

OTHELLO FANGI, Appellant, *v.* **REPUBLIC OF LIBERIA**, by and thru **CAROLINE B. NAJUE**, Appellee.

APPEAL FROM THE JUDGMENT OF THE FIRST JUDICIAL CIRCUIT COURT,
CRIMINAL ASSIZES “C”, MONTSERRAD COUNTY.

Heard: April 28, 2004. Decided: August 13, 2004.

1. A trial judge cannot reserve the right to investigate allegations into complaint of jury tampering by a party.
2. It is a judicially mandatory duty imposed on the trial judge by law and moral ethics to immediately suspend the trial and conduct an investigation pursuant to allegations of jury tampering and, depending on the findings, disband the jury and award a new trial.
3. Any behavior of the jury, during and immediately after service, which can be regarded as prejudicial or reflecting prejudice against a losing party, is a proper ground for a new trial.
4. When a jury has been empanelled to try the issues joined, their every act until discharged must remain under close scrutiny by the court, by the parties on both sides, and by the world at large.
5. In appellate practice, a reversible error is one which warrants the appellate court reversing a judgment before it; which reasonably might have prejudiced the party complaining.
6. A trial judge’s ruling that counsel cannot prevent the court from disbanding the jury when it has brought a verdict which has been re-corded in order to bring to its attention the question of jury tampering, but could bring a complaint by way of a motion is erroneous.
7. Whenever any of the parties to a case being tried by a jury discovers that the said jury has been tampered with, the said party has the right to immediately bring it to the attention of the trial judge who shall immediately conduct an investigation into such complaint.
8. The Supreme Court will award a new trial where the trial jury has returned a verdict in one party’s favour and it has been disbanded, and the jury serving that term of court, including some who had served on the panel, began to dance and make merry in court because the plaintiff had won.
9. Where a juror has been guilty of misconduct, the same is ground for a new trial in a motion for new trial.
10. It is an act of prejudice for the judge to deny a defendant the right to have his complaint of jury tampering investigated.
11. The law requires that every litigant is entitled to nothing less than the cold neutrality of an impartial judge.

12. A trial judge commits a reversible error by not investigating the jury tampering complaint and in such situation the judgment must be reversed and a new trial awarded.

The appellant was charged, indicted and convicted of theft of property, the allegations being that he had stolen monies (United States and Liberian dollars) and jewelries from the private prosecutrix, which she had given to him for safe-keeping. Upon the jury returning a verdict of guilty against the appellant, counsel for the appellant excepted to the verdict and brought to the attention of the trial court that they had received information that the jury had been tampered with, that they were requesting an investigation into the information, and that the jury not be discharged by the court until the allegations of tampering had been investigated. The trial judge denied the request, stating that the verdict had been excepted to which formed part of the records of the court, that the verdict had been recorded, and if counsel had anything to bring to the attention of the court he should do so later by way of a motion. In accordance with the said ruling, counsel for the appellant filed a motion for a new trial, stating therein the allegations of jury tampering and requesting an investigation. The motion was denied by the trial judge with no investigation being held into the complaint of jury tampering.

On appeal, the Supreme Court held that the trial judge was in error in not investigating the complaint of the appellant of jury tampering, noting that the trial court was under a mandatory legal obligation to investigate the allegation and that it was a reversible error for the judge to refuse to conduct the requested investigation. The Court opined that this obligation extended even where the jury had returned a verdict and had been discharged as well as to situations where the jury upon the return of the verdict joined in rejoicing with respect to the verdict.

Accordingly, the Court reversed the verdict and judgment of the trial court and awarded a new trial to the appellant.

Beyan D. Howard of Legal Consultancy, Inc. appeared for appellant. *Theophilus C. Gould*, Solicitor General, R. L., *Seikpjepo A. Wollor*, Assistant County Attorney, Montserrado County, R. L. and *James W. Zotaa, Jr.*, appeared for the appellee.

MR. JUSTICE GREAVES delivered the opinion of the Court.

On the 26th day of June, A. D. 2002, the Grand Jurors of the First Judicial Circuit Court, Montserrado County, Republic of Liberia, indicted Othello Fangi for the Crime of Theft of Property. The said indictment alleged, among other things, that on the 13th day of May, A. D. 2002, at 10:30 p. m. at Airfield, Sinkor, City of Monrovia, Montserrado County, Republic of Liberia, the within named defendant, Othello Fangi, without any color of right and also without the fear of God and the statutory laws of Liberia, and with the criminal and wicked

