

SOLOMON S. TARPEH, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT,
CRIMINAL ASSIZES, MONTSERRADO COUNTY.

Heard: October 22, 1986. Decided: January 23, 1987.

1. The drawing up and signing of a promissory note by a party charged with embezzlement, upon the request of a private prosecutor, radically changes the situation from a crime of embezzlement to a voluntary transfer of title to the property from the private prosecutor to the criminal defendant and transforms the act from one of embezzlement to one of debt.
2. It is against the law to prosecute a persons for the crime of embezzlement upon default of a promissory executed by him at the request of the private prosecutor, from whom the defendant had embezzled funds, and in respect of which the promissory note had been issued.
3. Debt presupposes nonpayment of a sum advanced, but unless there is an invasion of the title to the goods by conversion, embezzlement does not lie when the owner has transferred title from himself.
4. When a promissory note is signed by the accused, accepted by the private prosecutor and attested to by witnesses brought together by the private prosecutor as a means of compromise and settlement, the private prosecutor thereby voluntarily transferred title to the goods to be repaid in keeping with the note.
5. The law favors the amicable settlement of controversies, and it is the duty of courts rather to encourage than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims.
6. Courts should, and do, so far as they can do so legally and properly, support agreements which have for their object the amicable settlement of doubtful rights by parties.
7. Because they promote peace, voluntary settlement of differences between parties having legal capacity to contract in respect of their rights, where all have the same knowledge or means of obtaining knowledge concerning the circumstances involving their rights and where there are no fraud, misrepresentations, concealment, or other misleading incidents, must stand and be enforced if intended by the parties to be final, notwithstanding the settlement made might not be that which the court would have decreed if the controversy had been brought before it for decision.
8. Voluntary settlement, agreements or compromise are binding without regard to which party gets the best of the bargain or whether all the gain is in fact on one side and all the sacrifice on the other.

9. The prevention of compromise of claims by compelling adjustment of all controversies by litigation in court is against public policy.

The appellant, Solomon S. Tarpeh, appealed to the Supreme Court from a conviction from embezzlement by the Circuit Court for the First Judicial Circuit, criminal Assizes, Montserrado County. The appellant, to whom the private prosecutrix, a girl friend of his, had entrusted various sums of money over a period of time from her business, intended to be applied towards the construction of a house for the private prosecutrix, had converted the said amounts to his personal use and benefit.

Upon being pressured to refund the amounts to the private prosecutrix to avoid criminal prosecution, and on the suggestion of the private prosecutrix, the appellant executed a promissory note in which he agreed to make payment of the amounts involved in installment payments stipulated in the promissory note. When the appellant defaulted in making the payment, as stipulated in the promissory note, he was charged with the crime of embezzlement, tried, convicted and sentenced.

On appeal to the Supreme Court, the judgment was reversed. In reversing the lower court, the Supreme Court held that when a person who has embezzled money from another, thereafter executes a promissory note to pay back the said amount involved, and the promissory note is accepted by the victim, the act constituting the embezzlement is converted from a crime of embezzlement to a civil act of debt. Under such circumstances, it said, title in or to the property is transferred from the victim to the criminal defendant. Hence, the remedy available to the victim thereafter is an action of debt or debt by attachment and not one of embezzlement.

The Court noted that in the instant case, the private prosecutrix had agreed to the execution of the promissory note and had accepted the same. In accepting this new arrangement, the private prosecutrix had parted with title to the amount which then became vested in the defendant under the promise to repay the amount. As such, the Court said, the appellant could not be said to have converted or embezzled the funds which he now had title to. The execution of the promissory note, the Court observed, was a compromise or settlement reached out of court. Such acts, it said, are encouraged by the courts, and are binding on and enforceable against the parties thereto.

Concluding that as no criminal act existed following the execution and acceptance of the promissory note, the Court reversed the trial court's judgment and ordered the appellant released.

Joseph P. H Findley appeared for appellant. *McDonald .1 Krakue*, Solicitor General of the Republic of Liberia, appeared for the appellee.

MR. CHIEF JUSTICE NAGBE delivered the opinion of the Court.

Solomon S. Tarpeh was indicted for the crime of embezzlement under the 1956 Penal Law in the Circuit Court for the First Judicial Circuit, Criminal Assizes, Montserrado County, during its November Term, A. D. 1975. Arrested on January 27, 1976. Defendant Tarpeh was subsequently tried and found guilty of the aforementioned crime of embezzlement.

The facts as narrated in the appellee/prosecution's brief filed in the case are as follows:

"Elizabeth Bah, private prosecutrix in this case was the girlfriend of the defendant/appellant, Solomon Tarpeh, and was doing market and susu business when the defendant/appellant fell in love with her. According to records in this case the private prosecutrix told the defendant/appellant Tarpeh that her main objective was to build a house and he in turn promised that he would give her all assistance in this project, but she should give him whatever amounts she accrued from her business for safekeeping so that she could not use same for other things. In 1968, she received \$500.00 from the susu and gave it to the defendant/appellant for safekeeping. Subsequently, she gave him in August 1969 \$200.00, in October 1969, \$300.00, in December 1969, \$200.00, and in 1970, \$100.00, making a grand total of \$1,600, 00.

