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SCSL-03-01-PT
(4211-4217)

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SPECIAL COURT FOR SIERRA LEONE

IN TRIAL CHAMBER II

Case No: SCSL-03-01-PT
Before: Hon. Justice Julia Sebutinde, Presiding
Hon. Justice Richard Lussick
Hon. Justice Teresa Doherty
Registrar: Mr. Lovemore G. Munlo, SC
Date filed: 26 January 2007

SPECIAL COURT FOR SIERRA LEONE	
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THE PROSECUTOR

-v-

CHARLES TAYLOR

PUBLIC

DEFENCE APPLICATION FOR LEAVE TO APPEAL "JOINT DECISION ON
DEFENCE MOTIONS ON ADEQUATE FACILITIES AND ADEQUATE TIME FOR
THE PREPARATION OF MR. TAYLOR'S DEFENCE" DATED 23 JANUARY 2007

Office of the Prosecutor

Mr. Stephen Rapp
Mr. Christopher Staker
Mr. James C. Johnson
Ms. Brenda Hollis
Ms. Wendy van Tongeren
Ms. Shyamala Alagendra
Mr. Alain Werner

Counsel for Charles Taylor

Mr. Karim A. A. Khan
Mr. Roger Sahota

I INTRODUCTION

1. This is the Defence Application for leave to appeal the “Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr Taylor’s Defence” (“The Impugned Decision”), dated 23 January 2007.¹
2. The Defence applies for leave to appeal the Trial Chamber’s decision to set a trial date of 4 June 2007. There is no application for leave to appeal with regard to the Trial Chamber’s decision on adequate facilities.
3. As further advanced below in Section III, the Defence submits that there are grounds to grant leave to appeal pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“the Rules”) of the Special Court for Sierra Leone (“SCSL”), as the Impugned Decision, in impacting a fundamental Article 17 right to a fair trial, amounts to an exceptional circumstance that irreparably prejudices Mr. Taylor.
4. Further, and in the alternative, as advanced in the grounds taken individually or cumulatively in Sections IV and V, there are exceptional circumstances to grant certification for leave to appeal the decision to set a trial date of 4 June 2007 on the basis that: (i) the Trial Chamber’s decision amounts to an abuse of discretion raising an issue of fundamental importance to the SCSL, and (ii) the Trial Chamber’s decision raises a novel and substantial aspect of international criminal law.
5. It is further submitted in Section V that the Trial Chamber’s decision causes irreparable prejudice to the Defence.

II LEGAL FRAMEWORK

6. Rule 73(B) of the SCSL Rules states that:

(B) Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought

¹ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-164, Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence, 23 January 2007.

within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders.

7. The Trial Chamber in *Prosecutor v. Sesay al²* held that the two stage test sets a “high threshold” and “is conjunctive and not disjunctive”³ and that:

‘Exceptional circumstances’ may exist depending upon particular facts and circumstances, where, for instance the question in relation to which leave to appeal is sought is one of general principle to be decided for the first time, or is a question of public international law importance upon which further argument or decision at the appellate level could be conclusive to the interests of justice, or where the course of justice might be interfered with, or is one that raises serious issues of fundamental legal importance to the Special Court for Sierra Leone in particular, or international criminal law, in general, or some novel and substantial aspect of international criminal law for which no guidance can be derived from national criminal law systems.⁴

III VIOLATION OF RIGHT TO A FAIR TRIAL MEETS RULE 73(B) CRITERIA

8. The right to adequate time to prepare for trial is both expressly granted and derived from other rights that constitute elements of a fair trial. Article 17(4)(b) of the SCSL Statute allows Mr. Taylor to have “adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing”. Pursuant to Article 17(2) of the SCSL Statute, Mr. Taylor is entitled to a fair and public hearing. One element of a fair hearing is the principle of ‘equality of arms’. Equality of arms becomes an empty shell without adequate time to prepare.
9. The Defence submit that the Impugned Decision, in holding that the Defence requires more time to prepare but granting only limited relief, implicates the fundamental right to a fair trial pursuant to Article 17. *Prosecutor v. Brima* has previously held that any such violation by its

² *Prosecutor v. Sesay et al*, SCSL-04-15-T-401, Decision on Application for Leave to Appeal the Ruling (2nd May 2005) on Sesay – Motion Seeking Disclosure of the Relationship Between Government Agencies of the United States of America and the Office of the Prosecutor, 15 June 2005 (“Sesay Appeal”).

