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SCSL-03-01-T
(35586-35600)

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SPECIAL COURT FOR SIERRA LEONE

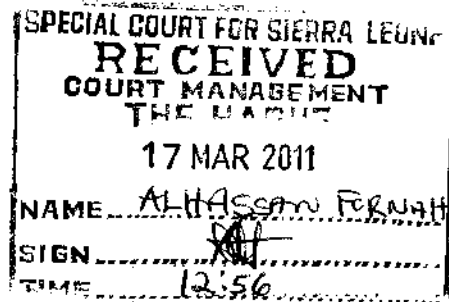
TRIAL CHAMBER II

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: 17 March 2010



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A & B URGENT PROSECUTION
MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE
SPECIAL COURT FOR SIERRA LEONE AND ON PROSECUTION SUPPLEMENTARY REQUESTS

Office of the Prosecutor:

Brenda J. Hollis
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James Supuwood

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

SEISED of the “Public with Confidential Annexes A and B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 24 February 2011 (“Motion”);¹

RECALLING the Trial Chamber’s “Order for Expedited Filing”, dated 25 February 2011,² wherein the Trial Chamber ordered expedited filing schedules for the response and reply;

SEISED ALSO of the “Public with Confidential Annexes A & B Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’”, filed on 25 February 2011 (“First Supplementary Request”);³

SEISED ALSO of the “Public with Confidential Annexes A & B Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’”, filed on 25 February 2011 (“Second Supplementary Request”);⁴

NOTING the “Public, with Confidential Annex A Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the of the Special Court for Sierra Leone’ and Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’”, filed on 1 March 2011 (“Response”);⁵

NOTING ALSO the “Prosecution Reply to Public, with Confidential Annex A Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the of the Special Court for Sierra Leone’ and Urgent Prosecution Request to Supplement the ‘Public with

¹ SCSL03-01-T-1215.

² SCSL03-01-T-1219.

³ SCSL03-01-T-1216.

⁴ SCSL03-01-T-1217.

⁵ SCSL03-01-T-1221.

Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, filed on 3 March 2011 (“Reply”);⁶

RECALLING the Trial Chamber’s “Decision on the Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone”, dated 25 February 2011 (“Contempt Decision”),⁷ in which it granted two Prosecution contempt motions in part, and directed the Registrar to appoint experienced independent Counsel, pursuant to Rule 77(C)(iii), to investigate the allegations that a person or persons may be in contempt of the Special Court;

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 54, 75 and 77 of the Rules of Procedure and Evidence (“Rules”);

HEREBY DECIDES AS FOLLOWS, based solely on the written submissions of the parties, pursuant to Rule 73(A) of the Rules;

I. BACKGROUND

1. On 3 February 2011, the Prosecution filed a “Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone” (“3 February Contempt Motion”).⁸ On 7 February 2011, the Prosecution filed a “Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone” (“7 February Contempt Motion”).⁹

2. On 25 February 2011, the Trial Chamber issued its Contempt Decision,¹⁰ in which it granted the 3 and 7 February Contempt Motions in part, and directed the Registrar to appoint experienced independent counsel, pursuant to Rule 77(C)(iii), to investigate the allegations that a person or persons, including Eric Senessie and/or Prince Taylor, may be in contempt of the Special Court by:

- (i) disclosing information relating to proceedings in knowing violation of an order of a Chamber by revealing the identity of protected Witnesses TF1-516 and TF1-585 to third parties, contrary to Rule 77(A)(ii);

⁶ SCSL-03-01-T-1222.

⁷ SCSL-03-01-T-1218.

⁸ SCSL-03-01-T-1185.

⁹ SCSL-03-01-T-1192.

¹⁰ SCSL-03-01-T-1218.

- (ii) offering a bribe to Witnesses Mohammed Kabba, TF1-585 and Dauda Aruna Fornie, who have given evidence in proceedings before the Trial Chamber, contrary to Rule 77(A)(iv) and Rule 77(B).
- (iii) “otherwise interfering with” witnesses Aruna Gbonda, Mohammed Kabba, TF1-585 and Dauda Aruna Fornie, who have given evidence in proceedings before the Trial Chamber, by attempting to compel them to recant their testimonies, contrary to Rules 77(A)(iv) and Rule 77(B);¹¹

3. In addition, the Trial Chamber ordered the parties not to contact Eric Senessie, Prince Taylor or witnesses Aruna Gbonda, Mohammed Kabba, Dauda Aruna Fornie, TF1-516 and TF1-585 pending the outcome of the investigation.¹² On the same day, the Prosecution filed the First and Second Supplementary Requests, in which it requested the Trial Chamber to supplement the 3 February and 7 February Contempt Motions with additional material.

