

Muamu Toure and Children (to be identified) of Truck Garage, Double Bridge Community, Monrovia, Liberia, APPELLANTS Versus Republic of Liberia, APPELLEE

LRSC 36

APPEAL

Heard: April 8, 2013 Decided: July 15, 2013

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

Based upon the complaint of one Kebeh Forkpah that the appellant and her children had gone on her premises and broken down her house that was under construction, the State caused the defendants to be charged with the crime of Criminal Mischief. The Grand jury, before whom the evidence was presented, came with up with a true bill in consonance with Chapter 15. Section 5.2 of the Revised Criminal Procedure Law, and from which an indictment was drawn. The indictment reads as follows:

INDICTMENT-

The Grand Jurors for the County of Montserrado, Republic of Liberia, upon their oath do hereby present:-That, Muamu Toure and Children (to be identified), defendants of Truck Garage, Double Bridge Community, City of Monrovia, County and Republic aforesaid, heretofore, say to wit:-

That in violation of Chapter 15, Section 15.5 (a, b, & c) of the New Penal Law of the Republic of Liberia, which states:-

Criminal Mischief: A person is guilty of criminal mischief if he:

- A. Damages tangible property of another purposely or recklessly;
- B. Damages tangible property of another negligently in the employment of fire, explosives or other dangerous means listed in Section 15.4 (1);
- C. Purposely or recklessly tampers with property of another so as to endanger person or property.

Plaintiff complains and says that on the 8th day of March A.D. 2006, in the Truck Garage, Double Bridge Community, Montserrado County, City of Monrovia, Republic of Liberia, the within and above named defendants then and there being without any legal color of right; and also without the fear of the statutory laws of

the Republic of Liberia, and with wicked and criminal intent to destroy and damage the private prosecutrix, Madam Kebbeh Cecelia Forkpa's premises, lying and situated in the Truck Garage area, Paynesville, Monrovia, Liberia did criminally, wickedly, willfully, purposely and intentionally go on the said premises along with four (4) boys who she claimed to be her children, and ordered them to demolish, damage and destroy the private Prosecutrix Two (2) Bedrooms house under construction at roof level, built with concrete and dirt blocks, value over US\$3,000.00; and that at the time of the commission of the crime, co-defendant Muamu Toure personally acted in demolishing said premises to the detriment and disadvantage of the private prosecutrix; thereby the crime of Criminal Mischief the defendants did do and commit at the above named place and on the above named date and time, contrary to the Organic Law of the Republic of Liberia.

The Grand Jurors aforesaid, upon their oath aforesaid, do further present: That Muamu Toure and children, defendants aforesaid, at the time and place, and date aforesaid, in manner and form aforesaid, do say that the crime of Criminal Mischief the defendants 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.

Republic of Liberia Plaintiff

by and thru:

Atty. Samuel K. Jacobs, Esq.

County Attorney for Montserrado County, R.L.

1. Kebbeh Cecelia Forkpa
2. Halematu Kiazolu
3. Jestina Harris
4. Documentary Evidence, Etc.

The indictment, as written, named the appellant, Muamu Toure, and children to be identified. However, the record reveals that when the case was called, Mauma Toure alone was present in the docket as her children were reportedly on the run and could not be arrested and brought under the jurisdiction of the court. The prosecution requested that the indictment be read to the appellant in the docket and to ascertain her plea. The request was granted and the appellant, after the reading of the indictment, entered a plea of not guilty. The appellant having joined issue with the state, exercised her right under the law and

requested the court to waive jury trial. The court granted the application based on our Criminal Procedure Law, Section 20.2, and the hearing heard by the Judge presiding.

In support of its case, that the act of the appellant constituted the crime of criminal mischief, the State brought to the stand, Mrs. Kebbeh Cecelia Forkpa, the private prosecutrix, who testified that on Decoration Day, March 8, 2006, the appellant Muamu Toure moved on her premises with her children and broke down her house which was at roof level. She asked Muamu Toure why she broke down her house and Muamu Toure replied that the land was hers and that when she went to Mecca she did not leave any house there, and having come and seen a house, she decided to break it down; that the witness should take her anywhere. The witness said, she went and took a picture of the demolished house, took pieces of the broken blocks and took them to the Sheriff's office.

The State second witness, Mr. Patrick P. Kermu, the building contractor of the private prosecutrix, testified that when he went to work on March 8, 2006, Decoration Day, around morning, he met Muamu Toure and her children breaking down the structure of the private prosecutrix with rocks, irons and sticks. The private prosecutrix called her lawyer to inform him about the problem and she was advised to take no action only to call a camera man and take photos of the broken house, and this she did. After that, everyone went to their various homes.

