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SCSL-03-01-T
(31076-31081)

31076



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

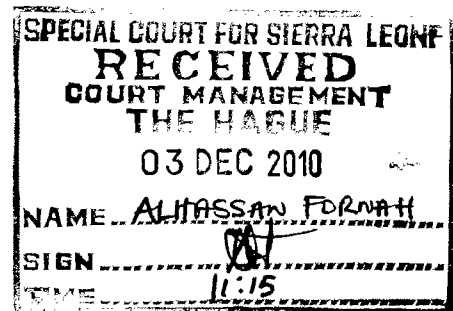
Case No.: SCSL-03-1-T

Date: 3 December 2010

PROSECUTOR

v.

Charles Ghankay TAYLOR



DECISION ON DEFENCE MOTION SEEKING LEAVE TO APPEAL THE DECISION ON THE DEFENCE MOTION REQUESTING AN INVESTIGATION INTO CONTEMPT OF COURT BY THE OFFICE OF THE PROSECUTOR AND ITS INVESTIGATORS

Office of the Prosecutor:

Brenda J. Hollis
Nicholas Koumjian
Leigh Lawrie

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”);

RECALLING that the Trial Chamber ordered the Defence to file all its remaining motions by 24 September 2010,¹ but indicated on 12 November 2010 that this time limit would not apply to the Motion for leave to appeal;²

SEISED of the “Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution [sic] and its Investigators”, filed on 15 November 2010 (“Motion”),³ wherein the Defence seeks leave to appeal the Trial Chamber’s “Decision on Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, dated 11 November 2010 (“Impugned Decision”),⁴ on the grounds that:

1) Exceptional circumstances exist in that:

- a) the Trial Chamber erred in law and/or fact in finding that (i) the Defence request amounted to a general audit of the Prosecutions operations since the inception of the Special Court in 2002, in that it does not sufficiently identify the persons subject of the contempt allegations and their corresponding contemptuous acts;⁵ (ii) the Defence request was time barred due to undue delay in bringing forth actions for contempt;⁶ (iii) the Defence request did not contain any credible allegations of contempt that satisfy the very low “reason to believe” evidentiary threshold under Rule 77 of the Rules of Procedure and Evidence (“Rules”);⁷ and iv) allegations of contempt of court under Rule 77 and allegations of abuse of discretion under Rule 39(ii) in relation to improper payments to witness are mutually exclusive;⁸
- b) by reason of the foregoing errors of law and/or fact the interests of justice might be interfered with, as the allegations may have implications on the integrity of the Office of

¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 13 September 2010, p. 48323.

² *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 12 November 2010, p. 49115.

³ SCSL-03-01-T-1121.

⁴ Motion, paras 1, 18.

⁵ Motion, paras 2, 7.

⁶ Motion, paras 2, 8.

⁷ Motion, paras 2, 9.

⁸ Motion, para. 10.

the Prosecution as an organ of the Special Court and as such challenge the integrity and lawfulness of the entire judicial process against the Accused;⁹

- c) this case raises a novel and fundamental question of law and/or fact as it is the first time such allegations have been raised against members of the Prosecution and these could have far-reaching implications on the integrity of the Special Court and the case against the Accused;¹⁰

2) Irreparable prejudice exists in that:

- a) there are no other remedies available to the Defence to challenge the propriety of the Prosecution conduct complained of and this issue cannot be remedied on appeal or through a re-trial;¹¹
- b) the Prosecution conduct has already prejudiced the Defence in that it induced some of the witnesses or potential witnesses to give false information against the Accused, and an investigation is the only way through which the full impact and implications of this prejudice can be assessed;¹²

NOTING the “Public with Confidential Annexes 2 & 3 Prosecution Response to Public Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators”, filed on 23 November 2010 (“Response”),¹³ wherein the Prosecution opposes the Motion on the basis that the Defence has failed to satisfy either of the conjunctive requirements of Rule 73(B);¹⁴

NOTING that the Prosecution argues that the Defence has failed to establish “exceptional circumstances”, in that:

- 1) purported errors of law and/or fact in the context of a decision concerning contempt do not of themselves give rise to exceptional circumstances;¹⁵
- 2) the Defence argument regarding novel and fundamental questions of law is disingenuous, as the original motion only alleged misconduct of individual members of the Office of the Prosecutor and did not request an investigation into the conduct of the Office of the

⁹ Motion, paras 11, 12.

