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SCSL-03-01-T
(30887-30903)

30887



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

Registrar: Ms. Binta Mansaray

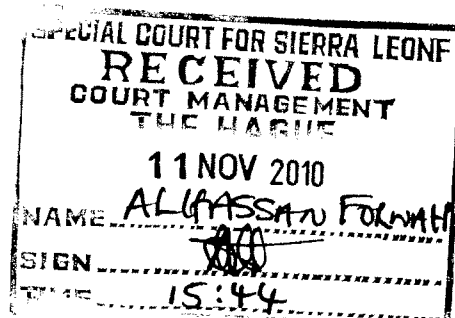
Date: 11 November 2010

Case No.: SCSL-03-01-T

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR



PUBLIC, WITH CONFIDENTIAL ANNEXES A AND B

**DEFENCE MOTION FOR ADMISSION OF DOCUMENTS PURSUANT TO RULE 92BIS –
PRINCE TAYLOR AND STEPHEN MORIBA**

Office of the Prosecutor:
Ms. Brenda J. Hollis

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. During the cross-examination of the last Defence Witness, DCT-102,¹ Mr Koumjian raised two issues relating to employees of the Defence Office of the Special Court for Sierra Leone. Firstly, Mr Koumjian suggested that the Taylor Defence Team investigator, Prince Taylor, is the same as the Prince Taylor who was with the RUF during the conflict. Secondly, Mr Koumjian suggested that the Gbao Defence Team witness assistant, Stephen Jusu Moriba, is the same as Pa Moriba who was an advisor to Foday Sankoh and who later went to Liberia.
2. The Defence submits that these propositions are unfounded and that the record regarding the role of these Defence Office employees should be set straight for the Trial Chamber.
3. Consequently, the Defence seeks admission under Rule 92*bis* of the following documents:
 - a. Email from Prince Taylor to Defence Counsel, dated 9 November 2010;
 - b. Curriculum Vitae of Prince Taylor;
 - c. Email from Jim Johnson to Karim Khan, dated 16 December 2006 and Email from Karim Khan to Chris Staker and Wendy van Tongeren, dated 14 December 2006; and
 - d. Email from Scott Martin to Terry Munyard, dated 10 November 2010.
4. The Defence appreciates that the Trial Chamber has previously ordered that all Defence filings be made no later than 24 September 2010.² However, in light of the fact that these issues were raised by Counsel for the Prosecution after the filing deadline, the Defence submits that it is in the interests of justice for the Trial Chamber to reconsider its previous deadline and adjudicate the present Motion.

¹ Witness DCT-102, Sam Koleh, testified between 1 November 2010 and 9 November 2010.

² *Prosecutor v. Taylor*, SCSL-03-01-T, Status Conference Transcript, 13 September 2010, p. 48323.

II. APPLICABLE LEGAL PRINCIPLES

Reconsideration

5. While the Special Court Rules are silent on whether a Trial Chamber can reconsider its own previous decisions, the Appeals Chamber has held that a Chamber has an inherent jurisdiction to reconsider its own decisions to avoid injustice or miscarriage of justice.³ Trial Chamber I adopted an ICTR Decision stating that the circumstances in which a Trial Chamber may reconsider a previous decision included instances where “new material circumstances have arisen since the decision”.⁴

Rule 92bis

6. The core requirements of Rule 92bis – that the information sought to be tendered in lieu of oral testimony must be relevant; that the information must not go to proof of the acts and conduct of the accused; and that the reliability of such information must be susceptible of confirmation – are well-established at this point in the trial. The Defence respectfully refers to the statement of law relating to Rule 92bis from the Trial Chamber’s most recent Rule 92bis Decision on 5 October 2010.⁵
7. Additionally, the Defence notes that the Prosecution’s right to cross-examination does not necessarily extend to Rule 92bis information that is not critical or pivotal to the Indictment.⁶

³ *Prosecutor v. Norman et al*, SCSL-04-14-A73, Decision on Prosecution Appeal Against the Trial Chamber’s Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal, 17 January 2005, para. 40.

⁴ *Prosecutor v. Norman et al*, SCSL-04-14-T-507, Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, para. 14 (but see generally paras. 10-16), citing *Prosecutor v. Renzaho*, ICTR-97-31-I, Decision on Renzaho’s Motion to Reconsider the Decision on Protective Measures for Victims and Witnesses to Crimes Alleged in the Indictment, 9 November 2005, paras. 20-21.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 5 October 2010, p. 3-4 (“**Rule 92bis Newspaper Decision**”).

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 5 October 2010, Sebutinde Dissent, para. 15.

III. SUBMISSIONS

The Trial Chamber should accept the filing of this motion

8. At a Status Conference on 13 September 2010, the Trial Chamber ordered the Defence to file all its outstanding Motions no later than 24 September 2010.⁷ The issues relating to Prince Taylor⁸ and Stephen Jusu Moriba⁹ arose during the cross-examination of DCT-102 this week, after the filing deadline.
9. The issue relating to Prince Taylor has been raised by the Prosecution before, and Defence Counsel has stated in Court that the Prince Taylor that works for the Defence Team is not the same as the RUF Prince Taylor.¹⁰ The Defence therefore assumed this issue had been put to rest. However, Prosecution Counsel seems to not have taken Defence Counsel's word that the Defence Team Prince Taylor is not the same as the RUF Prince Taylor, and has persisted in putting unfounded propositions to Defence witnesses. The Defence is thus left with no choice but to clarify the issue for the Trial Chamber through a Rule 92bis submission despite this late stage.
10. The issue relating to Stephen Jusu Moriba arose for the first time during cross-examination and could not have been foreseen by the Defence prior to the filing deadline.

