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SCSL-03-01-T
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SPECIAL COURT FOR SIERRA LEONE

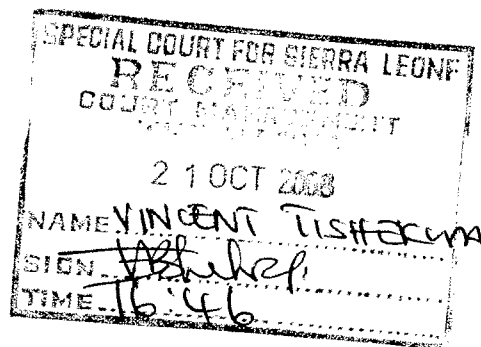
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 21 October 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A TO D & F TO G
PROSECUTION NOTICE UNDER RULE 92 *BIS* FOR THE ADMISSION OF EVIDENCE RELATED TO
INTER ALIA FREETOWN & WESTERN AREA - TF1-098, TF1-104 AND TF1-227

Office of the Prosecutor:
Brenda J. Hollis
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”);

RECALLING the Trial Chamber’s “Order under Rule 16 to Continue Trial in the Absence of a Judge”, dated 20 October 2008 (“Rule 16 Order”);¹

SEISED of the “Public with Confidential Annexes A to D & F to G Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *inter alia* Freetown & Western Area - TF1-098, TF1-104 & TF1-227”, filed on 3 October 2008 (“Notice”),² wherein the Prosecution gives notice under Rule 92bis of its intention to seek admission into evidence of parts of the prior trial transcripts and related exhibits of the testimony of Witnesses TF1-098, TF1-104 and TF1-227 in other proceedings before the Special Court,³ excluding those parts which concern: (i) legal argument; (ii) trial administrative matters; and (iii) evidence of the acts and conduct of the Accused;⁴

NOTING the “Public, with Confidential Annex A Defence Objection to ‘Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *inter alia* Freetown & Western Area - TF1-098, TF1-104 and TF1-227’ and Other Ancillary Relief”, filed on 8 October 2008 (“Objection”),⁵ wherein the Defence, as preliminary issues,

- (i) seeks the Courts indulgence to file an Objection exceeding the page limit according to Article 6(C) of the “Practice Direction of Dealing with Documents in The Hague - Sub-Office”, adopted on 16 January 2008 (“Practice Direction”), as it has combined its Objection with an application to rescind protective measures; and
- (ii) submits that pursuant to Rule 92bis the Prosecution does not have an automatic right to reply to this Objection;

and on the merits of the Objections the Defence objects to the admission of such evidence on the grounds that:

- (i) prior trial transcripts, related exhibits, and particularly supplemental witness statements should be submitted under Rule 92ter;
- (ii) some of the information is not relevant as it falls outside the Indictment period;
- (iii) some of the evidence reflects the Witnesses’ own respective opinions or conclusions;
- (iv) some of the information is “linkage” in nature and/or goes to proof of the acts and conduct of the Accused and cannot be admitted under Rule 92bis without the opportunity for cross-examination;⁶ and
- (v) that alternatively, if the Trial Chamber does not deny the admission of evidence completely, then

¹ *Prosecutor v. Taylor*, SCSL03-01-T-639, Order Under Rule 16 to Continue Trial in the Absence of a Judge, 20 October 2008.

² SCSL03-01-T-614.

³ Witness TF1-094 testified in *Prosecutor v. Brima, Kamara, Kanu*, SCSL4-16-T (“AFRC Trial”); Witness TF1-104 testified in the AFRC Trial and the transcript from the AFRC Trial was admitted in the proceedings of the *Prosecutor v. Sesay, Kallon, Gbao* SCSL04-15-T (“RUF Trial”) as exhibit P-60 and prior transcripts relating to TF1-104’s cross-examination in the RUF Trial is provided in Annex C; Witness TF1-277 testified in the AFRC Trial.

⁴ Notice, para. 29.

⁵ SCSL03-01-T-626.

⁶ Objection, para 5.

- (a) only those portions of the evidence not objected to in Annex A of the Objection should be admitted; and
- (b) the Trial Chamber should exercise its discretion to order the witnesses concerned to appear for cross-examination;⁷

NOTING the “Public with Confidential Annex Prosecution Reply to ‘Public, with Confidential Annex A Defence Objection to ‘Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *inter alia* Freetown and Western Area – TF1-098, TF1-104 and TF1-227 and Other Ancillary Relief’”, filed on 14 October 2008 (“Reply”);⁸

NOTING further, the Defence application for the protective measures of closed session granted to Witness TF1-104 in the proceedings of the *Prosecutor v. Brima, Kamara and Kanu* on 11 May 2005⁹ be rescinded because there has been a material change in circumstances;¹⁰