intent to deprive the private prosecutrix, Caraline B. Najue, of her jewelries and cash, in Liberian and United States Dollars, did commit said crime while employed as a watchman at the yard of private prosecutrix and her husband. It is alleged that the private prosecutrix had dug a hole in her yard on the above mentioned date and placed therein Twelve Thousand Five Hundred Liberian dollars (L\$12,500.00), Seventy-Five United States Dollars (US\$ 75.00) and assorted sets of jewelries, all valued at Nine Thousand United States dollars (US\$ 9,000.00), for safe-keeping, being afraid that the fighting in Arthington that day would spread to Monrovia and that she would thereby be deprived of her money and jewelries by the armed men involved. It was further alleged that the defendant dug out the said money and jewelries without the will and consent of the private prosecutrix. The indictment stated also that he converted same to his personal use and benefit and continued to exercise unauthorized control over same to the disadvantage and detriment of the private prosecutrix; and thereby the crime of theft of property the defendant did do and commit, in violation of chapter 15, Section 15.5, (a, b, c) of the New Penal Law of Liberia. This law states: THEFT OF PROPERTY: A person is guilty of theft if he:

- (a) 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;
- (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.

During the August, A. D. 2002 Term of the said Court (i.e. First Judicial Circuit, Montserrado County, Court "C"), the defendant/appellant joined issue with the Republic of Liberia when, upon arraignment, he made and entered a plea of not guilty. A jury trial was duly held under the direction of the court and on the 17th day of September, A. D. 2002, the trial jury returned a verdict of guilty against the defendant/ appellant. When one of the prosecution's counsel made an application/submission to the court to have the unanimous verdict of the trial jury received and recorded on the minutes of court so as to form a cogent part of the proceedings and to discharge the jury from answering any question/issue pertaining to the matter, the counsel for defendant/appellant excepted to the said verdict. He requested the trial judge not to discharge the trial jury as he had a complaint relating to the tempering of the jury to be brought to the attention of the court.

The trial judge denied the defendant/appellant's counsel request, stating in his ruling that "the defendant/appellant's counsel having excepted to the verdict of the empaneled jury which has been ordered recorded to form a part of the records in said case, and the verdict having been recorded by the clerk of court, in keeping with the practice and procedure in this jurisdiction, if the said counsel (defendant's counsel) had anything to bring to the

attention of the court and/or to make any other record, having excepted to the verdict, it is his right under the law to do so by a motion". The trial judge went on further to state in his ruling that the court was under obligation to disband the jury after the jury had submitted the verdict to the court, which the trial jury in this case had done and the jury in open court had been pooled as to whether its verdict is a unanimous one. He went on to state that the court will therefore proceed to disband the trial jury in keeping with the practice and procedure in this jurisdiction. He ended his ruling with "the jury is ordered disbanded having submitted its verdict in this case. And it is hereby so ordered". Defendant/ appellant's counsel then excepted to the trial judge's ruling.

The defendant/appellant on the 19th day of September, A. D. 2002, filed a fourteen-count motion for a new trial, in which motion he enumerated all of the facts and circumstances involved in the alleged tampering of the trial jury. Also, in view of the resistance of the prosecution, the trial judge denied defendant/appellant's motion for a new trial, without conducting an investigation into the alleged tempering of the jury. Defendant/appellant accordingly excepted to the ruling on the said motion.

On the 2nd day of October, A. D. 2002, a final judgment confirming the verdict was rendered, sentencing the defendant/appellant to a period of three (3) years in prison and adjudging him to make restitution of the amount of Twelve Thousand Five Hundred Liberian Dollars (L\$12,500.00), plus Seventy-Five United States Dollars (US\$75.00) and the value of the jewelries stolen, which amounted to Nine Thousand United States Dollars (US\$9,000.00). Exceptions to the judgment having been noted, and appeal announced and granted, the case is before this Court on appeal on a fifteen-count bill of exceptions.

We do not deem it necessary to quote each count of defendant/appellant's bill of exceptions, but only those we see as necessary to the disposition of this matter. We are therefore quoting counts 10, 11, 12, 13, and 14 of said exceptions, as follows:

10. That Your Honour erred when you stopped the counsel for defendant from making an application on the night of September 17, 2002 to this Honourable Court not to discharge the jury until an investigation was conducted into the allegation of jury tampering and by discharging the jury without conducting an investigation into the allegation of jury tampering which was brought to Your Honour's attention a few minutes after the verdict was returned by the jury.
11. That Your Honour erred when you, on September 24, 2002, denied defendant's counsel the opportunity of making record requesting this Honourable Court to summon the foreman and secretary of the jury who were not in court when the motion for new trial was called for hearing. As a matter of fact, the foreman of the jury has not reported to work since the night of September 17, 2002.
12. That Your Honour erred by denying the motion for new trial.

