUDGE: Okay. well, those are the impugned
10:30:49 25 decisions and I don't think that they are included. we certainly
26 haven't raised that point and neither has either side, and you've
27 filed consistently with that without objection, so I think -- I
28 think if that's your question, then I think that your answer is
29 it is not included.

1 MR ANYAH: Thank you.

2 PRESIDING JUDGE: Okay. Then whether the Prosecutor's
3 appellant submissions comply with paragraph 7, 8, and 10 of the
4 practice direction. Are you suggesting, Mr Anyah, that they do
10:31:19 5 not?

6 MR ANYAH: Yes, Madam President. We are suggesting that.

7 PRESIDING JUDGE: Okay. And in what way are you prejudiced
8 by what -- by the omissions that you're suggesting that have been
9 made here?

10:31:32 10 MR ANYAH: Well, we had a Status Conference on the 18th of
11 June when Your Honour Madam President indicated the importance to
12 the Chamber of the new practice direction on the structure of
13 grounds of appeal.

14 PRESIDING JUDGE: That's very true.

10:31:50 15 MR ANYAH: And you said that we ought to follow the
16 direction because Your Honours felt very strongly about it.

17 PRESIDING JUDGE: That's right.

18 MR ANYAH: And that is the basis upon which we say they do
19 not comply with it.

10:31:56 20 PRESIDING JUDGE: Okay.

21 MR ANYAH: It's not so much prejudice to Mr Taylor. It is
22 for the Court to have a document that's consistent with the
23 practice direction.

24 PRESIDING JUDGE: Okay. And the consistency with the
10:32:06 25 practice direction is in order that we may all have specific and
26 detailed information necessary to properly consider and make
27 decisions on your case, without which there could be prejudice to
28 one side or the other. My question to you is: Do you see any
29 prejudice in the omissions that you feel have been made by the

1 Prosecutor regarding those three practice directions?

2 MR ANYAH: Well, it circumscribes in some manner the manner
3 in which our response is to be provided. We have delineated our
4 grounds distinctly. We alleged 45 grounds and I believe we filed
10:32:48 5 submissions on 42 grounds of appeal. The Prosecution --

6 PRESIDING JUDGE: Which in and of itself means that you
7 were in violation of the practice direction in terms of your
8 notice, which --

9 MR ANYAH: No, we are not.

10 PRESIDING JUDGE: -- we did not raise because we saw no
11 prejudice. When I ask --

12 MR ANYAH: Madam President, I don't believe we are. A
13 party can always withdraw a ground when they see and have done
14 further research that it is not legally viable, and that's what
10:33:07 15 we've done. We've withdrawn those grounds. And it should be to
16 the benefit of the Court for expeditiousness purposes.

17 PRESIDING JUDGE: You have also relied in some of your
18 grounds on arguments made and other of your grounds, which is
19 repetition, but we did not consider that to be prejudicial to any
10:33:20 20 party, and it did not interfere with the Court's observance of
21 your material, and therefore we did not raise it with you as we
22 could have under Article 29 -- or 28, I'm sorry. No, I'm -- 29.
23 So my question is: We don't see any difficulty in terms of
24 understanding the four grounds of appeal that the prosecutor has
10:33:53 25 set out. If you have -- if you feel that by your allegation that
26 they do not comport with those three provisions that you are in
27 some way prejudiced, I need to know that because then we can talk
28 about how to make sure that you aren't prejudiced.

29 MR ANYAH: Well, if the touchstone of the inquiry is

1 whether we're prejudiced or not that is one thing. If the
2 inquiry is whether they violate the spirit and the letter of the
3 -- if they violate the letter of the practice direction, that's
4 another thing. So it depends on the nature of the inquiry. If
10:34:30 5 it is the former, whether we are prejudiced, I would ask for time
6 to go back review their brief again, determine how our response
7 is being prepared, and let Your Honour know by way of a filing if
8 we still contest this issue.

9 PRESIDING JUDGE: All right. But I would point out
10:34:48 10 paragraph 28:

11 "The provisions of this practice direction are without
12 prejudice to any orders or decisions that may be made by the
13 designated Pre-Hearing Judge."

