

1. On 7 and 10 May 2012, the President of the Special Court for Sierra Leone (“Special Court”), at the time, Justice Jon M. Kamanda, convened an Emergency Plenary Meeting of Judges pursuant to Rule 15*bis* (B) of the Rules of Procedure and Evidence of the Special Court (“Rules”), which mandates the President to refer an allegation of unfitness of a Judge to sit to the Council of Judges. Should the Council determine that (i) the allegation is of a serious nature and (ii) that there appears to be a substantial basis for same, “it shall refer the matter to the Plenary Meeting which will consider it and, if necessary, **make a recommendation to the body which appointed the Judge.**” (Emphasis added)
2. The Plenary was **seized** of a Complaint, dated 26 April 2012, submitted by Justice Richard Lussick, Presiding Judge of Trial Chamber II, on behalf of the Judges of Trial Chamber II, against Justice Malick Sow, Alternate Judge in that Chamber, alleging misconduct and “Unfitness to Sit” pursuant to Rule 15*bis*.
3. The Complaint before the Plenary was contained in an email dated 26 April 2012 addressed to the President by the Presiding Judge of Trial Chamber II, Justice Richard Lussick, which said Complaint was published to the Judges constituting the Emergency Plenary.
4. Justice Malick Sow responded to the Complaint via email to the President dated 1 May 2012, which said Response was also before the Plenary.
5. At the start of the deliberations on the first day of the Plenary i.e. 7 May 2012, Justice Julia Sebutinde of Trial Chamber II read a written 6 page statement on behalf of Trial Chamber II, which purported to be a Complaint against Justice Malick Sow.
6. The Appeals Chamber Judges of the Emergency Plenary were only apprised of this statement at the time it was read out by Justice Julia Sebutinde, who was not the Presiding Judge of Trial Chamber II.
7. *A fortiori*, Justice Malick Sow, against whom the allegations in the statement were made was not given prior notice of it and, consequently, had not been given the opportunity to respond.
8. I objected to the procedural irregularity, which patently impinged on Justice Malick Sow’s right to be heard, stating that it was against basic principles of natural justice, and submitted that the Emergency Plenary could not deliberate on the matter and that the views and recommendations of the Judges could not be sought when Justice Malick Sow had not been given an opportunity to

respond to what were to all intents and purposes 'new' allegations against him. I warned the Teleconference that unless Justice Malick Sow was given time to reply to the sudden and scurrilous allegations made against him by Justice Julia Sebutinde, the refusal to give him time to respond was tantamount to "a perversion of justice". I informed my colleagues that, accordingly, I was not, from that moment, taking any further part in the Emergency Plenary. I then walked out of the conference room and the Emergency Plenary.

9. The statement by Justice Julia Sebutinde was, however, already on the record and in my opinion, subsequent attempts to expunge it did not detract from the fact that it had been published.

10. I did not participate in any further deliberations either on 7 or 10 May 2012 or in any decision taken by the Plenary on the matter.

11. I opine that it is inaccurate and misleading to state in the so-called "Resolution On Complaint by Trial Chamber II against Justice Malick Sow", that

"THE JUDGES of the Special Court for Sierra Leone ... HAVE REACHED the following conclusions:

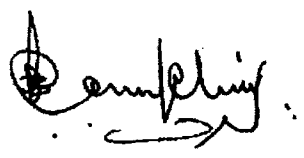
1. The Plenary DECLARES that Justice Malick Sow's behaviour in Court on the 26th April 2012 amounts to misconduct rendering him unfit to sit as an Alternate Judge of the Special Court.
2. The Plenary RECOMMENDS to the appointing authority pursuant to Rule 15bis (B) to decide upon the further status of Justice Malick Sow.
3. Pursuant to Rule 24(iii), the Plenary DIRECTS Justice Malick Sow to refrain from further sitting in the proceedings pending a decision from the appointing authority."

I was not one of those Judges of the Emergency Plenary who allegedly passed that Resolution and I did not resolve as alleged or at all.

DISPOSITION

12. For the foregoing reasons, I decline to voluntarily withdraw with respect to Defence Grounds 36 and 37 in the Appellate proceedings in *Prosecutor v. Charles Ghankay Taylor*.

Done in Freetown, Sierra Leone, this 13 day of September 2012.



Justice George Gelaga King

[Seal of the Special Court for Sierra Leone]

