**Wilson Darpul** and **Enoch Jasper** of the City of Fish Town, River Gee County, Liberia, APPELLANTS Versus **His Honor, Charles K. Williams**, Assigned Judge, 15th Judicial Circuit Court, River Gee County and the **Republic** of **Liberia**, Through the Ministry of Justice

**LRSC 19**

Heard: Resubmitted: November 14, 2012 Delivered: February 20, 2013

Mr. Justice Ja'neh delivered the Opinion of the Court

Murder is a heinous crime condemned by every civilization and faith persuasion. This is because the act of murder extinguishes life, unarguably the most precious gift bequeathed to humanity. Life Is a uniquely extraordinary treasure of the universe for various reasons: firstly, life is that Intangible being whose existence Is shrouded in the deep seas of mystery. The vast and endless field of mysteries surrounding the existence called life seems equally balanced by profound deficit of human knowledge and understanding as to its nature and character.

Secondly, no human Ingenuity manifest in incredible scientific advancement has, to date, succeeded in restoring one single lost life. A life once lost remains Irretrievable forever. Hence, sacrosanct it is universally accepted that this exquisite gift, no human enterprise has proven capable of replacing, be not destroyed by any human being. Consequently, a solemn obligation has devolved on every human society, simply by natural law', borne out of sober realization of the irretrievability of lost life, to protect and preserve every human life. Murder therefore demonstrates, unarguably, man's gruesome conduct of ultimate disregard for nature's most precious gift. This is precisely the raison d'etre why every human community attaches the most stringent and grievous penalties where the duty to preserve life is breached.

Section 14.1 (a) (b) of the Penal Law (published April 3, 1978), grades murder as a felony of the first degree while sub-section (b) and provides that a person Is guilty of murder In our jurisdiction If:

he: (a) Purposely or knowingly causes the death of another human being; or (b) Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life

Harsh sanctions imposed for murder vary from life imprisonment to execution by hanging of the guilty party. Section 31.1 (2), ILCLR title II (Criminal Procedure Law) (1973). This provision has directed all Liberian courts to "sentence a person who has been convicted of a capital offense (as in the instant case of murder) to death by hanging.

But despicable as the crime of murder is, every civilized human community endeavors also to maintain a balancing act In dealing with a person accused of

committing a crime; that is, preserving human life and punishing a party found guilty of taking life. In the Instance of Liberia, one is guilty only when a criminal defendant has been properly processed through the criminal justice system and duly accorded a fair and Impartial trial within the contemplation of the genius of the Liberian Constitution. Sacred principles and rules of procedure have been engraved in the law of the land setting forth mandatory standards that shall, at all times, be adhered to, strictly obeyed and adequately satisfied in every actor in all criminal trials within the bailiwick of the Republic.

These standards are carved in statutory and constitutional instruments seeking to guide all criminal trials conducted In Liberia. Strict compliance by state prosecutors to these constitutional and statutory standards and rules of procedure is as important as punishing the perpetrator of the gruesome act of murder itself.

By these standards, a person accused of atrocious breach of the law as the Illegal the taking of life shall be sanctioned only after the full story from all the relevant parties have been told in a process of equal and protection of both the accuser and the accused. Inscribed in Articles 20 and 21 of the Liberian Constitution (1986), our most sacred governing Instrument, are standards consecrated in phrases such as due process of law and speedy, public and impartial trials: These phrases were carved our Constitution of 1847, (amended through 1972). Section 7 of Article I of the Constitution, states, inter alias, every person criminally charged, shall have a right to a speedy, public and impartial trial. Section 8 under the same Article also addressed the issue of due process of law.

The words of Article 20 (a) of the Liberian Constitution (1986) copiously guarantee every person the right to due of process of law while those of Article 21 (c) speak set forth the standards for the treatment of one suspected of committing a criminal offense. Article 21 (c) is clearly commanding in its language:

Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible in a court of law. [Emphasis Ours].

It is only by these standards a judicial determination may be made whether an accused was duly accorded fair, public and impartial trial during the conduct of criminal proceedings within the contemplations of the Fathers of the law of the land.

Illuminating on the constitutional standards embedded in the phrase due process of law, one of Liberia's most venerated Chief Justices, Louis Arthur Grimes, in the case: Wolo v. Wolo 5 LLR 423 (1937), stated, inter alias:

The term due process of law, when applied to judicial proceedings means that there must be a competent tribunal to pass on the subject matter; notice actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel, and if the subject-matter involves a determination of the personal liability of defendant he must be brought within the jurisdiction by service of process within the state, or by his voluntary appearance. And there must be a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights Id. 427

Also discerning what the genius of our Constitution contemplated by their inscription of the phrase Impartial public trial, Mr. Chief Justice Pierre, delivering an Opinion of this Court in a murder case: Sackor v. Republic, 21 LLR394 (1973), said:

In order that it might be said that a trial has been impartial, there are certain requirements which must have been met. An impartial trial contemplates that the burden Imposed upon the State to convict the accused of the crime charged by the testimony of the witnesses is never removed or diminished. And it makes no difference whether or not the accused confesses to the crime. It is all the more the prosecution's responsibility to only convict by evidence which is cogent and convincing when the accused enters a plea of not guilty as in this case. Id. 400

Mr. Chief Justice Pierre, further speaking for this Court on the standards of impartial trial as well as the rights constitutionally preserved to the accused person, observed as follows:

There are three Important rights guaranteed to every accused under this requirement of the Constitution: (I) a public Wall (2) an impartial trial; and (3) a trial by a jury of the vicinity.

Upon each of these three constitutional provisions rests certain vital rights of the accused. This requirement forbids that a criminal trial be held in secret, lest the rights of the accused be trampled upon behind closed doom. It (further) commands that every criminal trial shall be impartial. Id. 399.

The Supreme Court, in that Opinion without dissent, then proceeded issued a stem warning to all persons whose business it is to prosecute for criminal conduct:

This Court will reverse the Judgment in, and remand for a new trial, any case in which the trial judge's acts and rulings are shown to be patently prejudicial to a party's rights and interests. lbid. 399.

We are inclined to follow the path of Mr. Justice Shannon, a distinguished member of this Court, in safeguarding the rights, liberties and privileges of

litigants in this Republic. When speaking for this Court, in Sawyer v. Republic, 8 LLR 311 (1944), Mr. Justice Shannon said: This Court has been so zealous in the safeguard of the rights, liberties, and privileges of litigants, especially of those criminally charged, that It has oft and anon been unwilling to confirm convictions unless upon conclusive proof of the prisoner's guilt. Id. 332.

Referring to those things that must obtain In order to warrant a legal conviction, Mr. Justice Wardsworth, in Dennis et al. v. Republic 20 LLR 47, (1970), said:

A Juridical conviction connotes (I) that the offense must be correctly charged in a valid indictment; (2) that only legal evidence should be placed before the Jury which is asked to convict; and (3) that the evidence thus sifted should satisfactorily establish the guilt of the accused beyond a reasonable doubts. ld. 65.

Keeping in mind these mandatory procedural requirements which must attend to all criminal trials in this jurisdiction, we now embark upon the review of the case on appeal before us by ascertaining whether the conviction met juridical standards.

