



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 18 AUGUST 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Julia Sebutinde
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans
Ms Sidney Thompson

For the Registry:

Mr Gregory Townsend
Ms Advera Kamuzora
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis
Mr Nicholas Koumjian
Ms Maja Dimitrova

For the accused Charles Ghankay
Taylor:

Mr Courtenay Griffiths QC
Mr Terry Munday
Mr Morris Anyah

For the Office of the Principal
Defender:

Mr Silas Chekera

1 Monday, 18 August 2008

2 [Open session]

3 [The accused not present]

4 [Upon commencing at 9.30 a.m.]

09:22:59 5 PRESIDING JUDGE: Good morning and I welcome you all back
6 to this next session. I note the accused is not present in
7 court. I will first take appearances and then I will ask about
8 his absence. Good morning, Ms Hollis.

9 MS HOLLIS: Good morning Madam President, your Honours.
09:30:12 10 Brenda J Hollis, Nicholas Koumjian, Maja Dimitrova appear this
11 morning for the Prosecution.

12 PRESIDING JUDGE: Thank you.

13 MR GRIFFITHS: Good morning your Honours, counsel opposite.
14 Courtenay Griffiths, my learned friend Mr Terry Munyard, my
09:30:26 15 learned friend Mr Morris Anyah and Silas Chekera.

16 PRESIDING JUDGE: Thank you, Mr Griffiths. I also note the
17 presence of the Registrar's representative here in The Hague and
18 I will now ask again I note the absence of the accused.
19 Mr Griffiths, can you advise us?

09:30:54 20 MR GRIFFITHS: Your Honour, on Friday last I received a
21 telephone call from Mr Taylor expressing concerns about a
22 heightened level of security occasioned, he was informed, by
23 certain intelligence received by the prison authorities. As a
24 consequence of that call Mr Townsend and Mr Chekera attended upon
09:31:23 25 Mr Taylor in the afternoon of Friday last and, having spoken to
26 him, from my conversation with Mr Chekera the situation is this:

27 Intelligence has been received by the custody officials
28 suggesting that there is a general security risk unrelated to
29 Mr Taylor and there is no specific suggestion, as I understand

1 it, that Mr Taylor himself poses any risk, but nonetheless, as a
2 consequence of that intelligence, there is a raised level of
3 security which relates in particular to his transportation to
4 court.

09:32:15 5 Now those measures include two particular procedures to
6 which the defendant objects. Firstly, during the course of his
7 transportation from the unit he is transported in such a way as
8 to effectively cause him sensory deprivation. Secondly, during
9 the course of that - and I have put that in those terms because I
09:32:54 10 have been specifically requested by Mr Townsend on behalf of the
11 security officials that I don't spell out precisely what measures
12 are employed during the course of his transportation which is why
13 I have been so elliptical in the way in which I have put that,
14 your Honours. But the second particular procedure is that the
09:33:21 15 defendant is chained around his waist and effectively led like a
16 leashed animal and he finds that particularly objectionable and
17 degrading. Now whereas the defendant accepts the need for
18 security, he challenges the two particular procedures which have
19 been demanded by the security services.

09:33:54 20 Now your Honours will be aware that this heightened level
21 of security caused us difficulties in the past during the course
22 of these proceedings and on that occasion upon further
23 investigation it was discovered that it was a totally false
24 alarm. As a consequence Mr Taylor is concerned that the need for
09:34:22 25 these heightened security measures be investigated properly and,
26 whereas he accepts the need for some form of security, will not
27 be willing to attend court if those two particular measures
28 remain in place.

