

THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING
IN ITS OCTOBER TERM, A. D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR : JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA ASSOCIATE JUSTICE
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE

Johnny Hill, Jr. Appellant)
)
Versus) APPEAL
)
The Republic of Liberia Appellee)
)
GROWING OUT OF THE CASE:)
)
Republic of Liberia by and thru Jimmy)
Kpah Dasaw of the City of Monrovia,)
Liberia Plaintiff)
)
Versus) CRIMINAL CONVEYANCE
) OF LAND
)
Johnny Hill, Jr. S. Emmanuel Freeman,)
Winston P. Gaye, Tom W. Diggs,)
Varney Kanneh, Emmanuel to be)
identified of the City of Monrovia,)
Liberia.....Defendants)

Heard: October 25, 2023

Decided: February 7, 2024

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

The *Revised Rules of the Supreme Court Rule IV Part 6 (c)* provides in part that “If a party appears, and the other party does not appear, but filed a brief, the Court will proceed to hear the argument of the party appearing, and renders its decision on the basis of the briefs filed and the argument of the party appearing...”.

When this case was called for hearing, the appellee’s counsel announced representation and the Court notes that the appellant was not represented by counsel. Upon inquiry, the Marshall informed the Court that his office served the notice of assignment on the appellant himself. When the Court enquired of the appellant, he informed the Court that his previous lawyer

had recommended another lawyer, but that the said recommended lawyer whose name the appellant did not give, was not in court. We note that when this case was called for hearing on April 27, 2022, this Court granted the appellant one month to retain the services of a lawyer in the interest of justice, since no lawyer appeared on behalf of the appellant. For over a year now, the appellant has not filed any excuse or information with the court with respect to securing a lawyer. Noting that this matter has remained on the docket of this Court for a protracted period, the Court evoked the necessary rules to enter upon the records and make the appropriate and necessary decision. Hence, this Opinion.

On the 3rd day of March 2016, the Grand Jury for Montserrado County, sitting in its February Term, returned a true bill charging the appellant, Johnny Hill, Jr., co-defendants, S. Emmanuel Freeman, Winston P. Gaye, Tom W. Diggs, Varney Kanneh, and Emmanuel, to be identified, with the crime of Criminal Conveyance of Land, a felony of the second degree. The indictment emanating therefrom averred as follows:

“INDICTMENT

That, the Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that you defendants, Johnny Hill, Jr., S. Emmanuel Freeman, Winston P. Gaye, Tom V. Diggs, Varney Kanneh, Emmanuel, Buyers and others to be identified, committed the crime of criminal conveyance of land, in violation of Chapter 15.20 and section 15.21 of the Penal Code, a Felony of the second degree, to wit:

1. That, between the periods of A.D. 2014 to and including A.D. 2016, in the area of Johnsonville, Montserrado County, Republic of Liberia, you defendants, Johnny Hill, Jr., S. Emmanuel Freeman, Winston P. Gaye, Tom V. Diggs, Varney Kanneh, Emmanuel, Buyers, and others to be identified, purposely, knowingly and willfully, committed the crime of Criminal Conveyance of Land, to wit:
2. That, during the periods of the 3rd day of March A.D. 2009 and the 30th day of March A.D. 2011, you, co-defendants John Hill, Jr., S. Emmanuel Freeman, and Winston P. Gaye, sold and executed deeds for 2 acres of land to the private prosecutor Jimmy Kpah in this area and said deeds were probated and registered according

to law in the City of Monrovia, Montserrado County, Republic of Liberia.

