

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS MARCH TERM, A.D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE  
BEFORE HIS HONOR: KABINEH M. JA'NEH .....ASSOCIATE JUSTICE  
BEFORE HERHONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III .....ASSOCIATE JUSTICE  
BEFORE HERHONOR: SIE-A-NYENE G. YUOH .....ASSOCIATE JUSTICE

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Nyazee Barway alias Joseph Dweh, Morris K. Cole alias )  
Edward Cole/General Girl, Isaac Taryon alias Wolie )  
Taryon, Stephen Gloto alias Rambo/Ninja, Prince Youty, )  
James Lee Cooper, Emmanuel Saymah alias Trainer, )  
Moses Baryee alias Moses Sarpee, Sam Tarley alias ) APPEAL  
Bull Dog, Ofori Diah, Alfred Bobby James, Jr. alias )  
Bobby Sarpee, Jacob Saydee and Mohammed )  
Massaquoi, of the City of Monrovia ..... APPELLANTS )  
)  
Versus )  
)  
Republic of Liberia by and thru the Ministry of Justice )  
.....APPELLEE )

**GROWING OUT OF THE CASE:**

Republic of Liberia by and thru the Ministry of Justice )  
..... Plaintiff )  
)  
Versus )  
)  
Nyazee Barway alias Joseph Dweh, Morris K. Cole alias ) MERCENARISM, MURDER,  
Edward Cole/General Girl, Isaac Taryon alias Wolie ) RAPE, ARSON & THEFT OF  
Taryon, Stephen Gloto alias Rambo/Ninja, Prince Youty, ) PROPERTY  
James Lee Cooper, Emmanuel Saymah alias Trainer, )  
Moses Baryee alias Moses Sarpee, Sam Tarley alias )  
Bull Dog, Ofori Diah, Alfred Bobby James, Jr. alias )  
Bobby Sarpee, Jacob Saydee and Mohammed )  
Massaquoi, of the City of Monrovia ..... Defendants )

Heard: May 5, 2015

Decided: September 22, 2016

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

In 2010, presidential and general elections took place in the neighboring Republic of Ivory Coast. It was reported that serious violence erupted after the said elections resulting into the alleged commission of multiple crimes of mercenarism, murder, rape, theft of property and arson in that country. The appellants/defendants in this case were arrested in Grand Gedeh

County, near the Ivorian border and other parts of Liberia and investigated for their alleged involvement in cross border attacks into the Ivory Coast. The arrests were carried out at diverse times culminating into two separate indictments. Of those initially arrested and investigated, ten (10) were charged with the commission of the crime of mercenarism, sent to court and subsequently indicted on September 13, 2011.

We quote the full text of the first indictment:

#### "INDICTMENT

The Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Isaac Cheapoo, alias Bob Marley, Prince Barclay, Jacob Saydee, Mohammed Massaquoi, Timothy Barlee, Philip Moore, Junior Gelor, Emmanuel Pewee and Fred Chelly all to be identified, committed the crime of mercenarism, a felony of the first degree, to wit:-

1. That in May, A.D. 2011, Co-defendants, Isaac Cheapoo, alias Bob Marley, Prince Barclay, Jacob Saydee, Mohammed Massaquoi, Timothy Barlee, Philip Moore, Junior Gelor, Emmanuel Pewee and Fred Chelly, were arrested by officers of the CSD Division of the Liberia National Police based on their commission of the crime of mercenarism.
2. That it is against Chapter 11, section 11.13 of the New Penal Law of [the] Republic of Liberia and therefore a violation of said law when Liberian citizens engage themselves in the act of mercenarism as individuals, groups, associations or representatives of the state itself with the intent of opposing by armed violence, a process of self-determination of the territorial integrity of another state.
3. That during post elections violence in Cote D'Ivoire in December, 2010, intelligence obtained by Liberian security forces indicated that the defendants, all Liberians, were involved in the fighting on both sides of the conflict. That on one occasion, a former fighter of the disbanded National Patriotic Front of Liberia (NPFL), Mylon Ghogbaye, spoke during a BBC interview with Jonathan Paleley and voiced that he was fighting in support of Al Hassan Ouattara.
4. That it was further reported that the retreated fighters re-entered the Ivorian side of the border and attacked a town known as "Whiteman's Camp", killing several persons and absconding with the loots. Reports received from victims in the town attacked on the border were relayed to Liberians in Zwedru and Dioulourou. Information obtained indicates that Ivorian gendarmerie was notified and visited the scene.
5. That the government of Liberia in maintaining the security of the State and refraining from actions that might be viewed as supporting the parties, cautioned Liberians against fighting in Cote D'Ivoire, amidst reports in the press that Liberians were being recruited to fight in neighboring Cote D'Ivoire.

6. That predicated on these reports of Liberians involvement in the Ivorian post elections conflict, twelve (12) persons were arrested in Grand Gedeh County for their involvement by State Security, brought down to Monrovia and turned over to the Crime Services Department of the Liberian National Police on May 21, A.D. 2011 for investigation. Defendants arrested and turned over included: Isaac Cheapoo, alias Bob Marley, Prince Barclay, Jacob Saydee, Mohammed Massaquoi, Timothy Barlee, Philip Moore, Junior Gelor, Emmanuel Pewee and Fred Chelly.
7. That during police preliminary investigation, Co-defendant, Isaac Cheapoo, explained to the investigators that in 2002, he left Liberia for Cote d'Ivoire and was residing in Dioukourou's refugee camp at Negla. Co-Defendant Cheapoo stated that before leaving for Cote d'Ivoire, he fought in the Liberian crises on the side of the government of the late president Samuel K. Doe under the command of Apollo Jay Swen. That each of the Liberians gave his own account of their involvement in the Ivorian crises.
8. The crime of mercenarism is committed by an individual, a group, an association, or representative or representatives of a State and the State itself with the intent of opposing by armed violence a process of self-determination on the territorial integrity of another State when the following acts are perpetrated, to wit:
9. The sheltering, organizing, financing, assisting, equipping, training, promoting, supporting or employing armed forces partially or wholly and consisting of persons not nationals of the Country being invaded or attempting to invade and merely or solely for money, personal gain, material or other reward; or (b) the enlisting, enrolling or attempting to enroll in the said armed forces; or (c) the allowing of the activities referred to in sub-section (1) (a) to be carried out in any territory under the jurisdiction of another State or in any place under its control; or (d) the affording of facilities for transit, transportation or other operations for the armed forces and activities referred to in sub-section (1) (a).
10. That the defendants have no affirmative defense.
11. That the defendants' act is contrary to: Chapter 11, Section 11.13 of the New Penal Law of the Republic of Liberia, and the peace and dignity of the Republic of Liberia.

True Bill / Ignoramus

WITNESSES

1. Det/C/Insp. T. Ottoos Bartuah
2. Det/Sgt. Alpha D. Jabateh
3. Det/Supt. Emmanuel D. Jilkan

Filed this A.D. 2011

Gayflor S. Mulbah Foreman of Grand Jurors

Clerk of Court Criminal Court "A"

ADDRESSES

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

In June 2012, there were further reports of cross border attacks into the Ivory Coast from Liberia. This prompted the Ivorian security officers, in collaboration with United Nations peace keepers in the Ivory Coast (UNOCI) to send a detachment comprising of three (3) vehicles with Ivorian and UNOCI security officers towards the problem area. The detachment came under attack in an area in the Ivory Coast called Para, close to the Liberian border.

From the police investigation conducted, it was reported that a group of unidentified assailants had crossed the Cavalla River from Liberia to carry out the attack in the Ivory Coast in a village called Sao. As a result of the cross border attacks, both Liberia and Ivory Coast decided to collaborate in the conduct of several investigations. The joint investigative efforts of the two sisterly countries led to the identification of Nyazee Barway, alias Joseph Dweh, as the ring leader of those carrying on the cross border attacks. Subsequently, Nyazee Barway and several other Liberian and Ivorian nationals were arrested and charged with the commission of the crimes of mercenarism, murder, rape, arson and theft of property. The arrested persons were indicted on October 30, 2012, by the Grand Jury for Montserrado County. Those indicted on the second indictment are: Nyazee Barway, alias Joseph Dweh, Morris K. Cole, alias Edward Cole/General Girl, Isaac Taryon, alias Wolie Taryon, Stephen Gloto, alias Rambo/Ninja, Nemlin Tere Antoine, Prince Youty, James Lee Cooper, Emmanuel Saymah, alias Trainer, Kommande Mohegar Alerie, Frank Oliver Nioule, Junior Nioule, Edward O Niolule, Julien Badison Toue, Moses Baryee, alias Moses Sarpee, Djikizion Guei Martin, Blao Nocaise, Sam Tarley, alias Bull Dog, Ofori Diah and Alfred Bobby James, Jr., alias Bobby Sarpee.

We quote the second indictment:

“INDICTMENT

COUNT 1

The Special Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Nyazee Barway alias J Joseph Dweh, Morris K. Cole alias Edward Cole/General Girl, Isaac Taryon alias, Wolie Taryon, Stephen Gloto alias Rambo/Ninja, Nemlin Tere Antione, Prince Youty, James Lee Cooper,

Emmanuel Saymah alias Trainer, Komande Mohegar Alerie, Frank Oliver Nioule Junior Nioule, Edward O. Nioule, Julien Badison Toue, Moses Baryee alias Moses Sarpee, Djikizion Guei Martin, Blao Nocaise, Sam Tarley alias Bull Dog, Ofori Diah and Alfred Bobby James, Jr. alias Bobby Sarpee, committed the crime of mercenarism, a felony of the first degree, to wit:-

1. That since post elections violence broke up in December of 2010 in the Ivory Coast that led to the arrest, detention and subsequent transfer to the Hague of former Ivorian President, Laurent Gbagbo to face war crime trial, many of his supporters, both Ivorians and other nationals went into hiding in Ivory Coast while others fled across the border into neighboring countries including Liberia.
2. That some of those supporters now defendants herein, Nyazee Barway alias Joseph Dweh, Morris K. Cole alias Edward Cole/General Girl, Isaac Taryon alias, Wolie Taryon, Stephen Gloto alias Rambo/Ninja, Nemlin Tere Antione, Prince Youty, James Lee Cooper, Emmanuel Saymah alias Trainer, Komande Mohegar Alerie, Frank Oliver Nioule, Junior Nioule, Edward O. Nioule, Julien Badison TOUC, Moses Baryee alias Moses Sarpee, Djikizion Guei Martin, Blao Nocaise, Sam Tarley alias Bull Dog, Ofori Diah and Alfred Bobby James, Jr. alias Bobby Sarpee, while residing in the borders of Liberia, connived and conspired to go into Ivory Coast to destabilize the government of that sisterly Republic.
3. That to effectuate their plans, the defendants from various refugee camps and towns in Grand Gedeh along the border with Ivory Coast, recruited and caused to be recruited for mercenary activities, received training into the Thai Forest in Grand Gedeh operated by Co-defendant George Moore, solicited and received funding from pro Gbagbo loyalists for attacks into Ivory Coast.
4. That defendant Emmanuel Saymah served as trainer for those recruited, received money, arms and ammunitions from Co-defendant George Moore after which he led twenty men including Co-defendant Komande M. Valerie, into Ivory Coast where Valerie operates a mercenary base in Touleplea and they attacked Pekan Military Barracks on August 13, 2012 in lower Touleplea, followed by attacks on other towns and villages resulting to the killing of many civilians, raping of women/girls, burning of houses and stealing of money and other properties.
5. That defendant Moses Baryee alias Moses Sarpee is the one who contacted Co-defendant Morris Cole from his village to join them in the plan attack on Ivory Coast. That upon defendant Cole's arrival at the Disco Hill residence of Codefendant Bobby Sarpee, he and others were given money by Bobby Sarpee for the planned attack on Ivory Coast. From the money received from Co-defendant Bobby Sarpee, defendant Moses Baryee was able to mobilize and recruit manpower and they were part of the fighting force that attacked the UN Peacekeeping Force in Para, Ivory Coast on June 14, 2012, where seven (7) UN Peacekeepers were killed along with scores of civilians.

6. That following the attacks in Ivory Coast, you, the defendants, fled back into Liberia at which time the security forces were alerted and you were arrested at different time intervals and diverse places and arms, ammunitions and communication devices and other warlike materials were retrieved from you.
7. That you defendant Ofori Diah received money (US\$100,000.00) from an Ivorian named Jackson Didier for the purchase of arms and ammunition in Singapore and Dubai for the mercenary activities in the Ivory Coast and that you also made contact for arms in Liberia from some of the defendants herein.
8. That it is against Chapter 11, section 11.13 of the New Penal Law of the Republic of Liberia and therefore a violation of said law when Liberian citizens engage themselves in the act of mercenarism as individuals, groups, associations or representatives of the state itself with the intent of opposing by armed violence a process of self-determination or the territorial integrity of another state.
9. The crime of mercenarism is committed by an individual, a group, an association, or representative or representatives of a state and the State itself with the intent of opposing by armed violence a process of self-determination or the territorial integrity of another State when the following acts are perpetrated, to wit:
  10. The sheltering, organizing, financing, assisting, equipping, training, promoting, supporting or employing armed forces partially or wholly and consisting of persons not nationals of the Country being invaded or attempting to invade and merely or solely for money, personal gain, material or other reward;
  - or (b), the enlisting, enrolling or attempting to enroll in the said armed forces; or (c) the allowing of the activities referred in sub-section (1) (a) to be carried out in any territory under the jurisdiction of another State or in any place under its control; or (d) the affording of facilities for transit, transportation or other operations for the armed forces and activities referred to in sub-section (1) (a).
11. That the defendants have no affirmative defense.
12. That the defendants' act is contrary to: Chapter 11, Section 11.13 of the New Penal Law of the Republic of Liberia, and the Peace and dignity of the Republic of Liberia.

## COUNT 2

The Special Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Nyazee Barway alias Joseph Dweh, Morris K. Cole alias Edward Cole/General Girl, Isaac Taryon alias, Wolie Taryon, Stephen Gloto alias Rambo/Ninja, Nemlin Tere Antione, Prince Youty, James Lee Cooper, Emmanuel Saymah alias Trainer, Komande Mohegar Alerie, Frank Oliver Nioule, Junior Nioule, Edward O. Nioule, Julien Badison Toue, Moses Baryee alias Moses Sarpee, Djikizion Guei Martin, Blao Nocaise, Sam Tarley alias Bull Dog, Ofori Diah and Alfred Bobby

James, Jr. alias Bobby Sarpee, committed the crime of murder, a felony of the first degree, to wit:

13. That you the defendants herein connived and conspired to launch cross border attacks in the Ivory Coast where post elections violence caused the security of that country to be fragile for the sole purpose of causing mayhem and the destruction of lives and properties eventually leading to the unseating of the government of President Al Hassan Ouattara.

14. That you defendants in the months of June and August 2012 traveled to the Ivory Coast from Liberia and attacked several villages, towns and military barracks and in the process killed seven (7) UN Peacekeepers and scores of civilians.

15. That the defendants have no affirmative defense.

16. A person engages in conduct purposely if when he engages in the conduct it is his conscious object to engage in conduct of that nature or to cause the result of that conduct.

17. A person engages in conduct knowingly if when he engages in the conduct he knows or has a firm belief unaccompanied by substantial doubt that he is doing so, whether or not it is his purpose to do so.

18. That the acts of the defendants are contrary to 4LCLR, Title 26, Section 14.1 (a); and 4 LCLR, Title 26, Section 50.5 and 51.3; and 4LCLR, Title 26, Sections 2.2(a) and (b); of the statutory laws of the Republic of Liberia; and peace and dignity of the Republic of Liberia.

### COUNT 3

[The] Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Nyazee Barway alias Joseph Dweh, Morris K. Cole alias Edward Cole/General Girl, Isaac Taryon alias, Wolie Taryon, Stephen Gloto alias Rambo/Ninja, Nemlin Tere Antione, Prince Youty, James Lee Cooper, Emmanuel Saymah alias Trainer, Komande Mohegar Alerie, Frank Oliver Nioule, Junior Nioule, Edward O. Nioule, Julien Badison Toue, Moses Baryee alias Moses Sarpee, Djikizion Guei Martin, Blao Nocaise, Sam Tarley alias Bull Dog, Ofori Diah and Alfred Bobby James, Jr. alias Bobby Sarpee, committed the crime of rape, a felony of the first degree, to wit:-

19. That between the months of June and August A.D. 2012, you the defendants herein entered into Ivory [Coast] from Liberia and launched armed attacks on several towns and villages in the Ivory Coast and during said attacks you forcefully and with violence and threats had sexual intercourse with women and girls against their will and consent.

20. That the act of the defendants is contrary to the New Penal Law Section 14.70(1) (a) (1) (11), (b) of the statutory laws of the Republic of Liberia.

21. Sexual intercourse means, penetration however slight to the vagina, anus or mouth or

any other opening of another by penis or penetration however slight of the vagina or anus of another person by a foreign object or any other part of the body (other than the penis).

#### COUNT 4

The Special Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Nyazee Barway alias Taryon, Stephen Gloto alias Rambo/Ninja, Nemlin Tere Antione, Prince Youty, James Lee Cooper, Emmanuel Saymah alias Trainer, Komande Mohegar Alerie, Frank Oliver Nioule, Junior Nioule, Edward O. Nioule, Julien Badison Toue, Moses Baryee alias Moses Sarpee, Djikizion Guei Martin, Blao Nocaise, Sam Tarley alias Bull Dog, Ofori Diah and Alfred Bobby James, Jr. alias Bobby Sarpee, committed the crime of arson, a felony of the second degree, to wit:-

22. That you the Defendants entered into the Ivory Coast between the months of June and August A.D. 2012 and attacked many towns and villages and set ablaze residential and official buildings thereby causing destruction to the properties of the fleeing civilian population and the inhabitants of those areas that came under attack.

