

THOMAS KAIFA, Appellant, v. REPUBLIC OF  
LIBERIA, Appellee.

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

Argued April 4, 1960. Decided May 6, 1960.

1. In jail delivery proceedings the discretion of the judge must be exercised with respect to the constitutional rights of the accused without endangering the safety of society.
2. Jail delivery is not a trial, and the release of a prisoner from detention is not an indication of innocence but merely a means provided by law to protect prisoners from being buried away in detention tombs and forgotten; its main purpose is to force a hearing or examination of the charge upon which the prisoner is held without bail in offenses other than capital crimes.
3. Prosecutors owe a duty to each fellow citizen as sacred and responsible as that which they owe to the State; and it is gross dereliction of duty for a prosecutor to hold a prisoner without benefit of bail indefinitely without bringing him to trial.
4. Bail cannot constitutionally be granted to a prisoner who has been regularly committed to jail after having been duly charged with commission of a capital offense.

On appeal from rulings denying applications for jail delivery and bail in a prosecution for murder, *rulings affirmed.*

*A. Gargar Richardson* for appellant. *The Solicitor General and Assistant Attorney General Gardiner* for appellee.

MR. JUSTICE PIERRE delivered the opinion of the Court.\*

In August, 1958, Thomas Kaifa, the appellant herein, was arrested for murder, and incarcerated in the Central Prison in Monrovia, pending indictment and trial. It would appear that, after appellant's arrest and imprisonment, although more than two sittings of the grand jury

\* Mr. Justice Harris was absent because of illness and took no part in this case.

met and adjourned, no indictment was found against him, but he still continued to languish in prison, deprived of his liberty and without benefit of bail. It was in these circumstances that Counsellor A. Gargar Richardson filed a petition for jail delivery on behalf of the appellant. The State resisted the application and the judge entered the following ruling denying same:

"The court says that the statute controlling the issue now at bar provides that a defendant arrested for an indictable offense who is not indicted at the end of the next succeeding term after his arrest shall be discharged from custody. From an inspection of the petition it is observed that the petitioner has failed to set forth therein the time of his arrest so as to enable this court to pass upon the merits or demerits therein contained. Aside from this, it is set forth in our Circuit Court Rules, that the prosecuting officer may, in resisting applications of this nature, show reason why the prisoner has not been indicted; and if those grounds are feasible and of legal efficacy the prisoner may not be discharged. In view of the foregoing rules of law and in consideration of the reasons set forth in the resistance made by the prosecution the petition is denied. Nevertheless it is further ordered that the cause which has led up to the defendant not yet being indicted be tried by the next term of court, and if there are any just causes he should be dealt with accordingly."

Exceptions were taken to this ruling, and appeal was announced therefrom by the appellant's counsel.

In the August, 1959 term of court, that is to say the second term of court after jail delivery had been denied, the accused, while still in prison without an indictment having been found against him, applied for bail. The State again resisted the application and again the judge denied it. Appeal was taken from this ruling also; hence the two rulings before us for review.

We would like to record, in addition to the position taken by the judge in denying the petition, that Rule 24 of our Circuit Court Rules provides as follows:

"On the last day of the trial term and after discharge of the Grand Jury, should there be persons in prison charged with the commission of crimes other than capital offenses, against whom no indictment has been brought, the Court may upon application, and in its discretion, grant a general gaol delivery for such persons."

In jail delivery proceedings the judge must seek to respect the constitutional rights of the accused without endangering the safety of society or abusing his discretion. Jail delivery is not a trial, and the release of a prisoner from detention is not an indication of the prisoner's innocence, but merely a means provided by the law to protect prisoners from being buried away in detention tombs and forgotten, its main purpose being to force a hearing or examination of the charge upon which he is held without bail for an offense other than a capital crime. Under our Constitution he is entitled to a speedy trial; so it is an abrogation of his constitutional rights to detain him indefinitely without an examination or a trial. There have been instances where applications for jail delivery have been sufficiently meritorious to warrant the prisoner's release. The disposition of such applications is left to the sound discretion of the judge acting within the scope of the law.

