

**Prince Mayango** of Monrovia Central Prison, City of Monrovia, Liberia  
APPELLANT Versus Her Honor **Evelina Z. Quaqua**, Assigned Circuit Judge, First  
Judicial Circuit, Criminal Assizes "E" and the Ministry of Justice, all of the City of  
Monrovia, Liberia APPELLEES.

**LRSC 32**

APPEAL. JUDGMENT REVERSED

Heard: April 27, 2010 Decided: August 18, 2010

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

At age forty seven, Prince Manyango was arrested and indicted for the crime of rape.  
Below is the indictment.

*"The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not that the defendant, Prince Manyango, committed the crime of Rape, a felony of the first degree to wit:*

- 1. That on April 25, 2009, at about 3:00 pm, the defendant, Prince Manyango, did have sexual intercourse with the victim, Pinky Dennis.*
- 2. That the defendant, Prince Manyango, called the victim, Pinky Dennis, into his house in Thumps-Up community, Caldwell, Montserrado County, Liberia to eat, and upon the victim entering the defendant's house, the defendant carried the victim to his room, forcibly pushed her on his bed, and penetrated the victim's vagina with his penis.*
- 3. That the defendant, Prince Mayango, whose age is 47 years, did intentionally and unlawfully penetrate the vagina of victim, Pinky Dennis, whose age is 14.*
- 4. That at the time of the relevant act, victim, Pinky Dennis, was less than 18 years old, and the defendant, Prince Mayango, was 18 years of age or order.*
- 5. That the defendant, Prince Mayango, age 47, on April 25, 2009, at about 3:00 pm, did force 14 years old victim, Pinky Dennis, onto his bed and forced her to have sexual intercourse with him by penetrating her vagina with his penis, thereby committing the crime Rape. The victim bled extensively and was immediately rushed to MSF (Island Clinic) for treatment but due to her critical condition she was transferred to the John F. Kennedy Medical Hospital where the victim Pinky Dennis was given full medical examination and treatment.*

6. *Sexual intercourse means penetration, however slight, of the vagina, anus or mouth or any other opening of another person by the penis; or, penetration, however slight, of the vagina or anus of another person by a foreign object or any other part of the body (other than the penis).*

7. *That the act of defendant, Prince Mayango, is contrary to: 4LCLR, Title 26, section 14.70 (1)(a)(0 and 4LCLR, Title 26, section 14, 70(1)(b) of the statutory laws of the Republic of Liberia, and peace and dignity of the Republic of Liberia.*

TRUE BILL IGNORAMUS *Witnesses:*

1. *Pinky Dennis*
2. *Virginia Wright*
3. *Police Officer to be identified*
4. *Medical Doctor to be identified*
5. *Other witness to be identified*

*Viola Roberts*

*Forelady of Grand Jurors*

*Samuel K. Jacobs, Esq.*

*County Attorney, Mo. Co. RL.*

On July 3, 2009 the judge of criminal Court E, the Special Court constituted to hear rape cases, issued notice of assignment for the arraignment of the accused on July 7, 2009. In the absence of counsel defendant was served the notice of assignment which he signed on his own behalf. When the case was called on July 7, 2009 as per the notice of assignment defendant was brought to court from jail and the indictment ordered to be read to him after which he pleaded not guilty. After the defendant had entered his not guilty plea the trial judge instructed the clerk to ascertain from the defendant whether he had a lawyer to represent him in the case. He answered in the negative and requested that he be allowed seven days to find a lawyer through the assistance of his uncle. Defendant said he had no confidence in the public defense team to represent his interest. The court in granting the request said, "Since the law prevailing provides that the court is under an obligation to find out and supervise how cases are processed before this court, Mr. Clerk you will, after seven days ascertain from the prison superintendant as to whether or not the lawyer the defendant spoke about has been secured. And is so ordered."

