IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR……..…….....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……..ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH…….…...ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…….…....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….……ASSOCIATE JUSTICE

Republic of Liberia by and thru the Ministry of Justice …… Appellant	)
Versus	) APPEAL
Moses Managbolor…….. Appellee	)
GROWING OUT OF THE CASE:	)
Moses Managbolor…….. Appellee	)
Versus	) MOTION TO DISMISS
Republic of Liberia by and thru the Ministry ……..…….Respondent	)
GROWING OUT OF THE CASE:	)
Republic of Liberia by and thru the Ministry of Justice …….Appellant	)
Versus	) CRIME: STATUTORY RAPE
Moses Managbolor…… Appellee	)

Heard: November 12, 2019 Decided: June 25, 2020

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

The Appellee, Moses Managbolor, was indicted during the August Term, A.D. 2011 of the 16th Judicial Circuit, Gbarpolu County for the Crime of Statutory Rape. Prior to the indictment, on the 8th day of August, A.D. 2011, the said circuit court ordered the arrest and detention of the appellee based on a complaint filed by the Women and Children Protection Section of the Liberia National Police.

On the 30th day of August, A.D. 2011, the appellee made his first appearance before the trial court where he was acquainted with his fundamental rights as guaranteed under the Constitution (1986) and the statutory laws of the Republic. There and then, the appellee told the trial court that he is able to retain counsel of his choice. The hearing was continued to the 2nd day of September, A.D. 2011 to allow the appellee to contact his counsel of choice. When the case was called on the 2nd of September 2011, the appellee informed the court that he had not contacted his counsel, the hearing was again continued until the 6th of September, 2011. For the third time, the appellee failed to retain counsel of his choice when the case was called.

The records reveal that there was no further hearing during the August Term, A.D. 2011. On the 2nd of December, 2011, now the November Term of Court of the 16th Judicial Circuit, the case was called with the noticed absence of the appellee's counsel, that is approximately three months when the case was last called, presumably to give the appellee sufficient time to retain counsel of his choice. The appellee in response to the court's inquiry about retaining a counsel of his choice told the trial court that he wants a different venue for the trial of the case. We quote excerpt of the minutes of court as follows:

> "The Court; Mr. Defendant, the court is ready to proceed with the speedy and expeditious trial of the case. What do you have to tell the court with respect to hiring a lawyer to legally represent you of your choice?
> Defendant's answer: My lawyer is ready but, I want you to assign this case to another venue, which is different venue, this is what I mean."
> The Court: the defendant in the dock again, for the fourth time in two terms of court has requested for continuance on ground that he has a lawyer of his choice capable to represent him. This court, sua sponte has granted him up to Monday, December 5, 2011, to contact his lawyer[to] be in court…."

The records before this Court are devoid of any showing that a hearing was had on the 5th of December, 2011. However, on the 7th of December, 2011, Counsellor Richard K. Flumo, Sr. representing the appellee formally filed an application for change of venue. The appellee's six count motion for change of venue and the appellant, Republic of Liberia's resistance thereto contain allegations that claim the attention of this Court, hence we quote verbatim the motion and the resistance as follows;

"MOTION FOR CHANGE OF VENUE

AND NOW COMES MOVANT in the above entitled cause of action praying Your Honor and this Honorable Court for a Change of Venue for the following legal, factual and sufficient reasons to wit:

1. The movant is defendant in the above captioned case; charged with the crime of rape. Movant begs leave of Your Honor and this Honorable Court to inform Your Honor that he was arrested by police and kept in their custody from charging and forwarding him to court. When questioned about the length of time taken by police to send your humble movant to court, they replied that the police had right to keep him for whatever time they wish – above 72 hours, which is an infringement of his constitutional rights.