³ Sesay Appeal, para. 17, citing *Prosecutor v. Sesay, Kallon, and Gbao*, SCSL-04-15-T-362, Decision on Application by the Second Accused for Leave for Interlocutory Appeal Against the Majority Decision of the Trial Chamber of 9th December 2004 on Issue of Urgent Concern to the Accused Morris Kallon, 2 May 2005. See also *id.*, para. 20 (“the probability of an erroneous ruling by the Trial Chamber does not, of itself constitute “exceptional circumstances” for the purposes of a Rule 73(B) application”).

⁴ Sesay Appeal, para. 16, citing *Prosecutor v. Sesay, Kallon, and Gbao*, SCSL-04-15-T-357, Decision on Defence Applications for Leave to Appeal Ruling of the 3rd of February, 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005, para. 26.

“very nature” meets the requirements of Rule 73(B).⁵ In granting leave to file an interlocutory appeal, the Trial Chamber held:

that in the present case the very nature of the application satisfies the conjunctive test of “exceptional circumstances” and “irreparable prejudice” by Rule 73(B) since it concerns a fundamental right enshrined in Article 17(4) of the Statute.⁶

IV ABUSE OF DISCRETION IS AN EXCEPTIONAL CIRCUMSTANCE

10. It is submitted that in setting a trial date contrary to the position of both the Defence and Prosecution the Trial Chamber has abused its discretion in a manner which meets the threshold of “exceptional circumstances” pursuant to Rule 73(B). Although the Trial Chamber accepted Defence submissions that the tentative trial date of April 2006 should be vacated for “good cause”, the new trial date was set seemingly arbitrarily, without explanation, or consideration of the positions of both parties.
11. The Defence respectfully submits that the Trial Chamber, properly considering the matter, should not have set an imminent trial start date in a case of acknowledged complexity and breadth without accompanying Rule 73bis scheduling orders, which are necessary for adequate preparation of the case. The constituent components of Rule 73bis are necessary stepping stones to a trial start date. For instance, without a pre-trial brief, the Defence is unable to focus its pre-trial preparation.
12. In this context it is submitted that the Trial Chamber, after accepting Defence submissions on the lack of adequate time to prepare, should have explicated its deviation from the relief sought by the Defence. The Trial Chamber’s denial of the preparation time sought by the Defence, after accepting that the Defence needed more time to adequately prepare, amounts to an abuse of discretion.

⁵ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-367, Decision on Brima – Kamara Application for Leave to Appeal From Decision on the Reappointment Of Kevin Metzger and Wilbert Harris as Lead Counsel, 5 August 2005, pg. 3.

⁶ *Id.*

V TRIAL CHAMBER'S DECISION RAISES NOVEL AND SUBSTANTIAL
ISSUES OF INTERNATIONAL CRIMINAL LAW

13. The Impugned Decision raises a novel and substantial issue of law in placing two enumerated components of the right to a fair trial of the Accused in conflict with one another. In this case, the Accused has applied for further time to prepare his defence in order to guarantee his Article 17 right to adequately prepare his case. The Trial Chamber, whilst agreeing that good cause exists for such an application, has limited the requested relief purportedly to guarantee the defendant's right to be tried without undue delay pursuant to Article 17(4)(c). In balancing what the Trial Chamber considers to be competing interests, the Trial Chamber has implicitly concluded that the right to be tried without undue delay takes precedence over the right to adequate time to prepare. The Defence submit that the right to adequate time to prepare and the right to be tried without undue delay are not competing interests; they are both essential elements of the right of a fair trial under Article 17 of the SCSL Statute. Mr. Taylor's right to be tried without undue delay cannot be invoked, *proprio motu*, to deny his appeal to preserve his right to adequately prepare his case.
14. This issue has not been considered previously in the Tribunal's jurisprudence. The instant case can be distinguished from *Prosecutor v. Milosevic*⁷ where the Appeals Chamber relied on Article 20 of the ICTY Statute. Article 20 has no parallel provision in the SCSL Statute. Thus the Appeals Chamber in *Milosevic* did not, as purported in the Impugned Decision, attempt to balance the Accused's right to adequately prepare for trial with his right to be tried without undue delay. Rather, the Chamber considered the need for expeditiousness of the proceedings pursuant to Article 20 of the ICTY Statute.⁸
15. The Defence therefore submit that this is a novel question, the resolution of which will contribute to the jurisprudence of the SCSL and to the development of international criminal law.

