Ayouba Bility & Lekpeh Johnson all of the City of Monrovia, Liberia, APPELLANTS Versus **Republic of Liberia** by & thru Liberia Petroleum Refinery Company (LPRC), APPELLEE

APPEAL

LRSC 18

Heard: November 12, 2013 Decided: February 20, 2015

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

Based on an investigation of a complaint by the Liberia Petroleum Refinery Company (LPRC) and the Liberia National Police (LNP), the Republic of Liberia appeared before the Grand Jury of Montserrado County to establish a probable cause for the issuance of an indictment against the appellants, Ayouba Bility and Lekpeh Johnson. The complaint was based on an alleged attempt by the appellants to violate Chapter 15, Section 15.51 of the New Penal Laws.

Having inquired into the offense alleged to have been committed, the Grand Jury presented an indictment charging the appellants with the crime of attempt to commit theft. Subsequently, the trial court, Criminal Court Assizes "C" for Montserrado County, ordered the issuance of a writ of arrest against the within named defendants, now appellants before us, bringing them under the jurisdiction of the court.

We herewith quote verbatim the indictment upon which the appellants were tried and convicted to wit:

And the Grand Jurors for the County of Montserrado, Republic of Liberia, upon their Oath do hereby presents Ayouba Bility and Lekpeh Johnson (to be identified), defendants of the City of Monrovia, County and Republic aforesaid, heretofore to wit:-

In violation of Chapter 10 Section 10.1 of the New Penal Laws of the Republic of Liberia which states:-

CRIMINAL ATTEMPT:

"A person is guilty of Criminal attempt of, acting with the kind of culpability otherwise required for commission of an offense, he purposely engages in conduct constituting a substantial step toward commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firm-less of the act's intent to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be."

And in violation of Chapter 15 Section 15.51 (a, b & c) of the New Penal Laws of the Republic of Liberia which states:-

"THEFT OF PROPERTY:

A person is guilty of theft if he:

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

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

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

On the 10th day of October 2007, at LPRC Compound, Bushrod Island, City of Monrovia, Montserrado County, Republic of Liberia, the within and above named defendants being there and then with criminal and wicked intent to deprive the Private Prosecutor, LPRC, represented by Mr. Robert Bear of its property same being a Motor valued at about (US$22,000.00), when the said defendants criminally, knowingly, purposely and intentionally did enter Total Compound, use a crane and jack the motor belonging to LPRC management, which was being kept at LPRC Tank Farm when the said defendant got arrested and the motor was retrieved by security personnel of the said LPRC.

Hence the crime of criminal attempt to commit theft the defendants did do and commit at the above named place, date and time contrary to the statutory laws of the Republic of Liberia.

And the grand jurors aforesaid, upon their oath aforesaid do presents: Ayouba Bility & Lekpeh Johnson (to be identified), defendants aforesaid, at the time, place and dates aforesaid, in the manner and form aforesaid, do say that the crime of criminal attempt to commit theft 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 & thru:

Samuel K. Jacobs, Esq.
County Attorney for Montserrado Co., R.L.

WITNESSES:	ADDRESSES:
1. Robert Bear	Paynesville
2. Kesselee Jallah	Sinkor

A hearing having been called for the purpose of proving the allegation as laid down in the indictment, the appellants when arraigned pleaded not guilty to the charge, and in accordance with the Criminal Procedure Law, Section 20.2, made application to the court for waiver of a jury trial, setting the court to preside as both judge of law and facts. The application was granted and the trial begun.

The state brought forth four witnesses to testify in its behalf.

The state's first witness, Mr. Robert M. Bear, the Security Manager of the Liberia Petroleum Refinery Company (LPRC) testified that in October 2007, at about 5:00p.m., he received a call informing him that some LPRC employees were carrying out an unwholesome act. Upon that information, Mr. Bear stated that he immediately dispatched one of his officers, Kesselly Jallah, to the scene. While there, Jallah called and informed him that some gentlemen along with the co-appellant, Ayouba Bility had brought a crane and parked it into the Total Compound and had extended the crane over and into the LPRC Compound, taking away a motor from the compound. Witness Bear testified that he immediately ordered Jallah to arrest the appellants and have them brought to the LPRC's compound and that his office then conducted an investigation into the matter.

