

996)

SCSL-03-01-T
(29219-29225)

29219



SPECIAL COURT FOR SIERRA LEONE

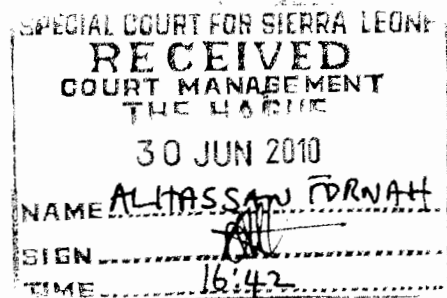
TRIAL CHAMBER II

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: 30 June 2010



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PROSECUTION MOTION FOR THE ISSUANCE
OF A SUBPOENA TO NAOMI CAMPBELL

Office of the Prosecutor:

Brenda J. Hollis
Nicholas Koumjian
Sigall Horovitz

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 Motion for the Issuance of a Subpoena to Naomi Campbell”, filed on 20 May 2010 (“Motion”),¹ wherein the Prosecution requests the Trial Chamber pursuant to Rule 54 (i) to issue a subpoena to Naomi Campbell requiring her appearance before the Trial Chamber to give testimony regarding her interactions with the Accused in the Republic of South Africa in September 1997; (ii) to order the Registrar to take all necessary measures to have the subpoena served and executed; and (iii) in accordance with Rule 8(C), to seek the assistance, where appropriate, of the authorised representatives of the country where Ms. Campbell is residing, working or visiting to ensure that she appears at the time and place indicated in the subpoena;²

NOTING the Prosecution submissions that:

- (a) the anticipated evidence of Naomi Campbell is highly probative and material to the Indictment as it-
 - (i) is direct evidence of the Accused’s possession of rough diamonds from a witness unrelated to the Sierra Leone or Liberian conflicts, a matter that goes to the heart of the joint criminal enterprise allegation;
 - (ii) corroborates the Prosecution allegations that the Accused received diamonds from the AFRC/RUF Junta during the Indictment period and that he arranged the shipment of arms from Burkina Faso that was delivered to the Sierra Leone Junta at the Magburaka airfield in October 1997; and
 - (iii) contradicts the Accused’s testimony that he has never been in possession of rough diamonds;³
- (b) there is *at least a good chance* that Ms. Campbell’s anticipated evidence will be of *material assistance* to the Prosecution in relation to these clearly defined issues, and therefore the “legitimate forensic purpose” requirement under Rule 54 of the Rules has been satisfied;⁴
- (c) since June 2009 the Prosecution has made several attempts to contact Ms. Campbell but she has to date, consistently refused to speak to the Prosecution voluntarily and has made public statements that she “does not want to be involved in the case” and that her reluctance to

¹ SCSL03-01-T-961.

² Motion, paras 1, 19-20.

³ Motion, paras 2, 12-13.

⁴ Motion, para. 13.

voluntarily speak to the Prosecution or to testify justifies the issuance of a subpoena compelling her attendance and satisfies the “necessity” requirement under Rule 54;⁵

NOTING ALSO the “Supplemental Information Relating to Motion for the Issuance of a Subpoena to Naomi Campbell” filed by the Prosecution on 10 June 2010 (“Supplemental Information”)⁶ wherein the Prosecution has indicated that Mr. Gideon Benaim, the legal representative of Ms. Campbell, has notified the Registrar of the Special Court in writing that he would accept service of a subpoena on behalf of Ms. Campbell, if one were issued and served;⁷

NOTING the “Defence Response to Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell”, filed on 31 May 2010 (“Response”),⁸ wherein the Defence opposes the Motion on the grounds that:

- (a) The Prosecution has failed to show a “legitimate forensic purpose” for Ms. Campbell’s anticipated evidence because they have never spoken to or interviewed her regarding the allegations that she received a diamond from the Accused in South Africa and her public statements in that regard are contrary to the Prosecution’s position;⁹
- (b) In view of Ms. Campbell’s public denial of those allegations, the Prosecution merely speculates that she would change her mind in court and there is not “a good chance” that her anticipated evidence would be “of material assistance” to the Prosecution case.¹⁰
- (c) Even if she did testify to this effect, such evidence would have little probative value as no reasonable trier of fact could make a link between this alleged diamond and the Accused’s support for rebels in Sierra Leone as alleged in the Indictment;¹¹
- (d) The Prosecution has failed to satisfy the “necessity” requirement, as Ms. Campbell’s evidence is obtainable elsewhere given that both Mia Farrow and Ms. Campbell’s agent Carole White are in a position to relay all of the allegedly pertinent information, and the Prosecution has already presented evidence about the Accused’s possession of diamonds during its case-in-chief;¹²

⁵ Motion, paras 14-18.

⁶ SCSL03-01-T-977.

⁷ Supplemental Information, para. 2

⁸ SCSL03-01-T-968.

⁹ Response, para. 4.

¹⁰ Response, paras 4-6.

¹¹ Response, para. 7.

¹² Response, paras 10-13.

