

In the Honorable Supreme Court of the Republic of Liberia
Sitting in its October Term, A.D. 2017.

Present: His Honor: Francis S. Korkpor, Sr.Chief Justice
Present: His Honor: Kabineh M. Ja'neh.....Associate Justice
Present: Her Honor: Jamesetta H. Wolokolie.....Associate Justice
Present: His Honor: Philip A. Z. Banks, IIIAssociate Justice
Present: Her Honor: Sie-A-Nyene G. Yuoh.....Associate Justice

Cleopatra Davis, James N. Davis, Joe Matadie and)
others to be identified of the City of Monrovia,)
Liberia.....Appellants)

APPEAL

VERSUS)

The Republic of Liberia, by and thru the Private)
Prosecutor, Ciapha S. Gbollie of the City of)
Monrovia, Liberia.....Appellee)

GROWING OUT OF THE CASE:)

CRIME:

The Republic of Liberia, by and thru the Private)
Prosecutor, Ciapha S. Gbollie of the City of)
Monrovia, Liberia.....Plaintiff)

THEFT OF PROPERTY)
AND CRIMINAL)
FACILITATION)

VERSUS)

Cleopatra Davis, James N. Davis, Joe Matadie)
and others to be identified of the City of Monrovia,)
Liberia.....Defendants)

Appeal from the First Judicial Circuit,
Criminal Court "C" for Montserrado County.

Heard: *May 4, A.D. 2017.*

Decided: *February 20, A.D. 2018.*

Counsellor J. Laveli Supuwood appeared for the appellee. No counsel appeared for the appellants.

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

The subject property of these appeal proceedings is before this Court for the second time. The certified records reveal that the appellee herein, Ciapha S. Gbollie, on July 6, A.D. 2006, instituted an action of summary proceedings to recover possession of real property at the Sixth Judicial Circuit Court for Montserrado County. The referenced petition for summary proceedings named William Flyn and Betty Torio Chea as party respondents. In that action, Appellee Gbollie claimed to be the legitimate owner of a parcel of land in Monrovia, with

a building thereon and sought to eject and oust said named respondents who were "wrongfully withholding" said property. Appellee annexed to the petition a copy of an administrator deed, executed by Cleopatra Davis, co-appellant in the current appeal. Also attached therewith was a copy of "Letters of Administration" dated November 14, A.D. 2001, which instrument was prepared by and released under the seal and authority of the Monthly and Probate Court for Montserrado County and signed by then Probate Judge, His Honour John L. Greaves. Appellee Gbollie, in further support of his claims, attached a copy of "Court's Decree of Sale" executed by Her Honour Amymusu K. Jones, dated October 26, A.D. 2004, evidencing the authorized sale by the Monthly and Probate Court for Montserrado County, of the subject property of the Bayou Chea's intestate estate, located at Center Street.

We wish to remark here that a full trial was conducted in the action of summary proceedings to recover possession of real property, commencing on April 3, A.D. 2008. At the close of said trial on November 12, A.D. 2008, His Honour Yusif D. Kaba, Resident Circuit Judge, Sixth Judicial Circuit Court, presiding, entered a final judgment adverse to Appellee/Petitioner Gbollie. In that judgment, Judge Kaba concluded as quoted:

"...while it is the contention of the petitioner that Co-respondent Betty Chea was present during the payment of some of the proceeds for the purchase of the property, the evidence does not support this. Neither is her thumb print placed on the instrument since she cannot read nor was there any witness produced to testify to the fact that she was present during those payments.

This court certainly sympathizes with the petitioner since Cleopatra Bruce Davis appeared before this court and admitted receiving the fund. However, the illegal act of Cleopatra Bruce Davis cannot and must not be used to deprive others of their legal and just property rights. Equity and justice will not lend any support in this regard.

WHEREFORE AND IN VIEW OF THE FOREGOING, it is the considered Ruling of this court that the petitioner's petition be, and the same is hereby denied and the returns [filed thereto] upheld. Costs of these proceedings are ruled against the petitioner. AND IT IS HEREBY SO ORDERED."

Appellee Ciapha Gbollie appealed from the referenced ruling entered by Judge Kaba and, having perfected his appeal, appeared before this Court. Disposing of that first appeal, the Supreme Court confirmed Judge Kaba's ruling in a unanimous Opinion handed down on January 21, A.D. 2010. The said Opinion was delivered by Madam Justice Gladys K. Johnson. We will refer to this later in this Opinion.

Barely two (2) months after the Supreme Court handed down the said Opinion, the Justice Ministry, at the instance of Ciapha S. Gbollie, caused the Grand Jury for Montserrado County to present an indictment charging the herein named appellants with the crimes of "*Theft of Property and Criminal Facilitation*". It may be remarked here that the Ministry of Justice is the Government agency vested with primary prosecution responsibility. Chapter 22, subchapter A, section 22.2 (a) & (b)] provides:

"It shall be the duty of the Minister of Justice to (a) procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the courts in which the Republic of Liberia or any officer thereof, as to such officer, is a party or may be interested. (b) Institute all legal proceedings necessary for law enforcement..." Our Emphasis.

On March 5, A.D. 2010, the First Judicial Circuit, Criminal Assizes "C"+, Montserrado County, on the strength of said indictment, issued a writ of arrest and had same duly served on Cleopatra B. Davies, James N. Davis, Joe Matadie and others, charging them accordingly. His Honour William K. Ware, Sr. of sainted memory, presiding over the November 2010 Term of the First Judicial Circuit Court, Criminal Assizes "C" for Montserrado County, on January 11, A.D. 2011, ordered the indictment read to the appellants who entered a plea of not guilty.

Having thereby joined issues with the State, and there being no waiver by the defendants of their constitutional right to jury trial, a petit jury was duly empanelled for the trial. At the conclusion of this trial, the appellants, Cleopatra B. Davies, James N. Davis and Joe Matadie were convicted of "*theft of property and criminal facilitation*". The second and current appeal has emanated from this criminal conviction.

The indictment upon which the appellants/defendants were tried and convicted 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, Cleopatra Davis, James Davis, Joe Matadie, and others to be identified, committed the crime of Theft of Property, a felony in the second degree, to wit:

1. *That sometime ago, on November 5, 2004, the Administratrix of the intestate estate of the late Bayou Chea, and seller Cleopatra Davis, and the Private Prosecutor, Ciapha Saa Gbollie, buyer entered a sales agreement for the sale by the Administrator and purchase by the Private Procecutor, of 0.26 lot of land situated on Center Street; in the City of Monrovia, Montserrado County, Republic of Liberia. That the sales agreement includes the purchase by the Private Prosecutor, of a building which is situated on the 0.26 lot of land that has been occupied by the Free Democratic Party of Liberia, and that the total price for the 0.26 lot of land and the building thereon was US\$50,000.00 which was paid in full; by the Private Prosecutor, as evidenced by the receipts and deed which was duly probated in the Monthly and Probate Court for Montserrado County, Republic of Liberia, and registered at the National Archives on July 20, 2005, and are attached to the case file, and that the building on the land contained some equipment and other items.*
2. *That since November, A.D. 2004, the defendants, Cleopatra Davis, Administratrix and seller, James N. Davis, Joe Matadie, and others to be identified, purposely, knowingly, willfully and intentionally stole, took, carried away and exercised unauthorized control over the office equipment and other items without the will and consent of the owner, converted them to their own use, therefore depriving the owner of the use of his property. And that the value of the property is US\$54,601.00 plus cash of LD34,525.00.*