23. That the defendants have no affirmative defense.

24. 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(s) is an occupied structure of another.

25. Vital public facility includes a facility maintained for use as a(n) (bridge, whether over land or water) (dam) (tunnel) (wharf) (communications installation)(radar installation) (power station) (airfield).

26. The acts of the defendants are contrary to 4LCLR, Title 26, Section 15.5 ; and 4LCLR, Title 26, Section 15.6; of the statutory laws of the Republic of Liberia; and the peace and dignity of the Republic of Liberia.

#### COUNT 5

The Special Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Nyazee Barway alias Joseph Dweh, Morris K. Cole alias Edward Cole/General Girl, Isaac Taryon alias, Wolie Taryon, Stephen Gloto alias Rambo/Ninja, Nemlin Tere Antione, Prince Youty, James Lee Cooper, Emmanuel Saymah alias Trainer, Komande Mohegar Alerie, Frank Oliver Nioule, Junior Nioule, Edward O. Nioule, Julien Badison Toue, Moses Baryee alias Moses Sarpee, Djikizion Guei Martin, Blao Nocaise, Sam Tarley alias Bull Dog, Ofori Diah and Alfred Bobby James, Jr. alias Bobby Sarpee, committed the crime of theft of property, a felony of the third degree, to wit:-

27. That between the months of June and August A.D. 2012, you, the Defendants, attacked

several towns and villages in the Ivory Coast from Liberia and that you stole, took and carried away monies and other valuables from the homes, offices and business areas of the civilian population and converted same into your own use without their consent. The defendants have therefore stolen, taken, carried away, exercised unauthorized control over and converted the Private Prosecutors' money to their own use without the will and consent of the owners, thereby depriving the owners of the use of their property.

28. That the defendants have no affirmative defense.
29. 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.
30. "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.
31. "OWNER" means any person(s) or Government with an interest in property such that it is [the] property of another as far as the defendant is concerned.
32. 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.
33. "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.
34. And the value of the property stolen was \$300.00 or over and the property was acquired or retained by a threat to commit a first or second degree felony.  
The value of property shall be the highest value by any reasonable standard, regardless of the defendant's knowledge of such value.
35. Defendants' act is contrary to: 4LCLR, Title 26, Section 15.51 (a); and 4LCLR, Title 26, Section 2.2 (b); and 4LCLR, Title 26, Section 15.61 (b) and (g); and 4LCLR, Title 26, Section 15.54; of the Statutory Laws of the Republic of Liberia; and Peace and dignity of the Republic of Liberia.

True Bill/Ignoramus  
ADDRESSES LNP

## WITNESSES

1. Alfred T. Quire
2. Stanley Kanbleh
3. Others

Documentary evidence

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

Jehu A. Beh  
Foreman, Special Grand Jurors

Clerk of Court/  
Criminal Court "A"

While the indicted persons were awaiting trial, the Government of the Republic of Ivory Coast requested for the extradition of all of those who were in the custody of the Liberian Government for cross border attacks into the Ivory Coast, including the citizens of Liberia. The Government of Liberia invoked its rights under the Extradition Treaty it has with the Republic of Ivory Coast and maintained that it could only extradite the Ivorian citizens and not Liberian citizens; and that the Liberian citizens arrested and indicted would be tried in Liberia. Accordingly, the Government of Liberia dropped charges against the Ivorian nationals on February 26, 2013, and entered a *nolle prosequi* in their favor. They were: Komande Mohegar Valerie, Nemin Terek Antoine, Djikizion Guei Martin, Blao Nicaise, Frank Oliver Nioule, Junior Nioule, Edward O. Nioule and Julien Badison Toué. They were subsequently extradited to the Ivory Coast to stand trial.

The records of this case show that co-defendants Isaac Cheapoo, alias Bob Marley, and Philip Moore each filed criminal appearance bonds at different time intervals. Co-defendant Isaac Cheapoo's bond was filed on February 1, 2012, and approved by Judge Benedict W. Holt, while co-defendant Philip Moore's bond was filed on February 24, 2012, and approved by Judge A. Blamo Dixon. At the call of the case for trial, the two co-defendants were not in court. For reasons not disclosed by the records of this case, the insurance company, African Insurance Corporation of Liberia which served as surety on the criminal appearance bonds for the two co-defendants were not made to produce them.

The records further show that the State filed a motion for severance to have the other appellants/defendants tried separately from co-defendants Isaac Cheapoo and Philip

Moore, since they could not be found. The motion for severance, not having been opposed by the appellants/defendants, was granted.

The appellants/defendants then brought to the attention of the trial court, that is to say Criminal Court "D" that they had filed a motion to dismiss the "main case" on the ground that the appellants/defendants had been in jail for more than two terms of court without being tried in violation of the law. The motion was resisted, argued pro et con and denied. The trial judge denied the motion on the ground that the motion was venued and filed before Criminal Court "B," therefore he (the trial judge presiding over Criminal Court "D,") did not have jurisdiction to hear and determine the said motion. From the records, no subsequent action was pursued by the appellants/defendants.

Then, co-appellants/defendants Ofori Diah and Alex Bobby James, alias Bobby Sarpee, filed a petition for summary proceedings against Magistrate Chineh before Criminal Court "D", complaining that Magistrate Chineh had refused to admit them to bail. They requested the trial court to admit them to bail because, according to them, they were charged by the Liberian National Police for para-military activities and criminal facilitation, second degree felonies under our criminal procedural law, which are bailable offences. It appears that co-defendants Ofori Diah and Alex Bobby James, alias Bobby Sarpee, having been named in the second indictment drawn by the State which charged them with mercenarism, a non-bailable offense, the issue of them being arrested on para-military activities and criminal facilitation was cured. Therefore, the trial judge denied the petition for the co-defendants to be admitted to bail. Again, from the records, no subsequent action was pursued by the appellants/defendants on this point. And since the appellants/defendants did not make this an issue in their bill of exceptions, we will not belabor the point.

On June 18, 2013, the State made application to consolidate the indictment against Isaac Cheapoo et al issued during the August term, 2011, and the indictment against Nyazee Barway et al issued during the August term 2012, of the First Judicial Circuit, Court "D" and amended to allow the court to try the appellants/defendants only on the charge of mercenarism and no other charge. All the parties agreed, so the application was granted. Thereafter, the state made application to enter *nolle prosequi* in favor of co-defendant Prince Barclay to be used as a state witness, which application was granted.

The records of this case reveal that trial jury was selected and the trial of the case was commenced but due to jury tampering, that trial was aborted, the jury disbanded and a new trial ordered by His Honor Yussif D. Kaba then presiding over Criminal Court "D".

On March 17, 2014, the new trial of the appellants/defendants began with His Honor Emery S. Paye, presiding by assignment. The State made application to the trial court first, to have the indictment against Isaac Cheapoo et al issued during the August term, 2011, and the indictment against Nyazee Barway et al issued during the August term, 2012, of the First Judicial Circuit, Criminal Court "D" consolidated and amended. The amendments were to the effect that co-defendant Christopher Lakpeh, who was arrested along with the other appellants/defendants, but whose name was inadvertently left out during the first trial that was aborted due to jury tampering be included in the second trial. Secondly, the State sought to amend the date of the alleged cross border attack to be June 8, 2012, instead of June 14, 2012 as it appears in count 5 of the second Indictment. And thirdly, the State made application to enter *nolle prosequi* in favor of co-defendant Prince Barclay to be used as a state witness. The appellants/defendants interposed no objections, therefore, the trial judge granted the applications.

At the trial the State produced eleven (11) regular witnesses to the witness stand and introduced sixty-one (61) documentary evidences. The State also produced seven (7) rebuttal witnesses. When the State rested with the production of evidence, the defendants filed a motion for judgment of acquittal. We quote the motion for judgment of acquittal:

"MOTION FOR JUDGMENT OF ACQUITTAL

AND NOW COMES MOVANT in the above-entitled cause moves this Honorable Court for a judgment of acquittal for the following legal and factual reasons, to wit:

1. That the Criminal Procedure Law provides: "The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses..." 1LCLR tit.2 subsec.20.10. *Motion for Judgment of Acquittal.*
2. That Respondent, the Republic of Liberia, has failed miserably to establish a prima facie case against the Movants. Hence, the evidence is insufficient to sustain a conviction in this case.
3. That the prosecution produced eleven (11) witnesses who testified in open court. Among the eleven (11) witnesses were four (4) police officers: Gregory O. W. Coleman, Inspector Savior Howard, Commissioner Alfred Quire and Commissioner Jleekan.
4. Inspector Savior Howard told the Court and Jury that he took assignment in Grand

Gedeh County in July 2012. He told [the] court that his assignment was to mind the borders and arrest those people that were involved in the cross border attack in the Ivory Coast, and that during his operation in Grand Gedeh County three (3) persons were arrested for cross border attack in the Ivory Coast and the three (3) were: Edward Cole, Nyazee Barway and Isaac Taryon.

5. And also because defense counsels submit and say that the other fifteen (15) Defendants that were never arrested by the operation of Savior Howard.

6. Defense observed that the testimonies of the state witnesses contradicted one another, in that, Commissioner Alfred Quire and Jleekan informed [the] court in July that they investigated the defendants and that arms were retrieved from the defendants, but Inspector Coleman, who was charged with the responsibility of restoring hope in the South Eastern Region told the court that they only retrieved ammunitions and not arms.

7. Because defense counsels contend and say that according to several Supreme Court Opinions, where the prosecution witnesses' testimonies contradict one another, the doubt created there from operates in favor of the defendant, and therefore, it is a ground for acquittal.

8. And also because defense counsels observed that the two state witnesses from the Ivory Coast, a Lieutenant of Ouattara's Army told [the] court that the citizens of Para informed him of the attack of Para, therefore, he set up a team of military personnel to carry out an investigation and to stop the advance movement of the attackers during which time six (6) persons were arrested all of whom were Ivorians, but never linked the defendants to the commission of the crime.

9. Movants further contend and say that the witnesses never linked the defendants to the commission of the crime; the second Ivorian witness who was a Deputy Commissioner of Security in the Ivory Coast; said that his testimony was based on what the Liberian Police told him and the confession of some of the defendants during their interrogation at the Police Headquarters. These statements of the Ivorian witnesses are all hearsay evidence, which cannot be used against the defendants. Therefore the motion for the Judgment of Acquittal can lie.

10. Because Movants say that the entire testimonies of the prosecution witnesses are all based on hearsay evidence, which made the prosecution [unable] to establish a prima facie case against the defendants, therefore Motion for Judgment of Acquittal can lie.

11. Further to the above, Movants contend and say that the State's principal witness, Thomas Gladior's testimony has no legal basis to be accepted by court in that he told the Court in July that some of the defendants were the ones that accused each other, thus implicating each other in the Cross border attack, such testimony of Thomas Gladior has no probative value therefore same cannot be used against any of the defendants in court, therefore the Motion for Judgmental of acquittal can lie.

12. That after parading eleven (11) witnesses before this Honorable Court, the respondent has been unable to go beyond hearsay evidence in order to establish proof of movants' guilt beyond all reasonable doubts, as required by law in proving a criminal case against the accused under Liberian law. Hence, the evidence is insufficient to sustain a conviction of movants.

13. That the entire case of mercenarism brought against the movants is based on a story concocted by Thomas Gladior, who informed the Liberia National Police that some citizens of Liberia were involved in the Ivorian armed conflict and it is clear from the record of this case that he undertook to engage in falsehood against his compatriots, in anticipation of receiving money from the Government of Liberia, through the police, as evidenced by his receipt of money and motorcycle for the operation created by him. Hence, the evidence in this case is clearly insufficient to sustain movants' conviction.

14. That Thomas Gladior's concocted story is based on information which was not corroborated by any of the eleven witnesses produced by respondent throughout the trial. For example, Gladior testified that he went to the Ivory Coast and saw the movants, that co-movant Emmanuel Saymah was arrested at the Ivorian border in Toe Town and with arms, that co-movant Isaac Taryon gave information to co-movant Bobby Sappee in his presence at the PTP Camp on the attack on the UN Peacekeeper in the Ivory Coast, that arms allegedly belonging to a group allegedly controlled by co-movant Nyazee Barway were retrieved from old or rotten logs in the Garleo Forest, amongst other testimonies, none of which was corroborated by any of the other witnesses produced by respondent. Hence, movants say the evidence is insufficient to sustain the conviction of movants.

15. That the information relied upon by the police to arrest the movants came singularly from Thomas Gladior, which information, the police then shared with the United Nations Panel of Experts and their counterparts from the Ivory Coast. Movants say that their continuous detention on the basis of uncorroborated information is a clear violation of their right to freedom of movement. Hence, they are entitled to an acquittal.

16. That the State failed miserably during the entire trial to prove the indictments with clear and cogent evidence as there were material variances in the testimonies of the witnesses. For example while some witnesses testifying for respondent told the court and Jury that the arms produced in court were retrieved as a result of cell phone communication between Nyazee Barway and his son, whom they referred to as Small Barway, ERU officer Wilson in his testimony told the court and jury, "...We asked him again where are the arms and he said, I don't know" This clearly shows that the arms displayed before court were not retrieved through Small Barway. Another example is the fact that respondent's first witness Pascal Kollie testified that the arms were buried in his gold camp, but witness Thomas Gladior said the arms were retrieved among old or rotten logs in Garleo Forest. Hence, the evidence is insufficient to sustain movants' conviction.

17. That during the entire case presented by respondent, no witness testified against, Timothy Barlee, Sam Tarlay, Prince Yuoty, Christopher Lakpayee, Fred Chelly, Junior Gelor, and Emmanuel Pewee. In fact, respondent's own witness Prince Barclay testified that Fred Chelly and Junior Gelor did not know anything about fighting in the Ivory Coast. Movants say that these co-movants should be acquitted as a matter of law as the state has failed to bring a scintilla of evidence against them.

18. That there was no evidence produced by respondent showing that any of the movants was arrested at the border returning from the Ivory Coast or with arm. Hence, the evidence is insufficient to sustain movants' conviction.

That respondent failed miserably to satisfy the burden of proof in this case, as required by law which is proof beyond all rational doubts. Hence, movant says the evidence is insufficient to sustain movants' conviction.

WHEREFORE AND IN VIEW OF THE FOREGOING, movants pray this Honorable Court to grant movants' motion, discharge them from further answering to the charge of mercenarism, and grant unto them such further relief as this court may consider just and legal."

The State filed resistance to the motion for Judgment of Acquittal which we also quote:

#### "RESPONDENT'S RESISTANCE

Respondent denies the legal and factual sufficiency of the averments contained in movants' motion for Judgment of Acquittal for the following reasons to wit:

1. Because as to count (1) of the movants' motion, respondent says that same is a mere recital of the Law that has no relevant to the case at bar and hence same should be ignored and the entire motion dismissed.

2. Further to count one (1) above and still responding to count (1) of movants' motion, respondent says that the statute referred to and relied upon by movants says "a defendant" and not defendants as referenced in count 17 of movants' motion. Respondent submits that assuming without admitting some of the defendants are released by this motion which accrues to the state a right of appeal, the status of the trial of the remaining defendants remains in jeopardy. Certainly, the framers of the law never anticipated that some of the defendants would be subject of appeal while others are being tried regularly for the same charge. The entire motion is a fit subject for dismissal and respondent so prays.

3. Further to count 2 above, respondent says that the motion relied upon by the movants speak to a dismissal of an "offense" and not defendants. In the case at bar, there is only one charge "mercenarism" and that has been established by the State.

4. Also because as to count (2) of the movants motion, respondent says that under the New Penal Code, specifically chapter (11) section (11.13) provides that: "The crime of mercenarism is committed, a felony of the first degree, by an individual, a group, an association, representative or representatives of a State and the State itself with the intent of opposing by armed violence a process of self-determination or the territorial integrity of another State when the following acts are perpetuated:

- a. The sheltering, organizing, financing, assisting, equipping, training, promoting, supporting or employing armed forces partially or wholly and consisting of persons not nationals of the country being invaded or attempting to invade and merely or solely for money, personal gain, material or other reward; or
- b. The enlisting, enrolling or attempting to enroll in the said armed forces; or
- c. The allowing of the activities referred in subsection (1) (a) to be carried out in any territory under the jurisdiction of another State or in any place under its control; or
- d. The affording of facilities for transit, transportation or other operations for the armed forces and activities referred to be in Sub-section (1) (a).

5. Further to count (2) above, respondent says that during the course of the trial, the prosecution witnesses established jointly and severally the connections of the defendants/movants to the commission of the crime: mercenarism. Your Honor is respectfully requested to take judicial notice of the statements and evidentiary materials admitted into evidence. Count (2) of the motion is contrary to the records in these proceedings and should therefore be ignored and the entire motion dismissed and respondent so prays.

6. And also because as to count (3) of the motion, same presents no triable issue.

7. And also because as to count (4) of the motion, respondent says that said count does not present the entire facts testified to by witness Howard. Respondent submits that witness Howard stated that Co-defendants Edward Cole, Nyazee Barway and Isaac Taryon were listed as wanted persons for the commission of the crime of mercenarism and therefore were arrested. Savior Howard giving the names of three defendants who he witnessed their arrest during his assignment in Grand Gedeh County does not suggest that the others not named by him were never arrested nor does it mean that they were not arrested for mercenarism. The evidence of the prosecution does not start and end with Savior Howard. In fact, there were other defendants arrested in 2011 long before this witness took up assignment and the arrest of these defendants were testified to in open court by other witnesses. Respondent says that not all of the defendants were arrested by Savior and his team. Some were arrested by other persons and turned over to the police as in the case of Jacob Saydee, who according to prosecution's 11<sup>th</sup> witness Thomas Gladior, was arrested by the citizens themselves. Your Honor is respectfully requested to take judicial notice of the minutes of these proceedings.

