



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

THURSDAY, 20 JANUARY 2011
2.01 P.M.
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judges:

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

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Fidelma Donlon
Ms Advera Nsiima Kamuzora
Mr Alhassan Fornah
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis
Mr Nicholas Koumjian
Mr Mohamed A Bangura
Ms Maja Dimitrova

For the accused Charles Ghankay
Taylor:

Mr Courtenay Griffiths
Mr Terry Munday
Mr Morris Anyah
Ms Logan Hambriek
Ms Salla Moilanen
Ms Claire Carlton-Hanciles

1 Thursday, 20 January 2011

2 [Open session]

3 [The accused present]

4 [Upon commencing at 2.01 p.m.]

14:01:28 5 PRESIDING JUDGE: Good afternoon. I'd like to open the
6 status conference by first wishing you all a Happy New Year and
7 the best for 2011. Can I take appearances, please, Ms Hollis?

8 MS HOLLIS: Thank you, Madam President, your Honours,
9 opposing counsel, and also our best for a new year, 2011. Today
14:02:04 10 for the Prosecution, Nicholas Koumjian, Mohamed A Bangura,
11 Maja Dimitrova and myself, Brenda J Hollis.

12 PRESIDING JUDGE: Thank you, Ms Hollis. Mr Griffiths?

13 MR GRIFFITHS: Good afternoon, your Honours and counsel
14 opposite and can we join in wishing everyone a happy new year.
14:02:21 15 For the Defence this afternoon, it's myself, Courtenay Griffiths,
16 with me, Mr Terry Munyard, Mr Morris Anyah and Ms Logan Hambrick
17 of counsel and we are also joined by our case manager,
18 Mrs Salla Moilanen, and the principal defender,
19 Mrs Claire Carlton-Hanciles.

14:02:47 20 PRESIDING JUDGE: Thank you, Mr Griffiths. Mr Griffiths,
21 you have requested this status conference to, I quote, "Give you
22 the opportunity to explain why you failed to file your final
23 brief." Before I ask you to address the Court, for purposes of
24 record, I would ask if the Defence, since they are not mandated
14:03:12 25 by Rule 86 to present any closing arguments or file a final
26 submissions, if it was the Defence's intention to file a final
27 brief.

28 MR GRIFFITHS: Mr Taylor has provided us with written
29 instructions that we are not to file a final brief until such

1 time as decisions are reached on all outstanding motions and
2 appeals. This is not meant to be a delaying tactic. It is a
3 point, in our submission, of fundamental principle. Now,
4 Mr Taylor is not saying that we should not file a final brief.

14:03:57 5 He has no intention of walking away from these proceedings -

6 PRESIDING JUDGE: Just a moment, Mr Griffiths, so in
7 effect, the answer to my first preliminary question is you did
8 intend to file a final brief?

9 MR GRIFFITHS: We do intend to file a final brief,
10 14:04:18 circumstances permitting.

11 PRESIDING JUDGE: Well, it appears to me that in your
12 address, you should also encapsulate reasons why you failed to or
13 why you deliberately elected to disobey an original court order
14 made on 22 October and in the light of your refusal to accept
15 14:04:42 service of the Prosecution brief, why you would not be deemed to
16 have elected not to file a response. So I would make those
17 points to allow you to encapsulate them in your address.

18 MR GRIFFITHS: At the time when the order was made by this
19 Court that final briefs should be submitted by 14 January of this
20 14:05:08 year, certain matters had not arisen which have since arisen, ex
21 improviso, which had to be addressed by Defence and which in our
22 submission requires detailed and concentrated focus by this Court
23 before we can properly decide on all the issues to include in our
24 final brief. At the time that the order was made, we did not
25 14:05:41 know, for example, about the Wikileaks cables which implicated
26 the very integrity of the Prosecution and this Court.
27 Furthermore, other issues have arisen which are still outstanding
28 and which are of profound importance in terms of our final brief.
29 In our submission, by way of example, we have a situation where,

