



SPECIAL COURT FOR SIERRA LEONE

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THE APPEALS CHAMBER

Before: Justice Geoffrey Robertson, Presiding
Justice George Gelaga King
Justice Emmanuel Ayoola
Justice Renate Winter

Registrar: Robin Vincent

Date: 13 March 2004

PROSECUTOR **Against** **SAM HINGA NORMAN**
(Case No.SCSL-2004-14-AR72(E))

**DECISION ON PRELIMINARY MOTION BASED ON LACK OF JURISDICTION
(JUDICIAL INDEPENDENCE)**

Office of the Prosecutor:

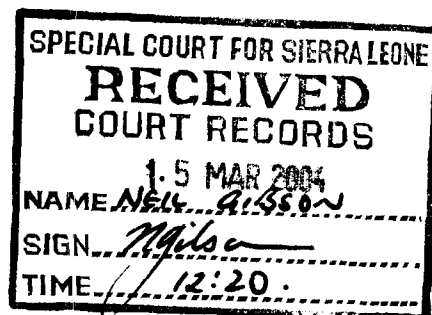
Desmond de Silva
Luc Côté
Walter Marcus-Jones
Abdul Tejan-Cole

Defence Counsel:

James Blyden Jenkins-Johnson
Sulaiman Banja Tejan-Sie

Intervener:

Michiel Pestman for Moinina Fofana



THE APPEALS CHAMBER of the Special Court for Sierra Leone ("the Special Court");

SEIZED of a Preliminary Motion Based on Lack of Jurisdiction: Judicial Independence, filed on 26 June 2003 on behalf of Sam Hinga Norman ("the Preliminary Motion");

NOTING the Prosecution Response filed on 7 July 2003¹; the Applicant's Reply filed on 14 July 2003²; and the referral of the Motion to the Appeals Chamber under Rule 72(E) of the Rules of Procedure and Evidence of the Special Court ("the Rules") on 17 September 2003³;

NOTING the intervention by Moinina Fofana for which substantive submissions were filed on 31 October 2003⁴;

NOTING that an oral hearing was held on 5 November 2003;

HAVING CONSIDERED THE ORAL AND WRITTEN SUBMISSIONS OF THE PARTIES;

HEREBY DECIDES AS FOLLOWS:

I. INTRODUCTION

1. This ruling concerns a Preliminary Motion filed on 26 June 2003 on behalf of Sam Hinga Norman ("the Applicant"), one of the persons standing trial before the Special Court for Sierra Leone ("the Court") in Case No. SCSL-2004-14⁵. The Preliminary Motion was referred to the Appeals Chamber of the Court pursuant to Rule 72(E) of the Rules of Procedure and Evidence of the Special Court ("the Rules").
2. By the Preliminary Motion the applicant challenges the jurisdiction of the Court to try him.

¹ Prosecution Response to the Third Defence "Preliminary Motion based on Lack of Jurisdiction: Judicial Independence", 7 July 2003 ("Prosecution Response").

² Reply - Preliminary Motion based on Lack of Jurisdiction: Judicial Independence, 14 July 2003 ("Defence Reply").

³ Order Pursuant to Rule 72(E): Defence Preliminary Motion on Lack of Jurisdiction: Judicial Independence, 17 September 2003.

⁴ Reply to the Prosecution Response to the Motion on Behalf of Moinina Fofana for leave to intervene as an interested party in the Preliminary Motion filed by Mr. Norman based on Lack of Jurisdiction: Judicial Independence and Substantive Submissions, 31 October 2003.

⁵ The Preliminary Motion was filed under Case No.SCSL-2003-08. Following the Decision and Order on Prosecution Motions for Joinder of 27 January 2004, and the subsequent Registry Decision for the Assignment of a new Case Number of 3 February 2004, this new case number has been assigned.

3. By virtue of Rule 72(B) of the Rules, preliminary motions by an accused are objections based on lack of jurisdiction; defects in the form of indictment; the denial of request for assignment of counsel; and abuse of process or applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82(B).
4. Rule 72(B) does not expressly describe a motion based on the fairness of a trial or alleging an infringement of the right of an accused to a fair hearing or, in effect, seeking a recusal of the judges as a preliminary motion. An objection that the Court lacks judicial independence is basically, and in substance, an objection to the fairness of the trial and an allegation that the right of the accused to a fair hearing is likely to be infringed by the trial. Evidently, it is to enable the applicant to find a platform within Rule 72 from which to raise these issues as a threshold issue that the objection has been described as a jurisdictional objection.
5. Notwithstanding that doubt may legitimately be entertained whether an allegation of real likelihood of bias is a challenge to the jurisdiction of the Court, the ground of the objection raised by the applicant's motion that the Court lacks judicial independence is sufficiently fundamental to make it imprudent to deny a hearing of the Preliminary Motion on the merits and not to determine the issues raised by the Preliminary Motion.