8. And also because as to counts (5 & 6) of the motion, respondent says that same are intended to mislead this Honorable Court. Respondent submits that the witnesses produced reveal specific facts about the commission of the crime as same relate to the defendants. The testimonies of the witnesses complimented and supplemented each other and hence to take one statement in isolation of the other is an adroit attempt to misguide this Honorable Court. Counts (5 & 6) are fit subjects for dismissal and respondent so prays.

9. And also because as to count (7) of the motion, respondent says that same is not applicable in that the witnesses testified succinctly to the facts as it relate to the involvement of the defendants singularly and collectively.

10. And also because as to count (8) of the motion, respondent says that again, the Counsel for the defendants/movants desires to mislead this Honorable Court. Respondent submits that witness Lt. Kone Hotie spoke of the ambush initiated and implemented by the defendants that led to the death of the Peace Keepers and an Ivorian Military Personnel. The witness identified photographs of the scene and the bodies of the Peace Keepers. Your Honor is respectfully requested to take judicial notice of the 53<sup>rd</sup> day jury sitting, April 16 sheet (4) & sheets 5 & 10 April 16, 2014. Count (8) of the motion should be ignored and the entire motion dismissed.

11. And also because as to count (9) of the motion, respondent says that its Sixth witness, Commissioner N'Gadi Dekoin Firmin testified as to his participation in the investigation of the defendants and, in fact, physically identified some of the defendants. Again, Your Honor is respectfully requested to take judicial notice of the 53<sup>rd</sup> day jury sitting, April 16, sheets 15-17 & sheet 18 April 21, 2014. Count (9) of the motion should be ignored and respondent so prays.

12. And also because as to count (10) of the motion, respondent says that it produced the various kinds of witnesses required in any criminal case. The prosecution produced eye witnesses, investigative witnesses as well as the show of physical evidence. Respondent submits that the testimonies of its witnesses are not the ones referred to as "Hearsay" under our law. Respondent submits that the testimonies were given by competent witnesses consistent with section (25.18) of the Civil Procedure Law. The events testified to, did occur and therefore were not hearsay.

13. And also because as to counts (11-16) of the motion, respondent says that same are grossly misleading and not supported by the records. Respondent submits that witness Thomas Gladior specifically recounted the involvement of the defendants, the connection one had to another. Respondent says that the only position of the defendants is a mere denial which is not sufficient to acquit. Counts (11-16) are fit subjects for dismissal and respondents so pray.

14. And also because as to count (17) of the motion, respondent says that Motion for [Judgment of] Acquittal is not a substitute for Severance. Respondent submits that if

the Counsels for the co-defendants felt that they had separate defenses, they should have filed for severance or separate trial. Respondent says to wait until the State shows the causal connection of all of the defendants is belated and hence said count should be ignored and the entire motion dismissed and respondent so prays.

15. Further to count (14) above, respondent says that witness Pascal Kollie on the 42<sup>nd</sup> day jury sitting, April 2 sheet (10) stated the involvement of Prince Youty likewise Co-defendant Ofori Diah linked Sam Tarlay in his voluntary statement given to the police. As to the other defendants they were part of the eighteen persons trained by defendant Emmanuel Saymah on George Moore base according to his statement given to the police which had been admitted into evidence.

16. And also because as to count (18) of the motion, respondent says that same is false and misleading as the records show that Emmanuel Saymah was in active combat when he was arrested. Said count (18) should be ignored and the entire motion dismissed.

17. And also because as to count (19) of the motion, respondent says that its witnesses succinctly established the case of mercenarism.

18. That respondent denies any and all averments in movants' motion for acquittal not specifically traversed herein.

Wherefore and in view of the foregoing facts, circumstances and laws controlling, respondent prays Your Honour to deny and dismiss movants unsupported and unmeritorious motion and order the trial of this case proceeded with in keeping with law and grant unto respondent any other relief just and equitable."

The trial court entertained arguments from the counsels representing the parties on the motion for judgment of acquittal and the resistance thereto and entered ruling which we have deemed necessary to quote for the benefit of this opinion.

#### "COURT'S RULING ON MOTION FOR JUDGMENT OF ACQUITTAL AND ITS RESISTANCE THERETO

Evidence to this court is like a ship with a compass. That is to say without a compass a ship will not travel; also without evidence this court cannot proceed with matter effectively.

On May 1, 2014, the prosecution rested with the production of both oral and other pieces of evidence. On the same date the defendants, by & thru their counsels, filed a nineteen count motion for a judgment of acquittal in favor of the eighteen defendants in the dock. The movants' ground for the motion is that the respondent/prosecution has failed miserably to have established a *prima facie* case against the defendants. The movants went on to cite those testimonies of prosecution's eleven witnesses which they termed as hearsay evidence. In count 17 of the movants' motion, they emphasized as follows: "that during the entire case

presented by the respondent, no witness testified against defendants namely, Timothy Barlee, Sam Tarley, Prince Youty, Christopher Larkpeh, Fred Chelly, Junior Gelor and Emmanuel Pewee. Hence, movants say that the above named defendants should be acquitted as a matter of law...."

The respondent/prosecution on its part, filed 18 count resistance stating reasons, among other things, why movants' motion should not be granted. That is to say, the respondent contends among other things that during the course of the trial, the prosecution's witnesses established jointly and severally the connection of the defendants/movants to the commission of the crime of MERCENARISM.

At the close of arguments, being the 8<sup>th</sup> day of May 2014, the prosecution [said] the following: "... That co-defendants Timothy Barlee, Christopher Larkpeh, Fred Chelly, Junior Gelor and Emmanuel Pewee had not been mentioned by the witnesses that had been available to testify before the court. Accordingly... the Republic of Liberia reluctantly submits that the five co-defendants, if the court so desires, are the subject of release under the motion for judgment of acquittal as filed only."

This submission, in the mind of the court, is a concession of the prosecution in respect to count 17 of movants' motion. This bold step taken by the prosecution is a mark of professionalism which brings to mind that the prosecution has no desire to persecute; but rather to create a level playing field in the trial of the defendants.

[In] count 17 of movants' motion they requested court for the release of the seven defendants namely, Timothy Barlee, Sam Tarley, Prince Youty, Christopher Larkpeh, Fred Chelly, Junior Gelor and Emmanuel Pewee. But the prosecution consented to the release of five of the defendants thereby leaving out defendants, Sam Tarley and Prince Youty on grounds that the two defendants are linked to the crime charged. To ascertain the reality as to whether or not defendants, Sam Tarley and Prince Youty are linked to the crime, this court decided to visit this case file and the records before court in this case. From the perusal of the records by the court, it is observed that in the statements of defendant, Ofori Diah, he did link defendant, Sam Tarley. Also in the statement of defendant Emmanuel Saymah and the testimony of that of Pascal Kollie, defendant Prince Youty was also linked. Accordingly, the court proceeds with the contention of the prosecution.

The statute relied upon for which the movants filed the motion for judgment of acquittal says: "the court on the motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If the defendants' motion for judgment of acquittal at the close of evidence offered by the Republic is not granted, the defendant may offer evidence without having reserved the right." 1LCLR, title 2, section 20.10.

Relying upon the law quoted supra, coupled with the concession of the prosecution to movants' motion for the release of some of the defendants in the dock, and realizing the soundness of said motion, particularly count 17 of the motion, same is hereby granted for the acquittal of defendants Timothy Barlee, Fred Chelly, Christopher Lakpeh, Junior Gelor and Emmanuel Pewee.

As for the other defendants, it is alleged that they made confessions in their voluntary statements before the police/security when they were arrested. Also, from the testimonies of prosecution witnesses before court, as observed on records, they were linked to the crime. Hence, they are hereby granted the opportunity to take the stand in defense of themselves. Thereafter, the Jury, being Trial of the facts, will be placed in the better position to determine otherwise. Hence, their motion for judgment of acquittal is hereby denied under the circumstance.

WHEREFORE AND IN VIEW OF THE FOREGOING, defendants Timothy Barley, Fred Chelly, Christopher Larkpeh, Junior Gelor and Emmanuel Pewee's motion for judgment of acquittal is hereby granted. Having granted their motion the offense of mercenarism with which the defendants are charged is hereby dismissed and are hereby ordered released from further detention to go without let, harassment or molestation from any quarters based upon this identical offense, except other valid offense not in connection with this case. The Clerk of this court is hereby ordered to prepare a release, place same in the hands of the Sheriff of this court, who is also ordered to proceed to the Monrovia Central Prison to effect the immediate release of the herein named defendants. And it is hereby so ordered."

From the ruling of the trial judge on the motion for judgment of acquittal, the counsels for the appellant/defendants noted exception. The trial of the case continued with the production of evidence by the remaining appellants/defendants who were not acquitted. A total of sixteen (16) witnesses were produced by the appellants/defendants, including all thirteen (13) of the appellants/defendants and three (3) other persons who were not appellants/defendants, and five (5) species of documentary evidence were introduced.

At the end of the trial, the jury brought a unanimous verdict of guilt against the 13 persons who were tried. Those found guilty, convicted and sentenced to life imprisonment are: Nyazee Barway, alias Joseph Dweh, Morris K. Cole, alias Edward Cole/General Girl, Isaac Taryon, alias Wolie Taryon, Steven Gloto, alias Rambo/Ninja, Prince Youty, James Lee Cooper, Emmanuel Saymah, alias Trainer, Moses Baryee, alias Moses Sarpee, Sam Tarley, alias Bulldog, Ophoree Diah, Alfred Bobby James, Jr., alias Bobby Sarpee, Jacob Saydee and Mohammed Massaquoi.

On June 12, 2014, the appellants/defendants filed a motion for a new trial alleging essentially that the verdict of the jury was against the evidence adduced in the case and

that the State did not produce prima facie evidence against them. The appellants/defendants also stated in their motion, as another ground for new trial, that Counselor Theophilus C. Gould misbehaved when he repeatedly told the jurors that Liberia will be attacked by the Ivory Coast if the jurors found the appellants/defendants not guilty. The motion for new trial was heard and denied by the trial judge who ruled that the witnesses of the State corroborated each other and that the verdict of the jury was in harmony with the evidence.

On June 17, 2014, the trial judge, His Honor Emery Paye entered a final ruling adjudging all of the 13 appellants/defendants tried guilty of the crime of mercenarism from which final ruling the appellants/defendants noted exceptions, announced an appeal to the Supreme Court of Liberia and filed a bill of exceptions consisting of nine (9) counts. We quote the bill of exceptions:

#### "DEFENDANTS' BILL OF EXCEPTIONS

And now come Defendants in the above entitled cause of action and being dissatisfied with the jury verdict, Your Honor's rulings and final judgment and hereby respectfully submit this Bill of Exceptions for Your Honor's approval for Appellate review and determination, for the following reasons, to wit:

1. That the jury erred when it ignored the doubt created by prosecution's witness Pascal Kollie when he testified on the one hand that he was forced by a group led by Nyazee Barway to go and fight in the Ivory Coast, but was not given any gun by the group when it entered [into the] Ivory Coast because he was not trusted by members of the group and on the other hand that on the group's return to Liberia, he was trusted with all the guns and same were buried at his gold camp.
2. That the jury erred when it failed to take into consideration the doubt created by the testimonies of prosecution's witness Pascal Kollie that guns allegedly used by defendants in the Ivory Coast were buried at his gold camp and the testimony of Thomas Gladior that the said guns were buried in rotten logs in the Garleo forest.
3. That the jury erred when it ignored the doubt created by the testimony of prosecution's witness Thomas Gladior when he said that he saw Emmanuel Pewee being arrested in Zwedru in July 2012 as found on sheet 49, April 10, 2014, when in fact Emmanuel Pewee had already been arrested, detained and indicted in 2011 according to the prosecution's own documentary evidence and the indictment of 2011 for the crime of mercenarism, as clear evidence of the untruthfulness of his entire testimony against the defendants.
4. That the jury erred when it ignored the fact that evidence given by prosecution's witnesses Thomas Gladior, Kone Hotie and N'gadi Dekoin Afirmin were hearsay

evidence, since they did not see any of the defendants fighting in the Ivory Coast, but testified based on information allegedly received by them from other people and gave such evidence credence thereby finding defendants guilty.

5. [That] the jury erred when it ignored the doubt created by the testimony of Baryee Gaye, when he testified that a Liberian Immigration officer was killed, without giving the name of the officer and without the prosecution producing any witness from the Bureau of Immigration and Naturalization to verify that the BIN lost any officer in Grand Gedeh during the time period mentioned in the testimony of witness Baryee Gaye. (See, sheet seven of April 3, 2014 and sheet three of April 7, 2014).

6. That the jury erred, when it did not take into consideration the doubt created by the admissions made by prosecution witnesses Alfred T. Quire and Emmanuel Doe Jleekan when they both said that they did not go to the crime scenes during the investigation of defendants. (See, Sheet seven of April 8, 2014 for witness Jleekan and for Quire sheet two, April 15, 2014). On the issue of crime scene visitation, Jleeken was asked, "Q. By your last two answers am I correct to say neither you nor any member of the investigation team visited the crime scene during your investigation before you concluded your investigation?" He answered, " ... To answer your question, we did not visit the crime scene being hostile, and dangerous." Quire was questioned." Q... Can you tell the court and the jury what prevented you from visiting the crime scene(s) during the investigation? He answered, "For the benefit of this court, I did not visit the crime scene because the crime scene was all the way in the Ivory Coast and also the crime scene at that point was unsafe ..."

7. That Your Honor erred when you ruled denying defendants' motion to suppress documentary evidence produced by the prosecution.

8. That Your Honor erred when you sustained objections to the following questions on the cross:

a. To Witness Pascal Kollie:

1. Q. You said that when you all returned from the Ivory Coast all the guns were buried in your gold camp. In other words, they were left with you to keep. Do you remember the total number of guns that were left with you to keep?

2. Objection. Grounds: 1. Misstatement of the witness as giving him guns to keep. Entrapment as to the number of guns that were given to the witness to keep.

Court: Objection sustained. (See sheet eight, April 2, 2014).

b. Pye (Baryee) Gaye

1. Q. You told the jury that this pair of [binoculars] or spying glass was used by Nyazee Barway during the combat in Cote D'Ivoire. Can you describe the length of distance that Nyazee Barway used to see using this vanaculous (binoculars) while you with him on the battle front?

2. Objection. Grounds: Not the best evidence as Nyazee Barway would be; 2. Entrapping; 3. He is not an expert witness at vanaculous (binocular) to give an expert testimony.

Court: Objection sustained on all grounds. (See sheet four, April 7, 2014)

c. Witness Emmanuel Doe Jleeken.

During cross examination. "Q. You told the court that the issue of Outtara or Gbargbo was not important in determining the crime of mercenarism. Two questions: 1. What, then, was important for you to arrive at the conclusion that mercenarism was committed by the defendants who were investigated. 2. While (why) did you include that information about Outtara and a claim made by Nylon Glogbaye in your police investigation report?

Objection: Grounds: 1. Argumentative. 2. An adroit circumvention of the principle of *stare decisis* and finally asked merely to entrap the witness. Court: Sustained." (See, sheet four, April 8, 2014).

On the direct. "Q. While testifying you told the court and jury that the defendants who you interrogated including Isaac Cheapoo, Philip Moore and Prince Barclay, who three are not in court now all gave you statements indicating their individual roles and those of others. If you see those statements given by those persons who you testify of would you be able to identify same?

Objection: Grounds: 1. Isaac Cheapoo, aka Bob Marley, Philip Moore and Prince Barclay are not on trial. 2. Proper premise was not made. 3. Introducing extrinsic matter as Bob Marley and Philip Moore had been set free ..."

The Court: For the benefit of the records and not as evidence to be used against those that are not before court, this court says objection overruled. (See, sheet twelve, April 7, 2014).

d. Alfred T. Quire

Your Honor erred when you overruled objection, on the ground of hearsay, to the identification and confirmation by witness Alfred T. Quire, a report authored by the United Nations Panel of Experts as evidence against defendants. (See, sheets nine through thirteen)

Your Honor erred when you sustained objection to the following question on the cross:

Q. I put to you that the following defendants were arrested and charged in manners that contravene their constitutional and statutory rights. They include Nyazee Barway who was arrested on July 14, 2012 and sent to the Monrovia City Court on August 30, 2012, Isaac Taryon who was arrested on July 14, 2012 and sent to Monrovia City Court on August 30, 2012, Morris K. Cole otherwise known as Edward Cole arrested on July 14, 2012 and sent to Monrovia City Court on August 30, 2012 ... Am I correct?

Objection. Grounds: 1. The question is unduly cumulative, invasion of the parole evidence rule as the documents speak for themselves, the question also abrogate the principle of *stare decisis* and the question is vague and indistinct, intended to entrap the witness.

The Court: Objection sustained on the second ground. (See, sheet six, April 14, 2014).

Your Honor erred when you sustained objection to the following question on the cross:

Q. During your testimony you identified three guns which you said carry serial numbers identical to the serial numbers of guns used by Peacekeepers in the Ivory Coast and thereby suggesting that these guns were allegedly used or obtained by the defendants from the Peacekeepers that were allegedly killed by them in Cote D'Ivoire. Did you do a forensic examination to determine whether the finger prints of and of the defendants is found on any of the guns that you identified that they belong to any of UNOCI?

The Court: In the testimony of the witness he mentioned that the defendants gave voluntary statements and showed direction where the guns allegedly used by them were buried and that the witness said based upon such direction the investigation retrieved the guns under review. By that, same is an indication that the Defendants did not deny, according to the witness, the alleged mercenarism. In the mind of this court, forensic examination was unnecessary. Hence, objection sustained." (See, sheet fourteen, April 14, 2014)

This ruling of Your Honor was highly inflammatory and prejudicial to a fair trial of the defendants as it was a clear signal to the jury as to how they should determine the case.

