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SCSL-2003-08-PT-060

(1729-1740)

**THE SPECIAL COURT FOR SIERRA LEONE**

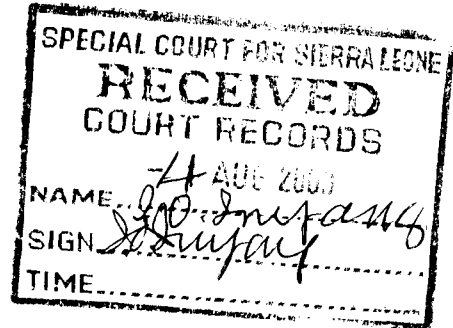
(1729-1740)

**BEFORE THE PRESIDENT OF THE TRIBUNAL**

**Before:** Judge Geoffrey Robertson

**Registrar:** Mr. Robin Vincent

**Date filed:** 4<sup>th</sup> August 2003



**The Prosecutor**

**Against**

Sam Hinga Norman

CASE NO SCSL - 2003 - 08 - PT

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**REPLY - MOTION FOR MODIFICATION OF  
THE CONDITIONS OF DETENTION**

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**Office of the Prosecutor**

Mr. James C. Johnson, Acting Chief of Prosecution  
Mr. Charles A. Caruso, Trial Counsel

**Defence Counsel**

James Blyden - Jenkins Johnston  
Sulaiman Banja Tejan-Sie

**The Prosecutor**

**Against**

**Sam Hinga Norman**

**CASE NO SCSL - 2003 - 08 – PT**

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**INTRODUCTION**

The Defence Motion for the Modification of the Conditions of Detention filed pursuant to Rule 64 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone should be granted. It is therefore respectfully submitted that the Prosecution's response to this motion does not satisfy the burden to show cause why the extant conditions of detention of the Accused should not be modified.

**BACKGROUND**

1. The Accused files this reply to the Prosecution's response to his motion for modification of the conditions of his detention (the "Defence Motion") filed on the 23<sup>rd</sup> July 2003.

2. The Defence agrees with the Prosecution that the accused was arrested on 10th March 2003 and transferred to the Court's facility on Bonthe island, and that on the 15th March 2003 the designated judge ordered his detention on remand until any other further order of the Court. The Accused has remained incarcerated.

**ARGUMENT**

3. The Defence contends that although Rule 64 unlike Rule 65 (B) does not expressly require the Judge or Trial Chamber to hear from the host State to which the accused seeks to be released; the jurisprudence in the **Prosecutor - against - Blaskic IT - 95 - 14 - T** (which is even acknowledged by the Prosecution at paragraph 5 of their response) laid down certain factors to be considered inter alia the "imperatives of security and order". The above factor the Accused argues can only be exhaustively considered with due reference to Government's position as the implementing partner in these circumstances of all such orders of the Court. It is in this regard to illustrate that government does not have any expressed opposition to an application for bail that the accused relied to make his case that any modification of the conditions of his detention would in no way jeopardise the above imperatives which Judge Casese tritely laid down in the Blaskic case. Also President Casese in Blaskic above- mentioned did consult the host country as expressed in page 2 of his "Decision on Motion of the Defence Seeking Modification Of the Conditions of Detention of General Blaskic"

**THE DEFENCE POSITION**

**A. Defence Application of Rule 65(B)**

4. The defence apologises that they made a genuine error in annexing the wrong letter as "Annex 1". Both letters were dated 19th June and addressed to the same person hence the inevitability or natural tendency to make a genuine error in those circumstances. The Accused therefore for the sake of completeness and to guide the President in making an informed ruling hereby attaches the correct letter in question as Annex 6.

5. The Accused reiterates his argument that Annex 2 does not expressly oppose bail and that the government has rather entrusted the Court or in this case its Presidency with the sole task of deciding the issue of bail and by analogy that of a modification of the conditions of detention. Further, that in the absence of any expressed opposition or security fear by government or its law enforcement agencies; the only logical and inevitable conclusion one can deduce in the circumstances from both the amicable relationship that existed and still exist between the Court and Government and Government "s past adherence to the orders of the Court, is that in this case Government will co-operate with any order or orders modifying the conditions of detention of the Accused herein.

6. The Defence never relied on Rule 65(B) in support of their application made pursuant to Rule 64, but rather is relying on Annex 2 to help President Robertson resolve the issues of the imperatives of security and order and his status and respect in society which factors should be taken into consideration in determining bail and by analogy the modification of conditions of detention. Law and order and the security of the state are the responsibility of the State so it is therefore trite that the views of Government be sought in those circumstances.

