IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR……..……..…….....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……..ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH…….…....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…….…....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….……ASSOCIATE JUSTICE

Jerry Korlubah and Francis Korlubah of the City of Monrovia, Liberia…….….Appellants	)
Versus	) APPEAL
Republic of Liberia by and thru James G. Harris of the City of Monrovia, Liberia……Appellee	)
GROWING OUT OF THE CASE:	)
Republic of Liberia by and thru James G. Harris of the City of Monrovia, Liberia……Plaintiff	)
Versus	) CRIMES: CRIMINAL MISCHIEF AND
Jerry Korlubah and Francis Korlubah of the City of Monrovia, Liberia……..Defendants	) CRIMINALTRESPASS

Heard: November 12, 2019 Decided: June 25, 2020

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

During the February Term, A.D. 2013 of the First Judicial Circuit for Montserrado County, the Grand Jury sitting therein returned a true bill charging the appellants, Jerry Korlubah and Francis Korlubah with the commission of crimes of criminal trespass and criminal mischief. The indictment emanating therefrom reads as follows:

"INDICTMENT

COUNT – 1

The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Jerry Korlubah and Francis Korlubah to be identified, committed the crime of Criminal Trespass, a felony of the third degree, to wit:

1. That on the 10th day of the month of February, A.D. 2013, on 24th Street, Sinkor in the City of Monrovia, Montserrado County, Republic of Liberia, the defendants Jerry Korlubah and Francis Korlubah with criminal mind and intent to take and convert another person's property to their own use and deprive the owner of the property, purposely, knowingly, willfully, intentionally and criminally committed the crime of criminal trespass against the Private Prosecutor, to wit:

2. That on the date and at the place mentioned above, the defendants without any color of right nor legal justification, moved on the Private Prosecutor's parcel of land which is located on 24th Street and began to construct a structure.
3. That the defendants' act is without the will and consent of the Private Prosecutor and is designed to forcibly take away the Private Prosecutor's parcel of land from him in total violation of the law controlling.
4. That the defendants' act has caused serious embarrassment to the Private Prosecutor as he cannot use his land for his own purpose and benefit.
5. That the defendants have no affirmative defense.
6. That the defendants' act is contrary to 4LCLR title 26, Section 15.21 (4) (a) of the statutory laws of the Republic of Liberia and the peace and dignity of the Republic of Liberia.

COUNT – 2

The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Jerry Korlubah and Francis Korlubah to be identified, committed the crime of Criminal Mischief, a felony of the third degree, to wit:

7. That on the 10th day of the month of February, A.D. 2013, on 24th Street, Sinkor in the City of Monrovia, Montserrado County, Republic of Liberia, the defendants, Jerry Korlubah and Francis Korlubah, with criminal mind and intent to take and convert another person's property to their own use and deprive the owner of the property, purposely, knowingly, willfully, intentionally and criminally committed the crime of criminal mischief against the Private Prosecutor, to wit:
8. That on the date and at the place mentioned above, the defendants criminally trespassed the Private Prosecutor's parcel of land.
9. That in the process of their trespass, the defendants met a zinc round structure which the Private Prosecutor constructed on his parcel of land, and is valued at US$400.00.
10. The defendants broke down, damaged and spoiled the Private Prosecutor's tangible property, the zinc round structure, and began to construct their own structure on the Private Prosecutor's land, thereby committing criminal mischief.
11. That the defendants have no affirmative defense.
12. A person engages in conduct purposely if when he engages in conduct it is his conscious objective to engage in conduct of that nature or cause the result of that conduct.
13. Property is that of another if anyone other than the actor has a possessory or proprietary interest therein, if a building or structure is divided into separately occupied units, any unit not occupied by the defendant [is] an unoccupied structure of another.
14. That the act of the defendants is contrary to: 4LCLR, Title 26, Section 15.5 (1) (a) and (2) 4LCLR, Title 26, Section 15.6 (b) and Title 26, Section 2,2 (c) of the statutory laws of the Republic of Liberia, and the peace and dignity of the Republic of Liberia.