Admission under Rule 92bis

11. The materials are submitted in lieu of oral testimony as the Defence does not intend to call anyone to testify in relation to these issues. The Defence will close its case on 12 November 2010,¹¹ irregardless of the outcome of this Motion. However, the documents should be admitted under Rule 92bis because they are relevant, their reliability is susceptible of confirmation, they contain factual and not opinion

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T, Status Conference Transcript, 13 September 2010, p. 48323.

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, **Testimony of Sam Kolley**, 8 November 2010, p. 48953-55.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, **Testimony of Sam Kolley**, 3 November 2010, p. 48554-8; 4 November 2010, p. 448701; 5 November 2010, p. 48897-8; 8 November 2010, p. 48956-60; and 9 November 2010, p. 49071-2.

¹⁰ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 12 April 2010, p. 38718 (Defence Counsel Terry Munyard stated that the Prince Taylor on the Taylor Defence Team was not previously a member of the RUF). On 25 February 2008, at p. 4717, Defence Counsel Morris Anyah also clarified that Prince Taylor was an investigator for the Taylor Defence Team.

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 9 November 2010, p. 49098-9.

information, and they do not go to proof of the acts and conduct of the Accused. The issues are not critical or pivotal to the Prosecution case such that in fairness, cross-examination of anyone is required.

Information relating to Prince Taylor:

12. In his email to Defence Counsel dated 9 November 2010, Prince Taylor states that he has noticed that the Office of the Prosecutor often mistakes him for the RUF G4 Commander, and that he would like make it known to the Prosecution that he never joined the RUF or any warring faction during the conflicts in Sierra Leone and Liberia.¹² Prince Taylor's Curriculum Vitae ("CV") shows that he was employed in a civilian capacity throughout the conflict and that he first worked at the Special Court as an investigator for the Fofana Defence Team.¹³ The Prosecution has always been aware of this fact, despite their repeated suggestions otherwise. Before former Defence Counsel Karim Khan hired Prince Taylor to work as an investigator for the Taylor Defence Team in 2006, he gave the Prosecution a copy of Prince Taylor's CV and the Prosecution acknowledged that they did not have any reason to believe that he would be an unsuitable person to serve as a defence investigator.¹⁴
13. These three documents are relevant to the statements of DCT-102 that the Prince Taylor who contacted him in Monrovia to serve as a potential Defence witness is not the same as the RUF Prince Taylor. The reliability of these documents is susceptible of confirmation by reference to each other, by reference to the source of the information, and by reference to the testimony of DCT-102¹⁵ and other Defence witnesses who have testified to the same.¹⁶ The information is factual and has nothing to do with the acts or conduct of the Accused.

¹² Confidential Annex A1.

¹³ Confidential Annex A2.

¹⁴ Confidential Annex A3.

¹⁵ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, **Testimony of Sam Kolley**, 8 November 2010, p. 48953-55.

¹⁶ See, ex. *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, **Testimony of Charles Ngebeh**, 12 April 2010, p. 38718; **Testimony of Fayia Musa**, 19 April 2010, p. 39286-7; and **Testimony of Isatu Kallon**, 23 June 2010, p. 43272.

Information relating to Stephen Jusu Moriba:

14. On 10 November 2010, Scott Martin, Co-Counsel for Augustine Gbao, sent Defence Counsel Terry Munyard an email stating that Stephen Moriba was employed in 2008 by the Defence Office as a witness assistant for the Gbao team. Scott Martin further stated that to his knowledge, Stephen Moriba did not work in Liberia or assist the Taylor Defence Team in his capacity as a witness assistant.¹⁷
15. This information is relevant to DCT-102's testimony that his RUF adjutant, Stephen Jusu Moriba, pictured in Exhibit D-472,¹⁸ who worked for the Special Court as a statement taker, is quite different than Pa Moriba, an elderly advisor to Foday Sankoh, whom DCT-102 later reconnected with in Liberia. The reliability of this email is susceptible of confirmation by reference to the source of the information and by reference to the testimony of DCT-102. The information is factual and has nothing to do with the acts or conduct of the Accused.

IV. CONCLUSION AND RELIEF REQUESTED

16. The Defence seeks the admission of the four documents under Rule 92*bis* given that the Prosecution has recently put forward unfounded and misleading propositions relating to Prince Taylor and Stephen Jusu Moriba.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 11th Day of November 2010,
The Hague, The Netherlands

¹⁷ Confidential Annex B.

¹⁸ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, **Testimony of Sam Kolleh**, 9 November 2010, p. 49071-2.

Table of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – Newspaper Article, 5 October 2010

Prosecutor v. Taylor, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – Newspaper Article, Separate Dissenting Opinion of the Honorable Justice Julia Sebutinde, 5 October 2010

Prosecutor v. Taylor Transcripts

12 April 2010

19 April 2010

23 June 2010

13 September 2010

3 November 2010

4 November 2010

5 November 2010

8 November 2010

9 November 2010

Other Special Court Decisions

Prosecutor v. Norman et al, SCSL-04-14-T-507, Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case

Prosecutor v. Norman et al, SCSL-04-14-A73, Decision on Prosecution Appeal Against the Trial Chamber's Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal, 17 January 2005



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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T**

Document Index Number: **1117**

Document Date: **11 November 2010**

Filing Date: **11 November 2010**

Document Type: - **Confidential Annexes A and B**

Number of Pages: **10** Number from: **30894 - 30903**

Application

Order

Indictment

Other

Motion

Correspondence

Document Title:

Public with confidential Annexes A and B Defence motion for admission of documents pursuant to Rule 92bis – Prince Taylor and Stephen Moriba

Name of Officer:

Alhassan Fornah

Signed: 