

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE CONTEMPT JUDGE

Case No.: STL-14-06/T/CJ

Before: Judge Nicola Lettieri, Contempt Judge

Registrar: Mr Daryl Mundis, Registrar

Date: 29 February 2016

Original language: English

Classification: Public

IN THE CASE AGAINST

AKHBAR BEIRUT S.A.L.
IBRAHIM MOHAMED ALI AL AMIN

**CORRECTED PUBLIC REDACTED VERSION OF DECISION ON MOTION FOR
RECONSIDERATION AND CERTIFICATION OF THE DECISION DISMISSING
REQUEST FOR EXHIBIT LIST AMENDMENT**

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

**Counsel for *Akhbar Beirut* S.A.L. and Mr
Ibrahim Mohamed Ali Al Amin:**
Mr Antonios Abou Kasm



INTRODUCTION

1. On 23 February 2016, the day before the commencement of trial in these proceedings, the *Amicus Curiae* Prosecutor (“*Amicus*”) filed a motion requesting leave to add six new exhibits to his Exhibit List, the application of protective measures for those exhibits and that these exhibits be admitted into evidence pursuant to Rule 154 of the Rules of Procedure and Evidence (“Rules”).¹

2. Without hearing from the Defence, two days later I dismissed this Motion in an oral decision on 25 February 2016 (“Oral Decision”), on the basis that the request came at too late a stage of the proceedings and would unduly prejudice the rights of the Accused.² At the time, the *Amicus* immediately expressed that the decision was “completely unfair”³ and then asked that the matter be certified for interlocutory appeal.⁴

3. I afforded the parties the opportunity to provide oral submissions on the issue of certification later that same day.⁵ The *Amicus*’s oral submissions implicitly requested reconsideration of the Oral Decision and, failing that, sought certification for interlocutory appeal. The Defence opposed the *Amicus*’s request for certification.

4. In light of the reasons set out below, I dismiss the *Amicus*’s requests.

APPLICABLE LAW

5. Under Rule 140, I may reconsider a decision at the request of a party where it is necessary to avoid injustice.

6. Rule 126 (C) specifies that interlocutory decisions are without appeal save with certification, if the decision involves “an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate

¹ STL, *In the matter against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0202, Request for Protective Measures, Motion for Amendment of the Rule 91(G)(iii) Prosecution Exhibit List and for Admission of Evidence Pursuant to Rule 154, Confidential, 23 February 2016 (“Request”). All further references to filings and decisions refer to this case number unless otherwise stated.

² STL, *In the matter against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/T/CJ, Trial Transcript, 25 February 2016, Confidential, pp. 62-63 (“Trial Transcript of 25 February”).

³ Trial Transcript of 25 February, p. 63

⁴ *Id.* at p. 66.

⁵ Email from Chambers Legal Officer to the Parties, 25 February 2016.

resolution by the Appeals Chamber may materially advance the proceedings”. Pursuant to Rule 60 *bis* (H), Rule 126 (C) is applicable, *mutatis mutandis*, in contempt proceedings.⁶

7. The Tribunal’s Appeals Chamber has held that certification “must necessarily be the exception”.⁷ The Rule’s high threshold requires under its first prong a serious assessment of an issue’s significance.⁸ Likewise, under the second prong, which concerns the matter of urgency, the assessment must be related only to issues for which an immediate resolution by the Appeals Panel may advance the proceedings.⁹ In general, the party applying for certification must take care to ensure that it specifies the appealable issues in its request.¹⁰

DISCUSSION

I. Position of the Parties

A. Position of the Amicus

8. The *Amicus* asserts that fairness requires either “allowing the parties a fair resolution” in respect of the Oral Decision or, failing that, certification for interlocutory appeal.¹¹ In particular, the *Amicus* argues that the Request was made at a late stage in the proceedings because of the “Court’s slowness in ruling” on earlier but related motions involving [REDACTED].¹²

⁶ I note that all appeals in contempt proceedings are brought before a specially designated Appeals Panel (*see* Rule 60 *bis* (M) STL RPE; STL, Practice Direction on Designation of Judges in Matters of Contempt, Obstruction of Justice and False Testimony, STL-PD-2013-06-Rev.3, 27 February 2013; STL, Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Special Tribunal for Lebanon, STL-PD-2013-07-Rev.1, 13 June 2013).

