

**Republic of Liberia PLAINTIFF/APPELLEE Versus Saye Zeegboe, Ernest  
Koodeah, Oliver Nehwow, Paye Toley, Nyan Kodeh et al  
DEFENDANTS/APPELLANTS**

**JUDGMENT REVERSED**

Heard: November 5, 2008 Decided: December 18, 2008

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

This case, emanating from the Saniquelle Mah Statutory District, Nimba County, is about the alleged murder of a young man committed by members of the Poro Society in Gbedin Town. But in order that we may set this case in an understandable or proper perspective since indeed not all Liberians are familiar with or even aware of the existence of the Poro Society in this culture we have borrowed the following passages from the brief submitted by the Appellants' counsel to form part of this opinion for the information and enlightenment of the uninformed.

Counsellor Francis Y. S. Garlawolu, counsel for Appellants in this case states in the first three paragraphs of his brief, and we quote:

1. *"Appellants are members of the Poro Society, which is esteemed as the most important fraternal institution amongst most tribal groups such as the Kpelle, Mano, Lorma, Mande, Bassa, Gbande, Vai, Gola, and Belleh, in Liberia.*
2. *Likened to other fraternal institutions in the world, the Poro has played predominant roles in educating young people, forging unity among its members, and maintaining discipline and peace in society.*
3. *In the Town of Gbendi, Nimba County, the Poro and Christian Churches co-exist. The Poro members do not disturb or interfere with the Church."*

We must also add that the Poro is a secret society. Its activities and functions are restricted to its members only. The society has some strict rules however, that bind not only its members, but non-members as well. One of such rules is that whenever the Poro Society Devil comes to town, non-member men, as well as women, must scurry into their houses and remain behind closed doors until the "Devil" leaves the town because it is forbidden for non-members, and women to lay eyes on the Poro Society Devil. If a male non-member lays eyes on the Poro Society Devil, the

consequence is his involuntary initiation into the society. The abode and headquarters of the Devil and the society itself is a designated spot in the bush near a town, called the society bush, where the members meet to initiate and train the young men, hold meetings, and make decisions affecting the tribe, community, or town.

In Gbendi Town, Nimba County, a non-member of the Poro Society, named Hasting Tokpah, was accused of seeing the Poro Society Devil when it came to town in the early morning hours of September 11, 2005. The records reveal that an announcement was made that morning for all non-members and women to go behind closed doors because the Devil was about to enter the town which order was obeyed by the non-members, including Hasting Tokpah. Later on the devil returned to the bushes and the doors opened allowing the inhabitants to go about their daily activities. Hasting Tokpah went to his farm. But then some time during the day, Saye Zeegboe, Co-Appellant was summoned by the Porro chief and told that his non-member son, Hasting Tokpah, saw the Poro Devil and that he should produce his son for initiation into the society. Saye Zeegboe begged to pay a fine in lieu of initiation because his Christian son would not agree to join the society. The Co-Appellant offered the society members some cane juice and money which they accepted but in addition, they demanded a big pig and some rice which the Co-Appellant produced also. They accepted the fines followed by a hand shake to close the deal, that is, waiving the demand for initiation.

That evening, when Hasting Tokpah returned from his farm, he went to the well to draw some water for his bath. While at the well; his father, Co-Appellant upon being informed that Hasting was back from his farm went to the well and asked Hasting Tokpah why he continued to embarrass him and cause him expenses every time the devil came to town by seeing the people's devil. It is stated in a testimony that his response to his father's scolding remarks was rude and disrespectful and that he even threatened to waste his father's blood.

There and then the Co-Appellant, Saye Zeegboe ordered three men on the scene to seize Hasting Tokpah and bring him to him. Hasting escaped into the bush with the men in pursuit. As he ran he had his cutlass and was still wearing his farming boots. While this chase was in process, the devil right away returned to town and the non-members went behind closed doors. Later on that night the men returned to town but without Hasting. Only his boots and cutlass were brought back. Since that day, September 11, 2005, when Hasting Tokpah ran into the bush followed by a group of poro society men, he has not been seen despite the efforts of search teams, local police, and UNMIL forces to find him.

The Grand Jury of the Eighth Judicial Circuit, Nimba County, indicted ten Defendants, namely: Zarwolo Gaygin, Saye Zeegboe, Ernest Kodeah, Nyan Kodeah, Paye Tulay, Nyan Gbobayee, Don't-Fool-The-Man, Nyan Chermand, Paye Mantor, William Flomo, et-all, all of Gbendi Town, Garr Clan, Nimba County, charging them with the crime of murder.

The Indictment alleged that the Defendants with malice aforethought did unlawfully, wickedly, willfully, deliberately, purposely, knowingly, premeditatively, Maliciously, chased Hasting Tokpah, now decedent, from the inland mission vicinity in Gbendi Town, County and Republic aforesaid in the bush towards the St. John's River and killed and murdered him and returned with his boots and cutlass.

Of the ten defendants indicted, only the five Appellants herein were brought to trial. The other indictees fled and have not been apprehended.

On the Defendant's, Motion for change of venue from Nimba County, the trial was removed to the Seventh Judicial Circuit, Grand Gedeh County. The presiding Judge was the Resident Circuit Judge, His Honor Roger Juty Niles. The Republic of Liberia, Plaintiff, was represented by Attorney Joseph K. G. Pyne, County Attorney for Grand Gedeh County representing the Ministry of Justice. The Defendants were represented by two Attorneys from the County Defense Counsel of Grand Gedeh namely: Attorney Brandy, Sr. and Attorney George S. Wiles, Jr.