⁷ *Prosecutor v. Milosevic*, ICTY, Case No IT-02-54AR73.6, Decision on the Interlocutory Appeal by the Amici Curiae Against the Trial Chamber Order Concerning the Preparation and Presentation of the Defence Case, 20 January 2004, paras, 8 and 17.

⁸ *Id.*, para. 21.

VI IRREPARABLE PREJUDICE

16. If the Defence are denied immediate relief and adequate time to prepare for trial, the prejudice caused cannot be remedied save with an order for retrial. The Defence investigation will be severely circumscribed. Appellate review at the close of proceedings will not be able to cure the lack of adequate preparation.
17. The Defence therefore submit that the prejudice caused by the impugned decision is irreparable through appeal at the end of the proceedings, and therefore fits the restricted criteria envisioned in drafting Rule 73(B). As the Appeals Chamber has ruled:

the underlying rationale for permitting such appeals is that certain matters cannot be cured or resolved by final appeal against judgement. However, most interlocutory decisions of a Trial Chamber will be capable of effective remedy in a final appeal where the parties would not be forbidden to challenge the correctness of interlocutory decisions which were not otherwise susceptible to interlocutory appeal in accordance with the Rules.⁹

18. Further, a pre-trial interlocutory appeal, in not interrupting or punctuating smooth trial proceedings, does not implicate the rationale behind Rule 73(B), namely that criminal trials must “not be heavily encumbered and consequently unduly delayed by interlocutory appeals”.¹⁰

V CONCLUSION

Accordingly, for the reasons adumbrated above the Defence respectfully asks the Trial Chamber for Certification of the Defence’s Application for Leave to Appeal.

Respectfully Submitted this 26th day of January 2007,



Karim A. A. Khan, Counsel for Mr. Charles Taylor

⁹ *Prosecutor v. Norman et al.*, SCSL-04-14-T-319, Decision on Prosecution Appeal Against the Trial Chamber Decision of August 2004 Refusing Leave to File an Interlocutory Appeal, Appeals Chamber, 17 January 2005, para. 29.

¹⁰ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-367, Decision on Brima – Kamara Application for Leave to Appeal From Decision on the Reappointment Of Kevin Metzger and Wilbert Harris as Lead Counsel, 5 August 2005, pg.2.

Table of Authorities

Special Court for Sierra Leone

1. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-164, Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence, 23 January 2007.
2. *Prosecutor v. Sesay et al*, SCSL-04-15-T-401, Decision on Application for Leave to Appeal the Ruling (2nd May 2005) on Sesay – Motion Seeking Disclosure of the Relationship Between Government Agencies of the United States of America and the Office of the Prosecutor, 15 June 2005.
3. *Prosecutor v. Sesay, Kallon, and Gbao*, SCSL-04-15-T-362, Decision on Application by the Second Accused for Leave for Interlocutory Appeal Against the Majority Decision of the Trial Chamber of 9th December 2004 on Issue of Urgent Concern to the Accused Morris Kallon, 2 May 2005.
4. *Prosecutor v. Sesay, Kallon, and Gbao*, SCSL-04-15-T-357, Decision on Defence Applications for Leave to Appeal Ruling of the 3rd of February, 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005.
5. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-367, Decision on Brima – Kamara Application for Leave to Appeal From Decision on the Reappointment Of Kevin Metzger and Wilbert Harris as Lead Counsel, 5 August 2005.
6. *Prosecutor v. Norman et al.*, SCSL-04-14-T-319, Decision on Prosecution Appeal Against the Trial Chamber Decision of August 2004 Refusing Leave to File an Interlocutory Appeal, Appeals Chamber, 17 January 2005.

ICTY Jurisprudence

7. *Prosecutor v Milosevic*, ICTY, Case No IT-02-54AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Preparation and Presentation of the Defence Case, 20 January 2004. Online: <http://www.un.org/icty/milosevic/appeal/decision-e/040120.htm>