Miama Bestman of the City of Monrovia, Liberia APPELLANT/DEFENDANT

VERSUS **Republic of Liberia** APPELLEE/PLAINTIFF

LRSC 5

HEARD: October 17, 2012 DECIDED: February 19, 2013

MR. JUSTICE BANKS DELIVERED THE OPINION OF THE COURT.

These proceedings, on appeal to the Honorable Supreme Court, are the result of a conviction of the appellant/defendant, Miama Bestman, by an empanelled jury, sitting at the February Term, 2006, of the Circuit Court, First Judicial Circuit, Criminal Assizes "C", Montserrado County, for the commission of the crime of theft of property. The trial, the conviction and the subsequent judgment by the trial court judge affirming the verdict of the jury, had their genesis in an altercation that occurred between the appellant/defendant and one Arinette Cooper, private prosecutrix, and in which the private prosecutrix alleged resulted in injury to her person and the theft of her phone. The private prosecutrix, seeking redress in regard to what she believed or alleged was a wrong committed against her by the appellant, on November 21, 2005, two days following the incident, filed a criminal complaint with the Liberia National Police (LNP), wherein she accused the appellant of assaulting her and stealing her Ericsson cell phone. The LNP, after conducting an investigation proceeded, on November 25, 2005, to charge the appellant with the commission of the crimes of simple assault and theft of property. Based on the said charge, which was reduced into writing on a police charge sheet and filed with the Magisterial Court of the City of Monrovia, a writ of arrest was issued on November 25, 2005, against and served on the appellant. The value of the cell phone, as stated in the writ of arrest, was placed at US$275.00.

The records show that although the appellant, defendant in the case below, requested a preliminary examination by the Magisterial *Court,* the State chose instead, as it had the right to *do,* to submit the matter to the Grand Jury for Montserrado County, which was sitting at the time. The Grand Jury, after examination of the evidence said to have been presented, submitted to the Circuit Court for the First Judicial Circuit, Criminal Court "A", Montserrado County, a Presentment wherein contained the Finding of a True Bill and a request that the court orders the County Attorney for Montserrado County to draw up an indictment against the defendant named therein charging her with the commission of the crime of theft of property.

It isn't clear when the Presentment was made as it is undated, or when it was brought before the *court,* or filed with the clerk of court. However, we do observe that the True Bill, appearing on the face of the Indictment, carries a filing date of December 22, 2005. This is important for this Court since, although the True Bill has a filing date of December 22, 2005, the minutes of the trial court show that the True Bill was presented to the *court,* in open court, on Monday, December 19, 2005, the 29th day Jury Sitting,

which date was three days earlier than the date the True Bill is recorded as having been filed with the clerk of the court.

The records also reveal that two days after the date shown on the True Bill as the filing *date,* that is, on December 24, 2005, the Indictment was filed with the clerk of court. Even more noticeable is that the Presentment, wherein the True Bill is contained, shows that it was venued before the November 2004 Term of the Court rather than the November 2005 term of the said court. We note also that neither the Presentment nor the True Bill made mention of the altercation or the assault which was mentioned in the writ of arrest issued by the Magisterial Court; and we do not speculate as to whether the evidence on the issue was presented to the Grand Jury but that that body felt that there was insufficient evidence to charge the defendant with the crime of simple or aggravated assault, or that the State had elected not to pursue the assault charge which it had originally levied against the appellant, and therefore did not present evidence in that regard to the Grand jury. What is important for us is that both the Presentment and the True Bill deviated from the original charges.

We also note that while the Indictment alleged in the body that the defendant had battered the private prosecutrix, it only charged her with the commission of the crime of theft of property. The Indictment was filed with the clerk of court on January 24, 2006 and set forth the events which allegedly led to the charge of the crime of theft of property against the defendant. We quote the said Indictment herewith:

"INDICTMENT

The Grand Jurors for the County of Montserrado, Republic of Liberia, upon their Oath do present: Maima Bestman (to be identified), defendant of the City of Monrovia, County and Republic aforesaid, heretofore, to wit:

That in violation of Chapter 15, Section 15.51 (a, b and c) of the New Penal Law of Liberia, which states:

Theft of Property:"A person is guilty of theft of property if he:

(a) Knowingly takes, misappropriates, converted or exercises unauthorized control over or makes an unauthorized transfer of an interest in, the property of another with the purpose of depriving the owner thereof;

(b) Knowingly obtains the property of another by deception or by threat with the purpose of depriving the owner thereof or purposely deprives another of his property by deception or by threat, or.

(c) Knowingly receives, retains, or disposes of property of another which has been stolen, with the purpose of depriving the owner thereof."

Plaintiff complains and says that on the 21st day of November A.D. 2005 at Sinkor, Old Road, City of Monrovia, Montserrado County, Republic of Liberia, the within and above named defendant without any color of right and also without the fear of the Statutory Laws of the Republic of Liberia,with criminal and wicked intent to deprive the private prosecutrix,

Arinette Cooper of her property, knowingly, purposely and wickedly did take, steal and carry beat and batter the private prosecutrix and as a result the private prosecutrix sustained injuries on her three left fingers and the defendant continues to exercise unauthorized control over the said property to the detriment and disadvantage of the private prosecutrix; thereby the crime of theft of property the said defendant did do and commit on the above named place and at the above named date and time; contrary to the organic laws of the Republic of Liberia.

And the Grand Jurors aforesaid, upon their oath aforesaid do present: Maima Bestman (to be identified), defendant aforesaid, at the time, place and date aforesaid in the manner and form aforesaid, do say that the crime of theft property the defendant did do and commit, contrary to the form, force and effect of the statutory laws of Liberia, in such cases made and provided and against the peace and dignity of this Republic.

Submitted by Republic of Liberia, Plaintiff
By and Thru:
Samuel B. Jacobs, Esq.
COUNTY ATTORNEY FOR MO.CO.RL

WITNESSES	ADDRESSES
1. Arinette Cooper	Sinkor
2. Johnson Williams	"
3. Ramsey Summons, et.al	"
Documentary evidence, etc."	

Based upon the indictment quoted above, a writ of arrest was again issued for the arrest of the appellant. Service of the writ was duly effected on the 26th day of January, A. D. 2006, thus formally bringing the defendant under the jurisdiction of the trial court. The case was assigned for hearing (i.e. trial) by Criminal Court C", First Judicial Circuit, Montserrado County, first on February 24, 2006 and subsequently on March 3, 2006. A petty jury having been empanelled, in accordance with law, trial of the case was commenced with His Honor James W. Zotaa, presiding.