A petty jury was empanelled and the trial proceeded. At the conclusion of the trial, the jury brought a verdict of not guilty in favor of four of the Defendants but found one Defendant, Saye Zeegboe, the father of Hasting Tokpah, guilty of murder. Surprisingly, however, the Trial Judge, His Honor Roger Juty Niles sua sponte set aside the "not guilty verdict" and entered a guilty verdict against the acquitted Defendants on grounds that the verdict was **irregular** and **inconsistent** with the practice and procedure. He however, upheld the guilty verdict of the lone Co-Defendant, Saye Zeegboe. He subsequently sentenced the Defendants to life imprisonment. Counsel for the Defendants noted exceptions and announced an appeal from the judgment which is now before us for review.

Before going further into this appeal, we must state here and now that the jury verdict of "not guilty" was not irregular and inconsistent. What was irregular and inconsistent are the followings:

1. Judge Niles neglected to sum up the evidence after the arguments, pro and con, as is required by provisions of the criminal procedure --1LCL Rev. Section 20.7. (2). The Judge did not instruct or charge the jury prior to retirement into their room of deliberation as is mandated under Section 20.8.1. Instruction to the jury after arguments is not discretionary. The jurors as laymen need to be provided legal definition of the crime charged, and explanations of principles of law applicable to the facts in evidence. Judge Nile, without following the procedure provided, simply said, after arguments had ended. "The Court: the court and the trial jury have listened to the arguments pro and con. Therefore, we ask them to go into their room of deliberation, telling the court whether the Defendants are guilty or not guilty of the crime of murder, and it is so ordered."

2. As to Co-Defendant Saye Zeegboe, though found guilty, the Judge provided him no opportunity to move the Court for a new trial. Immediately the verdict was entered, the Judge gave notice that ruling in the case would be handed down the next day which threat he actually did implement, in total violation of Section 22.1.2 (2). This section provides for a 4 days grace period after a verdict has been entered for the defendant to file a Motion for new trial.

3. The final irregular and inconsistent procedure in this case came about when the Judge in his ruling set aside the not guilty verdict and ruled that all the Defendants were guilty as charged and then sentenced all five of them to life imprisonment.

In a criminal trial, the participants have their unique roles cut out for them by provisions of law and procedure: The prosecution accuses, indicts, and prosecutes and must prove the allegations in the indictment beyond any reasonable doubt. The defense plays his role of defending and protecting the legal rights of the Defendants, making sure his client receive the best defense he is entitled to under the law and procedure. The Trial Judge is responsible for the conduct of the trial, maintaining order, deciding legal issues, admitting evidence, and instructing the jury. The jury's role is to weigh the evidence and bring a verdict based on their finding of fact. If their finding is inconsistent or contrary to the evidence adduced at the trial, the trial judge is not authorized by law to set it aside or change it and enter instead his own verdict.

Mr. Justice Pierre speaking for the court in **Jones v. Republic, 13LLR 623, 643 (1959)**, said "Whilst admission of evidence is the right of the court, what weight, credibility and effect the evidence should have is with the jury. No Judge may invade this province without infringing the legal rights of those selected and sworn to try the fact." See also **Collins v. Republic, 21 LLR 366, 379 (1972)**. In Collins v. Republic

the trial Judge in his ruling said that to set aside the verdict, he would be encroaching or infringing upon the right of the jury to pass upon the credibility and effect of the evidence. Although in the cited case the verdict in question was guilty and contrary to the evidence and the charge to the jury in which case the trial Judge should have set it aside and awarded a new trial, the said Judge instead ruled that "to set aside the verdict would have been an infringement of the province of the jury." However, wrong that conclusion of law was, it is comforting to know that at least he knew the boundary between his function and that of the jury, unlike the Judge in the case at bar. Judges must always bear in mind that not all verdicts will be to their liking and that whether they like a particular verdict or not is not what is important. What is important is that they (judges) conduct competent and impartial trials always.

It is our holding therefore that as to the acquitted Defendants, his Honor Roger Juty Niles, Sr., had no authority to sua sponte set aside the not guilty verdict and find said Defendants guilty. The jury, sole finder of the facts in this, as in every criminal case tried by jury, having brought the verdict after the trial, the Judge was only to have confirmed the said verdict and set the acquitted Defendants free from ever answering to the same charge. In this jurisdiction a judge may set aside a verdict for fraud, such as jury tampering, or upon motion when the verdict is against the weight of the evidence and whenever that be the case, a new trial should be awarded, not sentencing. The procedure employed by Judge Niles was very irregular, illegal and irresponsible and unexpected of a Circuit Court Judge. Said acquitted Defendants are therefore ordered released without day.

We must also correct Judge Nile's misconception that if a Defendant does not produce several witnesses, it is an admission of guilt, citing Deuteronomy Chapter 19 Verse 15, which states that, "one witness is not enough to acquit." We hold that as much as we do hold the Holy Bible in high esteem, we cannot uphold the Judge's Biblical citation in the face of the statute controlling our criminal procedure. In this jurisdiction, a Defendant is not even required to take the witness stand to produce evidence. The burden is on the accuser, the state, to prove the accused guilty, beyond a reasonable doubt. We hold that it is not the number of witnesses, but rather the weight and credibility of the testimony that determine guilt or innocence. **Nimley v. Republic, 21 LLR 348 (1972); Collins v. Republic , 21 LLR (1972).**

"An issue is not to be determined merely by the number of witnesses testifying in support or in contradiction of it, in comparison to those giving opposing testimony, but by the greater weight and sufficiency of the evidence, of which the trier of fact is the sole judge." 40A Am. Jur. 2d. Section 426 page 282. Therefore, the fact that the

prosecution in this case "paraded five witnesses" does not ipso facto establish a prima facie case of guilt beyond a reasonable doubt.

