



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

FRIDAY, 27 FEBRUARY 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

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

For Chambers:

Mr William Romans
Ms Carolyn Buff
Ms Sidney Thompson

For the Registry:

Mr Gregory Townsend
Ms Advera Kamuzora
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis
Mr Mohamed A Bangura
Ms Maja Dimitrova

For the accused Charles Ghankay Taylor: Mr Courtenay Griffiths QC

1 Friday, 27 February 2009

2 [Status Conference]

3 [Open session]

4 [The accused present]

09:25:09 5 [Upon commencing at 9.34 a.m.]

6 PRESIDING JUDGE: Good morning. We will take appearances
7 first, please.

8 MS HOLLIS: Good morning Mr President, your Honours,
9 opposing counsel. For the Prosecution this morning are Mohamed A
09:34:43 10 Bangura, Maja Dimitrova and myself, Brenda J Hollis.

11 MR GRIFFITHS: Good morning Mr President, your Honours,
12 counsel opposite. For the Defence today are myself, Courtenay
13 Griffiths, and our legal assistant Fatiah Balfas who has been
14 with us before.

09:35:11 15 PRESIDING JUDGE: Thank you. Well, this is a scheduled
16 status conference and the Trial Chamber has received the
17 notifications of agenda items both from the Prosecution and the
18 Defence.

19 We've also received a notification from the Prosecution
09:35:32 20 that's also been sent to the Defence that the Prosecution has no
21 additional witnesses and no other documentary evidence to present
22 in this case; that's other than the documents or portion of
23 documents which are the subject of motions 667 - that's the RUF
24 documents - 678/682 which is the JPC documents and 684 which are
09:36:06 25 the IGO documents.

26 I can inform the parties that the decision on the 684 IGO
27 documents has already been filed and the decision on the other
28 two motions will be filed this morning. It has already been
29 signed and sent to the CMS for filing. So in other words the

1 Last sentence of the Prosecution email which reads, "Without
2 prejudice to the admission of any of those documents or portions
3 of those documents pursuant to the Trial Chamber decision on
4 those motions the Prosecution will rest its case at tomorrow's
09:36:55 5 status conference", Ms Hollis do you see the way clear now to
6 rest the Prosecution case in view of what I've said about those
7 last outstanding motions?

8 MS HOLLIS: Indeed we do, Mr President, and in light of
9 that notice the Prosecution has no further evidence and the
09:37:14 10 Prosecution does rest its case.

11 PRESIDING JUDGE: Thank you, Ms Hollis. Well, then we move
12 on to the Defence and the first topic, taking into consideration
13 the agenda items suggested by both parties, is that do you intend
14 to move for a judgment of acquittal under Rule 98, Mr Griffiths?

09:37:49 15 MR GRIFFITHS: We do so intend, Mr President, and one of
16 the matters I apprehend we will have to address today is the
17 timetable for that and possibly fixing a date for oral argument.

18 PRESIDING JUDGE: That was going to be my next question.
19 When do you anticipate you will be in a position to present oral
09:38:15 20 argument?

21 MR GRIFFITHS: We consider that we will need in the region
22 of 40 working days in order to prepare our submissions and I
23 don't know, in light of that suggestion, what requirements the
24 Prosecution would have in terms of response.

09:38:51 25 PRESIDING JUDGE: We will hear from the Prosecution.

26 JUDGE SEBUTINDE: Mr Griffiths, 40 working days takes us to
27 when, in terms of the calendar?

28 MR GRIFFITHS: I think that takes us to some time in April.

29 PRESIDING JUDGE: I gather before you say anything else,

1 Mr Griffiths, you would want to learn the Prosecution's response
2 to that timetable.

3 MR GRIFFITHS: Yes, I would.

4 PRESIDING JUDGE: Do you wish to reply to that?

09:39:42 5 MS HOLLIS: We do, Mr President. We think that 40 days
6 from today, the close of our case, is undue delay. The Defence
7 have been on this case for over a year and a half and they have
8 had the evidence of this case for over a year and a half. We
9 called our last witness at the end of January. At that time they
09:40:13 10 had before them all the additional documents that we were likely
11 to have admitted either in whole or in part. There is no
12 document alone which would be the basis for any of the counts.
13 So they have had since the end of January at the latest to begin
14 working on this 98 submission.

09:40:27 15 We also note that unless they were misquoted in an article
16 in late January, even before our last witness finished, they said
17 they had to finalise their 98 bis submissions, indicating they
18 had been working on them. So we think of course they deserve a
19 reasonable time, but 40 days from today we think is too long.