Evidence having been submitted by the prosecution and a motion for judgment of acquittal having thereafter been filed by the appellant/defendant, resisted by the prosecution and denied by the court, the defendant/appellant was allowed to introduce evidence in support of her plea of not guilty. At the close of the evidence and following the final submission and arguments by the parties, the jury retired to their room of deliberation from whence they returned a verdict of guilty against the appellant. Exceptions were noted thereto and a motion for new trial was thereafter filed by the appellant o n March 24, 2006. The motion was resisted, arguments thereon entertained

by the court, and subsequently denied. Because we are called upon to determine whether the motion stated a sufficient factual and legal basis to overturn the verdict of the trial jury, or put differently, whether the evidence presented by the prosecution met the "beyond a reasonable doubt" standard required by law to warrant a verdict of guilty by the jury, we deem it important, for the purpose of that analysis, to quote the eleven-count motion. The motion stated thus:

"MOVANT in the above entitled cause of action respectfully requests this Honorable Court to set aside the verdict of the petit jury and grant a new trial on grounds that the verdict is contrary to the weight of evidence and showeth the following legal and factual reasons, to wit:

1. That plaintiff's first witness, the private prosecutrix, in her testimony gave a description of the phone, subject of the theft, when she said on cross examination, in answer to a question, that the phone was silver and black (sheet Nine, March 14, 2006, 2nd Day's sitting), which answer contradicts prosecution's second witness when he answered on cross examination that the phone has a black scribe and it looks gray (Sheet Thirteen, March 14, 2006, 22nd day'ssitting). Theevidence was uncorroborative and insufficient for a guilty verdict and counsel for the defendant prays for the setting aside of the verdict and granting of now trial.

2. That the testimony of prosecution's first witness that the phone was bought on June 29,2005 and given to her as a gift on June 30,2005 (Sheet Nine, 22nd day's sitting, March 11, 2006) contradicted the date on a proforma Invoice No. 907, marked and confirmed by court, introduced by prosecution which showed the date of 8/12/05. This contradiction was overlooked by the jury, for which the verdict should be set aside and a new trial given. Defendant so prays,

3.That the testimony or defendant's third witness, Manager of the Exclusive Supermarket where the phone is said to have been acquired indicate that the phone was never bought and a receipt given, but only a proforma Invoice was acquired. This is clear when, in answer to a question on cross examination, he said "those who come to our business to pay cash for goods we issue them receipts. And those who simply ask for provisions to ask for goods we issue them proforma invoice documents." (Sheet Two, March 20, 2006, 25th days sitting).

4. Also when defendant's third witness was asked on cross examination for information on proforma invoice, he answered "what we usually do is that when you ask for proforma, which is only intended to ask for the price, when the customer brings the money to purchase the goods we then receive the cash and issue cash receipt." (Sheet Two, 25th Jury sitting, March 22, 2006). This testimony is an indication that the phone was never bought and it never existed. Therefore, the verdict should be set aside and a new trial awarded. Defendant so prays

5. That also when prosecution's third witness was asked on cross examination whether he dealt directly with the private prosecutrix and the defendant, he said no (Sheet Four, Mach 16, 2006, 23rd day's sitting). Defendant prays that the verdict be set aside and

she be granted a new trial as the testimony of this witness did not corroborate that of the private prosecutrix.

6. That the verdict is contrary to the weight of evidence as the jury overlooked the fact that a proforma invoice is not a receipt which establishes the purchase and existence of the phone, subject of the theft. See count four (4) of movant's motion).

7. That there was doubt as to whether the phone existed, as the husband who allegedly acquired the phone was never introduced by prosecution to testify as to the existence of said phone since the manager in whose store the proforma was issued had denied the purchase of said phone. Therefore the verdict should be set aside and a new trial granted. Defendant so prays.

8. That the proforma invoice is not receipt to show the existence of the phone, subject of this case; therefore, reliance by the Jury on said evidence to bring a verdict of guilty against the defendant is wrongful. Defendant so prays for the granting of a new trial and setting aside of the verdict. The court may take judicial notice of its minutes in this case.

9. That the proforma invoice relied on by the jury to bring down a guilty verdict is insufficient to show ownership of the said phone, subject of this case. The Court may take judicial notice in this case as regards the proforma invoice.

10. That the lack of receipt shows that the said phone did not exist and was never owned. And where an object does not exist and is not owned, it cannot be stolen. Therefore, defendant prays for the setting aside of the verdict which did not consider that there was no receipt to show ownership and existence of the phone for consideration in its verdict. Defendant therefore prays for new trial.

11. That there were doubts and variances in the testimony of witnesses as contained in the prosecution's witnesses testimonies which are reflected in the minutes of court in this case and contained in Counts 1, 2,3, 4, 5, 6, 7, 8, 9, 10 of defendant/movant's motion for a new trial and the verdict be set aside. Defendant so prays.

WHEREFORE and in view of the foregoing, movant/defendant prays this Honourable Court to set aside the verdict of guilty against the defendant, now movant, and to grant a new trial and further grant unto defendant/ movant any and all reliefs deemed just, equitable and legal."

As stated earlier, the motion for new trial was resisted, heard by the court and denied. The eleven-count motion stated only one issue, for which the appellant requested the trial court to set aside the verdict of the jury and award a new trial. That single issue was whether the verdict was contrary to the weight of the evidence. The principal contentions raised by the appellant in support of the motion were that the private prosecutrix had failed to produce a receipt evidencing purchase of the cell phone which she said the appellant had stolen; that the only document produced by the prosecution regarding the purchase of the cell phone was a proforma invoice, which the issuer thereof had indicated was not evidence of a purchase but rather evidence only of the cost price of an item which

a customer had asked about; that the date stated on the proforma invoice clearly contradicted the date which the private prosecutrix stated her husband had purchased the phone for her; and that there was variance in the testimonies of the various state witnesses. The trial judge disagreed with the contentions raised by the appellant, and in a ruling on the motion for new trial, handed down on April *3,* 2006, at the 35th day's jury session, he denied the motion. We quote the said ruling, as follows:

"On March 24, A. D. 2006, exactly three days after a guilty verdict against the defendant was brought by the trial jury, the defendant, by and thru her legal counsel, filed a motion for new trial, which motion contained eleven counts.

The basic contentions of the motion are that the witnesses for the State contradicted each other on several points of facts and that the State failed to produce evidence of the existence of the cell phone which belonged to the private prosecutrix.