4. Given that the issues therein are related, the Trial Chamber will consider the Motion and the First and Second Supplementary Requests in the same decision.

II. SUBMISSIONS

Motion

5. The Prosecution requests that the Trial Chamber direct the Registrar to appoint experienced independent counsel to urgently investigate possible contempt of the Special Court in relation to, at minimum, one protected Prosecution witness (TF1-516).¹³ It adopts by reference all allegations and submissions made in its two previous contempt motions,¹⁴ and submits that the contact and conduct described in this Motion further demonstrates a concerted course of action against Prosecution witnesses “by alleged Defence agents and/or team members”.¹⁵

6. The Prosecution alleges that on 1 February 2011, TF1-516 was contacted in person by former RUF combatant Eric Koi Senessie (“Senessie”). According to TF1-516’s statement, Senessie told him that he was working with the Charles Taylor Defence Team, and that the Defence would give the

¹¹ Contempt Decision, pp. 19-20.

¹² Contempt Decision, p. 20.

¹³ Motion, paras 1, 24.

¹⁴ 3 February Contempt Motion; 7 February Contempt Motion.

¹⁵ Motion, para. 2.

witness money if he agreed to recant his sworn testimony.¹⁶ Although TF1-516 made it clear that he was not interested in meeting with the Taylor Defence Team, Senessie told TF1-516 that he would come back, and that in the meantime, he should further consider the proposal. TF1-516 told Senessie that he would not recant his sworn and truthful testimony.¹⁷

7. The Prosecution therefore submits that, in light of this information, there is “reason to believe” that Eric Senessie engaged in contemptuous conduct in violation of Rules 77(A) and/or (B).¹⁸ This conduct includes:

- (i) disclosure of the identity of a protected Prosecution witness (TF1-516) in knowing violation of the applicable protective measures orders, which falls within the ambit of Rule 77(A)(ii);¹⁹
- (ii) attempted bribery or otherwise interfering with a Prosecution witness (TF1-516), which falls within the ambit of Rule 77(A)(iv) and/or Rule 77(B);²⁰
- (iii) interference or attempted interference with the administration of justice through the violation of a court order – namely, making contact with a Prosecution witness (TF1-516), which falls within the ambit of Rule 77(A)(iv) and/or Rule 77(B);²¹

8. The Prosecution therefore requests that the Trial Chamber, pursuant to Rule 77(C)(iii), appoint experienced independent counsel to urgently investigate this possible contempt of the Special Court.²²

9. The Prosecution further submits that the account given by TF1-516 corroborates accounts given by witnesses in the 3 and 7 February Motions particularly those accounts previously alleging contemptuous conduct in relation to TF1-516.²³

10. The Prosecution also requests that, as an urgent interim measure, the Trial Chamber order the Defence team not to discuss with Eric Senessie and/or Prince Taylor anything associated with this request or resulting investigation.²⁴

¹⁶ Confidential Annex B.

¹⁷ Motion, para. 11.

¹⁸ Motion, paras 12.

¹⁹ Motion, paras 1, 15, 23.

²⁰ Motion, paras 1, 16-18, 23.

²¹ Motion, paras 1, 19-21, 23.

²² Motion, paras 1, 24.

²³ Motion, para. 13.

²⁴ Motion, para. 22. While Prince Taylor is not specifically implicated in the statement of TF1-516, the Prosecution submits that it has included his name as he is implicated in the 3 and 7 February Contempt Motions.

