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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

Acting Registrar: Binta Mansaray

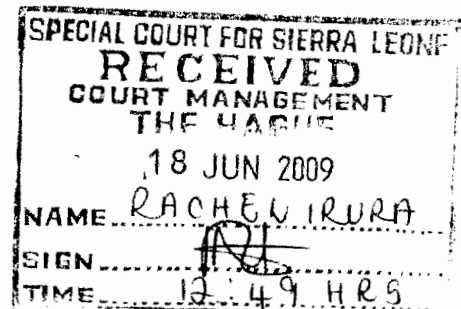
Case No.: SCSL-03-1-T

Date: 18 June 2009

PROSECUTOR

v.

Charles Ghankay TAYLOR



PUBLIC

DECISION ON URGENT DEFENCE MOTION FOR ADJOURNMENT OF TRIAL START-DATE DUE TO INABILITY TO TAKE INSTRUCTIONS FROM THE ACCUSED

Office of the Prosecutor:

Brenda J. Hollis
Nicholas Koumjian

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 Confidential Annexes A and B Urgent Defence Motion for Adjournment of Trial Start-Date due to Inability to Take Instructions from the Accused, Charles Ghankay Taylor”, filed on 12 June 2009 (“Motion”);¹

RECALLING that on 12 June 2009 the Trial Chamber ordered expedited filing of any Response and Reply in relation to the Motion;²

NOTING the “Confidential with Confidential Annexes A to D Prosecution Response to Urgent Defence Motion for Adjournment of Trial Start Date - Due to Inability to Take Instructions from the Accused Charles, Ghankay Taylor (sic)”, filed on 15 June 2009 (“Response”);³

NOTING ALSO the “Public Defence Reply to Confidential ‘Prosecution Response to Urgent Defence Motion for Adjournment of Trial Start Date ~ Due to Inability to Take Instructions from the Accused Charles, Ghankay Taylor (sic)’”, filed on 16 June 2009 (“Reply”);⁴

NOTING ALSO the “Confidential with Confidential Annex C Submissions of the Acting Registrar Pursuant to Rule 33(B) Regarding the Urgent Defence Motion for Adjournment of Trial Start-Date Due to Inability to Take Instructions from the Accused, Charles Ghankay Taylor”, filed on 17 June 2009 (“Registrar’s Submission”);⁵

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 54 and 73 of the Rules of Procedure and Evidence (“Rules”);

HEREBY DECIDES AS FOLLOWS, based solely on the written submissions of the parties, pursuant to Rule 73(A).

I. SUBMISSIONS

A. Motion

1. The Defence seeks an adjournment of the start-date of its case, currently scheduled for 29 June 2009. The Defence submits that on 10 June 2009 it was notified by email that *legionellosis bacteria* had been detected at the ICC Detention Centre (“Detention Centre”) where the Accused, Mr. Taylor, is held. On the same day, Defence Counsel notified the Trial Chamber that the Defence would not visit the Detention Centre until it was made clear that the Detention Centre was safe to visit.⁶
2. The Defence submits that the Accused was subsequently advised by officials at the Detention Centre that it would take twelve days or thereabouts for test results to show whether *legionellosis bacteria* are, or are not, still present in the facility. The Defence further submits that this is confirmed

¹ SCSL03-01-T-792.

² SCSL03-01-T-794.

³ SCSL03-01-T-795.

⁴ SCSL03-01-T-796.

⁵ SCSL03-01-T-797.

⁶ Motion, paras 1-3, Annex A.

by a letter of the Acting Registrar.⁷ It thus appears to the Defence that the Detention Centre will not be declared safe until, at the very least, 24 June 2009. It states that “it is an inescapable fact that no trial can proceed while the Accused is exposed to the legionellosis bacterium”.⁸

3. The Defence acknowledges that the Accused has access to a telephone, but submits that “detailed instructions can only be given in person and the need for such detailed instructions is accentuated by the proximity of the start of the Defence case and the fact that the Accused is the first witness to testify in his own defence.”⁹ As a direct consequence of the discovery of the *legionellosis bacteria*, the Defence will, at the very least, be deprived of approximately two weeks of instructions. This impinges on the Accused’s fair trial rights as protected by the Statute and necessitates an adjournment.

4. The Defence submits that, at the very least, the length of the adjournment should be for the same number of days as lost on account of the Detention Centre being unsafe. As this is currently unknown, the Defence submits that “for the sake of certainty” a date of Monday 17 August 2009 would be appropriate. The Defence calculate this date considering that:

(i) in a Motion currently before the Appeals Chamber the Defence have requested a start date of 15 July 2009;¹⁰

(ii) one month after this date would be appropriate, taking into account the “inevitable minimum delay” of two weeks, the very real possibility of further delay, the time required for the reports requested to be obtained, the need to schedule a date that is unlikely to require further adjournment and “the need for all parties to have a date to which they can work”.¹¹

5. Finally, the Defence state that the “proposals contained in the Registrar’s letter dated 12 June 2009 are insufficient”, given the seriousness of the disease, and request that the Chamber order the production of a full report from the Registrar outlining the degree of exposure to the bacteria to which the Accused has been subjected and a full medical examination of the Accused undertaken by an independent medical practitioner (not connected to the Special Court or the International Criminal Court) regarding any possible side-effects of this bacteria.