The defendant in this case is charged for theft of property. Theft of property is an unlawful taking of property of another person without the consent of said person, with intention to deny the said person of the use of said property and for the benefit of the taker. The elements which must be established by the prosecution in theft cases are that there was a property which belongs to the private prosecutrix that said item was taken away without consent of the owner by the accused for benefit of the accused. Since restitution is part of the judgment in all theft cases, the value of the property must also be established so that the court would be in a position to order restitution.

From a careful review of the motion for new trial, the movant/ defendant seems to root her motion in Chapter 22, section 22.2. (e) of 1LCLR, page 382, when the verdict is contrary to the weight to the evidence.

The first two witnesses for the State testified to the facts that the private prosecutrix had her phone in her hand, using same to communicate before she was attacked by the defendant who forcefully took the phone from the private prosecutrix. The phone was described by the first witness to be silver and black while the second witness described the phone to be gray and black. Clearly the variance in testimony describing the phone is not a material variance as silver is another category of gray color. The defendant herself admitted seeing cell phone with the private prosecutrix when she got into her yard but the defendant denied taking the cell phone. Therefore with these testimonies and proforma invoice which shows the value of the phone, there can be no doubt that the phone existed and did belong to the private prosecutrix.

The fourth witness for the defendant did confirm that the Exclusive Supermarket sells phones of the description consigned in the proforma invoice for said amount of four hundred twenty United States dollars (US$420.00). This is again another corroboration of the private prosecutrix's statement that the phone cost four hundred and twenty Unites States dollars by the defendant's own witness. It would have been another story had the defense fourth witness deny selling phones of the type which private prosecutrix said her husband bought for her from the Exclusive Supermarket. The defense has tried to tell the court that the variance in

the testimonies as to the date of purchase of the phone constitutes a material variance and creates a reasonable doubt to warrant a discharge of the accused. The court says that while [there is] doubt as to the precise date on which the husband of the private prosecutrix bought the phone for her gift, the fact which remain standing is that a Sony Ericson cell phone was purchased for private prosecutrix by her husband from the Exclusive Supermarket and given to her on June 30, A.D. 2005. Also remaining standing is that this phone was taken away from private prosecutrix without her consent by defendant for defendant's benefit.

Wherefore, the motion for new trial is hereby denied and the verdict of guilty against the defendant is hereby upheld. AND IT IS HEREBY SO ORDERED.

GIVEN UNDER OUR HAND AND SEAL OF THE COURT THIS 3RD DAY OF APRIL, A.D.

JAMES W. ZOTAA
ASSIGNED CIRCUIT JUDGE PRESIDING
CRIMINAL COURT, MONT. CO. R.L."

The appellant/defendant noted exceptions to the ruling, and gave notice that she would take advantage of the statute controlling. The exceptions having been noted, the judge then proceeded to hand down the judgment of the court affirming and confirming the verdict of the jury as follows:

"Court's Final Judgment

After carefully reviewing the evidence and the records in the case and up held the jury verdict of guilty, this court hereby adjudges the defendant guilty of the crime of theft of property. The defendant is hereby sentenced to serve a period of six month in the jail at the Monrovia Central Prison beginning April 4, A.D. 2006 and the defendant is hereby ordered to restitute the amount of four hundred and twenty United States dollars, same being the value of the stolen phone to the private prosecuttrix thru the state. AND IT IS HEREBY SO ORDERED.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT, THIS 3RD DAY OF APRIL A.D. 2006.

James W. Zotaa
Assigned Circuit Judge Presiding
Criminal Court "C", Mont. Co. R.L."

It is from this judgment sentencing the appellant to a term certain in prison and restitution of the alleged valued of the purported stolen phone and the verdict that preceded the judgment, as well as the court's denial of the motion for new trial, that the appellant noted further exceptions and announced an appeal complying with one of the cardinal prerequisites for the completion of the appeal. Thereafter, on April 12, 2006, and as required by the Criminal Procedure Law, Title 2, Liberian Code of Laws Revised, the

appellant filed a twenty-count bill of exceptions with the clerk of the trial court, duly approved by the trial court judge. The bill of exceptions read, as follows:

"And now comes defendant in the above entitled cause of action and most respectfully presents her bill of exceptions to Your Honour for approval to enable her to perfect her appeal to the Supreme Court of Liberia as announced, following your Honour's judgment on the 3rd day of April, A.D,2006, for the legal and factual reasons, to wit:

1. That defendant submits and says that your Honour committed a reversible error when you denied defendant's motion for judgment of acquittal on the basis of insufficient evidence regarding prosecution's submission in evidence of proforma invoice as document of title for the phone, subject of the case, and not a receipt as proof of title.

2. That defendant submits and says your Honour committed a reversible- error when you also denied defendant's motion for a judgment of acquittal on grounds of non-corroboration of prosecution's witnesses, which is material for judgment of acquittal.

3. That defendant says your Honour committed error when upon a motion for a judgment of acquittal on the basis that prosecution's first witness, the private prosecutrix, testified that the phone was acquired on June 29, 2005 and given to her on June 30, 2005, but the proforma invoice produced into evidence by prosecution showed 8/12/05, December 8, 2005, there existed a material variance showing the falsity of the private prosecutrix's statement, thus indicating a variance in the testimony and the invoice, which variance was sufficient and material to dismiss the case, but the motion was denied.

4. That Your Honour further committed a reversible error when you denied defendant's motion for judgment of acquittal on the basis that the documentary evidence presented was insufficient to convict the accused as the proforma invoice is not a document of title.

5. That Your Honour committed a reversible error when defendant requested for a motion for new trial on grounds that the verdict was contrary to the weight of the evidence, especially so when two of prosecutions' witnesses, in persons of the private prosecutrix and the prosecution's second witness, gave two different descriptions of the phone, subject of the case, indicating non-corroboration of the witnesses' testimonies, you denied the motion.

6. That Your Honour committed a reversible error when [ruling) on a motion for new trial, for reason that the court sets aside the verdict of the Jury on grounds that the verdict was contrary to the weight of the evidence because private prosecutrix, in her testimony, gave a different description of the phone, subject of the theft case, when on cross examination she described the same phone as silver and black and prosecution's second witness described the same phone as having a black scribe and looking gray, there being variance and uncorroboration. Your Honour denied the motion for new trial.