First Supplementary Request

11. In the First Supplementary Request, the Prosecution requests the Trial Chamber for leave to supplement the 3 February Contempt Motion with an audio recording and accompanying transcript of a phone conversation between TF1-585 and Senessie which, the Prosecution submits, may be of assistance to the Trial Chamber in assessing the 3 February Contempt Motion.²⁵ The transcript and audio recording are provided in Confidential Annexes A and B of this request. The Prosecution submits that it was unable to file this material with its original Motion, as it encountered difficulties in adequately translating the Mende portions of the recording, had to travel to TF1-585's location in order to review the recording and transcript with the witness and only received the transcript and recording in The Hague on 23 February 2011.²⁶

Second Supplementary Request

12. In the Second Supplementary Request, the Prosecution requests the Trial Chamber for leave to supplement the 7 February Contempt Motion with two signed and affirmed statements of Dauda Aruna Fornie which, the Prosecution submits, may be of assistance to the Trial Chamber in assessing the 7 February Contempt Motion.²⁷ The statements are provided in Confidential Annexes A and B of this request. The 7 February Contempt Motion was based on investigative interview notes from a telephone interview with Dauda Aruna Fornie.²⁸ The Prosecution submits that it was only subsequent to filing the Motion that it was able to travel to Dauda Aruna Fornie's location and obtain the signed and affirmed statements from the witness.²⁹

Response to Motion

13. The Defence submits that the Prosecution has not provided any new information which is not already covered by the Contempt Decision.³⁰

14. The Defence notes that the Trial Chamber has already directed an investigation into the allegation that the identity of TF1-516 was disclosed to third parties, including Senessie, in violation of Rule 77(A)(ii). Without prejudice to the merits of the allegation, the Defence does not object to the TF1-516's statement contained in Confidential B of the Motion being included as supplemental information material to the investigation. However, the Defence submits that it is plausible that TF1-

²⁵ First Supplementary Request, para. 1. The phone conversation is referred to in Confidential Annex D to the 3 February Contempt Motion, p. 3.

²⁶ First Supplementary Request, para. 3.

²⁷ Second Supplementary Request, para. 1.

²⁸ Second Supplementary Request, para. 3.

²⁹ Second Supplementary Request, para. 3.

³⁰ Response, para. 18.

516 had already disclosed to Senessie that he testified as a Prosecution witness, and thus there would be no violation of any disclosure order pertaining to his identity as a witness.³¹

15. In response to the Prosecution allegation that Senessie attempted to bribe TF1-516, the Defence notes that TF1-516 was never given any money, and that even when TF1-516 asked for a phone so that Senessie could be in touch with him, he was not provided with one. The Defence submits that this lack of payment illustrates that this allegation lacks credibility. In response to the Prosecution allegation that Senessie “otherwise interfered” with TF1-516, the Defence notes that between 1 February 2011 (when the initial contact was made) and 18 February 2011 (when the statement in Confidential Annex B was signed), there was no further contact made by Senessie with TF1-516.³²

16. In response to the Prosecution allegation that Senessie violated court ordered protective measures forbidding contact with TF1-516 by the Defence, the Defence recalls that on the basis of similar allegations in the 3 and 7 February Contempt Motions, the Trial Chamber found that there was “no reason to believe that either Senessie or Prince Taylor was acting on behalf of, or in accordance with instructions from, the Defence team in contacting these witnesses” and that therefore this contact did not constitute a violation of the provisions of the protective measures orders applicable to these witnesses.³³ The Defence reasserts that Senessie has never worked for the Defence Team, although he may purport to be working on its behalf. Consequently, the Defence submits that this contact does not constitute a violation of any court ordered protective measures prohibiting contact with this witness by the Defence.³⁴

17. Finally, the Defence submits that the urgent interim measures requested by the Prosecution have now been rendered moot by the Contempt Decision.³⁵

Response to First Supplementary Request

18. The Defence notes that the Trial Chamber has already ordered an investigation into allegations that Senessie and/or Prince Taylor disclosed the identity of, bribed, or otherwise interfered with TF1-585. It indicates that, without prejudice to the merits of the allegations under investigation, the Defence does not object to the audio recording being part of the background material provided to the independent investigator to be appointed by the Registrar.³⁶ However, the

³¹ Response, para. 6.

³² Response, para. 7.

³³ Response, para. 8, referring to Contempt Decision, paras 46-48.

³⁴ Response, para. 8.

³⁵ Response, para. 9.

³⁶ Response, paras 11, 19.