⁷ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.1, F0012/COR, *Corrected Version of Decision on Defence Appeals Against Trial Chamber’s Decision on Reconsideration of the Trial In Absentia Decision*, 1 November 2012, para. 8; *see also* F0036, *Decision on the Request for Certification to Appeal Decision on Assignment of Counsel*, 17 July 2014, para. 10.

⁸ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR126.2, F0008, *Decision on Appeal Against Pre-Trial Judge’s Decision on Motion by Counsel for Mr Badreddine Alleging the Absence of Authority of the Prosecutor*, 13 November 2012, para. 13.

⁹ *Id.* at para. 14.

¹⁰ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/AR90.2, F0007, *Decision on Defence Appeals Against the Trial Chamber’s “Decision on Alleged Defects in the Form of the Amended Indictment”*, 5 August 2013, paras 10-11.

¹¹ Trial Transcript of 25 February, pp. 69-70.

¹² *Id.* at p. 68. [REDACTED].

9. The *Amicus* argues that the material he seeks to add to his Exhibit List consists of six documents, none lengthy, which are “official records from the Tribunal’s Registry”.¹³ The *Amicus* notes that I previously ruled that the pertinent records had a factual nexus to the case and could likely materially assist in the presentation of the case.¹⁴

10. Moreover, the *Amicus* argues that certification of the Oral Decision for appeal is required given that the “nature of the evidence itself is highly important” to the outcome of this case.¹⁵ At the same time, the *Amicus* argues that the material is not complex, can be read in a matter of minutes and does not inject a new issue into the case.¹⁶ The *Amicus* estimates that the Defence would have an abundance of time to deal with this material and cites the period of time available to the Defence after the close of the *Amicus*’s case,¹⁷ although he acknowledges that the Defence is not obliged to present a case whatsoever.¹⁸ The *Amicus* asserts that the issue of these documents can be resolved now without the need for an appeal but that absent a “happy resolution”, he requests certification to be granted so that he can gain quick resolution of this matter before his case closes.¹⁹

B. Position of the Defence

11. The Defence states that it shares the views expressed in the Oral Decision where I rejected the *Amicus*’s Request for lack of timeliness.²⁰ The Defence argues that Rule 126 (C) provides for certification for appeal to be granted where the issue affects the fair and expeditious conduct of the proceedings. It argues that an appeal at this stage would be contrary to the expeditious conduct of the proceedings and would not materially advance the proceedings.²¹ An appeal would be counterproductive and lengthen the trial, at the expense of the Accused.²²

¹³ Trial Transcript of 25 February, pp. 68-69.

¹⁴ *Id.* at p. 69.

¹⁵ *Id.* at p. 70.

¹⁶ *Id.* at p. 68.

¹⁷ *Id.* at p. 64.

¹⁸ *Id.* at p. 66.

¹⁹ *Id.* at pp. 70-71.

²⁰ *Id.* at p. 71.

²¹ *Ibid.*

²² Trial Transcript of 25 February, p. 72.

C. Discussion

12. Although he has not stated so explicitly, I infer from the *Amicus*'s submissions that he requests reconsideration of the Oral Decision and failing that, seeks certification for interlocutory appeal. Therefore, I will address the merits of both requests.

13. With respect to the *Amicus*'s request for reconsideration, I recall that as a first step, I must conduct a *prima facie* assessment of the merits of the sought reconsideration before examining the request further. Here, I find that the *Amicus* request is manifestly unfounded.

14. I first note that contrary to the arguments raised by the *Amicus*, the Oral Decision left open whether or not he had acted with due diligence in bringing the Motion at such a late stage. Rather, the Oral Decision was based on the fact that permitting an amendment of the exhibit list would be prejudicial to the Defence, because it "would not allow the Defence adequate time to prepare without a further postponement of the trial. Such a postponement would cause undue delay in the proceedings, thereby infringing on the Accused's right to an expeditious trial."²³ I therefore find the arguments of the *Amicus* as to his efforts in bringing the Motion before me in a timely manner irrelevant.

