

**ANTHONY EMOJORHO, Appellant, v.
REPUBLIC OF LIBERIA, by and thru JOSEPH
MAJAMITE, Appellee.**

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE FIRST
JUDICIAL CIRCUIT, CRIMINAL ASSIZES, MONTSERRADO COUNTY.

Heard: April 7, 2003. Decided: MAY 9, 2003.

6. The mere denial by a defendant of criminal charges brought against him is insufficient to warrant an acquittal.
7. Where the records of a trial court indicate the occurrence of an event or transaction in court involving the judge and sheriff, the Supreme Court will believe that the events occurred unless the defendant can produce unimpeachable evidence and explanation to rebut the said records.
8. Where the issue of jury tampering is not raised upon the jury's return of a verdict but for the first time in a motion for a new trial, and the defendant fails to produce any evidence to substantiate the allegation, the ruling of the trial judge in dismissing the allegation will be held to be proper.

The appellant, who was indicted by the grand jury for Montserrado County for defrauding a secured creditor, tried and convicted by a petit jury, and ordered by the trial judge to make restitution of the amount involved, and sentenced to a jail term of six months in a judgment confirming the verdict, appealed to the Supreme Court for a review of the verdict and judgment. The appellant denied that he was ever given an amount by the private prosecutor, a nephew, for safe-keeping, as stated in the indictment, or that there was ever any transactions conducted between the said private prosecutor and him, or that he or any other person ever made any payment or offered to pay back the amount he was accused of receiving from the private prosecutor. The appellant also contended that the jurors were tampered with and that they were never sequestered during the trial of the case.

The Supreme Court confirmed the verdict and judgment of the trial court, holding that the records

revealed that the prosecution had presented sufficient evidence to show that the private prosecutor had delivered an amount to the appellant, that the appellant had refunded a part of the amount, that a leader of the appellant's and private prosecutor ethnic origins that had interceded to resolve the matter, that an amount of \$5,000.00 had been paid to the court as part of the refund of the money received by the appellant from the private prosecutor, and that the appellant had presented no evidence to rebut the evidence of the prosecution other than his own statement of denial which, standing alone, was insufficient to warrant an acquittal. The Court opined that the records of the trial court had clearly indicated that an amount was paid to the lower court towards the amount for which the appellant was accused, that the trial judge had no interest in the parties to have made such payment as was inferred by the appellant, and that such record was considered as accurate, unless the appellant presented unimpeachable evidence or explanation to the contrary, which he was unable to do.

With regard to the appellant's contention that the jury had been tampered with, and that there had been no sequestration of the jurors during the trial, the Court held that not only had the appellant not presented witnesses to testify that the jury had in fact been tampered with, but that he had also suffered lashes and waiver as he had not raised either of the issues in a timely manner, having done so only in the motion for a new trial and after the jury had been discharged and disbanded by the court. Accordingly, the Court confirmed the judgment and ordered enforcement thereof by the lower court.

Ignatius N. Weah and Joseph H. Constance appeared for the appellant. The Ministry of Justice, in association with *Beyan D. Howard* of The Legal Consultants, Inc. Law Firm, appeared for the appellee.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

Appellant was indicted by the grand jury of Montserrado County on March 23, 2001, during the February Term 2001 of the First Judicial Circuit Court Criminal Assizes "C", for allegedly committing the crime of defrauding secured creditors in the sum of L\$355,000.00 (Three Hundred Fifty Five Thousand Liberian Dollars), representing an alleged balance out of a total of L\$404,000.00 (Four Hundred Four Thousand Liberian Dollars).

The defendant, appellant herein, is the uncle of the private prosecutor, appellee herein. They are both Nigerian Nationals residing in Liberia. According to the indictment, in the month of September, A. D. 1998, on Johnson Street, Monrovia, the private prosecutor, Joseph Majemite, was served with a notice by the Liberia National Police to vacate the Johnson Street premises on which his business was located and to relocate the said business, named JOE BUSINESS CENTER, to another location because all businesses on the Johnson Street sidewalk had been earmarked for demolition.