3. *That since November, A.D. 2004, or thereabout, the defendants, Cleopatra Davis, James N. Davis, Joe Matadie and others to be identified, entered the building of the Private Prosecutor, stole, took, carried away and exercised unauthorized control over the office equipment and other items of the owner, and cash money, converted them to their own use, thereby depriving the owner of the use of his property, and that the value of the Property is US\$54,601.00 plus cash of LD\$34,525.00.*
4. *That the defendants have no affirmative defense.*
5. *In relation to the property and services, "OBTAIN" means to bring about a transfer or purported transfer of an interest in the property, whether to the defendant or another and secure performance thereof.*
6. *"PROPERTY OF ANOTHER" means property in which a person other than the actor has an interest which the actor is not privileged to infringe without consent regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in unlawful transaction or was subject to forfeiture as a security interest bearing therein even if legal title is in the creditor pursuant to a conditional sales contract or another security agreement.*
7. *"OWNER" means any persons or Government with an interest in property such that it is property of another as far as the defendants are concerned.*
8. *A person engages in conduct purposely if when he engages in conduct, it is his conscious object to engage in conduct of that nature or to cause the result of that conduct.*
9. *"DEPRIVED" means to withhold property or cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit has in fact been appropriate and withheld property or cause it to be withheld with the intent to restore it only for payment of a reward or under compensation and dispose of property or use it or transfer any interest in it under circumstances that make its restoration unlikely.*
10. *And the value of the property stolen was 50,000.00 or over and the property was acquired or retained by a threat to commit a first or second degree felony.*
11. *The value of the property shall be the highest value by any reasonable standard, regardless of the defendant's knowledge of such value.*
12. *Defendants' act is contrary to: 4 LCR, Title 26, Section 15.51 (a); and 4 LCLR, Title 26, Section 2.2 (b); and 4 LCLR, Title 26, Section 15.61 (b) and (g); and 4 LCLR, Title 26, Section 15.54; of the Statutory Laws of the Republic of Liberia; and 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, Cleopatra Davis, James Davis, Joe Matadie, and others to be identified, committed the crime of Criminal Facilitation, a felony in the third degree, to wit:

13. That on the 5th day of November, A.D.2004, in the City of Monrovia, Montserrado County, Republic of Liberia, the defendants, James N. Davis, Liaison between the Bayou Chea family members and the Gbollie Association, and husband of suspect Cleopatra Davis, along with Joe Matadie, together with suspect Cleopatra Davis, purposely, knowingly and willfully formed a group of family members who broke into the building that was purchase by the Private Prosecutor and its offices overnight, and that the building was purchased by the Private Prosecutor for US\$50,000.00, and that all of the office equipment and materials valued at US\$4,601.00 and cash money of LD\$34,525.00 were stolen by the suspect, Cleopatra Davis, as well as James N. Davis and Joe Matadie. That when the liaison, Co-defendant, James N. Davis, was told about the break-in and stolen property, he exhibited a don't care attitude and said he would produce his wife, Cleopatra Davis, to produce the equipment and materials stolen or their monetary value, but has done nothing in that direction to date, and that the value of the building, materials and equipment is US\$54,601.00 plus cash of LD\$34,525.00.
14. That the defendants have no affirmative defense.
15. That a person is guilty of criminal facilitation who, believing it probable that he is rendering an aid to a person who intends to commit a crime, engages in conduct which provided such person with means or opportunity for the commission thereof and in fact aids such person to commit a felony.
16. That the act of the defendants is contrary to: Chapter 10, Section 10.2 of the New Penal Law of the Republic of Liberia, and dignity of the Republic of Liberia.

TRUE BILL/IGNORAMUS

WITNESSES

1. Ciapha Saa Gborie
2. Cllr. Augustine Fayiah
3. Rev. Garmanda Kangar

ADDRESSES

Monrovia, Liberia
 "
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Lawrence J. Somah
 Foreman of Grand Jurors

Cllr. J. Daku Mulbah
 County Attorney
 Mont. Co., R.L.

Filed on this 5th day of March A.D. 2010

Clerk of Court
 Criminal Court "A"

Inspection of the certified records reveals that both the prosecution as well as the defense deposed evidence, oral and documentary, during the trial. Both parties having rested, His Honour Judge A. Blamo Dixon, Resident Circuit Judge, Criminal Court "C", duly charged the twelve-man trial jury. The trial jury thereafter retired, deliberated on the totality of the evidence put before them and thereafter returned with a unanimous guilty verdict against the three (3) appellants/defendants. Appellants filed a three (3) count motion for new trial. The basic contention in the motion seeking new trial was that the verdict was unsupported by the weight of the evidence deposed during the trial. The said motion was resisted, argued and denied.

In his final ruling handed down on March 10, A.D. 2011, Judge A. Blamo Dixon confirmed the jury verdict, adjudged the appellants guilty of the crimes of Theft of Property and Criminal Facilitation and sentenced them to imprisonment for a period of "six consecutive years". Judge Dixon also ordered the convicts to (1) retribute the amount of US\$54,601.00 plus LD\$34,525.00 and (2) fined each the amount of US\$300.00 to be immediately deposited into Government Revenue. Quote hereunder in relevant part is Judge Dixon's final ruling:

*"Wherefore and in view of the foregoing and the Laws controlling, it is the considered Opinion and Final Judgment of the first Judicial Circuit, Criminal assizes "C" for Montserrado County that the unanimous **GUILTY VERDICT** of the trial Jury is hereby confirmed and affirmed. Defendants Cleopatra Davis, James N. Davis, Joe Matadie et. al. are hereby adjudged **GUILTY** of the Crimes of Theft of Property and Criminal Facilitation. The said Defendants are hereby sentenced to imprisonment for a period of six consecutive years at the Monrovia Central Prison Compound; make restitution of the amount of **US\$54,601.00 plus LD\$34,525.00** and fined the amount of **US\$300.00** each to be immediately deposited into Government Revenue.*

*The Clerk of Court is hereby ordered to give effect to the Court's Final Judgment and the Sheriff is further ordered to enforce same, pending final determination of the case by the Honorable Supreme Court of the Republic of Liberia. **AND IT IS HEREBY SO ORDERED. MATTER SUSPENDED...**"*

It is from this final and several other rulings made during the course of the trial to which exceptions were taken that appellants are before this Court. Hence, this is the second time we have an appeal before this Court of last resort in relation to the identical subject property transaction.

