



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 27 SEPTEMBER 2010
10.00 A.M.
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judges:

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

For Chambers:

Mr Simon Meisenberg
Ms Erica Bussey

For the Registry:

Ms Advera Nsiima Kamuzora
Ms Rachel Irura
Ms Zainab Fofanah

For the Prosecution:

Ms Brenda J Hollis
Mr Mohamed A Bangura
Ms Maja Dimitrova

For the accused Charles Ghankay
Taylor:

Mr Terry Munday
Mr Silas Chekera
Ms Logan Hambri ck
Ms Fati ah Bal fas
Ms Salla Moilanen

1 Monday, 27 September 2010

2 [Open session]

3 [The accused present]

4 [Upon commencing at 10.03 a.m.]

09:52:48 5 PRESIDING JUDGE: Good morning. We will take appearances
6 first, please.

7 MS HOLLIS: Good morning, Madam President, your Honours
8 opposing counsel. This morning for the Prosecution, Mohamed A
9 Bangura, Maja Dimitrova and Brenda J Hollis.

10:03:33 10 MR MUNYARD: Good morning, Madam President, your Honours,
11 counsel opposite. For the Defence this morning we have myself
12 Terry Munyard, Silas Chekera, Logan Hambrick, our case manage
13 Salla Moilanen and our legal assistant Fatiah Balfas who is one
14 of the longest serving members of the team and is leaving us at
10:03:55 15 the end of this week. So this is the last time the Court will
16 see Ms Balfas and we are very grateful indeed for all the hard
17 work and dedication she has given to the team for actually longer
18 than any of the rest of us bar, I think, Ms Hambrick and
19 Mr Anyah.

10:04:14 20 PRESIDING JUDGE: Thank you for those comments, Mr Munyard,
21 and we do wish Ms Balfas all the best in the future.

22 Now, as you know, this is a status conference at which we
23 examine the status of things at least for the foreseeable future.

24 We know that there are, as of today, four pending motions
10:04:38 25 from the Defence, fairly sizeable motions, that I reckon will
26 take us - will take the judges through the recess in deciding
27 once the pleadings have closed of course.

28 The other matter, of course, we would like to hear from the
29 Defence is your way forward as of today.

1 MR MUNYARD: Yes, Madam President. Can I assist by
2 addressing three issues: The question of any outstanding live
3 witnesses; the motions is the second issue; and the third issue
4 is the question of disclosure by the Prosecution. They of course
10:05:33 5 have a continuing obligation of disclosure.

6 As far as live witnesses are concerned, the Defence
7 position is as it was on the previous occasion when I addressed
8 the Court - the previous status conference - that --

9 PRESIDING JUDGE: Could you remind us again exactly.

10:05:54 10 MR MUNYARD: Certainly. Very unlikely, in our estimation,
11 that we will call any further live evidence, but - and I am
12 really echoing one of his Honour Justice Lussick's comments on
13 the last occasion - we can't rule it out until we have the
14 Court's decisions on our outstanding motions. And so I emphasise
10:06:20 15 that it is still unlikely. I am not suggesting that we have got
16 anybody in the wings that we are likely to call upon. That is
17 not the case. But I do not rule it out at this stage, given that
18 there are a number of, as yet, unresolved matters. So that's the
19 position on live witnesses.

10:06:39 20 As far as the motions are concerned, we did race against
21 the clock last week and we got the motions in in the nick of
22 time. We have actually spotted one or two minor errors and filed
23 corrections this morning. So I hope those loose ends will now
24 have been tidied up. And at this stage, we don't anticipate
10:07:07 25 having to put anything else in writing before the Court.

26 Madam President, with respect, I agree with your
27 assessment, that the motions, the pleadings, the procedures and
28 the size of the motions, mean that it is unlikely that the Court
29 will have reached decisions by the time we finish our two-week

1 recess on 11 October.

2 As far as the third matter is concerned, the continuing
3 obligation of the Prosecution in relation to disclosure, in
4 particular of Rule 68 material, we note the reasoning in
10:07:53 5 your Honours' decision handed down on Thursday afternoon in
6 writing in relation to witness DCT-097. In particular, but not
7 exclusively, paragraph 11 of that decision, and it is our
8 submission that the Court has now clarified the meaning of
9 exculpatory material and the duty of the Prosecution. And the
10:08:23 10 Court's decision, in our submission, establishes a different
11 standard from that sought by the Prosecution in the pleadings in
12 relation to that motion. And it is our submission that the
13 Prosecution ought now to review their disclosure, in particular,
14 of either payments or benefits in kind given to potential Defence
10:08:50 15 witnesses, that is to say Defence witnesses of whom they were
16 notified in our witness lists, and to go back, now that they have
17 the Court's decision on the 097 motion - to go back and review
18 all those potential witnesses and disclose to us any payments or
19 benefits in kind that they made to potential Defence witnesses.
10:09:19 20 And we would invite the Prosecution to do that during the period
21 of the recess.

