

**Lafayette Orishall Gould, Varfley A. Dorleh, Prince Reeves, Edward Massaquoi, Karvan V. Shilue, J. Arnold Wilson, Lumeh Z. Quiwille, Edward K. Wregbe, Elwood N. Dargbe, Benjamin B. Wlehjah, Tijain Kromah and Alfred E. Tarley APPELLANTS VERSUS Republic of Liberia APPELLEE**

APPEAL

HEARD: OCTOBER 18, 2007 DECIDED: DECEMBER 21, 2007

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

On September 23, 2005, a Writ of Arrest was issued out of the Monrovia City Court presided over by Magistrate Milton D. Taylor, charging the crime of ECONOMIC SABOTAGE against Defendants: Orishall Lafayette Gould, Varfley Dorleh, Prince Reeves, Edward Massaquoi, Karvin V. Shilue, J. Arnold Wilson Lumeh Z. Quiwille, Edward K. Wregbe, Elwood N. Dargbe, Benjamin Wlehjah Tijain Kromah and Alfred E. Tarley, all Former employees of the National Social Security & Welfare Corporation. We quote verbatim the Magisterial Writ:

*"That [in] the year 2003, up to and including 2004, in the City of Monrovia Montserrado County, Republic of Liberia, the within named defendant, while in the employ of the National Social Security and Welfare Corporation (NASSCORP), as Director General among others, by virtue of the said responsibilities and positions, connived and conspired, receiving from the said Corporation the sum of. US\$615,930.12 and L\$112,676.73 for the purpose of purchasing for the Corporation, building materials, split unit air conditioner, furniture, spare parts, tyres, batteries, computers, accessories, maintenance costs, etc., and that having received the said amount, defendants criminally purposefully and intentionally converted the same into their personal use and benefit with the intent to defraud the National Social Security Welfare Corporation and Government of Liberia thereof: The alleged acts of the defendants being unlawful, criminal and illegal, is in violation of the ECONOMIC SABOTAGE Act of Liberia, the Defendants did do and commit. HENCE, THIS WRIT OF ARREST.*

The record shows that the prosecution objected to the criminal appearance bond filed by the defendants. However, after argument pro et con, the Magistrate allowed the bond. There is no indication that the defendants requested for preliminary examination, whereupon, the case was transferred to the First Judicial Circuit, Criminal Assizes for Montserrado County on January 19 2006, from whence an indictment was brought against them.

"INDICTMENT"

THE GRAND JURORS, good and lawful citizens of Montserrado County, Republic of Liberia, duly selected, sworn and impaneled to inquire into brought before them for and on behalf of the Republic of Liberia, do upon their OATH present the above named defendants, citizens of the Republic of Liberia, residing in the Republic of Liberia, for the Crime of ECONOMIC SABOTAGE to wit, as follows:-

That the defendants in contravention of the statutory laws of the Republic of Liberia as quoted below:

AN ACT TO AMEND CHAPTER 15 OF THE NEW PENAL LAW BY ADDING THERETO A NEW SUB-CHAPTER "F" TO PROVIDE FOR THE CRIME OF "ECONOMIC SABOTAGE", APPROVED JULY 31, 1989, SECTIONS 15.81 & 15.82 WHICH SAY:

AS TO 15.81: Misuse of Public Money, Property or Record

A person is guilty of first degree felony, if he:

(a) Knowingly steals, takes, purloins, or converts to his own use and benefit or the use of another; or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the Government of Liberia or of any Ministry, or Agency thereof or Public Corporation or any property made or being made under contract for the Government of Liberia or any Ministry, Agency thereof or Public Corporation;

(b) Receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been stolen, purloined or converted:

(c) Disposes of, uses or transfers any interest in property which has been entrusted to him as a fiduciary, or in his capacity as a Public Servant or any Officer of an Institution, in a manner he knows it is not authorized and that he knows to involve a risk of loss or detriment to the owner of the property or the Government of Liberia or other persons for whose benefit the property was entrusted.

