Republic of Liberia, Movant Versus **Darius Nbolonda** of the City of Monrovia, Respondent

MOTION TO DISMISS APPEAL

LRSC 36

HEARD: March 20, 2014 Decided: August 14, 2014

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT.

The appellant was convicted on September 14, 2009, for criminal attempt to commit murder to which he excepted and announced an appeal to the Honorable Supreme Court and filed his approved bill of exceptions on September 23, 2009, within the time allowed by statute. When the case was called for hearing before this Court on March 20, 2014, it was observed that on March 14, 2014, the prosecution had filed a motion to dismiss the appellant's appeal on grounds that the appellant had failed to file notice of completion of appeal. The Court also observed that the prosecution's motion to dismiss the appeal was filed four years after obtaining a clerk's certificate from the Criminal Court "B" on March 17, 2010.

In the interest of substantive justice, particularly where the instant appeal emanates from a lower court's judgment in a criminal matter, specifically the crime of criminal attempt to commit murder, this Court elected to consolidate both the motion to dismiss the appeal and the actual appeal. Accordingly, we will first delve into the facts surrounding the appeal and thereafter, the motion to dismiss the appeal.

On June 5, 2009, upon presentment by the grand jury for Montserrado County, Darius Nbolonda, the appellant herein was indicted and following a regular trial was convicted for the crime of criminal attempt to commit murder against Leemue Bolongei, the private prosecutrix. The indictment alleged that the appellant hit the private prosecutrix in her face with an unknown object which resulted in serious injury to her right eye.

When the trial commenced, the prosecution produced two regular witnesses in persons of the private prosecutrix and Krubo Pewee and one expert witness, Dr. Edward Gizzie of the John F. Kennedy Medical Center. In narrating her account of the events allegedly leading to the injury to her eye, the private prosecutrix testified that as a result of the appellant's sister insulting her (private prosecutrix) mother, a quarrel ensued between them, following which, the appellant's sister left but returned with the appellant in tow, who also entered the quarrel with the latter kicking her to the ground and piercing her eye causing her to bleed from the eye. The witness further testified that the appellant thereafter pursued her and her mother with an iron chair, raining threats upon them, but that they fled into their bedroom and bolted the doors, with the appellant still threatening them. The witness also narrated that she felt severe pain at the back of

her head and was taken to the John F. Kennedy Medical Center. She said out of fear of the appellant, she and her mother used the backdoor of their home to get to the Hospital, and upon examination she was informed by the doctors that her right eye was damaged and needed to be extracted. The witness said she visited both the Cooper Clinic and the Pakistanis doctors in Monrovia and Bomi Hills, respectively to obtain a second opinion but the medical results were the same. According to the witness, her left eye is also infected and she is currently living on drugs for the condition of her eyes and cannot go out after 8:OOp.m.

The prosecution's second witness, Krubo Pewee, the private prosecutrix mother who is also the aunt of the appellant testified to the same accounts as did the private prosecutrix. The witness alluded to the appellant's assault on the private prosecutrix which resulted to the injury of the private prosecutrix eye and the fact that the appellant and his sister pursued them with stick and an iron chair. We quote a relevant portion of the witness' testimony as follows:

Darius picked up the iron chair and attacked us. I told my daughter let's go. At this time blood was oozing from Leemue's (private prosecutrix) eye. All my body was trembling and I locked the door. Leemue ran in the other room and the old lady at the house locked the front door because of the defendant's mood; his sister also had a plank in her hand." See 13th day Jury Sitting, Tuesday August 25, 2009 sheet 34.

The witness further testified that out of fear, she and her daughter, the private prosecutrix used the back door of their house to sneak out in order to seek medical attention at the J.F.K Medical Center where the private prosecutrix was treated. According to the witness, the private prosecurix underwent treatment until the next day and was informed that the vessel in the eye was ruptured by a sharp object. The witness then concluded her testimony under direct examination by identifying the iron chair used by the appellant when he pursued them.

During cross examination the witness confirmed being present when the incident occurred, but was unable to identify the object that was used by the defendant when he injured the eye of her daughter, the private prosecutrix.

