

[These words do not appear in the report of the case at [1953] 1 Q.B. 617.]

Up to today, over one year later, nearing two years in fact, the plaintiff is without a suitable leg. It is true one was got by the specialist, but it had to be sent back, and the plaintiff has to use crutches. I assess the damages at £2,700, and with the special damages of £200. 12s. 0d. that is a total of £2,900. 12s. 0d. The costs are to be paid by the defendants.

Judgment for the plaintiff.

KAMARA (or SUSU) v. REGINAM

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Verity, C.J. (Nig.) and Coussey, J.A.): April 24th, 1953
(W.A.C.A. Cr. App. No. 72/53)

[1] **Criminal Law—homicide—evidence—dying declarations—admissible to show cause of death and identify person responsible:** In a trial of homicide, a dying declaration by the deceased naming the person responsible is admissible to show the cause and circumstances of death (page 311, lines 6-8).

[2] **Evidence—dying declarations—admissible to show cause of death and identify person responsible:** See [1] above.

[3] **Evidence—res gestae—words accompanying res gestae—words identifying offender uttered during actual commission of crime admissible as part of res gestae:** Evidence of spoken words which would be otherwise inadmissible as hearsay will be admissible as evidence of the truth of what was said if the words were uttered while the crime was actually being committed and therefore form part of the *res gestae* (page 311, lines 3-6).

The applicant was charged with murder in the Supreme Court. At the trial the applicant was convicted on the evidence of one person who heard the words uttered by the deceased while the crime was actually being committed and another person who heard her dying declaration. Both declarations identified the person responsible as the applicant. On an application for leave to appeal, the West African Court of Appeal considered whether such evidence was admissible in the circumstances of the case.

FOSTER-SUTTON, P., delivering the judgment of the court:

5 This is an application for leave to appeal against a conviction for murder. The case was heard by Kingsley, J., sitting with two assessors, at a session of the Supreme Court of Sierra Leone holden at Port Loko. We assigned counsel to argue the case on behalf of the applicant, and allowed it to be fully argued.

10 Yenken Sinyer, the deceased woman, was the wife of the applicant. On August 11th, 1952, the day upon which she received injuries which caused her death, she was seen with the applicant by the second witness for the prosecution, Posseh Siseh, who testified that she passed them on her way to a stream where she was going to fetch water, that she again passed them on her return journey, and that on the second occasion, just after she had passed them, she heard the deceased cry out—"Sister Posseh, although you are going, Susu is killing me." The witness went on to say that she shouted out herself and ran away, but did not turn round because she was afraid.

15 The third witness for the prosecution, the Town Chief of Menis, gave evidence that on the day in question he heard shouting from the direction of the stream, that he went out and saw the deceased coming along "holding her gut," and that she was crying—"My husband has killed me." The witness was also present at an interview the seventh prosecution witness, the Paramount Chief, had with the applicant at which the Paramount Chief asked the applicant "why he had wounded the woman, and if he had done it," to which the applicant is alleged by the Town Chief to have replied "I only scratched her with the knife small," and by the Paramount Chief that he had cut her with a knife.

20 Doctor T.W. Roberts, who examined the dead body of the woman on August 12th, testified that he found "a deep cut in the upper part of the belly extending from left to right, deepening as the cut progressed downwards until the belly cavity had been exposed, and that there were several pieces of gut hanging out." The doctor went on to say that there was also a severe cut on the right side of the liver. Death was due to haemorrhage from the liver and exposure of gut.

25 The defence was a complete denial of having anything to do with the crime.

30 After a careful and detailed summing-up by the learned trial judge, both assessors expressed the opinion that the applicant was guilty of murder, and the trial judge, after expressing the view that

the case was "crystal clear," convicted the applicant of murder and duly sentenced him to death.

In our opinion the statement alleged by the witness Posseh Siseh to have been made by the deceased while the crime was actually being committed was admissible as being part of the *res gestae*; and we are also of the opinion that the statement she is alleged by the Town Chief of Menis to have made—"My husband has killed me"—was admissible as a dying declaration.

In our view there is no merit in this application and it is accordingly refused.

Application dismissed.

JOHNSON v. ROBERTS

SUPREME COURT (Luke, Ag.J.): June 11th, 1953
(Civil Case No. 324/51)

- [1] Civil Procedure—discontinuance and dismissal—dismissal for want of prosecution—failure of plaintiff to give month's notice of intention to proceed fatal if year since last interlocutory proceeding: Where a plaintiff serves his statement of claim on the defendant over a year after the last interlocutory proceeding was taken in the action, he must also give the defendant a month's notice of his intention to proceed against him or the action will be dismissed for want of prosecution under O.XXIII, r.1 of the Supreme Court Rules, 1947 (page 314, line 27—page 315, line 21). 20
- [2] Civil Procedure—interlocutory proceedings—notice of intention to proceed—plaintiff must give defendant month's notice if year since last interlocutory proceeding: See [1] above. 25 30
- [3] Civil Procedure—parties—defendants—rectification of non-joinder—procedure to be followed by plaintiff: Where a plaintiff moves the court under O.XII, r.13 of the Supreme Court Rules, 1947 to add another defendant, he must either follow the procedure laid down in that Order or, if the original writ has already been served, he must serve a defendant who has already entered an appearance with a copy of the amended writ and then file it in the writ office against a defendant who did not enter an appearance (page 313, line 33—page 314, line 26). 35
- [4] Jurisprudence—reception of English law—incorporation of English law—civil procedure—English procedure for rectification of non-joinder of defendants to be applied: See [3] above. 40