AS TO 15.82: THEFT AND/OR ILLEGAL DISBURSEMENT AND EXPENDITURES OF PUBLIC MONEY

A person is guilty of a first degree felony, if he

(a) Knowingly fails to render his account or accounts for public money or property as provided by law, said person being an Officer, Employer, or Agent of the Government of Liberia or of any Ministry or Agency thereof or Public Corporation having received Public money, which he is not authorized to retain as salary, pay or emolument;

(b) Knowingly takes, misappropriates, converts, or exercises unauthorized control over, or makes unauthorized transfer of an interest in the property of another or the Government of Liberia, 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 or the Government of Liberia which, has been stolen, with the purpose of depriving the owner thereof or the Government of Liberia."

That, Co-Defendants, Lafayette E. Orishall Gould, Varfley A. Dorleh, Edward Massaquoi, and Prince S. Reeves while serving at the National Social Security and Welfare Corporation, a Government Of the Republic of Liberia's public corporation, shouldered with the responsibility of providing social security and welfare benefit to employees of the Government of the republic of Liberia and other private entities who contribute a percentage of their monthly salary through deductions, between the months of January, A.D. 2004 up to and including the month of December, A.D. 2004 as Director-general, Deputy Director-General for Administration, Chief and Senior Accountants, respectively with the intent of depriving the said National social Security and Welfare Corporation of funds intended for the completion of the Corporation's Samuel K. Doe Housing Estate, located and situated in Whein Town, Montserrado County, conspired and connived, raised vouchers and issued the following checks:

Voucher No.	Check No.	Purpose/Payee	Amount
	000010	Matthew Sparla	US\$14,000.00
	000007	Varfley A. Dolleh	US\$ 4,000.00
	000004	Jaspite Jackson	US&70,000.00
	000006	Wilmot Yalartai	US\$20,000.00
	000012	Morno Siryon	US\$30,000.00
	000008	Douglas Harris	US\$20,000.00
	000003	Morno Siryon	US\$30,000.00
			US\$188,000.00

Amounting to US\$188,000.00 (One Hundred Eighty Eight Thousand United States Dollars) not intended for the purpose of the corporation and in the name of fictitious individuals as well as some employees of the said corporation were encashed and the proceeds converted to their personal use and benefits, thereby depriving the corporation of its funds.

That also, co-defendants Lafayette E. Orishall Gould, Edward Massaquoi and Prince S. Reeves on diverse dates between the months of June to December, A.D. 2004, conspired, connived, raised vouchers and issued the following checks in favor of fictitious beneficiaries covered by the National Social Security and Welfare Corporation as follows:

Voucher No.	Checks No.	Purpose/Payee	Amount
	43138	Henry Robertson, Sr.	US\$1,000.00
	43150	William Sano	US\$1,100.00
	43144	Momo B. Luamba	US\$1,850.00
	43149	Patrick Langar	US\$1,100.00
	43167	James Ballah	US\$3,200.00
	3035	B. T. Woart	US\$2,500.00
	43034	James Ballah	US\$2,800.00
	CA016359	Simpson Ballah	US\$1,950.00
	CA016358	B. L. Woart	US\$1,775.00
	CA016359	Cooper Kerkula	US\$1,775.00
	CA016485	Charles Crawford	US\$4,750.00
	CA016484	Momo B. Laumba	US\$5,500.00
	CA016486	Cooper Kerkula	US\$3,775.00
			<u>US\$33,075.00</u>

Amounting to US\$33,075.00 (Thirty Three Thousand Seventy Five United States Dollars) in the name of fake beneficiaries purported to be covered by the Corporation's programs and converted the proceeds thereof to their personal use, thereby depriving the corporation of the said amount.

That further, co-defendants Varfley A. Dorleh, Edward Massaquoi and Prince S. Reeves on diverse dates and time between the months of June to December, A.D. 2004, raised vouchers and issued checks in favor of fictitious beneficiaries covered by the Corporation as follow:

Voucher No.	Checks No.	Purpose/Payee	Amount
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43273	Patrick Langar	US\$2,000.00
43201	James Ballah	US\$ 750.00
4302	Henry Robertson	US\$ 750.00
		US\$3,500.00

Amounting to Three thousand, Five Hundred United States Dollars (US\$3,500) in the name of fake beneficiaries purported to be covered by the corporation's programs and converted proceeds to their personal use, thereby depriving the corporation of its needed funds.