1 in that Wikileaks cable, mention is made of the fact by the US
2 ambassador to Monrovia, that Mr Taylor is still popular in many
3 rural areas of Liberia. How does that square with the
4 Prosecution which claims that he terrorised the civilian
14:06:30 5 population of that nation? Is that not directly relevant to the
6 contents of a final brief? Because our understanding of the word
7 "final" is that all outstanding issues have been dealt with
8 before one can issue a final brief. And we have a large number
9 of outstanding issues which have not been decided by this Court.
14:06:58 10 And Madam President, may I mention in passing that this is not
11 the first time that the Defence have been prejudiced by late
12 decision-making by this Court. You will recall that the decision
13 on JCE came after the close of the Prosecution case which as a
14 consequence meant that we were unable to cross-examine any
14:07:21 15 Prosecution witness on what eventually was stated to be the
16 purpose of this joint criminal enterprise. And as far as we are
17 concerned, we are not prepared to be prejudiced in that way
18 again, which is why we have taken the principled position that
19 unless and until we receive decisions on the outstanding motions
14:07:45 20 and appeals, we will not be filing a final brief.

21 And to deal with another matter raised by your Honour, we
22 have refused service of the Prosecution's final brief because we
23 do not want to be accused in due course of tailoring our final
24 brief, no pun intended, based on the contents of the
14:08:13 25 Prosecution's submissions. We want our submissions to stand
26 alone in their own right.

27 I don't know if there are any other matters that you'd like
28 my assistance on at this stage.

29 JUDGE LUSSICK: Mr Griffiths, I'm not sure your

1 representing your case quite accurately. All of those
2 outstanding motions that you say you do not wish to be prejudiced
3 by late decisions, they were all filed after you had closed the
4 Defence case and at a time when the Court was expecting you to be
14:08:49 5 preparing your final trial brief. And instead you filed I think
6 it was six or seven motions and now you come to court and tell us
7 that we are delaying the Defence. That seems a colossal hide to
8 me.

9 MR GRIFFITHS: We totally disagree with respect,
14:09:06 10 your Honour, for this reason. These matters arose and quite
11 legitimately we have to deal with them. Were we supposed to
12 ignore these two code cables, one of which directly implicates
13 the integrity of these proceedings and this Court? Were we
14 supposed to ignore it and then, when raised on appeal, only to be
14:09:28 15 told, well, you didn't deal with it in a timely fashion. That's
16 what the Prosecution would argue on appeal. So we have a right,
17 and a duty, indeed an obligation to our client to deal with these
18 issues as they arise. And that we have done.

19 JUDGE LUSSICK: We said in our decision that, having filed
14:09:50 20 a final trial brief, any further matters that arose from our
21 subsequent decisions of your motions could be the subject of a
22 further application to file additional submissions. Now, why do
23 you have to pull the whole Defence up while we are dealing with
24 matters that you have raised to delay - to delay the case, in my
14:10:15 25 opinion?

26 MR GRIFFITHS: Well, with respect, your Honour, these are
27 not delaying tactics. And I must make it clear that we are here
28 acting on the written direct instructions of Mr Taylor. He has
29 instructed us that he is not prepared for us to file a final

1 brief until such time as these outstanding matters have been
2 dealt with. And I repeat: They are legitimate matters which
3 impact on the contents of our final brief, and in our submission
4 as a matter of principle, no final, stressing and underlining
14:11:00 5 that word, brief can be submitted until all outstanding matters
6 are finalised. And that is our position.

7 JUDGE LUSSICK: I understand your position, Mr Griffiths,
8 and I understand that you have certain instructions. But I'm
9 simply of the view that a final brief could have been filed, and
14:11:26 10 I don't see any reason now why the Defence should not be deemed
11 to have elected not to file a final brief because when you do now
12 it will be in breach of a court order.

13 MR GRIFFITHS: Well, your Honour, I've already indicated
14 that it is our intention to file a final brief but it's
14:11:49 15 conditional, and in our submission, were your Honours to take the
16 view that our failure, in effect, amounts to us deciding not to
17 file a final brief, that would be contrary to the defendant's
18 intention, and of course, if your Honours were minded to take
19 such a course, I would have to take further instructions from my
14:12:13 20 client as to whether or not I could continue to represent him in
21 a professional capacity, based on such a decision.

