

REPUBLIC OF LIBERIA, Informant, v. **HIS HONOUR M. WILKINS
WRIGHT, EZZAT N. EID, CHUNG**, and the Solicitor-General of Liberia,
Respondents.

INFORMATION PROCEEDINGS.

Heard: July 14, 1995. Decided: July 26, 1995.

1. A crime is an offense against the sovereignty, a wrong which the government deems injurious not only to the victims but to the public at large, and which it punishes through a judicial proceeding in the government's name.
2. A letter patent authorizes an attorney to assist the State in prosecuting a criminal case.
3. The issuance of a letter patent to an attorney to assist the State in a criminal prosecution does not invest that attorney with the power and authority to conduct the prosecution to the exclusion of the prosecuting attorney for the State, but merely to assist the State under the management and control of the prosecuting attorney of the State. Such attorney cannot therefore take action in a criminal prosecution without the knowledge and consent of the State prosecuting attorney.
4. It is within the competence of the Solicitor General and/or the Assistant County Attorney, as prosecuting officers to file a motion to dismiss the prosecution of a defendant, once they determine that there is no basis for the prosecution.

Co-respondents in these proceedings were indicted for the crime of theft of property in the Circuit Court, First Judicial Circuit, Criminal Assizes "C". During the trial, the State applied for leave to produce rebuttal evidence on the ground that one of the prosecution witnesses was seen conversing with the private prosecutor. When the trial judge denied the application, the State applied to the Chambers Justice for a writ of certiorari. The Chambers Justice granted the application and ordered the trial judge to resume jurisdiction and have the witnesses testify for the prosecution. When the case was called, upon resumption of jurisdiction by the trial court, the State filed a motion to dismiss the prosecution for lack of sufficient evidence, which application was granted and the charges brought against the defendants dismissed.

However, a day prior to the dismissal of the case, one of the counsels from Simpson & Associates, lawyers for the private prosecutor, authorized to assist the state in the prosecution of the case, addressed a letter to the Clerk of the Supreme Court, taking

exceptions to the ruling of the Chambers Justice and announcing an appeal therefrom to the Full Bench. Reacting to this notice, the Solicitor General of the Republic of Liberia addressed a letter to the Clerk of the Supreme Court asking her to take note and spread on the records of the Honourable Supreme Court that the notice of appeal filed by the Simpson & Associates was null and void in that it is the prerogative of the Ministry of Justice to except to and announce and appeal on behalf of the Republic in all criminal cases, and not the prerogative of the lawyers for the private prosecutor, and that the Republic of Liberia did not except to the ruling of the Chambers Justice or announced an appeal to the Full Bench. Notwithstanding the aforesaid communication, the Law Firm of Simpson & Associates filed a bill of information in the name of the State against the trial judge and the Solicitor General, alleging, among other things, that the appeal in the certiorari proceedings was still pending when the trial judge entertained and granted the dismissal of the prosecution against the defendants and that the judge had lost jurisdiction because his term had expired.

Upon reviewing the records, the Supreme Court held that the Ministry of Justice did have the responsibility to prosecute all crimes and control and superintend all criminal prosecutions, and that an attorney authorized to assist the State cannot take any action in the prosecution of crime without the knowledge and consent of the prosecuting attorney for the state. The Supreme Court further held that once the term of the trial judge is extended, he can continue to exercise jurisdiction. Hence, it said, the dismissal of the complaint by the trial judge, based on the prosecuting attorneys' motion, terminated the cause. Regarding the misconduct of the prosecuting attorneys, the Supreme Court held that the power to punish them lies with their appointing powers, and not the courts. Accordingly, the information was denied.

McDonald Krakue and *Farmere Stubblefield* for informant. *H Varney G. Sherman* and *Theophilus Gould* for respondents.

MR. JUSTICE HNE delivered the opinion of the Court.

A crime is an offense against the sovereignty of the State. It is a wrong which the government deems injurious, not only to the victims but to the public at large, and which it punishes through a judicial proceeding in the government's name. 21 AM JUR 2d., *Criminal Law*, §1

The underlying case, theft of property, with which the defendants were charged, was

being tried for the second time. The Supreme Court during its October Term, 1994, remanded it when it came up on appeal by the State after the lower court granted the defendants' motion for judgment of acquittal. This time, the case travelled to the Supreme Court by petition for a writ of certiorari filed before the Chambers Justice. The State alleged that after the defendants rested evidence, it expressed its desire to produce rebutting witnesses, but that the trial judge denied the application on the ground that one of the witnesses, Mr. George Haddad, was seen conversing with the private prosecutor; hence, the petition for certiorari to review that ruling of the trial judge.

