

Republic of Liberia by and thru the Liberia Anti-Corruption Commission (LACC), represented by its Executive Chairperson and all of its authorized agents, PETITIONER Versus **His Honor Yussif D. Kaba**, Assigned Circuit Judge, Criminal Court C, Temple of Justice, Montserrado County, Republic of Liberia, 1ST RESPONDENT AND Beatrice Munah Sieh Brown, former Inspector General of the Liberia National Police, Harris Manneh Dunn, Former Deputy Commissioner for Administration, Liberia National Police, Prince O.A. Akinremi, Proprietor, Ultimate Investment & Holding Company, Kaymah N. Zeon and Nebo Garlo, Physical Auditors, Ministry of Finance, all of the City of Monrovia, Republic of Liberia, 2ND RESPONDENTS

LRSC 1

PETITION FOR A WRIT OF MANDAMUS

Heard: March 17, 2014 Decided: January 8, 2015

MR. JUSTICE JA'NEH delivered the Opinion of the Court.

This is a remedial proceeding at the instance of the petitioner, Liberia Anti-Corruption Commission (LACC), seeking the issuance of the extraordinary writ of mandamus. The original criminal case instituted by the petitioner and giving rise to this remedial process presents exceptional facts and peculiar circumstances.

From the onset, it is appropriate to state that the ultimate objective for pursuing the writ of mandamus in these proceedings is to enable the Supreme Court to hear the appeal announced by Petitioner LACC from the judge's denial of Petitioner's Motion for Relief from Judgment. Ordinarily, if the writ of mandamus were ordered issued, this Court of final arbiter would determine, firstly, whether the judge in fact properly ruled in denying the Motion for Relief from Judgment in which the trial judge was requested to reinstate the verdict of the trial jury which he had over turned; and secondly, we would also have to decide whether the trial judge acted consistent with law when he granted the Motion for New Trial, thereby vacating the unanimous guilty verdict returned in favour of Petitioner LACC and against persons named in the petition for the Writ of Mandamus as Second Respondents.

However, threading this path and limiting ourselves to the petition for the writ of mandamus will ultimately result in this case being brought before the Supreme Court for the second time. At the new hearing, which would be held much later in the future, this Court would of necessity, during that second time, enquire into the contents, merits and the legal correctness of the ruling of April 16, A. D. 2013, granting the Motion for New Trial; that is to say, whether His Honour Yussif D. Kaba, named in the petition as First Respondent, abused his judicial discretion when he set aside the unanimous guilty verdict and awarded a new trial.

But to embark on such a path would simply result in multiple hearings and determinations of this case. Especially where the liberties of citizens are in issue, as the instant case, such a long and tedious process tends to defeat the right to speedy dispensation of justice. That explains why the Supreme Court of Liberia, in a litany of Opinions, has frowned on piecemeal disposition of cases. One such case in point is Liberia Water and Sewer Corporation v. Thorpe and Peal

In that case, Mr. Justice Kpomakpor, speaking for the Court on spasmodic handling of cases resulting in array of hearings, said: "The procedure adopted by the petitioner...contravened certain fundamental principles of law, which are: (1) review of the cases by the Supreme Court in piecemeal causes delay of justice; and (2) that

multiplicity of suits through remedial process, such as certiorari ought to be discouraged" See: 36 LLR 795, 797 (1990). Not to entertain cases in bits and pieces has been a policy similarly adopted in numerous other cases. These include the following: National Milling Company of Liberia v. Pupo and Miatta Family Center, 34 LLR 647, 469 (1987); Doe et al v. Ash-Thompson, The Proposed Liberia Action Party et al., 33 LLR 251(1985).

We do not believe that it would be prudent on our part to depart from this clearly laid out path embraced by this Court. In other words, we shall entertain Petitioner LACC's petition for the remedial writ of mandamus by attending to related questions in order to avoid multiple hearings of this case in order to serve the overriding interest of justice.

To aid in this endeavor, and for the benefit of this Opinion, it is appropriate to commence by highlighting not only the peculiar facts and special circumstances in the case before us, but to carefully consider also, the various questions presented by the facts and circumstances. We have determined the followings as important issues in this regard:

1. In the light of the facts and circumstances of this case, was the judge's decision to grant the Motion for New Trial and set aside the jury's unanimous guilty verdict an abuse of judicial discretion and hence, reversible?
2. Whether the judge's refusal to grant an appeal from the ruling denying a motion for relief from judgment is a sufficient legal basis to authorize the issuance of the writ of mandamus?
3. Does the limitation imposed by Section 24.3 of the Criminal Procedure Law on a State Party's exercise of the right to appeal violate the provision of the Liberian Constitution which preserves as inviolable the right of appeal from all judgments save those of the Supreme Court of Liberia?

In considering the first question, whether the trial judge abused his discretion when he granted the Motion for New Trial and by that conduct set aside the verdict, we propose to review the facts and circumstances of the initial case. Providing a full background in this manner would aid us in shedding full light on the factual and legal reasons prompting our decision in these remedial proceedings for the Writ of Mandamus.

The certified records to this Court of dernier resort reveal that at the conclusion of a regular criminal trial during the February Term, A. D. 2013, conducted at the First Judicial Circuit, Criminal Assizes "C", with His Honour Yussif D. Kaba, presiding, a twelve (12) member empanelled petit jury, on March 7, A. D. 2013, returned a unanimous guilty verdict against five individuals, referred to in Petitioner LACC's petition as Second Respondents. They included two senior officials of the Liberia National Police, former Inspector General, Beatrice Munah Sieh-Brown and former Deputy Commissioner for Administration, Harris Manneh Dunn, along with two Physical Auditors of the Ministry of Finance, Kaymah N. Zeon and Nebo Garlo, as well as a Prince O. A. Akinremi, Proprietor of the Ultimate Investment & Holding Company. The five persons were jointly indicted and put on trial for allegedly committing the felonious crime of Economic Sabotage, Theft of Property, Criminal Conspiracy and Criminal Facilitation, in violation of Chapter 15, Sub-Chapter "F" (Economic Sabotage), Section 15.80 (a) and (b), Section 15.81(a, b and c) and Section 15.82 (a, b, and c); Sub-chapter "D" Section 15.51(Theft of Property); and Chapter 10, Sections 10.2 (Criminal Facilitation) and 10.4 (Criminal Conspiracy) of the New Penal Law of the Republic of Liberia. The indictment substantially alleged that the Second Respondents criminally, maliciously, willfully and intentionally stole, pilfered, carried away and exercised

unauthorized control over, and converted the amount of US\$199,800.00 (One Hundred Ninety-Nine Thousand Eight Hundred United States dollars) to their personal use and benefit.

Dissatisfied with the guilty verdict, the Second Respondents, Defendants in the court below, on March 8, A. D. 2013, filed a Motion for New Trial. In the Motion for New Trial, Second Respondents principally contended that the #unanimous [guilty] verdict runs contrary to the factual issues established during the trial that should have been the basis for the jury verdict."

