In the Honorable Supreme Court of the Republic of Liberia
Sitting in its March Term, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR....................CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE......ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH..............ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE......................ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA........................ASSOCIATE JUSTICE

In re: Republic of Liberia by and thru the Ministry of Justice .... APPELLANT) APPEAL

VERSUS

Jonathan K. Williams of the City of Monrovia, Liberia ....1ST APPELLEE

AND

Alice Youti and Edwina Youti of the City of Monrovia, Liberia ....2ND APPELLEES

GROWING OUT OF THE CASE:

Jonathan K. Williams of the City of Monrovia, Liberia ....1ST PETITIONER/APPELLEE

AND

Alice Youti and Edwina Youti of the City of Monrovia, Liberia ....2ND PETITIONERS/APPELLEES) PETITIONS FOR WRIT OF CERTIORARI

VERSUS

His Honor Roosevelt Z. Willie, Resident Circuit Judge, First Judicial Circuit, Criminal Assizes "A" Montserrado County, Republic of Liberia ....RESPONDENT/APPELLANT

GROWING OUT OF THE CASE:

Alice Youti and Edwina Youti of the City of Monrovia, Liberia .... MOVANTS) MOTIONS TO DISMISS THE INDICTMENT AND SEPARATE TRIAL

VERSUS

Republic of Liberia by and thru the Ministry of Justice ....RESPONDENT

AND

Jonathan K. Williams of the City of Monrovia, Liberia ....MOVANT/APPELLEE VERSUS Republic of Liberia by and thru the Ministry of Justice ....RESPONDENT	MOTIONS FOR CHANGE OF VENUE AND WAIVER OF JURY TRIAL
<u>GROWING OUT OF THE CASE:</u> Republic of Liberia by and thru the Ministry of Justice ....PLAINTIFF VERSUS Jonathan Williams, Alice Youti and Edwina Youti City of Monrovia, Liberia............... DEFENDANTS	<u>CRIMES:</u> <u>MURDER AND HINDERING LAW ENFORCEMENT</u>

Heard: July 16, 2019. Decided: August 22, 2019

When this case was called for hearing, Counsellors Edwin K. Martin, County Attorney for Montserrado County and Cornelius F. Wennah, Director, Felonious Crimes, Ministry of Justice appeared for appellant. Cllr. Dr. Jallah A. Barbu appear for first appellee, Jonathan K. Williams. Cllr. Jonathan T. Massaquoi of the International Law Group appeared for Second appellees, Alice Youti and Edwina Youti.

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This appeal emanates from a consolidated ruling of our distinguished Colleague, Her Honor Sie-A-Nyene G. Yuoh, then presiding in the Chambers of this Court, granting the alternative writs of certiorari and ordering the issuance of the peremptory writs. Two separate petitions for certiorari were filed. One petition was filed by the First Appellee, Jonathan K. Williams, alleging that the trial judge erred when he denied his motions for change of venue and waiver to trial by jury. The other petition was filed by Second Appellees, Alice Youti and Edwina Youti, also alleging that the trial judge erred when he denied their motions to dismiss the indictment and for severance.

Justice Yuoh entertained hearing of the petitions and entered a consolidated ruling of all of the issues contained in the respective petitions. It is from this consolidated ruling that the Appellant, Republic of Liberia, announced an appeal

to the full bench. The appellant is urging this Court to set aside the ruling of Justice Yuoh and affirm the several rulings of the trial judge.

To consider this application, it is important that this Court takes recourse to the records.

The records reveal that on the 5th day of June, 2018, the Grand Jury for Montserrado County returned a true bill in which the first appellee was found more probably than not to answer to the offense of murder against the person of Tyron Brown in the Kingdom Care Community. The same indictment found more probably than not that the second appellees were to answer for the offense of hindering law enforcement. The records also revealed that on the 31st day of August, A.D. 2018, the second appellees entered on the minutes of the trial court an application for separate trial. The second appellees submitted substantially that "every person charged with a crime shall have the rights to free, fair and impartial trial consistent with the Constitution of Liberia; that the joinder of offenses/trial with first appellee who was charged with the crime of murder was prejudicial in that their defenses clash with those of first appellee's; and that there is no causal link between the crime of murder allegedly committed by the first appellee and the crime of hindering law enforcement allegedly committed by the second appellees." The appellant resisted said motion on ground that hindering law enforcement for which the second appellees were charged is ancillary and complementary to the crime of murder allegedly committed by the first appellee; and that it is the discretion of the trial court to grant said application. This application was denied by the trial judge.

The records further show that on the 3rd day of September, A.D. 2018, the second appellees also filed a motion to dismiss the indictment on grounds that the crime of hindering law enforcement was not an indictable offense and that the magistrate court has exclusive jurisdiction over the same, hence, the trial court lacks jurisdiction over the subject matter and the persons of the second appellees. This application was followed by an application by the first appellee for change of venue. The latter relying on Criminal Procedure Law, Rev. Code 2:5.7 the first appellee submitted that he has reason to believe that he will not have an impartial trial in Montserrado County where the alleged crime of murder occurred. Both applications were resisted by the appellant and the trial judge entered rulings denying the applications. Another subject of the petition for a writ of certiorari filed before our colleague by the first appellee touched on the denial of the trial

ourt to grant his application for waiver of a trial by jury. The trial court also heard and denied this application.

It is from these several rulings of the trial court that the appellees filed two petitions for writs of certiorari that our colleague heard in Chambers ordering the reversal of the several rulings of the trial judge. It is also out of this consolidated ruling that this appeal grew.

Because we are in full agreement with our colleague on her determinations on the issues, we herewith adopt and incorporate the said ruling as an integral part of this opinion as follows:

> "At the very core of our Constitution is the preservation of the right to enjoyment of life and liberty by every citizen of the Republic. Article 11 provides inter alia that 'All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty'.
>
> The right to enjoy and defend life has been so jealously protected by the State to the extent that it did not only declare murder, the unlawful taking of one life, as a heinous crime, but prescribed what can be termed severest punishment for persons committing such atrocious crime varying from life imprisonment to execution by hanging of the guilty party. Section 31.1 (2) 1LCLR, Title II, Criminal Procedure Law (1973).
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> As recent as 2013, this Court recognizing the odious nature of the crime of murder enunciated in an opinion as follows:
> 'Murder is a heinous crime condemned by every civilization and faith persuasion. This is because the act of murder extinguishes life, unarguably the most precious gift bequeathed to humanity. |Life is a uniquely extraordinary treasure of the universe for various reasons; firstly, life is that intangible being whose existence is shrouded in the deep seas of mystery. The vast and endless field of mysteries surrounding the existence called life seems equally balanced by profound deficit of human knowledge and understanding as to its nature and character.
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> Secondly, no human ingenuity manifested in incredible scientific advancement has, to date, succeeded in restoring a single lost life. A life once lost remains irretrievable forever. Hence, sacrosanct it is universally accepted that this exquisite gift, no human enterprise has proven capable of replacing, be not destroyed by any human being. Consequently, a solemn obligation has devolved on every human society, simply by natural law, borne out of sober realization of the irretrievability of lost life, to protect and preserve every human life. Murder therefore demonstrates, unarguably, man's gruesome conduct of ultimate disregard for nature's most precious gift. This is precisely the raison d'etre why

every human community attaches the most stringent and grievous penalties where the duty to preserve life is breached' Darpul et al v. Judge Williams et al. Supreme Court Opinion, October Term, A.D. 2013.

Despite the severity our laws attach to the crime of murder and the harsh punishment the Supreme Court has upheld against persons found guilty of the unlawful taking of another's life, we have always been mindful of the equal protection clause of the law; we have endeavored to unrestrictedly protect the rights of a defendant in a murder case or other capital offenses carrying the death or life imprisonment penalties, while at the same time ensuring that upon proven conviction, h/she is punished proportionately to the crime committed; we are always guided by those constitutional and statutory safe guards provided us in the disposition of such cases and we are always equally aware that there are certain uncompromising rights of a defendant in a murder trial or any other criminal trial that must be pursued to the letter.

That is exactly the reason why, by a unanimous decision, the Supreme Court in the Darpul case cited supra espoused thus:
But, despicable as the crime of murder is, every civilized human community endeavors also to maintain a balancing act in dealing with a person accused of committing a crime; that is, preserving human life and punishing a party found guilty of taking life. In the instance of Liberia, one is guilty only when a criminal defendant has been properly processed through the criminal justice system and duly accorded a fair and impartial trial within the contemplation of the genius of the Liberian Constitution. Sacred principles and rules of procedure have been engraved in the law of the land setting forth mandatory standards that shall, at all times, be adhered to, strictly obeyed and adequately satisfied in every actor in all criminal trials within the bailiwick of the Republic.