22 JUDGE LUSSICK: Well, I for one am not bowed by that
23 implied threat, Mr Griffiths.

24 MR GRIFFITHS: It's not meant to be, your Honour.

14:12:33 25 PRESIDING JUDGE: Mr Griffiths, it appears to me from what
26 you have said that the matters you are putting forward now are no
27 different from the matters you put forward in the first request
28 which was ruled upon by way of a written decision, and which my
29 learned colleague has correctly pointed out did indicate that the

1 situation could be reviewed by way of an application when
2 decisions were rendered. Am I wrong on that?

3 MR GRIFFITHS: Well, we are relying upon those submissions,
4 but you will recall that the submissions, the written
14:13:08 5 submissions, we made, were summarily dismissed without even a
6 request from the Prosecution for a response and so consequently
7 we have not had, prior to today, an opportunity of addressing
8 your Honours directly on these issues and we think that we are
9 perfectly within our powers. It is perfectly within our

14:13:45 10 responsibilities, our professional responsibilities, to raise
11 those issues now and I can say this: At the time when we filed
12 those written submissions, we did not have Mr Taylor's clear,
13 written instructions as to his position. I do have those clear,
14 written instructions here and he has made it quite clear that
14:14:10 15 he's not prepared to instruct us to file a final brief until such
16 time as all outstanding decisions have been made. Those are my
17 instructions. I can't go behind them.

18 PRESIDING JUDGE: Any other matters, Mr Griffiths?

19 MR GRIFFITHS: Not for our purposes.

14:14:45 20 [Trial Chamber confers]

21 PRESIDING JUDGE: Ms Hollis, will you be address us on
22 behalf of the Prosecution?

23 MS HOLLIS: Yes, Madam President, I will.

24 Madam President, it has become even more clear, based on
14:15:00 25 what Defence counsel has just told you that what has happened in
26 this case is that the accused has made a deliberate election not
27 to file a final trial brief. To say that he has made some other
28 decision is to, in effect, give him control over the proceedings.
29 To say that he will file a final trial brief and has the right to

1 do so when conditions are such that he believes are appropriate
2 is to, in effect, let him sit in the middle of the courtroom and
3 run the trial. He has no such right. No accused has such a
4 right.

14:15:41 5 The Defence counsel has made it very clear that it was
6 express instructions from the accused, Mr Taylor, not to file on
7 the date ordered by your Honours, even after the Defence had
8 attempted to get a modification or rescission of the order
9 establishing that date. Unsuccessfully attempted to do that.

14:16:05 10 And then he elected not to play. Well, he can elect not to play
11 but this Court does not have to then change the schedule or
12 change the rules to play as he wishes to play. These are serious
13 dignified formal proceedings and he does not control them. It is
14 not any violation of fairness or justice to hold him to account
14:16:30 15 for the consequences of his deliberate and wilful choices.

16 Now, as the matter stands today, he has two additional
17 opportunities to present his views and arguments to this
18 Trial Chamber. There is a response that he may file on 31
19 January. He has elected not to look at the Prosecution brief but
14:16:55 20 it is there and available for him to look at. If he chooses not
21 to look at it and not to file a response, that is once again a
22 deliberate and wilful election on the part of the accused. And
23 it is not one that he should be rewarded for by giving him
24 additional time at some nebulous time in the future to file final
14:17:17 25 submissions.

26 In addition to that, he has the opportunity through his
27 counsel to make oral argument to your Honours in February. He
28 may or may not avail himself of that opportunity. Again, that is
29 a choice that lies squarely with him and he should be held to the

1 consequences of that choice.

2 We believe, your Honours, that it is not through the
3 actions of this Trial Chamber that we find ourselves here today.

4 It is through the actions of the accused through his Defence
14:17:51 5 team. If you recall, on 22 October, it was the Defence who chose
6 14 January so that they could file a proper, final brief. The
7 Trial Chamber gave them that choice and then the accused chose to
8 ignore it.

