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SCSL-03-01-T
(21219 - 21223)

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SPECIAL COURT FOR SIERRA LEONE

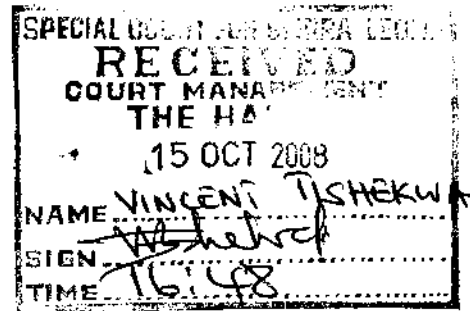
TRIAL CHAMBER II

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.: SCSL03-1-T

Date: 15 October 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A TO G
PROSECUTION NOTICE UNDER RULE 92 *BIS* FOR THE ADMISSION OF EVIDENCE
RELATED TO *INTER ALIA* KONO DISTRICT - TF1-195, TF1-197, TF1-198 & TF1-206

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”);

RECALLING the Trial Chamber’s “Order Under Rule 16 to Continue Trial in the Absence of a Judge”, dated 13 October 2008 (“Rule 16 Order”);¹

SEISED of the “Public with Confidential Annexes A to G Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *inter alia* Kono District - TF1-195, TF1-197, TF1-198 & TF1-206”, filed on 11 September 2008 (“Notice”),² wherein the Prosecution gives notice under Rule 92bis of its intention to seek to submit for admission into evidence:

- (1) parts of the prior trial transcripts and related exhibits of the testimony of Witnesses TF1-195³, TF1-197⁴, TF1-198⁵ and TF1-206⁶ given in other proceedings before the Special Court, excluding those sections which concern: (i) legal argument; (ii) trial administrative matters; and (iii) evidence of the acts and conduct of the Accused;⁷ and
- (2) subsequent statements made by TF1-198⁸ and TF1-206;⁹

NOTING the “Public with Confidential Annex A Defence Objection to ‘Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *inter alia* Kono District - TF1-195, TF1-197, TF1-198 & TF1-206 and Other Ancillary Relief”, filed on 17 September 2008 (“Objection”),¹⁰ wherein the Defence objects to the admission of such evidence on the grounds that: (i) some of the information is not relevant as it falls outside the Indictment period;¹¹ (ii) some of the evidence is not susceptible to confirmation;¹² (iii) some of the information is “linkage” in nature and/or goes to proof of the acts and conduct of the Accused;¹³ (iv) the Prosecution should have applied under Rule 92ter which, with the consent of the parties, would allow for the admission of written statements that go to the acts and conduct of the Accused and would also ensure that the witness is present for cross-examination;¹⁴ and (v) that alternatively, the Defence requests that, if the Trial Chamber admits the prior transcripts and related exhibits under Rule 92bis, it exercise its discretion to order the witnesses concerned to appear for cross-examination;¹⁵

¹ Prosecutor v. Taylor, SCSL-03-01-T-629, Order Under Rule 16 to Continue Trial in the Absence of a Judge, 13 October 2008 (“Rule 16 Order”).

² SCSL-T03-01-586.

³ TF1-195 testified in *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T (“RUF Trial”) on 1 February 2005.

⁴ TF1-197 testified in the RUF trial on 21 and 22 October 2004.

⁵ TF1-198 testified in *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T (“AFRC Trial”) on 28 June 2005.

⁶ TF1-206 testified in the AFRC trial on 28 and 29 June 2005.

⁷ Notice, paras 2, 28.

⁸ Notice, paras 12, 30; Confidential Annex E.

⁹ Notice, paras 14, 30; Confidential Annex G (incorrectly marked “Annex F”).

¹⁰ SCSL-T-03-01-598.

¹¹ Objection, para. 21.

¹² Objection, para. 22.

¹³ Objection, paras. 17-20.

¹⁴ Objection, paras 11, 12.

¹⁵ Objection, paras 6(c), 23-25.

NOTING further that the Defence applies for the closed session protective measures granted to Witnesses TF1-195, TF1-197, TF1-198 and TF1-206 in the RUF Trial¹⁶ to be rescinded¹⁷ on the grounds that “the underlying basis upon which the measures were granted no longer obtains” in that “[t]here has been a substantial change of circumstances”;¹⁸

FURTHER NOTING the “Public Prosecution Reply to Public with Confidential Annex A Defence Objection to Prosecution Notice under Rule 92bis for the Admission of Evidence related to *inter alia* Kono District and Other Ancillary Relief”, filed on 22 September 2008 (“Reply”);¹⁹

RECALLING that the Trial Chamber delivered an oral decision in court earlier today and advised that a written decision would follow;²⁰

MINDFUL of the provisions of Rule 92bis of the Rules of Procedure and Evidence (“Rules”);