## **B. Other Factors Favouring Modification of Detention**

### **i) The Health of the Accused**

7. The accused continues to rely upon the correspondence of Dr. Kandeh as well as his assertions regarding his ailment, his old age and poor medical history cumulatively as

solid grounds for the modification of the conditions of his detention. Neither Dr. Kandehe nor indeed the Counsel for the Prosecution could conclude that the surgery was successful especially since it recurred two years after the first surgery and we are just a year away from his last surgery. The defence submits that despite the provisions of Rules 13, 16, and 22 of the Rules for Detention of the Special Court adopted 7 March 2003, the Accused deserves specialist advice, care and treatment at his age and with his immediate medical history; "house arrest" until the final determination of this matter is most appropriate. With a medical history such as his the Court needs to consider the effects of his continued detention in Bonthe were the conditions are at best basic. Even if there is monitoring of his health there are no provisions for emergency care should the need arise and that is a distinct possibility at his age and with such a medical history.

### **ii) "Conditions in Bonthe/Unique Features Which Relates To The Accused"**

8. While the Accused may have complained about conditions of the detention facility that might be shared by the other inmates, the accused respectfully submits that these conditions affects him in a unique way not shared by the other inmates by virtue of his age and health history stated above. The defence therefore suggests that the matters offered by the accused as unique to his condition to wit: his age, health, status and integrity together with the conditions he proposed to ensure that safety and security concerns are met constitute sufficient reasons to alter the present terms of his detention and so does the present location of the detention facility.

### **iii) Length of Detention**

9. The Accused insists and reiterates that his submission on the length of his detention is premised on the notion of the presumption of innocence of an Accused person, and the natural justice principle of an accused right to a fair and speedy trial. In that regard therefore the accused contends that the length of the detention and the delay to justice are factors that should be considered by the President of the Court in this instant case.

**iv) Conditions of Detention**

10. The Accused contends that the complaints of the conditions of his detention still persist to date and is worsening each and every day. The cumulative effect of these series of breaches of the Rules of Detention the Accused suggests also justifies and supports the case for a modification of the conditions of his detention.

**C. The Principle of Proportionality**

11 It is the Accused's contention that his continued detention is neither suitable nor necessary to ensure his presence in Court, or to prevent his tampering with or destruction of evidence, endangering possible witnesses or present a potential danger to public order and peace. The conditions attached to "house arrest" would be stringent enough to ensure that the Accused does not escape or tamper with evidence and/or witnesses or pose a danger to public order and peace. Under the present circumstances the principle of proportionality is not satisfied because it is sufficient to use a more lenient measure namely "house arrest" to ensure against the fears expressed by the Prosecution and again the Accused reiterates that procedural measures should not be capricious or excessive.

**The Prosecution's Position**

**A. Risk of Flight**

12. The Accused contends that the conditions imposed for "house arrest" would be stringent enough to allay any fear that the Accused will flee. Thus the principle in Blaskic can be followed in this instant case without fear that the conditions will be broken. Moreover as the principle for the modification of the conditions of detention has been set down in Blaskic there is nothing preventing this Court from adopting new conditions to suit this Court and this accused. The reference to Johnny Paul Koroma is unfortunate and strictly not comparable to the instant case because Mr. Koroma was already on the run

and apparently out of the jurisdiction at the time of his indictment. Again the accused submits that stringent conditions could be put in place by the President of the Court out of an abundance of caution to ensure that the Accused stays within the confines of his modified detention facility and has very limited contact with the public.

**B. Endangerment of possible witnesses and Destruction of Evidence**

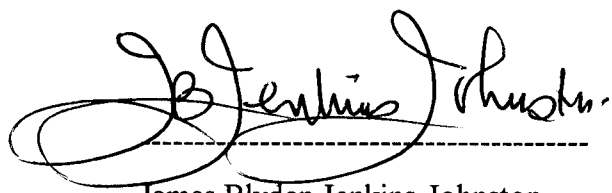
13. The Accused contends that the declaration of the Chief of Investigations insofar as it relates to two meetings addressed by the Accused is solely based on the statements of possible witnesses who are yet to be tested both as to veracity and integrity in cross-examination. Therefore these witness information at this stage is clearly inadmissible except if the Honourable President is inclined to having an oral hearing on the several issues before him and both Dr. White and the witnesses are disposed to giving oral evidence to the facts contained in the report of the Chief Investigator. Also, the author of attachment II is part of the prosecution and there is therefore the tendency of bias. The Accused vehemently denies the allegations against him in attachment II and pray that the President attach little or no weight to it as it is secondary, unreliable and untested. To rely on such statements at this stage will be most unfair to the Accused. Indeed there is no evidence that the Accused has intimidated or interfered with any possible witness since his indictment and in fact has been a model Detainee who has complied with all the rules of detention. As stated in 10 above conditions can be attached to his "house arrest" which will ensure that there is no interference with witnesses and/or evidence. It is for those reasons that the guidelines expresses in Blaskic were handed down.

**CONCLUSION**

14. For the reasons stated above Defence contends that the Accused's conditions of detention should be modified. The President can impose the conditions suggested by the Defence to ensure compliance with the orders of the court and to allay any fears the Prosecution might have as regards flight risk and interference of witnesses.

