

I have an application to make.

At the outset, I wish to make it perfectly clear that the remarks I am now going to make are not in any way directed to your Worship in his personal capacity and are certainly not intended to cast any reflection on the integrity of the Court.

On the contrary, on many occasions in the past, I have had the honour and privilege of appearing before your Worship as an attorney to plead on behalf of clients. I have always held your Worship, as I still do, in high esteem and have never for one single moment doubted your sense of fairness and justice.

I must also mention that I have nothing but respect for the learned

prosecutor whom I came to know during the days I practiced in these courts. My remarks are not intended to cast any reflection against him personally either.

The point I wish to raise shortly in my argument is based not on personal considerations but on important questions that may go beyond the scope of the present trial.

I might also mention that in the course of this ~~trial~~ application, I am frequently going to refer to the whole man and to whole people. I want at once to make clear that I am not a racialist and I do not support racialism of any kind

to me racism

because ~~it~~ is a barbaric thing whether it comes from a black man or from a white man.

I challenge the right of this Court to hear my case on two grounds:

Firstly, I challenge it on the ground that I will not be given a fair and swift trial.

Secondly, I consider myself neither morally nor legally obliged to obey laws made by a Parliament in which I am not represented.

In a farcical trial such as the present one, which involves a clash of the aspirations of the African people and those of whites, the Gambia's Courts as presently constituted, cannot see

impartial and fair.

In such cases Whites are interested parties. To have a White judicial officer presiding, however high his esteem and however strong his sense of fairness and justice, is to make Whites judge in their own case.

It is unjust and against the elementary principle of justice to contest Whites with cases involving the denial by them of basic human rights to the African people.

What sort of justice is this that enables the aggrieved to sit in judgment over those against whom they have laid a charge?

A judiciary controlled entirely by Whiles and enforcing laws made by a White Parliament in which we have no representation — laws which in most cases are passed in the face of unanimous opposition from Africans — cannot be regarded as an impartial tribunal in a fair trial where ~~an~~ African stands as an accused.

The Universal Declaration of Human Rights provides that all men are equal before the law and are entitled without any discrimination to equal protection of the law.

In 1951 Sir D.F. Malan, then Prime Minister, told the Union Parliament that this provision of the Declaration

afflict in this country. Similar statements have been made on numerous occasions in the past by whites in this country including judges and magistrates.

But the real truth is that there is in fact no equality before the law whatsoever as far as our people are concerned, and statements to the contrary are definitely incorrect and misleading.

It is true that an African, who is charged in a court of law, enjoys on the surface the same rights and privileges as a white accused in so far as the conduct of his trial is concerned. He is governed by the same rules of

procedure and evidence as apply to a white accused. But it would be grossly inaccurate to conclude from this fact - that an African consequently enjoys equality before the law.

In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed; a Constitution which guarantees democratic rights to all sections of the population, the right to approach the courts for protection or relief for the violation of rights guaranteed in the Constitution, and the right to take part in the administration of justice as judges, magistrates, attorneys-general, law advisors and similar

factions.

In the absence of ~~such~~ these safeguards the phrase "equality before the law", in so far as it is intended to apply to us, is meaningless and misleading. All the rights and privileges to which I have referred are monopolized exclusively by Whites and we enjoy none of them.

The White man makes all the laws, he pays us before ~~the~~<sup>his</sup> courts and accuses us, and he sits in judgment over us.

It is fit and proper to raise the question sharply: What is this rigid color bar in the administration of justice all about? Why is it that in this



Courtroom I face a white meijitor,  
 Coupailed by a white prosecutor and  
 escorted into the dock by a white  
 melody. Can anybody honestly and  
 bravely suggest that in this type of  
 atmosphere the scales of justice are evenly  
 balanced?

Why is it that no African in the history of  
 this country has ever had the privilege of  
 being tried by his own kith and kin,  
 by his own flesh and blood?

I will tell your worship why!

The real purpose of this royal colour bar  
 is to ensure that the justice dispensed  
 by the courts should conform with the  
 policy of the country, however much that

policy might be in conflict with the ~~accepted~~ norms of justice accepted in judicious throughout the civilised world.

I feel oppressed by the atmosphere of white domination that licks all around in this Courtroom. Somehow this atmosphere recalls to mind the inhuman injustice caused to my people outside the Courtroom by this same white domination. It reminds me that I am useless because there is a farmland in this Country that is white controlled. I am without land because the white minority has taken a lion's share of my Country and forced me to occupy poorly-stocked reserves, overpopulated and overstocked

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We are harassed by starvation and disease  
because Mr. Bamber's wealth is not shared  
by all sections of the population.

How can I be expected to believe that  
this same racial discrimination which has  
been the cause of so much injustice and  
suffering right through the year, should  
now operate here to give me a fair and  
impartial trial? Is there no danger that an  
African accused may regard these Courts,  
not as impartial tribunals dispensing  
justice without fear or favour, but as  
instruments used by the white man to  
punish those amongst us who clamour  
for deliverance from the fiery furnace of  
white rule?

I have grave fears that this system of  
justice may enable the guilty to drag

the innocent before the law. It enables the  
injured to prosecute and demand  
vengeance against the just.

