Lawrence Matadi of Monrovia Central Prison, City of Monrovia, Liberia APPELLANT Versus His Honor, **Benedict W. Holt**, **Sr.**, Assigned Circuit Judge, Criminal Court"A", Temple of Justice, Monrovia, and the **Ministry of Justice**, also of the City of Monrovia, Liberia APPELLEE

APPEAL FROM THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES "A" FOR MONTSERRADO COUNTY.

Heard: March 23, 2009. Decided: July 24, 2009.

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

Upon an indictment for murder presented by the Grand Jury for the County of Montserrado, Republic of Liberia, sitting during its February 2006 Term, Appellant Lawrence Matadi, criminal defendant in the court below, was arraigned and appellant pleaded "not guilty". Chapter 14, Section 14.1 of the New Penal Law of Liberia, providing for the crime of murder, states:

"A person is guilty of murder 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 indifferences to the value of human life. A rebuttable presumption that such indifference exists arises *if the defendant is engaged or is an accomplice in the commission of, or an attempt to commit, treason, offenses defined in Sections 11.2 or 11.3 of this title, espionage, sabotage, robbery, burglary, kidnapping, felonious restraint, arson, rape, aggravated involuntary sodomy, escape, piracy as other felony involving force or danger to human life."*

Sections 50.5 and 51.3 grade murder as a first degree felony and provide that a person convicted thereof shall be sentenced to death or life imprisonment.

The Republic of Liberia, appellee and plaintiff in the court below, complained in the indictment as follows:

".... That on the 30th day of December, A.D. 2005 at 72nd turning point, Paynesville, Montserrado County, Republic of Liberia, the within and above named defendant without any color of right and also without the fear of the Statutory Laws of the Republic of Liberia, with malice aforethought purposely and intentionally did stab and kill or caused the death of the deceased, Robert Karwargeah McKai. Plaintiff further says that the defendant requested the deceased to drive him from Red-Light and upon his refusal due to being tired, the defendant stabbed him, leading to the death of the deceased.

"Plaintiff complains and says that following the action of the defendant, the deceased bled profusely and was taken to the Benson Clinic but was later referred to the J. F. K. Medical Hospital where he was pronounced dead on the next day; thereby the crime of Murder, the defendant did do and commit fat] the above named place and at the above named date and time; contrary to the Organic Laws of the Republic of Liberia.

"And the Grand Jury aforesaid, upon their oath aforesaid, do present: That Lawrence Matadi defendant aforesaid, in the manner and form aforesaid, do say that the crime of murder the defendant did commit; contrary to the form, force and effect of the Statutory Laws of Liberia, in such cases made and provided and against the peace and dignity of this Republic."

Appellant having pleaded "not guilty", regular trial commenced on September 13, A.D. 2006, before His Honor, Benedict Holt, presiding by assignment at the First Judicial Circuit, Criminal Assizes "A" for Montserrado County. When both parties rested with production of evidence, the empanelled jury retired, deliberated and, on October 5, 2006, unanimously signed and returned a verdict of "Guilty" in favor of the state and against the appellant/criminal defendant.

By a final judgment dated October 12, 2006, entered on the guilty verdict, the trial court stated as follows:

"The trial jury having heard evidence from both sides deliberated and granted a verdict of guilty. [Defendant having been found] guilty for the murder of Robert Makai, ...the penalty [thereof].... is death or life imprisonment.

"This Court therefore says [that it takes into account] that this Country is signatory to international instruments ....which [seek to abolish] the death penalty ...although our statutory laws have not [been] amended to reflect harmony with these international instruments of which we are signatory.

"WHEREFORE, AND IN VIEW OF THE FACT AND CIRCUMSTANCES, this court having found Lawrence Matadi guilty of the crime of murder on the [5th] day of October, A.D. 2006, hereby sentences him to life Imprisonment for the unjustifiable and un-provoked killing of the late Lawrence Matadi...."

The circumstances attending this case, which have been detailed in this opinion, compel consideration of one issue: *"whether appellant/criminal defendant tried for a capital offense, was adequately represented consistent with the requirements under the laws of the land?"*

Review of certified records transmitted to this Court shows that after prosecution rested with production of evidence, appellant took the stand in his own defense. In his testimony in chief, this is what appellant told the court and jury:

"...lt happened on December 30th 2005 when I came from selling...I took bath and.... went to Junior's house. Junior said: "Lawrence, we are going to Red Light today; they hurt one of our brothers called Moses; it's his place I am going" as his sister followed him. This is how I followed Junior. We got to the car turning point which is Seventy-Second (721. Then I saw the cab man and I asked him "brother, are you going back to Red Light?" He told me "I do not have plenty passengers; so I am not going. But if you want to go, you will [have to] charter the car." I said that I didn't have money to charter car. One lady came and told the cab man, "if anything, I will charter the car. When I charter, the children will pay my money to me." This is how the cab man said we should sit in the car and go."

