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SCSL-03-01-T
(25248-25252)

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SPECIAL COURT FOR SIERRA LEONE

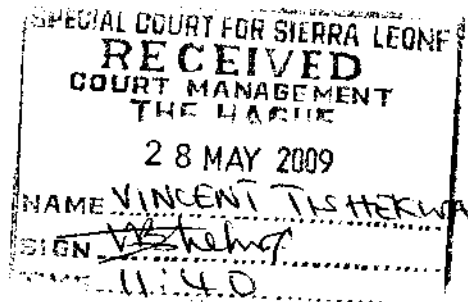
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 28 May 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

**DECISION ON DEFENCE APPLICATION FOR
LEAVE TO APPEAL THE 4 MAY 2009 ORAL DECISION
REQUIRING THE DEFENCE TO COMMENCE ITS CASE ON 29 JUNE 2009**

Office of the Prosecutor:

Brenda J. Hollis
Nicholas Koumjian
Kathryn Howarth

Defence Counsel for Charles G. Taylor:

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

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

SEISED of the “Public with Annex A Defence Application for Leave to Appeal the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009”, filed on 11 May 2009 (“Motion”),¹ wherein the Defence seeks leave to appeal the Trial Chamber’s Oral Decision rendered on 4 May 2009 requiring the Defence to commence its case on 29 June 2009 (“Impugned Decision”) on the grounds that exceptional circumstances and the potential for irreparable prejudice exist pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”) in that:

- i) the Majority erred in law by failing to give due weight to the fair trial rights of the Accused and in particular Article 17(4)(b) of the Statute which guarantees the right of the Accused to “have adequate time and facilities for the preparation of his or her defence[...]” and the Impugned Decision therefore constitutes an abuse of the Trial Chamber’s discretion;²
- ii) the Majority erred in fact by failing to consider the unique circumstances of the case, and in particular the unique logistical issues which impact upon the Defence’s ability to investigate, gather evidence and locate appropriate witnesses;³
- iii) the Majority failed to consider that the time sought by the Defence was reasonable and compares favourably to time sought by other accused before the Special Court;⁴
- iv) the Majority failed to consider or give due weight to the fact that an expeditious trial requires the Defence to prepare its case as thoroughly as possible, and a premature start may lead to multiple adjournments;⁵
- v) the delay sought by the Defence would cause no prejudice to the Prosecution;⁶

NOTING the “Prosecution Response to ‘Public with Annex A Defence Application for Leave to Appeal the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June

¹ SCSL03-01-T-777.

² Motion, paras 6, 14.

³ Motion, para. 6.

⁴ Motion, paras 6, 8.

⁵ Motion, para. 6.

⁶ Motion, para. 8.

2009”, filed on 20 May 2009 (“Response”),⁷ wherein the Prosecution opposes the Motion and submits that the impugned decision falls squarely within the legitimate ambit of the Trial Chamber’s discretion in the exercise of its case management function, and that the Defence has failed to demonstrate either an error of law, mixed law and fact or application of the law or an abuse of discretion giving rise to exceptional circumstances and irreparable prejudice;⁸

NOTING ALSO the “Public with Annex A Defence Reply to Prosecution Response to ‘Public with Annex A Defence Application for Leave to Appeal the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009’”, filed on 25 May 2009 (“Reply”),⁹ wherein the Defence submits that the Impugned Decision involves the fair trial rights of the Accused and not mere case management issues.¹⁰ Further, that the Defence could not properly interview witnesses until it was aware of the full scope of the Prosecution’s case and the decision of the Appeals Chamber on the joint criminal enterprise has led it to consider new witnesses;¹¹

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 73(A) and (B) 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;

RECALLING the Trial Chamber’s oral order of 7 May 2009 extending the time within which the Defence may file an application for leave to appeal to 11 May 2009;¹²

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;¹³

⁷ SCSL03-01-T-780.

⁸ Response, para. 2.

⁹ SCSL03-01-T-781.

¹⁰ Reply, para. 4.

¹¹ Reply, paras 7-8.

¹² *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Transcript 7 May 2009, p. 24232, ln 7-12.

RECALLING FURTHER the Impugned Oral Decision of 4 May 2009 where the Trial Chamber by a Majority, Justice Sebutinde dissenting, held that

In relation to an appropriate date for the commencement of the Defence case we have considered the arguments of the parties, including the memorandum of Mr. Griffiths of 26 March 2009 and that of Ms. Hollis for the Prosecution of 15 April 2009. [...] We bear in mind in fixing an appropriate start date that Mr. Taylor has been in custody since March 2006 and presumably investigations and preparations have been ongoing since that time. We also note that the last Prosecution witness was heard over three months ago on 29 January 2009. We note also that the Defence intends to call Mr. Taylor to give evidence and no doubt that will be a substantial amount of time which could be used for the preparation of other Defence witnesses. Taking these considerations into account we are not convinced that the time sought by the Defence is justified and we, the majority, are of the view that a reasonable and appropriate date for the start of the Defence case will be Monday, 29 June 2009 and we so order;¹⁴

NOTING that the Impugned Decision raises issues related to the Right of the Accused to adequate time for the preparation of his defence as enshrined in Article 17(4)(b) of the Statute;

CONSIDERING the Defence allegation that the Trial Chamber abused its discretion in choosing an appropriate start date for the Defence case;¹⁵ the peculiar logistical issues facing a party working away from the seat of the Court; that a final determination regarding the common purpose of the alleged joint criminal enterprise, an issue vital to the case, was issued on 4 May 2009; and that taken together these issues constitute exceptional circumstances;

FURTHER CONSIDERING that a premature start of the Defence case could not be remedied at the appeals stage of proceedings and could therefore cause irreparable prejudice to the Accused;

¹³ *Prosecutor v. Taylor*, Case No. SCSL-03-01-T-764, Decision on Defence Application for Leave to Appeal the Decision on Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE, 18 March 2009.

¹⁴ Transcript, 4 May 2009, pp. 24219-24222.

¹⁵ Motion, para. 14.

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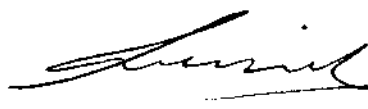
SATISFIED that the Defence has met the conjunctive conditions of exceptional circumstances and irreparable prejudice as prescribed by Rule 73(B);

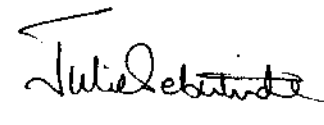
PURSUANT to Rule 73(B) of the Rules;

HEREBY GRANTS THE MOTION.

Done at The Hague, The Netherlands, this 28th day of Month 2009.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

