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SCSL-12-02
(012-023)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Single Judge

Binta Mansaray

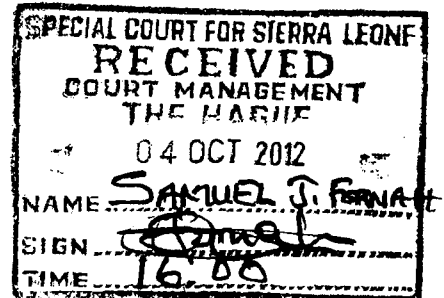
Case No.: SCSL-12-02

Date: 4 October 2012

INDEPENDENT COUNSEL

v.

Prince TAYLOR



PUBLIC WITH CONFIDENTIAL ANNEX A
DECISION ON THE CONFIDENTIAL - UNDER SEAL
SUBMISSION OF SUPPLEMENTAL CONFIDENTIAL REPORT OF INDEPENDENT COUNSEL

Independent Counsel:
William L. Gardner

013

I, Justice Teresa Doherty, Single Judge of the Special Court for Sierra Leone ("Special Court")

SEISED of the "Confidential - Under Seal Submission of Supplemental Confidential Report of Independent Counsel," filed on 22 August 2012 ("Supplemental Report");¹

RECALLING the "Decision on Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and on Prosecution Supplemental Requests," filed on 17 March 2011;²

RECALLING also the "Confidential - Under Seal Submission of Confidential Report of Independent Counsel," filed on 12 April 2011;³

RECALLING also the "Decision on the Report of Independent Counsel," filed on 24 May 2011;⁴

RECALLING also the Judgement in the case of *The Independent Counsel v. Eric Koi Senessie*, rendered on 21 June 2012 and filed on 16 August 2012;⁵

RECALLING FURTHER the Sentencing Judgement in the case of *The Independent Counsel v. Eric Koi Senessie*, rendered on 5 July 2012 and filed on 12 July 2012;⁶

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("the Statute") and Rules 73(A), 77 and 85(C) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("the Rules");

HEREBY decide as follows based solely on the written submission pursuant to Rule 73(A):

BACKGROUND

1. On 3 February 2011, the Prosecutor filed a motion "Public with Confidential Annexes A to E and Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone"⁷ and on 7 February 2011 she filed a further motion "Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone."⁸ The Trial Chamber filed the "Decision on Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation

¹ SCSL-03-01-T-1321.

² SCSL-03-01-T-1231.

³ SCSL-03-01-T-1240.

⁴ SCSL-03-01-T-1249.

⁵ Transcript 21 June 2012, pp. 1-35; SCSL-11-01-T-27.

⁶ Transcript 5 July 2012 pp. 2-11; SCSL-11-01-T-20.

⁷ SCSL-03-01-T-1185.

⁸ SCSL-03-01-T-1192.

into Contempt of the Special Court for Sierra Leone and on Prosecution Supplemental Requests” on 17 March 2011.⁹

2. Following appointment of William Gardner as Independent Counsel,¹⁰ and the filing of his report on 12 April 2011,¹¹ Trial Chamber II issued a decision directing Independent Counsel to prosecute Eric Senessie for contempt of court, annexing an order in lieu of indictment thereto and assigning the matter to Justice Teresa Doherty as a Single Judge in accordance with Rule 77(D).¹²
3. Senessie was arraigned and entered a plea of not guilty on 15 July 2011¹³ and, following a trial in Freetown from 11 to 15 June 2012, Senessie was convicted on 8 of 9 Counts on 21 June 2012.¹⁴
4. At a sentencing hearing on 4 July 2012, Senessie, *in allocutus*, stated that Prince Taylor had duped him, deliberately involved him and told him not to implicate him (Prince Taylor).¹⁵ On 5 July 2012, the Single Judge sentenced Senessie to two years’ imprisonment on each count, to run concurrently.¹⁶ Following Senessie’s *allocutus* and further investigation, Independent Counsel filed a confidential Supplemental Report.¹⁷

SUBMISSIONS

5. In his Supplemental Report, Counsel refers to Senessie’s *allocutus* and to subsequent discussions between Senessie’s Counsel and the Independent Counsel and submits that there are sufficient grounds to initiate contempt charges against Prince Taylor.¹⁸ These arise from knowingly and wilfully interfering with the Special Court’s administration of justice by:

⁹ SCSL-03-01-T-1231.

¹⁰ SCSL-03-01-T-1232.

¹¹ SCSL-03-01-T-1240.

¹² SCSL-03-01-T-1249.

¹³ Transcript 15 July 2012, pp. 1-7.

¹⁴ Transcript 21 June 2012, pp. 1-35.

¹⁵ Transcript 4 July 2012, pp. 3-6.

¹⁶ Transcript 5 July 2012, pp. 2-11.

¹⁷ SCSL-03-01-T-1231.

¹⁸ SCSL-03-01-T-1231, paras 9-16.