In 1971 the private prosecutrix commenced her building by the purchase of materials for the construction. As revealed from the records the defendant/appellant Solomon Tarpeh was unemployed from 1970 July and was solely and wholly depending on the private prosecutrix for his maintenance and support. In 1974, the private prosecutrix called upon Mr. Tarpeh to release the \$1,600.00 she had given him for safekeeping. But he told her in the presence of witnesses that he had used the money for another purpose and would refund same. The private prosecutrix did not accept this proposal and invited other persons to meet Mr. Tarpeh and compel him to refund this amount. After pressure was brought on him, he executed a promissory note to pay this amount in installments, commencing from the 15th of February 1974 when he was to pay upon the installment of the promissory note, \$200.00, and thereafter \$100.00 as of February 28, 1974. The promissory note is marked PL/1 and forms part of the records in this case.

Because of the failure of defendant Tarpeh to comply with the provisions of the promissory note he was indicted under the 1956 Penal Law for the commission of the crime of embezzlement in the Circuit Court for the First Judicial Circuit, Criminal Assizes, Montserrado County, during its November Term, 1975."

The trial judge, His Honour Napoleon Thorpe, among other instructions charged the jury that: "In this case, Miss Elizabeth Bah said that she gave to Mr. Solomon Tarpeh the amount of \$1,600.00 and when she went for her money Mr. Tarpeh had eaten it up. Now you heard that part of the evidence. I am glad that you are mixed men and women, boyfriends and girlfriends. You know what it is to give your boyfriend or girlfriend money to keep and you

know how it is hard for you to get it back. Now, Miss Bah is without her money ..."
Thereafter, the jury brought the verdict already referred to.

A final judgment was rendered thereon by the trial judge. Interestingly, no clear declaration was made by the trial court with respect to the legal status of the promissory note, referred to in connection with the amount of money in issue.

The Promissory Note reads as follows:

"REPUBLIC OF LIBERIA)
MONTSERRADO COUNTY)

PROMISSORY NOTE

\$1,600.00 In the years 1969 to 1972, I the undersigned, Mr. Solomon Tarpeh, of the City of Monrovia, received the lawful sum of ONE THOUSAND SIX HUNDRED (\$1,600.00) DOLLARS from Miss ElizabethS. Bah, a small businesswoman, of the Borough of Crouton, Bushrod Island, Monrovia, Liberia; for deposit only in her account with the Bank of Liberia, for the purpose of constructing a dwelling house, which amount I converted into my own use and benefit without her consent, being that she cannot read and write. I do hereby promise to pay to the said Miss Elizabeth S. Bah, through her attorney-in-fact, Henry S. Lewis, Esq. of the Liberian Senate, the sum of Two Hundred (\$200.00) Dollars in cash at the signing of this promissory note, and the balance of One Thousand Four Hundred (\$1,400.00) Dollars shall be paid in fourteen (14) equal monthly installments of One Hundred (\$100.00) Dollars each in the following manner to wit:

STIPULATIONS

1. On February 28, 1974 \$100.00
2. " March 30, 1974 \$100.00
3. " April 30, 1974 \$100.00
4. " May 30, 1974 \$100.00
5. " June 30, 1974 \$100.00
6. " July 30, 1974 \$100.00
7. " August 30, 1974 \$100.00
8. " September 30, 1974 \$100.00
9. " October 30, 1974 \$100.00
- 10." November 30, 1974 \$100.00
11. "December 30, 1974 \$100.00
12. "January 30, 1975 \$100.00
- 13."February 29, 1975 \$100.00
- 14." March 30, 1975 \$100.00

In the event of default for payment of one (1) single installment of the fourteen (14) installments herein stipulated above, the said Miss Elizabeth Bah through her attorney-in-fact, Henry S. Lewis, Esq., shall have the right to institute necessary court proceedings against me in any court of this Republic having competent jurisdiction for action of debt by attachment for immediate recovery of said amount or any part thereof.

IN WITNESS WHEREOF, I have set my hand and signature on this 15th day of February, A.D. 1974.

WITNESSES: James P. Karley Robert Kun Johnson Joseph Pisco Anthony Torbor SGD: Solomon S. Tarpeh 500 Revenue Stamp affixed on original."

The question which comes to mind is what disposition was made of this promissory note, as would lead to the conclusion that despite the execution of the said note the crime of embezzlement was still committed? Aside from stating that signing of the promissory note was evidence of the fact of embezzlement of Miss Bah's money, no legal exposition was made whatsoever; that is to say, no declaration or legal conclusion as to whether or not, in light of execution of the promissory note, a criminal prosecution for embezzlement could still be maintained, and if so, what then happens to the promissory note? In other words, what was the effect of the execution of the promissory note? Could criminal prosecution for embezzlement be brought despite the promissory note which was executed, not in the form of any agreement to forego prosecution for any crime committed, but as a result of a meeting held between the parties with relatives and friends in attendance because of the previous harmonious relationship which existed between the two parties as lovers.

