

ELIZABETH WALKER-NAGBE, et al., Appellants, v. REPUBLIC OF LIBERIA,
Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE THIRD
JUDICIAL CIRCUIT, SINOE COUNTY.

Heard: June 19, 1984. Decided: June 29, 1984.

1. Generally in this jurisdiction, cases are remanded when the irregularities complained of by the appellants, or such patent irregularities on the records, are traceable to the conduct of the court or its officers, and not due to the negligence of the prosecution, through faulty indictment or lack of proof.
2. Every written pleading, except one containing only issues of law, shall be verified on oath or affirmation that the averments or denials are true upon the affiant's personal knowledge or upon his information and belief... If a pleading is not properly verified or certified, or if it is verified or certified with intent to defeat the purpose of this section, it may be stricken, and the action may proceed as though the pleading had not been served.

The appellants appealed the conviction for murder from the Third Judicial Circuit to the Supreme Court. Interestingly, the prosecution filed a motion to dismiss the appeal and remand the case for a new trial on the grounds that there was insufficient evidence adduced at the trial to support the indictment. The prosecution maintained, therefore, that a new trial would provide an opportunity to prove its case. The appellants resisted the motion for lack of proper verification, among other things, and requested that the court orders a reversal of the lower court's decision and release of the appellants from prison without delay.

The Supreme Court denied the motion since the "irregularities" complained of by the prosecution were a consequence of its own negligence, and since the motion, based solely on facts, had not been properly verified. The Court, however, remanded the case to be tried on its merits since the appellants' "resistance goes beyond the substance of the motion" by requesting their release from prison.

The Solicitor General of Liberia, Laveli Supunwood, appeared for the appellee/movant. Arthur K. Williams and John Teevia appeared for the appellant/respondents.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The seventeen defendants in this case were indicted in Sinoe County in September, 1983, for the heinous crime of murder, and were tried and convicted of said offense, sentenced to life imprisonment, to remain in jail, die and be buried as prisoners. To this final judgment the defendants excepted and filed an appeal to this Honourable Court for review of the entire case.

Upon the call of this case for hearing, the prosecution informed the court that it had filed a motion to remand the case for a new trial, contending among other things: (1) That the allegations laid out in the indictment merely states that bark sassywood was administered to decedents causing their death; (2) that the witness testified that the decedents were taken into the bush, and there they were killed, but how they met their death has not been stated in all of the testimonies of the witnesses; and (3) that decedents died within Sinoe County, yet no application was made to examine the bodies of the decedents to establish their probable cause of death. The prosecution therefore prayed that the Court will remand the case in order to afford the State an opportunity to prove its case. Against this motion for remand, appellants filed a five-count resistance, contending that the motion was materially defective for lack of verification; secondly, that if the prosecution had felt that the allegations laid down in the indictment were not supported by the evidence adduced at the trial, it was its duty to amend said indictment during trial, and not otherwise; thirdly, that the motion was designed to delay and baffle justice, since in their view, the trial was regular; fourthly, that there was vast material variance between the indictment and the proof; and, finally, that a remand of the case will not cure the autopsy requirement since the decedents were buried long ago without any form of embalming. The defendants further maintained that since the prosecution conceded the insufficiency of the evidence to support the verdict of conviction, the judgment reached thereon should be reversed and the defendants, now appellants, discharged without day.

Both parties cited laws in support of their respective positions. After perusal of the records, as well as the motion and its resistance, the following issues presented themselves for our determination: 1) Under what circumstances, in this jurisdiction, can a case be remanded? 2) What is the effect of a motion to remand a case for a new trial if it fails to be verified?

During arguments, the prosecution contended that the resistance did not relate to the substance of the motion in that it did not only request its denial, but it went beyond by praying for the reversal of the judgment and discharge of the defendants.

The appellants, for their part, vehemently argued that the prosecution, in its motion, had conceded the absence of evidence to convict defendants, therefore the judgment of the lower court should be reversed and defendants discharged since the want of evidence in the

records is traceable to the prosecution. The prosecution, appellants maintained, should not be permitted to benefit from its own misdeed.

Resolving the first issue requires a legal definition of the word "remand" as used in this opinion. Ballentine's Law Dictionary defines the word to mean, "the return of a case by an appellate court to the trial court for entry of a proper judgment, further proceedings, or for a new trial." BALLENTINE'S LAW DICTIONARY 1088 (4 ed.). This jurisdiction has no statute spelling out the circumstances under which a criminal case on appeal can be remanded for a trial *de novo*. Fortunately there is much case law authority to this effect.