These standards are carved in statutory and constitutional instruments seeking to guide all criminal trial conducted in Liberia. Strict compliance by state prosecutors to these constitutional and statutory standards and rules of procedure is as important as punishing the perpetrator of the gruesome act of murder itself.'

The present proceedings are an outgrowth of [several] rulings made by Judge Roosevelt Z. Willie presiding over the First Judicial Circuit, Criminal Assizes 'A' which the present petitioners are alleging infringement on these constitutionally and statutorily protected rights of criminal defendants.

We have deemed it expedient to consolidate the two petitions for the writ of certiorari although separately filed by the two petitioners for the purpose of expeditious handling. The petitioners are requesting the issuance of the writ of certiorari, to review interlocutory rulings rendered by the respondent judge, Roosevelt Z. Willie, denying petitioner, Jonathan K. Williams' motion for change of venue and waiver of his right to a jury trial while petitioners, Alice and Edwina Youti, filed their motion for the dismissal of the charge of hindering law enforcement. We quote hereunder the two (2) petitions commencing with the petition filed by Alice and Edwina Youti, followed by the petition of Jonathan K. Williams, to wit:

PETITIONERS' ALICE AND EDWINA YOUTI PETITION

'Petitioners in the above entitled cause of action most respectfully petition Your Honor for the issuance of the Alternative Writ of Certiorari for the following reason to wit:

1. That the Petitioners are parties and Co-Defendants in the above criminal proceedings before Co-Respondent Judge, Roosevelt Z. Willie, presiding over the First Judicial Circuit Criminal Assizes 'A'. Your Honor is respectfully requested to take judicial notice of the records in these proceedings.
2. That during the pre-trial stage of the criminal proceedings, the Co-defendants, Alice Youti and Edwina Youti, requested for separate trial on grounds that the joinder of the crime of murder and hindering law enforcement would unfairly prejudice the interest and both constitutional and statutory rights of the Co-defendants. Also, Co-defendants contended and argued that separate trial should be granted in this case because the Co-defendants did not conspire or facilitate the alleged acts of the other Co-defendants, Jonathan Williams and Caesar Kennedy, neither did the indictment, charging them for hindering law enforcement, alleged any acts of conspiracy and facilitation by Co-defendants, Alice Youti and Edwina Youti to commit or cause the alleged act of murder.
3. Further to Count 2 mentioned herein above, Petitioners say that the allegation of hindering law enforcement as charged in the indictment may have occurred after the alleged act of murder was committed and completed. Because the charges, murder and hindering law enforcement, are independently provable ere; the presiding judge erred in denying the Co-defendants a separate trial, and that such denial endangers Co-defendants' right to have a free, fair and impartial trial. Therefore, to prosecute the Co-defendants along with a murder suspect will be antagonistic and amounts to unfair prejudice to Co-defendants.
4. Further to Count two 2 mentioned herein above, because there is no causal link and/or relationship between the charge of murder (during the alleged commission) and the charge hindering law enforcement, the Co-defendants contended and argued that separate trial should be granted in accordance with the law.
5. Further to Count four (4) mentioned herein above, the presiding judge said the following in his ruling:
   'We need to revert [to] the indictment[,] in the first count of the indictment, it charges the Defendants separately.' See, the minutes of the 16th day's jury sitting, August 31, 2018, page 5.
   Petitioner, Alice Youti and Edwina Youti, submit and say that their request for a separate trial was sound and legally grounded, and is further justified by the above assertion made by Co-respondent, His Honor, Roosevelt Willie, in the said erroneous and prejudicial ruling, coupled with the lack of any allegation or charge of conspiracy as can more fully be seen from the copy of the minutes of the court below containing the Co-respondent judge's ruling to the effect hereto attached and marked Exhibit 'P/2'. Therefore, Petitioners say [that] the presiding judge had committed a prejudicial and reversible error and same should be reversed.
6. Still further, Petitioners say that the presiding judge also said the following in his ruling:

'[t]he principle Defendant is charged for murder and the activities he is allege[d] to have engaged are clearly stipulated in the indictment and the law appertaining thereto are also defined. Regarding the Co-defendants [Petitioners] who are charged with hindering law enforcement the activities they must have played are also clear. Meaning that, there will be absolutely no confusion as to the role played by the alleged murderer and the role by those who hindered law enforcement.'

Petitioners submit and say that the presiding judge having recognized that the charges brought against the Defendants are separate, distinct and independently provable erred when he denied the Co-defendants a separate trial. Also, Petitioners say [that] the assertion by the presiding judge made that 'those who hindered law enforcement in term of evidence' is conclusive that the Co-defendants did in fact hindered law enforcement. Because of the said prejudicial ruling being rendered against them (Co-defendants), Petitioners say [that] the said prejudicial ruling is not only erroneous and dumbfounded in law but is proof that the presiding judge is prosecuting the case against the Co-defendants. Therefore, Petitioners say [that] the presiding judge erroneous ruling should be reversed and corrected.

7. The Petitioners say [that] a prejudicial joinder with the other Co-defendant, Jonathan Williams charged with murder will expose them to unfair prejudicial and present overwhelming confusion to the trial jury, therefore, the presiding judge has committed reversible error especially so when he held that there will be absolutely no confusion of the role played by the alleged murderer and that played by the Co-defendants. Petitioners submit and say it is apparent that the presiding judge failed to realize that in the event [of] of criminal case the fear for confusion is about the jurors and not necessarily the judge or lawyers. This is especially true because of the more serious or egregious nature of the murder charge that is so inflammatory and draws more sentiments.
8. Petitioners further say that the presiding judge erred and acted unlawfully when he denied them a separate trial. It is important to note in paragraph three (3), on page 5 of the minutes of the 16th day of jury sitting, that after holding 'that evidence adduced from a murderer cannot and will not implicate Co-defendants....[and that] the role each party is alleged to have played is different', Judge Willie still refused to grant a separate trial to the Co-defendants/Petitioners herein. Petitioners say and maintain that there is no casual link or relationship to the commission of the act of the alleged murder and the charge of hindering law enforcement in this case.
9. That the Petitioners say [that] the presiding judge erred when he held that joinder trial will not be antagonistic because of the danger of unfair prejudice it would pose to the Co-defendants who[se] charge is alleged to only occur after the fact of the alleged murder and risk of confusion the jurors may have in distinguishing the prosecution of the two charges.
10. Petitioners pray Your Honor to rescind and correct the erroneous and unlawful ruling rendered by His Honor, Roosevelt Willie on the 3rd of September, A.D. 2018, denying the Co-defendants/Petitioners herein motion to dismiss the indictment charging Petitioners for hindering

law enforcement. See the minutes of the 18th of jury sitting of the August Term of Court, Monday, September 3, 2018.

11. That Petitioners say [that] the presiding judge erred and acted unlawfully when he conferred jurisdiction upon himself and the court contrary to the laws and statute controlling. Therefore, Petitioners say [that] because the said charge, hindering law enforcement, is not an indictable offense, the circuit court, least to say Judge Willie lacks jurisdiction over the Co-defendants/Petitioners herein. Therefore, Petitioners say [that] for such gross error and unlawful act of the Co-respondent judge, his bad faith and defective ruling denying Co-defendants/Petitioners herein motion to dismiss should be reversed.

12. Petitioners further say and submit that because the offense of hindering law enforcement is indicated in the Penal Law (1973) §12.4 is a Third Degree Felony and as amended in 2012 in Title 26 §50.2(1) provides that, 'all prior references in the existing Penal Law to a third degree felony shall be hereby reclassified as first degree misdemeanor.' Petitioners respectfully request this Honorable Court to take note of the cross referenced with §7.3 (b) provides in part that, ' the magisterial court is concurrence with the justice f peace courts shall exercise exclusive original jurisdiction.' Thus, Petitioners say [that] Co-respondent, His Honor Roosevelt Z. Willie presiding in the said circuit court lacks jurisdiction over both the subject matter and persons o the Co-defendants and that his said erroneous and unlawful acts amounts to rewriting the statutes and laws controlling, the same is a reversible error.

13. That Petitioners say that the indictment charging the Co-defendant for hindering law enforcement is both fundamentally and facially defective and bogus on grounds that same cannot be equated to the capital offense of murder to be trial jointly. Therefore, Petitioners say and respectfully request Your Honor to have same reversed.