Mr. Bear testified that the investigation revealed that LPRC's management was neither aware of the motor being removed, nor of the chartering of the truck and crane. According to him, this was contrary to the policy of LPRC which required that the department of procurement be responsible for chartering and removal of tangible assets, in addition to an approved work request or order, endorsed by those responsible and given to

the LPRC security. Mr. Bear said he observed that this policy was violated as the appellants showed a work request which had not been signed by authorized personnel or given to LPRC security as is customary. The work request shown by the appellants was instead signed by the appellants themselves and given to the private security guard who was assigned at the Total Compound where the truck with the crane was parked to haul the motor over the fence of the LPRC Tank Farm. A work request, Mr. Bear said, could not originate from an individual and be approved by that same individual as was the case with the work request in issue.

During the investigation, when questioned about the work request, the Operations Manager who was the boss of co-appellant Lekpeh Johnson, and the Maintenance Manager who was the boss of co-appellant Ayouba Bility told the investigation that the appellants had no permission to remove the motor and they did not authorize the appellants to do so. The driver of the truck on which the crane was mounted and who was also invited to the investigation, explained that he was hired by Ayouba Bility and others to come and pick up the motor from LPRC's Tank Farm and take it to CEMENCO.

As is the normal practice, the witness said after the investigation he submitted his report to the LPRC management and the appellants were forwarded to the police for further investigation. The police took custody of the appellants to carry out its own investigation. Thereafter, based on its findings, the appellants were charged and forwarded to the magisterial court.
The prosecution having rested with Mr. Bear, its first witness, the defense cross-examined Mr. Bear and asked whether the motor was the property of LPRC and whether the Corporation had title for the said motor. Mr. Bear answered that the property was that of the Corporation.

The prosecution second witness, the truck owner, Ben T. Nagbe, took the stand and testified that he was hired by co-appellant Ayouba Bility and some persons to go to the Total Compound to lift up an alternator (motor) and take it to CEMENCO. Having agreed on the price to be paid, they proceeded to the Total Compound where co-appellant Bility and one Sorie (truck driver) talked with the security. Thereafter, the security opened the gate and he entered the fence but observed that the alternator was behind the fence. He inquired how they would take the motor out, and these men went through a small gate hooked the crane onto the motor and then told him to lift the crane up. It was while lifting the crane and placing the alternator on the back of his truck, that Jallah, the security from LPRC, came up to him and stopped him, stating that he was under arrest. When investigated by the LPRC security, Nagbe said he made a statement explaining his involvement and identified co-appellant Ayouba Bility and one Sorie as those who chartered him to remove the motor and take it to Cemenco. Co-appellant Bility corroborated that Nagbe was just a driver asked to come and lift the motor.

Prosecution's third witness Kesselly Jallah, and the fourth witness, Bobby G. Brown, in their testimonies corroborated the accounts testified to by prosecution's first and second witnesses. Kesselly in his testimony stated that Ayouba Bility tried to bribe him to let the truck go.
The prosecution having rested with oral and documentary evidence the defense asked for qualification of its witnesses.

Co-appellant, Ayouba Bility was brought forth as the defense first witness. He took the stand testifying that on the 10th of October, 2007, he and others were cleaning the LPRC's facility at the Bushrod Island, moving all the abandoned pipes and motors from its Texaco Compound. According to the witness, the motor in question

was so heavy that they could not lift it. They decided to look for equipment that could lift it. Co-appellant Ayouba Bility said he went to his manager and told him of the difficulty they faced, and suggested that they needed a crane. The manager approved and he contacted a man who could provide a crane. They walked to where the motor was lying and when the manager saw it, he said "go and arrange for the crane". The manager also instructed him to go to the Operation Department to get the work request so they could remove the machine to the workshop. So he went to co-appellant Lekpeh Johnson who made the request and gave it to him. Witness Bility said he then took it to his manager and they walked over to Total, asking one of the managers to allow them use Total's premises to remove the motor. When the truck came and began lifting the motor onto the truck, he saw Jallah, one of LPRC's security officers confronting the driver. He went to Jallah to inquire if there was a problem and Jallah responded that Director Bear had ordered him to go and arrest the truck. Bility said he told Jallah that he was an employee of LPRC, and whether Jallah did not see him going around with a work request. Jallah told him that he knew nothing about the matter but was only acting upon orders of his boss man, Mr. Bear, who had ordered him to arrest the truck and take it to the office. Bility denied that he tried to bribe Mr. Kesselly Jallah as he stated in his testimony. In fact, when he got to the office, he told his manager what had transpired and his manager accompanied him to see Mr. Bear. Bility said Mr. Bear refused to talk to him and his manager, and after the investigation, he and co-appellant Johnson were turned over to the police who charged them with theft and took them to the Magisterial Court in New Kru Town. At the magisterial court, a hearing was held and they were later acquitted and given a Clerk's certificate. Subsequently, they were indicted and charged with "attempted theft of property".

