

CHARLES THOMAS, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL
CIRCUIT, BONG COUNTY.

Heard: November 30 1988. Decided: December 29, 1988.

1. A complaint in a criminal case must be distinct and intelligible in order to sustain the charge contained in it.
2. A complaint that fails to name the owner of the goods allegedly stolen is defective.
3. The value of the allegedly stolen goods is an essential element of theft in Liberia because theft is graded according to the value of the stolen property.
4. In a case of theft, judgment may include restitution to the owner.
5. The issue of jurisdiction over the subject matter can be raised by a defendant and determined by a court competent to decide its own jurisdiction at any time before and after final judgment.
6. A party accused of a crime must be informed of the nature of the offense of which he is accused and that he has a right to counsel.
7. A person charged with a crime is presumed to be innocent until the contrary is proved; and the prosecution must establish its proof of guilt beyond a reasonable doubt.
8. Illegally obtained confession is inadmissible as evidence.
9. The law requires that an accused arrested without warrant must be brought before a magisterial court within two days and served with a warrant without any unnecessary delay, otherwise he should be discharged.
10. The uncorroborated testimony of an accomplice cannot be the sole determinant of the guilt of the accused and a judgment of conviction.

Appellant was summoned to the local police station and accused of theft. He was held in the police station "for some time" before he was brought before the magistrate on a charge of theft of property. Appellant asked for, and was granted, a

change of venue. He pleaded not guilty and filed a motion to dismiss the charges for want of jurisdiction over the subject matter, contending that the writ charging him with theft of property failed to state the value of the property allegedly stolen, and failed to name the owner of the stolen goods. The magistrate denied the motion and tried the case. Appellant was convicted of theft of property, fined and ordered to make restitution of the property without indicating to whom. Appellant excepted and announced an appeal to the Ninth Judicial Circuit Court. In the circuit court, appellant again filed a motion to dismiss the complaint for the same reasons he had laid in the magisterial court. The trial court denied the motion and ruled the case to trial. Appellant was convicted and sentenced to thirty (30) days in jail. Appellant appealed to the Supreme Court. The Court ruled that the complaint upon which appellant was charged and tried was defective for failure to state the value of the goods allegedly stolen and the owner of said goods. It also held that the question of jurisdiction may be raised at any time, and that the confession of guilt, allegedly made by appellant, was illegally obtained and therefore inadmissible. The Court concluded that the prosecution had failed to allege and prove the crime of theft of property against appellant. *Reversed*

Francis Y S. Garlawolo for appellant. *McDonald Krakue, the Solicitor General of Liberia*, for appellee.

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

Defendant, now appellant, was an employee of the Bong Mining Company and worked in the company's power house as a technician.

On July 1, 1986, defendant was summoned to the local police station in Bong Mines, where he was accused of stealing two rice coupons (a.k.a. tickets), numbered 62641 and 62642, from his divisional head at the power house. Rice coupons were usually issued by the company to employees who receive them from their respective divisional heads to help them obtain rice from a local store on the account of the company. Defendant was informed that the stolen rice coupons were seized from one Moses Toe, alias Koffi, at the rice store. The Lebanese merchant was earlier warned by the head of the power house division, where defendant worked, that the coupons had been stolen, and in case he saw them he should seize them, apprehend the suspect and inform the power house. When the coupons were found with Koffi, he told the Lebanese merchant, the police and Bong Mines Security that defendant had given him the coupons to obtain rice for him at the store. In fact, Koffi was also an employee at the company power house.

Defendant is alleged to have told the police that he stole the tickets from the head of his division and had given them to Koffi to obtain his rice. Koffi was subsequently released, and defendant kept in prison for some time before being brought before the magistrate by the police on July 7, 1986 on a charge of theft of property. Defendant requested a change of venue and the magistrate granted same for the Gbarnga Magisterial Court.

Defendant appeared before the magistrate on October 31, 1986, and pleaded not guilty, after which he filed a motion to dismiss the complaint for want of jurisdiction over the subject matter, and contended that the writ which charged him with theft of property failed to state the value of the property to give him notice and to determine the grade of the theft allegedly committed, as well as to allow the court to determine its own jurisdiction. The complaint had also failed to name the owner of the stolen property.