II. THE SPECIAL COURT FOR SIERRA LEONE

6. The Court is established by an agreement made on 16 June 2002 between the United Nations ("UN") and the Government of Sierra Leone to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996⁶.
7. The basic documents of the Court are:
 - (a) The Agreement between the UN and the Government of Sierra Leone ("the Agreement");
 - (b) The Statute of the Court which is annexed to the Agreement and forms an integral part thereof ("the Statute")⁷; and
 - (c) The Rules of Procedure and Evidence of the Special Court.

⁶ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2002 ("Special Court Agreement"), Article 1(1).

⁷ Statute of the Special Court for Sierra Leone, 16 January 2002.

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8. The issues raised by the Preliminary Motion do not involve an interpretation of these basic documents. It is thus unnecessary to have recourse to supplementary means of interpretation, including, for example the preparatory works of the Agreement and the circumstances of its conclusion other than to state in summary such circumstances as are contained in the preamble of the Agreement. This disclosed that the initiator of the Agreement was the UN Security Council. By its Resolution 1315 (2000) of 14 August 2000, the Security Council expressed deep concern "at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity"⁸. It requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law⁹. The Agreement resulted from the negotiations held for the establishment of the Court pursuant to the resolution.
9. The object and purpose of the Agreement is sufficiently clear from the preamble. It is also sufficiently clear that the intention of the parties to the Agreement is to achieve that purpose through the judicial process by employing the mechanism of a court deliberately described as independent.

III. RELEVANT PROVISIONS OF THE BASIC DOCUMENTS

Provisions relating to Judges

10. Article 2 of the Agreement provides for the composition of the Special Court and appointment of judges.
11. Briefly, the Special Court is composed of a Trial Chamber and an Appeals Chamber with the possibility of creation of a second Trial Chamber. The Chambers are composed of no fewer than eight judges, specifically described in the Agreement as "independent judges." The number of judges may be brought up to eleven on the creation of a second Trial Chamber. Of the eight judges five are appointed by the Secretary-General upon nominations forwarded

⁸ U.N. Security Council Resolution 1315, 14 August 2000, p. 1.

⁹ *Ibid.* para. 1.

by States and three by the Government of Sierra Leone. Two of the judges appointed by the Secretary-General serve in the Trial Chamber together with one appointed by the Sierra Leone Government, while three of the five judges appointed by the Secretary-General serve in the Appeals Chamber together with two appointed by the Sierra Leone Government.

12. Article 2(4) of the Agreement and Article 13(3) of the Statute provide that "Judges shall be appointed for a three-year term and shall be eligible for re-appointment."
13. Article 13(1) of the Statute provides that:

The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source.

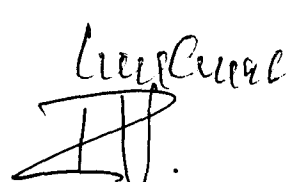
14. Rule 15 of the Rules provides that: "A Judge may not sit at a trial or appeal in any case in which he has a personal interest or concerning which he has had any personal association which might affect his impartiality."

Provisions relating to Funding and Management of the Court

15. Article 6 of the Agreement provides for the funds of the Court in the following terms:

The expenses of the Special Court shall be borne by voluntary contributions from the international community. It is understood that the Secretary-General will commence the process of establishing the Court when he has sufficient contributions in hand to finance the establishment of the Court and 12 months of its operation plus pledges equal to the anticipated expenses of the following 24 months of the Court's operation. It is further understood that the Secretary-General will continue to seek contributions equal to the anticipated expenses of the Court beyond its first three years of operation. Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-general and the Security Council shall explore alternate means of financing the Special Court.

16. Article 7 of the Agreement provides for the establishment by "interested States" of a Management Committee "to assist the Secretary-General in obtaining adequate funding, and

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provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States." The Management Committee is composed of important contributors to the Special Court.

Provision regarding the Termination of the Agreement

17. By virtue of Article 23 of the Agreement, the Agreement shall be terminated by agreement of the Parties upon completion of the judicial activities of the Special Court.