9 PRESIDING JUDGE: I think it was 14 January.

14:18:15 10 MS HOLLIS: Thank you, 14 of January of this year. That
11 was their choice, they were given it and then the accused chose
12 to ignore it. The accused was granted leave to appeal on two
13 issues on 2 and 3 of December and those are among the two issues
14 that the Defence now says must be resolved before they can file a
14:18:38 15 final trial brief. On 2 and 3 December you received no pleading
16 from the Defence saying, Oh gosh, things have changed, now would
17 you please give us an extension of time to file or would you stay
18 these proceedings? They filed their pleadings, their appeal
19 pleadings, on 14 December. No request for an extension of time
14:18:58 20 to file the final trial brief, no request for a stay of
21 proceedings. On 17 December, the day that -- the last official
22 day before the recess, they filed another substantive motion. No
23 request for an extension of time to file their final trial brief,
24 no request for a stay of the proceedings.

14:19:17 25 And then, over the break, they busied themselves writing
26 other motions instead of directing their attention to the 49,000
27 pages of transcript and the almost 1100 exhibits, and for them to
28 tell you that they could not file a final trial brief until such
29 time in the future that they might get a decision that might

1 favour them is simply a disingenuous and bad-faith argument,
2 especially in light of the fact that they only asked for this
3 delay at the very last minute and that they then ignore the
4 ruling of this Court who are the ones truly in charge of these
14:20:01 5 proceedings. They ignore that ruling because Mr Taylor didn't
6 like it. Well, that's unfortunate but that is what happens in
7 formal proceedings. Parties propose, judges dispose, and the
8 parties act consistent with the disposition of the judges.

9 This Trial Chamber gave a perfectly reasonable decision
14:20:24 10 about what could happen if, in the future, there was a ruling
11 that justified either additional evidence or additional
12 submissions. That ruling was not based on speculation as to what
13 might happen, but gave a very concrete, a very efficient, way of
14 dealing with any such matters that might arise in the future.

14:20:47 15 The Defence chose to ignore that, on instruction of this
16 accused and instead to simply not file submissions. There is
17 nothing that the Defence has said to you today that justifies
18 basically allowing this accused to run these proceedings. He has
19 elected not to file a final trial brief, except under his
14:21:10 20 conditions, and that's not the way it works in a criminal
21 proceeding. If he elects not to file a response, if he elects
22 not to engage in oral argument, those are his choices; his
23 choices, his consequences, no violation of any fairness,
24 certainly not a violation of any principle of justice because
14:21:28 25 every principle of justice says that an accused may not hold a
26 Trial Chamber and a proceeding hostage to his whims and his
27 desires.

28 We would suggest that the accused still has the opportunity
29 to put his positions before this Trial Chamber without disrupting

1 the orderly flow of the proceedings, without, in effect, taking
2 over control of these proceedings, and we would ask that your
3 Honours simply adhere to the remaining schedule and it is up to
4 the accused to determine whether he wishes to participate in
14:22:02 5 those two events or not. And the Defence has made some
6 affirmative statements about what these cables supposedly tell
7 you or don't tell you. That is not our position. These cables
8 tell you about an independent court, not a court that are puppets
9 of any government. Of course, that is a matter to be resolved
14:22:23 10 but the Defence raised it and I want you to know that our
11 position is that it's simply a bad-faith argument and not
12 supported by the very cables on which the Defence relies. So,
13 your Honours, those are the submissions we would make on this.
14 The accused choices, the accused's consequences, let us move
14:22:41 15 forward with what the Trial Chamber has determined based on the
16 wishes of the accused through his counsel should be the schedule
17 for final submissions in this case.

18 PRESIDING JUDGE: Thank you, Ms Hollis.

19 [Trial Chamber confers]

14:23:10 20 JUDGE SEBUTINDE: Mr Griffiths, two things. One, it seems
21 from your submissions that you are waiting upon decisions from
22 the Trial Chamber and also from the Appeals Chamber. Would I be
23 correct?

24 MR GRIFFITHS: Your Honour, yes.

14:23:29 25 JUDGE SEBUTINDE: Because I think from your submissions it
26 appeared as if you're only waiting for decisions from the
27 Trial Chamber. Secondly, according to the agenda for this
28 Status Conference, you are supposed to respond to any ensuing
29 concerns. Do you have any response in this regard?