The prosecution expert witness, Dr. Edward Gizzie of the John F. Kennedy Medical Center took the stand and testified that he had been in the employ of the Ministry of Health and Social Welfare since 2004 as Director of the National Eye Program and by the J.F.K Medical Center as the Aid for the eye department since 2001.The witness said that he was trained in Israel at the Hebrew University as an eye specialist and he has 22 years of experience. When questioned as to the matter of the private prosecutrix eye, the witness responded that the private prosecutrix complained of severe pain from the eye and head, and also of bleeding from the injured eye. He further explained that the private prosecutrix's eye was seriously bleeding and in cases like this it was necessary to first stop the bleeding, control the pain and prevent infection". See 15thday Jury Sitting, Thursday August 27, 2009 sheet 45.To do this the witness said pain killers were administered and amoxicillin

given for infection. The witness also testified: under microscopic examination the white part of the eye was lacerated and thru this laceration the retinol was totally detached. He further explained thus: once the retinol is detached there is no longer hope for the eye to see; we then realized why the vision of the injured eye could not see light on March 1, 2009.

During cross examination, the witness described the kind of object that resulted to the private prosecutrix's eye being injured. He explained that the diameter of the impacting object was bigger than the eye and the area of the eye involved was the eye lid and surrounding tissues of the eye. He said that medical diagnosis revealed that the object used to injure the private prosecutrix's eye was blunt and penetrating. We quote the medical report verbatim as follow:

Department of Clinical Ophthalmology

March 19, 2009

MEDICAL REPORT

To Whom It May Concern

Hospital Number: 25-30-22

RE: Ms. Bolongei Leemue

This is to certify that the above named is a citizen of Liberia 25 year-old female is a patient at JFK Eye Department with the chief complains of severe ocular pain, poor vision, and headaches. According to patient and relatives, this condition occurred through fighting with somebody on March 1, 2009. She was referred to JFK Eye Unit for investigation and management.

Ms. Bolongei Leemue has be assessed by the Ophthalmologist under the ophthalmic operating microscope on March 4, 2009 as having Blunt and Penetrating injury.

Ocular Examination March 1, 2009

1. Visual Acuity: RE: limited to No Light Perception (NLP) LE:20/40 lOP: RE:

10mmHg LE: 18 mmHg

2. Anterior Segments:

RE: total hyphema and laceration of the sclera from 2-4 0'clock position, large sub- conjunctival hemorrhage

LE: normal

a. Posterior Segments: Normal

RE: hemorrhage with total retinal detached

3. Diagnosis: BLUNT TRAUMA with Penetrating Injury to the Right Eye

March 19, 2009 Ms. Bolongei Leemue was seen and reexamined and the prognosis of the traumatized eye is very poor. On personal request from the relatives this Medical Report is written for Legal matter.

Kind regards.

Dr. Edward B. Guizie

Consultant Ophthalmologist/Surgeon

Head: JFK Eye Department

The records show that after the prosecution rested with the production of evidence, the defense introduced five witnesses in persons of the defendant himself, James Nbolonda, Christiana Johnson, Korpo Nbolonda Gedenma and Sam Mumulu. In support of his defense the defendant took the witness stand and testified that he received a telephone call from his father who requested that he proceed to his aunt's premises and to control the tension or quarrel between his sister and the private prosecutrix. According to the witness in an attempt to intervene between the private prosecutrix and his sister, the private prosecutrix was injured. We quote the pertinent portion of the witness's testimony, to wit:

Leemue came behind my sister with force and pushed her against an unfinished building, I went and parted them. Leemue back was facing me; I held her by the hand, and in an attempt to pull her away, Leemue and I came down with force on the ground. That is how my elbow hit Leemue's eye. See 15th day Jury Sitting, Thursday August 27, 2009 sheet 52

During cross examination the defendant admitted that while intervening between the belligerent parties he did injure the private prosecutrix eye with his elbow. He denied chasing the private prosecutrix and her mother with an iron chair and further testified that the private prosecutrix's mother injured his mouth with a flashlight. The prosecution gave notice to the court to rebut this portion of the witness' testimony concerning the iron chair.

The defense second witness in person of James Nbolonda, the father of the appellant, only testified to the fact that he had sent his son, to intervene in the matter between his sister and the private prosecutrix, but that he had no knowledge of the private prosecutrix injury. The witness further narrated that he lived out of town and was called therefrom to testify for the defendant.

