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RSCSL-03-01-ES
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RESIDUAL SPECIAL COURT FOR SIERRA LEONE
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SIERRA LEONE

Before: The Honourable Justice Jon Kamanda, President
The Honourable Justice Teresa Doherty, Duty Judge

Registrar: Ms. Binta Mansaray

Date: 1 July 2020

In the matter of

PROSECUTOR Against **CHARLES GHANKAY TAYLOR**

Case No. RSCSL- 03-1-ES

Public

**PRINCIPAL DEFENDER'S REQUEST FOR THE WITHDRAWAL AND/OR
RECUSAL OF HON. JUSTICE TERESA DOHERTY OF THE UNITED KINGDOM
(UK) AS THE DUTY JUDGE ON THE APPLICATION OF CHARLES G. TAYLOR
TO BE TEMPORARILY TRANSFERRED TO A SAFE THIRD COUNTRY TO
CONTINUE HIS IMPRISONMENT DUE TO THE MASSAIVE OUTBREAK OF
COVID 19 IN THE UK**

Office of the Prosecutor:

Mr. James C. Johnson

Defence Office:

Mr. Ibrahim Yillah

Counsel for Mr. Charles G. Taylor

Mr. Essa M. Faal

RESIDUAL SPECIAL COURT FOR SIERRA LEONE	
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COURT MANAGEMENT THE HAGUE	
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NAME	Frances Ngubuh-smat
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TIME	09:00

Procedural Background

1. On 15 June 2020, the Defence for Mr. Charles G. Taylor filed its Motion for temporary transfer to a safe third country to continue his imprisonment due to the massive outbreak of covid-19 in the UK;
2. On 24 June 2020, the Prosecutor filed his response to the Defence Motion having sought and obtained leave of the President of the Court to do so. The Principal Defender notes with concern that the President's decision granting the Prosecutor leave to respond to the Taylor Defence Motion was not served on both the Defence Office s well as the Taylor Defence team;
3. On the same date, that is, 24 June 2020, the Registrar filed her submissions with confidential annexes in further response to the Taylor Defence Motion for Temporary Transfer due to massive outbreak of covid 19 in the UK; and
4. On 29 June 2020, the President of the Court issued his order designating a duty judge in which he designated the Hon. Justice Teresa Doherty of the UK to serve as a duty Judge "to hear and determine all matters arising from the Motion."
5. It is in response to the President's Order that the Principal Defender files this request seeking the orderly withdrawal of the Hon. Justice Teresa Doherty of the UK as a duty Judge on the Taylor Motion because her lady is from the UK and the scope and extent of the litigation to be undertaken in this application may well encompass submissions from the UK Home Office or other officials responsible for UK Prison System response to covid 19. The duty Judge would undoubtedly be faced with a situation of passing some form of judgment/assessment of her country's response to covid 19 especially within that country's prison system with which the Taylor Motion is concerned. More particularly, the reasons for Mr. Taylor's request for the withdrawal of the duty Judge from the UK are set out immediately below.

Submissions

6. The Hon. Justice Teresa Doherty has served both the Special Court for Sierra Leone (SCSL) and its successor institution the Residual Special Court for Sierra Leone (RSCSL) with distinction. Her judicial record as well as her contributions to the jurisprudence on international criminal justice is available for the viewing of all in the public domain and the Principal Defender on behalf of the Taylor Defence team salutes her lady for her judicial dedication to this court and its predecessor over the years.
7. To be clear, Mr. Taylor is questioning neither the integrity nor the impartiality of the learned Justice. Whilst undoubtedly respecting the learned Justice's integrity, Mr. Taylor is constrained to bring this motion because the issues to be considered in the Taylor Motion touch and concern the UK's response to covid-19 within its prison system, in particular the specific prison where Mr. Taylor is currently serving his imprisonment. In order to properly consider such a motion, submissions would be required to be obtained from UK Officials with responsibility of implementing public health measures in the UK Prison in question and more broadly from the UK Authorities and this requires some judgment/assessment to be passed on the country that nominated the learned Justice to serve on this court which would place in the learned Justice in a difficult and even conflicting position.
8. Moreover, Mr. Taylor seeks to emphasise that the learned Justice is a UK National who had served as a judge in that country and nominated by that country to serve as a Judge in the RSCSL. This scenario by itself without more creates an appearance of 'bias' akin to a person being a judge in his/her own cause. It is for this reason principally that Mr. Taylor respectfully requests the President of the Court to withdraw his designation of a UK Judge to preside over a matter implicating the UK as a country and in respect of which he may seek leave for the duty judge to request written submissions from the UK Home Office amongst others to provide expert advice on the issues raised in the Taylor Motion especially given UK's role as the host country where Mr. Taylor is serving sentence and her obligations arising from her agreement with the RSCSL in this regard.
9. Furthermore, Mr. Taylor draws the President's attention to the fact that whilst he has no issues with the learned Justice's integrity to dispense justice, that he nevertheless

has concerns with the appearance of “partiality” especially given the famous principle of natural justice that “justice should not only be done but should be seen to be done.”