Q. I put to you that in every criminal investigation that reasonably cannot be used without touching, is involved, the proper thing to do at all times is to do forensic examination to ascertain the vitality to suspicion, especially were the crime alleged

is a capital offense where by law, the admission of guilt is not accepted by court. Am I correct?

Objection. Ground: An attempt to abrogate the principle of *stare decisis*, burdening of records.

The Court: sustained. (See, sheet fifteen, April 14, 2014).

Q. You did not test each of the weapons to determine the last time they were fired as is required in the investigation involving fire arms. Not so? Objection. Grounds: 1. An attempt to introduce an extrinsic matter as the witness is not an armed expert or ballistic; 2. Asked merely to entrap the witness, or without the pale of the witness' testimony.

The Court: Objection sustained.

Q. You told this court and the jury that the crime scene was located in the Ivory Coast and it was a hostile terrain; therefore, you could not go there but obtained the needed information from the crime scene from your counterparts. Is it fair to conclude or are you telling the court and the jury that there was no crime scene also anywhere in the Republic of Liberia?

Objection. Grounds: Argumentative; 2. Assuming facts not established; 3. Entrapment.

The Court: Objection sustained on the first ground. (See, sheet three and four, April 15, 2014).

e. Witness Konie Hotie Ivorian military commander.

Your Honor erred when you sustained objection to the following questions on during the cross examination of this witness for the prosecution.

Q. Mr. Witness, you informed this court in your testimony on the direct that you are an operation man in Para and also a Lieutenant and testified to a photograph of a vehicle that was arm bushed with an UN man standing near the vehicle. Please tell the court and the jury as a military man what type of weapons you think that was used to blast this vehicle to look the way it is looking?

Objection: Grounds: 1. Hypothetical, 2. Entrapping, 3. Soliciting facts not testified to 4. Irrelevant and immaterial.

The Court: Sustained on the second ground. (See sheet eleven, April 16, 2014).

Q. On sheet 16<sup>th</sup> of the minutes of court the 53<sup>rd</sup> day of the jury the February Term A.D. 2014, Wednesday, April 16, 2014, you said to the court and the jury that the

defendants were interrogated by you on the soil of Liberia to name Nyazee Barway, Bobby Sarpee, Rambo and Moses Sarpee, please tell the court on what date did you conduct this investigation in Liberia?

Objection: Grounds: 1. An attempt to evade parole evidence rule as the report in the hand of the counsel contained said information. 2. Entrapping the witness on the stand, and not the best evidence; and, 3. Totally irrelevant and immaterial.

The Court: Objection sustained on the issue of entrapment. (See, sheet Fifteen, April 21, 2014),

f. Thomas Gladior

Your Honor erred when you sustained objections to the following questions that were intended to establish the motive and inclination of the witness Thomas Gladior:

"Q. You told this court and jury on July 20, 2013 as can be found on page 46 or sheet 46, So I called back to town and asked 107 for some money and he sent me ONE HUNDRED FIFTY UNITED STATES DOLLARS (US\$150.00); the ONE HUNDRED FIFTY UNITED STATES DOLLARS (US\$150.00) he sent for us to help ourselves and buy gasoline. So when he sent the ONE HUNDRED FIFTY UNITED STATES DOLLARS (US\$150.00) the next morning the little boy and I got on the motorbike and sent to Ziah Town. You were giving this testimony in connection with your role in getting those involved in the Ivorian conflict arrested and the retrieving of arms. Am I correct that money was the motivation for your action?

Objection: Your Honor, (1) unconstitutional.

The Court: The question posed to the witness is not in connection to the case at bar; objection sustained. (See sheet 70, April 30, 2014).

Q. You also told this court and jury that on July 20, 2013 in the first trial that in addition to ONE HUNDRED FIFTY UNITED STATES DOLLARS (US\$150.00) you asked for TEN THOUSAND LIBERIAN DOLLARS (L\$10,000.00), and you also asked for a motorbike to help you with the operation. Am I correct?

Objection: (1) misstatement of the witness' testimony; (2) proper premise not laid; 3) asked merely to entrap the witness.

The Court: The question being irrelevant, the objection is sustained. (See sheet 71, April 30, 2014).

Q. Mr. Witness, since yesterday up to today's date, in your testimony you have been speaking less to the jury but more to the defendants and your kinsmen sitting in the audience, trying to clean yourself: "it is not me, is Bobby Sarpee, it is that other

person, it is not me, I didn't want to put them in jail." Your whole attempt in this trial is to prove to the people of Grand Gedeh that you are a bad person. Am I correct?

Objection: Assuming fact not established, opinionative, an attempt to introduce extrinsic matter and grossly irrelevant and immaterial. (For the last three questions, see, sheets 71 to 72, April 30, 2014).

9. Your Honor erred when you denied defendants' motion for new trial which emphasized that the verdict was contrary to the weight of the evidence and the misbehavior of prosecution's lead lawyer, Cllr. Theophilus Gould, who argued both in his opening statement and closing argument that if the jury were to acquit the defendants the Ivory Coast would declare war against Liberia and made such declaration with the presence of well-armed officers of the Emergency Response Unit of the Liberia National Police.

WHEREFORE, AND IN VIEW OF THE FOREGOING, defendants pray Your Honor to approve their Bill of Exceptions in order for Your Honor's rulings and Final Judgment to be reviewed and passed upon on appellate review by the Supreme Court of the Republic of Liberia; and to further grant unto defendants such relief that your deem just and right under the facts and circumstances of this case."

We should say, at this juncture, that the law provides that every party charging another with an offense is bound to prove it. Proof is the perfection of evidence without which there can be no proof. *Monie et al v. Republic of Liberia* [1988]; LRSC 2; 34LLR, 502 (1988); *Coleman v. Republic of Liberia*, 2LLR, 1 (1908); *Kelleng v. Republic of Liberia* [1934]; LRSC 4; 4LLR 339, 342 (1934). To warrant a conviction in a criminal case, the State must prove its case beyond a reasonable doubt, and the burden of proof remains with the State throughout the trial. *Elizabeth Davis v. Republic of Liberia* [2001] LRSC 27; 40LLR 676, citing *J. Kamara Burphy v. The Bureau of Traffic*, [1976] LRSC 24 25LLR 12, 13 (1976); *Williams v. Republic of Liberia* [2014] LRSC 45 (August 15, 2014); *Tody Heith v. Republic of Liberia*, 39LLR, 50, 64-65 (1998).

The law also provides that a defendant in a criminal case is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. *Criminal Procedure Law, Rev. Code 2:2.1; RL v. Eid et al.* [1995] LRSC 6; 37LLR 761 (February 16, 1995). In order to overcome presumption of innocence, proof of the defendant's guilt must be established beyond a reasonable doubt. *Jamal Eldine v. Republic of Liberia*, 27LLR 133, 147 (1978).

So, in the case before us, the State having charged the appellants/defendants, as a matter of law and due process, has the burden to establish the guilt of the appellants/defendants

beyond a reasonable doubt, the facts necessary constituting the crime of mercenarism with which all the appellants/defendants are charged. This means that a judgment in a criminal case must be supported by proof of all the elements of the crime beyond reasonable doubts. The State is not at liberty to present a lesser burden of proof for an element of the crime for one appellant/defendant as opposed to another appellant/defendant; the State must prove the guilt of all of the appellants/defendants in this case beyond reasonable doubts. And should there be doubt as to the guilt of the appellants/defendants or any of them, such doubt, as mandated by law must, as a matter of law, operate in favor of the appellants/defendants or any of them whose guilt remains doubtful. And a court of law is under obligation to set free any defendant whose guilt was not satisfactorily proved and remains in doubt.

Applying the foregoing cardinal principles of criminal law and proceedings to the case at bar, let us now examine the evidence adduced at the trial to see whether or not in the instant case, the State established proof of the crime of mercenarism with which the appellants/defendants were charged. As stated earlier, eleven (11) regular witnesses and seven (7) rebuttal witnesses testified for the state. Here is the summary of their testimonies:

The first witness for the State was Pascal Kollie who informed the trial court that he lived in Grand Gedeh County and worked as a gold digger in Garleo. He testified that he knows Nyazee Barway, Edward Cole and Kai Cole; that Nyazee Barway and Edward Cole lived with Kisi Brooks in Garleo and that while they were in the town Nyazee Barway and Edward Cole began to bring guns from Ziah Town, the home of Nyazee Barway into Garleo. He said Nyazee Barway also carried plenty fighters to Galeo; that when the population of the town began to increase, the citizens in the town told Nyazee Barway's stranger father, Kisi Brooks that he should tell his people to leave the town. He said one day, he encountered Nyazee Barway's Aide Camp called Kai Brooks while in Garleo; that Kai Brooks told him that the Ivory Coast has money so he should go there and fight to get more money. According to Pascal, he responded that where he was, he was getting more money and would never take a gun to kill another human being; that Kai then accused him of being on reconnaissance for Outtara, the Ivorian President; that he was chased, caught, tied and placed in the center of the town where Kai Brooks ordered him whipped under the rain and left unconscious; that upon Nyazee Barway's return to the town, he ordered that Pascal be untied which was done. He said Nyazee Barway's men moved to a village where the guns they had were washed and tested; that the men were then ordered to be in readiness to go to the Ivory Coast; that they sang songs while on their way for the first attack; that at the waterside, a boy called Nyaway crossed them into the Ivory Coast; that they encountered some FFCs who were Ouattara's people and they killed them and took their guns. The witness further testified that they then arrived at a barrack but they did not find any ammo so they retreated to cross back into Liberia; that in the process, some Ivorian soldiers opened fire and shot two of their men, Nyaway and Alex. Alex did not die and was taken across

back into Liberia. He said that after resting for four days in the forest, Nyazee Barway sent some men to Ziah Town to bring some of the weapons they had hidden there; that the next morning they crossed into the Ivory Coast again and got to a village where they arrested the villagers, ordered the village owner to surrender his single barrel gun and Nyazee Barway shot a little girl in the head with his pistol and ordered Kai Cole to kill all the villagers, a total of five in number. Thereafter, according to Pascal Kollie, they went to Para and had a gun battle with some FFCs who ran away; that they then divided themselves into two groups and set ambush; that while in the ambush, they saw UNOCI coming and Kai Cole blasted the car with an RPG and it somersaulted and all but one of the occupants died; that they took the guns from the dead FFCs and carried the injured one with them for a while before Nyazee Barway shot him with his pistol. He said when they returned from the Ivory Coast the guns they used were given to him and others for safe keeping.

The second witness for the State was Pye (Baryee) Gaye; he testified that he took part in the fighting in the Ivory Coast on Laurent Gbargbo's side. He identified Bobby Sarpee, Nyazee Barway, Edward Cole and Moses Baryee as their commanders who were sharing the regions. He also testified that Bobby Sarpee, Bob Marley and Prince Barclay were selected to be on the Boloken side; Moses Baryee chose to be on the Cholo play Region and Danalay, while Nyazee Barway chose to go by way of Tarlee, Para and San Pedro. He said he and others decided to go to Peace Camp where they would get their supplies; that they received one container with weapons through one Solo (the chairman for the Liberian Mercenaries in the Ivory Coast) who called Bobby Sarpee to go for the container and carry it to Peace Camp; that at Peace Camp Bobby Sarpee called Paulson Gartey, Bob Marley, Nyazee Barway, Garlo Payne and Merlo and shared the weapons, consisting of few boxes of arms and ammunition with some grenades; that when they returned to the Ivorian side, they decided to make a sacrifice and that is how Coachy and one Junior Tonnah told them to go to Tengbo border and collect one bright pregnant woman whom they killed to make gun proof medicine for the fighters. He said they encountered two Ivorian women on their way from the farm and questioned them as to whether there were soldiers in their town; that Nyazee Barway later killed them as they approached an area called Daoubli; that upon entering the town of Daoubli, they captured some arms and ammunitions and looted; that they returned to Liberia, killed an Immigration Officer and went to Galeo to prepare for the Para attack. He further testified that the Ivorians, using ground and air support began to launch and they could hear the sound so they retreated. He identified a pair of binoculars (spying glasses) which he said was used by Nyazee Barway during the combat in Cote d'Ivoire.

The third witness for the State was Emmanuel Doe Jleekan who informed the trial court that he is the Deputy Chief of the General Crimes Section of the Liberia National Police. He testified that he knew some of the appellants/defendants but not all; he identified Emmanuel Pewee, Junior Geelor, Philip Moore, Timothy Barlee, Fred Chelly, Jacob Saydee and Mohammed Massaquoi, alias Mohammed Kallon as those he knew through an investigation conducted by him and his team on the charge of mercenarism. He said the appellants/defendants did not want to write their own statements; that most of them said they could not read or write; that they therefore asked the police to write their voluntary statements; that they were represented by their lawyers who advised them to sign the

statements and they signed; and that their lawyers endorsed the statements. He made the following statements in respect of some of the appellants/defendants:

a) That Isaac Cheapoo, alias Bob Marley, revealed to the investigation team headed by him that he was approached by a fellow Liberian only known as Solo who told him that he and others with fighting experience from Liberia should assist the Laurent Gbargbo Government that was being fought by a rebel group known as New Forces; that he (Solo) was in contact with some top officials of the Laurent Gbargbo Government; that Cheapoo also stated that a meeting was arranged with them at Diou Koulo Military Barrack; that at that meeting he requested that their friends and relatives who were imprisoned in the Ivory Coast be released as a precondition for their cooperation and that they should be paid; that the Laurent Gbargbo's representative, Mr. Wlayee Delafor, agreed to those conditions and said in addition that they could take whatever material goods they came across during the fighting. He said Issac Cheapoo also informed the investigation team that another meeting was held in an area called Plateau in Abidjan where he (Isaac Cheapoo), Paulson Gathay, Bobby Sarpee, a fellow called Bull Dog and another called Iron Jacket were in attendance; that after the meeting they were issued guns (AK-47 assault rifles) to begin their fight against New Forces in Cote d'Ivoire; that they began fighting on behalf of the Laurent Gbargbo Government and captured some territories but the areas captured by them were lost when French troop started to assist the Ivorian rebels to oust Laurent Gbargbo from power and in the process most of their men got killed so they retreated until they got to the Cavalla River where he said he disabled the guns, left them in the Ivory Coast and he and his men crossed into Liberia;

b) That Prince Barclay informed the investigation team that he went to work in Grand Gedeh County but things got rough so he crossed over to the Ivory Coast to fight to sustain himself; that he and his friends were received by Isaac Cheapoo, alias Bob Marley who briefed them and, thereafter, armed them to begin fighting; that when they began to lose grounds, they informed their fellow Liberians to leave the area called Boloken because the place was no longer safe for them; that thereafter they left their guns in the Ivory Coast and came to Liberia where he was arrested;

c) That Mohammed Massaquoi, alias Mohammed Kallon informed the investigation team that he went to Grand Gedeh to do mining but later he crossed into the Ivory Coast when things got bad in Liberia; that while in the Ivory Coast, Prince Barclay took him and others to an Ivorian called Didier who held meeting with them and promised that the Laurent Gbargbo Government will pay them seven thousand CFAs per month should they get involved in fighting against the New Forces; that they had to retreat because they were losing territory; that he left his arms at the Cavalla River area and crossed into Liberia and was subsequently arrested;

d) That from their investigation of Jacob Saydee, he (Jacob Saydee) revealed that he went into the Ivory Coast in 2002 where he stayed until 2011 and got involved with fighting on behalf of the Laurent Gbargbo Government against New Forces; that they had to retreat because they were losing grounds to the New Forces and the French troops; that they left their arms at the Cavalla River and crossed into Liberia where they were arrested;

e) That Junior Geelor denied his involvement with the fighting in the Ivory Coast and stated that he was a businessman who was involved in selling marijuana, cane juice and other small, small things. He, however, stated that he knew some of those who fought in the Ivory Coast and mentioned Isaac Cheapoo, Prince Barclay and Jacob Saydee; and

f) Officer Emmanuel Doe Jleekan said that Timothy Barley, Emmanuel Pewee, Philip Moore and Fred Chelly also denied their involvement into the fighting in the Ivory Coast.

The fourth witness for the State was Col. Alfred T. Quire, II, the Chief Investigator of the Organized Crime Section, Liberia National Police. He testified that ten defendants, Nyazee Barway, alias Joseph Dweh, Morris Cole, alias Edward Cole or General Girl, Stephen Groto, alias Ninja or Rambo, Isaac Taryon, alias Golden Taryon, Prince Youty, James Lee Cooper, Emmanuel Saymah, alias Trainer, Moses Baryee, alias Moses Sarpee, Alfred Bobby James Jr., alias Bobby Sarpee and Ofori Diah, were turned over to the Crime Services Department of the Liberian National Police for investigation as to their involvement in acts of mercenarism which led to murder, rape, theft of property and arson. Col. Quire testified that the first group of six (6) defendants was received on July 14, 2012, for investigation; that the second group was received on August 24<sup>th</sup>, 2012 for investigation and that the last group was received on October 19<sup>th</sup> and 22<sup>nd</sup>, 2012. He said the appellants/defendants were given their Miranda rights in the presence of their lawyers, in persons of, Attorneys Arthur Johnson, Swahilo Seysay and Amos Kollie. He said that based on direction given by the appellants/defendants, they were able to retrieve ammunitions and arms which carried serial numbers identical to the serial numbers on arms used by United Nations Peacekeepers in the Ivory Coast. He said this suggests that the weapons were taken from the Para attack in Ivory Coast where seven United Nations Peacekeepers were killed. He said that they also retrieved a thuraya phone.

The fifth witness for the State, in person of Kone Hotie, a Lieutenant in the Ivorian Army, who was Commander of operations in the Para, Glargbo and Neklin areas, testified that Para was attacked on June 8, 2012; that the residents of Para informed him that Para had been attacked and he informed his bosses before proceeding to Para; that upon arrival in Para after some investigation, he sent combat troop on the road between Para and Sao in order to counter attack the advance movement of the attackers but before the combat troop arrived in Sao they were met with shooting and intense fighting; that some of the men were wounded; that the wounded soldiers were put in a vehicle to be taken to a clinic in Para but the entire group fell in an ambush and was killed. The witness said he took photographs of the ambush which was introduced into evidence.