In support of the appeal, the appellants have placed before the Supreme Court an approved bill of exceptions containing ten (10) counts. For the benefit of this Opinion, we herewith reproduce the bill of exceptions to wit:

1. *That Your Honour erred when you denied defendants' motion for new trial duly filed after excepting to a verdict for being contrary to the weight of the evidence adduced during trial.*
2. *That Your Honour erred when you selected to verbally explain or summarize the evidence to the jury and impressed on the minds of the jury that prosecution produced prima facie evidence, disqualified defendants' evidence and verbally instructed the jury to return a verdict of guilty against defendants so that the amount sued for would be paid in your court.*
3. *That Your Honour erred when you abandoned written instruction to the jury and ended with oral instruction during which you did undermine evidence of defendants and gave weight to that of prosecution prejudiciously.*
4. *That Your Honour erred when you told the jury that prosecution's rebuttal witness squarely rebutted defendant's testimony that payment as alleged was not made and that the whole deal was fake, when in your presence the purported rebuttal witness who testified and identified pieces of documents referred to as receipts was asked on the cross as to whether there was/were balance/balances stated on those instruments and he answered in the negative until during court's question, you submitted those instruments to him and asked him to look at them and state the balances, which he did in answering your question.*
5. *That your Honour erred when you sustained prosecution's objection to a question on the cross to prosecution's rebuttal Witness when he was asked to give the telephone number and the name of the cell phone company on which he was called by co-defendant Cleopatra Davies as alleged by him.*
6. *That Your Honour erred when you sustained prosecution's objection to a question on the cross to prosecution's rebuttal witness as to whether he and co-defendant Cleopatra Davies exchanged telephone numbers and if so what were the numbers.*

7. *That Your Honour erred when you failed to investigate as to which of the parties testified to the truth, whether prosecution that gave conflicting, inconsistent and contradicting statements or the defendants who gave corroborating testimony about how the entire transaction was conducted by private prosecutor, who on his own, obtained the signatures including those of witnesses as was testified to by co-defendant Cleopatra Davies and was duly corroborated by co-defendant Joe Matadie that his signature was obtained by private prosecutor in private prosecutor's office where co-defendant Joe Matadie was employed. This evidence as to the manner of obtaining the signatures on those instruments remained un rebutted.*
8. *That Your Honour erred when you allowed records other than those the prosecution prayed for in its motion/submission for a writ of subpoena deuces tecum and adtestificadum that was issued and served on the clerk of the Civil Law Court.*
9. *That Your Honour erred when you failed to render judgment based on co-defendant Cleopatra Davies and private prosecutor Gbollie's admission that the entire transaction was a fake deal.*
10. *That Your Honour erred when you adjudged defendants guilty, and gave defendants maximum sentence of the crimes charged but not proved as burglary as alleged was never proved because defendants produced evidence that the building in question was entered by court officers of the Debt Court for Montserrado County and not defendants. This evidence remained un rebutted.*

WHEREFORE, and in view of the foregoing facts and the circumstances, defendants most respectfully pray that Your Honour will approve this bill of exceptions so that the Honourable Supreme Court of Liberia will review your judgment.

Dated this 17th day of March, A.D. 2011.

Respectfully submitted by the defendants Cleopatra Davies and others by and Thru their counsel of Ashmun St., Monrovia.

*Thompson Jargba
Counsellor-At-Law*

*Approved By:
His Honour A. Blamo Dixon
Trial Judge*

In the bill of exceptions quoted herein above, appellants have endeavored to raise a number of contentions for which they pray this Court to reverse the **guilty** judgment entered against them. Appellants have, amongst others, accused Judge Dixon, the trial judge, of committing reversible error to the prejudice of the appellants when he (1) verbally charged the trial jury in his summary of the evidence; (2) when Judge Dixon instructed the trial jury to return a guilty verdict against the appellants after erroneously impressing on the mind of the petit jury that the evidence prosecution produced had made a prima facie case; and (3) that the judge having adjudged the appellants guilty of "Theft of Property and Criminal Facilitation" also reversibly sentenced the appellants to the "maximum sentence of the crime charged" when infact no such crime was ever proved.

Although appellants have recounted numerous issues in the bill of exceptions, it appears to this Court that one primary question captures the sum total of the substantive contention. That germane question is whether the trial judge, by confirming the jury unanimous guilty verdict, committed reversible error to warrant a vacation of the guilty judgment entered thereon against the three co appellants, Cleopatra Bruce Davis, James N. Davis, Joe Matadie and "*others to be identified*". Put differently, did the State make a prima facie case to warrant affirmation of its judgment of conviction? In dealing with this substantive query, we will also endeavor to delve into a number of collateral but important issues presented in the records. These will include the sentencing of "*others to be identified*" and the sentence imposed by the trial judge.

To provide satisfactory answer to this core question requires this Court of *final resort* to undertake a careful survey of the evidence the State deposed during the trial in proof of the material allegations set out in the indictment. For it is the rule that by levying allegations against a criminal defendant set out in an indictment, the State thereby imposes on itself the obligation to present prima facie evidence in proof thereof. Prima facie evidence, only by which a judgment of conviction can be legally secured, is defined as "*evidence sufficient to establish the facts unless rebutted*".

Only by satisfactory discharge of this duty would an affirmation of a judgment of conviction be warranted by the Supreme Court. *Forleh et al. v. Republic*, 42 LLR 23, 38 (2004); *Republic v. Chakpadeh*, 35 LLR 715, 720 (1988); *Republic v. Eid et al.* 37 LLR 761, 777 (1995).

In undertaking a review of the evidence Prosecution presented during trial, we must first take a close look at the substantial allegations contained in the indictment. For it is those material allegations set out in the indictment, basically the notice of complaint, that the Prosecution is obligated to prove as a matter of law. In the case, *Wiah v. Republic*, reported in 38 LLR 385, 394 (1997), this Court held that "*an indictment must allege with precision and certainty every material fact constituting the offense charge. And such material facts must be proved beyond a rational doubt or the accused will be entitled to a discharge.*"

We have summarized the substantive allegations made by the State and set out in the indictment as follows:

That on November 5, 2004, Cleopatra Davis, posing as Administratrix of the intestate estate of the late Bayou Chea, and seller of part of said estate, entered a sales agreement with the Private Prosecutor, Ciapha Saa Gbollie, for the purchase by Private Prosecutor, of 0.26 lot of land situated on Center Street, in the City of Monrovia, Montserrado County, Republic of Liberia, said land included a building occupied by the Free Democratic Party of Liberia; that the total price for the 0.26 lot of land and the building thereon was US\$50,000.00 which was paid in full by the Private Prosecutor and duly received by Cleopatra Davis, Administratrix and seller, by James N. Davis, Joe Matadie, and others to be identified, as evidenced by the receipts and the deed for the property which was duly probated in the Monthly and Probate Court for Montserrado County, Republic of Liberia, and registered at the National Archives on July 20, 2005; that Cleopatra Davis, Administratrix and seller, James N. Davis, Joe Matadie, and others to be identified, in November, A.D. 2004, having received the full purchase price for the property, yet purposely, knowingly, willfully and intentionally formed a group and entered on the said premises, stole, took, carried away and exercised unauthorized control over the office equipment and other items without the will and consent of the owner, converted them to their own use; that by this conduct, appellants deprived the private prosecutor, Siafa S. Gbollie, US\$54,601.00 plus cash of LD34,525.00; that the conduct of the appellants/defendants is contrary to Chapter 10, Section 10.2 of the New Penal Law of the Republic of Liberia, and dignity of the Republic of Liberia.