29 Now part of the difficulty, particularly from our point of

1 view as his legal representatives is the lack of transparency so
2 far as these intelligence notifications are concerned and we are
3 particularly concerned in light of the history of these matters
4 when the need for heightened security measures in the past was
09:35:10 5 found to be totally unfounded. We submit that these matters
6 ought in the first place to be properly investigated and,
7 secondly, we are concerned at the impact the imposition of such
8 measures might have upon Mr Taylor's fair trial rights, in
9 particular because the adoption of such measures in the first
09:35:34 10 place taints his public image not only with the Court, but we
11 submit also with the public, suggesting, as it does, that he
12 personally poses some particular security risk. Secondly of
13 course it affects his ability to prepare for and concentrate on
14 the proceedings whilst in court because of the anxieties
09:36:00 15 occasioned by the circumstances of his transportation and in
16 particular it distracts not only the accused from following the
17 proceedings properly, but also his advisors who have necessarily
18 to deal with and confront these matters obviously to the
19 detriment of other more important issues with which we have to
09:36:27 20 deal.

21 Whereas we appreciate that at one level these are
22 administrative matters, we do submit that unresolved they do
23 impinge upon the fair trial rights of the accused and obviously
24 upon the smooth and efficient running of the Court. So far as
09:36:49 25 that latter point is concerned, the point of my submission this
26 morning is that we should not sit today until such matters are
27 resolved.

28 Now I appreciate the pressures upon this Court in terms of
29 time, finance and otherwise, but equally I have to balance that

1 against the rights of the accused to a fair trial and the Court
2 will no doubt be aware of the degree to which the defendant has
3 become involved directly and personally in the conduct of his
4 defence and I would be loathe as lead counsel to embark on the
09:37:34 5 cross-examination of an important witness in the absence of the
6 accused, because whereas we are in possession of instructions so
7 far as this witness is concerned necessarily matters may arise ex
8 improviso during the course of the proceedings which require the
9 direct attention of the accused and the taking of specific
09:38:01 10 instructions from him and it seems to us in the circumstances it
11 would be very difficult for us to proceed properly in the absence
12 of Mr Taylor.

13 So the application we make this morning is that the
14 proceedings be adjourned until these particular difficulties are
09:38:19 15 resolved. That is my application, your Honour, unless there are
16 any specific matters upon which I can further assist you.

17 PRESIDING JUDGE: Before I invite a reply, Mr Griffiths, I
18 note that you say that - point out "not sit today" and then you
19 later say "the proceedings to be adjourned until the particular
09:38:44 20 difficulties are resolved". That appears to be - the second
21 point appears more open-ended than the first.

22 MR GRIFFITHS: Your Honour, yes, and perhaps I should be
23 clearer. It may be that during the course of today the matters
24 can be further investigated and we can arrive at some modus
09:39:08 25 vivendi which allows us to proceed tomorrow. If that is not
26 possible then my clear application would be that we not sit until
27 the matter be resolved.

28 Now I do understand from speaking to Mr Townsend earlier
29 that negotiations have been afoot to try and resolve these

1 difficulties, the stumbling block being those two particular
2 matters. Now it seems to me that it should not be beyond the wit
3 of the staff of this Court to try and resolve those matters
4 during the course of today, a working day, as opposed to over the
09:39:55 5 weekend which might have posed other logistical difficulties. So
6 I am optimistic that Mr Townsend can use today to attempt to
7 resolve these matters.

8 PRESIDING JUDGE: Thank you for that clarification,
9 Mr Griffiths. Ms Hollis, you have heard the application. Your
09:40:15 10 reply, please.

11 MS HOLLIS: The Prosecution opposes the application. We
12 believe this is clearly a situation that falls under Rule
13 60(A)(i). This accused, as far as we know, has had the
14 opportunity and right to come to court. He has refused to do so.
09:40:34 15 An accused's refusal to come to court does not undermine his fair
16 trial rights since it is his choice not to attend.

17 In terms of taking the time to resolve the issues, it
18 sounds from the application that the only resolution that would
19 bring this accused back in court would be for the removal of the
09:40:52 20 two conditions he apparently finds unacceptable. So in effect he
21 is attempting to use these proceedings to impose his will over
22 the security personnel who have made determinations about
23 appropriate measures.