The defense third witness in person of Christiana Johnson, a neighbor to the parties, alluded to the fact that there was a quarrel between the appellant's sister and the private prosecutrix and that the appellant intervened between the quarrelling parties, but that she was not present to see the appellant being injured.

The defense fifth witness in person of Korpor Nbolonda-Gedenma, the sister to the appellant stated that she and her aunty who is the private prosecutrix mother had an argument. The witness said when the private prosecutrix was informed about the argument the private prosecutrix quarreled with her and physically assaulted her. The witness further narrated that while her brother, the appellant was intervening in the physical scuffle between her and the private prosecutrix, the appellant fell with the private prosecutrix and injured the private prosecutrix.

When the defense rested with the production of evidence, the prosecution introduced its rebuttal witness in person of Winifred Yuan whose testimony was to rebut that portion of the appellant's testimony relating to his alleged attempted assault on the private prosecutrix and her mother with an iron chair. The rebuttal witness said, when I came from inside, I saw Aunty Krubo and her daughter running inside and I saw Darius with a chair in his hands rushing on them. See 21st day Jury Sitting, Thursday September 3, 2009 sheet 96. During cross examination the witness said she is a neighbor to the private prosecutrix mother but she did not see the fight between the parties. The witness described the chair allegedly used by the appellant as an old iron chair. The witness concluded her testimony by confirming that she saw the private prosecutrix and her mother flee into their bedroom as the appellant pursued them with the iron chair.

The jury returned a verdict of guilty against the defendant, to which the defendant excepted to and subsequently filed a motion for new trial which was resisted by the prosecution. On September 14, 2009, the trial judge denied the motion for new trial and entered judgment against the appellant by confirming the guilty verdict. The trial judge ruled that 11the jury verdict being consistent with the weight of the evidence adduced at the trial ...should not be disturbed on the charged of criminal attempt to commit murder." See 30'bday Jury Sitting, Monday September 14,2009 sheet 308. The judge concluded his ruling by stating that "the defendant is adjudged guilty of criminal attempt to commit murder and is hereby sentenced to 3 (three years) imprisonment at the Monrovia Central Prison or any correctional institution destined by government for this type of offense.

The defendant excepted to this judgment, announced an appeal to this Court and filed his bill of exceptions on September 23, 2009 containing 23 counts. We have deemed it necessary to quote verbatim the said bill of exceptions to show how deviant it is from established rules and precedents regarding the contents and construction of bill of exceptions within our jurisdiction, and to deter other lawyers from pursuing the same course of pleadings before this court and other subordinate courts. This is how the bill of exceptions reads:

1. That Your Honor grossly erred and in violation of Defendant's right denied him of a non-jury trial when said request was made as seen on sheet three (3) of the August 29, 2009 sitting; which was excepted to by Defendant and same was noted.

2. That Your Honor erred on the 31st of August, 2009 as seen on sheet six (6) when you overruled Defendant's objection to a question: Madam Witness, I have in my hand a photograph that was taken in the hospital. Were you to see it, will you be able to recognize same? This question was objected to as no part of the witness' statement referred to any photo. Defendant objected to this question, same was overruled and exception taken.

3. Your Honor also erred when, as seen on sheet seven (7) of August 21, 2009, you overruled Defendant's Resistance to an application of Prosecution in which Prosecution requested a photograph which in the mind of the Defense, same was never mentioned by the witness and that same was not the picture of Private Prosecutrix and was intended to inflame the minds of the jurors which served as a recipe for the verdict that was brought against the Defendant. Defendant excepted to this erroneous Ruling and same was noted.

4. Your Honor erred further on the 25th day of August, 2009 as found on sheet two (2) when you denied Defendant's question to wit: By that answer, Madam Witness, since your mother is truthful as per this case and said that Darius, you did not go to part, would I be correct to suggest that indeed there was a fight between you and Darius' sister? Objection to this question was sustained to which Defendant excepted and same was noted.

5. It was also error on your part to have sustained Persecution's Objection to Defendant's question: Madam Witness, in your statement before this court, you told the court that immediately after the incidence, you ran away into the house, am I correct? Defendant excepted this ruling and same was noted as seen on sheet two (2) of August 25, 2009.

