Korpoi v. Republic of Liberia [2012] LRSC 12 (16 August 2012)

Edwin Korpoi of the City of Bopolu Gbarpolu County Liberia, APPELLANT, Versus **The Republic of Liberia** by and thru Bob David for the Samaritans Purse, APPELLEE

APPEAL

Heard: June 6, 2012 Decided: August 16, 2012

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

Samaritan's Purse Relief International is a non-governmental organization (NGO) that is engaged in the undertaking of filtering water for rural inhabitants in Liberia. After carrying out an assessment in Gbarpolu County, the Organization identified Kungbor District as a site for carrying out its project of producing safe drinking water for the inhabitants. Appellant was employed by the Organization as a watsan technician and supervisor to build water filters for the inhabitants of the District. The private prosecutor accused the appellant of misapplying cement given to him for the project. This matter was brought to the government's attention which then investigated the allegation and proceeded to indict the appellant for misapplication of entrusted property.

The appellant pleaded not guilty to the charge against him. A hearing was had in the 16th Judicial Circuit sitting in its November Term, A. D. 2009. After the hearing, the appellant was found guilty of misapplication of thirty nine and a half (39.5) bags of cement and sentenced to four months prison term, plus restitution of the 39.5 bags of cement at the cost when the cement was purchased. The appellant appealed the judgment and it is this appeal that is now before us for determination. Our Criminal Procedure Law, Section 14.2 requires that except for petit larceny and other petit offenses which are prosecuted by complaint, all other crimes shall be prosecuted by an indictment, which is the formal accusation of a crime made by a grand jury and presented to the court against the accused person. The grand jury of a circuit inquires into all indictable offenses triable within the county and which are presented to it by the prosecuting attorney or otherwise come to its knowledge. If there is probable cause

to believe a particular person is guilty of such offense, it shall charge him therewith by indictment.

Having been convinced from all the evidence taken together, that there was a probable cause that the appellant was guilty of the offense of misapplication of entrusted property, the grand jury caused the following indictment to be drawn up:

"The Grand Jurors for Gbarpolu County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the Defendant Edwin Korpoi, committed the crime of Misapplication of Entrusted Property, a misdemeanour of the first degree, to wit:

That based upon the complaint of the private prosecutor, Samaritan's Purse by and thru its Watsan Coordinator, Mr. Bob David, between the months of April and May 2009, sixty-five (65) bags of cement intended to build cement water filters for Kungbor Community in the ratio of one to one (one bag of cement to one water filter) were issued to you the within named defendant, Edwin Korpoi of Samaritan's Purse, Gbarpolu County, Republic of Liberia, which you defendant received in full according to the waybill.

That according to your Immediate Boss, Bob David, the cement bags in question were received in the following manner: first five (5) bags to fix the worksite, second twenty (20) bags for the filters, third twenty (20) bags for the filters and lastly twenty-five (25) bags.

That sixty-five (65) bags were intended to fix sixty-five (65) cement filters for Kungbor Community. That you, Edwin Korpoi, claimed to have received fifty-five (55) bags instead of sixty-five (65), even though the waybill showed that you Edwin Korpoi received or was issued sixty-five (65) bags of cement.

That out of the sixty-five (65) filters that should had been made, you only produced thirty (30) filters; three (3) for Kungbor and twenty-seven (27) for Borbor Beach.

That it was established by private prosecutor that four (4) bags of cement were sold to one Madam Musu of Kungbor and that you the defendant Edwin Korpoi received L$500.00 (Five Hundred Liberia Dollars) from one Mrs. Jartu for cement.

That you defendant decided to bribe your helpers, Mr. Fombah Armah and Francis Johnson along with Samaritan's Purse Health Educator, Beyan Massaquoi, but they all refused your bribe.

Contrary to: 4 LCLR Tit. 26, Sec. 15.5l(a); 4 LCLR Tit. 26, Sec. 2.2(b), 4 LCLR Tit. 26, Sec. 15.6l(b) and (g); 4 LCLR Tit. 26, Sec. 15.54 of the Statutory Laws of the Republic of Liberia, and peace and dignity of the Republic of Liberia.

When the matter was called for trial by jury, the defense counsel moved the court to waive jury trial, thereby leaving the Judge to be both judge of law and fact. The criminal statute under which the appellant was charged, states:

A person is guilty of misdemeanor of the first degree if he/she disposes, uses or transfers any interest in property which has been entrusted to him/her as a fiduciary, or in his/her capacity as a public servant, or as an officer of a financial institution in the manner that he knows he is not authorized, and that he knows to involve a risk or lose or detriment to the owner of the property, or to the government or other persons for whose benefit the property(ies) was entrusted.

The Liberia Penal Code, Section 15.56.

Setting out to prove its case as charged, the prosecution brought four witnesses to testify.

THE PROSECUTION'S FIRST WITNESS, Mr. James Dayugar, the Based Manager of Samaritan's Purse Organization, Gbarpolu County, testified that the Samaritan's Purse Organization was engaged in bioscience water filtering for creeks used by inhabitants in the rural areas. Samaritan's Purse made some assessment in Kungbor District and came out with a decision to carry out its bioscience water filters project in the District. The Organization sent Edwin Korpoi, the appellant, to the District as the technician for the filters. Sometime later, Mr. James Dayugar said that he got a complaint from his the appellant's direct supervisor, Bob David, that the sixty-five (65) bags of the cement that were sent to the District were missing. Having received this report of the missing cement, he called Edwin into his office to Inquire about it. Edwin told him that he knew nothing about the missing cement. When asked how many filters he had constructed, Edwin told him that he had constructed fifty (50) filters. When further asked if, he, the witness went to Kungbor, whether Edwin could show the fifty (50) filters he had constructed. Edwin replied, “yes". The witness then contacted Bob David to accompany him to the District for the purpose

of verifying the fifty (50) filters that Edwin told him he had constructed. On reaching Kungbor, the witness testified that the appellant only showed them thirty (30) filters that had been constructed.