That also, Co-defendant, Elwood Dargbe on April 15, 2004 and March 2 , 2005 received from the following private entities operating in the City of Monrovia on behalf of the National Social Security and Welfare Corporation amounts representing their Liberian employees' Social security welfare's contributions deducted from their employees' monthly salary, as follows:

Date	Company	Amount
April 15, 2004	Enigma Shipping. Agency (check No. 0024459)	US\$151.14
April 15, 2004	Sigma Group, Inc.	L\$27,000.00
April 15, 2004	Deposited in NASSCORP'S AC	L\$21,000.00
Unaccounted for		L\$6,000.00
March 2, 2005	Best Store not Deposited	L\$2,053.92
	Unaccounted for	L\$6,000.00
		L\$58,053.92

Amounting to One Hundred Fifty-One United States Dollars and Fourteen Cents (US\$151.14). The Co-defendants also received the total amount of Twenty Seven Thousand Liberian Dollars (L\$27,000.00) from Sigma Group, Inc. and Two Thousand, Fifty-Three Liberian Dollars and Ninety-Two Cents (L\$2,053.92) from the Best Store; deposited with the National Social Security and Welfare Corporation, the amount of Twenty-One Thousand Liberian Dollars and Six Cents (L\$21,000.06), thereby depriving the said Corporation of One Hundred Fifty One United States Dollars and Fourteen Cents (US\$151.14) plus Eight Thousand Fifty Three United States Dollars and Ninety Two Cents (L\$8,053.92) and converted proceeds to his personal use.

That Co-Defendants, J. Arnold Wilson, Lumeh Z. Quiwillie, Edward K. Wregbe and Benjamin B. Wleh-Jah between the months of January to June, A.D. 2005, received from the following private entities operating in the City of Monrovia on behalf of the National Social Security and Welfare Corporation amounts representing their Liberian employees' social security and welfare's contribution deducted from their monthly salaries as follows:

***[Please see pdf file for table and figures]***

Thereby, depriving the National Social Security and Welfare Corporation the amount of US\$70,667.91 (Seventy Thousand, Six Hundred Sixty Seven United States Dollars and Ninety One Cents plus L\$39,219.72 (Thirty Nine Thousand Two Hundred Nineteen Dollars and Seventy Two Cents) and converted the proceeds to their personal use.

The co-defendants Benjamin B. Wleh-Jah, Jr. and Edward K. Wregbe in furtherance in defrauding the National Society Security and Welfare Corporation, established a corporation under the Associations Law of the Republic, named and styled the Corporation "National Social System Corporation Project (NASSCORP PROJECT) and deposited funds collected for and on behalf of the National Social Security and Welfare Corporation in account No. 10210078812012 at ECO Bank's Bushrod Island branch.

Further, co-defendant, Alfred E. Tarley on diverse dates and time between the months of November, A.D. 2004 to March, A.D. 2005, for the purpose of purchasing and implementing needs for the National Social Security and Welfare Corporation received and signed for the following checks but never bought and or paid as follows:

***[Please see pdf file for table and figures]***

Amounting to Thirty Six Thousand, One Hundred Twenty United States Dollars (US\$36,120.00).

Co-defendant, Tijan Kromah received for and on behalf of the National Social Security and Welfare Corporation the amount of US\$1,000.00 (One Thousand United States Dollars) plus L\$80,000.00 (Eighty Thousand Liberian Dollars) deducted from the Liberian employees' salaries as contribution towards their social security and welfare benefits as follows:

***[Please see pdf file for table and figures]***

The said defendant converted the said amount to his personal use thereby depriving the National Society Security and Welfare Corporation thereof.