6. Your Honor erred when you sustained Prosecution's objection to Defendant's question on the cross as seen on sheet three (3) of August 25, 2009. The question on the cross was: Madam Witness, in your testimony, you said "while she and I were fussing, our hands were to each other pointing": By that statement, Madam Witness, did there occur any hit from the sister of Darius on you? This question was denied and Defendant excepted and same was noted.

7. Your Honor erred when you denied Defendant's question as follows: In other words, there is no one cause for eye injury. Am I correct? This question on the cross was objected to and same was sustained as seen on sheet five (5) of August 27, 2009. Defendant excepted and same was noted.

8. Your Honor erred when you denied Defendant's question on the cross to the Medical Doctor in the following manner: Mr. Witness, you said the eye is declared legally blind, do you also legally declare medical issues? The answer was yes. And the follow-up question on the cross was how? This question was objected on grounds of argumentative, evading the province of the jury and not within the res gestae. Defendant excepted and same was noted as seen on sheet six (6) of August 27, 2009.

9. You also erred when you denied Defendant's resistance to an application of Prosecution to have a photo purportedly considered by prosecution as a photo of the Private Prosecutrix which photo was never testified to and same was not a photo of Private Prosecutrix. This photo was inflammatory and same was admitted into evidence. This can be seen on sheet seven (7) of August 27, 2009.

10.Your Honor erred when you denied Defendant's application for continuance after Prosecution abruptly rested with evidence to allow Defendant time as seen on sheet eight (8) of August 27, 2009. This application was denied and excepted taken and noted.

11.Your Honor erred also when you denied Defendant's question as follows: Madam Witness, did you see Darius jucking into the eye of Private Prosecutrix either by finger or any instrument? This question was objected to same sustained, exception taken and granted. See sheet fourteen (14) of August 31, 2009.

12. Your Honor further erred when, on September 1, 2009 as found on sheet five (5), you asked one of the Defense Witnesses as follows: Madam Witness, if you say yes, would you regret this matter being before this court? This question which is incriminating was objected to by the Defense, same was overruled by your Honor and exception taken and noted.

13. Your Honor further erred that on September 1, 2009 as extant on sheet five (5), Your Honor asked the Defense Witness as follows: Madam Witness, finally, during the many testimonies before this court by witnesses both as direct and cross, is it a fact that when matters come before this family it is difficult to be resolved, as this is an exception? This question was objected to and same was noted.

14. Your Honor erred on September 1, 2009 as found on sheet ten (10), you denied Defendant' application to have a document that was testified to and identified by Defendant's witness. This denial was excepted to and was noted.

15. It was error on your Honor's part to have sustained an objection to Defendant's question on the cross; that is while cross examining Prosecution's rebuttal witness as follows: Madam Witness, from the scene of the fight to where you were, are not far from each other, am I correct? This question was denied by Your Honor, exception taken and noted as seen on sheet three (3) of September 1, 2009.

16.Your Honor erred when you again denied Defendant's question while on the cross: Madam Witness, you said to this court and the jury that you were not there at the beginning of the fight; where were you when the fight started? This question was denied as seen on sheet three (3) of September 1, 2009, exception taken and noted.

17. Your Honor erred when you sustained Defendant's question to the witness which question was as follows: Madam Witness, for the benefit of this court since you told this court and the jury

that you saw people coming around, were these people or any of them identified by you? Your Honor sustained Prosecution's objection to this question, to which Defense excepted and same was granted as seen of sheet four (4) of September 1, 2009.

18. Your Honor erred when on September 1, 2009 as seen on sheet four, you sustained Prosecution's objection on the cross: Madam Witness, you told this court that there was light which means that you saw portion of the fight since you were out. Am I correct? Defense excepted and the exception was noted.

19. It was also a gross error on Your Honor' part when you denied Defendant's question while on the cross as follows: Madam Witness, you and Christiana Johnson left the scene together. Am I correct? As seen on sheet five (5) of September 5, 2009 sitting. Defense excepted and same was noted.

20. Your Honor further erred when you charge the Jury which charge was never balanced as required by law. As seen on sheet one (1) of September 8, 2009 through sheet nine (9), you understated the laws that would have charted the minds of the Jurors, but you only summarized in few sentences the legal memorandum of the Defense, but proceeded and emphasized the reliances of Prosecution, thereby doing and meting pure injustice to the Defendant. Exception was taken and it was noted.