7. Further, that Your Honour committed a reversible error when you denied defendant's motion for new trial with request that the judge sets aside the verdict and grant a new trial, the verdict being contrary to the weight of the evidence, for reason that the jury

overlooked the material evidence that the testimony of prosecution's first witness that the phone, subject of the theft case, was bought on June 29, 2005 and given to her as a gift on June 30, 2005 (sheet nine, 22nd day's Jury sitting, March 14, 2006), contradicting the date on proforma invoice no. 907, marked and confirmed by court introduced by prosecution, showing 8/12/05 as the date of acquisition of the said invoice, the two dates being contradicting.

8. Further also, that Your Honour committed a reversible error when on a motion for new trial, with request that your Honour sets aside the verdict and grant a new trial, the verdict being contrary to the weight of evidence, on grounds that the testimony of defendant's third witness, manager of the Superstore, where the phone is said to have been acquired, indicated that the phone was never bought and a receipt given, but only a proforma invoice was acquired, you denied said motion. The witness' testimony was clear when, in answer to a question on cross examination, he said "those who come to our business to pay cash for goods we issue them proforma invoice document." Sheet two, March 20, 2006, 25th day's sitting, Your Honour denied defendant motion which she believes is a reversible error.

9. And further, that Your Honour committed a reversible error when the defendant's motion for new trial, with request that the judge sets aside the jury's verdict and grant a new trial, the verdict being contrary to the weight of evidence, for reason of non-existence of the phone as it was never bought, the motion was denied, which motion clearly states: "Also when defendant's third witness was asked on cross examination for information on proforma invoice, he answered, "what we usually do is that when you ask for the proforma which is only intended to ask for the price. When the customer brings the- money to purchase the goods, we then receive the cash and issue cash receipt." (Sheet Two, 25th day's Jury sitting, March 20, 2006). The denial of the motion was a reversible error, Defendant says.

10. And further also, that Your Honour committed a reversible error when you denied defendant's motion for new trial which was made on the ground that the verdict was contrary to the weight of evidence as the jury overlooked the fact that a proforma invoice is not a receipt which established the purchase and existence of the phone, subject of the case, thus showing variance and insufficient evidence.

11. And further that Your Honour committed a reversible error when you denied defendant's motion for new trial, with request to set aside the jury verdict and grant a new trial, giving reason that there was doubt as to whether the phone, subject of the case, existed as the husband who allegedly acquired the phone was never introduced to testify as to the existence of said phone since the manager in whose store the proforma invoice was issued had denied the purchase of said phone.

12.And further, that Your Honour committed a reversible error when you denied defendant's motion for new trial, with request that the verdict be set aside and a new trial given, the verdict being contrary to the weight of the evidence for reason that the proforma invoice was not a receipt to show the existence of the phone, subject of the case. Therefore, reliance by the jury on said evidence to bring a guilty verdict was wrongful.

13. And further also, that Your Honour committed reversible error when you denied defendant's motion for a new trial, with request that the verdict be set aside and a new trial given, the verdict being contrary to the weight of evidence for reason that the proforma invoice relied on by the jury to bring down a guilty verdict was insufficient to show ownership of the phone, subject of the theft case.

14.And further also, that Your Honour committed a reversible error when you denied the defendant's motion for new trial with request to set aside the verdict as being contrary to the weight of evidence for reason that the lack of receipt shows that the phone, subject of the case did not exit and was never owned; and where an object does not exist and is not owned, it cannot be stolen.

15.And also further, that Your Honour committed a reversible error when you denied defendant's motion for new trial, with request to set aside the verdict and grant a new trial, the verdict being contrary to the weight of the evidence, for reasons that there were doubts and variances in the testimonies of witnesses, as contained in the prosecution's witnesses' testimonies reflected in the minutes of court on the court's records.

16.That Your Honour committed a reversible error when, in your ruling on the motion for new trial, you admitted that one of the elements which must be established by the prosecution in theft cases is "that there was a property which belongs to the private prosecutrix (sheet four, 35th Day's Jury sitting, Monday, April 3, 2006), and in the same ruling (sheet Five,35th day's Jury sitting, Monday, April 3, 2006),you said that the court was in doubt as to the precise date on which the husband of the private prosecutrix bought the phone for a gift, which doubt defendant believes is a material non-prima facie evidence showing uncorroboration, insufficient evidence, contradiction, and variance for which a verdict of not-guilty and judgment of not-guilty should have been given, as defendant believes that the phone was never bought and never existed, and the indictment was never proven.

17.That further,in Your Honour's ruling on the motion for new trial and subsequent j judgment, Your Honour admitted to variance in prosecution's witness' testimonies, but still denied the motion for new trial and gave a judgment of guilty which defendant believes is a reversible error committed by Your Honour.

18. That furthermore, Your Honour committed a reversible error when, with variance in prosecution's witnesses' testimonies, non-corroborationof the testimonies of prosecution's witnesses, doubts as admitted by Your Honour's ruling on the testimonies, contradictions in the prosecution's witness' testimony, doubts as to the purchase of the phone, insufficient evidence, Your Honour still upheld the guilty verdict and adjudged the defendant guilty.

19.That also Your Honour committed reversible error when one of the reasons for your judgment was based on defendant's witness' testimony that he sells phone of the type which private prosecutrix said her husband bought, without establishing whether the particular phone, subject of the theft, was even bought, but you admitted to the existence

of a proforma invoice in your ruling and not a precise date the phone was bought, which doubt should operate in favor of the accused (defendant).

20.That Your Honour also committed a reversible error when you upheld the verdict of the jury which was contrary to the weight of the evidence produced in the case, as the evidence produced by prosecution had variances, doubts, uncorroboration and insufficient evidence."

From the foregoing facts, the bill of exceptions filed by the appellant, the briefs filed by the parties, and the oral arguments made before this Court, we have culled out the single issue, the answer to which we believe will be dispositive of the case. That issue is whether the verdict of guilty was against the weight of the evidence adduced at the trial. Stated in the alternative, the question is whether the state met the required burden of proof "beyond a reasonable doubt" to warrant a verdict and judgment of guilty against the appellant. The issue, we should note embodies the two ancillary contentions of the appellant, that is, that the trial court erred in denying the appellant's motion for judgment of acquittal and motion for new trial, both of which are stated in the bill of exceptions as points for the consideration of this Court.

