

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

**THE CONTEMPT JUDGE**

**Case No.:** STL-14-05/T/CJ  
**Before:** Judge Nicola Lettieri, Contempt Judge  
**Registrar:** Mr Daryl Mundis, Registrar  
**Date:** 11 May 2015  
**Original language:** English  
**Classification:** Confidential

**IN THE CASE AGAINST**

***AL JADEED [CO.] S.A.L./ NEW T.V. S.A.L. (N.T.V.)***  
**KARMA MOHAMED TAHSIN AL KHAYAT**

**DECISION ON *AMICUS CURIAE* PROSECUTOR'S SUBMISSIONS ON DEFENCE  
WITNESS DT08**

***Amicus Curiae* Prosecutor:**  
Mr Kenneth Scott

**Counsel for *Al Jadeed [CO.] S.A.L./***  
***NEW T.V. S.A.L. (N.T.V.)* and**  
**Ms Karma Khayat:**  
Mr Karim A.A. Khan  
Mr Rodney Dixon  
Ms Shyamala Alagendra



## INTRODUCTION

1. On 5 May 2015, the *Amicus Curiae* Prosecutor (“*Amicus*”) requested that I exclude the evidence of Defence witness DT08.<sup>1</sup> The Defence responded, opposing the Motion.<sup>2</sup>
2. Having considered the Parties’ submissions, I grant the Motion in part.

## APPLICABLE LAW

3. Rule 112 (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that the Defence shall, “[...] within the time-limit prescribed by the Pre-Trial Judge or the Trial Chamber, but not less than one week prior to the commencement of the Defence case: [...] (ii) provide to the Prosecutor copies of statements if any, of all witnesses whom the Defence intends to call to testify at trial”.
4. Rule 128 (i) (b) provides that the Defence must file “[...] a summary of the facts on which each witness is expected to testify”.

## DISCUSSION

### ***A. The position of the Amicus***

5. The *Amicus* avers that the Defence has not complied with its disclosure obligations because it did not provide him with witness DT08’s statement, or other adequate disclosure, but only a short summary of the witness’s expected testimony.<sup>3</sup>
6. The *Amicus* also submits that calling witness DT08, a Judge in Lebanon, to provide evidence as to the actions of parties who appeared before him and the reasons for his decisions is inappropriate.<sup>4</sup>
7. The *Amicus* further argues that witness DT08 is in effect an expert witness with respect to his intended testimony on the legal provisions governing the service of documents in Lebanon.

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<sup>1</sup> STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/T/CJ, F0143, Submissions on Defence Witness DT08, Confidential, 5 May 2015 (“Motion”). All further references to filings and decisions refer to this case number unless otherwise stated.

<sup>2</sup> F0147, Defence Response to Submissions on Defence Witness DT08, Confidential with Confidential Annexes, 7 May 2015, (“Response”).

<sup>3</sup> Motion, paras 1, 5-6.

<sup>4</sup> *Id.* at para. 7.

Accordingly, the Defence has failed to comply with its disclosure obligations under Rule 161.<sup>5</sup> The *Amicus* avers that the Defence has not provided him with the witness's *curriculum vitae* nor with the corresponding expert report or statement. He recalls that the Defence had declared that it did not expect to call any expert witnesses.<sup>6</sup>

### ***B. The position of the Accused***

8. The Defence opposes the Motion.<sup>7</sup> It rejects the *Amicus*'s arguments that its disclosure with respect to witness DT08 has been inadequate. The Defence argues that it complied with my Order on the conduct of proceedings and that it notified the *Amicus* of the issues that the witness would address in his testimony.<sup>8</sup>

9. The Defence avers that, under Rule 112, it must only disclose statements of its witnesses if they exist and that it promptly provided the *Amicus* with a copy of the proofing notes of the witness.<sup>9</sup>

10. The Defence also rejects the *Amicus*'s argument that it would be inappropriate to call a judge to give evidence on domestic proceedings because no rule or practice prevents this and it has been done in other international courts.<sup>10</sup>

11. The Defence submits further that witness DT08 is not an expert witness but a witness of fact and that he will testify about his knowledge of the forgery proceedings concerning Ms Mariam Al-Bassam and service of the Pre-Trial Judge's Order of 10 August 2012.<sup>11</sup>

### ***C. Discussion***

12. I first note that, contrary to the *Amicus*'s argument,<sup>12</sup> the Rules do not require the Defence to produce statements for those witnesses it wishes to call. Rule 112 (A) is clear in stating that the Defence must provide the Prosecutor with statements only if they exist ("if any").

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<sup>5</sup> Motion, para. 8.

<sup>6</sup> *Ibid.*

<sup>7</sup> Response, para. 15.

