

408)

SCSL-03-01-T
(145585-145588)

145585



SPECIAL COURT FOR SIERRA LEONE

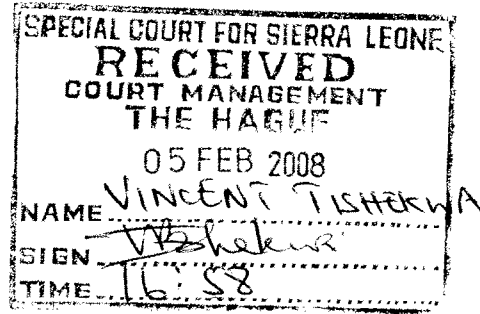
TRIAL CHAMBER II

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

Registrar: Mr. Herman von Hebel

Case No.: SCSL-03-1-T

Date: 5 February 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PUBLIC WITH CONFIDENTIAL ANNEX D MOTION FOR LEAVE TO VARY THE
WITNESS LIST & TO DISCLOSE STATEMENTS OF ADDITIONAL WITNESSES

Office of the Prosecutor:

Brenda Hollis
Mohammed Bangura
Nicholas Koumjian
Leigh Lawrie

Defence Counsel for Charles G. Taylor:

Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Public with Confidential Annex D Motion for Leave to Vary the Witness List & to Disclose Statements of Additional Witnesses,” filed on 13 December 2007 (“Motion”),¹ wherein the Prosecution requests leave to vary the witness list it filed with the Pre-Trial Conference Materials (“Witness List”)² and to disclose the witness statements of the proposed additional witnesses to the Defence;

NOTING that in the Motion, the Prosecution specifically seeks to vary the witness list as follows, namely to:

- (i) delete 17 witnesses from its witness list;³
- (ii) move 7 witnesses from its core witness list to its back-up witness list;⁴
- (iii) move 6 witnesses from its back-up witness list to its core witness list;⁵
- (iv) add the following 11 additional witnesses to its core witness list: Stephen Smith, TF1-024, TF1-556, TF1-571, TF1-575, TF1-577, TF1-579, TF1-584, TF1-585, TF1-590, TF1-597 (“Proposed Additional Witnesses”);⁶ and
- (v) identify TF1-028, TF1-035, TF1-143 and TF1-215 as witnesses who will give evidence *viva voce* rather than under Rule 92*bis* of the Rules of Procedure and Evidence (“Rules”).⁷

NOTING FURTHER that the Prosecution requests the Trial Chamber “to issue an order authorising the disclosure of the statements of the Proposed Additional Witnesses subject to the appropriate protective measures [...] in respect of TF1-585 and TF1-597, following receipt, and in accordance with, the decision on the pending request for such measures,” and, to “permit the Prosecution to file with the Court the Amended Witness List”;⁸

NOTING FURTHER that the Defence did not file a Response to the Motion;

RECALLING the Trial Chamber’s “Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure”, dated 10 January 2008, which orders that “the protective measures set out in paragraphs (a) to (m) of the Trial Chamber’s Protective Measures

¹ *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, “Public with Confidential Annex D Motion for Leave to Vary the Witness List & to Disclose Statements of Additional Witnesses”, dated 13 December 2007.

² *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, “Public Rule 73*bis* Pre-Trial Conference Materials Pre-Trial Brief”, filed on 4 April 2007.

³ Witnesses TF1-020, TF1-042, TF1-044, TF1-093, TF1-119, TF1-180, TF1-193, TF1-235, TF1-251, TF1-280, TF1-336, TF1-510, TF1-518, TF1-546, TF1-558, TF1-560, TF1-570; Motion, para. 5(i).

⁴ Witnesses TF1-376, TF1-397, TF1-413, TF1-414, TF1-540, TF1-554, TF1-565; Motion, para. 5(ii).

⁵ Witnesses TF1-065, TF1-076, TF1-157, TF1-158, TF1-278, TF1-555; Motion, para. 5(iii).

⁶ Motion, para. 5(iv).

⁷ Motion, para. 5(v).

⁸ Motion, paras. 30(ii) and 30(iii).

Decision of 5 May 2006 be extended to Witnesses TF1-585 and TF1-597 and that those measures be implemented immediately”;⁹

MINDFUL OF Rule 73bis(E) of the Rules, which states:

After the commencement of the Trial, the Prosecutor may, if he considers it to be in the interest of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.

ALSO MINDFUL OF Rule 66, specifically Rule 66(A)(ii), which states:

Subject to the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall:

[...]

Continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 42 days before the trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good cause being shown by the Prosecution. Upon good cause being shown by the Defence, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the Defence within a prescribed time.

RECALLING that in assessing whether the interests of justice and good cause have been shown, the Chamber should consider the following criteria: “the materiality of the testimony, the complexity of the case, prejudice to the Defence including elements of surprise, on-going investigations, replacements and corroboration of evidence,” as well as “the sufficiency and time of disclosure of witness information to the Defence,” and “allegations in the indictments; the ability of the Defence to make an effective cross-examination of the proposed testimony, given its novelty or other factors; and the justification offered by the Prosecution for the addition of the witness.”¹⁰

CONSIDERING that the Prosecution disclosed relevant materials pursuant to Rule 66 of the Rules for Witness TF1-024 in May 2007, that disclosure for the other witnesses was made in November 2007, and that the Prosecution has indicated that, except for Witness TF1-556, all Witnesses to be added to the Witness List would not be called during the first trial session and that TF1-556 would only testify in mid February at the earliest;¹¹

⁹ *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, “Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure”, dated 10 January 2008.

¹⁰ *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, “Decision on Prosecution Request for Leave to Call an Additional Witness (Zainab Hawa Bangura) Pursuant to Rule 73bis(E), and on Joint Defence Notice to Inform the Trial Chamber of its Position Vis-à-vis the Proposed Expert Witness (Mrs. Bangura) Pursuant to Rule 94bis”, dated 5 August 2005, paras. 21-22; Following *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-T, “Decision on Prosecution Request for Leave to Call Additional Witnesses”, dated 9 July 2004, paras. 16-18; See also *Prosecutor v. Bagosora*, Case No. ICTR-98-41-T, “Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73bis(E)”, dated 26 June 2003, para. 14; *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-I, “Decision on the Prosecutor’s Oral Motion for Leave to Amend the List of Selected Witnesses”, dated 26 June 2001, para. 20.

¹¹ Motion, paras. 24, 25.

FINDING that the Prosecution has shown good cause for the requested variation under the provisions of Rule 66(A)(ii), and that it is in the interests of justice to permit the Prosecution to amend its witness list pursuant to Rule 73bis(E) in the terms requested;


PURSUANT TO Rules 54 and 73bis of the Rules,


HEREBY GRANTS the Motion, and

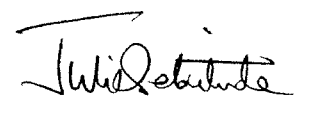
ORDERS that the Prosecution is hereby:

- (i) granted leave to vary the Witness List as set out in paragraph 5 of the Motion;
- (ii) authorised to disclose the statements of the Proposed Additional Witnesses subject to the applicable protective measures;
- (iii) permitted to file with the Court its Amended Witness List;

Done at The Hague, The Netherlands, this 5th day of February 2008.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


Justice Julia Sebutinde

