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SPECIAL COURT FOR SIERRA LEONE

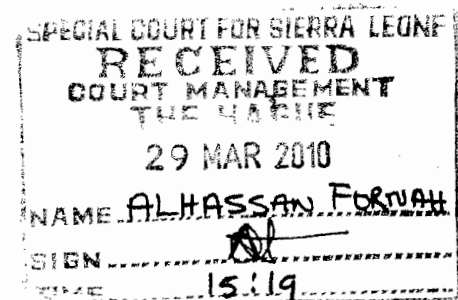
TRIAL CHAMBER II

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

Registrar: Binta Mansaray

Case No.: SCSL-03-1-T

Date: 29 March 2010



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PROSECUTION REQUEST FOR ORDERS IN
RELATION TO THE SCHEDULING OF THE REMAINDER OF THE CASE

Office of the Prosecutor:

Brenda J. Hollis
Nicholas Koumjian
Nina Jørgensen
Kathryn Howarth

Counsel for the Accused:

Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

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

SEISED of the “Prosecution Request for Orders in Relation to the Scheduling of the Remainder of the Case”, filed on 26 February 2010 (“Motion”),¹ wherein the Prosecution requests that the Trial Chamber order the Defence to conclude its case by a specific date, namely by 1 June 2010,² on the grounds that:

- (i) The time anticipated by the Defence for the presentation of its evidence, which the Prosecution calculates to be about two years, far exceeds the length of the presentation of the Prosecution case³ and cannot be regarded as anywhere near “proportionate” to the length of the Prosecution case which lasted for twelve and a half months;⁴
- (ii) The imposition of a specific date on the Defence is appropriate in the instant case and is consistent with the rights of the Accused;⁵
- (iii) The Trial Chamber retains the discretion to alter any deadline should “unforeseen circumstances” arise or should the Defence suffer “injustice” by a deadline set by the Trial Chamber;⁶
- (iv) In respect of a specific date, the Prosecution submits that 1 June 2010 would provide the Defence with a “proportionate” amount of time in order to set forth its case consistent with his rights as this date would provide the Defence with a total period of eight and a half months for the presentation of its case which is over 80 % of the time taken by the Prosecution for the presentation of its evidence and which is a more generous allocation of time than accorded to other cases before the ICTY and ICTR;⁷

NOTING the “Defence Response to Prosecution Request for Orders in Relation to the Scheduling of the Remainder of the Case”, filed on 8 March 2010 (“Response”),⁸ wherein the Defence objects to the Prosecution Motion on the basis that it is premature, unnecessary and unfair,⁹ and submits that:

¹ SCSL03-01-T-918.

² Motion, paras 2, 26.

³ Motion, para. 19.

⁴ Motion, para. 21.

⁵ Motion, para. 22.

⁶ Motion, para. 22.

⁷ Motion, para. 23.

⁸ SCSL03-01-T-923.

⁹ Response, para. 2.





- (i) The Defence has acted in good faith with regard to its obligations for the presentation of evidence during the Defence case, and has not caused any unjustified delay to the trial to this point;¹⁰
- (ii) The Prosecution request is premature as the Defence case is just beginning¹¹ and the Defence is still in the process of revising its witness list downward, a process which is similar to the Prosecution's own reduction of witnesses from its original estimate during the course of its case;¹²
- (iii) The Prosecution request is unnecessary as it assumes the Defence intends to either prolong the case inordinately or lacks the judgement to present its case in an efficient manner and assumes that the Trial Chamber would not be able to determine an efficient management of the Defence case without the Prosecution's prompting;¹³
- (iv) The Prosecution request is unfair as it abrogates the rights of the Accused to fully present his case as protected by Article 17(4)(e)¹⁴ and it has been difficult for the Defence to provide an accurate estimate for the length of its case as it has continually been conducting investigations and interviewing witnesses; nevertheless, the Defence estimates that its case will last for approximately one year, and will thus conclude sometime in the summer of 2010;¹⁵
- (v) The Defence has been forced to call a large number of witnesses because, through its allegation of a joint criminal enterprise, the Prosecution has broadened the scope of the case well beyond the temporal and geographical limits of the Indictment to include matters pre-1996, matters of NPFL activities during the Liberian civil war and unrelated matters of Taylor's presidency;¹⁶
- (vi) Even if the Defence does not match Prosecution witnesses one to one in terms of numbers, the Defence should be allowed the discretion to challenge the Prosecution case as it sees fit;¹⁷
- (vii) The Prosecution was not limited in the presentation of its own case,¹⁸ even though the evidence provided by its crime-base witnesses was repetitive, unnecessarily cumulative and arguably irrelevant;¹⁹

¹⁰ Response, para. 7.

¹¹ Response, para. 8.

¹² Response, para. 9.

¹³ Response, para. 10.

¹⁴ Response, para. 12.

¹⁵ Response, para. 13.

¹⁶ Response, para. 15.

¹⁷ Response, para. 16.