The indictment further averred that as a result of the notice, the private prosecutor was constrained to vacate said premises, entrusting to his uncle, the defendant/appellant, Anthony Emojorho, the total sum of L\$404,000.00 for safe keeping. The indictment indicated that although several demands were made by the private prosecutor to the appellant to refund the money entrusted to him, the appellant had refunded only L\$49,000.00 (Forty Nine Thousand Liberian Dollars), leaving a balance of L\$355,000.00 which the appellant had failed and refused to pay.

On August 30, 2001, the appellant was arraigned, where-upon he entered a plea of not guilty. A trial jury was duly selected, sworn and empanelled. Whereupon the prosecution commenced producing evidence in support of the indictment. A total of seven witnesses were produced, all of whom were sworn, took the stand, testified in support of the charges laid in the indictment,

were examined, cross examined and discharged. At the close of the prosecution's case, the appellant commenced production of evidence in his defense, consisting of five witnesses, all of whom were duly sworn, took the stand, and testified denying of the charges levied against the appellant. They too were examined, cross-examined and discharged.

Thereafter, counsels for the parties made oral arguments to the jury, which was followed by the judge's charge. The jury then retired to their room of deliberation, from whence they returned with a unanimous verdict of guilty against the appellant. The judge heard and denied a defense motion for a new trial, entered final judgment confirming and affirming the unanimous verdict of guilty against the appellant, sentenced him to a prison term of six months, and ordered him to make restitution of the amount of L\$335,000.00 claimed in the indictment, plus 6% interest. It is from the foregoing verdict and judgment that the appellant has appealed to this Honour-able Court for review and reversal, and filing in that respect a forty-six (46) count bill of exceptions contending basically that the verdict and judgment were contrary to the weight of the evidence adduced at the trial.

During the trial it was established that when the private prosecutor was unsuccessful in retrieving his money from his uncle, the appellant, he sought the aid of the court, which proceeded to indict the appellant. It was also established that prior to the commencement of the trial in the lower court, the chairman of the Abraka Union-Liberia, Mr. Abel Obarakpo, wrote the court on June 18, 2001 requesting the court to allow him to intervene and to have the case removed to his home for an out-of-court settlement. The court granted the request of the chairman of the Abraka Union, of which both the private prosecutor and the appellant were members. Through this intervention, the amount of L\$5,000.00 was paid on behalf of the appellant by the said chairman of the Union to the judge, who ordered the sheriff to issue a receipt for the said amount.

However, in testifying in defense of the appellant, the chairman of the Abraka Union denied paying any money to the trial judge on behalf of the appellant, stating that his efforts at amicably settling the matter proved unsuccessful because the private prosecutor had refused to cooperate and had remarked to them that he had more confidence in the court than in the Union. The witness stated that he was therefore constrained to return the matter to the court for continuation of the trial.

The appellant also testified in his own defense. He denied that he had concluded any financial transactions with the private prosecutor but said that before the demolition exercise was undertaken in 1998, the private prosecutor had asked him to use his influence with a friend, the then Senior Inspector of Police, Col. McCauley, to prevent the private prosecutor's house (shop) from being demolished. He stated further that the request was turned down by the police and that when he and the private prosecutor returned from the Police Headquarters, the premises had already been demolished. It was at this time, he said, that the private prosecutor had asked him to secure his doors, door frames, zinc, counter, and deep freezer, at the home of his (appellant's) sister, which he did.

