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SCSL-03-01-T
(21902 – 21905)

21902

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: 31 October 2008

SPECIAL COURT FOR SIERRA LEONE
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PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON CONFIDENTIAL DEFENCE APPLICATION FOR LEAVE TO APPEAL AN ORAL AND MAJORITY DECISION OF THE TRIAL CHAMBER RESCINDING PROTECTIVE MEASURES PURPORTEDLY GRANTED TO WITNESS TF1-065

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 Defence Application for Leave to Appeal an Oral and Majority Decision of the Trial Chamber Rescinding Protective Measures Purportedly Granted to Witness TF1-065", filed on 26 September 2008 ("Motion"),[1] wherein the Defence seeks leave to appeal the Trial Chamber's oral decision of 23 September 2008 ("Impugned Decision")[2] regarding the rescission of the protective measures purportedly granted to Witness TF1-065 on the grounds that:

(i) Witness TF1-065 was never granted protective measures in any prior proceedings by a Judge or Trial Chamber of the Special Court and that, as such, the Trial Chamber erred in law and in fact in ordering rescission of protective measures, as there was nothing to rescind; and

(ii) this error amounts to exceptional circumstances and occasions irreparable prejudice to the Defence;[3]

NOTING the "Public Prosecution Response to 'Confidential Defence Application for Leave to Appeal an Oral and Majority Decision of the Trial Chamber Rescinding Protective Measures Purportedly Granted to Witness TF1-065' and Related Addendum", filed on 3 October 2008 ("Response"),[4] wherein the Prosecution submits that the Motion should be denied on the grounds that:

(i) the Motion does not concern a justiciable issue which may properly be the subject of an appeal and is, in effect, a request for an advisory opinion;

(ii) the Impugned Decision concerns a request by the Prosecution for the rescission of protective measures which was not opposed by the Defence except to argue that the witness had never been the subject of protective measures;

(iii) since Witness TF1-065 testified without protective measures, the Defence has not suffered any prejudice as a result of the Impugned Decision; and

(iv) the Impugned Decision does not give rise to exceptional circumstances;[5]

NOTING ALSO the "Confidential Defence Reply to the 'Prosecution Response to 'Confidential Defence Application for Leave to Appeal an Oral and Majority Decision of the Trial Chamber Rescinding Protective Measures Purportedly Granted to Witness TF1-065' and Related Addendum'", filed on 8 October 2008 ("Reply");[6]

RECALLING the "Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure" rendered by Justice Bankole Thompson in the case of *Prosecutor v. Sesay*[7] on 23 May 2005 ("23 May 2003 Decision"), wherein Justice Thompson

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[1] SCSL-03-01-T-609.
[2] Transcript, 23 September 2008, pp. 17052-17053.
[3] Motion, paras 2, 3.
[4] SCSL-03-01-T-613.
[5] Response, para. 3.
[6] SCSL-03-01-T-625.
[7] SCSL-03-05-PT.

granted specific protective measures to witnesses, but that neither the motion nor the 23 May 2003 Decision provided a detailed list of persons covered therein;[8]

RECALLING FURTHER that on 23 September 2008, prior to the testimony of Witness TF1-065, the Prosecution notified the Trial Chamber and the Defence that, in its submission, the Witness had, in the 23 May 2003 Decision, been granted the protective measures of a pseudonym and use of a screen during his testimony, but that following informed discussions with the Prosecution, Witness TF1-065 waived all protective measures and wished to testify openly;[9]

RECALLING ALSO that the Defence did not oppose the Prosecution request to rescind the protective measures for Witness TF1-065, but that at the same time questioned whether the witness was in fact covered by the 23 May 2003 Decision;

RECALLING the Impugned Decision, where the Trial Chamber held as follows:

> By a majority, Justice Sebutinde dissenting, we rescind the protective measures attributed to witness TF1-065, those measures being recited at paragraphs B, C and E of the decision of 23 May 2003.[10]

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

NOTING that Rule 73(B) of the Rules provides that:

> 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;[11]

CONSIDERING that the Defence did not oppose the rescission of the protective measures, save for its observation that Witness TF1-065 was never granted protective measures, and that furthermore, the witness indicated his willingness to testify openly, and the Defence has not demonstrated how this could cause irreparable prejudice to its case;

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[8] *Prosecutor v. Sesay*, SCSL-03-05-PT-038, "Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure", 23 May 2003 ("23 May 2003 Decision").

[9] Transcript, 23 September 2008, p. 17045.

[10] Transcript, 23 September 2008, pp. 17052, 17053; Justice Sebutinde dissented and held that: "Simply to say that I don't object to the rescission per se, but my own view is there is nothing in the decision of 23 May 2003 to convince me that witness TF1-065 is one of the witnesses covered in that decision. Therefore for me the Prosecution motion is redundant - motion for rescission is redundant - as far as I'm concerned."

[11] *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.

FINDING THEREFORE that the Defence has not met the conjunctive conditions of exceptional circumstances and irreparable prejudice;

FOR THE ABOVE REASONS

DENIES the Motion.

Done at The Hague, The Netherlands, this 31st day of October 2008.

Justice Richard Lussick

Justice Teresa Doherty
Presiding Judge

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]