The case file is devoid of any information as to whether the clerk contacted the prison superintendant to determine whether or not defendant had secured a lawyer. But in a

letter addressed to Mr. Elijah Y. Cheapoo, Head of Public Defense Team, it was stated by the judge's directive as follows:

*"September 23, 2009*

*Cllr. Elijah Y. Cheapoo*

*Head, Public Defense Team*

*Temple of Justice Monrovia, Liberia*

*Cllr. Cheapoo:*

*In Re: Republic of Liberia....Plaintiff Versus Prince Mayango....Defendant. Crime: Rape*

*By directive of Her Honour Evelina Z. Quaqua, Assigned Resident Circuit Judge, Criminal Court "E" for Montserrado County, Republic of Liberia, sitting in its August A.D. 2009 we hereby forward to you copy of above case file received from the GBVS Unit and to further inform you that during the pre-Trial Arraignment, the defendant informed the Court that he is indigent and hence cannot afford a lawyer to represent his legal interest. You will also find the accompanying pre trial conference order which is scheduled for the 30th instant at 10:00 am.*

*Best regards,*

*Very truly yours,*

*Moses C. D. Wesseh, Sr. Clerk, Criminal Court "A"*

On the same September 23, 2009 when the court assigned the defense team to represent the defendant, the said court issued citation for a pre-trial conference to convene on September 30, 2009, a week after the defense had been assigned as counsel for the defendant.

On September 28, 2009 the defense team filed a pretrial motion to dismiss the indictment stating several grounds. We shall quote only count three of said motion:

*3. "And also because movant object to the indictment and the photographs, in that the minutes of this court for July 7, 2009, page six (6) thereof shows that the movant was not represented by counsel when the court read the indictment to him and he pleaded not guilty, before a lawyer was appointed by the court for the movant. For these additional reasons, the indictment and the photographs are fake and should be dismissed. Copies of the minutes of said court are hereto attached as exhibit "B" to form part of this motion."*

The prosecution's resistance to said count three (3) of the motion stated in count six (6) of the resistance as follows:

6. *"That still further to count five (5) above, respondent says that the right of a defendant to a lawyer or to be represented by a lawyer at the time of arraignment is not part of the indictment, and if the defendant is not provided with a lawyer, renders the indictment defective and a ground for dismissal of the indictment. Count one to four of the motion should be dismissed and the entire motion dismissed and respondent so prays."*

Arguments pro and con were heard and the judge ruled denying the motion to dismiss the indictment. Several other pre-trial proceedings were had after which the judge ruled the case to trial by jury. The prosecution produced six witnesses including the victim (private prosecutrix), two neighbors, police and medical professionals who testified to the allegations of rape laid out in the indictment. After the prosecution had rested its production of evidence and rested its case in toto, the defense team by and through one of its counsels entered a submission on the records which is herein quoted:

*"At this stage counsel for the defendant bring to the attention of this court the following application in keeping with our constitution and statutory provision. Counsel says to this court that the defendant is pleased to invoke Article 21(c) of the constitution of the Republic of Liberia, the right to remain silent which states and I quote, "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 he makes could be used against him in a court of law." Defendant through his legal counsel also make use of chapter 2 of the Criminal Law of Liberia which cause the right of the defendant that include privileges and duty of accused persons and 25.5 of the Criminal Procedure Law that causes the burden of proof to rest on the party that alleges the fact. Counsel says that these rules are all intended for the right of an accused person specifically in criminal cases. Counsel prays court for this application to be granted since indeed is provided and deeply rooted in law, especially the Constitution of Liberia and submits."*

At the conclusion of the defense counsel's submission, prosecution stated that it had no resistance or objection to defendant's right to remain silent.

The trial judge granted defendant's request to remain silent. By remaining silent the defense did not put forth any defense in support of the defendant's not guilty plea.

