7911 SCSL-03-01-T (25458-25468) 25458

THE SPECIAL COURT FOR SIERRA LEONE

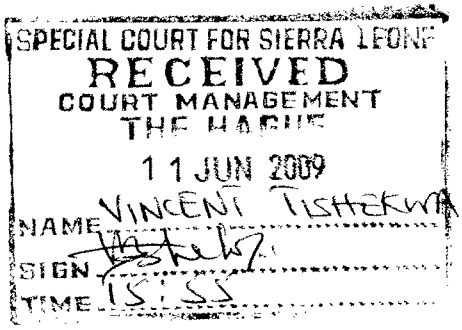
Appeals Chamber

Before: Justice Renate Winter, Presiding Judge
Justice Jon M. Kamanda
Justice George Gelaga King
Justice Emmanuel Ayoola
Justice Shireen Fisher

Acting Registrar: Ms. Binta Mansaray

Date: 11 June 2009

Case No.: SCSL-2003-01-T



THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE REPLY TO PROSECUTION RESPONSE TO "PUBLIC WITH ANNEXES A, B AND C DEFENCE NOTICE OF APPEAL AND SUBMISSIONS REGARDING THE 4 MAY 2009 ORAL DECISION REQUIRING THE DEFENCE TO COMMENCE ITS CASE ON 29 JUNE 2009"

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Kathryn Howarth

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Andrew Cayley
Mr. Morris Anyah
Mr. Silas Chekera

I. INTRODUCTION

1. This is the Defence's Reply[1] to the *Prosecution Response to "Public with Annexes A, B and C Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its case on 29 June 2009".*[2]. The Defence's Notice of Appeal was filed on 4 June 2009[3].
2. The Defence incorporates by reference herein, all arguments and averments (including those pertaining to the applicable standard of review) that were advanced in its Appeal as if set forth below in full.
3. Having considered the Prosecution's Response, the Defence avers without any hesitation that the Response merely serves to reinforce why the relief sought by the Appeal should be granted.

II. ARGUMENT

Submissions Relevant to all Grounds of Appeal

4. In the interests of brevity and consistency with the Response, the Defence will address arguments which are common to all grounds of appeal before responding to those proposed by the Prosecution in the Response.
5. The Defence denies that the Trial Chamber exercised its discretion correctly in setting the date for the start of the Defence case as 29 June 2009. The Defence believes that in making this determination, the Trial Chamber failed to take full and reasoned consideration of the evidential and logistical tasks currently facing the Defence Team, full account of the fair trial rights of the accused, and full account of the legitimate expectations generated in the accused due to the amount of time granted to other accuseds before the SCSL.
6. The Defence fully agrees with the statement of the Prosecution Response that "It is the responsibility of the Trial Chamber and not the Parties to set the trial schedule."[4] However,

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[1] ("**Reply**")
[2] *Prosecutor v. Taylor,* SCSL-03-01-T-787, "Prosecution Response to 'Public with Annexes A, B and C Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its case on 29 June 2009'." ("**Response**").
[3] *Prosecutor v. Taylor,* SCSL-03-01-T-786,"Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its case on 29 June 2009" 4 June 2009" ("**Appeal**").
[4] *Response.* para. 7

and contrary to what is suggested in the Response, the Defence has never sought to dictate to the Trial Chamber the date on which the Defence should begin its case. Indeed, the Defence has merely sought to assist the Trial Chamber in balancing its two necessary obligations to "ensure that a trial is fair and expeditious."[5] As has been consistently repeated by the Defence, failure to allow a two-week delay would result in extending the trial date further due to unavoidable adjournments over the remainder of the trial and would significantly affect the accused's right to a fair trial.

7. In failing to adequately consider and/or give correct weight to the submissions of the Defence, the Trial Chamber erred in the exercise of its discretion and as a consequence, the Appealed Decision falls outside the remit of the permissible scope of a Trial Chamber's discretion. The Prosecution's assertion that submissions now being made by the Defence on appeal are "in essence an attempt to re-litigate"[6] prior submissions made by the Defence is misplaced and is a gross over-simplification of the issues. The recurring submissions of the Defence are legally permissible before the Appeals Chamber and amount to no more than effective advocacy borne out the exercise of the accused's rights to a fair trial in order to ensure that his rights are fully protected by the Appeals process.

