## KAMARA *v.* REGINAM

COURT OF APPEAL (Ames, Ag. P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 19th, 1964
(Cr. App. No. 11/64)

[1] **Criminal Law—murder—plea—plea of guilty—plea of guilty of killing not necessarily plea of guilty of murder:** A plea of guilty of having killed a person is not necessarily a plea of guilty of having murdered him; it is for the court to decide whether admission of the facts amounts to a plea of guilty in law (page 25, lines 21–26; page 26, lines 19–22).

[2] **Criminal Procedure—pleas—plea of guilty—plea of guilty of killing not necessarily plea of guilty of murder:** See [1] above.

[3] **Criminal Procedure—pleas—plea of guilty—words of accused—plea must be with full understanding:** An accused person is not to be taken to admit an offence unless he pleads guilty to it with full understanding of the nature of the offence and the effect of the plea (page 26, lines 10–29).

The appellant was charged in the Supreme Court with murder. The appellant heard his wife together in a room with another man. When they heard the appellant coming they tried to leave quickly but fell. The appellant picked up his cutlass and struck his wife. He then went to the police station and reported what he had done. He was arrested and later charged with the murder of his wife.

At his trial the information was interpreted twice to the appellant who pleaded guilty. When asked whether he had anything to say as to why sentence should not be passed on him he recounted the circumstances of the killing. He was then sentenced to death.

The appellant appealed on the ground that he had not pleaded guilty to murder but had only admitted the fact of killing his wife. It was maintained that his admission amounted to a plea of guilty of killing upon provocation and not of guilty of killing with malice aforethought. Even though he had pleaded guilty he did not fully understand the charge and there is a duty on the court not to accept a plea of guilty to a charge of murder unless it is perfectly satisfied that the accused person fully understands the nature of the offence and pleads guilty in unmistakable terms.

Case referred to:

(1) *Tomasi Mufumu* v. *R.*, [1959] E.A. 625.

*Luke* and *Kamara* for the appellant;
*B. Macaulay, Q.C., Att.-Gen.*, and *Fewry, Senior Crown Counsel*, for the Crown.

AMES, Ag. P., delivering the judgment of the court:

The appellant was convicted of murder and sentenced to death upon what the learned trial judge recorded as being a plea of guilty. The note in the record is as follows:

"Accused present speaking Creole.

Information read and explained to accused who pleads guilty.

A.B. Kamara for the defence.

At request of counsel for the defence information again read to accused and explained to him, this time in Limba and he pleads guilty."

When called upon as to whether he had anything to say as to why sentence should not be passed upon him, the appellant said:

"As I mentioned that I killed my wife, my lord, I met my wife and a man in the room. I heard my wife say to the man in the room: 'Hurry up, my man is here.' As I heard this I went inside. They attempted to run out. They fell. I picked up my cutlass from under the bed and chopped them. My wife cried. I took the cutlass and reported at the police station. I told the police I had chopped my wife in my house. I was detained by the police; that is all."

It seems to us impossible that the appellant could have intended to plead guilty to more than the fact of having killed the deceased, who was one of his two wives. And there, in that statement made in court, was his elaboration of his admission of having killed her. It amounted to a plea of guilty of killing upon provocation and not of guilty of killing with malice aforethought.

With all respect to the learned judge, had he, at that late stage, made further enquiry as to what the appellant had meant by his plea, he would have found that that was what the appellant meant, and he could then have amended the plea, on the ground that the appellant's meaning had been mistaken somewhere in the "to and fro" of interpretation. He would have entered a plea of not guilty of murder but guilty of manslaughter. The Crown might then have accepted that confession of manslaughter, which is what has been done before us by the learned Attorney-General, who outlined the facts to us.

The Attorney-General cited the decision of the Court of Appeal for Eastern Africa in *Tomasi Mufumu* v. *R.* (1), an appeal from the High Court of Uganda. That Court of Appeal had to consider a situation similar to that in the instant appeal. The judgment included a passage as to what a trial judge should do and what notes he should record before accepting a plea of guilty in a case of murder. The law

in Uganda is not necessarily the same as it is here, and we certainly have no law here as to what notes should be recorded in such a case.

Our Criminal Procedure Act (*cap.* 39) makes no provision as to the acceptance of a plea of guilty and the procedure following thereupon. Consequently the law on the point in force here remains (until and unless the legislature alters it) the same as that in force in England immediately before the independence of Sierra Leone. What that was is stated in *Archbold, Criminal Pleading, Evidence & Practice,* 35th ed., at 143, para. 424 (1962):

> "If the prisoner pleads guilty, and it appears to the *satisfaction of the judge* that he rightly comprehends the effect of his plea, his confession is recorded, and sentence is forthwith passed, or he is removed from the bar to be again brought up for judgment."
>
> [Emphasis supplied].

Paragraph 1092, at 450, states:

> "(1) Plea of guilty at the trial. In this case the prisoner in open court freely and voluntarily confesses that he is guilty of the offence of which he is charged. . . . [T]his admission may be of guilt as to the facts, subject to the view of the court as to whether admission of the facts amounts to a plea of guilty in law. . . . Where the prisoner pleads guilty, *and the court accepts the plea,* further proof or trial is needless. . . ."
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> [Emphasis supplied].

Every judge, including no doubt the very careful judge in the instant case, is reluctant to accept a plea of guilty in a case of murder. He may advise the prisoner to withdraw it and plead not guilty. On the other hand he may accept a plea of guilty, if he is satisfied that its meaning and effect are understood. How best to be so satisfied in any particular case is for him to decide.

As we have said, we think that in the instant case there must have been a misunderstanding somewhere, and that the ends of justice will best be met by our making the following order: The appeal is allowed and it is directed that the plea of guilty be deleted from the record of the court below and a plea of guilty of manslaughter be entered instead. The sentence passed by the court below is set aside and instead we pass a sentence of seven years' imprisonment.

*Order accordingly.*