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SCSL-03-01-A
(2677-2682)

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THE SPECIAL COURT FOR SIERRA LEONE

THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Pre-Hearing Judge

Registrar: Ms. Binta Mansaray

Date: 15 October 2012

Case No.: SCSL-2003-01-A

THE PROSECUTOR

—v—

CHARLES GHANKAY TAYLOR

PUBLIC

***DEFENCE RESPONSE TO URGENT PROSECUTION MOTION REGARDING THE
DEFENCE'S FAILURE TO COMPLY WITH THE PRACTICE DIRECTION***

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Mr. James Pace

Counsel for Charles G. Taylor:

Mr. Morris Anyah
Mr. Eugene O'Sullivan
Mr. Christopher Gosnell
Ms. Kate Gibson
Ms. Magda Karagiannakis

SPECIAL COURT FOR SIERRA LEONE
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I. INTRODUCTION

1. On 12 October 2012, the Prosecution filed a motion¹ alleging wilful, unethical and serious professional misconduct on the part of Defence Counsel in this case, requesting that Defence Counsel be sanctioned by the Pre-Hearing Judge.² The Pre-Hearing Judge ordered the Defence to respond to the Motion by 15 October 2012.³ The Defence hereby responds.

2. The Motion alleges that the typeface of the “main text”⁴ of the Appellant’s Submissions of Charles Taylor⁵ “is 11.5 rather than the required 12” point font.⁶ Further, it alleges that footnotes in the Appellant’s Submissions have a 9.5 typeface that is “less than that usually used in filings before this Court.”⁷

3. Orders sought by the Motion include that the Defence re-file its Appellant’s Submissions, and the Pre-Hearing Judge “clarify”⁸ or “determine”⁹ the number of pages available to the Defence for its Rule 112 submissions¹⁰ and “sanction Defence Counsel as she deems fit.”¹¹

II. SUBMISSIONS

4. The Motion is unfounded, vexatious, contains recklessly made and patently false accusations that call into serious question the professionalism and integrity of Defence Counsel,¹² all without any proof. The Appellant’s Submissions complies with the Practice

¹ *Prosecutor v. Taylor*, SCSL-03-01-A-1335, Urgent Prosecution Motion regarding the Defence’s Failure to Comply with the Practice Direction, 12 October 2012 (“Motion”).

² Motion, paras. 4 and 8.

³ *Prosecutor v. Taylor*, SCSL-03-01-A-1336, Scheduling Order for Response and Reply Regarding the “Urgent Prosecution Motion regarding the Defence’s Failure to Comply with the Practice Direction,” 12 October 2012 (“Scheduling Order”).

⁴ Motion, para. 4.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-A-1326, Appellant’s Submissions of Charles Ghankay Taylor, 1 October 2012 and *Prosecutor v. Taylor*, SCSL-03-01-A-1331, Corrigendum to Appellant’s Submissions of Charles Ghankay Taylor, 8 October 2012 (“Appellant’s Submissions”). The Appellant’s Submissions are referred to in the Motion as “Defence’s Rule 111 Submissions.” See, Motion, para. 4 - 5.

⁶ Motion, para. 4.

⁷ Motion, para. 5.

⁸ Motion, paras. 1 and 8.

⁹ Motion, para. 6.

¹⁰ See, *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, as amended on 31 May 2012 (“Rules”), Rule 112.

¹¹ Motion, para. 8.

¹² Motion, paras. 4 and 8.

Direction's requirement of having a typeface in the main text that is 12-point font,¹³ and the allegation in the Motion that an 11.5-point typeface has been used is patently false.¹⁴ Likewise, the allegation that the footnotes in the Appellant's Submissions is in 9.5 typeface or font,¹⁵ is completely false, given that all footnotes in the Appellant's Submissions are 10-point font.¹⁶ The Motion should, accordingly, be dismissed in its entirety.

5. The Defence will provide Microsoft Word "read-only" versions of the Appellant's Submissions¹⁷ to the Senior Legal Officer of the Appeals Chamber for inspection today. The Case Manager of the Defence will contact the Case Manager of the Prosecution to be present (should the Prosecution so desire) during the hand-over of the electronic versions of the Appellant's Submissions to the Chamber's representative. The Defence respectfully requests, however, that the said Word versions not be made available to the Prosecution.

6. Properly understood, the Motion, as signed by the Prosecutor, is alleging that the four Defence Counsel who signed the Appellant's Submissions -- despite over 50 years of collective legal experience as members of the Bar and at risk to their professional reputation and personal integrity -- conspired and undertook to deliberately mislead the Court and the Prosecution to gain a tactical advantage in a single criminal case by reducing the font size of a legal brief by 0.5 points.

7. The allegations were made at 12:03 p.m.,¹⁸ less than twenty-four hours after an e-mail to Lead Defence Counsel (sent at 15:43 p.m. on the previous day).¹⁹ Contrary to the assertion in the Motion that the Prosecution "noticed"²⁰ or "noted"²¹ that the typeface of the Appellant's

¹³ See, Article 4(G) of the Practice Direction on dealing with Documents in The Hague - Sub-Office, as amended on 25 April 2008 ("Practice Direction on Dealing with Documents in The Hague").

¹⁴ Motion, para. 4.

¹⁵ Motion, para 5.

