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SCSL-03-01-T
(27102-27106)

27102



THE SPECIAL COURT FOR SIERRA LEONE

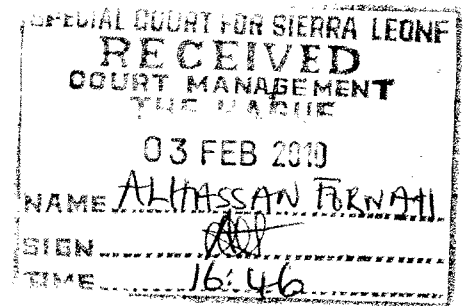
Trial Chamber II

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

Acting Registrar: Ms. Binta Mansaray

Date: 3 February 2010

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE RESPONSE TO "URGENT APPLICATION FOR LEAVE TO
APPEAL ORAL DECISIONS OF 25 AND 26 JANUARY 2010 ON USE OF
DOCUMENTS IN CROSS-EXAMINATION"**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Nina Jørgensen
Ms. Kathryn Howarth
Mr. Christopher Santora

Counsel for Charles G. Taylor:

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

I. INTRODUCTION

1. This is the Defence Response to the Prosecution’s Urgent Application for Leave to Appeal Oral Decisions of 25 and 26 January 2010 on Use of Documents in Cross-examination.¹
2. The Application concerns the use of four groups of documents in court.²
3. In its oral decisions of 21 January 2010, the Trial Chamber applied the test it had laid down in a previous decision relating to the use of documents containing fresh evidence during cross-examination.³ In the present Application the Prosecution argues that in making those oral decisions, the Trial Chamber erred in its application of the Documents Decision test as it relates to the use of fresh evidence for purposes of cross-examination (“**the use test**”). Those errors, the Prosecution argues, amount to “exceptional circumstances” and could result in “irreparable prejudice”.⁴
4. The Defence submits that the Application does not meet the conjunctive standards of exceptional circumstances and irreparable prejudice under Rule 73(B) of the Rules of Procedure and Evidence. Therefore, leave to appeal should be denied.

II. APPLICABLE LEGAL STANDARD

5. In terms of applicable law, the Defence adopts and incorporates the standard referred to in its earlier filings of 22 January 2010 and 27 January 2010.⁵

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-892, “Urgent Application for Leave to Appeal Oral Decisions of 25 and 26 January 2010 on Use of Documents in Cross-examination”, 28 January 2010 (“**the Application**”).

² Application, para. 1.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-865, “Decision on Prosecution Motion in Relation to the Applicable Legal Standards governing the Use and Admission of Documents by the Prosecution during Cross-Examination”, 30 November 2009 (“**Documents Decision**”).

⁴ Application, paras. 23-31.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-883, “Defence Response to the Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-examination”, 22 January 2010 (“**22 January Response**”); *Prosecutor v. Taylor*, SCSL-03-01-T-891, “Defence Response to the Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-examination”, 27 January 2010 (“**27 January Response**”).

III. ARGUMENT

Exceptional circumstances

6. To the extent that, in the present Application, the Prosecution relies on the same legal arguments as in its previous Applications,⁶ the Defence also relies on the legal arguments in its 22 January Response and 27 January Response.
7. In paragraphs 26 to 28 of the Application, the Prosecution merely repeats the argument that the Trial Chamber erred in rejecting the Prosecution's intended use of the document over and above the nature of the material in the document. This is effectively the same contention advanced in paragraph 16 of its 18 January Application and likewise paragraph 16 of its 21 January Application and paragraph 13 of its 25 January Application;⁷ an argument which the Trial Chamber has already rejected.⁸ Therefore, the same argument cannot now give rise to exceptional circumstances.

Irreparable prejudice

8. To the extent that, in the present Application, the Prosecution relies on the same legal arguments as in its previous Applications,⁹ the Defence also relies on the legal arguments in its Response dated 22 January 2010 and Response dated 27 January 2010.¹⁰

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-875, "Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-examination", 18 January 2010 ("**18 January Application**"); *Prosecutor v. Taylor*, SCSL-03-01-T-882, "Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-examination", 21 January 2010 ("**21 January Application**").

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-889, "Urgent Application for Leave to Appeal Oral Decisions of 21 January 2010 on Use of Documents in Cross-examination", 25 January 2010 ("**25 January Application**").

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T-898, "Decision on Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-examination", 29 January 2010.

⁹ 18 January Application; 21 January Application.

¹⁰ 22 January Response; 27 January Response.

IV. CONCLUSION

9. For all or any one or more of the foregoing reasons, the Prosecution's case fails the conjunctive exceptional circumstances and irreparable prejudice test. Leave to appeal must therefore be denied and the Defence respectfully submits that the Application should be dismissed.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor

Dated this 3rd Day of February 2010,
The Hague, The Netherlands

LIST OF AUTHORITIES

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-865, “Decision on Prosecution Motion in Relation to the Applicable Legal Standards governing the Use and Admission of Documents by the Prosecution during Cross-Examination”, 30 November 2009

Prosecutor v. Taylor, SCSL-03-01-T-875, “Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination”, 18 January 2010

Prosecutor v. Taylor, SCSL-03-01-T-882, “Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-examination”, 21 January 2010

Prosecutor v. Taylor, SCSL-03-01-T-883, “Defence Response to the Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-examination”, 22 January 2010

Prosecutor v. Taylor, SCSL-03-01-T-889, “Urgent Application for Leave to Appeal Oral Decisions of 21 January 2010 on Use of Documents in Cross-examination”, 25 January 2010

Prosecutor v. Taylor, SCSL-03-01-T-891, “Defence Response to Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-examination”, 27 January 2010

Prosecutor v. Taylor, SCSL-03-01-T-892, “Urgent Application for Leave to Appeal Oral Decisions of 25 and 26 January 2010 on Use of Documents in Cross-examination”, 28 January 2010

Prosecutor v. Taylor, SCSL-03-01-T-898, “Decision on Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-examination”, 29 January 2010