Inspection of the certified records to this Court reveals that at the instance of the Republic of Liberia, appellee/plaintiff In these proceedings, the Grand Jury of the Fifteenth Judicial Circuit of River Gee County, Republic of Liberia, on September 23, 2009, presented an indictment against three individuals.

The indictment charged Wilson Darpul, Enoch Jasper and Abraham Kanweah with the crime of murder. The indictment upon which the defendants, now appellants, were tried, and two convicted, substantially states:

That on the 10th day of May, A.D.2009 during the time intervening between 8:00 to 10:00p.m. of May 10, A.D. 2009, at Gbeapo Pronoken high way, in River Gee County, Republic of Liberia, the defendants, Wilson Darpul, Enoch Jasper and Abraham Kanweah did knowingly, purposely and intentionally cause the death of the deceased Abdulayee Jalloh Bah manifesting extreme indifference to the value of human being life to wit; killed the deceased purposely and knowingly, in contravention of the penal Ian of the Republic of Liberia section 14.1 (a) (b) of the penal code.

That on Saturday, May 9, 2009, defendant Wilson Darpul met with defendant Enoch Jasper at Darpul house in Tarken and told him about a blood deal to kill for ritual purpose and Enoch later informed his friend Defendant Abraham Kanweah and they all agreed at Wilson Darpul's house to charter any motor cycle rider to kill for the blood deal (Ritual) purpose.

On Sunday, May 10, 2009, between 8:00 to 10:00p.m., defendant Enoch Jasper and defendant Abraham Kanweah went on the road leading from Pronoken to Fish Town city, River Gee County to charter any motor bike posting as passengers. There victim Abdulayee Jalloh Bah was chartered while defendant

Wilson Darpul, Chief planner of the deal got in a white 4x4 pick up that was driven by Commany Wesseh's driver, (Boys Wesseh). Enoch Jasper took along with him a single barrel gun which he said was given to him by Wilson Darpul. While defendants Enoch and Abraham along with the victim Abdulayee were riding (going) on the victim's motor bike, Enoch Jasper pulled out the single barrel gun from the bag and hit the victim on the back of (his) victim head which left the victim unconscious. Immediately a white pick-up in which defendant Wilson Darpul was riding in, came from behind them (defendants Enoch Jasper, Abraham and the victim) and arrived on the crime scene and the driver Boye Wesseh flashed his vehicle light and Wilson Darpul got down along with Commany Wesseh's driver (Boys Wesseh) who took hold of the victim and carried him in the bush where he was killed and his body was dumped on the main road. The victim motor cycle was taken to defendant Wilson Darpul's house by defendants Enoch Jasper and Abraham Kanweah upon the instruction of defendant Wilson Darpul.

Three (3) weeks later, defendants Enoch Jasper and Abraham Kanweah were seen with the deceased's motor bike in Gbeapo Kanweaken and were arrested while the motor cycle was retrieved by the police from defendant Darpul's residence. And after police investigation they were charged with the crime of MURDER. In violation of the Penal Law of the Republic of Liberia Chapter 14 section 14.1 against the peace and dignity of the Republic of Liberia, the within named defendants did do and commit the crime of MURDER.

The Republic of Liberia produced the following evidences:
1. One single barrel gun
2. The deceased motor bike (red millium)
3. The pictures of the deceased's remains
4. The coroner's report/medical report
5. The police investigative report

The Republic of Liberia will call the following witnesses:
1. Maxwell Tarwilly Fish Town City/Central Police Monrovia
2. The County Coroner/Moses Wesseh Pronoken
3. Mr. Gabriel Alas Zeah Pronoken
4 And Victor Quayee Pronoken
5. Other Officer, Page Central Monrovia

Republic of Liberia by and thru
ATTY. ORETHA G. DION
COUNTY ATTORNEY, RIVER GEE COUNTY

It would appear that the State, exercising the right granted to it under section 18.1, I LCLR, title II (Criminal Procedure Law) (1973), filed a motion to nolle prosequoi Abraham Kanweah.

Section 18.1 of our criminal procedure code, referred to above, provides:
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.

The records however are clear that on arraignment, Co-appellant Enoch Jasper pleaded guilty, while Co-appellant Wilson Darpul, joined Issue with the State by entering a plea of not guilty to the murder charge. A petit jury was empanelled and trial had. Six State witnesses were produced, examined, cross-examined and discharged.

The herein two appellants, who testified In their own behalf, were also subjected to rigorous examination and cross-examination and discharged thereafter. The trial jury, having been charged by the trial judge, retired, considered the facts and circumstances of the case, reviewed the testimonies, examined the evidence introduced by both the prosecution and the defense and returned a unanimous verdict of guilty against the herein appellants, Wilson Darpul and Enoch Jasper.

Appellants excepted to the guilty verdict and have tendered for our review a fourteenth-count Bill of Exceptions; hence these appeal proceedings.

We will now set forth, for the benefit of this Opinion, all the counts enumerated in the bill of exceptions.

1. That Your Honor erred when you denied defendants' motion for severance and change of venue as found on page 5 of the 11th Day Jury sitting on November 24, 2009.

2. That Your Honor further erred when you sustained prosecution's objection to defendant's question to prosecution's witness on whether or not Wilson Darpul and Enoch Jasper, defendants, were investigated along with the others to be identified.

3. That Your Honor erred when you sustained prosecution's objection to defendant's question as to whether or not defendants were acquainted with their Miranda rights as found on page eight of the 21st Day Jury sitting on Thursday, December 10, 2009.

4. That Your Honor did err when you denied defendant's motion for continuance due to lack of access to the defendants by their counsel, the Public Defender, since they were transferred from the River Gee Central Prison to the Police Cell as found on page three of the 22nd Day Jury Sitting on Friday, December 11, 2009.

5. That Your Honor also erred when you sustained prosecution's objection to defendants' question to prosecution's witness as to what shape the defendants were

In when statements were extracted from them since they (Defendants) were arrested with the help of angry mob as found on page six of the 22nd Day Jury Sitting on Friday, December 11, 2009.

6. That Your Honor further erred when you sustained prosecution's objection to prosecution's witness [as regard] inconsistent dates in which he arrived in River Gee which question was Intended to impeach [said] witness' testimony, as found on page two of the 23rd Day Jury Sitting on Monday December 14, 2009.

7. That Your Honor further erred when you sustained prosecution's objection to defendant's question that prosecution's Investigation was based on the confession and admission of one of the defendants, as found on page three of the 23rd Day Jury sitting, on Monday, December 14, 2009.

8. That Your Honor further erred when you disallowed defense question which would have enabled the defendant, Wilson Darpul, to have explained what he knew about the killing of the late Jalloh, as found on page three of the 25th Day Jury's Sitting, on Wednesday, December 16, 2009.

9. That Your Honor erred when you sustained an objection of prosecution to Defense question as to what was the connection between Abraham Kanweah and Enoch Jasper, on the one hand, and Wilson Darpul on the other, as regards the motor bike that was found in Mr. Darpul's residence, as found on page three of the 25th Day Jury's Sitting Wednesday, December 16, 2009.

10. That Your Honor also erred when you sustained prosecution's objection to defense question as to whether Defendant Wilson Darpul contracted Co-defendant Enoch Jasper to get human blood, as found on page four of the 25th Day Jury's Sitting on Wednesday, December 16, 2009.