14. That Petitioners say that if Co-respondent judge, Willie's rulings are not corrected, it is the impression that a court can confers upon itself jurisdiction and that a criminal defendant's right to have separate trial can loosely be denied, will run contrary to previous opinions of the Honorable Supreme Court regarding the courts' jurisdictions and the right to separate trial.

15. That the two counselors of the Honorable Supreme Court have certified that the contentions raised in the petition are sound in law. Your Honor is respectfully requested to take judicial notice of a copy of each of the certificates hereto attached and marked Exhibit 'P/2'.

WHEREFORE AND IN VIEW OF THE FOREGOING, Petitioners pray this Honorable Court to order the court below to send the entire case file to this Court for review and to order the alternative writ issued, set a time for the Respondents to appear and show cause why the preemptory writ should not be issued, it any reason they have, and thereafter, set aside the Co-respondent judge's ruling, order the court below to refuse jurisdiction and transfer the said matter to the proper venue; and grant unto Petitioners any and all further relief that this Court may deem just legal and equitable under the given circumstances.

Dated this 3rd day of September, A.D. 2018
RESPECTFULLY SUBMITTED

PETITIONERS BY AND THRU
LEGAL COUNSEL
Jonathan T. Massaquoi
COUNSELLOR-AT-LAW

A review of the petition shows that the petitioners advanced two reasons for their request for separate trial from that of the petitioner Williams: (1) that their defenses are antagonistic to those of the defendant Williams' as the indictment did not show any conspiracy or facilitation between they and Williams to commit the crime of murder; (2) that the crime of hindering law enforcement being a first degree misdemeanor for which a magisterial court has exclusive original jurisdiction, the trial court should refuse jurisdiction and transfer same to the appropriate venue for trial.

PETITIONER JONATHAN K. WILLIAMS' PETITION

'AND NOW COMES YOUR HUMBLE PETITIONER in the above entitled cause of action petitioning Your Honor and this Honorable Court to grant Petitioner's Petition for a Writ of Certiorari for the following factual and legal reasons as petitioner herein showeth, to wit:

1. That Petitioner, Defendant in a murder trial pending before the First Judicial Circuit, Criminal Court 'A' presided over by His Honor Roosevelt Z. Willie, is Movant in a motion for change of venue proceeding filed on September 3, 2018 [at] the First Judicial Circuit Court for Montserrado County, Criminal Court 'A', which was heard and ruled upon by Co-respondent, His Honor Roosevelt Z. Willie, on the same day. Attached hereto and marked as Petitioner's Exhibit 'P/1' in bulk is a copy of the aforesaid motion and the referenced ruling on same in substantiation of the averment contained herein.
2. That Petitioner's prayer for the Writ of Certiorari is predicated upon two very serious sets of errors made by the presiding judge, one growing out of a request for change of venue as explained in count 3 through 12 and the other growing out of his determination that Petitioner's counsels unduly delayed the commencement of the murder trial and therefore he fined said counsels United States Dollars One Hundred (USD100.00) or its equivalent in Liberia Dollars, contained in counts 13 through herein below.
3. That as the first part of the complaint against the Co-respondent judge, Petitioner says subsequent to the motion for change of venue as contained in count one (1) hereinabove, Petitioner's counsel, on the minutes of court made a submission on the same September 3, 2018, consistent with Article 21(h), waiving his right to trial by jury and same was denied by Co-respondent judge, Roosevelt Z. Willie. Attached hereto and marked as Petitioner's Exhibit 'P/2' is copy of the minutes, specifically the submission of Petitioner's counsel and the ruling of the Co-respondent judge to form a cogent part of this proceeding.
4. That the ruling of Co-respondent judge, Roosevelt Z. Willie ('Exhibit P/1') is grossly erroneous and prejudicial in that the Co-respondent judge ruled denying Petitioner's motion for change of venue for reasons stated in the first paragraph of sheet nine (9) of His Honor's ruling, which contradict Petitioner/Movant's motion and argument; there is nowhere in [the] petition ever argue that he wants a change of venue 'because there will be publicity in the allegation by both print and electronic media'.
5. Further as to count four (4) in count three of Petitioner/Movant's motion for change of venue wherein he asserts that 'Movant has a very strong belief and there is reason to maintain such strong belief that he will not

have an impartial trial in Montserrado County predicated upon the diverse local bias that have engulfed the incident that led to the unfortunate situation culminating into his (Movant) arrest and trial for murder, including but not limited to condemnation in the print and electronic media of him (Movant), expressions of falsehood as to the cause of the exchanges that occurred between him (Movant) and the victim that led to the death of the latter, and the undisputable actual fear and apprehension that person having knowledge of the situation and can explain from their certain memories now have refused to even align with him both in public and private in the county'. Petitioner most respectfully prays Your Honor to take notice of the referenced count in [the] motion to substantiate Petitioner's averment herein.

6. That Petitioner further submits and avers that Co-respondent, Judge Roosevelt Z. Willie committed a reversible error when he gave a meaning to Section 5.7(i), change of place of prosecution contained in Volume 1, Title II of the Criminal Procedure Law, which says '...on motion of the prosecuting attorney or the defendant, the court may order the proceedings in a criminal prosecution transferred to a competent court in another county in any of the following cases:

   (a) if the county in which the prosecution is pending is not one of the counties specified in section 5.1-5.6; (b) if there is reason to believe that an impartial trial cannot be held in the county in which it is pending; and (c) if all the parties agree and if the convenience of material witnesses and the ends of justice will be promoted thereby.'

7. Further to count six (6) above, Co-respondent judge Willie in his ruling as found on sheet nine (9), 18th day of jury sitting, set a new requirement to grant a motion for change of venue contrary to the standard set by the Honorable Supreme Court of Liberia. Co-respondent, Roosevelt Z. Willie held: '.... When a motion for change of venue is made there are requirements: (1) there must a pretrial bias publicity; (2) it must be shown that the venue for which the change is to take place from must not be a proper venue and (3) that there are proof of hostility the defendant or the movant and as a result of that there will be injustice'. Petitioner maintains that His Honor, Judge Willie's ruling is contrary to the clear and mandatory meaning given by the Honorable Supreme Court to Section 5.7(b) of the Criminal Procedure Law as mentioned supra. The Honorable Court says in the case Gbeyama v. R.L. 35LLR567 (1988), that 'where a defendant in a criminal case involving a felony swears that he fears that because of local prejudice, he will be unable to obtain justice; our statute makes it mandatory that a change of venue be granted.' Petitioner therefore begs Your Honor to find that the Co-respondent judge is in irreparable error as his determination is in tension with that of the Court vested with authority to say what the law is in this Republic.

8. Petitioner says that Co-respondent, His Honor Roosevelt Willie committed reversible error when he said [that] Co-respondent denied Petitioner/Movant's motion for change of venue holding as can be found in the court's minutes of the 18th day of jury sitting, specifically sheet nine (9), second paragraph that '...we have not seen any evident here where media has made judgment in this case by rendering defendant Williams guilty already.' Petitioner says that in Gbeyamaa v. R. L. 35LLR as mentioned above, the Honorable Supreme Court did not require a movant requesting the court to change venue of trial to produce evidence that he/she has been rendered guilty. The honorable Supreme Court says and

has held in a litany of cases on this subject that 'where a defendant in a criminal case involving a felony swears that he fears that because of local prejudice, he will be unable to obtain justice, our statute makes it mandatory that a change of venue be granted.' Similarly, the Honorable Supreme Court says in the se Weah v. R. L. 35LLR677 (1988) that the Court [has] unequivocally upheld the right of defendant asserting that it has 'adopted a principle of law which states that in criminal prosecution the right of the accused to a change of venue upon the ground to obtain fair trial in the county where the indictment is found, or because of local prejudice and excitement is universally recognized.'

9. Petitioner says that Co-respondent, His Honor Roosevelt Willie committed reversible error when he impressed in his ruling as found in Exhibit 'P/1' sheet ten (10) that both parties relied on Chapter 5.7 © of the Criminal Procedure Law, Petitioner says that during Petitioner/Movant argument, emphasis was made on Chapter 5.7 (b) of the Criminal Procedure Law and not chapter 5.7 (c) as found in His Honor Roosevelt Z. Willie ruling; and even if that were the case, the Supreme Court's standard of measure remains the controlling law and the judge and all other persons bound thereby. Hence, the judge's decision ought to be reversed and Petitioner so prays.