The State, appellee on the other hand, contended that the value of the coupons is generally known to everyone in Bong Mines to be \$24.00 each, and therefore the value of the stolen property was \$48.00. The magistrate denied the motion, tried the case on its merits, and eventually convicted defendant of the crime of theft of property. The magistrate ordered defendant to make restitution of the coupons or their value without indicating to whom. He was fined \$50.00, payable forthwith into government revenue, or in the alternative, serve a sentence of one month in prison. Defendant excepted and announced an appeal to the Ninth Judicial Circuit Court, Gbarnga, Bong County, sitting in its May Term, A. D. 1987.

In the circuit court, the case was tried and defendant again filed a motion to dismiss the complaint for lack of jurisdiction over the subject matter of the action. He maintained that a court trying an action of theft of property determines its own jurisdiction from the value of the property allegedly stolen, as under our law the crime is divided into grades based on the value of the stolen property. Here, the complaint fails to indicate the value of the stolen property, which would have given defendant notice of the extent of the charge against him; neither did it name the owner of the stolen goods, which would have shown the owner of the property to whom possible restitution would have been made in case defendant was convicted of the crime.

The prosecution, on the other hand, contended that defendant was barred from filing the motion to dismiss the complaint at that stage, after pleading to the writ, as it is

forbidden to move for dismissal of a complaint after issue has been joined between the parties. Hence, it prayed for denial of the motion and going into the merits of the matter instead.

The trial court denied the motion and ruled the case to trial on its merits for the fact that the defendant had already pleaded to the writ. Hence, defendant was barred from moving for dismissal of the said action.

During the trial, the prosecution produced three witnesses in its behalf: Captain Siaka Kiawu of the Liberian National Police Captain David Kollie of the Bong Mines Security Service, both of whom had arrested and interrogated defendant; and also one Mr. Salim, the Lebanese merchant at the rice store who had caught Koffi with the stolen rice tickets (coupons). All three testified that defendant had voluntarily confessed to the theft of the two rice tickets and that he had also written and signed the said confession without any coercion.

The prosecution later produced a fourth witness, Moses Toe, alias Koffi, who stated that defendant had given him the stolen coupons in order to obtain rice for him at the store.

Defendant then took the stand and denied that he stole the coupons or gave them to Koffi. He contended that his purported voluntary statement was, in fact, obtained from him through coercion and harassment while in police custody naked, barefooted and handcuffed. He said an earlier statement which he voluntarily made denying the charge against him was discarded with threats that he either makes another statement admitting the theft, or suffer further punishment at the hands of the police. Hence, he had made the statement in order to save his skin.

Two witnesses testified on behalf of the defendant corroborating his own testimony. They were John Mulbah and Boima Crawford who confirmed that defendant had made an earlier statement of innocence which the police rejected and ordered him to make another under threats while he was in custody, handcuffed, naked and barefooted.

At the conclusion of the trial, the judge found defendant guilty of theft of property and sentenced him to thirty days in prison, maintaining that the prosecution had proved a prima facie case of theft against defendant. Defendant excepted to the said judgment and announced an appeal to this Court. Hence, this appeal.

Appellant particularly contended in his bill of exceptions that the trial judge erred in acquiring jurisdiction over the cause since the complaint failed to give the value of the stolen property to allow the court determine its own jurisdiction over the cause. This was especially important since theft cases are graded on the value of the stolen goods, and the failure in giving value in this case further denied defendant sufficient notice of the charge against him. He further contended that the complaint had also failed to name the owner of the stolen property, which was fatal since it is an essential element of the crime of theft of property, as it allows the court to make a possible restitution in case of conviction. Finally, appellant maintained that his alleged voluntary statement was in fact obtained from him by force and harassments as his witnesses had confirmed; and that in any case, the court should have refused the testimony of Koffi since the tickets were not found with defendant, and Koffi's testimony was totally uncorroborated.

Appellee, on the other hand, contended in its brief that appellant's conviction was proper after a free and fair trial, and therefore the conviction should stand. It maintained that the confession made by the appellant was voluntary and legally obtained as confirmed by the testimonies of the two officers and the Lebanese merchant. Appellee concluded that Koffi's testimony was sufficient to convict appellant, since the prosecution witnesses had confirmed that appellant had stolen the said tickets and given them to Koffi to obtain his rice.