<sup>8</sup> *Id.* at paras 4, 9.

<sup>9</sup> *Id.* at paras 5-6.

<sup>10</sup> *Id.* at para. 7.

<sup>11</sup> *Id.* at para. 8.

<sup>12</sup> Motion, para. 6.

13. However, Rule 128 (i) (b) states that, prior to the commencement of its case, the Defence must provide “a summary of the facts on which each witness is expected to testify”. This provision is based on the underlying principle that the Prosecution must be put on notice of these facts, allowing it to properly prepare its cross-examination.<sup>13</sup> The summary can therefore not be so general or minimal that it does not provide adequate notice.<sup>14</sup>

14. Here, in the absence of a more detailed witness statement, I find that the succinct three-paragraph summary provided by the Defence is not fully adequate because it fails to provide sufficient notice to the *Amicus* with respect to all the facts on which the witness is expected to testify.

15. Paragraph 1 of the summary explains that the witness will testify on his “knowledge of the circumstances surrounding the initiation of a forgery complaint by Ms Mariam Al Bassam against Chief Warrant Officer Akram Rahal in October 2013”.<sup>15</sup> This description is not sufficiently precise in that it does not spell out with the necessary clarity the actual facts about which the witness is expected to testify in this respect which would allow meaningful preparation by the *Amicus*.

16. Similarly, paragraph 3 of the summary states that the witness will testify about his “knowledge, as the judicial officer with carriage of the aforementioned forgery complaint, of the legal provisions governing the service of the document underlying the aforementioned forgery complaint and similar such documents”.<sup>16</sup> Again, this description is too vague to meet the requirements under Rule 128 because it does not spell out any facts about which the witness would testify with sufficient specificity to permit the *Amicus* to prepare.

17. Paragraph 2 of the summary is specific enough in its description of the facts on which the witness will testify: “Judge Bou Samra’s knowledge, as the judicial officer with carriage of the aforementioned forgery complaint, of the pre-hearing meeting between Judge Bou Samra, Ms.

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<sup>13</sup> See ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Decision on Prosecution Urgent Motion Related to Non-Compliance of Stanišić Defence with Rule 65 *ter* (G) and Rule 67 of the Rules, 12 October 2011, para. 22 (on the equivalent ICTY Rule).

<sup>14</sup> See ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Prosecution Motion for Relief for Defence Disclosure Violations – Srebrenica Witnesses, 11 April 2013, para. 8.

<sup>15</sup> Motion, Annex A.

<sup>16</sup> *Ibid.*

Mariam Al Bassam and Ms. Maya Habli held on 23 October 2013, in which the complaint was withdrawn.”<sup>17</sup> This description provides adequate notice for the *Amicus* to prepare.

18. While the Defence has now disclosed proofing notes to the *Amicus*, I find that this disclosure occurred too late to permit the *Amicus* to properly prepare for the witness’s testimony in respect to the parts of the summary that were not sufficiently clear.

19. As a result, I will only allow witness DT08 to testify on the matters covered by paragraph 2 of the summary that was disclosed to the *Amicus*.

20. This testimony is limited to the witness’s first-hand account of the facts that occurred during the 23 October 2013 pre-hearing meeting. This testimony qualifies as factual, not expert testimony. I therefore need not address the *Amicus*’s complaint that the Defence did not provide proper notice as regards expert testimony.

#### ***D. Confidentiality***

21. Certain submissions in this matter were filed confidentially. Though there is indeed information in the filings that should remain confidential, they should be made public with appropriate redactions. I therefore order the Parties to file, as appropriate, public redacted versions of their submissions. I encourage the Parties to verify their redactions with one another before filing their redacted submissions. A public redacted version of this Decision will also be issued.

### **DISPOSITION**

**FOR THESE REASONS;**

**PURSUANT** to Rules 60 *bis*, 112 and 128 of the Rules;

**I**

**GRANT** the Motion in part;

**AUTHORIZE** witness DT08’s factual testimony only with respect to paragraph 2 of the witness summary disclosed to the *Amicus*, which reads as follows:

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<sup>17</sup> Motion, Annex A.

“Judge Bou Samra’s knowledge, as the judicial officer with carriage of the aforementioned forgery complaint, of the pre-hearing meeting between Judge Bou Samra, Ms. Mariam Al Bassam and Ms. Maya Habli held on 23 October 2013, in which the complaint was withdrawn.”;

**ORDER** the Parties to file public redacted versions of the submissions related to this Decision;  
and

**DISMISS** the Motion in every other respect.

Done in Arabic, English and French, the English version being authoritative.

Dated 11 May 2015

Leidschendam, the Netherlands



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Judge Nicola Lettieri  
Contempt Judge