In continuance of depriving the National Society Security and Welfare Corporation of funds collected from both employees of public and private entities for social security and welfare benefits of employed Liberians, co-defendants Lafayette E. Orishall Gould, Edward Massaquoi, Prince S. Reeves and Alfred Tarley raised and issued checks in the names of factious business entities to purchase vehicles for and on behalf of the corporation as follows:

***[Please see pdf file for table and figures]***

That the defendants with criminal intent, feloniously, knowingly took, received, misappropriated and converted to their personal use the total sums of US\$441,573.91 (Four Hundred Forty One Thousand, Five Hundred Seventy Three United States Dollars and Ninety One Cents) plus L\$133,273.64 (One Hundred Thirty Three Thousand, Two Hundred Seventy Three United States Dollars and Six Four Cents) from the National Social Security and Welfare Corporation at times and places aforesaid in manner and form aforesaid, the CRIME OF ECONOMIC SABOTAGE, did do and commit, contrary to the form, force and effect of the statutory laws of the Republic of Liberia, against the peace and dignity of the Republic.

And the Grand Jurors aforesaid upon their OATH aforesaid, do present: that Lafayette E. Orishall Gould, Varfley A. Dorleh, Prince Reeves, Edward Massaquoi, Kanvan V. Shilue, J. Arnold Wilson, Lumeh Z. Quiwillie, Edward K. Wregbe, Elwood N. Dargbe, Benjamin B. Wleh-Jah, Tijan Kromah and Alfred F. Tarley, defendants aforesaid, at the time and place in manner aforesaid, the time of Economic Sabotage the defendants did do and comments contrary to the form, force and effect of the Statutory Laws of the Republic of Liberia, in such cases as made and provided for and against the peace and dignity of the Republic of Liberia.

Republic of Liberia, Plaintiff by and thru the Ministry of justice

Attorney Samuel K. Jacobs

COUNTY ATTORNEY/MONTSERRADO COUNTY, R.L.

WITNESSES:

A.B.KEMOKAI

ADDRESSES

National Social Security & Welfare Corp.

National Social Security & Welfare Corp.

The trial of the case was conducted during the May, 2006 Term at the First Judicial Circuit, Criminal Assizes "C" then presided over by His Honour Blamo Dixon. Before the indictment was read to the defendants, the prosecution entered *nolle prosequi* in favour of Co-Defendant Karvan V. Shilue. Thereafter the case was proceeded with and on August 22, 2006 the empanelled jury brought a unanimous verdict of not guilty in favour of the defendants. The trial judge, His Honour Blamo Dixon, on the same day the verdict was brought, made final ruling, discharging the defendants from further answering to the charge of Economic Sabotage, ordered their bond returned and disbanded the trial jury.

On August 26, 2006, four days after the trial judge had made final ruling in the case, the prosecution filed a motion to set aside the verdict and award a new trial, basically contending that: 1) the judgment acquitting the defendants was based on a verdict reached as a consequence of bribery by defendants in violation of subsection 12.50 of the New Panel Law of Liberia; 2) that defendants bribed the jurors when the jurors failed in their effort to obtain bribe from the prosecution through a letter dated August 17, 2006 addressed to "County" and signed by the Secretary and Foreman of the jury; 3) that a verdict obtained by outright bribery is not a valid verdict and should not be accorded any legal standing and protection; 4) that given that the verdict of the petit jury in this case is a product of bribery, a second degree felony under Liberian Law, said verdict should be set aside and a new jury trial ordered; and 5) that the law provides that a party may be relieved from judgment for fraud or viodness of the judgment, therefore, the judgment should be set aside for fraud as same was obtained based on a verdict that was obtained by criminal means, thereby making it void.