1. True Bill
2. True Bill

WITNESSESS:

1. James G. Harris, Sr.
2. Joshua Lincoln

3. Ben Kaihoun
4. Jeremiah Carter
   Monrovia, Liberia

ADDRESSES:

_____ _____

Jackson Nyepan
Foreman of Grand Jurors

Cllr. J. Daku Mulbah
County Attorney
Mont. Co. RL

Filed this 4th day of April, A.D. 2013.

_____
Clerk of Court
Criminal Court "A"."

The case was venue before Criminal Assizes "B" of the First Judicial Circuit for Montserrado County for trial under the gavel of His Honor, Johannes Z. Zlahn of sainted memory during the May Term, A.D. 2013. Upon arraignment, the appellants pleaded not guilty to the charges. There and then, a petit jury was duly empaneled for trial. Production of evidence and argument having been concluded by both parties, the trier of facts retired in its room of deliberation and later returned a unanimous verdict of guilty against the appellants. The appellants filed a motion for a new trial contending that the unanimous verdict of the jury was contrary to the weight of evidence adduced during the trial. The motion was duly assigned, argued and granted. A careful perusal of the certified records reveal that no exception was made to this ruling, hence said ruling is not a subject of review on this appeal.

On the 5th day of December, A.D. 2013, that is, during the November Term, A.D. 2013, the appellants were again arraigned and they entered a plea of not guilty. Unlike the first trial, the appellants waived trial by a jury. The new trial commenced under the gavel of His Honor Sikajipo Wolloh presiding as both the trier of facts and law.

During the trial of the appellee, the Republic of Liberia produced the following three witnesses: Mr. James G. Harris, the private prosecutor; Mr. Ben O. Kiahun, one of the administrators of the Intestate Estate of Gbangay Sorbor who sold the property in question to the private prosecutor; and, Mr. Joshua Lincoln, a friend of the private prosecutor who was invited by the private prosecutor on the day of the alleged commission of the crimes by the appellants.

The appellants also produced three witnesses as follows: Co-appellant Jerry Korlubah, who claimed ownership of the zinc shack that is the subject of the crime; co-appellant Francis Korlubah, the brother of Co-appellant Jerry Korlubah; and Mr. J. Franklin Carter who is alleged to have built the zinc shack with the permission of Co-appellant Jerry Korlubah.

Substantially, the appellee evidence tends to establish that the private prosecutor, in the year 2005, purchased a half lot of land situated and lying at 24th Street, Sinkor, in an area commonly known as the old GSA Compound from the Intestate Estate of

Gbangay Sorbor through its administrator, Ben O. Kiahun, Bobby Howard and Morris Kallon; that the private prosecutor purchased the property with a zinc shack already constructed thereupon; that this zinc shack was constructed by Co-appellant Jerry Korlubah and Benjamin Carter based upon the permission of the co-administrator of the Intestate Estate of Gbangay Sorbor, Ben O. Kiahun, for the purpose of operating a poultry outlet; that the said co-administrator also gave permission to the co-appellant and other squatters to remain on other surrounding properties after the General Services Agency (GSA) abandoned and left the property; that the private prosecutor, in 2007, constructed a dwelling house upon the property and moved therein without challenge or objection from any person whatsoever and with the knowledge of the Co-appellant Jerry Korlubah; that surprisingly on the 10th day of February, 2013 the appellants, without the knowledge, permission and acquiescence of the private prosecutor, violently entered upon the said property and proceeded to dismantle the zinc shack with the intent and purpose of constructing another more durable structure in its stead; and that because the appellants failed to heed to the protest of the private prosecutor, the private prosecutor called Mr. Ben O. Kiahun and Mr. Josiah Lincoln who corroborated the private prosecutor's allegation of the renovation or transformation of the zinc shack by the appellants.