Ngadi Dekoin Firmin, an Ivorian Police Commissioner, was the sixth witness who testified for the State. He testified that after the attack in Sao, Para and Nigre, six (6) persons were arrested including Turay Eric, Tarbio Francois and Kiyee Hevey; that in the statement of these arrested persons, they said that they were taken hostage by heavily armed men in the forest on the Liberian side while trying to cross from Liberia into the Ivory Coast. He said the arrested persons also informed the investigation that the head of the group of armed men was called Nyazee Barway who wore a leopard skin hat. He said from that investigation the Ivorian investigators were able to identify two of the attackers, Nyazee Barway, the group

leader who wore a leopard skin hat and Steve Gloto alias Rambo; that the authority in the Ivory Coast contacted the Liberia National Police, who used the information to carry on further investigation that led to the arrest of Nyazee Barway and Stephen Gloto alias Rambo. This witness also testified that after the arrest of Nyazee Barway and Rambo, he visited the Liberia National Police and was allowed to interview Nyazee Barway, Rambo and Morris Cole; that during the interview, he recalled that Morris Cole, alias Edward Cole was asked as to who had the thuraya phone and he answered that Bobby Sarpee had the communications equipment including the thuraya phone. He further testified that at the investigation, it was revealed by Morris Cole that Ofori Diah was present when the financiers gave US\$5000.00 to recruit some fighters and that subsequent thereto, he and Ofori Diah came to Monrovia to obtain travel documents so that they could travel to Dubai and Singapore to purchase arms; that Morris Cole also said that upon their return from Dubai and Singapore, they were instructed to attack Tayee but instead they attacked Para.

The seventh witness for the State, Col. Gregory O. W. Coleman, of the Liberian National Police, testified that the Police Task Force launched tactical operations to deny access to the use of Liberians to destabilize the neighboring Ivory Coast. He said they were able to recover arms, ammunitions and arrest suspected mercenaries who were later turned over to the investigation team; that the arms and ammunitions were retrieved based on intelligence and the cooperation from willing sources, such as, Small Barway, who was arrested for acts of mercenarism, and who cooperated with the investigation up to the point where he took investigators to the area where some arms and ammunitions were found. He identified the arms retrieved as a result of the information disclosed by Small Barway.

The eighth witness for the State was Officer Savior Howard, a member of the Emergency Response Unit (ERU) who testified that he was deployed in Grand Gedeh County in July 2012 to help man the border with orders to arrest or stop people from coming into and going out of Liberia with the intention of fighting in the Ivory Coast and to arrest those who were involved in the Ivorian fighting. He said that on July 13, 2012, ERU and AFL officers did a patrol around PTP Refugee Camp and in the process arrested three persons that were involved in the cross border attack. He named those arrested as Edward Cole, Nyazee Barway and Isaac Taryon.

The ninth witness for the State was Chief Inspector Thomas Wilson, Planning Officer for the ERU, who testified that he was assigned in Grand Gedeh on a special operation in 2012 when the Government of Liberia received information that people were leaving Grand Gedeh County to go to the Ivory Coast to fight; that the Government of Liberia deployed ERU and AFL to protect and monitor the border of Liberia and the Ivory Coast; that on July 22, 2012 he received a phone call from his boss, 107 to go along with Nyazee Barway's son, Small Barway, and a team from ERU and AFL in the Garleo forest to retrieve some arms and ammunitions. He testified that they retrieved the arms and ammunitions and took many photos in the process.

The tenth witness for the State was Prince Barclay. Prince Barclay was arrested along with the other appellants in this case, but the State dropped charges against him to be used as a witness. He testified that in 2010 he went to Grand Gedeh to do gold mining where he worked for three months; that he crossed into the Ivory Coast and fought for the Laurent

Gbargbo Government along with the appellants/defendants. He said that he knows Bobby Sarpee, Jacob Saydee, Morris Cole, James Lee Cooper, Mohammed Massaquoi, Timothy Barlee, Junior Geelor, Christopher Lekpeh, Emmanuel Pewee, and Nyazee Barway. He also said that their overall boss was known as Didier.

The eleventh witness for the State was Thomas Gladior, a Correction Officer. He said he was gathering intelligence on the appellants/defendants throughout his association with them. He testified that he signed for some of the appellants/defendants who were in prison in Zwedru, Grand Gedeh County and traveled with them to the Ivory Coast. He identified those he signed for as Alex Barway, the son of Nyazee Barway, Junior Jonah and James Suah, alias Tourist and identified the detention book in which he signed for them. He said he was involved in retrieving arms and ammunitions the appellants/defendants had buried in the Garleo Forest. He identified Nyazee Barway, Bobby Sarpee, Ofori Diah, Emmanuel Saymah, Moses Baryee, Steve Gloto also known as Rambo, and Jacob Saydee as those who took part in fighting in the Ivory Coast. He said, he was present when Emmanuel Saymah was arrested by a joint team of ERU and AFL officers with arms (AK-47 rifles).

When the State rested with the production of oral and documentary evidence, the appellants/defendants elected to take the stand and testify in their respective behalves. We should note that the law does not make it mandatory for a defendant in a criminal case to take the witness stand and testify. As we stated earlier herein above, the burden of proof rests squarely on the State to prove the guilt of the defendant beyond reasonable doubts. However, where the State has carried the burden and established a *prima facie evidence*, or a believable case, the burden will shift to the defendant. "Prima facie evidence is that which, either alone or aided by other facts presumed from those established by the evidence, shows the existence of the fact it is adduced to prove, unless overcome by counter evidence; evidence which, not explained or contradicted, is sufficient to maintain the proposition affirmed. Prima facie evidence is sufficient to support a verdict in favor of the party by whom it is introduced where no controverting evidence is introduced by the adverse party..." 23 C. J. S. Evidence § 1735.

An accused person may, however, elect not to take the stand and testify in his own behalf, and that privilege may not draw an adverse inference of guilt therefrom; but when an accused in a criminal prosecution takes the witness stand but fails to explain any incriminating facts and circumstances in evidence, he takes the chance of any reasonable inference of guilt which the jury might properly draw from the whole evidence. Reliance: *Republic of Liberia v. William Gabriel Kpolleh et al* (1990) 36LLR 623

Let us now review the testimonies of the appellants/defendants in this case to see whether their testimonies particularly rebutted and controverted the incriminating testimonies of the witnesses presented by the State. We summarize below the appellants/defendants' testimonies adduced in the trial court:

Alex Bobby Julue, alias Bobby Sarpee was the first to testify. He denied that he was involved in the fighting in the Ivory Coast; that he was only in the Ivory Coast seeking refuge to go America on a resettlement program. He said he left Liberia during the war in 1990 and spent nine years in and out of the Ivory Coast. He said that while in Grand Gedeh, he heard rumors that people were carrying on cross border attacks on Ivory Coast; that he heard his name on the radio that he was one of the persons carrying on the cross border attacks; that a relative advised him to leave Grand Gedeh and come to Monrovia; that he ran in the bush and spent two months in the bush before arriving in Ganta, Nimba County where he was arrested.

Ofori Diah was the appellants/defendants' second witness. Concerning the charge of mercenarism against him, he said that in his life, he has never been to the Ivory Coast; that the Government of Liberia lied on him; that in 2004, he was working with the Free Port of Monrovia as Director of Security controlling all seaports. He said he did not receive any money from anybody to fight in the Ivory Coast; that he did not know Laurent Gbargbo's pastor who is said to have given him money to fight in the Ivory Coast. He denied making and signing a written statement before the police. With the exception of Moses Bayee whom he referred to as his little brother, he said he got to know the rest of the appellants/defendants while he was in jail with them.

Prince Youty, the third witness for the appellants/defendants, testified that he was arrested in his gold camp in Grand Gedeh County called Jamaica on July 28, 2012 by ERU Police. He said he was only arrested because he and Thomas Gladior, the Correction Officer were loving to the same girl, Patricial L. Hodges; that this is why Thomas Gladior implicated him and denied any involvement in the fighting in the Ivory Coast. He said that Patricial L. Hodges was suspended from work for three months because she testified on his behalf.

The fourth witness for the appellants/defendants was Moses Baryee. He testified that he was working with CARITAS in Toe Town, Grand Gedeh County as a security guard to protect refugees and NGO's properties. He said he was arrested on August 13, 2012 in a town called Neku where he had carried a friend there on his motor bike; he denied any connection with the fighting in the Ivory Coast.

Sam Tarley was the fifth witness for the appellants/defendants. He gave a very long testimony, the gist of which is that he was doing his rubber business in his home in a town called Behwaly, Nimba County when he was arrested on March 15, 2012. He said he was a former fighter of LURD, but he did not go to the Ivory Coast to fight. He said he made a written statement before the police and signed it.

Jacob Saydee was the sixth witness for the appellants/defendants. He testified that he was arrested in Bare Town, Tchien District, Grand Gedeh County by the ERU and Police on May 8, 2011; that he was accused of fighting in the Ivory Coast. He said he has never been to the Ivory Coast. He complained that ERU took gold from him at the time of his arrest.

Mohammed Massaquoi was the seventh witness for the appellants/defendants. He testified that he was digging gold in Chea Zonnie District, Grand Gedeh County when he was arrested by the ERU. He said one morning he was coming from the gold mine with his mattress on his head when he was arrested. He denied any knowledge of fighting in the Ivory Coast.

James Cooper was the eighth witness for the appellants/defendants. He testified that he lived on King Lodge, Toweh Street, Zwedru, Grand Gedeh County. He said he worked with the General Services Agency (GSA ); that he served as the secretary general of the Grand Gedeh Branch of the Liberia Football Association. He said he was at the football practice ground when he was arrested and denied fighting in the Ivory Coast.

Isaac Taryon was the ninth witness for the appellants/defendants. He informed the trial court that he was living in Zwedru, Grand Gedeh County; that he was a motor bike rider; that he took a woman on his motor bike to PDP Camp and when they got to PDP Camp, he bought liquor for him and his friends and while they were drinking he was arrested on July 12, 2012, by the ERU, Police and army people. He said he did not know anything about fighting in the Ivory Coast.

Edward Cole was the tenth witness for the appellants/defendants. He testified that he hails from Grand Gedeh County and was living in Zwedru before his arrest on July 12, 2012 by ERU, Police and military people. He said he had gone to buy rice from the PDP Camp when he was arrested. He said he was beaten and his two cell phones were taken from him and he and Isaac Taryon were put in the back of a pick-up and taken to Zwedru and later to Monrovia. He denied knowledge of fighting in the Ivory Coast.

The eleventh witness that testified for the appellants/defendants was Edwin Telay; it appears that this was a character witness specially brought to testify in favor of Nyazee Barway. He said he hails from Ziah Town, Grand Gedeh County; that he knows Nyazee Barway very well; that he knows his son Jr. Barway who attended the same school with him. He said Nyazee Barway owned a gold creek which he (Nyazee Barway) operated and therefore did not go anywhere; that he can put his head on the chopping board for Nyazee Barway because he had not heard anything concerning his involvement in rebel activities in the Ivory Coast.

The twelfth witness for the appellants/defendants was Nyazee Barway. He testified that he hails from Konoboe District, Grand Gedeh County but resides in Ziah Town in the same Grand Gedeh County. He told the court and jury that since he returned from exile in Ghana he had not gone anywhere outside of Liberia; that he did not go to fight in the Ivory Coast. He said he was arrested in Zwedru by the ERU and the Army; that he had no arm or ammunition with him, not even a knife at the time of his arrest on July 12, 2012, at 1:00 am.

He said he did not fight in the Ivory Coast. He said even though he called his name, his father's name and his mother's name, he did not make statement and he did not sign any statement with the police.

The thirteenth witness for the appellants/defendants was Jackson T. Jarba who said that he hails from Galeo Town, Konoboe District, Grand Gedeh County. He said he was in Galeo Town between 2010-2012; that nobody recruited people in Galeo Town to go fight in the Ivory Coast. The testimony of this witness was largely that Galeo Town is a traditional town in which the elders were in complete control.

Abraham Togba was the fourteenth witness for the appellants/defendants. He said he lived at ELWA Junction, Monrovia. He said that he knows Ofori Diah; that Ofori Diah is his first cousin; that he served Ofori Diah as what he termed *pro bono* special assistant; that they were trying to open a company called A&M Enterprise in 2012. He said he had no knowledge of Ofori Diah travelling to the Ivory Coast to engage in rebel activities;

After the testimony of Abraham Togba, the appellants/defendants concluded their side of the case. The State then produced seven rebuttal witnesses. However, we have deemed it necessary to summarize below testimonies of five of the rebuttal witnesses. We determined that the testimonies of rebuttal witnesses Philip Asone Nah Wollor and Patricial L. Hodges, were not relevant and necessary.

Rebuttal witness Roland Garwo testified that he crossed Bobby Sarpee, Edward Cole, Jacob Saydee, Moses Sarpee, one Playboy and Nyazee Barway when they were being pursued by the Al Hassan Outtara forces from the Ivory Coast to Liberia. He also testified that he allowed them to use one of his canoes to go for their arms they left them at the waterside. The witness also testified that Bobby Sarpee sent him to collect arms and ammunition from Tchien to Zwedru.

Atty. Amos K. Kollie rebutted the testimonies of the appellants/defendants when they said that they were never represented by lawyers before the police. Detail of his testimony is presented herein below.

Pascal Kollie who had earlier testified for the State, refuted co-defendant Isaac Taryon's statement that the motor bike he (Isaac Taryon) was riding belonged to him. He said the motor bike actually belonged to Nyazee Barway.

Chief Inspector John M. Kollie of the Liberian National Police rebutted the statement of co-defendant Bobby Sarpee that he never made any statement to the Liberia National Police; he confirmed that Bobby Sarpee and Ofori Diah made statements to the police in the presence of their legal counsels. He said at the Police Headquarters, when necessary, statements of accused persons are recorded by an investigating officer and read to the accused in the presence of his counsel for their confirmation before the accused person signs.

The last rebuttal witness for the State was Jones T. Mulls, Sr., employee of the General Services Agency, who testified rebutting the testimony of co-defendant James Lee Cooper who said he was employed with the GSA in Zwedru, Grand Gedeh County. He said that James Lee Cooper was not an employee of GSA assigned in Zwedru, Grand Gedeh County.

Having carefully perused the indictment against the appellants/defendants and considered the evidence adduced at the trial in the case before us, as well as the appellants/defendants points of disagreement with the verdict of the jury and the final ruling of the trial judge as catalogued in the bill of exceptions, we have determined that the lone issue for our consideration in deciding this case is whether or not the State established *prima facie* evidence against the appellants/defendants? In other words, did the State prove the crime of mercenarism with which the defendants were charged?

The answer to this question lies in the testimonies of the witnesses for the State. In this regard, we should note that the key witnesses produced by the State were Thomas Glador, Pascal Kollie, Pye Gaye and Prince Barclay who said they were eye witnesses to the crime of mercenarism with which the appellants/defendants are charged. Thomas Glador is a Correction Officer with the Ministry of Justice who was working undercover to gather information from the appellants/defendants, while Pascal Kollie, Pye Gaye, and Prince Barclay were initially arrested as co-conspirators in the commission of the crime of mercenarism but the State dropped the charge of mercenarism against them so that they could be used as state witnesses. This act is permissible under our law. In the case: *Republic of Liberia v. William Gabriel Kpolleh et al* cited above, this Court held that "an accomplice is competent to testify as a witness for the State".

In the testimony of Thomas Glador, he narrated that he was gathering intelligence on the appellants/defendants throughout his association with them; that he signed for some of the appellants/defendants who were in prison in Zwedru, Grand Gedeh County and travelled with them to the Ivory Coast. He identified those he signed for as Alex Barway, the son of Nyazee Barway, Junior Jonah and James Suah, alias Terrorist and identified the detention book in which he signed for them. He said he was involved in retrieving arms and ammunitions the appellants/defendants had buried in the Garleo Forest. He further identified Nyazee Barway, Bobby Sarpee, Ofori Diah, Emmanuel Saymah, Moses Baryee, Steve Gloto also known as Rambo, and Jacob Saydee as those who took part in fighting in the Ivory Coast. He said he was present when Emmanuel Saymah was arrested by a joint team of ERU and AFL officers with arms (AK-47 rifles).

In the testimony of Pascal Kollie, a Guinean national who had gone to Galeo to mine gold, he said he was forcibly recruited to join the appellants/defendants and went along with some of the appellants/defendants to the Ivory Coast; he said he was present when the Peacekeepers were blasted by the forces of Nyazee Barway in a town in the Ivory Coast called Para, killing all seven of the Peacekeepers; he identified the RPG that was used to shoot the peacekeepers. He identified Nyazee Barway and Edward Cole as some of the appellants/defendants who fought in the Ivory Coast. The witness, when asked on the cross-examination whether any of the appellants/defendants he had testified were hauling guns from Ziah Town to Galeo were amongst the appellants/defendants sitting in the dock answered yes and pointed to Nyazee Barway and Edward Cole.

