

MOMO KAMARA et al., Appellants, v. REPUBLIC
OF LIBERIA, Appellee.

MOTION "FOR RELIEF FROM JUDGMENT" IN AN APPEAL FROM
THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
GRAND CAPE MOUNT COUNTY.

Argued April 29, 1970. Decided June 12, 1970.

1. Provisions in the Civil Procedure Law are applicable to criminal as well as civil cases.
2. In order to move for relief provided by statute in cases of mistake, the mistake must be inadvertent, and not, as in the instant case, a mistake resulting from tactical trial error on the part of the attorney.

At the trial of the appellants charged with the crime of malicious mischief, their attorney stated his intention to put on a witness to rebut testimony given by witnesses for the prosecution. However, at the end of the prosecution's case, he specifically waived the right to present evidence and allowed the case to go to the jury, which found the defendants guilty. After judgment was entered against defendants, an appeal was taken. During its pendency, a motion was made "for relief from judgment," on the ground that waiving the right to put in evidence had resulted from a mistake inadvertently made by counsel. *Motion denied.*

Nete-Sie Brownell for appellant. *Solicitor General George E. Henriès* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

The present proceedings have grown out of a criminal action of malicious mischief, from an indictment drawn against appellants during the August Term, 1968, of the Circuit Court for the Fifth Judicial Circuit, Grand Cape

Mount County. At the time of their arraignment in the court below, defendants pleaded not guilty to the charge made against them. Thereupon, issue was joined and the case tried.

The prosecution at the commencement of the trial put witnesses on the stand in support of its position. During the testimony by witnesses of the prosecution, defendants' counsel stated for the record that he would put upon the stand a witness to rebut evidence given by one of the prosecution witnesses. In spite of this fact, when the prosecution rested, said counsel further stated: "For good and sufficient reasons, defendants waive evidence and submit the case through the jurors for argument." After due deliberation, the jury returned a verdict of guilty, assessing a fine of \$3,900.00 against the defendants, to be paid to the private prosecutor. Final judgment was thereupon rendered confirming the verdict of the jury, and in consequence of this sentence was passed. Exceptions were taken to the judgment of the court below and an appeal therefrom indicated. However, before its consideration by this Court, a motion was filed before us on March 7, 1969, entitled, "Motion for appellate court to grant relief from judgment of the Circuit Court, Fifth Judicial Circuit, Grand Cape Mount County, rendered November 20th, 1968."

The motion as filed enumerated substantially the same facts that have hereinabove been recounted. In addition to the above, counsel for appellants averred that a mistake was inadvertently made when counsel for defendants in the court below waived evidence of the defendants as above set forth.

It is the contention of appellants' counsel that the inadvertence alleged is an act curable by this Court by way of granting relief from the enforcement of the judgment, as rendered by the court below.

In support of this proposition appellants cited our Civil Procedure Law, 1956 Code, 6:890, 891; the Criminal

Procedure Law, 1956 Code, 8:390(b, c); and L. 1963-4, ch. III, §§ 4107, 5112, 5115.

In opposition to the motion, the appellee filed a three-count affidavit, in which it was contended that the sections quoted from both the new Civil Procedure Law and title 6 of the Civil Procedure Law did not constitute grounds upon which this Court could grant the relief sought, for they were nonapplicable in respect of criminal proceedings and, *a fortiori*, allude specifically to civil proceedings. We must here state that we are unable to go along with the prosecution in regard to the nonapplicability of these sections to criminal cases, practice, and procedure. In respect of proceedings in the appellate court, unless there is a specific exclusion of the applicability of the law as found in the Civil Procedure Law (be it the old or the new), it shall apply to both civil and criminal causes.

However, in the substantive application of this adjective law cited *supra*, we must hold that sections 890 and 891 are not applicable in respect of the cause at bar, for here we are concerned with whether or not the patent and overt avowal of attorney Perry, in respect of the nonproduction of evidence at the trial in the court below, is the inadvertence or mistake that the law contemplated as a basis for granting relief under the provisions of those sections. We must here hold that the error supposedly committed, though not overtly evident, is not the error contemplated by the lawmakers for the application of these particular sections. We are here dealing primarily with the supposed inefficiency of the attorney which, if taken to constitute error that would cause this Court to grant relief from the enforcement of a judgment, would have the net effect of creating a dangerous inroad into our practice and procedure.

Turning now to sections 5112, 5115, and 4107 above cited, we must hold that section 5112 relates to error in the transmittal of letters from the lower court to this

Court. Section 5115 is concerned with instances wherein this Court in a review of a cause permits a decision to be predicated partially upon points not raised in the court below but which are vital to the dispensing of transparent justice, although their inclusion before this Court constitutes plain error. Section 4107 is concerned with procedure allowable in the trial courts and has no legal application to matters before this Court.

In view of the above, we must hold that the grounds laid in the motion do not constitute grounds upon which the relief requested may be granted. In the circumstances, the motion is denied, and it is hereby so ordered.

Motion denied.