In proof of the material allegations stated herein above, the State introduced four regular witnesses at the trial. Mr. Ciapha Saah Gbollie was the first witness for the State. In his testimony in chief, Witness Gbollie narrated that the Gbollie family, in 1982, leased a building on Center Street, Monrovia, from Mr. Borbor Chea, then the administrator of the intestate estate of Bayou Chea. The life span of the lease was for twenty five (25) years. Witness Gbollie explained that following the demise of Administrator Borbor Chea, sometimes in the late 1990, the witness was introduced to Mr. Borbor Chea's sister, Betty Chea and some other family members. These family members included co-appellant, Cleopatra Bruce Davis. The witness said that Cleopatra Bruce Davis was infact introduced to him as the new administrator of the Bayou Chea estate. Thereafter, transactions between the Gbollie family and the new administratrix, Cleopatra Bruce Davis, went on uneventfully until the beginning of the civil conflict in 1990. He testified that the period between 2001 and 2003 was turbulent in Liberia, a fact known to all, and that he was in and out of Liberia during this period and that he returned from Accra, Ghana, having attended the Liberia's Peace Talks in 2003. He said that by this time, the agreement of lease was about to expire. According to Witness Gbollie, he therefore engaged Administratrix Cleopatra B. Davis together with her husband, Mr. James Davis. The first meeting was convened at the Davis' home at Stephen Tolbert Estate, in Gardnersville, Liberia. The witness told the court and jury that it was at that meeting held at the Stephen Tolbert Estate that Administratrix Cleopatra Bruce Davis, along with her husband, James Davis, initiated discussion to sell the demised premises. But the witness narrated that Administratrix Cleopatra Bruce Davis however informed him that she alone could not sell the property and that she would consult her aunty, Betty Chea. Three (3) days thereafter, Administratrix Cleopatra called him and asked that a meeting be convened. According to the witness, Administratrix Cleopatra Bruce Davis also requested that Witness Gbollie's vehicle travel to Mount Barclay in order to convey Betty Chea, Cleopatra Davis' aunty, to the meeting. Cleopatra along with Joe Matadi travelled on the vehicle to Mount Barclay and brought Aunty Betty Chea to the meeting held at Beirut Restaurant in Monrovia.

The witness further explained that all the members of the Bayou Chea family were present at this meeting in Beirut Restaurant. *"At the close of the meeting at Beirut Restaurant on a Friday, the family promised to convene a family meeting to discuss the sale of the property after which contact will be made with me"*, Witness Gbollie told the court and jury. Witness Gbollie also testified that he was contacted on the Monday after the family meeting was said to have taken place and told that the Bayou Chea family had agreed to sell the demised property to the witness. Since he, Witness Gbollie, was about to travel, he introduced Rev. Garmondeh Karngar to the Bayou Chea family as the person who would handle the payment for and on his behalf. The witness said that he felt comfortable with this arrangement as Rev. Karngar and members of the Chea family were of the same ethnic group. Shortly after the departure of the witness for the United States of America, Rev. Karngar made the first payment in the amount of **Ten Thousand (USD10,000.00) United States Dollars to Betty Chea and Cleopatra Davis on October 6, 2004**. A second **Ten Thousand (USD10,000.00)** was also paid to Cleopatra Davis on October 13, 2004. This time, Cleopatra Davis came in with her lawyer, Counsellor Beyan Howard, while Witness Gbollie was represented by Counsellor Augustine Fayiah. When the signed and probated deed of the property was ready, the witness testified that he asked the Bayou family members to go to his (witness') lawyer for the payment. *"This time, five members of the family signed the document at the lawyer's office. But Betty Chea and James Davis both refused to sign the document although they were urged to do so"*, said the witness. Further testifying, the witness told the court and jury that sometimes in 2006, Administratrix Cleopatra Bruce Davis organized her family members to occupy the house after receiving full payment therefor. The witness said that when her attention was called to this behavior, Cleopatra suggested that the witness should seek a court action to remove the occupants since they all *"ate the money from the sale of the property"*. It was at this point he instituted the action of Summary Proceedings to Recover Possession of Real Property at the Civil Law Court against those who were occupying the property without his (witness') consent.

To the utmost surprise of the witness, he said: *"during trial at the Civil Law Court, Cleopatra whom I expected to testify in my behalf, to the contrary, testified in court on behalf of her family members. Cleopatra Davis while testifying informed the court that it was she and her brother that sold the property and that the rest of the family including Betty Chea did not know anything about the sale."*

While on the direct, Witness Gbollie identified several instruments which were accordingly marked by the trial court. These instruments included "Decree of Sale" issued from the Probate Court for Montserrado County, "Letters of Administration" and an "Administrator's Deed", cash receipts, sale agreement and authorization note from the Bayou Chea family to Witness Gbollie to take possession of the property.

Answering to a juror question whether the balance sales price was paid, as the receipts show that there was balance payment of Thirty Thousand United States Dollars (US\$30,000.00) outstanding, Witness Gbollie explained that on his return from the United States of America he personally made three (3) payments, Ten Thousand United States Dollars (US\$10,000.00) each, to Cleopatra Davis and the other family members. These family members included Emmanuel Matadi, Joe Matadi, Nathaniel Chea and Mark Chea. He said a general receipt for Fifty Thousand United States Dollars was duly issued. The witness was thereafter discharged.

Counsellor Augustine C. Fayiah, was prosecution's second witness. In his general testimony, the lawyer witness informed the court that Cleopatra Davis came to his office in 2004, along with Mr. Ciaphas Gbollie and informed him (witness) that she was selling their property on Center Street. He told the court and jury that Cleopatra informed him that she was the administratrix of the subject property and in support thereof presented to him (the witness) a Letters of Administration, Court Decree of Sale and a draft agreement made by her lawyer, Counsellor Beyan D. Howard. The witness narrated that Cleopatra further told him that she had already received some payments from Ciapha S. Gbollie and that a comprehensive receipt would be prepared upon payment of the balance amount.

Witness Counsellor Fayiah further testified that he prepared a comprehensive receipt for Fifty Thousand United States Dollars (US\$50,000.00) when the balance payment was made in his (Counsellor Fayiah's) office. According to this witness, Cleopatra thereafter took a deed to his (witness') office to be probated and registered in accordance with law. He said that he therefore went ahead and probated the deed at the Probate Court and registered same at the Archives, thereby ending his role in the process.

Addressing a juror question regarding how much money was paid to the Davis family in his office, the witness stated that it was Nine Thousand United States Dollars (US\$9,000.00). He also informed the court that two family members, Joe Matadi and Cleopatra Davis, received the balance payment in his (witness') office. Before his discharge from the stand, the witness identified and confirmed several documents to include those earlier testified to by the first witness.

It is important to remark here that the State during trial made applications for *subpoena duces tecum* of the trial records of the action of Summary Proceedings conducted at the Civil Law Court, and *subpoena adtestificandum* of the clerk of the Sixth Judicial Circuit Court for Montserrado County. Judge A. Blamo Dixon granted the applications. Accordingly, the trial records of the summary proceedings to recover possession of real property were lifted, adopted and admitted as evidence in this new trial. In this regard, it became important to have Ellen Hall, Clerk of the Civil Law Court and official custodian of said records, to be subpoenaed to testify to the authenticity of those court records.

Clerk Ellen Hall of the Civil Law Court, taking the stand as prosecution's third witness, said she was in court in obedience to the *subpoena duces tecum* served on her on February 17, A.D. 2011. She said that she has appeared in court to produce the case file in the trial of the case: "*Ciaphas Saah Gborie, Plaintiff v. William Flynn and Betty T. Chea*" in an Action of Summary Proceedings to Recover Possession of Real Property.

The said file was therefore presented in open court. Witness Hall was thanked by the court and a mark of identification was placed on the said file. The file included minutes, exhibits and pleadings which the witness recognized and named. The File was marked and reconfirmed by the court. The witness also identified several documents in answer to questions under cross examination. These documents included (P/1 in bulk) Court's Decree of Sale, Letters of Administration and an Administrator Deed executed by Cleopatra Davis in favour of the Private Prosecutor, Ciapha S. Gbollie, probated and registered according to law; (P/2 in bulk) including cash receipt for US Fifty Thousand Dollars, dated November 30, 2004, signed by Cleopatra Davis and two other receipts for US Ten Thousand Dollars (US\$10,000.00) each, dated October 6 and 13, 2004; (P/3 in bulk) which includes the Sale Agreement executed between the parties for the purchase of the property for US Fifty Thousand Dollars (US\$50,000.00), and (P/4 in bulk), same being the Authorization Note, authorizing Mr. Ciapha S. Gbollie to claim legitimate ownership of the said property, the said authorization note is also signed by Co-appellant Cleopatra Davis, and others. All of the instruments were testified to, identified, confirmed and re-confirmed by the court. Prosecution thereafter rested reserving the right to present rebuttal witness/es, should that become necessary.

