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SCSL-03-01-T
(37682-37696)

37682



THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

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

Registrar: Ms. Binta Mansaray

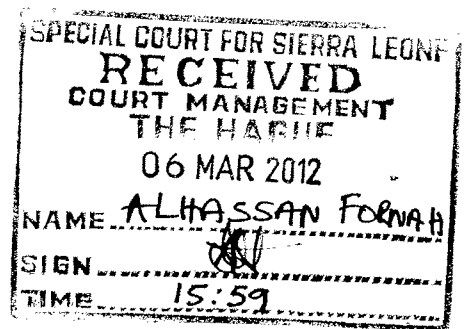
Date: 6 March 2012

Case No.: SCSL-03-01-T

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR



URGENT

PUBLIC, WITH CONFIDENTIAL ANNEXES A & B AND EX PARTE ANNEX C

DEFENCE REQUEST TO CHANGE DATE OF JUDGEMENT

Office of the Prosecutor:

Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:

Mr. Courtenay Griffiths, Q.C.

Mr. Terry Munyard

Mr. Morris Anyah

Mr. Silas Chekera

Ms. Logan Hambrick

I. INTRODUCTION

1. On 1 March 2012, the justices of Trial Chamber II issued a *Scheduling Order for Delivery of Judgement*.¹ The Chamber ordered that a public hearing shall be held in The Hague to deliver judgement in the case against Charles Taylor on Thursday, 26 April 2012 at 11:00am (the “judgement date”).
2. The Defence appreciates the effort by the Trial Chamber to give the parties adequate notice of the judgement date. The Defence however observes that the judgement date presents certain difficulties and respectfully requests the Trial Chamber to exercise its discretion and change the judgement date from Thursday, 26 April 2012, to Monday, 30 April 2012, or any other suitable date thereafter. This request is based on the following reasons:
 - a. Lead Counsel has prior professional engagements on the judgement date, which have been on the calendar since September 2011 and which cannot be moved;

and/or
 - b. The delivery of judgement in the Taylor case on the eve of Sierra Leone’s 51st Independence Day celebrations appears to be ill-timed and poses potential security risks.

II. LEGAL PRINCIPLES

3. Rule 54 of the Rules of Procedure and Evidence gives the Trial Chamber the power to issue any orders, which may be necessary for, *inter alia*, the conduct of the trial. The Trial Chamber has acknowledged that it is “within the inherent jurisdiction of the Trial Chamber to reconsider one of its own decisions in the case of a clear error of reasoning,

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1265.

or where new material circumstances have arisen since the decision was issued which justify reconsideration in order to avoid injustice".²

4. The decision to reconsider is a discretionary one.³

III. SUBMISSIONS

Lead Counsel has other Professional Engagements

5. Since June 2011, the Defence has proactively requested the Registry and the Trial Chamber to consult the parties prior to setting a date for judgement.⁴ As the legal services contracts for most Defence team members were temporarily suspended at the close of proceedings in this case in March 2011, counsel were compelled to seek interim employment elsewhere, and the Defence foresaw the potential that any judgement date set by the Trial Chamber could conflict with prior legal commitments. The Defence thus beseeched the Court for prior consultations as to any possible date.
6. However, more than seven months later, the Trial Chamber set the judgement date without consulting the parties.
7. Lead defence counsel is affected the most in this regard. As Lead Counsel has not been remunerated by the Special Court for Sierra Leone during the period between closing arguments in March 2011 and mid-April 2012,⁵ he has necessarily taken cases in other jurisdictions. As a result, Lead Counsel is scheduled to represent another client in a High

² *Prosecutor v. Taylor*, SCSL-03-01-T-1132, Decision on Public with Annex A Defence Motion for Reconsideration of Decision on Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 3 December 2010, p. 3

³ *Ibid*, citing *Prosecutor v. Taylor*, SCSL-03-01-T-595, Decision on Public with Confidential Annexes B and E Urgent Prosecution Application for Reconsideration of Oral Decision Regarding Protective Measures for Witness TF1-215 or in the Alternative Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TF1-215, 15 September 2008, p.4; *Prosecutor v. Delic et al*, IT-96-21-Abis, Judgement on Sentence Appeal, 8 April 2003, para. 48.

⁴ See Confidential Annex A: Email on 10 June 2011 from Terry Munyard addressed to the Registrar and copied to the Senior Legal Officer of Trial Chamber II; Email on 13 June 2011 from Courtenay Griffiths QC addressed to the Registrar and the Principal Defender and copied to the Senior Legal Officer of Trial Chamber II.

⁵ See Confidential Annex B: On 1 March 2012, Defence Counsel were informed by the Principal Defender that their legal services contracts will resume on 12 April 2012.

Court matter on 25 and 26 April 2012.⁶ This hearing has been scheduled since September 2011. As counsel had already committed himself, it is now too late to change this date; it is also too late for counsel to find a suitable replacement due to the complexities of the case and obligations to the client.