11. That Your Honor further erred when you overruled defense objection to prosecution question as to whether defendant Darpul informed the police of the motor bike he found in his house and that a motorist was killed and found dead, as found on page five of the 25th Day Jury's sitting on Wednesday, December 16, 2009.

12. That Your Honor also erred when you overruled Defense objection to prosecution's question as to whether Defendant Darpul informed or called counsel besides the police and Informed them about the bike allegedly parked at his house by co-defendants Enoch Jasper and Abraham Kanweah, as found on page five of the 25th Day Jury's sitting, on Wednesday, December 16, 2009.

13. That Your Honor further erred when you overruled Defense objection to prosecution's question as to why defendant Darpul didn't protect the late Jalloh's Interest, as found on page six of the 25th Day Jury's Sitting, on Wednesday, December 16, 2009.

14. That Your Honor also erred when you gave your final Ruling In which you upheld the Jury verdict of guilty for defendants despite the fact that the verdict Is not supported by the evidence adduced during the entire trial, as found on page five of the 28th Day Jury Sitting on Monday, December 21, 2009.

We desire to remark here, with some sense of bewilderment, that the trial judge, His Honor, Charles K. Williams, on December 31, 2009, duly approved the Bill of Exceptions, without noting any reservations thereon. Judge Williams neglected and failed to state his reservations, if any, on the Bill of Exceptions. The charges of Irregular conduct mounted against the judge included the judge's denial of appellants' motion for change of venue without any legal justification, his alleged refusal to investigate appellants' allegations that they were not accorded their Miranda rights to which every person accused of crime Is constitutionally entitled, and the allegation also, that the appellants were denied access to their lawyers. Appellants have prayed the Supreme Court, on the basis of these serious allegations, that Judge Williams' final judgment be setaside for the numerous legal errors appellant have insisted were committed during the conduct of the trial.

Not only are these grave allegations to which judge Williams, with no reservation on the bill of Exceptions, has himself compelled this Court to accord deserving credence to those allegations. Additionally, without expressing any reservations on the Bill of Exceptions, Judge Williams signals his perfect agreement with every count therein contained. Further, by not expressing any reservations, not only that Judge Williams neglected and failed miserably in his statutory duty, but by that failure, ascribed credence to the serious charges made against the trial proceedings as narrated in the Bill of Exceptions.

In both Trowein v. Kpaka, 34 LLr 130, 132 (1986), and Sio v. Sio, reported also in 34 LLR 245, 248 (1986), this Court restated section 51.7, title 1, (Civil procedure Law), (1LCL Rev., (1973)). This section, mandating such notation on the Bill of Exceptions, states, inter alias. The appellant shall present a bill of exceptions signed by him to the trial Judge within ten days after rendition of the Judgment. The judge shall sign the Bill of Exception, noting thereon such reservation as he may wish to make. (Emphasis supplied)

What constitutes a Bill of Exceptions was spoken to by this Court as far back as 1861, in Yates v. McGill Brothers, I LLR 2, (1861). In that case, bill of exceptions is defined as a formal statement in writing of exceptions taken to the opinions, decisions, or directions of a Judge, delivered during the trial of a cause, setting forth the proceedings in the trial, the opinion or decision given, and the exceptions taken thereto, and sealed by the trial Judge in testimony of its correctness.

To put it differently, a bill of exceptions is an embodiment of complaints to the effect that the trial judge committed certain errors of law resulting in an adverse

final judgment against the appellant. The appellant thereupon goes to the appellate court seeking a reversal of the judgment upon the errors of law alleged to have been committed by the trial judge. That is precisely why this Court, in Bonwein, et at, v. Whea et al.,14 LLR 445, 449 (1961), made this observation: In every such case [of appeal], it is obvious that the real defendant on appeal is the trial Judge; but because of the impropriety in most cases of making a Judge a real defendant, his defense has to be undertaken by the appellee upon whose motion, and in whose favor the Judgments alleged to have been erroneous, were based.

The approval of the bill of exception, according to Mr. Justice Azango, speaking for the Court in Cooper v. Alamendine, 20 LLR 416, 423 (1971), constitutes an admission of the correctness of the contentions raised in said bill of exceptions by the appellant. Mr. Justice Azango said, and we are in perfect agreement, that: When the Judge signs the bill of exceptions, he thereby adopts and certifies every material statement in the bill which precedes his signature. Judges should remember that a bill of exceptions is a formal statement in writing of the exceptions taken to the opinion, decision, or direction of the Judge, delivered during the trial of the cause, setting forth the proceedings at the trial, the opinion or decision given, and the exceptions taken thereto, and signed by the Judge in testimony of its correctness. When this is done without reservation, the unexpressed qualification of the statement that would, If uttered, so affect or alter its meaning for the persons addressed as to vitiate its truth, what does he expect the Appellate Court to do? [Our Emphasis].

So, in view of these circumstances, ever mindful of its sacred and onerous responsibility as the final arbiter of justice In Liberia, and ever conscious of its sacrosanct supervisory duty of the Nation's criminal justice system, especially in the instance of a murder trial, where the penalty, upon conviction, is either life Imprisonment or death by hanging, this Court has been compelled even more so, to accord the trial records the exhaustive review and scrutiny they deserve.

Appellants have prayed this Court to accord attentive reflections to bill of exceptions as tendered raising several procedural and substantive issues. However, we shall endeavour to pass only on issues that will be in furtherance of the position we take in the determination of the appeal now before us.

We are guided in this journey by the established principle of law in this jurisdiction, enunciated in numerous Opinions of this Court. It is the law in this jurisdiction that the Supreme Court has no legal obligation to pass on every Issue of contention raised in the bill of exceptions or contained in the briefs. The Liberia Company (LIBCO) v. Collins, 36LLR 828, 831 (1990). We have also held in Lamco J.V. Operating Company v. Verdier, as reported in 26 LLR 445 (1978), that it is the province of the Supreme Court to pass only upon those issues it deems meritorious, germane to the controversy and are justiciable.

Proceeding along these lines, appellants have raised grave concerns about the trial court's handling of the motion for severance as well as their application made for change of venue. It is appellants' argument that the denial of their motion for severance and change of venue, being error of law, constitutes sufficient ground to authorize the overturn of Judge Williams' final judgment.

This contention is succinctly captured in count I (one) of the bill of exceptions, in which appellants contended: That Your Honor erred when you denied defendants' motion for severance and change of venue as found on page 5 of the 11th Day Jury sitting on November 24, 2009.

Inspection of the records indicates that counsel for Co-appellant Wilson Darpul, on November 23, 2009, filed a two-count motion for severance stating as follows:

Wilson Darpul, defendant in the entitled cause by and through his legal counsels respectfully prays the honorable court and Your Honor to grant defendant's motion for separate trial as showeth to wit:

1. Because defendant says that at no time he ever sat with any of the two fellows, Enoch Jasper and Abraham Kanweah, to discuss issues of wanting human blood for Commany Wesseh as alleged by them.

2. And that at no time Commany Wesseh's driver and the defendant ever drove behind the two fellows while they were enroute to willfully kill Abdulayee Jalloh Bah as alleged by them.

