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SCSL-03-01-PT
(9411-9421)



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THE SPECIAL COURT FOR SIERRA LEONE

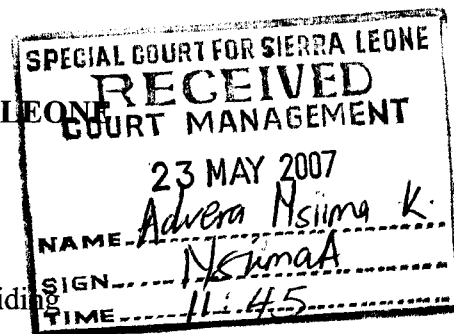
In Trial Chamber II

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

Registrar: Mr. Herman von Hebel, Acting Registrar

Date: 23 May 2007

Case No.: SCSL-2003-01-PT



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

URGENT & PUBLIC

**DEFENCE MOTION PURSUANT TO RULE 54 REQUESTING ORDER
TO COURT MANAGEMENT TO ACCEPT FILINGS AND SERVE HARD COPIES
OF ALL FILINGS ON THE PARTIES IN THE HAGUE IMMEDIATELY**

Office of the Prosecution

Ms. Brenda Hollis
Ms. Wendy van Tongeren
Ms. Ann Sutherland
Ms. Shyamala Alagendra
Mr. Alain Werner
Ms. Leigh Lawrie

Counsel for Charles Taylor

Mr. Karim A. A. Khan
Mr. Roger Sahota

I. Introduction

1. Pursuant to Rule 54 of the Special Court Rules of Procedure and Evidence (“Rules”), which permits the Trial Chamber to issue such orders as may be necessary for the “for the preparation or conduct of the trial,” the Defence for Mr. Charles Taylor (“Defence”) request that the Trial Chamber order Court Management to accept filings and serve hard copies of all filings on parties in The Hague, effective immediately.

II. The Problem

2. Over the course of the past week, the Defence has been inundated with lengthy Prosecution Motions.¹ The Defence is attempting to respond to these Motions in a timely manner.² However, that attempt is being thwarted by the slow and uncertain electronic service of documents on Defence counsel in The Hague,³ as well as a lack of basic but essential office supplies.⁴
3. Ascertaining the correct date of service and receipt is not an abstract concern of the Defence, but rather a critical consideration in determining the allocation of its human resources so as to meet the filing deadlines for responses set out in Rule 7(C) and Rule 94bis(B).

¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-236, Prosecution's Motion for Judicial Notice, 14 May 2007 (2129 pages) (“Judicial Notice Motion”); *Prosecutor v. Taylor*, SCSL-03-01-PT-238, Prosecution Filing of Expert Report Pursuant to 94(bis), 15 May 2007 (209 pages - contains five expert reports: Ellis, Smillie, Dufka, Vann, Anderson) (“Expert Reports”); *Prosecutor v. Taylor*, SCSL-03-01-PT-239, Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis for Use During Opening Statement, 16 May 2007 (397 pages) (“Opening Statement Motion”); *Prosecutor v. Taylor*, SCSL-03-01-PT-241, Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis, 17 May 2007 (891 pages) (“Admission of Material Motion”); and *Prosecutor v. Taylor*, SCSL-03-01-PT-242, Confidential Prosecution Filing of Expert Report Pursuant to Rule 94(bis), 17 May 2007 (72 pages - contains one confidential expert report).

² Note, however, *Prosecutor v. Taylor*, SCSL-03-01-PT-247, Defence Motion Pursuant to Rule 7bis Seeking Extension of Time to Respond to Prosecution's Motion for Judicial Notice, 21 May 2007.

³ The Defence has previously brought the problem with the slow server and delays of emails to the attention of CITS and Court Management, but there has been no response to date from either department. See Letter from Karim Khan to CITS and CMS, dated 30 April 2007 [Annex A].

⁴ See, *id.*, para. 5 (explaining that The Hague sub-office has run out of paper for the second time in two weeks).

