

SCSL - 2003 - 08 - PT
(6525 - 6546)

SPECIAL COURT FOR SIERRA LEONE

Before: Justice Robertson, President

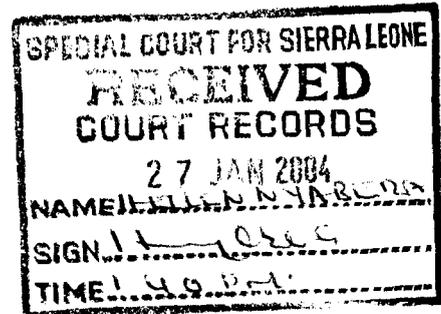
Registrar: Mr Robin Vincent

Date Filed: 27 January 2004

THE PROSECUTOR

v

SAM HINGA NORMAN



**MOTION TO REVERSE THE ORDER OF THE REGISTRAR
UNDER RULE 48 (c) OF THE RULES OF DETENTION**

Defence Counsel

James Blyden Jenkins-Johnston
Sulaiman Banja Tejan-Sie
Adiatu Tejan

Office of the Prosecutor

David Crane

1. The Applicant moves the President of the Court to reverse the decision of the Registrar to grant a Request for prohibition of contact made by the Prosecutor under Rule 48 (a) of the Rules of Detention described as “(Rules Governing the Detention of Persons Awaiting Trial Or Appeal Before The Special Court For Sierra Leone Or Otherwise Detained On The Authority Of The Special Court For Sierra Leone)”.

Background

2. The Applicant is the incumbent Minister of Internal Affairs of the Republic of Sierra Leone. The Applicant was arrested in connection with proceedings currently seized of the Special Court for alleged war crimes and crimes against humanity in an Indictment dated 3rd March 2003 and confirmed on 7th March 2003.
3. The Applicant was arrested on 10th March 2003 and transferred into the custody of the Special Court. He was initially detained at the Bonthe Detention Centre, and is currently detained at the Special Court facility at Jomo Kenyatta Road in Freetown.
4. At all material times prior to his arrest the Applicant was a lawful abiding citizen and minister of government, and since his arrest has exercised his right to seek independent legal advice in preparation of his defence of the Indictment, the allegations of which are vigorously *contested*.
5. The Applicant, a trained and disciplined soldier and former Regent Chief of Telu-Bongor in the Southern province of Sierra Leone having the demeanour and appearance of one deserving admiration

and respect amongst civilians and soldiers alike, has ceaselessly complied with the rules of his detention since his incarceration, and surrendered himself to the regime of his captors in like manner.

6. At all material times, the Applicant's detention has been governed by the 'Rules of Detention' aforementioned.

The Facts

7. On Wednesday 21st January 2004 the Applicant was orally notified of the Order of the Registrar annexed and marked as "A" which was read to him at the same time. Subsequently that same day, accompanied by his Legal Counsel, he was handed a hard copy of the Order. The Applicant's Legal Counsel was summoned by the Registrar and informed of the Registrar's intention to curtail the Applicant's privileges by Order effectively suspending social visits and prohibiting telephone calls by the Applicant for a maximum of 14 days.
8. The Registrar sought to justify this course by alleging that the Applicant had been party to a telephone conversation with an unnamed male conducted in 'Mende', the Applicant's native language, the contents of which are alleged by the Registrar to expose an intention by the Applicant to incite others to organise a violent insurgency thereby threatening the process of the Court and posing a serious security risk.
9. The Applicant's Counsel was provided with an ambiguous transcript of the aforesaid telephone conversation on the day following the making of the Order. The said transcript is annexed to this application

marked as “B” and is not accepted as in any way redolent of culpability on the part of the Applicant.

10. The Registrar’s decision was in response to an ‘Urgent Request’ filed by the Prosecutor under Rule 48 (a) of the instant Rules. The Rules provide at 48 (c) that the Applicant *“shall immediately be informed orally of the fact of any such request, and in writing if circumstances permit”*.
11. The Applicant was not informed orally or expressly of the Prosecutor’s Request.
12. The Applicant’s Legal Counsel have been on record since the Applicant’s arrest acting under Power of Attorney filed on behalf of the Applicant and were also not informed orally or expressly of the Prosecutor’s Request.
13. The Registrar thus failed to apply the fundamental principles of natural justice in favour of the Applicant in his omission to properly inform the Applicant of the Prosecutor’s Request. Consequently, the Applicant was not allowed the opportunity to make representations directly or via his Legal Counsel against such a harsh Request which fact has occasioned prejudice to the Applicant.
14. The Registrar, tainted by the Prosecutor’s imperative demand, acted summarily on the notion that the Request was justifiable, and made the Order thereby erroneously rejecting the presumption of innocence in favour of the Applicant.