Outlining the number of cement that had· been sent to the appellant for the construction of the filters, the witness told the court that the cement was sent in three categories: each category had its own waybill. That the Organization sent seventy-five (75) bags of cement. Sixty-five (65) of the seventy-five (75) bags were specifically for the filters and the other ten (10) were for other purposes. Since each filter constructed required a bag of cement, the witness decided that he and Bob David go and inspect the warehouse in which the cement was kept. They noticed that the warehouse had not been broken into, but they did not find any cement in the warehouse and Edwin could not say what had happened to the rest of the cement.

Thereafter, Mr. Dayugar said he went around the District to find out about the missing cement. He came across one lady by the name of Musu who usually cooked for them when they visited the District. She told them that Edwin had sold her five (5) bags of cement. Two other persons came up and told him that Edwin received five hundred Liberian Dollars (L$500.00) from each of them, promising to give them cement. Bob David, Musu, Beyan, the appellant himself and some other people were present when these discussions were going on, but the appellant did not deny any of the allegations. The appellant being the supervisor and the fact that he could not show the fifty (50) filters that he said he had constructed, and based on what others had told him, the witness said he told the appellant that he was responsible for the missing cement. The witness testified further that the appellant himself verbally told him that instead of using one bag of cement to a filter, he used three-fourth (3/4) bag of cement to construct a filter, which meant then that for every four filters the appellant constructed, one bag of cement was left over. The witness calculated that if the appellant constructed thirty (30) filters using three-fourth (3/4) of a bag for each, then there were some 7.5bags of cement that the appellant kept and sold. The witness testified further that the appellant stated to him that in order to sustain himself, he told the boys that were working along with him to sell the remaining one-fourth (1/4) bag of cement from each bag. With said investigation and statement from the appellant, the witness said he brought the appellant down from Kungbor to Bopolu City where he got the police involved. The police came to the Samaritan Purse's Compound and arrested the appellant.

THE PROSECUTION'S SECOND WITNESS, Mr. Bob David, the appellant's immediate supervisor who worked with the Samaritan Purse as a watsan technician, confirmed the first witness testimony when he testified that he sent the appellant as supervisor of the project in Kungbor District along with Beyan Massaquoi as health educator. Two other causal workers were sent along to go to Kungbor to produce filters that would provide safe drinking water for the people of the District. The witness said, he sent seventy-five (75) bags of cement for the project and they were sent in three categories. The appellant and the others were instructed to use five (5) bags to build a worksite and another five (5) bags to prepare a room for keeping the materials; the remaining sixty-five (65) bags to be used for the production of the filters. Witness Bob David told the court that he got a call from Kungbor later in the month of April 2009 that appellant was coming to meet him about the project. The appellant came to Bopolu with a report that he had produced fifty (50) bioscience water filters. Witness David said he complained that this was not true since he had gotten report that there were thirty-nine (39) filters done instead of fifty (50). The appellant denied the report and said that it was a lie. So witness said he was asked by the Monitoring Evaluator to go and monitor the work; he took along with him the Based Manager, Mr. James Dayugar. Upon their arrival in the District, they found out that only thirty (30) filters had been constructed and they were not in good condition; they were cracked and leaking. When the appellant was asked why the leakage, the appellant said he used three-fourth (3/4) bag to each filter. This made the filters substandard. The witness said he then wrote his report and submitted it to the office. The office asked the appellant to replace the cement, or it would get the Criminal Investigation Division (CID) involved in investigating the case.

THE PROSECUTION'S THIRD WITNESS, Mr. Beyan Massaquoi, testified that he was the Health Educator assigned with the project. An assessment was carried out in Kungbor District after which, in late April, he and the appellant were assigned to carry out the water filter project in Kungbor District. The appellant was selected to head the project. Initially they had taken five bags of cement to construct the work site, after which they went to Bopolu and took delivery of twenty (20) bags of cement. Because the appellant was about to take his leave, they agreed that Beyan would go ahead and find two other men to work with them to begin the process until the appellant returned from his leave. Beyan testified that he got two men to help him start the project and they built nine (9) filters before the appellant returned from his leave. When the appellant came, Beyan testified that he opened the

warehouse and showed the appellant the eleven bags of cement that were left. Later, they got the consent of Samaritan Purse Office to put a floor in one of the rooms in furtherance of an understanding between Samaritan Purse and the owner of the house. In May, another twenty five (25) bags of cement were brought for the project. Since the appellant was not there, Beyan said he received the cement and upon the return of the appellant, he took him to the warehouse and showed him the cement. After reporting the cement, the witness said he then gave appellant the key and said to him, you can now go ahead with your work, since it's your job. He stated that he was there in May when twenty (20) bags of cement were again brought for the project. He then decided to plaster his own room.

Testifying further, Beyan said he was going to Bopolu for his pay so he suggested to the appellant that they take stock of the cement and have him take a report back to the main office in Bopolu. The appellant agreed and they counted thirty two bags which was left In the warehouse. Before going to Bopolu, Beyan said, they had constructed thirty filters.

After his leave, witness Beyan said he went to Kungbor to do a follow up on the filters. When he got there, he decided to take a rest and while he was sitting on his bed, the appellant came into his room and told him that he had used the cement they had left in Kungbor. He asked the appellant for what purpose, and the appellant told him that he was stranded and so he used the cement; that Beyan was not to worry, he knew how to make his report. Beyan said he told him, he was afraid. Thereafter, Beyan called and asked Bob David to come to Kungbor as something had happened and he wanted him to come and ratify; he also wrote a letter to Bob David, and later went to Bopolu where he met Bob David and the Based Manager in Gbarma. He told them what was going on and they told him that they were going to visit the District. They all went back to Kungbor that same day. It did not take long when the appellant also arrived in Kungbor.

