



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

WEDNESDAY, 27 FEBRUARY 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

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

For Chambers:

Mr Simon Meisenberg
Ms Carolyn Buff

For the Registry:

Ms Rosette Muzigo-Morrison
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis
Mr Mohamed A Bangura
Ms Shyamala Alagendra
Ms Maja Dimitrova

For the accused Charles Ghankay Taylor:

Mr Courtenay Griffiths QC
Mr Terry Munday
Mr Morris Anyah

For the Office of the Principal Defender:

Mr Silas Chekera

1 Wednesday, 27 February 2008

2 [Open session]

3 [The accused present]

4 [Upon commencing at 9.30 a.m.]

09:29:30 5 PRESIDING JUDGE: Before I take appearance I see Mr Taylor
6 is back with us and I hope he is fully recovered. Now,
7 Ms Alagenda, we will take appearances please.

8 MS ALAGENDRA: Good morning, your Honour. For the
9 Prosecution are Ms Brenda Hollis, Mr Mohamed Bangura and myself,
09:29:51 10 Shyamala Alagenda, and Maja Dimitrova. Thank you.

11 MR ANYAH: Good morning, your Honours, Madam President.
12 For the Defence we have Courtenay Griffiths QC, Mr Terry Munyard,
13 myself, Morris Anyah, and we are joined today by Silas Chekera,
14 duty counsel from the Office of the Principal Defender.

09:30:18 15 PRESIDING JUDGE: Thank you, Mr Anyah. Ms Alagenda,
16 I presume you have carriage of the next witness. Please proceed.

17 MS ALAGENDRA: The next witness is TF1-362 and this witness
18 is subject to protective measures from the Trial Chamber, that
19 she will testify in a closed session.

09:30:36 20 PRESIDING JUDGE: Is this an existing order?

21 MS ALAGENDRA: Yes, your Honour.

22 PRESIDING JUDGE: Where does this order come from?

23 MS ALAGENDRA: Your Honour, I am willing to provide a copy
24 of the order from the Trial Chamber if it will assist.

09:30:51 25 JUDGE LUSSICK: Which Trial Chamber?

26 MS ALAGENDRA: Trial Chamber I, your Honour.

27 JUDGE LUSSICK: Not our Trial Chamber?

28 MS ALAGENDRA: No, your Honour.

29 PRESIDING JUDGE: If we can have a copy of that order,

1 please.

2 Mr Anyah, you are on your feet and I was going to ask you
3 if you have seen a copy of this relevant order.

4 MR ANYAH: Indeed, I was going to seek permission to have a
09:34:07 5 copy if it would please the Chamber. We do not have a copy of
6 it.

7 PRESIDING JUDGE: I will ask Madam Court Attendant to show
8 you a copy before making a relevant - unless, Ms Alagenda, you
9 have a spare copy for the Defence. Thank you.

09:36:23 10 Mr Anyah, you have seen the order?

11 MR ANYAH: Yes, Madam President. I have read it. I do
12 have some arguments to make. One of them might actually vitiate
13 some of the concerns because it relates to our position that the
14 witness's name is already in the public domain. That is looking
09:36:46 15 at the order and the reasons given for the protective measures.
16 I would note, as the Chamber is aware, the order is dated 11 May
17 2005, before the accused in this case was even taken into
18 custody.

19 PRESIDING JUDGE: If you are going to make a reference,
09:37:06 20 please ensure that you don't name the witness.

21 MR ANYAH: I certainly will not, yes. There would, in our
22 view, be an obligation on the part of the Prosecution to show
23 that the circumstances which necessitated this order back then
24 continue to prevail and obtain at the present time, because we
09:37:30 25 are now in the year 2008 and, as I have said, or made reference
26 to, we are of the view that the witness's name is already in the
27 public domain in another context which I cannot really elaborate
28 on at this point.

29 PRESIDING JUDGE: What do you say, Mr Anyah, to what appear

1 to be the mandatory provisions of Rule 75(F) sub-rule 1?

2 MR ANYAH: We are, indeed, governed by protective measures
3 decisions that are taken by a preceding Trial Chamber and we
4 ordinarily would be obligated to come forth with an application
09:38:14 5 at an appropriate time to this Chamber, but I don't know that,
6 since this new Defence team took carriage of the case, this issue
7 has been litigated to the full extent given that a lot of the
8 notices of these measures were given to the prior Defence team.

9 JUDGE SEBUTINDE: Mr Anyah, are you saying that the prior
09:38:44 10 Defence team was actually notified of the protective measures
11 pertaining to each and every prosecution witness?

12 MR ANYAH: I do not know. I was a part of the prior
13 Defence team, but this issue was not in the forefront of
14 discussions. I sincerely doubt that in every case when a prior
09:39:04 15 Trial Chamber rendered such a decision notice was given, because
16 ordinarily we would not be aware that a possible witness in
17 another case might be a witness here until much later in the
18 process. So, I cannot speak to that, that they had notice of
19 this decision. Of course, all decisions - the argument could be
09:39:29 20 made that notice is always given when any decision is made, but
21 I do not believe I can sincerely say they had notice of this
22 decision.

