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SCSL-03-01-T  
(32426-32431)

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**SPECIAL COURT FOR SIERRA LEONE**

**TRIAL CHAMBER II**

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

**Registrar:** Binta Mansaray

**Case No.:** SCSL-03-1-T

**Date:** 2 February 2011

SPECIAL COURT FOR SIERRA LEONE	
<b>RECEIVED</b>	
COURT MANAGEMENT	
THE HAGUE	
03 FEB 2011	
NAME	ALHASSAN FOMWALL
SIGN	
TIME	09:30

**PROSECUTOR**

v.

**Charles Ghankay TAYLOR**

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**DECISION ON PUBLIC WITH ANNEX A DEFENCE MOTION  
SEEKING LEAVE TO APPEAL THE DECISION ON DEFENCE REQUEST FOR A STATUS  
CONFERENCE PURSUANT TO RULE 65BIS AND DEFENCE MOTION FOR STAY OF  
PROCEEDINGS PENDING RESOLUTION OF OUTSTANDING ISSUES**

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**Office of the Prosecutor:**

Brenda J. Hollis  
Leigh Lawrie  
Nathan Quick

**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 Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues”, filed on 14 January 2011 (“Motion”),<sup>1</sup> wherein the Defence seeks leave to appeal the Trial Chamber’s “Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues” (“Impugned Decision”),<sup>2</sup> dated 12 January 2011, on the basis that:

- 1) “exceptional circumstances” exist in that:
  - a. the Trial Chamber committed several procedural errors and/or errors of law and/or fact including a failure to properly consider and give due weight to several factors, which individually and collectively amount to exceptional circumstances in that the interests of justice might be interfered with; and/or because further decision is conducive to the interests of justice; and/or because the case raises a question of fundamental legal importance;<sup>3</sup>
  - b. the outstanding motions raise issues of fundamental legal importance that go to the heart of the case in so far as they have a potential impact on the independence and integrity of the Trial Chamber and Prosecution, and may give rise to an application for a mistrial;<sup>4</sup>
  - c. the present Motion implicates similar issues to those that were considered to be exceptional circumstances in the Trial Chamber’s previous decision to grant the Defence leave to appeal the date chosen by the Trial Chamber for the start of the Defence case;<sup>5</sup>
- 2) irreparable prejudice exists in that:
  - a. the outstanding issues impact on the integrity of the entire case and the entire judicial process;

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<sup>1</sup> SCSL-03-01-T-1155.

<sup>2</sup> SCSL-03-01-T-1154.

<sup>3</sup> Motion, paras 3-4, 20.

<sup>4</sup> Motion, paras 10-18.

<sup>5</sup> Motion, para. 10, referring to *Prosecutor v. Taylor*, SCSL-03-01-T-783, Decision on Defence Application for Leave to Appeal the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009, 28 May 2009.

- b. the evidential issues implicated in the Motions are of such importance that they cut across the entire case and could not properly be addressed through supplementary filings;<sup>6</sup>
- c. matters relating to the filing deadline for the submission of the final briefs cannot be remedied on final appeal since, if the Defence were to file an incomplete or non-comprehensive final brief, the Accused would be irreparably prejudiced;<sup>7</sup>

**NOTING** that the Defence further requests an order that the Motion shall operate as a stay of proceedings pending appeal;<sup>8</sup>

**NOTING** the "Prosecution Response to 'Public, with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues", filed on 27 January 2011 ("Response"),<sup>9</sup> wherein the Prosecution submits that the motion should be dismissed on the basis that:

- 1) The Defence has failed to establish "exceptional circumstances" in that:
  - a. discretionary trial management decisions generally do not give rise to exceptional circumstances justifying certification<sup>10</sup> and certification of a discretionary decision relating to the filing of the final brief is likely to impede the proceedings;<sup>11</sup>
  - b. the Defence erroneously claims that exceptional circumstances arise out of the pending motions, but must instead prove that the Impugned Decision gives rise to exceptional circumstances;<sup>12</sup>
- 2) the Defence has failed to show irreparable prejudice in that it has failed to substantiate its claim that the pending filings concern matters that cannot be sufficiently dealt with in supplementary submissions or ancillary motions;<sup>13</sup>

**NOTING** that the Prosecution further submits that: (i) the Defence request for a stay of proceedings is an attempt to invalidate previous decisions made by the Trial Chamber which have already been ignored by the Defence on instructions from the Accused and is merely a further dilatory tactic;

<sup>6</sup> Motion, paras 21-23.

<sup>7</sup> Motion, para. 25.

<sup>8</sup> Motion, paras 5, 26.

<sup>9</sup> SCSL-03-01-T-1172.

<sup>10</sup> Response, para. 8.

<sup>11</sup> Response, para 11.