09:40:54 20 PRESIDING JUDGE: While you're at it, Ms Hollis, granted
21 that the Defence is entitled to a reasonable time and taking into
22 account the fact that the last Prosecution evidence has only just
23 been admitted this morning, what would you deem to be a
24 reasonable time?

09:41:16 25 MS HOLLIS: We would suggest that the third week in March
26 would be a reasonable delay for them to make their submissions,
27 because we do count it from the end of January. Again, we noted
28 I think the last time we met that we were relying on no document
29 to support a count. So there is no single document that is the

1 sole basis for a count. So we would think they would have
2 reasonable time if you were to set at least their argument for
3 the beginning of the week of the third week of March.

09:42:01 4 PRESIDING JUDGE: Then of course, while you're on your
5 feet, we then would be looking at how long would the Prosecution
6 need to respond to the Defence submissions?

7 MS HOLLIS: Once we are aware of what those submissions are
8 we would need very little time to respond. We are acting with
9 diligence, as we are sure the Defence is, and organising our
09:42:20 10 evidence so as to be able to respond. So we would think it would
11 be a matter of a few days at the most for us to be able to
12 respond.

13 PRESIDING JUDGE: I think at this stage, Ms Hollis, the
14 most practical and perhaps expeditious way to proceed is not to
09:42:41 15 tie the Prosecution down to any specific time to respond until
16 you've heard the nature of the submissions. So perhaps that's
17 something we can decide on your application once the Defence oral
18 submissions have been heard by the Court.

19 MS HOLLIS: We appreciate that flexibility, Mr President.

09:43:08 20 PRESIDING JUDGE: Thank you, Ms Hollis. Do you wish to
21 reply to that, Mr Griffiths?

22 MR GRIFFITHS: I certainly do, Mr President. I don't want
23 to appear argumentative about this and first I must congratulate
24 the Prosecution on their intelligence gathering efforts to be
09:43:26 25 able to quote an article dating from January of this year. In
26 our submission it really doesn't lie in the mouth of the
27 Prosecution to suggest we have had a year and a half when they
28 have had some five years in which to put their case together -
29 over five years - with almost four times the resources available

1 to them that is available to the Defence. So we submit those
2 considerations have to be taken into account in assessing what
3 resources are available to the Defence to analyse properly over a
4 year's worth of evidence covering many thousands of pages of
09:44:12 5 transcripts in order to be able to properly assist this Court in
6 the very onerous task of providing a judgment on what is a very
7 important motion.

8 In our submission the request we've made is perfectly
9 reasonable in the circumstances and we would submit that the
09:44:35 10 suggestion being made by the Prosecution that the third week in
11 March, which is effectively three weeks' time, is sufficient, we
12 submit that is totally inadequate. In protecting Mr Taylor's
13 interests, we feel that there is no way we could properly address
14 the multiplicity of issues on an 11 count indictment in three
09:45:04 15 weeks.

16 PRESIDING JUDGE: All right. Thank you. At the end of the
17 submissions in this conference the Trial Chamber will adjourn for
18 a brief period and we will set some final time lines.

19 But we will move on now to another topic. I am referring
09:45:55 20 to item 3 on the Prosecution suggested agenda. That was at this
21 particular status conference: "Set a date for submission of
22 pre-defence conference materials in event the Defence puts on a
23 case. That can be set as specific number of days/weeks from
24 close of Prosecution case."

09:46:28 25 We haven't decided one way or the other on that yet,
26 Ms Hollis, but my own view is that it's a little premature to set
27 a pre-defence conference without any ruling on the Rule 98
28 submissions and, in fact, it even presupposes that we are going
29 to find against the Defence on Rule 98 submissions to make

1 arrangements already for a pre-defence conference. But if you
2 have any arguments you would like to put forward as to why you
3 would want that particular agenda item dealt with now, rather
4 than subsequent to the Rule 98 decision, we will certainly hear
09:47:15 5 that.

6 MS HOLLIS: Thank you, Mr President. Of course dates can
7 be set and if your Honours were to dismiss all the counts then
8 those dates would simply not be relevant at any point. We don't
9 believe it's premature. We believe that there is precedent for
09:47:33 10 setting such dates even before the close of the Prosecution case
11 in other very complex cases. In the Milosevic case they set a
12 time for the, for them, Rule 98 bis submissions and for the
13 commencement of a Defence case even before the Prosecution ended.
14 They also did that in the Gotovina case, which is a very complex
09:48:01 15 case involving high profile individuals, and so we believe that
16 it is possible to do that.