As to the one Defendant, Saye Zeegboe, who was found guilty by the jury and sentenced to life imprisonment by the trial Judge, as a result of which judgment he has fled to this Court of last resort for a review of the case, we shall examine the various testimonies with specific reference to him only. We shall begin with the prosecution's first witness, the mother of Hasting Tokpah, called Nohn Tokpah, who is also the wife of the Appellant/Defendant, Saye Zeegboe. The salient points gathered from her testimony are that the Appellant had on several occasions asked her son, Hasting Tokpah, to join the poro society but the young man had refused on each occasion. That on September 11, 2005, on her husband orders, some poro society men chased her son into the bush toward the St. John's River on allegations that he had seen their devil and that since that chase, she had not seen her son; that during an inquiry before the town's people and tribal authority, two men, had her son's boots and his cutlass in their possession; that when she asked the father about the whereabouts of her son, he at first said that her son was alive but when queried at another time he said that the poro chairman, one of the Defendants herein, Paye Tuley put so much pressure on him that he gave his son to the society members that her son put cola nut in a cup and bought his death he was therefore dead. She said further that when she took his complaint to the church, and the church members confronted him, he remarked in the presence of a gathering of people that he and the church members did not father his son. She said the Defendants killed her son when they chased him in the bush. And that the killing took place at the St. John's River.

On the direct-examination the prosecution put the following question to the witness:

*Q. Madam witness, I heard from your general testimony before this honorable court that some time ago your husband asked your son to join the Poro Society and your son refused according to you. Is this what caused your man to give your son to his friends to kill him?*

There being no objection to this very leading question on the direct examination, the witness answered "yes." The above question was not only leading but suggested a conclusion that the Defendant gave his son and that his friends killed him this question was outside the province of the direct examination. It was a cross-examination of the prosecution own witness which should have been objected to and the objection sustained by the judge

The witness was also cross-examined by the defense counsel. These were some of the questions and answers:

*Q. Madam Witness, if your husband told you that he and the church did not bear this child and that he had offered him according to you, why did you involve the other people?*

*A. These men are the zoes of the town. Paye Toley is the chief zoe. He got behind my husband to get my child Nyan Kodea made the announcement to the town that Hasting had returned to the town. Don't-Fool-The-Man was one of those whose name was confessed in my son's killing; Ernest Kodeah was the one in possession of my son's boots. But I was not at St. John River where they did the killing.*

*Q. Madam Witness please refresh your memory and tell this honorable court and jury , you had made mention that your son died and was killed by the Defendants? If yes, have you even seen the body?*

*A. I did not see the body.*

*Q. Madam Witness, which of the Defendants told you your son had been killed?*

*A. From the time my son got missing, the boots he was wearing were produced by one of the Defendants and the cutlass was produced by one of them. That's how I got to know.*

This answer was not responsive but the defense counsel waived objection:

*Q. Madam witness, please say if it is because Paye, one of the Defendants is a zoe that is why you included him as one of the murderers of your child?*

*A. My husband told me that Paye Toley got behind him to produce my son to be initiated and he gave him and that my son took kola nut and put it in a cup and bought his death and today he is dead.*

*Q. Madam witness, if you were not present at the killing of your son, how do you know that his killing was done at St. John's River?*

There was an objection to this question by the prosecution on the ground of "burdening of the records" which the Judge sustained. We fail to see how the records were burdened by this question since a question of that nature had not previously been asked or answered. The witness (mother of the alleged victim) in her testimony

said that the killing was done at the St. John's River. The question as to how she knew that the killing was done at the St. John's River since she was not there was a pertinent question which the Judge should have allowed.

**Jury Questions**

*Q. Madam witness, your son that was killed, was he the son of you and your husband or another man?*

*A. I born him by this my very husband.*

*Q. Madam witness, according to your statement your husband had been after your son for a long time to join the poro society, what has been your reaction?*

*A. When he was behind this boy I told him we are Christians. Since Hasting said he does not want to join, leave him alone and Hasting left our house to live in the church compound*

This testimony left no impression on our mind that the Appellant/Defendant committed the crime of murder. To our mind, the witness accused him of giving orders to some men to chase and grab her son so he could have him initiated by the Poro Society under pressure from the Poro .Chairman. A permission to initiate a person into the society is not the same as a permission to kill him. Her testimony was of no probative value that could substantiate the allegation in the indictment. The expression allegedly made by the Defendant that her "son put cola nut in a cup and bought his death" was never probed into, neither by the Prosecution on the direct nor the defense on the cross examination. The Judge and jurors similarly refrained from inquiring and obtaining the meaning or implication of the parable.

She also testified and said that before a gathering of people, the Appellant said that he and the Church people did not father his son; in other words, they were meddling in his business. The saying or expression, as we view it, does not imply a confession of guilt. This statement in fact, allegedly made before a gathering of people should have been corroborated by one or two of the people that constituted the gathering for whatever it was worth. There was no such corroboration. The statements she attributed to Appellant were denied by him when he testified and the prosecution produced no rebuttal. Her reference to her son's boots and cutlass found in the possession of the two indictees also failed to prove that Saye Zeegboe murdered her son. The two items were said to have been found at separate times at a spot on the way to the St. John's River, the direction in which the victim ran when he was being chased by the men. Upon the father's request the two men brought the items to town



