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SCSL-03-01-T
(29094-29097)



29094

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

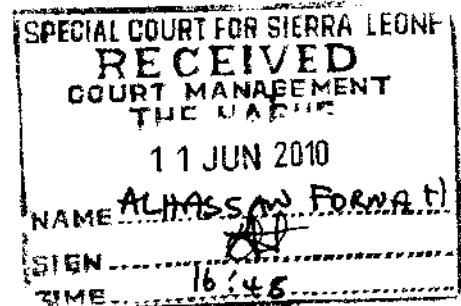
Case No.: SCSL-03-1-T

Date: 11 June 2010

PROSECUTOR

v.

Charles Ghankay TAYLOR



DECISION ON DEFENCE APPLICATION FOR ADMISSION OF
AFFIDAVIT BY DCT-118 PURSUANT TO RULE 92BIS

Office of the Prosecutor:
Brenda J. Hollis

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 “Public with Confidential Annex A Defence Application for Admission of Affidavit by DCT-118 Pursuant to Rule 92bis”, filed on 21 May 2010 (“Motion”),¹ wherein the Defence requests that

- 1) the affidavit of Witness DCT-118 in Annex A to the Motion be admitted into evidence pursuant to Rule 92bis; and
- 2) the protective measures for DCT-118 be modified such that Annex A can be filed and/or tendered into evidence publicly;²

on the grounds that:

- 1) Witness DCT-118 is approximately 100 years old and in such fragile health that travel from Liberia to The Hague in order to testify orally could be detrimental to his well-being;³
- 2) it is in the interests of a fair trial to admit the affidavit in lieu of oral testimony, considering the time, expense and personal effort which would be involved in bringing the witness to The Hague to testify on a limited point;⁴
- 3) the witness has affirmatively waived his right to protection so as to allow disclosure of his name to the public;⁵
- 4) the evidence in the affidavit is relevant and susceptible of confirmation;⁶
- 5) the affidavit does not contain information that goes to proof of the acts and conduct of the Accused as charged in the Indictment;⁷
- 6) the admission of the affidavit does not prejudice the Prosecution as the contents thereof do not relate to a critical element of the case and do not require the cross-examination of Witness DCT-118;⁸

¹ SCSL-03-01-T-963.

² Motion, para 2, referring to the Trial Chamber’s Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials, 27 May 2009 (“Protective Measures Decision”); see also Motion, para. 20.

³ Motion, paras 9-11.

⁴ Motion, para 11.

⁵ Motion, para 2.

⁶ Motion, paras 12-14.

⁷ Motion, paras 15, 16.

⁸ Motion, paras 17-19.

NOTING the “Prosecution Response to the Public, with Confidential Annex A Defence Application for Admission of Affidavit by DCT-118 Pursuant to Rule 92bis”, filed on 26 May 2010 (“Response”),⁹ wherein the Prosecution advises that “in light of the advanced age and alleged fragile health of the witness”, it does not object to the admission of the affidavit in lieu of oral testimony; nor does it object to the application for rescission of protective measures. However, the Prosecution submits that it does not accept the accuracy, truthfulness or completeness of the affidavit and does not concede that any weight should be given to it;¹⁰

NOTING FURTHER that the Defence did not file a reply;

RECALLING the Trial Chamber’s “Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials”, dated 27 May 2009 (“Protective Measures Decision”), wherein certain Defence witnesses were granted protective measures, including use of a pseudonym and non-disclosure of identifying data to the public or media;¹¹

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 26bis, 75(I), 89(C) and 92bis of the Rules of Procedure and Evidence (“Rules”);

NOTING that Rule 92bis provides:

- (A) In addition to the provisions of Rule 92ter, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
- (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days;

SATISFIED that the affidavit meets the requirements for admission under Rule 92bis;

SATISFIED ALSO that the Prosecution does not object to the admission into evidence of the affidavit in lieu oral testimony;

⁹ SCSL-03-01-T-967.

¹⁰ Response, para. 3.

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-T-782, Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials, 27 May 2009 providing for following categories of witnesses:

- (i) insiders or ex-combatants who fought for or were closely associated with any faction (including AFL, AFRC, CDF, LURD, NPFL, RUF, SLA, STF and ULIMO) during the conflicts that took place in Sierra Leone and/or Liberia; or
- (ii) former or current political or other high-ranking officials involved diplomatically or otherwise in the conflicts that took place in Sierra Leone and/or Liberia.


SATISFIED FURTHER that Witness DCT-118 has waived his protection under the Protective Measures Decision¹² so as to allow disclosure of his name to the public;

GRANTS THE MOTION; and


ORDERS:

- (1) that measures (a), (b) and (c) of the Protective Measures Decision be rescinded in relation to Witness DCT-118;
- (2) that the affidavit of Witness DCT-118 in Annex A to the Motion be admitted into evidence as Defence Exhibit D-421;
- (3) that the Defence file the affidavit of Witness DCT-118 publicly.

Done at The Hague, The Netherlands, this 11th day of June 2010.



Justice Richard Lussick



Justice Julia Sebutinde
Presiding Judge



Justice Teresa Dofferty



¹² Specifically, the protection granted under paras (a), (b) and (c) of the Protective Measures Decision.