WHEREFORE AND IN VIEW OF THE FOREGOING CIRCUMSTANCES, defendant's counsel pray the Honorable Court and Your honor to be gracious and grant defendant's motion for separate trial as required by law. Please see ILCLR page 144, section 16.7 and 6 LLR page 128, syl. 9.

On November 24, 2009, the following day, same being the Eleventh (11th) Day's Jury sitting, the records also reveal that counsel for Co-appellant Wilson Darpul, made the following application on the minutes of court:

At this stage, one of counsel for defendant respectfully moves the Honorable Court and Your Honor for severance and change of venue in the case Wilson Darpul, Defendant/Movant v. The Republic of Liberia, as you will see the attached Motions filed by defendant counsel. Please sew 1 LCLR page 144, Section 15.7 as well as 6 LLR page 128.A/VD respectfully submits. And Counsel further says that since both motions are in the interest of the Defendant, both should be tried.

When the application, quoted herein above, was made, State lawyers' first reaction was to place on the minutes of court the following:

Prosecution has no objection on the two motions just made. AND SUBMITS.

It strikes us as a novelty and strange practice that few minutes thereafter state prosecutors changed their minds and proceeded to their objection to the application for severance and change of venue. Their resistance, also placed on the minutes of court, was as follows:

At this stage, prosecution begs leave of court to spread its resistance on the minutes of court.

THE COURT: Application is granted. And the prosecution is hereby allowed to spread its resistance on the records.

At this stage, one of counsel for the prosecution prays this Honorable court to deny the two motions consolidated by the counsel for the following reason to wit (1) Change of venue (2) Motion for severance.

1. That this case at bar has not been called for hearing. It is only at the call of the case can the defendant asks for severance and in this case, that has not been done. So prosecution is taken aback by this counsel.

2. This is the county of River Gee where the crime (of murder) was committed and defendant resides here also. Therefore, he should be tried in the same county where the crime was committed.

3. That defendant Wilson Darpul is a principal defendant In this case at bar. He master-minded the plan to kill for blood (ritualistic killing). The co-defendant Enoch Jasper and Abraham Kanweah have all accused him of master minding this wicked plan, knowingly and purposely he killed for blood in contravention of the penal law of the Republic of Liberia, Section 14. 1. 4. That Defendant Wilson Darpul, after they killed for blood, also ordered the co-defendant to take the motor bike to his house for keeping, where it was arrested by the police after two weeks. The other co-defendant has also accused him so he must squarely face them; he cannot excuse himself by means of severance he being the principal defendant. Prosecution says no; he must answer to the charges of his co-defendants to clear the minds of this court in the place of the county where the crime was committed and when he is residing.

In view of the foregoing, as to the change of venue, counsel for prosecution prays court to settle the issue of severance as defendant cannot be excused from the action by asking for change of venue. [As to the issue of severance, prosecution says same must be looked into carefully by this court before considering the change of venue; he must be tried here. AND SUBMITS.

We must remark here that the primary purpose of criminal prosecution in our jurisdiction is to seek justice for both the State as well as the criminal defendant and not to convict. Andrew T. Davies. Director of Police, et. al v. The intestate Estate of Anwar Rif 25 LLR 144 (1976). To afford the accused a fair, speedy and impartial public trial is sacrosanct, irrespective of the ghastly character of the crime he is

charged with. This is because fair trial, according to the Liberian Constitution (1986), is an entitlement. It is therefore mandatory on all courts of law in this jurisdiction that rights that have been constitutionally granted be safeguarded and enjoyed by all criminal defendants in the conduct of criminal proceedings. Utmost diligence is even more obligatory on all courts in Liberia where the criminal defendant, as those in the murder case now before us, by filing the application for change of venue, was representing to the trial court that he ran the risk of being robbed of his constitutional entitlement to fair trial if made to be tried in the jurisdiction in which the crime was committed.

The denial of the application for change of venue by Judge Williams, under the facts and circumstances of this case, and without providing any factual and legal bases for said denial, violates the principles of fair and impartial public trial.

This Court again emphasizes that it is an absolute necessity that justice be served in the interest of all, the State whose object it is to combat crimes and punish criminal conduct, the appellants in the instant case, who are standing in rather grave peril for their lives, and the court as the institution shouldering the onerous duty of supervising the criminal justice system by ensuring that those on trial enjoy all the rights accorded them by the law of the land. It is our Opinion that a criminal defendant cannot be deemed and said to have enjoyed his constitutional right to fair and impartial trial if tried, as in the instance of the herein appellants, by jury selected from a community with demonstrated prejudice and bias against the defendant. The records in the case at bar do not convince us that the herein appellants were accorded fair and impartial public trial as contemplated under the law of the land. Rather, their trial constituted derogation of the constitution of the land.

But prosecution's resistance to appellants' application for change of venue, as indicated herein above, gives a rather disconsolate impression of its appreciation of the ultimate object of its duty. Defense reacted by stating as indicated:

Your Honor, this is simple cause and the prosecution is trying to delay this case for a defendant to ask for severance. In William Bryant and others versus The Republic of Liberia 61 LLR 128 (1938), the Supreme Court held that when several defendants are Jointly indicted a motion for severance should be granted as a right if upon the face of the indictment there is no delay.

Judge Williams entertained arguments, pro et cons, on the application and thereafter denied both the severance and change of venue. It strikes us as reprehensible that the judge's ruling failed woefully to address these two important issues of severance and change of venue in any deservingly significant fashion. We note with dismay, however, His ruling was simply nothing but a fleeting reference: the Motion of severance is hereby denied; likewise the motion of change of venue is also denied, conspicuously void of any substance.

In our considered opinion, these were major questions clearly bordering on fair and impartial trial, especially in light of the facts and circumstances of the instant case. We quote Judge Williams' ruling verbatim:

The counsel of the defendant, who is Paramount Chief, has been arrested accused of having masterminded the crime of murder, (and taking) away the life of a motorist, the case for which several arrests were made. Counsel for the defendant insists that his client will not be given justice if [tried] in River Gee County where the crime was committed and where the defendant in question resides. The counsel has attempted to show the court the reason for severance and the change of venue. The prosecution, on the other hand, has [urged] the court to be conscious enough as the laws require that such severance must be granted only if the indictment upon which said defendant is charged has shown no connection of the defendant asking for severance with the other defendants who are arrested. In this case, the indictment is emphatic as it states that the defendant praying for severance is the one who planned the commission of the crime; that (he has) The court believes that it will be unfair to the other defendants who are accusing this defendant of master minding the crime. In view of the foregoing, this court hereby rules that the Motion of severance is hereby denied likewise the motion for change of venue is also denied. AND IT IS HEREBY SO ORDERED.

The controlling law on change of venue is section 5.7, ILCLR; title II, (Criminal Procedure Law). It speaks the following language:

On motion of the prosecuting attorney or the defendant, the court may order the proceedings in a criminal prosecution transferred to a competent court in another county in any of the following cases;

(a) If the county in which the prosecution is pending is not one of the counties specified in sections 5.1-5.6; [section 5.1 states the general law which requires that a crime be prosecuted in any court of competent jurisdiction in the county in which said offense was committed.

(b) If there is reason to believe that an impartial trial cannot be had in the county in which it is pending;

(c) If all the parties agree and if the convenience of material witnesses and the ends of justice will be promoted thereby.

