

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Arah Kamara of the City of Monrovia, Liberia.....Appellant)
)
Versus) APPEAL
)
Republic of Liberia, by and thru Golda Baker and Hester Baker)
..... Appellee)
)
GROWING OUT OF THE CASE:)
)
Republic of Liberia by and thru Golda Baker and Hester Baker)
.....Plaintiff)
) THEFT OF PROPERTY
Versus)
)
Arah Kamara of the City of Monrovia, Liberia.....Defendant)

Heard: November 23, 2023

Decided: February 7, 2024

MR. JUSTICE GBEISAY, SR. DELIVERED THE OPINION OF THE COURT

This appeal emanates from the March 28, 2014, ruling of the Resident Judge of the First Judicial Circuit Court, Criminal Assizes “C”, His Honor A. Blamo Dixon, on a criminal indictment for theft of property against the appellant, Arah Kamara.

The records show that during the May Term of the First Judicial Circuit Court, 2010, the Grand Jury of Montserrado County indicted the appellant, defendant in the court below, for the crime of theft of property on complaint brought by and thru Mr. M. W. Goda Baker and Madam Hesta Baker, private prosecutor and prosecutrix, respectively, representing the Intestate Estate of Elizabeth Moore-Johnson.

The indictment alleged principally that in 1977 and thereafter, the private prosecutor and prosecutrix acquired five hundred (500) acres of land out of a total of eight hundred (800) acres of land from their grandmother, Elizabeth Moore Johnson, in lower Virginia, Montserrado County, Liberia; that their grandmother hired the services of Arah Kamara, the appellant, being a licensed surveyor at the Ministry of Land, Mines and Energy, to conduct

survey services on her behalf from time to time, that in addition to payment received for services rendered, the appellant was given ½ lot of land as his own; that to the best knowledge of the private prosecutors, their grandmother sold three hundred (300) acres out of the eight hundred (800) acres, including the portion sold to the Government of Liberia for the construction of the road leading to the OAU complex, and the remaining five hundred (500) acres were given to the private prosecutors; that the private prosecutors entrusted to the care of the appellant/defendant their land documents, including the deed, map and diagrams for the eight hundred (800) acres of land; that at the outbreak of the civil crisis in Liberia, the private prosecutors sought refuge out of Liberia during which time the appellant/defendant, Arah Kamara, perpetrated his criminal act by selling the remaining five hundred (500) acres of land of the Elizabeth Moore-Johnson's Estate, using his knowledge as a registered licensed surveyor and being in possession of the mother deed, map and diagram to defraud the private prosecutors of Four Million United States (US\$4,000,000.00) Dollars being the value of the five hundred (500) acres of land allegedly sold; that the appellant/defendant's act is contrary 4 LCLR, Title 26, Sections 15.51 (a); 2.2(b); 5.61(b) and (g); and 15.54, of the statutory laws of the Republic of Liberia, and the peace and dignity of the Republic.

The records also show that prior to the indictment, a complaint was filed with the Ministry of Justice, upon which a preliminary investigation was held and thereafter, the defendant was charged with the crime of theft of property; that the investigation also established that Mr. Arah Kamara, the appellant/defendant had sold the property to several persons, and executed several transfer deeds to himself and some of his family members which totaled twenty-one (21) lots of land out of the Elizabeth Moore-Johnson's estate.

The records further show that the appellant/defendant was arrested in June 2010, and accordingly tendered a criminal appearance bond, consistent with law; that on March 11, 2012, the counsel for the defendant filed a four-count motion to dismiss the indictment against his client on ground that the defendant had not been tried beyond the statutory period of two consecutive terms of court since his indictment, which failure violates his rights under the law; that the motion was resisted by the prosecution, arguments had *pro et con* and thereafter, the motion was denied by the trial court, thus, the case was ruled to trial.

On February 12, 2014, when the case was called for hearing, the indictment was ordered read, and the defendant pleaded not guilty; hence, joined issues with the State. Subsequently, a nine-member jury was selected and empaneled. The prosecution produced five regular witnesses and two rebuttal witnesses, namely: Hesta Woods-Baker, Evelyn T. Vanyabah, Helena Gbegbee, Robert Lee Chattah and Oliver Rouhana, as regular witnesses, and

Augurie Herring and Hesta Woods-Baker, as rebuttal witnesses; the defense thereafter produced six (6) witnesses.

