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SCSL-03-01-AR72
(3332-3335)

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SPECIAL COURT FOR SIERRA LEONE

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THE APPEALS CHAMBER

Before: Justice George Gelaga King, Presiding
Justice Emmanuel Ayoola
Justice Renate Winter

Registrar: Mr. Lovemore Munlo, SC

Date: 29 May 2006

PROSECUTOR Against Charles Ghankay Taylor
(Case No.SCSL-2003-01-R72)

Public Document

DECISION ON URGENT DEFENCE MOTION AGAINST CHANGE OF VENUE

Office of the Prosecutor:
James C. Johnson, Ms. Brenda Hollis
Ms. Nina Jørgensen

Defence Counsel for Charles Ghankay Taylor:
Mr. Karim A.A. Khan

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1. Having learned from a Special Court press release that the President of the Special Court had requested the Government of The Netherlands and the President of the International Criminal Court to facilitate the conduct of the trial of Charles Taylor by the Special Court in The Hague, the Defence filed a Motion¹ before Trial Chamber II asking the Trial Chamber:

- (i) To order that no change of venue from the seat of the Special Court in Freetown to a third location be made without affording the Defence for Mr. Taylor a right to be heard;
- (ii) To request the President to withdraw the requests to use the ICC facilities in The Netherlands;
- (iii) In the alternative, to clarify that these requests have not been made and/or that a decision to transfer Taylor to The Netherlands for Trial has not yet been made.

2. The Prosecution opposed the Motion.²

3. Trial Chamber II considered that the Motion raised objections based on lack of jurisdiction pursuant to Rule 72(B)(i) by challenging the President's authority to decide whether to change the venue of the trial and alleged an abuse of process pursuant to Rule 72(B)(v) by arguing that the President discriminated against the accused.³ Accordingly,

¹ Urgent Defence Motion for an Order that no Change of Venue from the Seat of the Court in Freetown Be Ordered Without the Defence Being Heard on the Issue and Motion that the Trial Chamber Request the President of the Special Court to Withdraw the Requests Purportedly Made to (1) the Government of the Kingdom of the Netherlands to Permit that the Trial of Charles Ghankay Taylor Be Conducted on its Territory & (2) to the President of the ICC for Use of the ICC Building and Facilities in the Netherlands During the Proposed Trial of Charles Ghankay Taylor, 7 April 2006 (the "Motion"). *See also*, Defence Reply to Prosecution Response to Motion for an Order that no Change of Venue from the Seat of the Court in Freetown Be Ordered Without the Defence Being Heard on the Issue and Motion that the Trial Chamber Request the President of the Special Court to Withdraw the Requests Purportedly Made to (1) the Government of the Kingdom of the Netherlands to Permit that the Trial of Charles Ghankay Taylor Be Conducted on its Territory & (2) to the President of the ICC for Use of the ICC Building and Facilities in the Netherlands During the Proposed Trial of Charles Ghankay Taylor", 28 April 2006.

² Prosecution Response to Taylor Urgent Motion Against Change of Venue, 25 April 2006.

³ Order Pursuant to Rule 72(E) and 72(F), 3 May 2006.

Trial Chamber II referred the Motion to the Appeals Chamber pursuant to Rule 72(E) and (F).

4. The Appeals Chamber finds that this referral was inappropriate not only because the Motion is unrelated to jurisdiction or abuse of process but also because the Motion requested relief falling outside of the powers of the Trial Chamber.

Admissibility of the Motion

5. The Motion is inadmissible because it seeks to interject the Trial Chamber, and now the Appeals Chamber, into the administrative and diplomatic functions of the President. Neither the Trial Chamber nor the Appeals Chamber is authorised to take the actions sought by the Defence.

6. The procedure for changing the venue of a trial is set out in the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone and the Rules of Procedure and Evidence.⁴ Without prejudging the appropriate procedure to be followed, it is clear that these procedures necessarily entail the type of preliminary diplomatic steps taken by the President and reported in the press release.

7. Neither the Statute nor the Rules authorises a Chamber to intervene in the administrative and diplomatic functions entrusted to the President. Even the residual inherent power of the Chambers to ensure the fairness of the trial cannot be invoked to support the declaratory and prospective relief sought by the Defence in the instant case since no decision has been taken which affects any fair trial rights.⁵

8. At this stage of the proceedings, matters relating to the venue of the Taylor trial are exclusively within the administrative and diplomatic mandate of the President. Prior to a decision being made, any questions relating to the President's activities concerning the

⁴ See, e.g. Article 10 of the Agreement; Rule 4 of the Rules.

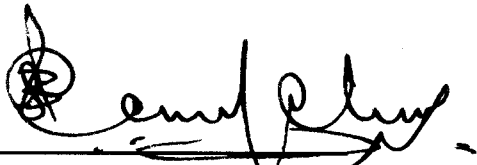
⁵ See, e.g., *Prosecutor v. Blagojević*, Case No. IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003, para. 7.

venue of the Taylor trial should be directed to the Office of the President and not to the Trial or Appeals Chambers.

Disposition

9. Accordingly, the Appeals Chamber finds that the Motion is inadmissible and, thus, dismisses the Motion in its entirety.

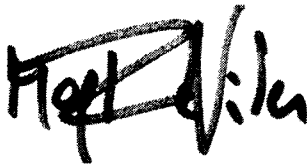
Done in Freetown, this 29th day of May 2006.



Justice George Gelaga King
Presiding Judge



Justice Emmanuel Ayoola



Justice Renate Winter

[Seal of the Special Court for Sierra Leone]