B. Response

6. The Prosecution opposes the Defence request to adjourn the start of the Defence case, claiming that there is no basis for the delay and the facts establish no reason why Counsel cannot continue to speak with the Accused.¹² The Prosecution does not oppose orders necessary to ensure the health of the Accused to the extent that there is any factual basis for additional testing or medical examination of the Accused.¹³

⁷ Motion, para. 5, Annex B.

⁸ Motion, para. 7.

⁹ Motion, para. 8.

¹⁰ Motion, para. 10, SCSL03-01-T-786.

¹¹ Motion, para. 10.

¹² Response, para. 1.

¹³ Response, para. 2.

7. The Prosecution includes as annexes copies of internal correspondence that it is aware of at time of filing. According to the Prosecution, these show that none of the detainees or staff have shown any signs of infection,¹⁴ that the water system at the Detention Centre has been flushed, some water pipes and a broken valve replaced and bacterium appropriate filters installed, and that by the afternoon of 11 June, the day after the bacterium was discovered, the water system was safe to use.¹⁵ Furthermore, the Prosecution cites a memorandum from the Medical Officer at the ICC Detention Unit in which the Medical Officer explains that visitors the Detention Centre were never at risk as the visitor's area contains no showers or air conditioning which could produce the aerosols necessary for transmission of the bacterium.¹⁶

8. The Prosecution submits that given the information that the contamination problem was resolved within one day and that those in the visitors' area were never exposed, there is no reason to believe that Counsel would be at any risk to visit the Accused at the Detention Centre. The Prosecution states that if Defence Counsel still fears exposure, the Defence can request alternative measures for communicating with the Accused. They have not done so, indicating that "the Defence urgent Motion is an attempt to use the situation to obtain an unwarranted postponement of the commencement of the Defence case".¹⁷ Furthermore, there is no factual basis which would deny the Defence team access to the Accused, except its own "tactical decision" to forgo such access.¹⁸

9. The Prosecution notes that the date of 17 August 2009 suggested by the Defence bears no relation to any of the facts regarding the situation at the Detention Centre, but rather corresponds with the prior Defence request of 4 May 2009 to delay the start of the Defence case to mid-August 2009.¹⁹

10. The Prosecution states that the Accused is detained in the same prison as detainees for the ICC and the ICTY and that the Defence has presented no facts that other ongoing trials have been delayed, nor that visits by other counsel have been suspended because of the discovery of the bacterium at the Detention Centre.²⁰

C. Reply

11. The Defence submits that the Prosecution contention that the discovery of the bacteria has caused no delay, and that the contamination problem was resolved in one day, is not supported by the evidence it attaches to its Motion. Rather, it establishes that it will take twelve days to obtain the results of the tests from the water samples and to confirm whether the bacteria are or are not present. Thus, the situation is in fact on-going.²¹ The Prosecution's assertion that there is no risk is countered by the fact that the Detention Centre has taken "abundant precautions", which would not be necessary if there was in fact no risk.²²

¹⁴ Response, para. 5, Annex B.

¹⁵ Response, paras 6-7, Annex C; Motion, Confidential Annex B.

¹⁶ Response, para. 8, Annex D.

¹⁷ Response, para. 10.

¹⁸ Response, para. 13.

¹⁹ Response, para. 11.

²⁰ Response, para. 12.

²¹ Reply, para. 5.

²² Reply, para. 6.

12. With respect to the Prosecution's assertion that the Defence could apply to the Trial Chamber to authorise meeting the Accused elsewhere, the Defence submits that this would be unworkable in practice, as there is difficulty in changing the security situation in relation to the Accused at short notice, and such a move may even cause further delay.²³

13. Regarding the issues raised by the Prosecution's Response in relation to the "arrangements in respect of other detainees of the ICC and ICTY", the Defence submits that the point is irrelevant as it is not the Defence's responsibility to protect the safety of other detainees, who may take what risks they please.²⁴

14. The Defence restates its position that it is reasonable to refrain from visiting the Accused while the situation is on-going. As a consequence, the Defence has been unable to take instructions from the Accused.²⁵

15. In relation to the appropriate length of an adjournment, the Defence reiterates that 17 August 2009 is an appropriate date for the commencement of the Defence case, however, and at the very least, the trial should be adjourned for the same number of days as is lost by the Defence until the Detention Centre is finally declared safe. If the results are available when expected, this delay would be twelve days.²⁶