21. Again Your Honor erred when you denied Defendant's Motion for retrial as seen on sheet one (1) of September 12, 2009 through sheet three (3) and sustained Prosecution's Resistance, thereby denying Defendant of true justice. Exception was taken and same was noted.

22. Your Honor erred on September 11, 2009 as seen on sheet four (4) when you sentenced the Defendant to three (3) year imprisonment and further set aside Defendant's bond even though same duly signed by His Your Honor Kolai while presiding in Criminal Court A in which the bond was filed. Defense excepted to same and announced an appeal to the Honorable Supreme Court.

23. Finally, Your Honor was very bias and mono focused during the entire proceedings against the Defendant, which conduct on Your Honor's part was highlighted by your many rulings against the Defendant as can be seen in the entire file.

This Court has determined that besides counts 1, 3 and 21, the rest of the counts of the bill of exceptions and the issues raised therein are of no substantive significance to the case and its outcome. These counts are legally unintelligible and constitute a logorrhea or incoherent wordiness of the trial proceedings. Readers hereafter can judge for themselves to see the portrayal of the professional lapses of some of the lawyers practicing before our courts.

Lawyers should refrain from unnecessary prolixity and be cognizant of and apply the rules governing proceedings in our courts. The applicable rule of court relating to bill of exceptions

provides that "the appellant shall state in his bill of exceptions the points of law to be especially relied upon in support of his appeal; and the bill of exceptions shall contain only such statements of facts and only such papers as may be necessary to explain the rulings on the issues or question involved, and the appellant shall state distinctly the several matters of law in the charge of the court to which he excepted. Revised Rules of The Supreme Court V Part 1. (our emphasis). The danger of non-compliance to this basic rule is aptly espoused in an Opinion by this Court when it held "where the bill of exceptions is unintelligible, confused, or conflicting, it will be interpreted against the appellant and in support of the judgment. Wiah v. Republic 38 LLR 385, 389 (1997).

Also as to those counts in the bill of exception which we have deemed unnecessary this Court says that it is trite law that the Supreme Court need not pass on all of the issues raised in the bill of exceptions or in the briefs filed by the parties, but only the important and germane ones.

In count one (1) of the bill of exceptions the appellant has alleged that the trial judge violated his right by denying his request for a bench trial. In count three (3) of the bill of exceptions, he contended that the trial judge erred when he allowed a photograph that was not testified to by prosecution witness to be admitted into evidence, alleging that the image was not that of the private prosecutor; and, in count twenty one (21) of the bill of exceptions the appellant averred that the trial judge erred by denying his motion for a new trial.

The Court will now commence addressing these issues. As to count one (1) of the bill of exceptions, the certified records show that on August 21, 2009, the prosecution requested for the empanelling of a jury to hear the case, which submission was resisted by the appellant thus waiving his right to a jury trial. On that same date, the trial court denied the appellant's resistance by ruling in this manner: the state is prosecuting an offense which is criminal in nature and that criminal attempt to commit murder is a second degree felony. The application for the state is granted.

The Criminal Procedure Law Rev. Code 2:20.1 provides that the defendant is entitled to trial by jury in a criminal action in which he is charged with any crime other than petty larceny or petty offense. It is also provided that in all cases except where a sentence of death may be imposed, trial by jury may be waived by a defendant who has the advice of counsel or who is himself an attorney. Such waiver shall be made in open court and entered on record. ld.2. Pursuant to these provisions of the criminal statute, this Court will now determine whether the offense charged, that is, criminal attempt to commit murder carries the death penalty sentence which by law prohibits the appellant from waiving his right to a jury trial. The Penal Law Rev. Code 26.10.1(4) provides that criminal attempt is an offense of the same class as the offense attempted, except that an attempt to commit a felony of the first degree shall be a felony of the second degree. It is also stated in the Penal Law that murder is a felony of the first degree and a person convicted of murder may be sentenced to death or life imprisonment. Id. 14.1(b). In view of these legal principles, we hold that the offense of criminal attempt to commit murder is a second degree felony which does not carry the death sentence because, in keeping with the Penal Law Rev. Code

26:50.5(b) the maximum penalty for a second degree felony is five years imprisonment, thus the trial judge erred when he ruled denying the appellant's right to waive trial by jury. We however quickly note that this error by the trial judge did not affect the evidence which the entire case was pillared on and that it is the evidence alone that enables the court or a jury to pronounce with certainty concerning the matter in dispute. Levin v. Juvico Supermarket 24LLR 187, 194 (1975); Reynolds v. Garfuah 41LLR 362, 371 (2003).

