

BAIGYEN, Appellant, v. REPUBLIC OF LIBERIA,
Appellee.

ON APPEAL FROM A JUDGMENT OF THE CIRCUIT COURT (JUDICIAL
CIRCUIT NOT INDICATED).

Argued April 25, 1967. Decided June 16, 1967.

1. When the prosecution, certain that appellant was not fairly represented at the trial for murder and doubtful of the legal premises upon which the verdict of guilt was based, applies to the Supreme Court for a reversal of judgment and a new trial, the Supreme Court will entertain the application.
2. In view of its spirit of dedication to the best traditions of the legal profession, and the honest desire shown for justice under the law and for fairness, the Supreme Court will, in accordance with the urging of the prosecution, reverse a judgment affirming a finding of guilt and order the case remanded to the lower court for a new trial.

After trial and conviction by a jury finding the defendant guilty of murder, the prosecution moved by affidavit to have the verdict set aside and the case retried, because of incompetence of defendant's trial counsel and the trial record itself. Based thereon, the prosecution expressed great doubt as to the justice of the verdict. The *motion*, in which appellant's counsel joined, was *granted*, the verdict was set aside and a new trial ordered.

Nathaniel B. Seton for appellant. *Solicitor General Nelson W. Broderick* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

When the above-entitled cause was assigned for hearing, appellee's counsel submitted for the consideration of the Court an affidavit which reads:

"1. Appellant was charged with murder, allegedly by willfully neglecting to support, nurture, and sustain one Zulu, as a result of which Zulu died from want of medical attention and means of sustenance

and support. Zulu was not a minor. He was a matured person. Notwithstanding, the evidence adduced at the trial does not show that appellant sustained such relation with Zulu that imposed upon appellant that legal duty and obligation to support and maintain Zulu.

"2. Is Zulu dead? The only presumption of Zulu's death was predicated upon the fact that the bones of a human being were found in a pineapple orchard near the home of appellant where decedent last resided. Witnesses said that the clothes that decedent was wearing when they last saw him were also found near the human bones. There was no expert medical testimony to identify the bones as those of Zulu or that they were in fact the bones of a male being. Appellee submits that the corpus delicti was not established beyond a reasonable doubt. We are of the opinion, therefore, that the trial judge, Hon. Roderick N. Lewis, should have on his own motion awarded a new trial.

"3. Appellee submits that upon a review of the appeal, it is evident that appellant Baigyen was not represented by competent counsel. One attorney Harry F. T. Nayou, of the so-called Allied Law Association, Grand Gedeh County, counsel for appellant in the court below, did not take the jurisdictional steps necessary for the appeal to be cognizable before this Court. The records in the appeal do not indicate that he excepted to the verdict of the empaneled jury. He did not file a motion for new trial, an indispensable requirement for an appeal to the Supreme Court. The purported six counts bill of exceptions did not raise any issue of law or fact and exceptions thereto. Moreover, certain allegations contained in the bill of exceptions are not supported by the record certified to this Court.

"4. Appellee submits that the fact that appellant

failed to file a motion for a new trial is good and legal grounds for a motion to dismiss the appeal and sustain the conviction, but in good conscience refuses to do so, for this would be iniquitous because the crime is not only a felony but a capital offense punishable with death by hanging.

“WHEREFORE, in view of the above, appellee is of the opinion that appellant did not obtain a fair trial and respectfully submits that the verdict and judgment of the trial court should be set aside and a new trial awarded.

“Dated this 23rd day of April, 1967.

“Respectfully submitted,

“REPUBLIC OF LIBERIA, Appellee

“By: [Sgd.] NELSON WM. BRODERICK,
Solicitor General, R.L.

[Sgd.] JAMES A. A. PIERRE,
Attorney General, R.L.,

“Of counsel for Republic of
Liberia, Appellee.”

Nathaniel R. Seton, counsel for appellant, offered no opposition to the affidavit of appellee quoted; rather, he acquiesced to the said affidavit in urging the case to be remanded, so as to be tried in keeping with the law.

Usually we do not favor the remand of causes except for justifiable reasons, as it has a tendency to impose undue hardship on all parties concerned, and also, in many cases, creates a duplication in the work of this Court.

Appellee's affidavit under consideration presents a rare phenomenon. We observe appellee pressing for the remand of this case because of certain alleged irregularities, legal blunders and omissions committed during and after the trial of the case in the lower court by appellant's counsel. This evinces the spirit of conscientiousness and good intention on the part of appellee's counsel to do that

which is right, as far as it is humanly possible. This spirit to do that which is right should characterize the act of every member of the legal profession, thereby invoking divine guidance and blessing on the honorable discharge of so sacred an obligation as that of a lawyer.

In view of appellee's affidavit praying that this case should be remanded because "appellee is of the opinion that appellant did not obtain a fair trial," there is no alternative but to reverse the judgment of the trial court and remand the case, with instructions that it be taken up and disposed of according to law during the term of court following the receipt of the mandate of this Court in the above-entitled cause. And it is hereby so ordered.

Reversed and remanded.