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1759

SCSL - 2003 - 08 - PF  
(1759 - 1762)



**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

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**THE TRIAL CHAMBER**

Before: Judge Bankole Thompson, Presiding Judge  
Judge Pierre Boutet  
Judge Benjamin Mutanga Itoe

Registrar: Robin Vincent

Date: 17<sup>th</sup> of September 2003

The Prosecutor against

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

**ORDER PURSUANT TO RULE 72 (E)**

**DEFENCE PRELIMINARY MOTION ON LACK OF JURISDICTION: JUDICIAL INDEPENDENCE**

Office of the Prosecutor:  
Mr. Luc Côté, Chief of Prosecutions

Defence Counsel:  
Mr. James Blyden Jenkins-Johnston  
Mr. Sulaiman Banja Tejan-Sie

<b>SPECIAL COURT FOR SIERRA LEONE</b>	
CERTIFIED TRUE COPY OF THE ORIGINAL.	
SEEN BY ME	
NAME. MAUREEN EDMONDS	.....
SIGNATURE. <i>M Edmonds</i>	DATE 24/9/03

<b>SPECIAL COURT FOR SIERRA LEONE</b>	
<b>RECEIVED</b>	
<b>COURT RECORDS</b>	
24 SEP 2003	
NAME. MAUREEN EDMONDS	.....
SIGN. <i>M Edmonds</i>	.....
TIME. 13.00	.....

THE SPECIAL COURT FOR SIERRA LEONE (“the Special Court”)

SITTING as the Trial Chamber (“the Chamber”), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet, and Judge Benjamin Mutanga Itoe;

SEIZED of the Defence Preliminary Motion on Lack of Jurisdiction: Judicial Independence of the 26<sup>th</sup> day of June 2003 (“the Preliminary Motion”), in relation to the charges against Samuel Hinga Norman (“the Accused”);

CONSIDERING the Prosecution’s Response to “the Preliminary Motion” dated the 7<sup>th</sup> day of July 2003 (“the Response”);

CONSIDERING the Order on the Defence Request for Extension of Time within which to File Defence Reply to Prosecutor’s Response to Defence Preliminary Motions of the 17<sup>th</sup> day of September 2003;

CONSIDERING the Defence Reply to “the Preliminary Motion” dated the 14<sup>th</sup> day of July 2003 (“the Reply”);

CONSIDERING the entire provisions of Rule 72 of the Rules of Procedure and Evidence (“The Rules”);

CONSIDERING, in particular, the provisions of Rule 72 (E) of “the Rules” which provide that “the Chamber” shall refer to the Appeals Chamber for a determination as soon as practicable any preliminary motion which raises a serious issue relating to jurisdiction;

CONSIDERING that the Defence “Preliminary Motion” objects to the jurisdiction of “the Special Court” to try “the Accused” on all the charges contained in the Indictment;

CONSIDERING that the Indictment charges “the Accused” with several counts of Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court (“The Statute”), Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of “the Statute”, and of Other Serious Violations of International Humanitarian Law, punishable under Article 4 of “the Statute”;

CONSIDERING that “the Accused” submits that “the Special Court” lacks sufficient guarantees of judicial independence as its funding arrangements create a legitimate fear of political interference by economical manipulation;

CONSIDERING, in particular, that “the Accused” submits that Articles 6 and 7 of the Agreement between the United Nations and the Government of the Republic of Sierra Leone on the Establishment of the Special Court create an opportunity for pressure on all Organs of “the Special Court” by the donor States who voluntarily contribute to its

financial and administrative budget, particularly those States who have representatives on the Management Committee of "the Special Court";

CONSIDERING that "the Accused" also submits that a reasonable observer apprised of the financial and administrative structure of "the Special Court", which do not insulate the judiciary from political pressure through financial manipulation, would have legitimate grounds to fear for its independence;

GIVEN that "the Accused", in light of the above, argues that the lack of institutional financial independence created by "the Special Court" system of voluntary contribution adversely and directly affects its jurisdiction to try him for any of the counts contained in the Indictment;

**THE CHAMBER**

FINDS that the foregoing submissions raise a serious issue relating to the jurisdiction of "the Special Court" to try "the Accused" on all the counts of the Indictment that has been preferred against him;

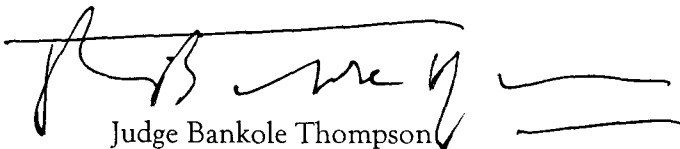
AND THEREFORE, PURSUANT TO RULE 72 (E) OF THE RULES,

REFERS this Defence "Preliminary Motion", together with the Prosecution's "Response" and the Defence "Reply" thereto, to the Appeals Chamber of "the Special Court" for determination;

ORDERS that the reference of this Motion to the Appeals Chamber shall not operate as a stay of the trial of "the Accused";

Done in Freetown, this 17<sup>th</sup> of September 2003

The Trial Chamber

  
Judge Bankole Thompson  
Presiding Judge





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**COURT MANAGEMENT MEMORANDUM**

<b>Date:</b> 24 <sup>th</sup> September 2003	<b>Ref:</b> NG/CMS/LO/039/03
<b>To:</b> J.B Jenkins-Johnson - Lead Counsel Q. Whitaker - Legal Assistant S.B Tejan-Sie - Co-Counsel S Roy - Chief, Defence Office L Coté - Chief, Prosecution	<b>Through:</b> Len Dolphin - Chief, Court Management
	<b>From:</b> Neil Gibson
<b>Cc:</b> Judge Bankole Thompson, Presiding Judge Benjamin M. Itoe Judge Pierre Boutet Matteo Crippa, Chambers Support Nathalie Passeron, Chambers Support	
<b>Cases:</b> SAM HINGA NORMAN - SCSL03-08	
<b>Subject:</b> Amendments to Order dated 17 <sup>th</sup> of September 2003	

*Len Dolphin*

Judge Bankole Thompson as Presiding Judge of the Trial Chamber has directed me to inform you in regards to the Order Pursuant to Rule 72, Defence Preliminary Motion on Lack of Jurisdiction: Judicial Independence. Judge Thompson since the drafting of the Order has identified some typographical errors, the amendments have been made, and an amended order is hereby attached.

Please be aware the time limits pursuant to Rule 72 (G(i)) of the Rules of Procedure and Evidence are not extended and remain as follows:-

The Defence have 14 days from the 19<sup>th</sup> of September 2003, to lodge additional written submissions. The time limit expiring close of business on the 2<sup>nd</sup> of October 2003.

The Prosecution have 14 days thereafter to lodge a response, with the Defence having a further 7 days thereafter to lodge a reply.

Regards,

*Neil Gibson*

**SPECIAL COURT FOR SIERRA LEONE**  
**CERTIFIED TRUE COPY OF THE ORIGINAL**  
 SEEN BY ME  
 NAME HAUKSEN EDWARDS  
 SIGNATURE Neil Gibson DATE 24/9/03