3. That you Co-defendants, Johnny Hill, Jr., S. Emmanuel Freeman, Tom S. Diggs, and Winston P. Gaye, having signed and executed deeds of 2 acres of land to the private prosecutor and without being privileged and license to (have) legitimacy over the private prosecutor's properties, entered on the said 2 acres of land in the above-mentioned place, conspired, connived, surveyed and sold 6 ½ lots of said properties for the grand total of US\$3,600 (Three Thousand Six Hundred United States Dollars), paid to you co-defendants Varney Kanneh, Emmanuel and other buyers.
4. That you, co-defendants Varney Kanneh, Emmanuel, and other buyers to be identified were informed regarding the purchase of said properties by the private prosecutor and knew full well that you, co-defendants Johnny Hill, Jr., S. Emmanuel Freeman, Tom S. Diggs, and Winston P. Gaye were not the rightful owners of said properties and were not license to sell but instead, you co-defendants (buyers) to be identified acquire the properties from them without regard to the law of criminal conveyance of land.
5. That you, surveyors, to be identified without any color of right, legal justification, or license to survey private prosecutrix's properties and knowing full well that you co-defendants Stephen Trokonjay Dawori, Sampson G. Potter, Othello Davis, Emmanuel Bruce, and Sylvester Williams were not the rightful owners of said properties but instead conspired and connived with them and surveyed the said properties.
6. A person is guilty of criminal conveyance of land, a felony of the second degree if he/she conveys to another through sale, gift mortgage, or lease a parcel of land that he/she has no title by purchase, gift, or inheritance evidenced by a deed, traceable to the Republic of Liberia, from the lawful owner or by any other lawful means.
7. A person is guilty of a third-degree felony if he knowingly purchases a parcel of land that he knows or has reason to know does not belong to the seller or is being criminally conveyed.
8. A surveyor who encourages, persuades, surveys, uses his influence, or in any other way participates or conspires with anyone in the sale or purchase of a parcel of land knowing or being in the position to know that the seller of such land has no lawful title is guilty of a first-degree felony punishable by both a

fine to be determined by a court of competent jurisdiction, and a prison term of not less than ten years.

9. A surveyor who surveys a parcel of land without notice of all adjoining property owners, consistent with existing law, regulation, or executive order or procedure, is guilty of a felony of the third degree.
10. A district commissioner, land commissioner, city mayor, Township commissioner, or any other local government official, or a person charged with the responsibility to archive land deeds and records or traditional chief, elder, or any other person holding a powerful traditional position, who abuses his/her authority to unduly influence or compel an individual or group of individuals to convey a parcel of land or any portion thereof, knowing or being in a position to know the land so conveyed belongs not to the person or persons conveying same or knowing or being in the position to know that without the use of such influence or compulsion, a conveyance of said land is not possible is guilty of a felony of the second degree.
11. A legislator or a person holding a national level position, such as a minister, deputy minister, director general, deputy director general, any ranking officer of a law enforcement agency, or any other public official or law enforcement officer, who abuses his/her office by influencing or compelling the conveyances of a parcel of land, knowing or having reason to know that without the use of such influence or compulsion, a conveyance of said land is not possible is guilty of a second-degree felony.

True bill/ignorance

Witnesses

1. Jimmy Kpah Dasaw
2. Junior Reeves
3. Melitha Peters
4. George Uta
5. Fedrick Peters
6. Documentary evidence

ADDRESSES

Monrovia, Liberia

Cecelia K. Ballah
Forelady of Grand Jurors

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

Filed on the 23rd day of February A.D. 2016

Clerk of Court
Criminal Court "A"

The records show that on the 2nd day of March 2016, the First Judicial Circuit for Montserrado County, Criminal Assizes "C," ordered a writ of arrest for the appellant and the other co-defendants. The Sheriff's returns show that only the appellant was served the writ, bringing him under the court's jurisdiction.

The records further show that when the court called the case for trial, the prosecution submitted that the appellant be severed from the other defendants not brought under the trial court's jurisdiction. The defendants' counsel, resisting this application, averred that co-defendants S. Emmanuel Freeman and Tom W. Diggs were always in court and promised that these defendants would be in court during the court next sitting; as to co-defendants Varney Kanneh and Emmanuel, the defense counsel claimed that the appellant does not know them. Despite the above claim, the defense counsel had previously filed a criminal appearance bond for all the defendants. However, the trial judge suspended the hearing that day and requested the counsel for the appellant to produce all the defendants as per the commitment in the appearance bond filed on their behalf during the next court sitting.