24 We believe that that should not be allowed and we believe
09:41:11 25 that we should go forward because it is a voluntary absence, he
26 has refused to attend and therefore he has waived his right to be
27 present and these proceedings should not be hostage to his whims
28 about how he is transported or what security measures are
29 determined appropriate in the circumstances.

1 PRESIDING JUDGE: Thank you, Ms Hollis. Before I confer
2 with my learned colleagues, Mr Townsend, I note you have heard
3 both the application and the reply. Are there any matters that
4 you can help assist the Court with?

09:41:48 5 MR TOWNSEND: May it please the Trial Chamber, yes, your
6 Honour, if I might briefly just give you some additional
7 information upon which you might base any decision on how to
8 proceed today. The ICC authorities at the detention centre
9 informed Mr Taylor, it is my information, on 13 August 2008,
09:42:09 10 that's last Wednesday, that the security would go from medium
11 level to high level and that this change in security level was
12 not applicable only to Mr Taylor, but also to one ICC detainee.

13 Mr Taylor voiced objections, as Mr Griffiths admitted, to
14 two conditions and Mr Taylor expressed those same objections to
09:42:40 15 me on Friday, 15 August 2008. Mr Taylor appeared in a good
16 condition, he has been in custody over the recess and this
17 morning at 8.25 we received from Mr Tjonk an absence from court
18 form in which Mr Taylor was advised that proceedings would
19 continue today and that his absence may be an implied waiver to
09:43:07 20 his right to be present at trial and Mr Taylor declined to fill
21 out that waiver form, having given instructions to counsel.

22 We have indeed addressed the Dutch transport authorities,
23 the DV&O, about these two objections and they have not been able
24 to accommodate us based on their security protocol. It's not
09:43:40 25 that Mr Taylor is being - having security measures escalated
26 being targeted at him, but rather it's just a changed security
27 scene on the ground and those are all the - that's all the
28 information I have at this point, your Honour.

29 PRESIDING JUDGE: Thank you. Mr Townsend, may I take it

1 that you have given copies of this document signed by Mr Tjonk to
2 counsel for the Defence and Prosecution?

3 MR TOWNSEND: Yes, your Honour, and all the parties.

4 PRESIDING JUDGE: Thank you. Please allow me to confer.

09:44:14 5 [Trial Chamber conferred]

6 The Chamber will withdraw to discuss this application and
7 we will reconvene as soon as we have reached a decision. You
8 will be notified through the Legal Officer. Please adjourn court
9 temporarily.

09:44:43 10 [Break taken at 9.45 a.m.]

11 [Upon resuming at 10.20 a.m.]

12 PRESIDING JUDGE: We have considered the submissions of the
13 parties and of the Registrar's representative. We note that the
14 trial has been proceeding smoothly hitherto and one reason is
10:20:43 15 that Mr Taylor has conducted himself very reasonably.

16 There has not been any evidence put before us to show that
17 the upgrading of Mr Taylor's security regime has been as a result
18 of his behaviour.

19 We agree with the Defence that it is at a disadvantage in
10:21:07 20 having to cross-examine this particular witness without the
21 benefit of instructions from the accused and that this is a
22 feature that has some bearing on his fair trial rights.

23 It would appear that the matter is capable of resolution
24 and, in our view, the Registrar should be directly involved.

10:21:34 25 Accordingly we adjourn the hearing for one day and direct
26 the Registrar to investigate with a view to urgently resolving
27 this issue and to report to the Trial Chamber tomorrow at 9.30
28 a.m.

29 Ms Hollis, I note the witness is absent from the witness's

1 stand and I would therefore be grateful if someone would explain
2 this to him. I appreciate it will not be you, but perhaps I
3 should have directed that to the Registrar more properly than to
4 you. Mr Registrar, you have heard what I said.

10:22:15 5 In the circumstances we will adjourn until 9.30 tomorrow.
6 Please adjourn court.

7 [Whereupon the hearing adjourned at 10.24 a.m.
8 to be reconvened on Tuesday, 19 August 2008 at
9 9.30 a.m.]

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