In addition to the oral testimony, the appellee testified to, had marked and confirmed, and later introduced into evidence the following instruments:

P/1 – The transfer deed executed by the Intestate Estate of Gbangay Sorbor in favor of the private prosecutor; and

P/2 - photos in bulk of the demolition of the zinc shack and construction of a concrete structure by the appellants.

The appellants' evidence on the other hand tends to establish that Co-appellant Jerry Korlubah was an employee of the General Service Agency; that in 1991 while he was in the employ of the General Services Agency his friend and former workmate, Mr. J. Franklin Carter requested a piece of land from him to construct a poultry house; that he permitted Mr. Carter to construct the said house on a portion of the GSA Compound occupied property; that the poultry was constructed and when Mr. Carter concluded his use of the same, the Co-appellant Jerry Korlubah transformed the zinc shack into a dwelling house to accommodate relatives who fled their respective homes due to the Octopus Attack in the Gardnersville area; that after the General Services Agency cancelled the lease agreement for the property, the Co-appellant Jerry Korlubah attempted to purchase the property but that he was advised by Forley Passawe, an administrator of the Intestate Estate of Kurmaku Gissi, that the property could not be sold because it was a subject of litigation; that however, Mr. Passawe gave Co-appellant Jerry Korlubah a power of attorney along

with a copy of the deed for the property empowering him to oversee the property; that when the private prosecutor was attempting to purchase the property in 2005, Co-appellant Jerry Korlubah advised him against buying the property because of dispute surrounding the ownership of the property; that after constructing a house in front of the zinc shack, the private prosecutor complained the occupants of the zinc shack to the magisterial court that, upon the presentation of the title deed in the possession of Co-appellant Jerry Korlubah, transferred the matter to the Civil Law Court where it is still pending; that up to and including the time of the incident of the renovation of the zinc shack, the zinc shack was in the possession of and occupied by the privies of Co-appellant Jerry Korlubah and that at no time did the private prosecutor exercise any control over or possession of the said zinc shack.

The appellants also testified to, had marked and confirmed, and later introduced into evidence the following in support of their case over the objection of the appellee:

D/1 in bulk – a writ of summons in summary proceeding to recover possession of real property, a certified copy of a deed in favor of Kormaku Gissi, Jartu Golafalie and Tawo Zoe, power of attorney from Foley Passawe, administrator of Kormaku Gissi Estate to co-appellant, Jerry Korlubah;

D/2 - Minutes of the Six Judicial Circuit for Montserrado County granting the motion for an investigative survey in the case: the Intestate Estate of the late Kurmaku Gissi and the Intestate Estate of late Gbangay Sorbor,

D/3 - Motion to intervene filed by the co-appellant before the Six Judicial Circuit for Montserrado in the action of summary proceeding to recover possession of real property.

After final argument in the trial, the trial judge entered the final judgment. We quote excerpt of the trial judge's final judgment as follows:

> "….After the testimonies of the defendants' witness, they motioned this court for the admissibility into evidence D/1, D/2 and D/3, being the power of attorney as well as the Deed; D/2 was a motion for an investigative survey and D/3 was a motion to intervene. Court says that when the defense counsel moved this court for the admissibility into evidence D/1, D/2 and D/3, counsel for the prosecution objected to the admissibility of those documents, and the ground he gave was that said documents were not relevant to the issues before court; same was argued pro et con and denied. Court wants to know whether or not the issue before this court is criminal or civil? During the testimonies, prosecution produced a deed, which, according to them, was given to Mr. Harris as the owner of the property in question; they also testified to photos that were taken on the crime scene, that according to them, the destruction of the zinc shack that was carried out by Defendant Jerry Korlubah and his brother. During the same testimony, defendants testified to a deed that is not in his name; said deed was marked as D/2; the y also testified [to] a motion for investigative survey; that also has no bearing on criminal trespass and criminal mischief; they also testified to a power of attorney; granted that he had a power of attorney,

is it a legal backing to destroy a property? Court says no, the denial for criminal trespass and mischief is different from that of an investigative survey, motion to intervene and power of attorney; defendants miserably [failed] to rebut or deny the charges levied against them; they are therefore, adjudged guilty by this court for criminal mischief and criminal trespass, and they are sentenced, this matter being a second degree felony, for five years. And so ordered."