Relating to the issue of a gate pass, co-appellant Bility said that the company would have only issued a gate pass when the equipment was loaded on the truck and the truck license plate number and the driver's name taken before a gate pass issued. In this case, the witness said there was no time to issue a gate pass as the truck was being loaded when the driver was arrested.

Appellants' second witness, co-appellant Lekpeh Johnson, testified that on the 10th October 2007, in the afternoon, co-appellant Ayouba Bility whom he knew as General Maintenance Foreman came to his office and told him that he needed a work request to facilitate the removal of a motor. Johnson said that he made the request and noticed that his immediate boss who should have signed the request was out of the office and his Motorola hand set was on charge which created a communication gap. He tried to call his boss on his cell phone but the phone was also off. He came back to his office and found out that co-appellant Bility was still awaiting him. At that point, co-appellant Johnson said Bility having informed him that he had engaged the service of a machine to help him do his job, he felt obligated to sign the work request to avoid unnecessary cost to the LPRC Management.

Like co-appellant Bility, Johnson said he was charged with theft and taken to the Magisterial Court in New Kru Town where he was acquitted and issued a Clerk's Certificate, which he submitted to the LPRC management in keeping with his letter of suspension. Later they were arrested based on an indictment for attempted theft.

Appellants' third witness, Mr. Lewis Howard, a former manager of Maintenance Department at LPRC testified and informed the court that in 1990, 1991, and 1992, when calm returned after the first Liberia civil crisis, Total wrote the LPRC Management requesting the Corporation to remove its motor as it was obstructing Total's loading area. LPRC asked Mobil then to assist the LPRC in moving the motor since Mobil had a forklift.

All attempts to lift the motor by Total's forklift were unsuccessful as the forklift kept turning over each time it was hooked onto the motor. LPRC then decided to get in touch with someone with a crane to remove the motor but the cost was exorbitant so they abandoned the idea until he was informed by his superintendent (field), co-appellant Bility, that he had found someone who could move the motor for US$60.00 from the Mobile Compound to LPRC maintenance workshop. As manager of maintenance, Mr. Howard said he and Mr. Bility went to Total yard and got in touch with one of its bosses and informed him of what they wanted to do. The Mobile's boss requested for a work request and Brown said he sent Mr. Bility for the request which he brought and he (Howard) gave a photocopy to the Total's boss, and the original to Mr. Bility; he then went back to the office and made his report before leaving. Thereafter Mr. Howard said he got a call from Mr. Bility telling him that the motor and truck were under arrest. He went to Mr. Robert Bear's office to inquire about the arrest, but Mr. Bear refused to talk to him, stating that the matter was beyond his reach. Brown testified that he was not aware of the motor being taken to Cemenco.

Appellant's fourth witness, Mr. Abraham Kromah, testified that he was contacted by co-appellant Mr. Bility to charter a crane truck to lift the motor and take it to LPRC's maintenance workshop; while they were in the process of lifting the motor the security came and stopped them.

The defense rested evidence after its fourth witness.

After the defense rested with its production of evidence, the prosecution brought back one of its witnesses, Mr. Bobby Brown to rebut co-defendant Bility's testimony that the removal of the motor was during the general cleaning exercise. Mr. Brown stated that clean up exercises are ordered by administration and communicated through a memorandum to the workforce. During the day of the attempted removal of the motor, he was not aware, and did not receive a memorandum for a cleanup exercise and he did not authorize said removal of the motor. He was on his way home that afternoon from work when he noticed the jack truck with the motor on it parked within the perimeter of LPRC.