The State third witness, Madam Jestina Harris, said that she knew the defendant Muamu Toure; she also testified that on the morning of Decoration Day, March 8, 2006, she saw Muamu Toure with a group of boys go on the disputed property where she gave the boys order to break down the private prosecutrix' house which was at roof level. The private prosecutrix went around crying, looking for a camera man. Kebbeh asked Muamu Toure why she was breaking down her house, and Muamu Toure replied that the place was for her; when she left to go to Mecca, she did not leave a house on the land and after she came she saw the house and that was why she was breaking down the house. The private prosecutrix then brought a photographer who took the photos of the demolished house.

The prosecution rested evidence after its third witness and asked court for admission of its documentary evidence P-1 in bulk comprising some receipts of materials bought to construct the house, photos of the demolished house and some broken blocks.

The State having rested the production of evidence, the defense took the stand, calling on the appellant Madam Muamu Toure as its first witness. Muamu Toure

denied the allegation made against her. She testified that she did not know the private prosecutrix, Madam Kebbeh Cecelia Forkpa, or where she lived. She only got to meet Madam Kebbeh Cecelia Forkpa when Kebbeh came to her house asking for her son, Kalue Toure. Later, she heard that the private prosecutrix had arrested and taken him to the Jacob Town Depot. When she went for Kalue at the depot, the police told her to go along with Kalue to the Temple of Justice. They came to the Temple of Justice, and there she was told that she was a criminal, and she replied, I am no criminal; I am just from Mecca.

The defense second and third witnesses Kalue Toure and Ahmed Toure, sons of the Muamu Toure took the stand and denied that they were on the property on March 8, 2006, or that they broke down the house of the private prosecutrix based on the instruction of their mother, the appellant. They both denied knowing the private prosecutrix and it was only when she had Karlue arrested did they get to know her.

The defense put into evidence copies of a writ of arrest and bond filed at the Paynesville Magisterial Court showing that the appellant's son, Karlue, had been taken to the Paynesville Magisterial Court on the same charge of Criminal Mischief for allegedly demolishing the private prosecutrix house. The defense argued that there was variance in the prosecution's evidence since the writ of the Paynesville Magisterial Court, charging Karlue Toure for criminal mischief stated that the incident occurred in January 2006, and yet the indictment charged the defendant as executing the crime on March 8, 2006.

Having heard the evidence of both parties, the judge, acting also as trial of the facts, ruled finding Maumu Toure, the appellant, guilty of misdemeanor of the second degree for the wanton destruction of the private prosecutrix' property, and sentenced her to a prison term of three (3) years. The judge also ruled that the appellant retribute to the private prosecutrix the value of her damaged property in the amount of Three Thousand United States dollars (US\$3,000.00).

Excepting to the ruling of the judge, the appellant filed a 2 count bill of exceptions as follows:

1. That your Honour's final judgment is inconsistent with the weight of the evidence adduced during the trial, especially giving the evidence of variance and inconsistencies introduced during the trial as to the level of the construction at the time it was allegedly destroyed and the value of the structure. That your Honour ignore the evidence introduced by the defense specifically courts mark D/1 in bulk which included a writ of arrest issued out of Paynesville Magisterial Court for the crime of

criminal mischief for the same property but showed different dates of destruction, level of construction, value of the destruction.

2. That the defendant/appellants submit that under the laws extant in this jurisdiction in any criminal proceedings, the prosecution is under duty to establish by the corroboration of evidence its case beyond reasonable doubt, notwithstanding the failure of prosecution to prove its case beyond reasonable doubt given the inconsistencies and the conflicting evidence adduced during the trial by both parties as to the allegation by private prosecutrix as to date, level of the construction and the value of the damages yet your Honor ruled that the defendant are guilty of crime of criminal mischief thus committing reversible error to which defendant/appellant excepted.

Complaining that the judge of the lower court erred and his judgment was against the weight of the evidence, the appellant refers to the variance in the writ of arrest issued out in the Paynesville Magisterial Court against her son and the indictment under which she was tried as it related to the destruction of the same property.

The indictment on which the appellant was charge stated that the demolished house located in Truck Garage, Double Bridge Community, Paynesville was at roof level; was demolished on Decoration Day, March 8, 2006; and it was valued over three thousand United States Dollars (US\$3,000) at the time it was demolished by the appellant. On the other hand, the defense tried to impeach the allegation of the indictment by putting into evidence a writ of arrest from the Paynesville Magisterial Court charging the defendant Karlue Toure for Criminal Mischief for damaging and destroying the same house of the private prosecutrix on January 8, 2006; the house in the Magisterial writ alleged that the house was at window level, and the house valued at \$350.