IV. SUMMARY OF ARGUMENTS

18. The applicant by his counsel argues that the right to a fair hearing is breached where there are legitimate grounds to fear that a tribunal is not independent. Absence of executive and legislative control over judicial salaries is an aspect and mark of judicial independence.¹⁰ The funding arrangements made for the Court in Article 6 of the Agreement and the function of the Management Committee which consists of representatives of donor States create a legitimate fear of interference in justice delivery by the Court through economic manipulation, since, it was argued, donor States could indicate their displeasure with any decision of the Court by withholding their contribution to the funds of the Court. With basically only three major donor States funding the Court, the ability of the court to carry out its judicial activities will be impaired, if at least one of them were to withhold its voluntary contribution to the funds, thereby bringing the operations of the court below the standard of judicial independence required of States as set out in the International Bar Association's Minimum Standards of Judicial Independence.¹¹ On the strength of the case thus put, the applicant sought a declaration the Special Court lacks jurisdiction over any of the accused before it and prays that proceedings be stayed pending the implementation of sufficient financial guarantees.¹²
19. For their part the Prosecution argued that the Court is insulated from bias or reasonable apprehension of bias by the selection process of judges of the Court, diplomatic immunity granted to judges of the Court, the merely advisory nature of the role of the Management

¹⁰ Preliminary Motion para. 2.

¹¹ See *ibid.* para. 16, 17 and Defence Reply, para. 5 and 10.

¹² *Ibid.*, para. 22-23.

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Committee and the several structural safeguards contained in the basic documents of the Court.¹³

V. SAFEGUARD OF JUDICIAL INDEPENDENCE

20. Safeguard of judicial independence takes several forms. However, since the question raised by the motion falls within a narrow compass it is unnecessary to enter into any lengthy discourse of the concept of judicial independence or of the various mechanisms usually put in place to safeguard judicial independence.
21. One prominent safeguard of judicial independence in a democratic State is the doctrine of separation of powers which, in regard to the independence of the judiciary, operates to reserve to the judiciary the exercise of judicial powers of the State and protects the judiciary from being so dependent on other arms of Government as to raise a reasonable apprehension of a real likelihood that judicial functions of the judiciary are performed under the influence of another arm of Government or body.
22. In practice, in regard to the judiciary, there are various models of separation of powers. However, in hardly any is the judiciary required or expected to raise revenue by itself to fund its operations so that it could maintain judicial independence. Indeed, as will be seen shortly, were the judiciary to run its operations and pay its judges from moneys generated from its judicial activities the apprehension of likelihood of bias would become more real and reasonable.
23. In some models the executive deals with staffing and administration of the judiciary, sometimes under the umbrella of a Ministry of Justice. In others the executive is excluded from participation in such process. In some models the judiciary is self-accounting, in others the budget of the judiciary is part of the budget of a Ministry of Justice in which the judiciary is treated, at least for budgetary purposes, as a department of the Ministry of Justice.

VI. FUNDING ARRANGEMENT AND INDEPENDENCE

24. Where the allegation is that the funding arrangement of a judiciary raises a real likelihood of bias so that an accused entertains a reasonable apprehension that he cannot have a fair trial,

¹³ Prosecution Response, para. 9, 11, 13.

much more is required than merely showing that the court derives its funding from a source which may be displeased by its decisions. There are other considerations, the principal of which is whether such funding arrangement leads to a real likelihood that the court will be influenced by such arrangement to give decisions, not on the merits of the case, but to please the funding body or agency. Such factors as the obligation, moral or legal, of the funding body or agency and the guarantee of payment of judicial remuneration, however the judiciary is funded, are relevant factors.

25. Denial of adequate funding of the judiciary which would emasculate its performance while the payment of judicial remuneration remained protected must be distinguished from denial of funding where judicial remuneration is unprotected and would therefore affect the payment of judicial remuneration. The former is a shirking of responsibility by the state to provide an efficient or any machinery of justice, while the latter may raise a concern of real likelihood of judicial bias. The conclusion seems clear that it is not every inadequacy in funding arrangement that leads to an inability of courts to dispense justice without bias.
26. It has long been acknowledged that judicial independence rests on the twin pillars of security of tenure of the judge and guarantee of judicial remuneration and its protection from the whims and caprices of governments or bodies charged with the responsibility of funding the judiciary.
27. As early as 1701 it was provided by the Act of Settlement that:

Judges Commission be made *Quamdiu se bene gesserint* [that is, during good behaviour] and their salaries ascertained and established.¹⁴