Upon the inspection of project completed, Beyan testified that their bosses found out that only thirty (30) filters had been completed. The appellant could not give account of the balance twenty (20) filters as he had reported to his bosses that he had constructed fifty filters, and he could not account for the balance cement. All of the employees then came back to Bopolu and those on the project were taken to the police station for preliminary investigation where they were asked to write statements concerning the cement issue. They wrote their various statements and later they were invited to the CID Office which carried out their own

investigation. The witness said that the appellant later stated that he was responsible for the cement and that he would work and pay for same.

THE PROSECUTION'S FOURTH WITNESS, Detective Sgt. Emmanuel Duewanna, CID Commander for Gbarpolu County, testified that on the 12th day of June 2009, at 8:00 p.m., Mr. James S. Dayugar came and reported to the police that he sent 65 bags of cement for construction of water filters to Edwin Korpoi. Later, on June 9, Mr. Dayugar said he received Information through one of the workers. Mr. Dayugar, that the cement was missing from the warehouse. He then went to Kungbor to find out about the missing cement, and when he asked the appellant about the cement, he got no good explanation from him. Based upon his complaint, Edwin Korpoi was accused and invited at the police charge of quarters. When Edwin Korpoi was asked at the police station about the missing cement, he admitted to receiving fifty-five (55) bags of cement, and he showed the way he used them. According to the information that he gave the CID, the witness testified that appellant told them he used 30 bags, the rest of the cement he used for the work site, for his room, and some for food which he permitted the boys to use.

After its fourth witness, the prosecution asked to admit into evidence both its oral and documentary evidence. Thereafter, the defense moved for judgment of acquittal; the defense stated that the State had failed to produce sufficient evidence to sustain and substantiate the allegation contained in the indictment.

This motion was denied by the court who ordered the proceedings proceeded with.

The defense took the stand and produced its lone witness, the defendant Edwin Korpoi. In his testimony in Chief, he testified as follows:

This year, 2009, I took a leave. April 27, 2009, this leave ended. May 27, 2009, Samaritan's Purse entrusted me with twenty (20) bags of cement to go and fix some filters in Kungbo. I carried the cement and fixed the filters that they told me to fix. When I brought my report, the Based Manager, Mr. James Dayugar, asked me to go to Kungbor to see the work I did. We went back; I showed him the twenty filters for the twenty bags of cement. So we came back. The man brought me to the police and prosecuted me. Up to now I don't know what he prosecuted me for. I stop here.

Having listened to both sides of the matter and considering both documentary and oral evidence, the Judge ruled that the appellant Edwin Korpoi, did misapply thirty nine and a half (39.5) bags of cement entrusted to him for the construction

of bioscience filters for the benefit of the inhabitants of Kungbor District, and therefore found him guilty, sentencing him to four (4) months imprisonment and restitution of the cost of the cement considering the price at the time of the purchase. Our Penal Law, Section 50.7 provides:

A person who has been convicted of a misdemeanor may be sentence to imprisonment for the following terms:

(a) For a misdemeanor of the first degree, to a definite term of imprisonment to be fixed by the court at no more than one year.

Excepting to the Court's Judgment, the appellant filed a ten (10) count bill of exceptions as follows:

BILL OF EXCEPTIONS

AND NOW COMES defendant in the above entitled cause of action and most respectfully present his Bill of Exception to Your Honor for approval to enable him to perfect his appeal from the Honorable Supreme Court of Liberia as announced following Your Honor's final Ruling/Judgment on 18th day of December A. D. 2009 as showeth to wit:

1. That defendant in the above entitled cause of action, being dissatisfied with Your Honor's final ruling/judgment and having announced an appeal to the Honorable Supreme Court of Liberia, sitting in its October Term, A. D. 2009, tender in this Bill of Exception consistent with Section 24.7 1LCLR page 388 for the Supreme Court to take judicial seize In order to review You Honor's final ruling/judgment.

2. Counsel for defendant says and submits, that in this jurisdiction, the burden of proof lies solely on the prosecution of what is alleged in the complaint/ indictment against the defendant. Failure on the part of prosecution to prove what is alleged in the complaint/indictment against defendant, presents the issues of insufficiency of evidence, and reasonable doubt which must be settled;

3. Counsel says and submits that in the instant case, all the allegations that are made in the complaint/indictment against defendant were not proven during the trial of this case by prosecution as Is required by law. For example:

(a) In count one (1) of the indictment it is alleged that sixty-five (65) bags of cement were issued and received by defendant intended to build cement water filters for Kungbor Community, at the ratio of one cement bag for one water filter, that which the defendant received in full according to the waybill. But no waybill to substantiate the allegation was attached to the indictment, nor was any shown to the court during the trial of this case, and Your Honor did not ask for it.

(b) Then in count two (2) of the same indictment it Is alleged that the same cement was received by defendant as alleged by Bob David, In the following manner: five (5) bags to fix the work site, second, twenty (20) bags to fix water filters, third, twenty (20) bags for water filters and lastly twenty-five (25) bags intended for no purpose, totaling altogether seventy (70) bags, here again no waybill was attached to the indictment nor was any shown to court during the trial.

(c)That during the trial Bob David alleged that defendant sold four bags of cement to one Madam Musu of Kungbor, but during the trial said Bob David did not make any effort to bring Madam Musu to prove that defendant sold four bags of cement to her, nor did you yourself do so, so no evidence of the allegation.

4. It is very clear that all the allegations in the Indictment against the defendant for which he was tried, convicted, sentenced to four months of imprisonment, were not proven by best/sufficient evidence by prosecution as is required by law, thus presenting the issues of insufficiency of evidence and reasonable doubt present themselves, that must be settled as is required by law, by whom and how?