First Ground of Appeal

8. The Prosecution argues that denying the Accused the requested two weeks does not deprive him of his fair trial rights under Article 17 of The Statute.[7] The Prosecution's argument is based on two grounds, namely, that: (i) the Defence team has had adequate time to prepare the Accused's case and (ii) the Defence team has enjoyed an "abundant"[8] allocation of resources.

Adequate Time

9. In determining what constitutes "adequate" time, the Defence submits once more that what should be construed as "adequate" within the meaning of Article 17(4)(b) of the Statute

[5] *Rule 26bis* provides that "The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the Accused and due regard for the protection of victims and witnesses"

[6] See Response para 9

[7] See Response para 10

[8] See Response para 15

should not only have reference to the unique circumstances of this case but should also be analysed in comparison to the periods of time given to the Defence in the RUF, AFRC, and CDF cases before the SCSL (see, also, the third ground of the appeal).

10. The Response avers that the Defence has not established that the Appealed Decision deprives the Accused of his fair trial rights. The Defence again submits in the strongest possible terms that this is not simply a matter of case or trial management but one of reasonableness and fairness in terms of the Accused's fair trial rights under Article 17 (4)(b) of the Statute and generally accepted as *jus cogens* in international criminal law.
11. The arguments put forward by the Prosecution in paragraph 10 of the Response clearly fail to acknowledge the fact that until January of 2009, the Defence team had not heard the full Prosecution case and were unable therefore to complete preparation of the Defence case. As should no doubt be appreciated, any Defence case must revolve, in large measure, around the factual testimony of Prosecution witnesses and the consequent cross-examination. Accordingly, and for obvious reasons, a Defence case cannot be fully prepared and constructed until the completion of the Prosecution's case. Further, it is not the duty of the Defence to guess what the Prosecution is going to choose to allege against the Accused ahead of time or to prepare a response until the entirety of the Prosecution's evidence and allegations have been heard.
12. The Prosecution also argues that whilst the Defence is involved in examinations-in-chief, it will have a "substantial amount of time which could be used for the further preparation of Defence witnesses."[9] However, and as previously stated,[10] many prospective Defence witnesses have requested to speak only to Lead Defence Counsel, thus obviously requiring the presence of Lead Counsel at witness interviews and leaving open the prospects further potential adjournments since Lead Counsel cannot at the same time be examining the Accused in court an travelling to meet with witnesses, and endangering, as a consequence, the Accused's fair trial rights by necessitating the prolonged fracturing of his Defence team.[11]
13. As mentioned by the Defence on several occasions,[12] the circumstances of this case are unique: the Defence is spread out over various locations, and taking into consideration the

[9] See Response para 11
[10] See Appeal para 34
[11] 26 March 2009 Letter by Lead Defence Counsel
[12] See Appeal subsection D

fact that the Trial is sitting in a different locale than all other cases tried by the Special Court, it becomes clear that the limited amount of granted and available to the Defence team before the commencement of its case is plainly placing the accused at bar at an unfair disadvantage even before his case commences.

14. For purposes of accuracy, the assertion by the Prosecution that the current Defence team was granted an adjournment and had the benefit of "over" five (5) months to prepare from the 20 August 2007 Status Conference to the re-commencement of the trial on 7 January 2008 is inaccurate.[13] Anyone who counts that period of time per calendar days will arrive at a total of 140 days or the equivalent of 4.6 months. The Prosecution's assertion to the contrary is consequently erroneous and disingenuous.

Resources

15. The Prosecution also argues that the Defence Team has "abundant resources"[14] at its disposal, citing a Website that has no affiliation to the Defence team in its efforts to count the number of Defence team members.[15] The Defence prefers instead to adopt a qualitative (rather than quantitative) approach to the potential contributions of its members than a misplaced emphasis on the numbers of Defence tea members. Such an approach serves the best interests of the Accused and safeguards his fair trial rights.