The appellants interposed exception to and announced an appeal from this final judgment and in support thereof filed the following one count bill of exception:

"DEFENDANTS' JERRY KORLUBAH AND FRANCIS KORLUBAH BILL OF EXCEPTIONS

Defendants herein above named most respectfully present to Your Honor this bill of exception praying that Your Honor will approve of same to enable the defendants to have their appeal reviewed by the Honorable Supreme Court for the following reasons showeth to wit:

1. That defendants submit and say that defendants waived jury trial and the said trial was a bench case for you the trial judge to hear the case came with a judgment of guilty against the defendants herein above contrary to the evidence and testimony of the private prosecutor, James G. Harris, adduced during the trial upon which the defendants' counsel seriously [excepted] the ruling of you the trial judge.

Wherefore and in view of the foregoing facts and circumstances stated in this bill of exceptions, defendants pray Your Honor will approve of this bill of exceptions to allow the review of this case by the Supreme Court during its March Term, A.D. 2013.

Respectfully submitted the above
Named defendants by and thru their
Counsels:

_____
Sam Y. Cooper
Counsellor-at-Law

Dated 14th day of January, A.D. 2014
Approved:_____
Sikajipo Wolloh
Assigned Circuit Judge
Criminal Court "B"

Before addressing the issues determinative of the case, we note with disappointment that the appellants' bill of exceptions quoted above fails to pass the test of particularity or specifications as required under Section 51.7 of the Civil Procedure Law, Revised Code as elaborated infra. As recent as 2015, this Court adequately espoused the principle governing the office of the bill of exceptions in the case

Universal Printing Press, v. Blue Cross Insurance Company, Opinion of the Supreme Court, March Term, A.D. 2015 as follows:

> "… We do so with the backdrop of the long standing principle enunciated by this Court that a bill of exceptions must state with precision the exact, particular and unambiguous recitation of the violations attributed to the trial judge such that the appellate court not only has a clear picture of the alleged erroneous acts of which the trial judge is accused but also that the Court can easily identify in the records the said act which is the subject of challenge by the appellant. MIM Timber Corporation v. Johnson, 31LLR 145 (1983). In the case C. F. Wilhelm Jantzen[1983] LRSC 87; , 31 LLR 343 (1983), this Court, speaking through Mr. Justice Morris said the following: 'A bill of exceptions in a case on appeal must show with particularity the alleged errors committed by the trial court; otherwise, the counts making the allegations against the trial court will not be sustained.' ...The Supreme Court, relying on Section 51.7 of the Civil Procedure Law, Title 1, Liberian Code of Laws Revised, has defined a bill of exceptions as a specification of the exceptions made to the judgment, decision, order, ruling, sentence or other matters of the trial court excepted to, and relied upon for the appeal, together with a statement of the basis of the exceptions. Wiah v. Republic, [1997] LRSC 7; 38 LLR 385 (1997). … Relying on its articulation of the definition and object of the bill of exceptions, the Court stated of the appellant's complaint in the bill of exceptions as follows: 'it is so vague that it leaves one with the impression that counsel or the appellant merely filed the bill of exceptions to fulfill the requirements of the appeal process…."