17 Why would it be good to do that now? We believe it would
18 be good to do that now so that things can be planned, a schedule
19 can be made. Of course upon any showing of good cause those
09:48:17 20 dates could be changed, but we believe that there is an ability
21 to set that date at this point and, in fact, to set a date for
22 the commencement of a Defence case should there be one. Then,
23 for that matter, that date could be set and the dates for
24 submission of pre-defence conference materials could be backdated
09:48:40 25 from that.

26 We think again we've made the arguments about the time the
27 Defence has had. They have also indicated in the media, at the
28 same time they said they were finalising their 98 bis, the steps
29 they have already taken to organise and begin the preparation for

1 their case. Of course we recall that before our recess in
2 December we took a day off, a Tuesday I recall, so that they
3 could have a meeting of the Defence team in terms of preparing
4 any Defence case they might present.

09:49:17 5 So we believe that there is the ability to do that. We
6 think it would help everyone with schedules and determining
7 workload should that be done.

8 PRESIDING JUDGE: Thank you, Ms Hollis. While you're on
9 your feet we may as well dispose of the final Prosecution agenda
09:49:37 10 item which is related to what you have just been saying. That
11 is: "Set a date for commencement of the Defence case, if there
12 is to be a Defence case and the Trial Chamber can, for instance,
13 set a specific number of days or weeks from close of the
14 Prosecution case or from filing of pre-defence conference
09:50:03 15 materials." Is that an agenda item you wanted to submit on at
16 this stage?

17 MS HOLLIS: I would rely on the submissions I have just
18 made. We believe that these are linked and that indeed a date
19 for the commencement of any Defence case that may be presented,
09:50:21 20 should it be necessary, can be decided and then the filing dates
21 and dates for any pre-defence conference could be backdated from
22 that. So we do believe it is something that could be done and in
23 our submission a date in May would be a reasonable date for the
24 commencement of any Defence case in the event one needs to be
09:50:45 25 presented and will be presented.

26 PRESIDING JUDGE: All right. Thank you, Ms Hollis.
27 Mr Griffiths?

28 MR GRIFFITHS: Mr President, I propose to deal with this
29 submission very shortly. Although we are anxious that this trial

1 is conducted expeditiously, we feel that to deal with the third
2 item on the Prosecution's agenda at this stage is premature in
3 that it prejudices the Rule 98 submissions yet to be made and, in
4 any event, for important logistical reasons we would not be in a
09:51:23 5 position to comply with any order in relation to that third topic
6 at this stage.

7 PRESIDING JUDGE: I gather that submission carries over to
8 the fourth item as well, setting a date for the beginning of the
9 Defence case?

09:51:45 10 MR GRIFFITHS: Mr President, yes. Mr President, if I could
11 just indicate one of the important reasons why these logistical
12 difficulties arise. Sadly, for us, our sole international
13 investigator died earlier this week and consequently we've had to
14 put on hold many ongoing investigations that he was conducting.
09:52:18 15 We are not yet at a stage when we can appoint a replacement and
16 that of course is going to cause us a great deal of delay in the
17 preparation of our case.

18 PRESIDING JUDGE: I see. Thank you, Mr Griffiths.
19 Anything you wish to reply to, Ms Hollis, or have you said it all
09:52:36 20 already?

21 MS HOLLIS: Only to say that we are very sorry to hear
22 about the passing of the international investigator.

23 PRESIDING JUDGE: Thank you, Ms Hollis. Now I believe that
24 covers the agenda of both the Prosecution and Defence for this
09:52:55 25 status conference.

26 Before we adjourn to make some decisions, are there any
27 other items that you would wish to raise, Ms Hollis?

28 MS HOLLIS: The Prosecution has nothing further,
29 Mr President.

1 PRESIDING JUDGE: Thank you. Mr Griffiths?

2 MR GRIFFITHS: Neither do we, Mr President.

3 PRESIDING JUDGE: All right. We will have a brief
4 adjournment. It shouldn't take too long.

09:53:19 5 [Break taken at 9.55 a.m.]

6 [Upon resuming at 10.31 a.m.]

7 PRESIDING JUDGE: Well, the first thing we need to decide
8 at the status conference is the date for delivery of the
9 submissions under Rule 98. The Defence application is that it
10 requires 40 working days, which would mean that if granted the
11 Defence would make its oral decisions on Rule 98 on 27 April.