4. Lately there has been a significant time lag between the date stamp showing when Court Management received documents, the date documents are electronically served to the parties, and the date documents are actually received by the parties in their email inboxes.⁵ There is often an additional time lapse as attachments trickle in. An earlier decision in this case unequivocally stated that “time does not run from the date CMS purportedly receive a document but from the time that the document is transmitted to the parties”.⁶ Consequently, the Defence wants to be clear that it only views service or transmission as complete when the Defence has received the last attachment, including all annexes, in a legible format.

5. Mr. Taylor was transferred to The Hague on 21 June 2006, almost a full year ago. His transfer by the Special Court was contemplated even long before that. Yet a non-functional Defence Office was only made available to the Defence in mid-March of 2007. It is unacceptable and prejudicial to the Defence that effective procedures are still not in place to ensure the proper filing by and service of documents on Defence counsel in The Hague. It seems that only when the Prosecution moves to its offices in The Hague will the filing and service of documents in The Hague be operable. The optics of this arrangement are unfortunate, as the organization of Court Management should not be seen as triggered by the presence of the Prosecution.

6. In two recent filings, the Prosecution has included multiple CDs as annexes of sorts.⁷ Yet no provision has been made for the Defence, located in The Hague where its client is detained and where the trial will soon be held, to obtain these CDs. Given the location of counsel, the instruction that the CDs should be picked up in the CMS office in Freetown is impractical.

⁵ For instance, the Prosecution’s Admission of Material Motion was date stamped by CMS on 17 May 2007, served by CMS on 21 May 2007, and received by the Defence on 22 May 2007. Likewise, the Prosecution’s Opening Statement Motion was date stamped by CMS on 16 May 2007, served by CMS on 18 May 2007 and received by CMS on 19 May 2007. The Defence is aware that a Prosecution Motion on Expert Reports has been filed, but it has not yet received a copy of that filing. Furthermore, the Defence have only received portions of the Prosecution’s Judicial Notice Motion. Many of those portions that have been received are actually illegible – see Email from Rosette Muzigo-Morrison, dated 23 May 2007 [Annex B].

⁶ *Prosecutor v. Taylor*, SCSL-03-01-PT-125, Decision on Defence Motion to Set Aside and/or Reconsider the Trial Chamber’s “Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure” dated 15 September 2006, 5 October 2006, para. 7.

⁷ According to an email from Court Management, the Prosecution’s Opening Statement Motion is supposed to be served with 14 audio CDs as annexes. Similarly, the Admission of Material Motion is supposed to be served with four audio CDs as annexes.

The Defence position is that until the CDs are received by them in The Hague, the entire motion has not been received. The Defence is simply unable to make an informed response at this point.

- 7. According to Article 17(4)(c), Mr. Taylor has a statutory right to be tried without undue delay. These delays in service of documents further complicate the work of the Defence and make it more difficult to prepare adequately for trial, thus extending the amount of time the Defence might otherwise need to prepare.

III. The Proposed Solution

- 8. Court Management has a very competent staff already present in The Hague. The Defence respectfully suggest that the staff in The Hague be allowed to do their job, ie. accept electronic filings from and serve hard copies of filings on the parties. The Court Management staff in The Hague should be a conduit of documents, in hard copy,⁸ to the Defence.
- 9. The Defence respectfully request that the Trial Chamber order Court Management in The Hague to keep a date of when filings were received by them and when they were served on the parties. Such a system set-up would alleviate ambiguity.
- 10. In the instance that a dispute arises between counsel and the Trial Chamber as to when a document was served and thus what time a response or reply is due, the record of Court Management as to when it physically delivered the document to the Defence should be determinative.

⁸ The Defence understands that in Freetown, each detainee is routinely served a hard copy of filings in his case by Court Management and/or Defence Office staff. Mr. Taylor has never been able to receive hard copies from Court Management, but has had to rely on his Defence Team instead, to print and bring filings to him.

9415

IV. Conclusion

11. Because of the foregoing problems associated with a slow email server and because of the voluminous last-minute filings from the Prosecution, the Defence respectfully requests this Trial Chamber to order Court Management to:

- i. Accept electronic filing in The Hague as soon as practicable; and
- ii. Serve all of the recent Prosecution Motions (those dated 14 May 2007 onward) on the Defence in The Hague in hard copy, after which time the clock will start running for the Defence to respond.