Defence submits that an official, independent transcript of the recording be made, as the Defence has listened to the audio recording, which is of poor quality, and has noted that not all of the conversation between Senessie and TF1-585 appears to be properly captured.³⁷

19. The Defence also notes that the recording of the conversation between TF1-585 and Senessie took place after TF1-585 had talked to the Prosecution investigators. It therefore suggests that Senessie had been “set-up” by the Prosecution and that this casts doubt onto the credibility and overall allegations put forth by TF1-585.³⁸

20. The Defence also submits that aspects of this statement may cast doubt on the credibility of the allegations put forward by TF1-585.³⁹

Response to Second Supplementary Request

21. The Defence notes that the Trial Chamber, Justice Sebutinde dissenting, has already ordered an investigation into allegations that Senessie offered a bribe to or otherwise interfered with Dauda Aruna Fornie.⁴⁰ Without prejudice to the merits of the allegations under investigation, the Defence does not object to these statements being part of the background material provided to the independent investigator to be appointed by the Registrar.⁴¹

22. The Defence also submits that aspects of this statement may cast doubt on the credibility of the allegations put forward by Dauda Aruna Fornie.⁴²

Reply

23. The Prosecution submits that as the Trial Chamber has already ordered an investigation into the disclosure of identifying information in relation to TF1-516 regarding a violation of Rule 77(A)(ii), the Defence submissions regarding the credibility of the allegations underlying the decision to investigate are irrelevant as to whether an investigation should be ordered.⁴³ The Prosecution submits that the possibility that a person knew a protected witness in another setting, not as a witness, does not detract from the contemptuous disclosure of that individual’s status as a witness.⁴⁴

24. The Prosecution contends that the Defence’s arguments regarding offers of bribes to Prosecution witnesses are without merit. The Trial Chamber has already determined that the fact that money was not actually provided does not detract from reason to believe that an offer of a bribe

³⁷ Response, para. 11.

³⁸ Response, 12.

³⁹ Response, para. 17.

⁴⁰ Response, para. 15.

⁴¹ Response, paras 16, 19.

⁴² Response, paras 12-14.

⁴³ Reply, paras 4-5.

⁴⁴ Reply, para. 6.

was made in exchange for recantation of previously sworn testimony in violation of Rule 77(A)(iv).⁴⁵ The Prosecution also submits that the Defence has failed to rebut any reason to believe that Senessie and/or others not yet identified may have interfered with TF1-516, given that in its Contempt Decision, the Trial Chamber found reason to believe a witness may have been “otherwise interfered with” on the basis of similar conduct by Senessie.⁴⁶

25. The Prosecution submits that the Defence claims that Senessie is not acting as a Defence agent must be weighed against Senessie’s conduct as a *de facto* Defence agent with regard to at least five Prosecution witnesses. It therefore submits that there is reason to believe that Senessie is a *de facto* agent of the Defence, and that there is reason to believe that alleged Defence Team agent Senessie and/or others not identified contacted protected Prosecution witnesses in violation of existing orders.⁴⁷

26. Finally, the Prosecution submits that, as the Defence correctly notes, the Trial Chamber has already ordered the urgent interim measures requested by the Prosecution.⁴⁸

Reply to First Supplementary Request

27. The Prosecution submits in reply that the Supplementary Request is relevant to the Trial Chamber’s consideration of the Motion, insofar as it further demonstrates an on-going concerted course of action directed against Prosecution witnesses.⁴⁹ The Prosecution agrees that, as the Defence suggests, these supplemental materials should be provided to the independent investigator designated to conduct an investigation in accordance with the Contempt Decision.⁵⁰ The Prosecution submits, however, that to the extent that the Trial Chamber finds that the submissions of the Defence in relation to the supplemental material are relevant to the ordered investigation, these submissions do not detract from the credibility of the information supporting an investigation.⁵¹

28. The Prosecution further submits that the Defence submissions that the supplementary materials contained in Confidential Annexes A and B to the First Supplementary Request cast doubt on the credibility of the allegations made by TF1-585 lack merit.⁵²

⁴⁵ Reply, para. 7.

⁴⁶ Reply, para. 8, referring to Contempt Decision, paras 44, 55.

⁴⁷ Reply, para. 10.

⁴⁸ Reply, para. 11.

⁴⁹ Reply, para. 2.