"We sat in the car and waited and it was going to 9 O'clock [p.m.] and we couldn't see the cab man. When he came, he said he was not going anywhere again; that we should get down from the car. So Junior and myself got down from the car. I told the driver "you never wanted to carry us; why did you waste our time?" From there, I said to him "you are playing fun out of us." This is the time we were walking on the road talking to each other.

Then the cab man said that we are stupid; I told him we are not talking stupid thing. Then he [the cab man] jumped out of the car and followed us on the road to go fight. He slapped me and my torch light dropped. Then we started fighting. While we were fighting, it was at that time he picked up the knife.

[Then] he juked me with the knife on my face. Then I said oh... but you juke me " He dropped the knife he juked me with. Then I took the knife. This is how he was rushing to me and the strength he got was big pass me. Then I said, "this man is coming to me." Then I defended myself; I juked him with the knife too...."

When he rested with his testimony in toto, appellant was asked by the trial jury the following questions:

Ques: "Mr. witness, I heard you saying that the [deceased] was the first to jump you [to fight]. My question to you is this: do you believe that we have law and order?"

Ans: "Yes, I believe we have law and order."

Ques: "If yes we have law and order, do you think it was preferable [that] at the time the man jumped to hold the instrument he juked you with to take [said instrument] to the law?'

Ans: "At that time the fighting was serious; so [there was] no chance to go to [the] law."

Ques: "In your testimony [in chief], you told us that the deceased had weight more than you and you said he was the first person to stab you with the knife. Can you [show] where he stabbed you

with the knife?"

Ans: "Yes, on my face."

Following these questions to the appellant, defense counsel all of a sudden made the following submission:

"Counsel for defendant waived re-direction of the witness since indeed he [defendant] told the court and jury that the deceased first attacked the defendant and the defendant resisted the attack."

Clearly from his affirmative testimony, appellant admitted to the act of stabbing the deceased with a knife during the fight. But appellant did say the deceased first stabbed him, the appellant, and the said deceased, in appellant's own words: *"was rushing to me and the strength he got was big pass me. Then I said, this man is coming to me. Then I defended myself; I juked him with the knife too...."*

Generally speaking, *"a person is justified in using a reasonable amount of force in self defense if he or she believes that the danger of bodily harm is imminent and that force is necessary to avoid this danger."* Black's Law Dictionary (Eighth Edition). But self defense is an affirmative plea where the accused admits to committing the homicide, as in the case at bar.

Consonant herewith, this Court recognizes that not every homicide is a murder. According to Black's Law Dictionary (Eighth Edition), *"a defendant's assertion of facts and arguments* [in self defense], *if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true "* The Dictionary as referenced also provides for both imperfect and perfect self defenses. Accordingly and under in perfect self defense, force is used by one who "accurately appraises the necessity *and the amount of force to repel an attack"; whereas imperfect self defense obtains when an individual makes "an* honest but unreasonable mistake that force is necessary to repel an attack. In some jurisdictions, such a self defender will be charged with a

lesser offense than the one committed."

Here in our jurisdiction, self defense has long been held as a principle of legal defense in homicide cases. As a principle, self defense was further enunciated in Kpeh-You v. Republic 11 LLR 108, 114 (1952). Therein, this Court said:

"It is a well settled rule of law that every person has a right to defend himself against aggression, and may even take a life in such defense where the surrounding facts and circumstances fall within the requirements of the law.... To justify the exercise of this right, it is imperative that the person defending himself, or the one being defended, be in imminent danger; for mere apprehension will not justify the taking of life in self defense. Moreover, there must be no means of escape from the aggression."

Speaking further, the Supreme Court held:

"In order that the homicide may be excusable on the ground of being in defense of another, the defendant must show, according to one view, that the killing was actually necessary, not merely he had reasonable ground to believe that the act was necessary, not merely that he had reasonable ground to believe that the act was necessary, and that he had no other way to prevent the threatened acts of the deceased." lbd. 114.

Both in appellant's testimony during trial as well as the submission made by the defense counsel, appellant admitted to stabbing the deceased. Appellant however told the court that the deceased slapped him and fighting ensued. Appellant also told the court that while he and deceased were fighting, it was the deceased who allegedly picked up a knife and hit him [the appellant] on his face; that it was at that stage when the deceased had dropped the knife but yet rushing on him that appellant, in apparent fear of the size of the deceased, who was rushing on him, he [appellant] stabbed the deceased. The deceased, in appellant's own words was "big pass me". Then I said, this man is coming to me; then I defended myself; I juked him with the knife too."

Having carefully reviewed the records certified to us, and also during argument before this Court, we could not to conclude that appellant was adequately represented in these criminal proceedings. And where legal representation is established to be in adequate in a criminal trial especially on charges in the nature of a capital offense, as in the case before us, affirmation of conviction under said circumstances, would violate the letter and spirit of article 20 (I) of the Liberian Constitution (1986), which, inter alia, mandates as follows:

"…In all trials, hearings, interrogatories and other proceedings where a person is accused of a criminal offense, the accused shall have the right to counsel of his choice; and where the accused is unable to secure such representation, the Republic shall make available legal aid services to ensure the protection of his rights." [Emphasis supplied].