From the clear language of the cited provision of the statute, it cannot be a subject of reasonable debate that an application for a change of venue of a trial is granted as an automatic right to be enjoyed by every criminal defendant. Nor has the statute granted a trial judge an unfettered discretion to deny an application made for change of venue. To the contrary, the statute has specifically stipulated grounds, which, when established, would warrant and compel the granting and transfer of a case to a different venue for the conduct of a criminal trial. It therefore follows that a trial

judge acts within the ambit of the law when he denies an application for the transfer of a case to a different jurisdiction where the grounds contemplated under the statute have not been established.

Subsection (b) is unambiguous in its dictates to every court. It directs the trial court to grant an application permitting the transfer of a trial to another jurisdiction if there is basis to believe that a fair trial is unlikely in the light of surrounding circumstances, including local prejudice. Clearly, jurors as triers of facts and are selected from the vicinity. This makes it rather important for a court of law to give most reflective consideration to the issue whether local prejudice seems to exist such as to undermine the prospects for fair and impartial public trial. Without making sufficient enquiry into these circumstances, we wonder how a judge would make a proper determination on this question.

In Weah v. Republic, 35 LLR 567, 571 (1988), a murder case also, as the instant case before us, this Court adopted a common principle of law. It states that in criminal prosecutions, the right of the accused to a change of venue upon the ground of inability to obtain a fair trial in the county where the indictment is found, or because of local prejudice and excitement is universally recognized. it is a fundamental principle of law that every person charged with crime shall have a right to a fair and impartial trial and while it is generally presumed that defendant can obtain a fair and impartial trial In the county where the offense with which he is charged was committed, when he can show that because of local excitement or prejudice against him in the county where the indictment is found, he will be unable to obtain a fair trial there, he is entitled to have the venue changed to another county.

It is recognized that the commission of heinous crime, as murder, attracts a natural flow of popular emotional outburst from the people of the vicinity where such is committed. Resulting fears which grip the affected community tend to fuel a popular desire for swift and immediate justice for what is regarded as the loss of one of their own. Neighbors tend to develop some feelings of care and affinity for one another. The jury system, as a matter of fact, is fundamentally premised on this principle: that having developed a sort of bond of geniality, a neighbor is unlikely to condemn unjustly a neighbor for a crime he didn't do than a stranger would. It is the law of general application that the trial jurors be selected from the locality where the crime was committed. But there is a downside to this law. It has also been argued that a stranger accused of an outrageous crime against a neighbor, is likely to be convicted by jurors from that neighborhood for a crime the outsider may not have committed. The legal system therefore put a method in place which seeks to deal with this challenge by also providing for change of venue in order to safeguard the right to a fair and impartial trial regardless of the accused being a neighbor or a perfect stranger. Change of Venue as a principle of law is basically intended to strike that balance between these seemingly conflicting interests.

It is therefore mandatory that where an application for change of venue has been made, the judge's decision to grant or deny same ought to accord attentive consideration to the entire circumstances attendant to the commission of the crime. The judge should ruminate on Incidences as those surrounding the arrest of the criminal defendant, neighborhood discussions and apparent prejudice and bias openly conveyed by the community dwellers as to the guilt of the accused long before the commencement of the trial. The law controlling imposes a duty on the trial judge before whom a motion for change of venue has been placed to fully ascertain and enquire into these factual circumstances in order to make a determination whether a defendant could be accorded fair and impartial public trial in that community or county. The circumstances of this case bring to fore one obvious question: whether all the facts and circumstances attending the post crime commission environment of the instant case tended to suggest the existence of local prejudice such as to legally justify the granting of appellants' application for change of venue from River Gee County.

Let us revert to the records to see if some answers could be found. The trial records indicate that in his statement to the police, co-appellant, Enoch Jasper, reported:

So both of us (Enoch and Abraham) decided coming on the road to Tarken Junction where we saw Pa- Sloee and the mechanic that were seen with the late Jalloh's bike. He (Abraham) escaped from the group and I also escaped. But I heard that Abraham was caught by the group so I myself reported to the police at Tarkein the next day.

According to the records, Co-appellant Abraham Kanwea also indicated in his statement to the police, which was admitted in evidence, that he too was arrested under similar circumstances. He said:

but that same day, the town men caught us and turned us over to the police, and they brought us to Fishtown police station

Further, one of the State witnesses, Detective Maxwell Tarawally, in his general testimony also confirmed that mob action attended to the arrest of the appellants/defendants.

He testified:

On Monday, May 11, 2009, at 06:00a.m., Police began investigation. On May 25, 2009, at 4:30p.m, some concerned citizens led by one Muibah of Gbeapo Kanweaken and an angry mob arrested the three suspects, defendants, Nimely, Enoch S. Jasper, who is 19 years of age, Grebo by tribe, and lived in Zwedru, Grand Gedeh County.[Our Emphasis].

It would seem from these statements that this murder case attracted a lot of general local interest. Local community dwellers intact became involved by seemingly assisting law enforcement to find and arrest suspects. As indicated herein above,

mob actions, which have proven very messy in this jurisdiction, were employed in the arrest of persons the mob assumed to be the perpetrators of the crime.

This is further confirmed even in the statement taken from Co-appellant Wilson Darpul by Liberia National Police recording officer, Detective Corporal Halvin Page, Marked as P/10, and admitted into evidence, speaks to how the people in River Gee, especially those residing in the immediate vicinity of the crime, saw and treated the appellants.

In the recorded statement, Co-appellant Darpul said:

I was arrested by police and detained on May 25, 2009, on allegation of a murder case involving a motorcyclist they identified as Ambulayee Jalloh a Guinean, whose dead body was discovered along the highway between Pronoken and Fishtown. This motorist (victim) was killed by Abraham Kanweah and Enoch Jasper based upon their testimonies and confession they made to the police in Fishtown. After my arrest by the police, I was released on parole to go for treatment for injuries I sustained at the hands of mob (angry crowd) for the murder of the motorist.[Our Emphasis].

In the opinion of this Court, the circumstances, as described in detail in the records, appear to underscore the real need for the trial judge to have taken time and made sufficient queries as to the existence and prevalence of local bias and prejudice. It seems to this Court that the formal hearing on a motion for Change of Venue has one primary objective. The hearing affords the judge an opportunity to gather pertinent information especially in the light of huge local interests, biases and prejudices that existed as seen in mob actions. When armed with this information and knowledge, the judge is better positioned to make a fair judicial determination whether it will serve the best interest of transparent justice and fair trial if the trial is transferred to a different jurisdiction. Conventionally, a motion seeking change of venue is addressed to the sound discretion of the judge. It is therefore appropriate that having entertained such a motion, Judge Williams' ruling should have reflected his reasons, factual as well as legal, for denying the motion. For a decision entered by a judge on this motion may be overturned where abuse of his discretion is shown.

Despite our diligent scrutiny of the records before us, we were unable to find any evidence tending to show that Judge Williams was guided by the law in vogue on change of venue and how an application therefor ought to be disposed of. The judge's ruling of November 24, 2009, recorded on the minutes of court, Eleventh (11th Day's Jury sitting, denying the motion for change of venue was transient, utterly void of any factual or legal reasons. In our considered opinion, the judge's conduct in this respect constitutes not only a fatal error but an incredible breach of the applicable laws as well.

