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SCSL-2003-08-PT

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IN THE SPECIAL COURT FOR SIERRA LEONE

Before: Judge Geoffrey Robertson
The President of the Special Court

Case No. SCSL-2003-08-PT

In the matter of:

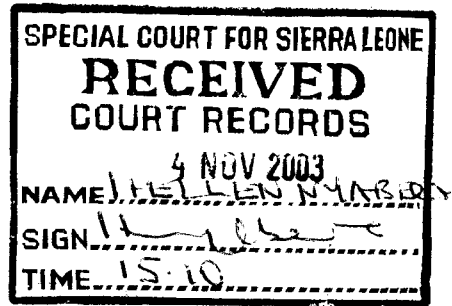
CHIEF SAMUEL HINGA NORMAN JP

Re Application by the Truth and Reconciliation Commission for Sierra Leone

**GROUND OF APPEAL BY THE TRUTH AND RECONCILIATION COMMISSION
FOR SIERRA LEONE ("TRC" OR "THE COMMISSION")
AND CHIEF SAMUEL HINGA NORMAN JP AGAINST THE DECISION
OF HIS LORDSHIP JUDGE BANKOLE THOMPSON ("THE DECISION")
DELIVERED ON 30 OCTOBER 2003 TO DENY THE TRC'S REQUEST
TO CONDUCT A PUBLIC HEARING WITH CHIEF SAMUEL HINGA NORMAN JP**

To: THE REGISTRAR
Special Court for Sierra Leone
Freetown

And To: THE PROSECUTOR
Special Court for Sierra Leone
Freetown



S I R S

BE PLEASED TO TAKE NOTICE that, further to the Notice of Appeal filed on 31 October 2003, the TRC and Chief Samuel Hinga Norman JP (“the Appellants”) hereby file their grounds of appeal jointly in terms of paragraph 5 of the Practice Direction adopted on 9 September 2003, as amended on 4 October 2003 (“the Practice Direction”) against the decision of His Lordship Judge Bankole Thompson delivered on 30 October 2003. The grounds of appeal are set out below. The learned Judge erred in:-

1. limiting himself to “two alternative judicial options” and thereby failing to apply his mind to a third option, namely the approval of the TRC’s Request to Conduct a Public Hearing with Chief Samuel Hinga Norman JP (“the TRC’s Request”) subject to conditions, in accordance with paragraph 5 of the Practice Direction (paragraphs 8 and 9 of the Decision);
2. finding that the TRC wished to conduct a public hearing with Chief Samuel Hinga Norman JP (“the Accused”) on the centrality of his role in the conflict, rather than on the subject areas set out in paragraph 18 of the TRC’s Request subject to the caveat contained in paragraph 17 of the TRC’s Request; and further finding that the TRC’s Request clashed with the presumption of innocence (paragraph 10 of the Decision);
3. interpreting the Truth and Reconciliation Commission Act, 2000 (“the Act”) narrowly as to the categories of persons that may statutorily testify before the Commission; and specifically affording a pre-eminence to section 7 of the Act, the operations section, without reading that provision in the light of other sections, in particular section 8, which sets out the powers of the Commission (paragraph 11 of the Decision);
4. finding that “the records” reveal that the Accused was invited to testify before the TRC as a “perpetrator of abuses and violations” and that this inference is supported by the two assertions referred to in paragraph 12 of the Decision; and further that the TRC’s Request is “predicated” upon these two assertions (paragraph 12 of the Decision);

5. finding that the TRC in its Request has asserted that “the Accused did play a central role in the conflict in Sierra Leone” and that this assertion forms part of the basis upon which the TRC Request is predicated (paragraph 12 of the Decision);
6. suggesting that the TRC, prior to any hearing it may conduct, is bound to reach a conclusion as to the category into which a potential witness falls; and further that the TRC reached a conclusion as to the category into which the Accused falls (paragraph 12 of the Decision);
7. equating the alleged centrality of the Accused’s role in the conflict with the Accused’s guilt as a perpetrator and further holding that a plea of not guilty constitutes evidence of the “highly contentious, and as yet, unsubstantiated” nature of the alleged centrality of the Accused’s role in the conflict (paragraph 12 of the Decision);
8. finding that “the perception of the Commission that the Accused did play a central role in the conflict as a perpetrator of abuses and violations prior to his testimony before the Commission is inconsistent with the presumption of innocence” (paragraph 12 of the Decision);
9. inferring that on a “contextual reading” of the Act the word “perpetrator” has a “restrictive connotation with reference only to persons who committed abuses and violations... and are willing to confess their guilt” and that as such “the word cannot properly be applied to an ‘indictee’ who has pleaded not guilty...” (paragraph 12 of the Decision);
10. finding that “[o]nce a person has been indicted, he does not fall within the statutory ambit of the Act” (paragraph 12 of the Decision);
11. misrepresenting the institutional character of the TRC as “an institution before which an accused appears to testify that already characterises the accused as a ‘perpetrator’...” (paragraph 13 of the Decision);

