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

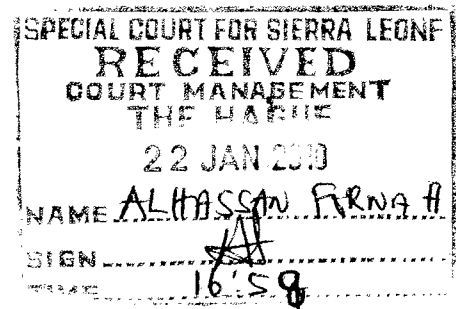
TRIAL CHAMBER II

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

Acting Registrar: Binta Mansaray

Case No.: SCSL-03-1-T

Date: 22 January 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

**DECISION ON DEFENCE MOTION FOR LEAVE TO VARY VERSION III OF THE DEFENCE RULE
73 TER WITNESS LIST AND SUMMARIES**

Office of the Prosecutor:

Brenda J. Hollis
Nicholas Koumjian
Mohamed Bangura
Kathryn Howarth

Counsel for the Accused:

Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);
 SEISED of the “Public with Annexes A and B and Confidential Annex C Defence Motion for Leave to Vary Version III of the Defence Rule 73^{ter} Witness List and Summaries”, filed on 11 December 2009 (“Motion”),¹ wherein the Defence requests the Trial Chamber for leave to vary its witness list and submits that it would be “in the interest of justice” to order the following:

- (i) the Defence may file Version IV of its Rule 73^{ter} witness list and summaries;
- (ii) the Defence may drop the 49 witnesses whose names appear in Annex A from its Rule 73^{ter} witness list and summaries;
- (iii) the Defence may add the 32 witnesses whose pseudonyms and summaries appear in Annexes B and C to its Rule 73^{ter} witness list and summaries when filing Version IV;

NOTING the “Prosecution Response to Defence Motion for Leave to Vary Version III of the Defence Rule 73^{ter} Witness List and Summaries”, filed on 11 January 2010 (“Response”),² wherein the Prosecution opposes the Motion and submits:

- (i) that in order to demonstrate that the addition of witnesses is “in the interests of justice” pursuant to Rule 73^{ter}(E), the Defence must show that it has “good cause” to add such witnesses;³
- (ii) that it does not object to the removal of the 49 witnesses from the Defence witness list;⁴

¹ SCSL-03-01-T-869.

² SCSL-03-01-T-873

³ Response, para. 11.

⁴ Response, para. 23.

(iii) that the Defence has not shown “good cause” to add 32 additional witnesses to the witness list as

(a) such an addition would result in undue delay of the proceedings,⁵ and

(b) that the anticipated evidence of several of the proposed additional witnesses is duplicitous;⁶

NOTING ALSO the “Defence Reply to Public Prosecution Response to Defence Motion for Leave to Vary Version III of the Defence Rule 73ter Witness List and Summaries”, filed on 18 January 2010 (“Reply”),⁷ wherein the Defence submits that the applicable standard for Rule 73ter(E) is that of the “interests of justice” and not that of “good cause”;⁸

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 73(A) and 73ter(E) of the Rules of Procedure and Evidence (“Rules”);

NOTING that Rule 73ter(E) provides that “after the commencement of the defence case, the defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses to call”;

NOTING that while the Defence requests leave to drop 49 witnesses from its witness list, Witness DCT-135 has been listed twice in Annex A,⁹ and that therefore the number of witnesses that the Defence proposes to drop is actually 48;

⁵ Reponse, paras 15-21.

⁶ Response, para. 22.

⁷ SCSL-03-01-T-878.

⁸ Reply, para. 5.

⁹ Motion, Annex A (Witness DCT-135 is listed both as Witness #23 and Witness #41).