The laws of Liberia, inclusive of the Liberian Constitution of 1986 (the Organic Law of the Land), the Criminal Procedure Law and the Penal Law, as well as our case law, espoused in the many opinions and decisions of the Supreme Court of Liberia, are clear and uncompromising in their expose of the principle governing the standard for determination of the question of the innocence or guilt of a person accused of the commission of a crime. That principle, embedded in our criminal law since the foundation of the republic, is premised on the legal norm that an accused is presumed innocent until proven guilty. The Liberian Constitution, at Article 21(h), clearly sets out, as a core component of the fundamental rights of the people, that in all criminal cases, an accused "shall be presumed innocent until the contrary is proved beyond a reasonable doubt." LIB. CONST., Art. 21(f) (1986). Our Criminal Procedure Law, Title 2 of our Revised Code of Laws, at section 2.1, subscribes to the same standard articulated by the Constitution. The Section sates: "A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal." Criminal Procedure Law, Rev. Code 2:2.1. the principle was similarly stated in the entire body of the predecessor statutes to the Revised Code, quoted herein. See CrPL 2:201; 1956 Code 8:268.

In like manner, this Court has followed a long line of tradition, as old as the Republic, in pronouncing and upholding the principle that a person accused of the commission of a crime is presumed innocent until he or she is proven guilty of the crime, and that in the case of any reasonable doubt as to his or her guilt, he or she is entitled to an acquittal. In one of the cases, *Dunn et al. v. Republic,* reported in the very first volume of the Liberia Law Reports, the Supreme Court said, regarding the principle referenced

herein that: It is a well settled principle in criminal law that 'everyone is presumed to be innocent until the contrary is proven." 1LLR 401(1903), text at 405. The Court then added:

"And, says Mr. Archbold, where the plea of the defendant is 'not guilty', the prosecution must prove the defendant guilty of the charge before the latter can be called upon for his defense. (1Arch. Crim. Pleadings, p.359). And the prosecution must prove it beyond a rational doubt. In civil cases, the jury may decide according to the preponderance of evidence, but in criminal cases---cases affecting life or liberty--- the evidence must be so conclusive as to exclude every rational doubt of prisoner's guilt; for if, after hearing all the evidence, the mind of the jury is in such condition that it cannot say it feels a moral certainty of the truth of the charge, then there arises a doubt, which must operate in favor of the accused." *id.,* at 405.

One century and a decade after that pronouncement by the Supreme Court, and throughout the intervening period, we continue to subscribe to the principle stated in the Dunn case, buttressed both by the Constitution and the statutory laws passed by the legislature under mandate of the Constitution. See Swaray v. Republic, 28 LLR 194 (1979); Wreh v. Republic, 30 LLR 459- (1983); Thomas v. Republic, 35 LLR 759 (1988); Bah v. Republic, 36 LLR 541(1989); Republic v. Eid et al., 37 LLR 761(1995); Seegboe et al. v. Republic, Supreme Court Opinion, October Term, A. D. 2008, decided December 18, 2008. And throughout the intervening periods, the Court has continued to referenced the linkage between the principle and the Constitution. Thus, in Alfred v. Republic, 33 LLR 87 (1985), decided by the Supreme Court one year before the 1986 Constitution came into effect, the Court re-echoed its previous position that "a defendant charged with the commission of a crime is presumed innocent until the contrary is proved." The Court stated further that "Where a plea on arraignment of the defendant is "not guilty", the onus probandi is on the prosecution to establish the defendant's guilt, devoid of all reasonable doubt", adding that "although an accused's guilt is satisfactorily proved, if there is shown to exist any reasonable doubt, he is entitled to an acquittal." *ld.,* at 90-91.

In Munnah and Sommah, decided barely two years after the 1986 Constitution came into effect, the Supreme Court reiterated its position on the matter, noting that "under the Constitution [meaning the new Constitution], a defendant..is presumed innocent until the contrary is proved beyond a reasonable doubt; and in case of a reasonable doubt, whether his guilt is satisfactorily shown, he is entitled to an acquittal." 35 LLR 40 (1988).

The message from those pronouncements is two-fold. Firstly, that under no circumstance should a conclusion of "guilty" be meted out or drawn against a defendant without affording him or her the opportunity of a trial where proof is presented against him or her and a verdict and/or judgment reached from such evidence. In every instance, the presumption of innocence must precede such trial, conviction or judgment. No court therefore can convict a defendant who accused of the commission of a crime without first exposing him or her to the standard or premise of innocence until proved guilty. Secondly,

and of equal importance, is that at a trial, duly conducted, wherein the State seeks to alter the presumption of innocence, and at which all of the rights, safeguards and protection stipulated by the Constitution and the statutes and case laws are respected and adhered to, the State or the prosecution, representing the State, must establish "beyond a reasonable doubt" the guilt of the defendant. This is the ultimate condition for rebutting the presumption of innocence of the defendant, and where the evidence presented by the State is not beyond a reasonable doubt or where the defendant creates such reasonable doubt, a conviction cannot be sustained and will be overturned by this Court. Sirleaf v. Republic, Supreme Court Opinion, decided August 17, 2012, March Term, 2012.

The question, therefore, is whether, in the instant case, the State established beyond a reasonable doubt the guilt of the appeal, or, put in the alternative, whether the appellant was able to establish sufficient doubt to preclude the jury reaching a verdict of guilty against her. In the motion for judgment of acquittal, the appellant asserted that the State had failed to establish her guilt beyond a reasonable doubt; and in the motion for new trial and the bill of exceptions she added the further assertion that she had raised sufficient doubt by the evidence presented to create further "reasonable doubt" to preclude a verdict of guilty.

The prosecution, on the other hand maintained that it had met that burden of proof, and that it did prove beyond a reasonable doubt the guilt of the defendant/appellant, thus warranting the jury reaching a verdict of guilty. The trial judge agreed with the position of the prosecution and therefore denied both the motion for a judgment of acquittal and the motion for new trial. Thus, in order for us to determine whether the State was able to attain the threshold of "beyond the reasonable doubt" standard, we revert to the evidence produced by the prosecution.

We should state, both from our review of the records and from listening to the arguments of the State prosecutors, that the prime objective of the criminal prosecution was to have the defendant pay to the private prosecutrix the value of the cell phone. We are persuaded to accept that as the prime basis for the suit, for although the private prosecutrix accused the defendant of battering her, inflicting wounds on her person, threatening her with a knife which could have resulted into very serious bodily harm or even death, and using very abusive words on her, the State prosecutors chose to seek an indictment for only theft of property to the value of the cell phone. The indictment, under which the appellant was charged with theft of property, placed the value of the phone at US420.00.