D. Registrar's Submission

16. The Acting Registrar presents a chronological account of internal communications regarding: (i) the discovery of the bacteria and notification to Counsel; (ii) the Defence team's notification to the Trial Chamber and the Registry that it would suspend visits to the Detention Centre; and (iii) internal communications between staff including medical personnel (annexed as confidential annexes) in relation to remedial measures taken and an assessment of risk to detainees at the Detention Centre and their visitors.²⁷

17. Regarding the test results for the hot water samples taken on 11 June 2009, should they test positive in 12 day's time, "additional measures will be taken by the ICC at that point to cleanse the hot water system of the bacteria. In the meantime, showers and taps have been equipped with the requisite prevention systems, allowing every detainee and staff to use the facility as usual."²⁸

²³ Reply, para. 8.

²⁴ Reply, para. 9.

²⁵ Reply, para. 10.

²⁶ Reply, para. 12.

²⁷ Registrar's Submission, paras 1-4, 9-13, 23, Confidential Annexes A-D.

²⁸ Registrar's Submission, para. 21.

II. APPLICABLE LAW

18. The Trial Chamber takes note of the applicable part of Article 17 of the Statute:

Article 17: Rights of the accused

[...]

4. In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

[...]

b. To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her choosing;

[...]

19. The identically worded provision of the ICTY Statute, Article 21(4)(b), has been interpreted by the ICTY Appeals Chamber to mean that the “it is a fundamental right of an accused to have access to counsel at any stage of the proceedings”, and that “to take away this right for an extended period of time could potentially undermine one of the most important basic rights of an accused and endanger the integrity and fairness of the proceedings as a whole.”²⁹

III. DELIBERATIONS

20. On 4 May 2009 the Trial Chamber ordered that the Defence case would commence on 29 June 2009.³⁰ In so ordering, the Trial Chamber was of the view that this would give the Defence sufficient time to complete the preparation of the Defence case, with the expectation that the Accused would have uninterrupted access with his Legal Counsel during the intervening period. Through no fault of either the Accused or his Defence Counsel, this has not been possible due to the detection of *legionellosis bacteria* in the hot water system of the Detention Centre. In the circumstances, the Trial Chamber considers that Defence Counsel’s decision not to visit the Detention Centre until assured that it was clear of the bacteria was a reasonable one.

21. At this stage of the trial it is of pivotal importance that the Accused has uninterrupted access to his Counsel, and thus the Trial Chamber considers that it would be unfairly prejudicial to the Accused were he to be deprived of time to prepare his case because of circumstances beyond his control. Accordingly, the Trial Chamber holds that the Accused is entitled to an adjournment for the time lost during the intervening period between the suspension of the visits by Defence Counsel and the declaration that the Detention Centre has been cleared of the *legionellosis bacteria*. As to the question of what constitutes an appropriate adjournment, the Trial Chamber agrees with the

²⁹ *Prosecutor v. Prlić et al.*, IT-04-74-AR73.10, Decision on Prosecution’s Appeal against Trial Chamber’s Order on Contact Between the Accused and Counsel During an Accused’s Testimony Pursuant to Rule 85(C), 5 September 2008, paras 14, 16.

³⁰ Transcript of 4 May 2009, p. 24220.

Prosecution submission that the date of 17 August 2009 suggested by the Defence bears no relation to any of the facts regarding the situation at the Detention Centre.

22. The information provided by the Parties in their submissions, as well as that provided by the Registrar under Rule 33(B), indicates that all necessary remedial measures have been taken to clear the Detention Centre of the bacteria. On the assumption that the twelve-day test results for the bacteria will return negative, and considering the importance of adequate preparation for the Accused's testimony as a witness in his own defence, the Trial Chamber finds that a postponement of twelve days to the originally scheduled start date for the Defence case is warranted. Having so found, the Trial Chamber is also of the view that it would be practical to postpone the Status Conference originally scheduled for 22 June 2009 by the same period of time.

23. The Trial Chamber is satisfied that the Registry has taken all necessary steps to ensure the well-being of the Accused, and that it will remain vigilant in closely monitoring the situation. There is thus no need at this stage for the Trial Chamber to order the production of a report outlining the degree of exposure to the bacteria to which the Accused has been subjected, or an independent medical examination of the Accused, as requested by the Defence.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

GRANTS the Motion in part and **ORDERS** that:

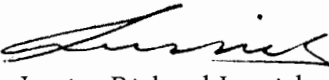
1. The previously scheduled commencement date for the commencement of the Defence case of Monday 29 June 2009 is vacated.
2. The previously scheduled date for a Status Conference of Monday 22 June 2009 is vacated.
3. A Status Conference shall be held on Monday 6 July 2009 at 9:30 a.m.
4. The Defence shall commence its case on Monday 13 July 2009, at 9:30 a.m.

and

DENIES the remainder of the Motion.

Done at The Hague, The Netherlands, this 18th day of June 2009.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