5. The legal settlement of issues of any kind In all cases including this case is by motions; one is by the trial court on its own, to move to dismiss on grounds of either insufficiency of evidence, or on reasonable doubt, dismiss the charge, acquit and discharge defendant, or by the defendant raising the issues and motion the court to dismiss, or for judgment of acquittal all in keeping with law that are on the book;

6. Counsel says and submits, that Your Honor knows of this provision of the law, and yet Your Honor is ignored It and when the counsel for defendant raised these issues, throughout the trial and finally motion to dismiss the case on those

grounds, prayed for judgment of acquittal Your Honor over- ruled it and denied them, thus ground to except to your final judgment and announced an appeal.

7. Counsel says and submits that a judge is not to make himself a party to any case before him, but in this particular case, for reason known to Your Honor, greater portion of your ruling, final judgment carries personal defenses defending Your Honor self and castigating the defendant and accusing him of being trained to come to court and lie etc., as can be seeing on pages 29-32, of the minutes of the final judgment; all contrary to the ethic of judges rules and laws. Partiality, and prejudicial nature was involved;

8. That the main issues at bar in this case were left untouched and Your Honor went on to deal with issues less important in the case, the main issues: that is to say, whether or not plaintiff issues sixty-five (65) bags of cement to defendant as alleged in the indictment; whether or not defendant received them and misapplied them, etc., and Your Honor went on to deal with writing of the defendant, etc., all contrary to law;

9. That Your Honor denied appellant/movant, defendant motion to subpoena his material witness, whose testimony defendant was relying on, denying such motion was damaging to defendant is contrary to Section 17.3(3) and

10. Counsel finally says and submits that while the court is only to examine pieces of evidence placed before it by the parties. Your Honor chose to extract evidence from the defendant by ordering him (the defendant) to go into your Chamber and write a paragraph from a book which you gave him. Such act not being in line with law. Counsel for defendant prayed and moved the court that said writing should not form part of the evidence against the defendant but Your Honor denied said motion and refused to note defendant's exception; thereby making the court a party to the case, contrary to law.

WHEREFORE AND IN VIEW OF THE FOREGOING defendant/appellant/movant most humbly prays Your Honor's approval of this Bill of Exception to enable him to perfect his appeal from the Honorable Supreme Court of Liberia as the law provides.

The appellant's bill of exception counts 1 through 6 challenge the conviction of the appellant on the ground that the prosecution did not proved the allegations averred in the indictment. The Supreme Court is called upon to review whether in fact the prosecution produced sufficient evidence to prove that the appellant did

misapplied property entrusted to him in violation of Section 15.56, so as to warrant his conviction.

The indictment alleged that the appellant was In charge of a bioscience water project and was specifically provided sixty-five (65) bags of cement to carry out construction of water filters in the Kungbor Community. The project required one bag of cement to a filter. Provision of the cement was evidence by waybills which were signed by those working on the project in Kungbor and evidenced by their signature attesting to receipt thereof. Although the appellant claimed he had received only fifty five (55) bags of cement instead of the sixty-five as evidenced by the waybills, he built only thirty (30) filters, three (3) for Kungbor and twenty seven (27) in Borbor Beach. When the controversy began for accountability of the balance cement, the appellant attempted to bribe his co-workers of the project which they refused. The Indictment alleged that the private prosecutor established that appellant sold four (4) bags of cement to one Madam Musu of Kungbor and received Liberia Dollar five hundred (L$500) from one Mrs. Jartu for cement. Thus the appellant was charged with misapplication of entrusted property.

In proving Its allegation, the State produced four witnesses who overwhelmingly testified that seventy five (75) bags of cement were sent to the appellant for the project in Kungbor. Sixty five (65) bags were to be used to build the water filters at one bag to each filter and the other ten (10) were for other purposes, like preparing the warehouse where the cement was to be stored. There were also overwhelming evidence produced by the prosecution that only thirty filters were built, and according to prosecution's witnesses, James Dayugar and Bob David who left Gbarpolu to inspect the project when the complaint was sent to them, even those thirty built were substandard; they were cracking and leaking. They testified that the appellant admitted to using three fourths of a bag of cement instead of one whole bag to a filter.

Besides the oral testimonies of the prosecution's witnesses, voluntary statements said to have been made by the witnesses and other employees working on the project when they were investigated were introduced into evidence. These statements presented into evidence included a statement from the appellant himself. Two of the employees, Francis Johnson and Fomba Armah statements are summarized as follows:

Mr. Francis Johnson, a 26 year old male, who worked with the project, wrote at the police station, that in May 2009, the project staff went to Bopolu to take pay; but before going, Edwin Korpoi, the appellant, and Beyan Massaquoi told them that the balance bags of cement left were thirty-two (32) bags. Upon their return, they went to check the warehouse but there were only fifteen (15) bags of cement. One of the employees, Fomba Armah, told him that the appellant sent someone to the warehouse for cement, but he, Armah, refused. Another time the appellant sent someone to him Francis Johnson with a note saying that he should give the person one bag of cement, but he again refused and the appellant himself came afterwards. Another time the appellant told him to take two (2) bags of the cement, Fombah Armah two (2) bags, and three (3) bags to be kept for Beyan Massaquoi. Francis said that his little brother told him that trouble is coming, so all those that were told to take the cement left the cement in the warehouse. The next day someone came for the cement and carried It and offered Francis Armah L$100.00 but he refused the money. So they started making confusion. Francis Johnson said that his brother advised that they take the balance items from the warehouse such as Crisco oil, four cups and some empty containers.