In the testimony of Pye Gaye, the other eye witness who hails from Grand Gedeh County, he said he was one of those with Nyazee Barway at the time they were in the Ivory Coast. He said he knows Nyazee Barway, Bobby Sarpee, Edward Cole, Moses Sarpee, Bob Marley, Prince Barclay and plenty other Liberians who fought in the Ivory Coast under the sponsorship of Laurent Gbagbo loyalists. He testified about an attempt to capture Para by the fighters of Nyazee Barway which led to the death of the Peacekeepers. He said Bobby Sarpee, Nyazee Barway, Edward Cole, and Moses Sarpee were the commanders steering the regions; he said Prince Barclay, Bob Marley and Bobby Sarpee were selected to be on the Troplay region and Danane, while Nyezee Barway chose to go by way of Cari, Para and San Petro. He said they received supplies from one Solo who was chairman for the Liberian mercenaries in the Ivory Coast. The witness was asked whether he knows the Guinea Kpelle man named Pascal Kollie and he answered yes. And he went on to say that he met Pascal Kollie at the gold camp in Galeo but he (Pascal Kollie) and others were not fighters.

And Prince Barclay stated on the witness stand that he fought alongside Jacob Saydee, Bob Marley, Bobby Sarpee, and Mohammed Massaquoi in the Ivory Coast. He also said he knows Nyezee Barway; that Nyazee Barway was their commander.

The testimonies of these four key witnesses, in our opinion, directly linked many of the appellants/defendants to the crime of mercenarism. Besides, there were other witnesses for the State who were not eye witnesses, but whose testimonies provided damning and incriminating facts and circumstances that linked and connected many of the appellants/defendants to the crime with which they are charged. For example, N'gadi Farmin, an Ivorian who identified himself as the Deputy Director of State Security, testified that the

attacks on Soa, Negrin, and Para on June 8, 2012, resulted into many deaths, destruction of houses, and other properties in the Ivory Coast, including the killing of seven United Nations Peacekeepers. He said from their investigation they were able to arrest Toure Eric, Cari Fransuah and Kai Haley, all Ivorian nationals, who informed them that while they were crossing into the Ivory Coast they were taken hostage by heavily armed men headed by Nyazee Barway who was wearing a leopard skin hat. According to this witness, the three arrested Ivorians told them that when the armed men crossed the Cavalla River in canoe, they engaged in heavy fighting with the Ivorian military; that by this information, Nyazee Barway and Rambo were identified and they immediately communicated this information to their Liberian counterparts as a result of which Nyazee Barway, Rambo and others were arrested in Liberia. He said he interviewed Nyazee Barway and Rambo who confirmed to him their involvement in the fighting in the Ivory Coast on the side of Laurent Gbagbo. According to the witness, Nyazee Barway also named other fighters such as, Bobby Sarpee, Morris Cole, Edward Cole, etc. He was asked on the cross-examination if he could identify Morris Cole who he said he interrogated? The witness answered "yes". He then walked from his seat, went to where the appellants/defendants were sitting and correctly identified Morris Cole.

Moreover, we see in the records before us, written statements said to have been made by the appellants/defendants at the time of their arrest and interrogation. We see that some of the statements were signed, while thumb prints were affixed to others. The statements provide the appellants/defendants' position concerning their alleged commission of the crime with which they are charged. We see that some of the statements, on their faces, constitute outright admissions and concessions by the concerned appellants/defendants.

Emmanuel Doe Jleekan, Deputy Chief of the General Crimes Section of the Liberia National Police testified that many of the appellants/defendants did not want to write their own statements because they said they could not read or write; that they therefore asked the police to write their voluntary statements. He said the appellants were represented by their lawyers who advised them to sign the statements and they signed; and that their lawyers countersigned the statements. He identified Emmanuel Pewee, Junior Geelor, Philip Moore, Timothy Barlee, Jacob Saydee and Mohammed Massaquoi, alias Mohammed Kallon as those investigated by his team and on whose behalf statements were written which they signed with the advice of their lawyers who countersigned the statements.

Other police investigators also said that some appellants/defendants made and signed written statements before them in the presence of their lawyers and that their lawyers

countersigned the statements. For example, Col. Alfred T. Quire, II, Chief Investigator of the Organized Crime Section, Liberia National Police said before investigating Nyazee Barway, Morris Cole, Isaac Taryon, Prince Youty, James Lee Cooper, Emmanuel Saymah, Moses Baryee, Alfred Bobby, James Julu and Ofori Diah, they were all informed of their Miranda rights in the presence of their lawyers, Attorneys Arthur Johnson, Swahilu Sesay and Amos Kollie and that the appellants/defendants made statements which were signed by them and countersigned by their lawyers.

We have deemed it particularly essential, for the purpose of this opinion to reproduce below, the statement made by each appellant/defendant before the police during investigation.

### Appellants/defendants' Statements Made before the Liberian National Police

#### 1. JACOB SAYDEE

Date of Birth: 1985, June 5.

Place of Birth: Tuzon, Grand Gedeh County, Tchien District, Beh Town

Father's Name: Edward Z. Saydee

Mother's Name: Manie Saydee

"In the year 2001, I went to Ivory Coast. While in Ivory Coast things were fine with me until 2011 when the war started with Lawrence Gbargbo Government. So we the Liberians in Ivory Coast decided to fight for Gbargbo. After things went against Gbargbo that's how we decided to come back to Liberia. On our way to Liberia we were missing in action. The route we took we met with a rebel group. We decided to exchange fire with the rebel. We manage[d] to cross the Liberia border. During the crossing of the Cavalla River the Ivorian soldiers that came with us left across the Ivorian side of the river. The commander that brought us said that he never wanted problem and advised that no one should cross with arm or ammunition. So we left everything with the Ivorian soldier that came with us. After we crossed to a gold camp called Middle East, the mining chairman of Middle East decided to call his security to arrest us, and send for ERU and instructed the ERU to ask us for the arm we brought from Ivory Coast.

After [that] the ERU brought us to Zwedru and turned us over to the Police for investigation. My money, nine pieces of CFA and my phone were taken from me by Deputy Commander/E.O, Lansana. This is all that happen."

Signed: Jacob Saydee (Signature).

May 23, 2011-7:46 p.m.

## 2. PRINCE YOUTI

Date of Birth: April 7, 1982

Place of Birth: Ganta, Nimba County

Father's Name: Moses Youti

Mother's Name: Esther Youti

Tribe: Krahn

"It was on July 4, 2012, at 7:00 AM. I was in the camp I saw the ERU and the AFL came to the camp to me, saying that I have guns so we should go to Zwedru and show the place. After we got to Zwedru, they told me to talk the true because we [came] from across, Ivory Coast. And I told them no, I have not been to Ivory Coast; later they told me to come to Monrovia and answer questions."

Signed: Prince Youti (Signature).

## 3. STEPHEN J. GLOTO alias RAMBO

Date of Birth: March 17, 1969

Place of Birth: Zwedru, Grand Gedeh County

Name of Father: Nyeway Gloto

Name of Mother: Elizabeth Gloto

Name of Wife: Patricia Gloto

"I was hunting in the bush in June 2012 where the Ghana people [are] cutting their bitter root stalk in River Gee County [near] Cavalla River not far from Para in Ivory Coast, about two hours walking distance. While I was in the bush hunting Barway came with group of men and two Ivorian girls in the village along with seven AK-47 riffles and RPG and they arrested five girls plus three children and "hide" them. When I came from the hunting bush and got in the village I did not meet anybody in the village. But [in no time] Barway and his group put me at gun point and took my hunting "Kanjah" from my back and my single barrel gun from me. Among the group I recognized Barway, Edward Cole, Karyo, Pyenayou including some Ivoirians and two Nigerians. Barway told me that they had mission to attack Ivory Coast soldiers and he wanted me to be part of them and I told them that I have no arm to fight. But Barway told me to use my single barrel gun they took from me in the meantime, because any area we capture they will communicate with Garbgo's son named 'God Father' to bring supplies. Then I told him that I have people in Ivory Coast, therefore I am not able to attack Ivory Coast. It was when he (Barway) took his pistol and pointed it to me, sat me on the ground and then he left me. Later I went to him for my gun but he refused to give me the gun on ground that I will get it in Ivory Coast. But Cole and the Ivorian "papay" begged for me and said that since I was willing to go with them he should give me the gun and he ordered that the gun be given to me, and they gave me the gun. I went home and slept and

at about 3:00a.m. I ran away from the village and went to Youbah Town in River Gee County and told Elijah Teah, the Town Chief that Nyazee Barway was in the bush catching people including Salah Town Chief. He, Barway told me that they were expecting re-enforcement and that small Barway and Brooks will be leading. Thereafter I went in my home village. The first time I saw Edward Cole was in 2012, I killed monkey and went in the bush and there I saw Barway and Edward Cole. Barway was the commander while Cole had seven AK-47 riffles and a Thuraya Phone. They captured four women and two Ghanaians. Barway and Cole were always in close communication while we were in Ivory Coast."

Signed: Stephen J. Gloto (Signature).

#### 4. ALFRED BOBBY JAMES, Jr. Alias Bobby Sarpee

Date of Birth: March 3, 1973

Place of Birth:

Name of Father: Alfred James, Sr.

Name of Mother: Mary James

Name of Wife: Patience Gaye

"[In] 2011 my Father –in-law, Grease Didier came from Ghana and approached me that he wanted to mobilize us to go to Ivory Coast to fight but later went back to Ghana to collect money to mobilize men to fight. But he did not come back to Liberia; then Moses Blayee contacted me that Emmanuel otherwise known as Mission and Ofori Diah were coming to Liberia with money and he Moses told me that if Ofori and Emmanuel ask me whether we had "armo" I should say yes, so they will come with money. After few weeks Ofori and Emmanuel came from Dubai to Monrovia then to Grand Gedeh County with US\$100,000.00. But when they met me, I was not well they give me US\$1000.00 to buy motor bike to contact men for arms. Then I asked them that you meet me sick then you are giving me US\$1,000.00? What do I use to treat myself? They told me that they will come back for the mission with money. That how they left and came back Monrovia. When they got in Monrovia, they told Jackson Didier, who is the source of the money that they were using for mobilization of fighting men. Didier went to Ghana and came back then he called me and Moses to meet him (Didier) in Ganta, Nimba County. We met him and he give us US\$5,000.00 (United States Dollars), and Emmanuel took US\$900.00, and Jackson Didier who gave the money took US\$1,000.00 to pay his hotel bill in Monrovia. The balance US\$3,100.00, I told Moses when we left them that since they (Emmanuel & Jackson) brought the first US\$100,000.00 and bought cars, so [we] should share the US\$3,100.00 between ourselves. Then I gave Moses US\$1,100.00 from which he bought power saw. The balance US\$2,000.00 I bought one Motor bike. Thereafter, we left for Grand Gedeh County. Moses stopped in Toe's Town, where he lives, and then I continued to Zwedru, where I lived. The names of those who financed the mission to Ivory Coast:

1. Jackson Didier – Gbargbo's Grandson (Ivorian)
2. Jackson Didier Father – Gbargbo's Finance man (Ivorian)

3. Tiah Zuway – Advisor to Gbargbo (Ivorian)
4. Abel Wleh – Minister, Public Function (Ivorian)
5. Gelay Wulue Amie – Minister, Internal (Ivorian)
6. Gee Maio – Youth Leader (Ivorian)
7. Grean Didier – Custom Officer, Father –in – Law to Bobby Sarpee
8. Gbargbo’s Pastor- A’sse Oliae Tacho (Ivorian)

In furtherance of my statement, the fighting force received money and comprised the following:

1. Nyazee Barway- US\$500.00+ US900.00
2. Morris Cole - US\$500.00
3. Stephen Gloto (Rambo)
4. Isaac Taryou, he was body guard to Barway.
5. Steve Karbe
6. Nimely Tere Antoine – US\$150.00
7. Small Barway
8. James Lee Cooper – Recording Clerk to Bobby Sarpee
9. James Nuah ( Jimmy Ringe) – Mobilizer of ammunition
10. Gouteh - US\$50.00 (Ivorian)
11. Isaac Cheabo alias Bob Marley (one motor bike + US\$500.00)
12. Iron Jacket, Tiah, Rock – 1, Terrorist -1
13. Brooks
14. Dirty Prick (Ivorian)

To conclude my statement reference to the various attacks in the Ivory Coast, 2011 specifically, Para, the attack was led by Nyazee Barway. Jackson Didier told Barway to go to Thai in the Ivory Coast because it has an Airport to enable Chopper to land with arms and ammunition from Ghana. Because of Nyazee Barway’s selfish motive, he diverted and went to Para the position of the New Forces rebel, during which time his forces killed some people. Predicated upon the attack, FFC informed the peacekeepers that went to the rescue of the people in the process they were attacked and killed by Barway men with the purpose of taking the peacekeepers gun according to Gonteh and Tawo Barway.”

Signed: *Alfred Bobby James, Jr. (Thumb Print).*

5. SAM TARLEY Alias Bull Dog

Date of Birth: June 9, 1976

Place of Birth: Pehwalay, Nimba County

Name of Father: Deceased

Name of Mother: Annie Tarley

Name of Wife: Helena Tarley

“On March 15, 2012 I left from Monrovia for Behwalay Town in Kpagbe, Nimba County my birth home, to plant my cocoa and rubber. I had earlier planted some of my rubber and my

father planted some of the cocoa that I went to enlarge and brush under. When I got to Behwalay, I joined the community policing forum as a member to help the border patrol team. We the community forum members can be out with the border patrol (Immigration) officers to help keep watch over our town. The border patrol commander there is one Rich who is in control presently. About two days ago while I was in Behwalay Town, a team of ERU Officers went there with one pickup asking the town people and the border patrol officers as to what was happening in the town. They told them everything was fine. They asked them as to whether training was going in and around the town. They said no, that I was the only ex-general of LURD in the town planting my cocoa and rubber. So the ERU officer said I should go with them in Ganta that Government wants to talk with me. They took me to Ganta where I spent six days in the cell and they later brought me in Monrovia to spend another six days in the cell before turning me over for an investigation. I did not tell anyone who is training or where training is going on."

Signed: Sam Tarley (Signature).

6.MOHAMMED MASSAQUOI

Date of Birth: January 9, 1983

Place of Birth: Margibi County

Name of Father:

Name of Mother:

Name of Wife:

"In August 2010, I left Zwedru, Kola Bye-Pass and travelled to Ivory Coast and settled at Deweh, the Gold bush, to mine gold. While we were there the Mossi and Bywoleh people drove us from the mining bush. That's how I followed our brother in Bolaken, at which time I was recruited by Prince Barclay, who was the Deputy Commander to Bob Marley. Bob Marley was hired to fight alongside former Ivorian president, Lawrence Gbargbo army in uniform. The weapon assigned to me was M-60 machine gun. We were based in Boleken and we were attacked by Ivorian President Ouatarara group and we retreated to a town name Zigklo, and we were again attacked in Zigklo when we and Bob Marley separated, we got into a Cocoa Plantation. We ran out of food so we started retreating to Liberia near the Cavalla River, when we reached the Cavalla River, I met Bobby Kpasuah who transported me across the Cavalla River. After I crossed to the Liberia side, I made three days in Bleyee Town before ERU arrived there and an order was passed that everyone who came from Ivory Coast should be arrested. That [is] how I was arrested on Wednesday, May 11, 2011 and stayed one week in Grand Gedeh Police Station before I was transferred to Monrovia."

Signed: Mohammed Massaquoi (Thumb Print).

## 7.OPHORI DIAH

Date of Birth: December 25, 1968

Place of Birth: Grand Gedeh County

Name of Father: Smith Diah

Name of Mother: Sarah Diah

Name of Wife: Onikeh Diah

"I am a former LURD General. Sometimes in 2004, Mr. Wallace Dennis of the Police, Ebenego Zoweh Kan, Edward Gbor, James Gbagbotee and four others went to meet Laurent Gbargbo through Balayago Boyee. I was the only one from LURD side; but all those named above are from former MODEL. So they said Laurent Gbargbo want to meet me. We went by road through Toe's Town border to Abidjan. We did not see President Gbargbo but we saw Gbargbo's wife, Gbargbo's Pastor and other Government officials including the Superintendent of Tulay-play District, Ivory Coast. These persons were known by Wallace and other former MODEL fighters. These former Ivorian Ministers give us 60,000.00 CFA, and told us that they wanted us to join the Gbargbo's people to fight against the Rebel. I told them that I hold word that I was the former deputy chief of staff and I will reach it to my former chief of staff (the late General Cobra) upon my return in Liberia. When we returned in Liberia, we give the 60,000.00 CFA to Blayafu Boyee who gave me only 2,500.00 CFA for LURD as our share. He and his group took the balance money with the hope that they were going to call me back. When President Sirleaf took office for her first term, the former Ivorian Minister in the Gbargbo's Government send for us again; but this time Mr. Wallace Dennis did not go with us; we were headed by Paye Duah alias Garand. We met the Minister in this Town after Tolap-play. But I don't know the Minister's name. The Minister told us that the reason why he sent for us is that he married to Garand sister ... He told Garand that he will recruit us and that he will tell President Gbargbo whatever we want, he will tell President Gbargbo to do it for us that he will be our head. He killed one goat for us that night. The next day when we were coming back home to Liberia, he gave us 150,000 CFA, but Garrand told him it couldn't pay our way back home. He told us he was going to call someone in Tulay-Play to add our transportation up that he was not having money; when we got in Tulay-Play, his girlfriend give us 20,000 CFA. When I came back I called Railey from NSA [and told him] that I want to see Fumba Sirleaf. The next day I got ready to go and see Fumba Sirleaf, when Railey called on my number, but my phone was in Garrand's hand so he answered my phone. Garrand told me that Railey was on my line so he gave me the phone; Railey told me that Garrand and I should go to NSA to see Fumba Sirleaf. When we went to NSA, I did not tell Fumba Sirleaf what was on my mind because Garrand was there. I only told him thanks for the job, that he should tell the Oldma (Ellen Sirleaf) thanks for the job, that I give my support to them and that he is my brother, I will give them all my cooperation. He Fumba asked me as to what I was doing then. I told him that I was planting my rubber in Grand Gedeh County. So he told me that he was going to ask Firestone to give me all the rubber "signs". The next day when I called Fumba he did not answer my call. Last year, when the rebel war started in Abidjan, Garrand and Junior Taylor told me that Paul Deshield wanted to see me and some other guys. So Garrand, Junior Taylor, Gbagbotee, Junior Toweh,

Abenezer and five others left for Ivory Coast, but we stopped in Killey. There we saw Bobby Sarpee and it was my first time to see Bobby and Paul Deshield in their group. Bobby Sarpee brought money in bag in the car with some men hanging on it. Garrand and Junior told me that Bobby and Paul Deshield had 150,000,000 CFA for recruitment. I went to one of my aunty in Killay to speak to her while Garrand and Junior Tailor were talking to Bobby Sarpee. They told me that I should go talk to Bobby Sarpee that he does not want to give them the money. I told Bobby what happened but he told me that he does not trust Garrand and Taylor; that they were heading him before, that it was his time; that he will not give them the money it was his time. I told Bobby I was Deputy Chief of Staff for LURD, I had lot of cars but I sold them and build houses. I am making business, let him take the money and follow us so he can build his house. I told him to convince the man, Paul Deshield, but he told me that Gbargbo has confidence in him, he will die with Gbargbo, he was not going anywhere..."