Both parties having rested evidence in toto, the court, based on the evidence presented, and taking cognizance of the law controlling, ruled that there was a single issue presented: "Whether or not an examination of all the evidence adduced during the trial showed that the prosecution evidence was of such probity value so as to prove beyond reasonable doubt that the defendant were guilty of the offense charged in the indictment?"

In his ruling finding and adjudging the appellants guilty of the crime of criminal attempt to commit theft, His Honor Judge Yussif D. Kaba stated that it was undisputable that the motor, the bone of the contention, was owned by LPRC; that the appellants were employees of LPRC; that a truck with a crane was hired which went into the Total Compound, extended its crane into the LPRC's Compound, took the said motor and loaded it onto the truck; that immediately thereafter the LPRC security came and intervened and arrested the truck and investigated those involved with the loading of the motor onto the truck. Also the Judge ruled that it was also undisputable that the LPRC security was not aware of the work order and that the motor was to be removed. What was in dispute, the judge said, was whether the work order request was issued in conformity with the LPRC

regulation and the request executed in line with procedures?

Reviewing the evidence, the Judge said, the appellants themselves stated that they did not bring the removal of the motor to the attention of the security office of LPRC, and so no security of LPRC was posted when the work of removing the motor took place; rather, the appellants said what they intended to do was to firstly remove the motor over the LPRC fence into the Total compound unto the truck, then notify the security. On the issue of work order, the Judge said the office of a work order was a source of authority and an instrument of notice. As a source of authority, it spelled out the power vested in the holder named in the work order, and as notice, it informs all others as to that authority. If this is so, in the situation as obtained in this case, a rational mind would think that such an authority would be displayed since the securities of the LPRC are there to protect the properties of the entity from both the employees and outsiders accessing the company's premises. One reason for issuing a work order in the situation as obtained was to give legitimacy for the removal of the motor. The Judge further stated that it could not be seen as rational for the motor to have been removed from the LPRC Compound through the Total Compound without notice to the security section and therefore one would conclude that the appellants acted outside the normal expected operational procedure.

Further on the work order, the Judge said that the parties were in agreement that generally and normally a work order request can be obtained with more than one signature and that senior officers of LPRC must attest to same with the exception being during an emergency situation. Can it be said that such emergency existed in the case at hand which warranted a departure from the normal procedure, the Judge ask? According to the appellants the emergency was because a truck was already available and therefore if the motor had not been removed that day, LPRC would have been forced to pay a cost much higher.

The Judge stated that he took note of the emergency work orders testified to and admitted as evidenced on behalf of the appellants; however, all of those requests for work orders were directly related to product movement and product equipment related maintenance which he saw was logical in committing a person to initiate and approve such request, since not doing so could result in an irreparable cost to the corporation, but the removal of an abandoned motor since 1991, he said, constituted no such emergency. The Judge stated that it must be noted since 1991 to the present, several managements have changed hands at LPRC and priorities of new management brought in have changed. How then can it be said that a decision reached allegedly in 1991, can be considered in 2007, under a new management, as emergency without the expressed authority of the new management, and where the object of the emergency is not more than an abandoned motor that has nothing to do with the present operation.

As to where the motor was taken, the court said that it is the law and provision of our statute that the best evidence of a case must be produced. In this case, there was no better evidence of where the motor was to be taken than that obtained from the driver that was hired to carry the motor. The driver in his testimony clearly stated that he was hired to move the motor from LPRC's Compound through the Total Compound to Cemenco. This testimony of the driver taken together with other circumstantial evidence, the Judge said, created a chain which was not broken by the appellants, evidence.

The trial court therefore found that the motor was the property of LPRC and that the appellants did not have

sufficient authority to remove the motor; that the appellants were using deception to have the said motor removed with the purpose of depriving the LPRC of the motor; and that the appellant failed in the attempt to have the motor removed because of the interception of LPRC security. He therefore found the appellants guilty of attempted theft and sentenced them to a month imprisonment.

