

SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE CONTEMPT JUDGE

Case No.: STL-14-06/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 2 March 2016
Original language: English
Classification: Public

IN THE CASE AGAINST***AKHBAR BEIRUT S.A.L.*
IBRAHIM MOHAMED ALI AL AMIN**

**PUBLIC REDACTED VERSION OF DECISION ON MOTION FOR ADMISSION OF
THE STATEMENT OF WITNESS AP02 AND OF WITNESS AP14 PURSUANT TO
RULE 156**

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

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



INTRODUCTION

1. The *Amicus Curiae* Prosecutor (“*Amicus*”) requests, pursuant to Rule 156 of the Rules of Procedure and Evidence (“Rules”), that I admit into evidence the written statements of witnesses AP02 and AP14, in lieu of examination-in-chief, with some additional questioning of witness AP02 (Request).¹ The Defence opposes the Request.²

APPLICABLE LAW

2. The following provisions of the Rules, which apply *mutatis mutandis*,³ are relevant to my determination.

3. As a general matter, pursuant to Rule 149 (C), the Contempt Judge may admit any relevant evidence which he deems to have probative value. Rule 154 enables the Contempt Judge to admit evidence in the form of a document or other record, subject to Rules 155, 156 and 158, and consistent with Rule 149 (C) and (D).

4. Under Rule 156, the Contempt Judge may admit, in lieu of examination-in-chief, the evidence of a witness in the form of a written statement that goes to proof of the acts and conduct of the accused as charged in the indictment, only if the following conditions are met: (1) the witness is present in court; (2) the witness is available for cross-examination and any questioning by the Contempt Judge; and (3) the witness attests that the written statement accurately reflects that witness’s declaration and what the witness would say if examined.

5. I am also guided by the well-established practice of the International Criminal Tribunal for the former Yugoslavia (“ICTY”). The jurisprudence holds that the main objective of

¹ STL, *In the case against Akhbar Beirut S.A.L. and Al Amin*, STL-14-06/PT/CJ, F0184, Motion for Admission of the Statement of Witness AP02 and of Witness AP15 Pursuant to Rule 156, 12 February 2016 (“Request”). All further references to filings and decisions refer to this case number unless otherwise stated.

² F0185, Defence Response to the *Amicus Curiae* Prosecutor’s Motion for Admission into Evidence of the Statement of Witness AP02 and of Witness AP15 Pursuant to Rule 156, 15 February 2016 (“Response”).

³ Rule 60 *bis* (H) STL RPE.

Rule 92 *ter* of the ICTY Rules of Procedure and Evidence, which is the equivalent of Rule 156, is to ensure an effective and expeditious trial in accordance with the rights of the accused.⁴

DISCUSSION

I. Position of the Parties

A. Position of the *Amicus*

6. The *Amicus* requests the application of Rule 156 to the testimony of witnesses AP02 and AP14.⁵

1. Witness AP02

7. The *Amicus* argues that the statement of witness AP02 sets out his evidence in an efficient manner and is clearly relevant and probative.⁶ Further, witness AP02 will be present in court, available for cross-examination and the Judge's questions, and will attest that the statement accurately sets out his evidence and what his testimony would be if examined orally.⁷

8. Following the affirmation and adoption of his statement, the *Amicus* expects to ask the witness a limited amount of supplemental questions to explain and clarify some points.⁸ Finally, the *Amicus* argues that admitting the evidence of witness AP02 in this way will substantially expedite the trial proceedings and ensure that he will be able to present his case in the allocated time.⁹

2. Witness AP14

9. The *Amicus* argues that the witness statement of AP14 is relevant and probative, [REDACTED]¹⁰ The *Amicus* asserts that the evidence of witness AP14 is straightforward and its

⁴ ICTY, *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 3 July 2007, p. 2; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Motion to Convert *Viva Voce* Witnesses to Rule 92 *ter* Witnesses, 31 May 2007, p. 2.

⁵ Request, p. 1.

⁶ *Id.* at para. 5.

⁷ *Ibid.*

⁸ Request, para. 6.

⁹ *Id.* at para. 8.