The Court is inclined to reach the same conclusion in the instant case, that is, that the appellants' bill of exceptions being so vague, the counsel and appellants' object was merely to file the bill of exceptions so as to fulfill the requirements for review before us. There is nothing specifically stated in the bill of exceptions pointing to errors to warrant our review. It is not sufficient to state that the judgment of the trial court is contrary to the weight of evidence in the bill of exceptions without stating the specificities of the evidence that came in conflict with the final judgement of the trial court. The appellants' bill of exceptions not being tenable because of lack of specifications as required by statute could have rendered the appeal dismissible at this point. However, this Court consistently has maintained that procedural technicalities should not be allowed to overcome the interest of substantive justice. *Dennis v. Republic of Liberia, 1LLR 232 (1898), Russ v. Republic of Liberia, 5LLR 189 (1936),Watts v. Republic of Liberia, 10LLR 403 (1951), Kpolleh et al v. R.L., 36LLR 623 (1990).* This is why we are inclined to meticulously peruse the pages of the transcribed records, identify the contentions of the parties so as to arrive at the controlling issues for our determination. Notwithstanding our stance on the search for substantive justice, we must reemphasize the importance that lawyers are to strictly comply with the principle that governs a bill of exception. We therefore

caution lawyers to adhere to statutory requirements of a bill of exception as future dereliction of this kind will attract sanction from the Bench.

Considering the final judgment of the trial court and the vague bill of exceptions filed by the appellant, the issue that begs for determination is whether the finding and conclusion of the trial judge in the final judgment is contrary to the evidence adduced by the parties during the trial and the laws applicable thereto?

To resolve this issue, we will search the evidence with the objective of determining whether the trial judge's conclusions finds support therefrom. The evidence shows that there is no dispute that the private prosecutor, in 2005, purchased half lot of land from the Intestate Estate of Gbankay Sorbor. As a matter of fact, the appellants' evidence tends to establish that they were aware of the said purchase, although they advised against it due to pending litigation involving the property. The parties are also in agreement that the zinc shack which is the center of the criminal charges was not constructed by the private prosecutor. The parties are in agreement that this structure was constructed in 1991 by J. Franklin Carter, although there seems to be controversy as to from whom the permission to construct this structure was obtained. The prosecution's evidence tends to establish that the permission was granted by one of the administrators of the Intestate Estate of Gbankay Sorbor, while the appellants' evidence tends to establish that the permission was granted by Co-appellant Jerry Korlubah when he was serving as Chief of Security of the G.S.A. that was occupying the property at the time. In fact, Mr. Carter, who is said to have constructed the shack, appeared as a witness for the appellants and corroborated Co-appellant Jerry Korluba's testimony that the permission to construct the shack was given by the said co-appellant. It must be noted that the prosecution made no attempt to rebut this testimony.

The major evidentiary controversy is whether Co-appellant Jerry Korlubah remains in possession and occupancy of the zinc shack from its construction up to and including the time of the renovation of the zinc shack. The prosecution evidence tends to impress upon us that the private prosecutor purchased the half lot with the zinc shack thereupon while the appellants' evidence tends to establish that the appellants, from 1991, maintain possession of the zinc shack up to the time of the renovation of the same. It is now our duty to search the evidence in determining this factual issue.

Three important pieces of evidence introduced by the appellants are instructive in the resolution of this issue. Those pieces of evidence are the writ of Summons in the Action of Summary Proceedings instituted by the private prosecutor against occupants of the zinc shack dated 11th day of November, A.D. 2010, the Motion to Intervene in the said action filed by Co-appellant Jerry Korlubah dated the 22nd day of November, A.D. 2010, and the minutes of the court granting an application for an

investigative survey dated the 4th day of April, A.D. 2011. If these documents are true and correct, they are demonstrative that before the private prosecutor instituted the action, privies of Co-appellant Jerry Korlubah were in possession and occupancy of the said shack. This can be the only logical explanation for the private prosecutor instituting the action to summarily evict them from the property. We are inclined to accept these instruments as true and correct since no attempt was made by the appellee to challenge or rebut them. It is a principle of law in this jurisdiction that evidence not rebutted is deemed to be admitted. *Gray v. R.L, 26LLR 357 (1978), Davis v. R. L., 40LLR 659 (2001), Fallah v. R.L., Opinion of the Supreme Court, March Term, A.D. 2011,*