10. Further to count nine (9) above, Petitioner says that Co-respondent, Roosevelt Z. Willie committed a reversible error when he says as found on the sheet (10) containing His Honor's decision in relation to the second set of defendant with hindering law enforcement that '...one of the parties specifically stated that he interposes no objection to the point of change of venue but that if the case will be tried by this court they do not want to go out of Montserrado County by that assertion or indication constructively what does it means, is that, he does not want to go out of the Montserrado County...' Petitioner says that this assertion of the Co-respondent is contrary to the submission made by the Co-defendants who are indicted for the crime of hindering law enforcement. Co-respondents said in their submission as found in Exhibit 'P/1', fourth paragraph of sheet six (6), 18th day of jury sitting that 'at this stage, one of counsels for Co-defendants says that they interpose no objection to the said motion being filed by Co-defendant, Jonathan Williams except that it may want to be tried in this county only and if there will be any interference to the effect. And submit ...' Co-respondent, Judge Roosevelt Z. Willie failed, refused and neglected to consider the phrase '...it may want to be tried in this county...' Notwithstanding, Petitioner wonders how a position or desire of a different defendant is binding on the exercise and therefore negates his enjoyment of his fundamental right, especially in a matter that is so corrosive and bears on his very life? This finding of Co-respondent Judge Willie is erroneous and Petitioner prays Your Honor to determine so.

11. Petitioner avers that upon denial of his motion for change of venue, Petition pleaded not guilty to the indictment and waived jury trial consistent with the 1986 Constitution of Liberia, Article 21(h) which says 'No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by a Grand Jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall , with appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused

shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy.'

12. Further as to count eleven (11) above, Petitioner says contrary to Article 21 (h) of the 1986 Constitution of Liberia mentioned supra, Co-Defendant, His Honor Roosevelt Z. Willie denied Petitioner/Movant's informed decision to waive jury trial citing the Criminal Procedure Law, Section 20.2 which says "In all cases except where a sentence of death may be imposed, trial by a jury may be waived by a defendant who has the advice of counsel or who is himself an attorney. Such waiver shall be made in open court and entered of record." Petitioner says that this statutory provision is in tension with the Constitutional provision cited supra and that that in fact; there is precedence for a defendant charged with capital crime and in fact, murder, to waive jury trial. The case Hans C. Williams and Mardia P. Williams V. R.L, heard by the Honorable Supreme Court on May 7, 2014 and decided on August 15, 2014 speaks in certain terms of this rule.
13. On the determination of the Co-Respondent Judge that the Petitioner's counsel "are testing the resolve of the court" and therefore are "fined US$100.00" Petitioner says that the Judge's action is arbitrary and unsupported by both facts and law. Petitioner equates the Judge's determination on this issue to a bad omen against Petitioner and thus, having the tendency to create apprehension in his legal team.
14. Petitioner informs Your Honor that two weeks prior to returning to court, he first appeared without a lawyer and beg the Judge to grant him three weeks to find a lawyer as no lawyer was agreeable to representing him but the Co-respondent Judge granted him two weeks instead. Throughout the two weeks Petitioner and his family contacted several lawyers but all hesitated on grounds that the matter is toxic and they are unable to take risk in the face of public resentment. Howbeit, Petitioner's family contacted Cllr. Jallah A. Barbu on Saturday, August 25, 2018 who also expressed difficult in representing Petitioner but with persistent appeal, advised that he be given time to consider the request. On Monday, August 17, 2018, Cllr. Barbu and Petitioner's family members met and he again advised that he needed to speak with Petitioner which meeting he had with Petitioner on Tuesday that is the day before Petitioner's next appearance in court.
15. On Wednesday, August 29, 2018, Petitioner was brought to Court and upon inquiry, informed Co-Respondent Judge Willie that he still did not have a lawyer but has spoken with Cllr. Barbu; he therefore begged the Judge to summon Cllr. Barbu to establish his stance as to requesting him which the judge did.
16. On inquiry to Cllr. Barbu he clearly indicated that he had not decided but that since the Petitioner/Defendant finger-pointed him as the counsel of his choice and to bring closure to the matter, he would accept the request with a proviso that he be given up to Monday, November 3, 2018 to prepare to give the Defendant adequate representation. The Co-Respondent Judge refused to grant the Monday extension and only gave a day, and ordered the next sitting to be Friday, August 31, 2018.
17. Petitioner says that the Friday proceedings, his counsel informed Court that Petitioner/Defendant was not agreeable to being tired in Montserrado County although a final decision had not been made and therefore asked the

Judge to allow them the weekend to conclude same with the Petitioner/Defendant. This request was agreed to by the State Prosecutors but in his determination, the Co-Respondent Judge determined otherwise and although he reluctantly granted the request, fined Petitioner/Defendant's counsel as indicated. Hereto attached and marked as Petitioner's exhibit "P/3 in bulk" is copy of the minutes of the proceedings of Wednesday and Friday, August 29th, and 31st respectively, to form a cogent parts of this Petition.

18. Petitioner says that the Judge's action is contrary to law as provided and the legal interest of Petitioner/Defendant and that it has the potential to scare off Petitioner/Defendant's lawyers and they could withdraw their services for fear of being wrongly handled and their professional reputation tarnished. Hence, Petitioner also prays Your Honor to determine that the Co-Respondent Judge is in reversible error and therefore reverse this wrong ruling of the judge. Petitioner relies on Section 2.2, Adequate Legal Representation of Accused Persons, Criminal Procedure Law, specifically sub-section 3 which provides: "... Facilities to obtain and consult with legal counsel of own selection to be furnished. At any time when an accused while in custody or on appearance before the court advises that he desires to obtain legal counsel of his own selection, upon his request he shall immediately be furnished, without cost to him, with available facilities to aid him in securing such counsel and shall be allowed reasonable time and opportunity to consult privately with such counsel before any further proceedings are held". Hence, Petitioner contends that by any parity or reasoning, it was and remains wrong for the Co-Respondent Judge to have pursued the course of action he did against Petitioner's legal counsels.

Wherefore and in view of the foregoing, Petitioner most respectfully prays Your Honor to cite the Co-Respondent Judge and all parties of interest to this Petition to show cause, if any, why the Peremptory Writ of Certiorari so prayed for should not be issued; and to grant unto Petitioner any and all other relief Your Honor deems just and legal in this matter.

Respectfully submitted Petitioner
by and thru his legal counsel

Dr. Jallah A. Barbu
COUNSELOR-AT-LAW

Jimmy S. Bombo
COUNSELLOR-AT-LAW

We have determined to only address two issues from the above quoted petition which we deem germane to the matter before us, which are, Petitioner William's motion to waive jury trial and change of venue. The Supreme Court has opined that it will not pass upon every issue raised before it, except they are important and germane to the determination of the case. Halaby ét al v. Cooper, 41LLR, 136, 146 (2002).

As earlier stated, the origin for the filling by the two petitioner for the writ of certiorari stem from interlocutory rulings rendered by the respondent judge when he denied then two separate motions. Petitioner Williams filed a formal motion for waiving his right to a jury trial and a change of venue, while Petitioners Alice and Edwina Youti spread on the minutes of the trial court, request for separate trial from Defendant Williams. In view of the fact that the issues raised in the Motions filed by both parties in the trial court are similar to the ones raised in the present petitions, we will not quote the said motions. We however deem it necessary to quote below

relevant counts of the prosecution's resistances to the two motions which were made on the minutes of the trial court, to wit:

The State's resistance to Petitioners/Co-Defendants Alice and Edwina Youti's motion for dismissal of the charge against them:

"In resisting the motion for dismissal of the indictment one of counsels for the prosecution says the following to wit:

1. That as to count 3 of the motion, counsel draws court's attention to Chapter 14, Section 14.6 of the Criminal Procedure Law of Liberia. Sub-section 1 of that chapter says "Two or more offenses may be charged in the same indictment or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are based on the same act or transactions or two or more acts connected together or constituting parts of a common scheme or plan". That this count of the Movant's motion is promptly quashed and silent by this statute. That the said count represents a misreading of the law and consequently should be denied and dismissed.
2. Further to count 2 above, Respondent says and submit that the fact remains that Movants and the principal defendant acted in concert, and the actions and transactions of the movants and defendant Williams are inextricably linked and hence their misdemeanor as claimed by Movant is connected to the bigger capital offense. Therefore, the motion to dismiss the indictment on grounds that it is not an indictable offense has lost relevance and must therefore be denied by Your Honor.
3. Further to count 5 above, Respondent says that this indictment is concise, clear and states the role of Movants which is clearly connected to the commission of the crime of murder and therefore same cannot be represented as a basis of the dismissal of the indictment. Furthermore, Respondent says whilst it acknowledges the classification of misdemeanor as being cognizable before the magisterial court, is not applicable in this instant case and should therefore be ignored, denied and dismissed consistent with law and practice in this jurisdiction.

