



SPECIAL COURT FOR SIERRA LEONE

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Before: Justice Raja Fernando, President

Registrar: Robin Vincent

Date: 29 June 2005

PROSECUTOR

Against

Sam Hinga Norman
(Case No.SCSL-04-14-RD47)

DECISION ON REQUEST TO REVERSE THE ORDER OF THE ACTING REGISTRAR UNDER RULE 47(A) OF THE RULES OF DETENTION OF 6 JUNE 2005

Office of the Prosecutor:
David M. Crane
Luc Côté

Defence Counsel:
Dr Bu-Buakei Jabbi

LEN DOLPHIN
Len Dolphin
9.15 AM.

I, PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE,

SEIZED of the Request to Reverse the Order of the Acting Registrar under Rule 47 (A) of the Rules of Detention of 6 June 2005 (“the Decision”), sent to me by Sam Hinga Norman (“the Applicant”) on 7 June 2005 (“the Request”);

NOTING the letter of the Registrar to the Applicant’s Counsel dated 15 June 2005 (“the Registrar’s letter of 15 June 2005”);

HEREBY DECIDE:

I. BACKGROUND

1. On 6 June 2005, the Applicant, currently detained in the Detention Facility of the Special Court for Sierra Leone, received a letter from Mr Robert Kirkwood, Acting Registrar, informing him that, in accordance with his power to regulate communication under Rule 47(v), he had decided to suspend his rights to visits and communication for the next 28 days from the date of the letter, because it had come to his attention that the Applicant was responsible for the writing and sending out of the Detention Facility a letter “To all South Easterners of Sierra Leone and all Kamajors, Family and Friends”.
2. On 7 June 2005, the Applicant seized me of a request to reverse that Decision pursuant to Rule 47(G) of the Rules of Detention.

II. SUBMISSIONS

3. The Applicant requests me to reverse the Decision made against him. He attaches to the Request a request dated 7 June 2005 from his Counsel to the Acting Registrar who rendered the Decision, a copy of the Decision, and a copy of a handwritten letter published in a newspaper on 30 May 2005 and entitled “A letter from Special Court”.
4. The reasons of the Request are developed in the request that was addressed on the same day by Counsel for Norman to the Acting Registrar (attached to the request). Counsel for Norman submits that:
 - i. The Decision is *ultra vires*, since:
 - The purported Rule mentioned in support of the Decision, namely “Rule 47(v)” does not exist in the Rules of Detention;
 - The power granted to the Registrar under RD 47 to prohibit visits are specific and not generic in nature and may be exercised only in respect of specified visitors, but not to prohibit visits generally;
 - The power to regulate communication granted by RD 47(A)(v) does not necessarily include the power to regulate visits. The two sets of powers are separate and distinct and must be expressly and specifically invoked.
 - To suspend a right of a Detainee is completely different from regulating it, the former being a punitive act of prohibition rather than an administrative one of regulation within the terms of RD 47(A);

- ii. The Decision does not mention any proper inquiry or investigation as having been conducted into the allegations against the Detainee before the adoption of the sanction. This is fundamentally unfair to the Detainee, as it has not accorded him any opportunity of being heard in his own defence or of being represented for that purpose;
 - iii. The sanction is excessive and disproportionate: it would have been far more appropriate to apply either or both of the respective sanctions of search of any visitors to him under Rule 41(D) & (E) and of inspection of all letters and packages going to or leaving the Detainee under RD 46(A);
 - iv. The contents of the alleged publication are unrelated to and incapable of producing the possible effects of disturbing the maintenance of the security and good order in the Detention Facility, as deprecated in RD 47(A)(v) and Rule 47(B)(v). A copy of the said publication is attached to the Request;
 - v. The Decision is imbued with bias towards the Detainee in that it purports to punish him alone for an act which it alleges was done by three persons.
5. On 15 June 2005, the Registrar sent a letter to the Applicant's Counsel, which states that:
- i. The mention of "Rule 47(v)" in the Decision is a typographical error and should read "Rule 47(A)(v)". This error, however, does not invalidate the order of the Acting Registrar.
 - ii. There was an investigation of the matter and the Applicant readily admitted his failure to follow Detention Facility Procedures in relation to the note he had taken out of the Detention Facility. The Applicant did not disclose who took the note for him.
 - iii. The action taken by the Acting Registrar is neither disproportionate nor excessive: the Applicant received warnings in two prior occasions and has his right to communications suspended for 28 days on another previous occasion.
 - iv. The matter is still under investigation in relation to the other names on the note.