<sup>12</sup> Response, para. 9.

<sup>13</sup> Response, paras 10, 12.

(ii) allowing the Accused to ignore court orders while the Prosecution abided by a court-determined schedule would reward the Accused for his wilful disregard of court orders; (iii) allowing the Defence the benefit of additional time to refine its final trial brief, time denied to the Prosecution, would “create an inequity contrary to the interests of justice and expeditious conduct of the proceedings”;<sup>14</sup>

**NOTING ALSO** the “Defence Reply to Prosecution Response to Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65bis and Defence Motion for Stay on Proceedings Pending Resolution of Outstanding Issues”, filed on 1 February 2011 (“Reply”);<sup>15</sup>

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

**NOTING** that Rule 73(B) provides:

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.

**NOTING** therefore that (i) as a general rule, interlocutory decisions are not subject to appeal; (ii) Rule 73(B) involves a high threshold that must be met before the Trial Chamber can exercise its discretion to grant leave to appeal; (iii) a party seeking leave to appeal against an interlocutory decision must show “exceptional circumstances” and “irreparable prejudice”; (iv) the two prong test prescribed under Rule 73(B) is conjunctive and not disjunctive;<sup>16</sup>

**RECALLING** the Appeals Chamber rulings that “[a]s a general principle, interlocutory appeals are a rare exception”<sup>17</sup> and that “[i]n 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 that any errors which affect the final judgement will be corrected in due course by this Chamber on appeal”.<sup>18</sup>

**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

<sup>14</sup> Response, para. 16.

<sup>15</sup> SCSL03-01-T-1180.

<sup>16</sup> *Prosecutor v Brima, Kamara, Kanu*, SCSL4-16-T, Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 of 31 March 2006, 4 May 2006.

<sup>17</sup> *Prosecutor v. Taylor*, SCSL03-01-T-1166, Decision on Public Defence Notice of Appeal and Submissions Regarding the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 21 January 2011.

<sup>18</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para. 43.

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";<sup>19</sup> and that "exceptional circumstances" may arise "where the cause of justice may be interfered with" or "where issues of fundamental legal importance" are raised;<sup>20</sup>

**CONSIDERING** that the Defence request for a status conference has been overtaken by events, since a status conference was held on 20 January 2011 at which the original submissions for a status conference were re-argued by the Defence and disposed of by the Trial Chamber;<sup>21</sup>

**CONSIDERING ALSO** that the outstanding motions which the Defence claimed were of fundamental importance and needed to be decided before the preparation of its final trial brief have now been decided;<sup>22</sup>

**REITERATING** the statement made by the Trial Chamber in the Impugned Decision that "once a determination on the pending motions has been made by the Trial Chamber, any outstanding issues on which the Defence may wish to make written submissions can be the subject of an appropriate application in accordance with the Rules";<sup>23</sup>

<sup>19</sup> *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.

<sup>20</sup> *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.

<sup>21</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 20 January 2011. See *Prosecutor v. Taylor*, SCSL-03-01-T-1162, Scheduling Order for Status Conference on 20 January 2011, 18 January 2011.

<sup>22</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1166, Decision on Public Defence Notice of Appeal and Submissions Regarding the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 21 January 2011; *Prosecutor v. Taylor*, SCSL-03-01-T-1167, Decision on Public with Annexes A-H and Confidential Annexes I-J Defence Motion to Recall Four Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 24 January 2011; *Prosecutor v. Taylor*, SCSL-03-01-T-1168, Decision on Defence Appeal Regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 25 January 2011 ("Appeals Chamber Decision on Admission of Documents"); *Prosecutor v. Taylor*, SCSL-03-01-T-1171, Decision on the Urgent and Public with Annexes A-C Defence Motion to Re-Open its Case in Order to Seek Admission of Documents Relating to the Relationship Between the United States Government and the Prosecution of Charles Taylor, 27 January 2011 ("Trial Chamber Decision on Admission of Documents"); *Prosecutor v. Taylor*, SCSL-03-01-T-174, Decision on Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables, 28 January 2011. The Trial Chamber also notes that, in accordance with the Appeals Chamber Decision on Admission of Documents, two documents were admitted into evidence as D-479 and D-480, and that, in accordance with the Trial Chamber Decision on Admission of Documents, two documents were admitted into evidence as D-481 and D-482.

<sup>23</sup> Impugned Decision, p. 3.

FINDING therefore that the Defence has not satisfied the conjunctive conditions of exceptional circumstances and irreparable prejudice required by Rule 73(B);

FOR THE ABOVE REASONS

HEREBY DISMISSES THE MOTION.

Done at The Hague, The Netherlands, this 2<sup>nd</sup> day of February 2011.



Justice Richard Lussick



Justice Teresa Doherty  
Presiding Judge



Justice Julia Sebutinde