RECALLING the Trial Chamber’s previous decision establishing the applicable law in relation to such Rule 92bis motions;²¹

HAVING conducted a careful examination of the transcripts of the testimony of Witnesses TF1-195, TF1-197, TF1-198, and TF1-206 and the exhibits admitted during their testimony in the RUF and/or AFRC trials;

SATISFIED that the information the Prosecution is seeking to tender in lieu of the oral testimony of Witnesses TF1-195, TF1-197, TF1-198, and TF1-206 does not directly go to proof of the acts and conduct of the Accused, is relevant to the purpose for which it is submitted and that its reliability is susceptible of confirmation;

SATISFIED FURTHER that the nature of the information contained in the transcripts sought to be tendered in evidence by the Prosecution is sufficiently proximate to the Accused that its admission in the absence of an opportunity to cross-examine the makers of the statements would unfairly prejudice the Accused and that it is therefore in the interests of justice to afford the Accused such an opportunity;

NOTING the Prosecution submission that should the Trial Chamber grant cross-examination of Witness TF1-197 then the Prosecution will not seek to admit this witness’s prior testimony under Rule 92bis but, instead, will adduce additional relevant evidence by calling the witness to testify entirely *viva voce*;²²

¹⁶ In *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-05-15-T, “Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Protective Measures dated 2 April 2004”, dated 4 May 2004, the Prosecution applied for Protective Measures for Witnesses TF1-195, TF1-197, TF1-198 and TF1-206. The relevant Trial Chamber Decision is *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-05-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses,” 5 July 2004 (“5 July 2004 RUF Decision”).

¹⁷ Objection, paras 7, 26-31.

¹⁸ Objection, paras. 7.

¹⁹ SCSL-T-03-01-604.

²⁰ Transcript 15 October 2008.

²¹ *Prosecutor v. Taylor*, SCSL-03-01-T-556, Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence, 15 July 2008.

²² Notice, para. 27.

FINDING that the Prosecution may call Witness TF1-197 to give evidence *viva voce*, since the Prosecution has the liberty to choose the method of its presentation of evidence and may choose to change such method of presentation and that the Defence will not be prejudiced as it will have the right to cross-examine the witness;²³

RECALLING the Trial Chamber's various oral rulings in relation to the above mentioned decision of Trial Chamber I, in which it was stated that:

[The Trial Chamber] find[s] nothing in the [5 July 2004] decision which would entitle witness TF1-215 to any protective measures. In our view, the decision relates solely to those witnesses listed in annexes A and B of the renewed Prosecution motion for protective measures. Witness TF1-215 is not among those witnesses listed in the annexes. Accordingly, the witness will testify in open court and the Defence application to rescind the protective measures of this witness is now moot;²⁴

FINDING therefore that in relation to Witnesses TF1-195, TF1-197, TF1-198 and TF1-206 the Defence application to rescind protective measures is moot as these witnesses do not enjoy protective measures;

FOR THE ABOVE REASONS

PURSUANT TO Rules 26*bis*, 54, 75, 89(C), and 92*bis* of the Rules of Procedure and Evidence;

GRANTS the Prosecution application **IN PART**; and

ORDERS that

- (1) The prior transcripts and related exhibits relating to testimony of Witnesses TF1-95, TF1-197, TF1-198 and TF1-206;
 - (2) The statement of Witnesses TF1-198 contained in Confidential Annex E to the Motion; and
 - (3) The Statement of Witness TF1-206 contained in confidential Annex G to the Motion,
- shall be admitted in evidence, pursuant to Rule 92*bis*, provided that the Prosecution shall make the said witnesses available for cross-examination by the Defence; and

DISMISSES the Defence application for rescission of protective measures in respect of Witnesses TF1-195, TF1-197, TF1-198, and TF1-206.

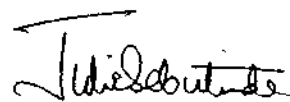
²³ *Prosecutor v. Taylor*, SCSL-03-01-T-575, Decision on Public Prosecution Motion for Leave to Call TF1-036 to Give Evidence in Chief & Cross-examination Viva Voce, 5 September 2008.

²⁴ Transcript 6 May 2008, pp. 9122 to 9123; see also *Prosecutor v. Taylor*, SCSL-03-01-T-595, Decision on Public with Confidential Annexes B and E Urgent Prosecution Application for Reconsideration of Oral Decision Regarding Protective Measures for Witness TF1-215 or in the Alternative Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TF1-215, 15 September 2008.

Done at The Hague, The Netherlands, this 15th day of October 2008.



Justice Richard Lussick
Presiding Judge²⁵



Justice Julia Sebutinde



²⁵ In accordance with the Rule 16 Order.