

**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: 12 January 2016

Original language: English

Classification: Public

**DECISION GRANTING SABRA'S REQUEST FOR LEAVE FOR
RECONSIDERATION OF TRIAL CHAMBER'S ORDER OF 10 JULY 2015**

(Extract from Official Public Transcript of Hearing on 12 January 2016, page 91, line 11 to
page 95, line 8)

This is a decision on the request -- urgent request for reconsideration of the decision on disclosure motion, filing F2397, filed by counsel for Mr. Assad Hassan Sabra on the 6th of January, 2016, in which they sought leave under Rule 140 of the Special Tribunal's Rules of Procedure and Evidence for the leave of the Presiding Judge for the Trial Chamber to reconsider a decision of the 10th of July, 2015.

In that decision the Trial Chamber dismissed, in a decision rendered in court, a motion filed by counsel for that accused seeking the disclosure of the full mobile telephone contact list of Witness 430. The Trial Chamber found that counsel had not demonstrated why the full contact list was material to Defence preparations or how it could be exculpatory. Counsel did not ask for the contact information listed in Witness 430's mobile phone for any specific number. Instead, they requested the entire list in case additional numbers of interest happened to appear in it.

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From these submissions, the Trial Chamber could not determine the materiality to the Sabra Defence case and the Chamber agreed with the Prosecution's submissions on privacy as it raised privacy concerns for everyone else in Witness 430's contact list.

The Trial Chamber held that the full contact list does not establish anything beyond that they were in the witness's telephone and the information he listed for them. There was, therefore, no basis for its disclosure under either Rule 110(B) or Rule 113. The Trial Chamber also invited counsel for Mr. Sabra to request from the Prosecution the contact information of specific numbers rather than asking for the entire contact list.

On the 6th of January, 2016, counsel for Mr. Sabra asked for leave to reconsider that decision in the same motion. They made substantive reconsideration submissions if I granted leave to reconsider. They argued that upon review of documents potentially relevant to cross-examination of Witness 486, the Defence had come to the view that this witness might be able to testify to the attribution of certain telephone and mobile numbers, including, if relevant, from Witness 430's mobile phone list.

They argued it is not readily apparent from the list of remaining Prosecution witnesses which other witnesses may be able to attribute some of these numbers. The Defence wishes to consider in an informed matter whether the attribution of some of these numbers could be established through Witness 486 since he had examined this entire contact list. Further, he was one of the investigators who took the decision to stop the process of review of the full contact list. He also made comments regarding some of the numbers listed in the relevant investigator's notes.

The witness in question is Mr. [...] Alasdair Macleod who is presently testifying.

The Defence submits that these factors warrant reconsideration of the decision to prevent injustice and to guarantee the fairness of proceedings and equality of arms between the parties.

The Prosecution argued or responded that the only connection between Mr. Macleod and Witness 430 is that Mr. Macleod is one of the investigators who interviewed the witness and who in investigator's notes made comments with respect to some of the numbers in Witness 430's contact list that were discussed during the interview.

The Sabra Defence already had access to the 111 contacts from Witness 430's phone that were discussed in the interview and an investigator's note containing Mr. Macleod's comments. The Sabra Defence [...] has not identified any reason to consider that Mr.

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Macleod could identify or comment on the users of any other phone numbers in Witness 430's contact list. That the Sabra Defence may ask certain questions during their cross-examination of Mr. Macleod if Witness 430's contact list contains numbers that the Defence considers relevant does not amount to a new fact warranting reconsideration.

Further, counsel for Mr. Sabra have not demonstrated that the entire contact list of Witness 430 is subject to disclosure under Rules 110(B) and 113. Neither has the Defence identified and requested from the Prosecution or the Lebanese authorities information related to specific numbers of interest. Moreover, the Defence may present evidence relevant to the attribution of such numbers by calling its own witnesses.

The Prosecution concludes that no injustice results if it is unable to elicit attribution evidence from one particular Prosecution witness.

Finally, the Prosecution criticized the Defence's filing its motion as "urgent" despite the Trial Chamber directing in an oral order of the 16th of November, 2015, that Mr. Macleod should be made available for cross-examination and despite being aware of the investigator's note concerning Witness 430's mobile telephone contacts since November 2012.

Under Rule 140, the Trial Chamber may, proprio motu, or at the request of a party with the leave of the Presiding Judge, reconsider a decision, if necessary to avoid injustice. Reconsideration is an exceptional remedy and a party must show that the decision has resulted in an injustice. The Presiding Judge must grant leave before the Chamber can reconsider a decision.

The role of the Presiding Judge is to provide a prime facie examination of the request to ensure that it may be admitted in terms of procedure and that it is not manifestly ill-founded, including a filtering function to prevent the filing of unwarranted requests. The request must be duly reasoned and reconsideration may only be granted if the application is not manifestly unfounded, frivolous, or aimed at circumventing the Rules. The Presiding Judge acts as a filter to screen applications to ensure that they contain the procedural and legal justifications necessary to allow the Trial Chamber to decide an application for reconsideration on its merits.

As the Presiding Judge, I've carefully reviewed the arguments of counsel for Mr. Sabra and the Prosecution's response. I am not convinced that the request for leave is manifestly unfounded, frivolous, or aimed at circumventing the Rules, and for that reason I've granted leave to the Trial Chamber to reconsider its decision of the 10th of July, 2015.

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