In count three (3) of the bill of exceptions the appellant alleged that a photograph which was not the image of the private prosecutrix was presented to the jury without the prosecution witness(es) testifying to same. It is further alleged in count 3 of the bill of exceptions that the photograph was used by the prosecution to inflame the minds of the jurors which served as a recipe for the guilty verdict. This Court observed that this allegation in count 3 of the appellant's bill of exceptions is not supported by the records and that same is a misrepresentation of the facts. Below, we quote the relevant section culled from the records regarding the said photograph:

Q. Madam witness please refresh your memory and tell this court and jury whether or not any photograph was taken while you were in the hospital?

A . Yes Photo was taken.

Q . With that answer were you to see such photographs. Will you be able to recognize same.

A . Yes, I will be able to recognize same

Q . Madam witness, I now hand you this instrument please look at It and tell the court and the jury what you recognize it to be?

A .I recognize my face and the clothes I was wearing.

See Minutes of court, Friday, August 21, 2009, sheet 7, 11th day Jury Session.

The above quoted section of the certified records establishes that the photograph was indeed testified to by the private prosecutrix, the appellee's first witness and that the appellant objected to the admission of the photograph into evidence on grounds that the photograph was prejudicial. Also, contrary to Count 3 nowhere in the records is it shown that the appellant ever objected to the photograph on grounds that the image in the photograph was not that of the private prosecutrix. The Supreme Court has consistently held that it will not address issues not raised by the parties or excepted to. Johnson v Republic, 31 LLR 280 (1983); Pentee v Tulay, 40 LLR 207 (2000).

In count 21 of the bill of exceptions the appellant further contended that the trial court erred by denying his motion for a new trial. The appellant alleged that the denial of his motion was tantamount to a denial of substantive justice. Statute provides that the following [shall] 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 matter of law or refused to give proper instruction which was requested by the defendant;

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

i) That for any cause not due to his own fault the defendant has not received a fair and impartial trial". Criminal Procedure Law, Rev. Code 2:22.1.2

It is the law hoary with age that after a trial by jury the court may set aside a verdict and order a new trial where the verdict is contrary to the weight of the evidence. National Port Authority v. Kimah 31 LLR 545, 550 (1983); Barclay v. Digen 39 LLR 774, 785 (1999); Super Cold Services v. Liberia American Insurance Corporation 42 LLR 366, 378 (2004). In the Super Cold Service case the Supreme Court held that "a motion for a new trial can be made on the ground of errors committed either at the trial or in pretrial proceedings". According to the Court, "this gives the judge the opportunity to sit as a juror and to assess the weight of the evidence and credibility". Id. We observed that none of the grounds stated in the Criminal Statute quoted was established by the appellant in its bill of exceptions and neither does the records support any of the grounds stated to warrant a new trial. We find to the contrary however, that the records show that the prosecution directly established with corroborative and medical evidence that the appellant did injure the private prosecutrix eye as a result of a shuffle between the private prosecutrix and the appellant. This fact was never denied by the appellant rather the appellant and his witnesses admitted to this fact. It is trite law that all admissions made by a party are conclusive evidence against such party.

The records also revealed that the prosecution established by the preponderance of evidence that after the appellant injured the private prosecutrix eye, he assailed the private prosecutrix and her mother with an iron chair. The defendant denied this but his denial was rebutted by prosecution's witness in person of Winifred Yuan who testified that she saw the private prosecutrix and her

mother flee into their room as the appellant attacked them with an iron chair. This Court has held that "the sufficiency of evidence to prove the main fact of guilt, or any evidentiary fact looking thereto, is a matter within the province of the jury. They are the triers of fact, the sole judges of the weight and worth of the evidence and the credibility of the witnesses. Living Counsellor v Republic, Supreme Court Opinion October Term 2008. The Court further held that, the 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. Ezzat Eid v Republic, 37 LLR 775, 776 (1995). In the instant case, the jury accepted the testimonies of the appellee's witnesses as being credible and weighty; and as there is no evidence that the jury abused its discretion, the verdict will not be disturbed by the appellate court. Harris v. Cavalla Rubber Corp. Supreme Court Opinion October Term 2012. In view of this, we hold that where the verdict is pillared and firmly supported by the evidence in the records same will not be disturbed by a motion for new trial and that the Supreme Court will confirm the jury's verdict that is in conformity with the law and evidence.