22 That is all I need to say at the moment on that matter. It
23 seems to us, therefore, Madam President, that there will need to
24 be a status conference - there will need to be a status
10:09:45 25 conference after the recess, but I query whether you would want a
26 status conference on the first day back, as it were. Of course,
27 we are entirely in the hands of the Court on that but much will
28 turn on your own deliberations and the time that you will need to
29 deliberate on the motions.

1 Can I just add one other thing, and make it absolutely
2 clear? When I talked about the Prosecution's continuing
3 obligation to disclose, as clarified by your decision of last
4 Thursday, these are potential - I am talking about potential
10:10:23 5 Defence witnesses who were also treated as potential Prosecution
6 witnesses by the Prosecution before they ever became potential
7 Defence witnesses. In other words, people in the same category
8 as witness DCT-097.

9 PRESIDING JUDGE: Mr Munyard, may I inquire why you have
10:10:47 10 not filed a formal motion where these disclosures are concerned?

11 MR MUNYARD: Madam President, there is a reason in
12 principle and also a reason in practice. The reason in principle
13 is that it is the Prosecution's continuing duty to disclose that
14 information to us. It does not, on the face of it, require a
10:11:08 15 motion from the Defence. That's the reason in principle.

16 There is also a practical issue here. We did not receive
17 your written decision clarifying the meaning of exculpatory
18 evidence in relation to such potential witnesses until Thursday
19 afternoon. But, be that as it may, the principle still remains
10:11:36 20 that this is a matter for the Prosecution to review. They had -
21 and it was only on Thursday afternoon that they had, for the
22 first time, in writing, the Court's own interpretation of their
23 obligations to disclose in relation to exculpatory material of
24 this nature, and so they have had very little time, indeed, to
10:12:05 25 review the category of witnesses that I am talking about, and we
26 would not have expected them between Thursday afternoon and
27 Friday at 5 o'clock to have suddenly come up with a list of - or
28 with further disclosure. We appreciate that they need time to
29 look at that and to carry out their obligation.

1 It is only if, in our view, they do not carry out their
2 obligations with sufficient and reasonable time to do so, that we
3 would then, in our view, be required to put in a written motion
4 to the Court. I hope that clarifies our position, Madam
10:12:42 5 President.

6 Those are my submissions, if there is anything else before
7 I sit down that I can clarify, I am obviously happy to do so.

8 PRESIDING JUDGE: Thank you, Mr Munyard. That will be
9 fine.

10:12:56 10 Ms Hollis, would you wish to respond to any of the points
11 raised, please?

12 MS HOLLIS: Thank you, Madam President. Madam President,
13 in relation to potential Defence witnesses and that they don't
14 know, maybe they have and maybe they don't, we suggest that
10:13:13 15 simply is not good enough. It has been 19 months almost since
16 the Prosecution closed its case. It has been over 14 months
17 since the Defence began its case. They have had access to the
18 accused to determine who should be called since the very first
19 day they came on this case three years ago. If they don't know
10:13:33 20 by today who they need to call to address substantive issues, we
21 suggest they are not going to know. And to leave this case open
22 indefinitely while they continue to decide, we suggest is not
23 proper trial management, it is not in the interests of justice,
24 and it certainly is not part of any right of any accused. So we
10:13:54 25 suggest that is not a proper basis to continue to keep this case
26 open.

27 In relation to the Defence motions. As your Honour pointed
28 out, four motions were filed on 24th, only one motion was filed
29 prior to that. And of the four motions that were filed on the

1 24th, three of them were filed at 16:57, at 19:38 when the
2 Prosecution still happened to be in its offices, a person from
3 CMS came to our office and asked if we would accept the last
4 filing and, of course, since we were there, we did accept the
10:14:37 5 last filing. So we received these at the very end of the day on
6 Friday.

7 Now, nonetheless, we do want to move things forward in this
8 case so that we can have an end to the Defence case. We
9 anticipate we will be able to file responses to three of the four
10:14:58 10 this week. We will work very hard to see if we cannot, in fact,
11 file responses to all of them. It may be, however, that we are
12 only able to file responses to three of the four. Should that be
13 the case, we will file the response to the fourth motion
14 immediately next week, hopefully, no later than close of business
10:15:20 15 on Monday, and the reason that we have to wait for some of these
16 motions is to get information from Freetown.

17 So we will move very rapidly to file responses to these
18 motions well in advance of the time that we would be allotted.
19 We ask that your Honours impose an expedited reply schedule on
10:15:45 20 the Defence, giving them between 24 and 48 hours to file any
21 reply they might have, so that your Honours will be able to
22 decide these motions, hopefully, during this supposed recess, or
23 very shortly thereafter.

