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SCSL-03-01-A
(2660-2666)

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THE SPECIAL COURT FOR SIERRA LEONE

THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding Judge
Justice Emmanuel Ayoola
Justice George Gelaga King
Justice Renate Winter
Justice Jon M. Kamanda
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

Date: 11 October 2012

Case No.: SCSL-2003-01-A

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE RESPONSE TO *URGENT PROSECUTION MOTION FOR RECONSIDERATION OR REVIEW OF THE PRE-HEARING JUDGE'S 4 OCTOBER 2012 'SCHEDULING ORDER FOR FILINGS AND SUBMISSIONS'*

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Mr. Mohamed A. Bangura
Ms. Nina Tavakoli
Ms. Ruth Mary Hackler
Ms. Ula Nathai-Lutchman
Mr. Cóman Kenny

Counsel for Charles G. Taylor:
Mr. Morris Anyah
Mr. Eugene O'Sullivan
Mr. Christopher Gosnell
Ms. Kate Gibson
Ms. Magda Karagiannakis

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I. INTRODUCTION

1. The Defence hereby files this response to the *Urgent Prosecution Motion for Reconsideration or Review of the Pre-Hearing Judge's 4 October 2012 'Scheduling Order for Filings and Submissions.'*[1]

2. The Defence concurs with the requested relief and those parts of the Motion that allege clear errors of reasoning in the Impugned Decision.[2] The Defence disagrees that the Impugned Decision has already occasioned an injustice for the Prosecution[3] and with the ostensible proposition in the Motion that the order in the Impugned Decision which advances the deadline for the filing of any Defence motions under Rule 115[4] is not erroneous and, consequently, may be upheld during reconsideration or review by the Appeals Chamber.[5]

3. Reconsideration or review of the Impugned Decision is consequently warranted and the reinstatement of the deadlines set by the Appeals Chamber in its 21 August 2012 decision[6] manifestly necessary.

II. APPLICABLE LAW

4. The Defence does not disagree with the applicable law on reconsideration and review, as outlined in the Motion.

III. SUBMISSIONS

5. The Defence submits that there are several clear errors of reasoning in the Impugned Decision, warranting its reconsideration or review.[7] The Motion identifies several, such as: the

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[1] *Prosecutor v. Taylor*, SCSL-03-01-A-1329, Urgent Prosecution Motion for Reconsideration or Review of the Pre-Hearing Judge's 4 October 2012 "Scheduling Order for Filings and Submissions," 5 October 2012 (hereafter, "Motion").

[2] *Prosecutor v. Taylor*, SCSL-03-01-A-1328, Scheduling Order for Filings and Submissions, 4 October 2012 ("Impugned Decision"). For alleged "clear errors in reasoning" agreeable to the Defence, see paras. 1, 7, 14 and 16 of the Motion.

[3] For injustices alleged to have already been occasioned by the Impugned Decision, see paras. 10 and 13 of the Motion.

[4] See, *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, as amended on 31 May 2012 ("Rules"), Rule 115.

[5] See, para. 15 of the Motion, and page 3 of the Impugned Decision, ordering that the Defence file any motion pursuant to Rule 115 no later than 2 November 2012.

[6] *Prosecutor v. Taylor*, SCSL-03-01-A-1320, Decision on Defence Motion for Reconsideration or Review of *Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113* and Final Order on Extension of Time for Filing Submissions, 21 August 2012 ("Final Scheduling Decision").

absence of any change in the complexity of the issues raised in this appeal and in the size of the record between the issuance of the Final Scheduling Decision on 21 August and the filing of appellants' submissions on 1 October 2012[8] and the untenable pronouncement in the Impugned Decision that the deadline set in Rule 115 "takes into account that the moving party's decision as to the necessity for the additional evidence... may depend on the non-moving party's Response pursuant to Rule 112."[9] The Defence agrees with the Motion that these are clear errors of reasoning, warranting reconsideration or review of the Impugned Decision.

6. More significant than those errors, however, is the fundamental error which undergirds the Impugned Decision: namely, an undue regard for the expeditiousness of the proceedings at the expense of the obligation under Rule 109(B)(i) to ensure a fair hearing. The Motion rightly deems this a clear error of reasoning[10] and a violation of "the obligation which inheres in the Pre-Hearing Judge to issue decisions to ensure the preparation of the case for a 'fair' hearing."[11]

7. Fairness to both parties dictates that deadlines set by the Appeals Chamber can be relied upon and are not subject to sudden arbitrary changes without consultation or consent. The same is true of deadlines which are prescribed by the Rules – in this case, Rule 115.

8. Careful thought and consideration went into the determination in Rule 115 that a party may apply to present additional evidence before the Appeals Chamber until the deadline for the filing of the submissions in reply. And until and unless there are demonstrable reasons to believe that a party is deliberately seeking to delay the proceedings, the presumption that parties appearing before the Court are acting in good faith ought to be respected. Suggestions to the contrary without demonstrable proof are unnecessary, unwarranted and prejudicial.[12]

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[7] *Prosecutor v. Norman et al.*, SCSL-04-14-T-319, Decision on Prosecution Appeal against the Trial Chamber's Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal, 17 January 2005 ("Norman Decision"), paras. 40 and 35. See, also, *Prosecutor v. Mucić, et al.*, Case No. IT-96-21A*bis*, Judgment on Sentence Appeal, 8 April 2003, para. 49 ("Mucić, et al.") and *Prosecutor v. Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2.

[8] See, para. 7 of the Motion and *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 ("Defence Appellant's Submissions") and *Prosecutor v. Taylor*, SCSL-03-01-A-1325, Prosecution's Appellant's Submissions with Confidential Sections D & E of the Book of Authorities, 1 October 2012 ("Prosecution's Appellant's Submissions").

