

1046)

SCSL-03-01-T
(29723-29727)

29723



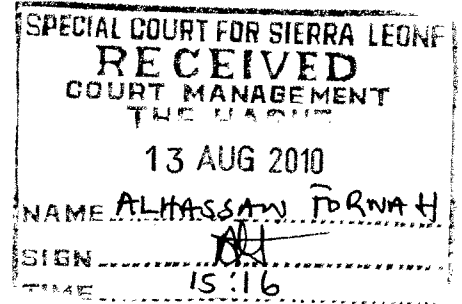
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 13 August 2010



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION RESPONSE TO "PUBLIC WITH PUBLIC ANNEX F AND CONFIDENTIAL ANNEXES A, B, C, D, E, G, H, I, DEFENCE MOTION FOR DISCLOSURE OF STATEMENT AND PROSECUTION PAYMENTS MADE TO DCT-097"

Office of the Prosecutor:
Ms. Brenda J. Hollis
Ms. Leigh Lawrie

Counsel for the Accused:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. The Prosecution files this response to the “Public, with Public Annex F and Confidential Annexes A, B, C, D, E, G, H, I, Defence Motion for Disclosure of Statement and Prosecution Payments made to DCT-097” (“**Motion**”).¹
2. The Motion incorrectly alleges that the Prosecution has failed to comply with its Rule 68 disclosure obligations² and requests disclosure of “the substance of a statement given by DCT-097 to Global Witness ... and an accounting and explanation of money paid to or benefits conferred on DCT-097 by the Prosecution”.³
3. The Defence allegation is unfounded. The Prosecution has discharged and will continue to discharge its obligations under Rule 68. Accordingly, the Motion should be dismissed.

II. SUBMISSIONS

Global Witness Material

4. The Prosecution is not in breach of its disclosure obligations in respect of the requested Global Witness material as, simply put, the Prosecution does not have this material in its possession, nor does the Prosecution know of the existence of any Rule 68 evidence in any such material.
5. As noted by the Defence, the Prosecution disclosed various unredacted statements of DCT-097 under cover of a letter dated 14 June 2010.⁴ This disclosure was made on a *bona fide* basis and in the spirit of the jurisprudence in this area.⁵ The majority of these statements had previously been disclosed to the Defence in redacted form on 17 May 2006 pursuant to the Prosecution’s global obligations under Rules 66 and/or 68.
6. Where, as in this case, the existence of exculpatory material is disputed, the Defence must “satisfy the Chamber on a *prima facie* basis of the Prosecutor’s custody or control of the materials requested.”⁶ The Defence seek to satisfy this requirement by asserting that “the Prosecution must have [the] statement [given to Global Witness] within its

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1039, Public, with Public Annex F and Confidential Annexes A, B, C, D, E, G, H, I, Defence Motion for Disclosure of Statement and Prosecution Payments made to DCT-097, 4 August 2010.

² Motion, para. 1.

³ *Ibid*, para. 25. See also para. 3.

⁴ *Ibid*, Confidential Annex A.

⁵ See for example *Prosecutor v. Sesay et al.*, SCSL-04-15-T-936, Decision on Sesay Application for Disclosure Pursuant to Rules 89(B) and/or 66(A)(ii), 10 January 2008.

⁶ *Prosecutor v. Nzirorera et al.*, ICTR-98-44-I, Decision on the Defence Motion for Disclosure of Exculpatory Evidence, 7 October 2003, para. 11(ii).

custody or control”⁷ simply because it is alleged that Global Witness triggered the initial contact between DCT-097 and the Prosecution. The Defence argument is mere speculation and such speculation does not establish a *prima facie* case that such material is within the custody or control of the Prosecution. Indeed, on the sequence of events as narrated in the Motion, it is clear that contact between the Prosecution and DCT-097 was not contingent or based on receipt of any information from Global Witness.⁸ Rather, the Defence sequence of events indicates contact was triggered by an exchange of names between two organizations investigating similar events. Accordingly, the Defence has failed to make the required *prima facie* showing.