2. Movant on the 2nd day of December, 2011 appear before Your Honor, upon assignment and requested the presence of his legal counsel and that he did not want to be tried in Gbarpolu for reasons stated in this motion and just after that, prison guards cuffed him and explained to movant they were instructed by Your Honor to cuff him from 12:35 P.M. to 4:05 P.M., and the said instruction was executed, and movant remained handcuffed from 12:35 P.M. to 4:05 P.M. without eating which is prejudicial to him. Movant further says that since his indictment up to and including the filing of this motion, he has never been provided copy of said indictment to afford him opportunity to forward same to his legal counsel for proper legal representation.

3. That the action of the police, coupled with the treatment experienced after his appearance before Your Honor on the 2nd day of December, A.D. 2011 in compliance with a notice of assignment from the Sixteen Judicial Circuit Court, upon Your Honor's instruction convinces movant that if tried in Gbarpulu, he will not get transparent justice and same is a contravention of his constitutional rights to speedy free, fair and impartial trial.

4. That if the case is tried here, it will impose serious financial bottleneck and inconvenience on movant for the timely availability of his witnesses to Bopolu during trial, thereby, the end of transparent justice will not be encouraged, achieved, promoted and satisfied. For reliance, see 1 LCLR, page 318, Section 5.7 paragraph (b) and 29 LLR page 35, in the case, James Saar versus Republic, syllabus three.

5. That due to the sentiment and local prejudice attached to this case, movant feels that he cannot get justice in Garpolu County, if he is tried here.

6. This motion is not made in bad faith, but to satisfy the end of justice.

WHEREFORE AND IN VIEW of the foregoing, movant humbly request Your Honor to grant his request as contained in the motion

and grant unto him any or other relief that you deem fit, just and fair, and so prays."

In reaction to the appellee's application for change of venue, the appellant filed a six count resistance and averred as follows:

" AND NOW COMES RESPONDENT in the above entitled cause of action praying Your Honor and this Honorable Court to deny in its totality the motion for change of venue [for the] following legal, factual and sufficient reasons to wit:

1. That movant's affidavit is defective in that it does not bear the name and official stamp of the justice of the peace who prepared it. Let the court take judicial notice of the fact that all affidavits must bear the name, signature and stamp of the judicial officer who issues it.

2. That the movant's claim of [being] arrested and detained by the police from the 4th of August to the 11th of August, 2011 without charge is without legal merit. Because granted that if it were so, there was a legal remedy available to the defendant other than request for change of venue. (Article 21(g) of the 1986 Constitution)

3. That the movant's reason for change of venue as stated in paragraph 2 of its motion is legally defunct in that the defendant did not request the court and be granted the right to represent himself as a legal counsel. (1LCLR Title 2 Chapter 2 Section 2.2(5)

4. That as to count 3 of movant's motion stating that he will not be accorded speedy trial thereby denying him of his constitutional right is a careless statement in that defendant was arraigned before court to [plead] since August 30, 2011. That all delays are attributable to the defendant since he requested and was granted continuance several times during the August Term of Court which finally resulted to the transfer of the case to the November Term of Court on September 6, 2011. Let the court take judicial notice of its record in the case.

5. That movant's reasons as stated in counts 4 and 5 lack legal ground and should be denied for lack of evidence. (1LCLR Title 1, Chapter 10, Section 10.4(1)

6. That movant's motion is made in very bad faith in that it is intended to compromise this heinous crime of rape as movant's representatives have starting negotiating with the victim's family as the result of which said witnesses have started hiding from prosecution contrary to ur previous interaction when they were in daily contact with prosecution.

Wherefore and in view of the foregoing, the court should deny the motion for change of venue in its totality for lack of evidence and legal grounds."

There is no information in the records before this Court to show that the motion for change of venue was regularly assigned and passed on by the 16th Judicial Circuit. The certified records reveal that on the 20th day of January, A.D. 2012, the case was transferred to the 1st Judicial Circuit, Criminal Assizes "E" for Montserrado County.