When the court called the case the following day, the defense counsel interposed no objection to the prosecution's application that co-defendant Johnny Hills, Jr. be severed from the other defendants and that the court issue a writ of arrest for the other co-defendants. The court granted the application but set aside the bond concerning the other co-defendants. The sheriff's returns to the second writ of arrest show that only co-defendant Tom W. Diggs was arrested and brought under the trial court's jurisdiction. The prosecution subsequently entered a plea of nolle prosequi in favor of co-defendant Diggs, who later testified on behalf of the State.

On the 9th day of December 2016, the court arraigned the appellant, and he entered a plea of Not Guilty, thereby joining issue with the State. The trial court had a jury trial that culminated in the trial jury's return of a unanimous guilty verdict. The appellant filed a motion for a new trial, which the court regularly heard and denied. On the 12th day of January 2017, the trial court entered a final ruling affirming the verdict and, on the 31st day of January 2017, sentenced the appellant to a five-year jail term based upon a pre-sentencing report from the Ministry of Justice. The appellant noted exceptions to the final ruling and sentencing by the trial judge and announced an appeal to the Supreme Court, interposing a four-count bill of exceptions. For the benefit of this Opinion, it is appropriate to state the averments in the appellant's bill of exception verbatim.

“APPELLANT’S BILL OF EXCEPTION

Mr. Johnny Hill, Jr. of Paynesville, Montserrado County, Republic of Liberia, appellant in the above-entitled proceedings, most respectfully informs your honor that on the 12th day of January, A.D. 2017, your Honor rendered final judgment against the appellant from which final judgment of your honor appellant excepted and announced an appeal to the Honorable Supreme Court of the Republic of Liberia sitting in its March Term, A.D. 2017, and therefore submits this Bill of Exception for your approval as follow to wit:

1. Respondent says that your honor committed a reversible error to have heard and determined the Action of Criminal conveyance when all of the acts complained of were done prior to the coming into force of the criminal conveyance Act, by which action your honor violated the constitutional and statutory law.
2. That your Honor committed a reversible error when your honor proceeded to hear the case without other co-defendants in the person of Messers Stephen Trokonja Dawosi, Sampson G. Potter, Othello Davis, Emmanuel Bruce, and Sylvester Williams when, in fact, there was no Motion for separate trial on their behalf. Consequently, they should have been tried along with the respondent in this action since they acted in concert.
3. That Your Honor committed a reversible error in confirming and affirming the trial's verdict in the face of contradictions between and among the witnesses.
4. That your Honor committed a reversible error on the Motion for a new trial when your Honor stated on sheet #2 of the ruling that the defendant received and benefitted from two thousand United States Dollars (US\$2,000.00) as his share for the land, received United

States Six Hundred (US\$600) dollars as his share for the relocation of Varney Kenneh when in truth and fact prosecution 3rd witness Mr. John N. Wheiyogar on sheet #2 of the 25th-day jury sitting, the 13th day of December 2016 said that they give Mr. Johnny Hill, Jr. United States Six Hundred (US\$600.00) dollars, issued a receipt, signed the deed and left.

We shall now proceed to consider the appellant's bill of exceptions and to determine whether the acts of or omissions by the court complained of in the bill of exception constitute errors and, if so, whether the errors are sufficient to justify the reversal of the trial judge's final ruling.

In count one of his bills of exception, the appellant contends that the National Legislature had not promulgated the Criminal Conveyance Act of 2014 when the act constituting the crime was alleged to have been committed by the appellant. The appellant argued that an act to constitute a crime must be promulgated as such. Therefore, the appellant believes that his alleged action not having been criminalized by law, he cannot be criminally held therefor.