Wherefore and in view of the foregoing, Counsel for Respondent prays the following:

a) That the motion being a ripe subject for dismissal because of its wrongful legal foundation should be dismissed.
b) Your Honor should order this matter proceeded with and receive this motion as if it was never filed
c) Grant unto the Respondent any and all further reliefs that you find just, legal and equitable in the premises. And respectfully submits.

The State's resistance to Petitioner/Defendant William's motion for change of venue:

"... In resistance to the motion for change of venue field by Co-defendant Jonathan Williams, one of counsels for the Prosecution submits and says that said motion to include all its averments and counts should be denied and dismissed out of premises of this Honorable court for the following reasons to wit:

1. That as to count 1 of Movant's motion up to count 2, prosecution maintains that the law cited by the Co-defendant is clear but its application to the case at bar renders same ineffectual. Further to count 1 of the Republic of Liberia resistance, Prosecution maintains that the framers of said laws were clear on the creation of same as said law is

conditioned on reasons, genuine and specifically proffered before court consequence in granting the motion change of venue. Regrettably, the co-defendant has not, up to time of filling of this motion indicated by means of an affidavit or by any other instrument to necessitate the condition under which the reasons are spelled out by the framers of the laws to be granted. Therefore count 1 up to count 2 should be denied by Your Honor and this honorable court.

2. That as to count 3 of the co-defendant's motion the prosecution maintains and says that said count is so indistinct and vague as to the assertion of the co-defendant. Prosecution says that in its count 3 the co-defendant exerted to divert local biases specifically condemnation in print and electronic media but woefully failed and neglected to bring those pieces of evidence as named in the motion so as to give the court reasons to believe that the Prosecution or said cause of action will be impartial against het codefendant in these proceedings. The Prosecution maintains that mere assertion without an iota of proof renders said count as being baseless and same does not fall within the ambit in the law as provided in Chapter, Section 5.7.1 of the statute quoted by the codefendant/Movant. Hence count 3 of the movant's motion should be dismissed and denied.
3. That as to count 4 and 5 of Movant's motion, Prosecution says that it cannot decide for the defendant who has established his potency to hire its own Counsel and the assertion that his legal counsel are unwilling, same is irrelevant and cannot justify a good reason for having this matter changed from this jurisdiction. Further to the count, prosecution maintains again that there is not affidavit from the witness that they are afraid to testify before this court as indicate by co-defendant. Prosecution maintains that the accession made by the co-defendant that its witnesses are afraid without any affidavit from witnesses, same is a mere accession that this Court cannot take serious and said accession post the burden of proof on the codefendant to show with all responsibility and the failure to do so renders said count dismissible before Your Honor and this Honorable Court.
4. That as to count 6 and 7 movant's motion, the Republic maintains that same is a mere contradiction as there is no coherence of the ideas for the fact that the previous counts say the witnesses have expressed their disagreement. Said accession by the Movant shows Your Honor and this Honorable Court that the counts stated herein have not stated or provided the reasons upon which this Honorable Court relies to sustain the Motion prayed for by the co-defendant. Counsel further maintains that the co-defendant again asserted biases in the electronic and print media that will render said trial being non impartial but again neglected to punctuate with specific indication as to the name of the newspaper, the caption the recording of the electronic media and the tapes from broadcast studio to reasons as provided under the law supra.
5. That as to counts 9 and 10 of the Movant's Motion, Prosecution maintains that the law cited under Article 11 (a) (h) of the Constitution of Liberia (1986) which guarantees to protect life are all precise laws and same are also organic but said law cannot find a placement in the subject proceedings because the co-defendant in the dock has been charged and indicted with the commission of murder same being felony of the first degree. The citation made by the co-defendant cannot be applicable to him as he has allegedly injured and rendered lifeless another Liberian citizen who family and professional colleagues are still

in a regrettable mood. Co-defendant by law has not stated again any justifiable reasons before this court to sustain it prayer for the change of venue as all reasons given are factual reasons without any evidence to justify the granting of said motion, as such said count and the averment should be denied and dismissed as in keeping with law.

6. That as to count 11, prosecution maintains that the case cited in 35LLR upon which the Honorable Supreme Court opined stated evidential reasons along with affidavit to justify the opinion of the Supreme Court. The Supreme Court being a constitutional court did not rule on mere facts but the facts of this case provided that there were sufficient evidence stated by the party appellant and said facts included an affidavit and tangible instrument upon which the Supreme Court acted and relied in consonance with Chapter 5, Sub-section 5.1 and 5.7. Counsels says that the case law cited by the co-defendant cannot be the same to the instant case at bar as the co-movant reluctantly and woefully neglected to attached specifically the name of the electronic media and a tape from said electronic media indicating; the biases, a caption of the name of the print media indicating the story of the biases that will render this trial being impartial against the interest of the codefendant. Counsel maintains that even though the deceased in these proceedings was a professional journalist but no institution whatsoever had published any story same being bias that will render a trial against co-defendant who wickedly committed said act, gruesome as wicked as being impartial and unfair. Hence, said count 11 being a total misplacement of the law should be denied and dismissed.
7. As to count 13 counsels prays Your Honor and this honorable court that was specifically transverse in said count. Wherefore in view of the foregoing facts and circumstances mentioned by Prosecution, Prosecution prays Your Honor and this Court to have said motion which is ill-fated and without evidence deny and dismiss and grant unto Prosecution any other relief that Your Honor deems just legal with the practices of law, and submit."

The Respondent judge entertained arguments pro and co on the motions and the resistance thereto and thereafter, ruled on September 3, 2018, denying the motions by both petitioners, thus the present petitions for the writ of certiorari to review the respondent judge's interlocutory ruling.

In order to fully appreciate the issues contained in the interlocutory ruling being sought by the Petitioners for review, and how they were addressed by the Respondent judge we take recourse to and quote the full text of the trial judge's ruling starting with the ruling regarding the motion for separate trial by petitioners Alice and Edwina Youti, as follow, to wit:

"THE COURT: Predicated upon the two motions made, one for dismissal of the charge of hindering law enforcement against defendants Alice Youti and Edwina Youti, and the other separate motion made by Mr. Jonathan Williams for change of venue, this Court will decide the motions separately as they were made. The first motion being that of dismissal of the charge hindering law enforcement on the principle ground that the offense of hindering law enforcement as indicated in the Penal Law, Section 12.4 is a third degree felony and the extension of the jurisdiction of the magisterial court confer on the Magisterial Court, all

third degree felonies as first degree misdemeanor. Movant argued that this court lacks jurisdiction to try the defendant on the said charge because misdemeanor of the first degree is conferred on the magisterial court. The Prosecution in resisting that motion insists that it cannot apply in this case because it is linked to the action of the principle defendant who is charged with murder. Meaning that, it is not possible as earlier ruled by this Court to try the defendants separately without the action of their principal defendant.

The motion and the argument put forth by the parties bring us to one single issue, and that issue is whether or not the Movants action as charged in the indictment is part of a conspiracy of a common scheme or plan to extort (estop) the principal defendant from prosecution; to answer this question, we want to take a look at the indictment particularly in count 3 of the principle defendant "... that as Jonathan Williams render the deceased unconscious by stabbing him several times on diverse parts of his body, defendant Caesar Kennedy conspired with defendant Jonathan Williams and transported the injured body in defendant Jonathan Williams' infinity jeep bearing license plate A63505 to the Kingdom Care Community in Paynesville and dumb him at the road side where he remained until he expired and that the body of the late Tyron Brown was only discovered later by passer-by in the Kingdom Care Community. Count 4. That after the dumbing of the body of Tyron Brown, the defendant later washed said vehicle burned the plastic that they defendants had wrapped Tyron Brown in with the sole purpose of concealing and destroying all cases of evidence".

