

SCSL-03-01-T
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SPECIAL COURT FOR SIERRA LEONE

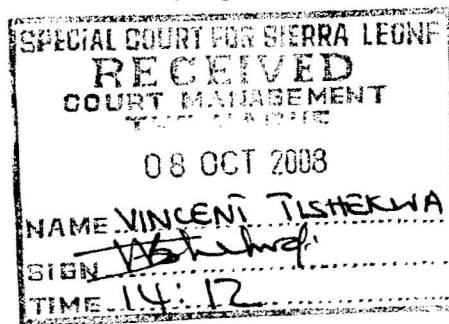
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 8 October 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PROSECUTION NOTICE UNDER RULE 92BIS
FOR THE ADMISSION OF EVIDENCE RELATED TO *INTER ALIA* KONO DISTRICT

Office of the Prosecutor:

Brenda J. Hollis
Leigh Lawrie

Defence Counsel for Charles G. Taylor:

Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Public with Confidential Annexes D to G Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *inter alia* Kono District”, filed on 28 August 2008 (“Notice”),¹ wherein the Prosecution gives notice under Rule 92bis of its intention to seek admission into evidence of parts of the prior trial transcripts and related exhibits of the testimony of Witnesses TF1-072, TF1-074, TF1-076 and TF1-077 in other proceedings before the Special Court of Sierra Leone (“SCSL”),² and that the Prosecution seeks to exclude those parts which concern: (i) legal argument which had no impact on the evidence of the witness; (ii) trial administrative matters; and (iii) evidence of the acts and conduct of the Accused;³

NOTING the “Public, with Confidential Annex A Defence Objection to Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *inter alia* Kono District and Other Ancillary Relief”, filed on 12 September 2008 (“Objection”),⁴ wherein the Defence objects to the admission of such evidence on the grounds that: (i) some of the information is not relevant as it falls outside the Indictment period; (ii) some of the evidence reflects the Witnesses’ own respective opinions or conclusions; and (iii) some of the information is “linkage” in nature and/or goes to proof of the acts and conduct of the Accused and cannot be admitted under Rule 92bis without the opportunity for cross-examination;⁵ and that alternatively, if the Trial Chamber does not deny the admission of evidence completely, then (i) only those portions of the evidence not objected to in Annex A of the Objection should be admitted; and (ii) the Trial Chamber should exercise its discretion to order the witnesses concerned to appear for cross-examination;⁶ further, the Defence applies for the protective measures granted to Witnesses TF1-072, TF1-074, TF1-076 and TF1-077 in the RUF proceedings on 5 July 2004⁷ be rescinded because there has been a material change in circumstances;⁸

MINDFUL of the provisions of Rule 92bis of the Rules of Procedure and Evidence (“Rules”);

RECALLING the Trial Chamber’s previous decision establishing the applicable law in relation to such Rule 92bis motions;⁹

HAVING conducted a careful examination of the transcripts of the testimony of Witnesses TF1-072, TF1-074, TF1-076 and TF1-077 and the exhibits¹⁰ admitted during their testimony in the RUF and/or AFRC trials;

¹ SCSL-03-01-T-571 (“Notice”).

² Witnesses TF1-074 and TF1-077 testified in *Prosecutor v. Sesay et al.* (“RUF Trial”); Witnesses TF1-072 and TF1-076 testified in *Prosecutor v. Brima et al.* (SCSL-04-16-T) (“AFRC Trial”); Witness TF1-074 also subsequently testified in the AFRC Trial after having testified in the RUF Trial.

³ Notice, para. 27.

⁴ SCSL-03-01-T-589 (“Objection”).

⁵ Objection, para 5.

⁶ Objection, para 6.

⁷ Referring to *Prosecutor v. Sesay et al.*, SCSL-05-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004.

⁸ Objection, para 7.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T-556, Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence, 15 July 2008.

¹⁰ Set out in Public Annex C and Confidential Annex E of the Notice.

FINDING that the Defence complaint that the Prosecution did not provide an exhibit¹¹ referred to during the cross-examination of Witness TF1-074¹² is inaccurate in that the exhibit was in fact provided by the Prosecution, but was improperly cited;¹³

FINDING that the testimony of Witness TF1-074¹⁴ includes a reference to a name written on a piece of paper by Defence Counsel for the Accused Kanu and shown to the witness during cross-examination which has not been provided by the Prosecution in its Notice as the document was not tendered and that this part of the witness' testimony is therefore not susceptible to confirmation, but that this can be cured during cross-examination;

SATISFIED that the information the Prosecution is seeking to tender in lieu of the oral testimony of Witnesses TF1-072, TF1-074, TF1-076 and TF1-077 does not directly go to proof of the acts and conduct of the Accused, is relevant to the purpose for which it is submitted and that its reliability is susceptible of confirmation;

SATISFIED FURTHER that the nature of the information contained in the transcripts sought to be tendered in evidence by the Prosecution is sufficiently proximate to the Accused that its admission in the absence of an opportunity to cross-examine the makers of the statements would unfairly prejudice the Accused and that it is therefore in the interests of justice to afford the Accused such an opportunity;

