

**FELEKU**, Appellant, *v.* **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE TENTH JUDICIAL  
CIRCUIT, LOFA COUNTY.

Heard: April 29, 1982.

Decided: July 8, 1982.

1. A plea of not guilty by an accused puts into issue all the evidence that the State may have against the accused.
2. The burden of proof rests with the State to prove beyond all reasonable doubts the commission of the crime, the connection of the accused to the crime, and the evidence surrounding its commission.
3. Where the trial of an accused has been purposely concocted by the prosecution and the court aids the gross irregularities resulting into a denial of the basic rights of the accused, he should be granted relief from further denial of his liberties by a discharge without day.
4. The prolong detention of an accused without a hearing is a violation of his human right, his right to a speedy trial, and his right to the equal protection of the law.
5. Without a hearing initially by a circuit court, an appeal therefrom cannot lie. Jurisdiction over such a case cannot vest in the Supreme Court.

Appellant, who was tried and convicted of the crime of murder, filed in the trial court a motion for a new trial. The motion was granted and a new trial ordered by the trial court. However, while the new trial was still pending, the appellant's counsel filed a motion in arrest of judgment. The motion was resisted, argued and denied by the trial court. Final judgment was thereupon rendered and the appellant was sentenced to death by hanging. From this judgment, appellant announced an appeal to the Supreme Court.

The Supreme Court held that the judgment from whence the appeal was taken was null and void as the new trial ordered by the trial judge had not been conducted to warrant the filing of the unmeritorious motion in arrest of judgment. The Court opined that since there was no legal judgment rendered by the trial court, from which an appeal could have been taken, a new trial having been ordered but which had not been conducted, it (the Supreme Court) could not hear the appeal. The Court accordingly declined to hear the appeal. The Court noted, however, that it regarded the acts of the prosecution, the defense attorney and the trial judge as erroneous, irregular, illegal and violative of the rights of the appellant to a fair, speedy and impartial trial, and an abridgment of his liberty. The Court therefore held each of the counsel in contempt of court and fined each \$100.00. The Court also ordered the trial court to resume jurisdiction over the case and conduct a speedy trial.

*Raymond A. Hoggard* appeared for appellant. The Minister of Justice, *Isaac C. Nyephu*, assisted by the Acting Solicitor General, *Richard McFarland* appeared for appellee.

MR. JUSTICE MABANDE delivered the opinion of the Court.

When scientists compete, they do so for the advancement of knowledge and the prosperity of mankind. In the instant case, however, the contest of the counsel for the defense and the state implied an exhibition of an adventure burdened with gross inefficiency and negligence. In their demonstration of the want of minimum conformity with the law, they were aided by the court in denying the accused of his rights. They progressively adopted all forms and acts of trial irregularities violative of the rights of both the State and the accused.

In this case, the appellant was represented by the Lofa County Defense Counsel, in person of Edwin Clarke, assisted by Attorney Jallah K. Fasiann, while the State was represented by County Attorney Mohamed V. Kromah, assisted by Attorney John Best Kennedy. The trial was conducted by His Honour McDonald Krakue.

It is humiliating to our profession, but duty has compelled us to reveal the truth of what happened at the trial of Appellant Feleku at the Tenth Judicial Circuit Court, Lofa County. The appellant had been charged with the crime of murder.

Appellant Feleku was arrested in Zelowo Town, Lofa County, on February 2<sup>nd</sup>, 1971, for the murder of his girlfriend, Mama. During the November Term, 1971, of the Circuit Court for the Tenth Judicial Circuit, Lofa County, the trial of the Appellant Feleku commenced. The State produced a sort of evidence based on police interrogation of the accused. The accused himself took the stand and produced barely any material testimony or defense. However, we note that a plea of not guilty by an accused puts into issue all of the evidence that the State may have against that party. The burden of proof, therefore, still remained on the State to prove beyond all rational doubt the commission of the crime, the connection of the accused to the crime, and the evidence surrounding its commission. *Massaquoi v. Lowndes*, 4 LLR 260 (1935).

After the conclusion of the testimony and the submission of the case to the jury, a verdict of guilty of murder was brought against Appellant Feleku, to which he excepted and filed a motion for a new trial. The trial court ruled thus on the motion:

"The motion for new trial, having been taken into serious consideration by this court, and for the defendant to be given a fair and impartial trial, as to his guilt beyond all rational doubts, is hereby granted and priority will be given his case on the trial docket for the ensuing February A. D. 1972 Term of this Court."