On September 1, 2006 the defendants filed resistance to the motion to set aside the verdict and award a new trial. They denied offering any bribe to the jury and contended essentially that: 1) under the criminal procedure law, *Chapter 22, section 22.1* a motion for new trial is not available to the state; it is only available to the defendant ; 2) that Circuit Judge William Ware, who succeeded Circuit Judge Blamo Dixon lacked the legal authority to review, modify and or alter the decision of his colleague of concurrent jurisdiction; 3) that the content of the letter in contention subordinates



the jurors to the County Attorney when it referred to him as "Chief" and he had this communication from the 17th of August, 2006 up to and including the date of the verdict and judgment and never informed the presiding judge; 4) that the State having deliberately kept the letter in question in anticipation of the verdict in its favor, to come now and present it as a newly discovered evidence is a share product of bad faith ; and 5) that even if a "Motion for New Trial" was available to the State as a matter of right, the State is guilty of waiver and lashes.

Judge William Ware who succeeded Judge Blamo Dixon in Criminal Court "C" denied the resistance and granted the motion, set aside the verdict of the empanelled jury and ordered a new trial. He relied on the case: *Harding v. Harding*, 32 LLR, 86, 93 (1984), wherein the principle of law is that "[a] motion for new trial is granted or denied at the discretion of a succeeding judge when he is furnished with the information which enables him fairly and intelligently to pass upon the questions presented by the motion." In this connection, the judge determined that there were sufficient information before him to enable him decide the motion.

We will consider three germane issues in deciding this case, they are:

1. Whether or not Judge William Ware who succeeded Judge Blamo Dixon, acted properly when he granted the motion for new trial, given that his colleague of concurrent jurisdiction had already ruled discharging the defendants based on the unanimous verdict of not guilty brought by the empanelled jury?
2. Whether or not under the Criminal Procedure Law of Liberia a motion for new trial can be made by the state?
3. Whether or not the allegation that the defendants bribed the jury was timely made, and if yes, whether said allegation was substantiated?

Concerning the first issue, whether or not Judge William Ware acted properly when he granted the motion for a new trial, given that Judge Blamo Dixon, his colleague of concurrent jurisdiction had already ruled discharging the defendants, we hold that Judge William Ware did not act properly. In *Re: Testate Estate of Fineboy Larzalee*, 28 LLR 99, 104 (1979), the Supreme Court held that "[a] judge has no power or authority to review, set aside, modify, or reverse the ruling of a judge of concurrent jurisdiction. Accordingly, a judge who succeeds another judge in any court has no power or authority to tamper with any judgment or ruling of his predecessor..."

In more recent cases this Court has consistently upheld this principle of law. In *Flomo v. Baimba*, 31 LLR 464 (1983), the Supreme Court held that a Judge acts wrongly in ruling in a matter which runs contrary to that made by his predecessor in the same matter. In *Kpoto v. Kpoto*, 34 LLR 371 (1987), this Court was even more direct and specific on the point when it held that "[no] Circuit Judge has the power to review, modify, or rescind any decision by another judge who is of the same official hierarchy on any point already passed upon by his predecessor, however, erroneous the act of his colleague may be".

Based on the authorities above, there is no doubt that Judge William Ware erred by granting the motion for new trial, when his colleague of the same ranking had already acknowledged and accepted the verdict of the empanelled jury, as a consequence of which the defendants were set freed. Judge Blamo Dixon having ruled, discharging the defendants from further answering to the charge of Economic Sabotage, it was legally wrong for Judge William Ware to have ruled granting a motion for new trial in the same case. The effect of Judge Ware's ruling is to have the same defendants reappear and answer to the same charge. We hold that whether Judge Blamoh Dixon was right or wrong in his decision, his colleague who succeeded him is not allowed by law to review and undo what he had done. The power to review and reverse the act of a Circuit Judge lies only in the Supreme Court.

We turn next to the issue, whether or not under the Criminal Procedure Law of Liberia a motion for new trial can be made by the state?