Hereafter, two regular witnesses took the stand to present evidence for the defense. Cleopatra M. Davis, defense first witness, told the court and jury that she knew and acknowledged only two receipts which were signed by her (Cleopatra) and Madam Betty Chea. She said that those two receipts were actually made by Appellee/Private Prosecutor Ciapha S. Gbollie himself. She testified that Private Prosecutor Ciapha S. Gbollie had asked her to sign those two receipts in order *"to get rid of his brother, Joseph Fayiah Gbollie from the house that is in question."* The witness insisted that Ciapha S. Gbollie was striking a total deal with her to help him get his brother out of the building and in return she will receive Fifty Thousand United States Dollars (US\$50,000.00).

That is why, according to the witness, Ciapha Gbollie invited her to Counsellor Augustine Fayiah's office where she was presented some documents including Letters of Administration, in her sole name, a Decree of Sale also only in her name as well as a title deed in her name only and the Sale Agreement. She said: *"Cllr. Fayiah asked me if I was aware of the deal and I said yes. I thereafter placed my signature on the documents."*

The witness further explained that when they left Cllr. Fayiah's office, Mr. Gbollie called her one day to say that her aunty had moved into the building for which they (she and Mr. Gbollie) had made the deal. Gbollie asked her to do everything to get her out. Witness Cleopatra Davis told the court that she did everything in her power to get her aunt out of the building but was not successful. She said Mr. Gbollie then took her (the witness') aunty, Madam Betty Chea and her son, to the Civil Law Court and not the witness. The witness further explained that when she was called by the Civil Law Court to say what she knew about the case, she told the court that it was Mr. Ciapha Gbollie who was undermining everything. She testified that she told the court that the receipts presented to the court by Mr. Gbollie to show payment for the property were actually the product of a deal reached between her and Mr. Gbollie, the private prosecutor. The witness denied the allegation that the building was burst into and items stolen therefrom, maintaining that at no time did any burglary of the building take place. She further emphasized that her name was placed on the receipts by a trick played on her by the private prosecutor. She further indicated *"after the case at the Civil Law Court in which I testified, Mr. Gbollie then falsely indicted me and my husband and brother who do not know anything that transpired between Mr. Ciapha Gbollie and me."* The witness, testifying, insisted that the whole transaction which landed them before Criminal Court "C" was a fake deal which Mr. Ciapha Gbollie made with her in return for which he pledged to give her Fifty Thousand United States Dollars (US\$50,000.00). Asked about the names affixed on the Sale Agreement and the Deed, the witness said she does not know how Mr. Ciapha Gbollie got the names of those family members on those instruments as she was the only one with Mr. Gbollie in Cllr. Fayiah's office.

During cross examination, Witness Cleopatra was asked the following questions:

"Question: Are you the same Cleopatra Bruce Davis who testified in the case: Ciapha S. Gbollie vs. William Flyn and Betty Chea before the Civil Law Court?"

"Answer: Yes, I am the same Cleopatra Bruce Davis who testified in the Civil Law Court."

"Question: Madam witness, you have told this court and jury that you received Fifty Thousand United States Dollars from Mr. Ciaphas Gbollie because you made a deal to get his brother out of the property. Do you want this jury to believe that the Fifty Thousand Dollars you received was for the purpose of getting his brother out of the building?"

"Answer: As I stated earlier, we made a deal and that is what I was supposed to be paid if all went well."

"Question: Madam witness, on July 22, 2008, 32nd Day's Jury Sitting of the Civil Law Court, found on Sheet Eleven, this question was put to you on the cross examination: "Madam witness, in your testimony in chief you told this court that you received the amount of Fifty Thousand Dollars in total for the sale of the aforesaid premises. Your answer was, "yes". But today, you are telling this court and jury that the money [you received then was a deal you and Ciapha Gbollie made, a fake deal? Please reconcile the two statements for the benefit of the jury?"

"Answer: As I said during the striking of our deal, we agreed that Fifty Thousand United States Dollars was going to be paid to me and because the deal had not climax at the time, that's why I said he paid Fifty Thousand Dollars because the deal was still on."

"Question: In that same testimony which you gave, you were asked the following question: "Madam Witness, please tell this court if you can (remember) the names of some of the family members who were involved in your admitted trick." "Your answer was again I said in my testimony we are four family heads of the property. It is me and my brothers who signed all the documents we gave to Mr. Ciaphas Gbollie." And you were further asked "Madam witness, please state the names of your brothers who were involved in this disaster with you" and your answer was: "Mr. Neweh Brown, Joe Matadi, Suku Matala and Mark Chea. Secondly, according to our family structure, each represented by one. The heads are: Cleopatra Davis, Betty Chea, (not legible) and Oretha Chea, according to the paper we got from the court. So in fact Madam Witness, you told one story in that court and you are telling another story to this court, not so?"

"Answer: As was stated in my testimony, I was the one that Ciapha dealt with."

Joe Matadi was defense second witness. Witness Matadi told the court and jury that he was working with Mr. Ciapha Gbollie at LIMINCO as Office Assistant. He said that he received a call one evening from Ciapha Gbollie who asked him to come to the office to see him. When he got to the office, he said Mr. Gbollie asked him to witness some documents. These included a Deed and a Sale Agreement on which he said he saw his sister's signature. He said Mr. Gbollie then gave him a token of USD Five Hundred Dollars (USD500.00) to witness those documents. *"And he being my boss I witnessed the documents, the deed and the sales agreement..."*

Defense third witness was Mr. S. Peter Doe-Kpar, Clerk of the Monthly and Probate Court for Montserrado County. Witness Doe-Kpar was subpoenaed to produce the file of the Interstate Estate of Bayou Chea with all the records.

Following his brief testimony in chief, the witness answered the following questions:

"Question: Mr. Witness, please look through the file and tell this court and jury if there is any petition filed by Betty Chea and Cleopatra Davis praying for a Decree of Sale or a Letters of Administration to administer the intestate estate of the late Bayou Chea?"

"Answer: Yes, on October 1, 1997, a petition for a Letters of Administration was filed before the Monthly and Probate Court by Mrs. Betty Torlor Chea and Cleopatra Bruce Davis, daughter and granddaughter (of Bayou Chea) to administer the said estate."

"Question: Mr. Witness, please look thru D/5 in bulk, the file that you have brought to this court, and tell this court and jury if there is any petition of Cleopatra Davis praying court to administer the Intestate Estate of the late Bayou Chea?"

"Answer: Yes, a petition was filed by Cleopatra Davis praying the Monthly and Probate Court to administer the intestate estate of the late Bayou Chea. The said petition was filed and signed on September 13, 2005."

"Question: Mr. Witness, please tell this court and jury if there is a petition of Cleopatra Davis praying court for a Letters of Administration to administer the intestate estate of the late Bayou Chea, since the document you identified previously is not the petition praying for the administration of the said estate?"

"Answer: As I search the record of this case, there is no petition filed by Cleopatra Davis to administer the Bayou Chea Estate."