- 1) offering a bribe to four named witnesses;
 - 2) otherwise interfering with four named witnesses;
 - 3) interfering with Senessie, who was about to give evidence in proceedings before a Chamber or alternatively interfering with Senessie, a potential witness in a contempt proceeding and;
 - 4) a further count of interfering with Senessie as a potential witness and a witness about to give evidence in proceedings before a Chamber by persuading Senessie to discharge his then Defence Counsel and refuse to engage in the plea bargain process that was recommended by the said Defence Counsel.¹⁹
6. Independent Counsel refers to the evidence given by the five victim-witnesses who testified in the Senessie trial and Senessie's evidence that Taylor originated this scheme to approach the witnesses to recant.²⁰ Counsel also refers to his interview with Prince Taylor.²¹ I have also considered a) the content of the interview between Prince Taylor and Independent Counsel detailed in his report to the Trial Chamber;²² and b) Confidential Annex J to the "Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses," filed on 17 December 2010 and referred to in submissions.²³
7. I note in Confidential Annex J, Prince Taylor recorded that he was working as an investigator for the Charles Taylor defence team and he states "it has recently come to my attention that several witnesses who testified for the Prosecution in the Taylor trial have been or are in the process of being relocated by WVS"²⁴ None of the witnesses named in Confidential Annex J was a complainant against Senessie in the trial before me. Independent Counsel points to

¹⁹ SCSL-03-01-T-1231, paras 5-8.

²⁰ SCSL-03-01-T-1231, para. 10.

²¹ See SCSL-03-01-T-1240.

²² SCSL-03-01-T-1240, paras 6-7.

²³ SCSL-03-01-T-1242, Annex J.

²⁴ SCSL-03-01-T-1242, Annex J, para. 4.

the fact that Prince Taylor was an investigator for the Taylor defence team until 31 December 2010, that is fifteen days after he signed Confidential Annex J. Independent Counsel relies on this Annex to state a belief that Taylor “contrived the bribery scheme involving Senessie and the five complainants in order to get witnesses to consider recantation so that he could approach the Charles Taylor defense [sic] team and get re-hired.”²⁵ Independent Counsel also points to additional information and statements that have been given to him since 4 July 2012 which give further detail of the pressure/instruction Prince Taylor gave Senessie to implement his scheme to have witnesses recant their evidence.²⁶

APPLICABLE LAW

8. Rules 77(A) provides that: The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice, including any person who:

[...]

(iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;

(v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

[...]

9. Rule 77(C) provides that when a Judge or a Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may:

[...]

²⁵ SCSL-03-01-T-1321, para. 16.

²⁶ SCSL-03-01-T-1321, para. 14.

(iii) [...] If the Chamber considers that there are sufficient grounds to against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter.

10. Finally, Rule 77(D) provides that:

Proceedings under Sub-Rule (C)(iii) above may be assigned to be heard by a single judge of any Trial Chamber or a Trial Chamber.

11. The Appeals Chamber has stated that the standard of proof in determining whether an independent investigation should be ordered into a matter of contempt is:

[...] not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of “reason to believe” that an offence may have been committed, which is the pre-condition for ordering an independent investigation.²⁷

12. Notwithstanding the lower standard of proof, an allegation of contempt must be credible enough to provide a Judge or Trial Chamber with “reason to believe” that a person may be in contempt.²⁸

DELIBERATIONS

13. I note that the original investigation and supplemental investigation have been carried out and reports submitted to the Trial Chamber in accordance with Rule 77(C)(iii). I must therefore determine if the standard of a *prima facie* case, which is the standard for committal for trial, has been reached.

²⁷ *The Prosecutor v. Alex Tamba Brima et al.*, SCSL04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005, para. 17 (“AFRC Appeals Chamber Decision”).

²⁸ *The Prosecutor v. Charles Ghankay Taylor*, SCSL03-01-T-690, Confidential Decision on Confidential Prosecution Motion for an Investigation by Independent Counsel into Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 8 December 2008, para. 23, referring to AFRC Appeals Chamber Decision, para. 2. See also, *The Prosecutor v. Charles Ghankay Taylor*, SCSL03-01-T-1119, Decision on Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Prosecutor and its Investigators, 11 November 2010 (“11 November 2010 Contempt Decision”), p. 20.