We should note also, however, that an earlier writ of arrest issued by the Monrovia City Magisterial Court, which charged the appellant with both simple assault and theft of property, commenced at the instance of the Liberian National Police, which had investigated the case, put the value of the cell phone at US$275.00. The State was therefore under a legal duty, as required by the Penal Law provisions prescribing theft of property as a criminal offence, to prove two very important facts: Firstly, that the defendant/appellant stole the cell phone of the private prosecutrix, and, secondly, to establish the value of the cell phone, if restitution was to be made by the defendant of the value of the phone. None of those could be left to mere speculation.

In order to meet the burden of proof standard of "beyond a reasonable doubt", the prosecution produced four witnesses: The private prosecutrix, a house boy who said that he worked for the private prosecutrix; and two officers of the Liberia National Police who stated that they had investigated the case. In her testimony, the private prosecutrix stated that the cell phone, which she accused the appellant of taking from her during the incident, was purchased for her by her husband on June 29, 2005 as a gift in honour of her having to give birth, and that her husband had presented the phone to her on the following day, June 30, 2005. The witness described the cell phone as a silver and black Sony Ericsson cell phone. She also identified what was termed as "a receipt", for the purchase of the cell phone as well as a box said to be the box in which the cell phone came. According to the witness, the cell phone was purchased from the Exclusive Supermarket Store on Center Street, in Monrovia. The document, i.e. the purported "receipt", identified by the private prosecutrix, was marked and confirmed by the court, and admitted into evidence at the close of the evidence by the prosecution.

The prosecution second witness, Johnson William, the yard boy to the private prosecutrix. He testified that the appellant had attacked the private prosecutrix, wounded her, and had taken away her phone, stating that nothing would come out of her action. He indicated also that the police arrived on the scene and had all of the parties involved taken to the police depot at IPA yard for investigation. The witness described the phone as a gray Sony Ericsson phone with a black scribe on the side.

The prosecution third and fourth witnesses identified themselves as officers of the Liberia National Police. The third witness, Detective Leo K. Puosah, stated that although he was a professional investigator, he was not assigned to investigate the incident of the instant case and that he was only assigned to control the people at the gate. He stated that while at this assignment, the sister of the defendant had approached him and said that she knew who had the phone, but that he paid no heed to her. Instead, he said, he told her only that he would inform the investigator of what she had said, and that he then asked her to leave the police compound. As to his knowledge of the case, he stated only that he had been informed by the investigator who handled the case that the matter involved a cell phone and an assault, and that it had been forwarded to court. This information was given to him only after the case had been forwarded to court.

The fourth witness for the prosecution was police officer Lindsay Gould who stated that he was assigned with the Women and Children Protection unit of the Liberia National Police. The witness, although acknowledging that he was part of the team that investigated the complaint of the private prosecutrix, he had very little to say about the incident. This is what he said: "It was sometimes ago, the date I cannot vividly remember, when Mrs. Arinette Cooper came to our section and alleged that her Sony Ericsson cell phone which cost US$420.00 was jerked from her by defendant Miama Bestman while they were in a fight on the VP Road. This is all I know." Moreover, even though the witness admitted, on being questioned further, that he was part of the investigating team, that the parties had executed written statements, and that he had signed the report, he stated

that he had no firsthand information of the case and did not know to which court the case was forwarded.

This was the prosecution evidence and it formed the basis upon which the defendant/appellant herein has moved the trial court for a judgment of acquittal and subsequently for a new trial following the guilty verdict of the trial jury. We are of the considered opinion that the trial judge erred in not granting the defendant's motions, firstly for a judgment of acquittal, and later for a new trial. The records point to a miserable failure of the prosecution to meet the requisite standard of proof beyond a reasonable doubt. A number of contentions for this conclusion can be highlighted.

Firstly, while the private prosecutrix stated that her phone was taken from her by the appellant, and her testimony was buttressed by the testimony of the State's second witness, her house boy, the records are devoid of any police report making such finding or showing that the incident occurred as narrated by the private prosecutrix. The first police officer produced by the prosecution to corroborate the private prosecutrix statement, claimed that he knew nothing of the case. In fact, he went even further to state that the appellant's sister had indicated to him that she knew who had the private prosecutrix cell phone. Yet, there is nothing in the records to indicate that any further probe was made of the information. To the contrary, rather than having the sister invited to provide information as to who had the cell phone of the private prosecutrix, the officer stated that he chose to direct that the appellant's sister leave the premises.

The second officer of the LNP, who said that he was a member of the investigating team, openly admitted that he had no information on the case even though he had signed the report, thus giving the impression that the investigation had been conducted by another person and the report prepared by some other person but provided to him only for his signature.

Secondly, the Penal Law, upon which the State's case rested, clearly sets out the basis upon which the charge of theft of property can be levied. It states that: "A person is guilty of theft of property if he: (a) Knowingly takes, misappropriates, converted or exercises unauthorized control over or makes an unauthorized transfer of an interest in, the property of another with the purpose of depriving the owner thereof." [Emphasis ours]. A critical requisite of the section for charging a person with theft of property is that the property is owned by another. This means that the private prosecutrix must show and demonstrate that the property which she states was stolen from her by the appellant must be shown to be owned by her.

The State must have been in full knowledge of this prerequisite, for the state prosecutors sought to establish ownership of the property in the private prosecutrix by introducing a document which, although noted thereon as a proforma invoice, was stated by the state prosecutors and the private prosecutor to be a "receipt". The appellant challenged the document on several grounds. Firstly, that the document was a proforma invoice and not a "receipt" of the purchase of any phone, as claimed by the State and the private

prosecutrix. The appellant had a witness from the vendor from which the private prosecutrix said the phone had been purchased. The witness stated that the document exhibited by the State and testified to by the private prosecutrix was not a "receipt" but rather only a proforma invoice showing the cost of a phone and not the purchase of a phone.

Yet, notwithstanding this damaging testimony, the State prosecutors failed to produce any rebutting witness to disprove the testimony of that witness. This Court has said in a number of cases that where allegations are made and there is a failure to rebut such allegations, the allegations are assumed to be true. In the case Kamara v. Republic, 22 LLR 329 (1974) the Court said: "The question in criminal cases therefore, is not of mere proof but proof beyond a reasonable doubt. Thus, where an accused has presented proof or evidence as to raise a strong doubt regarding the substance of prosecution's *case,* the latter is under a duty to rebut said evidence or the conviction will be overturned. The question is whether the prosecution formed "link by link the chain of evidence needed in criminal cases to lead any reasonable mind to the conclusion of the guilt of the appellant beyond a reasonable doubt." *id.,* at 680.