15. Further and in particular, the Order was made without prior investigation or disclosure of the audiotape of the alleged offensive telephone conversation in order to allow the Applicant to obtain the advice of Legal Counsel on the application and interpretation of the Rules.
16. The Applicant had enjoyed unbroken visits by his wife, children and close family members and friends during his detention. The Registrar immediately released a copy of the Order into the public domain. The Registrar allowed the media to reproduce the Order causing maximum confusion, anxiety and embarrassment to the Applicant and his family who were suddenly deprived of the prospect of the company of the Applicant whilst in detention.
17. The Applicant would enlighten the Court that following his arrest his Legal Counsel issued a press statement on 31st March 2003 annexed and marked as "C", requesting all the Applicant's supporters, well-wishers and friends, outraged by his arrest, to adhere to the rule of law and allow due process to take place. It is respectfully submitted that this depicts the mind of a man who would not recklessly or selfishly incite others to violence.
18. The Applicant in an affidavit exhibited as JBJJ/1 to this application maintains his innocence against the allegations in the Prosecutor's Request, and repeated in the Order of the Registrar.
19. The Applicant avers that the Registrar acted in bad faith in suspending the Applicant's social visits and thus compromised the solemn declaration of the Registrar to the President of the Court pursuant to Rule 32 Rules of Procedure and Evidence that he will

perform his duties *“in all loyalty, discretion and good conscience and...faithfully observe all the provisions of the Agreement, the Statute and the Rules and Procedure of the Special Court.*

20. Further, the Applicant condemns the practice of covert telephone surveillance, which is in breach of the Applicant’s fundamental human rights in particular the right to privacy.

21. Accordingly, the Applicant deems the Registrar to be in contempt of the Preamble to the Rules of Detention containing express provisions *“to ensure the continued application and protection of...individual rights...and “...the need to ensure respect for human rights and fundamental freedoms particularly the presumption of innocence...*

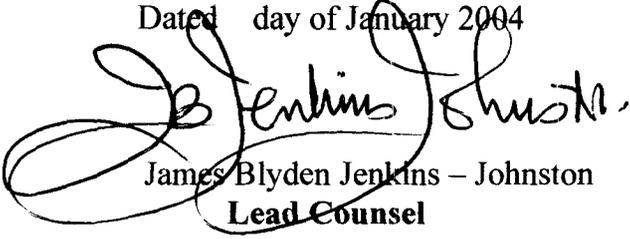
Relief Sought

20. The Applicant seeks the following relief in the interests of justice having regard to the facts set out heretofore:

- (a) Expedited consideration of this matter by the President having regard to the short period of exclusion and prohibition specified in the Order of the Registrar.
- (b) Reversal of the Registrar’s Order to exclude and prohibit social visits and telephone calls respectively to the Applicant, and *mutatis mutandis*, a denial of the Prosecutor’s Request under Rule 48 (c) of the Rules.
- (c) Order for immediate disclosure of the audiotape of the alleged telephone conversation for transcription by the Applicant’s Legal Counsel through the use of independent experts.
- (d) Any other relief as the Court sees fit and just.

In Freetown

Dated day of January 2004


James Blyden Jenkins – Johnston
Lead Counsel


Sulaiman Banja Tejan-Sie
Co- Counsel

Adiatu Bun-Tejan
Legal Assistant



SPECIAL COURT FOR SIERRA LEONE

Before: Justice Robertson, President

Registrar: Mr Robin Vincent

Date Filed: 26 January 2004

THE PROSECUTOR

v

SAM HINGA NORMAN

APPLICANT'S AFFIDAVIT IN SUPPORT

EXHIBIT JBJJ/1

Defence Counsel

James Blyden Jenkins-Johnston

Sulaiman Banja Tejan-Sie

Adiatu Bun-Tejan

Office of the Prosecutor

David Crane

I, Samuel Hinga Norman currently detained at the Special Court for Sierra Leone Detention facility situated at Jomo Kenyatta Road in Freetown do make Oath and say as follows,

