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SCSL - 03 - 01 - PT
(4242 - 4248)

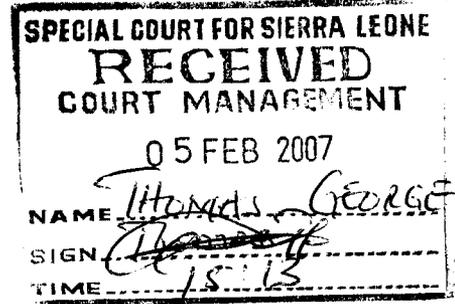
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**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone**

Before: Hon. Justice Julia Sebutinde, Presiding
Hon. Justice Teresa Doherty
Hon. Justice Richard Lussick

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 5 February 2006



THE PROSECUTOR

Against

Charles Taylor

Case No. SCSL-03-01-PT

PUBLIC

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

Office of the Prosecutor:
Ms. Brenda J. Hollis
Ms. Anne Althaus

Defence Counsel for Charles Taylor
Mr. Karim A. A. Khan
Mr. Roger Sahota

I. INTRODUCTION

1. The Prosecution files this response to the “Defence Application for Leave to Appeal ‘Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for Preparation for Mr. Taylor’s Defence’ dated 23 January 2007” (“**Motion**”). The Defence filed this Motion on the 26 January 2007.¹
2. The Motion requests that the Trial Chamber grant leave to the Defence to appeal against the Trial Chamber’s “Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for Preparation for Mr. Taylor’s Defence” of 23 January 2007 (“**Decision**”),² which sets a trial start date of 4 June 2007, rather than September 2007, as had been requested by the Defence.
3. The Prosecution supports the Defence request for leave to appeal.

II. SUBMISSIONS

A. Test for Granting Leave to Appeal

4. Article 73 (B) of the Rules of Procedure and Evidence (“**Rules**”) provides that leave to appeal may be granted in exceptional circumstances and to avoid irreparable prejudice to a party. The two conditions - exceptional circumstances and irreparable prejudice - are conjunctive.³ As held by the Appeals Chamber of the Special Court:

“The underlying rationale for permitting such appeals is that certain matters cannot be cured or resolved by final appeal against judgement.”⁴

5. This restrictive test, as consolidated by the jurisprudence of the Special Court, aims at ensuring that criminal proceedings are not heavily encumbered and unduly delayed by

¹ *Prosecutor v Taylor*, SCSL-03-01-PT-168, “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”, Trial Chamber, 26 January 2007 (“**Motion**”).

² *Prosecutor v Taylor*, SCSL-03-01-PT-164, “Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for Preparation for Mr. Taylor’s Defence”, Trial Chamber, 23 January 2007 (“**Decision**”).

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”, Trial Chamber, 2 May 2005, para. 17 (iv).

⁴ *Prosecutor v. Norman, Fofana and Kondewa*, 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; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T-357, “Decision on Defence Application for Leave to Appeal Ruling of the 3rd February 2005 on the Exclusion of Statements of Witness TF1-141”, Trial Chamber, 28 April 2005, (“**Sesay Decision**”), para. 21.

interlocutory appeals.⁵

6. The Prosecution submits that this test is met in the present instance. Allowing this appeal would not amount to undue diversion, but would rather ensure a fair trial and an efficient and expeditious use of the judicial time.

B. Exceptional circumstances

7. According to the jurisprudence of the Court, no comprehensive or exhaustive definition of “exceptional circumstances” exists. They in fact depend on, and vary with, the circumstances of each case.⁶

8. Exceptional circumstances may exist 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 ... 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, ...”⁷

9. The Prosecution submits that the existence of “exceptional circumstances” is not confined to situations where the proposed appeal point is one of general principle or fundamental importance. In determining whether or not “exceptional circumstances” exist, regard should also be had to the realities of the particular situation, and the practical consequences of granting or not granting leave to appeal in a particular case.
10. The practical circumstances in the present case are as follows. The Defence maintains that the Decision is inconsistent with the rights of the Accused under Article 17 (4) (b) of the Statute, on the ground that the Defence has not been allowed adequate time for the preparation of its case. If leave to bring an interlocutory appeal is not now granted, the Defence would still have the possibility of raising this issue in an appeal against the final trial judgement, if the Accused is convicted. At that stage, the remedy that the Appeals Chamber may order would be to quash the conviction, and to order a retrial, or to order a re-opening of the proceedings. That would clearly be in the interests of neither the Defence, nor the Prosecution, nor the Special Court as a whole, nor would it be in the interests of judicial

⁵ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-483, “Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 of 31 March 2006”, Trial Chamber, 4 May 2006, p. 2.

⁶ *Sesay* Decision, para. 25.

⁷ *Ibid*, para. 26.

economy. The Prosecution submits that in all of the circumstances as a whole, it is clearly desirable for this issue of the alleged violation of Article 17 (4) (b) of the Statute to be settled once and for all before the trial begins, by a decision of the Appeals Chamber. If the interlocutory appeal is denied by the Appeals Chamber, the trial can proceed on the basis that it has definitively been settled that the setting of the 4 June trial start date was not inconsistent with the rights of the Accused. If the interlocutory appeal is allowed, the situation can be remedied much more efficiently at this stage, by simply postponing the trial start date by an appropriate period of time.