Counsels for the parties submitted legal memoranda. We find it quite interesting that the defense team that was pleased to exercise its constitutional right to remain silent, which said counsel interpreted to mean not only that the defendant would not testify but that he would waive the production of any other evidence, would now submit the following information under the heading FACTS in his legal memorandum which we

quote as follows:

## Defense Legal Memorandum

### FACTS

*"This is a case in which the defendant, Prince Mayango is accused of the crime of rape involving a female, Pinky Dennis, whose age is not certain because her indictment says initially 11, later 14 years after amendment of the indictment, and Doctor's report says she does not resemble 11 years old and the alleged victim says she is 15, but claimed that she was born November 29, 2002. The facts in the case are that according to the defendant the alleged victim, Pinky Dennis was passing and stopped at the defendant's house while he was sitting at the front of the building. The defendant was eating and the plaintiff asked the defendant for ten (10) Liberian Dollars which defendant gave to plaintiff, Pinky. The plaintiff insisted the defendant adds an additional amount of ten(10) Liberian Dollars and while in that conversation, plaintiff paused and said that she was feeling something pouring down between her legs. When attention of defendant was called to this, plaintiff was observed to be pouring with blood from between her legs. Defendant asked plaintiff whether it was her menstruation and she replied in the affirmative. Because of the continuous pull of blood from the plaintiff, defendant entered his house and brought diapers for the plaintiff to prop herself and advised that plaintiff go home to her parents for immediate attention. All of these took place outside of defendant's house. When the defendant was accused of rape by Madam Vera (Maimi) and other community members."*

We must ask here and now lest we forget. What was the aim or goal to be achieved by defense counsel when he included in his legal memorandum information or testimony which, the defense had earlier waived by choosing to remain silent when he had the opportunity to speak? What purpose would the second hand or hearsay information serve at that stage of the case? Why was the defense counsel testifying, and he was not even under oath? Must we assume that the said counsel forgot the evidence rule which says that the original or primary evidence must be produced unless it is proven to be lost or inaccessible? Why did the defense counsel decide to speak (belatedly) words that could have flown from the lips and certain knowledge of the living and accessible defendant himself? Why did counsel select to testify to facts that laid squarely within the certain knowledge of the defendant, while the defendant sat supinely in his dock? And why was this testimony offered after the trial court had ended the admission of evidence and was now proceeding to hear the arguments? Counsel could not legally add information or facts to the case that were never in the records in his summary of the facts of the case. Was there an objection or calling to a point when counsel for the defendant became a witness without notice and so belatedly in the trial? The record did not show.

In this jurisdiction the summary of the facts of a case must reflect the facts adduced at trial and are recorded on the minutes of court. The summary of the facts in his legal memorandum on behalf of his client who was "pleased to exercise his Art. 21 (c) right to remain silent" has no legal foundation in our practice. We must state that when a lawyer serves as a witness, he is placed under oath and testifies during the trial like every other witness. He does not testify after the fact. In the case at bar, all the facts that counsel included in his legal memorandum, things his client told him but which did not form part of the trial records, could not be brought into the case during the argument stage. And for doing so, we are persuaded to give some thought to the defendant's categorical statement on the day of his arraignment when he declared he needed time to find his own lawyer, he did not wish to be represented by the public defense team because he had no confidence in them.

Both parties submitted and argued their legal memoranda and the case was submitted to the jury after the judge's charge. They returned a unanimous verdict of Guilty. The defense noted exception to the verdict. The defendant was subsequently sentenced to life imprisonment.

In a six count bill of exceptions appellant pointed out the errors he alleged the trial judge made. We shall however address only count one of (1) of the bill of exceptions. In count one (1) the appellant assigned as error when the trial judge arraigned the defendant in the absence of counsel either of his choice or by court appointment pursuant to Article 21 (h) of the Liberia Constitution herein quoted:

*(h). "No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by a Grand Jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy.*

*(i) The right to counsel and the rights of counsel shall be inviolable. There shall be no interference with the lawyer-client relationship. 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."*