Let's turn to the indictment of the Movant in count 2 "that on said surprise mentioned day, time and place the defendant in this case all of whom live in the same compound with Jonathan Williams and Caesar Kennedy murderers of the deceased Tyron Brown being in full knowledge of the murder of the deceased concealed said information thereby preventing the discovering of the crime of murder committed by Jonathan Williams and Caesar Kennedy. If you look at the indictment and the issue we have raise whether they acted in concert the answer is YES. There was a conspiracy to conceal the discovery as alleged of the deceased. Our laws also provide in the Criminal Procedure Law section 14.6, title Joinder "... Tw or more offenses may be charged in the same indictment or complaint in a separate for each offense if the offenses are charged, whether felonies or misdemeanors or both, are based on the same act or transactions or two or more acts connected together or constituting parts of a common scheme or plan." Therefore while it is true that the crime hindering law enforcement on its own merit has been conferred on the jurisdiction of the magisterial court; when it is done in consent or as a scheme or as plan with a felony that is indictable it cannot and should be argued that it should that it should go to the magisterial court or be dismissed because what is of essence is that there is something in law call criminal joinder where the higher offense can even take precedent and therefore it was murder aspect that took precedent in the indictment to come and ask for dismissal of the case because it is treble by a Magistrate court this court says as far as our law is concerned it cannot hold water and it is hereby denied. AND SO ORDERD.

GIVEN UNDER MY HANDS AND SEAL
OF COURT THIS 3RD DAY OF SEPTENBER
A.D. 2018

ROOSEVELT Z. WILLIE
RESIDENT CIRCUIT JUDGE
ASSIGNED CRIMINAL COURT "A"

The Co-defendants, Alice and Edwina Youti excepted to this ruling and put the trial court on notice of their intention to take advantage of a remedial process, thus the present petition for the writ of certiorari.
We observed that the judge premised the denial of petitioners Alice and Edwina Youtis' motion to dismiss the charge of hindering law enforcement on Section 14.6 (1) of the Criminal Procedure Law, which states as follows:
'1. Of offenses. Two or more offenses may be charged in the same indictment or complaint in a separate count for each offense if the offenses charged whether felonies or misdemeanor or both, are based on the same act or transaction or on two or more acts or transaction connected together or constituting parts of a common scheme or plan.'
To buttress his reliance on the above on the above quoted statute, the respondent judge, quoted excerpts from the indictment, that is, counts 3, 4, and 2 thereof as follow, to wit:
Count 3'….that as defendant Jonathan K. Williams rendered the deceased unconscious by stabbing him several times on diverse parts of his body, defendant Caesar Kennedy being extremely indifferent to human life conspired with defendant Jonathan K. Williams and transported the injured body of the deceased in said Jonathan K. Williams' Infiniti Jeep bearing license plate number A63505 to the Kingdom Care Community in Paynesville and dumped him at the road side where he remained until he expired; and that the body of the late Tyron Brown was only discovered later by passers-by in the Kingdom Care Community.'
Count 4 '….that after the dumping of the injured body of the Tyron Brown the defendants later washed said vehicle and burned the plastic that they/defendants had wrapped Tyron Brown in with the sole purpose of concealing and destroying all traces of evidence…'
Count 2 '….that on said supra mentioned date, time and place the defendants, all of whom live in the same compound with Jonathan K. Williams and Caesar Kennedy the murderers of the Deceased journalist, Tyron Brown, being in full knowledge of the murder of the deceased, concealed said information thereby preventing the discovery of the crime of murder committed by Jonathan K. Williams and Caesar Kennedy. That on said 15 April, 2018, when defendants Jonathan K. Williams and Caesar Kennedy…'

We further take note of the fact that the thrust of the respondent judge's ruling is the outcome of the manner by which he framed the issue regarding the petitioners' request for separate trial and in addressing said issue, how same led him to rely on the quoted statute, that is, Section 14.6 (1) of the Criminal Procedure Law. For the benefit of this Chambers Ruling I deem it necessary to quote the issue as framed by the trial judge.

'...whether or not the movants as charged in the indictment is part of a conspiracy of a common scheme or plan to estop the principal defendant from prosecution.'

We note that nowhere in the indictment regarding the petitioners is any mention made of a 'conspiracy' as was included in the issue framed by the trial judge. In fact, we perceive that it was the manner in which the judge framed his issue that had him relying on Section 14.6(1),....(supra).
The quoted excerpts from the indictment by the trial are void of any showing that the offense for which the petitioners Youtis were charged, are based on the same act or transactions connected together or constituting parts of a common scheme or plan. Instead, the only conspirator named and described in the indictment is one Caesar Kennedy whose act was directly connected to the defendant's (alleged) act of murder.
The records show that it was after the alleged acts by Williams and Kennedy, that the police charged the co-defendants/petitioners with hindering law enforcement, speak to acts subsequent to an act already committed.
In its argument, the lawyers representing the state tried to impress upon us that the petitioners Youtis came under the component of the stated statute, dealing with 'transaction or transactions connected together'. Transactions mainly refer to dealings, businesses, trades, connection, etc. and are distinct from conspiratorial or same acts performed or committed by persons at a particular date, time and place as contemplated by the quoted statute. The only persons mentioned in the indictment as acting in concert were Jonathan K. Williams and Caesar Kennedy and not the petitioners, Youtis.

Moreover, a careful look at the Judge's ruling begs the question of whether same was premised on the indictment or his personal perception as to what might have occurred during the course of commission of the crime. Judge Willie attempts to rule on the charges of conspiracy and connivance presumable gathered out of his imagination as to the circumstances surrounding the crime rather basing his ruling on the charges contained in the indictment yet to be proven and the police report in the records before him. It is a principle of law, historically held by the Supreme Court that the indictment should contain allegations that must be proven as charged. Wright v. Republic, Supreme Court Opinion, March Term, A.D. 2010; Sneh v. Republic, 35 LLR 136 139 (1988); Banioe v. Republic, 26 LLR, 255, 273 (1977) And this implies that anything outside of the charges contained in the indictment cannot be a subject of judicial determination.

Judge Willie's action of imputing conspiracy and connivance into the charges contained in the indictment regarding the Youtis and thereby premising his ruling on those issues is not only tantamount to the court doing for the prosecution what it should do for itself but also against the established legal principle that a court shall not sua sponte raise issues for party litigants or making the court or the trial judge himself a party to the case.

We have on several occasions admonished judges not to get personally involved in cases appearing before them. Judicial cannon #10 provides that "a judge should be temperate, attentive, impartial and since he is to administer the law, interpret it and apply it to the facts; he should be studious of the principles of law and diligent in endeavoring to ascertain the facts'.

We are equally taken aback at the portion of the trial judge's ruling wherein he acknowledges his lack of jurisdiction over the subject matter of the charge

of hindering law enforcement, but insists on ascribing jurisdiction onto himself on what he erroneously referred to as a 'conspiracy' between the principle defendant, Williams and the Co-defendants, Alice and Edwina Youti, and which erroneous ruling the State wants this Court to uphold, when it argued that at certain point in time during trial in the lower court they will produce evidence against Williams and at a certain time produce evidence against the Youtis. What a travesty of the law!

Jurisdiction of the subject matter, hindering law enforcement in the instant case, is conferred by law and not by the inference of a judge, a state prosecutor or any judicial officer. The prerogative to define the category, grading, punishment of offenses and the tribunal in which such offenses shall be tried is with the Legislative Branch of Government and no judicial officer can circumvent such authority. The legislature was emphatic when it amended the Penal Law and declared that all third degree felonies be deemed as first degree misdemeanors and that all 1st, 2nd and 3rd degree misdemeanors are exclusively and originally within the trial jurisdiction of a magisterial court. ['An Act to Amend Title 17 of the Liberian Code of Laws Revised, Judiciary Law, Chapter 4, Relating to the Jurisdiction of the Debt Court; Chapter 7 Relating to the Magistrates' Court And Related Matters. Section 7.3.

"(b) in criminal proceedings. Magistrates shall hold court for the examination of persons charged with an offense over which a superior court has original jurisdiction alleged to have been committed at any place within their respective magisterial areas except cases of rape or sexual violence. The Magistrates' jurisdiction over criminal proceedings herein set forth shall also extend to contiguous areas in which no magisterial or justice of the peace court is established.

Magisterial courts in concurrence with justice of the peace courts shall exercise exclusive original jurisdiction:

(1) of cases of petit larceny;
(2) of misdemeanors of the first, second and third degree;']

It is therefore our holding that the judge erred when he relied on the quoted statute, at section 14.6 (1) of the Criminal Procedure Law and that the trial judge should have relinquished jurisdiction over the crime of hindering law enforcement same being a 1st degree misdemeanor and cognizable before a magisterial court.

We now revert to and quote verbatim the respondent judge's ruling regarding the petitioner Jonathan K. Williams' motion for change of venue and waiver of jury trial.