The 1986 Constitution provides in Article 21(a) that "No person shall be made subject to any law or punishment which was not in effect at the time of commission of an offense, nor shall the legislature enact any bill of attainder or *ex post facto* law." *The Penal Code also states, "No conduct constitutes an offense unless it is a crime or infraction under this title or another statute of Liberia."* The question that begs for an answer here is whether the Criminal Conveyance of Land Act had been promulgated when the appellant is alleged to have committed the act for which he is charged. The National Legislature promulgated the Criminal Conveyance of land on August 26, 2014, and subsequently, the Ministry of Foreign Affairs published the same on September 2, 2014, thereby giving it the required legal effect. Therefore, to answer this question, we will have to search the indictment and the evidence to determine when the act the appellant is accused of is alleged to have been committed and see whether it predates or post-date the enactment of the statute that criminalized it.

The indictment charging the appellant with the commission of the crime in count one as follows:

That between the period A.D. 2014 to and including A.D. 2016, in the area of Johnsonville, Montserrado County, Republic of Liberia, you defendants, Johnny Hills Jr., S. Emmanuel, Freeman, Winston P. Gaye, Tom V. Diggs, Varney Kanneh, buyers and others to be identified, purposely, knowingly, and willfully committed the crime of criminal conveyance of land, ...".

This averment leaves no doubt that the indictment is charging the appellant for the commission of an act that is statutorily defined as a crime under the Penal Code and the relevant statute criminalizes the act. However, the indictment is not specific as to when the appellant committed the act, although the period referred to in the indictment encapsulate the period of the effective date of the statute.

During the trial, the private prosecutor, in answer to a question posed to him on the direct, testified in substance that it was in 2014 that he noticed one Varney Kanneh brushing and digging a foundation on the land he purchased from the appellant and others. When he confronted Mr. Kanneh, Mr. Kanneh told him that the appellant sold the property to him. He subsequently contacted the appellant, and the appellant informed him that he, the appellant, did not benefit from the money that the private prosecutor paid for the land. After much negotiation, the appellant agreed that the private prosecutor paid the appellant the amount of USD600 for the private prosecutor's land to be returned to him. The private prosecutor paid the appellant the amount of LD56, 000.00 constituting the equivalent of the USD 600 agreed upon. Subsequently, the private prosecutor noticed that rather than placing the private prosecutor in possession of the land he initially purchased from the appellant and others, the appellant relocated him to a site adjacent to his original property and issued a backdated deed to Mr. Kanneh, which predated the private prosecutor's deed but yet made reference to the private prosecutor as an adjacent property owner. Again, the prosecution's evidence is not specific regarding the time the appellant committed the act. However, the indictment states that the appellant committed the crime between 2014 and 2016.

The appellant, for his part, did not challenge the indictment or the prosecution's evidence concerning when the act was committed during the trial. The appellant also did not produce evidence to indicate the date and time when the act for which he was accused was committed. The appellant, in count one of his bill of exceptions, admitted committing the act but failed to state when the commission took place. Considering that the prosecution evidence tends to establish that the appellant committed the act constituting the crime in 2014, the appellant had the burden to prove that the act was committed before the effective date of the penal code, especially considering the appellant's admission in his bill of exceptions that he committed the act he is accused of. Our Penal Law provides in Chapter 1 Section 1.6(c) that “affirmative defense involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which he can fairly be required to adduce supporting evidence.” Notwithstanding, the appellant’s evidence failed to establish when the said act was committed since he’s alleging that all of the acts complained of were committed before the Criminal Conveyance Law came into force. The burden of establishing that the act for which he was accused did not occur during the effective period of the statute criminalizing the act was squarely on the appellant. The burden of proof to establish the affirmative of an issue involved in an action rests upon the party alleging the facts constituting that issue and remains there until the end. *Harmon v RL 6 LLR 308 (1938)*; it is the law that a party alleging a fact must prove it—*Doe et al. v. Randolph et al. 35 LLR 724 (1988)*. The appellant having failed to challenge the indictment and to produce evidence to establish that the act for which the indictment accused him took place outside of the ambit of the effective period of the statute, and this issue having been raised belatedly in a motion for new trial thereby depriving the prosecution of the opportunity to produce rebuttal evidence, we cannot give credence to the same.