1. I am currently incarcerated at the Special Court facility as aforementioned. I was arrested on 10th March 2003 and remained in detention since that date in connection with allegations of war crimes and crimes against humanity. Prior to my incarceration, I was a serving Minister of Internal Affairs of the Republic of Sierra Leone government.
2. I am a man of hitherto good character.
3. On Wednesday 21st January I was orally notified of an Order of the Registrar dated 20th January 2004 that the exercise of my rights as a detainee to social visits and telephone calls was being suspended and prohibited respectively for 14 days duration. I was informed that this was due to a telephone conversation I had with a male in which I motivated others to commit violent acts in light of my ongoing detention.
4. The Order was read to me in the absence of legal representatives. I subsequently received a hard copy of the Order in the presence of my Legal Counsel after the Order was read to me.
5. I did not receive prior notification orally or expressly of the Prosecutor's Request which preceded the making of the Order of the Registrar, in contravention of the Rules of Detention governing my confinement.
6. The Order maliciously accused me of inciting others to commit violence. This allegation is robustly denied and the Order is, in my view, flawed with inaccuracies and untruths.
7. The Registrar failed to investigate the circumstances of the Prosecutor's Request leading to the making of the Order and rejected the presumption of innocence in my favour. The fact that the Order was released to the media without further proof has caused me undue prejudice, embarrassment and hardship and I am deprived of the opportunity of maintaining contact with my loved ones who are concerned for my health and well-being.

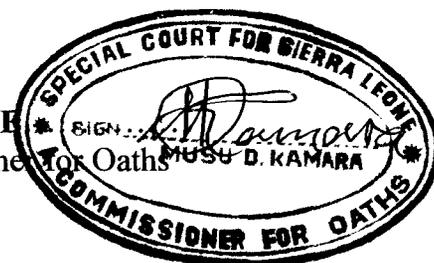
- 8. I maintain my innocence and have requested through my Legal Counsel a copy of the audiotape of the conversation allegedly inciting violence.
- 9. I make this affidavit in support of the application to reverse the Order of the Registrar under Rule 48 (c) of the Rules of Detention.

SWORN to at the Special Court
 Detention facility, Jomo Kenyatta
 Road, Freetown on the
 26th day of January 2004 at
 1: 05 o'clock in the Afternoon.

Sam Hinga Norman

 DEPONENT

BEFORE ME
 A Commisioner for Oaths



THIS AFFIDAVIT IS FILED BY SAM HINGA NORMAN, THE ACCUSED PERSON HEREIN OF THE SPECIAL COURT DETENTION FACILITY, JOMO KENYTTA ROAD, FREETOWN.

TABLE OF ANNEXES

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| 1. Order of the Registrar | “A” |
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ANNEXE "A"

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(6469-6472)

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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

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THE REGISTRY

Registrar: Robin Vincent

Date: 20 day of January, 2004

Prosecutor against

Sam Hinga Norman
(Case No.SCSL-2003-08-PT)

DECISION PROHIBITING COMMUNICATIONS AND VISITS

Office of the Prosecutor:

David M. Crane

Defence Counsel for Sam Hinga Norman:

James Blyden Jenkins- Johnson
Sulaiman Banja Tejan-Sie
Quincy Whitaker
Timothy Owen



THE REGISTRAR,

CONSIDERING the Resolution 1315 of 14 August 2000, whereby the Security Council requested the Secretary-General to “negotiate an agreement with the Government of Sierra Leone to create an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law”;

CONSIDERING the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone (“Agreement”), signed in Freetown on 16 January 2002, and the Statute of the Special Court for Sierra Leone annexed to the Agreement (“Statute”);

CONSIDERING the "Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court or otherwise Detained on the Authority of the Special Court" ("Rules of Detention") as adopted on 7 March 2003, and subsequently amended on 25 September 2003;

CONSIDERING Rule 3 of the Rules of Detention which provides that the Special Court "shall retain the ultimate responsibility for all aspects of detention pursuant to these Rules [of Detention]" and that all Detainees shall be "subject to the sole jurisdiction of the Special Court at all times that they are so detained, even though physically absent from the Detention Facility, until final release or transfer to another institution";