The following questions were posed to this witness during cross examination:

'Question: Mr. Witness, by that answer, this file is the official file of the Bayou Chea Estate according to you which is in the possession of the Monthly and Probate Court, to which you have just testified to the

effect that a Letters of Administration was issued in November, A.D. 2001 under your signature, S. Peter Doe-Kpar, Clerk of Court, and His Honor John L. Greaves, Judge, Monthly and Probate Court, Montserrado County. Mr. Witness, I want you to tell the court and jury whether or not it is possible for your court to issue these Letters of Administration without a petition as shown by the records?"

"Answer: The Monthly and Probate Court for Montserrado County does not issue Decree without a petition."

After the cross examination of the witness, the prosecution rested with the witness. Hereafter, the State presented two rebuttal witnesses. The first rebuttal witness was Rev. Garmondeh Karngar. He was specifically asked as follows:

"Mr. Witness, one of the defendants in the dock in person of Cleopatra Maude Bruce Davis took the stand and testified in these proceedings on the charge of the Crime of Theft of Property for which she and the co-defendants have been indicted and are on trial before this court. During her testimony in chief, Co-defendant Cleopatra Davis testified in chief and in answer during cross examination to a question whether she can remember receiving money paid to her by you, Rev. Garmondeh Karngar on behalf of Mr. Ciapha Saa Gbollie, she answered that she could not remember ever receiving money from you on behalf of Mr. Gbollie. You have therefore been brought here as a rebuttal witness to testify on this issue. Please tell the jury sitting here and this court what you know about payment made by you on behalf of Mr. Gbollie?"

The rebuttal witness, Rev. Garmondeh Karngar, Director of Missions, World Wide Mission, answered as reproduced hereunder to wit:

"Alright, thank you, I remember several months ago I was brought to similar court to give testimony concerning this same issue on the payment of money to Cleopatra Davis and her family. At that time, the question of receiving the money was answered in the positive; but the problem was whether her Aunty Betty Chea was the one that signed the receipt along with Cleopatra Davis. I did give the answer which I believe the records will be here in the court.

However, I will like to testify again in this court just to clear the record. I worked with Mr. Gbollie when I was Commercial Manager of the Liberian Mining Company from 2003 to 2006. On September 26, 2004, Mr. Gbollie took me to Cleopatra Davis on Center Street where she had her business and told me that he had some arrangement with her and her family to buy a house that is hosting the Free Democratic Party on Center Street and since he was about to go to the United States, he wanted me to proxy for him to work with Cleopatra Davis and her family in making some payments on behalf of him to Cleopatra Davis and her family. On October 2, 2004, I met with Cleopatra Davis and an elderly woman called Betty Chea, introduced to me as an Aunty to Cleopatra Davis; they were going to be the ones to receive the money on behalf of the family. However, they told me that they had death in their family and the family was meeting on Sunday, October 3, 2004 and they were going to conclude on the sale of the house to Mr. Gbollie. At that time, they did not take the money. On October 4, 2004, I received a call from Cleopatra Davis informing me that the family had agreed to sell the house, so I should proceed to make payment. On October 6, 2004, I met Cleopatra Davis and the Aunty that was introduced to me and I made the first payment of 10,000.00USD to her and her Aunty at her business center on Center Street. The receipt was issued to me by Cleopatra Davis and when I inquired about the signature of Aunty Betty Chea, she told me that she did not go to school and she could not write; but she had touched the pen "as her signature/agreement." One week after, on October 13, 2004, I made the second payment to Cleopatra Davis and Aunty Betty Chea in the sum of 10,000.00USD. So I paid on behalf of Mr. Gbollie, the payment of 20,000.00USD to Cleopatra Davis and her family. When Mr. Gbollie came from the United States, I presented the two receipts to him to confirm the payment of the money. This is what I know."

"Question: Thank you Mr. Witness; by that answer I open this page containing two instruments. I pass these instruments to you; tell the court and jury whether they are the same receipts you testified to?"

"Answer: These are the receipts that were issued to me, but I believe these are photocopies."

After the cross examination and questions from the jury and Court, the prosecution rested with the witness in toto.

After both parties rested evidence, according to the certified records, His Honour A. Blamo N. Dixon, orally charged the empanelled trial jury. Thereafter, the empanelled petit trial jury retired, deliberated, and in consideration of the totality of the evidence presented, returned a unanimous guilty verdict against the appellants. The Judge entered final judgment confirming the guilty verdict and sentencing the appellants to what he termed as "*the maximum of six years in common jail*". Judge Dixon also ordered that the appellants retribute the stolen amount and that each should pay "*immediately*" into Government Revenue, a fine of Three Hundred United States Dollars.

Appellants are before this Court of final arbiter substantially contending that they are entitled to acquittal as a matter of law; they are primarily claiming that the State failed to make a prima facie case against them. This Court views this pivotal contention, on account of which appellants have fled to this Court of last resort, as sheer absurdity, to say the least.

Appellants were indicted and charged with Theft of Property and Criminal Facilitation, a second degree felony. Chapter 15, Subchapter D, Section 15. 51 of the New Penal Code of Liberia, Title 26 (1976), provides, that a person is guilty of theft if he:

- (a) *Knowingly takes, misappropriates, converts, or exercises unauthorized control over or makes an unauthorized transfer of an interest in the property of another with the purpose of depriving the owner thereof*
- (b) *Knowingly obtains the property of another by deception or by threat with the purpose of depriving the owner thereof or purposely deprives another of his property by deception or by threat, or*
- (c) *Knowingly receives, retains or disposes of property of another which has been stolen, with the purpose of depriving the owner thereof."*

Further, Criminal Facilitation is defined under Chapter 10, Section 10.2 of the New Penal Code of Liberia, Title 26, (1976). Said provision stipulates that a person is *"guilty of Criminal Facilitation, who believing it probable that he is rendering aid to a person who intends to commit a crime, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony..."*

During the trial, the State presented both oral and documentary evidence demonstrating that the appellants, Cleopatra Davis, James N. Davis and Joe Matadi, connived, planned and did deceive the Private Prosecutor, Ciapha S. Gbollie, into believing that they intended and had been authorized by family members to sell a portion of the intestate estate of Baryou Chea. Through this calculated scheme, the appellants, with Cleopatra as the master mind, cleverly and deceptively, organized family meetings to make it look as if a consent of all family members in interest had been secured for the sale of the subject property to the private prosecutor. On account of these deceptive machinations, private prosecutor Ciapha S. Gbollie paid to the appellants, and for the benefit of each of them, the full amount of US\$50,000.00 (Fifty Thousand United States Dollars). That the said amount of US\$50,000.00 (Fifty Thousand United States Dollars) was paid to Co-appellant Cleopatra as head of a criminal gang is not disputed. Co-appellant Cleopatra however shamelessly sought to defend herself by arguing that the said amount of Fifty Thousand United States Dollars was a payment to her in a fake transaction to throw out of the subject property Private Prosecutor's elder brother, who then occupied the premises.