The appellant further contends that the court erred when it tried the defendant alone, considering that the indictment charged the appellant and other defendants. Our review of the transcribed record confirmed that the indictment charged the appellant and others. However, as indicated herein supra, the court granted a severance trial for the appellant at the commencement of the trial based upon an application by the appellee,

which the appellant did not resist. This act of the trial court finds support under our criminal procedure law where It is provided that " [i]f it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or by a joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires." 1LCLR 2.16.10. The records having established that it is the parties that requested for the separate trial and that the court, in the exercise of its discretion, granted the request, we do not see any error in the separate trial of the appellant.

The appellant also contends that the trial judge erred when, despite contradiction between and among the prosecution witnesses, he confirmed and affirmed the trial jury's verdict.

It is the law that a defendant charged with committing a criminal offense is presumed innocent until the contrary is proven. 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*. Reasonable doubt requirement for the acquittal of a defendant refers to the doubt created in the minds of the jurors who are triers of fact and not the court or the judge presiding *R.L. v. Eid et al. 37 LLR 761 (1995)*. This Court has also held that "[i]n order to convict a person in a criminal case, the prosecution must prove the guilt of the accused with such legal certainty as to exclude every reasonable hypothesis of his innocence; and all material facts essential to constitute the crime must be proved beyond a reasonable doubt. Otherwise, the accused will be entitled to a discharge. Considering the above principles of law and the averments in the indictment, the state had the onus to establish that it is the defendant, acting in concert with others, who sold the property in question to the private prosecutor and that knowing that he had parted with title to the said property to the private prosecutor and with intent to deprive the private prosecutor of the property, sold the selfsame property to Varney Kanneh and others.

In substantiating these allegations, the prosecution paraded five regular witnesses: Jimmy Kpah Dasaw, Tom Diggs, Reverend John Wheiyougar, George Uta, one subpoenaed witness, Mrs. Ellen Hall Kamara, and two rebuttal witnesses.

The prosecution's first witness, the private prosecutor Jimmy Kpah Dasaw, testified that when he went to check on the land he bought from the appellant and others, Varney Kanneh had brushed the land and was digging a foundation thereupon. When he confronted Varney, Varney informed him that the appellant had sold the land to him. The witness testified further that when he confronted the appellant, the appellant admitted to selling the property to Mr. Kanneh and justified his action by saying that he did not benefit from the money the private prosecutor paid for the land since he was one of the beneficiaries of the estate that owned the land. The appellant requested that the private prosecutor give him US\$1,000.00 to relocate Mr. Kanneh. The witness further told the court that after the negotiation, he finally agreed to pay the amount of US\$600.00 to the appellant. The appellant finally accepted LD52,000.00 from the private prosecutor, equivalent to the US\$600.00 decided upon. The witness testified that despite the payment to the appellant of the agreed amount, the appellant failed to relocate Mr. Kanneh. He told the court that when he engaged Mr. Kanneh after that, Mr. Kanneh presented to him a deed that the appellant executed in favor of Mr. Kanneh dated 2006, purporting to be a title deed for the property in dispute with the name of the private prosecutor appearing on the said deed as adjacent property owner, even though the private prosecutor bought his property in 2009. The private prosecutor testified that when he made the background check on Mr. Kanneh's deed at the National Registry of Deeds, he discovered that the deed executed in favor of Mr. Kanneh was backdated.

The Prosecution's second witness, Tom W. Diggs, is one of the defendants in whose favor the state entered a *nolle prosequi*. He testified, among other things, that he knows that the private prosecutor bought two acres of land from the Intestate Estate of Tarsue Gbazoe. After the land was surveyed, the estate administrators issued an administrator's deed to the private prosecutors. On cross-examination, the witness testified that the

private prosecutor purchased another acre of land in 2009 but that no deed was issued to him for the second purchase. The witness further told the court that he was informed that the appellant resold some portion of the land already sold by the estate to the private prosecutor.