Signed: Ofori Diah (Signature).

### 8.MORRIS COLE

Date of Birth: March 3, 1967

Place of Birth: Korlowleh Town, Grand Gedeh County

Name of Father: Yancy Cole

Name of Mother: Sarah Diah

Name of Wife: Lucy Cole

"I was recruited in 1990 as AFL personnel and fought for the Government troop. I also fought for LPC in 1993. The time they were fighting in Ivory Coast, I was in Jarwuodee in Grand Gedeh County digging gold. At time, I go to Zwedru and back. On the 5<sup>th</sup> or 6<sup>th</sup> of July 2012, I left Jarwuodee and went Zwedru to build on my piece of land I bought in February 2012 for US\$350.00. The land was surveyed by one James Meme. While I was in Zwedru, my little cousin, Marie Nile, who resides in PTP Refugee Camp called me to go to the camp to help her collect her ration. I went to the PTP Camp on Thursday, July 12, 2012 and collected the ration the same day. On my way back to Zwedru, on Friday, July 13, 2012, in the evening around 4:00p.m. while riding on the motor bike I was arrested by police who told me that they had information that I was involved in cross border attack in Ivory Coast and I said to them that I was not involved in cross border attack in Ivory Coast and that I did not take part in the war.

In March 2012, I was in my house in Karlowleh Town, Putu District. While there Bobby Sarpee sent a man identified as Moses for me to come to Zwedru. After I went to Zwedru, I met Sarpee. He informed me that he has mission on hand for Ivory Coast. He said to me that his father-in-law, Didier gave him the contract to find men for him. After he said this to me I asked him how do we start? He told me that he has seven pieces of fire arms on hand already and I agreed with him, but I asked him what about the finance. He told me after we get through putting the manpower together he will inform the person in charge and money will come. But I told him that the seven pieces of arms you said you transported to Ziah

Town is not enough. He told me that Oldman Barway had something with him in Ziah Town. But when we arrived in Ziah Town, Barway was not having anything much with him. From there he Bobby went back to Zwedru and asked the leaders with the responsibility to control their own area of concern. Those team leaders are 1) Rambo, 2) Brooks, 3) Goteh, 4) one Ivorian to be identified. The mobilizers for these men include: 1) Bobby Sarpee, 2) Moses Barway, 3) James Nuoh, 4) Bob Marley, 5) Iron Jacket, and I, Morris Cole. After we sent to Ivory Coast, we left Ziah Town and came to Zwedru; while in Zwedru, we heard on the radio that our men entered in Ivory Coast so we the mobilizers met together and went for them in the bush. The eleven arms and the seven arms from the peace keepers were brought to Liberia but according to our men, on their way to Liberia two arms left in the water.

Reference to the act of mercenarism, it was Nyazee Barway that led the troop to Ivory Coast and was accompanied by Rambo, Brooks and others. At the beginning of this year, Wallace Dennis who is supposed to be the employee of the National Security Agency (NSA) and Cousin to Bobby Sarpee led the supporters (Ivoirians) on the mission to Toe Town, Grand Gedeh County to meet with Bobby for the first discussion and arrangements. It was the same time Wallace Dennis' vehicle had accident and someone hand got broken in the process. As per the communication (Thuraya Phone), Nyazee Barway had one assigned to him and he was in communication always.

This is what I know."

Signed: Morris K. Cole (Signature).

#### 9. ISAAC TARYON

Date of Birth: October 10, 1978

Place of Birth: Grand Gedeh County

Name of Father: Joseph Taryon

Name of Mother: Liser Taryon

Name of Wife:

"On July 13, 2012, I was in Ziah Town, Grand Gedeh County where about 8:00pm-9:00pm, after coming from work, sitting with my family lecturing, a security friend of mine that I call Chief of Staff came to me under the tent in the camp in Zwedru City. This friend asked me to escort him to go latrine in the bush. When the fellow and I went in the bush we were surrounded by group of officers, who said they were looking for "Bobby". I told them that the Bobby that I know only come to a palm wine seller every morning and when he gets through drinking he returns back to the bush. I told the officers that if they wanted to get Bobby I can take them to where he normally comes in the morning to drink palm wine and go back. I took the officers to the area but they later put me in the car to come with them to town. This is just how they brought me in town here."

Signed: Isaac Taryon (Thumb Print).

10.JAMES LEE COOPER

Date of Birth: June 21, 1978

Place of Birth: Montserrado County

Name of Father: Cyrus Cooper

Name of Mother: Zendu Cooper

Name of Wife :

"I, Mr. James Lee Cooper, a worker of GSA and Acting Secretary with LFA, Zwedru Branch, was arrested at the Administrative Building, Grand Gedeh County, during working hours at about 11:30am. Upon my arrest, I was told that I am needed at the police headquarter for police interrogation. Upon our arrival, I was asked that according to information I did not cross to the Ivory Coast but whether I know one Bobby Sarpee who is wanted by the government. I did tell them that yes I know Bobby in Guiglo, Ivory Coast. But upon my return to Liberia, I do not know his whereabouts because I live in Zwedru and Bobby is residing in TPT Refugee Camp so I do not know his activities.

I was also asked if I know one Didier, who was the father- in-law of Bobby Sarpee. I told him during our stay in Ivory Coast I knew Didier to be the Town Chief in Kar-day, one of the villages in the Ivory Coast. I was also asked whether I will be willing to help the government to locate Bobby Sarpee and I did tell him yes, if I am being authorized I will be willing to help my country.

Later, one Gayflor Zoway took charge of me and sent me home for one week and I was asked to work along with David Gladior to help the government to locate Bobby Sarpee. But, unfortunately, this gone Sunday after I came from practice, I was called by the LNP County Commander and I reported to Headquarters. But on Tuesday night about 3:00am, I was told that you people [are] going to Monrovia for further investigation."

Signed: James Lee Cooper (Thumb Print).

11. NYAZEE BARWAY Alias Joseph Dweh

Date of Birth: 1955

Place of Birth: Ziah Town, Grand Gedeh County

Name of Father: Borbor Cha Barway

Name of Mother: Esther Baryee

Name of Wife : Emma, Dorothy, Nora and Sophie

"I am Nyazee Barway, alias Joseph Dweh. I was born in Ziah Town, Grand Gedeh County in 1955. I am presently 57 years of age. After I was born, I did not go to grade school. I lived in Ziah Town all my days. When I became a young man, I survived on farming. I came to Monrovia in 1986 and was trained in Camp Todee Military Barracks, in the same 1986; I was enlisted in the AFL. There I worked up to the time of the Liberia Civil War. Yes, I did fight the Civil War on AFL side against Taylor and Prince Johnson Forces. I was a captain in the army and infantry soldier that operated M-16 rifle. As per the subversion activities going on at the Ivorian border, I am not part of it. I am innocent. I am presently a business man caring with life.

Yes, as per Bobby, I know him to be a fellow business man. Bobby and I are from the same town in Grand Gedeh County. Bobby is one of the Gbargbo fighters that crossed over to Ivory Coast from Liberia who is presently hiding but I do not know where he is. I also know Bob Marley who is a fighter too. I think Bob Marley resides in his home, Putu.

Four months ago, Bobby Sarpee started the recruitment of mercenaries in Zwedru, Grand Gedeh County. The men he was recruiting were both Liberians and Ivoirians. I was one of the recruits. It was Morris Cole who was taking down the names of those men who were willing to go and fight in Ivory Coast. Firstly, the following men are the ones who put us together: Bobby, Wokie and Moses. Bobby Sarpee brought about twenty arms including AK and RPG rifles and told us to go fight in Ivory Coast on Lawrence Gbargbo side. Bobby Sarpee told me that, he was giving us US\$50,000.00 to fight for Gbargbo. I received US\$300.00 from Bobby to go to fight in Ivory Coast. He brought arms in Liberia from fighters who came from Ivory Coast. I never went into Ivory Coast to fight but was based on Cavalla Island in Liberia where I instructed Brooks to lead the troop in Ivory Coast through the order of Sarpee. Brooks told me that they entered the first farm in Ivory Coast and the second town that was taken was Nekley. It was Rambo group who attacked the UN Peace Keepers' position... I do not know who was giving the money to Moses and Didier for us to fight in Ivory Coast, but we were all together receiving money for the job in Ivory Coast. Those of us that were together include Jimmy Rambo, Bob Marley, Iron Jacket and including one Ivoirian man by the name of F. Gondeh."

Signed: Nyazee Barway (Thumb Print).

## 12.EMMANUEL SAYMAH

Date of Birth: December 1, 1967

Place of Birth: Grand Gedeh County

Name of Father: Nepien Saymah

Name of Mother: Kleaweh Saymah

Name of Wife :

"On July 13, 2012, George Pouh, male, tribe Gio, a Liberian, and George Moore, male, tribe, Ivoirian Krahn and an Ivoirian came to Saniwein on that date to discuss with me. They sent for me from Ploe Podee. Having received the message, I proceeded to Saniwein. George Pouh and I were in the Liberia defunct army. I have known him since 1990. As for George Moore, the Ivoirian, I do not know him. The both of them and I went in a discussion. George Pouh came up with a point of a better acquaintance he has with me over fifteen years. He introduced George Moore, an Ivoirian who is standing in the vanguard to mobilize people within Liberia to stage an incursion in the month of August 2012. According to George Moore he resides in PTP. In the discussion with them, they said there were men being assembled within the forest between Toe Town and Saniwein. The discussion was held on the highway, Saniwein and Duogee Towns. In the discussion, George Moore promised to compensate me with the amount of US\$3,000.00 for the operation. We discussed and he gave me US\$75.00.

Later on the 29<sup>th</sup> of July 2012, George Ploe and George Moore came to Saniway for the second time and they sent for me. I went to Sanwein and met them. The second or final discussion they had with me centered on the motives of this operation. The Ivoirians that residing within the territory have been terrorized by Mossi elements (the pro Ouatarra's fighters) that have taken their farm land and even did some killing. The Touleplau belt is the settlement of the Ivoirian Krahn segment. According to George Moore, there were other groups within the belt. After we finalized the discussion, we got on motor bike and headed to PTP road. We did not reach to PTP road but made a stop at the middle of the road. We met six Ivoirians at the junction waiting on George Moore to proceed to the base. But Pouh came back to Zwedru. Making the number of eight of us dispatched to the base between Toe Town and Saniwein. Having walked one week distance, we got to the base known as George Moore Base; twelve persons were met with totaling twenty persons. We spent a week on the base before the attack of the military barrack. I met three AK-47, two AK-48 and two single barrel guns on the base for the operation. When we attacked the position of the Ivorian troop we captured two RPG and five AK-48. The re-enforcement came and drove us. I decided to cross to Liberia and back to Grand Gedeh County."

Signed: Emmanuel Saymah (Signature).

### 13.MOSES BARWAY

Date of Birth: December 20, 1977

Place of Birth: Polar, Grand Gedeh County

Name of Father: Baryee Gboweay

Name of Mother: Martha Gboweay

Name of Wife: Josephine Beh

"During the end of 2011, Bobby Sarpee came to me in Toe Town and told me that he had a mission from some former Lawrence Gbargbo Ministers to carry war in Ivory Coast because he was fighting for Lawrence Gbargbo in Abidjan, Ivory Coast. I asked him how he was going to do it because the Liberia Government was not willing to support any war, and the entire country security was in the hand of UNMIL. He told me he had connections. In February or March 2012, I went to Bobby Sarpee with my motor bike in Zwedru, Disco Hill. He sent me to Morris Cole, alias Edward Cole to his village, Karlorwleh, Putu District, Grand Gedeh County to call Edward. When I carried Edward, Bobby told me about the mission in Ivory Coast that Edward should connect his boys because Edward is a former rebel General and he and Bobby were in Abidjan fighting for Gbargbo. Edward told Bobby he agreed but it requires money. Bobby told him no problem. After some time, I went to Bobby again at his Disco Hill, Zwedru residence but he was sick. There I saw one Ivoirian name Anthony, and the other one I do not know his name. Bobby said they were the financiers (supporters for this mission). Bobby was thinking where to cross to go attack in Ivory Coast. Someone told him about Nyazee Barway, alias Joseph Dweh, who had his village in the Ivory Coast border and he too is a former strong fighter and general. Nyazee Barway came to Bobby [and] told him about the mission. He too said it requires money. Bobby promised to give him money so he agreed. Another time when I came to Zwedru with my motor bike I reached to Bobby's place where Nyzee Barway came and Bobby Sarpee gave him US\$600.00. He left after some time I heard that rebel kill seven UN soldiers in Ivory Coast. After few days the Human Right Organization on BBC accused Liberia that it was Liberian mercenaries that crossed into Ivory Coast and killed the seven UN soldiers. For the August 13, 2012 Pakana Barrack attack, I do not know who did it and I do not have idea about it. I do not know where Bobby Sarpee is."

Signed: Moses Baryee( Thumb Print).

Notwithstanding, the foregoing statements made by the appellants/defendants during the time of investigation before the police, when they took the witness stand to testify and were confronted with their respective written statements, all of them except Sam Tarley, denied ever making the statements before the police. They said they were only asked about what they called their "bio data" and they gave them to the police, but claimed that the

rest of the information in their statements was never made by them. They also denied that they were represented by lawyers.

Amongst the appellants/defendants who made such denials is Mohammed Massaquoi, who, while on the witness stand was asked the following question concerning his statement made to the police and he answered:

“Q/ Mr. Witness, you made a statement to the Liberia National Police that was co-signed by your lawyer, Atty. Amos K. Kollie. Am I correct?” A/“You are wrong. Where? Does Amos Kollie know me? I had money to hire lawyer at that time? I don’t know Amos Kollie. He is not my lawyer.”

But Attorney Amos Kollie, Public Defender, testifying when he appeared as a rebuttal witness for the State, maintained that he and Attorneys Arthur Johnson and Swahilu Sesay went to the police station upon the request of the police to be present at the interrogation of the appellants/defendants. Here are the actual words of Attorney Amos Kollie on this issue when he testified as a rebuttal witness:

“Q/ Mr. Witness, the defendants in the dock... testified that they were not represented by counsel during their interrogation at the police station specifically co-defendant Mohammed Massaquoi... what do you have to say?

“A/ If my memory would serve me well, it was in May of 2011 that a team of Public Defenders headed by Atty. Arthur T. Johnson provided legal representations at the Liberia National Police headquarters based on the request made to the Office of Public Defense for Montserrado County by the authorities of the Liberia National Police for us to be present while they were interrogating a group of prisoners that were within their withholding cell at a point in time. That information was communicated to Atty. Arthur Johnson and he in turn asked me to join him for us to go on that assignment. So, yes, indeed we represented some people that were undergoing interrogation at the Liberia National Police headquarters. That representation was made straightly in line with the mandate we have as Public Defenders.”

Also, another appellant/defendant Emmanuel Saymah denied ever giving any statement to the police; he denied fighting in the Ivory Coast and also denied being arrested with arms as testified to by Thomas Gladior, a Correction Officer turned informant, who said he was present when Emmanuel Saymah was arrested with arms. While on the cross-examination, Emmanuel Saymah further denied providing pertinent information, such as his date of birth, the size of his family and the names of his parents etc. We quote excerpts from his question and answer while testifying on the cross-examination:

“Q/ Mr. Witness, you were born on December 1, 1967. Am I correct?

A/ I am a 1967 born, December 1<sup>st</sup>.

Q/ Mr. Witness, who gave that information to the police?

A/ I gave my address because they asked me for my name and the town I was born; that was the only thing they asked me for and that what I gave them.

Q/ Mr. Witness, you are married with four children; am I correct?

A/ You are correct, I have four living children.

Q/ So Who gave that information to the police?

A/ [It is] in this court I gave you that statement; I did not give it to the police; I made the statement last year right in this court.

Q/ Mr. Witness, your father's name is Nathan Saymah and your mother's name is Kluweh Saymah. Am I correct?

A/ Yes, that's what I said here when my Counselor asked me; he asked me for my mother and father's name right in this court last year. I did not make statement like that to the police. They did not ask me for my ma and my pa.

Q/ Mr. Witness, you said that you never give the information to the police, I present to you M/61 marked and confirmed by court which was taken on September 24, 2012; Your name, your father's name, your mother's name, and your date of birth are also reflected. What have you to say?

A/ This paper you government people want to prosecute us, you found means to put false crime on us; this is not my statement; I never made that kind of statement to the police. My statement you took last year was what you took to the police to combine it together.