Using the principle quoted above, and adhered to consistently by this Court, we must draw the conclusion that the statement by the witness as to the invoice, not having been rebutted, is deemed to be true and creates a reasonable doubt in the prosecution's case.

But the purported "receipt" had a second problem, which also went to the core of the charge and to the statute under which the appellant was charged. It was not in the name of the private prosecutrix, and except for the private prosecutrix lone testimony, there was no other evidence, such as the testimony of the person whose named appeared on the purported receipt indicating that he had transferred title to the phone to the private prosecutrix or some document to the effect, showing that title to the phone had been transferred to her. Instead, the case records show that the purported receipt was in the name of one Harry Cooper. The private prosecutrix had sought to overcome this fact by asserting that the phone had been purchased by her husband, whom she says is Harry Cooper, to honour her giving birth. That may very well have been true, but the fact remains that the document was not in her name and there was no other document or evidence to show that title had been transferred to her. As such, legal title to the phone remained vested in another person, at least until there was a showing that a formal transfer, written or oral, was made.

While the point may not have seemed important to the prosecution, we believe that the framers of the Penal Code clearly sought to ensure that claims of theft of property was grounded in ownership of the property in the party claiming that the theft had been committed against him or her. Section 15.51(a) is unambiguous in that regard. It states that a person is guilty of theft if he or she "knowingly takes, misappropriates, converts or exercises unauthorized control over or makes an unauthorized transfer of an interest in, the property of another with the purpose of depriving the owner thereof." The statute requires two allegations in order for the crime to obtain: (a) that the property belongs to another person, and (b) that such other person is the owner of the property. Those

requirements impose on a person claiming that a theft was committed against him/her the obligation to show that the property stolen is owned by or belonged to him or her, not merely by possession of the property but by legal title to the property. We must state here, as we have done in many cases heretofore, that mere allegations are not fact or proof; they must be proved at the trial. Morgan v. Barclay, 42 LLR 259 (2004). As this Court stated in Monie and Garzu v. Republic, 34 LLR 502 (1988), "Every person charging another with an offense is bound to prove it. Proof is the perfection of evidence, without which there can be no proof." Thus, the mere allegation of ownership to the cell phone by the private prosecutrix was insufficient under the statute; proof of such ownership or title must have been satisfactorily produced at the trial.

The private prosecutrix could not make the claim that the phone which she said was stolen from her by the appellant was her phone, without showing more. The State was required to either exhibit a document of ownership or transfer in the name of the private prosecutrix or in the alternative have Mr. Harry Cooper, whose name appeared on the document, take the witness stand and testify that indeed he was the purchaser of the phone and that he had transferred ownership of the phone to the private prosecutrix as a gift for her giving birth to a child. This would have corroborated her claim to ownership of the property and enable her to meet one of the standards set by the Penal Law for prosecution of the charge. We are at a lost as to why the State did not think that it was important to have Mr. Cooper take the witness stand to testify for the State, either initially to established that the phone was in fact purchased by him and that he had passed title and/or ownership to his wife, the private prosecutrix, and thus corroborate the testimony of the private prosecutrix, or subsequently, to rebut the defense claim that the phone was never purchased, and that therefore no phone was stolen from the private prosecutrix that was allegedly owned by her. In the absence of such supporting and corroborating testimony and the purported "receipt" being in the name of another person, the testimony as to ownership by the private prosecutrix remained uncorroborated. If the private prosecutrix could not show ownership to the property, the State could not prosecute a case based on a claim of such ownership.

We wonder further why, since the State had determined not to press charges for simple or aggravated assault, and had instead opted to charge the appellant with theft of property, it did not have Mr. Harry Cooper served as private prosecutor, since the document relied upon to show ownership to the phone was in his name.

In addition, the purported receipt had an even greater problem with the date shown thereon, which completely rendered the allegation of the State and the statement of the private prosecutrix seriously questionable, sufficiently to create reasonable doubt on the minds of the jurors. The minutes of the trial court revealed that the private prosecutrix had alleged that her husband had purchased the phone for her on June 29, 2005 as a gift for her having given birth to a child. She had alleged further that the phone was delivered to her on June 30, 2005, one day after the purchase. Yet, the document identified by her and introduced into evidence had a date of 8/12/05. We note that whether one views the date as August 12, 2005 or December 8, 2005, it clearly disproved

the allegation of the State and the statement by the private prosecutrix that the document represented the receipt for the purchase of the phone. The phone could not have been purchased on June 29, 2005 and the document evidencing the purchase showing a date several months after the date which the private prosecutrix alleged the phone was purchased. We find these discrepancies to be more cogent to the determination of the case than the emphasis placed by the appellant on the description of the phone. We do not find that the slight variance in the witnesses' testimonies as to the description of the phone has such legal or factual significance as would have affected the outcome of the case had we determined that the prosecution had met the burden of proof imposed by the law.

We note further that the third and fourth witnesses for the State, officers of the Liberia National Police who claimed to have investigated or participated in the investigation of the complaint lodged with the LNP by the private prosecutrix, added no value to the prosecution's case. The both of them, in answer to questions posed to them, indicated that they knew nothing about the case, although the fourth witness did acknowledge that he was a member of the investigating team. They were asked no questions about proforma invoice which the private prosecutrix had identified and which was marked and confirmed by the court, and they made no mention of and offered no explanation in regard to the invoice, whether characterized as "cash invoice" or "proforma invoice"; they provided no information on the value of the phone or any document they had seen regarding the cell phone which the private prosecutrix claimed the appellant had stolen from her. Further, they were not asked to produce copy of the police report which formed the basis for the charge sheet submitted to the Monrovia City Magisterial Court and which would have explained the evidence gathered in the course of the investigation; they did not know to which court the matter had been forwarded to; they were not asked and made no statement as to regarding the phone which was alleged to have been stolen. Thus, for all purposes of this opinion, only two witnesses were of importance or of substance, and even *then,* we do not believe that their testimony met the standard required under the law to have warranted the verdict of guilty brought against the appellant. The jury should therefore have returned a verdict of not guilty in favor of the appellant, based on what we have stated above.