We now turn our attention to the matter of the Motion to dismiss the appellant's appeal. As earlier stated herein, on March 17, 2010, the prosecution obtained a clerk's certificate to the effect that the defendant had failed to file and serve his notice of completion of appeal in keeping with Statute, but waited approximately four years thereafter that is, on March 14, 2014, to file a three (3) count motion to dismiss the appellant's appeal. The motion reads as follow:

1) That Criminal Procedure Rev. Code 2:24.7(1) provides that "Necessary steps: The following shall be necessary for the completion of an appeal: (a) Announcement of the taking of the appeal; (b) Filing of the bill of exceptions; (c) Service and filing of the notice of completion of the appeal. Failure to comply with any of the requirements as stated in this paragraph within the time allowed by statute shall be ground for dismissal of appeal.

2) That Criminal Procedure Rev. Code 2:24.16also provides that "The supervision and control of the proceedings on appeal shall be in the appellate court from the time the notice of completion of appeal is filed.

3) Movant says that in the instant case, the respondent/appellant herein, on September 14, 2009, excepted and announced an appeal from the final judgment in the case out of which this motion grows; and that on September 23, 2009, the respondent/appellant's bill of exceptions was approved by the trial judge, and filed with the clerk on the self-same day. Notwithstanding the filing of his bill of exceptions, the respondent/appellant failed to cause the Notice of Completion of Appeal to be issued and served on the movant/appellee, up to and including the date of the filing of the movant's motion to dismiss the appeal. Attached hereto and marked as movant's Exhibit Mil is a Clerk's Certificate indicating that the respondent/appellant has failed to perfect his appeal.

4) Movant says that the respondent/appellant should have caused a Notice of Completion of Appeal to be issued within Sixty (60) days after rendition of judgment in the lower court, and cause seem to be served on the movant; but on inspection of the records in the case, a Notice of Completion of Appeal has not been issued or served on the movant.

5) Movant says, the omission of any one step necessary to the perfection of an appeal within the time allowed by statue is ground for the dismissal of the appeal. Therefore, movant prays that respondent/appellant's appeal be dismissed, as the respondent/appellant has failed and neglected to cause the issuance and the service of the Notice of Completion of Appeal on the movant/plaintiff within statutory time.

On March 17, 2014, the appellant filed its resistance which we also quote as follow:

1) That as to counts one (1), two (2), three (3), and four (4) of the motion to dismiss Appeal, respondent contends that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in counts (1), two (2), three (3), and four (4) of the motion hereof Hence, respondent prays for the dismissal of counts (1), two (2), three (3), and four (4) of the motion.

2) And also because the entire motion to dismiss appeal should be denied in that, Chapter 24, section 24.17 of the Criminal Procedure Law of Liberia provides that, it is the trial court that dismisses appeal where the appeal is not filed and its notice of completion is not served on the opposite party as it is alleged in the movant motion to dismiss appeal. The Appellate court will only dismiss the appeal where the appeal is completed and notice of completion of appeal is filed and served on the opposite party but the Appellant failed to appear when the case was called hearing.

3) In the case at bar, movant alleged that no notice of completion of appeal was filed and served, so the motion to dismiss the appeal should have been filed in the trial court and not in the Supreme Court of Liberia; since said Supreme Court has not obtained jurisdiction over the parties and subject matter.

The Statute has outlined the necessary and mandatory steps for the completion of an appeal to the Supreme Court in criminal cases. The case before us being criminal in nature, we quote the relevant provision(s) of the criminal Statute regarding the completion of an appeal, to wit:

the following shall be necessary for the completion of an appeal:

a) Announcement of the taking of the appeal

b) Filing of the bill of exceptions;

c) Service and filing of notice of completion of the appeal." Criminal Procedure Law Rev. Code 2:24.7.