The prosecution's third witness, John N. Wheiyougar, testified that he knew both the private prosecutor and the appellant. The witness narrated that in 2009, the private prosecutor came to him and said he wanted to buy land; he took the private prosecutor to the site of the land on Pipeline Road, and he introduced the private prosecutor to Tom W. Diggs and Winston Gaye as a person interested in buying land. The witness testified that Tom W. Diggs and Winston Gaye charged the private prosecutor the sum of US\$4,000.00. After negotiation, the private prosecutor paid US\$2,000, and the land was surveyed, deed prepared, and the administrators signed it and delivered it to the private prosecutor. The witness further testified that after some years, the private prosecutor called and told him that the appellant had sold his land. When the appellant was confronted, the appellant said he did not sell the private prosecutor's property but rather the place he sold was a car road; that the private prosecutor insisted that it was not a car road that the appellant sold, but rather the private prosecutor's land; that the private prosecutor took the matter to the police and the police transfer the same to the magisterial court; that the court dismissed the matter on the ground that title was in issue; That when the private prosecutor and others tried to reason with the appellant, the appellant told them that he (the appellant) did not received his share of the money that the private prosecutor paid for the land and therefore he demanded the private prosecutor to give him US\$1,000 for him to affix his signature to the private prosecutor's deed; that after negotiation, he accepted US\$600 for which he signed a receipt and affixed his signature to the private prosecutor's deed. Finally, the witness confirmed on the stand that the private prosecutor bought three acres.

The prosecution's fourth witness, George Utah, testified that the private prosecutor called and told him that the appellant informed him that the other administrators did not give him his share of the money the private

prosecutor paid for the land and that the private prosecutor paid the appellant US\$600.00 for which the appellant signed the deed.

The prosecution's subpoena witness, Ellen Hall Kamara, took the witness stand, testified, and produced a case file involving Jimmy Kpah Dasaw, plaintiff, versus Varney Kanneh, Jefferson, and Mr. Russell, pending before the Civil Law Court. With this witness, the prosecutor rested with the production of oral evidence and introduced the following documents into evidence:

- a) Administrator Deed from Johnny Hills, Jr., Winston P. Gaye, Tom W. Diggs, and S. Emmanuel Freeman to Jimmy Kpah Dasaw. Marked as PR/1.
- b) Administrator's deed for one acre of land signed by Johnny Hills, Jr., S. Emmanuel Freeman Winston P. Gaye, and Tom W Diggs to Jimmy Kpah Dasaw. Marked as PR/2
- c) Administrator deed from Johnny Hills, Jr., S. Emmanuel Freeman, Winston P. Gagye, and Tom W. Diggs to Varlee Kenneh. Marked as PR/3.
- d) Letter of non-discovery of Varlee Konneh from the Archives. Marked as PR/4
- e) Pictorial of buildings and cornerstones on private prosecutor's land. Marked as P/5 in bulk.
- f) The payment receipt issued to Jimmy Kpah Darsaw was signed by Johnny Hills, Jr. and witnessed by Abel G. Norris, George Utah, and Martha B. Peters.

When the prosecution rested with the production of oral and documentary evidence and gave notice to produce rebuttal witnesses, the appellant filed a motion for judgment of acquittal, which the court heard and denied. The appellant then took the witness stand and produced three witnesses: the appellant, Stephen Kieh, and Abel G. Norris.

The appellant's first witness, the appellant himself, testified substantially that the private prosecutor gave him US\$600 for an acre of land on Pipeline Road, and he signed a deed to the private prosecutor for the land. The witness testified that his late brother, Winston P. Gaye, sold one lot of land

to Varney Kanneh, who shared a boundary with the private prosecutor. The witness further testified that there was an argument between Varney Kanneh and the private prosecutor and that the administrator of the estate and a pastor intervened to resolve the dispute between Varney Kanneh and the private prosecutor. That the private prosecutor told them that he purchased his property from one Mr. John Wheyougar; that the appellant informed the private prosecutor that Mr. Wheyougar did not own property in the area; that the private prosecutor appealed to them as administrators and he paid US\$600 to them, for an acre of land and they settle the issue between the private prosecutor and Mr. Kanneh; that the property he sold to the private prosecutor is one lot which is still available. On cross-examination, the appellant denied receiving US\$2,000.00 from the private prosecutor for any land for which he issued a deed.