Respectfully Submitted,



Karim A. A. Khan

Lead Counsel for Mr. Charles Taylor

Dated this 23rd Day of May 2007

Table of Authorities

9416

Prosecutor v. Taylor, SCSL-03-01-PT-125, Decision on Defence Motion to Set Aside and/or Reconsider the Trial Chamber's "Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure" dated 15 September 2006, 5 October 2006

Prosecutor v. Taylor, SCSL-03-01-PT-236, Prosecution's Motion for Judicial Notice, 14 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-238, Prosecution Filing of Expert Report Pursuant to 94(bis), 15 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-239, Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis for Use During Opening Statement, 16 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-241, Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis, 17 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-242, Confidential Prosecution Filing of Expert Report Pursuant to Rule 94(bis), 17 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-247, Defence Motion Pursuant to Rule 7bis Seeking Extension of Time to Respond to Prosecution's Motion for Judicial Notice, 21 May 2007



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DFCT Ref LCH 30042007

30 April 2007

Plummer Hamilton
Chief of Information Technology
Special Court for Sierra Leone
Freetown, Sierra Leone

Elaine Bola-Clarkson
Chief of Court Management
Special Court for Sierra Leone
Freetown, Sierra Leone

**RE: Delays with the Special Court server and its impact on filings
submitted by the Taylor Defence Team**

Dear Mr. Hamilton and Ms. Bola-Clarkson,

I hope all is well with both of you, especially as you are busy preparing your respective departments for the challenges relating to the imminent start of the Taylor trial in The Hague. I hesitate to bring this concern to your attention, because I know you are doing your best to oversee the efficient functioning of your departments, but I need to ask for your assistance in addressing what have become routine delays with sending emails to and from the Special Court server, as these delays have negatively impacted the ability of the Taylor Defence Team to compose, proofread, revise, and file court documents in a timely manner.

As you well know, the Taylor Defence Team is split between offices in the Netherlands, Liberia, and Sierra Leone. Because of Mr. Taylor's detention in The Hague, away from the primary crime bases as alleged in the Indictment, counsel and legal assistants on the Taylor Defence Team are often geographically disjoined from the seat of the Court and must communicate via email. Yet the time lines for filing motions, responses and replies were written under the presumption that teams would be together in Freetown. Thus, when the emails going to and from the Special Court are delayed for whatever reason, the Taylor Defence Team is significantly and uniquely prejudiced.

For instance, this afternoon, the Defence was preparing a motion that needed to be filed by the end of the day. A Legal Assistant sent me an email with an attachment for my review at 12:30. By 6:00 this evening, I still have not received the email. In order to file on time, my Legal Assistant and I were forced to read the draft of the motion over the phone and make corrections and changes to the text verbally. This process was exceptionally difficult and ultimately not satisfactory.

9418

However, this is not the first time that significant delays in sending and receiving emails have made it difficult for the Defence to comply with Court deadlines. In fact, in February, the Defence was forced to file a Reply a day late because of problems with the slow email server. The Trial Chamber admitted the Reply notwithstanding the late filing, acknowledging that "...problems with the slow e-mail server have also been felt by the Trial Chamber on several recent occasions" (*Prosecutor v. Taylor*, SCSL-03-01-PT-209, Decision on Defence Motion to Lift the Redactions of Identifying Information of Fifteen Core Witnesses, 21 March 2007, paras. 6-7). The Defence attempts to operate in full compliance with all Court rules and regulations and is frustrated when it cannot function properly because of technical and logistical problems.

Given these concerns and the resulting prejudice to the Defence, I respectfully request that CITS and CMS focus their efforts on enabling the Court to accept filings in The Hague without further delay. In the meantime, I would appreciate it if CITS could look into the server problem and resolve whatever is causing the delays. Furthermore, perhaps it is possible to devise a system whereby on occasions where there is a significant delay on the server, CITS could advise CMS or the Trial Chamber so they could accommodate for the difficulties of the Defence.