Additionally, our Criminal Procedure Law), I L.C.L. Rev., title. II, section 2.2 (1) (1973), safeguards the inviolable right of a criminal defendant to representation by legal counsel at every stage of proceedings. The law stipulates that:

"In all criminal prosecution, the accused shall enjoy the right to be represented by legal counsel at every stage of the proceedings from the time of arrest or, where no arrest has been made, from the initial appearance and submission of the accused to the jurisdiction of the court. The right continues through appeal and post-conviction proceedings, if any."

But upon careful perusal of certified records in this case, it is revealed that a writ of arrest issued out of the First Judicial Circuit, Criminal Assizes "A" For Montserrado County was served on the person of appellant on March 25, 2006, evidenced by the Sheriff's returns, dated March 27, 2006. From the date appellant was brought under the jurisdiction of Criminal Court "A" through service of precept on March 25, 2006 up to and including August 18, 2006 when the murder case was assigned for hearing, a period more than one hundred and forty (140) days, the records are void of showing that appellant had any benefit of a legal counsel of record.

Even the notice for hearing thereafter was served on the appellant himself as further indicated by the Sheriff's returns dated August 28, 2006. As per our records, evidencing as to the first time appellant was accorded a defense counsel was August 30, 2006, twelve (12) days after the first notice was issued by the court for hearing.

In fact following his appointment as defense counsel by the trial court, Counselor Elijah J. Cheapo on said, made the following submission:

"The defense counsel says that he is not prepared to commence this trial for reason that he is not acquainted with the accused and the case; that is to say, defense has not interviewed the defendant and witnesses....

"Further counsel moves this court to grant him continuance so that he could put up an adequate defense for the defendant after the State supplies the defendant through his counsel with the list of their witnesses and other evidence they may have which is permitted under the principle of bill of particulars...."

One clear indication that appellant was inadequately represented is demonstrated in the interesting submission the defense counsel made following cross examination and jury questions to the appellant. Seemingly uninformed as to the substantive facts which could inform the defense of his client, the defense counsel, made the submission which we earlier referred to; that is:

"Counsel for defendant waived re-direction of the witness since indeed he [defendant] told the court and jury that the deceased first attacked the defendant and the defendant resisted the attack." [Emphasis Supplied].

By this sort of representation, this Court wonders whether the defense counsel ever interviewed his client as a necessary means of preparing and mounting a vigorous defense in favor of appellant. This Court is also tempted to ask whether the defense counsel was hearing his client for the first time admitting to stabbing

the deceased when the appellant took the stand. These notwithstanding, and amazingly, the defense counsel at the close of the trial requested the trial court to charge the jury on such provisions of our Criminal Procedure Law as sections 2.1, 25.5 and 25.7, respectively. The defense counsel also amazingly requested the trial tribunal to draw the jury's attention to the Second Optional Protocol of the International Covenant on Civil and Political Rights, which instrument seeks abolition of the death penalty and imposes a duty, at the minimum, not to execute any such penalty.

We are also stunned that the defense counsel, up until he appeared before this Court of final arbiter, mentioned nothing about the legal principle of self defense in favor of appellant.

The facts in the case at bar are clearly analogous to those in *Rogers v. Republic.* In the *Roger* opinion delivered during the October 2008 Term of the Supreme Court, Mr. Justice Korkpor,Sr., speaking for this Court without dissent, commented on the long held principle object of criminal prosecution, enunciated in *Gauhoe & Coyzoe v. Republic,* 10 LLR 204 (1949). Justice Korkpor said:

"The prime object of all criminal prosecution is to ensure that justice is done. This Court has held that when neither the defense nor the prosecution in a criminal case exercise due care, diligence, and legal astuteness in protecting its client's or the state's interest, the Court will reverse a conviction and remand the case for new trial."

We hold that the defense counsel's reliance on the laws as cited provisions in defense of appellant were largely if not totally unsupportive of self defense as appellant's primary legal reliance. We hold further that the defense application made to the trial court to charge the jury on laws ineffectual to the self defense as appellant primary defense in the face of his admission to stabbing the deceased, combine to compel a finding by this Court that the appellant, on trial for the heinous crime of murder, and where convicted will be sentenced to life imprisonment at the minimum, was inadequately represented. In our opinion,

defense counsel unarguably demonstrated acute lack of legal aptitude required by our law in defense of person particularly charged with a capital offense.

Having observed the numerous irregularities mentioned herein and others not herein referenced, obtaining in the trial of this case, this Court is reluctant to affirm the judgment rendered in the court below; said judgment is therefore reversed and the case ordered remanded with instruction to the judge presiding therein to resume jurisdiction and hear this case *de novo*.

The Clerk of this Court is ordered to send a mandate to the court below to give effect to this judgment. AND IS HEREBY Under self defense as an affirmative plea, generally speaking, SO ORDERED.
REVERSED AND REMANDED.

Elijah J. Cheapo of the Montserrado County Defense Team, appeared for appellant. Solicitor General Tiawon S. Gongloe and Yarmie Q. Gbeisay, Sr., of the Ministry of Justice, appeared for appellee.