The drawing up and signing of the promissory note by defendant Tarpeh, upon the request of the private prosecutrix, Elizabeth Bah, radically changed the situation, for in doing so, she thereby voluntarily transferred her title to said amount of \$1,600.00 to defendant Tarpeh, repayable by him in installments as stipulated in the promissory note. In that case, the question of embezzlement could not have arisen. Rather, the appropriate redress consequent upon the note for recovery of the amount was an action of debt. To prosecute defendant for the crime of embezzlement upon his default on the note is not in conformity with law and the terms of that note which stipulated that:

"In the event of default for payment of one (1) single installment of the fourteen (14) installments herein stipulated above, the said Miss Elizabeth Bah, through her attorney-in-fact, Henry S. Lewis, Esq., shall have the right to institute necessary court proceedings against me in any court of this Republic having competent jurisdiction for action of debt by attachment for immediate recovery of said amount or any part thereof"

In face of this, why was the defendant prosecuted for embezzlement instead of being pursued in debt by attachment? In *John v. Republic of Liberia*, Crime: Embezzlement, found in 7 LLR 261 (1941), where the facts, if not the circumstances, were similar to those in the instant case, defendant/appellant was convicted of embezzlement by the lower court. This Court laid down in syllabus 8 that:

"Debt presupposes nonpayment of a sum advanced, but, unless there is an invasion of the title to the goods by conversion, embezzlement does not lie when the owner has transferred title from himself."

Expounding on the difference between embezzlement and debt in such circumstances as those involved in the case at bar, Chief Justice Grimes, at page 270 of the text of the above cited case, said:

"Returning to the submission of counsel for defense, we must now examine the legal difference between embezzlement, the offense charged, and debt, which counsel submits was the extreme limit of defendant's delinquency. And first we must premise that embezzlement and larceny are cognate offenses, differing radically in the following particulars: (1) In the latter the original taking is unlawful, involving a trespass upon the property of the owner, and the unlawful taking and transportation of the property deprive the owner of his possession of, and dominion over, his own property; (2) In embezzlement, on the other hand, the original taking is lawful, for the owner voluntarily surrenders the possession of his property to a bailee for a specific purpose, being careful to retain the title in himself. The gravamen of embezzlement is the act or effort of the bailee to so convert the property entrusted to him as to deprive the owner of his title thereto. The contention of appellant here was that the owner voluntarily parted with the title to the goods, as witnesses who were employees of the company say was done and as the company's ledger discloses, by debiting the defendant periodically with the deficits; that destroyed the gravamen of the offense of embezzlement; and that to hold otherwise would be equivalent to charging defendant with an illegal conversion of goods debited to him as to any other ordinary debtor. That debt presupposes nonpayment of a sum advanced, but, unless there is an invasion of the title to the goods by conversion, then when the owner has transferred title from himself, embezzlement does not lie."

When the promissory note was signed by defendant Tarpeh, accepted by Madam Bah and attested to by witnesses brought together by Madam Bah as a means of compromise and settlement, she thereby voluntarily transferred title to the goods -the money - to be repaid in keeping with the note. We wonder therefore why she chose not to seek recovery of the funds by means of the promissory note secured from the defendant/ appellant following the compromise meeting held on February 15, 1974?

The law favors peace and amicable settlements of disputes. In respect of such approach, we found in 11 AM JUR., *Compromise and Settlement*, § 4, at 249, the following:

"4. Policy of Law to Encourage Compromise. - The law favors the amicable settlement of controversies, and it is the duty of courts rather to encourage than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. The nature or extent of the rights of each should not be too nicely scrutinized. Courts should, and do, so far as they can do so legally and properly, support agreements which have for their object the amicable settlement of doubtful rights by parties; the consideration for such agreements is not only valuable, but highly meritorious. Because they promote peace, voluntary settlement of differences between parties having legal capacity to contract in respect of their rights, where all have the same knowledge or means of obtaining knowledge concerning the circumstances involving their rights and where there are no fraud, misrepresentations, concealment, or other misleading incidents, must stand and be enforced if intended by the parties to be final, notwithstanding the settlement made might not be that which the court would have decreed if the controversy had been brought before it for decision. Such agreements are binding without regard to which party gets the best of the bargain or whether all the gain is in fact on one side and all the sacrifice on the other. It has been declared that to prevent the compromise of claims by compelling adjustment of all controversies by litigation in court is against public policy."

In view of the foregoing and the law controlling, we are of the unanimous opinion that defendant/appellant, Solomon S. Tarpeh, was wrongly prosecuted for the crime of embezzlement. The judgment of the court below is hereby reversed, and the defendant/appellant is acquitted. And it is hereby so ordered.

Judgment reversed.