

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

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

Heard: November 5, 1984. Decided: November 23, 1984.

1. All evidence leading to an acquittal or conviction of a defendant must be produced to enable the court to render justice.
2. Where the trial records indicate confusion and uncertainty in the facts elicited so that the appellate court finds no factual basis upon which to predicate its opinion, the case will be remanded to the lower court for proper clarification.

The defendants/appellants were convicted by the Third Judicial Circuit Court, Sinoe County, of the crime of murder. The defendants were alleged to have taken seven persons into the bush and murdered them. At the trial, the prosecution witnesses testified to seeing the bodies of the victims but could not say with what the decedents had been killed. The defendants, while admitting that the seven persons had died, denied that they had killed the persons whose death they were accused of. Instead, the defendants contended and produced witnesses who testified to the effect that the decedents had died from the administration of sassywood. According to the defendants, the decedents had taken the sassywood to vindicate themselves from accusations of witchcraft.

The Supreme Court *reversed* the judgment and *remanded* the case for a new trial, holding that the evidence shown by the trial records indicated confusion and uncertainty, and that as such, the Court was without a factual basis upon which to base an opinion of conviction or acquittal. In remanding the case, the Court noted that evidence leading to an acquittal or conviction of the defendants must be produced in order to render justice to the opposing parties.

John T. Teewia, Arthur K. Williams and Jenkinson T. Nyenpon appeared for appellants. *Abraham B. Kromah*, Solicitor General and *S. Momolu Kaiwu*, Senior Counsel of the Ministry of Justice, appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This appeal emanates from the Third Judicial Circuit Court for Sinoe County. According to the records of this case, Patrick Nyongbe, a school teacher who was wounded on a football field was sent to the John F. Kennedy Medical Center in Monrovia where he died. Thereafter, the mortal remains of Patrick Nyongbe was transported to his home town of Meniah, in Sinoe County. It was alleged that prior to the arrival of the body of Patrick Nyongbe in Meniah, one Jerboe Doe went to Draco where he obtained juju (medicine); that he returned to Meniah with the juju (medicine) to be buried in the ground so that the relatives of the late Patrick Nyongbe could not delve into the cause of Patrick Nyongbe's death; that while discussing with one Nyongbe Kparnwhen as to how to plant or bury the medicine, the mother of Patrick Nyongbe overheard them; and that she shouted and called the Town Chief, Jacob Kun. It was also alleged that the Town Chief immediately instituted an investigation and that Jerboe Doe named seven other persons, making them nine in all. The Town Chief however denied this allegation. Instead, Town Chief Jacob Kun testified that when the Kru Governor, Elizabeth Walker Nagbe, brought the remains of the late Patrick Nyongbe to Meniah, she sent to inform him and requested that he send people to meet the body at the Waterside. The witness stated that when they brought the body to Meniah Town, he was called by the Kru Governor and her group and asked what was the cause of Patrick Nyongbe's death. He said that he told her that it was late, about 12:00 o'clock midnight, and that she should therefore wait at least until day. He stated further that the governor got angry with him and dismissed him from the position of Town Chief because, she said, he was delaying her operation.

The witnesses for the prosecution all corroborated each other to the effect that seven persons, including one pregnant woman and a school teacher, were taken to the bush and killed by the defendants. They could not, however, say with what instruments or weapons the decedents were killed because they were not present. According to these witnesses, the defendants, after killing the first three persons in the bush, came and reported same to

co-defendant Elizabeth Walker Nagbe and that they (the witnesses) went and saw the bodies of the first three persons in the bush. The witnesses also testified that later the defendants caught four more persons, among whom was a school teacher; that these four persons were also carried into the bush and killed; and that the killings were reported to co-defendant Elizabeth Walker Nagbe. The witnesses further stated that they went and saw the bodies. The bodies of the decedents, they said, were muddied up, and that the area in which they were killed looked like wild animals had been fighting there.

The defense witnesses, on the other hand, testified that the seven decedents died from the internal administration (drinking) of sassywood. The fact that the seven persons died or were killed is not disputed. What is in dispute is the cause of death. The defense witnesses testified that the seven persons who died drank sassywood to indicate that they were wrongly accused of being witchcraft. According to them, a lady who was among those that drank the sassywood spewed it and was thereby exonerated from the accusation of being a witchcraft.

Defense witness Jarboe Gebeh, whom it is alleged spewed the sassywood, said they (she and the decedents) were all kept in one house the night before they drank the sassywood. About 5:30 to 6:00 o'clock the next morning they ran away from the house and went into the bush. She also stated that when they got in the bush, she went her way and the others went their way. Yet, according to her testimony, while on their way and after they had gotten in the bush, they began cutting and eating the sasswoods, meaning they were taking the bark of the different trees for the sassywood. One question which comes to mind is, if she went her own way and the others went their way in the bush, how did she know about the others eating sassywood in the bush when they were not together?

Both witnesses for the prosecution and the defense admitted that the seven persons died either by sassywood or were killed by defendants and buried, three bodies in one hole and four in another hole. However, there are several missing links in the evidence of both sides. Since seven lives have been taken and sixteen lives are now pending, we feel that all the evidence leading to the acquittal or conviction of the defendants must be produced so as to enable this Court to render justice to both parties. Town Chief Jacob Kun alleged that he was suspended by Governor Elizabeth Walker Nagbe, but Elizabeth Walker Nagbe, in answer to a question from the court, denied suspending the Town Chief. What then led the Town Chief to escape from their town and take refuge with the Paramount Chief? What

were the contents of the Paramount Chief's letter and to whom was the letter addressed, since the Town Chief was already with the Paramount Chief? What was the reply to the Paramount Chief's letter and who replied him? Who ordered the arrest of the six persons that were ordered released by the Commissioner and for what were they detained? The ninth person that the sassywood caught who ran away is said to be in Monrovia. Why he was not summoned to testify? What were the findings of the Commissioner from the on-the-spot investigation, conducted by him, in association with his assistant and the Paramount Chief?

Where the trial records indicate, as in the present case, confusion and uncertainty in the facts elicited so that the appellate court finds no factual basis upon which to predicate its opinion, the case will be remanded to the lower court for proper clarification. *Liberia Trading Corporation v. Cole*, 21 LLR 176 (1972).

Mr. Justice M. Kron Yangbe maintains that the judgment of the lower court should be reversed and the defendants discharged without day, while Mr. Justice Frank W. Smith strongly holds that the judgment of the lower court should be affirmed. They therefore disagree with our conclusion.

In view of the foregoing circumstances surrounding this case, it is our holding that the judgment of the lower court be, and the same is hereby reversed and the case remanded for new trial. And it is so ordered.

Judgment reversed; case remanded for new trial.