*Section 22.1, 1LCLR Criminal Procedure Law on Motion for New Trial provides:*

1. Power to grant. *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. When the defendant has been found guilty by the court, a motion for new trial may be granted only on the ground of newly discovered evidence. [Emphasis supplied]*

2. Grounds. *The following constitute grounds for granting a new trial:*

*a. That the jurors decided the verdict by lot or by any other means than a fair expression of opinion on the part of all the jurors;*

*b. That the jury received evidence out of court other than that resulting from a view of the premises;*

*c. That a juror has been guilty of misconduct;*

*d. That the prosecuting attorney has been guilty of misconduct;*

*e. That the verdict is contrary to the weight of the evidence;*

*f. That the court erred in the decision of any matter of law arising during the course of the trial;*

*g. That the court misdirected the jury on a matter of law or refused to give a proper instruction which was requested by the defendant;*

*h. That new and material evidence has been discovered which if introduced at the trial would probably have changed the verdict or finding of the court and which the defendant could not with reasonable diligence have discovered and produced upon the trial;*

*i. That for any cause not due to his own fault the defendant has not received (1 fair and impartial trial.*

*3. Time Limit. A motion for a new trial on the ground of new<sup>e</sup> discovered evidence may be made at any time after a verdict or finding of guilty. If an appeal is pending, the motion shall be made before the appellate court. A motion for a new trial on any other ground shall be made within four days after verdict.*

*4. Procedure on the new trial. If a new trial is granted, it shall proceed in all respects as if no former trial had been had. A defendant who has been convicted of a lesser degree of an offense than that charged in the indictment, may on retrial be convicted on the offense that was charged; but a defendant against whom several offenses have been expressly charged in the same indictment may not on retrial be convicted of an offense charged in the indictment of which he was acquitted on the first trial. The former verdict or finding shall not be used or referred to in evidence or argument on the new trial*

From the language of the provision of the Criminal Procedure Law quoted above, it is clear that the making of a motion for new trial is not a right granted by law to the state in criminal cases ; only the defendant enjoys such a right. The statute specifically says that it is only when "a verdict has been rendered against the defendant [that] the court, on motion of the defendant, may grant a new trial..." hold that, while the state may have another available remedy under the circumstance of this case on account of the alleged jury tampering, that remedy certainly does not lie in the filing of a motion for new trial. The laws of this Country not having granted permission to the State to file a motion For new trial it is not within the province of our courts to grant such permission.

Judge William Ware relied on the principle or law in the *Harding v. Harding* case which says that a motion for new trial is granted or denied at the discretion of the succeeding judge, when he is furnished with the required information to make a decision. But the Facts of the *Harding* case are not analogous to the facts of the case before us. In the *Harding* case, the defendant could not appear in court to testify because she was absent from the jurisdiction of the court. Therefore, a motion for continuance was filed in her favor. The trial judge in that case denied the motion and proceeded with the case in the absence of the defendant. But before final judgment could be made on the verdict of the empanelled jury, a writ of prohibition was filed against the act of the trial judge denying the defendant's motion for continuance. While the prohibition was still pending the trial judge was reassigned to another circuit and lost jurisdiction. The prohibition was subsequently dismissed and a succeeding judge, after being furnished with the required information to make decision, granted a motion for new trial. The important thing to note is that, final ruling was not made in the *Harding* case, unlike the case before us where the trial Judge, His Honor Blamo Dixon made final ruling discharging the defendants. Besides, the *Harding* case was a civil matter in which either party, under our law, may file a motion for new trial. We confirm the ruling in the *Harding* case which was relied on by Judge William Ware, but we hold that the principle of law in that case is not applicable to the case before us.

The last and final issue in this case involves the allegation of jury tampering. The prosecution contended that the defendants "bribed the jurors when the jurors failed in their effort to obtain bribe from the [prosecution] through a letter dated August 17, 2006 addressed to "county" and signed by the Secretary and Foreman of the jury." From all indications, it is clear that the reference to "county" in the letter is to the County Attorney of Montserrado County who prosecuted this case in the lower court.

The letter reads:

"August 17-06

County, How the morning Chief; thank God for life.

Chief; my people and I are about to enter the room, and so they are asking me how you people are sending them in the room, and what are they entering with. The case is clear cut, these men, must go to jail for stealing such a huge amount from the Liberians ...

One thing they told me was that they want 20GUSD or 15000 but I told them that I was going to get to you and get back. Please chief let us do something that will not make us still long. All had agreed to send these criminals to jail for 35 years or above and all properties seized.

It's Yours

Humble servants

Secretary & Foreman."