14 I am telling you I found nothing in the Prosecution's brief
10:35:03 15 that I considered to be a violation to the extent that it
16 interfered with our ability to understand the brief and to
17 consider it carefully within the spirit of these Rules. If, in
18 fact, there is something there that affects you, that you feel is
19 prejudicial to your client, by all means raise it, but I am
10:35:35 20 saying that under Article -- Article 28, I see nothing that if
21 there is even a technical violation that is inconsistent with the
22 spirit of the Rules or in any way inhibits us from properly
23 understanding the arguments.

24 If you're saying you can't answer those arguments, let me
10:35:58 25 know why, but I would expect that you would explain to me why you
26 are in some way prejudiced. If it's simply a question of, "Are
27 we going to be accused of not complying with the Rule if we
28 follow the same format," if that's the crux of what it is that
29 you're concerned about, then I suggest that the way to resolve

1 that is to talk among yourselves in person and say. "We're going
2 to follow the same format. Are you going to have any objection
3 to that?" If they don't, you already know the Court's position.
4 If you want to follow the same format that she has set out,
10:36:42 5 that's perfectly fine as far as the Court is concerned. And if
6 you can agree that that is not going to raise any issues among
7 you, proceed.

8 MR ANYAH: Madam President, you've made your position known
9 to us. We will go back, and we will consider. If they are
10:37:01 10 appropriate grounds to proceed, given your comments this morning,
11 we will proceed. If they are not, you will not receive a motion
12 from us.

13 PRESIDING JUDGE: Thank you. Okay. A couple of other
14 things, and I will get to the recess issue, not to worry.

10:37:30 15 I am perfectly happy to settle any motions that you have in
16 good faith that affect your arguments on appeal. I am perfectly
17 happy to settle any valid motions of process that you cannot
18 resolve among yourselves, after having tried to do so, that will
19 advance the appeal. I am not willing to look at those motions,
10:37:54 20 though, until I have some certification from the two of you that
21 you have tried to work out whatever the allegations that you are
22 making about one another, because what we're talking about here
23 is allegations against each other. We're not talking about the
24 appeal case. We need to focus on the appeal cause, because none
10:38:13 25 of us have an awful lot of time.

26 In connection with that, please do not plead by
27 correspondence. I know my senior legal officer has indicated to
28 the parties if there is any misunderstanding in the past, if
29 there's anything you need the Court to do, you have to issue a

1 pleading. I mean, that's pretty simple. You can't ask the court
2 officer to pass on to the Judge that you want something done, nor
3 can you give them items of evidence ex parte and without filing
4 them. So, please, we have to respect the boundaries here of what
10:38:56 5 the court officer can and can't accept, and he cannot accept
6 requests of the Court and will not respond to them. So please
7 put them in proper form. But before you do that, if it has to do
8 with simply that you don't like that the other side's done,
9 please try to talk it out first.

10:39:15 10 Secondly, the side of the boundary that the senior legal
11 officer can assist with is logistics and scheduling. Now, I know
12 that you've all worked in other domestic court systems. The way
13 that this system is set up is different, as is obvious, but in a
14 domestic system we would have a court clerk who would be a person
10:39:45 15 who was of great experience, who could answer any questions, who
16 could speak for the Judge, who could speak for the lawyers, who
17 was a neutral party that knew the answers to the questions as
18 they came up, and who could -- against whom you would never even
19 consider including in any kind of litigation you would do.

10:40:05 20 Right, Mr Anyah? In Georgia isn't that how it works?

21 MR ANYAH: Yes, Madam President.

22 PRESIDING JUDGE: Okay. We don't have that, okay? We
23 don't have that here. It's a big lack, but that's the way the
24 tribunal's are set up. I wish I had my court clerk from Vermont,
10:40:21 25 but I don't. So what we have to do is try to do a work-around
26 with the people that we do have, and that creates boundary
27 issues. And nonetheless, we still have to do the work-around.
28 So work-arounds are critical. So the senior legal officer, on
29 behalf of Chambers, has been authorised to work with you and your

1 legal officers to get around the logistical and schedule issues.
2 However, if what he is writing is going to show up in a pleading
3 as an annex, I'm going to tell him not to do that. And if I tell
4 him not to do that, it's going to make things harder for
10:41:05 5 everyone.