I truly appreciate your efforts, and I am aware of the technical, logistical and budgetary constraints faced by Communications and Information Technology Support, as well as by Court Management. However, I hope that you can, in conjunction with the Registry, begin to accept documents for filing at The Hague, resolve whatever technical problems exist, and/or formulate a system whereby CMS and the Trial Chamber are made aware of delays on the email server that could impact timely filings by the Defence, in order to avoid further prejudice to Mr. Taylor because of his detention and trial away from the seat of the Special Court.

Kind Regards,



Karim A. A. Khan

Counsel for Mr. Charles Taylor

9419

CC: Hon. Justice George Gelaga King, President
Hon. Justice Julia Sebutinde, Presiding Judge
Hon. Justice Richard Lussick
Hon. Justice Teresa Doherty
Mr. Herman von Hebel, Acting Registrar
Mr. Vincent Nmehielle, Principal Defender
Mr. Stephen Rapp, Prosecutor

Annek B


SCSL Defence-Taylor/SCSL
05/23/2007 10:44 AM

To Logan Hambrick/SCSL@SCSL
cc
bcc
Subject Fw: Document Number: SCSL-03-01-236-246,

9420

----- Forwarded by SCSL Defence-Taylor/SCSL on 05/23/2007 10:44 AM -----

**Rosette
Muzigo-Morrison/SCSL@UNL
B**
05/23/2007 07:39 AM

To Elaine Bola-Clarkson/SCSL
adenuga@un.org@SCSL@UNITED NATIONS LOGISTICS
BASE, charlesjalloh@gmail.com@SCSL@UNITED
NATIONS LOGISTICS BASE,
cmbuisman@yahoo.co.uk@SCSL@UNITED NATIONS
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cmbuisman@hotmail.com@SCSL@UNITED NATIONS
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NATIONS LOGISTICS BASE, lagara@scsl@UNITED
NATIONS LOGISTICS BASE, lussick@scsl@UNITED
NATIONS LOGISTICS BASE, meisenberg@scsl@UNITED
NATIONS LOGISTICS BASE, nahamya@scsl@UNITED
NATIONS LOGISTICS BASE, rapp@scsl@UNITED
NATIONS LOGISTICS BASE,
rogersahota@gmail.com@SCSL@UNITED NATIONS
LOGISTICS BASE, sebutinde@scsl@UNITED NATIONS
LOGISTICS BASE, singhavi@gmail.com@SCSL@UNITED
NATIONS LOGISTICS BASE,
sow8@un.org@SCSL@UNITED NATIONS LOGISTICS
BASE, sutherlanda@un.org@SCSL@UNITED NATIONS
LOGISTICS BASE, vantongeren@scsl@UNITED NATIONS
LOGISTICS BASE, vonhebel@un.org@SCSL@UNITED
NATIONS LOGISTICS BASE,
waiser@un.org@SCSL@UNITED NATIONS LOGISTICS
BASE
cc
Subject Re: Document Number: SCSL-03-01-236-246, 

Dear Elaine,

Further to my telephone message yesterday and our telephone discussion last evening, I would like to inform you that the CMS office at the Sub-Office has still not been able to serve the Defence of Mr. Taylor with all documents filed from 17 May 2007 onwards.

Yesterday morning I had promised Mr. Khan that we would do our best to get hard copies of the documents to them latest this morning but we are unable to do that as we are yet to receive a complete set of the said documents.

While the web-mail service has been restored, it would appear that several of the emails have not come through. (must be floating in cyber space)

9421

Additionally, some of the documents received are illegible. It is not possible to tell from this end whether the problem was with the scanning or the originals filed. They come out as blank dark pages and will be of no use to the Defense.

Your urgent intervention is therefore solicited to have all the documents put on a CD and sent to the Sub-Office.

We will print them out and serve the Defence Office.

Could you please bring this matter to the attention of the Judges of Trial Chamber II as there are time limit implications involved.

Loking forward to hearing from you soon,

Kind regards,

Rosette