After a conference and a hearing of the petition, the Chambers Justice ordered the Clerk of this Court to direct the trial judge to resume jurisdiction and have the witnesses testify for the prosecution. Hereunder is the text of the Clerk's letter:

May 3, 1995

"His Honour M. Wilkins Wright

Judge, Criminal Court "C"

Temple of Justice

Monrovia, Liberia

May It Please Your Honour:

PETITIONER Versus His Honour M. Wilkins Wright Assigned Judge, Criminal Court "C", February Term A. D. 1995 and Ezzat N. Eid and Chung of Monrovia, Liberia, RESPONDENTS (PETITION FOR A WRIT OF CERTIORARI)

In Re: Republic of Liberia, The Chambers Justice, His Honour Frank W. Smith, has directed me to inform you that he had heard argument on May 1, 1995, in the certiorari proceedings filed against your ruling granting defendant's application disqualifying prosecution's two rebuttal witnesses because it was alleged that they were seen in open court discussing with the private prosecutor, Mr. Bejanany, prior to the judge entering into the courtroom that morning. The alternative writ was therefore issued because the Chambers Justice was of the opinion that there should be no reason for the prosecution, who had the burden of proof, to be denied that right to produce evidence to prove the guilt of the defendant.

However, during argument, the defendant conceded and withdrew the objection for the two witnesses to testify and requested that the case be sent down in order for the witnesses to take the stand and testify for the prosecution. The county attorney's office has also concurred with the defendant for the witnesses to testify, as is shown

by a letter from the Assistant County Attorney, Varfie F. Williams, a copy of which is hereto attached to this letter for your easy reference.

In view of the above, you are hereby mandated to resume jurisdiction over the case out of which the proceedings referenced supra grew, and to proceed to have the witnesses testify and thereafter give judgment based on the evidence and the law in support during the period of extension and no more. With Kind Regards,

Very Truly Your, Signed: Martha G. Bryant Martha G. Bryant
CLERK, SUPREME COURT, R.L.

Upon the receipt of this mandate by the trial judge, he resumed jurisdiction and cited the parties for resumption of the trial on May 4, 1995. The Solicitor General, along with the assistant county attorney, filed a motion to dismiss the prosecution for lack of sufficient evidence. The trial judge granted the motion and the charge brought against the defendants was dismissed.

On May 3, 1995, the State allegedly filed a notice of appeal, appealing from the Chambers Justice's ruling. The notice of appeal is as follows:

CHAMBERS SMITH JUSTICE
REPUBLIC OF LIBERIA, INFORMANT VS. EZZAT N. EID AND CHUNG OF
MONROVIA, LIBERIA RESPONDENTS (PETITION FOR A WRIT OF
CERTIORARI)

GROWING OUR OF THE CASE: REPUBLIC OF LIBERIA PLAINTIFF
VERSUS EZZAT N. EID, CASSI KERMAND AND CHUNG OF MONROVIA,
LIBERIA DEFENDANTS (CRIME: THEFT OF)

NOTICE OF APPEAL:

TO HIS HONOUR
FRANK W. SMITH
CHAMBERS JUSTICE
SUPREME COURT OF
LIBERIA MARCH TERM
A. D. 1995

MAY IT PLEASE YOUR HONOUR:

To your ruling handed down this 3rd day of May, 1995, granting petitioner's petition and ordering the respondent judge, M. Wilkins Wright, to resume jurisdiction and continue with trial, please take note that petitioner, Republic of Liberia, excepts to your ruling and announces an appeal to the full Bench and submits.

Respectfully submits, Republic of Liberia, by and thru the Acting County Attorney for Montserrado County, Charles Abdulai, assisted by SIMPSON AND ASSOCIATES

Sgd: McDonald J. Krakue

McDonald J. Krakue

COUNSELLOR-AT-LAW Dated this 3rd day of May A. D. 1995

As seen from the notice of appeal, it was not signed by any official from the Ministry of Justice. Instead, it was signed by the Simpson and Associates.

The following notice, dated May 4, 1995, was filed with the Clerk of the Supreme Court by the Solicitor General:

May 4, 1995

Ms. Martha G. Bryant

Clerk, Supreme Court of Liberia

Monrovia, Liberia

Madam Clerk:

We have just received a copy of a letter of appeal filed by Simpson & Associates Law Firm for and on behalf of the Republic of Liberia in the case:

REPUBLIC OF LIBERIA, PETITIONER VERSUS HIS HONOUR M. WILKINS WRIGHT ASSIGNED JUDGE, CRIMINAL COURT "C", FEBRUARY TERM A. D. 1995 AND EZZAT N. EID AND CHUNG OF MONROVIA, LIBERIA RESPONDENTS (PETITION FOR A WRIT OF CERTIORARI)

Please take note and spread on the records of the Honourable Supreme Court of Liberia that the petitioner never excepted to the ruling of Chambers Justice Frank W. Smith on May 3, 1995, and never announced an appeal to the Full Bench, sitting in its March Term A. D. 1995. The Ruling of the Chambers Justice was in conformity with the petition for the writ of certiorari and a letter under the signature of the Assistant County Attorney for Montserrado County requesting the Chamber Justice to, based on the concession of the respondents, return the case to the trial court with an order

to resume jurisdiction and allow the petitioner to put its rebuttal witnesses on the stand.

Please also take note that it is the prerogative of the Ministry of Justice to except to and announce an appeal in the above-captioned case; it is not the prerogative of the lawyers for the private prosecutor to announce an appeal and thereafter advise the Ministry of Justice through a copy of the notice of appeal.