to take them to the town chief. One of them infact was not even a participant in the chase. We are therefore not persuaded to believe that Saye Zeegboe murdered his son, buried his body in a secret place with hopes of concealing it forever, then decided to bring to the attention of the town chief two pieces of incriminating evidence, the alleged victim's farming boots and his cutlass. We are of the opinion that the fact that the victim's boots and cutlass were found, is no proof certain that those who brought the items to town were the ones who murdered him or that he was in fact murdered. Other possibilities exist to also conclude otherwise. The existence of those other possibilities creates doubt which must operate in favor of the defendant. Examples for other possibilities could be that Hasting Tokpah kicked off his heavy farming boots to enable him outrun his chasers and left them along with his cutlass as was suggested by counsel for the defense who during the argument of the case said that he strongly believed the young man ran and crossed the border into Guinea as has often happened in that area That is possible. Is it also possible that Hasting jumped into the treacherous St. John's River and lost his life by drowning? Or was he caught by his chasers and murdered? It is possible. But what happened to the body, was it buried, burnt, or otherwise permanently disposed of, etc? Anyone of these is anybody's guess. But can a conviction for murder be based on conjecture? We hold no; for in order to obtain a conviction for murder, the prosecution must prove the allegations beyond a reasonable doubt. The testimony of the first witness only raised doubts, it failed to substantiate the allegations that Hasting was murdered, and that Zeegboe committed the crime. Although some legal authorities have held that production of the dead body of the victim is not an absolute requirement for establishing death, that death can be established through circumstantial evidence, they have also held that circumstantial evidence must also be established beyond a reasonable doubt.

The common law principle with respect to conviction based on circumstantial evidence states that, "to justify a conviction of homicide, the circumstantial evidence must do more than create a suspicion of guilt. It must point unerringly to the accused's guilt. Where the evidence that the accused committed the homicide charged is wholly circumstantial, it must be viewed with caution and weighed with scrupulous circumspection, and the introduction of such evidence does not relieve the prosecution of its duty of proving guilt beyond a reasonable doubt. If the circumstances are as consistent with the accused's innocence as with his or her guilt, they are insufficient." 40A Am, Jur.2d, Section 425- circumstantial evidence page 281 para.2. This is a case in which the body of the alleged victim was never produced or found and as a result there was no medical examination to determine the cause of death. Nevertheless, the indictment alleged that the Defendants committed the

unlawful and willful act of murder. It is a settled principal in criminal law and procedure that to find a conviction, the following elements must exist: (a) there must be proof that a human being lost his or her life and that the death was not due to natural causes, (b) there must also be proof that the accused Defendant committed the act and that he had a criminal mind or motive for committing the unlawful act. These two elements constitute the corpus delicti of the offense which must be proved beyond a reasonable doubt. Proof may be established by direct or indirect circumstantial evidence. In each instance however, it is required that the evidence be conclusive and beyond a reasonable doubt.

In *Nimley V. Republic*, 21 LLR 348, 360 (1972), Mr. Justice Azango speaking for the court said, "to establish the element of death in the corpus delicti the circumstantial evidence must be strong and cogent.. It is not established by injuries inflicted on the party alleged to have been killed. To sustain a conviction, proof of the criminal agency is as indispensable as the proof of death..." See also *Dunn V. Republic* 1LLR 401, (1903). *Otto v. Republic*, 17 LLR 186 (1965).

The second witness took the stand. He was called Saye Glaylon also from Gbendi Town. In his general testimony he said that when the announcement was made that morning for non-members to go indoors, Hasting started running toward the church compound. A boy named Saye Boyo said, "There is the big non-member (meaning Hasting) going over there." When the doors were again opened, the men went back in their society bush. Co-Defendant Paye Tuley, the poro chairman, said to Say Zeegboe that his son' Hasting had seen their devil. He demanded that Saye Zeegboe produce his son. He said in fact that Saye Zeegboe should not leave the society bush unless he presented something for the men to "sit on" (eat or drink) before going for his son. Saye Zeegboe went in town and brought a bottle of cane juice (local alcoholic beverage) and some money. After that the poro Chairman sent the devil interpreter behind Saye Zeegboe back to town to look for Hasting. They went to Hasting's house, but by then Hasting had gone to his farm. Saye Zeegboe returned to the society bush and reported that his son had gone to his farm. The Chairman then demanded that Saye Zeegboe should bring a big pig and some cooked rice for the men "to sit on" (eat while waiting). Saye Zeegboe began to beg them to leave his son alone. But the society leaders put some men behind Saye Zeegboe to go to the town and bring his son. After some time Saye Zeegboe and the men returned to the bush bringing a big pig. At this juncture the witness said he left the society bush and went back to town. Part of his testimony is a repetition of the incident at the well between Saye Zeegboe and his son Hasting Tokpah and the subsequent chasing of Hasting toward the St. John's River. He added that as Hasting Tokpah ran, one of the

indictees called Don't-Fool-The-Man, and others began throwing rocks at him. This witness testified further and said that as the men chased Hasting Tokpah into the bush he (witness) also joined the chase while announcing the coming of the devil. He took the main road to the St. John's River where they all were headed. On the way he met a man call Nyanquoi-Go-Baye who asked him to carry his clothes that were on the rocks up the river. He did, but upon his return he met a pair of boots and a cutlass and on the other side he met a wide place like fighting went on there. He stood there for long. He heard noise like a group of people. He saw Zarwolo Gaygline and Saye Ernest going in the valley. He did not see the group of people that were running behind Hasting again. He returned to town. The other members returned at night and announced the opening of doors.

On the cross-examination, several questions were put to the witness. The following are a few of them:

*Q. Mr. Witness, according to your testimony that a group, of people chased the late Hasting and you also followed and you got to the water side at St. John River, at that time you met two persons, did you asked where are the other group?*

*A. I did not want to ask any question*

*Q. Mr. Witness, you made mention in your testimony that when you got to the waterside you met a wide spot that looked like fighting went on there where you fond the boots and the cutlass. Did you see anybody or blood?*

*A. No, I did not.*

This witness established no link or connection between Saye Zeegboe and the crime charged.