CONSIDERING that whilst the Rules of Detention ensure the continued application and protection of individual rights of persons in detention, the application of its provisions relating to communication and visits also require that the interests of the administration of justice and the purposes of the Agreement and Statute of the Special Court be considered;

CONSIDERING that the Rules of Detention envisage that a balanced weighing of a detainee's individual rights with that of the institutional duties and obligations of the Special Court may be called for in certain situations where conflicting interests become apparent;

NOTING that Mr. Sam Hinga Norman (the “Detainee”) is presently awaiting trial before the Special Court and is being detained in Detention Facility of the Special Court (“Detention Facility”), situated at Jomo Kenyatta Road, Freetown, Sierra Leone;

NOTING the Prosecutor's Request for Active Monitoring of the Detainee's Telephone Calls, dated 20 October 2003, and the Registrar's decision of 25 October 2003 to the effect that all telephone calls made or received by the Detainee, with the exception of

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those made to or received from the his Defence Counsel, be “actively monitored” (i.e. recorded and listened to);

NOTING PARTICULARLY that the Registrar has received reports that the Detainee has recently made statements inciting his supporters to public unrest, using communication facilities provided by the Detention Facility and with the intention of having these statements subsequently being reported in the media;

CONSIDERING the Prosecutor’s “Urgent request according to Rule 48 of the Rules of Detention to prohibit any contact between Hinga Norman and any other person”, dated 20 January 2004, stating that the transcript of a telephone conversation between the Detainee and an unidentified person on 19 January 2004 “demonstrates that Hinga Norman may be prepared to call various factions to arms”;

CONSIDERING the Prosecutor’s Urgent Request that “all contact (visits and telephone calls) between Hinga Norman and any outsider, including members of his family” is prohibited;

CONSIDERING that Rule 48(A)(ii) of the Rules of Detention provides that “[t]he Prosecutor may request the Registrar or, in cases of emergency, the Chief of Detention, to prohibit, regulate or set conditions for contact between a Detainee and any other person if the Prosecutor has reasonable grounds for believing that such contact [...] could prejudice or otherwise affect the outcome of the proceedings against the Detainee or any other investigation” and that it follows from this Rule that communications and visits between a detainee and any other person may be prohibited if there are reasons to believe that such communications and visits would lead to a detainee’s statements appearing in the media with the effect of undermining the mandate of the Special Court;

CONSIDERING that the facilities provided by the Detention Facility are intended for the well-being of the Detainee and not for purposes that frustrate the mandate of the Special Court;

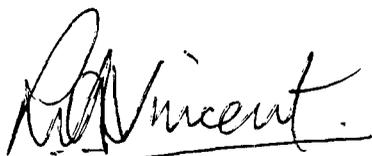
DECIDES pursuant to Rule 48(A)(ii) of the Rules of Detention, for a period of fourteen (14) days following this Decision, which decision shall then be reviewed, to:

(i) Prohibit communication, via telephone between the Detainee with any person(s) (particularly with the media), such prohibition shall not apply to telephone communication with his Defence Counsel on condition that this facility shall not be used in any manner to contact the media;

(ii) Prohibit all visits between the Detainee with any person(s) (particularly with the media), such prohibition shall not apply to visits with his Defence Counsel on condition that this facility shall not be used in any manner to contact the media;

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(iii) The aforesaid restrictions will not apply to written communications wherein the current practices shall be maintained and the Detention Facility's regulations concerning correspondence shall be adhered to.



Robin Vincent
Registrar

Dated this 20th day of January 2004
Freetown
Sierra Leone

ANNEXE "B"

Man: How are you?

Norman: Thanks be to God

Man: I have prepared that thing but its 17 and I have 8 (unclear statement) and I want to deal with the others tomorrow.

Norman: That's not bad. But you should do it quickly so that I can sign it. Once I sign one of them you can "deal" with the others.

Man: Did you say I should give them to Alpha?

Norman: If you give it to Alpha, he'll give it to one of my lawyers(the female lawyer) so she will bring it to me so that I can sign it and she'll take it back to him. So you should try to see her in the evening.

Man: That's not bad. Whatever the case may be, I would like to send seven or eight of them tomorrow.

Norman: Well, but you should wait for me to sign it. You should send it to Arthur and others tomorrow for their approval. I'll try to telephone them this evening and inform them that you'll be taking the documents to them this evening and that they should go through them quickly. You should only send a copy to them.