Strange and ridiculous as it appears to the legal profession, in spite of this ruling, dated November 2, 1971, the appellant's counsel, on the 24<sup>th</sup> day of November, A. D. 1971, filed a motion in arrest of a judgment that did not exist, since the motion for a new trial had been granted by the trial judge.

The trial court however proceeded to ruled on the groundless motion. Hence, even though the new trial that was granted had not been heard, the court, on the 25<sup>th</sup> day of November, 1971, rendered a final judgment of conviction for murder against the appellant, sentencing him to death by hanging.

In all of these illegal and disappointing acts of irregularities, the court, the prosecution and the defense fully and happily participated. We have at least heard of Shakespeare's Comedy of Errors, but today the judiciary is confronted with Appellant Feleku's tragedy of errors.

The grief and anger of this Court was further provoked by the prosecution and the defense when an appeal was processed and filed before it by members of the National Bar Association, demanding the review of a trial that had never been had. It is evident to the Court that the prosecution and the defense purposely processed the purported appeal and argued before us that judgment be entered in their respective favours, only to mislead the Court and use it as a weapon in further encroaching on the liberties of the accused. We are of the opinion that where the illegal trial of an accused has been purposely concocted by the prosecution, and the court aids in the gross irregularities which result into a denial of the basic rights of the accused, he should be granted relief from further denial of his liberties by a discharge without day. The 12 years of confinement of the accused without being accorded the right to a fair and speedy trial was a denial of his fundamental rights to the equal protection of the law and freedom from oppression. This, we decry. *Joillia v. Republic*, 29 LLR 541 (1982), decided February 5, 1982.

The prolong detention of the accused without a hearing was violative of his human right, his right to speedy trial and his right to the equal protection of the law. Where an agency of society becomes so inhumane to an accused, it is the duty of the courts to grant him relief by freeing him from the oppressive powers of that society. In consonance with our duty to help save the country from chaos by the preservation of the rights and liberties of the people, we consider it necessary to reiterate to the prosecution that prolonged detention without trial is highly illegal, and to warn the said prosecution that such acts will not be countenanced by this Court. Where such acts are perpetrated by any trial court, in collaborated with the prosecution and the defense counsel, this Court, when called upon by the oppressed, shall bring him relief by ordering his immediate discharge without day.

When the judiciary, the only department of the government armed with the law to guarantee the liberties of all, join in such oppressive practices, society gets disillusioned with its machinery of justice. The indefinite detention of Appellant Feleku without trial, is considered an act of the court. This we sincerely regret. We cannot pardon the unlawful application of the law by any agency of government when the result of such lack of needed scientific legal skills oppresses the people. All lawyers, government lawyers not excluded, when they appear before the courts of this Republic to prosecute or defend a case, are arms of the judiciary. It is equally their duty to secure the maintenance of fairness and justice to all, as it is naturally obligatory on each of us to preserve his own good name.

We hold that the briefs of both the Ministry of Justice and appellant, being inconsistent with and immaterial to any issue in point, are hereby disallowed and dismissed.

This Supreme Court could have delved into the merits of this case and granted immediate adequate relief to Appellant Feleku, but the new trial ordered by the trial court has not yet been determined. This Court cannot therefore exercise appellate jurisdiction over the murder charge levied against Appellant Feleku. Without a hearing of the cause initially by a circuit court, an appeal therefrom cannot lie.

Hence, jurisdiction over the case cannot vests in the Supreme Court. We therefore decline to consider the appeal. *Pennob v. Brown*, 15 LLR 237 (1963).

If there is any remedy consistent with this opinion to be granted the accused, it is within the province of the trial court to give.

However, because of the negligent, unprofessional and illegal conduct of the trial of this case by County Attorney Mohamed H. Kromah of Lofa County and his assistant attorney, John D. Kennedy, as well as the then defense counsel of Lofa County, Edwin Clarke, and his assistant, Fasiann K. Jallah, they are hereby fined each the sum of \$100.00 dollars. We consider the manner in which they conducted themselves in their profession, and in the judiciary, in spite of all previous warnings, as contemptuous to the Court.

We are therefore of the opinion that this appeal, being contrary to the law of the land, the same should be and is hereby declined. However, given all that we have said above relative to the judgment of the trial court being null and void, since the said judgment was rendered after the trial court had granted the appellant's motion for a new trial, vacated the judgment and ordered a new trial, we hold that there was no valid judgment from which an appeal could have been taken. The Clerk of this Court is also hereby commanded to send a mandate to the presiding judge of the Tenth Judicial Circuit Court, Lofa County, to resume immediate jurisdiction over this case and give it priority consideration on the trial docket. And it is hereby so ordered.

*Appeal declined; judgment reversed.*