The trial judge ruled that the variance in evidence that the defense sought to prove was not applicable since the evidence adduced showed that the appellants continually engage in an act of mischief against the private prosecutrix and the arrest of the defendant's son, Karlu, on January 2006, was based on a separate complaint against him of criminal mischief that took place in January 2006, while his mother, the appellant was away in Mecca.

This Court in the case, *Ware v. R.L.*, 5LLR 381, 391, (1937) stated, The object of impeaching the testimony of a witness is to show that by some affirmative statement, more or less consciously made, the witness has given testimony at this time inconsistent with what he/he had said at previous time and that, therefore, the witness is unworthy of credit. As evidence so given tends to cast a certain amount of

moral oblique upon the witness more or less permanently, it is but fair that (1) his attention should be called, on cross examination, to the apparently irreconcilable inconsistency of the two statements while on the stand; and (2) that he be given an opportunity to explain, which explanation, if not satisfactory, he should receive notice before his discharge from the witness stand, that his opponent intends to impeach.

The record reveals that the private prosecutrix, Kebeh Forkpah, was given no opportunity to reconcile the alleged inconsistencies appellant's counsel sought to bring out in the appellant's defense. On the cross examination of the private prosecutrix, the appellant counsel did not present the issue of the inconsistencies in the writ issued against Karlue Toure, co-defendant, in the Paynesville Magisterial Court, and the indictment. What is even more astonishing is that the prosecution neglected to have the private prosecutor brought back to the stand to rebut and clarify the assertion made by the appellant witness on the stand and for which the documents subpoena from the Paynesville Magisterial Court was brought to impeach the allegation contained in the indictment. This neglect on the part of the prosecution counsel is incomprehensible.

Howbeit, when he took the stand, Ahmed Toure, son of the appellant and the defense third witness, in answering to questions posed to him on the cross examination, set out that no inconsistency existed as to the indictment and the writ issued out by the Paynesville Magisterial Court. He explained that his brother Karlue Toure was arrested in January 2006, during this time his mother, the private prosecutrix, was in Mecca and the police advised him to compromise the matter and forget about the criminal mischief but he told them that his mother who owned the property was in Mecca on her pilgrimage. Based upon this, his brother Karlue was taken to the Paynesville Magisterial Court and a writ issued against him in January 2006; he then posed a bond for his brother's release and the case remained pending. In March, Ahmed said Karlue was again arrested and kept in the police cell for two days. This time his mother, the appellant, was in the country. She was told to go to Temple of Justice with his brother where there was a writ for criminal mischief issued this time for her and her children. It is this writ that culminated into an indictment and the trial. This court has said an indictment is sufficient if it informs the defendant of the nature, time, place and circumstances of the crime charge. *Williams v. RL*. 15LLR. 99, 109, (1962).

We therefore agree with the Judge's ruling that the writ charging the defendant's son, Karlue, on January 2006, was separate and distinct from the charge in the indictment and for which the prosecution had set out to prove. Even the appellee's second witness said that he had gone to do further work on the house when the incident

occurred. This is an indication that construction of the house continued and further expenditure made on the house after the appellant's son Karlue was arrested in January 2006, for whatever damage he may have caused to the house under construction and which the private prosecutrix set at US\$350. The private prosecutrix did not seek an indictment when the appellant's son attempted to demolish the private prosecutrix house. It was only when the appellant and her children proceeded to demolish the private prosecutrix house upon her return from Mecca, two months later, as the photo showed, did the private prosecutrix seek an indictment against the appellants. The indictment stated that the incident took place on March 8, 2006, and by then the house was at roof level and cost three thousand United States Dollars (US\$3,000). The prosecution second witness even testified that he was the contractor for the private prosecutrix and he went to work that morning of March 8, 2006, to loosen the form from the concrete of the pillar and lintel when he met the defendant and her boys breaking down the structure.

In answering the question whether the evidence as presented supports the findings that criminal mischief was indeed committed, this Court answers in the affirmative.

The appellant says that the state was under a duty to establish by corroboration of evidence its case beyond all reasonable doubt, and given the inconsistencies and the conflicting evidence adduced during trial, the Judge committed a reversible error by finding the appellant guilty of Criminal Mischief.