Fombah Armah, a 19 year old male who also worked with the project wrote that during the investigation in some part of May 2009, the project staff returned from Bopolu and went back to the worksite. They noticed that seventeen (17) bags of cement that were left in the warehouse were missing. Previously, when leaving for Bopolu, they left 32 bags in the warehouse but upon their return, only 15 bags were there. Their landlady who was in possession of the warehouse key told him that she was instructed to give four (4) bags to one man identified as Dorley. The following day he saw a note signed by the appellant instructing him to give a bag of cement to a man with the note. Thereafter, when the appellant came, Armah said he asked him about the materials that were leaving from the warehouse, and the appellant told him that he was aware; that Armah should leave it with him as a boss, as he knew how to make his report. After that, the appellant decided to share the balance 10 bags amongst the staff. Armah said, the appellant gave him two bags, Francis, two bags, the appellant himself, three bags and he kept three bags for Beyan Massaquoi. Seeing how the cement was handled, Armah said he decided not to sell his, so he left it in the warehouse. To his surprise, when he came to the

warehouse later, Armah said he noticed that the rest of the cement was taken away by the appellant. He got angry and went to inform their landlady and she told him that she was going to meet with the appellant. The following day, he met with the appellant and asked for his share of the money from the sale of the cement that was taken from the warehouse. The appellant gave him $LD100.00, and that made him angry; he threw the money back at him and walked away. The appellant walked behind him and told him not to get angry, that he was going to add his money up later.

To substantiate the number of cement sent for the project, the prosecution's second witness, Bob David, was asked the question, on the direct, how supplies were delivered from Bopolu to the project site where the appellant carried on the construction of the filters. He answered that the Organization has a request book in which all requests are recorded. Items from the warehouse based on the request made were accompanied by a waybill. On the waybill are the names of the item(s), the name of the person who made the request, the name of person who transports the item(s) and the name of the receiver.

The records show that the prosecution presented three waybills evidencing the quantity of cement sent. These documents were testified to, marked and admitted into evidence by the trial Judge. One waybill, dated April 28, 2009, was for twenty five (25) bags of cement, and upon delivery was signed for by Beyan Massaquoi, the prosecution third witness; the other dated May 7, 2009, for twenty (20) bags of cement, was signed for by Edwin Korpoi, the appellant himself; and the third waybill, dated April 20, 2009, for thirty (30) bags of cement, was again signed for by Beyan Massaquoi.

Despite the testimonies and evidence of waybills introduced by the prosecution, the appellant has alleged in Count 3 of his bill of exceptions that no waybill was produced to substantiate the allegation by either being attached to the indictment or shown to the court during the trial of the case,and the Judge did not ask for it.

We find this totally untrue as the record is replete of presentation of the waybill into evidence and admission by the trial court. For example, the following shows the production and admission into evidence of three waybills:

DIRECT EXAMINATION OF PROSECUTION FIRST WITNESS, MR. JAMES DAYUGAR:

Q. Tell this court, Mr. Witness, the procedure or procedures used in transferring materials from Bopolu to the project site.

A. What we do when materials are requested from the warehouse, we use the waybill system. The person that issued the materials from the warehouse, the date the materials were issued, and the location where the materials are going. Once the materials have been issued on the waybill, the requestor signs for the materials, take into the field and they are received here in the project area. That is the procedure.

Q. Mr. Witness, by that answer you mean that any material that is lifted from Bopolu to the project site is accompanied by waybill, were you to see the waybill could you identify same?

A. Yes.

Q. Mr. Witness, I have in my hand a document, I pass it on to you to identify what this is.

A. Yes, this is our waybill.

At this stage, prosecution passed to the court the waybill that has been identified by the present witness for mark of identification.

The court: The request by the prosecution for a mark of identification to be placed on the instrument just identified and testified to by the witness is hereby granted and said instrument is hereby marked CT/1, so ordered.

Q. Mr. Witness, I again pass you the same document. Look at the signature on that document and tell this court whose signature is that.

A. There are three sets of signature on this document, one signature for the person who issued the materials from the warehouse and the other two signatures are Beyan Massaquoi's and Edwin Korpoi's, respectively.

At this stage, Your Honor, prosecution requests the court to put a mark of confirmation on the documents.

The Court: The prosecution's request is hereby granted.

We also find in the records the following questions posed and answers thereto on the CROSS EXAMINATION:

Q. Mr. Witness, do you have any document to prove that sixty-five (65) bags of cement were given purposely for the making of filters?

A. I said on the waybill we sent seventy-five (75) bags of cement to Kungbor; however, sixty-five (65) bags of those cement bags were intended for filter construction and the other ten (10) for other purposes.

DIRECT EXAMINATION OF PROSECUTION SECOND WITNESS, MR. BOB DAVID:

Q. Mr. Witness, in your testimony you mentioned about a waybill that was used whenever material was transferred from Bopolu to Kungbor, were you to see the waybill will you identify same?

A. Yes.

At this stage, prosecution passes you the waybill to reconfirm the document just presented to you.

The Court: the request by the prosecution to place a mark of reconfirmation on the document is granted and said Instrument is hereby reconfirmed. And it is so ordered.

The waybills produced into evidence and which forms part of the prosecution proof of cement delivered, show features for the signatures of the recipient, the date the cement and other items are delivered. The waybill of April 20, 2009, confirms that Beyan Massaquoi signed for and received thirty bags of cement on April 21, 2009; another waybill shows that on April 28, 2009, Beya'n Massaquoi again signed for and received twenty-five bags of cement on April 28, 2009; and on the waybill of May 7, 2009, the appellant himself signed for and received twenty bags of cement on May 17, 2001. Total deliveries of cement to the project as per the

waybills show that seventy five bags of cement were delivered for the project, contrary to the appellant's testimony on the stand that he received only twenty bags of cement, or his voluntary statement made at the police station that he received only fifty five bags of cement for the project in Kungbor.

