

**THE TRIAL CHAMBER**

**Case No:** STL-11-01/T/TC

**Before:** Judge David Re, Presiding  
Judge Janet Nosworthy  
Judge Micheline Braidy  
Judge Walid Akoum, Alternate Judge  
Judge Nicola Lettieri, Alternate Judge

**Registrar:** Mr Daryl Mundis

**Date:** 20 January 2014

**Original language:** English

**Classification:** Public

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**DECISION GRANTING LEAVE TO RECONSIDER THE TRIAL CHAMBER'S  
DECISION (F1280) ON ADMISSION OF WRITTEN STATEMENTS UNDER RULE  
155 AND ALLOWING WITNESS PRH 555 TO ATTEND FOR CROSS-  
EXAMINATION**

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(Extract from Official Public Transcript of Hearing on 20 January 2014, page 2, line 18 to  
page 4, line 22)

On the 20th of December, 2013, the Trial Chamber issued a decision on admitting into evidence some 13 witness statements without cross-examination. The Trial Chamber required another ten witnesses to attend for cross-examination, either live or by video conference link. This was the first decision on the Prosecution motion for admission of written statements under Rule 155.

On the 9th of January, this year, counsel for Mr. Assad Hassan Sabra filed a request to reconsider the decision in relation to one witness whose evidence the Trial Chamber had decided to admit into evidence without allowing cross-examination, which was contrary to counsel for Mr. Sabra's request in their response to the Prosecution's motion. The reason for requesting reconsideration they have given is that in not allowing counsel for Mr. Sabra to cross-examine the witness, the Defence has been deprived the opportunity to call evidence relevant to its case, leading to an injustice that prejudices the rights of Mr. Sabra. On the 14th

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of January the Prosecution responded, opposing the request for reconsideration, on the basis that Defence counsel had failed to establish that reconsideration was necessary to avoid an injustice or that the decision was wrong.

The witness statement describes still images from CCTV footage obtained at the crime scene. His statement does not concern the acts and conduct of the accused. The evidence is relevant and probative and meets the requirement of Rule 155 and the relevant Practice Direction. The Trial Chamber decided to admit the statement into evidence but without requiring that witness to attend for cross-examination.

When a request for reconsideration of a decision is made, the Presiding Judge decides whether to grant leave to reconsider a Trial Chamber decision. In this case, I don't consider that the decision we made was wrong. Contrary to the arguments of counsel for Mr. Sabra, the Trial Chamber did consider the submissions of the Defence in their totality. The entirety of their arguments were conditioned on the witness's evidence being only potentially relevant to the Defence of Mr. Sabra. For this reason, the Trial Chamber found that request to be unsubstantiated.

However, in their request for reconsideration, counsel for Mr. Sabra have now submitted how the witness's evidence is relevant to its case, not just potentially relevant to its case, and have more fully substantiated the reasons why. It is now apparent that they wish to cross-examine this witness on other issues relating to evidence different to that which is in the statement of the witness that we have admitted into evidence under Rule 155. The issues on which counsel for Mr. Sabra wish to cross-examine this witness relate to evidence to be presented at a later stage of the Prosecution's case, but not from what is in the witness's statement that the Trial Chamber has decided to admit into evidence in the first part of the trial. For these reasons, as the Presiding Judge, I will grant leave to counsel for Mr. Sabra for the Trial Chamber to reconsider the decision.

Having done that, the Trial Chamber has now reconsidered the decision and, for the reasons I have just given, we will allow the witness to attend for cross-examination. But, as the witness -- as the Defence wishes to cross-examine him about things that are relevant to a later stage of the case, his statement will be admitted into evidence now in relation to the first part of the case and he will be asked or directed to attend court for cross-examination at the appropriate point later in the trial.

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