The third witness for the prosecution Daniel Tokpah was the brother of the alleged victim and also son of Saye Zeegboe, the Appellant herein. The essence of his testimony in chief was that it was his father who asked the some poro men to run and catch his brother. While they were stoning and chasing him, the society members brought the devil to town which automatically sent all non-members behind closed doors. Later in the evening the men returned to town but without Hasting. Saye Zeegboe informed the family that the men did not find Hasting. The family panicked and went to the town chief the next morning and reported the incident. The town chief sent for the Appellant and inquired about the whereabouts of Hasting.

According to him, his father answered by saying that he had given his son to his friends. The chief in response said, "yes, but to his where is your son?" Saye Zeegboe then said, "I bore my child, nobody helped to bear my child and so nobody has the right to ask me." So the town chief sent for the paramount chief, clan chief, zoe chief, and the district commissioner. While the tribal authorities were asking questions, Nyanquoi Go-baye said "the time we took the boots from the man's feet, they gave them to Saye Ernest and cutlass was given to Zarwolo Gayline." So the chief order the two men to produce the cutlass and boots and they did.

The witness continued and said that the Appellant Saye Zeegboe had said several times that Hasting Tokpah was alive. So one evening he and his mother went to his father's house and demanded to know where his brother was. It was at that time the Appellant decided to tell the truth. He said "son I will tell the truth, your brother put kola in the plate and challenged the devil. So he is not alive, he is dead." The witness said he asked for his brother's body but his father said, no. He and his mother then began to cry. He said further that on another day a tapper called Don't-Fool-The-Man who also lived in the church yard confessed and said "my brother the boy's father knows about it, the chairman knows it and along with the members of the poro society. It is true that we killed him. By the time we ran behind him, we grapped him and tied him. We came in town. We called his father and told him his mission had been fulfilled. He said that the solution was to kill the man. He said if you allow him to join the society, he will disclose our society to his church members. So we left and went to the area where we had tied him. The witness said further that Don't-Fool-The-Man confessed further and said that upon their return to where they had tied Hasting, "they took up the knife and gave it to Zarwolo Gayline and Zarwolo Gayline took up the knife and chapped Hasting on the neck then Don't-Fool-The-Man said, I am not from this town. I am in your midst. So give me the cutlass. Let me kill him. So the gave him the cutlass and he killed Hasting Tokpah." The witness named all the indictees as those that chased his brother. He identified his brother's boots and cutlass.

On the cross-examination, the following pertinent questions were put to the witness to which questions he provided answers in turn:

*Q. Mr. Witness, you named several persons who are accused for the death of your brother, where are the other besides the five?*

*A. The other, some ran away and went to Guinea and some to Monrovia.*

*Q. Mr. Witness, according to you Zarwolo Gaygline took knife and chapped your brother on the neck and Don't-Fool-The-Man took up a cutlass and killed him (Hasting). Pleas tell the Court and jury, were you present?*

*A. Those were the words of Don't-Fool-The-Man and it was trough his words that I got to know.*

*Q. Mr. Witness please say whether these Defendants were arrested by the chiefs zoe chief and the commissioner before Don't-Fool-The-Man made this statement concerning the death of the later Hasting*

*A. No. After the commissioner, the zoe clief and Town chief left then he made this statement.*

*Q. Mr. Witness, please say where were you and Don't-Fool-The-Man when he made this statement?*

There was an objection to this question on the ground of "Burdening of Records." The Trial Judge sustained the objection. We fail to see how. The witness said in his testimony in chief that a tapper named Don't-Fool-The-Man who lived in the churchyard made the statement without saying specifically where they were when he confessed. It would have been enlightening for the court and jury to know where the statement was made and even who else was present.

### **JURY QUESTIONS**

*Q. Is this particular Defendant in the case of your father?*

*A. Yes.*

*Q. What we the jury want to know is now that you have shown your father among the Defendants whether the other four Defendants took part in the death of your brother?*

*A. Yes.*

*Q. When the men were running behind your brother, where were you?*

*A. When they started the thing in the churchyard I was there present. When they were running behind him going in the bush to where they killed him they put their devil outside. So I got back inside because I am not a member to follow them.*

*Q. Mr. Witness according to you, you were not there during the murder of your brother, how did you get the boots?*

*A. In front of the commissioner, town chief zoe chief and the paramount chief one of them left there and said, "the boots that we, took off from the man's feet that this man we gave it to Saye Ernest and the cutlass we gave it to Zarwolo Gaygline." This was the time we got to know.*

The testimony of this witness is of special interest because among the witnesses who testified, this witness was the only one who gave an account of what allegedly happened to Hasting: He was caught by his chasers, tied and left in the bush, and report of his capture was made to the father who had asked them to catch him but that the father gave them permission to kill him in order to protect the secrets of their society; that they used a knife and chapped him on the neck and a cutlass to kill him and that the actual killing was done by Don't-Fool-The-Man.

On the cross examination, the Defense Counsel put this question to the witness:

*Q. Mr. Witness according to you, Zarwolo Gaygline took up knife and chapped your brother on the neck and Don't-Fool-The-Man took up a cutlass and killed the late Hasting Tokpah. If this is correct, please tell this Honorable Court and jury, were you present?*

*A. Those were the words of Don't-Fool-The-Man and it was through his words that I got to know.*

The foregoing testimony is a classic example of hearsay evidence. Hearsay evidence as defined in Black's Law Dictionary, Eighth Edition, is testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness. Such testimony is generally inadmissible under the rules of evidence.

**The hearsay rule** according to the dictionary is the rule that "no assertion offered as testimony can be received unless it is or has been open to test by cross-examination or an opportunity for cross-examination, except as provided otherwise by the rules of evidence, by court rules, or by statute."