It must be emphasized here that in their eight-count Motion for New Trial, Second Respondents requested the assigned judge, His Honour Yussif D. Kaba, to overturn the guilty verdict primarily because it was against the weight of the evidence prosecution introduced during trial. For the benefit of this Opinion, the Motion for New Trial is quoted hereunder:

1. Because the Jurors failed to take into account the variances of the testimonies of the witnesses for the Prosecution and also the variances between the oral testimony of the Respondent's principal witnesses and the documentary evidence adduced during the trial, for which the unanimous verdict of the empanelled jury should be set aside and a new trial awarded
2. That the unanimous verdict should be set aside and a new trial ordered, because the action of the Prosecution is tainted with grudge, malice and witch hunting as evidenced by Movants/Defendants' first witness testimony in person of Munah Sieh Brown, when she testified in open court that she and the head of Prosecution institution fought over a love relation at the University of Liberia and because of her, all other Defendants are suffering, which testimony was never rebutted by the Prosecution. Under our law, any statement made against a person which is not rebutted is deemed admitted. This clearly shows that there was premeditated malice against the defendants for which said verdict should be set aside and a new trial awarded
3. The jury unanimous verdict runs contrary to the weight of the evidence adduced at the trial, because the Plaintiff's own rebuttal witness admitted that she signed a delivery order and received the Finance Ministry Auditors who visited her office and physically checked the uniforms.
4. The unanimous verdict should be set aside and a new trial awarded because the judge's charge to the jurors was clear; he told the jurors that in reaching a verdict they should apply the law and the evidence adduced during the trial on each Defendant beyond a reasonable doubt. Rather than following the judge's instruction, they returned with a blanket unanimous verdict. A reasonable mind would conclude that the jurors carried out the judge's instruction correctly when they filed the first form but later somersaulted and destroyed said verdict form and threw it away as a result of undue influence for which a judge should take judicial notice of historical facts in keeping with Chapter 25, Section 25.2 which states "The judge shall on his own motion take judicial notice of public historical facts that are so well known as not to be a subject of reasonable dispute.
5. Movants say that although all the five witnesses for Defendants testified in substance that the uniforms were delivered as evidenced by Martha Sonpon is signature on the delivery order, the empanelled jury however ignored same and returned with their unanimous verdict contrary to the evidence adduced at the trial Hence, new trial is required and Your Honor is requested to grant Movants' Motion and order a new trial
6. That Movants say that the unanimous verdict of the jury runs contrary to the weight of the evidence adduced at trial because the burden of proof which is cardinal in all criminal trials rested solely with the Prosecution and

their failure to prove the crimes charged in the indictment wherein reasonable doubt existed, the juror were specifically charged to the effect that such reasonable doubt must work in favor of the Movant/Defendants and at such they should and must have brought back a verdict of not guilty consistent with Chapter 2, Section 2.1 of our criminal statute. Accordingly a new trial is legal and consistent with law and so prays.

7. That Movants further say that the unanimous verdict of the jurors runs contrary to the weight of the evidence adduced at trial because the admission of Prosecution 1S rebuttal witness in person of Martha B. Sonpon, the then Logistics Officer of the Liberia National Police, admitted to signing the delivery order and admitted to permitting the Physical Auditors from the Ministry of Finance to enter the police warehouse for the sole purpose for conducting a physical audit on the uniforms and accessories before a report for payment on the voucher was finally made to the Ministry of Finance for payment. Accordingly, the jurors failed to consider this relevant testimony of said witness in arriving at their verdict.

8. That, also this admission by Mistress Martha B. Sonpon was further buttressed by an answer on the cross as to why she did not blow an alarm to indicate that the uniforms and accessories were not delivered for over 2 years, and to this question, she give no valid answer to clear the doubt, but yet the jurors ignored such cardinal testimony and brought forth the unanimous guilty verdict for which the movants/defendants request new trial

WHEREFORE AND IN VIEW OF THE FOREGOING, Movants most respectfully pray Your Honor and this Honorable Court to set aside the jurors unanimous verdict in these proceedings and order a new trial, because the said unanimous verdict runs contrary to the factual issues established during the trial that should have been the basis for the jurors verdict, and order a new trial as in keeping with our law extant, and also grant unto Movants any and all further relief that Your Honor may deem just, legal and equitable."

Petitioner LACC resisted the Motion for New Trial by filing a thirty-eight count Returns. We have determined as adequate to quote therefrom only counts thirty four (34) and thirty six (36):

"34. Further as to the entire Motion [for New Trial], Respondent/Plaintiff says same should be denied because Movants/Defendants failed to provide any iota of evidence of acts on the part of the prosecution, the jury, Court Officers or the Presiding Judge in support of any of the nine (9) grounds for which a motion for new trial may be granted as provided by the Criminal Procedure Law of Liberia or that there was any miscarriage of justice during the trial The Supreme Court of Liberia has held that in the absence of miscarriage of justice, a Motion for New Trial shall be denied. Killix v. Republic, 8 LLR, page 173. The Court also held in the case: Ledlow et al. v. Republic, 2 LLR 569, 581-582 (1925), "unless it is manifestly and palpably against the weight of the evidence, courts of justice ought not to set aside a jury verdict N This position of the Court was recently re-emphasized by Mr. Justice Ja'neh in the case Fatorma v. R.L., decided during the October Term 2010 on January 20, 2011. Movants/Defendants have not pointed to any action of the jury, the judge, the prosecution or any officer of the court or any portion of the records that shows that anything was done in this case that is manifestly and palpably against the weight of the evidence in this case. Therefore, Respondent/Plaintiff respectfully requests this Honourable court to deny Movant's Motion".

"36. Further as to the entire motion, same should be denied because the pieces of evidence produced by the Respondent/Plaintiff were clear, cogent and in support of the allegations contained in the indictment and therefore, the verdict was consistent with the weight of the evidence adduced at trial The Supreme Court of

Liberia has held, ' motion for a new trial will be denied where the evidence to support the verdict is clear, cogent and convincing. *Kasimu v. Republic*, 25 LLR 80 (1976)".

According to the records certified to this Court, the trial judge entertained arguments, pro et con, and by a ruling dated April 16, A. D. 2013, granted the Motion for New Trial, vacated the jury guilty verdict and awarded Second Respondents/Criminal Defendants a new trial. The judge justified his conduct to grant the motion and to set aside the jury verdict on the single ground that the petit jury failed to follow his instructions.

A critical review of the ruling granting the Motion for a New Trial reveals that the learned judge passed on the question "whether the panel of jurors disregarded any instruction contained in the judge's charge and therefore this court should set aside the verdict and award a new trial": Because of its critical relevance to the issue at bar, we herewith reproduce the relevant portion of said ruling as follows:

"For an informed determination of this issue, the court takes judicial notice of its instruction on this matter as is contained in its charge. The court instructed the jury as follows: "The defendants are either individually or severally charged separately with the commission of either some or all of the crimes charged in each of the counts in the indictment You must separately decide each count charged against each defendant. Your verdict on one count as to one or some of the defendants should not control your verdict on any other counts or as to any other defendant (s)."

A search of our law shows that our Criminal Procedural Statute is not silent on this subject. Chapter 20, Section 20,11, Paragraph 2, found on page 379 of Title 1 of the Liberia Code of law Revised provides as follows.

"Form of verdict. The verdict shall be unanimous and shall be guilty or not guilty. If different offenses are charged in the indictment the jurors shall, if they convict the defendant make it clear by their verdict on which counts, if the indictment is divided into counts, or of what offenses, they find him guilty."

Is the unanimous verdict returned by the panel in conformity with the clear and unambiguous language of the above statute? It is worth noting the command words adopted by the framers of this statute: '...the jurors shall, if they convict the defendant make it clear by their verdict on which counts, if the indictment is divided into count...' Certainly, this verdict convicts the defendants and certainly the indictment in this matter is divided into counts. But unfortunately, the jurors failed to indicate or make it appear by their verdict on which count the defendants are found guilty. Certainly, it is the law that where the statute is clear, the court lacks the authority to give any meaning thereto but the clear meaning flowing therefrom. The panel of jurors, having failed to follow the instruction of the court on this subject which is supported by the statute, the court says that this constitutes material defect that affect the validity and legality of the verdict Emphasis supplied.