Payments to or benefits conferred on DCT-097

7. DCT-097 is a witness who the Defence have not only interviewed but have decided to call to give testimony to this Court in support of the Defence case. This fact is to be contrasted with the Prosecution’s use of the witness. DCT-097 has never been included on any of the Prosecution’s witness lists filed with the Court in this case. Further, DCT-097 has not testified for the Prosecution in this or in any other case. The witness has, therefore, never been part of the Prosecution’s evidence.
8. The jurisprudence upon which the Defence relies establishes that payments and other benefits made to *Prosecution* witnesses should be disclosed under Rule 68⁹ as, to use the language of the rule, it “may affect the credibility of prosecution evidence”. The Prosecution has strictly complied with this disclosure obligation and has disclosed details of all payments to and benefits conferred on *Prosecution* witnesses. However, there is no jurisprudence to support the Defence contention that such disclosure must be made in respect of Defence witnesses.
9. The Prosecutor is responsible for making the initial determination of what material meets Rule 68 disclosure requirements.¹⁰ The Prosecutor has determined that, at this stage, the Prosecution is not under an obligation to disclose material relating to payments made to or benefits conferred on DCT-097. As the Defence challenge this determination and allege a

⁷ Motion, para. 16.

⁸ *Ibid*, para. 10.

⁹ *Ibid*, paras. 22 and 23.

¹⁰ *Prosecutor v. Norman et al.*, SCSL-04-14-T-730. Decision on Fofana Request for Full Review of Prosecution Evidence to Identify Rule 68 Material for Disclosure, 6 November 2006, p.3.

Rule 68 breach, the Defence must satisfy the criteria identified in the Motion, the second of which is the presentation of *prima facie* evidence that the material sought is exculpatory or potentially exculpatory in nature.¹¹

10. The jurisprudence demonstrates that in order to make a *prima facie* showing, sufficient information must be provided to the Court before it will be prepared to go behind the Prosecutor's assertion that the requested material is not exculpatory.¹² In the present case, the Defence has made no showing sufficient to establish the exculpatory or potentially exculpatory character of the material requested when the relationship of the payments or other benefits to the content of the statements and/or the proposed testimony is unknown.¹³

III. CONCLUSION

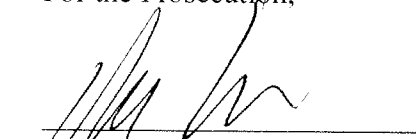
11. For the reasons set out above, the Defence motion should be denied.

Filed in The Hague,

13 August 2010,

For the Prosecution,

for



Brenda J. Hollis,
The Prosecutor

¹¹ Motion, para. 15.

¹² See for example *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Decision on Defence Motions for Disclosure of Information Obtained from Juvénal Uwilingiyimana, 27 April 2006, paras. 10 & 11 and *Prosecutor v. Bagasora et al.*, ICTR-98-41-T, Decision on Disclosure of Materials relating to Immigration Statements of Defence Witnesses, 27 September 2005, para. 9.

¹³ The latest summary of DCT-097's expected testimony is included in *Prosecutor v. Taylor*, SCSL-03-01-T-957, Public with Annex A, C and Confidential Annex B Defence Rule 73ter Filing of Witness Summaries – Version Five, 12 May 2010 at p. 28732. However, the details provided are skeletal.

INDEX OF AUTHORITIES**SCSL*****Prosecutor v. Taylor***

Prosecutor v. Taylor, SCSL-03-01-T-1039, Public, with Public Annex F and Confidential Annexes A, B, C, D, E, G, H, I, Defence Motion for Disclosure of Statement and Prosecution Payments made to DCT-097, 4 August 2010

Prosecutor v. Taylor, SCSL-03-01-T-957, Public with Annex A, C and Confidential Annex B Defence Rule 73ter Filing of Witness Summaries – Version Five, 12 May 2010

Prosecutor v. Sesay et al. SCSL-04-15-T

Prosecutor v. Sesay et al., SCSL-04-15-T-936, Decision on Sesay Application for Disclosure Pursuant to Rules 89(B) and/or 66(A)(ii), 10 January 2008

Prosecutor v. Norman et al, SCSL-04-14-T

Prosecutor v. Norman et al., SCSL-04-14-T-730, Decision on Fofana Request for Full Review of Prosecution Evidence to Identify Rule 68 Material for Disclosure, 6 November 2006

ICTY

Prosecutor v. Nzirorera et al., ICTR-98-44-I, Decision on the Defence Motion for Disclosure of Exculpatory Evidence, 7 October 2003
<http://www.unict.org/Portals/0/Case/English/Nzirorera/decision/071003.pdf>

Prosecutor v. Karemera et al., ICTR-98-44-T, Decision on Defence Motions for Disclosure of Information Obtained from Juvénal Uwilingiyimana, 27 April 2006
<http://www.unict.org/Portals/0/Case/English/Karemera/trail/270406.pdf>

Prosecutor v. Bagasora et al., ICTR-98-41-T, Decision on Disclosure of Materials relating to Immigration Statements of Defence Witnesses, 27 September 2005
<http://www.unict.org/Portals/0/Case/English/Bagasora/Trial%20and%20Appeal/270905b.pdf>