24 In relation to disclosure, the Prosecution has made
10:16:07 25 disclosure based on its understanding of the disclosure rule and
26 the jurisprudence on that disclosure. We will certainly take
27 into account your Honours' decision of last week to see if that
28 requires any additional disclosure on our part.

29 In relation to looking at this decision and applying it to

1 all Defence witnesses, please keep in mind that the Defence filed
2 a list of 250 some witnesses. We don't have the names of most of
3 those witnesses. So at best --

10:16:47 4 JUDGE DOHERTY: Sorry to interrupt, Ms Hollis, but my
5 understanding of Mr Munyard's submission was this applied only to
6 potential Defence witnesses who happened to be potential
7 Prosecution witnesses and not to all witnesses of the Defence,
8 and if I am incorrect in that interpretation Mr Munyard will
9 indicate. So my understanding is that it is a little more
10:17:06 10 limited than all Defence witnesses.

11 MS HOLLIS: That is our understanding of what Mr Munyard
12 said. We have yet to formulate our opinion on that - the
13 language of your Honours' decision. But my point was, we don't
14 know if all of these 250 some were at one time potential
10:17:26 15 Prosecution witnesses, because we don't have their names. So we
16 certainly, if we agree with that interpretation, we will check
17 the known Defence witnesses against our list because we certainly
18 intend to comply with your Honours' ruling as to what Rule 68 is.
19 We did not challenge that ruling, and we intend to comply with
10:17:48 20 it. But that is the point I am making in relation to all of the
21 Defence witnesses. The great majority, we have no idea who they
22 are, so we are unable to check. We do ask your Honours to set an
23 end date to the Defence case, even if it is conditional. We
24 think it is beyond time for that to happen. They do not have a
10:18:10 25 right to an open-ended case and we ask that your Honours take
26 action to set a date. And as I said, we will work very
27 diligently to ensure that we provide our responses very --

28 PRESIDING JUDGE: Ms Hollis, do you mean another date
29 because the Court did set such a date.

1 MS HOLLIS: Well, Madam President, with respect, our
2 understanding was that that date was arrived at based on an
3 estimate of how long it would take to complete examination of
4 seven witnesses. It was not a date that was given, no matter
10:18:39 5 what happens in court, the Defence case may remain open until 12
6 November. Rather, it was premised purely on how long it would
7 take to call the seven witnesses the Defence indicated to you
8 they would call, based on their estimates of how long it would
9 take them to examine these witnesses and then other estimates
10:18:59 10 relating to cross-examination, re-direct. So it was not an open
11 date for anything that may occur but, rather, premised solely on
12 seven witnesses that now we have heard will likely not be called.
13 And, again, in relation to this "we may or may not call
14 witnesses", we suggest that is too vague, too late and we ask
10:19:20 15 that your Honours not keep the case open with this very vague
16 possibility 14 months after the Defence has opened their case.
17 Thank you, Madam President.

18 MR MUNYARD: Madam President, may I respond just to clarify
19 a couple of matters?

10:19:39 20 PRESIDING JUDGE: Very well.

21 MR MUNYARD: We are not talking about all potential Defence
22 witnesses. Justice Doherty's characterisation of my argument is
23 correct. We are talking about people whose names have already
24 been disclosed to the Prosecution. And, indeed, if need be, we
10:19:58 25 can assist the Prosecution by indicating again the names of those
26 who we think fall into that category.

27 Then going back to Ms Hollis's first point, which really
28 links in with her last point, the Defence have no desire to keep
29 this case running indefinitely. And there is no suggestion, on

1 our part, that we are going to keep it running indefinitely.

2 The Court will set a date today for the next status
3 conference. That was what you, Madam President, indicated on the
4 last occasion. And we are as anxious as anyone to make sure that
10:20:42 5 the case is concluded expeditiously. But I have said all along,
6 over the last three occasions, I think - three including today -
7 that it is very unlikely that we will call any more live
8 evidence, but for reasons that I have given on previous occasions
9 and repeated today, we can't rule it out until all of the
10:21:12 10 pleadings and all of the decisions of the Court are to hand. It
11 would be, in our view, professionally verging on the
12 professionally negligent to close the door now before we know the
13 outcome of the Court's decisions on the motions.

14 Moving on, then, to those motions, there is, in law, no
10:21:38 15 basis for ordering expedited response times. The Court is going
16 to be in vacation for two weeks, albeit everybody knows that the
17 parties and the Court itself, the judges and the Court staff,
18 will maintain a number of people still working throughout the
19 vacation, and that in itself is a degree of sacrifice and
10:22:11 20 expedition on the part of the parties and the Court, the fact
21 that people are going to be required to work through their
22 vacation. And so, in our submission, the Prosecution have made
23 out no basis in law for expedited filings. There is no reason in
24 fact for expedited filings, and we do anticipate closing the case
10:22:36 25 within the time that the Court previously indicated.