To the foregoing final ruling of the trial judge, the appellants excepted and accordingly announced and perfected an appeal to the Honorable Supreme Court of Liberia, placing before it a bill of exceptions containing twelve (12) counts. For the purpose of this opinion, we shall quote Counts 1, 2, and 3, of the appellants twelve counts thereof as follows:

1. "That Your Honor erred by referring to the testimony given by prosecution's witness Ben Nagbe as the best evidence with regard to Cemenco as the destination of the crane truck. The fact is Ben Nagbe was hired by defendant witness Abraham Kromah without the presence and participation of the defendants in this case: Is it reasonable to hold the defendants guilty for hearsay statements? NO! Furthermore after Ben Nagbe testimony and prosecution rested with the production of both oral and documentary evidence, Mr. Abraham Kromah, testifying before this court on behalf of the defendants, denied ever instructing Ben Nagbe to transport the motor to Cemenco. At this point, the burden of proof or rebuttal automatically shifted to the prosecution; this prosecution failed to do. Instead, in Your Honor final judgment, you erroneously stated that the burden of proof was on the defendants. Your Honor cited no law to support your best evidence theory which considered Mr. Nagbe credible and best than Mr. Kromah; nor did you point to the specific circumstantial evidence that found the basis of Your Honor's position in his matter; or is there any established formula to point that Mr. Kromah acted as an agent of defendant Ayouba Bility. Because of this erroneous application of the best evidence in the final judgment, defendant took an exception and announced an appeal. Same was granted, for which this Bill of Exceptions emanates.

2. That as to the question of circumstantial evidence, Your Honor erred in your final judgment, because, besides the work request for the removal of the motor in question, defense admitted into evidence three separate work requests, with all having the same standard of issuance-none will say take this item to that place, but will only say remove. Your orders to visit the alleged scene of the crime and to subpoena Mr. King of Total were whole heartedly welcome by the both parties, because as juror de facto, we thought that would have help clear your mind; unfortunately, you did not follow up on them; hence this Bill of Exceptions.

3. That as to the question of whether the work request was issued confirmative with the regulations of LPRC, Your Honor erred because at no point in time did LPRC admit into evidence regulations of rules governing the issuance of work request or cited any provision of such regulation which you used as a yard stick for your Honor's ruling. Your ruling in this regard was based upon contradictory testimonies from Robert Bear, Kessely Jallah and Mr. Boby Brown. According to Mr. Bear, Mr. Johnson was not the rightful person to endorse such a work request. "A work request cannot be originated from the individual and approved by that same individual". "Looking at the value of this motor, the only person this work request for transfer of this motor is the Director of operation". Also according to Mr. Kessely Jallah, both in his testimony in chief (sheet 12, 26th day jury sitting June 10, 2009) and on the cross (Sheet 3, 29th day jury sitting June 13, 2009), he maintained that he arrested the truck because on the work request, the signature of the head of the maintenance department was lacking; and

that Mr. Johnson could sign a work request but it must be approved by the most senior officer. Additionally, Mr. Brown from operation department also claimed that, the work request requires higher approving authority signature for the performance of that job. He further went on to clarify that, there are conditions under which one person can originate and also approve a work request and that in the situation of extreme emergency and with the full acknowledge of a higher authority. (Sheet 6, 29th day jury sitting June 13, 2009). To counter weight these statements, besides the work request in question, defense admitted into evidence, three different work requests that Mr. Johnson originated and signed. To clarify the doubts created by these facts, the burden of prove was shifted to prosecution to have presented a written standing procedures to clarify doubts created by these statements from the securities and Mr. Brown. Appellants brought to Your Honor's attention during argument the various prosecutions' contradictory testimonies. Yet Your Honor rendered final judgment against the defendants from which an appeal was announced and granted."

The bill of exceptions basically questions whether the state established a prima facie case against the appellants to warrant their conviction for the alleged commission of criminal attempt to commit theft?
The appellants contend in count # 1 of their bill of exceptions that it was erroneous for the trial judge to have considered the testimony of the hired driver, Mr. Ben Nagbe, as the best evidence in establishing the actual destination of where the motor was being removed to since Nagbe was hired by Abraham Kromah without the presence of and the participation of the appellants, and Abraham Kromah testifying for the appellants denied instructing Nagbe to transport the motor to Cemenco.