Speaking for the Supreme Court during disposition of the appeal taken from the trial judgment entered in the action of summary proceeding to recover possession of Real Property, this is how Madam Justice Gladys K. Johnson aptly described the appellees' criminal conduct:

✓ *"This case is a classic example of business dealings done in bad faith. It is a case in which the major participants, in their endeavor and design to take advantage of Betty Chea's lack of education, tried to dispossess her of her father's property. The major participants referenced herein are the appellant and the co-administratrix."*



In their effort to take advantage of Betty Chea's incompetency because of her illiteracy, and dispossess her and the other family members of their property, they connived to set her up by adding her name to the receipts to serve as evidence of her involvement in the transactions. But they knew that if they had her to sign as an illiterate person on the sale agreement and on the deed, her thumb print would have to be the proof of participation. And how could they obtain her thumb print since they did not want her to know about the sale of the property? So Cleopatra, now being caught in her tricks which she said Mr. Ciapha Gbollie masterminded either by some guilt of conscience or act of God, or may be because she was now caught in her tricks and finding no avenue of escaping from the wrath of the betrayed family members, had but one option, to confess that Betty Chea and the other family heads were not involved in her transaction leading to the sale of the disputed property. By that confession, and the fact that the deed itself, by being executed after the estate had been closed, and the sale agreement being unauthenticated and the two documents not being signed by Betty Chea, the co-administratrix, all of these factors rendered the enforcement of petitioner/appellant's petition to recover possession of real property legally unauthorized. In Railey and Montgomery v. Clark, 10 LLR 330, 335 (1950) this court emphasized "that where a dispute arises over title to real estate, a deed is the best evidence to settle said dispute or to prove in whom title to said property is legally vested. Moreover, hoary with age is the principle that in contests of this nature, a party recovers or succeeds upon the strength of his own title and not upon the weakness of his adversary."

- ✓ *Appellant in reliance on his agreement of sale and the deed subsequently executed, probated, and registered in the archives, proceeded to evict the defendants. The documents presented in support of his claim to ownership, having been invalid, his title must crumble. There was no other proof sufficient other than the deed which is usually the best evidence of title to property.*

The performance of the Probate Court in this estate matter was not only substandard but questionable. It is worth repeating that the Probate Court is the court authorized by law to protect all interests in decedent estates, intestate as well as testate. In this particular estate matter, the Probate Court, under both Judge John Greaves and Judge Amymusu Jones, failed to exercise the due care required of them under the Probate statute.

In the case of Judge John Greaves, he granted letters of administration to Betty Chea and Cleopatra Davies to administer the Bayou Chea estate in 1997. While said letters of administration was in full force and effect, he granted another letters of administration to Cleopatra Davies solely, to administer the said estate without any record of a revocation of the prior document, or that the co-administratrix Betty Chea had died, or was absent from Liberia never to return, or was in any otherwise incapacitated. Courts must take note of their own records. This the judge did not do.

Similarly, Judge Amymusu Jones, upon petition filed that Betty Chea be rejoined with Cleopatra Davies to administer the estate in view of what Judge Greaves had done, granted the petition and appointed Betty Chea to co-administer the estate along with Cleopatra Davies. But surprisingly, after granting the letters of co-administration to Betty Chea, Judge Jones issued two decrees of sale to Cleopatra Davies alone, without the co-administratrix Betty Chea, to sell two pieces of estate property including the subject of this dispute. But not only that, on the day following the issuance of the two decrees of sale, Judge Jones declared the Bayou Chea estate closed. Months after the closing of the estate, Cleopatra Davies executed a sales agreement between herself and appellant, and an administrator deed to the exclusion of her co-administratrix, thereby illegally transferring title to appellant.

Wherefore and in view of all the irregularities and illegalities that attended the acquisition of this property, it is our opinion that the administrator deed on which the appellant relied to support his summary proceeding to recover possession of real property was unlawfully and irregularly executed. Said administrator deed from Cleopatra B. Davies to Mr. Ciapha Gbollie is hereby declared an invalid instrument. We therefore confirm the judgment from which this appeal was taken.

The Clerk of this Court is ordered to instruct the court below to resume jurisdiction and enforce this judgment. This judgment does not however preclude appellant from availing himself of any other legal remedies to restore himself. IT IS HEREBY SO ORDERED... "

It is interesting to note that during the criminal trial, the State presented witnesses who testified to the payment of monies directly to Co-appellants Cleopatra Bruce Davis, James N. Davis and Joe Matadie; that these appellees

acted in concert in receiving payments and in their malicious pretense to be acting for and on behalf of other family members of the intestate estate of Bayou Chea. Their conduct was a calculated scheme to deprive Private Prosecutor/Appellee Gbollie of his property, in the amount of US\$50,000.00 (Fifty Thousand United States Dollars). During trial, State Prosecutors proffered incontrovertible documentary evidence, including payment receipts, signed by the appellants, acknowledging receipt of money from the private prosecutor. One of those instruments, dated November 30, A.D. 2004, is captioned *"Cash Receipt for the Purchase of the Building from Madam Cleopatra Davis, Seller/Administratrix of the Intestate Estate of the Late Bayou Chea, lying and situated on Center Street, Central Monrovia, Montserrado County, Monrovia, Liberia"*. The said instrument was jointly executed by the appellants, Cleopatra Bruce Davis, James N. Davis and Joe Matadie. By this instrument, the appellants admitted receiving payment from appellee as per the November 30, A.D. 2004 dated receipt, referenced herein above. The referenced instrument was issued by Co-appellant Cleopatra Davis as administratrix/seller and Co-appellees Mac Chea, Emmanuel Matadi, Joe Matadi and Nathaniel Chea. This receipt clearly evidences the collection by appellants, through misrepresentation with malicious intent to deprive a person of his property. At the time of the purported sale, the appellants undoubtedly knew that they were without authority to transfer title. The appellants therefore knowingly received with the sole criminal intent and purpose of depriving the appellee and private prosecutor of his money, in the sum total of Fifty Thousand United States Dollars (\$50,000.00). The taking by appellants of money from Appellee Gbollie, under the circumstances herein described, constituted outright theft of property as defined by Section 15.51 (a) of the Penal Code of the Republic of Liberia. The amount taken from the appellee/private prosecutor is immaterial to proof of the commission of the crime of theft of property.

The State indeed presented cogent, overwhelming, convincing and irrefutable evidence in support of the indictment thereby making a prima facie case against the appellants/defendants. Hence, the judgment entered by the trial judge, confirming the unanimous guilty verdict returned by the petit jury need not be reversed by this final Court of justice in the land, but may be modified where deemed appropriate.

Consistent with the evidence produced, this Court says that it is unable to affirm that part of the trial court's judgment ordering the restitution of the items, or value thereof, said to belong to appellee. According to the indictment, certain items said to belong to Appellee Gbollie were alleged removed from the building by Co-appellant Cleopatra when she allegedly broke-in. We have painstakingly searched in the voluminous records but found no Police Report to aid this Court in understanding when the alleged break-in occurred, whether an investigation was conducted from which a list of the reported stolen items was made, or a value thereof determined. We have seen no such listing of the equipment reportedly stolen or the value thereof. Evidence of this kind is necessary for the purpose of ordering restitution of those items. Under the circumstance, to approve the ruling of the trial judge ordering restitution of those items without evidence would be tantamount to swimming in the realm of speculations.

Far back in 1928, this Court held in Taylor versus Worrell, reported in 3 LLR 14, at page 18, that "...it is the evidence that determines the issues of fact in all litigation, and where it appears that a court, tribunal or officer proceeded without the proper evidence for both parties, it creates an irregularity in trial..." This principle of law is further articulated in numerous Opinions of this Court including "Thompson Versus Republic," 14 LLR 133, 143 (1960).

Consequently, we hereby disallow restitution of the alleged stolen items valued at US\$4,601.00 and cash money of LD\$34,525.00. These represent the sum total which the appellee set forth in the indictment as the value of all the equipment, materials and cash reportedly stolen and carried away by principal Defendant Cleopatra Davis.