13. That Your Honour erred when you failed refused, and neglected to investigate the allegation of jury tampering on the ground that the issue was not raised at the proper time.
14. That Your Honour erred when you in your ruling denying the motion for new trial, failed, refused and neglected to take into consideration the admission made by Counsellor James W. Zotaa, Jr., one of the counsels for prosecution, to the effect that he signed the affidavit attached to the resistance to the motion for new trial on behalf of the foreman and secretary.

For the purpose of this opinion, we deem only one issue worthy of our consideration for the timely disposition of this matter, i.e. whether the trial judge committed a reversible error in discharging the jury without conducting an investigation into the allegation of jury tampering which was brought to his attention on the night the jury brought the verdict of guilty against the defendant on the ground that said issue was not raised at the proper time. We shall now revert to several opinions rendered by this Honourable Court relating to jury tampering which also clarify at what stage a party affected by said act(s) may bring same to the attention of the trial judge. We shall now proceed to enumerate the said opinions and discuss same before answering the question posed by the issue.

In the case *Camer Liberia Corporation v. A. H. Basma and Sons*, 32 LLR 100 (1984), Syl. 1, this Court opined that “A trial judge cannot reserve the right to investigate allegations into complaint of jury tampering by a party. Rather, it is a judicially mandatory duty imposed on the trial judge by law and moral ethics to immediately suspend the trial and conduct an investigation pursuant to such allegations and, depending on the findings, disband the jury and award a new trial”. In the case *McCauley v. Doe*, 22 LLR 310, Syl. 4 (1973), this Court earlier opined that “any behavior of the jury, during and immediately after service, which can be regarded as prejudicial or reflecting prejudice against the losing party is a proper ground for a new trial”. Further, in *Shabeen v. C. F. A. O.*, 13 LLR 278 (1958), this Court earlier opined that when a jury has been empaneled to try the issue joined, their every act until discharged must remain under close scrutiny by the court, by the parties on both sides, and by the world at large. The Supreme Court remanded those cases for new trials.

A recourse to sheet eleven (11), Tuesday, September 17, 2002, 27th day jury sitting, August Term, A. D. 2002, shows that when the trial jury brought a verdict of guilty against the defendant/appellant, one of prosecution’s counsel, in the person of Counsellor Sikajipo A. Wollor, made an application to receive the unanimous verdict of the jury, have same recorded on the minutes of court and to have the court discharge the trial jury from answering any question pertaining to said case (disbanding the trial jury). The trial judge ordered the verdict recorded by the clerk of said court, but the defendant/ appellant’s counsel excepted to the verdict and prayed that the trial jury not be discharged as he had a matter concerning the tampering of the jury to be brought to the attention of the court, especially as relates to the foremen of the trial jury. Defendant/appellant’s counsel alleged in

his argument before the Supreme Court that he was stopped from placing the circumstances surrounding the alleged tampering of the trial jury on the minutes of court and the trial judge proceeded to rule on his application thus:

“Counsel for the defendant having excepted to the verdict of the empanelled jury which has been ordered to form part of the records in this case and the said verdict having been recorded by the clerk of court in keeping with the practice and procedure in this jurisdiction that this court knows of in keeping with jury trials. If the counsel for defendant has anything to bring to the attention of the court and/or to make any other record having excepted to the verdict, it is his right under the law to do so by a motion. The court is under the obligation to disband the jury after the jury has submitted the verdict to the court which the trial jury in this case has done and the said jury in open court has been pooled as to whether their verdict is a unanimous verdict. The court will now therefore proceed to disband the jury in keeping with the practice and procedure in this jurisdiction. The jury is ordered disbanded, having submitted its verdict in this case. And so ordered”. See Sheet eleven (11), Tuesday, September 17, 27th day jury sitting, August Term, 2002. The defendant/appellant’s counsel duly excepted to said ruling.

The defendant/appellant’s counsel, on September 19, 2002, then proceeded to file a motion for new trial in keeping with law and in keeping with the trial judge’s ruling of September 17, 2002 that “if the counsel for defendant has anything to bring to the attention of the court and/or to make any other record having excepted to the verdict, it is his right under the law to do so by a motion”. In the fourteen-count motion for new trial, defendant/ appellant alleged, among other things, that the foreman and secretary of the jury were demanding One Thousand Five Hundred United States Dollars (U.S. \$1,500.00) in order to return a verdict of not guilty and stated therein that the private prosecutrix had already given the jurors more than One Thousand Five Hundred United States Dollars (U.S.1,500.00), since the evidence adduced at trial was insufficient for the Republic of Liberia to prevail. They warned that if movant (defendant/appellant) failed to give the amount they were requesting for, they would be constrained to return a verdict of guilty. See counts 4 and 5 of defendant/ appellant’s motion for a new trial.

