

GEORGE TEHN GARLO, Appellant, v.  
REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,  
GRAND GEDEH COUNTY.

Argued November 3, 1970. Decided January 22, 1971.

1. If no remedial process is sought after a request for continuance has been denied, objection to the ruling will be deemed waived.
2. Rights of persons charged with a crime will be zealously guarded by the Supreme Court.
3. Where the defense in a criminal case has not been conducted with due care, diligence, and astuteness, a judgment of conviction will be set aside, and a new trial ordered, on the ground that the defendant did not receive a fair and impartial trial.

Appellant was indicted for murder, tried by jury, and found guilty. He appealed from the judgment of the court sentencing him to death. During the appeal, after observing irregularities in the conduct of the case by counsel for defendant, the Supreme Court solicited the opinion of the Solicitor General as to whether defendant's representation was by competent counsel. The Solicitor General replied that he did not think so. The Supreme Court held to its imposed rule requiring it to zealously safeguard the rights of persons and *reversed* the *judgment* of the lower court, ordering the *case remanded* thereto for retrial.

*David Y. Swengbe, Sr.*, and *David D. Gbala* for appellant. The *Solicitor General* for appellee.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

Appellant in these proceedings was indicted for the crime of murder by the grand jury of Grand Gedeh County.

Counsellors David Y. Swengbe, Sr., and David D. Gbala were retained and undertook the defense of defendant. The trial was held, with Hon. Dessiline T. Harris presiding by assignment, which resulted in a verdict of guilt, and the judgment of the court sentencing him to death.

To this verdict and judgment defendant excepted and perfected an appeal to this Court on a bill of exceptions containing 3 counts.

During the argument before this Court, counsel for appellant strenuously contended that the trial judge erred in refusing to grant a motion for continuance so as to afford appellant an opportunity to submit himself to psychiatric examination to establish that he was insane at the time of the crime.

This Court, in *Hill v. Hill*, 13 LLR 257 (1958), ruled that where a request for continuance is denied, if no remedial process is sought objection to the ruling will be deemed waived.

The record before us is void of any indication made for an application for remedial process to review the ruling denying the motion for continuance. We regard this negligence to be a grave dereliction of duty. More than this, it was argued that the defendant was, however, examined by a psychiatrist and that the report was in the hands of the Superintendent of the County. At this point, the Court referred to its declaration in *Gauhoe et ano. v. Republic of Liberia*, 10 LLR 204 (1949), when it held that when neither the defense nor the prosecution in a murder trial exercised due care, diligence, and legal astuteness in protecting its client's or the state's interests, the Court will reverse a conviction and remand the case for a new trial.

This Court inquired of the Solicitor General whether, in his opinion, the appellant had been ably represented, and the Solicitor General, in the true role of a conscientious and open-minded prosecutor, replied in the negative.

The policy of this Court has always been to guard with zealous care the rights and liberties of litigants appearing before us, as was indicated in *Quai v. Republic of Liberia*, 12 LLR 402 (1951), when we held that a judgment of conviction of a crime will be set aside where it appears that the trial was not fair and impartial, and that an essential element of a fair and impartial trial of a criminal case is that the defendant be represented by competent counsel.

This Court, not being satisfied that defendant was represented in the court below by competent counsel, is unwilling to affirm the judgment of conviction.

The judgment of the court below is, therefore, reversed and the case remanded for a new trial, with instruction that should the appellant be unable to retain counsel, the court below will appoint competent counsel to represent him at the expense of the Government.

*Reversed and remanded.*