¹⁰ *Id.* at para. 9.

admission pursuant to Rule 156 achieves the greatest efficiency, while still making her fully available for cross-examination and the Judge's questions.¹¹ [REDACTED]¹²

10. The *Amicus* does not anticipate that he will have any supplemental questions for witness AP14, beyond affirming her statement.¹³ Finally, the *Amicus* submits that the Defence will not be prejudiced in any way, as the Defence will have exactly the same opportunity for full cross-examination as if the witness had provided her evidence by way of examination-in-chief.¹⁴

B. Position of the Defence

1. Witness AP02

11. The Defence opposes the admission of the statement of this witness under Rule 156 for two reasons.¹⁵ The first objection is that the evidence presented in this statement is contested by the Defence and too significant to the charges to be simply admitted in the form of a written statement instead of a customary examination-in-chief.¹⁶ The Defence relies on case-law from the ICTY which states that the significance of the proposed evidence to the issue of criminal responsibility is a factor militating against the admission of this evidence pursuant to Rule 92 *ter*, which is the ICTY's equivalent of Rule 156 of the Rules.¹⁷

12. Second, the Defence alleges that there are several contradictions between witness AP02's statement and those of other witnesses and documents submitted in the case.¹⁸ The Defence asserts that it would be in the interest of justice for the Defence to test the credibility of the witness at all stages of the proceedings, notably on the basis of the witness's responses given during a customary examination-in-chief.¹⁹

¹¹ Request, para. 10.

¹² *Ibid.*

¹³ Request, para. 11.

¹⁴ *Id.* at para. 12.

¹⁵ Response, para. 2.

¹⁶ *Id.* at paras 2, 3.

¹⁷ *Id.* at para. 4.

¹⁸ *Id.* at para. 6.

¹⁹ *Id.* at paras 7, 8.

2. Witness AP14

13. On 10 February 2016, the Defence filed a motion to exclude witness AP14 from the *Amicus*'s witness list,²⁰ and it maintains that position.²¹ The Defence objects to the admission of AP14's witness statement on the grounds that the statement was only disclosed to the Defence on 12 February 2016, whereas the trial is scheduled to start on 24 February 2016.²² Further, the statement comprises new essential information which was not previously disclosed to the Defence.²³ The Defence argues that the information should have been disclosed to the Defence much earlier in order for it to adequately prepare for trial, which correlates to the right of the Accused to a fair trial.²⁴

II. Discussion

1. Witness AP02

14. In relation to the Defence's first objection that the evidence to be provided by witness AP02 is so significant that it should be tendered *viva voce*, I note that there is nothing in the Rules or the Statute of this Tribunal that excludes admitting important evidence under Rule 156. Only in very exceptionally circumstances will I disallow a party from using a Rule 156 motion.²⁵ Therefore, the fact that witness AP02 statement contains evidence allegedly going to the heart of the charges in this case does not in itself necessitate that he be heard *viva voce*. Furthermore, the admission of witness AP02 statement in lieu of an examination-in-chief will expedite the proceedings while allowing for a full cross-examination of the witness by the Defence. I am therefore satisfied that allowing the submission of witness AP02's statement in lieu of an examination-in-chief is in compliance with the right of the Accused to a fair trial.

15. In relation to the Defence's second objection that witness AP02's purported testimony contradicts other evidence, I note that the Defence will have the opportunity to address all of the

²⁰ F0180, Motion for Sanctions Against the *Amicus Curiae* Prosecutor for Failing to Comply with his Disclosure Obligations, Confidential, 10 February 2016.

²¹ Response, para. 9.

²² *Ibid.*

²³ *Ibid.*

²⁴ Response, para. 10.

²⁵ ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Decision with Regard to Prosecution Motion for Admission into Evidence of Witness Harland's Statement and Associated Documents, 3 July 2012, para. 10.

alleged contradictions during cross-examination. The Defence is therefore not prejudiced by the presentation of witness AP02's evidence pursuant to Rule 156.

16. I further find that the evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 149 and 156.

2. Witness AP14

17. The Defence opposes the admission of witness AP14 statement on the grounds that it contains new essential information in paragraphs 15-17, not previously disclosed to the Defence. I previously ruled that I will not permit questioning or admit evidence which is beyond the scope of witness AP14's testimony as framed or summarized by the *Amicus* in his submissions and disclosures provided to the Defence before the 4 January 2016 deadline. [REDACTED] Consequently, the *Amicus* will not be permitted to tender into evidence or question the witness on information contained in paragraphs 15, 16 and 17 of the written statement of witness AP14.

18. With the exception of the excluded paragraphs, I find that the evidence is relevant, has probative value, and is appropriate for admission pursuant to Rules 149 and 156.

19. The requirements established by Rule 156 can only be satisfied once the witness appears in court and attests to the accuracy of his statement. I will therefore rule on the admission of witnesses AP02 and AP14 statements only after they have testified in court.

III. Confidentiality

20. 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 149 and 156;

I

DEFER my decision on admission of the Rule 156 statements for witnesses AP02 and AP14 until they have testified in court.

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

Dated 2 March 2016

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

