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SCSL-03-01-T
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SPECIAL COURT FOR SIERRA LEONE

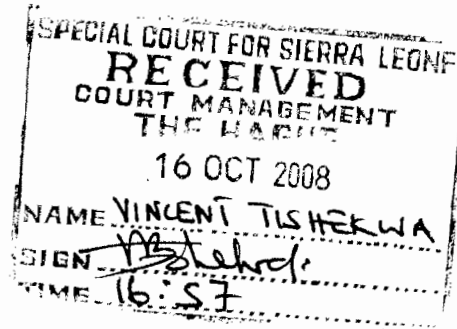
TRIAL CHAMBER II

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.: SCSL-03-1-T

Date: 16 October 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A TO C
PROSECUTION NOTICE UNDER RULE 92 *BIS* FOR THE ADMISSION OF EVIDENCE
RELATED TO INTER ALIA FREETOWN & WESTERN AREA - TF1-023 & TF1-029

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 with Confidential Annexes A to C Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *inter alia* Freetown & Western Area - TF1-023 & TF1-029”, filed on 11 September 2008 (“Notice”),¹ wherein the Prosecution gives notice under Rule 92bis of its intention to seek admission into evidence of parts of the prior trial transcripts and related exhibits of the testimony of Witnesses TF1-023 and TF1-029 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;²

NOTING the “Public, with Confidential Annex A, Defence Objection to ‘Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *inter alia* Freetown & Western Area - TF1-023 & TF1-029’ and Other Ancillary Relief”, filed on 17 September 2008 (“Objection”),³ wherein the Defence objects to the admission of the prior trial transcripts and related exhibits of the witnesses on the grounds that: (i) some of the evidence is not relevant as it falls outside the indictment period; (ii) some of the evidence reflects the Witnesses’ own opinions and conclusions; (iii) some of the evidence is “linkage” in nature and goes to the proof of the acts and conduct of the Accused and cannot be admitted under Rule 92bis without the opportunity for cross-examination⁴; (iv) the Prosecution should have applied under Rule 92ter, which requires the agreement of the parties and that the witnesses be present for cross-examination;⁵ and the Defence requests the Trial Chamber to: (1) dismiss the Notice entirely; or (2) admit into evidence only those portions of the Witnesses’ prior testimony and related exhibits that are not objected to in Annex A; (3) in the event that the Trial Chamber admits the objectionable portions Witnesses’ testimony and related exhibits, the Defence further requests the Trial Chamber to (a) order the Prosecution to make witnesses TF1-023 and TF1-029 available for cross-examination; and (b) vary or rescind the protective measures previously granted to those Witnesses;⁶

NOTING the “Public with Confidential Annex 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* Freetown & Western Area - TF1-023 & TF1-029’ And Other Ancillary Relief”, filed on 23 September 2008 (“Reply”);⁷

MINDFUL of the provisions of Rules 92bis and 92ter 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;⁸

¹ SCSL-03-1-T-585 (“Notice”).

² Notice paras, 2, 28, 30.

³ SCSL-03-01-T-597 (“Objection”).

⁴ Objection, para 5.

⁵ Objection, para 11.

⁶ Objection, para. 32.

⁷ SCSL-03-01-T-603 (“Reply”).

⁸ *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.

HAVING conducted a careful examination of the transcripts of the testimony of Witnesses TF1-023 and TF1-029 and the exhibits⁹ admitted during their testimony in the AFRC¹⁰ and RUF¹¹ trials respectively;

SATISFIED that the information the Prosecution is seeking to tender in lieu of the oral testimony of Witnesses TF1-023 and TF1-029 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;

RECALLING that Witnesses TF1-023 and TF1-029 were in previous proceedings granted the protective measures of the use of a pseudonym, screen and voice distortion;¹²

FINDING that the Defence has not presented any supporting evidence capable of establishing on a balance of probabilities that these witnesses are no longer in need of such protective measures;¹³

FOR THE ABOVE REASONS

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

GRANTS the Prosecution application in the Notice **IN PART**; and,

ORDERS that

the prior trial transcripts and related exhibits relating to the testimony of Witnesses TF1-023 and TF1-029 in Annexes A to C to the Motion shall be admitted into evidence pursuant to Rule 92bis provided that the Prosecution shall make the said Witnesses available for cross-examination by the Defence.

DISMISSES the Defence application for rescission of protective measures in respect of Witnesses TF1-023 and TF1-029.

⁹ Set out in Public Annex C and Confidential Annex E of the Notice.

¹⁰ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T.

¹¹ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-05-15-T.

¹² *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-05-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004. TF1-023 and TF1-029 are Category A Witnesses (Sexual Violence).

¹³ See *Prosecutor v. Sesay, Kallon, Gbao*, Case No. SCSL-04-15-T, Decision on Prosecution Appeal of Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses, 23 May 2008, paras 35 to 37.

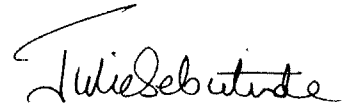
Done at The Hague, The Netherlands, this 16th day of October 2008.



Justice Richard Lussick



Justice Teresa Doherty
Presiding Judge



Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