¹⁶ The Practice Direction on dealing with Documents in The Hague prescribes the use of a 12-point font or typeface, without any qualifications. However, regular usage and practice has not been set aside in filings before this Court, regarding the use of smaller font sizes for text in footnotes (usually 10-point font), footnote numbers (usually superscript font), and indented, verbatim quotations (usually 11-point font). The Defence has followed and complied with this customary practice for footnotes (all 10-point font), indented, verbatim quotations (all 11-point font) and footnote numbers in the Appellant's Submissions. The same usage is apparent upon examining the Prosecution's Appellant's Submissions (see, e.g., the reduced font size of indented quotations in paras. 27 and 113, and the reduced font size of footnotes and footnote numbers throughout the document). See, *Prosecutor v. Taylor*, SCSL-03-01-A-1325, Public Prosecution Appellant's Submissions with Confidential Sections D & E of the Book of Authorities, 1 October 2012 ("Prosecution's Appellant's Submissions").

¹⁷ This includes all filings on both 1 and 8 October 2012, as well as the Annexes thereto.

¹⁸ The Motion was time-stamped when it was filed at that time.

¹⁹ See, Annex A to the Motion.

²⁰ Motion, para. 3.

²¹ Motion, para. 4.

Submissions is 11.5, the Prosecution's knowledge about the facts had not changed between the time of the e-mail when it said, "we are unable to determine whether it uses a 12-point... or 11.5-point font,"²² and when the Motion was filed on the following day. Having admitted shortcomings in its ability to verify the size of the font used, the Prosecution's averment that the font is 11.5-point and the allegation that that was done to circumvent the Court's Order of 7 August 2012²³ were made without any factual basis, or were purely speculative, at best.

8. Of all other options available to the Prosecution before proceeding with such serious allegations, including checking the scaling of its printer or requesting such information about the scanning device used by the Court Management Section (CMS) or, alternatively, attempting to contact Lead Defence Counsel or Co-Counsel by telephone to raise the issue, the Prosecution recklessly proceeded with the malicious allegations within twenty-four hours of the e-mail.

9. The Defence, in the face of such manifestly unfounded and unsubstantiated allegations of wilful misconduct, reserves its right to move the Court for sanctions against the Prosecutor.

10. Regarding the averment in the Motion that "the cumulative effect of the irregularities in the Defence pleadings has further delayed the Prosecution's ability to meet its filing obligations in an orderly, timely manner,"²⁴ the Defence contests the Motion as groundless, as it did the *Prosecution Motion Seeking Clarification of the Practice Direction on the Structure of Grounds of Appeal before the Special Court*.²⁵ Consequently, it cannot be that unsustained averments and allegations by a party can, in turn, provide justification for any failings on the part of that party to meet filing deadlines imposed by the Court.

III. CONCLUSION

11. For the foregoing reasons, the Defence respectfully requests that the Motion be denied in its entirety.

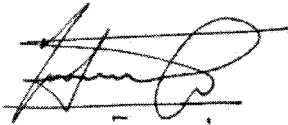


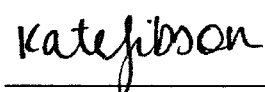
²² Annex A to the Motion.

²³ *Prosecutor v. Taylor*, SCSL-03-01-A-1315, Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, 7 August 2012.

²⁴ Motion, para. 7.

²⁵ *Prosecutor v. Taylor*, SCSL-03-01-A-1327, Prosecution Motion Seeking Clarification of the Practice Direction on the Structure of Grounds of Appeal before the Special Court, 3 October 2012.

Respectfully submitted,

			
Morris Anyah Lead Counsel for Charles G. Taylor	Eugene O'Sullivan Co-Counsel for Charles G. Taylor	Christopher Gosnell Co-Counsel for Charles G. Taylor	Kate Gibson Co-Counsel for Charles G. Taylor

Dated this 15th Day of October 2012, The Hague, The Netherlands

List of Authorities

SCSL

Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended on 31 May 2012

Practice Direction on dealing with Documents in The Hague - Sub-Office, as amended on 25 April 2008

Prosecutor v. Taylor, SCSL-03-01-A

Prosecutor v. Taylor, SCSL-03-01-A-1336, Scheduling Order for Response and Reply Regarding the “Urgent Prosecution Motion regarding the Defence’s Failure to Comply with the Practice Direction,” 12 October 2012

Prosecutor v. Taylor, SCSL-03-01-A-1335, Urgent Prosecution Motion regarding the Defence’s Failure to Comply with the Practice Direction, 12 October 2012

Prosecutor v. Taylor, SCSL-03-01-A-1331, Corrigendum to Appellant’s Submissions of Charles Ghankay Taylor, 8 October 2012

Prosecutor v. Taylor, SCSL-03-01-A-1327, Prosecution Motion Seeking Clarification of the Practice Direction on the Structure of Grounds of Appeal before the Special Court, 3 October 2012

Prosecutor v. Taylor, SCSL-03-01-A-1326, Appellant’s Submissions of Charles Ghankay Taylor, 1 October 2012

Prosecutor v. Taylor, SCSL-03-01-A-1325, Public Prosecution Appellant’s Submissions with Confidential Sections D & E of the Book of Authorities, 1 October 2012

Prosecutor v. Taylor, SCSL-03-01-A-1315, Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, 7 August 2012