6 So please, please, if we are -- I mean, if anybody in the
7 court oversteps their bounds and there's something that is
8 directly relevant to your case, of course we want to hear about
9 it, but if it's e-mail that's being exchanged to try to
10:41:22 10 facilitate your issues and the Chamber's issues, it's not for
11 litigation. Okay? So I mean --

12 Ms Hollis, do you understand my problem here?

13 MS HOLLIS: I do. I was just checking with my legal
14 officer to see if we have done that, but I do understand the
10:41:47 15 problem completely.

16 PRESIDING JUDGE: And Mr Anyah?

17 MR ANYAH: We have not filed as an annex to any document
18 any e-mail from the senior legal officer.

19 PRESIDING JUDGE: Well -- and it's not just the senior --
10:41:56 20 it's court staff generally. When they're trying to help with a
21 problem, if you want them to be forthcoming and as helpful as
22 they can be, they're -- they're going to feel restrained if they
23 feel that anything that they write or say is going to be part of
24 the court case. Unless -- you know, are there are lines that can
10:42:17 25 be drawn, but in terms of just the logistics of getting what has
26 to go from point A to point B. So I'm just asking that you
27 assert caution and your good judgement and not put them in fear
28 of trying to help you. Okay?

29 MR ANYAH: Madam President, we appreciate people are

1 working under pressure, and we don't wish to compound the
2 pressure or cause any inconvenience to the court staff. Where
3 the line is drawn is if the exchanges with them would affect the
4 substantive rights of our client.

10:42:54 5 PRESIDING JUDGE: Absolutely.

6 MR ANYAH: That's where the line is drawn.

7 PRESIDING JUDGE: Yes. I agree with you.

8 Okay. All right. I'm going to issue an order consistent
9 with what we spoke about in terms of certifying, that you have
10:43:10 10 spoken face-to-face with one another before filing any motions
11 having to do with allegations of impropriety against one another
12 or in non-compliance with the practice directions or the Rules.
13 In a -- and my hope is that you will be able to rise to the
14 occasion and work these things out in a way that's satisfactory
10:43:36 15 to both.

16 MS HOLLIS: Your Honour.

17 PRESIDING JUDGE: Yes.

18 MS HOLLIS: Your Honour, if I could ask for a clarification
19 on that.

10:43:41 20 PRESIDING JUDGE: Yes.

21 MS HOLLIS: My understanding is that this -- when you talk
22 about the violation of the practice direction or the Rules, this
23 has to do with -- doesn't have to do with the substantive
24 content --

10:43:54 25 PRESIDING JUDGE: Absolutely not.

26 MS HOLLIS: -- of the submissions --

27 PRESIDING JUDGE: Absolutely not.

28 MS HOLLIS: -- because there will be arguments that the
29 substantive content does not comport with the requirements of the

1 Rule. Now that's something we can include in our response;
2 correct?

3 PRESIDING JUDGE: Exactly, yes.

4 MS HOLLIS: Okay.

10:44:09 5 PRESIDING JUDGE: No, I'm talking about motions like the
6 ones we've been talking about here today. Okay?

7 Okay. And finally, let me point to the paragraph in the
8 practice direction that I am most concerned about everyone
9 following and that is number 11:

10:44:31 10 "The appellant shall maintain a respectful and decorous
11 tone in his and her submissions."

12 Let's try to do that, okay? They are -- we are downward
13 spiraling here. Save your righteous indignation for when it's
14 due. I'm sure there'll be occasions when it will be. Save your
10:45:02 15 allegations until you've worked out between you that there
16 actually is a misconduct, and hopefully there will be none.
17 Let's try to get through the next few months as cordially as we
18 can do it.

19 And, Mr Anyah, I'm looking forward to your 115. I've been
10:45:16 20 looking forward to it for months now.

21 Let's talk, Ms Hollis, about your request -- or your
22 question about recess. Yes, there's going to be a recess. Yes,
23 there are going to be filings that are submitted. The recess
24 will begin -- I think it's Monday the 17th. We should be -- it
10:45:37 25 should conclude on January the 7th. The Court will be open.