Generally in this jurisdiction, cases are remanded when the irregularities complained of by the appellants, or such patent irregularities on the record, are traceable to the conduct of the court or its officers, and not due to the negligence of the prosecution, through faulty indictment or lack of proof. The most recent case relevant here is that of *Anderson et. al. v. Republic*, 27 LLR 67 (1978) in which it was held that "the Supreme Court will reverse the judgment in, and remand for a new trial, any case that comes before it in which the judge's acts and rulings were patently prejudicial to the defendants' rights and interests." In that case, eight defendants were tried and convicted of murder. On appeal the Supreme Court found that the rights of the defendants had been violated in three respects: the number of peremptory challenges exercised by the prosecution in selecting jury, the admission at the trial of confessions which were involuntary, and the display by the trial judge of partiality in favor of the prosecution. The judgment of conviction was then reversed and the case was remanded.

In the earlier case *Sackor v. Republic*, 21 LLR 394 (1973), the same conclusion was reached by this Court. The appellant in this case was convicted of murder, and an appeal was taken based primarily on an aspect of the judge's charge to the jury. In commenting on the evidence, the judge referred to an admission made by defendant while testifying, which was not supported by the trial records. The Supreme Court held that reversible error had been committed. The judgment was therefore reversed and the case remanded.

In yet another case, *Quai v. Republic*, 12 LLR 402 (1957), the Supreme Court held that it was not convinced by the records that the appellants had such a fair and impartial trial as to warrant it to sustain his conviction. The court believed that the defense of the accused was carelessly handled by the attorney appointed by the trial judge. The case was therefore remanded.

The case under review falls far short of the conditions laid down in the foregoing cases relative to the remand of a criminal case. In this case the irregularities complained of by the

prosecution are traceable to its own negligence in handling the case, and not to the court and its officers. Appellants did not in any way point to irregularities at the trial but, instead, they contend that the trial had been regular and the prosecution was given ample chance to prove its case. The case cannot therefore be remanded for causes solely attributed to the prosecution's own fault.

In the case *Soa et. al. v. Republic*, 15 LLR 242 (1963), appellants were tried and convicted of murder, and on appeal the judgment was reversed and the case remanded when the prosecution filed a submission conceding the insufficiency of the evidence upon which conviction was based. However, in that case, the Supreme Court pointed out that it granted the request because the defendants had joined with the prosecution and supported the request for a remand of the case.

This is not the case here. In this case the defendants have resisted the prosecution's motion for a remand, which resistance happens to be supported by law. They have even gone beyond the substance of the motion and have prayed this Court for a reversal of the judgment and for their immediate discharge from prison.

Our next issue is to determine the effect of a motion for a remand which has not been verified. The relevant statute on verification of pleadings states that: "Every written pleading except one containing only issues of law shall be verified on oath or affirmation that the averments or denials are true upon the affiant's personal knowledge or upon his information and belief." Civil Procedure Law, Rev. Code 1: 9.4 (1).

"If a pleading is not properly verified or certified, or if it is verified or certified with intent to defeat the purpose of this section, it may be stricken, and the action may proceed as though the pleading had not been served" Civil Procedure Law, Rev. Code 1:9.4(5).

According to Ballentine's Law Dictionary, "verification is a sworn statement of the truth of the facts stated in an instrument. A statement under oath by a party who pleads that his pleading is true to his own knowledge or to the best of his knowledge and belief." *BALLENTINE'S LAW DICTIONARY* 1338 (3rd ed.) Considering this definition in the light of the motion filed by the prosecution, it would appear that the motion rests upon facts brought out during the trial, such as, the administering of bark-sassy- wood causing death, testimony of witnesses that decedents were killed without showing how, and the absence of an autopsy to ascertain the cause of death. The fact that the prosecution has asked for a remand due to insufficiency of evidence to convict, presents a question of law arising from said facts.

However, since the prosecution's motion is based purely on factual matters with the issue of law being merely incidental to those facts, it would have been proper had its motion been verified. Failure of prosecution to have properly verified its motion, and the verification having been made one day before the preparation of the motion, it is a fatal error to request for remand predicated upon said motion. According to the law of verification cited *supra*, the court will ignore any motion on issues of fact for lack of proper verification.

Additionally, the resistance of appellants will not be considered since (1) the motion it attacks is essentially nonexistent, and (2) the said resistance goes beyond the substance of the motion by requesting discharge of the appellants from prison.

We therefore hold that, under the circumstances, the motion for a remand is not properly before this Court, and that the case should be heard on its merits. And it is hereby so ordered.

Motion denied; Case remanded.