11. The Prosecution further submits that exceptional circumstances arise from the fact that:

- (i) the question in relation to which leave to appeal is sought relates to guarantees granted to the Accused under Article 17 (4) of the Statute, in particular, the right of an Accused to have adequate time for the preparation of his defence;
- (ii) the question therefore raises a serious issue of general principle of fundamental legal importance to the Special Court in particular, and international criminal law in general;
- (iii) the question is one to be decided for the first time by this Court.

12. The Trial Chamber, in its Decision, stated that its duty was to

“balance the right of the Accused to have adequate time for the preparation of his case and his right to be tried without undue delay.”⁸

13. The issue that was dealt with in the Decision thus concerned the interrelationship of two different rights of the Accused under Article 17 (4) of the Statute. The fact that a Trial Chamber decision dealt with an Article 17 (4) right appears on at least one occasion to have been considered of itself sufficient to constitute “exceptional circumstances” for the purposes of Rule 73 (B).⁹ The fact that the Decision in this case concerned the interrelationship of two such Article 17 (4) rights *a fortiori* supports the conclusion that exceptional circumstances exist in the present case.

14. Another exceptional factor in this case was that the Trial Chamber set a trial start date of 4 June 2007, notwithstanding that even the Prosecution had conceded that a delay until at least

⁸ Decision, para. 21.

⁹ *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”, Trial Chamber, 5 August 2005, p. 3.

July 2007 would be appropriate. The Trial Chamber has estimated that, in order to guarantee the Accused his right to be tried without undue delay, the date of the trial had to be moved to 4 June 2007. The Trial Chamber may have considered that the right to be tried without undue delay supersedes the right of an accused to adequate time to prepare the defence.¹⁰ This balance is of fundamental legal importance to the Court and international criminal law in general.

15. While there are no Special Court decisions on this issue, it was addressed in the RUF trial. In that trial, the Presiding Judge expressed his views as follows:

“...clearly, from a juridical perspective, the right to a fair and expeditious trial is paramount, and it is the cardinal norm, yet, in the process where, sometimes, you sacrifice fairness to expedition, you end up with the possibility of miscarriage of justice, and the Bench is eminently aware of the complexity of the process.¹¹...It is also possible to argue, quite forcefully, and I do so, if we were to treat the concept of a fair trial as separate and distinct from the concept of an expeditious trial, and we’re forced to make a judicial choice, we would, in fact, make a choice in favour of a fair trial rather than expedition as a means, as the end, in itself. When expedition becomes the end, all kinds of problems can arise... The end is a fair trial, in some respects, and expedition is part of how you achieve the fair trial. But if expedition becomes clearly the sole and exclusive end, then fairness can be sacrificed, even the integrity of the process can be sacrificed.”¹²

16. In the Prosecution’s view, this acknowledges that a judicious balancing of different factors is required, although the case law to date has not dealt expressly in detail with how this balancing exercise is to be undertaken. The Decision thus raises new legal issues of importance for the Special Court and for international criminal law in general.

C. Irreparable prejudice

17. The Prosecution submits that this matter cannot be cured or resolved by final appeal against the trial judgement. The start date fixed by the Decision was intended to avoid undue delay. However, if this question is not resolved on interlocutory appeal, it may be raised in a post-judgement appeal, in which case, as noted above, the remedy may be an order for a retrial, or a re-opening of the trial proceedings. If this were to occur, it would lead to even greater

¹⁰ Decision, para. 21.

¹¹ *Prosecutor v. Sesay, Kallon and Gbao*, Trial Transcript, 2 August 2006, p. 88, (lines 9-14).

¹² *Ibid.*, p. 88, (lines 27-29) and p. 89, (lines 1-10).

delays in the finalisation of this case than the delay that the Decision was intending to avoid. The only way that such delay can definitely be avoided is for this issue to be settled prior to the start of trial by a decision of the Appeals Chamber.

18. The submissions above do not relate to the substance of the proposed Defence appeal, but to the desirability of this issue being definitively settled by the Appeals Chamber at this interlocutory stage.

III. Conclusion

19. Accordingly, the Prosecution respectfully submits that the Defence should be granted leave to appeal against the Trial Chamber's Decision.

Filed in Freetown

5 February 2007

For the Prosecution,



Brenda J. Hollis

Index of Authorities

SCSL:

Prosecutor v Taylor, SCSL-03-01-PT-168, “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”, Trial Chamber, 26 January 2007.

Prosecutor v Taylor, SCSL-03-01-PT-164, “Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for Preparation for Mr. Taylor’s Defence”, Trial Chamber, 23 January 2007.

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”, Trial Chamber, 2 May 2005.

Prosecutor v. Norman, Fofana and Kondewa, 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.

Prosecutor v. Sesay, Kallon and Gbao, SCSL-2004-15-T-357, “Decision on Defence Application for Leave to Appeal Ruling of the 3rd February 2005 on the Exclusion of Statements of Witness TF1-141”, 28 April 2005.

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-483, “Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 of 31 March 2006”, Trial Chamber, 4 May 2006.

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Prosecutor v. Sesay, Kallon and Gbao, Trial Transcript, 2 August 2006.