

**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: 8 July 2015

Original language: English

Classification: Public

Order to Prosecution to Disclose Text Messages to Sabra Defence

(Extract from Official Public Transcript of Hearing on 8 July 2015, page 49, line 18 to page 52, line 15)

On the 7th of July, 2015, in court, counsel for the accused Mr. Sabra, Mr. Mettraux, made an oral application to the Trial Chamber to order the Prosecution to disclose what he said was the content of four or five SMS messages relevant to the testimony of Mr. Ben-Jeddo, who is shortly to testify. And according to Mr. Mettraux -- that was at page 102 of the transcript of the 7th of July. And according to Mr. Mettraux, each of these SMSs relate to -- or were sent or received in 2005, that's at page 104.

The reasons given by counsel for seeking this order were that it was material to Defence preparations because of contact between Mr. Ben-Jeddo and another person and another witness and that same other person "with people who are of interest to us, some of whom we believe might have been implicated either in the operation to kill Mr. Hariri or in the operation to hide the responsibility of those who carried out the attack." That was at page 105 of the transcript.

Rule 110(B) of the Rules of Procedure and Evidence require the Prosecution to disclose or make available to the Defence any object in the Prosecutor's custody or control

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which is material to the preparation of the Defence or is intended for use by the Prosecutor as evidence at trial. The Prosecution opposed the application, saying that there was nothing in the messages which was material in their view to the Defence preparations for trial. That was at page 110 to 111 of yesterday's transcript.

The Trial Chamber, when we heard legal submissions on this issue yesterday, did not have either the correspondence between counsel for Mr. Sabra and the Prosecution which resulted in the application yesterday, nor the SMS messages in question. As a result, we ordered the parties to provide us with the SMS messages -- I'm sorry, the parties to provide the Trial Chamber with the correspondence and the Prosecution to provide us, the Trial Chamber, with the SMS messages so that we could independently verify for ourselves whether it could be material to the preparation of the Defence for trial.

The Trial Chamber has viewed the SMS messages. There are five SMS messages: Three on the 19th of January, 2005; and two on the 27th of July, 2006. The three messages sent on the 19th of January, 2005, are basically a -- what you would call a group e-mail, saying: Wishing you well every year, may God be upon you with well being and blessing, with the name of the person who sent it following that. So there are three messages, that's basically relating to -- it's basically a happy Eid message sent to three different people. The two messages of the 27th of July say: We will be coming after five minutes at you home. That was in English. And the response to that two minutes later was: Okay. That is the content of these five messages.

The Trial Chamber has considered the Defence request that we order the Prosecution to disclose these to the Defence, as they may be --as they may be material to the preparation of the Defence for trial. We sympathize with the dilemma presented to the Defence in their not knowing what is in these messages and therefore they are unable to make an informed decision as to whether or not they could be relevant or not. And it's basically in the hands of the Prosecution to make that judgment call, so to speak, as to whether the messages may be relevant. There is of course some truth in what Mr. Milne said yesterday, in that he saw no relevance to -- or he saw nothing material in these messages in relation to Defence preparations for trial.

However, the Trial Chamber is of the view that because the Defence position appears to be that they may relate to contact between people they believe might have been implicated either in the operation to kill Mr. Hariri or in the operation to hide the responsibility of those

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who carried out the attack, that they may be marginally relevant to Defence preparations for trial. On this basis, we will, on this occasion, order the Prosecution to disclose these five SMS messages to Defence counsel. But I say having read the messages, we can only say no more than it might be marginally relevant, not that it is -- not that we can say that it is completely material, but that is not our judgment call at the moment.

So the order is to the Prosecution to disclose these text messages to the Defence immediately; and secondly, for the parties, that is, counsel for Mr. Sabra and the Prosecution, to file before the Trial Chamber, please, in a joint filing, the correspondence in a redacted form. We don't need a submission, we just simply need a cover page saying that this is the correspondence referred to in the order which we have just issued. And we do that just so that the material supporting this decision is on the court file.

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