12. holding that the TRC “may endanger the rights of [an] accused to a fair and impartial trial” by placing a “burden of disproving his guilt or proving his innocence on the accused”; and in so doing implying that the TRC acts as a court of law and further that the TRC has made out a case against the Accused (paragraph 13 of the Decision);
13. limiting himself to the consideration of merely two societal interests, namely the interest that accused persons are entitled to a fair trial and the TRC’s institutional role in establishing the historical record of the conflict; and further assuming that these interests are “competing and conflicting” (paragraph 14 of the Decision);
14. propounding the existence of a “consistent and accepted judicial trend, nationally and internationally, ...” that wherever a conflict arises between “some compelling societal or institutional interest” and an accused person's right to a fair trial, then such a conflict is always resolved in favour of the latter; and founding the resolution of such a conflict purely upon the apparent existence of the stated trend rather than upon any proportional assessment of the different interests at stake; and further compounding such mistakes by declaring that the right to a fair trial triumphs whenever it clashes with “other equally cherished rights in modern democratic societies” (paragraph 14 of the Decision);
15. holding that “to yield to the institutional interest of the TRC” would “certainly jeopardise” the Accused’s right to a fair trial and would constitute an “unprincipled departure from a well-established and widely acknowledged judicial practice” (paragraph 14 of the Decision);
16. finding that should the Special Court for Sierra Leone (“the SCSL”) permit an indictee to testify before the TRC then it would be tantamount to giving that indictee a “licence to incriminate himself” (paragraph 14 of the Decision);
17. appointing the SCSL as the guardian of an indictee's due process rights without any reference either to the safeguards contained in paragraph 4 of the SCSL's own Practice Direction or to the learned Judge's own finding in paragraph 8 of the Decision that paragraph 4 of the Practice Direction has been fully complied with or to the active and ongoing engagement of Defence Counsel in the matter (paragraph 14 of the Decision);

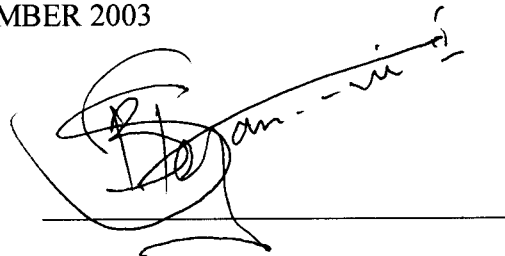
18. implying that the TRC engages itself in questions of criminal guilt or innocence and that, in attempting to facilitate a public hearing with the Accused, the TRC has presumed the guilt of the Accused; and further implying that the “three main basic due process rights” stand to be infringed by the Accused's participation in a TRC hearing, notwithstanding the following factors: the provisions of paragraph 4 of the Practice Direction; the finding of the learned Judge in paragraph 8 of the Decision; the role of Defence Counsel; and the undertakings of the TRC, as contained in paragraph 17 of the TRC's Request and further reflected in paragraph 2.2.5 of the TRC's submissions of 24 October 2003, in consultation with Defence Counsel not to canvass the Accused on the specific elements of the criminal charges against him (paragraph 15 of the Decision);
19. implying that the TRC would compel the Accused to give certain testimony notwithstanding the fact that the Accused himself initiated this process; and further implying specifically that the TRC would contravene the International Covenant on Civil and Political Rights, 1966 by compelling the accused “to testify against himself or to confess to guilt” (paragraph 15 of the Decision);
20. holding that persons charged with “international crimes” are accorded “super due process rights” in vindicating themselves regardless of “national considerations”; and thereby dismissing the fact that the TRC's Request seeks to secure the rights of the Accused and of the wider public under human rights law; and further implying that so called “super due process rights” amount to more than universally accepted human rights, particularly in that they envisage stricter protections (paragraph 15 of the Decision);
21. finding that “acceding to the [TRC's] Request” would jeopardise the interests of justice and the preservation of the integrity of the proceedings of the Special Court (paragraph 16 of the Decision); and
22. holding that it is “incontrovertible” that what is at stake is the right of the Accused to a fair and impartial trial “where he can enjoy ample opportunity, with all the judicial guarantees and procedural safeguards, to vindicate himself” and failing therein to acknowledge that there are other rights and interests at stake here (paragraph 16 of the Decision).

TAKE NOTICE FURTHER that the Appellants will supply written Heads of Argument at the hearing of the appeal; alternatively, if time permits, Appellants will file their written Heads of Argument prior to the hearing, either as agreed to between the Parties or as directed by the Registrar.

SIGNED at FREETOWN this 4TH day of NOVEMBER 2003



Truth & Reconciliation Commission
Jomo Kenyatta Road
Freetown



Counsel for Chief Samuel Hinga Norman JP
c/o The Defence Office
Special Court for Sierra Leone
Freetown