Wherefore and in view of the foregoing, and in exercise of its legal discretion, it is the considered opinion of this court that the Movants Motion for New Trial be and same is hereby ordered granted and the Resistance thereto denied. A New Trial is hereby granted in this matter. **AND IT IS SO ORDERED.**"

The first basic question this Court is confronted with is whether the trial judge abused his by granting Second Respondents' Motion for New Trial. It is a well settled principle of law in this jurisdiction that generally, the granting or denial of a motion rests in the sound discretion of a judge. Accordingly, no error can be assigned to the conduct of a trial judge who, in exercise of his discretion, both in criminal and civil cases, enters a ruling on a motion granting or dismissing same.

Stated otherwise, it is trite law that an appellate tribunal is without legal authority to review the judge's exercise

of the discretion to grant or deny a motion. However, there is one notable exception to this general principle; that is, the appellate court would act properly to review the granting or denial of a motion if it is established that a judge has abused his discretion by granting or denying a motion to the "prejudice" of a party. *Swaray v. Republic of Liberia*, 28 LLR 194, 201(1979); *Killix v. Republic of Liberia*, 8 LLR 173, 177 (1943); *Dopoe v. City Supermarket*, 34 LLR 343, 350-1 (1984); *Insurance Company of Africa/INTRUSCO Corporation v. Fantastic Store*, 32 LLR 336, 383 (1984); *Dasusea et al. v. Coleman*, 36 LLR 102, (1989); *Blamoh-Collins v. Collins*, 30 LLR 195 (1982).

In *Blamoh-Collins*, cited herein above, Mr. Chief Justice Gbalazeh pointed out "abuse of discretion" as a legal basis for reviewing a judge's ruling on a motion for new trial. The Chief Justice put it this way:

"motion for new trial, being an issue of law, and argument being an effort to convince the trial judge, the granting or denying thereof is absolutely discretionary on the part of the trial court, except and unless it is shown that the trial court abused its discretion. In the absence of such showing, the motion will be legally and properly denied." [Emphasis supplied] *Id.* 199-200.

Further, the applicable statute on motion for new trial has expressly provided nine (9) legal grounds for the granting of a motion seeking a new trial. The Criminal Procedure Law, Rev. Code 2: 22.1(1) and (2), naming the nine (9) permissible grounds, states as follows:

"1. Power to grant.

When a verdict has been rendered against the defendant, the court on motion of the defendant may grant a new trial on any of the grounds specified in paragraph 2 of this section.

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

- (a) That the jurors decided the verdict by lot or by any other means than a fair expression of opinion on the part of all the Jurors;
- (b) That the jury received evidence out of court other than that resulting from a view of the premises;
- (c) That a juror has been guilty of misconduct;
- (d) That the prosecuting attorney has been guilty of misconduct;
- (e) That the verdict is contrary to the weight of the evidence;
- (f) That the court erred in the decision of any matter of law arising during the course of the trial;
- (g) That the court misdirected the jury on a matter of law or refused to give a proper instruction which was requested by the defendant;
- (h) That new and material evidence has been discovered which if introduced at the trial would probably have changed the verdict or finding of the court and which the defendant could not with reasonable diligence have discovered and produce upon the trial;
- (i) That for any cause not due to his own fault the defendant has not received a fair and impartial trial "

This Court construes the phrase "any of the grounds specified" to be the statutory reference for the exercise of judicial discretion whether or not to grant a motion for new trial. In other words, the legislators intended the exercise of discretionary authority of granting a motion for new trial and awarding a trial de novo, to be guided by law. It therefore follows that where the trial judge has granted a motion for a new trial under the canopy of exercising judicial discretion but without any legal basis, such a conduct is a proper subject for appellate

review. That is to say, a higher tribunal may properly evaluate the exercise of judicial discretionary authority where it is evidently clear that there was an abuse thereof as to be offensive to the ends of justice.

Having set this basis, let us now travel to the certified records and determine whether the legal basis the judge alluded to and upon which he expressly relied to grant the Motion for a New Trial is within the pale of the law. The question is, was the judge's conduct in granting the motion for a new trial, resulting in setting aside the guilty verdict returned against the criminal defendants in the court below, a proper exercise of the discretion granted under the laws applicable?

As we earlier indicated, the judge granted the motion for a new trial for the singular reason that the jury failed to follow the instruction of the court'. This being the case, we must ask a second basic question whether the legal remedy for the jury's failure to obey the trial judge's instructions justifies the granting of a Motion for a New Trial as an exercise of discretion? Or the granting of a motion for a new trial, as was done in the instant case, amounts to an abuse of judicial discretion?

In *Swaray v. Republic*, the appellant/defendant contended before this Court that his motion for new trial should have been granted because the trial judge erroneously charged the empanelled jury. The Supreme Court, citing Criminal Procedure law, Rev. Code 2: 22.1(1), (2), rejected this argument. Mr. Justice Henries, speaking for the Court, held that the misunderstanding of a judge's instructions by the petit jury "is not a ground for the granting of a new trial" *Id.* 28 LLR 194, 200 (1979).

Given the laws controlling, we are unable to come to term with the ground specifically stated and relied upon by the judge for granting the motion for a new trial. Insufficiency of the evidence is one primary ground for the granting of a motion for new trial. That the evidence did not support the jury finding was not suggested by the learned judge, even by way of fleeting reference, for throwing away the unanimous guilty verdict. To the contrary, and this point is worth noting, the trial judge himself made an extensive review of the evidence upon which the trial jury returned the guilty verdict. He was himself satisfied that the evidence presented by LACC warranted the return of a guilty verdict. We here quote the relevant part of said ruling:

"Relative to the second issue [i.e., whether the verdict as returned by the trial jury is contrary to the weight of the evidence adduced at the trial for which this court should set aside the same and award a new trial?], "Substantially, the evidence as adduced by the Respondent/Prosecution in this matter tend to establish that a whistle blower addressed a letter to the Liberia Anti-Corruption Commission informing the Commission of alleged act of financial mal-practices being perpetrated by one of the Co- Movants/Co-Defendants Prince Akinremi, CEO of Ultimate Investment Corporation, in the procurement of uniforms and accessories for the use of the ERU of the National Police and Fire Service officers with the aid and cooperation of officials of the Liberia National Police and the National Fire Bureau against the revenue of this Republic. Pursuant thereto, an investigation was commissioned which established that there was not sufficient evidence to support the allegations against the procurement for the Fire Service, but that there was evidence to support the allegations in relation to the procurement of accessories and uniforms for the ERU of the Liberia National Police. The evidence tend to establish that no uniform and accessories were ordered by Ultimate Investment Corporation

during the period when these uniforms and accessories are said to have been ordered; that the bidding said to have been conducted for the selection of the successful bidder was not done in keeping with law; that even though Ultimate Investment Corporation received full payment for same, the uniforms and accessories were never delivered in spite of the fact that the delivery order issued to Co-Movant/Co-defendant Prince Akinremi, CEO of Ultimate Investment Corporation, was signed by Respondent/Prosecution rebuttal witness Martha Sonpon; that the Ministry of Finance was made to pay for the said uniforms based upon deception on the part of Co-defendants Kaymah N. Zeon and Nebo Garlo who did not conduct pre-payment audit as contemplated by law and in keeping with accepted auditing standard applicable under the circumstances."

If Judge Kaba's ruling were anything to be guided by, wherein he outrightly dismissed any proposition of insufficiency of the evidence, as the Movants/Respondents vainly attempted to persuade the court to believe, then we must say the guilty verdict the jury returned on March 7, A. D. 2013, was clearly improperly vacated by the trial judge when he granted the Second Respondents' Motion for New Trial. *Kasimu v. Republic*, 25 LLR 80 (1976); *Blamoh-Collins v. Collins*, 30 LLR 195, 199 (1982). There being no legal basis for his decision, the granting of the motion for new trial and the awarding of a trial de novo constitutes a clear abuse of judicial discretion. As the jury's failure to follow the judge's instructions is not a legally sanctioned ground for setting aside a verdict returned by an empanelled jury, it follows that a ruling granting a motion in this regard is reviewable by an appellate court as a matter of law.