16. Furthermore, the Prosecution's argument that the Defence has received more resources than previous accuseds tried by the Special Court[16] fails to mention the difference in circumstances between the previous trials and the trial of the accused at bar. For example, it is well-documented that unlike all other Special Court cases, this case is being heard outside of Sierra Leonean where the alleged crimes occurred and a majority of witnesses are resident. The difficulties which this creates should be obvious and they result in an even greater strain on resources than could possibly have occurred in any other trial before the Special Court.

17. To treat the Accused in the same way as those tried previously by the Special Court is to prejudice the Accused's chances of a fair trial by binding him to an entirely inappropriate yardstick. Additionally, it is submitted that comparisons to previous Special Court cases also

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[13] See Response Para 11
[14] See Response para 15
[15] See Response footnote 27
[16] See Response para 15

suffice to demonstrate the exceptionally difficult and complicated factors involved in the current trial.

18. For the above reasons, it is submitted that the Majority of the Trial Chamber erred in law and erred in fact by failing to give due weight to the fair trial rights of the Accused when setting the date on which the Defence case is to commence and in evaluating the peculiar time and resource constraints that the Defence has been forced to contend with.

Second Ground of Appeal

19. As has been argued previously by the Defence,[17] the untimely death of the team's International Investigator was so detrimental due to the fact that information that he had personally obtained while alive was not turned-over to the Defence before he passed away. As such, fresh investigations must now be conducted in order replace over 6 months' worth of information with no extension of time having been requested as a consequence by the Defence, save for the additional two-weeks which it now seeks for the various reasons being advanced in this appeals process. To state, as does the Prosecution in paragraph 16 of the Response that, "in an international tribunal, it is not unusual to have a regular turnover of staff and all parties must deal with this problematic reality" is not only unreasonable, it is ill-conceived as well. It is undoubtedly a rare occurrence for any defence team to lose its chief International Investigator in the manner that the team at bar has at such a vital time of the case. Indeed, unlike other staff turnover, the Defence Team cannot in the circumstances facilitate a smooth transition from one international investigator to the next, nor the preparation of the usual "exit report" that would otherwise have obtained in circumstances where an important team member of is departing the team.

20. In these unusual and unexpected circumstances, it is most unfair and extremely detrimental to the Accused, to have expected the Defence team to have anticipated the unforeseeable.

Third Ground of Appeal

21. The Prosecution makes the argument[18] that the time granted to former accuseds that were tried by the Special Court provides no basis for the current appeal, and that the reason for the length of time in the RUF and CDF cases was that "Trial Chamber I was simultaneously

[17] See Appeal para 32
[18] See Response para 17

engaged in two trials." As has been previously indicated,[19] the running of two trials was not and has not been offered as a reason for the length of time allocated to those two cases for the preparation of their respective Defence cases and the amount of time awarded was based solely upon the consideration of the amount of time that each Defence needed to prepare its case.[20] Furthermore, and in the AFRC case,[21] the Trial Chamber was not involved in any such simultaneous trial, and the Trial Chamber still allocated two (2) months and five (5) days between the Rule 98 decision and the start of the defence case.

22. When these facts are taken into account in conjunction with the circumstances in this case, the Defence submits that it should be concluded that in fact a greater (not lesser) amount of time than was granted in the previous cases should have been granted to the Defence by the Majority of the Trial Chamber, as astutely pointed out and recommended by Judge Sebutinde in her dissenting opinion.[22]

Points not Addressed by the Prosecution in its Response

23. It is pertinent to note that the Response fails to address a number of key points made in the Appeal: namely, points four and five of the Defence's grounds of Appeal.

24. More specifically, the Response does not address the submission that the Trial Chamber has ultimately only exacerbated the problem in seeking to expedite proceedings by rendering the Appealed Decision. As stated previously,[23] a premature start may well lead to multiple adjournments, prove to be a false-economy and lead to a far longer trial period than would otherwise have occurred. As such, the Majority of the Trial Chamber has erred in the exercise of its discretion.