III. APPLICABLE LAW

6. Rule 47 of the Rule of Detention reads:

"Prohibition or Conditions on Communications and Visits

- (A) The Registrar, acting on his own initiative or at the request of a Judge, a Chamber or the Prosecutor, may prohibit, regulate or set conditions for communications, including the monitoring of telephone calls, and may prohibit, regulate or set conditions on visits between a Detainee and any other person if there are reasonable grounds for believing that such communications and visits:
 - (i) are for the purposes of attempting to arrange the escape of any Detainee from the Detention Facility;

- (ii) could prejudice or otherwise undermine the outcome of the proceedings against any Detainee or any other proceedings;
 - (iii) could constitute a danger to the health and safety of any person;
 - (iv) could be used by any Detainee to breach an order made by a Judge or a Chamber, or otherwise interfere with the administration of justice or frustrate the mandate of the Special Court; or
 - (v) could disturb the maintenance of the security and good order in the Detention facility.
- (B) The Registrar may make arrangements for any communication to or by any or all Detainees to be intercepted if the Registrar considers that it is necessary on the grounds set out in Paragraph A of this Rule and it is proportionate to what sought to be achieved.
- (C) The order of the Registrar shall have effect for six months or if the Registrar believes that such arrangements are no longer necessary or proportionate to what is sought to be achieved whichever is the earlier. The order for interception may be extended for a further six months if the Registrar considers that the arrangements are still necessary on the grounds set out in Paragraph A of this Rule and proportionate to what is sought to be achieved.
- (D) The Registrar shall not retain any intercepted material for a period longer than three months beginning with the day on which the material was intercepted or obtained unless the Registrar is satisfied that continued retention is necessary on the grounds specified in Paragraph A of this Rule and is proportionate to what is sought to be achieved by continued retention. Where such material is retained for longer than three months the Registrar shall review its continued retention every three months.
- (E) In case of emergency, a Judge, a Chamber or the Prosecutor may make a request under paragraph (A) to the Chief of Detention to prohibit, regulate or set conditions for communications, including monitoring telephone calls, and to prohibit, regulate or set conditions for visits between a Detainee and any other person. In such a case, the Judge, the Chamber or the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefore. The Registrar shall review the decision of the Chief of Detention, as soon as practicable thereafter.
- (F) The Detainee shall be informed in writing of any decision under paragraphs (A), (B), (C), (D) or (E), together with the reasons therefore within twenty-four hours of such decision.
- (G) A Detainee may, at any time, request the President to reverse a decision made by the Registrar under this Rule.”

III. DISCUSSION

Preliminary Issues

7. Under Rule 47(G) of the Rules of Detention, the request is admissible, since:
- the challenged decision was rendered by the Acting Registrar under Rule 47 of the Rules of Detention;
 - there is no time limit for such a Request;

- the Request comes from the Detainee to whom the impugned decision was addressed.
8. Rule 47(G) of the Rules of Detention does not provide for any particular procedure to follow in the treatment of such request. Nor are applicable the dispositions of Rules 59-60 of the Rules of Detention, which provide for a right to make complaints to the Chief of Detention and the Registrar. There is therefore no requirement to wait for a formal response from the Registrar on the Request which can be determined on the basis of the sole submissions from the Defence, and the answer sent by the Registrar to Norman's Counsel on 15 June 2005 which are part of the records.

On the first Ground of the Request

9. I have noted the typographical error which appears in the Decision, which refers to "Rule 47(v) of the Detention Rules" instead of "Rule 47(A)(v)". This error is confirmed by the Registrar in his letter of 15 June 2005. It is my view that such a typographical error does not affect the legality of the Decision which clearly relies in the same paragraph on the Registrar's powers to regulate communication, provided by Rule 47 of the Rules of Detention. The power to prohibit communications and visits does appear in the very title of Rule 47 of the Rules of Detention and is clearly granted by this Rule. In the same way, the power to suspend visits and/or communications is undeniably included in the power to "prohibit, regulate or set conditions" provided by the Rule. The reference that is made to Rule 47 of the Rules of Detention in the Decision therefore gives a sufficient legal basis for the Registrar to exercise that power.
10. The Applicant does not provide for any authority supporting the submission that the power to prohibit, regulate or set conditions on visits and communications shall be exercised only in respect of specified visits or visitors, but not to prohibit visits generally. References in the Rule to "communications" and to "any other person" are, in the opposite, very broad and give support to general interdictions of the kind ordered by the Registrar in the Decision, which was therefore perfectly grounded.
11. I therefore consider that this first Ground fails.