In our jurisdiction, it is a settled question that no judge should disturb a verdict reached by a trial jury, exercising its authority within the acceptable legal perimeters, and after said jury's due consideration of the evidence presented during trial. *Beysolow v. Coleman*, 9 LLR 156, 160 (1946); *Haider v. Kassa* 20 LLR 324, 329 (1971); *Liberian Oil Refinery Company v. Mahmoud*, 21LLR 201, 214 (1972); *Dagber v. Molley*, 26 LLR 422, 427 (1978); *American Life Insurance Company, Inc., v. Holder*, 29 LLR 143,165 (1981); *Liberia Tractor and Equipment Company (UBTRACO) v. Perry*, 38 LLR 119, 127 (1995); *Momolu v. Cummings* 38 LLR 307, 314 (1996); *Cavalla Rubber Corporation v. Harris, Morris v Diggs*, Supreme Court Opinion, March Term 2011.

Under our laws, the petit jury is the exclusive judge of the credence to be accorded to the evidence. Judge Kaba in his ruling granting a new trial in fact duly acknowledged the role of the jurors as such. He declared in said ruling that: "It is the office of the trial jury to determine the fact, apply the law from the court's instruction to those facts and return a verdict thereupon. It is the office of the trial judge to hear and pass upon all issues of law that are raised during the trial...;Jurors are the judges of facts in a trial.

In the case under review, the empanelled jury listened to the testimonies and evidence presented by the parties during the criminal trial. Thereafter, the trial jury having been duly charged by the trial judge, retired, deliberated and returned a unanimous guilty verdict against the Second Respondents. By the act of granting a motion for new trial thereafter, the trial judge simply embarked on a reckless collision with the laws controlling. We therefore hold that his ruling granting the Motion for New Trial, thereby setting aside the unanimous guilty verdict, being a blatant abuse of judicial discretion, was a sufficient legal basis for the granting of the Motion for Relief from Judgment filed by Petitioner LACC in these mandamus proceedings.

For the sake of further analysis, let's accept *arguendo* that the trial jury in fact outrightly disobeyed the instructions contained in the judge's charge. Assuming this was the case, was setting aside the verdict the legal

remedy to correct that failure on the part of the petit jury? We think not. The case, *Appleton v. Republic*, 11LLR 284 (1952), is instructive here. In that case, the trial judge ordered the jury verdict amended in open court. Mr. Justice Shannon speaking for the Court on this issue, opined thus:

[I]f the verdict of the jury did not conform to the evidence with respect to the amount embezzled, the trial court should have either disbanded the jury and ordered a new trial or given additional instructions and directed further deliberation. *Id.* 286. [Our Emphasis].

As can indicated, where the jury returns a verdict unsupported by the evidence, the trial judge has the authority to either disband the jury and award a new trial or give the jury additional instruction by directing them to return an appropriate verdict. This principle is also consistent with the position taken by this Court in *Swaray*, cited earlier in this Opinion.

However, the criminal case prompting these remedial proceedings did not present a case of the verdict being unsupported by the evidence. It is a case where the jury, according to the trial judge, failed to follow his instructions as set forth in the charge. This Court has to state here that both in *Swaray* as well as *Firestone Plantations Company v. Kollie*, the Supreme Court held that where the jury failed to follow the instruction of the trial judge, a duty is thereby imposed on the said judge to give the jury an opportunity to correct the verdict. This can be done by giving the jury additional instructions so that they conform to the instructions of the judge. This being the law controlling, we wonder how the failure to follow the judge's instructions could justify the granting of a motion for new trial and setting aside the verdict returned by an empanelled jury. The Judge seems to have simply created this ground. Nowhere in the eight count- motion for new trial was it ever contended by the Movants/Defendants/Second Respondents that the petit jury failed to follow Judge Kaba's instruction and therefore the verdict be set aside.

The certified records further reveal that after the trial judge granted the motion for new trial, in violation of the laws applicable, and set aside the jury unanimous verdict, the herein Petitioner, LACC, filed an eighteen count Motion for Relief from Judgment, seeking to have said erroneous ruling rescinded. The Motion for Relief from Judgment questioned the factual and legal basis of Judge Kaba's ruling to grant the Motion for New Trial. The Motion by LACC then prayed the trial judge to rescind the erroneous ruling, reinstate the jury verdict and return the parties to where they were prior to vacation of the verdict. For the benefit of this Opinion, we have deemed it appropriate to reproduce the Motion for Relief from Judgment to wit:

“1. That Movant is Plaintiff in the above cause of action which merits have been determined by the trial jury in these proceedings and unanimous guilty verdict brought against the respondents/Defendants on March 7, 2013. Your Honour is respectfully requested to take judicial notice of the records in these proceedings.

2. That following the [return of the] unanimous guilty verdict the entire panel of the trial jury was polled to ascertain the unanimous guilty verdict and each of the jurors confirmed and affirmed the unanimous guilty verdict based on the weight of the evidence adduced at the trial by prosecution.

3. That following the polling of the entire panel jury, Your Honour ordered the recording of the unanimous guilty verdict to form part of the records in these proceedings. Your Honour is respectfully requested to take judicial notice of the records as relate to counts 2 and 3 above. Movants/Plaintiff also wishes to bring to the attention of Your Honour and this Honourable Court that the minutes of March 7, 2013, was served on Movant/Plaintiff

on April 22, 2013, one month 15 days after the verdict.

4. That on March 9, 2013, the Respondents/Defendants in these proceedings filed an eight (8) count Motion for New trial basically alleging (a) variances in the testimonies of Prosecution's witnesses and the oral testimony of Prosecution's principal witness and documentary evidence adduced at trial; (b) the prosecution of defendants being based on grudge, malice and witch hunting and (c) the unanimous guilty verdict not being supported by the weight of the evidence adduced at trial without stating by reference to the records the alleged variances.

5. Movants/Plaintiff filed a thirty eight count Resistance to the said motion contending, rejecting, refuting, and denying the averments set in the motion for new Trial specifically contending that said Motion was lacking in facts and in law and requested your Honour to deny and dismiss the entire Motion.

6. That argument pro and con was heard by Your Honour and this Honourable Court on March 29, 2013, and Your Honour reserve ruling pending a regular notice of assignment .

7. That on April 16, 2013, 18 days after the court heard argument, pro and con, on the Motion for new trial, Your Honour ruled setting aside the unanimous guilty verdict of the trial jury and ordered a new trial contrary to our laws, practice and procedure in this jurisdiction. Said Ruling/Judgment was served on Movant/Plaintiff on April 22,

2013. Your Honour is respectfully requested to take judicial notice of the records in these proceedings.

8. That the Ruling/Judgment setting aside the unanimous guilty verdict of the trial jury after the court has taken evidence, both oral and documentary on the merits from both the prosecution and defendants and had same admitted into evidence to form part of the entire proceedings, constituted a Final Ruling/Judgment from which a Motion for Relief from judgment will lie under our law, practice and procedure in this jurisdiction.

9. That the sole basis of Your Honour's Final Ruling/Judgment as stated in Your Final ruling is that the jurors failed to indicate or make it appear by their verdict on which count the defendants are found guilty" contrary to Your Honour's instruction in the charge given to the trial jury and the verdict form issued to the trial jury for the verdict. Your Honour is respectfully requested to take judicial notice of the records in these proceedings specifically Your Instructions to the trial jury on March 7, 2013 and verdict form.