This Court spoke succinctly on the matter such as we have in the instant case when, in the case Monie and Garzu v. Republic, 34 LLR 502 (1988), it said: "One of the cardinal principles of law is that a defendant is presumed innocent until the contrary is proven. This presumption is legally held to give the benefit of the doubt to the accused, and it cannot be repelled by any evidence which is short of sufficiently establishing the fact of criminality with moral certainty. To affix on any person the stigma of a crime...requires that the evidence must be convincing and excludes from the mind all doubts." *Id.,* at 515. Also, in Davies v. Republic, 40 LLR 659 (2001), the Supreme *Court,* speaking through Mr. Justice Morris, said: "In order to convict a person in a criminal *case,* the prosecution must prove the guilt of the accused with such legal certainty as to exclude every reasonable hypothesis of his innocence; and all material facts essential to constitute the crime must be proved

beyond a reasonable doubt. Otherwise the accused will be entitled to a discharge." *See also Koffa* v. Republic, 34 LLR 489 (1988).

Given the failure of the jury to bring in a verdict that conformed to the evidence, the trial judge, under the circumstances, should have granted the motion for new trial. Our Criminal Procedure Law is very clear on the issue. It vests in the trial judge the authority, where the evidence is insufficient for a conviction, to award a new trial to the defendant. Section 22.1states: When a *verdict has* been rendered against the defendant, the court on motion of the defendant may grant a new trial on any of the grounds specified in paragraph 2 of this section." Paragraph 2, sub-section (e) states as one of the grounds for granting of a motion for new trial" that the verdict is contrary to the weight of the evidence".

In the case *Sirleaf v. Republic,* decided at the March Term 2012 of this Honourable Court, we said of the standard required by the law that: "our criminal law, in addition to the presumption of innocence of a defendant, also imposes on the State the obligation not only to show by a preponderance of the evidence the guilt of the defendant but also to meet the standard of proof beyond all reasonable doubt before a conviction of the defendant can be upheld. We referenced a long line of cases in support of our decision, including Saar v. Republic, 29 LLR 35 (1981); Fe/eku *v.* Republic, 30 LLR 189 _ (1982); Wreh v. Republic, 30 LLR 459 (1983); Kroma v. Republic, 32 LLR 198 (1984); Davies v. Republic*,* 40 LLR 659 (2001); Okrasi v. Republic, Supreme Court Opinion, March Term, A. D. 2009, decided July 23, 2009; Wogbeh v. Republic, Supreme Court Opinion, October Term, A. D. 2009, decided January 21, 2010; and Brown et al. v. Republic, Supreme Court Opinion, October Term, A. D. 2009, decided January 21, 2010."

We particularly noted how emphatic the Court was in its pronouncement in the Brown case that "A person charged with the commission of a criminal offense, ghastly as the crime may be, is presumed innocent until the contrary is proven, and where his plea is NOT GUILTY, the *onus probandi* is on the prosecution to establish his guilt, devoid of reasonable doubt." And we reemphasized the words of the Supreme Court in the case Davies v. Republic, 40 LLR 659 (2001), wherein the Court said: "in all trials upon indictments in order for the State to convict the prosecution must prove the guilt of the accused with such legal certainty as to exclude every reasonable hypothesis of his innocence; that material facts essential to constitute the crime charged must be proved beyond a reasonable doubt; otherwise, the accused will be entitled to a discharge. *id.,* at 676-77" And citing the case Burphy v. The Bureau of Traffic*,* 25 LLR 12 (1976), in support of its holding, this Court added: "To warrant a conviction in a criminal case, the state must prove its case beyond a reasonable doubt; and the burden of proof remains with the prosecution throughout the trial." The Court further propounded:"In criminal prosecution, in order to eradicate every reasonable doubt, the evidence must be conclusive; and if it be circumstantial, it should be so connected as to positively connect one element within another for a chain of evidence sufficient to lead the mind irresistibly to the conclusion that the accused is the guilty party." Citing Kojee v. Republic, 20 LLR 18 (1970); Republic v. Smith, 25LLR 207 (1976). See also Heith v. Republic, wherein this Court said: "A judgment of conviction in a criminal case

must be supported by proof of all elements of the crime charged beyond a reasonable doubt." 39 LLR 50 (1998). The want of such proof, this Court has said, is deemed sufficient to defeat the best laid action. Konnah and Tiawan v. Carver, 36 LLR 319 (1989). We are convinced, from our review of the entire records in the case, that the prosecution did not meet the legal threshold of proof beyond a reasonable doubt for a conviction, and that in the face of that failing the jury could not return a verdict of guilty against the appellant.

The trial judge was clearly confronted with these facts, both at the time he ruled on the motion for judgment of acquittal and the motion for a new trial. Indeed, the judge acknowledged in his ruling on the motion for new trial that showing that the prosecution had not met the burden of proof required by the criminal statute.

Accordingly, we hold that the prosecution, having failed to meet the threshold standard to establish the guilt of the appellant beyond a reasonable doubt, the verdict of guilty brought by the petit jury and the judgment of the lower court confirming the said verdict are hereby reversed. We do so under authority vested in this Court to render such judgment as the lower court should have rendered. Baaklini v. Henries, Younis et al., 39 LLR 303, 312(1999); Wright v. Reeves, 26 LLR 38 (1977); Williams v. Tubman, 14 LLR 109 (1960); John v. Republic, 13 LLR 143 (1958).

We further hold that in accordance with this Opinion, the appellant be released forthwith from further answering to the charge of theft of property with which she was charged. We direct that her bond be returned to her. This judgment, however, is without prejudice to the prosecution to bring, as it may deem appropriate, other actions, excluding the theft of property, growing out of the incident, such as simple or aggravated assault which, from the records, it seemed to have earlier contemplated when the action was first commenced in the magisterial court, but ensuring that it meets the threshold burden of proof beyond a reasonable doubt.

The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over the case and to give effect to this judgment. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

JUDGMENT REVERSED.

COUNSELLOR PAUL N. GUAH, SR., APPEARED FOR THE APPELLANT. COUNSELLOR MICAH WILKINS WRIGHT, SOLICITOR GENERAL OF LIBERIA, COUNSELLOR AUGUSTINE C. FAYIAH, ASSISTANT MINISTER FOR LITIGATION, COUNSELLOR J. DAKU MULBAH, COUNTY ATTORNEY FOR MONTSERRADO COUNTY, AND COUNSELLOR YAMIE QUIQUI GBEISAY, SENIOR LEGAL COUNSEL, ALL OF THE MINISTRY OF JUSTICE, APPEARED FOR THE APPELLEE,