The defendant/appellant’s counsel also attached a copy of a note written to the defendant/appellant by the foreman of the trial jury marked “Exhibit M/1” to the said motion for new trial requesting an audience with the defendant. The note is dated August 23, 2003, which we quote herein word-for-word:

“August 23, 2003

Mr. Defendant,

Please write your full name and the location of your resident with good direction on the back of this note and give it to me.

I want to meet you secretly. Please be serious. I want to meet you after the case to discuss issue that is in your interest. Let this be a secret.

Thanks,

Joseph N. Bestman

Joseph N. Bestman

Foreman-Panel Jurors”

The trial judge heard the said motion for new trial and denied same without instituting an investigation into the allegation of jury tampering as outlined in defendant/ appellant's motion, which was followed by the court's final judgement on the 2nd day of October, A. D. 2002 sentencing defendant/appellant to three (3) years imprisonment and ordering him to make restitution of monies and the value of the jewelries. Defendant/ appellant excepted to the final judgment and announced an appeal to this Court. Hence, this appeal.

In appellate practice, a reversible error is one which warrants the appellate court reversing a judgment before it. Also, it is substantial error which reasonably might have prejudiced the party complaining. See BLACK'S LAW DICTIONARY 487 (5th ed.)

Did the trial judge commit a reversible error by discharging the trial jury without conducting an investigation into the allegation of jury tampering which was brought to his attention by defendant/appellant on the night the trial jury returned a verdict of guilty against the defendant/appellant's? We concur with the defendant/appellant's counsel as this Court has stated in numerous opinions that a trial judge cannot reserve the right to investigate allegations into a complaint of jury tampering by a party. Rather, it is a judicially mandatory duty imposed upon him by law and moral ethics to immediately suspend the trial and conduct an investigation pursuant to such allegations and, depending on the findings, disband the jury and award a new trial. *Camer Liberia Corporation v. A. H. Basma and Sons*, 32 LLR 100, Syl. 1 (1984). It was incumbent on the trial judge in the instant case to have suspended the proceedings/trial immediately upon defendant/appellant counsel's informing him that he had an information to be brought to the attention of said court relative to the tampering of the trial jury and to institute an investigation into same, and if there be any truth or merit to said complaint, proceed to disband the trial jury and award a new trial. The trial judge's ruling that defendant/appellant's counsel could not prevent the court from disbanding the jury when it had brought in a verdict which had been recorded in order to bring to its attention the question of jury tampering, but could bring said complaint by way of a motion was erroneous. Whenever any of the parties to a case being tried by a jury discovers that the said jury has been tampered with, the said party has the right to immediately bring it to the attention of the trial judge who shall immediately conduct an investigation into such complaint and if there be any merit, disband the trial jury and award a new trial. This Court has even awarded a new trial where the trial jury had returned a verdict in one party's favor and it had been disbanded, but the jury serving that term of court, including some of those who had served on the panel, began to dance and make merry in

court because the plaintiff had won. *McCauley v. Doe*, 22 LLR 310 (1973), syl 4. Also, the Criminal Procedure Law, Rev. Code 1: 22.1(2), as found in 1 LCLR, motion for new trial, states in paragraph 2(c) that where a juror has been guilty of misconduct, it is a ground for a new trial.

How else can a trial judge determine that a juror is guilty of misconduct but by an investigation? It was an act of prejudice for the judge to have denied defendant the right to have his complaint investigated. The law requires that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. The trial judge committed a reversible error and therefore the judgment of the trial court ought to be reversed and a new trial awarded. The prosecution argued that the note on which the defendant/appellant relies was dated August 23, 2002, but was not brought to the attention of the court until the 17th day of September, A. D. 2002 which presupposes some dubious deed on the part of the defendant/appellant. We still hold that it was legally and morally incumbent upon the trial judge to immediately suspend the trial upon receipt of the complaint, taking into consideration the defenses raised during the investigation by the prosecution in reaching a conclusion; but this was not done. What about the deliberate staying away of the foreman and secretary of the trial jury from court after the verdict was brought when defendant/appellant's counsel raised the issue of "jury tampering"? What about the affidavit that was alleged to have been signed by the secretary and foreman of the trial jury to the effect that they did not solicit bribe from any of the parties that was allegedly signed by Counsellor Zotaa and not the jurors? All of those allegations should have been investigated by the trial judge. The said trial judge committed a reversible error by not investigating the jury tampering complaint and therefore the judgment must be reversed and a new trial awarded.

Wherefore, and in view of the all the facts, circumstances and legal citations stated herein, we hold that the judgment appealed from be, and the same is hereby set aside and the case remanded with the instruction that the trial court resumes jurisdiction and try the case anew. The Clerk of this Court is hereby ordered to send a mandate to the judge presiding therein to resume jurisdiction and give effect to this opinion. And it is hereby so ordered.

Judgment reversed; case remanded.