14. The information contained in TF1-516's statement which was referred to in evidence during trial shows Senessie approached the witnesses who gave evidence against him, purportedly on behalf of the Charles Taylor defence team. TF1-585 gave evidence of a call being made to Taylor at Senessie's behest.
15. The information that has come to the attention of the Independent Counsel, both by reason of Senessie's *allocutus* and Counsel's subsequent investigations, indicate that Prince Taylor instigated or instructed Senessie to approach witnesses and may have provided funds to enable him to do so.
16. These investigations and submissions are credible enough to persuade me that there is a *prima facie* case that Prince Taylor may be in contempt of the Special Court by attempting to have witnesses recant their testimony through his instructions to Eric Koi Senessie on various dates between 26 January 2011 and late February 2011 in Kailahun and that Taylor, subsequent to the 15 July 2011, instructed Senessie in a manner intended to prevent evidence of his (Taylor's) involvement in the interference with witnesses being brought to the attention to the Independent Counsel and, in turn, the Court.
17. In relation to the proposed count that Taylor interfered with Senessie who was "about to give evidence in proceedings before a Chamber," by persuading him to give false information to Independent Counsel, I have considered whether, when Senessie spoke and gave false information, there was a "proceeding" in existence. "Proceeding" is not defined in the Rules. As the procedure provided by Rule 77 (C)(iii) had been initiated by way of a motion, followed by a Trial Chamber decision, and the investigation implemented by that decision, I hold that this investigative procedure constituted a "proceeding" and therefore Senessie was, at that time, a potential witness.
18. In relation to the proposed count of interfering with a witness "about to give evidence" by persuading Senessie to discharge his then Defence Counsel and not follow that Counsel's

advice, I consider that Senessie had then ceased to be a “potential witness” or a “witness about to give evidence in proceedings before a Chamber.” Senessie had become an accused. An accused person is not obliged to give evidence in his own trial (Article 17(g) of the Statute); he may do so only “if he chooses to do so” pursuant to Rule 85(C) and therefore cannot be a potential witness or a witness about to give evidence in proceedings before a Chamber.

19. I note that the Supplemental Report of Independent Counsel was filed in accordance with the original proceedings with the title of *The Prosecutor v. Charles Ghankay Taylor*. As the case of *The Prosecutor v. Charles Ghankay Taylor* has been completed at the trial stage, I consider that it is no longer appropriate to have these proceedings filed as Charles Taylor proceedings. Accordingly I direct that the title of these proceedings be amended to “*Independent Counsel v. Prince Taylor*,” and be assigned a different case reference number.

Done at The Hague, The Netherlands this 4th day of October 2012.

Justice Teresa Doherty
Single Judge



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SPECIAL COURT FOR SIERRA LEONE	
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Re-classified as Public Pursu
ant to the single Judge's
Decision.

ANNEX A

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Annex A:

Independent Counsel v. Prince Taylor

Order in Lieu of Indictment

Charges

PRINCE TAYLOR, a resident of Bo, Sierra Leone, is charged with the following offences:

COUNT 1: Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 26 and 29 January 2011, in Kailahun Town, Kailahun District, Prince Taylor offered a bribe to Mohamed Kabba, a witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor* in return for recanting his previous testimony in that trial through instructions to Eric Senessie.

COUNT 2: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 26 and 29 January 2011 and 3 February 2011, in Kailahun Town, Kailahun District, Prince Taylor attempted to influence Mohammed Kabba, a witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, to recant his previous testimony in that trial through instructions to Eric Senessie.

COUNT 3: Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 3 February 2011, in Kailahun Town, Kailahun District, Prince Taylor offered a bribe and relocation to TF1-274, a witness who has given testimony before Trial Chamber II

in the proceedings of *Prosecutor v. Taylor*, in return for recanting his previous testimony in that trial through instructions to Eric Senessie.

COUNT 4: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 3 February 2011, in Kailahun Town, Kailahun District, Prince Taylor attempted to influence TF1-274, a witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, to recant his previous testimony in that trial through instructions to Eric Senessie.

COUNT 5: Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 1 February 2011, in Kailahun Town, Kailahun District, Prince Taylor offered a bribe to protected witness TF1-516 a witness who gave testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, in return for recanting his previous testimony in that trial through instructions to Eric Senessie.

COUNT 6: Knowingly and wilfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 27 January 2011, in Kailahun Town, Kailahun District, Prince Taylor offered a bribe to protected witness TF1-585 a witness who gave testimony before the Trial Chamber in the proceedings of *Prosecutor v. Taylor*, in return for recanting her previous testimony in that trial directly and through instructions to Eric Senessie.

COUNT 7: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 27 January 2011, in Kailahun Town, Kailahun District, Prince Taylor attempted to influence protected witness TF1-585, a witness who gave testimony before Trial

Chamber II in the proceedings of *Prosecutor v. Taylor*, to recant her previous testimony directly and through instructions to Eric Senessie.

COUNT 8: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 29, 30 and 31 January 2011, in Kailahun Town, Kailahun District, Prince Taylor attempted to influence Aruna Gbonda, a witness who has given testimony before Trial Chamber II in the proceedings of *Prosecutor v. Taylor*, to recant his previous testimony in that trial through instructions to Eric Senessie.

COUNT 9: Knowingly and wilfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who is about to give evidence in proceedings before a Chamber, in violation of Rule 77(A)(iv).

Particulars: On or about 26 March 2011 to 6 April 2011 Prince Taylor attempted to influence Eric Senessie, a witness about to give evidence in proceedings before Trial Chamber II, by instructing and otherwise persuading Eric Senessie to give false information to the Independent Counsel appointed by the Registrar on the order of Trial Chamber II.

Done at The Hague, The Netherlands, this 4th day of October 2012.

Justice Teresa Doherty
Single Judge