1 MR GRIFFITHS: Well, to this extent: First of all,
2 responding to the comments made by my learned friend, in our
3 submission, Mr Taylor is not seeking to control these
4 proceedings. Rather, he's seeking to ensure that his trial is
14:24:13 5 fair. And whereas my learned friend suggests that rather than
6 concentrate on the final brief we busied ourself over the
7 Christmas recess with other matters, now, that may arise from the
8 Prosecution's own embarrassment at some of the details which have
9 emerged, ex improviso, since that date was set, but we submit
14:24:41 10 that the cumulative effect of all the issues which have arisen,
11 ex improviso, in our submission, supports the position which we
12 now take. Now, so far as other concerns, I note that the
13 Prosecution have served a - or filed a motion seeking corrections
14 to the final brief which they submitted. We are not in a
14:25:10 15 position to deal with that, not having seen the final brief or,
16 indeed, looked at the suggested corrections. So as far as that
17 is concerned, we are not in a position to comment because we
18 submit that it is important, as guaranteed by Article 6, that a
19 defendant has adequate time and facilities in order to prepare
14:25:37 20 his defence and we are submitting that we have not had that, and
21 that is the fundamental basis for our submissions.

22 I don't know if there are any other matters with which I
23 can assist.

24 PRESIDING JUDGE: I'd like to be clear about this
14:26:06 25 situation, Mr Griffiths. You have stated that Mr Taylor,
26 I quote, is not seeking to control the proceedings. But the
27 instructions it appears to me that he has given you are
28 tantamount to contempt of a court order, which was made on 22
29 October and the - you said about time to prepare, you've also

1 mentioned time to prepare, and it was Mr Munyard on behalf of the
2 Defence that submitted 14 January as time to prepare. So what
3 you are, to my mind, saying is your instructions are in breach of
4 an order.

14:26:54 5 MR GRIFFITHS: We would disagree with respect, your Honour.
6 The time when the Defence made those submissions as to the
7 timetable, Mr Munyard didn't have the benefit of a crystal ball
8 to know that other important matters would thereafter arise
9 requiring our attention. And so consequently, the order must
14:27:17 10 necessarily be contingents upon unforeseen events which have
11 thereafter arisen. So that to be - for that to be constantly
12 thrown in our face, that you are the ones who established this
13 timetable, really doesn't take account of the fact that at the
14 time that we did, we could not have foreseen any of these events
14:27:42 15 which required our urgent and focused attention.

16 PRESIDING JUDGE: I note, Mr Griffiths, that you also
17 indicated that you would not be in a position to respond to the
18 Prosecution motions and the corrigendum concerning corrections to
19 the final brief. We had proposed that possibly that could be
14:28:12 20 dealt with orally today. However, in the light of your
21 indication, can I take it that you are not prepared to proceed
22 with that matter?

23 MR GRIFFITHS: Well, I'm not in a position to. It's not a
24 question of not being prepared to. I am simply not in a position
14:28:27 25 to because I've not seen the final brief, I equally have not and
26 quite deliberately not, looked at the recent motion filed by the
27 Prosecution seeking corrections.

28 PRESIDING JUDGE: Thank you. We will adjourn briefly to
29 consider these matters.

1 [Break taken at 2.30 p.m.]

2 [Upon resuming at 3.39 p.m.]

3 PRESIDING JUDGE: The Trial Chamber has considered the
4 submissions of counsel. This Status Conference was convened on
15:38:50 5 the application of the Defence to, and I quote, "Give Defence an
6 opportunity to explain why it failed to file its final brief on
7 the 14th of January 2011 as ordered, and why it has refused to
8 accept service of the Prosecution final brief."

9 On 22 October 2010, the Trial Chamber issued orders to the
15:39:23 10 parties inter alia to file their respective final briefs by 14
11 January 2011. We learned today that lead counsel from - from
12 lead counsel for the Defence, that Mr Taylor has instructed him
13 not to file a final brief until decisions on outstanding motions
14 and appeals are rendered. In other words, Mr Taylor instructed
15:39:54 15 his counsel not to comply with the Court's order.