10. Courts in the UK have had occasion to deal with instances where judges had been asked to recuse themselves or be removed from cases. Whilst the Principal Defender appreciates that this motion does not constitute a case, he submits that the principles warranting withdrawal/recusal from cases apply equally to this motion. The attention of the President is drawn to the case *R v. Sussex Justices, Ex parte McCarthy* where Lord Hewart C.J said “*Justice must not only be done but should manifestly and undoubtedly be seen to be done.*”¹
11. This famous quote which has reverberated across common law jurisdictions touches the concerns expressed by Mr. Taylor in this motion in that it would create the appearance of bias should a UK Judge be designated to serve as a duty Judge to determine matters relating to covid-19 in the UK wherein UK officials may be required to file submissions and a judgment made on that country’s response to covid-19 within one of its prisons. The safest option, the Principal Defender submits is to designate a Judge from a different jurisdiction to do so which would allay Mr. Taylor’s concerns on the fairness and impartiality of the process. Otherwise, however fair or balanced a decision is reached, it would create the appearance of conflict especially given the fact that her lady would have to preside over the steps the country that nominated her has taken to fight the spread of covid-19 within the UK Prison System and to pass a judgment on her country’s response. This would put her lady in a difficult position.
12. Similarly in the case of *Regina v Bow Street Metropolitan Stipendiary Magistrates and others, Ex parte Pinochet Ugarte, the House of Lords stated inter alia that*; “The court cannot rely on its knowledge of the integrity of the judge concerned to outweigh the appearance of bias to the eye of the bystander. The reference point must remain the reasonable observer. This is consistent with the test laid down under article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.”²

¹ (1923) 1 KB 256 at 259

²2000 1 A.C. 119

13. The President is further reminded of the decision of the predecessor of this court in the case of the *Prosecutor v Issa Hassan Sesay, Decision on Defence Motion Seeking the Disqualification of Geoffrey Robertson from the Appeals Chamber*³ wherein the Appeals Chamber disqualified Geoffrey Robertson on grounds of appearance of bias.
14. There is sufficient legal basis for this request. The Principal Defender refers to Rule 54 and 15 (A) and (B) of the Rules of the Procedure and Evidence of this Court. The Principal Defender notes that Rule 15 references a judge sitting on a trial or an appeal but nevertheless submits that the principles set out therein are applicable with equal force to this motion because the principles of impartiality which inform a trial and an appeal are the same principles which apply to interlocutory applications arising post trial or post appeal such as the instant one.
15. The Principal Defender further refers to and relies on the case of the *Prosecutor v Issa Hassan Sesay, Decision on Defence Motion Seeking the Disqualification of Geoffrey Robertson from the Appeals Chamber*⁴ wherein the Appeals Chamber disqualified Geoffrey Robertson on grounds of appearance of bias even before any matter on that case had come up before the Appeals Chamber where the impugned Justice sat as a Justice. The Appeals Chamber nonetheless unanimously accepted the disqualification of the Impugned Justice despite his protestation that no matter in that case had come up before the Appeals Chamber where he sat as a judge. The Principal Defender submits that there is no compelling reason(s) why the principle enunciated in the *Sesay case supra* should not be applied to the instant application otherwise there would be inconsistency in the application of the principle of perception of bias by this Court and its predecessor institution.

³ SCSL -04-15-AR-15 [2004] SCSL 1 (13 March 2004)

⁴ SCSL -04-15-AR-15 [2004] SCSL 1 (13 March 2004)

Conclusion

16. In conclusion, it is Mr. Taylor's humble request to the President of the Court to withdraw the designation of the Hon. Teresa Doherty as duty Judge to deal with and determine all issues relating to the Taylor covid-19 motion in the UK and to replace her lady with another Justice from the roster of Judges maintained by the Court. Alternatively, should the President decline to act on this motion on the ground that he has already nominated a duty Judge, that the said duty Judge, the Hon. Justice Teresa Doherty recuses herself from hearing and determining any or all of the issues arising from the Taylor motion requesting temporary transfer to a safe third country due to the massive outbreak of covid-19 in the UK.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ibrahim Yillah', written over a horizontal line.

Ibrahim Yillah

Principal Defender