

CR. APP. 10/92

IN THE COURT OF APPEAL FOR SIERRA LEONE

CORAM:-

HON. MR. JUSTICE M.O. ADOPHY

- JUSTICE OF APPEAL (PRESIDING)

HON. MR. JUSTICE A.B. TIMBO

- JUSTICE OF APPEAL

HON. MRS. JUSTICE V.A.D. WRIGHT

- JUSTICE OF APPEAL

BETWEEN:-

AMADU JUANA SMITH

- APPELLANT

VS.

THE STATE

- RESPONDENT

D.P.P. With Him Miss. Atiba-Davies, for the State - Respondent
 Mr. A.K.A. Barber, for the Appellant.

JUDGMENT DELIVERED THIS 31ST DAY OF JANUARY, 1994

ADOPHY M.O. J.A:- The appellant then accused with four others were tried on a charge of Murder in that they on the 4th day of October 1990 at Limba Village in the Southern Province of the Republic of Sierra Leone murdered Ibrahim Kher.

The trial was held at the Bo High Court, the appellant was convicted and sentenced to death by Nylander J. The rest of the accused persons acquitted and discharged. The appellant appealed to this Court against the conviction.

On the 26th of May 1993 at the hearing of the appeal before us learned counsel assigned to argue this appeal on behalf of the appellant sought leave to amend the ground (s) of appeal dated 2nd May 1992 by substituting those contained in the amended grounds dated 12th May 1993. Objection to this application was raised but on the 30th June 1993, Miss Atiba-Davies informed the Court that the Learned Director of Public Prosecutions now wishes to abandon his objection. Thereupon learned counsel for the appellant intimated the Court that he has since filed further additional ground of appeal. Leave was accordingly sought and obtained to argue the additional ground dated 22nd June 1993.

Thereafter learned counsel for the appellant elected to argue ground 3 only which is 3. "That the trial is a nullity on the ground that the appellant did not take his plea," submitting therefrom, that the appellant not having taken his plea together with the other four accused persons who were acquitted and discharged the trial is a nullity.

He therefore implored the Court that appellant be not retried. Relied on the case of Mohamed Bangura v The State Cr. App. 4/86 by Short J. Miss Atiba-Davies in her reply said inter alia that having gone through the original records of the High Court she was satisfied that the plea of the appellant was not recorded, conceded to the submission of learned counsel for the appellant but urged the court to order that the appellant be retried.

On our careful perusal of the records in the High Court as well as the typed records of the court, we were altogether satisfied that the said records bear out the truth of the findings of both learned counsel.

This appeal has inevitably made it altogether necessary for recourse to be had by this court to what is otherwise regarded and accepted as a very basic principle in Criminal Procedure. It has always been recognised and accepted that the arraignment of an accused person against whom an indictment has been preferred and signed consists of three parts firstly calling the accused to the bar by name, secondly reading the indictment to him and thirdly asking him whether he is guilty or not guilty.

Accordingly as soon as the indictment has been read to the accused, the Registrar or other Officer of the court demands of him "How say you, are you guilty or not guilty". Section 132 of the Criminal Procedure Act No. 32 of 1965 thus provide, "A person to be tried on any indictment shall be placed at the bar unfettered, unless the court shall see cause otherwise to order, and shall be read over to him by the Registrar or other Officer, the indictment or charge of the court and explained if need be by the Officer or the interpreter of the court and such person shall be required forthwith to plead thereto, where the person is entitled to service of a copy of the indictment he shall object to the want of such service and the court shall find that he has not been duly served therewith".

There should be no ambiguity in the plea and the arraignment therefore is not complete till the accused has pleaded and his plea recorded accordingly. The plea of the accused is of such importance to the trial procedure that it has always been held that without it the court cannot exercise its jurisdiction to try the accused and a purported trial in the absence of a plea is null and void. See *Mensu v The Republic* (1971) 2CLR30 C.C.P. v *Tunji Lagos* (1962) 1 "GIR 127. May I observe however that though these cases were summary trials yet it has never been in doubt that the principle should be the same. It is also necessary to note that the plea and all disputes connected with it are dealt with by the Judge alone irrespective of whether the trial is to be with jury.

As said before in this judgement we are totally convinced and satisfied that neither was the appellant's plea taken nor was it ever recorded. Accordingly we have no hesitation in arriving at the decision that the purported trial of the appellant was a nullity and we therefore order that the appellant Amadu Juana Smith be retried.

Before concluding this judgement we wish to state without any equivocation that learned counsel who appear in our Courts should never in such courts lose sight of or be indifferent to the principle that they too are "Ministers of Justice." It has always been said that even in the face of a misdirection it is proper and desirable that learned counsel should draw the attention of the judge to the misdirection. See Edmund Thomas Southgate 47 Cr. App. 252. Philimore J. in the summing up used the word "justify" on several occasions. At the end of the summing up, counsel drew the judge's attention to the use of that word and submitted that it was a departure from the language of Section 8 of the Homicide Act 1957. The judge accepted the submission and then directed the jury that justify was not the correct word. Edmund Davies L.J. in giving the judgement of the court said in the opinion of the court counsel had in the circumstances adopted a course which was commendable and desirable.

If counsel (for the prosecution or the defence) had but drawn the attention of the trial judge in the instant case to the apparent omission it should have been recognised and corrected in limine. That simple, straight forward and inexpensive act would have obviated what today amounts to and is looked upon as legal excursion, in utter futility.

Therefore:-

Trial of Amadu Juana Smith
By High Court
- Nullity

Order - Amadu Juana Smith
Be Retried on charge of Murder of Ibrahim Khan.

(Sgd) Hon. Mr. Justice M.O. Adophy; Justice of Appeal

(Sgd) Hon. Mr. Justice A.B. Timbo Justice of Appeal

(Sgd) Hon. Mrs. Justice V.A.D. Wright Justice of Appeal