- (viii) The courtroom sitting schedule is varied and uncertain and therefore tying the Defence to a certain date would not guarantee that the Defence would have an adequate amount of time to prepare its case;²⁰
- (ix) Should the Trial Chamber be inclined to limit the length of the Defence case, it should be instructed by the ICTY Appeals Chamber *Orić* Decision,²¹ and should accordingly consider whether the amount of time is “reasonably proportional” and “objectively adequate”; time limits can only be determined on a case-by-case basis depending on the gravity and complexity of the case the Accused has to answer;²²

NOTING ALSO the “Prosecution Reply to Defence Response to Prosecution Request for Orders in Relation to the Scheduling of the Remainder of the Case”, filed on 12 March 2010 (“Reply”).²³ wherein the Prosecution submits that:

- (i) Its request is not premature as the Defence case began nearly 8 months ago and that by the Defence’s own estimate its case is nearly half completed;²⁴
- (ii) Its request is not unnecessary as the time estimates provided by the Defence have been contradictory and unreliable, the Defence is conducting on-going investigations which demonstrate the need for the imposition of an end date; the Defence has already been granted two adjournments which permitted a further eight months in addition to preparations conducted during all other phases of the trial, and Defence guarantees that time to prepare and investigate would contribute to the efficiency of the proceedings in the long run have not proven accurate;²⁵
- (iii) The imposition of an “end date” by the Trial Chamber is within the exercise of its trial management function and does not entail any violation of the Accused’s fair trial rights;²⁶
- (iv) The Defence has the ability to modify a set end date upon showing of good cause and this ensures that efficient deadlines are fair to the accused and are applied with reference to the specific circumstances of the case as the Defence demands;²⁷

¹⁸ Response, para. 16.

¹⁹ Response, para. 17.

²⁰ Response, para. 18.

²¹ *Prosecutor v. Orić*, IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para. 8.

²² Response, paras 6, 14.

²³ SCSL03-01-T-925.

²⁴ Reply, para. 3.

²⁵ Reply, para. 4.

²⁶ Reply, para. 5.

²⁷ Reply, para. 5.

- (v) Article 17(4)(e) guarantees procedural equality to the Accused and not the right of the Accused or his counsel to determine how many witnesses will be called or how long the Defence case will continue;²⁸
- (vi) Defence arguments relating to the broadness and relevance of the evidence brought by the Prosecution²⁹ and alleging the repetitive and unnecessary nature of the Prosecution's crime base evidence³⁰ are unhelpful and without merit³¹ and fail to explain why a Defence case proportional in length to that of the Prosecution case-in-chief would be inadequate;³²
- (vii) Finally, the Prosecution argues that it is illogical for the Defence to claim that the application of "unnecessary guidelines" "fetters" the trial management powers of the Trial Chamber. It submits the action is necessary and within the inherent powers of the Trial Chamber to control the proceedings and that such limits are routinely applied at the ICTY and the ICTR;³³

NOTING that Article 17(4) of the Statute provides that:

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:
- a. To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
 - b. To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
 - c. To be tried without undue delay;
 - d. To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
 - e. To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
 - f. To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;
 - g. Not to be compelled to testify against himself or herself or to confess guilt.

NOTING that Rules 73ter (C) and (D) provide:

²⁸ Reply, para. 6.

²⁹ As set out in paragraph 15 of the Response.

³⁰ As set out in paragraph 17 of the Response.

³¹ Reply, paras 7-8.

³² Reply, para. 7.

³³ Reply, para. 9





(C) The Trial Chamber or a Judge designated from among its members may order the defence to shorten the estimated length of the examination-in-chief for some witnesses;

(D) The Trial Chamber or a Judge designated from among its members may order the defence to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.

COGNISANT of the Trial Chamber's inherent power to control proceedings³⁴ and of its discretion pursuant to Rules 73(C) and 73(D) to order the Defence to shorten the estimated length of the examination-in-chief of some witnesses and to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts;

NOTING the Defence commitment to revise its witness list downwards³⁵ and its statement that "currently, it estimates that its case will last approximately one year, and thus will conclude sometime in the summer of 2010",³⁶ and agreeing with the Defence that it has to this point acted in good faith with regard to its obligations for the presentation of evidence and has not caused unjustified delay to the trial;³⁷

NOTING FURTHER that since February 2010, the Trial Chamber has been sitting a reduced number of hours as a result of having to share a courtroom with an ICC trial chamber, a factor that further affects the time-table of this case;

NOTING ALSO that the Prosecution itself has contributed significantly to lengthening the trial proceedings by introducing a large number of documents containing "fresh evidence" after the close of its case-in-chief;

RECALLING the declaration by Prosecutor Rapp that, after the Accused has given evidence, "other defense (sic) witnesses will testify and the Accused will be *assured* of his right to *fully* contest the indictment against him"³⁸ (emphasis added);

NOTING that the Motion was filed at a time when the Trial Chamber was hearing evidence from only the second Defence witness to be called after the Accused had given evidence;³⁹

³⁴ *Prosecutor v. Galić*, IT-98-29-T, Scheduling Order, 12 September 2002, p. 2.

³⁵ Response, para. 9.

³⁶ Response, para. 13.

³⁷ Response, para. 7.

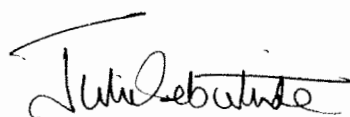
³⁸ Statement to the United Nations Security Council by Stephen Rapp, Prosecutor Special Court for Sierra Leone, 16 July 2009, p.2, second para.

FINDING that to grant the order sought by the Prosecution at such an early stage of the Defence case, when the Defence has thus far not been at fault in the presentation of its evidence, would not serve either the interest of justice nor the importance of a fair trial;

DISMISSES the Motion.

Done at The Hague, The Netherlands, this 29th day of March 2010.


Justice Richard Lussick


Justice Julia Sebutinde
Presiding Judge
[Seal of the Special Court for Sierra Leone]


Justice Teresa Doherty



³⁹ See Response, para. 8.