

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-14-PT
APPEALS CHAMBER

THE PROSECUTOR
OF THE SPECIAL COURT
v.
SAMUEL HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

28 MAY 2004
1440H
DECISION

Before the Judges:

Emmanuel Ayoola, Presiding
A. Raja N. Fernando
George Gelaga King

For the Registry:

Mr. Geoff Walker

For the Prosecution:

Mr. James Johnson

For the Accused Samuel Hinga Norman:

Mr. James Blyden Jenkins-Johnson
Mr. Sulaiman B. Tejan-Sie

For the Accused Moinina Fofana:

(Absent)

For the Accused Allieu Kondewa:

(Absent)

Court Reporter:

Ms. Gifty C. Harding

P R O C E E D I N G S

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MR. WALKER:

All persons having anything to do before the Special Court Appeal Chamber, draw near and give your attendance.

SCSL-2004-14-PT, Prosecutor vs. Norman. This is the rendering of a decision on a motion to recuse Justice Winter from deliberation on the preliminary motion on the recruitment of child soldiers.

MR. PRESIDENT:

Appearances, please.

MR. JOHNSON:

For the Prosecution, James Johnson, Your Honour.

MR. JOHNSON:

For the Defence James Blyden Jenkins-Johnson and Sulaiman Tejan-Sie.

MR. PRESIDENT:

Justice Fernando will announce the decision of the Court.

JUDGE FERNANDO:

I will now deliver a summary of my decision on this motion. The complete version of the reasons for the decision will be available at the Registry shortly.

It was submitted on behalf of the Accused, Samuel Hinga Norman, that Justice Renate Winter, pursuant to Rule 15(A) of the Rules, ought to withdraw from any further deliberation in the preliminary motion challenging whether the recruitment of child soldiers amounted to a crime under international customary law at the time of the indictment that he faces, and that any past contribution be struck from the remaining judges' consideration.

In its decision on the motion for disqualification of Justice Robertson in the case of *Sesay*, this Chamber held that the applicable test for determining applications made under Rule 15(B) is whether an independent bystander or reasonable person will have a legitimate reason to fear that the judge in question lacks impartiality.

The issues that arise in this motion are as follows:

Does the reviewing of the draft and supporting the drafting process of the report formally published by UNICEF and "No Peace Without Justice" in September 2002 demonstrate bias on the part of Judge Winter?

Two, does the technical assistance provided by Judge Winter to a project undertaken by the Iranian

1 Country Office of UNICEF show bias on the part of Judge Winter? And,
2 3. Does the participation of Judge Winter in a Masters programme in children's rights run by the
3 University of Freiburg as an expert indicate bias?
4

5 As observed by the Prosecution, while it is not uncommon for authors of publications to submit their
6 drafts for experts for their comments and suggestions and to acknowledge their assistance, the views
7 expressed in the publication remain those of the author and cannot be attributed to the person who
8 reviewed the draft. There is no material to suggest that Judge Winter approved any draft. She was
9 one of over 50 persons who reviewed the draft and who supported the drafting process.
10

11 There is a general rule that judges should not only be subjectively free from bias, but there should be
12 nothing in the surrounding circumstances which objectively gives rise to an appearance of bias.
13

14 In relation to issue (a), I am unable to agree with the Defence suggestion that on the above facts, as
15 submitted to this Court, a reasonable observer properly informed would reasonably apprehend any
16 bias.
17

18 In relation to issue (b), as the Prosecution points out, the February 2002 publication relates to a
19 project undertaken by the Iran Country Office of UNICEF that involved the study tour to Austria where
20 Judge Winter is a judge.
21

22 A party challenging the judge's impartiality must demonstrate that the judge entertains a personal
23 interest in, or a particular concern for any other parties. Such a personal interest or particular concern
24 is different from a professional interest in the subject matter of the case.
25

26 Similarly, in relation to issue (3), teaching in an international Masters programme, as with reviewing a
27 report, does not in -- does not in and of itself show or even suggest an appearance of bias. On the
28 material before the Chamber, there is no detail provided of the nature of Justice Winter's involvement
29 in the Freiburg Masters programme, and to consider this point further would be purely speculative.
30

31 On the contrary, we find that each of the grounds relied upon by the Defence motion, rather than
32 proving any actual or perceived bias on the part of Judge Winter with regard to the questions if and
33 when the recruitment of child soldiers became a crime under international law, are evidence of the
34 internationally recognised qualification of Justice Winter in the general field of juvenile justice. As
35 required by Article 13(2) of the Statute of the Special Court, taking account of such expertise in the
36 composition of the Chamber is entirely appropriate.
37

1 For the above reasons -- for the detailed reasons which will be available in the Registry in due course,
2 the motion is dismissed.

3 MR. PRESIDENT:

4 I agree.

5 JUDGE KING:

6 I also agree.

7 MR. PRESIDENT:

8 Court rise.

9 *(Court adjourned at 1447H)*

10 *(Pages 1 to 3 by Gifty C. Harding)*

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CERTIFICATE

I, Gifty C. Harding, Official Court Reporter for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*machine writer*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of my ability and understanding.

I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in nowise interested in the result of said cause.

_____ Gifty C. Harding