Man: Who? Arthur?

Norman: Yes. In Kenema. Send the other copy to Alieu in Bo. Tell them to read through quickly and give whatever suggestions they have. If they want to write a different version, let me know but I don't want them to write it because they are out there. They could be arrested. I want to write it because I am already a detainee so I can't be arrested anymore.

Man: Okay. You know what I'll do, I am going to give Mamie two copies so that she can send them to Bo and Kenema.

Norman: Do it quickly and send it to Alpha. Or do you know what to do? Send two copies to upcountry, keep two copies No, the copies that you'll be giving to Mamie are the ones she'll have to send Upcountry. Keep another copy safely and send the others to me so that I can sign them.

Man: Okay.

Norman: But was it done well?

Man: Yes.

Norman: Are there not any mistakes? Did you check it thoroughly?

Man: Yes.

Norman: Okay, thank you very much.

Man: In fact, that is why I want to give it to you for your perusal. That way, you can make your own suggestions.

Norman: It doesn't matter as long as you have checked it properly. Are you sure that its okay.

Man: Yes.

Norman. Okay, thank you.

Man: So tomorrow, I'll try to speak to the media.

Norman: No wait a minute! Wait for me to check it tomorrow. After checking it, you can send it to where you wish to.

Man: No, I wanted to speak to the media (BBC)

Norman: No. Don't send it to the media yet.

Man: No. That's not what I intend discussing with the media. I just want to grant them a special interview. Because I've already got a journalist willing to interview me tomorrow.

Norman: All right. That's good. Just tell them that we are asking whether they want peace or war. We have already asked them this question before but we've not got a response and time is far spent. And we have now been in detention for bout 11 months. More importantly, there were people who didn't benefit from the war and they are waiting for another conflict to compensate for what they lost.

Man: Okay. See you later. Bye bye.

ANNEXE "C"

J. B. JENKINS-JOHNSTON

B. A. (HONS)(DUNELM)
BARRISTER-AT-LAW, SOLICITOR
COMMISSIONER FOR OATHS,
AND NOTARY PUBLIC

AYOTUNDE CHAMBERS

4 Percival Street,
P. O. Box 1164
Freetown.
Sierra Leone.

My Ref: **JBJJ/CHK**

Your Ref:

Date: **31st March 2003.**

PRESS STATEMENT

By J. B. Jenkins-Johnston Esq.

For and on behalf of Chief Samuel Hinga Norman.

ON Thursday 27th March 2003 I had a lengthy conversation with my Client **Chief Samuel Hinga Norman** in his cell at the place where he is currently being detained, and he gave me specific instructions to issue this Press Statement on his behalf.

Firstly, he wishes me to express his very sincere thanks and gratitude to all members of his family, his relatives, friends and particularly the members of the Civil Defence Force for the massive support they have shown and expressed since his arrest, indictment and detention. He looks forward to that same support to be given to him in defence of the charges brought against him until the matter is judiciously laid to rest.

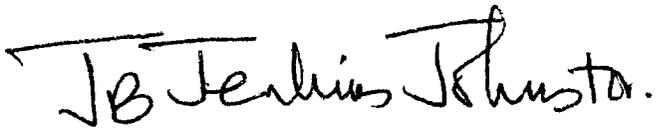
Chief Samuel Hinga Norman wishes me to say also that he has heard that there is fear in some quarters about the reaction of the Kamajors to his arrest and detention, and that this fear is spreading because of national and International interest in this matter.

He has asked me to appeal to all his friends and supporters and particularly to the Kamajors, that since they risked their lives to fight in support of peace, freedom and democracy and as far as he understands the position democracy means

respect for the rule of Law among other things, he is asking everyone to respect what they fought for, and to be calm, quiet and law-abiding and to give a chance to the operation of the rule of Law as he believes that at the end of the day he will be vindicated and acquitted of all charges.

He therefore wishes to enjoin all to desist from any act that may be misconstrued to be disrespect for the rule of Law or an attempt to interfere with the due process of the Law.

Finally, he wishes me to say that you all should continue to pray for him and for our Country, and that with God on our side, we will surely prevail in the end.



**J. B. JENKINS-JOHNSTON ESQ.
Defence Counsel for Chief Samuel
Norman.**