

BOYMAH BINDA QUAI, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued October 22, 1956. Decided February 22, 1957.

1. Any person accused of a crime has a constitutional right to a fair and impartial trial.
2. A judgment of conviction of a crime will be set aside when it appears that the trial was not fair and impartial.
3. An essential element of a fair and impartial trial of a criminal case is that the defendant be represented by competent counsel.
4. Where a criminal proceeding is conducted in *farina pauperis*, and counsel is assigned by the court to represent the defendant, the court should assign the most competent available counsel, particularly in cases of capital offenses.
5. A bill of exceptions in a case on appeal must show with particularity the alleged errors of the lower court.

Appellant, who was indicted, tried and convicted of murder, was represented, *in forma pauperis*, by counsel assigned by the trial court. On appeal to this Court the *judgment* of conviction was *reversed* and the case *remanded* for new trial.

N. M. Johnson for appellant. *The Solicitor General* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

By a grand jury of the Circuit Court of the First Judicial Circuit, Montserrat County, at its November, 1954, term, Boymah Binda Quai, appellant herein, was indicted for the atrocious crime of murder which carries a death penalty upon conviction. It would appear that, when said appellant was brought to trial, he declared himself *in forma pauperis*, and was assigned an attorney to represent him at the expense of the Government. The trial resulted in a judgment of conviction from which he has appealed to this Court.

We have not been convinced by the records that the appellant had such a fair and impartial trial as to warrant our sustaining his conviction and sentence to death. His defense was carelessly conducted by the attorney assigned by the trial court. We mention the following as one of the glaring instances of the mishandling of the said case. The bill of exceptions submitted for the trial Judge's approval, and upon which the appeal would be heard, contains only two counts, which read as follows :

"1. Because, on the 18th day of May, 1955, plaintiff's counsel objected to certain questions put to the witness by defense counsel, Your Honor sustained said objections and did not permit said questions to be answered. (*Vide* almost to the bottom of sheets `2' and '3' of the 10th day which fell on May 10, 1955.)

"2. And also because on the 19th day of May, 1955, plaintiff's counsel, after resting oral testimony and offering article marked `P/1' as written and other evidence, Your Honor did not sustain the objection of defendant's counsel as made against the admismisibility of said article. (*Vide* middle paragraph of sheet `1' of the 19th day of May, 1955, which fell on the 11th day's session.)"

The said bill of exceptions, after recital of the above two counts only, closed with the following words :

"Defendant excepted and prayed an appeal to the Honorable Supreme Court of the Republic of Liberia at its October, 1955, term."

The incongruous dates given in the said bill of exceptions are apparent on the face thereof, since under our statutes the Circuit Court of the First judicial Circuit regularly opens on the second Monday in February, May, August and November in each year. How, then, could the tenth day's session of the May term fall on the 10th of May, as is set forth in Count "1"?

Further, said bill of exceptions does not show the particular questions which the defense counsel put to witnesses and which were objected to by plaintiff's counsel ; neither does it show with particularity the article offered into evidence "as written and other evidence" which the court below allegedly admitted over counsel's objections.

Finally the unbelievable and inexplicable is reached when the said bill of exceptions fails to show that the case ever progressed to the following stages : verdict of the jury with exceptions thereto; motion for new trial and the court's ruling thereon; and the

final judgment with exceptions also thereto.

Under our Constitution, every person is guaranteed a fair and impartial trial. When this is not accorded a conviction should be set aside. In cases of trials *in forma pauperis*, and in the absence of defense counsel, trial courts should be particular in assigning lawyers to defend, and should make sure that the best available counsel are called in, particularly in cases of capital offenses involving the death sentence.

We are consequently unwilling to affirm the judgment of the lower court sentencing the appellant to death by hanging. The said judgment is therefore set aside and the case remanded for new trial in the court below. In the absence of defense counsel the trial court is instructed to assign a competent lawyer at the expense of the Government. And it is hereby so ordered.

Reversed and remanded.