⁵⁰ Reply, paras 3, 12, 20.

⁵¹ Reply, paras 3, 13.

⁵² Reply, paras 14-16.

Reply to Second Supplementary Request

29. The Prosecution submits in reply that the Supplementary Request is relevant to the Trial Chamber's consideration of the Motion, insofar as it further demonstrates an on-going concerted course of action directed against Prosecution witnesses.⁵³ The Prosecution agrees that, as the Defence suggests, these supplemental materials should be provided to the independent investigator designated to conduct an investigation in accordance with the Contempt Decision.⁵⁴ The Prosecution submits, however, that to the extent that the Trial Chamber finds that the submissions of the Defence in relation to the supplemental material are relevant to the ordered investigation, these submissions do not detract from the credibility of the information supporting an investigation.⁵⁵

30. The Prosecution further submits that the Defence submissions that the supplementary materials contained in Confidential Annexes A and B to the First Supplementary Request cast doubt on the credibility of the allegations made by Dauda Aruna Fornie lack merit.⁵⁶

II. APPLICABLE LAW

31. Rule 77 sets out the law and procedure for dealing with contempt of the Special Court. The relevant parts of Rule 77 provide:

Rule 77: Contempt of the Special Court

- (A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice, including any person who:
- (i) being a witness before a Chamber, subject to Rule 90(E) refuses or fails to answer a question;
 - (ii) discloses information relating to proceedings in knowing violation of an order of a Chamber;
 - (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
 - (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;
 - (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or

⁵³ Reply, para. 2.

⁵⁴ Reply, paras 3, 12, 20.

⁵⁵ Reply, paras 3, 13.

⁵⁶ Reply, para. 17.

- (vi) knowingly assists an accused person to evade the jurisdiction of the Special Court.
- (B) Any incitement or attempt to commit any of the acts punishable under Sub-Rule (A) is punishable as contempt of the Special Court with the same penalties.
- (C) When a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may:
 - (i) deal with the matter summarily itself;
 - (ii) refer the matter to the appropriate authorities of Sierra Leone; or
 - (iii) direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter.
- [...]
- (I) If a counsel is found guilty of contempt of the Special Court pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to appear before the Special Court or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.

32. The Appeals Chamber has stated that the standard of proof in determining whether an independent investigation should be ordered into a matter of contempt is:

[...] not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of "reason to believe" that an offence may have been committed, which is the pre-condition for ordering an independent investigation.⁵⁷

33. Notwithstanding the lower standard of proof, an allegation of contempt must be *credible* enough to provide a Judge or Trial Chamber with "reason to believe" that a person may be in contempt.⁵⁸

34. Furthermore, any alleged misconduct should be brought to the attention of the Trial Chamber without undue delay.⁵⁹

⁵⁷ *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(j) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005 ("AFRC Appeals Decision"), para. 17.

⁵⁸ *Prosecutor v. Taylor*, SCSL-03-01-T-690, Confidential Decision on Confidential Prosecution Motion For an Investigation by Independent Counsel Into Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 8 December 2008, para. 23, referring to AFRC Appeals Chamber Decision, para. 2. See also *Prosecutor v. Taylor*, SCSL-03-01-T-1119, Decision on Public with Confidential Annexes A-J and Public Annexes K-0 Defence Motion Requesting an Investigation into Contempt of Court by the Prosecutor and its Investigators, 11 November 2010 ("11 November 2010 Contempt Decision"), p. 20.

⁵⁹ *Prosecutor v. Taylor*, SCSL-03-01-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008, paras 14-15. See also 11 November 2010 Contempt Decision, p. 20.

III. DELIBERATIONS

Motion

Allegation of disclosure of information in knowing violation of an order of a Chamber (Rule 77(A)(ii))

35. The information contained in TF1-516's statement is that Senessie approached the witness on 1 February 2011, purporting to act on behalf of the Charles Taylor Defence Team.⁶⁰

36. The Trial Chamber recalls that TF1-516 is subject to protective measures ordered by the Trial Chamber protecting his name and other identifying information from disclosure to the public and media,⁶¹ and other measures protecting his identity.⁶² Accordingly, based on the information before it, the Trial Chamber has reason to believe that a person or persons may be in contempt of the Special Court by disclosing the identity of this witness to Senessie in violation of protective measures ordered by the Trial Chamber, contrary to Rule 77(A)(ii).