¹⁰ Motion, para. 13.

¹¹ Motion, para. 15.

¹² Motion, para. 16.

¹³ SCSL-03-01-T-1126.

¹⁴ Response, para. 1.

¹⁵ Response, para. 4.

Prosecutor, and that in any event the principles applicable to allegations of contempt are well established;¹⁶

NOTING that the Prosecution argues that the Defence has failed to establish that the Impugned Decision will result in irreparable prejudice in that:

- 1) the Defence is in fact trying to bring before the Trial Chamber information provided in the context of an investigation extraneous to the present proceedings and which does not have the safeguards of cross-examination or judicial questioning;¹⁷
- 2) the Defence's argument that it has suffered irreparable prejudice because it has been deprived of untainted witnesses should be dismissed as disingenuous, as the potential witnesses compromised themselves by giving various versions of their stories and the Defence could have called all the individuals in question as witnesses;¹⁸
- 3) the Defence does not address the issue why the Impugned Decision is not remediable on final appeal;¹⁹

NOTING ALSO the "Defence Reply to Prosecution Response to Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators", filed on 26 November 2010 ("Reply");²⁰

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rule 73;

NOTING that the conditions which must pertain for the Trial Chamber to grant leave to appeal are set out in Rule 73(B) which provides that:

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 Appeals Chamber ruling that:

In this Court, the procedural assumption is that trials will continue to their conclusion without delay or diversion caused by interlocutory appeals on procedural matters, and

¹⁶ Response, para. 6.

¹⁷ Response, para. 10.

¹⁸ Response, para. 12.

¹⁹ Response, para. 15.

²⁰ SCSL-03-01-T-1129.

that any errors which affect the final judgement will be corrected in due course by this Chamber on appeal.²¹

RECALLING ALSO that this Court has held that an interlocutory appeal does not lie as of right and that “the overriding legal consideration in respect of an application of this nature is that the applicant’s case must reach a level nothing short of “exceptional circumstances” and “irreparable prejudice”, having regard to the restrictive nature of Rule 73(B) and the rationale that criminal trials must not be heavily encumbered and, consequently, unduly delayed by interlocutory appeals”;²² and that “exceptional circumstances” may arise “where the cause of justice may be interfered with” or “where issues of fundamental legal importance” are raised;²³

CONSIDERING that Motion raises issues of fundamental legal importance relating to the interpretation and application of Rule 77, in particular, whether the Rule extends to general complaints regarding the operations of the Office of the Prosecutor and its staff, including payments or benefits made to witnesses, potential witnesses and sources;

CONSIDERING FURTHER that as the Defence allegations of contempt of court have serious implications on the integrity of the Office of the Prosecutor that may ultimately affect the integrity and/or fairness of these proceedings, the Accused might suffer irreparable prejudice that cannot be easily remedied on final appeal;

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

FOR THE ABOVE REASONS

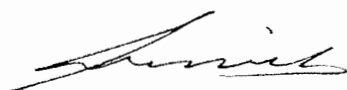
GRANTS the Motion.

²¹ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para. 43.

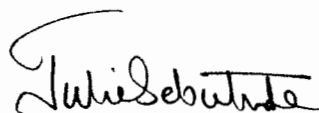
²² *Prosecutor v. Taylor*, SCSL-03-01-T-584, Decision on Confidential Prosecution Application for Leave to Appeal Decision to Vary the Protective Measures of TF1-168, 10 September 2008.

²³ *Prosecutor v. Taylor*, 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; *Prosecutor v. Taylor*, SCSL-03-01-T-764, Decision on Public Prosecution Application for Leave to Appeal Decision Regarding the Tender of Documents, 11 December 2008, p. 3; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T-357, Decision on Defence Applications for Leave to Appeal Ruling of 3rd February 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005.

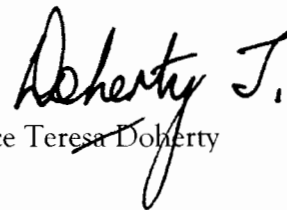
Done at The Hague, The Netherlands, this 3rd day of December 2010.



Justice Richard Lussick



Justice Julia Sebutinde
Presiding Judge



Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]