The best evidence rule which is universally accepted normally applies to writings and is evidence of the higher quality available as measure by the nature of the case. We are convinced by the waybills produced into evidence that the quantity of cement sent were seventy five bags. It remained for the appellant who said that he received only twenty bags of cement to deny knowledge of the other fifty five bags sent and signed for by his co-worker Beyan Massaquoi which Beyan said he reported to the appellant. Failure of the appellant to deny Beyan's testimony resulted to sufficient proof that indeed seventy-five bags of cement was indeed dispatched to kungbor for the project.

Overwhelming testimonies were that only thirty of the filters were built, and even appellant's bosses testimonies stated that these filters were substandard because appellant caused the filters to be built using 3/4 bag each instead of the one bag required for each; that the appellant admitted to them that he had the balance cement sold to feed the workers. There is nothing in the records showing an understanding that the appellant was responsible to feed the workers of the project. On the contrary, they all testified that they went to Bopolu at some point to receive their salaries.

The appellant maintained on the stand that he was given only twenty (20) bags of cement for the project in Kungbo, out of which he molded twenty (20} filters for the District Kungbo but below is the voluntary statement said to have been made by him at the police station in Bopolu:

I was assigned in Kungbor District along with three (3) boys, namely: Beyan Massaquoi, Francis and Fomba. When I was on my leave, Beyan Massaquol was in charge; he received and signed for cement. In the first instance, I know about fifty-five (55) bags of cement of which five (5) bags to be used for the floor on the worksite. After my leave, I went back to Kungbor and met fifteen (15) filters on ground along with five (5) bags of cement and (20) bags which Beyan had received, making it twenty-five (25) bags of cement which was reported to me. Thirty-one (31) filters were constructed. Five (5) bags of cement were used for floor. Beyan used two (2) bags for his room's floor. I used two (2) bags for mine also, and another one (1) bag was taken by Beyan that I was never

informed of. One (1) bag was taken by the boys, which **I** was not informed of. But for the condition in the area where we were, **I** told my boys to be keeping half (1/2) bag of cement for our sustenance whenever they work. They kept the cement for two (2) to three (3) weeks, and we were able to get about 5–7 bags of cement. When **I** returned, they asked me for sale of the cement and **I** allowed them. Later Beyan came to the office for his share of the money because he did not get his, but he himself used to be a part of the mission for our food money.

The appellant in his statement wrote, accounting for the fifty five bags of cement as follows:

Five (5) bags for floor to the worksite
Two (2) bags for the floor in Beyan's room
Two (2) bags also for the floor in the guest's room
One (1) bag *of* was taken by Beyan
One (1) bag was also taken by the boys
Thirty-two (32) bags were used to construct the filters
Five (5) bags were used for plastering the guest house

I gave them permission to sell the half (1/2) bag of cement that was saved by them.

On the direct examination regarding the voluntary statement said to have been made by the appellant at the police station, the appellant's counsel posed these questions to him:

Q. Mr. Witness, please refresh your memory and tell this court, whether you ever made any statement written or oral at the police headquarters?

A. yes, Sir.

Q. How did you make this statement?

A. **I** gave the statement at the police station.

Q. Mr. Witness, by that answer we want you to please tell this court whether you wrote the statement.

A. I gave the statement and It was written.

Q. can you remember ever signing said statement Mr. Witness? A. Yes, I signed it.

At this stage the counsel for defendant rest with the witness on the stand with the usual reservation for redirect if the need exist. And submit.

There is inconsistency in the testimony and the voluntary statement that appellant said he dictated and signed. In his testimony on the stand he said that he was entrusted with only twenty bags of cement, but In his statement to the police, he said, I know of fifty five (55) bags of cement. He then outlined how he used the fifty five bags. The Supreme Court has held that conflict in testimonies goes to the weight of the evidence, Forleh et al vs. R.L, 42LLR 23, 39, (2004); This Court in the case, Kpolleh et al vs. Republic, 36LLR 623 (1990) ruled that an accused who when he takes the stand fails to explain Incriminating facts and circumstances in evidence, takes the chance of reasonable inference of guilt which the jury may properly draw from the whole evidence. Besides, the uncorroborated evidence of an accused is insufficient to establish his innocence, especially where the evidence against him is clear and convincing. Toe vs. Republic, 30LLR 491 (1983); Davies vs. R.L. 40LLR 659, 683 (2001). Besides his lone testimony that he had received only twenty bags of cement and had constructed twenty filters, appellant made no attempt to dispute the allegations made against him by his co-workers, that he had misapplied the cement given for the filter project and had tried to bribe them and prevail on them that he could handle the issue and they were not to worry. Beyan Massaquoi, prosecution third witness, testified that when he received the cement delivered for the project in the appellant's absence, upon the appellant's return, he took him to the warehouse and accounted to him for the cement received. This was not denied by the appellant.

The appellant in count 3(c) of his bill of exception states that Bob David, the prosecution second witness, alleged that the appellant sold four bags of cement to one Madam Musu but during the trial the prosecution did not make any effort to bring Madam Musu to prove that the appellant sold four bags of cement to her, nor did the Judge do so.

Firstly It is not the prerogative of a judge to cite a witness to prove a case brought before him as he is to exercise neutrality and impartially In all matters before him. It is encumbered on a party who alleges a crime to prove it and the judge sitting without a jury is only to determine the issues of fact presented and make a determination thereon. Our Criminal Procedure Law, Section 20.3. states, "Issues of fact shall be determined by the court in cases in which trial by the jury has been waived. In a case tried without jury, the court shall make a general finding.