37. The Trial Chamber recalls, however, that in the Contempt Decision, it has already authorized an investigation into allegations that a person or persons may have disclosed information relating to proceedings in knowing violation of an order of a Chamber by revealing the identity of protected witness TF1-516 to third parties, contrary to Rule 77(A)(ii).⁶³

Allegations of Offering a Bribe to a Witness and other Interference with Witnesses (Rule 77(A)(iv) and Rule 77(B))

38. The information in TF1-516's statement alleges that Senessie told the witness that the Taylor Defence Team would give him money if he agreed to recant his prior testimony.⁶⁴

⁶⁰ Confidential Annex B of the Motion.

⁶¹ *Prosecutor v. Taylor*, SCSL-03-01-T-120, Decision on Urgent Prosecution Motion for Protective Measures for Witnesses and for Non-Public Disclosure, 15 September 2006 ("September 2006 Protective Measures Decision"), referring to and granting the measures contained in the SCSL-03-01-T-99, Decision on Confidential Prosecution Motion for Immediate Protective Measure for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, 5 May 2006 ("May 2006 Protective Measures Decision"), provision (g), and *Prosecutor v. Taylor*, SCSL-03-01-T-125, Decision on Defence Motion to Set Aside and/or Reconsider Trial Chamber's Decision on Urgent Prosecution Motion for Witnesses and for Non-Public Disclosure dated 15 September 2006, 5 October 2006 which reaffirmed its previous decision granting protective measures.

⁶² *Prosecutor v. Taylor*, SCSL-03-01-T-437, Decision on Confidential Prosecution Motion for Additional Protective Measures for the Trial Proceedings of Witnesses TF1-515, 516, 385, 539, 567, 388 and 390, 13 March 2008, granting trial protective measures including a pseudonym, and *Prosecutor v. Taylor*, SCSL-03-01-T-455, Corrigendum on Decision on Confidential Prosecution Motion for Additional Protective Measures for the Trial Proceedings of Witnesses TF1-515, 516, 385, 539, 567, 388 and 390, 4 April 2008 clarifying that screen and facial distortion were ordered for TF1-516, not voice distortion.

⁶³ Contempt Decision, p. 19.

⁶⁴ Confidential Annex B of the Motion.

39. Although there is no evidence that money was actually provided to this witness, the Trial Chamber has reason to believe that a person or persons, including Senessie, may be in contempt by offering a bribe to witness TF1-516 who had given evidence in proceedings before the Trial Chamber, in order to urge him to recant his prior testimony, contrary to Rule 77(A)(iv) of the Rules. Under Rule 77(A)(iv) it is immaterial that no money was actually provided, so long as the offer of a bribe was made.

Allegation of Violation of Court Order Prohibiting Direct Contact by the Defence with Protected witnesses (Rule 77(A)(iv))

40. The Prosecution alleges that, in contacting witness TFI-516, Senessie violated court ordered protective measures prohibiting direct contact by the Defence Team with certain protected witnesses, which falls within the ambit of Rule 77(A) as it constitutes an interference with the administration of justice.⁶⁵

41. The Trial Chamber accepts the Defence contention that Senessie has never worked for the Defence Team, which has not been contested by the Prosecution. Accordingly, notwithstanding what was told to the witness TF1-516 by Senessie, the Trial Chamber has no reason to believe that Senessie was acting on behalf of, or in accordance with instructions from, the Defence Team in contacting this witness.

42. Therefore, Senessie's contact with witness TFI-516 does not constitute a violation of the provisions of the protective measures order applicable to this witness⁶⁶ which prohibits the Defence from directly or indirectly contacting any protected Prosecution witness without seeking leave of the Prosecution or the Trial Chamber. Hence, in relation to this contact, the Trial Chamber does not have reason to believe that a person may be in contempt.

Conclusion

43. On the basis of the information contained in Confidential Annex B of the Motion, and considering the orders already made in the Contempt Decision, the Trial Chamber has reason to believe that a person or persons, including Eric Senessie, may be in contempt of the Special Court for offering a bribe to witnesses TF1-516 who has given evidence in proceedings before the Trial Chamber, in return for recanting his previous testimony, contrary to Rules 77(A)(iv) and 77(B).