8. While, strictly speaking, this information on Lead Counsel's prior engagements does not constitute new material circumstances arising after the judgement date, in the present circumstances, the information has been rendered material by the Trial Chamber's unilateral decision, and should thus suffice as new material circumstances for purposes of a reconsideration of the Trial Chamber's decision.
9. Furthermore, as the judgement date is such a momentous stage in this case, the Accused feels very strongly that Lead Counsel must be present to receive the verdict and to immediately provide legal advice and strategy with respect to whatever outcome may obtain. Additionally, and if for no other reason, it is simply befitting that lead counsel should be in attendance for the delivery of judgement.
10. Considering the importance of Lead Counsel's presence in court on the day that the verdict is rendered and the fact that the Trial Chamber was not aware of the material circumstances relating to Lead Counsel's availability when it issued its scheduling order, the Defence requests that the judgement be rendered on a date when Lead Counsel and all members of the team are available.

Sierra Leonean Independence Day Celebrations

11. For the past 50 years, Sierra Leone has celebrated its independence from British colonial rule on the 27th of April. It is custom that the Lantern Parade, street carnivals and all-night celebrations are held on the eve of the Independence Day.⁷ The se events are

⁶ See Ex Parte Annex C for details as to Lead Counsel's professional engagement.

⁷ For an explanation of the Lantern Parade tradition and images from street celebrations in years past, see for example: http://www.switsalone.com/9859_thousands-on-the-streets-of-freetown-to-welcome-sierra-leone-49-lantern-parade/; <http://www.visitsierraleone.org/Gallery/festival/lantern-parade-10.html>; and

typically an emotive time for the country as it reflects on its past and celebrates its future. The delivery of the Taylor judgement the eve of the Independence Day would thus eclipse this historic festive tradition.

12. Furthermore, the festivities generally attract large, jubilant crowds throughout the country, particularly from the area around the Cotton Tree through Freetown's East End. The Taylor judgement will undoubtedly be a source of passionate discussion and debate. The risk of rioting in relation to either a conviction or an acquittal seems increased under these circumstances. Notably, the seat of the Taylor trial was moved from Freetown to The Hague because of security concerns in the sub-region,⁸ and thus any date set for judgement should be alive to these tensions.⁹
13. In this regard, it is important to recall one of the tenets behind the establishment of the Court. The Special Court for Sierra Leone was established pursuant to Security Council Resolution 1315 (2000). At the core of the Court's mandate was the responsibility to "contribute to the process of national reconciliation and to the restoration and *maintenance of peace*". The Defence submits that announcing the verdict at a time when the nation is in festive mood and the streets are already thronged with people poses a direct security threat and runs counter to the Court's responsibility to maintain peace.
14. Thus, to the extent that the Trial Chamber might not have considered these issues when determining the judgement date, the Defence respectfully requests the Chamber to reconsider its decision. If, however, the date was deliberately chosen to coincide with the Independence Day celebrations, the Defence respectfully submits that the timing would appear to be in bad taste in the event of a conviction. The timing would give the

http://news.sl/drwebsite/publish/article_200517768.shtml. It is notable that last year, for Sierra Leone's Jubilee Anniversary, the Lantern Parade was held during the weekend after Independence Day (rather than on the eve of Independence), in order to cater for the larger-than-usual crowds and additional State celebrations.

⁸ Security Council Resolution 1688 (2006).

⁹ For example, at the International Criminal Court, Pre-Trial Chamber II considered the security situation and the likelihood of "heated public debate" in Kenya when determining the date to issue its decision on the confirmation of charges against six Kenyan suspects. *Prosecutor v. Ruto et al*, ICC-01/09-01/11-357, Decision on the Issuance of the Decision Pursuant to Article 61(7) of the Rome Statute, 26 October 2011, para. 13.

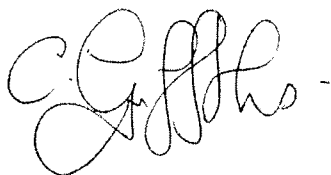
impression that Taylor is being offered to the people of Sierra Leone as part of the independence celebrations.

15. Likewise, the timing would be ill-conceived in the event of an acquittal, as it is likely to inflame an already excitable and sizeable crowd.
16. The Defence thus submits that the Chamber has committed a clear error of reasoning in setting the date for judgement on the eve of Sierra Leonean Independence Day. As a result, the Trial Chamber should exercise its discretion and change the date, as it is neither respectful of local culture, prudent from a security perspective, nor in good taste for the Court to deliver its verdict as to the guilt or innocence of Charles Taylor while Sierra Leoneans are celebrating their independence.
17. Additionally and/or alternatively, the Trial Chamber must reconsider its decision on the basis of the new information availed to it relating to the availability of Lead Counsel.

IV. RELIEF REQUESTED

18. In light of the above, the Defence requests that the Trial Chamber exercise its discretion to reconsider its Scheduling Order and change the date of judgement from 26 April to 30 April 2012, or to any suitable date soon thereafter. Both the fact that Lead Counsel is indisposed and the optics of delivering the Taylor judgement on the eve of Independence are separately sufficient reasons for such reconsideration. It is an even more persuasive argument when both are taken into regard.
19. The Defence requests that this application be heard on an expedited basis, given the need for the parties and public to plan for the hearing.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read 'C. Griffiths'.

Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 6th Day of March 2012
The Hague, The Netherlands



SPECIAL COURT FOR SIERRA LEONE

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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

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- Application
- Order
- Indictment
- Other**
- Motion
- Correspondence

Document Title:

**Urgent, public, with confidential Annexes A and B and Ex parte Annex C
Defence request to change date of judgement**

Name of Officer:

Alhassan Fornah

Signed: