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SPECIAL COURT FOR SIERRA LEONE

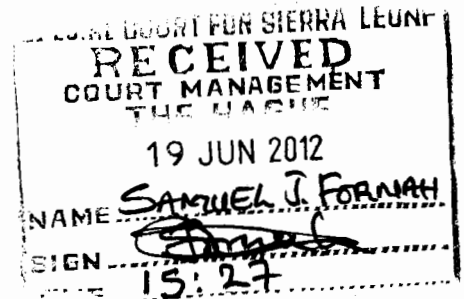
TRIAL CHAMBER II

Before: Justice Teresa Doherty, Single Judge
Binta Mansaray
Case No.: SCSL-03-1-T
Date: 19 June 2012

PROSECUTOR

v.

Charles Ghankay TAYLOR



DECISION ON CONFIDENTIAL WITH CONFIDENTIAL ANNEXES A-E PROSECUTION MOTION FOR THE TRIAL CHAMBER TO SUMMARILY DEAL WITH CONTEMPT OF THE SPECIAL COURT FOR SIERRA LEONE AND FOR URGENT INTERIM MEASURES

Office of the Prosecutor:
Brenda J. Hollis
Nathan Quick

Counsel for the Accused:
Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

I, Justice Teresa Doherty, Single Judge of the Special Court for Sierra Leone (“Special Court”);

RECALLING the “Decision on Confidential with Confidential Annexes A-E Prosecution Motion for the Trial Chamber to Summarily Deal with Contempt of the Special Court for Sierra Leone and for Urgent Interim Measure” dated 24 March 2011;

NOTING that a Judgment and a Sentencing Judgment in the matter of the *Prosecutor v. Charles Ghankay Taylor* were delivered on the 26 April 2012 and 30 May 2012, respectively;

COGNISANT of the Provisions of Rules 73, 75, 77 of the Rules of Procedure of Evidence (“Rules”) and the Code of Conduct for Counsel with a Right of Audience before the Special Court for Sierra Leone;

HEREBY DECIDE AS FOLLOWS, based solely on the written submission of the parties pursuant to Rules 73(A) of the Rules:

BACKGROUND

1. The Prosecutor filed the “Confidential with Confidential Annexes A-E Prosecution Motion for the Trial Chamber to Summarily Deal with Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures” on 17 February 2011 (“Motion”), submitting that the Table of Contents of Public Annex A of the Defence document “Confidential with Annexes A-C Defence Final Brief” included the names of seven protected Prosecution witnesses, the disclosure of whose identifying information had been prohibited by order of the Trial Chamber.
2. The Prosecution submitted that Public Annex A was not filed publicly by accident, and therefore there was reason to believe that Lead Defence Counsel was in contempt of the Special Court by wilfully and knowingly and/or by reckless indifference disclosing the identities of the seven protected witnesses in violation of Rule 77(A)(ii) and/or 77(B) of the Rules.
3. In the alternative, the Prosecution submitted that Lead Defence Counsel committed an abuse of process punishable under Rule 46(C) of the Code of Conduct, arguing that a finding of bad faith or specific intent is not required for imposition of sanctions under Rule 46.

4. The Prosecution requested that the Trial Chamber summarily deal with the possible contempt of court but that "in the interests of a fair and expeditious trial," it should postpone a decision until after the trial is declared closed or completed.
5. In their Response the Defence "accepted and apologised" for the fact that the identities of the seven protected witnesses were inadvertently disclosed in the Table of Contents of Public Annex A. The Defence made further submissions concerning material provided by Professor William Schabas and disputed that the disclosure, which they described as "an unintentional mistake," should lead to disciplinary action or contempt proceedings.
6. The Trial Chamber, by a majority opinion, agreed with the Prosecution's submission that, in the interest of a fair and expeditious trial, a decision on whether a person may be in contempt of the court should be postponed until the trial is completed.
7. I now consider whether, on the submissions before me, a person may be in contempt of the Special Court pursuant to Rule 77(A)(ii) of the Rules.

DELIBERATIONS

Rule 77(C)(ii) of the Rules provides:

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 experience 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.

8. The Appeals Chamber, in the matter of *Prosecutor v. Brima et al.*,¹ held that the standard provided in Rule 77(C) of the Rules is that a Judge or Trial Chamber must find that the Court has "reason to believe" that the person may be in contempt of court and that this is

¹ *Prosecutor v. Brima, Kamara and Kanu*, SCSL04-16-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, para. 17.

lower than the standard of the *prima facie* case which is the standard for committal proceedings.

9. The undisputed facts before me show that the names of seven protected witnesses were disclosed in a publicly filed document annexed to a Defence Final Trial Brief. It is undisputed that the document remained as a public document for a period of approximately seven days until the Court Management Services temporarily withdrew Public Annex A in response to the concerns raised by the Chief of Prosecutions.
10. I consider that this disclosure is sufficient to constitute "reason to believe" that Defence Lead Counsel, who signed the document that was filed, disclosed information in violation of an order of the Chamber directing that the names of witnesses provided with protective measures safeguarding their privacy and security shall not be disclosed.
11. Accordingly, I have reason to believe that Lead Defence Counsel may be in contempt and direct that a Status Conference be held to determine the procedure to hear and determine the matter.

Done at Freetown, Sierra Leone, this 19 day of June 2012.

Teresa J. Doherty
Justice Teresa Doherty
Single Judge