We agree that the testimony of Musu herself would have been given a greater weigh in the determination of the evidence produced by the prosecution, but that did not rule out the testimony given by Bob David, that upon his own investigation, one Madam Musu told him in the presence of the appellant and others that appellant sold her four bags of cement. He testified to what was told him, and any evidence that assist in getting at the truth of the matter is relevant and admissible unless because of some legal rule, it is declared incompetent. The appellant did not deny this allegation when he took the stand. In fact the prosecution witness, Dayugar, said on the stand that the appellant was present when the statement was made by Musu and he did not deny it. Failure by a party to dispute a claim amounts to an admission. Civil Procedure Law Rev. Code 1: 9.8 Defenses and objections; Inter-Con Security Systems vs Miah and Yarkpawolo, 38LLR 633, 650 (1998). The Judge was therefore to weigh and determine the credibility of this testimony along with other evidence produce by the state and make a determination as to the greater weigh and sufficiency of the evidence produced, and determined whether there was preponderance of evidence which left no doubt as to the guilt of the appellant. It is the law extant that the evidence to obtain conviction in criminal cases, there must be proved beyond all reasonable doubt as to guilt of the accused. Tolbert vs R.L, 19LLR 251, 263 (1969)

Counts 7, 8, and 10 of appellant's bill of exceptions accuses the judge of spending greater portion of his ruling on defending himself and castigating the appellant, based on the counsel for appellant's objection to the admission of writing of the appellant that had been extracted from the appellant when the Judge request the appellant to go into his Chambers and write a paragraph from a book in which he gave him.

A review of the record in the file shows the following after the close of crossed examination of the appellant by the prosecution:

Court Questions:

Q. Mr. Witness, during your testimony in chief, you did say that you made a statement at the police station and that you submitted same to the officer Interrogating you. My question is whether or not the statement were made by you or written by you?

A. The statements were made orally by me.

Q. By that answer Mr. Witness, the court wants to know whether or not you can write.

A. Yes, Sir.

Q. Do you also read?

A. Yes, Sir.

Q. Who then did the written statement in your behalf?

A. The investigation officer investigating me at the police station.

Q. By that answer Mr. Witness, did you read the statement after it was written?

A. Yes.

Q. Mr. Witness, I hand you one clean sheet of paper and a paragraph taken from one book, please go in my chamber and sit there quietly and have said paragraph written in your own penmanship. You may now proceed.

At this stage, counsel for the defendant prays to inform court and his Honor that he has rested with the production of oral testimony, by that [appellant] has rested in toto

with the production of evidence with the usual reservation to produce rebuttal evidence, and faithfully submits.

As can be read from the records, counsel for appellant did not object to the action of the judge handing the sheet to the appellant to go into the Judge's Chambers to write a paragraph. In fact, after the presentation of the sheet to the witness, the judge proceeded to further question the witness and after the court rested with the witness the counsel for appellant rested evidence in toto. The matter was then assigned for final argument the next day. It was upon the appearance for argument by the parties that the counsel for the appellant raised the issue of the Judge request to have the appellant write in his chambers and challenge the admissibility of the writing into evidence.

Portion of the Judge's ruling referring to this issue reads:

This Court want to inform the parties, both defendant and prosecution that the Judge who is presiding over this case is not a nonsense lawyer or Judge. To be specific, this Judge is a trained security one who had gone through security training for two consecutive years in the white man land and at the university level as part of his legal training. And therefore will not allow any party litigant or lawyers, to mislead the Court. This Judge shall use all his expertise to render a fair transparent judgment that comes before him. To be specific, after the two lawyers, prosecution and defense rested in total with the production of both oral and documentary evidence, direct and cross, it was left with the Court under our procedure, to ask questions to the defendant. And one question that was posted to the defendant was whether or not he can read and write, and he said yes. It was from this question that the Court asked him to go into the Judge's Chambers to write a single paragraph so as to convince the Court whether he actually wrote the purported voluntary statement at the police station.

After he [appellant] returned in thirty minutes time, he served the Judge with the copy of the paragraph in his hand writing. The Judge being a criminal lawyer, did compare the writing of the defendant with that of the voluntary statement that was made at the police station. We shall return to that specific later.

Regarding this issue of admissibility of the writing of the appellant ordered by the Judge, we look at the following answers to questions put by the Judge to Sgt. Emmanuel Duewanah.

Q. Mr. Witness the voluntary statement that you alluded to have been written by the defendant, who wrote the statement?

A. The statement was written by the defendant himself.

The Judge acting as both judge and jury, alleged in his ruling that he had gone through security training for two years as part of his legal training and he could use his expertise to render a fair and transparent judgment of matters that come before him.

We wonder why the Judge needed to go through such great length to find out whether the appellant wrote the voluntary statement. The Judge's request that the appellant write a paragraph to inform his decision in this matter, we say, was unnecessary in determining the truth of whether or not the statement was made by the appellant. Looking at the questions posed to the appellant by his own counsel on the direct examination, written supra, the appellant admitted to making a statement at the police station. He said that he gave the statement and it was written. He also admitted that he signed it. In answer to the Judge's question whether he could read and write, he answered, yes.

A party's admissions are always competent evidence against him or her, and they may be used either as substantive evidence or for the purpose of impeachment. Voluntary statement which was not denied by the appellant must be deemed as admitted. The Judge's attempt to establish that the appellant indeed wrote the statement himself did not have any bearing on the appellant's testimony which admitted that the statement was dictated and signed by him; and his admission that he could read. This Court has said admissions made by a party are admissible against him. Republic vs. Tolbert et al., 36LLR 739 (1990).

In Count 9 of appellant's bill of exceptions, he also states that the Judge denied the appellant's motion to subpoena his material witness whose testimony defendant was relying on, denying such motion was damaging to defendant contrary to section 17.3 of our Criminal Procedure Law.