(e) Given Ms. Campbell’s reluctance to be involved in these proceeds, it is unlikely that a court order compelling her attendance would provide the degree of cooperation needed from her;¹³

(f) It is highly likely that a subpoena issued by the Trial Chamber may not be enforced, given the fact that the Special Court lacks the institutional arrangements and so-called Chapter VII powers under the United Nations Charter for enforcement;¹⁴

NOTING ALSO the “Prosecution Reply to Defence Response to Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell”, filed on 7 June 2010 (“Reply”);¹⁵

NOTING the “Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses”, filed on 29 June 2010 in which the Trial Chamber granted the Prosecution leave to re-open its case to call three additional witnesses, one of whom is Naomi Campbell;¹⁶

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 8(C), 54 and 73(A) of the Rules of Procedure and Evidence (“Rules”);

MINDFUL that Rule 54 provides that “[a]t the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or conduct of a trial”;

ALSO MINDFUL that Rule 8(C) provides that “[t]he Special Court may invite third States not party to the Agreement to provide assistance on the basis of an *ad hoc* arrangement, an agreement with such State, or any other appropriate basis”;

RECALLING that the Security Council, acting under Chapter VII of the Charter of the United Nations, in Resolution 1688 (2006) encouraged “all States [...] to ensure that any evidence or witnesses are, upon the request of the Special Court, promptly made available to the Special Court”;

CONSIDERING that in relation to the Trial Chamber’s power and the legal standard for the issuance of a subpoena under Rule 54, the Appeals Chamber has held that:

¹³ Response, para. 14.
¹⁴ Response, paras 15-17.
¹⁵ SCSL-03-01-T-971.
¹⁶ SCSL-03-01-T-993.

The determination of whether a subpoena should be issued is in the discretion of the Trial Chamber.¹⁷

[...]

The Court will grant a subpoena if it is “necessary” to bring to court an unwilling, but important, witness. The phrase in Rule 54 “necessary for the purposes of [...] preparation or conduct of the trial” requires the applicant to show that it is necessary to issue a subpoena or other order so as to bring evidence to Court. That is satisfied if the applicant shows that the subpoena is likely to elicit evidence material to an issue in the case which cannot be obtained without judicial intervention. The key question is whether the effect that the subpoena will have is necessary to try the case fairly.¹⁸

[i]n order to satisfy Rule 54, the Chamber should consider whether the applicant has demonstrated a “legitimate forensic purpose” by showing a reasonable basis for the belief that the information to be provided by a prospective witness is likely to be of material assistance to the applicant’s case, or that there is at least a good chance that it would be of material assistance to the applicant’s case, in relation to clearly identified issues relevant to the [...] trial.¹⁹

[...]

It is incumbent on the party seeking to compel a reluctant witness to testify to satisfy the Chamber that a subpoena should be issued. The Trial Chamber is entitled to look carefully at the proposed evidence and may decline to issue a subpoena if the proposed evidence fails to address a sufficiently material issue. In so doing, the Trial Chamber does not conduct a “premature evaluation” of the probative value of the evidence...Rather, the Trial Chamber assesses whether issuing a subpoena to compel a reluctant witness to testify may be necessary for the purposes of an investigation or for the preparation or conduct of the trial²⁰...when the applicant has been unable to interview the prospective witness, the test will have to be applied in a reasonably liberal way.²¹

[...]

[t]he availability of the evidence from other sources is a relevant inquiry in the exercise of the Trial Chamber’s discretion, where other sources may be available without resort to the coercive powers of the Court.²²

RECALLING that the Trial Chamber has previously noted in relation to a declaration from Mia Farrow, that the incident in which the Accused allegedly gave Naomi Campbell a rough diamond in August 1997 is “a central issue in the Prosecution’s case”;²³

CONSIDERING the Prosecution submissions that:

¹⁷ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Interlocutory Appeals against Trial Chamber Decision refusing to Subpoena the President of Sierra Leone, 11 September 2006 (“*Norman Appeal Decision*”), para. 8.

¹⁸ *Ibid.*, para. 9.

¹⁹ *Ibid.*, para. 10.

²⁰ *Ibid.*, para. 21.

²¹ *Ibid.*, para. 23.

²² *Ibid.*, para. 28.

²³ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 14 January 2010, p. 33348, ln 15.

- (i) Ms. Naomi Campbell has to date, declined to communicate with the Prosecution or to voluntarily testify in this trial;²⁴
- (ii) although the evidence of Mia Farrow and Carole White is also relevant, Ms. Campbell is best placed to give evidence regarding this incident as she was the alleged recipient of the diamond from the Accused and that the anticipated evidence, therefore, cannot be obtained by other means;²⁵

CONSIDERING that Ms. Campbell's anticipated testimony relates to clearly identified issues that are relevant to the trial, namely, the Accused's possession of rough diamonds and his support to the AFRC/RUF junta during summer-fall 1997;

SATISFIED that the Prosecution has shown that there is at least a good chance that the information to be provided by Ms. Campbell would be of material assistance to its case in relation to clearly identified issues relevant to the trial;

SATISFIED therefore that the Motion meets the requirements for the issuance of a subpoena *ad testificandum*;

NOTING the Prosecution submission that Mr. Gideon Benaim, the legal representative of Ms. Campbell, has notified the Registrar of the Special Court that he would accept service of a subpoena on behalf of Ms. Campbell, if one were issued and served;

HEREBY GRANTS the Motion and;

DIRECTS the Prosecution to submit forthwith a draft subpoena *ad testificandum* with sufficient information in order to ensure the issuance of the subpoena by the Trial Chamber;

ORDERS the Registrar upon receipt of the subpoena *ad testificandum* issued by the Trial Chamber to:

- (i) cause a copy of the attached Subpoena to be served upon Ms. Campbell;
- (ii) transmit copies of this Order and the attached Subpoena to the responsible authorities of the state where Ms. Campbell is residing; and

²⁴ Motion, paras 14-18.

²⁵ Reply, para. 8.





RESPECTFULLY REQUESTS the authorities of the state in which Ms. Campbell is residing to assist in the enforcement of this Order;

Done at The Hague, The Netherlands, this 30th day of June 2010.



Justice Richard Lussick



Justice Julia Sebutinde
Presiding Judge



Justice Teresa Doherty