More besides, the testimony of appellee's third witness, Mr. Joshua Lincoln is supportive of this conclusion. In answers to questions posed to Mr. Lincoln, he answered as follows:

> " Q. Mr. Witness, it suggest[s] to me that the property Jerry Korlubah is occupying as you said he has been on the GSA Compound for a protracted period is his legitimate property?
> A. Jerry Korlubah does not reside in the property in question, but if you are speaking at the one that Jerry Korlubah is residing in, [from] my knowledge, Jerry Korlubah is squatting in the property he is residing in, because the entire community at that said property was one upon a time a victim and they were all asked to be thrown out by one Dukuly and it was the very Ben Kaihon that came with a lawyer from Sherman and Sherman that put halt to the eviction; this is how Jerry Korlubah and the rest of the people that dwell on the GSA old structure remain there; that is why I [am] assuming that they are squatting.
> Q. Mr. Witness, the property in question, who is presently occupying the property?
> A. That very property in question, after the war, many people were squatting on the GSA property, even at the place Mr. Harris bought his piece of lot, that is house is built on. There was a garden, that was the squatters that were using the zinc shack. Mr. Harris said he was not bothering with the zinc shack; that the space was enough to build the house he wanted to build."

These answers clearly supports the finding that indeed the Co-appellant Jerry Korlubah and his privies were in possession of the said property long before the private prosecutor did his purchase and that they remain in possession during and after the private prosecutor constructed his building.

The next issue to resolve in our inquiry is whether the trial judge was legally justified in his judgment when he referred to the exhibits introduced by the appellants as irrelevant to his determination as to whether criminal trespass and criminal mischief were committed by the appellants. The trial judge opined as follows:

> "… During the same testimony, defendants testified to a deed that is not in his name; said deed was marked as D/2; they also testified [to] a motion for investigative survey; that also has no bearing on criminal

> trespass and criminal mischief; they also testified to a power of attorney; granted that he had a power of attorney, is it a legal backing to destroy a property? Court says no, the denial for criminal trespass and mischief is different from that of an investigative survey, motion to intervene and power of attorney; defendants miserably [failed] to rebut or deny the charges levied against them; …"

Certainly, relevancy is a statutory principle of evidence in this jurisdiction. *"All evidence must be relevant to the issues; that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damage." Civil Procedure Law, Rev. Code: 1:25.4*. In order therefore to determine the relevancy of a piece of evidence, the evidence must be considered in light of the controversy and whether it has the propensity to resolve the issues involve therein.

The controversy that is the subject of the matter on appeal is the commission of the crimes of criminal trespass and criminal mischief. What actions or omission under our law constitute the commission of these two crimes? We take recourse to our Revised Penal Code in answering this question.

Criminal Trespass is defined under our law as follows:

> A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters, or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof. An offense under this paragraph is a misdemeanor of the first degree if it is committed in a dwelling at night. Otherwise it is a misdemeanor of the second degree." Penal Law, Revised Code: 26:15.21

As for Criminal Mischief, the law provides as follows:

> A person is guilty of criminal mischief if he:
>
> (a) Damages tangible property of another purposely or recklessly;
> (b) Damages tangible property of another negligently in the employment of fire, explosives or other dangerous means listed in Section 15.4 (1);
> (c) Purposely or recklessly tampers with tangible property of another so as to endanger person or property." Penal Law, Revised Code: 26:15.5