We agree with the trial Judge. A driver will inquire before accepting consideration to provide transport service to remove an item from point "A", where the item is, to point "B", where the item is to be taken.
According to the certified records before this Court, Mr. Nagbe testified that he was hired by co-appellant Ayouba Bility and some persons to go to the Total Compound to lift up an alternator and take it to CEMENCO. Having agreed on the price to be paid, they proceeded to the Total Compound. Assuming arguendo that co-appellant Ayouba Bility did not participate in the hiring of the driver and that it was Abraham Kromah who did the hiring, does it negate the fact that the hired driver could not have known the destination? To the contrary, the driver testified that both co-appellant Ayouba Bility and Abraham Kromah hired his services to remove the motor. Co-appellant Ayouba Bility brought no independent witness to rebut this testimony of the driver. We therefore do not agree with the appellants' contention that it was unreasonable to hold them guilty for what they termed and referred to as hearsay statements. The best evidence of a fact is the testimony of a person who knows." Okrasi et al. v. RL, Supreme Court Opinion, March Term 2009; Blamo v. Republic, 17 LLR 232, 235 (1966).
In this case, the driver was merely a commercial driver and he did not seem to have any personal interest in the removal of the motor; we therefore see no reason for him to have stated that he was hired to take the motor to Cemenco when he was actually hired to take the motor to the LPRC Compound. Further, the records indicate that when the appellants were arrested for attempting to take away the motor, the driver, Ben T. Nagbe was not arrested based on the intervention of co-appellant Bility who indicated to the LPRC's security guards that Ben T. Nagbe was just a "mere driver".

Both counts 2 and 3 of the bill of exceptions raise similar issue. The appellants contend that the trial judge's

ruling was based upon contradictory testimonies which tend to establish that the appellants intended to take away the motor to another destination; that the three work requests put into evidence by the appellants to show the procedure for removing of items from LPRC Compound did not state where items from LPRC were to be taken, but simply stated "remove"; and that the trial Judge erred in deciding the issue of whether the work request for removal of the motor was issued in conformity with the regulations of LPRC as LPRC did not admit into evidence regulations or rules governing the issuance of work request or cited any provision of such regulation. The Judge's ruling was based on contradictory testimonies from the state's witnesses.

The appellants stated that they obtained the work request based on the LPRC policy. That is, they initiated and approved the work request based on the urgency of the matter and the Operations Manager, Mr. Bobby Brown, could not be found to sign the work request.

This allegation that he was unreachable on the day the work request/order was signed by co-appellant was refuted by Mr. Bobby Brown. He testified that he had spent the whole day at work. For the most part, when at work, he is either in his office, or in the immediate confines of his office.
We are in agreement with the trial Judge. Co-appellant Lekpeh Johnson himself testified that such an emergency applied to petroleum products supply and delivery. It is clear from the evidence presented that such an emergency did not exist to warrant the conditional approval of the work request by co-appellant Lekpeh Johnson in the absence of authority from his boss or any authorized personnel of the Corporation. To crown it all, the appellants themselves stated that they did not bring the removal of the motor to the attention of the security office of LPRC, and so no security of LPRC was posted when the work of removing the motor took place; rather, the appellants said what they intended to do was firstly remove the motor unto the truck, and then notified the LPRC Security.

Even though the Prosecution did not admit into evidence documented rules and regulations governing the issuance of work request or cited any provision thereof; however, the oral testimonies of the state witnesses and including co-appellant Lekpeh Johnson who are custodians of these rules and regulations governing the issuance of work request of the LPRC pointed to the fact that issuance of the work request/order did not meet the threshold requirement pursuant to LPRC's policies. The parties were in agreement that generally and normally a work order request should be obtained with more than one signature and that senior officers of LPRC must attest to same with the exception being during an emergency situation. As the Judge asked, can it be said that such emergency existed in the case, which warranted a departure from the normal procedure? According to the appellants the emergency was because a truck was already available and therefore if the motor had not been removed that day, LPRC would have been forced to pay a cost much higher. We are not convinced by this reason given by the appellants since Mr. Lewis Howard testified that it was in 1990, 1991 and 1992 that total requested the LPRC to remove the motor but LPRC was unable to remove it because they could not find a crane to lift it. There is no indication in record that the LPRC was pressuring the new management of LPRC to remove the motor and for which the appellants felt duty bound to lift the motor to the LPRC Compound immediately.

We hold, that the emergency work orders testified to and admitted as evidenced on behalf of the appellants were directly related to product movement and product equipment related maintenance which was logical in committing a person to initiate and approve such request, since not doing so could result in an irreparable cost

to the corporation, but the removal of the abandoned motor constituted no such emergency.