We observe that appellant's entire defense rested on the denial of any knowledge of or involvement in the transactions set out in the indictment; that is, all of the appellant's witnesses denied the respective roles ascribed to them or alleged in the indictment and testified to by the prosecution's witnesses. In response thereto, the appellee contended that the mere denial by the appellant and the Chairman of the Union, of the payment of the L\$5,000.00 to the judge and the receipt thereof by the sheriff of the trial court, is insufficient to defeat the written receipt issued by the sheriff to the appellant and the sheriff's testimony to that effect. We uphold the appellee's position and reaffirm the age old holding of this Court that the mere denial by a defendant of the charges against him is not a sufficient basis to

warrant an acquittal.

We note, interestingly, that the records of the trial court show that the judge called the sheriff and ordered him to issue a receipt for the L\$5,000.00 and to take custody of the money laid on the judge's desk by the Union's Chairman, although this was denied by the appellant's witness. The question which we are prompted to ask is what would have been the interest of the judge in paying L\$5,000.00 of his own money on behalf of a defendant criminally charged and standing trial before him, and for what motive? We find none, and therefore hold that unless the appellant can produce unimpeachable evidence and explanation to rebut the trial court's records, we are constrained to believe the judge and the sheriff.

The appellant alleged also that there was tampering with the jury. The appellee countered the allegation by asserting that the said issue was improperly raised, in that the appellant and his counsel were in court when the jurors returned from their room of deliberation and delivered the unanimous verdict of guilty against the appellant; that the jurors were then polled and none of them complained that they had been tampered with by the prosecution, but instead, each of them confirmed that the verdict announced was his/her verdict; and that they were thereafter discharged with the thanks of the court, and hence no longer under the court's jurisdiction; and that all of these events had occurred without any objections from the appellant. We agree with the appellee that the issue of jury tampering was raised by the appellant for the first time in his motion for a new trial and that even at the hearing of the said motion the appellant had failed to produce any witnesses to substantiate the allegation. Obviously and correctly, the judge denied the motion. We hold that the judge acted properly and therefore hereby sustain the appellee's contention.

The appellant further complained that the jurors were not sequestered during the trial. In response to this allegation the appellee counter argued that the appellant

had raised the issue for the first time in his motion for new trial and that the issue was therefore not properly brought before the court. The appellee contended that the issue could only have been deemed to be properly before the court if the appellant had raised it after the jury was selected, sworn, and empanelled and before the trial commenced, rather than after the trial had been concluded, the jury discharged, and then only for the first time raised in the motion for new trial. Again, we are in full accord and agreement with the appellee and therefore overrule the contention of the appellant.

From all the records we have perused, and considering the evidence adduced during the trial, we are of the conviction that the prosecution made out a *prima facie* case against the appellant as to him having received the money from the private prosecution for safe keeping and failing to return the portion of the amount as stated in the indictment. Why was there a need and an attempt to remove the matter from court by the Abraka Union and settle same at home if there had not been such transaction between the appellee and the appellant? Why would the trial judge have paid money on behalf of an accused who was being tried before him and who had no relationship to him, in regard to or growing out of a private transaction in which both the appellee and appellant were Nigerian Nationals? We do not find therefore that any error was committed by the lower court judge for which his final judgment or the jury's verdict ought to be disturbed, set aside, or reversed. Hence, we confirm and affirm the same.

WHEREFORE, and in view of the forgoing, it is our considered opinion that the appeal should be and the same is hereby denied and dismissed, and that the verdict of guilty and final judgment of the trial judge be and the same are hereby confirmed and affirmed. Accordingly, this Court upholds the sentencing of the appellant to a definite prison term of six (6) months and the trial court's order requiring him to make restitution of the full and just amount of L\$355,000.00 (Three Hundred Fifty five Thousand Liberian Dollars), plus six percent

(6%) interest.

The Clerk of this Court is hereby ordered to send a mandate to the First Judicial Circuit Court, Criminal Assizes "C", ordering the judge therein presiding to resume jurisdiction over the case and enforce the final judgment as affirmed and confirmed herein by this Honourable Court. Costs are disallowed. And it is hereby so ordered.

Judgment affirmed.