'THE COURT…. On the other motion for change of venue, the motion and argument put forth and the law cited presents one issue and that issue is what the basis for the change of venue?

..According to the Movant requesting this court for the change of venue, he argued that the defendant is requesting a change of venue specifically to Gbarpolu County because he fears that there will not be an impartial trial in his jurisdiction. He states that there will be publicity in the allegation by

both the print and electronic media. He also feels that in view of the fact that prospective jurors to be selected from already have preconceived view of how to rule in this case. The Movant although relied on several laws but one of the principal laws he relied on says that the Supreme Court has made it mandatory to grant a motion for change of venue whenever it is expressed by any of the parties; in this case, the defendant. In resisting to that motion the prosecution argued that the motion for change of venue should be denied because this court has earlier ruled that the defendant cannot be severance because of the nature of the charge and also that the requirements for change of venue as defined in Section 5.7 of the Criminal Procedure Law have not been met by the Movant and also that the Movant has not shown any evidence to support his claim of fear. We will now revert to our earlier issue raised. When a motion for change of venue is made there are requirements: 1. There must be a pretrial bias publicity; 2. It must be shown that the venue for which the change is to take place from must not be a proper venue; and 3. That there are proofs of hostility the defendant or the Movant and as a result of that there will be injustice.
Let us comment on these requirements one at a time, the Movant spoke about pretrial publicity, from where we sit, in any murder case where the life of a human being is taken, media will always report it; and in any vicinity where the media is, [it] will report about [the murder case]. The law specifically says that bias publicity [of a homicide]. Meaning that the media did not only speak of the homicide, but, made judgment in the case. We have not seen any evidence here where the media made judgment in this case by rendering defendant Williams guilty already.

The second point [raised by the movant is] about improper venue, is that, whether this court has the jurisdiction to hear this case. This court is called Criminal Court 'A' and is responsible for crimes against person. Meaning that [this court] has jurisdiction to hear this case. Hostility is the other element for the granting of a motion for change of place of prosecution. Again, we have [not] seen any hostility whether physical or verbal. [Needless to say that,] since the accused has been coming to court we have not seen anybody insulting him physically or verbally. The [question that begs is] whether the accused will be denied justice as a result of what we have just said.

In the mind of this court, we say no. More than that, Chapter 5.7 (c) that both parties relied on says that '.... for a change of venue to be granted the parties must agree...' This law does not necessarily mean that the Movant and the Respondent should agree. The point here is, it must be noted in this case, that the co-defendant must be tried together. The lawyer representing the co-defendants does not even agree to the point of change of venue. The lawyer specifically stated that he interposes no objection to the motion for change of venue, but [added] that if the case will be tried by this court, they do not want to go out of Montserrado County. By that assertion or indication, he means, he does not want to go out of Montserrado County. And this court has stated that ve cannot separate their trial. So we must try them jointly [because] one of the arties says that they want to be tried in Montserrado County. Having said that e mandatory expression of the Supreme Court from [where] we sit is not in cuum, meaning that not because you ask for change of venue it will be nted. There are elements that will be satisfied and in this case those elements e not been satisfied. Therefore and in view of the foregoing, [the motion for

change of venue] is denied, and this case is ordered proceeded with. AND SO ORDERED.

GIVEN UNDER MY HANDS AND SEAL OF COURT ON THIS 3RD OF SEPTEMBER, A.D. 2018

ROOSEVELT Z. WILLIE
RESIDENT CIRCUIT JUDGE
ASSIGNED CRIMINAL COURT 'A'

Firstly, we have researched our laws and precedents by the Supreme Court and have not found the three (3) requirements outlined by the trial judge as the basis for the granting of a change of venue. Thus, said purported requirements having no basis in law same are set aside and we so hold. The framers of our Criminal Procedure Law knowing the dire consequences of one being tried criminally, especially for the crime of murder, a capital offense that carries a penalty of death or life imprisonment, espoused, that the purpose and construction said law, are 'intended for the just determination of every criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.' Criminal Procedure Law, Section 1.2.

In line with the standard of impartiality and fairness in the administration of justice, our law grants a party the right to change of place of prosecution if he/she so swear provided that one of the following grounds is established:

a. If the county in which the prosecution is pending is not one of the counties specified in section 5.1-5.16;
b. If there is reason to believe that an impartial trial cannot be had in the county in which it is pending;
c. If all the parties agree and if the convenience of material witnesses and the ends of justice will be promoted thereby. Criminal Procedure Law, Rev. Code 2:5.7

A reading of the above quoted provision of the statue is void of any substantive evidentiary burden placed on a party making a request for a change of venue as the State has so strenuously stated in its resistance to the movant's motion before the trial court and in its brief and argument before this Court. In other words, the movant is not obligated to show or proffer any form of evidence in order to have a motion for a change of venue granted by a court. ['Sawyer V. Republic, (1944) LRSC 16; 8 LLR 311 (1944); Gbenyena v. RL (1988) LRSC 88; 35 LLR 567 (1988). Supreme Court held that "where a defendant in a criminal case involving a felony swears that he fears that because of local prejudice, he will be unable to obtain injustice, our statutes makes it mandatory that a change of venue be granted']. Unlike other provisions of the law which require certain evidentiary prerequisites before the granting of an order or motion, a movant in a change of venue must only comply with one of the three grounds stated above. For instance, a movant in a motion for a writ of attachment must (1) file an affidavit subscribed and sworn to by himself, his attorney or agent, stating his claim and the damages that he believes he

has sustained thereby, showing that one or more of the grounds of attachment provided by section 7.11 of the Civil Procedure Law, and (2) give a bond in an amount equal to one and one-half times the amount demanded in the complaint that the plaintiff shall pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the plaintiff fails to prosecute the case successfully or it if is finally decided that the plaintiff was not entitled to an attachment of the defendant's property, and that the Plaintiff shall pay to the sheriff all of his allowable fees.

So even accepting the trial judge's requirements for argument sake and comparing same with the circumstance of his case and taking pretrial bias publicity as the first basis for a justification to grant a motion for change of venue, we note the gravity of the crime of murder and as earlier stated, the irretrievable characteristics of a lost life. The unreceptive fact that a family member is lost and gone and can never be seen and its attaining grief is so immeasurable that one cannot take away the public attraction that comes along with the loss of one life even if the victim is neglected by society or is mentally imbalanced. Obviously with the character of the victim in the instant case as gleaned from the records, being a promising young person and a journalist, the attraction of public sentiments and publicity cannot be a matter of question. These sentiments, although anticipated, may likely interfere with the right of the accused and however guilty he/she may be, we, as protectors of the sacred laws of this country, are under obligation to do so. Hence, a ground for a change of venue on the basis of public bias and publicity which might impact the trial of the case should have been considered by the trial judge. In fact, a perusal of the resistance by the State proves this very point 'public sentiments' when it stated thus: ".... the citation made by the co-defendant cannot be applicable to him as he has allegedly injured and rendered lifeless another Liberian citizen whose family and professional colleagues are still in a regrettable mood... Counsel maintains that even though the deceased was a professional journalist, but no institution whatsoever had published any story same being bias that would render a trial against co-defendant who wickedly committed said gruesome act could now raise the issue of an impartial and unfair trial."

That is why the Supreme Court has reasoned that the option to change a place of trial or prosecution is a right conferred to a criminal defendant in a murder trial and that the exercise of such right cannot be hindered by any court of law. In the Darpul case (2013) quoted supra, while referencing another case, Weah v. Republic, 35 LLR 567, 571 (1988), of similar circumstances, the Supreme Court held:

'A murder case also, as the instant case before us, this Court adopted a common principle of law. It states that in criminal prosecutions, the right of the accused to a change of venue upon the ground of inability to obtain a fair trial in the county where the indictment is found, or because of local prejudice and excitement is universally recognized. It is a fundamental principle of law that every person charged with crime shall have a right to a fair and impartial trial and while it is generally presumed that defendant can obtain a fair and impartial trial in the county where the offense with which he is charged was committed, when he can show that because of local excitement or prejudice against him in the county where

the indictment is found he will be unable to obtain a fair trial there, he is entitled to have the venue changed to another county.