10. Movant further contends and says that as a matter of law, instructions to the jury as to how a verdict should be returned also includes the nature of the verdict form issued to the trial jury for that purpose; meaning the nature of the verdict form is also an instruction in itself to be followed by the trial jury.

11. Further to count 10, above, Movant/plaintiff submits and contends that the instruction on the verdict form was for the trial jury to return with a unanimous verdict either guilty or not guilty and nothing more. In the instant case, the trial jury considering the weight of the evidence adduced at trial by the prosecution, returned with a unanimous guilty verdict consistent with the indictment, law, practice and procedure in this jurisdiction.

12. Movant/Plaintiff says further that Your Honour made a mistake and inadvertently erred when you held that the trial jury failed to follow the instruction given to them in bringing the verdict as the records are void of any such instructions to the trial jury.

13. Movant/Plaintiff says further that though Respondent slash defendants motion for New Trial totally void of any issue relating to the basis of Your Ruling/Judgment, Your Honour raised contrary to our law, practice and procedure in this jurisdiction that the court cannot do for the party litigant what they have to do for themselves.

14. Further to count 9 above, Movant/Plaintiff submits and says that the sole basis for the granting of the Motion for New Trial is void of any of the statutory requirements provided for under Section 22.1 of the Criminal Procedure law.

15. Also because Your Honour inadvertently and mistakenly interpreted the law relied on to grant the motion for new trial for which reason a Motion for Relief from Judgment will lie as matter of law.

16. Further to count fourteen above, Your Honour's final ruling/Judgment on the motion for New Trial is void as a matter of law and facts and also contrary to Judicial Order #4.

17. Also because Your Honour's basis for the granting of a New trial runs contrary to the intent and spirit of the statute and this tends to defeat the end of justice in the fight against corruption in this country.

18. And finally because given the facts and circumstances and the laws controlling, a Motion for Relief from Judgment will lie as a matter of law.

WHEREFORE AND IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES, Movant/Plaintiff prays Your Honour and this Honourable Court to grant Movant/Plaintiff's motion, reinstate the trial jury's unanimous guilty verdict as brought against the Defendants and grant unto Movant/Plaintiff any and all further relief as required by law in this jurisdiction."

As can be seen from the averments, Petitioner LACC, in filing the motion seeking to rescind Judge Kaba's ruling granting the motion for new trial, relied on Section 41. 7. 2, Civil Procedure Law, Rev. Code. We will revert to this provision of the statute later in this Opinion.

Also worthy of note is that Respondents/Defendant, resisting the Motion for Relief from Judgment, quoted herein above, filed Returns containing three counts quoted hereunder to wit:

"1. That as to count one (1) thru eighteen (18) of the Movant's Motion, Respondents say that said counts are subject fit for dismissal, in that before one seeks for the relief of any judgment there must be a judgment putting the case to finality. In the instant case, there was a ruling on a motion for new trial which ruling is an interlocutory judgment and not a final judgment because the case is still pending on the court's records for new trial Hence counts one (1) thru eighteen (18) of the movant's motion should be denied and dismissed in its entirety.

2. That further to count one above, Respondents say that the presiding Judge over the Criminal Court Assizes "C" for the February Term, A. D. 2013, His Honour Yussif D. Kaba is out of term, since the February Term of court has ended and cannot exercise jurisdiction over any Motion for Relief from Judgment rendered during the February 2013 Term of Court. For a party to have relief from any judgment, it should be done during the term time. Therefore, movant's motion should crumble and be thrown over the window, respondents so pray.

3. Respondents deny any and all allegations as contained in Movant's motion which are not specifically traversed in this resistance.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondents most respectfully pray Your Honour and this Honourable Court to deny and dismiss Movant's Motion for Relief from Judgment since the granting of the Motion for New Trial is interlocutory [and] grant unto Respondents any and all further relief as Your Honour may deem legal, just and equitable.

By a ruling dated May 7, A. D. 2013, Judge Kaba denied the Motion for Relief from Judgment. According to the records, the appeal announced by Petitioner LACC from the ruling dismissing the Motion for Relief

from Judgment was also denied. This prompted counsel for the LACC to make the following submission:

"Counsel for the Movant excepts Your Honour's ruling thereof and give notice that they hereby again will take advantage of the statute. And submits. "

The decision by the trial judge to deny the appeal under the facts herein above detailed generates a cardinal question: Is a ruling in disposition of a Motion for Relief from Judgment appealable? In other words, was the entertainment of the Motion for Relief from Judgment a separate proceeding from which an appeal may lie? Put differently, is the issuance of a Writ of Mandamus warranted to command the granting of an appeal from a ruling on a Motion for Relief from Judgment? In his ruling on this question, the judge concluded that a ruling as such is not appealable.

We are unable to agree that a ruling entered on a Motion for Relief from Judgment cannot be appealed. A Motion for Relief from Judgment is a special proceeding and the judgment entered thereon, granting or denying said motion, as in the case before us, being final in itself, is properly appealable as a matter of law. In the case, *Stubblefield et al. v. Nasseh*, 25 LLR, 24 (1976), Mr. Justice Henries, in adopting a common law principle regarding the nature and character of motion for relief from judgment, articulated as follows:

“motion for relief from judgment when timely made, is another means by which litigants can gain relief from an erroneous or unwarranted judgment. It is in the nature of a review, and is a separate proceedings from the action sought to be reviewed It is a new action, not a further step in the former action. Review is said to be equivalent to a new trial after judgment. However, the original judgment is not set aside, but stands until the judgment is reviewed ..The judgment in review may affirm, reverse or modify the former judgment in whole, or in part, or may make such other disposition of the case as may be necessary to secure the just and legal right of all parties... id., 29-30.

Also, according to Mr. Chief Justice Pierre in *Stubblefield, et al. v. Nassah*, 25 LLR 152 (1976), one reason “to entitle a party to relief from judgment”, is a showing by the moving party that the judgment which the movant seeks to vacate or rescind is "unjust that movant is actually or prospectively “injured or prejudiced by the judgment”, that the movant stands to "benefit" from the granting of the relief sought; and that the relief requested can be granted without “material injustice" or injury to the opposing party or will not be prejudicial to the "intervening rights" of third person. Id., 165-6.

Additionally, the Civil Procedure Law, Rev. Code provides some guidelines on this subject. Section 1:41. 7. 2, Civil Procedure Law, Rev. Code, provides as follows:

II. Grounds. On motion and upon such terms as are just the court may relief a party or his legal representative from a final judgment for the following reasons:

- a. Mistake, inadvertence, surprise, or excusable neglect;
- b. Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26. 4 of this title;
- c. Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- d. Voidness of the judgment; or
- e. Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or inequity in allowing prospective application to the judgment."

Based on review of the facts surveyed herein above in this Opinion and in due consideration of the applicable laws, it is safe to reach these conclusions: (1) that the ruling rendered by Judge Kaba on April 16, A. D. 2013, granting the Motion for New Trial, same being an abuse of judicial discretion, and without the pale of the law, was reversible; and (2) that in the light of the abuse of judicial discretion demonstrated in granting the Motion for New Trial, Petitioner LACC's Motion for Relief from Judgment should have been granted to rescind the erroneous ruling and to restore the jury's unanimous guilty verdict, returned on March 7, A. D. 2013. And we so hold.

This takes us to the next cardinal question whether the refusal by the judge to grant LACC's appeal from the ruling denying the Motion for Relief from Judgment, provides, both in fact and in law, a basis adequate to warrant the issuance of the Writ of Mandamus.

