judgment is at the discretion of the court. The trial judge gave judgment on September 10th, 1963, more than a year after the termination became effective. He declined to make a declaration and dismissed the appellant's action. With respect, I think that that was the proper decision, although I do so for different reasons. I would dismiss the appeal.

BANKOLE JONES, C.J. and DOVE-EDWIN, J.A. concurred.

Appeal dismissed.

MINJOU JALLOH and SALIFU JALLOH *v.* REGINAM

COURT OF APPEAL (Ames, Ag. P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 19th, 1964
(Cr. App. No. 7/64 and 8/64)

[1] **Evidence—competency and compellability—competency—subsequent finding that witness not competent—trial not vitiated if evidence corroborated:** Where it is subsequently proved that a witness at a trial was not competent, the whole trial is not vitiated if there was other evidence to corroborate the incompetent witness (page 23, lines 26–29).

[2] **Evidence — competency and compellability — competency — witness competent although charged with another offence arising from the same incident:** A witness is not incompetent merely because he himself is charged with another offence arising from the same facts and even though his case has not been heard or concluded (page 23, lines 10–27).

[3] **Evidence—corroboration—accomplices—persons who are not accomplices—coercion—not present at crime:** Where a principal to a crime coerces another into his service in committing the crime, but without compelling their presence at the crime, the person so coerced is not an accomplice to the crime (page 22, lines 25–31).

The appellants were charged in the Supreme Court with murder.

The appellants made an armed raid on a village during which they committed several thefts and wounded three people. They brought the stolen goods to two other men who were waiting unarmed at the edge of the village. Two of the wounded people later died and the four men were arrested and charged with the murder of one of them. Before the trial, the names of the two men who had been

waiting at the edge of the village were struck out of the information at the request of the counsel for the Crown. They were later called as witnesses for the prosecution.

The appellants were charged with and convicted of murder. They appealed on the grounds that (a) the trial judge misdirected himself and the assessors in holding that the persons whose names were struck out of the information were not accomplices to the crime; and (b) that he had failed to put the defence case adequately to the assessors.

Cases referred to:

(1) *R.* v. *Grant,* [1944] 2 All E.R. 311; (1944), 30 Cr. App. R. 99, distinguished.

(2) *R.* v. *Norfolk Q.S., ex p. Brunson,* [1953] 1 Q.B. 503; [1953] 1 All E.R. 346, considered.

S. H. Harding for the first appellant;
Basma for the second appellant;
Browne-Marke for the Crown.

DOVE-EDWIN, J.A., delivering the judgment of the court:

The two appellants were charged with the murder of one Mambaleh Bangura on October 19th, 1962. At first there were four accused persons, the two appellants and two others, Alieu Jalloh and Sorie Jalloh but, on January 7th, 1964, the names of Alieu and Sorie were struck out of the information at the request of counsel for the Crown, as they had not been committed for trial. This was done and the information amended accordingly, before any plea was taken.

The case against the appellants was that they and the two persons whose names were struck out of the information and another not before the court either as witness or accused, went to a village some distance from their town at Sallakunda and there stole several articles. The two appellants were armed. The two men, Alieu and Sorie, were not armed and they say they were coerced into following the appellants who had threatened them and that they did not go into Sallakunda village, but were told to wait outside. The loot was brought to where they were waiting and from their positions they could hear shouts and cries from Sallakunda village where the appellants and the other accused man had gone. The first appellant admitted that he had struck a woman and wounded her and that he

did not think she would live. In fact no less than three persons were hurt at this raid and the woman with whose death the appellants were charged, died and so did another man.

The appellants were tried by a judge sitting with two assessors in Makeni and after trial, said to have lasted eight days, were convicted and sentenced to death. They were each defended by counsel. From their conviction and sentence they have each appealed to this court on separate grounds. Each appellant was represented by counsel. The first appellant's grounds of appeal are— (a) that the learned trial judge misdirected himself and the assessors in law in holding that the first witness for the prosecution Sorie Jalloh and the eighth witness Alieu Jallih (the two men who were originally charged with the appellants) are not accomplices to the crime of murder; (b) that in the result he failed to put the defence case adequately to the assessors.

As to the first ground, according to the notes of the summing-up by the judge there was ample direction of the assessors on the question of accomplices. The learned judge himself found in his judgment that the two witnesses, whom he referred to as "boys," were not accomplices to the murder. It is true they knew that the three persons who went into the village went there armed but they were not in a position to know that they would use their weapons to do any grievous harm to anyone. In any case the learned judge found that the two witnesses (the first and eighth for the prosecution) were mere boys who were pressed into service. He says in his judgment: "I am left in no doubt whatsoever from the evidence and the circumstances that the first accused [now the first appellant] coerced these boys into his service and that he and the second accused [now the second appellant] and a third man carried out the armed raid, etc." On this finding the two prosecution witnesses were not accomplices. Even if they were, there was ample corroboration of their evidence that not only was the murder committed but that the appellants committed it. Both in his summing-up and his judgment the learned trial judge had in view the necessity for corroboration where accomplices are concerned.

Mr. Basma, counsel for the second appellant, raised the point that at one stage of the trial he was told that the second appellant was in custody at the date of the offence. The learned trial judge found as a fact that the second accused was arrested in November. He notes that the first appellant was all the time prompting the second appellant. In any case, the two witnesses in question were

considered trustworthy witnesses, and they identified the second appellant as a person who went armed into the village with the first appellant. It is true that the fourth witness for the prosecution when recalled said: "I do not know the whereabouts of the second accused [appellant] on October 19th. He was at large. I arrested him in November, 1962. I don't know whether he was in prison in October." Counsel, quite rightly, made good use of this, but we are satisfied that on the day of the murder the second accused was not in prison but took part in the raid on Sallakunda village.

Another point of interest raised by counsel for the second appellant was that the evidence given by the first prosecution witness was wrongly received, as he was not at the time a competent witness, his trial on a charge of robbery arising from the same incident not having been heard or concluded. He relies on the case of *R.* v. *Grant* (1). This was a charge of conspiracy and it was held ([1944] 2 All E.R. at 311; 30 Cr. App. R. at 99)—

> "that it was not competent for the prosecution to call as witnesses persons who were themselves concerned in the charge on which they were called. Consequently the committal of all the persons charged was bad and the indictment must be quashed."

This case went even further but it is to be noted that it was reviewed in the case of *R.* v. *Norfolk Q.S., ex p. Brunson* (2). Although what happened in that case could not happen now, what is important is that the case of *R.* v. *Grant* was not followed.

In any case, the first witness for the prosecution in our view was a competent witness and even if he was not, the eighth witness for the prosecution was, and the whole trial would not be vitiated because of the first witness's evidence. We agree that the evidence of the first witness was properly received at the trial of the appellants. As pointed out before, the first witness had been discharged from the murder trial.

We are agreed that the appeals of the first and second appellants should be dismissed, and they are dismissed accordingly.

Appeals dismissed.