Commenting on that English statute, Chief Justice Burger, delivering the lead opinion of the US Supreme Court in *United States v. Will*¹⁵, said:

The English statute is the earliest legislative acknowledgment that control over the tenure and compensation of judges is incompatible with a truly independent judiciary, free of improper influence from other forces within government.¹⁶

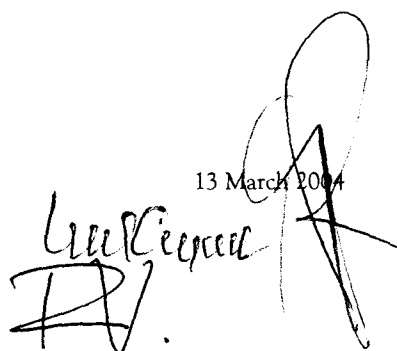
¹⁴ Act of Settlement, 12 & 13 Will. III, ch. 2, § III, cl. 7 (1701).

¹⁵ *United States v. Will* 449 U.S. 200 (1980).

¹⁶ *Ibid.* at p. 218.

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In the same vein as in the Act of Settlement, several modern Constitutions make provision for the security of tenure of judges and for protection of judicial remuneration. Thus, by section 138(1) of the Constitution of Sierra Leone of 1991¹⁷, it is provided that:

The salaries, allowances, gratuities and pensions of Judges of the Superior Court of judicature shall be charged upon the Consolidated Fund.

Section 138(3) of the same Constitution provided that:

The salary, allowances, privileges, right in respect of leave of absence, gratuity or pension and other conditions of service of a Judge of the Superior Court of Judicature shall not be varied to his disadvantage.

A similar but shorter provision to the same effect is contained in section 1 of Article III of the Constitution of the United States¹⁸ which provides that:

. . . The Judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance of office.

28. Some would reason that a safeguard of judicial independence is the payment of handsome remuneration to judges. Another view, and this would appear to be the better view, is that the level of remuneration of a judge is an acknowledgment of the high skill he possesses and which he is expected to bring to the discharge of his judicial function in order to enhance the quality of justice. Be that as it may, of more value in securing judicial independence are the assurance and guarantee of security of tenure and guarantee and protection of the level and payment of judicial remuneration.

VII. THE MAIN QUESTION

29. Notwithstanding what would appear to be a digression to the wider area of the concept of judicial independence relevant, perhaps, as a backdrop to a consideration of the main issue raised by the Preliminary Motion, the question in these proceedings, in the final analysis, falls within a narrow compass. The question relates to the funding of the Court and it is whether funding of the Court by voluntary contribution of interested States coupled with the

¹⁷ The Constitution of Sierra Leone 1991, 24 September 1991.

¹⁸ U.S. Const. art. III, § 1 (2004).

structure of the Management Committee deprives the Court of the necessary guarantees of independence and impartiality.

30. As earlier stated, mere complaint about funding arrangements of a Court cannot by itself be a ground for imputing a real likelihood of bias to a judge. What is material and has to be established is that such funding arrangements are capable of creating a real and reasonable apprehension in the mind of an average person that the judge is not likely to be able to decide fairly. A rough and ready test which seems apt can be fashioned out of a passage in the lead opinion of Chief Justice Taft in the U.S. Supreme Court case of *Tumey v. Ohio*¹⁹ where he said:

. . . the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honour and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.²⁰

In the U.S. case of *Ward v. Village of Monroeville*²¹, the U.S. Supreme Court formulated a test thus:

whether the mayor's situation is one which 'would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused...'²²

31. The test in these two cases, adapted by substituting 'Court's' for 'mayor's' in the first line in the passage above, seems apt for the purpose of this case, having regard to the suggestion which is the pith and substance of the argument advanced by counsel for the applicant that the funding arrangement of the Court is such as would reasonably be seen as likely to put pressure on the judges of the Court to convict the accused so that they may thereby please the donor States to prevent them from withholding their contributions to the funds of the Court.

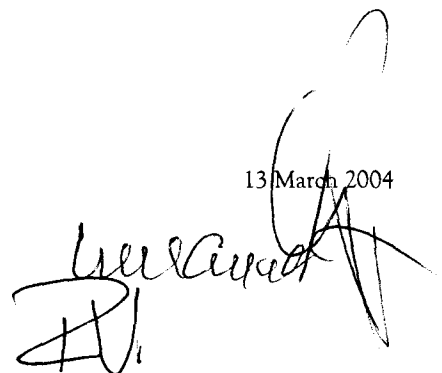
¹⁹ *Tumey v. Ohio*, 273 U.S. 510 (1927).