According to both provisions of the constitution cited supra, the defendant's rights are protected. This protection of the accused is pursuant to another provision which states that an accused person is presumed innocent until proven guilty beyond a reasonable doubt. Art. 21(h). No person accused of a crime as serious as rape which carries a life sentence should stand naked (without legal counsel) before a judge, prosecutors, officers of court and other interested parties to enter a plea to the charges made in the indictment. So important is the accused's right to counsel that upon his arrest and while in police custody, the law mandates that he/she be represented by counsel at every stage of the investigation. Art. 21(c) Liberian Constitution. These constitutional provisions are binding on all who administer justice in this land. It is amazing that on July 7, 2009 the trial judge, in collaboration with the prosecution, decided to bring the defendant forward for arraignment without even asking him if he had a lawyer of his choice. When the prosecution announced representation and there was no representation made on behalf of the defendant, the prosecuting attorney moved the court to have the indictment read to the defendant. The court went along. The defendant understood because of his background, a school teacher, so he entered a plea of not guilty. But let's suppose he was an illiterate. These provisions of law give no permit to a judge to treat defendants differently. All are equal or should be equal before the law. The judge erred. We hold however that in view of the defendant's not guilty plea, the absence of a legal counsel at his arraignment caused him no harm nor did it prejudice his case. Had he had a lawyer present he would have done exactly what he did without a lawyer, pleaded not guilty.

Victims have many rights under the laws of this country, and so do defendants also. But in these days of mob justice, the rights of victims have by far outweighed the rights of the accused. Let's take for example, a person suspected of thievery. The moment someone shouts rogue, the whole community takes up arm, rocks, sticks even matchets and any weapon they can lay their hands on and in hot pursuit of the suspect they all proceed. If the suspect is unlucky to be caught he is likely to be killed by the mob without any regard to his constitutional right to be heard before judgment. The authorities' acquiescence in the mob's murder of a fellow citizen and the citizenry acts as though the suspect had received his just reward. It is ironic that this same society that takes mob action against petty thieves to the extent of cracking their skull in full view of the public, this same society only whines or criticizes government for not prosecuting government officials for stealing public funds, and nothing more. In other words when a poor person steals, he is executed by the mob without a trial but when a rich person steals public funds to increase his riches, the mob says nothing or very little. There is no suggestion herein made that the mob should hustle white collard suspects to the police station. The point intended to be conveyed is that mob justice has been

administered only against some, and not others. This is not only lawlessness but unequal application of the mob's kind of justice." This lawlessness to be discouraged by government's intervention in order to protect the rights of the accused guaranteed under the constitution.

In the case at bar the victim reported that she had been raped. The person to whom she made the report alighted the whole community. The crowd descended on the accused at his house, the scene of the alleged crime. The mob hustled him, holding him by his clothes to the police station. By their action he had already been convicted. Laws need to be enacted against mob justice a justice system under which the mob assigns to itself the duties of arresting officer, jury, judge and hangman. This is lawlessness which ought to be outlawed and severally punished if committed by any group of persons who cannot prove self defense for their behavior. The public must be told that the penalty for stealing is not death and that penalties are preceded by trial and judgment.

A paramount issue of interest to us in this rape case is whether the parties were accorded equal justice. In other words, did the victim and the defendant receive equal treatment in court as is accorded each under the constitution? The answer is no. The first unequal treatment meted out to the defendant was the absence of counsel at his arraignment while the powerful Ministry of Justice counsel for the plaintiff was present and ready to proceed. The second was the judge's callous disregard of defendant's need for a period longer than the seven day's he had asked for to secure a lawyer. The trial judge should have known or reasoned that seven days was too short and then allowed the defendant a reasonable period of time, like thirty days. But she did not. The trial judge avoided any direct communication with the defendant in the dock after the arraignment proceeding. She devised a novel communication process by speaking to the defendant through the clerk of court, thus:

*"The Court: Mr. Clerk you are further to ascertain from the defendant in the dock whether he has a lawyer to represent his legal interest in this court. And so ordered.*

*Clerk's Report: Your Honor as per your order that we ascertain from the defendant whether he has a lawyer, we did ascertain from him and he replied, "I don't have a lawyer. I could get one later." Hence my report. And submit. The Court: you will further ascertain from the defendant when he intends to get his lawyer he is talking about for it is the obligation of both the court and prosecution to ensure that defendant have a free, fair and impartial trial. And is so ordered.*

*Clerk's Report: Your Honor, the defendant was told to better explain his statement that he does not*



