

THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING
IN ITS OCTOBER TERM, A. D. 2024

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

Dennis Dukuly of Voinjama City, Lofa County)
Republic of Liberia..... Appellant)
)
Versus) APPEAL
)
The 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, Republic of Liberia Plaintiff) CRIMES:
) Statutory Rape and
Versus) Murder
)
Dennis Dukuly of Voinjama City, Lofa County)
Republic of Liberia..... Defendant)

Heard: April 30, 2024

Decided: December 19, 2024

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

Pursuant to section 15.2 of the Criminal Procedure Law, the Grand Jury for Lofa County, sitting in its November Term, A. D. 2013, returned a true bill on the 13th day of November 2013, charging the appellant, Dennis Dukuly, with the Crimes of Statutory Rape and Murder, both charges being felony of the first degree. We here quote the two counts of the indictment as follows:

“INDICTMENT
COUNT #1

The Grand Juror for Lofa County, Republic of Liberia Upon their OATH do hereby find, more probably than not, that the DEFENDANT Dennis Dukuly of Voinjama City, Voinjama District, Lofa County, Republic of Liberia committed the crime of STATUTORY RAPE, a felony of the first degree and a capital offense to wit:

1. That on the 24th day of September A.D. 2013, during the night hours at about 22:40 GMT, in the Karzah Community, Voinjama City, Lofa County, the Defendant did have sexual intercourse with another person Krubo K. Gayflor (his biological sister) and the Defendant intentionally penetrated the vagina of the victim.
2. Offense; a person who has sexual intercourse with another person (male/female) has committed rape if:
 - a) (i) He intentionally penetrates the vagina, anus mouth or any other opening of another person (male/female) with his penis, without his consent.

- (ii) He/she intentionally penetrates the vagina, anus of another person with a foreign object or other part of the body (other than the penis) without the victim's consent.
- b) The victim is less than eighteen years old, provided the actor is eighteen years of age or older.

Definition

- a) Sexual Intercourse
 - (i) Penetration, however slight of the vagina, or anus or mouth, or any opening of another person by the penis; or
 - (ii) 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).
- 3. That on the 24th day of September A.D. 2013, during the night hours at about 22:40GMT, the Defendant did have sexual intercourse with his biological sister after stroking her with a stick on her neck thus rendering her unconscious.
- 4. The Defendant was left with his little sister (age 12yrs) by their step-father who is a night guard at the Telewonyan Memorial Hospital to take care of her while he the step-father was on his way to work. While leaving, the Defendant was instructed by their father to lock the door since he the father was now going to work.
- 5. When their father left, the Defendant locked the back door, he entered the room where his parent left them and closed the door, he woke the girl from sleep forcibly by slapping her on the body and asked for sex; upon her refusal, that's when he stroked her with a stick and she went unconscious and he subsequently had sexual intercourse with the victim by forcibly inserting his penis into her vagina.

COUNT #2 – MURDER

- 6. The Grand Juror for Lofa County, Republic of Liberia, upon their OATH do hereby find, more probably than not, that the Defendant, Dennis Dukuly of the Kazah Community, Voinjama City, Voinjama District, Lofa County, Republic of Liberia committed the crime of MURDER, a felony of the first degree and a capital offense to wit:
- 7. That on the 24th day of September A. D. 2013 at about 10:40PM, the Defendant Dennis Dukuly, did purposely cause the death of other human being by stroking the victim with a stick.
- 8. An offense – a person is guilty of murder if he:
 - a. Purposely or knowingly causes the death of another human being; or
 - b. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life. A rebuttable presumption that such indifference exists arises if the Defendant is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit, treason, offenses defined in Section 11.2 or 11.3 of this title, espionage, sabotage, robbery, kidnapping, felonious restraint, arson, rape, aggravated involuntary sodomy, escape, piracy, or other felony involving force or danger to human life.
- 9. Murder is a felony of the first degree but a person convicted of murder may be sentenced to death or life imprisonment as provided in Section 50.5 and 51.3.
- 10. That the Republic of Liberia complaints and avers that the Defendant Dennis Dukuly of Karzah Community, Voinjama City, Lofa County, Republic of Liberia on Tuesday, September 24, A.D. 2013 during the night hours, Defendant deliberately, intentionally, purposely, without any legal justification, took a stick and hit the victim with the sole purpose of having sex; after having sexual intercourse with the victim and later realized that she was unconscious, he the Defendant, having seen the pool of blood bleeding from the vagina of the victim, the victim not being conscious

to respond to him, it was at that stage he became afraid and he took the body of the victim to dispose of same.