12 Now the Prosecution, in opposition to that application, has
13 suggested that a reasonable period for the Defence to prepare
14 their submissions would be up to the third week in March; in
10:32:30 15 other words, some date commencing that week. On our
16 calculations, that only allows the Defence barely two weeks and
17 we don't regard that as a satisfactory or reasonable period.

18 Now we are very aware that the amendments to Rule 98, to
19 make it an oral procedure, was intended to expedite the process
10:33:10 20 involving Rule 98 motions. While it expedites the process, it in
21 no way diminishes the Trial Chamber's responsibility to make a
22 considered decision.

23 However we do find that there is some weight in
24 Mr Griffiths's argument that not only does the Defence have to
10:33:39 25 analyse over a year's worth of evidence, but some of that
26 evidence from various witnesses was quite voluminous and there
27 were 91 witnesses - the evidence of 91 witnesses - which the
28 Defence will need to address when preparing its submissions.

29 So the Trial Chamber has decided that what would be a

1 reasonable period for the Defence to prepare its submissions
2 would be 25 working days, which takes us up to Monday 6 April,
3 and so we will order that the Defence submissions for a judgment
4 of acquittal under Rule 98 will be heard by this Court on Monday
10:34:41 5 6 April commencing at 9.30 a.m.

6 Now, in relation to that order we now must decide an
7 appropriate length of time for the submissions. Just as a
8 guideline, we note in the RUF case that has just been decided
9 this week the parties were each allowed a maximum of two hours to
10:35:30 10 present their oral submissions. Mr Griffiths, do you have
11 anything to suggest on a length of time for the submissions?

12 MR GRIFFITHS: Well in our submission, Mr President, your
13 Honours, I think we should allow perhaps two days of oral
14 argument.

10:35:52 15 PRESIDING JUDGE: That's from the Defence?

16 MR GRIFFITHS: No, no, that is for both parties.

17 PRESIDING JUDGE: Well, as we said this morning, once you
18 have delivered the Defence arguments we will certainly entertain
19 some time for the Prosecution to present its arguments. I would
10:36:14 20 be surprised if the Prosecution would be in a position to follow
21 straight on from your submissions.

22 MR GRIFFITHS: Very well. In those circumstances then,
23 Mr President, I'm sure that our submissions won't last more than
24 a day.

10:36:34 25 PRESIDING JUDGE: All right. Ms Hollis, I think I will
26 hear you on this because obviously the time we give the Defence
27 will have some bearing on the time we give the Prosecution and so
28 do you have any views on an appropriate length of time for
29 addresses?

1 MS HOLLIS: Yes, Mr President. First of all we think that
2 we have to note that this is not a closing argument, that the
3 legal standard for Rule 98 is very strict and so that --

4 PRESIDING JUDGE: That is true, yes.

10:37:06 5 MS HOLLIS: So we don't think a day of oral argument would
6 at all be required. We do believe that something in the range of
7 two to three hours would be more than appropriate to deal in a
8 very focused and specified way with the legal standard for Rule
9 98, which is a very strict standard in many ways.

10:37:28 10 PRESIDING JUDGE: Thank you, Ms Hollis.

11 I make it clear that in the Rule 98 submissions it won't be
12 necessary to address on the legal standard. We will be looking
13 at the standard as being whether the evidence adduced is legally
14 capable of supporting a conviction. Of course, the submissions
10:39:03 15 will not be touching on the credibility and reliability of the
16 evidence either. So, in our view, we think that the Rule 98
17 submissions should be limited to a morning. That is, from 9.30
18 until 1.30 with the usual morning break. So that will give each
19 party three and a half hours to present its submissions.

10:39:40 20 Now there is one other matter. That is the Prosecution's
21 suggestion to set a date for submission of pre-defence conference
22 materials and also set a date for the commencement of the Defence
23 case. We've considered this but we do not deem it appropriate to
24 fix those dates at this particular status conference and we will
10:40:26 25 address that issue once the Rule 98 motion has been decided.

26 So unless there are any other matters we will now adjourn
27 court for hearing of the Defence oral submissions under Rule 98
28 to Monday, 6 April at 9.30 a.m.

29 [Whereupon the Court adjourned at 10.42 a.m.]

1 to be reconvened on Monday, 6 April 2009 at
2 9.30 a.m.]
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