The indictment charged that the private prosecutrix two bedroom house was demolished on Decoration Day, March 8, 2006. All the witnesses of the prosecution testified to the appellant and her children going on the premises located at Truck Garage, Paynesville and demolishing the private prosecutrix house on March 8, 2006. The appellant denied the allegation and said that she did not know the private prosecutrix and she was not on the premises the day the house was said to have been demolished. However, she testified that when she came from Mecca while having a party upon her return, she and her son Karlue were arrested and taken to the police station where they were forwarded to the Temple of Justice and there she was accused of being a criminal.

A further perusal of the file showed that the prosecution admitted into evidence a photo of the demolished house and some receipts of the materials bought for its construction.

The appellant's entire defense rested on her denial of any knowledge of the demolition of the private prosecutrix house. This Court has stated that the mere

denial by a defendant of criminal charges is insufficient to warrant acquittal. *Emojorho vs. RL*. 41LLR 355, 359, (2003). The jury is the exclusive judge of evidence, and must in reason be the exclusive judge as to what constitutes the preponderance of the evidence, and in the instant case where the trial was held without a jury, it was the prerogative of the trial judge to exercise that role. Having heard the evidence and reviewed the documentary evidence such as the photo of the demolished house, the judge found the defendant guilty of criminal mischief sentencing the defendant to three years in prison.

Having no doubt from the record brought before us that the appellant did demolish the house of the private prosecutrix, this Court affirms the ruling of the lower court finding the defendant guilty of criminal mischief; we however assign as error the grading and sentencing of the appellant based on the evidence presented. The judge wrote in his judgment:

Wherefore, and in view of the foregoing it is therefore the holding of this Court that the defendant and co-defendants be held and same is liable for unwarranted destruction of the private prosecutrix property. Further the defendant are held liable to pay to the private prosecutrix the value of her damage property in the amount of US\$3,000.00 (Three thousand united states dollars).

Criminal Mischief being misdemeanor of the second degree the defendant is hereby order to report to this court to serve a prison sentence of three years for the crime Criminal Mischief committed by the defendant.

Firstly, we must make it emphatically clear that nowhere in the records were the co-defendants, as referred to in the judge's ruling, ever arrested and arraigned in court so as to be brought under the jurisdiction of the court. It was only Muamu Toure, who when arraigned, pleaded not guilty to the indictment on which she was tried, and found guilty. Where the co-defendants could not be found, it was only proper that the prosecution asked for severance so as to have them arrested, arraigned and tried at a later date. This trial being conducted only upon the appearance and plea of Muamu Toure, a judgment therefrom was binding only on her and not her children, the co-defendants.

This Court says based on the allegation and what is proved during trial, criminal mischief may be graded as third degree felony, first degree misdemeanor or second degree.

Our Penal Code §15.5 on Criminal Mischief states:

1. Offense. A person is guilty of criminal mischief if he:

- a. Damages tangible property of another purposely or recklessly;
- b. Damages tangible property of another negligently in the employment of fire, explosives or other dangerous means listed in Section 15.4 (1);
- c. Purposely or recklessly tampers with property of another so as to endanger person or property.

2. Grading. Criminal mischief is a felony of the third degree if the actor purposely causes pecuniary loss of \$5,000.00 or over, or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public services. Criminal mischief is a misdemeanor of the first degree if the actor recklessly causes any such loss, interruption, impairment or damage, or he purposely causes pecuniary loss in excess of \$500.00 and under \$5,000.00. Otherwise criminal mischief is a misdemeanor of the second degree.

In this case, the act carried out by the appellant was a misdemeanor of the first degree as by her act she did recklessly cause damage and pecuniary loss in excess of US\$500 and under US\$5,000 and in which case our Penal Law §50.7 states:

Sentence to Imprisonment for Misdemeanor:

A person who has been convicted of a misdemeanor may be sentenced to imprisonment for the following terms:

- a. For a misdemeanor of the first degree, to a definite term of imprisonment to be fixed by the Court at no more than one year;
- b. For a misdemeanor of the second degree, to a definite term of imprisonment to be fixed by the court at no more than thirty days.

The defendant, from the facts proven during the trial, having committed a crime of first degree misdemeanor, the law requires her to be sentenced to a prison term of no more than one (1) year. The court below was therefore in error when it ruled that the appellant was guilty of a second degree misdemeanor; and in further error when it sentenced her to a prison term of three years, when in fact the statute assigns a misdemeanor of second degree to a jail committal of not more than thirty (30) days.

Under the legal principal extant that the Supreme Court may do what the lower court failed to do, and it having reviewed the file and found that the appellant did indeed commit a misdemeanor of the first degree, in consonance with the statute that the sentence to be imposed is an imprisonment term up to one year upon

such conviction, we hereby hold that the appellant serves a prison term of three months.