For a person to be held for Criminal Trespass in light of the above definition, his entry upon the property must be without 'license or privilege to do so'. In the instant case, the appellants are not denying that they entered upon the property upon which the zinc shack is constructed or that they interfered with the said zinc shack. The defense of the appellants is that they were long in possession and occupancy of the zinc shack before the private prosecutor constructed his house nearby and that they remain in possession of the said zinc shack up to the time they decided to reconstruct it into a more durable structure. The appellants' evidence in this regard remains undisputed and un-rebutted. Certainly, there is evidence of a challenge to appellants' possession and occupancy by the private prosecutor considering the action of

summary proceedings to recover possession of real property instituted against Co-appellant Jerry Korlubah's tenants. This in no way negates the fact that Co-appellant Jerry Korlubah was in possession of the zinc shack. Therefore evidence of the institution of such action by the private prosecutor against the agents of the Co-appellant Jerry Korlubah is indeed relevant in establishing whether he was licensed or privileged to enter upon the property of the zinc shack and to interfere with it.

Moreover, the institution of an action of summary proceeding to recover possession of real property by the private prosecutor raises a reasonable doubt as to whether the appellants could have trespassed on a property which they continue have possession of since 1991 or thereabout. How could one be in possession of a property and at the same time trespass on the very property? The private prosecutor would have no cause to institute an action of summary proceeding to recover possession of real property if the Co-appellant Jerry Korlubah or his privies were not occupying the zinc shack. It is obvious from the evidence that the appellants' exercise of possession of the zinc shack gave rise to the action filed by the private prosecutor in the Sixth Judicial Circuit for Montserrado County. This Court in affirming *Hne v. R. L. 33 LLR 253(1985)* espouses the principle controlling criminal trespass vis-à-vis dispute of title over land as follows:

> "The rationale therefore is to prevent intrusions into the privacy of property owners and to protect their properties and persons from members of the public who might even turn out to be dangerous, both to life and property. The law guarantees that owners or occupiers of dwellings and other realties will be able to restrict unwanted strangers or other visitors as they wish. However, one cannot reasonably infer that the statute was also intended to settle any conflicting claims to ownership of realty as in the instant case. The appellants having exhibited a title deed of their principal and letters granting them power of attorney to supervise the subject property and including their attempt to resolve the matter could not reasonably be regarded as trespassers." Cisco et al v. R. L., Opinion of the Supreme Court, October Term, A.D. 2015.

The trial judge therefore erred when he overruled the evidence adduced by the appellants in support of their defense of prior and continued possession of the zinc shack under color of a title, whether or not the title was better or superior to the one adduced by the private prosecutor was not in issue. The question before the trial judge was whether under the facts and circumstances as presented, the appellants could be held for criminal trespass. We hold that the evidence adduced by the appellants was relevant to the question and that the appellants could not have trespassed under the facts and circumstances.

Along the same parity of reasoning, we cannot fathom as to how the appellants could have committed criminal mischief when the undisputed testimonies of the appellants

tend to prove that they constructed, possess and continue to live in the zinc shack up to and including the time of the trial. Can it be said that a person is guilty of criminal mischief when he breaks down and replaces his dwelling place from a zinc shack to a concrete structure within the meaning of Section 15.5 of the Penal Law? We do not think this was the contemplation of the law writers. The statute clearly and unambiguously proscribes the intentional, negligent or reckless act of a person that results into a loss of tangible thing of value owned by another person. In the instant case, the failure by the appellee to rebut the appellants' claim that they constructed, possess and reside in the zinc shack not only failed to pass the test for mischief, but it also creates a reasonable doubt in the mind of this Court. Put differently, the appellee failed to meet the burden of proving beyond a reasonable doubt that at the time of the commission of the relevant act by the appellants, that the private prosecutor exercises full and complete possession of the zinc shack. As a matter of fact, the evidence of the prosecution tends to show the contrary. It follows that the evidence adduced by the appellee during trial is insufficient to support a conviction of the offense of criminal mischief. We therefore hold that the judgment of the trial court is contrary to the weight of the evidence.

WHEREFORE AND IN VIEW OF THE FOREGOING, the judgment of the trial court finding the appellants guilty of the criminal trespass and criminal mischief is reversed. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over the case and enforce the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.