Arguments were heard pro et con and the case was submitted to the jury for deliberation with which they returned a unanimous verdict of guilty against the appellant/defendant. The appellant/defendant, thereafter, excepted and filed a motion for new trial. The motion was heard and subsequently denied, final judgment was entered by the lower court adjudging the defendant guilty and sentencing him to five (5) years imprisonment; the defendant was also ordered to make restitution of twenty-one lots of land at the rate of Nine Hundred United States Dollars (US\$900) per lot with the total amount being Eighteen Thousand United States Dollars (US\$18,000) for the illegal sale of the property subject of this dispute; the defendant was also ordered to evict and remove all those to whom he illegally sold the twenty-one lots of land.

The defendant excepted to this ruling of the lower court and announced an appeal before this Honorable Court sitting in its March Term, 2014.

In support of his appeal, the defendant filed a twenty-count bill of exceptions before this Court alleging errors committed by the trial judge in a bid to persuade this Court to overturn the ruling of the lower court.

Ordinarily, we would have perused the records of this case as certified to this Court to determine from the evidence whether or not to uphold or overturn the ruling of the trial court; however, we must mention here that upon assignment by this Court for hearing of this case, the defense lawyers informed this Court that the defendant, Arah Kamara had passed away and attached his death certificate to substantiate this claim.

The issue dispositive of this matter is whether given the facts and circumstances of this case, the death of the defendant terminates the appeal?

It is a standing principle of law that crimes are not transferrable. In other words, someone else irrespective of whatever relationship he bears with an accused cannot be prosecuted for the alleged crimes of another. The facts culled from the record before us is that the state accused Arah Kamara for the crime of Theft of Property, subsequently indicted him, pleaded to the writ "NOT GUILTY", and hereby joined issues with the state. The trial was regularly heard and the trial jury returned a unanimous verdict of guilty, which verdict was confirmed by the court and defendant Kamara was sentenced for (5) years imprisonment and further ordered to retribute US\$18,000 United States Dollars to the private prosecutor.

From the above ruling, the defendant, Arah Kamara excepted and announced an appeal to the Supreme Court of Liberia. The appeal was perfected and the matter was duly laid before this court.

At the call of the case for final argument, the counsel for appellant, Arah Kamara informed this court that Appellant Defendant Arah Kamara has died and he presented a death certificate to that effect and prayed the court to discontinue the case. The information was resisted by counsel for appellee, who requested the court to entertain the argument and proceed with the case in spite of the death of the appellant.

This court says that the principle of “abatement ab initio” (Latin phrase “from the beginning”) is a common law legal doctrine that states that the death of the defendant who is appealing a criminal conviction extinguishes all criminal proceedings initiated against that defendant from the indictment through conviction. In other words it is a legal doctrine or rule in criminal law which negates a conviction and verdict if the defendant dies before final conviction or before the exhaustion of all his legal appeals. As in the instant case, the Court is constrained to invoke the principle of abatement and terminate the proceeding as the Court cannot enforce its judgment on a dead body or anyone else in his stead. In the case *Dove V. United States* 423 US 325 (1976), the United States Supreme Court dismissed the petition for a Writ of Certiorari on grounds that the petitioner Oscar Roosevelt Dove on November 14, 1975 died while the said petition was still pending. Abatement is a Common Law legal doctrine that states that, the death of a defendant who is appealing a criminal conviction extinguishes all criminal proceeding initiated against that defendant from the indictment through conviction. This court, considering the death of the defendant Arah Kamara, which is not disputed by the appellee, is left with no other legal alternative, but to abate and terminate the case against him.

WHEREFORE AND IN VIEW OF THE FOREGOING, the appeal is hereby ordered abated and the case terminated *ab initio*. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and proceed accordingly.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR AMARA M. SHERIFF APPEARED FOR APPELLANT. COUNSELLORS NYANTI TUAN AND WILLIAM A. N. GBANTOR APPEARED FOR APPELLEE.