The dictionary further states reasons for the hearsay rule: "the chief reasons for the rule are that out-of-court statements amounting to hearsay are not made under oath and are not subject to cross-examination."

Under Liberian Civil Procedure Law, hearsay evidence is not admissible except to the extent and under the circumstances in paragraphs 2, 3, and 5 of this section or as otherwise established by law 1LCL Rev. Section 25.7.1 See also Yancy and Delaney v.

Republic, 5LLR 182, 187 (1936). The testimony of the witness does not fall under any of the exceptions.

The witness narrated how the victim was murdered, but admitted that his testimony was not based on his personal knowledge but on information he was provided with by the assailant himself, Don't-Fool-The-Man. In order that any credibility can be given to the allegations contained in the testimony, the doer of the act must be produced for cross-examination. His testimony would have been the best evidence since indeed he had firsthand knowledge of the facts alleged. For those reasons his testimony, even though not objected to by the defense counsel, is inadmissible to substantiate the allegations of murder levied against the Appellant/Defendant, Saye Zeegboe.

A fundamental principle of our Criminal Procedure Law is that the accused defendant must be confronted with evidence against him, The reason for this requirement is to afford the accused the opportunity to challenge, respond to, or refute the truthfulness of the allegations made against him. In the case at bar, the witness in his testimony made serious accusations but could not furnish answers because the information he put forth were not from his own knowledge but rather from the knowledge of another person, Don't-Fool-The-Man. It is our opinion that the testimony of this prosecution witness also did not prove that the Appellant/Defendant Saye Zeegboe took the life of Hasting Tokpah and that he did so with a criminal motive, or that Saye Zeegboe gave the permission or order for his son to be killed.

The prosecution's fourth witness James Meniboon was the Town chief of Gbendi Town. He began his testimony by identifying the Defendant Saye Zeegboe as his uncle. He said that one morning while he was coming from his farm he met a group of Poro men at the fork of the road leading from the devil's bush to the main road. He was informed by the chairman of the poro that Saye Zeegboe's son, a non-member, saw their devil when it came to town in the morning; that Saye Zeegboe was therefore ordered to produce his son for initiation pursuant to poro rule, but that Saye Zeegboe was begging to pay a fine in lieu of initiation. He said that finally Saye Zeegboe was allowed to pay the fine which resolved the problem. He confirmed that at a town meeting, Ernest Kodeah produced the victim's boots and Zarwolo Gaygline, one of the fugitive from justice proceed the cutlass. The tribal authorities, the UN, local police, and other security agencies assembled in Gbendi Town to investigate and they searched the area but to no avail. Even the people of Gbendi Town divided themselves into search teams to help find Hasting but there

was no trace or clue as to his whereabouts. A writ of arrest was issued on the complaint of the victim's mother against the indictees named therein. They were sent to jail in Ganta. He testified further and said that Saye Zeegboe went to his mother in their village and confessed that Hasting put kola nut in a calabash and bought his death. He said his mother told him when he paid a visit.

On the cross-examination one of the jurors put the following question to the witness:

Q. Mr. Witness, all the country people get society. The jury wants to know whether in Nimba County when someone violates the devil you people can kill him or the late Hasting was the first person.

A. If someone spoils (breaks) the devil's law as the late Hasting did, the devil can kill the person, then later deliver the person and it can end in joy and so my answer for your question is, no.

By that answer the witness clarified that in Poro Culture the phrase "to be killed by the devil" does not mean kill in the sense that someone's life is taken but rather that the devil takes the person away and initiates him into 'the society and at the end of the period, brings the person back who is now a member of the poro. So when the poro chairman demanded that Hasting be brought so the devil could kill him, it was a way of speaking in poro culture.

Some portion of this testimony also is hearsay evidence. This witness said the Defendant Saye Zeegboe went to his mother and informed her that Hasting put kola nut in a calabash and bought his death. In the records before us there is no showing that the prosecution tried to obtain corroboration of this testimony first hand by requesting for a subpoena to be issued and served on the mother of the witness to testify under oath and be cross-examined for credibility and truthfulness of the allegations.

Although our Criminal Procedure Law requires that the names and addresses of the witness be endorsed on the indictment or made available to the Defendant prior to trial, 1LCL Rev. Section 14.8, Section 17.4 provides exceptions:

1. The original list may be amended and filed within 5 days after arraignment.
2. Unknown witness not named in the indictment or amended list may be allowed to testify. In this case the name of this witness' mother, sister of the Defendant came up



as he testified. The prosecution should have requested court to allow her to testify, and not to rely on the hearsay evidence of the witness. The testimony of this witness like those before it failed to establish the culpability of the Defendant.

The prosecution rested with the production of evidence after the testimony of this witness. The defense should have moved the trial court for acquittal on ground that the prosecution failed to establish a prima facie case that would warrant putting up a defense. This was not done. According to the records, as soon as the prosecution rested the production of evidence, the trial Judge ordered the defense to proceed to produce evidence, and he did by calling the first witness to the stand. Appellant/Defendant, Zeegboe took the witness stand and testified in his own behalf. The essence of his testimony is as follows:

He was sitting in a house when the interpreter of the devil came to inform him that someone from the camp had violated their poro rule and that the matter could not be discussed in town, only in the society bush. The devil came in town and led them in the bush. While going with the group, he saw Hasting Tokpah (Fohn) his son, in his house when the devil came to town and Hasting stated to leave the house. The witness said he remained behind and went back to his house and there he met a group of men standing in his house. They told him that his son had just seen their devil, and where was the son going? He remained in his house with the men until the doors were open. The interpreter and all the members of the poro society came to his house. So he begged the men to go in the bush and that he would follow shortly. He then put the matter before Hasting's mother, saying: I am always telling my son he can't hear me. Now he has seen the people's devil. The mother said, he had failed on her son. "I told him to wait," he said, but he jumped out and started going. He then told the mother to find something so he could go in the bush and beg. He said a brother by the name of Koolo gave him LD\$100.00. He bought a bottle of cane juice and took it with \$60.00 to the men in the society bush and begged them to forgive. They said that this was not his son's first time, he had done it several times. He must therefore give them one big pig. He then told them that he would go in town and call a family meeting to see if Hasting would agree to join the society. When he got to town, Hasting had gone to the farm. He then went to the family and they had their meeting and paid the fine. Later Hasting returned from the farm and went to the well to draw water and while he (Zeegboe was sitting in his house, Hasting's younger brother, Zarwolo and others told him Hasting was back from the farm. He went to meet Hasting at the well in the churchyard. He called Hasting and said he would like to see him when he finished drawing his water. Hasting (Fohn) said to him, "the way

you call me if you call for the second time, if your blood will not waste, your body will be on the ground."

The Defendant then said to him "you did it before and I paid the expenses but since you are repeating it to my very self, I am coming there to you so you can chap me." When he said this, Hasting grabbed his cutlass that was near by and he jumped in the bush because the well was near the bush. There were three men and some small children present. He said to the men "gentlemen, please grab the boy for me and they starting chasing him. Because Hasting had his cutlass, the people were afraid of him. The three men he asked to grab Hasting were Zarwolo Gayaline, Nyanquio Gobave and Nyanquio Biokia.

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As the men chased his son, he also followed and at some place along the way he saw the boots and cutlass. He stood by them. Someone called him and he answered and then asked if they saw Hasting but they said no. He then informed them that he saw his boots and they all came to where the boots were. He pointed out areas to the men to searched for Hasting saying perhaps he was hiding somewhere. They searched all around but did not see him. It was getting late so he told them "let's go to town" and just in that time a young man was coming to take his bath. It was he Zeegboe asked the to take the boots to town and Zarwolo he asked to take the cutlass. They took the items to the town chief who told them to keep them till day.

On the morning of the following day while they were going to the town chiefs place, they saw a big group of people from Hasting's church who came to the town chief and reported that one of their Christian brothers Hasting Tokpah was missing. They were told to go back and sit down; that it was the chiefs business, they would look into it. The town chief then called all the boys and able bodied men of the town and sent them in the bush in search of Hasting. The chief then told Zeegboe to find food for them. Then the commissioner, coroner and securities came in the church compound and sent for him so he could take them to where he found the boots and he did. They made observations. Someone asked, "Is this the main place where the incident took place?" They all then returned to the town. The authorities asked him to explain what happened and he did pointing out the three men he had asked to grab his son. Right away the authorities present grabbed the three men and him and took them to Ganta and detained them in the police cell for a week. Then they were sent to court and he alone was asked questions.

After making his statement, they told them to go back to Gbendi Town and search for the boy, but they should first file a bond. The town chief stood their bond. They

told the town chief and .Saye Zeegboe to return to Ganta and inform the police if they did not find the boy. The police kept the boots and the cutlass. He put announcement on the air about his missing son. When he returned to Gbendi Town, he received a writ of arrest that was issued at the instance of his wife, the mother of the missing boy. He filed a bond for \$800.00OLD but then was told after the payment that his crime was unbailable.

He was charged with murder and not kidnapping. He was transferred from prison in Sanniquelle to Central Prison in Monrovia and while there, the other Defendants were brought in. He concluded by saying that the other prisoners had nothing to do with the case. And this was how it happened, he concluded.

The witness was "crossed-examined" by his counsel as well as the prosecution. Here are the direct examination questions as per the records.

**DIRECT EXAMINATION:**

*Q. Mr. Defendant, please tell the Court and the trial Jury, how many times your non members son Hasting spied the devil?*

*A. He saw the devil three different times. That was the fourth one when my friends told me to pay a fine.*

*Q. Mr. Defendant, please say as to whether those you ordered to grab your son and the devil interpreter you testified to are in the bailiwick of the Court?*

*A. No, none of them are here.*

*Q. Mr. Defendant, those groups that went to look for your son whom you followed later and you found your son's boots and you called them to come to you and they did, where these three gentlemen among them?*

*A. No, they are not in open Court.*

*Q. Mr. Defendant, according to you that in the evening time, while standing beside St. John River you saw this boy Ernest Kodea came to the water side to take bath and you ordered him to take the late Hasting's boots to carry it to town, is this is what involved him to be a murderer?*

*A. Yes, that's it, he only heard us and came and I asked him to take the boots.*

*Q. Mr. Defendant, please .tell this Honourable Court you made mention that the Chiefs, Commissioners, the Government Security(ies) and the UNMIL Security(ies) went in the town for the investigatiob of your missing cbild, did they ever go on the ground where you found the boots?*

*A. Yes, we all went there.*

*Q. Mr. Defendant, when you people got there did you find the body of your son, if no, how come you said your son died?*

*A. I did not tell anything like that to her. I always meet her in Court since this thing took place.*

Counsel for the Defendant cross-examined his own witness without any objection from the prosecution.