From a review of the records in this matter, couple with the arguments of the counsel before us, we are satisfied that we need to decide the following issues:

1. Whether or not the writ and the complaint which brought defendant under the jurisdiction of the court were defective?
2. Is lack of jurisdiction over the subject matter one of those defenses that must be raised before a plea is entered under a criminal charge?
3. Whether or not the confession of guilt allegedly made by appellant to the police officers interrogating him, after arrest, was voluntary and legally obtained ?
4. Whether or not the prosecution in this case had properly alleged and proved the crime of theft of property against appellant?

Our statute provides that a crime may be prosecuted in conformity with the provisions of chapter 14 of our Criminal Procedure Law. *See* Criminal Procedure Law,

Rev. Code 2:14.1. Rule twenty five of the magistrate courts provides that a criminal proceeding shall be commenced by the issuance of a writ of arrest by the clerk of court, and that, "it shall contain a *distinct and intelligible complaint sufficient to sustain the charge.*" (Our emphasis). Rule twenty five of the Magistrate Courts (1972). Similarly, the criminal procedure statute provides "The written complaint shall specify the nature of the offense charged and *shall contain a concise statement of the acts of the defendant alleged to constitute such offense and of the time and place of commission of the offense and of any person if any, against whom, and the thing, if any, in respect to which the offense was committed.*" (Our emphasis). Criminal Procedure Law, Rev. Code 2:14.4.

The foregoing constitutes the requirements for a complaint before a magistrate. We will next proceed to consider whether or not the complaint by which appellant was arraigned, tried and convicted conformed to the basic standards or requirements. The writ of arrest and the complaint against appellant ran as follows:

WRIT OF ARREST

Republic of Liberia, to Major James E. Toles, commanding officer for Bong Mines Police Detachment or his Deputy; Greetings: You are hereby commanded to arrest the body (ies) of Charles Thomas, defendant(s), and forthwith bring him/her before me, a duly qualified stipendiary magistrate on the 7th day of July A.D. 1986 at the hour of 10.00 a.m., to answer the charge of theft of property based upon the oath and complaint of the Republic of Liberia by and thru David Kollie, complainant, which complaint is substantially as follows:

NATURE OF COMPLAINT

On Tuesday, July 1, 1986 at about 4:30 p.m. at Bong Mines, Lower Bong County, the defendant without any legal color of right whatsoever, did unlawfully and feloniously steal, take and carry away two (2) rice tickets with Nos. 62641 and 62642 against the will and consent of the owner. This the defendant did do and commit.

This being contrary to the form, force and effect of the statute laws of Liberia in such cases made and provided against the peace and dignity of the Republic, and have you there this writ

Issued this 7th day of July, A.D. 1986.

Signed: Paul S. Montgomery

CLERK OF SAID COURT

WITNESSES: Republic of Liberia - David Kollie, et al.

We will now see whether or not the above writ of arrest and the accompanying

complaint conformed to the requirements of the Criminal Procedure Law of Liberia cited, *supra*, and the rules of the magisterial court, specifically rule 25. The essential portion of the rule for the issue we now consider is the crime charged. The rules provide that the warrant shall "*contain a distinct and intelligible complaint sufficient to sustain the charge.*" *Id.* (Our emphasis). The necessary words in that provision are "distinct" and "intelligible". That is, the complaint, in order to sustain the charge, must be distinct and intelligible.

The statute, on the other hand, provides essentially that: "The written complaint shall specify the nature of the offense charged and shall contain a *concise statement of the acts of the defendant alleged to constitute such offense, and of the time and place of commission of the offense and of the person, if any, against whom, and the thing, if any, in respect to which the offense was committed.*" *Id.* (Our emphasis).

The important elements, therefore, of a complaint consist of the following:

1. A concise, distinct and intelligible statement of the crime charged.
2. The said statement or complaint should be capable of sustaining the charge.
3. The acts of defendant alleged to constitute the charge.
4. The time and place of commission of the act.
5. The person, if any, against whom the act was committed.
6. The thing, if any, in respect of which the offense was committed.

In analyzing the complaint against appellant, we notice that he is charged with the crime of theft of property.

The statement of the complaint is that: a) defendant unlawfully stole and took away two rice tickets with Nos. 62641 and 62642; b) this was at 4.30 p.m., on July 19 1986, at Bong Mines, Lower Bong County; c) this was against the will and consent of the owner of the stolen goods whom it doesn't name at all; and d) that the acts violated the statute laws of Liberia.