We therefore are in full agreement with the appellants that the Judge clearly committed a reversible error.

It is critically important to observe also that Co-appellant Wilson Darpul made an application not to be jointly tried with Co-appellant Enoch Jasper. Judge willams' denial of said severance application was also a reversible error.

It must be remembered here, firstly, that the pleas entered by the two appellants/defendants were converse one to the other. It follows therefore that their defense would be different. Under these facts and circumstances, to compel joint trial of these two in the face of one admitting to the charge and the other stringent denial of any Involvement in the commission of the crime, in our opinion, constitutes prejudicial joinder, which the statute clearly frowns upon.

Section 16.10, I LCLR, on prejudicial joinder has this to say:

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or by a joinder of trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other remedy justice requires.

While it is the law in vogue that a motion for severance is addressed to the sound discretion of the court, there is an exception. The insistence on joint trial of defendants is deemed proper, according to this Court where the defenses do not conflict and are not antagonistic. Horace et al. v. Republic, 16 L LR 341, 345 (1958).

In the case at bar, it appears to us that the application for severance should have been granted. This is because the pleas are in conflict where with one appellant/defendant is pleading guilty, while the other has joined issue with the State by challenging the truthfulness of the charge. The minutes of trial court, 21st Day Jury sitting, December 10, 2009, shows that the clerk reported that the indictment has been read to the defendants and Wilson Darpul pleaded not guilty while Defendant Jasper pleaded guilty.

Under those circumstances, where the pleas are aggressively hostile to each other, it cannot be successfully contended that the defenses set forth by the appellants in the Instant case are not furiously inimical one to the other.

Judge Williams' denial of the motion of severance, under the facts and circumstances of this case, provides yet another basis for the proper setting aside of his final ruling.

While the issues discussed above are sufficient to reverse appellants' conviction and remand the case at bar in the ultimate interest of justice, we shall pass on a few of the other issues and circumstances with which we are confronted in these appeal proceedings in the ultimate interest of justice.

Appellants represented to this Court in count four (4) of the bill of exceptions that:

That Your Honor did err when you denied defendant's motion for continuance due to lack of access to the defendants by their counsel, the Public Defender, since they

were transferred from the River Gee Central Prison to the Police Cell as found on page three of the 22nd Day Jury Sitting on Friday, December 11, 2009.

The issue of legal representation is one of grave constitutional concern. Article 21 (c) of the Liberian Constitution (1986), cited earlier in this opinion, is clearly mandatory in its language. It dictates in relevant part that:

Every person suspected or accused of committing a crime shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible in a court of law. [Emphasis Ours].

In the case at bar, the trial records indicate that counsel for the appellants/defendants complained to the trial judge that defense counsel have not had access to their clients. On this issue, the following submission was made by counsel for the appellants on the minutes of December 11, 2009, the 22nd day's jury sitting:

At this stage, one of counsel for the defendant gave notice to this court that upon the conclusion of the proceedings yesterday and based upon the testimony of the witness, counsel of defendant made an attempt to talk with the defendant but to no avail.

Counsel further says that they visited the Fishtown Prison this morning about 8:30a.m. to 9:00a.m and did not see the defendants. Counsel says according to Article 21(e) of the Constitution of the Republic that civilian charged with a crime [should] be kept in a civil prison. Counsel says that he perused the prison and the defendant was not there. Secondly, chapter2 of the Criminal Procedure Law, Section 2.24 [provides] that the counsel for defendant has the right to confer with the defendant. One of counsel for defendant says that upon the visitation of the prison, he was unable to see the defendant. Wherefore and in view of the foregoing, prays for continuance to afford him time to meet with his client. AND SUBMITS.

Prosecution resisted the application for continuance principally arguing that it was made simply to delay and baffle the case. It strikes us as totally incomprehensible that the trial judge denied defense application for time to confer with its clients. The trial judge said:

In keeping with our trial proceedings and in the handling of criminal cases, it is the right of the Ministry of Justice to safeguard the procedure adopted in the court and in so doing the protection and right of the person accused, for the protection of Jury, the protection of the Judge presiding and the protection of the counsels in the case. In the opinion of this court, the defendants In this case are to be secured by the Ministry of Justice so as to bring them every day to court to be pro of the defendant is aware of the security of the prison house and the submission of counsel

for defendant Is viewed as a delay tactic which is frowned upon by the Supreme Court of Liberia as laid down in Matheller vs. Matiheller, 17 LLR page 472 In which the Supreme Court caution the counsel of party [not] to subject the court to their will [and] to delay the hearing of the case. (This is) especially so where the submission of the counsel [requesting court] for continuance has no legal basis [but Intended] simply to delay and baffle justice. Having said that, the court overrules the submission made by the counsel.

We wonder whether Judge Williams was unaware of the fact that the appellants in these proceedings were on trial for the capital offense of murder and upon conviction for which they would be condemned to death by hanging or imprisonment for life; thereby providing more compelling grounds that such defendants must be afforded adequate representation.

While the records reveal that counsel informed the trial judge that they had not been able to confer with their clients [the appellants] to enable them to mount the necessary defense, a claim not refuted by prosecution, Judge Williams' denial of defense request for continuance, under those circumstances, effectively deprived the appellants/defendants of adequate legal representation, to which they were constitutionally entitled in Liberia.

In Otto v. Republic 21 LLR 390 (1972), the appellant, Joe Otto, having administered a poisonous liquid to his two-month-old child, Josephine Otto, was charged with murder, tried and convicted. Although the filing of a bill of exceptions is one of the statutory requirements for the perfection of an appeal, and without which the Supreme Court is not authorized to review the records transmitted on appeal, but in that case, an approved bill of exceptions was omitted from the records transmitted to the Supreme Court. Yet, this Court, having determined that such fatal neglect and failure was due to the wanton neglect and carelessness of counsel for appellant, reversed the guilty judgment and remanded the case for a new trial. According to Mr. Justice Horace, speaking for this Court, this was necessary in order to give appellant the opportunity to have proper and efficient representation in the Mal court, especially since he is being tried for his very life. Id. 393

The Otto case relied on the principle enunciated in Qual v. Republic, decided by this Court in 1957, as reported in 12 LLR 402.

In Qual appellant was also convicted of murder. This Court set aside the judgment and remanded the case for a new trial, for reason, according to Mr. Justice Shannon, that Appellant Qual's defense was carelessly conducted by the attorney assigned by the trial court such that the Supreme Court was not convinced on the face of the records that the appellant had a fair and impartial trial as to warrant our sustaining his conviction and sentence to death. Id. 403.

We have consistently upheld this principle. And the case now before provides no sufficient factual or legal basis to suggest a departure from this settled legal path hoary with time in this jurisdiction.

We cannot conclude this opinion without commenting on the demonstrated prejudicial conduct of the trial judge and utterances of bias made throughout the trial.