26 I do understand, Ms Hollis, why you raise the issue of
27 filings on anything but emergency measures, because I am familiar
28 with the record and what's happened in previous years over the
29 winter holiday.

1 Mr Anyah, would you have any objection to our entering an
2 order that limits filings over the recess to emergency matters
3 that cannot be delayed until the end of the recess, which is, I
4 think, what Ms Hollis is asking for. And this is so that
10:46:17 5 everybody gets a bit of a break, not -- it's not -- don't think
6 tactics here. Just we're going to need some time.

7 MR ANYAH: We have -- we have no objections.

8 PRESIDING JUDGE: I'm sorry?

9 MR ANYAH: I have no objections.

10 PRESIDING JUDGE: Great. All right. Now, I know I keep
11 postponing what people can say, and, Ms Hollis, is there anything
12 further you'd like to say?

13 MS HOLLIS: If I could just raise one additional question
14 in relation to the recess and -- what has happened to us on
10:46:49 15 several occasions during the course of the trial is that a day or
16 two or three before the recess, we would get a filing that would
17 be due as soon as the recess was over, which would require us to
18 work through the recess, and that was the question about whether
19 filings, except those that were truly emergencies, should be
10:47:09 20 backed up so that all of the pleadings would be in before the
21 recess starts, because we have on several occasions worked
22 through the holidays to respond to motions that were filed just
23 before the recess.

24 PRESIDING JUDGE: Mm-hmm. Okay.

10:47:23 25 MS HOLLIS: That was the point that we were concerned
26 about.

27 PRESIDING JUDGE: Okay. And, Mr Anyah, do you have any
28 problem with having a deadline, a cut-off date, before the
29 recess?

1 MR ANYAH: We are in the Court's hands, but the context is
2 we're under pressure to file a Rule 115 motion. Maybe more than
3 one motion, depending on when we receive the additional evidence.

4 PRESIDING JUDGE: Right.

10:47:47 5 MR ANYAH: And if it is the case that on the days
6 approaching the 17th of December it is necessary that we file, I
7 think we ought to be able to file. The two -- the two parties
8 have large enough teams that certain members of the team could be
9 designated to work if necessary during the recess. Others might
10:48:09 10 take their vacation earlier on, before the 17th of December.

11 It doesn't seem to me to serve any purpose to have a recess
12 period where filings are limited, and now we want to have even
13 before the recess period a week or so cut-off date for filings.
14 It doesn't seem appropriate to me. So we would rather just have
10:48:29 15 a recess period, and the parties can manage their work in the
16 totality of the circumstances as best as they see fit. If it is
17 necessary that we file something before the 17th of December, we
18 should be allowed to file it, unless Your Honour wishes to make
19 the recess period commence even before the 17th.

10:48:53 20 MS HOLLIS: Your Honour, may I make one brief comment, very
21 brief?

22 PRESIDING JUDGE: Yes.

23 MS HOLLIS: The Defence is supposing they will be allowed
24 to file Rule 115 after they file their reply, because --

10:49:01 25 PRESIDING JUDGE: I don't think so.

26 MS HOLLIS: -- the replies are due on the 30th of November.

27 PRESIDING JUDGE: I think they know that. I think
28 they're -- they're assuming that they're going to win their 115.
29 Yes.

1 MR ANYAH: Yes, Madam President.

2 PRESIDING JUDGE: Okay. I think they know that November
3 30th is the cut-off, not the due date, the cut-off. I think
4 they're anticipating other things happening after that date.

10:49:27 5 Okay. Any -- Ms Hollis, was there anything further?

6 MS HOLLIS: No, Your Honour.

7 PRESIDING JUDGE: Mr Anyah?

8 MR ANYAH: No, Madam President.

9 PRESIDING JUDGE: Okay. I suspect we will be having
10:49:46 10 another Status Conference in, I'd say, probably between two and
11 three weeks given the estimate on the 115 motion.

12 Thank you, folks.

13 [Whereupon the Status Conference
14 adjourned at 11.13 a.m.]

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