We do not see the relevance of the appellants contention that the trial Judge did not visit the Total Compound, the scene of the crime, or subpoena the security at Total Compound, Mr. King, since there was no dispute as to where the truck was taken to remove the motor and the appellants themselves testified that they presented the work request to Mr. King so they could be allowed to enter the Total Compound with the crane truck to lift and take out the motor.
An aged old legal maxim states that" the soul of the law is reasoning". It is a well-established principle of law in this jurisdiction that whenever the logical deduction from the facts placed on the record leads conclusively to the logical deduction that the crime was committed by the accused, it is sufficient. Gardiner v. Republic, 8 LLR 406, 412 (1944); Woods v. Republic, 1 LLR 445,452 (1905).

In regard to the co-defendant Bility's contention that the removing of the motor was during the general cleaning exercise, Mr. Bobby Brown, Supply Chain Manager of the Operations Department testified to the contrary that the clean-up exercises are ordered by administration and communicated through a memorandum to the workforce. During the day of the attempted removal of the motor, he was not aware, and did not receive a memorandum for a cleanup exercise and he did not authorize said removal of the motor. He was on his way home that afternoon from work that he noticed a jack truck with the motor on it parked within the perimeter of LPRC.

We are in full agreement with the Judge that the work order did not comply with the standard operating procedure of the LPRC and the removal therefore was without the knowledge of the LPRC Management; that testimony of the driver, Mr. Nagbe, that the motor was to have been taken to Cemenco, was sufficient to establish where the motor was destined to be taken; that the appellants attempted to take the motor away with the purpose of depriving the owner, LPRC, thereof when they elected to present the purported work request to the Total's security guard instead of the security guards of LPRC.
Credibility of a witness and the weight and value to be given to his testimony, in a criminal prosecution is a matter to be determined by the jury or by the court if it sits without a jury. The court or jury in making such determination, may take into consideration any attendant facts or circumstances which tend to throw light on the accuracy, truthfulness, and sincerity of the witness.

The Supreme Court has further held that the object of a trial is to secure above all a juridical conviction. A juridical conviction connotes (1) That the offense must be correctly charged in a valid indictment; (2) That only legal evidence should be placed before the jury which is asked to convict; and (3) That the evidence thus sifted should satisfactorily establish the guilt of the accused beyond a reasonable doubt. Lewis v. Republic of Liberia, 5LLR 358,368 (1937); Weh Dennis and Mullenburg v. Republic of Liberia, 20 LLR 47, 65 (1970).

From the testimonies of appellants' own witnesses, they do not deny or rebut the allegation that they attempted to take the property of the private prosecutor, but tried to raise the defense that they did so under the color of authority from the management. The state rebutted that LPRC did not give the authority to the appellants for the removal of the motor and produced sufficient and overwhelming evidence to support its case against

the appellants.

According to our criminal jurisprudence, the primary purpose in punishing attempts is not to deter the commission of completed crimes, but, rather, to subject the corrective action those individuals who have sufficiently manifested their dangerousness. A person who fails to perpetrate the object crime, despite committing some act in furtherance of that illegal outcome, is nevertheless guilty of an attempt, because attempted criminal conduct is a danger to organized society and therefore independently culpable even though the intended result does not ensue.(21 AM JUR 2d, Criminal Law, Section 154). In the instant case, the appellants were convicted and sentenced to a common jail for a period one (1) month by the trial judge principally because the motor in question was retrieved by the private prosecutor ; secondly, to deter others whom without any color of right from taking legitimate properties of others. The Supreme has held that a criminal court has a duty to society to punish the commission of crime and thereby discourage and prevent it, and an equal duty to an accused to see that he gets a fair and impartial trial and that his punishment, upon conviction, is in harmony with the spirit and intent of the law of the land. RL v. Weafuah & Hunter, 16 LLR 122, 128-129 (1964).

We are of no doubt that the juridical conviction of the appellants was secured. This being a criminal attempt to commit theft which places the crime in the category of a first degree misdemeanor with a sentencing fixed by a court of not more than one year, we confirm the conviction and judgment of the trial Judge sentencing the appellants to one (1) month imprisonment.

The Clerk of this Court is hereby ordered to send a mandate to the court below instructing the judge presiding therein to resume jurisdiction over this case and to enforce its judgment. AND IT IS HEREBY SO ORDERED.