NOTING that the Defence filed Version III of its Rule 73ter witness list and summaries on 10 July 2009;¹⁰

RECALLING that the Defence case commenced on 13 July 2009;¹¹

HOLDING that the “good cause” standard is not applicable to a defence request to add witnesses pursuant to Rule 73ter(E), and that the Defence need only demonstrate that such addition is “in the interests of justice”. The “good cause” standard arises from the Prosecution’s disclosure obligations under Rule 66(A)(ii), and there is no equivalent obligation for the Defence;¹²

RECALLING that at the status conference on 6 July 2009, the Trial Chamber indicated that “it appreciates that investigations are ongoing”, accepted that the Defence was not in a position to provide a final list of core and back-up witnesses at that time, and indicated that this was “a matter that the Trial Chamber thinks is appropriate to revisit closer to the end of the testimony of the Accused and we intend to do that”;¹³

RECALLING further that on 12 November 2009, the Trial Chamber ordered that the Defence file a final list of its “core” and “back-up” witnesses by 11 December 2009;¹⁴

¹⁰ *Prosecutor v. Taylor*, SCSL-03-01-T-809, Public with Annex A and Confidential Annex B, Updated and Corrected Defence Rule 73ter Filing of Witness Summaries - Version III, 10 July 2009.

¹¹ As the Defence had not yet commenced its case, it filed previous amendments to its witness list as “updated and corrected” versions of its original list pursuant to Rule 73ter(B). See *Prosecutor v. Taylor*, SCSL-03-01-T-793, Public with Annex A and Confidential Annex B, Updated and Corrected Defence Rule 73ter Filing of Witness Summaries, 12 June 2009 and *Prosecutor v. Taylor*, SCSL-03-01-T-809, Public with Annex A and Confidential Annex B, Updated and Corrected Defence Rule 73ter Filing of Witness Summaries - Version III, 10 July 2009.

¹² *Prosecutor v. Nahimana*, ICT-99-52-T, Decision on the Defense’s Application under Rule 73ter(E) for Leave to Call Additional Defense Witnesses, 9 October 2002.

¹³ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 6 July 2009, p. 24283.

¹⁴ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript 12 November 2009, p. 31622.

NOTING that the Defence filed its final list of its “core” and “back-up” witnesses on 11 December 2009, which provisionally included several of the witnesses that the Defence, in this Motion, requests permission to add;¹⁵

CONSIDERING that the Trial Chamber has previously acknowledged that the Defence investigations were in a state of transition, and indicated to the Defence that it had a degree of flexibility in finalizing its witness list until 11 December 2009;

SATISFIED, therefore, that in the circumstances, the Defence has satisfied the requirements of Rule 73ter(E) in that it has shown that it is in the interests of justice to vary its witness list at this stage by adding and dropping the proposed witnesses;

RECALLING, however, that once the final witness list and summaries have been filed, the Trial Chamber retains the ability, pursuant to Rule 73ter(D) of the Rules, to reduce the number of witnesses called if an excessive number of witnesses are being called to prove the same facts;

PURSUANT to Rules 73(A) and 73ter(E);

HEREBY GRANTS THE MOTION and

ORDERS as follows:

- (i) The Defence may drop the 48 witnesses whose pseudonyms appear in Annex A from its Rule 73ter witness list and summaries when filing Version IV;
- (ii) The Defence may add the 32 witnesses whose pseudonyms appear in Annexes B and C to its Rule 73ter witness list and summaries when filing Version IV;

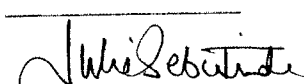
¹⁵ Letter from Courtenay Griffiths, Q.C. to Brenda J. Hollis, copied to Chambers Legal Officers, entitled “List of Core and Back-Up Witnesses”, 11 December 2009.

- (iii) That the Defence file Version IV of its Rule 73^{ter} witness list and summaries no later than close of business on 29 January 2010.

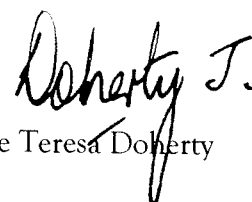
Done at The Hague, The Netherlands, this 22nd day of January 2010.



Justice Richard Lussick



Justice Julia Sebutinde
Presiding Judge



Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]