Besides imposing a jail sentence, the judge in his ruling required the appellant to retribute the three thousand United States Dollars (\$3,000) the appellant said she had expended on material bought to construct of her house. A review of the file shows the following receipts totaling United States two thousand, six hundred and ninety seven dollars and fifty cents (\$2,697.50):

ITEMS: 10 planks- US\$44.00; 45 planks-45.00; 300 sand-300.00; Round poles- 22.50; Blocks-250.00 (Nov. 28, 2006); Crushed rocks-150.00; Steel rod-157.00; Cement-1,242.00; Contractor fee paid-487.00

Our Penal Code Section 50.9 (5) states:

Restitution. Unless restitution has been made prior to sentencing the court shall include in the sentence an order directing the defendant to return the property or pay its value to the person wrongfully deprived thereof, or pay the person whose property was damaged through the intentional or reckless commission of the offense, the amount of loss suffered therefrom.

Restitution as awarded in this case is compensation for specific damages, the expenses of materials used to construct the house before it was damaged. This court has said in order to determine what restitution to order, there must be positive proof of the nature and quantum of the [damaged] property, so that, in the act of punishing crime the court does no wrong to the accused. William vs. R.L. 15LLR, 99, 115, (1962).

The defense questioned the receipt of Two Hundred and Fifty United States Dollars (US\$250.00) stated as cost for two hundred and eighty pieces of blocks. This receipt, the defense said, reflected purchase made on November 28, 2006, eight months after the defendant was said to have broken down the private prosecutrix house. Though the private prosecutrix said that she could not read and write and so could not give a reason for the receipt made out in November of 2006, we are disinclined to accept her explanation since it is far from plausible that a date reflected on a receipt, even if a mistake, would be so many month away from the actual date of the purchase. This amount we feel must be excluded. This leaves us then with the amount of specific damages proved by the prosecution as United States Two Thousand, Four Hundred and Forty Seven Dollars and Fifty Cent (US\$2,447.50), actual cost of the material used to construct the house when

demolished by the appellant and which keeps the crime committed within the domain of a misdemeanor of the first degree.

Let us interject here that the purpose of our criminal law and of the justice process is to prevent what the society considers to be undesirable; to instill order and the rule of law in a society. Where one alleges that he or she is owner of a parcel of land and another person is said to have encroached on said land illegally, the law provides that he/she must institute an action of ejectment or cause an action for criminal trespass to be instituted by the State, depending on the motive or intent. Looking at the cost and time associated with litigation, some persons who are convinced that they are the real owners of property being encroached on by another move on the property and insist on taking possession outside of the law. If our courts were to allow everyone who claims that another illegally build on his/her property to demolish said structures, there is a strong probability that we could see chaos erupting in our society, especially where the builder of the structure believes similarly that he/she has superior title to the property. We must reiterate that though a person may believe he/she has genuine title to a property, he/she must not be allowed to take the law into his/her own hand. If he/she decides to demolish another's structure without recourse to the law, he/she must be held responsible for committing an act not only inconsistent with the law but constituting a crime under the law; and where upon a determination by the court that indeed such act was committed and constitutes a crime, he/she must be made to answer for such criminal act. Our decision therefore does not determine title to the land. It determines only that the defendant/appellant having been found to have carried out the destruction, she did commit a crime.

IN VIEW OF THE ABOVE, this Court confirms the judgment of the court below finding appellant guilty of criminal mischief. However, said judgment is confirmed with the modification that the crime committed by the appellant constitutes a misdemeanor of the first degree under the Penal Law and not second degree as adjudged by the court below. Accordingly, the sentence of the defendant to a jail term of three years, being erroneous and un-supported by law, is modified and reduced to a jail term of three (3) months. The appellant is ordered to restitute to the private prosecutrix the amount of United States Two Thousand, Four Hundred and Forty Seven Dollars and Fifty Cent (US\$2,447.50) instead of the lower court's judgment requiring restitution of United States Three Thousand Dollars (US\$3,000.00).

That this judgment relates only to the trial court's findings and this Court confirmation that indeed the appellant did commit the crime of criminal mischief, and punitive measure assigned to such act under our law requires her to make restitution and serve a jail term. However, the appellant is not precluded from instituting an action seeking in court a hearing to determine her right or title to the said property if she so desires. AND IT IS HEREBY SO ORDERED. Costs disallowed.

[See pdf file for caption of the indictment]