The nineteen count petition filed by _____ Petitioner LACC's seeking the extraordinary Writ of Mandamus is hereunder reproduced:

"1. Petitioner in petitioning your Honor and this Honorable Court submits and quotes Article I of the 1986 Constitution of the Republic of Liberia as follows: "the Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional.

2. Petitioner further submits and says that Article 11(d) of the Constitution also states in clear and uncertain terms that "all persons are equal in front of the law and are therefore entitled to the equal exception to this fundamental right since in fact and indeed the state is the body of persons who should be entitled to equal protection of the law without any precondition.

3. In further petitioning Your Honor and this Honourable Court, Petitioner submits and says that Article 20 (b) of the Constitution says that the right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. Petitioner also contends that the State and or any of its institutions is unconditionally entitled to an appeal at all times and in any matter from a judgment, decree, decision or ruling of any court or administrative board or agency as guaranteed by this provision of the Constitution.

4. Petitioner is further submitting and saying that Article 66 of the Constitution also provides that the Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of records, courts not of records, administrative agencies, autonomous agencies or any other authority, both as to law and fact and that the Legislature has no authority to make any law nor create any exception to deprive the Supreme Court of this power granted under this constitutional provision.

5. Petitioner also submits and says that in order to guarantee and protect the rights of all, Article 26, of the Constitution provides that "where any person or association alleges that any of the rights granted under this constitution or any legislation or directive are constitutionally contravened, that person or association may invoke

the privilege and benefit of court direction, order or writ, including a judgment of unconstitutionality"

6. Petitioner says further that the right to an appeal being an inviolable right provided and guaranteed by the Constitution of Liberia without any exception and or precondition automatically imposes a duty on judges, except for the Honorable Supreme Court, to grant an appeal as part of an official judicial function.

7. NOW THEREFORE, Petitioner submits and says that it was established by an Act of Legislature in August 2008 with the mandate among other things "to implement appropriate measures and undertake programs geared towards investigating, prosecuting and preventing acts of corruption, including educating the public about the ills of corruption and the benefits of its eradication.

8. That the Petitioner in exercise of its statutory mandate is the Plaintiff in the above cause of action which merits have been determined by the trial jury and unanimous guilty verdict brought against the 2nd d Respondents/Defendants on March 7, 2013. Attached hereto is a copy of the unanimous guilty verdict marked as EXHIBIT "P/1" to form a part of this Petition.

9. That following the unanimous guilty verdict the entire panel of the trial jury was polled to ascertain the unanimous Guilty Verdict and each of the jurors confirmed and affirmed the unanimous Guilty Verdict based on the weight of the evidence adduced at the trial by Petitioner/Plaintiff and the verdict was ordered and recorded by 1st Respondent to form part of the records in these proceedings.

10. That on March 9, 2013, 2nd d Respondents/Defendants in these proceedings filed an eight (8) counts motion for new trial basically alleging (a) variances in the testimonies of prosecution's witnesses and the oral testimony of prosecution's principal witness and documentary evidence adduced at trial, (b) the prosecution of Defendants being based on grudge, malice and witch hunting and (c) the unanimous guilty verdict not being supported by the weight of the evidence adduced at trial, without stating by reference and or particularity to the records alleged variances.

11. That Petitioner/Plaintiff filed a 38 counts resistance to the motion for new trial contending, rejecting, refuting, and denying the averments set in the motion for new trial specifically contending that said motion was lacking in facts and law and requested 1st Respondent to deny and dismiss the entire motion. Attached hereto are copies of the motion and resistance thereto marked in bulk as EXHIBIT "P/2" to form part of this petition.

12. That following arguments pro and con on March 29, 2013 on the Motion, 1st Respondent His Honor Yussif D. Kaba, on April 16, 2013, 18 days after the court heard arguments, ruled setting aside the unanimous guilty verdict of the trial jury and ordered a new trial contrary to our laws, practice and procedure in this jurisdiction. A copy of the ruling/judgment was served on Petitioner/Plaintiff on April 22, 2013. Attached hereto is a copy of the ruling/judgment marked as EXHIBIT "P/3" to form part of this Petition.

13. That following 1st Respondent's ruling/judgment granting the motion for new trial and setting aside the unanimous guilty verdict of the trial jury after the court had taken evidence both oral and documentary on the merits from Petitioner/Plaintiff and 2nd d Respondents/Defendants and had same admitted into evidence to form part of the records, your humble Petitioner filed a 18 counts Respondent's basis for granting the Motion for New Trial was lacking in law and fact. 2nd Respondent filed a 3 count Resistance to the Motion for Relief

from Judgment. Attached hereto and marked EXHIBIT #P/4" in bulk are copies of the motion and the resistance thereto to form part of this Petition.

14. Petitioner further submits and says that though the Motion for Relief from Judgment was supported by law and facts of the case, 1st Respondent without any justification in law and facts handed down a ruling/judgment denying Petitioner's motion. Attached hereto and marked as EXHIBIT "P/5" is a copy of the court judgment to form part of this Petition.

15. That Petitioner exercising its constitutional right excepted to the judgment and announced an appeal to the Honorable Supreme Court sitting in its October Term A.D. 2013 but again 1st Respondent, in total violation of Petitioner's constitutional rights, denied the appeal on ground that the ruling/judgment was interlocutory and therefore not appealable. This Court is respectfully requested to take judicial notice of the minutes of court of the special session of May 7, 2013, May Term A.D. 2013 attached in bulk to EXHIBIT #P/5."

16. Petitioner contends and says that 1st Respondent's denial of Petitioner's right to appeal and Section 24.3 of Chapter 24 limiting the right of appeal of the State in Criminal matters constitutionally contravene and are in total violation of Article 2, Article 11 (d), Article 20 (b) Article 66 and all other provisions of the Constitution of this Republic which is the organic law within this jurisdiction and should therefore be declared unconstitutional and 1st Respondent be mandated to grant Petitioner's appeal which is a right guaranteed under our Constitution.

17. Further to count 16 above, this Honourable Supreme Court held in the case; His Honor Yussif D. Kaba, Assigned Circuit Judge, 6th Judicial Circuit and the Government of the Republic of Liberia, represented by the Honourable Minister of Lands, Mines & Energy, Appellants versus Bentley International Trading Corporation (Ross Mines Ltd), by and through its President and CEO, Kenneh A. Ross, Jr., Appellee, that "a ruling on a motion for relief from judgment, which denies or dismisses the motion, is a final judgment from which appeal lies to the Supreme Court".

18. Petitioner submits and says also that Article 26 of the Constitution gives the right to Petitioner to invoke the privilege and benefit of this Honourable Supreme Court direction, order or writ, including a judgment declaring unconstitutional the denial of Petitioner's right to appeal in the instant case.

19. Petitioner further contends and says that Mandamus will lie to compel 1st Respondent to grant Petitioner's appeal so as to be heard by the Honorable Supreme Court which right is inviolable under our Constitution.

WHEREFORE AND IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES, Petitioner prays Your Honor and this Honourable Court for the issuance of the writ to compel 1st Respondent to grant Petitioner's appeal as a matter of right guaranteed by our Constitution and grant unto Petitioner/Plaintiff any and all further relief as required by law in this jurisdiction"

The Justice presiding in Chambers, upon review of the Petition, cited the parties to a conference. Having listened to the contentions, pro et con, put forth by the parties at the conference, formed the opinion that certain questions bordering on a state party's exercise of the constitutional right of appeal have been raised. We

note that it is the law in this jurisdiction that no single Justice of the Supreme Court can deal with such grave question. This long held principle of law was reiterated by Mr. Justice Henries in *Ayad v. Dennis*, 23 LLR 165, 166 (1974), one of the celebrated cases on due process of law. In that case, Mr. Justice Henries held that when an application "might raise a constitutional issue", the Chambers Justice before whom said application is venued will refer said application to the Full Bench for the Court's consideration of the relief prayed for and final disposition thereof. See also: *Keyor v. Borbor and Carr*, 17 LLR 465, 471 (1966); *Goodman Shipping and Stevedoring Corporation v. National Port Authority*, 37 LLR 545, 548 (1994); *Garlawolo et al. v. Elections Commission et al.*, 41LLR 377, 383 (2003); *Inter Burgo Industrial Company v. The Ministry of Agriculture et al.*, Supreme Court Opinion October Term 2008.