25. Likewise, the Prosecution has failed to address the fifth ground of the appeal: namely, that it has not been shown that the Prosecution would suffer any prejudice as a result of the

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[19] See Defence Reply to Prosecution Response to "Public with Annex A Defence Aplication for Leave to Appeal the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009" 25 May 2009

[20] *Prosecutor v. Norman et al.*, SCSL-04-14-T-474, "Order Concerning the Preparation and Presentation of the Defence Case", 21 October 2005; *Prosecutor v. Norman et al.*, SCSL-04-14-T-489, "Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case", 28 November 2005; and *Prosecutor v. Sesay et al.*, SCSL-04-15-T-659, "Scheduling Order Concerning the Preparation and the Commencement of the Defence Case", 30 October 2006

[21] *Prosecutor v. Brima et al.*, SCSL-04-16-T-478, "Order for Disclosure Pursuant to Rule 73 *ter* and the Start of the Defence Case", 26 April 2006

[22] *Prosecutor v. Taylor*, SCSL-03-01-T, Transcripts of Proceedings, 4 May 2009, page 24220-24221

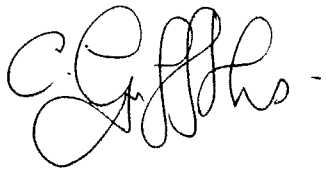
[23] 26 March 2009 Letter by Lead Defence Counsel

proposed two-week postponement of the date of commencement of the Defence's case. Having failed to address this matter in the Response and having provided no evidence of potential prejudice, the Prosecution must be said to have acquiesced to the proposition that it would suffer no prejudice as a consequence of the two-week delay.

III. CONCLUSION

26. For all the foregoing reasons, the Defence respectfully requests that the Appeals Chamber overturn the Appealed Decision and order that the Defence case be commenced on 15 July 2009.

Respectfully submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 11th day of June 2009,
The Hague, The Netherlands

List of Authorities

SCSL

Prosecutor v Taylor

Prosecutor v. Taylor, SCSL-03-01-T, Transcript of Proceedings, 9 April 2009.

Prosecutor v. Taylor, SCSL-03-01-T, Transcript of Proceedings, 7 May 2009.

Prosecutor v. Taylor, SCSL-03-01-T-320, "Principal Defender's Decision Assigning New Counsel to Charles Ghankay Taylor", 17 July 2007.

Prosecutor v. Taylor, SCSL-03-01-T-777, "Public with Annexes Defence Application for Leave to Appeal the Oral Decision Requiring the Defence to Commence its Case on 29 June 2009", 11 May 2009.

Prosecutor v. Taylor, SCSL-03-01-T-781, "Defence Reply to 'Prosecution Response to Public with Annexes Defence Application for Leave to Appeal the Oral Decision Requiring the Defence to Commence its Case on 29 June 2009'", 25 May 2009.

Prosecutor v. Taylor, SCSL-03-01-T-786, "Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its case on 29 June 2009", 4 June 2009.

Prosecutor v. Taylor, SCSL-03-01-T-787, "Prosecution Response to 'Public with Annexes A, B and C Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its case on 29 June 2009'", 8 June 2009.

CDF

Prosecutor v. Norman et al., SCSL-04-14-T-474, "Order Concerning the Preparation and Presentation of the Defence Case", 21 October 2005.

Prosecutor v. Norman et al., SCSL-04-14-T-489, "Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case", 28 November 2005.

RUF

Prosecutor v. Sesay et al., SCSL-04-15-T-659, "Scheduling Order Concerning the Preparation and the Commencement of the Defence Case", 30 October 2006.

AFRC

Prosecutor v. Brima et al., SCSL-04-16-T-478, "Order for Disclosure Pursuant to Rule 73 ter and the Start of the Defence Case", 26 April 2006.

Prosecutor v. Brima et al., SCSL-04-16-T-628, "Judgment", 20 June 2007.

Prosecutor v. Brima et al., SCSL-04-16-A, "Judgment", 22 February 2008.