This is the first ground of my objection.  
That I will not be given a fair and  
profitable trial.

The second ground of my objection is  
that I consider myself neither morally  
nor legally obliged to obey laws made by  
a parliament in which I am not  
represented.

That the will of the people is the basis of  
the authority of government is a principle  
universally acknowledged as sacred  
throughout the civilized world, and as  
constituting the basic foundation of freedom  
and justice. It is understandable why

Citizens, who have the vote as well as the right of direct representation in the country's governing bodies, should be morally and legally bound by the laws governing the country.

It should be equally understandable why we as Africans should adopt the attitude that we are neither morally nor legally bound to obey laws which we have not made, nor can we be expected to have confidence in courts which uphold and enforce such laws.

I am aware that in many cases of this nature in the past both African courts have upheld the right of the African people to work for democratic changes. Some of our judicial officers have even openly criticised <sup>the</sup> policy which

refuses to acknowledge that all men are born free and equal, and fearlessly condemned the denial of opportunities to our people.

But such exceptions exist in spite, not because, of the grotesque system of justice that has been built up in this County. These exceptions furnish yet another proof that even amongst the County's whites there are honest men whose sense of fairness and justice revolt against the cruelty perpetrated by their own white brothers to our people.

The existence of genuine democratic values amongst some of the County's whites in the judiciary, however slender they may be, is welcomed by me. But I have no illusions about the significance

of this fact, as heavy a sign as it may be. Such honest and upright Whiles are few and they have certainly not succeeded in converting the vast majority of the rest of the whole population that while repugnance leads to danger and disaster.

Moreover, it would be a hopeless command who relied for his victories on the few soldiers in the enemy camp who sympathize with his cause. A competent general puts his faith on the superior striking force he commands and on the justness of his cause which he must pursue uncompromisingly to the bitter end.

I hate racial discrimination more intensely and in all its manifestations

I have fought it all along my life. I fight it now, and will do so until the end of my days. Even although I now happen to be tried by one whose opinion I hold in high esteem, I detest most violently the set up that surrounds me here. It makes me feel that I am a black man in a white man's coat. This should not be. I should feel perfectly at ease and at home with the assurance that I am being tried by a fellow South African who does not regard me as inferior, ~~and~~ entitled to a special type of justice.

This is not the type of atmosphere most conducive to feelings of security and confidence in the infallibility of a Court.



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The Court might reply to this part of my argument by assuring me that it will try my case fairly and without fear or favour; that in deciding whether or not I am guilty of the offence charged by the State, the Court will not be influenced by the colour of my skin or by any other improper motive.

That might well be so. But such a reply would completely miss the whole point of my argument.

As already indicated my objection is not directed to your worship in his personal capacity nor is it intended to reflect upon the integrity of the Court. My objection is based upon the fact that our Courts, as presently constituted, create

gave doubts in the mind of an African accused, whether he will receive a fair and proper trial.

This doubt springs from objective facts relating to the practice of unfair discrimination against the black man in the Constitution of the Country's Court. Such doubts cannot be allayed by mere verbal assurances from a presiding officer, however sincere such assurances might be. There is only one way, and one way only of allaying such doubts, namely, by removing unfair discrimination in judicial appointments. This is my first difficulty.

I have yet another difficulty about similar assurances your workshop might

Broadly speaking

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quite. <sup>ix</sup> African and Whites in this Country have no common standard of fairness, ~~and~~ morality and ethics, and it would be very difficult to determine on my part what standard of fairness and justice your worship had in mind.

In their relationship with us both African Whites regard it as fair and just to pursue policies which have outraged the conscience of honest and upright men throughout the civilized world. They suppress our aspirations, bar our way to freedom and deny us opportunities to promote the our moral and material progress, to secure ourselves from fear and want.

All the good things of life are reserved

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for the white folk and we black  
are expected to be content to nourish  
our bodies with such pieces of food  
as drop the tables of men with a  
white kin. This is the white man's  
standard of fairness and justice.

Herein lies his conception of ethics.  
Whatever he himself may say in his  
defense, the white man's moral  
standards in this country must be  
judged by the extent to which she  
has condemned the vast majority  
of its citizens to serfdom and  
inferiority.

We, on the other hand, regard the  
struggle against color discrimination  
and for the pursuit of freedom and  
happiness as the highest aspiration of

all men. Through bitter experience, we have learnt to regard the white man as a harsh and merciless type of human being who contempt for our rights, and who utter indifference to the promotion of our welfare, makes his assurances to us absolutely meaningless and hypocritical.

I have the hope and confidence that your worship will not treat this objection lightly as a frivolous objection.

I have decided to speak frankly and honestly because the injustice I have referred to contains the seeds of an extremely dangerous situation for County

and people

I make no threat when I say  
 that <sup>unless</sup> these wrongs are remedied  
 without delay, we might well  
 find that even plain talk before  
 judicial officers is too timid a  
 method of voicing our aspirations.

I make no threat when I say that  
 unless these wrongs are remedied  
 without delay, we might well find  
 that even plain talk before the  
 County's boards is too timid a  
 method to draw the attention of  
 the County to our political demands.

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