The appellant's second witness, Stephen Kieh, essentially testified that in 2006, his brother, the late Winston P. Gaye, sold the property to Mr. Varney Kanneh; Varney went to Winston Gaye and complained that someone was encroaching on his property. Since Mr. Gaye was sick, he asked the appellant to investigate the matter. The witness testified that he and the appellant went on the site and met Reverend Wheyougar and the private prosecutor on the land; that the appellant asked the private prosecutor as to whom he bought his land from, and the private prosecutor answered that he bought his land from Rev. Wheyougar; that when they asked Rev. Wheyougar, he answered that indeed he sold the one acre to the private prosecutor. The private prosecutor was informed that Reverend Wheyougar did not own land in the area and that the private prosecutor took the matter to the Paynesville Magisterial Court, and the court advised him that the deed in his possession was incorrect. The witness testified that the private prosecutor apologized to the appellant and others and appealed to rebuy the land. The appellant charged US\$2,000, and based upon an appeal, the private prosecutor paid the amount of US\$600.00, for which he was issued a receipt. On cross-examination, the witness testified that the private prosecutor paid US\$2,000 for the repurchase of the land.

The appellant's third witness, Abel G. Norris, testified in essence that he knew about some of the transactions that took place between the appellant and the private prosecutor, that the appellant complained about his signature being forged on the deed conveying one acre of land to the private prosecutor; that he and the appellant went to John Wheyougar for discussion; that while in the debate, his pastor's wife, Martha Peter, walked in and told them that the private prosecutor bought this one acre of land to build a school; that since Martha Peter was his pastor's wife, he and the private prosecutor kept appealing to the appellant; that later the appellant agreed and charged US\$1,000.00; that Mr. Wheyougar and the private prosecutor keep appealing until they paid US\$600.00. On cross-examination, the witness told the court that Mr. John Wheyougar said he never sold one acre of land to the private prosecutor. At this point, the defendant rested with producing oral and documentary evidence. The prosecution took the stand and rebutted the appellant's witnesses' testimonies, reaffirming that the appellant sold three acres of the private prosecutor and later resold a portion of the said same property to Varlee Kanneh.

Having considered the evidence adduced by the parties during the case hearing, we shall now determine whether or not the prosecution produced prima facie evidence that established the appellant's guilt and whether the appellant produced evidence to counter the case made by the prosecution.

The prosecution's evidence tends to establish that the private prosecutor bought three (3) acres of land from the Intestate Estate of Tarsue Gbazoe at two different times; the evidence further tends to establish that after the estate had parted with title to the property, the appellant knowing that title to the property was no longer vested in the estate, proceeded to resell the said same property to Varney Kanneh and others. The evidence also tends to establish that the appellant, after receiving money from the private prosecutor to correct his illegal action of selling the private prosecutor's property to Mr. Kanneh by relocating the said Mr. Kanneh, failed and neglected to remove Mr. Kanneh from the property created a fake title for Mr. Kanneh in which he made the private prosecutor a neighbor to Mr. Kanneh when in fact the day the Mr. Kanneh is said to have purchased the

land was 2006, three years before the private prosecutor could buy his land from the estate.

A further evaluation of the prosecution's evidence shows no substantial contradiction or variance between the testimonies of its witnesses. On the other side, the prosecution produced title instruments that support the averments made by the witnesses. Additionally, the title instruments alluded to by the prosecution to have been executed by the appellant and other administrators of the intestate estate of Tarsue Gbazoe bear a signature purporting to be that of the appellant.