The complaint in this case is defective in one important respect: it fails to name the owner of the goods allegedly stolen by appellant, as the statute and the rules require. Additionally, it also fails to give the value of the stolen property, an essential element

of theft in this jurisdiction where theft is graded according to the value of the stolen property, considering judgment may include restitution to the owner. It is not only a requirement of the statute and rules of procedure that the complaint be a clear, concise and intelligent statement of the offense charged, including the name of the person wronged, but more importantly, in order to be concise and intelligible, a complaint of theft must allege the owner of the stolen goods, if there is to be a prima facie case of theft against defendant at all. A stolen property should be of value and have an owner who has not given consent to the taking or transportation of said property. Penal Law, Rev. Code 26:15.54(6). A complaint is the "allegation made to a proper officer that some person, whether known or unknown, has been guilty of a designated offense, with an offer to prove the fact, and a request that the offender may be punished. It is a technical term, descriptive of proceedings before a magistrate. *To have legal effect, the complaint must be supported by such evidence that shows that an offense has been committed and renders it certain or probable that it was committed by the person named or described in the complaint*" BOVIER'S LAW DICTIONARY 573.

Hence, from the foregoing, we hold that the writ and complaint on which appellant was arraigned, tried and convicted were incurably and fatally defective. It failed to give appellant sufficient notice of the charge against him, and it in no way assisted the court itself to determine its own jurisdiction over the charge of theft of property, which is graded according to the value of the stolen property. *Wade v. Republic*, 12 LLR 284 (1956).

The second issue to be considered involves whether or not the lack of jurisdiction over the subject matter is one of the defenses in a criminal prosecution which must be raised before a plea can be entered. The trial judge denied the appellant's motion to dismiss the complaint and maintained that the issue should have been raised before a plea was entered. Hence he concluded that the issue was barred from being raised after the issues had been joined.

However, our statute on criminal procedure provides as follows:

"Defenses and objections based on defects in the institution of the prosecution or in the indictment *other than that it fails to show jurisdiction in the court over the subject matter or to charge an offense, may be raised* only by motion to dismiss before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction to try the offense or the failure of the indictment or information to

charge an offense shall be noticed by the court *at any stage of the proceeding.*" (Emphasis ours). Criminal Procedure Law, Rev. Code 2:16.7(2).

Rule 26 of the magistrate courts also provides: "If there be any objection to the warrant, such objection must be made immediately after the case is called for hearing, and before the defendant pleads to the warrant. But after issue is joined, an application demurring to the writ shall not be allowed; *except to the jurisdiction* over the subject matter, which may be made at any time before *judgment.* (Our emphasis). Rules of Magistrate Courts, Rule 26.

This Court itself held on several occasions in the not too distant past that the issue of jurisdiction over the subject matter can be raised by a defendant and determined by a court of competent jurisdiction at anytime before and after final judgment. *African Mercantile Agency v. Bonnah*, 26 LLR 80 (1977); *Lamco J. V. Operating Company v. Verdier*, 26 LLR180 (1977); *Kororo v Parker Paint Company, Inc.*, 23 LLR 133 (1974); *Union National Bank v. Monrovia Construction Company* 23 LLR 197 (1974); and *Cooper v. Alamendine* 20 LLR 416 (1971).

From the foregoing, we conclude that the issue of jurisdiction over the subject matter may be raised at any stage of the trial before final judgment, and that the judge of the trial court erred in denying appellant's motion to dismiss because the said motion was raised after a plea was entered.

The third issue we consider in this case is whether or not the confession allegedly made by appellant was voluntary and legally obtained by the police officers.

We find in the records of the case that up to final judgment the appellant contended that he had made two statements to the police, and that the first statement was voluntary in which he had denied any knowledge of the stolen rice tickets found with Koffi at the store. However, he continued to say that he was stripped naked by the police and the BMC security, forced to walk without shoes, handcuffed, and was compelled by the officers interrogating him to write the second statement admitting to the theft, or else suffer more pains at the hands of law enforcement. The same officers were also witnesses for the prosecution alleging that appellant had made a voluntary statement after being warned of all his legal rights as an accused.

Appellant and two witnesses testified in his behalf. Appellant contended that he was stripped naked and forced to write the second statement, which testimony was confirmed by his two witnesses who said that appellant was molested, stripped of

everything (including shoes), handcuffed, and forced to discard his earlier statement of innocence for the second statement which admitted the theft and his guilt. These testimonies were not rebutted by the prosecution at the trial.