Accordingly, the Chambers Justice ordered the Clerk of the Supreme Court, to issue the Alternative or Provisional Writ of Mandamus with the further instruction that the proceedings be forwarded to the Supreme Court en bane for its consideration of the relief sought.

The Respondents, in compliance with directives contained in the Alternative Writ, filed their Returns to the petition. In further strict compliance with section 1:5.64, (Civil Procedure Law, Rev. Code), requiring that the Attorney General of the Republic of Liberia be notified where the constitutionality of a statute has been brought into question, the Writ was served on the Attorney-General/Minister of Justice directing that Justice Ministry file appropriate papers "in support" of the constitutionality of Criminal Procedure Law, Rev. Code 2:24.3, the constitutionality of which has been brought into question in the instant case.

In compliance with the instructions set forth in the Provisional Writ, issued by the Clerk on May 23, 2013, the Second Respondents/Criminal Defendants filed their Returns on June 4, 2013. The thirteen Count Returns is recounted as follows:

"1. Because as to the entire Petition, Respondents say that our law defined under Chapter 24, Section 24.3 of the Criminal Procedure Law of this country clearly defined cases in which the Republic has or may exercise the right to appeal. Specifically Section 24.3 of the Criminal Procedure Law provide as follow: Right of appeal by the Republic: An appeal may be taken as a right by the Republic from: (a) An order granting a motion by the defendant to dismiss the indictment or (b) An order granting a motion for judgment of acquittal.

2. That as to counts one (1), two (2), three (3), four (4), five (5) and six (6) of the Petitioner's Petition, Respondents aver and say that the Petitioner did quote the correct constitutional provisions as are contained in these counts. Notwithstanding these provisions of the Constitution the framers of our law determined that the Republic or State may appeal in a limited way squarely laid down in Section 24.3. Respondents say that the rationale of this provision of our criminal procedure law must be considered in our argument The State, in prosecuting any matter, has advantages of all the facilities, resources, etc. to establish a case against any accuse. Where the State fails to make such a case during the trial and an accused is declared not guilty the framers of our law thought that with all of the State available resources, a non-guilty verdict in favor of an

accused is sufficient to extinguish the further prosecution of the accused.

3. That further to count two (2) above, the Respondents say that this Court, that is, the Supreme Court of the Republic of Liberia, has given credence to this provision of our law from time immemorial Respondents believe 26 that the regulation of this provision by the Supreme Court over one hundred years now makes the provision of the statute binding upon all parties in criminal proceedings. To give this provision a different interpretation as is being attempted by the Petitioners in these proceedings will be an attempt to give different meaning and effect to a law which has been recognized and accepted by this Court for over a century. More besides, Article 21 of the constitution of 1986 at paragraph "H" it is clearly provided that no person shall be subject to double jeopardy. The granting of an appeal to the State means that the case must be tried de novo, which presupposes that the defendant must plead to the indictment for the second time in the event the case is remanded by the Supreme Court

4. That as to count seven (7) of Petitioners Petition, Respondents say that said count presents no traversible issue. Hence counts one thru seven of the Petitioners Petition should be ignored or disregarded.

5. That as to counts eight (8) and nine (9) of the Petitioner's Petition, Respondents say that while it is true that the jury brought a unanimous guilty verdict against the Respondents in these proceedings, the entire records in the proceedings clearly shows that the evidence adduced during the trial were manifestly contrary to the guilty verdict that was brought by the jury. In this jurisdiction, a defendant in a criminal action is presumed to be innocent until the contrary is proved, and in the case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal For reliance see Criminal Procedure Law Chapter 2, section 2.1. Respondents say that during the trial, the first and second Defendants testified that: A. a purchasing committee was set up by the Liberia National Police for the selection of a vendor and the selection was approved by PPCC, which was pre-financed and supplied by the vendor the second defendant herein, B. That the Liberia National Police signed a delivery note showing that the uniforms were delivered and received, C That the Auditors of the Ministry of Finance testified that during their physical audit at the Liberia National Police premises they saw and checked the uniforms and accessories which appeared on the payment voucher before the money was paid to the vendor. D. That the Police Officer who opened the warehouse for the auditors to check the uniforms also testified and told the court and jury that the Chief of Logistics gave him the keys to open the ware house for the auditors to enter and check the uniforms and accessories, and E. that contrary to the above when the Chief of Logistics took the stand, she testified admitting to the signing of the delivery note but denied receiving the uniforms, that she signed the delivery note upon the instruction of her boss, which in the minds of the Respondents created a serious doubt which should operate in favor of the accused as a matter of law.

6. That further to count five above, Respondents say that the indictment which brought them under the jurisdiction of the court charged each of the defendants separately, and the Judge's charge to the jury gave the

jury specific instruction on how they should deliberate and bring down their verdict, but on the contrary, the jury returned from their room of deliberation with a blanket verdict contrary to the Judge's instruction which is sufficient grounds for the court to set the verdict aside and award a new trial. More besides, the power for the trial Judge to grant or not to grant a new trial is a statutory power vested upon the Judge which cannot be disturbed by the appellate court. Hence counts eight and nine of the Petitioner's Petition should be overruled and dismissed.

7. That as to count ten (10) of the Petitioner's Petition. Respondents say that while they confirm and affirm that there was sufficient contradiction and inconsistencies in the evidence adduced by the prosecution there were more corroboration of the testimonies of the Respondents witnesses. There is no requirement under our law that the Respondent needed to state the inconsistencies and the consistencies during the trial by means other than the records which clearly supports that argument of the respondents. Count ten of the Petitioner's Petition should therefore be disregarded and dismissed.

8. That as to count eleven (11) of the Petitioner's petition, Respondents say that this count presents no traversible issue and therefore need not to be traversed. Hence the said count should be disregarded.

9. That as to count twelve (12) of the Petitioner's Petition, Respondents say that the authority of a trial court to award a new trial has bases in our law. Chapter 26, Section 26.4 of our Civil Procedure Law states that "After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separate

issue where the verdict is contrary to the weight of the evidence or in the interest of justice. A Motion under this section shall be made within four days after verdict. No extension of time shall be granted for making a motion under this section". The argument therefore by the Petitioner that the judge acted contrary to law because he set the verdict aside and awarded a new trial is inconsistent with the law cited herein. Hence count twelve (12) of the Petitioner's Petition should be overruled and dismissed.

10. That as to counts thirteen (13) and fourteen (14) of the Petitioner's Petition, Respondents say that these counts are false and misleading in that to grant a Motion for Relief from Judgment in this jurisdiction, the grounds provided for in Chapter 41 Section 41.7 must be met. In the on the basis that the jury guilty verdict was not supported by the evidence adduced during the trial. The law in this jurisdiction in criminal prosecution is that when doubt exists in criminal prosecutions as to the guilt or innocence of the Defendant, such a doubt operates in favor of the Defendant. The factual issues which have to be taken into consideration by the jury is whether the vendor, who was paid by the Government of Liberia to produce uniforms for the Liberia National Police, delivered the uniforms to the Liberia National Police. Evidence was adduced during the trial that the vendor delivered the uniforms and same was received by one Martha Sonpon. Martha Sonpon contradicted this documentary evidence by her oral testimony to the effect that although she signed the delivery order she did not received the actual goods. The auditors from the Ministry of Finance, on the other hand, told the court and the jury that indeed they did a physical audit in the warehouse of the Liberia National

Police thereby confirming that the uniforms were delivered. These testimonies present doubt, which in keeping with law, operates in favor of the accused. The Co-Respondent Judge's denial of the Motion for Relief from Judgment is supported by the law and that Petitioners counsel's argument is therefore inconsistent with our law, therefore counts thirteen and fourteen of Petitioners Petition should be disregarded and dismissed.