15. In any event, I find unfounded the *Amicus*'s claim that it was unfair to dismiss his Motion for lateness when it is this Chamber that bears the responsibility for providing a late response to certain other motions. I understand this to be a reference to [REDACTED].²⁴ I note however that this request was only filed on 24 November 2015 which was, at the time, only two months before the then-scheduled commencement of trial, 28 January 2016.²⁵ The *Amicus* should have taken into consideration that this type of request requires [REDACTED]. Moreover, I agree with the Defence argument that the *Amicus* has had the opportunity to investigate and compile evidence in this matter for a number of years. Indeed, the *Amicus* had the opportunity to access this type of material [REDACTED] long before he submitted his original request. Thus, the Request arrived at a very belated point in these proceedings, and the *Amicus* failed to show good cause for doing so.²⁶ Therefore, I do not find that the *Amicus* made his initial request in a timely fashion and

²³ Trial Transcript of 25 February, p. 63.

²⁴ [REDACTED].

²⁵ F0111, Scheduling Order, 14 October 2015.

²⁶ Trial Transcript of 25 February, p. 72.

equally reject the suggestion that the late filing of his Request is due only to the date on which the 11 February 2016 Decision was issued.

16. Moreover, I reject the *Amicus's* argument that the Defence would have an abundance of time to deal with this material due to the period of time available after the close of the *Amicus's* case and the beginning of the Defence's case. As the *Amicus* acknowledges, the Defence is not obliged to present a case whatsoever.

17. With respect to my finding in the Oral Decision that the addition of the concerned documents to the *Amicus's* Exhibit List could not be justified given the irreparable prejudice that the Accused would suffer as a result, the *Amicus* has failed to show any change of circumstances or facts or any error in the Oral Decision such that the interests of justice may require me to reconsider this decision. In conclusion, a party seeking reconsideration cannot merely repeat the same arguments that led to the original decision in the first place,²⁷ whereas all the *Amicus* has done here is voice his disagreement with the Oral Decision. This does not meet the high threshold for reconsideration. I therefore dismiss the *Amicus's* request to provide an immediate remedy by reconsidering the Oral Decision.

18. As regards his request for certification, the *Amicus* has failed to meet the requirements under Rule 126 (C). In particular, he has not demonstrated the requisite significance and urgency to obtain leave to appeal the Oral Decision. Mere disagreement with the reasoning set out in my previous decision does not, in itself, give rise to a certifiable issue.²⁸ Certification must be exceptional and the *Amicus* has not persuaded me that the issue raised, being an unsuccessful attempt to introduce six new documents the day before trial commences, would significantly affect the fair and expeditious conduct of these proceedings or the outcome of the trial. Indeed, I already dismissed above the *Amicus's* arguments that he has been diligent and that trial fairness requires admission of these materials. Moreover the *Amicus* has failed to substantiate his arguments any further than stating that "the nature of the evidence itself is highly important to

²⁷ See STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/RES, F1618, Decision on the Head of Defence Office "Request to Change the Conditions Imposed by the Decisions of 21 December 2012 and 27 March 2013 relating to the Assignment of Mr Nashabe", 14 July 2014, para. 16.

²⁸ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, F2069, Decision Denying Certification to Appeal the Trial Chamber's Decision on Issuing a Summons to Witness 012, 10 July 2015, para. 20.

this decision.”²⁹ He has not elaborated on the particulars of the alleged impact on the case as a whole. He has therefore not met the first prong of Rule 126 (C).

19. While I could dismiss the certification request on this basis alone, I also find that an immediate resolution of this issue by the Appeals Panel would not materially advance the proceedings but rather would only further lengthen and delay this trial which is currently underway. I have recently twice allowed the *Amicus* to amend his Exhibit List and postponed this trial once as a result.³⁰ The Accused has a right to adequate time and facilities in the preparation of their defence and also to be tried expeditiously.³¹ The principles of fairness and expeditiousness require that this trial continue without further interruption or postponement. Consequently, I dismiss the *Amicus*’s request for certification.

Confidentiality

20. This decision is filed confidentially as it makes reference to the content of filings which remain classified as confidential. A public redacted version will also be issued.

²⁹ Trial Transcript of 25 February, p. 68.

³⁰ See F0164, Public Redacted Version of Decision on Motions to Amend the *Amicus Curiae* Prosecutor’s Exhibit and Witness Lists, 18 December 2015; see also F0201, Decision on Motion for Amendment of the Rule 91(G)(iii) Exhibit List and for Admission of Evidence Pursuant to Rule 154.

³¹ See Art. 16 STL St.

DISPOSITION

FOR THESE REASONS;

PURSUANT TO Rules 126 (C) and 140;

I

DISMISS the *Amicus's* requests in their entirety.

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

Dated 29 February 2016

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