Here again, we are guided by the principle enunciated by this Court in sundry opinions, including Quezon v. Republic, 23 LLR 33, 36 (1974). Although the defendant In that case was poorly represented by a lawyer hired by himself and on the basis of that fact, his argument that he did not receive a fair and impartial trial would ordinarily have been unsustainable, the Supreme Court, however reversed the defendant's conviction for reason that the trial Judge made certain prejudicial statements. According to this Court, those utterances rendered the trial and the defendant's conviction unfair. His Honor, Frederick K. Tulay, in his charge to the Jury, said:

In so far as the law is concerned, it Is the opinion of this court that the prosecution has made a prima facie case and that the defendant has woefully failed to make a proper defense; that he did It In a heat of passion or that he did It because decedent was the aggressor. He simply tells you that he did not touch the person of the decedent at all. A very weak defense Indeed.

Two observations need to be made here. Firstly, in the Quezon case, appellant hired his own lawyer who poorly represented him during the trial. In that case, this Court did not sustain his argument that he was not accorded fair and impartial trial due to inadequate legal representation. Secondly, the Supreme Court, nevertheless, reversed the judgment of conviction and remanded the case for a new trial on account of what the Supreme Court determined to be prejudicial statements made by the trial judge.

Reversing the judgment and remanding the case for a new trial, the Supreme Court held to be manifestly prejudicial to the appellant/defendant, the statement made by the trial judge during the charge and that the statement had the tendency to mislead the jury, the sole triers and judges of the facts.

Also in Sackor v. Republic, 21 LLR 394 (1973), the appellant was tried and convicted on murder charge. His appeal challenging the legal propriety of the judge's charge subjected same to critical appellate examination. On review, this Court determined that although the trial records were void of any evidence to support his charge, the judge nevertheless elected to comment on Appellant Sackor's testimony prejudicially in the following manner:

in testifying In his own behalf on the stand, defendant [Sackor] told you that he did shoot decedent, because when he first saw the object, he recognized same to be a meat and because of 'the turning of his eyes,' he shot decedent. id. 398.

Commenting on this conduct, Mr. Chief Justice Pierre, speaking for a unanimous Court, said:

Appellant's counsel contended, and we are in perfect agreement with him, that this part of the judge's charge was not justified by the record and was, therefore, prejudicial error, since it influenced the jury's verdict against defendant.

The Court then held that it will remand for a new trial any case in which the trial judge's acts and rulings are shown to be patently prejudicial to a party's rights and interests. [Our Emphasis]. Ibid. 399.

Let us revert to the records in the case at bar to see whether Judge Williams exhibited any conduct or uttered any statement that may qualify as being patently biased and prejudicial to the appellants' legal Interests. The records are replete with utterances made by Judge Williams which are not only prejudicial, but clearly reflect no acceptable posture that any judge ought to exhibit, which is cool neutrality. We now touch on a few of such statements and utterances:

(1). Co-appellant Wilson Darpul, while on the witness stand, was asked the following question:

Q. Mr. Witness, since the deceased Abdulayee Jalloh was found dead on the 11th of May 2009 and that you were at your house when contacted about the death of the late Jalloh, did you go on the scene to see as Paramount Chief of that area?

A. I went on the scene.

Judge Williams, as if to conclude on the guilt of Co-appellant Wilson Darpul, made the following inflammatory and patently prejudicial statement on the minutes of court:

The witness styled himself as a Paramount Chief of a Chiefdom in which the late Jalloh was murdered. Under our law, the Paramount Chief of chiefdom takes responsibility of every act of lawlessness committed by citizens.

When a presiding judge makes such an utterance to the hearing of the jurors who see him as the priest and master of the law clearly declaring the appellant responsibly for the murder, it cannot be reasonably argued that said appellant enjoyed a fair trial. It is regrettable that the trial judge failed to cite the law which transfers criminal responsibility from a citizen or group of citizens to a paramount chief on account of being a local government official. Of course, the judge could not cite his reliance because no such law exists in this jurisdiction.

(2) In his Final Ruling, dated December 21, 2009, Judge Williams also stated:

In this trial and with the testimonies of the witnesses, Ambassador Conmany Wesseh is so exposed by invitation of his car and driver who engaged the services of co-defendant Wilson Darpul, resulting to the brutal killing of the late Jalloh. I strongly feel, as the one who is presiding over this case, that Ambassador [Wisseh] appear before the tribunal to exonerate himself in which his driver and his personal car were involved to carry on this wanton brutal and uncivilized killing of poor Jalloh, one who was only [trying] to earn his living.

This utterance by the judge is not only reprehensible but wanting of any pale of the law. It underscores the apparent vested interest Judge Williams had in this murder case, which in the first place, should have compelled him to recuse himself from conducting the trial.

It is the province of the Ministry of Justice and other duly authorized institutions in Liberia to investigate those allegations. Where sufficient factual and legal bases are found, those institutions are obligated to prosecute in accordance with law. As to who should, or ought to face prosecution is a prosecutorial function and a court of law need not assume said function.

Judge Williams showed no restraints in this trial. Shortly after the return of the indictment by the grand jury on September 23, 2009, charging defendants Wilson Darpul, Enoch Jasper and Abraham Kanweah with the crime of Murder, and shortly thereafter, the Clerk of Court, Fifteenth Judicial Circuit Court, River Gee, operating under the supervision of the presiding judge, issued a Writ of Arrest signed by the Clerk of Court William Lee Wah, Sr.

The writ of arrest, issued September 23, 2009, was captioned: Republic of Liberia vs. Enoch Jasper, Wilson Darpul and Comnany Wessseh's driver to be identified. The Writ commanded as stated:

You are hereby commanded to arrest the living bodies of Enoch Jasper, Wilson Darpul and Comnany Wesseh's driver to be Identified charged with the commission of the crime of MURDER and cause them to appear before the 15th Judicial Circuit Court, River Gee County, Republic of Liberia, sitting in its August Term A.D. 2009 to answer to the complaint filed against them by the Republic of Liberia on the charge of MURDER.

You are hereby commanded to make your official returns endorsed on the back of the original copy.

AND FOR SO DOING THIS SHALL CONSTITUTE YOUR LEGAL AND SUFFICIENT AUTHORITY.

This writ of arrest was followed by a letter from the clerk addressed to the Sheriff of Criminal Court A, Temple of Justice, Monrovia, Liberia, to the following effect:

You are hereby requested to assist Major Joseph S. Choloply, Sheriff, River Gee County to arrest the living body of Boye Wesseh, Defendant charged before the 15th Judicial Circuit Court on the Writ of Arrest and Indictment brought by the Grand Jury of River Gee County sitting in the August Term, A.D. 2009, to have him arrested and detained to be brought to River Gee County.

We are appalled by the judge's conduct as described herein. For the judge to have issued a writ of arrest against a person (Boye Wesseh), seeking to have said person answer to a capital offense, without the presentment of an indictment by a Grand Jury charging said person as a criminal defendant, is not only a blatant violation of the Constitution of Liberia (1986), but, also, a clear shaming of the judge's oath and duty to defend the Constitution and laws of Liberia and to act as an impartial arbiter in every case, whether between two private citizens or between a private citizen and state.

Without an indictment clearly naming a defendant party, and not by reference, a person cannot be properly called upon to answer to commission of a grave and an indictable crime.

The language of Article 21 (h) of the Liberian Constitution (1986), prohibiting any such action, is cogently clear on this point. The provision commands:

No person shall be held to answer for a capital offense or infamous crime except in cases of Impeachment, cases arising in the Armed Forces and petty offences, unless upon Indictment by a Grand Jury.