NOTING the “Public with Confidential Annex Corrigendum to Three Prosecution Notices Submitted Under Rule 92bis (SCSL-03-01-T-585, SCSL-03-01-T-611 & SCSL-03-01-T-614), filed on 20 October 2008;¹¹

MINDFUL of the provisions of Article 6(C) of the Practice Direction and Rule 92bis of the Rules of Procedure and Evidence (“Rules”);

FINDING that, for sake of expediency, it is appropriate for the Trial Chamber to allow the oversized filing¹² by the Defence in this instance even though the Trial Chamber does not consider that the Defence has demonstrated that there is good cause for filing the Objection together with a separate application;¹³

FINDING FURTHER that although Rule 92bis does not specifically provide for a reply to an objection, it does not specifically preclude a reply, and that in the instant case the Prosecution has a right of reply to the fresh application raised by the Defence in its Objection;

RECALLING the Trial Chamber’s previous decision establishing the applicable law in relation to such Rule 92bis motions;¹⁴

HAVING conducted a careful examination of the transcripts of the testimony of Witnesses TF1-098, TF1-104 and TF1-227 admitted during their testimony in the AFRC and RUF trials and the supplemental witness statement;¹⁵

⁷ Objection, para 6.

⁸ SCSL-03-01-T-632.

⁹ Referring to *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-180, “Decision on Urgent and Confidential Prosecution Application to Vary Protective Measures Regarding Witnesses TF1-104 and TF1-081”, 11 May 2005.

¹⁰ Objection, paras 25-33.

¹¹ SCSL-03-01-T-640.

¹² Article 6(C) of the Practice Direction of Dealing with Documents in The Hague – Sub-Office, adopted on 16 January 2008.

¹³ See also *Prosecutor v. Taylor*, SCSL-03-01-T-XXX, Decision on Defence Motion for Leave to File and Oversized Filing of Defence Motion on Adequate Time and Facilities for the Preparation of Mr. Taylor’s Defence, 11 December 2006.

¹⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-556, Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence, 15 July 2008.



SATISFIED that the information the Prosecution is seeking to tender in lieu of the oral testimony of Witnesses TF1-098, TF1-104 and TF1-227 does not directly go to proof of the acts and conduct of the Accused, is relevant to the purpose for which it is submitted and that its reliability is susceptible of confirmation;

SATISFIED FURTHER that the nature of the information contained in the transcripts sought to be tendered in evidence by the Prosecution is sufficiently proximate to the Accused that its admission in the absence of an opportunity to cross-examine the makers of the statements would unfairly prejudice the Accused and that it is therefore in the interests of justice to afford the Accused such an opportunity;

FINDING in relation to the Defence application to rescind the protective measures of Witness TF1-104 that the Defence has failed to satisfy its obligation to “present supporting evidence capable of establishing on a preponderance of probabilities that the witness is no longer in need of such protection”;¹⁶

FOR THE ABOVE REASONS

PURSUANT TO Rules 26bis, 54, 75, 89(C), and 92bis of the Rules;

GRANTS the Prosecution application **IN PART**, and

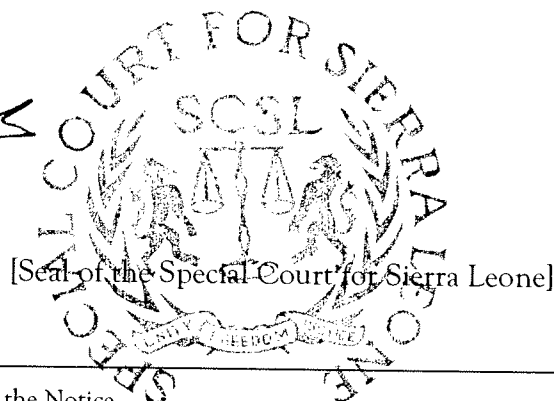
ORDERS that


the prior trial transcripts relating to the testimony of Witnesses TF1-098, TF1-104 and TF1-227 in Annexes A, C, E and F to the Motion and the witness statements in Annexes B, D and G shall be admitted into evidence pursuant to Rule 92bis provided that the Prosecution shall make the said Witnesses available for cross-examination by the Defence; and

DISMISSES the Defence application for rescission of protective measures in respect of Witnesses TF1-104.

Done at The Hague, The Netherlands, this 21st day of October 2008.


Justice Richard Lussick




Justice Teresa Doherty
Presiding Judge

¹⁵ Set out in Annex B, D and G of the Notice.

¹⁶ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T, Decision on Prosecution Appeal of Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses, 23 May 2008, para. 36; see also *Prosecutor v. Taylor*, SCSL-03-01-T-636, Confidential Decision on Prosecution Appeal Regarding the Decision Concerning Protective Measures of Witness TF1-168, 17 October 2008, para. 17.