In spite of the fact that the state prosecutor who initially handled this case before the 16th Judicial Circuit for Gbapolu County made a serious allegation of a potential compromise between the appellee and private prosecutrix's family, there is nowhere in the records showing that the appellant took measures to prevent or avert a compromise of a rape case involving a ten year old victim. What we see replete in the records is the employ of procedural technicalities over substantive justice much contrary to numerous opinions of this Court. The transcribed records reveal an array of lawyers filing several different applications on behalf of the appellee. The motion to admit to bail was filed on behalf of the appellee by Attorney Joseph S. Doe and resisted by the appellant, but, there is no evidence of a hearing on the motion. Then the first motion to dismiss indictment filed on behalf of the appellee by Counsellor David W. Woah which motion appears not to have been heard. Without notice of withdrawal to amend the motion to dismiss filed on the 16th day of July, 2012 supra, the appellee by and thru Counsellor Albert S. Sims of the Sherman and Sherman Law Firm filed the second motion to dismiss the indictment on 15th day of September, 2015 which was resisted by the appellant Republic and a hearing had. The ruling from the latter motion to dismiss in favor of the appellee is the subject of appeal before this Court. While the appeal from the ruling granting the appellee's motion to dismiss is pending before this Court, the counsels representing the parties in vacation by themselves have filed with the Clerk of the Court a notice of withdrawal of the cause. We quote the notice as follows:

> "To: The Clerk
> Honorable Supreme Court of Liberia
> Temple of Justice
> Montserrado County
> Monrovia, Liberia
>
> RE: NOTICE OF STIPULATION OF VOLUNTARY
> DISCONTINUANCE:
>
> Upon receipt of this communication, you will please spread upon the records of this Honorable Court that counsels of record for both

parties (Plaintiff and Defendant) in the above captioned case, in keeping with Section 11.6 (1) (b) of ILCLR, page 212, hereby sign and filed this **STIPULATION OF NOTICE OF VOLUNTARY DISCONTINUANCE** as follows: to wit:

1. That consistent with section 11.6 (b) of 1LCLR, page 212 as stated supra, the parties hereby voluntarily discontinuance the above captioned case;

2. That the withdrawal by prosecution of the case is without prejudice;

3. That counsel for the appellee has accepted and agreed to the said offer of discontinuance, without prejudice to either party in this case.

NOW THEREFORE, counsels for the parties have agreed to discontinue the hereinabove captioned case and do hereby respectfully request this Honorable Court to approve the said stipulation and have the aforementioned appeal stricken.

For Appellant: For Appellee

Signed:_____ Signed:_____
Cllr. Sayma Syrenius Cephus Cllr. Albert S. Sims
Solicitor General, R. L. Sherman & Sherman, Inc.

Signed:_____ Signed:_____
Cllr. Wesseh A. Wesseh Cllr. Neto Z. Lighe
Assistant Minister for Litigation Sherman & Sherman, Inc.

Signed:_____
Cllr. Edwin K. Martin
Montserrado County Attorney

Signed:_____
Cllr. Isaac I. George
Acting Director, NGBV – CU

Signed:_____
Cllr. Kathleen P. Makor
Chief Prosecutor, NGBV – CU

Signed:_____
Cllr. H. Calvin Momolu
Prosecutor, NGBV – CU

DATED THIS _ day of November, 2019

Aproved:_____
Yussif D. Kaba
Associate Justice
Supreme Court, R.L.”

When the notice of withdrawal was called for hearing, the appellant's counsel proceeded to argue for the granting of the notice as follows:

"Q Why is the State asking to discontinue this matter?
A Your Honors, all efforts by the State to have the witnesses brought to court has proved futile.
Q Is that the only reason you want this case discontinued?
A No, your honors.
Q Where is the private prosecutrix?
A The private prosecutrix along with her family relocated to Sierra Leone, Your Honors."

As mentioned earlier in this Opinion, the appellant alleged of an ongoing negotiation between the appellee's representatives, who were not named, and the private prosecutrix's family. We think the appellant ought to have gone beyond mere allegation of a collusion and should have taken measures such as praying the trial court for a writ of subpoena to compel the appearance of these witnesses. Better still, the appellant could have pressed charges against those it believed were obstructing the administration of justice by preventing witnesses from testifying. To our utmost surprise, the appellant has appeared before this Court to aver that the private prosecutrix along with her family have relocated to Sierra Leone indicative of its inability to proceed with the prosecution of the crime charged.