We will now delve in a few collateral issues raised by the appellants for which they are praying for reversal of the judgment of guilty entered against them. One such contention raised by the appellants was that the trial judge did not formally charge the jury from a written script. To deal with this issue, we reverted to the records of the trial proceedings. We also did not find any such written charge by the trial judge thereby substantiating appellants' assertion that Judge Dixon charged the jury extemporaneously. The question then is whether the failure by the judge to charge the jury from a written script amounted to a reversible error in the instant case?

We do not think so. While it is an advisable practice for a trial judge to issue a formal charge to the trial jury, Judge Dixon not having done so in the case at bar constitutes no legal ground to set aside the judgment entered against the appellants. A failure by a judge to formally charge the petit jury would amount material error only where a defense lawyer specifically requests formally that the jury be charged. This Court, in the case, *Wiah v. Republic*, 38 LLR 385, 389-90 (1997), held as follows:

"...at the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court shall instruct the jury on the law as set forth in the requests. At the same time, copies of such requests shall be furnished to the adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. The court shall instruct the jury on every issue of law arising out of the facts even though no requests to charge thereon have been submitted by counsel. (Emphasis ours)."

Unfortunately, there is nothing in the certified records to illustrate that the defense made any written such request of the trial judge. Defense not having requested that the jurors be formally charged in the case under review, we cannot allow a reversal of the guilty judgment for reason that the judge did not formally charge the petit jury. Appellant's contention in this respect is not tenable in law.

Finally, we proceed to address the issue of the six year prison sentence the trial judge imposed on the appellants. It is noteworthy that Judge Dixon, in his final judgment, concluded in the manner following:

"Wherefore and in view of the foregoing and the Laws controlling, it is the considered Opinion and Final Judgment of the first Judicial Circuit, Criminal assizes "C" for Montserrado County that the unanimous GUILTY VERDICT of the trial Jury is hereby confirmed and affirmed. Defendants Cleopatra Davis, James N. Davis, Joe Matadie et. al. are hereby adjudged GUILTY of the Crimes of Theft of Property and Criminal Facilitation. The said Defendants are hereby sentenced to imprisonment for a period of six consecutive years at the Monrovia Central Prison Compound; make restitution of the amount of US\$54,601.00 plus LD\$34,525.00 and fined the amount of US\$300.00 each to be immediately deposited into Government Revenue.

The Clerk of Court is hereby ordered to give effect to the Court's Final Judgment and the Sheriff is further ordered to enforce same, pending final determination of the case by the Honorable Supreme Court of the Republic of Liberia. AND IT IS HEREBY SO ORDERED. MATTER SUSPENDED.

GIVEN UNDER MY HANDS AND SEAL
OF COURT THIS 10th Day of MARCH A.
D. 2011."

According to the certified records before us, the appellants were charged, tried and convicted of multiple crimes, Theft of Property and Criminal Facilitation. One of the two crimes of which appellants were convicted was "*Theft of Property*". Under Section 15.54 of the Penal Law of Liberia (1976), the crime of theft of property is graded as a felony of the second degree if the value of the stolen property, as in the instant case, is \$50,000 or over. The statute, specifically Section 50.5.1 (b) of the Penal Code, decrees a definite jail term to be served by a person guilty of a second degree felony, the maximum of which, in the words of the Penal Code, "*shall be five years*". Further, Section 10.2(3) of the Penal Code provides that "*[f]acilitation of a felony of the first degree is a felony of the third degree [and] [f]acilitation of a felony of the second degree or felony of the third [as] a misdemeanor of the first degree.*" According to Section 50.7 (a) of the Penal Code, the maximum jail term for first degree misdemeanor, applicable in the case before us, and of which the appellants were also convicted, is to be fixed by the court not exceeding "*one year*".

But according to the certified records transmitted to this Court, Judge Blamo Dixon ordered that the convicts serve jail term "*for a period of six (6) consecutive years*". It would appear that Judge Dixon reasoned it to be appropriate combining the maximum prison terms of five years for theft of property with the one year maximum imprisonment for Criminal facilitation. By this seemingly rational mathematical calculation, the judge decreed the six year prison term to be served by the appellants.

While the six year jail sentence decreed by the learned judge may appear mathematically accurate, his decision in this respect is unsupported by law. In this jurisdiction, the imposition of punishment for commission of crime is strictly prescribed by the Penal Code. A trial judge is accorded the discretion to give a guilty defendant a length of time as punishment within and not without the period prescribed by law. Vide: *Republic versus Weafuah et al.*, 16 LLR 122, 128 (1964).

Under the circumstances of the case at bar, the appellants were tried and convicted of multiple crimes with multiple grades; theft of property, a felony of the second degree, and criminal facilitation, a felony of the third degree or first degree misdemeanor. The question that arises in this case is whether a judge acts within the law by summing up the maximum prison terms of the crimes. In other words, did the judge act in accordance with law when he imposed five (5) year period of imprisonment for theft of property, a felony of the second degree and one (1) year additional jail term, for criminal facilitation, a misdemeanor of the first degree? Our answer to this question is a resounding negative. This Court adopted the "merger principle" enunciated by this Court far back in 1874. Vide: 11 A.D.H. 946; *U.S. v. Rindskopf, 6 Bissel 259 (W.D. Wis. 1874)*. The basic concept of this principle is that where one is convicted of more than one offense, the smaller offense is merged in the greater offense; however, acquittal of a party of the greater offense does not bar the State from indicting the party for the lesser offense. This is the way the Supreme Court of Liberia articulated the principle in the case, *Dennis versus Republic, 3 LLR 105, 110 (1929)*.

"...it is undoubtedly true that the appellant received a large amount of the bill by false pretenses which is a misdemeanor, the latter offense is merged in the felony....however ...the acquittal of the latter is no bar to an indictment for the former.

This is the applicable principle of law where a party defendant is adjudged guilty of multiple crimes. Consonant herewith, it is clear that Judge Dixon was without the pale of the law when he sentenced the herein appellants to six (6) year prison term for theft of property and criminal facilitation. In keeping with the principle extant, theft of property as felony of the second degree, a greater offense, fuses with criminal facilitation, misdemeanor of the first degree and therefore a lesser offense. In this case, it was within the proper exercise of Judge Dixon's judicial discretion to impose the maximum prison term of five (5) years on the guilty defendants for the greater offense of theft of property, a felony of the second degree. We therefore reverse Judge Dixon in respect to the sentence imposed.

It should also be remembered that the matter on appeal has lingered in the corridors of the Temple of Justice for a period of over ten (10) years leading to a criminal conviction. During this lingering period, it would appear that restitution of some of the amounts payable by the appellants have been made. As we understand it, payments made by the appellants include cash repayment as well as rental proceeds receivable from the building/s at the center of these appeal proceedings. In the interest of justice, and to ensure just calculations of all the amounts restituted as well as for a fair and just imposition of a jail term, we are remanding this case to the court below for sentencing hearing, consistent with practice and procedure in this jurisdiction.

WHEREFORE, and in view of the foregoing, the judgment entered by the trial judge is hereby confirmed with the modifications as herein detailed. The Clerk of this Court is ordered to send a mandate to the judge presiding in the court below to resume jurisdiction over this case and give the effect to this Judgment and within thirty (30) days as of receipt of this mandate, file returns to this Court informing us as to the manner of execution. **AND IT IS HEREBY SO ORDERED.**