The Statute also states that failure to comply with any of the requirements stated in this paragraph within the time allowed by statute shall be ground for dismissal of the appeal". ld. An appeal from a judgment, sentence or order shall be taken by oral announcement in open court at the time of rendition of the judgment or imposition of sentence, or granting of the order from which the appeal is taken. Criminal Law Revised Code 2: 24.8. It is also provided that the time allowed for the presentment of the bill of exceptions for approval by the trial judge after rendition of the judgment, sentence, or the order granting the appeal is ten (10) days. After presenting the bill of exceptions to the trial judge for signature or approval, the appellant shall file same with the clerk of the trial court within sixty (60) days after the rendition of the judgment, sentence, or order granting the appeal. Id.24.9. Regarding the notice of completion of appeal, the Statute further provides, "on application of the appellant, the clerk shall thereupon issue a notice of the completion of the appeal, one copy of which shall be served by the appellant on the appellee, and another copy of which shall be filed with the clerk of the Supreme Court. The original of such notice shall be filed in the office of the clerk of the trial court. These are the provisions of the law for the completion of an appeal in criminal proceedings. Interestingly though, the counsel for the appellant has not disputed these provisions of the law nor denied the fact that no notice of the completion of the appeal was filed. The only contention raised by the appellant's counsel is that the motion to dismiss the appeal is not properly venue before the Honorable Supreme Court and quoted the criminal statute which states that an appeal may be dismissed by the trial court on motion for failure of the appellant to complete the appeal and file notice of its completion as required by this chapter, and by the appellate court for failure of the appellant to appear on the hearing of the appeal. Criminal Procedure Law Rev. Code 2:24.17.

The provisions of the statute and precedents set by this Court are clear, that the motion to dismiss the appeal should have been filed in the trial court. However, we quickly note a pertinent fact here, that whether this Appellate Court or the lower court dismisses the appeal, same is dismissible for failure of the appellant to comply with one of the mandatory steps in completing the appeal. The Supreme Court speaking through Madam Justice Johnson articulated that "the law is clear as to when and how the appeal process should be conducted in order that a case can be properly before the Supreme Court for appellate review. The process is a succession of events each of which event has its individual role to play and in playing it contribute to the successful accomplishment of a common goal which goal is to complete the appeal process in straight conformity to the law controlling."Blamo et al. v. The Management of Catholic Relief Services Supreme Court Opinion October Term 2006. The Court further espoused that "taking an appeal is a journey to the Supreme Court, step by step and when any one of those steps is missing or is defective, the journey cannot be completed'. ld. This being said and given the fact that the appeal is dismissible and coupled with the authority of the Supreme Court to render a judgment that the lower Court should have rendered, we hold that the motion to dismiss the appeal is hereby granted.

Before concluding this opinion, our attention has been drawn to certain irregularities committed after the trial court sentenced the appellant to a jail term of three (3) years on September 14, 2009 and a commitment issued on the very same day. The records show that on September 29 2009, a release in favor of the appellant was issued by the clerk of the trial court releasing the defendant from prison without a bond or authority of the court. We therefore order that the appellant be re-arrested and that he be committed to prison to serve out the complete sentence of three years.

We also order that an investigation be conducted by the trial court in collaboration with the office of the Court Administrator to ascertain how the appellant was released after being convicted and committed to confinement. This is an administrative order intended to ascertain the involvement of the clerk and other judicial officers in circumventing the judgment of the trial court and has no bearing on the outcome of this appeal as has been determined herein. The Office of the Court Administrator is to report to this Court within three weeks as of the reading of the mandate at the trial court.

Wherefore, and in view of all that this Court has narrated herein above, and the legal citations in support of the Court's position, this Court finds no reason to disturb the judgment of the trial court and grants the motion to dismiss the appeal. It is hereby so ordered.

JUDGMENT AFFIRMED WITH MODIFICATION

Counsellor Idris Sheriff of the Henries Law Firm appeared for the appellant. The appellee was represented by Counsellors Betty Lamin-Blamo, Solicitor General of Liberia, and Augustine C. Fayiah, Assistant Minister for Litigation of the Ministry of Justice in association with Counsellor Necular Y. Edwards of the Dean and Associates Law Firm.