²⁰ *Ibid.* at p. 532.

²¹ *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), citing *Tumey*, *ibid.*

²² *Ibid.* 60.

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Astonishing as the suggestion may seem, and, indeed is, it is one that evokes the need to apply the test stated above and to examine whether it has any foundation in fact.

32. Before reverting to the present case, it is of interest to note, albeit very briefly, one case in which the above test has been applied to the advantage of the accused and another in which it has been held inapplicable. All are cases decided by the U.S. Supreme Court which appears to have developed a rich jurisprudence in this area of law.
33. In *Tumey v Ohio*²³ the facts, taken from the syllabus, are as follows: Under statutes of Ohio, offences against stay prohibition, involving a wide range of fines enforceable by imprisonment may be tried without a jury before the mayor of any rural village situated in the county (however populous) in which offences occur. His judgment upon the facts is final and conclusive unless so clearly unsupported as to indicate mistake, bias, or wilful disregard of duty. The fines are divided between the State and the village. The village, by means of the fines collected, hires attorneys and detectives to arrest alleged offenders anywhere in the county and prosecute them before the mayor. In addition to his salary, the mayor, when he convicts, but not otherwise, receives his fees and costs amounting to a substantial income. The fine offers means of adding materially to the financial prosperity of the village, for which the mayor, in his executive capacity, is responsible. It was held that the due process of law was denied the defendant in the case. The court held that the mayor had a pecuniary interest as a result of his judgment such as to disqualify him. The court said:

It appears from the evidence in this case, and would be plain if the evidence did not show it, that the law is calculated to awaken the interest of all those in the village charged with the responsibility of raising the public money and expending it, in the pecuniarily successful conduct of such a court. The mayor represents the village, and cannot escape his representative capacity. [...] With his interest as mayor in the financial condition of the village, and his responsibility therefore, might not a defendant with reason say that he feared he could not get a fair trial or a fair sentence from one who would have so strong a motive to help his village by conviction and a heavy fine?²⁴

As a statement of principle the court said:

²³ *Supra* note 19.

²⁴ *Tumey v. Ohio*, *supra* note 19, at p. 533.

But it certainly violates the Fourteenth Amendment, and deprives a defendant in a criminal case of due process of law, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.²⁵

34. On the other hand, in *Dugan v. Ohio*²⁶ the petitioner was convicted and fined by the mayor of a city for a violation of the Ohio liquor law committed within the city limits. The legislative powers of the city were exercised by a commission of five, of whom the mayor was one, and its executive powers by the commission and a manager, who was the active executive. The functions of the mayor, as such, were judicial only. His sole compensation was a salary fixed by the vote of the other commissioners, and payable out of a general fund to which the fines accumulated in his court under all laws contributed, the salary being the same whether the trial before him resulted in convictions or acquittals. It was held that the mayor's relation to the fund and to the financial policy of the city were too remote to warrant a presumption of bias towards conviction in prosecutions before him as a judge.²⁷
35. In this case direct pecuniary interest in the result of a trial is not suggested by the applicant's case. Nonetheless, it was suggested that apprehension that the funding of the Court may be so severely diminished were the court to render decisions which displease major donors to the funds of the court, to the detriment of the ability of the Court to pay remunerations to judges, would have the same prejudicial consequences for the ability of the judges to dispense justice fairly as if they had direct pecuniary interest in the proceedings.
36. The position is sufficiently clear to enable it to be stated in the following propositions:
 - (a) A judge is disqualified from adjudication where he has a direct, personal or pecuniary interest in the litigation and, particularly, in criminal trials where pecuniary benefit accrues to him by his convicting.²⁸
 - (b) A judge is not disqualified from adjudicating where there is no objective reason to infer on any showing that failure to convict (or acquit) in any case or cases would deprive him of or affect his fixed remuneration.²⁹

²⁵ *Tumey v. Ohio*, *supra* note 19, at p. 523.

²⁶ *Dugan v. Ohio*, 277 U.S. 61 (1928).

²⁷ *Ibid.*, at p. 65

²⁸ See *Ward v. Village of Monroeville* *supra* note 21 ; See *Tumey v. Ohio*, *supra* note 19.

²⁹ *Dugan v. Ohio*, *supra* note 19.

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- (c) A judge should disqualify himself if a reasonable and informed person would believe that there is a real danger of bias.
- (d) A reasonable person will not rush to an assumption that a judge will violate his oath and the duties of his office on a remote and speculative belief that his remuneration may be affected in any way by the decision he gives.

