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SCSL-03-01-T  
(29681-29685)

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SPECIAL COURT FOR SIERRA LEONE

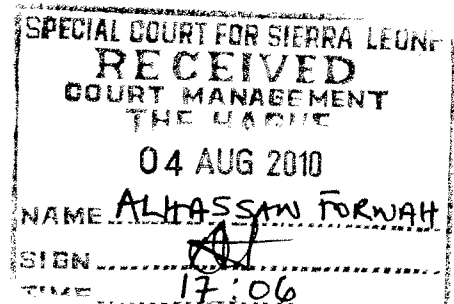
TRIAL CHAMBER II

Before: Justice Julia Sebutinde, Presiding Judge  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Binta Mansaray

Case No.: SCSL-03-1-T

Date: 4 August 2010



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON URGENT DEFENCE MOTION FOR STAY OF EVIDENCE  
PENDING DISCLOSURE OF THE STATEMENT OF NAOMI CAMPBELL

Office of the Prosecutor:

Brenda J. Hollis  
Sigall Horovitz

Counsel for the Accused:

Courtenay Griffiths, Q.C.  
Terry Munyard  
Morris Anyah  
Silas Chekera  
James Supuwood

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”); SEISED of the “Urgent Defence Motion for Stay of Evidence Pending Disclosure of the Statement of Naomi Campbell”, filed on 30 July 2010 (“Urgent Motion”),<sup>1</sup> wherein the Defence requests the Trial Chamber to stay the evidence of Naomi Campbell scheduled to be heard on 5 August 2010, pending disclosure by the Prosecution to the Defence of the statement of the said witness,<sup>2</sup> on the grounds that:

- (a) failure by the Prosecution to disclose Ms. Campbell’s statement violates its mandatory statutory obligation under Rule 66 of the Rules of Procedure and Evidence (“Rules”), and more importantly, the Accused’s fair trial rights under Article 17 of the Statute of the Special Court (“Statute”);<sup>3</sup>
- (b) it is implicit in Rule 66 that the Prosecution has an obligation to obtain a statement from any witness it intends to call;<sup>4</sup>
- (c) the Prosecution therefore has an obligation to obtain a statement from Ms. Campbell or alternatively, to apply for the appropriate relief from the court to ensure that it could obtain such a statement;<sup>5</sup>
- (d) the obligation of the Prosecution to obtain and disclose a witness’s statement is designed to safeguard the Accused’s fair trial rights guaranteed under Article 17(4) of the Statute, as well as Rule 66(A) of the Rules, for it is only through such disclosure that the Accused is informed adequately of the material details of the nature and cause of the charges against

<sup>1</sup> SCSL03-01-T-1023.

<sup>2</sup> Motion, paras 1, 23.

<sup>3</sup> Motion, para. 2.

<sup>4</sup> Motion, para. 11.

<sup>5</sup> Motion, paras 11, 19.

him and thus be in a position to adequately prepare his defence and to examine, or have examined, the witnesses against him;<sup>6</sup>

**RECALLING** the Trial Chamber's "Order for Expedited Filing", dated 2 August 2010, wherein the Trial Chamber ordered expedited filing schedules for a response and reply;<sup>7</sup>

**NOTING** the "Prosecution Response to Urgent Defence Motion for Stay of Evidence Pending Disclosure of the Statement of Naomi Campbell", filed on 3 August 2010 ("Response"),<sup>8</sup> wherein the Prosecution opposes the Motion on the grounds that:

- (a) the Prosecution has obtained no statement from the witness, and it has no interview or proofing notes of this witness as Ms. Campbell has declined requests to speak to the Prosecution;<sup>9</sup>
- (b) Rule 66 only imposes upon the Prosecution the obligation to disclose witness statements which are in its possession, and the Prosecution cannot be expected to disclose a statement which it does not have in its possession or which does not exist;<sup>10</sup>
- (c) the Prosecution is under no statutory or other obligation to obtain a statement from every witness, particularly in the present circumstances, where the witness is uncooperative and has not agreed to be interviewed;<sup>11</sup>
- (d) The summary disclosed by the Prosecution provides sufficient notice to the Defence as to her anticipated testimony;<sup>12</sup>

<sup>6</sup> Motion, paras 9, 12.

<sup>7</sup> SCSL-03-01-T-1026.

<sup>8</sup> SCSL-03-01-T-1032.

<sup>9</sup> Response, paras 3, 9.

<sup>10</sup> Response, para. 6-7.

