The decision appealed from is set aside and the appeal is remitted to the court below for determination according to the following directions:

1. That the appeal of the respondents in that court be allowed as far as it concerned count 2 and that the convictions and sentences on that count be set aside; and

2. That their appeal be dismissed as far as it concerned counts 1 and 3.

Order accordingly.

BANGURA (M.) *v.* REGINAM

COURT OF APPEAL (Ames, P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 8th, 1965
(Cr. App. No. 39/64)

[1] **Criminal Procedure — appeals—appeals against conviction—judge's summing-up not recorded—circumstances in which omission not fatal:** An omission to record the summing-up in a jury trial is not fatal to a conviction if the verdict is unanimous and is supported by the evidence and the evidence raises no difficult questions and includes nothing in the accused's favour apart from his own unsworn statements contradicted by sworn evidence (page 215, lines 37–40; page 216, lines 11–14).

[2] **Criminal Procedure—judge's summing-up—omission to record—circumstances in which not fatal to conviction:** See [1] above.

[3] **Criminal Procedure — record—contents—summing-up not recorded—circumstances in which omission not fatal to conviction:** See [1] above.

[4] **Evidence — record — contents — summing-up not recorded — circumstances in which omission not fatal to conviction:** See [1] above.

The applicant was charged in the Supreme Court with entering a dwelling-house with intent to commit a felony therein.

He was convicted by the unanimous verdict of a jury. The only points of evidence in his favour were statements he had made denying his guilt which were put in evidence during the case for the prosecution. He did not give evidence or call witnesses and all the oral sworn evidence went to show that he was guilty and that his statements were untrue. The evidence raised no difficult questions and was ample to support the conviction.

The summing-up was not recorded. Applying for leave to appeal,

the applicant argued on the weight of the evidence. The Solicitor-General addressed the court, at its own request, as to the effect of the omission to record the summing-up.

Cases referred to:

(1) *R.* v. *Wango,* West African Court of Appeal, Cr. App. No. 47 of 1959, unreported.

(2) *R.* v. *Williams,* West African Court of Appeal, Cr. App. No. 10 of 1958, unreported.

The applicant appeared in person.
D. M. A. Macaulay, Sol.-Gen., for the Crown.

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

This is an application for leave to appeal against a conviction for entering a dwelling-house at night with intent to commit a felony therein. The applicant was convicted by the unanimous verdict of a jury. He was not represented by counsel at his trial or before us. He addressed us himself, and confined himself to the weight of evidence (no house-breaking instruments in his hand, and such like). It is sufficient to say that there was ample evidence to warrant the conviction.

We found that the appeal record contained no summing-up. There had been a summing-up, but it had not been recorded. So we asked the Solicitor-General who represented the respondent to address us as to the effect, if any, of that. He drew our attention to the case of *R.* v. *Wango* (1), in which the West African Court of Appeal quashed a conviction for arson in a jury trial, where no record of the summing-up had been made. That court called a summing-up an essential part of the trial, and said that when it is not recorded the appeal court has a record of the trial in which an essential part is missing. We agree entirely. That appeal was different from this one. It was a majority verdict of eight for conviction and four for acquittal. Also, there were points in the evidence which might have been in favour of the appellant and the court could not know if and how they had been treated in the summing-up.

Here the verdict was unanimous, and we see no points of evidence in favour of the applicant, apart from his statements to the police and his statutory statement to the committing magistrate all of which were denials of guilt, and all of which were put in evidence during the case for the prosecution. The applicant did

not give evidence or call witnesses. All the oral sworn evidence indicated his guilt and that his statements were untrue.

In the case of *R.* v. *Williams* (2) there was a unanimous verdict convicting the appellant of a sexual offence against a girl of eight years of age—contrary to what was then s.6 of the Children's Ordinance (*cap.* 31). There was no record of the summing-up. The West African Court of Appeal quashed the conviction. It could find no corroborative evidence implicating the appellant and the absence of any record of the summing-up made any other decision out of the question in the circumstances.

We think that both those cases are to be distinguished from the present one, in which there was a unanimous verdict and in which no difficult questions arise and in which the evidence went to show clearly the applicant's guilt.

We must not be taken as departing from what was said by the West African Court of Appeal in *Wango's* case as to the need for a judge who has no stenographer to adjourn for a while "to prepare a sufficient note of what he intends to tell the jury."

We are however of opinion that in such a clear and one-sided case as this must have seemed to the jury there is no possibility that there has been a miscarriage of justice.

The application is refused.

Application refused.

KHAN *v.* GILBEY and GILBEY

COURT OF APPEAL (Ames, P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 15th, 1965
(Civil App. No. 26/63)

[1] Civil Procedure — appeals — matters of fact — trial by judge alone — appellate court's duty to draw its own inference from facts proved or admitted: On appeal from a judge sitting alone, it is the duty of the Court of Appeal to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of witnesses comes into question, but with full liberty to draw its own inference from the facts proved or admitted and to decide accordingly (page 228, lines 2–8).

[2] Courts—Court of Appeal—matters of fact—appeal court may draw its own inference from facts proved or admitted: See [1] above.