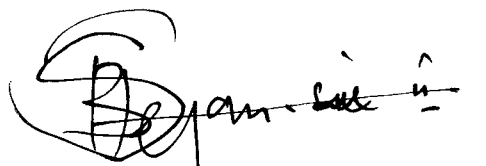
Freetown, 4th August 2003.

For the Accused,

A handwritten signature in black ink, appearing to read 'James Blyden Jenkins-Johnston', written over a horizontal dashed line.

James Blyden Jenkins-Johnston

Lead Counsel

A handwritten signature in black ink, appearing to read 'Sulaiman Banja Tejan-Sie', written over a horizontal dashed line.

Sulaiman Banja Tejan-Sie

Co- Counsel



**INDEX OF ANNEX**

1. Letter Addressed to the President on Government's position regarding bail for the accused.

# ANNEX 1

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

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

My Ref: JBJJ/CHK

Your Ref:

Date: 19<sup>th</sup> June 2003.

His Excellency The President,  
Alhaji Dr. Ahmad Tejan Kabbah,  
State Lodge,  
Hill Station, Freetown.

Your Excellency,

**Re: THE PROSECUTOR vs SAM HINGA NORMAN.**  
**Case No. SCSL - 2003 - 08 - PT**

I act for and on behalf of Chief Sam Hinga Norman, who until 10<sup>th</sup> March 2003 was your Minister of Internal Affairs, and who is now an indictee before The Special Court for Sierra Leone.

As Your Excellency is aware, Chief Norman was arrested on 10<sup>th</sup> March 2003 and since that time he has been in detention at the Bonthe Detention Centre awaiting trial before The Special Court. It is now more than three (3) months since Chief Norman was arrested, but there is still no certainty about when his trial will commence.

On the instructions of my Client, I have had to make several protests, both verbally and in writing, to the Officials at the Detention Centre and to the Registrar of the Court, about the conditions under which my Client is being held and he even commenced a hunger strike a while ago to highlight the conditions prevailing at the Detention Centre, and the resultant effect on his health and wellbeing. However, Family and friends were able to persuade him to call off the hunger strike.

Fortunately there is provision in the Rules of Procedure and Evidence...

the Special Court is said to be applicable to the present case.

Rule 65 provides as follows:

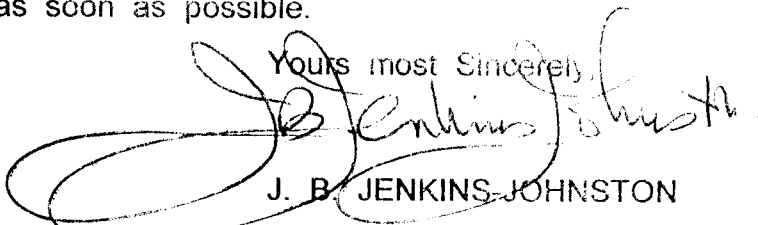
- (A) Once detained, An Accused shall not be granted bail except upon the order of a Judge or Trial Chamber.
- (B) Bail may be ordered by a Judge or a Trial Chamber on the condition that the State to which the Accused seeks to be granted bail only if it is satisfied that the Accused will appear for trial and if released, will not pose a danger to any victim, witness or other individual.

Consequent upon the foregoing, it would seem to be the case that it is a precondition before bail could be granted for Your Excellency's Government to state clearly that you have no objection to bail being granted on conditions to be determined by the Court. The Purpose of this letter therefore, is to expressly request the concurrence of Your Excellency's Government in the application for bail. I have no doubt that bearing in mind Chief Norman's record of service to the State, his selfless determination to restore democracy when anarchy prevailed, and his outstanding loyalty to the Party and to Your Excellency's Government, our request will be granted without hesitation.

As time is of the essence, I would respectfully ask that our request be expeditiously dealt with, and if it is necessary, my Co-Counsel Sulaiman Banja Tejan-Sie and myself stand ready to have an audience with Your Excellency to further explain and/or clarify any of the points raised in this letter.

I thank Your Excellency most sincerely for your time, and look forward to hearing from you as soon as possible.

Yours most Sincerely,



J. B. JENKINS-JOHNSTON

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| <p>C.C. (1) The Vice President<br/>Vice President's Office,<br/>Spur Road, Freetown.</p> <p>(2) The Attorney-General and Minister<br/>Of Justice,<br/>Attorney-General's Chambers<br/>Guma Building,<br/>Freetown.</p> <p>(3) Chief Sam Hinga Norman,<br/>C/o Bonthe Detention Centre,<br/>Bonthe.</p> | <p>(4) The Norman Family,<br/>C/o Mrs. Mamie Norman and<br/>Miss Juliet Hawa Norman,</p> <p>(5) Sulaiman Banja Tejan-Sie Esq.,<br/>36 Bathurst Street,<br/>Freetown.</p> |
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