⁶⁵ Motion, para. 21.

⁶⁶September 2006 Protective Measures Decision, referring to and granting Provision (m) of the May 2006 Protective Measures Decision. Provision (m) of the May 2006 Protective Measures Decision states that "the Defence shall not directly or indirectly contact any protected witness except with the written consent of the Prosecution or leave of the court".

44. The Trial Chamber recalls that it has previously authorized an investigation into possible contempt by a person or persons, including Senessie, in relation to allegations of similar conduct with respect to witness TF1-516, TF1-585, Dauda Aruna Fornie, Mohamed Kabba and Aruna Gbonda,⁶⁷ and that therefore the requests by the Prosecution into allegations of the disclosure of the identity of TF1-516 are already covered by the Contempt Decision.

45. Given the similarity of the allegations, the Trial Chamber finds that, for reasons of economy and consistency, the investigation into the allegations of contemptuous conduct described above should be joined to the investigation authorized in the Contempt Decision, and that the same experienced independent Counsel should investigate the allegations identified above.

Urgent Interim Measure

46. The Trial Chamber notes that in its Contempt Decision, it has already ordered the parties not contact Senessie and/or witness TF1-516 pending the outcome of the investigation.⁶⁸ The Trial Chamber therefore finds that the Prosecution's request for this interim measure is now moot.

First and Second Supplementary Requests

47. The Trial Chamber recalls that it has already issued a decision on the 3 and 7 February Motions, in which it granted them in part, and authorized an investigation into allegations of contemptuous conduct in relation to these two witnesses.⁶⁹ Accordingly, it finds that the Prosecution's First and Second Supplementary Requests are also moot.

48. However, the Trial Chamber considers that, as the supplementary materials relate to the Prosecution allegations that are the subject of the investigation authorized in the Contempt Decision, such materials may be useful to the independent Counsel appointed by the Registrar to conduct this investigation. It notes that the Defence does not object to these supplementary materials being made part of the background materials provided to the independent Counsel.

49. The Trial Chamber notes the Defence submission that not all of the conversation between Senessie and TF1-585 appears to be properly captured in the transcript contained in Annex A to the First Supplementary Request, and its request for an official, independent transcript of the recording. However, it finds that as it has already authorized the Registrar to appoint independent Counsel to investigate allegations of contemptuous conduct in relation to witness TF1-585, it is now within the independent Counsel's discretion to determine whether the transcript of the recording is adequate

⁶⁷ Contempt Decision, pp. 19-20.

⁶⁸ Contempt Decision, p. 20.

⁶⁹ Contempt Decision, pp. 19-20.

and to request another transcript if he determines that this is necessary. Accordingly, the Trial Chamber dismisses the Defence request.

FOR THE ABOVE REASONS

DISMISSES the Prosecution's First and Second Supplementary Requests for leave to supplement the 3 February and 7 February Contempt Motions as moot;

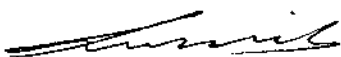
GRANTS THE MOTION in part;

DIRECTS that the Registrar, pursuant to Rule 77(C)(iii) of the Rules, to further direct independent counsel appointed in accordance with the orders of the Trial Chamber in the Contempt Decision to also investigate the allegations that a person or persons, including Eric Senessie, may be in contempt of the Special Court by offering a bribe to witness TF1-516, who has given evidence in proceedings before the Trial Chamber, contrary to Rules 77(A)(iv) and Rule 77(B) of the Rules.

DIRECTS that the Registrar provide the independent counsel appointed with the following supplementary materials:

- (i) The audio recording and transcript contained in Confidential Annexes A and B of the First Supplementary Request;
- (ii) The two signed and sworn statements contained in Confidential Annexes A and B of the Second Supplementary Request;
- (iii) All the necessary background material, including the confidential documentation to the relevant contempt motions.

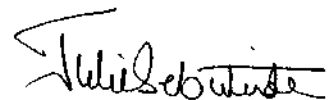
Done at The Hague, The Netherlands, this 17th day of March 2011.



Justice Richard Lussick



Justice Teresa Doherty
Presiding Judge



Justice Julia Sebutinde