VIII. ABSENCE OF FACTUAL BASIS FOR ALLEGATION.

37. On the true facts, it is manifest that the assumptions on which the applicant based his challenge to the jurisdiction of the Court are far-fetched and have no factual basis that can support the contention that the funding arrangement of the Court could reasonably occasion the denial of a fair hearing. The judges of the Court are on fixed term contracts of three years, though subject to re-appointment. The remuneration payable to each judge is certain and fixed by the contract of appointment. The liability of the Court to pay such remuneration is not in any way conditional upon whether the parties to the Agreement establishing the Court are able to raise voluntary contributions to fund the court, since, indeed, by Article 6 of the Agreement it is provided that:

“Should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Special Court.” Finally, the Agreement establishing the Court can only be terminated by virtue of Article 23 of the Agreement “upon completion of the judicial activities of the Special Court.”

38. It is clear from these indisputable facts that there is no way in which the remuneration of the judges of the Court is tied to the funding of the court by voluntary contribution of donor States or can be subject to manipulation.
39. The concerns which engender the applicant’s motion are of limited scope and relate only to the funding of the Court by voluntary contribution. Reference by counsel to the Canadian Supreme Court case *Reference Re Remuneration of Judges*³⁰ seems unnecessary beyond a mention of the now uncontroversial principle, which applicant’s counsel stated the decision stood for, that judicial salaries must be protected from executive, legislative or managerial manipulation. The issues discussed in that case of circumstances in which reduction of judicial salary may be

³⁰ *Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] 3 S.C.R. 3.

permissible or whether judges may negotiate their salaries are really not material to the determination of the main issue in this case. The Canadian Supreme Court ruled that the way the reduction of salaries was carried out was unconstitutional. In our case, the question is whether the judges would feel pressured to produce results in the form of convictions in order to attract sufficient funds for the Special Court, lest their salaries be reduced. Special Court judges' salaries are certain and fixed by the contract of appointment. The reduction of judges' salaries is in itself unrealistic. Similarly, although in the final analysis the ground on which an objection is raised in this case boils down to likelihood of bias, the bias alleged is not of the same type as was discussed in the case of *ex parte Pinochet* (No. 2)³¹ where the bias alleged was not as to pecuniary interest of the judges in the result of the proceedings, but one likely to be occasioned by the close relationship of one of the judges to a cause promoted by an intervener (Amnesty International) who was in the rather unusual circumstances of the case deemed to have been a party.

40. It may well be stated, if only in an attempt at relative exhaustiveness, that if the voluntary contributor States to the funds may be said to have a 'cause' it is not a cause that is in issue in the case or that can be said to be of controversy in democratic societies. That 'cause' is that a man will not be condemned without a fair and public trial and that there must be an end to impunity of serious violations of international humanitarian law. It is in furtherance of the 'cause' that the Court in its Rules established a Defence Office for the purpose of ensuring the rights of suspects and accused.³²
41. Undoubtedly, states which have contributed to the funds of the Court must have done so because they believe in due process of law and the rule of law. It is far-fetched, preposterous and, almost, bad taste to suggest that donor states, which in their national practice promote and respect human rights and the rule of law and promote such values internationally, would be committed to funding and sustaining a court in the expectation that it will operate contrary to those same values.
42. Although the objection of the applicant has been couched in terms of judicial independence and bias, it is expedient and sufficient to limit the determination of the objection to the limited question that has been identified. The Court is not one functioning as an arm of a

³¹ *R. v. Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte* (No. 2) [2000] 1 A.C. 119.

³² Rule 45 of the Rules.

state in a particular legal order or system. Its jurisdiction is of an extremely limited nature and the lifespan of the Court itself is predictably limited. It is for this reason that it is unnecessary to examine at any length the functions of the Management Committee, which in no way approximates either to the executive or the legislature in a State nor wields powers of such organs which may be subject to review by the Special Court. The Committee has no cause to influence and cannot, in performance of its role, influence the Court in the determination of cases before it.

43. It suffices for the determination of the Preliminary Motion to hold that the funding arrangements of the Court cannot be reasonably seen in any way to lead to any real likelihood of bias in the Court in the determination of matters before it.

IX. DISPOSITION

44. For all of the above reasons, this Preliminary Motion is dismissed.

Done at Freetown this 13th Day of March 2004

Justice Robertson

Presiding

Justice King

Justice Ayoola

Justice Winter