Please further take note that the notice of appeal filed by the Law Firm of Simpson & Associates is null and void and was never made with the consent or participation of the prosecuting attorneys for the State. As such there is no appeal pending before the Honourable Supreme Court of Liberia in the abovecaptioned case.

Republic of Liberia PETITIONER by and thru the Ministry of Justice Sgd: C.
Aimesa Reeves
C. Aimesa Reeves SOLICITOR-GENERAL
cc: His Honour James G. Bull Chief Justice Judge Wright
Criminal Court "C"
Simpson & Associates

The State has now come with information against the trial judge and the Solicitor General. The information alleges that the appeal in the certiorari proceedings was still pending when the trial judge entertained and granted the dismissal of the prosecution against the defendants and that the judge had lost jurisdiction because his term had expired. It alleges that the appeal was granted on May 4, 1995, and the trial judge entertained the motion to dismiss the charge of theft of property on May 3, 1995.

The mandate sent to the trial judge by the Clerk of this Court which is quoted above, is dated May 3, 1995. The notice of appeal allegedly filed by the State is dated May 3, 1995. The question that arises is why would the State appeal from the ruling of the Chambers Justice when the said ruling is in the State's favour? There is a notice to the Clerk of this Court by the Solicitor General that the State did not take any appeal from the Chambers Justice's ruling and that the notice of appeal signed by Simpson & Associates is null and void, being made without the consent and participation of the prosecuting attorneys for the State. Further, we have the motion for dismissal of the prosecution of the defendants filed in the trial court by the Solicitor General and the assistant county attorney.

The information alleges that the trial judge had lost jurisdiction when he entertained

and granted the motion to dismiss the prosecution against the defendants because his term had expired. The records show that an extension of the trial judge's term was granted and so he was still in jurisdiction when he granted the motion.

Regarding the contention that an appeal was pending from the ruling of the Chambers Justice in the certiorari proceedings, the Solicitor General, by the notice to this Court, said that there was no appeal by the State and declared that the notice filed by the Simpson & Associates Law Firm was null and void as it was not filed with the participation and consent of the Ministry of Justice.

In their argument before this Court, the lawyers from Simpson & Associates asserted that they had authority to file the notice of appeal independent of the Ministry of Justice on the strength of their letter patent, dated May 30, 1994, signed by the then acting Solicitor General, Counsellor John L. Greaves, and they assert that the letter patent authorizes them to assist the State in prosecuting the case. It is our view that the State, through the Ministry of Justice, has the responsibility to prosecute all crimes and control and superintend all criminal prosecutions; and that an attorney authorized to assist the State cannot take any action in the prosecution of a crime without the knowledge and consent of the prosecuting attorney for the State. The Criminal Procedure Law states:

"(a) A prosecuting attorney means the Attorney General, the Solicitor General, or an Assistant Attorney General or other Attorney of the Department of Justice who assumes the duty of prosecuting a particular case, or the county, territorial or district attorney in charge of a prosecution." Criminal Procedure Law, Rev. Code 2:1.5(a)

The State, through the prosecuting attorney, that is the Ministry of Justice, is at all times in charge of criminal prosecution. The issuance of a letter patent to an attorney to assist the State in a criminal prosecution does not invest that attorney with the power and authority to conduct the prosecution to the exclusion of the prosecuting attorney for the State; it is merely to assist the State under the management and control of the prosecuting attorney of the State. Such attorney cannot therefore take an action in a criminal prosecution without the knowledge and consent of the state prosecuting attorney. The Solicitor General, principal prosecuting attorney of the State, having by notice to the Clerk, informed this Court that the State has not appealed from the ruling of the Chambers Justice, that notice must be the governing notice before this Court. This Court must therefore conclude it that there is no appeal pending before it from the ruling of the Chambers Justice in the certiorari proceedings.

Our criminal code provides that:

"The prosecuting attorney may, by leave of court, file a dismissal of an indictment or complaint or of a count contained therein as to either all or some of the defendants. The prosecution shall thereupon terminate to the extent indicated in the dismissal."
Id., 2:18.1

It is within the competence of the Solicitor General and/or the assistant county attorney, as a prosecuting officers, to file the motion to dismiss the prosecution of the defendants for theft of property, once they determine that there is no basis for the prosecution.

Having already stated above that the trial judge was still in jurisdiction when he granted the motion, his granting of the motion terminated the prosecution in keeping with our criminal law.

The information seeks to have this Court bring sanctions against the Solicitor General for performing the duties of her office in a manner which may be unsatisfactory to the private prosecutor, as the counsels for informants put it, and to punish the Solicitor General for what may seem to them to be malfeasance or misfeasance. It is not the function of the judiciary to punish the Solicitor General for such misconduct if the present set of facts constitutes one. It is the office of the power which appoints such an official to do so.

From what we have said herein above, it is our holding that the private prosecutor does not have the capacity to bring the information now before this Court. Further, the information lacks any legal basis as to the points of law which it presents. The information is therefore denied.

The Clerk of this Court is ordered to send a mandate to the trial court directing the presiding judge thereof to give effect to this opinion. And it is hereby so ordered.

Information denied.