It is recognized that the commission of a heinous crime, as murder, attracts a natural flow of popular emotional outburst from the people of the vicinity where such act is committed. Resulting fears which grip the affected community tend to fuel a popular desire for swift and immediate justice for the loss of one of their own. Neighbors tend to develop some feelings of care and affinity for one another. The jury system, as a matter of fact, is fundamentally premised on this principle: that having developed a sort of bond of geniality, a neighbor is unlikely to condemn a neighbor for a crime than a stranger would. It is the law of general application that the trial jurors be selected from the locality where crime was committed. But there is a downside to this law. It has also been argued that a stranger accused of an outrageous crime against a neighbor, is likely to be convicted by jurors from that neighborhood for a crime the outsider may not have committed. The legal system therefore puts a method in place which seeks to deal with this challenge by providing for change of venue in order to safeguard the right to a fair and impartial trial regardless of the accused being a neighbor or a perfect stranger. Change of venue as a principle of law is basically intended to strike that balance between these seemingly conflicting interests.

It is therefore mandatory that where an application for change of venue has been made, the judge's decision to grant or deny same ought to accord attentive consideration to the entire circumstances attendant to the commission of the crime and the reaction and emotions of the locality.

The question posed in the Darpul case, we also ask in the present case. Did the facts and circumstances attending the post crime commission environment of the instant case tended to suggest the existence of local prejudice such as to legally justify the granting of the motion for change of venue? To address this, we take recourse to the records, particularly the motion for change of venue, the resistance thereto and the trial judge's ruling under review.

Frist, we note that all the motions were filed before the trial court on September 3, 2018; that arguments were heard on the same September 3, 2018 and the trial judge's ruling rendered on the selfsame September 3, 2018. This was definitely not sufficient time for the trial judge to have accorded attentive consideration to the entire circumstances attendant to the commission of the crime.

As to the State's resistance, we again re-quote same, to wit:
... ' the citation made by the co-defendant cannot be applicable to him as he has allegedly injured and rendered lifeless another Liberian citizen whose family and professional colleagues are still in a regrettable mood... Counsel maintains that even though the deceased was a professional journalist, but no institution whatsoever had published any story same being bias that would render a trial against co-defendant who wickedly committed said gruesome act could now raise the issue of an impartial and unfair trial.'

As regards the trial judge's ruling we also quote, to wit:
'... let me comment on these requirements one at a time. The Movant spoke about pretrial publicity; from where we sit in any murder case

where the life of a human being is taken the media will always report of it and in any vicinity where the media is there will be a report of it. The law specifically says bias publicity, meaning that the media did not speak of the homicide but made judgment in the case. We have not seen any evidence where the media has made judgment in this case by rendering defendant Williams guilty already.'

From the above quotes, both the State and the trial judge do confirm the existence of local prejudice and bias, especially given the profession of the deceased and the fact that he lived, worked and dwelled in the present County of Montserrado. The trial judge for his part is of the opinion that although the media did report on the matter, as long as the media did not bring any final judgment against the defendant, the reporting was not bias. We disagree. Of course, the media is not cloth with any authority to make such a decision; it is only the court before which the case is venue that can make such a final judgment.

It is therefore our holding, as supported by this Court's conclusion in the Darpul case and other cases cited supra, that in cases of infamous crimes such as murder where public interest and sentiments of the local community or persons connected to the victim or the alleged perpetrator(s) where same was allegedly committed, the defendant's request for change of venue must be treated as a matter of right.

Judge Willie also denied the movant's application not to be tried by a jury concluding that the Criminal Procedure Law precludes a defendant charged with an offense wherein a death penalty may be imposed from exercising the right to waive a jury trial. The controlling provision on which he based his ruling reads as follows:

'In all cases except where a sentence of death may be imposes, trial by a jury may be waived by a defendant who has the advice of counsel or who is himself an attorney. Such waiver shall be made in open court and entered of record.' Criminal Procedure Law, Rev. Code, 2:20.2

A facial interpretation of this provision of the law gives the impression that the trial judge's conclusion that it forbids the waiver of jury trial by a person charged with an offense in which a death sentence may be imposed; an exclusive construction of it without reference to other provisions of the constitution would mean that the judge was within the pale of law when he denied the movant's application for a waiver of jury trial.

However, the cannons of statutory interpretation require us to test every provision of a statute against constitutional commands and if the former falls short, even in the slightest term, to the latter, a court of law is under obligation to give premium to the competition between provisions of the constitution and that of a statute for every legislative enactment that comes in conflict with the organic law is void from its very origin.

Thus, in order to accept the interpretation given to the above provision by the trial judge, we must ascertain whether the framers of the Constitution were silent on the right to waive jury trial, or whether they delegated the determination of such right to the legislature, or that they themselves set any condition, such as the gravity of the offense or the gravity of the

sentence to be imposed as presented by the statutory provision above, impedes the right to waive jury trial.

Article 21 (h) of the 1986 Constitution provides:
No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by a Grand Jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy.

The only requirement set by the organic law, the Constitution, on the defendant's choice or right to waive trial by jury is that he/she must do such waiver with appropriate understanding and must expressly waive the right to a jury trial. There is no condition on the imprisonment term of the offense charged neither there is any discretion given the judge to decide whether to accept the defendant's choice to waive his right to a trial by jury.

Thus, the judge's reliance on the provision of the criminal procedure law quoted above being in contravention of the Constitution, was grave error. It is an elementary principle of law and mandated by the forbearers of the Constitution that not only the organic law is the supreme and fundamental law of Liberia and its provisions have binding force and effect on all authorities and persons throughout the Republic but also "Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect." See Lib. Const. Article 2, 1986.

In the face of the trial judge's errors in handling the proceedings; his failure to relinquish jurisdiction on the charge of hindering law enforcement, a 1st degree misdemeanor cognizable before a magisterial court; his refusal to grant a defendant charged with an infamous crime of murder against numerous opinions of the Supreme Court; and his disregard of the defendant's constitutional right to choose whether he wants a jury trial or not, are all circumstances when put together justifies the reversal of his-ruling and granting the peremptory writ of certiorari.

Before concluding this ruling, we must reiterate the position taken by this Court in the Darpul case as follow:

'We must remark here that the primary purpose of criminal prosecution in our jurisdiction is to seek justice for both the State as well as the criminal defendant and not to convict. Andrew T. Davies. Director of Police, et. Al v. The intestate Estate of Anwar Rif 25 LLR 144 (1976). To afford the accused a fair, speedy and impartial public trial is sacrosanct, irrespective of the ghastly character of the crime he is charged with. This is because fair trial, according to the Liberian Constitution (1986), is an entitlement. It is therefore mandatory on all courts of law in this jurisdiction that rights

that have been constitutionality granted safeguarded and enjoyed by all criminal defendants in the conduct of criminal proceedings. Utmost diligence is even more obligatory on all courts in Liberia where the criminal defendant, as those in the murder case now before us, by filing the application for change of venue, was representing to the trial court that he ran the risk of being robbed of his constitutional entitlement to fair trial if made to be tried in the jurisdiction in which the crime was committed."

WHEREFORE and in view of all that have been stated herein, the alternative writ of certiorari is hereby affirmed and the preemptory writ of certiorari is ordered issued. The two (2) rulings of the trial judge denying both the motion for separate trial from defendant Jonathan Williams, by petitioners Alice and Edwina Youti and the motion for change of venue by petition Jonathan Williams are hereby reversed, with instruction that the matter regarding petitioners Alice and Edwina Youti be transferred to the appropriate magisterial court;; and with further instruction that the judge presiding forward the matter of the trial for murder against Petitioner Jonathan Williams be transferred to the 16th Judicial Circuit Court, Gbarpolu County in accordance with the law regarding such transfer and that the trial thereof be prioritized.

The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction over this matter and proceed in accordance with this Ruling. IT IS SO ORDERED.

GIVEN UNDER MY HAND AND SEAL OF THE SUPREME COURT THIS 20TH DAY OF SEPTEMBER, 2018.

SIE-A-NYENE G. YUOH
JUSTICE PRESIDING IN CHAMBERS
SUPREME COURT OF LIBERIA

Notwithstanding the affirmance of the decisions of our colleague as we have stated above, it is the opinion of this Court that for the convenience of the parties, ease of transporting witnesses and largely for the purpose of promoting the ends of justice, it becomes compelling to modify our colleague's decision to order the change of place of prosecution for the first appellee Jonathan K. Williams to the Bomi County.

WHEREFORE AND IN VIEW OF THE FOREGOING, the consolidated ruling of Madam Justice Yuoh is affirmed with modification that the trial as to first appellee Jonathan K. Williams be transferred to the Eleventh Judicial Circuit for Bomi County. The Clerk of this Court is ordered to send a mandate to the court below to proceed in accordance with this opinion. Costs disallowed. AND IT IS HEREBY SO ORDERED.