*have a lawyer but it will be later as it is the concern of the court and persecution that he has a fair trial. In replying thereto, he said he would get a lawyer within seven (7) days. My report respectfully submitted.*

*The Court: the Clerk's report is hereby noted however Mr. Clerk you shall further ascertain from the witness in the dock as to how this information will be communicated to the court to enable the court to proceed to the pretrial conference that will guarantee that a trial date will be set. And so ordered.*

*Clerk's Report: Your Honor as per your order that we ascertain from the defendant as to his understanding for legal representation, he informed me that he will find a lawyer through his uncle as he does not have confidence in the public defense team and that such information will be passed on to the superintendent of Montserrado Central Prison, hence, my report. And submit.*

*(Our emphasis) The Court: since the law prevailing provide that the court is under obligation to find out and supervise how cases are processed before this court, Mr. Clerk, you will after seven (7) days ascertain from the prison superintendant whether the lawyer spoke about has been secured. And is so ordered. Matter suspended."*

We have no idea why the judge could not have asked the defendant questions directly. No doubt the defendant was at a loss also and perhaps depressed by the judge's attitude toward him. What happened to the rule that says that a judge should maintain a cool neutrality in any case over which he/she presides? Or the constitutional provision of "innocent until proven guilty?" In a criminal trial the judge must never aid the strong against the weak. If he or she does there can be no fair trial to brag about.

In addition to what we have opined supra with respect to the unequal treatment or dispensation of justice in this case is the fact that on the day of his arraignment, the defendant speaking to the judge through the clerk of court said that he would find a lawyer through his uncle's assistance as he did not have confidence in the public defense team. But not long after that pronouncement, the trial judge in the letter to the same defense team said that at the arraignment of the defendant, defendant said he was an indigent and hence could not afford a lawyer to represent him. That assertion was far from the truth, and we wonder why the defendant was misquoted. We also wonder why the judge brushed aside the defendant's wish not to be represented by the defense team because he had no confidence in the team? Can it be said that a fair trial was held where the defendant was forced to be represented by a legal counsel that he had no confidence in? We say no. Article 21 (i) which we quoted supra says that an accused person is entitled to a counsel of his choice and that if he cannot afford counsel, the state will provide him legal aid. The judge in this case would cite that provision of the

constitution in her own defense. But what good was expected to be derived from a lawyer-client relation in which there was no confidence? The judge would have played her role well if she had appointed an experienced lawyer to represent the defendant on a pro bono basis. There are still such lawyers in the profession today. If she had cared to accord the defendant the right to be represented competently and effectively against the prosecution's iron clad evidence and at the end the defendant was found guilty beyond a reasonable doubt, then and in that case this Court would have no hesitation in upholding the verdict of guilt. The judge should have respected his wish not to be represented by counsel he had no confidence in. Because that was not done, defendant's apprehension or fears about the defense team came to pass. We are of the opinion that the defendant was not adequately and effectively represented. An ineffective representation is tantamount to no representation and in the absence of representation for a defendant in a criminal case there can be no fair trial however straight forward the prosecution's case might be. We cannot therefore in good conscience uphold this judgment. It is a good thing for criminals to be brought to justice and the victim vindicated. But it is a bad thing when the defendant has been poorly and ineffectively counseled or represented during trial.

In view of the above it is our candid opinion that this judgment be reversed and the case remanded for a new trial. The Clerk is ordered to send a mandate to the judge at criminal Court "E" to resume jurisdiction and try this case de novo, that is to begin by inquiring from the defendant if he can afford a counsel of his choice, allowing him up to 60 days within which to secure counsel of his choice and if he cannot secure a counsel of his choice then said judge should assign a court appointed counsel, not the public defense team, to represent the defendant pro bono, or request the Chief Justice to assign him a lawyer. IT IS HEREBY SO ORDERED.

*JUDGMENT REVERSED CASE REMANDED*

*The appellant was represented by Counsellor Elijah Y. Cheapoo, Sr. of the Defense Counsel Team of Montserrado the appellee was represented by Counselors Yamie Quiqui Gbeisay, Sr. and M. Wilkins Wright.*