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

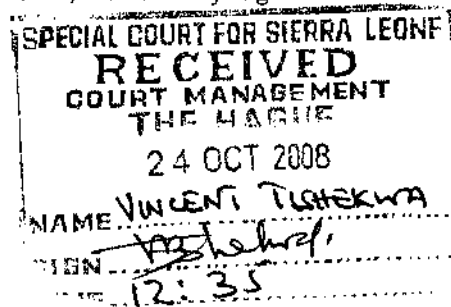
TRIAL CHAMBER II

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: 24 October 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

**DECISION ON CONFIDENTIAL URGENT PROSECUTION APPLICATION
FOR LEAVE TO APPEAL ORAL DECISION REGARDING
PROTECTIVE MEASURES FOR WITNESS TF1-062**

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 “Confidential Urgent Prosecution Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TF1-062”, filed on 25 September 2008 (“Motion”),¹ wherein the Prosecution requests

- (i) an urgent application for leave to appeal the oral Decision made on 23 September 2008 which held that Witness TF1-062 was not protected by protective measures previously ordered by the Court; and
- (ii) an expedited filing schedule so that, if leave is granted, the appeal can be filed expeditiously for timely resolution of the matter;

NOTING ALSO the “Confidential Defence Response to ‘Urgent Prosecution Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TF1-062’”, filed on 6 October (“Response”),² wherein the Defence submits that the Motion should be denied on the grounds that the Prosecution fails

- (i) to establish an error of law or fact in the Trial Chamber’s decision;
- (ii) to establish ‘exceptional circumstances’; and
- (iii) to demonstrate irreparable prejudice;³

NOTING ALSO the “Public Prosecution Reply to ‘Defence Response to Urgent Prosecution Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TF1-062’”, filed on 13 October (“Reply”);⁴

RECALLING the “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses” rendered by Trial Chamber I in the case of the *Prosecutor v. Sesay, Kallon, Gbao* (“RUF trial”)⁵ on 5 July 2004 (“5 July 2004 Decision”);⁶

RECALLING FURTHER that on 23 September 2008, prior to Witness TF1-062 testifying, the Prosecution stated in court that, in its opinion, Trial Chamber I in the 5 July 2004 Decision had granted the Witness the protective measures of the use of a pseudonym as well as a screen during his testimony;⁷

RECALLING the Trial Chamber’s Oral Decision of 23 September 2008, where the Trial Chamber held as follows:

Having considered the decision of Trial Chamber I of 5 July 2004 fully, we have rendered our decision that witnesses not in categories A, B and C are not subject to the protective measures

¹ SCSL-03-01-T-606.

² SCSL-03-01-T-620.

³ Response, para 3.

⁴ SCSL-03-01-T-630.

⁵ SCSL-04-15-T (“RUF trial”).

⁶ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004 (“RUF Decision”).

⁷ Transcript 23 September 2008, pp. 17036-17039.

and this applies to the current witness TF1-062. Accordingly, we hold that he does not enjoy protective measures. On the question of the protective measures accorded to him in the AFRC trial, we note that on that particular occasion the issue and the question of his protective measures was not raised by the Defence and the decision of this Trial Chamber in regard to that witness was then premised on an assumption that the protective measures existed. However after a more recent and more close examination of the decision we are of the view, as I have already noted, that he does not enjoy those protective measures.⁸

MINDFUL of Rules 26bis, 54, 73 and 75 of the Rules of Procedure and Evidence (“Rules”);

NOTING that Rule 73(B) provides:

Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders;

NOTING FURTHER that it is well established in the jurisprudence of the Special Court that leave to appeal may be granted by the Trial Chamber pursuant to Rule 73(B) only in cases where the conjunctive conditions of exceptional circumstances and irreparable prejudice are both satisfied;

RECALLING the Trial Chamber’s previous decision establishing the applicable law in relation to leave to appeal in cases where the Impugned Decision has resulted in a key witness for the Prosecution refusing to testify;⁹

SATISFIED that the Prosecution has met the conjunctive conditions of exceptional circumstances, in that the issue at stake relates to witness protection, and irreparable prejudice, in that the Impugned Decision has resulted in a key witness for the Prosecution refusing to testify;

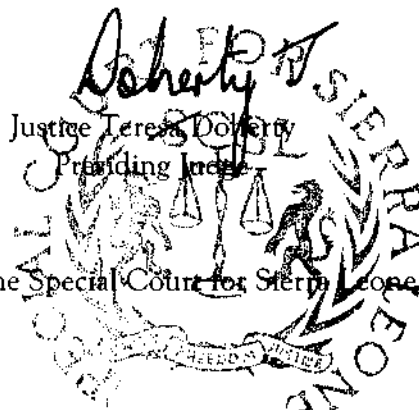
FOR THE ABOVE REASONS

GRANTS the Motion.

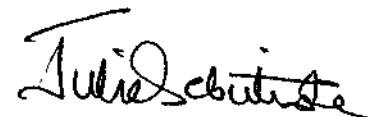
Done at The Hague, The Netherlands, this 24th day of October 2008.



Justice Richard Lussick



[Seal of the Special Court for Sierra Leone]



Justice Julia Sebutinde

⁸ Transcript 23 September 2008, p. 17043.

⁹ See *Prosecutor v. Taylor*, SCSL-03-01-T-501, 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.