26 Now, the date of 12 November may have been fixed bearing
27 certain matters in mind, but I think it is unfortunate that we
28 should be criticised for reducing the number of witnesses that we
29 were going to call, thereby saving not only the Court and the

1 parties a great deal of time but also a vast amount of public
2 expense. I hope we are not going to be criticised or penalised
3 in any way for having achieved that. And so I would ask the
4 Court to set a sensible and practical timetable, not to drag the
10:23:16 5 case out a day longer than is necessary but to do justice to the
6 Defence case by setting an appropriate date for the next status
7 conference, the usual timetable for filings, and we can then all
8 review the position by the time of the next status conference.
9 The date of that is entirely, we would submit, in your Honours'
10:23:41 10 hands, and we have no submissions on precisely when it should be,
11 apart from what I said earlier.

12 Again, unless there are any matters on which I can assist
13 further, those are my submissions.

14 PRESIDING JUDGE: We will confer now.

10:24:10 15 [Trial Chamber conferred]

16 PRESIDING JUDGE: We will retire momentarily to deliberate
17 on the issues raised between the parties and hope that I will
18 come back with some rulings on these matters. It shouldn't be
19 more than half an hour. Thank you. Court adjourns.

10:25:43 20 [Break taken at 10.25 a.m.]

21 [Upon resuming at 10.56 a.m.]

22 PRESIDING JUDGE: After deliberation, these are the rulings
23 of the Court on the various issues raised by the parties.

24 Firstly, on the issue of the pending motions, whilst we
10:56:37 25 appreciate the submissions by the Prosecution that they will make
26 every effort to file timely responses, when we looked at the
27 calendar actually, the date given by Ms Hollis, the date of
28 Monday the 4th would be exactly 10 days after receiving the
29 motions, or the last motion anyway. And so, looking at it

1 mathematically, basically that would not be an expedited response
2 if you were to file your response by Monday, 4 October. That is
3 not to say that you may not file earlier but basically, in our
4 view, we are not really saving any time and so we reckon that it
10:57:36 5 is not fair, if we have not expedited the filings of the
6 response, to expedite the filings of the Defence replies which
7 are a mere five days from receipt of the response, so we decline
8 to expedite the filings of the replies.

9 Now if we go by the calendar, that would mean that if the
10:58:01 10 last response is filed on Monday, October 4, that should give the
11 Defence five days within which to file their last reply. And I
12 am not saying that you could not file earlier, of course you can
13 file earlier, and I believe and trust that the parties are acting
14 in the interests of expediting the trial and don't need to be
10:58:31 15 reminded. Then that would definitely bring us to the end of the
16 recess. That would be the end of the recess on Monday the 11th.

17 Now, we are giving the judges some time to deliberate on
18 whatever pending motions there may be by the 11th and to give a
19 decision and then to allow the Defence time to consider the
10:59:00 20 decision we have given and to see how they then plan to go
21 forward after that decision.

22 So we are going to set a date for the next status
23 conference on Friday, 22 October. This date we reckon will give
24 everybody sufficient time to carefully consider the decisions of
10:59:26 25 the Chamber on the pending motions and to consider the way
26 forward.

27 Now at that status conference we intend to hear submissions
28 from the parties on formal closure of the Defence case. This of
29 course will include with finality the issue of any witnesses that

1 you still intend to call. We really will not hopefully hear the
2 kind of submissions you have been giving, Mr Munyard. We hope
3 that by this time the Defence will have decided, because this is
4 the time we are going to set a formal date for closure. When I
11:00:08 5 say set, it's actually going to be a revision of the date that
6 was set earlier because, as the Prosecution rightly pointed out
7 this morning, that date of 12 November was set with certain
8 events in mind; that is, the calling of seven witnesses. Now,
9 those events did not happen, or have been overtaken by events,
11:00:34 10 other events, and so we need to revise that date of 12 November
11 one way or the other, and we hope to do it on the date of 22
12 October.

13 Again, on that date, in addition to setting a closure date
14 for the Defence case, we will nominate, or we will hear - we will
11:00:57 15 hear submissions on time limits for filing the final briefs of
16 the parties and for closing arguments and incidental matters, and
17 we will set dates for all of those issues on that date.

18 Now, unless there are any other matters, I am going to
19 adjourn the proceedings to Friday, 22 October at 10 o'clock in
11:01:27 20 the morning, and to wish everybody a restful but fruitful
21 judicial recess. Thank you.

22 [Whereupon the hearing adjourned at 11.02 a.m.
23 to be reconvened on Friday, 22 October 2010 at
24 10.00 a.m.]

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