On the other hand, the appellant's evidence consisted of variances and contradictions between and among the testimonies of the appellant's witnesses. To begin with, while the appellant himself testified that he did not know Mr. Varney Kanneh, in another breath, he told the court that he knew it was his brother who sold the property to Mr. Kanneh. Besides, the prosecution introduced into evidence a deed executed in favor of Mr. Varlee Kanneh, bearing the appellant's signature as one of the estate administrators conveying the property. Apart from his own testimony claiming that he did not sell any property to Mr. Kanneh, he did not endeavor to produce evidence indicating that the deed introduced by the prosecution was not executed. More interestingly, the prosecution introduced into evidence a receipt executed by the appellant and witnessed by one of the witnesses who testified on his behalf during the trial in which the appellant acknowledged receipt of the amount of L\$52,000.00 as full payment for resettlement of one acre of land dispute located Pipeline Road. We note that the appellant acknowledged receipt of US\$600.00 from the private prosecutor. However, the appellant alleged that the US\$600.00 he received was for the purchase of another property by the private prosecutor. This Court says that in the face of the receipt alluded to herein above, which clearly states on its face that the US\$600.00 was paid for relocation and in the absence of evidence challenging the authenticity of the receipt, it is clear that the appellant failed to rebut the evidence produced by the prosecution that the US\$600.00 was paid to relocate Mr. Varlee Kanneh. *Sneh v RL* 35 LLR 136 (1988); *S. Flomo v RL* 26 LLR 51 (1977); *Mobil Oil Inc. v Sano* [1968]; *Harmon v RL* 6 LLR 308 (1938).

The appellant also flagged as error the trial judge's conclusion in his ruling on the motion for a new trial that the appellant received and benefitted from Two Thousand United States Dollars (US\$2,000.00) as his share for the first land purchased by the private prosecutor. The appellant claimed he was unaware of that land transaction and did not receive any amount therefrom. However, one of the prosecution's witnesses in person, Mr. Tom W. Diggs, testified that the appellant participated in the sale of the land in question and received his share of the amount generated from the sale. Additionally, one of the appellant's witnesses, Stephen Kieh, informed the court that, indeed, the private prosecutor paid the amount of US\$2,000. However, it must be stated here that the evidence tend to establish that the private prosecutor paid the US\$2,000.00 to the administrators including the appellant, rather than exclusively to the appellant. It is this amount that the appellant alleged that the other administrators did not share with him.

This Court says that considering the evidence adduced by the prosecution, it is logical to conclude that the prosecution established its case of criminal conveyance of land by a chain of evidence which removed every reasonable hypothesis of doubt. The law is that in a criminal prosecution, to eradicate every reasonable doubt, the evidence must be conclusive, and if it is circumstantial, it should be so connected as to positively connect one element with another for a chain of evidence sufficient to lead the mind irresistibly to the conclusion that the accused is the guilty party *Davis v. R.L. 40 LLR 65*.

Besides, the trial having been regularly had, and the conclusion of the jury supported by the evidence as to the guilt of the accused, the Supreme Court has no reason to disturb the final judgment. This Court has consistently held that it is the jury's duty to place all of the evidence, both by the prosecution and the defense, on its scale of consideration *Jones versus Republic, 13 LLR 643 (1960)*.

If the evidence is sufficient to support a verdict, the court should not disturb the same. In the instant case, our review of the evidence convinces us that the evidence is sufficient and supportive of the verdict returned by the trial jury; hence, the same should not and ought not to be disturbed.

We note that the trial court imposed a five-year imprisonment on the appellant during the appellant's sentencing. The penal code classifies Criminal Conveyance of Land as a second-degree felony and further provides that in addition to a maximum imprisonment term of five years, a person convicted of criminal conveyance of land is required to retribute double the gain he acquired due to his criminal action. In the instant case, the evidence having established that the appellant benefited from his illegal transaction in the amount of Six Hundred United States Dollars (US\$600.00), in addition to the five-year prison term imposed, the appellant shall also pay the amount of United States One Thousand Two Hundred Dollars (US\$1,200.00).

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the trial court is hereby affirmed with modification that the appellant in addition to the prison term of five years, he is ordered to retribute to the appellee the amount of United States One thousand Two Hundred Dollars (US\$1,200). The Clerk of this Court is ordered to send a Mandate to the court below mandating the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Bobby F.W. Livingstone and Philip W. Gongloe appeared for the appellee. No counsel appeared for the appellant.