23 PRESIDING JUDGE: Thank you. I am not sure if you are
24 making some form of application, or on an observation.
09:39:50 25 Therefore, I am not sure whether I should invite a response from
26 the Prosecution.

27 MR ANYAH: Well, the forcefulness of our presentation would
28 be enhanced if I could indicate why we want this decision
29 reconsidered and that would take it into the nature of an

1 application. Like I said, we are of the view that the witness's
2 name is in the public domain. I would leave it at that and I
3 would rest on that in making this an application that to the
4 extent this Chamber finds it within its discretion to rescind
09:40:21 5 this order, that it should.

6 PRESIDING JUDGE: Ms Alagendra - Ms Hollis, you have heard
7 the Defence.

8 MS HOLLIS: If I may be allowed, Madam President. The
9 reason I rise is this has broader implications extending to other
09:40:38 10 witnesses as well. Indeed, the Defence were given notice of
11 existing protective measures very early on, in accordance with
12 Rule 75, and, in fact, when disclosure was made, even redacted
13 disclosure was made, regarding this witness it was clear from
14 that disclosure that there had been prior protection.

09:40:58 15 In addition to that, in something that we filed on 28
16 January reference to this witness was made and an oral decision
17 was put in this reference and the oral decision is one that was
18 followed by the written decision you have before you, so for the
19 Defence to say they did not have notice, we suggest, is without
09:41:21 20 merit.

21 Secondly, 75 says very clearly they are in effect until
22 there is an application for them to be rescinded. There needs to
23 be a timely application for this. Witnesses are not ping pong
24 balls. We can't bring them, keep them here until the last
09:41:39 25 minute, have it decided that they can't go in a forum that they
26 find comfortable and protective of their security and then expect
27 them, at some later date, to be able to come back. This is an
28 untimely application and we suggest they have given no reason
29 that there should be any change to it and such application is

1 untimely. If they wish to go into more detail to make a record,
2 we suggest we go into private session. Again, I think there has
3 been a very cavalier treatment of the protections afforded these
4 witnesses and we think this should be, in a minimum, private
09:42:12 5 session, if not closed session, if we are going to go into the
6 specifics.

7 PRESIDING JUDGE: Thank you, Ms Hollis.

8 JUDGE SEBUTINDE: Ms Hollis, there is something we didn't
9 quite understand. The record is not very clear here, but you
09:43:48 10 referred to there has been a "cavalier" manner in which these
11 witnesses have been afforded protective measures, or something.

12 MS HOLLIS: The cavalier manner in which the protective
13 measures have been dealt with and we refer to instances --

14 JUDGE SEBUTINDE: Could you elaborate.

09:44:09 15 MS HOLLIS: Yes, we refer to instances where the names of
16 protective witnesses have been given in open session. We refer
17 to instances where questions relating to particular personal
18 circumstances of a witness have been given, or asked, in open
19 session so that the whole world knows particular circumstances of
09:44:25 20 the family of a witness, which is not relevant. So, our concern
21 is that we deal very, very cautiously when we are discussing even
22 these matters and so I certainly applaud Defence counsel when he
23 says he would not be able to go, in open session, into further
24 detail and that is why the Prosecution invites that if there are
09:44:46 25 further submissions to be made they be made in private session,
26 or in closed session, because nothing is done in a vacuum and a
27 bit of information here and a bit of information there can very
28 well lead to violation of protective measures.

29 JUDGE SEBUTINDE: Incidentally, Ms Hollis, I didn't hear,

1 on this occasion, the Defence mentioning the name of this
2 witness, or anything that seems to --

3 MS HOLLIS: No, they did not on this occasion.

09:45:14

4 JUDGE SEBUTINDE: That is why we didn't quite understand
5 what you meant.

09:46:45

6 PRESIDING JUDGE: We note there was no timely application
7 to vary or rescind the order of Trial Chamber I made in May 2005.
8 Therefore we are, albeit reluctantly, bound by the provisions of
9 Rule 75(F), and the order of Trial Chamber I, and this witness's
10 testimony will proceed in closed session.

09:47:02

11 On a very practical point, I do recall it was said at some
12 previous occasion that we would like a little more notice of
13 these closed sessions to be able to put the practicalities in
14 place. I do note Ms Hollis has informed the Bench and reminded
15 us that documents are filed. I am just looking at purely the
16 practicalities, immediately before the witness comes into court.
17 In the circumstances, we direct a closed session.

18 [At this point in the proceedings, a portion of
19 the transcript, pages 4798 to 4920, was
20 extracted and sealed under separate cover, as
21 the proceeding was heard in closed session.]

22
23 [Whereupon the hearing adjourned at 4.30 p.m.
24 to be reconvened on Thursday, 28 February 2008
25 at 9.30 a.m.]

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