We must rule out the claim by the appellant that the Judge denied his request to produce a material witness to testify on his behalf. We must emphasize here that we have read and re-read the records in this case thoroughly in order to substantiate this claim of appellant from the records and nowhere have we seen that the appellant's counsel requested for subpoena of a witness, likewise a material witness, after he rested with the appellant on the stand. The records reveal that immediately after the appellant lone testimony, the cross examination and the court's question posed to him on the stand, the appellant's counsel rested with evidence. We have quoted this portion of the record above. Also in appellant's brief and argument before this Bench, this issue was never brought up. This Bench frowns on a counsel which tries to mislead the court charging in his bill of exceptions an issue that was never part of the proceedings below. RULE 4 of our code for the moral and ethical conduct of lawyers states that a lawyer's word of honor is sacred and his dealings in all matters and on all occasions should not be such as repugnant to his oath, and degrading to his profession. The deliberate inclusion of counsel of appellant's Count 9 in the bill of exception was highly unethical and we must warn the counsel that any repeat by him in the future to deliberately include untruth in his bill of exception with the aim to mislead this court will lead us with no alternative but to take disciplinary action against him.

We are however surprised that the Judge who granted the appeal did not make any reservation on the bill of exception when it was presented to him to be signed. Our Civil Procedure Law Rev. Code, 1: 51.7 states. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment.

The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The fact that no reservation was noted to the appellant's Count 9 of his bill of exceptions is a clear indication of our judge's failure to read and attach importance to issues raised and papers filed before them, especially when this court has ruled that an approval of a bill of exceptions by a judge without expressly noting reservation admits to correctness of the bill of exception and adopts material statements which precede his signature. Wilson vs. Firestone Plantation Company and the Board of General Appeals, 34LLR 134, 148-149 (1986).

Having reviewed the records in the file brought before us,, we disagree with the appellant in this matter that the allegations in the indictment against him were never proved. There were overwhelming evidence produced by the prosecution that Samaritan Purse delivered sixty five bags of cement for construction of sixty five filters; that only thirty filers were constructed; that the appellant who was in charge of the project could not account for thirty-five bags of the missing cement; that the appellant sold some of the cement to the inhabitants of the district where the filters were being constructed; that the appellant cause the workers on the project to used 3/4 of each bag to a filter instead of the full one bag required and sold the balance 1/4 of each bag; thereby, causing even the thirty filters that were constructed to be substandard as the full amount of cement was not used; that the appellant tried to bribed the workers when questions were raised about the disappearance of the cement in the warehouse.

Principle of criminal procedure law is that the State must prove defendant's guilt beyond reasonable doubt. Overwhelming oral and documentary evidence were produced and corroborated by all of the prosecution witnesses in support of the indictment. The uncorroborated testimony of the appellant was insufficient to establish his innocence where evidence against him was clear and cogent. This Court has said a defendant may not be set free on the strength of his lone testimony as against those given by two or more witnesses. Republic, Forleh et al. vs 42LLR 23, 38 (2004).

There is no doubt in our minds from the records in this case that the prosecution proved that the appellant misapplied the cement entrusted to him to construct water filters to ensure the provision of safe drinking water to the inhabitants of the Kungbor District, in Gbarpolu County. From our calculation of the sixty-five bags allocated for the construction of the filter, the appellant could not account for thirty-five, bags of cement, since only thirty filters were constructed. That from each filter, the appellant told the workers to save 1/4 bag to be sold for food; this amounted to the savings of seven and a half bags of cement from the thirty bags used to construct the cement. Therefore, the total bags of cement misapplied were forty two and a half (42 1/2) bags.

Let us interject that the Samaritan Purse Relief International is a non-governmental organization operating in Liberia, developing bioscience water filters which are

constructed in areas where the inhabitants use creek water for drinking. Like other international non-governmental organizations, Liberians are usually employed to carry out the activities of these organizations. We need not emphasize the health hazard of rural inhabitants whose drinking water is taken from creeks. It is therefore disheartening that a fellow Liberian working with this Organization and who has an opportunity to ensure better health for his people by providing safe drinking water could be so dishonest as to use up the materials given for such a project, much to the detriment of his fellow citizens.

This case presents a case of the overwhelming impunity prevailing in our society, where Liberians who have an opportunity to work with international organizations to carry out various social activities for the development of our people, particularly in the rural areas, have misapply materials and other resources intended to carry out these projects. This Court frowns on such behaviour and will not condone any of such behaviour when brought before it, particularly where there is overwhelming evidence produced as to the dishonesty of the accused, and we are left with no doubt about the commission of the crime by the accused.

This Court having found on the basis of the evidence presented that the appellant did indeed commit the crime of misapplication of entrusted property as charged, hereby confirms the judgment of the trial judge as herein modified: that the jail term of (4) months, the appellant Edwin Korpoi was ordered to serve, be increased to six (6) months as a deterrent to others likewise to desist from carrying out similar act; that restitution be made for forty two and a half (42 1/2) bags of cement as deduced from the evidence presented, instead of thirty-nine (39.5) bags as erroneously adjudged by the trial court.

It is further ordered that where appellant fails to restitute the forty two and a half (42 1/2) bags of cement, or the value thereof calculated at US$10.00 (ten United States dollars) per bag, or its equivalent in Liberian dollars, the appellant, Edwin Korpoi, shall serve one month for every US$25.00 (twenty five United States dollars) as prescribed by statute until the full value of the forty two and a half (42 1/2) bags of cement is liquidated. AND IT IS HEREBY SO ORDERED.

The appellant was represented by counsellor Elijah Y. Cheapoo, Sr., of the office of the Public Defender for Montserrado County, and the appellee was represented by

counsellors M. Wilkins Wright, Solicitor General of the Republic of Liberia, Samuel K. Jacobs, Senior Legal Counsel, Ministry of Justice and E. Boakai Harvey, Legal Counsel, Ministry of Justice.