16 The Defence has also refused to accept service of the
17 Prosecution final brief.

18 The outstanding appeals and motions referred to were filed
19 after the Defence closed its case, at a time when the
15:40:20 20 Trial Chamber expected that the Defence would be preparing its
21 final brief. The decisions on outstanding motions and appeals
22 may call for further orders to be made in relation to the
23 presentation of the Defence case and in the interests of a fair
24 trial. But the Trial Chamber emphasises that any such orders
15:40:49 25 will be made by the Trial Chamber and not by Mr Taylor.

26 Mr Taylor does not have the option of obeying or disobeying court
27 orders as he sees fit.

28 The Trial Chamber has a duty of fairness to all parties,
29 and a duty to ensure an expeditious and fair trial. In this

1 vein, the Trial Chamber has indicated that it will afford the
2 Defence the opportunity to apply for ancillary relief, if
3 necessary, after the decisions on the very recently filed motions
4 and appeals are rendered. The majority of the Trial Chamber,
15:41:37 5 Justice Sebutinde dissenting, consider that they have not heard
6 submissions that causes the Trial Chamber to review or amend the
7 original orders rendered on 22 October 2010 and the majority
8 decision of 12 January 2011.

9 Justice Sebutinde will make a dissenting - give a
15:42:10 10 dissenting opinion.

11 JUDGE SEBUTINDE: Very briefly, I have carefully listened
12 to the submissions and explanations given by lead counsel for the
13 Defence. For me, I consider that this is a very important stage
14 in the trial, in this trial, the stage at which each side wraps
15:42:41 15 up its case. For me, the essence of a fair trial at this stage
16 is to afford each side to wrap up its case before the judges.
17 The reasons given by the Defence, explaining why they are not in
18 a position to wrap up its case and file their final trial briefs,
19 in a nutshell, are that there are decisions they expect from the
15:43:18 20 Trial Chamber and from the Appeals Chamber, the results of which
21 may well affect the content of their final briefs and the content
22 of the defence of the accused. For me, it would not be fair to
23 ask the defendant to wrap up his defence when there are issues on
24 the table of the judges that we have not been able to deal with
15:43:49 25 yet. In other words, the ball is in the court - is in the court
26 of the Court, so to speak.

27 In my view, it is not unreasonable for Mr Taylor to say to
28 the judges, "I will file a trial brief as soon as you give me the
29 judgments or the decisions that I'm waiting for." On the other

1 hand, what we are saying to Mr Taylor is, "File a piecemeal final
2 brief in your defence."

3 Article 17(4)(b), I think, guarantees the accused adequate
4 time to prepare his defence and preparing his defence in my view
15:44:45 5 could not be more stressed than at this time when he's asked to
6 wrap up his defence. He has asked for time, time to do what? To
7 allow the judges to deliver the judgments that are due from them.
8 He has not asked for extra time, to dilly-dally. He's simply
9 waiting for decisions that are pending before the judges.

15:45:18 10 Now, this is not to blame the judges per se, that they have
11 taken their time over the judgments. I do not know why, for
12 instance, the appeals are still pending. It could be that some
13 of the filings haven't closed. Whatever the reasons are, the
14 bottom line is that the accused ought, at the very minimum, to be
15:45:41 15 afforded an opportunity to prepare his final defence with all the
16 pieces before him, and in my view, it is not fair to ask him to
17 prepare piecemeal defences.

18 Now, I would personally have been of the view that an
19 adjustment could be made to accommodate Mr Taylor by about a week
15:46:09 20 or so, but that an effort should be made by the judges to deliver
21 the judgments due.

22 Those would be my brief arguments.

23 PRESIDING JUDGE: If there are no other matters, I will
24 adjourn the Court until 8 February 2011.

15:46:33 25 Mr Griffiths, any other matters?

26 MR GRIFFITHS: There are no other matters which I wish to
27 raise.

28 PRESIDING JUDGE: Thank you, Ms Hollis?

29 MS HOLLIS: No, Madam President.

1 PRESIDING JUDGE: Thank you. Accordingly, the Court is
2 adjourned until the 8th of February.

3 [Whereupon the Status Conference adjourned at
4 3.47 p.m.]

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