In the face of the fact as alleged by the appellant that it cannot prosecute the case against the appellee because of the difficulty in bringing the witnesses to court, can it be said that the continued detention of the appellee for about nine years without a trial is violative of the appellee's right to a speedy, fair and impartial hearing. One may be tempted to shift blame to the appellee on account of the fact that it took the appellee two successive terms of court to retain a lawyer of his choice. However, a careful review of the records show that since the transfer of the case to the First Judicial Circuit for Montserrado County in January of 2012, the appellant has been the one requesting for repeated continuance of the proceedings because it does not have the complete transcribed records or that the witnesses were not forthcoming to testify.

As a matter of settled principle, the appellee is presumed innocent until the contrary is proved beyond a reasonable doubt. R.L. v. Eid et al, 37 LLR 761 (1995), Sirleaf v RL., Opinion of the Supreme Court, March Term, A.D. 2012, Williams v RL, Opinion of the Supreme Court, March Term, A.D. 2014 2014. The

failure of the appellant to proceed with the prosecution of the cause has the tendency for any reasonable inference that the proof is not evident or the presumption is not great that the appellee committed statutory rape. It follows the dilemma that the case presents, that is, the interest of the private prosecutrix for justice, considering the possible pain, trauma and stigma she may have endured or is enduring vis-a-via the right of the appellee to speedy, fair and impartial hearing.

Notwithstanding the chilling facts surrounding the parties' decision to voluntarily discontinue and abate the proceedings in the case, this Court has repeatedly held that it is not a party to any suit, but that it exists to promote justice thereby serving public interest. The Court has always maintained that the administration of justice must be done with speed and care. We cannot therefore unreasonably or unjustly force the trial of a case to the detriment of the parties especially when the parties have expressed their unpreparedness to continue with proceedings on the merit for what the appellant, in particular, termed as difficulty to bring witnesses to court. However, we shall, as in the instant case, hold counsels to a proper appreciation of their duties to the public interest, that is, to do justice. Lawyers must therefore endeavor to demonstrate that duty to the public interest because a departure therefrom is sufficient to warrant ethics proceedings.

This Court shall now proceed to answer the question: whether the application for voluntary discontinuance filed by the parties is tenable in law? We answer the question in the affirmative.

Rule III Part 2 of the Revised of the Supreme Court provides as follows:

> " In all cases where the cause shall not be docketed and the records filed with the clerk by either party before the expiration of five (5) days from the commencement of the term, the cause shall be continued until next term.
> Whenever the appellant and appellee, or the petitioner and respondent shall in vacation by themselves, or either counsel, sign and file with the clerk as agreement in writing directing the cause to be withdrawn and specifying the terms on which it is to be withdrawn as to costs, shall pay to the clerk any fees that may be due him and the ministerial officers, it shall be the duty of the clerk to enter the case withdrawn upon the approval of the Chief Justice or any Justice of the Court, and to give either party requesting it a certificate of withdrawal."

We observed from a careful inspection of the records that the appellant by and thru an array of government lawyers including the Solicitor General, Cllr. Sayma Sernius Cephus and the appellee's counsel signed a joint

stipulation of notice of voluntary discontinuance and filed same with the Clerk of this Court on the 8th day of November, 2019. The said joint stipulation being sound in law was approved by Mr. Justice Yussif D. Kaba on the selfsame date, however, with the right reserved in the appellant to recommence the case against the appellee. We therefore hold that the joint stipulation for a voluntary withdrawal being consistent with our laws and practice is granted without prejudice to the appellant.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Notice of Voluntary Discontinuance and Withdrawal filed by the parties being consistent with the Revised Rules of this Court, is granted. The Clerk of this Court is ordered to have the cause discontinued and stricken from the Docket. AND IT IS HEREBY SO ORDERED.