First of all, as we see it, it is highly improbable that the State could have known the correct information of Emmanuel Saymah, and all the other appellants/defendants if they did not provide these pertinent and personal information voluntarily at the time of their arrest and interrogation. Secondly, the records show that the lawyers for the appellants/defendants filed a motion for discovery which was granted by the trial court, which means that all documentary evidence the State relied on to prosecute the appellants/defendants, including all statements made during the time of their arrest by the police or other security forces were made or ought to have been made available to

the counsels for the appellants/defendants. If the statements under review were not the true statements of the appellants/defendants, as they have contended, their lawyers should have filed a motion to suppress evidence in keeping with law, to preclude the State from introducing them into evidence. But no such action was taken. Under the circumstance, we accept the overwhelming testimony of Attorney Amos Kollie which was not refuted, that the appellants/defendants were indeed represented by counsels at the time they were being investigated by the police.

We accept, also, that the appellants/defendants were given their Miranda warnings before police interrogation and that the statements they made to the police were made voluntarily. We do not find that the rights of the appellants/defendants were violated. This Court has held that where the constitutional or other rights of the criminal defendant are not violated, it is legal and proper for the trial judge to admit into evidence, the voluntary statement of confession written and signed by the defendant. *Swen v. Republic of Liberia* [200] LRSC 14; 40LLR 138 (2000). We hold, therefore, that the written statements and other documentary evidence, as well as the oral testimonies of the appellants/defendants, pegged against the evidence produced by the State were properly admitted and sent to the jury as trial of facts for their consideration.

We must note that the appellants/defendants in this case have made general and unfounded denials not only that they were represented by counsels at the time of their investigation at the police which denials we refuse to accept, but they have also made general denials of their involvement in the crime with which they were charged. Their respective testimonies are replete with such general denials without specifics. As stated earlier, having elected to take the witness stand to testify, the appellants/defendants, as a matter of law, were required to explain any and every incriminating facts and circumstances in the evidence adduced by the State, or else, they took the chance of any reasonable inference of guilt which the jury drew from the whole evidence produced by the State. This principle of law was upheld in the *William Gabriel Kpolleh* case cited above. As clearly seen in the statements, they did not only present mere general denials, but the statement of one co-appellant/co-defendant variously connected and implicated the other co-appellants/co-defendants.

Moreover, the testimonies of the appellants/defendants did not corroborate with each other. In other words, the testimony of each appellant/defendant stood alone without support from

the other co-appellants/co-defendants. This Court has held, hoary with age, that the uncorroborated testimony of a criminal defendant is insufficient a ground to authorize reversal of a judgment of conviction. This Court has also held that a defendant may not be set free on the strength of his lone testimony especially where two or more witnesses have testified against him. *Forleh et al vs. Republic*, 42 LLR 23 (2004).

Further, this Court has held that where several persons conspire to commit a crime, the act and declaration of any co-conspirator during such conspiracy and in furtherance thereof, is admissible evidence against any conspirator on trial. It is settled principle of law that an accomplice testifying for the prosecution notwithstanding the turpitude of his conduct is not on that account an incompetent witness; the fact that a witness is an accomplice as a matter of law does not preclude the use of the testimony by the state. The same is true even though he has pleaded guilty. This is likewise true even though the accomplice witness confesses his criminal culpability or testifies under promise of immunity. *2Wharton's Criminal Evidence* 1224, section 729; *Kpolleh et al v. Republic* [1990] LRSC 1; 36LLR623 (1990).

On the other hand, we see from the records before us, that the State established *prima facie* evidence against certain of the appellants/defendants. The testimonies of the witnesses produced by the State against those appellants/defendants corroborated each other as to time and events. This is especially true with the compelling testimonies of Thomas Gladior, Pascal Kollie, Pye Gaye and Prince Barclay who served as eye witnesses. These are witnesses who travelled with and saw the appellants/defendants fighting in the Ivory Coast; their testimonies were never rebutted, or refuted. Other witnesses, though not eye witnesses, gave testimonies that connected the appellants/defendants to the commission of the crime of mercenarism. We therefore hold that the State sustained the burden of proof and did, in fact, prove that indeed the act of mercenarism was committed by the appellants/defendants.

We take note of the contention of the counsel for the appellants/defendants in his brief filed and argued before this Court that the acts of mercenarism for which the appellants/defendants were charged took place in the Ivory Coast, outside the territorial confines of Liberia, therefore, the appellants/defendants who are all Liberian citizens cannot be tried for said act which was not committed against Liberia, but against a foreign state. He argued that the law on mercenarism was enacted by the National Legislature "to protect Liberia from bounty hunters who may wish to participate in military operations against the

Republic of Liberia by aiding a state engaged in war with Liberia although such persons are not citizens of the enemy state or by participating in internal armed civil conflict when at the time of doing so they had not acquired the citizenship of Liberia..." The counsel further argued that the last portion of the law on mercenarism shows that the law was meant for the internal security of Liberia and no other country. The crux of the contention of the counsel for appellants/defendants, is that no Liberian who commits acts of mercenarism against another State while residing in Liberia can be arrested and tried in Liberia. We do not agree.

Under Chapter 11, Section 11.13 of the Penal Law of Liberia, the crime of mercenarism, a first degree felony and a non-bailable offense, is committed by an individual, a group, an association, or representative or representatives of a state and the state itself with the intent of opposing by armed violence a process of self-determination of the territorial integrity of another state when the following acts are perpetrated, to wit: (a) "the sheltering, organizing, financing, assisting, equipping, training, promoting, supporting or employing armed forces partially or wholly and consisting of persons not nationals of the country being invaded or attempting to invade merely or solely for money, personal gain, material or other reward; or (b) the enlisting, enrolling or attempting to enroll in the said armed forces; or (c) the allowing of the activities referred to in sub-section (1) (a) to be carried out in any territory under the jurisdiction of another state or in any place under its control; or (d) the offering of facilities for transit, transportation or other operations for the armed forces and activities referred to in sub-section (1) (a)."

There can be no denial that the actual planning of the act of mercenarism by the appellants/defendants in this case took place in Liberia because all of the appellants/defendants are Liberians and were residing in Liberia at the time. Planning involves not only the conception of the idea but also organizing, assisting, promoting and supporting it in line with Chapter 11, Section 11.13(a) of the Penal Law quoted above. There is also evidence in the records before us that the appellants/defendants enlisted, enrolled or attempted to enroll people in Liberia for the purpose of carrying out the intent of mercenarism in the Ivory Coast. So, intent, which is an essential element of a crime, was here in Liberia harbored by the appellants/defendants, followed by supporting, planning, assisting, promoting, enrolling or attempting to enroll. It cannot be said, therefore, that the crime of mercenarism was not also committed on the Liberian soil.

Moreover, we take judicial notice that Liberia is a signatory to the Organization of African Unity (OAU) Convention for the Elimination of Mercenarism in Africa adopted on July 3,

1977 in Libreville, Gabon and signed by Liberia on July 19, 1985. The Convention was ratified by Liberia on March 31, 1982, and the instrument of ratification deposited on June 9, 1982. The Organization of African Unity (OAU) was replaced by the African Union (AU). This means that the AU Convention on the Elimination of Mercenarism in Africa is binding on Liberia. For the purpose of this opinion, we quote some relevant portions of that Convention:

#### ARTICLE 1 – DEFINITION

1. A mercenary is any person who:

a) is specially recruited locally or abroad in order to fight in an armed conflict;

b) does in fact take a direct part in the hostilities;

c) is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to the conflict material compensation;

d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

e) is not a member of the armed forces of a party to the conflict; and

f) is not sent by a state other than a party to the conflict on official mission as a member of the armed forces of the said state.

2. The crime of mercenarism is committed by the individual, group or association, representative of a State and the State itself who with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State, that practices any of the following acts:

a) Shelters, organizes, finances, assists, equips, trains, promotes, supports or in any manner employs bands of mercenaries;

b) Enlists, enrolls or tries to enroll in the said bands;

c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces.

3. Any person, natural or juridical who commits the crime of mercenarism as defined in paragraph 1 of this Article commits an offence considered as a crime against peace and security in Africa and shall be punished as such.

## ARTICLE 2 – AGGRAVATING CIRCUMSTANCE

The fact of assuming command over or giving orders to mercenaries shall be considered as an aggravating circumstance.

## ARTICLE 3 – STATUS OF MERCENARIES

Mercenaries shall not enjoy the status of combatants and shall not be entitled to the prisoners of war status.

## ARTICLE 4 – SCOPE OF CRIMINAL RESPONSIBILITY

A mercenary is responsible both for the crime of mercenarism and all related offences, without prejudice to any other offences for which he may be prosecuted.

## ARTICLE 5 – GENERAL RESPONSIBILITY OF STATES AND THEIR REPRESENTATIVES

1. When the representative of a State is responsible by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, he shall be punished for such an act or omission.

2. When a State is accused by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, any other party to the present Convention may invoke the provisions of this Convention in its relations with the offending State and before any competent OAU or International Organization tribunal or body.

## ARTICLE 6 – OBLIGATIONS OF STATES

The contracting parties shall take all necessary measures to eradicate all mercenary activities in Africa.

To this end, each contracting State shall undertake to:

- (a) Prevent its nationals or foreigners on its territory from engaging in any of the acts mentioned in Article 1 of this Convention;
- (b) Prevent entry into or passage through its territory of any mercenary or any equipment destined for mercenary use;
- (c) Prohibit on its territory any activities by persons or organizations who use mercenaries against any African State member of the Organization of African Unity or the people of Africa in their struggle for liberation;
- (d) Communicate to the other Member States of the Organization of African Unity either directly or through the Secretariat of the OAU any information related to the activities of mercenaries as soon as it comes to its knowledge;
- (e) Forbid on its territory the recruitment, training, financing and equipment of mercenaries and any other form of activities likely to promote mercenarism;

- (f) Take all the necessary legislative and other measures to ensure the immediate entry into force of this Convention.

#### ARTICLE 7 – PENALTIES

Each contracting State shall undertake to make the offence defined in Article 1 of this Convention punishable by the severest penalties under its laws including capital punishment.

#### ARTICLE 8 – JURISDICTION

Each contracting State shall undertake to take such measures as may be necessary to punish, in accordance with the provisions of Article 7, any person who commits an offence under Article 1 of this Convention and who is found on its territory if it does not extradite him to the State against which the offence has been committed.

#### ARTICLE 9 – EXTRADITION

1. The crimes defined in Article 1 of this Convention, are not covered by national legislation excluding extradition for political offences.
2. A request for extradition shall not be refused unless the requested State undertakes to exercise jurisdiction over the offender in accordance with the provisions of Article 8.
3. Where a national is involved in the request for extradition, the requested State shall take proceedings against him for the offence committed if extradition is refused.
4. Where proceedings have been initiated in accordance with paragraphs 2 and 3 of this Article, the requested State shall inform the requesting State or any other State member of the OAU interested in the proceedings, of the result thereof.
5. A State shall be deemed interested in the proceedings within the meaning of paragraph 4 of this Article if the offence is linked in any way with its territory or is directed against its interests.

We observe that our law on mercenarism is similar to the above quoted AU Convention for the Elimination of Mercenarism in Africa. Especially Article I, Section 2 of the Convention is almost word for word with Chapter 11, Section 11.13 of our Penal Law. Moreover, under Article 8 of the Convention which deals with jurisdiction, it is expressly stated that “[E]ach contracting State shall undertake to take such measures as may be necessary to punish, in accordance with the provisions of Article 7, any person who commits an offence under

Article 1 of this Convention and who is found on its territory if it does not extradite him to the State against which the offence has been committed.” [Emphasis supplied].

As stated earlier on in this opinion, the Government of the Republic of Ivory Coast requested for the extradition of all of those who were in the custody of the Liberian Government for cross border attacks into the Ivory Coast, including the citizens of Liberia. The Government of Liberia invoked its rights under the Extradition Treaty it has with the Republic of Ivory Coast and maintained that it could only extradite the Ivorian citizens and not Liberian citizens; and that the Liberian citizens arrested and indicted would be tried in Liberia. Accordingly, the Government of Liberia dropped charges against the Ivorian nationals on February 26, 2013, and entered a *nolle prosequi* in their favor. They were: Komande Mohegar Valerie, Nemin Terek Antoine, Djikizion Guei Martin, Blao Nicaise, Frank Oliver Nioule, Junior Nioule, Edward O. Nioule and Julien Badison Toue. They were subsequently extradited to the Ivory Coast to stand trial. We hold that the position taken by this Government to extradite citizens of Ivory Coast to that country to stand trial and to keep Liberian citizens arrested for the crime of mercenarism in Liberia and try them is not only in line with the Extradition Treaty Liberia has with Ivory Coast and the provision of our Penal Law on mercenarism, but it is also in line with Article 8 of the AU Convention for the Elimination of Mercenarism in Africa. In view of this we disagree that where citizens of Liberian plan, support, shelter, organize, assist, train, promote, enroll, enlist and support the act of mercenarism in a foreign Country, especially a neighboring country, Liberia cannot try those citizens involved.

We take due note of another contention raised by the counsel of the appellants/defendants for and on behalf of the appellants/defendants and that is – Counselor Theophilus Gould, one of counsels for the State argued both in his opening statement and closing argument that if the jurors were to acquit the appellants/defendants, the Ivory Coast would declare war against Liberia. The appellants/defendants’ counsel maintained that the trial judge erred when he refused to set aside the verdict of the jury and award a new trial on account of what he referred to as the “misbehavior” of Counselor Gould. This contention was raised in count 15 of the appellants/defendants’ motion for new trial and in count 9 of their bill of exceptions.

The records do not show that neither the State nor Counselor Gould deny making the remark alluded to him. This is how, in count 10 of the resistance to the motion for new trial, the State traversed the issue: “And also because the ensuring of security for all is no ground

for new trial and therefore same should be ignored and dismissed." This statement does not sound to us like a denial. In fact, it sounds more of an admission. In law, a matter well pleaded but not denied is considered admitted. *Saar v. Republic* [1981] LRSC 3; 29LLR 35 (1981); *Chenoweth v. Liberia Trading Corporation* [1964] LRSC 31; 16 LLR 3 (1964).

Having made the remark in his opening statement before the jury, the fact Counselor Gould chose to also make the identical remark in his closing argument makes it even more preposterous, to say the least. And it is shocking that the trial judge said nothing and did nothing about this conduct in his court. The said remark, we say, is outrageous, out of place and reprehensible. It is not representative of any lawyer of this Bar, especially one who has served as President of the Liberian National Bar Association. If we may deduce that the intent of the remark was to create fear in the jury and court to find for the State, then we should say that the objective of a lawyer in the prosecution or defense of a case is not to convict or to acquit, but to see that justice is served. And if justice is served when the lawyer wins or loses a case, that lawyer is said to have performed an honorable service not only to his client, but most importantly to his nation and profession. For his unwholesome remark, Counselor Gould is hereby fined the amount of US\$500.00 to be paid into Government revenue in 72 hours as of the date of this opinion.

Our foregoing position on the conduct of Counselor Gould notwithstanding, we should say that we do not believe that the misbehavior of a lawyer such as the one complained of in this case is a ground for awarding a new trial.

Returning to the main case of mercenarism, we say that given all we have said hereinabove, we hold that the State met the mandatory threshold standards of establishing *prima facie* evidence against nine (9) of the thirteen (13) appellants/defendants, namely: Nyazee Barway, alias Joseph Dweh, Morris K. Cole, alias Edward Cole/General Girl, Steven Gloto, alias Rambo/Ninja, Emmanuel Saymah, alias Trainer, Moses Baryee, alias Moses Sarpee, Sam Ofori Diah, Alfred Bobby James, Jr., alias Bobby Sarpee, Jacob Saydee and Mohammed Massaquoi. The voluntary statements of these appellants/defendants duly made during their investigation by the police and in the presence of their counsels connected them to the crime of mercenarism with which they were charged; thus, their uncorroborated testimonies of general denials are insufficient to warrant the reversal of the judgment of conviction entered against them in the lower court. Other evidence produced by the State also linked and connected the appellants/defendants to the crime of mercenarism.

As regarding co-appellants/co-defendants Isaac Taryon, alias Wolie Taryon, Prince Youty, James Lee Cooper and Sam Tarley alias Bull Dog, their voluntary statements made during investigation by the police did not connect them to the crime of mercenarism. And the State did not produce sufficient evidence to connect and satisfactorily establish their guilt. There were fleeting references made to them by other witnesses, but we do not believe that such references were sufficient to prove beyond reasonable doubts that they committed the crime of mercenarism with which they were charged.

WHEREFORE and in view of the foregoing, the judgment of the trial court entered against the appellants/defendants is hereby reversed in part and affirmed in part as follows:

a) that as there was not sufficient evidence to connect and satisfactorily establish the guilt of co-appellants/co-defendants Isaac Taryon, alias Wolie Taryon, Prince Youty, James Lee Cooper and Sam Tarley, alias Bull Dog, the crime of mercenarism with which they are charged is hereby dismissed and they are ordered released forthwith from detention without let; and

b) that the State satisfactorily proved the crime of mercenarism against: Nyazee Barway, alias Joseph Dweh, Morris K. Cole, alias Edward Cole/General Girl, Steven Gloto, alias Rambo/Ninja, Emmanuel Saymah, alias Trainer, Moses Baryee, alias Moses Sarpee, Sam Ofori Diah, Alfred Bobby James, Jr., alias Bobby Sarpee, Jacob Saydee and Mohammed Massaquoi. Accordingly, they are adjudged guilty of the crime of mercenarism and sentenced to life imprisonment.

The Clerk of this Court is ordered to send a mandate to the lower court to resume jurisdiction over this case and give effect to this judgment. IT IS HEREBY SO ORDERED.

Judgment affirmed.

Counselor Tiawon S. Gongloe of Gongloe & Associates Inc., in association with Counselor Viama Blama appeared for the appellants/defendants.

Counselors Betty Lamin Blamo, Solicitor General, Republic of Liberia, J. Daku Mulbah, County Attorney for Montserrado County, Ministry of Justice, and Theophilus C. Gould of Kemp and Associates Law Firm, appeared for the State.