On the Second Ground of the Request

12. Rule 47(A) of the Rules of Detention provides that the Registrar may prohibit, regulate or set conditions for communications and visits "if there are reasonable grounds for believing" that such a measure is necessary. Paragraph (G) of the same Rule further provides that the Detainee may request the President to reverse the decision of the Registrar. It results from the combination of these two sub-Rules that the "reasonable grounds" supporting a decision to prohibit, regulate or set conditions for visits and communications shall be specified, in order to provide the President with the reasons of the decision for his determination on the request to reverse.
13. In the current case, the Decision only mentions that it has come to the attention of the Acting Registrar that the Applicant has been responsible for writing and sending out of the Detention Facility a letter and that he reasonably believes that this unauthorised passing occurred during a visit at the Detention Facility. There

is no indication on the way this information has come to the attention of the Acting Registrar, nor on the available evidence that the Applicant did write and pass the letter.

14. It is only in the Registrar's letter of 15 June 2005 that it is stated that:

"There was an investigation of the matter and Mr. Norman readily admitted to his failure to follow Detention Facility Procedures in relation to the note he had taken out of the Detention Facility. Unfortunately he would not disclose who took the note for him. You will be able to confirm that directly with Mr. Norman."

15. I note that that information was not challenged by the Applicant's Counsel.

16. It is therefore my view that, since the Applicant himself confirmed having written and sent the letter out of the Detention Facility without following the applicable procedures, the Acting Registrar did have "reasonable grounds for believing" that the measure was necessary.

17. However, it is my view that such "reasonable grounds" should have been explained in the Decision in order to make sure that the reasons of the sanction were clearly understood by the Applicant and to provide the President with sufficient information for his determination on a potential request to reverse pursuant to Rule 47(G) of the Rules of Detention. It is therefore my conclusion that the Acting Registrar erred in law by failing to specify the "reasonable grounds for believing" that the sanction was necessary, but that this error does not invalidate the Decision.

18. I therefore consider that the second Ground of the Request fails.

On the Third Ground of the Request

19. The Decision is consistent with the dispositions of Rule 47(A) of the Rules of Detention as regards the nature of the sanction applicable to the breach, namely the suspension of the right to visits and communication. The *quantum* of the sanction, namely the next 28 days from the date of the letter, was under the discretion of the Acting Registrar and does not appear to be manifestly disproportionate. The Applicant therefore fails to demonstrate any ground for reversing the Decision on that aspect.

On the Fourth Ground of the Request

20. In opposition to the submissions of the Applicant, the substance of the letter, which was not appended to the Decision, does not appear to be the reason of the sanction. The Decision clearly states that the threat to the security and good order of the Detention Facility is constituted by the fact that the Applicant is "continuing unauthorised communications". Such unauthorised communications, by breaching the Registrar's regulations under Rule 47(A), undeniably threaten the good order of the Detention Facility, irrespective of their substance. The Decision was therefore grounded on this aspect.

On the Fifth Ground of the Request

21. The Decision mentions that the Applicant was previously warned about unauthorised communications and had also had visits suspended for 28 days by order of the Registrar on 8 November 2004 for the same reason. Although Rule 47 of the Rules of Detention does not require previous warnings before a decision to sanction the conduct of a detainee is rendered, those previous warnings and sanction are sufficient to justify the Decision of the Acting Registrar to sanction the Applicant alone, without any appearance of bias resulting from it.
22. Furthermore, it results from the Registrar's letter of 15 June 2005 that:
- “The matter is still under investigation in relation to the other names on the note and [...] Mr. Norman has not been singled out in this matter.”
23. It is my view that the fact that the Applicant alone was sanctioned at that stage is perfectly justified and that there is no bias, nor appearance of bias resulting from the Decision of the Acting Registrar. I therefore dismiss the Request on this Ground.

FOR THE FOREGOING REASON, I

DECIDE that the Acting Registrar erred in law by rendering his Decision without indicating the “reasonable grounds” leading to it;

CONFIRM the Acting Registrar's Decision on all other aspects;

DISMISS the Request pursuant to Rule 47(G) of the Rules of Detention.

Done at Freetown this 29th day of June 2005

Fernando

Justice Raja Fernando
President