### **CROSS EXAMINATION**

*Q. Mr. Defendant, for the benefit of this Honourable Court and the trial jury you said that the late Hasting is not dead according to you, if so where is Hasting now as we are speaking?*

*A. Since they chased him I have not seen him up to this time, we did not see his body, we have not seen his blood.*

*Q. Mr. Defendant, according to you that you, the chairman, and some of the chiefs met and at that time you saw some group of church members who reported that Hasting was missing, based upon your order as the father, why did you tell them they should leave it with you?*

*A. It was not I who made that statement, it was the chief's chairman for the entire clan (Garr).*

*Q. Mr. Defendant, is there any set rule by the poro society, that if somebody violate it they should be killed?*

*A. Yes, the person can be initiated*

### **JURY QUESTIONS:**

*Q. Mr. Defendant, according to you, you did give the poro members the amount of sixty Liberian dollars and a bottle of cane juice to beg them. Did you beg them not to kill your son or what did you beg them for?*

*A. I gave that or those items because he was a Christian so that they could leave him alone. If he were not Christian he could have gone to join the poro society.*

*Q. Mr. Defendant, what made the boy to leave the house and live in the churchyard?*

*A. He left because my house is packed. There is no room. No one drove him. He decided to move to his uncle to live with him.*

*Q. Mr. Defendant, what made the boy to run away after he was drawing some water when you were going towards him?*

*A. For the pronouncement he made that if you repeat that statement your blood will waste, your body will be on the ground, I told him I am coming to you there. When he saw me he ran away.*

*Q. Mr. Defendant, who were your family members that you met for the boy to join the poro society?*

*A. His mother, his brother, and those who are in the family that are poro members.*

*Q. Mr. Defendant, where are those three men that you ordered to grab your son and bring him to you*

*A. They ran away after we were all arrested and detained*

*Q. Mr. Defendant, you made mention that you went to the zoe chairman instead of the town chief who is a Government eye to find your missing child, why instead?*

*A. I did not go to the clan chairman. Soon in the morning when I was going to the town chief he and I met right in front of my house and he asked me. Is it true that your child was missing. I answered yes, I am going to the town chief and he asked to go with me to the town chief*

After a careful consideration of the testimony of the Defendant in the Court below, his answers to the prosecution's and the jurors' questions we have formed the opinion that because the prosecution failed to destroy the credibility or truthfulness of his testimony he was a credible witness and therefore innocent of the crime charged. The fundamental premise of our criminal justice system is that the accused is innocent until proven guilty. The burden was on the Republic to prove that the Defendant Saye Zeeboe with criminal intent killed his son Hasting Tokpah, which burden, from all the evidence herein provided, the Republic miserably failed to bear.

We see no need to include the testimonies of the other Defendants in this opinion; for to do so would be a useless exercise, since indeed said testimonies did not link the

Appellant to the commission of the crime, directly or circumstantially. The prosecutions only established fact in this case is that it was Saye Zeegboe who ordered the three men to grab his son, a fact that was substantiated even by the Appellant himself. We hold that this fact alone though, corroborated, is insufficient to convict the Appellant.

This Court by thus concluding is not by any means being insensitive to the pain of the family and relatives, yea, the Republic of Liberia whose loved one and citizen, respectively has disappeared since November 11, 2005. We are all faced with a mystery still. We must ask, if Hastings was not murdered or is not even dead, or is dead but that he met his death by some other means apart from the acts of the Appellant, and without proof beyond a reasonable doubt of the Appellant's culpability, we were to sentence him to life imprisonment wouldn't we be guilty of punishing an innocent person? On the other hand, if the Appellant in deed did murder the victim but for lack of sufficient evidence he is off the hook, wouldn't we have let a man get away with a crime? We hold that in either case we rather be guilty of letting ten guilty men go free than for one innocent man to be punished. In *Nimley V. Republic*, 21LLR 348, 361 (1972), Justice Azango speaking for the court quoted the British Jurist, Judge Sir Matthew Hale who said, "It is better for ten guilty persons to go unpunished than that one innocent person should be punished." The learned Justice Azango expounded further and said "This theory has been upheld by this Court for more than 80 years as a safe and sound rule for the observance of criminal tribunals." We maintain that proposition. In this case ten persons were indicted for murder, five broke jail and fled, five were tried, four found not guilty, one found guilty. Of the five that fled three were the persons Appellant had asked to catch Hasting. They chased him toward the St. John's River. When the chase ended, Hasting was reported missing and has not been found since November, 2005. The five that fled, including the three pursuers, have not been apprehended. The prosecution witnesses failed to prove that Hasting was killed or murdered and that the Appellant committed the act. Although Hasting's absence from family and neighbors remains a mystery that could lead us to conclude that he is dead, such a presumption would be prematurely made; for a presumption of death can only be made after seven years of absence and disappearance especially in the absence of clear and convincing circumstantial evidence that Hasting is dead. It is now three years since Hasting disappeared from his home Gbendi Town, Nimba County. Is he dead? If yes, who committed the act, was it his dad so he won't have to see the people's devil again and cause his dad losses, that is paying heavy fines in lieu of initiation as was argued by counsel for the Republic? Did his pursuers kill him accidentally? Or is Hasting Tokpah roaming about in Guinea as was surmised by the defense counsel

during his argument before this court? We received no answers to these questions, not from the prosecution, and not from the defense. These are 'doubts which must operate in favor of the Defendant.

It is a maxim, hoary with age, that he who alleges a fact has the burden of proof. In the instant case the Republic alleged certain facts which in our opinion it failed to bear the burden of proving beyond a reasonable doubt. The state failed to prove that Hasting was killed and that the Appellant criminally, unlawfully and wantonly committed the crime.

Wherefore and in view of the facts and circumstances of this case, it is our opinion that the verdict of guilt in the Court below be set aside and the judgment of life imprisonment reversed. The ruling in this case does not serve as a bar to the future prosecution of the other indictees who fled from justice and were absent for the trial. The clerk of this Court is ordered to instruct the Judge of the Trial Court of the Seventh Judicial Circuit Court of Grand Gedeh County to resume jurisdiction and execute this mandate. AND IT IS HEREBY SO ORDERED.