<sup>11</sup> Response, para. 6.

<sup>12</sup> Response, paras 8-9.

NOTING ALSO the “Public with Confidential Annex A Defence Reply to Prosecution Response to Urgent Defence Motion for Stay of Evidence Pending Disclosure of the Statement of the Statement of Naomi Campbell”, filed on 3 August 2003 (“Reply”),<sup>13</sup>

COGNISANT of the provisions of Article 17(4) of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 54 and 66 of the Rules of Procedure and Evidence (“Rules”);

NOTING that on 27 July 2010, the Prosecution disclosed to the Defence a summary of the anticipated testimony of Naomi Campbell,<sup>14</sup> and further disclosed a correction to this summary on 3 August 2010;<sup>15</sup>

RECALLING that Article 17(4) of the Statute provides that the Accused has the right to be informed promptly and in detail of the nature and cause of the charges against him, to have adequate time and facilities for the preparation of his defence and to examine or have examined the witnesses against him;

RECALLING that Rule 66(A)(ii) of the Rules provides that the Prosecution shall continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify;

NOTING that the *subpoena* issued in relation to Ms. Campbell required her to appear as a witness before the court but did not require her to provide a statement to the Prosecution;<sup>16</sup>

CONSIDERING that “the Prosecution is neither able nor obliged to disclose documents that are not in its possession or to which it does not have access”,<sup>17</sup> nor is it obliged under Rule 66 to obtain a statement from an uncooperative witness;<sup>18</sup>

<sup>13</sup> SCSL-03-01-T-1036.

<sup>14</sup> Letter from Brenda J. Hollis, Prosecutor, to Courtenay Griffiths, Lead Defence Counsel, 27 July 2010


<sup>15</sup> Letter from Brenda J. Hollis, Prosecutor, to Courtenay Griffiths, Lead Defence Counsel, 3 August 2010.

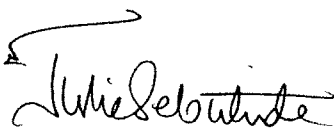
<sup>16</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-999, *Subpoena ad Testificandum*, 1 July 2010.


CONSIDERING FURTHER that “the fact that a witness does not have a prior statement does not render a trial unfair or automatically put a party at an unjust disadvantage. A witness may provide evidence which was unforeseen to both parties during his *viva voce* examination, independent of any previous statements, and [...] it is for the Chamber to determine, on a case by case basis, whether this new information could affect the fairness of the trial proceedings”;<sup>19</sup>

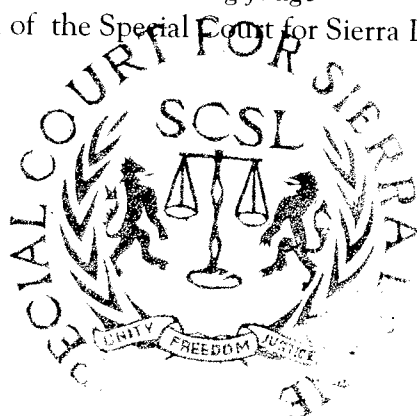
HEREBY DISMISSES THE MOTION.

Done at The Hague, The Netherlands, this 4<sup>th</sup> day of August 2010.

  
Justice Richard Lussick

  
Justice Julia Sebutinde  
Presiding Judge  
[Seal of the Special Court for Sierra Leone]

  
Justice Teresa Doherty



<sup>17</sup> *Prosecutor v. Stanisić and Simatović*, IT-03-69-T, Reasons for Decision on Postponement of Cross-Examination of the Testimony of Witness Milovanović, 22 July 2010 (“*Stanisić Decision*”), para. 8; *Prosecutor v. Karemera*, ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion of Notice of Violation of Rule 66(A)(ii) for Witness ALZ and AMC, and for Remedial and Punitive Measures, 11 July 2007, para. 6; *Prosecutor v. Nshogoza*, ICTR-07-91-PT, Decision on Defence Motion for the Prosecutor to Produce Videotape of Interview with Witness BUC, 31 December 2008, para. 5. See also *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T-246, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigators’ Notes Pursuant to Rules 66 and/or 68, 4 May 2005.

<sup>18</sup> See *Stanisić Decision*, para. 8, where the Trial Chamber held that “Rule 66 does not, however, require the Prosecution to produce a statement” and that “an ‘uncooperative’ witness may give testimony without providing the Prosecution with a prior statement”.

<sup>19</sup> *Stanisić Decision*, para. 9.