This Court says that it considers allegation of jury tampering very serious. Where an allegation of jury tampering is made, our courts are under obligation to conduct full scale investigation and if jury tampering is established, they should not only set aside the verdict brought by the jury, but also administer appropriate penalty to those found guilty.

In the case: *Ginger vs. Bai*, 19 LLR 372, 375, (1969) this Court held that when a charge has been raised by one of the parties of jury tampering, the trial court should suspend all proceedings to properly investigate this serious allegation.

We note however, that the allegation of jury tampering in the case before us was made by the State in a Motion to Set Aside the Verdict and Award a New Trial filed on August 26, 2006, four days after the trial judge, His Honour Blamo Dixon had made final ruling in the case and discharged the defendants. By then Judge Dixon was assigned to another Circuit and had lost jurisdiction and by then, the jury had been disbanded. The question is, if the letter was written to the County Attorney who was prosecuting the case on August 17, 2006, five full days before the jury verdict was brought, why was it not immediately brought to the attention of the trial judge, His Honor Blamo Dixon? Or, why was it not brought to his attention at least before he rendered final judgment in the case? It is clear that the allegation of Jury tampering was not timely made.

The Supreme Court has held that "[a] proper basis for inclusion in a motion for a new trial and the bill of exceptions of a complaint regarding jury tampering or irregular behaviour is that it first be raised while the jury is still empanelled, and where a party fails to follow this procedure, the issue will be considered to be improperly brought before the Supreme Court for review." *Constance & Continental General and Life Insurance Company vs. Ajavon et-al*, 40 LLR, 295,303 (2000).

The prosecution contends that the letter in question was in the possession of the Sheriff of Criminal Court "C", Musa Samuel Johnson, who did not bring it to the attention of the County Attorney until a day after the final judgment in the case was rendered. But this contention is without proof. No sworn affidavit was issued by Sheriff Musa Samuel Johnson indicating when he gave the letter to the County Attorney, and no other proof was established to substantiate the statement.

The defendants argued that the letter was fake. But, assuming that the letter in question is genuine, that is, it was indeed written by the Secretary and Foreman of the jury, with the purpose of soliciting bribe, we still do not see how the defendants are drawn into the picture, since they are not the ones the letter purports to solicit bribe from. The contention that the jury failed to obtain bribe from the State therefore they were bribed by the defendants is mere allegation not supported by evidence before us and therefore not tenable in law.

In its brief filed and argued before this Court, the State informed us that the matter of the alleged jury tampering was reported to the police who investigated the case, following which an indictment was brought against the twelve jurors who sat on the case and two bailiffs in the trial court. No indictment was brought against any of the defendants in the main case who are alleged to have bribed the jury. The two bailiffs and one of the jurors who were indicted brought under the jurisdiction of the lower court were tried and acquitted, while the case against eleven other jurors who could not be found is still pending. So, as we speak, no one has been tried and convicted on the charge of bribery.

Our laws require proof from he who alleges, and where proof is lacking, an allegation cannot stand. Our laws also provide that the defendant be given the benefit of doubt in criminal cases. Under the circumstance of this case, we hold that the allegation of jury tampering was not substantiated. The Supreme Court has held that "[where] issue of jury tampering is raised upon the return of a verdict but for the first time in a motion for a new trial and the defendant fails to produce any evidence to substantiate the allegation, the ruling of the trial judge in dismissing the allegation will be held to be proper". Emoiorho v. Republic, 41 LLR, 355, 360 (2003).

Based on what we have said, we hold that Judge William Ware ought not to have granted the Motion to Set Aside the Verdict and Award New Trial. Since he granted the said motion, we must reverse his ruling. Accordingly, the appeal is hereby granted, the ruling of Judge William Ware granting the State's motion setting aside the verdict of the empanelled jury and awarding a new trial is hereby reversed.

Clerk of this Court is ordered to inform the trial court to resume jurisdiction over this case and give effect to this ruling. AND IT IS SO ORDERED.

*APPEAL GRANTED RULING REVERSED.*