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SCSL-03-01-T
(19232-19234)

19232



SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 5 September 2008

SPECIAL COURT FOR SIERRA LEONE	
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COURT MANAGEMENT	
THE CLERK	
05 SEP 2008	
NAME	VINCENTI USTEKWA
SIGN	<i>[Signature]</i>
TIME	15:01

PROSECUTOR

v.

Charles Ghankay TAYLOR

**DECISION ON PUBLIC PROSECUTION NOTICE OF CHANGE IN WITNESS STATUS
OR IN THE ALTERNATIVE MOTION FOR LEAVE TO CHANGE WITNESS STATUS**

Office of the Prosecutor:

Brenda J. Hollis
Leigh Lawrie

Defence Counsel for Charles G. Taylor:

Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Public Prosecution Notice of Change in Witness Status or in the Alternative Motion for Leave to Change Witness Status,” filed on 12 August 2008 (“Notice”),¹ wherein the Prosecution notifies the Court that it will present the evidence of three predominantly linkage witnesses, TF1-041, TF1-045 and TF1-071, and four predominantly crime base witnesses, TF1-065, TF1-173, TF1-189 and TF1-459, through live testimony rather than pursuant to an application under Rule 92bis of the Rules of Procedure and Evidence (“Rules”). In the alternative, should the Trial Chamber be of the view that such a variation of the witness list would fall under Rule 73bis(E), the Prosecution seeks leave of the Trial Chamber to make the above variation;²

NOTING the “Public Defence Response to Urgent Public Notice of Change in Witness Status or in the Alternative Motion for Leave to Change Witness Status”, filed on 22 August 2008 (“Response”),³ wherein the Defence argues that proposing to present the evidence of seven witness through live testimony rather than through admission of their prior trial transcripts pursuant to Rule 92bis has the practical effect of varying the Prosecution’s Witness List as the number of witnesses has increased and therefore the Prosecution must seek leave of the Trial Chamber under Rule 73 bis(E);⁴

NOTING the “Public Prosecution Reply to Defence Response to Urgent Public Notice of Change in Witness Status or, in the Alternative, Motion for Leave to Change Witness Status”, filed on 27 August 2008 (“Reply”),⁵ wherein the Prosecution asserts that the seven witnesses referred to in the Prosecution’s filing are witnesses who have been previously included in the Prosecution’s Witness List since 4 April 2007,⁶ and that the Prosecution filed a summary of the facts on which each of the seven witnesses were expected to testify as part of the Pre-trial conference materials and that it has complied with all its disclosure obligations;⁷

RECALLING the “Prosecution’s Amended Witness List”, filed on 7 February 2008 (“Amended Witness List”), wherein the Prosecution indicated that witnesses TF1-041, TF1-045, TF1-071, TF1-065, TF1-173, TF1-189 and TF1-459 are listed as witnesses whose evidence will be presented pursuant to an application under Rule 92bis;⁸

COGNISANT of Rules 73bis, 85, 90 of the Rules;

NOTING in particular that Rule 73bis(B)(iv) and (E) of the Rules provide:

Rule 73 bis: Pre-Trial Conference (amended 29 May 2004, 13 May 2006 and 24 November 2006)

(B) Prior to the Pre-Trial Conference the Trial Chamber or a Judge designated from among its members may order the Prosecutor, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial, to file the following:

[...]

¹ SCSL-03-01-T-564 (“Notice”).

² Motion, paras 12, 13.

³ SCSL-03-01-T-567 (“Response”).

⁴ Response, paras 3, 5.

⁵ SCSL-03-01-T-570 (“Reply”).

⁶ Reply, para. 3.

⁷ Reply, para. 9.

⁸ SCSL-03-01-T-410, Prosecution’s Amended Witness List, 7 February 2008 (“Amended Witness List”).

- (iv) A list of witnesses the Prosecutor intends to call with:
 - (a) The name or pseudonym of each witness;
 - (b) A summary of the facts on which each witness will testify;
 - (c) The points in the indictment on which each witness will testify; and
 - (d) The estimated length of time required for each witness;

(E) After the commencement of the Trial, the Prosecutor may, if he considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.

NOTING that Rule 73bis of the Rules does not obligate the Prosecution to file an indication of the method of presentation of the evidence in its Pre-trial conference material and further that the jurisprudence of the Special Court permits the Prosecution to move witnesses from its “back-up” to “core” witness list without seeking leave of the Trial Chamber, if such variation does not prejudice the Defence in its trial preparation;⁹

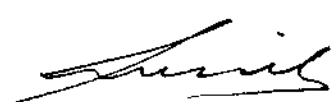
HOLDING THEREFORE that it falls within the discretion of the Prosecution to present its case through live witness testimony and that the Defence will not thereby suffer any prejudice since it will have the right to cross-examine each witness;

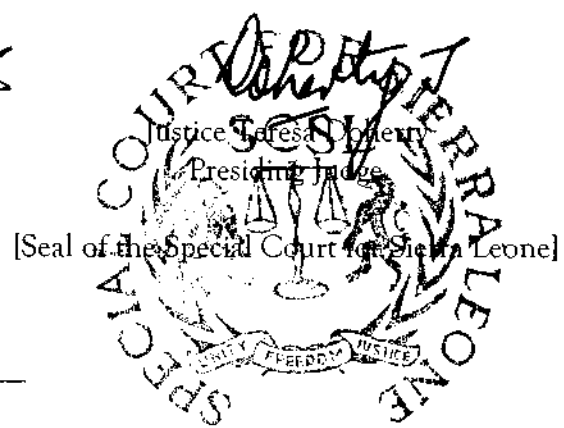
NOTING FURTHER that the Defence has previously complained, in relation to an application to adduce evidence through Rule 92bis, that the Accused would be deprived of a public hearing by such a procedure¹⁰ and, furthermore, that the Defence has not demonstrated how it they would be prejudiced by the presentation of live testimony in the present case;


FOR THE ABOVE REASONS

HEREBY ACCEPTS the Notice.

Done at The Hague, The Netherlands, this 5th day of September 2008.


Justice Richard Lussick




Justice Julia Sebutinde

⁹ *Prosecutor v. Sesay, Kallo, Gbao*, SCSL04-15-T, Decision Regarding the Prosecution’s Further Renewed Witness List, 5 April 2005, paras 30, 31.

¹⁰ See SCSL03-01-T-391, Public Defence Response to Prosecution Motion for Admission of Part of Prior Evidence of TF1-362 & TF1-371 Pursuant to Rule 92ter, 14 January 2008, para. 12.