[9] Motion, paras. 1 and 14; See, Rules 115 and 112 of the Rules. See Impugned Decision, para. 5.

[10] Motion, para. 1.

[11] Motion, para. 10.

[12] In this regard, the interpretation given to an earlier Defence filing in footnote 7 of the Impugned Decision ("Contrary to Taylor's submission, Rule 115 [does] not give a party the opportunity to tactically surprise the opposing party with new evidence") and the accompanying text in paragraph 4 of the Impugned Decision ("A party has no right to intentionally delay the filing of Rule 115 motions in order to lengthen the proceedings or limit the

9. In this case, the full bench of the Appeals Chamber set 23 November 2012 as the deadline for the filing of the Respondent's Submissions.[13] It must be presumed that the Appeals Chamber was fully aware of the indication given by the Defence in its Notice of Appeal[14] of its intention to present additional evidence, pursuant to Rule 115, when that deadline was set. Other considerations must also be presumed to have been weighed by the Appeals Chamber when it set that deadline, including what amounts to a reasonable time period for the parties to respond to each other's appellant's submissions.

10. Indeed, and in an earlier decision of the pre-Hearing Judge, it was stated that providing notice to the parties of certain dates relevant to the appeal "as soon as possible [,] will benefit the Parties by allowing them more effectively plan and manage their work."[15] Reliance has consequently been placed on the certainty of the briefing deadlines fixed by the Appeals Chamber as the parties have planned their work and their schedules. Renewal of an intention to present additional evidence in paragraph 16 of the Defence Appellant's Submissions,[16] even though extending the possibility of additional evidence to include more grounds of appeal than stated in the Notice of Appeal, does not warrant a drastic and arbitrary modification of the Final Scheduling Decision. In fact, nothing in the Impugned Decision expressly cites to the very Final Scheduling Decision that it purports to modify.

11. Bearing in mind the 2 November 2012 deadline set by the Impugned Decision for Defence Rule 115 motion(s), a question arises regarding what deadline would apply if the Prosecution subsequently came into possession of additional evidence that it wanted to present to the Appeals Chamber. Would the provisions of Rule 115 obtain in such circumstances to allow the Prosecution until 23 November 2012 to present such evidence, or has the Impugned Decision reflected only on the prospects of the Defence seeking to present additional evidence? With respect, there cannot be one set of deadlines under Rule 115 for all other parties before the

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time available to the opposing party to identify rebuttal material") come very close to suggesting improper motives on the part of the Defence in providing notice of its intention to exercise a right granted an accused by the Rules.

[13] Final Scheduling Decision, para. 4 on pages 3 – 4.

[14] *Prosecutor v. Taylor*, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012, paras. 104 and *Prosecutor v. Taylor*, SCSL-03-01-A-1304, Corrigendum to Notice of Appeal of Charles Ghankay Taylor, 23 July 2012 (collectively, "Notice of Appeal").

[15] *Prosecutor v. Taylor*, SCSL-03-01-A-1322, Notice Relevant to Appeal Hearing, 31 August 2012.

[16] The Motion is in error when it points to "paragraph 15" (not 16) of the Defence Appellant's Submissions on this issue, but correct in noting that the Defence indicated that the grounds of appeal at issue "include but are not limited to" those specified therein. See Motion, para. 9. The Impugned Decision clearly ignores the quote phrase and impermissibly seeks to restrict the scope of any additional evidence to be presented to only grounds of appeal 7-9, 15-16, 23, 32-33 and 36-38.

Special Court and a different one for Charles Taylor. For these and other reasons given, the Motion is equally misplaced, to the extent that is suggests it would be fair and appropriate, in the totality of the circumstances, to uphold that aspect of the Impugned Decision that requires the Defence to present all Rule 115 motions by 2 November 2012.

IV. CONCLUSION

12. For the foregoing reasons, the Impugned Decision should be reconsidered or reviewed, and the deadlines set by the Appeals Chamber in the Final Scheduling Decision be restored.

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 11th 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.

Statute of the Special Court for Sierra Leone, annexed to the *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, 16 January 2002.

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

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-1329, Urgent Prosecution Motion for Reconsideration or Review of the Pre-Hearing Judge's 4 October 2012 "Scheduling Order for Filings and Submissions," 5 October 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1328, Scheduling Order for Filings and Submissions, 4 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, Prosecution's Appellant's Submissions with Confidential Sections D & E of the Book of Authorities, 1 October 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1320, Decision on Defence Motion for Reconsideration or Review of *Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113* and Final Order on Extension of Time for Filing Submissions, 21 August 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1304, Corrigendum to Notice of Appeal of Charles Ghankay Taylor, 23 July 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012.

***Prosecutor v. Taylor*, SCSL-03-01-T**

Prosecutor v. Taylor, SCSL-03-01-T-1285, Sentencing Judgement, 30 May 2012.

Prosecutor v. Taylor, SCSL-03-01-T-1284, Corrigendum to Judgement Filed on 18 May 2012, 30 May 2012.

Prosecutor v. Taylor, SCSL-03-01-T-1283, Judgement, dated 18 May 2012, filed 30 May 2012.

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

Prosecutor v. Norman et al., SCSL-04-14-T-319, Decision on Prosecution Appeal against the Trial Chamber's Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal, 17 January 2005.

ICTY

Prosecutor v. Galić, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004.
http://www.icty.org/x/cases/galic/acdec/en/040716.htm

Prosecutor v. Mucić, et al., Case No. IT-96-21A*bis*, Judgment on Sentence Appeal, 8 April 2003.
http://www.icty.org/x/cases/mucic/acjug/en/cel-aj030408.pdf