There are generally two categories of crime—misdemeanors and felonies. Felonies are divided into capital and non-capital offenses. The Constitution provides that all prisoners shall be bailable by sufficient sureties unless for capital offenses. Murder falling within the class of capital offenses, the judge was left no alternative when he denied the application for bail. Our law provides, and it is the procedure known and followed in our courts, that upon arrest for a capital offense the accused has a

right to apply to a court of first instance. There the State's witnesses will be examined in the presence of the accused, with a view of ascertaining whether the proof of the commission of the crime is clear or the evidence of the accused's guilt strong. If the court of first instance so finds it will commit the accused to prison and report the findings to the superior court which has trial jurisdiction; if the court of first instance finds to the contrary, the accused may be released on bail pending trial for a less offense.

We inquired of appellant's counsel whether these necessary legal steps had been taken in his client's interest, and were surprised to learn that no such effort had been made by him to put the machinery of the law into operation in the interest of justice and in fairness to the accused. But as remiss as the accused is shown to have been in asserting his legal rights, the prosecution cannot escape a great amount of blame, even in face of the obvious neglect of duty on part of the counsel for accused. No good and conscientious prosecutor, realizing the sacredness of his duty, would hold an accused citizen in prison, even for a capital offense, for more than eighteen months, as was done in this case, without either bringing an indictment charging the crime for which he was arrested, or realizing that he could not successfully secure or maintain conviction therefor, taking the necessary professional steps to try the prisoner for a lower degree of crime, or release him from further unlawful detention. In our Code of Moral and Professional Ethics, on page 1 of the pamphlet of rules governing procedure in our courts and regulating the moral and ethical conduct of lawyers, under the heading *The Lawyer's Duty to His Client*, we have Rule 4, which reads as follows:

"Having undertaken the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused, the lawyer shall exert his very best professional effort; otherwise, innocent persons,

victims only of suspicious circumstances, might be denied proper legal defense. Having undertaken each defense, the lawyer is bound by all fair and honorable means to present every defense that the laws of the land permit, to the end that no persons may be deprived of life, liberty, or privilege but by due process of law.

"The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible and utterly unprofessional."

Could any more be said to make lawyers realize their duty to a client? Or could we more strongly emphasize to prosecutors, that their greatest and most valuable contribution to the State is not conviction, but loyal, conscientious and efficient prosecution of crime? All good prosecutors should know that they owe a duty to each of their fellow citizens as sacred and responsible as that which they owe to the State. Besides, it is gross dereliction of duty for a prosecutor to hold a prisoner without benefit of bail indefinitely without bringing him to trial.

According to Article I, Section 7th of the Constitution of Liberia:

"No person shall be held to answer for a capital or infamous crime . . . unless upon presentment by a grand jury; and every person criminally charged, shall have right to be seasonably furnished with a copy of the charge, to be confronted with witnesses against him,—to have compulsory process for obtaining witnesses in his favor; and to have a speedy, public and impartial trial by a jury of the vicinity."

If any prosecutor has doubts as to the scope of the constitutional responsibility his office imposes upon him, let him seriously consider anew this provision of the basic law of the land. Under these terms of the Constitution, per-

sons held for capital offenses, as in the appellant in this case, are entitled to be charged by a grand jury. They are also entitled to be seasonably furnished (that is to say, as early as it is possible, for it to be done after arrest) with a copy of the grand jury's indictment against them. They have a right to be confronted with the witnesses who will testify for the State against them. They are also entitled to compulsory process to be issued by the State, when and if necessary to bring witnesses to testify on their behalf. And most important of all, the Constitution guarantees them a speedy, public and impartial trial by a jury of the vicinity. All of these safeguards are guaranteed by the basic law to insure protection of the rights and privileges of citizens; and when any one of the several of these enumerated rights is infringed, the victim of such infringement suffers as grievous a wrong as the founders of this Nation suffered in the land wherein they were denied these basic human rights.

Although we cannot condone the conduct of the prosecutors in detaining indefinitely and without indictment a prisoner accused of murder, nevertheless it would not be lawful for us to reverse the rulings of the judges who respectively denied the petition for jail delivery and the application for bail. We therefore affirm both of these rulings.

*Affirmed.*