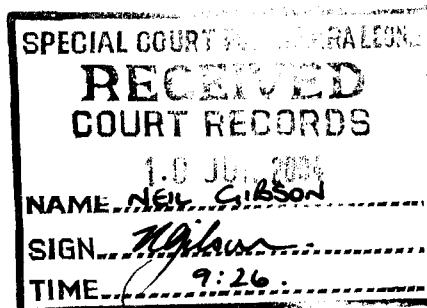


THE SPECIAL COURT FOR SIERRA LEONE**THE APPEALS CHAMBER**

**BEFORE: Justice Emmanuel Ayoola Presiding
Justice Raja Fernando
Justice Renate Winter
Justice George Gelaga King**

Registrar: Mr Robin Vincent

Date filed: 9th June 2004



The Prosecutor

-v-

Issa Hassan Sesay

Case No: SCSL - 2004 – 15 - PT

**DEFENCE REPLY TO PROSECUTION RESPONSE TO MOTION
SEEKING THE DISQUALIFICATION OF JUSTICE ROBERTSON
FROM ALL JUDICIAL FUNCTIONS INVOLVING THE RUF
(INCLUDING THOSE EXERCISED PURSUANT TO RULE 24 OF
THE RULES OF PROCEDURE AND EVIDENCE)**

Office of the Prosecutor
David Crane
Esmond de Silva
Luc Cote,

Defence
Tim Clayson
Wayne Jordash
Serry Kamal
Sareta Ashraph

REPLY

1. In paragraph 7 of the Prosecution response (“The Response”) they suggest that the Motion seeking the disqualification of Justice Robertson from all judicial functions involving the RUF (including those exercised pursuant to Rule 24 of the Rules of Procedure and Evidence) (“The Motion”) is the third attempt by the Defence to re – litigate the same issue and this “offends the principle of finality to litigation”. The defence are unsure as to the nature of this alleged *principle* which remains curiously unexplained in the Prosecution response. If by this phrase the Prosecution seek to suggest that once an issue has been decided by the Court then it is not open to a party to seek to obtain clarification of the decision (as in the defence motion of the 20 April 2004) or to have the reasoning (which was the basis of a previous decision) applied logically and fairly to other defence concerns (as in the present motion) then the defence disagree.¹
2. The defence simply respectfully request that the Appeal Chamber, which has made clear the scope of its ruling in its order of the 25th May 2004,² apply the underlying reasoning to the present application and thereafter as a matter of logic disqualify Justice Robertson from all judicial functions involving the RUF.
3. The accused is entitled to know (a) why an independent bystander or the reasonable man, reading the passages in Justice Robertson’s book (the subject of the first defence motion) will have a legitimate reason to fear that Justice Robertson lacks impartiality in relation to the cases of the RUF but that fear does not rightly and reasonably extend to other judicial functions which impact upon the cases of the RUF and (b) why a reasonable man, let alone an

¹ The defence also are curious as to whether that principle applies to the Prosecution and their numerous attempts to obtain joinder (or “concurrency”) of the AFRC and RUF cases.

² Noting it was “clear, explicit and unambiguous”.

accused person will apprehend bias in relation to *only* cases before the Appeal Chamber but not other functions which impact upon the cases of the RUF.

4. It is submitted that this question has not been addressed in course of these proceedings nor has it been dealt with in a reasoned judgement. The defence therefore seeks the present order.
5. The defence find it highly regrettable that the Prosecution refuse to argue the substance of this application. Instead it prefers to avoid the real questions which it clearly finds inconvenient. The defence opine that the interests of justice would have been enhanced if the Prosecution had cared to join in this debate rather than to ignore the issues raised. As further evidence that this issue has not been dealt with the defence submit that the Prosecution have failed at any stage to argue the central issue namely, given the basis for the disqualification of Justice Robertson from the cases of the RUF, is it logical that this disqualification must apply to all other judicial functions which impact upon the trials of the RUF?
6. It matters not whether (as asserted by the Prosecution in paragraph 12 of their response) the consequences of acceding to the defence motion would be that Justice Robertson would be disqualified from Judgeship at the Special Court. This is not a valid reason not to address the important issue of whether the accused and the reasonable man will have a legitimate fear that Justice Robertson lacks impartiality in relation to his judicial functions which affect the RUF.
7. The answer (given the Appeal Chamber's ruling of the 13th March 2004) to this issue must logically be in the affirmative.

CONCLUSION

8. The defence seeks therefore (i) what it perceives to be a logical application of the ruling of the 13th March 2004 or (ii) a ruling with reasons attached thereto from the Appeal Chamber on this issue so that the defence might be allowed to ascertain the alternative reasoning and thereby seek to protect the interests of the accused.



Tim Clayson

Wayne Jordash

Serry Kamal

Sareta Ashraph

9th June 2004

BOOK OF AUTHORITIES

1. R v Sussex, Ex parte McCarthy (1924) 1 K.B. pp 256.
2. R v Gough (1993) A.C. 646