NOTING that in relation to the Defence application to rescind the protective measures of Witnesses TF1-072, TF1-074, TF1-076 and TF1-077, only Witness TF1-076 is listed explicitly in the Annex to the Prosecution Motion¹⁵ decided in the 5 July 2004 Decision of Trial Chamber I and that TF1-076 was a Category 1 witness in the RUF Trial;¹⁶

RECALLING the Trial Chamber's various oral rulings in relation to the above mentioned decision of Trial Chamber I, in which it was stated that:

[The Trial Chamber] find[s] nothing in the [5 July 2004] decision which would entitle witness TF1-215 to any protective measures. In our view, the decision relates solely to those witnesses listed in annexes A and B of the renewed Prosecution motion for protective measures. Witness TF1-215 is not among those witnesses listed in the

¹¹ *Prosecutor v. Brima et al.*, SCSL-04-16T, Defence Exhibit No. D8, p. 8208.

¹² *Prosecutor v. Brima et al.*, SCSL-04-16-T, Witness TF1-074, T. 5 July 2005, p. 35 (CMS p. 18574).

¹³ The Exhibit, which appears in Annex E, was improperly labelled by the Prosecution in its Notice as "AFRC Defence Exhibit No. 2" whereas it was tendered in *Prosecutor v. Brima et al.*, as Exhibit D8 and consequently labelled by CMS as SCSL-04-16-T Exhibit SCSL/ERN/D8 (Under Seal). Additionally, the page reference to the Exhibit given by Defence Counsel during cross-examination in that case was incorrect. Defence Counsel directed the Court to an extract of the witness' statement on "page 8208" while the extract actually appears on pp. 8203-8204 (CMS p. 18607-18608).

¹⁴ *Prosecutor v. Brima et al.*, SCSL-04-16-T, T. 5 July 2005, pp. 42-43 (CMS p. 18581-18582). The Defence in its Objection incorrectly cited the reference as TF1-074, 5 May 2005, pp. 42-43.

¹⁵ *Prosecutor v. Sesay et al.*, SCSL-05-15-T-102, "Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004", 4 May 2004, Annex A.

¹⁶ *Prosecutor v. Sesay et al.*, SCSL-05-15-T-180, "Decision on Prosecution Motion for Modification of Protective Measures for Witnesses", 5 July 2004. TF1-076 is a Category A Witness (Sexual Violence).

annexes. Accordingly, the witness will testify in open court and the Defence application to rescind the protective measures of this witness is now moot;¹⁷

FINDING therefore that in relation to Witnesses TF1-072, TF1-074 and TF1-077 the Defence application to rescind protective measures is moot as these witnesses do not enjoy protective measures and that in relation to TF1-076 the Defence has not established on a balance of probabilities that this witness is no longer in need of such protection;

FOR THE ABOVE REASONS

PURSUANT TO Rules 26bis, 54, 75, 89(C), and 92bis of the Rules of Procedure and Evidence;

GRANTS the Prosecution application **IN PART**, and

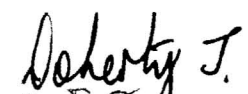
ORDERS that

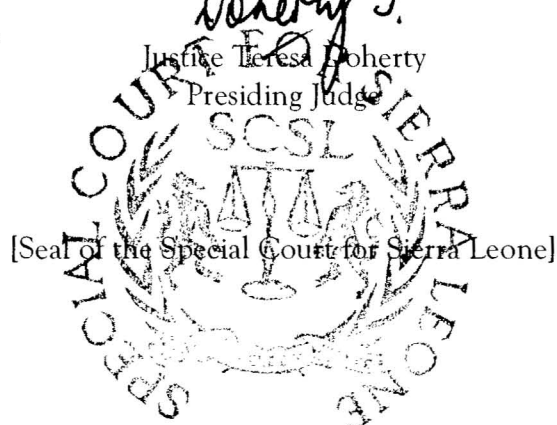
the prior trial transcripts and related exhibits relating to the testimony of Witnesses TF1-072, TF1-074, TF1-076 and TF1-077 in Annexes A, B, D, F, and G to the Motion shall be admitted into evidence pursuant to Rule 92bis provided that the Prosecution shall make the said Witnesses available for cross-examination by the Defence; and

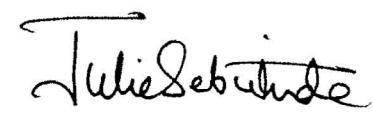
DISMISSES the Defence application for rescission of protective measures in respect of Witnesses TF1-072, TF1-074, TF1-076 and TF1-077.

Done at The Hague, The Netherlands, this 8th day of October 2008.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


[Seal of the Special Court for Sierra Leone]


Justice Julia Sebutinde

¹⁷ Transcript 6 May 2008, pp. 9122 to 9123; see also *Prosecutor v. Taylor*, SCSL-03-01-T-595, Decision on Public with Confidential Annexes B and E Urgent Prosecution Application for Reconsideration of Oral Decision Regarding Protective Measures for Witness TF1-215 or in the Alternative Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TF1-215, 15 September 2008.