11. That as to counts sixteen (16), seventeen (17) and eighteen (18) of the Petitioners Petition, Respondents say that the denial by the Co- Respondent Judge of the appeal announced in these proceedings is supported by Chapter 24, section 24. 3 of 1LCL Revised. This law has been upheld by our courts hoary with age in this jurisdiction. More besides, Article 21 of the Liberia Constitution at Paragraph H, forbids subjecting a citizen or any person to double jeopardy. These provisions of our statute and our Constitution are also in agreement with the 5TH Amendment of the United State Constitution of which most of our laws were also patterned. Unless and until these laws are changed or until the Supreme Court can speak to it, same remain the law on our books and every court or judge within this jurisdiction is under a duty to uphold same and to do anything to the contrary will be inconsistent with our law. The Supreme Court ruling in the case "Government of the Republic of Liberia versus Bentley International Corporation" relied upon by the Petitioner relative to the granting of the relief of judgment is not applicable in these proceedings in that the RL versus the Bentley case was a civil matter whereas the subject case is criminal. Hence, counts sixteen, seventeen, and eighteen of the Petitioners Petition should be disregarded and dismissed.

12. That as to count nineteen (19) of the Petitioner's Petition, Respondents say that while they agree that Mandamus will compel a judicial officer to carry out an official function such as the granting of an appeal, it will be certainly illegal to apply for a Writ of Mandamus to compel a judge to do something illegal. In the face of Article 21 at paragraph 8 and Chapter 24 of 1 LCL Revised at Section 24.3 it will be illegal and inconsistent with the Constitution and the statutory laws to use Mandamus to compel a sitting judge to do an act prohibited by our law. Therefore, count nineteen (19) of Petitioner's Petition should be dismissed and denied.

13. Respondents deny all and singular the allegations of both law and facts as are contained in Petitioners Petition that were not specifically traversed in this Returns.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondents most respectfully pray Your Honour to deny and dismiss Petitioners Petition in its entirety and grant unto the Respondents any other relief Your Honors may deem just, legal and Equitable in the premises."

We have already held that the Motion for Relief from Judgment is a special proceeding; that a ruling entered in disposition of the said motion, whether granting or denying same, is a proper subject for appellate review. Where a judicial officer has refused to grant an appeal from a Motion for Relief from Judgment, as in the instant case, a petition for a writ of mandamus will issue directed at the officer commanding him therein to grant the appeal.

In the case, Brewer v. Mathies et al., 41LLR 229 (2002), Mr. Justice Wright spoke for the Supreme Court Bench without dissent and opined that [T]he duty of a judge is either mandatory or discretionary depending

on the circumstances upon which the duty is imposed upon the judge, or it is depended upon the dictates of the statute which imposes the duty." Mr. Justice Wright also defined judicial discretion as a "liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of law, and [that the] exercise of such discretion is reviewable only for an abuse thereof." Id. 235.

Clearly, the granting of an appeal under the special facts and circumstances of this case is certainly fair and equitable as there was a glaring abuse of discretion by the trial judge. Under these circumstances, a writ of mandamus would properly issue to command the trial judge to grant the appeal. The petition for the writ of mandamus is therefore ordered issued forthwith.

The last question to be addressed is whether the limitation on the right of a state party to appeal in criminal cases imposed by Section 24.3 of the Criminal Procedure Law violative of the Liberian Constitution which grants as inviolable the right of an appeal from any judgment, decree, or ruling entered by any court or administrative agency, save the Honourable Supreme Court of the Republic of Liberia?

Clearly, this query borders on the constitutionality of Section 24.3 of the Civil Procedure Codes. It is well to emphasize here however our fidelity as a court of last resort to a standing rule in constitutional law. This rule restrains a court from delving into constitutional questions unless absolutely necessary. In the case before us, it is particularly noteworthy that the disposition of the constitutional question raised by Petitioner LACC does not seem to fundamentally rest on addressing the constitutionality of the statute referenced. Hence, we as a Court will adhere to the principle of avoidance of the constitutional question as enunciated in the case: *Ashwander v. Tennessee Valley Authority*, 207 U.S. 288, 346, 347; 56 S.Ct. 466, 482.

As a Court, we have maintained an abiding loyalty to this rule. This was again demonstrated by this Court's holding in: *IN RE· Morris M. Dukuly v. The National Elections Commission*. Supreme Court Opinion, Special Session, September 21, 2005.

In that case, a constitutional issue was raised #whether the right to vote is synonymous with and analogous to the right to be voted for, or to contest for elective office."

Mr. Justice Korkpor, speaking for this Court, without dissent, held thus:

"Even [if] were we to decide that the regulation made by the Appellee is contrary to law, it would not change the outcome of this case. Therefore, having decided that the act of the Appellee appears to have been accepted by the political party who endorsed and submitted Appellant's name to the National Elections Commission, we do not see the necessity of delving into this issue which borders on constitutional question. This Court has held that it will not pass upon a constitutional question although properly presented, if there is also present, some other grounds upon which the case may be disposed of. In other words, #if a case can be decided on either of the two grounds, one involving a constitutional question, the other question of statutory or general rule, the court will decide on the latter."

The holding in the Dukuly case finds support in a litany of cases decided by this Court. Liberia Bank for

Development & Investment v. Lancelot Holder, 29 LLR 310, 314 (1981) and Hananiah Zoe, et al. v. National Elections Commission, Supreme Court Opinion, Special Session, September 21, 2005. We therefore do not believe that the issue is ripe for disposition at this time.

Having carefully reviewed the facts narrated in this case, analyzed the various issues raised and considered the laws applicable, and in order not to further frustrate the ends of justice especially in the light of the colossal abuse of judicial discretion committed by the trial, and this Court being authorized to render the judgment which the trial court should have rendered to serve ends of justice, it is our opinion that the Peremptory Writ of Mandamus be, and same is hereby ordered issued commanding the judge presiding in the First Judicial Circuit, Criminal Assizes "C" for Montserrat County, to: (1) grant Respondent LACC's appeal predicated upon, and arising from the Motion for Relief from Judgment, as detailed in this Opinion; (2) that this Court having determined that the ruling granting the Motion for New Trial, was reversible, said verdict, as recorded on March 7, 2013, is ordered reinstated, for all intents and purposes; and (3) The trial judge is hence ordered to grant the appeal, nunc pro tunc, and accordingly allow any and all aggrieved parties to file the bill of exceptions, in accordance with the statute controlling appeals, with the further order that the full, complete and final transcript of the trial proceedings be forwarded to this Court of final arbiter for full and complete review of the case on its merits.

The Clerk of this Court is hereby ordered to send a mandate to the judge presiding in the court below to give immediate effect to this judgment. And it is hereby so ordered. Petition Granted.

Counsellor Othello S. Payman, I, appeared for the petitioner. Counsellors Koboi L. Johnson, Cooper W. Kruah, Sr., Mathais Omeja, Jr., Alexander Zoe, Nyenati Tuan and Idris S. Sheriff, appeared for the respondents.