Under our criminal procedure 1 aw, no accused person may be interrogated, or examined or otherwise questioned, or asked to confess his guilt by a peace officer or any other employee of the Republic of Liberia, without first being informed of the following:

- a) The nature of the offense of which he is accused or suspected,
- b) That he has the right to *have legal counsel present at all times while he is being questioned or is making any statement or admission*, (Our emphasis).
- c) That he does not have to make any statement or admission regarding the offense of which he is accused or suspected
- d) That any statement or admission made by him may be used as evidence against him in a criminal prosecution. Criminal Procedure Law, Rev. Code 2:2.3.

However, we find no evidence in the records to convince us that the above information was furnished the appellant prior to his interrogation and the making of his alleged confessions. While the police officers testifying for the prosecution alleged that they had warned appellant to remain silent, there is nothing in the record showing that the proper warning above was given. We have serious doubts that he was informed of the offense against him, or that he had right to counsel during his interrogation and thereafter. In fact there is no showing, and there is every reason to believe that no counsel was present at his interrogation at the police station when he is alleged to have made a voluntary statement of confession of guilt. This was a gross denial of appellant's constitutional and statutory rights which cannot be overlooked by this Court. Criminal Procedure Law, Rev. Code 2:2.3); Liberian Constitution.

Additionally, the non-rebuttal of the testimonies of appellant and his witnesses concerning the former's coercion and harassment leave us with no doubt that the alleged voluntary confession by the appellant did not occur. "A person charged with a crime is presumed to be innocent until the contrary is proved; *and the prosecution must establish by its proof the guilt of the defendant beyond a reasonable doubt.*" (Our emphasis). *Eldine v. Republic*, 27 LLR 133 (1978); Criminal Procedure Law, Rev. Code 2:2.1. That doubt will obviously work in the interest of the accused, the appellant.

We are convinced further that the trial judge ought to have refused to admit the alleged confession of guilt, especially after this Court had earlier said that "confession illegally obtained is inadmissible as evidence." *Id.* The record has additional evidence that after the arrest of appellant and his alleged confession on July 1, 1986, he was not brought before a magistrate until a week later on July 7, 1986 after languishing in the police cell for about one week. One wonders why he was kept so long away from a magistrate, if he had actually confessed his guilt voluntarily on the day of arrest.

In fact our laws require that an accused arrested without a warrant must be brought before a magistrate before the expiration of two days and served a warrant without any unnecessary delay, otherwise he should be discharged. Criminal Procedure Law, Rev. Code 2:10.11(1&2)2.1. This Court warned before, and we take this opportunity to warn again, that law enforcement agencies may not usurp judicial functions. *Ejo et al v. Republic*, 17 LLR 681 (1966).

From the above, we hold that the alleged confession was, in fact, not voluntary.

We now come to the final issue in this case: whether or not the prosecution alleged and proved the charge of theft of property against the appellant. We already held on the first issue that the prosecution failed to properly allege the offense of theft of property, as it failed to name the owner of the stolen goods and, also, to attach a reasonable value to them. We also hold that the state had equally failed to prove any theft against the appellant. Nowhere in the records did the prosecution prove asportation by any legal evidence against appellant.

The rice coupons or tickets in question were retrieved from Koffi and not the appellant, while the rice was not obtained at all, since the coupons were retrieved before they were used. Apart from the testimony of the police officers, and the now discredited voluntary confession of guilt, the prosecution leaves us in doubt as to why Koffi's testimony was admitted into evidence by the trial court. Indeed, Koffi himself who worked together with appellant at the power house might have committed the theft. This Court has held that the uncorroborated testimony of an accomplice cannot be the sole determinant of the guilt of the accused and a judgment of conviction. *Gio et al v Republic*, 21 LLR 339 (1972).

We conclude this opinion on the note that the Supreme Court has a sacred duty at all times to jealously guard the rights of persons charged with a crime. *Garlo v Republic*, 20 LLR 234 (1971).

In view of the facts and the laws cited herein we have no choice but to reverse the judgment appealed from, and the same is hereby reversed. The case is therefore dismissed, and the appellant is discharged without day. And it is so ordered.

Judgment reversed.