The trial records before us further reveal that Judge Williams sentenced Co-defendant, Enoch Jasper, who initially pleaded guilty, to five (5) years in prison after his conviction for the capital offense of murder. We cannot but wonder as to his reason for the five (5) years jail sentence, as this Court has found no legal basis for Judge Williams conduct in this regard. The penalty for murder is set by our Penal Law. No judge may confer unto himself the power to determine the punishment for a crime. That is strictly a legislative function and unless discretion is granted by statute, no judicial officer may properly exercise any such authority. Therefore, by reducing the sentence of one of the defendants in this case to five (5) years, Judge Williams exercised legislative power in outrageous violation of the constitutional doctrine of separation of powers; and by so doing, the judge clearly exceeded the power delegated to the judiciary by our Constitution.

Before concluding, it behooves us to comment at least briefly on state prosecutor's duties to an accused under the Miranda Principles as engraved in the Liberian Constitution. This is an absolute necessity in the light of the circumstances surrounding the arrest the arrest and detention of the appellants as narrated with copious details in this Opinion. Every suspect/accused is entitled to a lawyer at, and during every stage in criminal inquiry. The preservation of this right by state security and prosecution personnel is mandatory.

Article 21 (c) of the Liberian Constitution (1986) is unmistakably clear in its pronouncement:

Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible in a court of law. [Emphasis Ours].

As a matter of law, the right of the accused to legal counsel at every stage in a criminal investigation is a practice universally accepted in similar jurisdictions. The holding in Miranda v. Arizona, 384 U. S. 436 (1966), seems to have universal application today. By its expression, the Liberian Constitution has safeguarded the right of the accused person to an attorney at every stage in a criminal investigation. It is a duty under the Liberian Constitution, not police discretion.

Within this context, the records indicate that prosecution witness, Anthony Sherman, II, was asked to say how he conducted investigation of the suspects including the Appellants in these proceedings. He answered as follows:

As an investigator, whenever allegation is levied against somebody when they are brought before you they have a Miranda Right, right to legal counsel, in every stage of the investigation that was brought before us, right to telephone call, (three), that which they were told and before they made their voluntary statement. And after they made their statement, they signed It, by the thumb print and for those who can[t] write. [Minutes of Court 21st Day Jury Sitting, December 10, 2009].

Another state witness Col. Ansumana S. Kromah, also told the court:

There we launched a full investigation so as to arrest the doers of the act. Because of the character evident of the defendant, we arrested Mr. Enoch Jasper, along with Abraham Kanweah for investigation and interrogation. During our investigations, in respect of the constitutional right of the suspects at the time, we contacted the Former Defense Counsel of the County in person of one Paul S.T. Brooks so as to represent and guide the legal interest of the suspect under probe. Sir, during the course of our investigation conducted, without force, violence, duress, one of the defendants in persons of Enoch Jasper voluntarily confessed and admitted that the said crime was committed by him and one Abraham Kanweah with the complicity of a Paramount Chief by the name of Honourable Wilson Darpul. By virtue of that voluntary confession, the investigation invited Mr. Darpul so as to assist in its probe since in deed and in truth, his name had been confessed in the commissions of the crime. Sir, in our probe, Mr. Darpul denied his involvement.

It must be noted however, that Witness Maxwell Tarwally, appearing before the grand jury on September 21, 2009, was asked whether Appellant Wilson Darpul had given any statement. His answer was: No.

But the records submitted into evidence appeared to contradict the testimony deposed by said state witness that no statement had been taken from Co-appellant Wilson Darpul up to September 21, 2009. Quite to the contrary, the records show that between May 10, and 25, 2009, appellants in these proceedings had been arrested and statements taken from them by recording officer, Detective Cpl. Halin Page.

These statements, referred to by prosecutors as voluntary confession was marked as P/10, and admitted into evidence.

How these criminal defendants could be deemed as accorded their Miranda rights under these circumstances, (1) when state prosecutors provided contradictory testimonies in this regard, and (2) in the face also of the defence application in open court requesting continuance in order for defence lawyers to have the opportunity to confer with their clients, as all efforts to make contact with the accused, up to the commencement of the trial, had proven futile. So when and where were these defendants advised by lawyers? Prosecution's stance in this respect beats our imagination.

In all criminal trials, an essential element for determining whether the defendant was accorded fair and impartial trial is competent legal representation. Qual v. Republic, 12 LLR 402 (1957); Kpolleh v. Republic, 36 LLR 623, 669 (1989). But in the case at bar, the defence lawyers demonstrated monstrous incompetence in their legal representation of the appellants in these proceedings.

To crown it all, and in total disregard of the numerous irregularities attending to the trial of this case, including the myriad prejudicial utterances made by the trial judge, counsel for the appellants/defendants seemed thrilled and jubilant by the verdict of guilty returned by the trial jury.

The minutes of the 26th day's jury sitting, December 17, 2009, recorded the following as statement from the defence lawyers:

One of Counsel for defendant though taken aback by the decision of the jury, he wants to extend his thanks and appreciation to said Jury for the job well done. AND SUBMIT.

This is an amazing commentary on our criminal justice system. Here is a trial characterized by copious irregularities. It commenced with the defendants being arrested and subjected to criminal investigation and made to sign voluntary statement of confession without the benefit of legal counsel. It was also a trial conducted in the midst of prejudicial utterances from the trial judge such as to glaringly influence the trial jury's outlook and opinion. Further, the proceedings were those that faithfully disregarded every rule of criminal that should be strictly adhered to at all times. Yet, to crown it all, as if what had happened was already not grave enough, the lawyer gets up to gallantly receive the guilty verdict expressing

heartfelt gratitude to the jury and obviously to the trial court in the counsel's words "for the a Job well done.

This conduct on the part of the defense lawyer speaks volumes to their legal competence. It further explains why this defense team failed to see the real needs, both circumstantial and legal, to warrant the filing of a motion for new trial. How could it be said that the appellants, under the circumstances detailed in this Opinion, were accorded fair and impartial trial as contemplated by the genius of our Constitution? We do not think so.

WHEREFORE, and ever-mindful of our fundamental duty to ensure that truth is established and justice is done under the laws made for and designed to bring about such truth, as consistent with the orderly administration of justice, and in the light of the circumstances of this case where the laws on fair and impartial trial were recklessly disregarded and abandoned during the entire conduct of the trial in the court below, and the trial records having established that the standards set to procure juridical conviction and that only legal evidence should be placed before the Jury which is asked to convict were ignored, and having therefore decided to remand the case for a trial de novo, we will delve no further into the records.

NOW therefore, it is our considered opinion that the guilty verdict returned by the trial Jury and the ruling entered by the trial judge confirming said verdict, convicting and adjudging the appellants guilty of murder, being in violation of the law of the land, be and same is hereby reversed and the case ordered remanded to be tried de novo and to take precedence over all other criminal matters.

The Clerk of this Court is hereby ordered to send a mandate to the court below to give effect to this judgment. AND IT IS HEREBY SO ORDERED.

JUDGMENT REVERSED AND CASE REMANDED.

Counselor J. D. Baryogar Junius appeared for the appellants. Counselors Samuel K. Jacobs, Serena F. Garlawolu and M. Wilkins Wright of the Ministry of Justice, appeared for the appellees.