11. The Defendant clandestinely took the victim outdoor where he made sure no one was around, he, the Defendant threw some of the victim's clothes into a nearby latrine to destroyed evidence and carried the victim to another latrine few meters away from their residence.
12. Upon carrying the victim (corpse) into the latrine, the Defendant under the cover of darkness, forcibly put/dump the deceased into the latrine hole (with human feces) when he realized that he had killed the girl.
13. During police preliminary investigation conducted, it was established that the victim was the biological sister of the Defendant as revealed by the mother. Further, the Defendant intentionally stroked the deceased with a stick and he the Defendant had sexual intercourse with the unconscious victim which later resulted to death. This is evidenced by the medical report from the Telewonyan Memorial Hospital in Voinjama, Lofa County, photographs of the deceased as well as photographs of the corpse, the criminal agency (the stick), witnesses testimonies, some pieces of clothing found on the crime scene that belong to the Defendant as well as the deceased, and the Police Charged Sheet and voice recording of the Defendant's statement before his Counsel.
14. The act of Defendant Dennis Dukuly being criminal, wicked, unlawful, intentional and barbaric with sole purpose of taking away innocent life, thereby depriving the late Krubo K. Gayflor of the right to live, the Defendant knowingly committed the crime of STATUTORY RAPE and MURDER at the time and date contrary to 4LCLR, Title 26, Chapter 14 Subsection 14.70(3)(a)(i) and 14.70(4)(b) and 4LCLR, Title 26, Chapter 14 Section 14.1(a); Title 26 Section 50.5, and 51.3; 4LCLR Sections 2.2(a) and (b); of the Statutory Laws of the Republic of Liberia, and the Peace and Dignity of the Republic.
15. The Republic of Liberia will produce the following witnesses:
 1. Mr. Selee G. Kezelee Father of the Deceased in Karzah, Voinjama City
 2. Madam Kebbeh Deddeh ... Resident of Karzah, Voinjama City
 3. Elizabeth Jallah Mother of the Defendant in Karzah, Voinjama City
 4. Sonnie Jallah Also of Karzah in Voinjama City, Lofa County
 5. Senlelia K. Kullie of the same address
 6. Det. Joseph B. Flomoku LNP
 7. Det. Mohammed V. Kromah Commander CSD Section LNP, Lofa County
 8. Mr. Dorfelsor Jayguhwoyan PA/DHSO, Voinjama District, Lofa County Health Team

Dated this 13th day of November A.D. 2013.”

On November 19, 2023, the appellant was arrested and brought under the trial court's jurisdiction. On February 13, 2014, the court arraigned the appellant, and he pleaded guilty to the crime of statutory rape and pleaded not guilty to the crime of murder, thereby joining issues with the State with respect to the crime of murder. The court, however, set aside the plea of guilty entered by the appellant and entered a plea of not guilty as provided for in section 16.4 of Title 2 of 1 LCLR thereby requiring the State to prove the guilt of the appellant as alleged in the indictment. The trial commenced with the selection of the trial jury. The prosecution took the witness stand and

produced four witnesses. The appellant, for his part, produced three witnesses. Following the presentation of evidence and the final arguments of the parties, the panel retired and later returned a guilty verdict on all the counts against the appellant. The appellant filed a motion for a new trial, which the court heard and denied. The court subsequently affirmed the guilty verdict and sentenced the appellant to death by hanging. The appellant entered exceptions to the court's final ruling and filed a seven-count bill of exceptions. The averments in the bill of exceptions constitute the contentious issues on appeal; hence, we here quote the same verbatim.

“Defendant's bill of exceptions

1. Your Honor committed prejudicial error and reversible error in that in open court, you posed a question to the defendant's mother, who testified on his behalf in the following words: 'Is it the fact that this defendant killed a baby on the farm in Zorzor, but you and other family decided to handle it family way? To this question, the defendant's mother replied, "No, I don't know". (page 12, 6th day's jury sitting of February 17, 2024. In the defendant's mind, this question was a grandstanding by your Honor, which counsels attempted to correct by the new trial.
2. Your Honor erred when you took the court's file, which contained the photographs of the deceased that had been admitted into evidence to the jury, and opened said exhibits before them. This was so prejudicial to the defendant's case that when the jury arose to retire to their room, the foreman asked in open court: 'How long should we stay in our room?' The defendant contends that all of the above operations were against him and that he did not receive a fair and impartial trial. Counsel did not enter an exception because your honor had completed charging the Jury but raised it in the motion for a new trial, which prosecution defendant as a function of the court in his resistance to the motion for a new trial.
3. That the verdict ran contrary to the weight of the evidence because, during the trial, the evidence only showed that the defendant, being influenced by evil spirits in his sleep, suddenly awoke and struck his sister, who was sleeping once with a stick. She never thereafter shook, struggled, or talked again, and he had sex with her body. And under the direction of the said evil spirit, dumped her in a latrine. The evidence from all the witnesses amounted to nothing more than manslaughter and abuse of corpse because counsel contends that the defendant's statement that he was not to himself suggests that he was struggling under a state of temporary insanity, which needed investigation. Counsel strongly contends that if the defendant was normal and not being controlled by demon, he could not treat his biological sister like he did.

4. Also, the testimonies of the State witnesses failed to prove that the elements of malice aforethought, criminal intent, and deliberation are essential elements required to elevate a homicide to murder. That the State, which had alleged that the defendant sexted his sister while she was unconscious, failed to prove the said time of unconsciousness and the actual time of death. The State did not prove rape because for rape to be asserted, the State must prove when Krubo Gayflor died to be able to determine whether she was alive when Dennis had sexual intercourse, which would constitute rape, but the State failed to do so.
5. The Court erred as a matter of law when, upon arraignment of the defendant, and after having taken the stand and testified, the defendant said these words: 'When our father left, I fell asleep. While sleeping, a friend came to me; before coming to me, fire came in front of me. When the fire came, it changed my whole spirit. Then, the spirit started controlling me. I woke up, took the hoe handle from under the bed, and once hit my sister on the neck. She was not shaking, so I felt she was unconscious; then it made me have sex with her. So when she was not shaking, I got afraid, and I carried her and dumped her in the toilet.' Counsels say that after this explanation, the court had a duty to order an examination to determine the defendant's mental fitness to proceed in keeping with Chapter 6 of the Criminal Procedure Law, even without a motion from his counsels. This could have established whether, given the circumstances, the defendant suffered from what could be tantamount to temporary insanity and or diminished capacity. Yet our honor sentenced the defendant to death by hanging, to which ruling counsels entered exceptions and announced an appeal.
6. And especially so because, after counsel for the defendant brought the irregularities in the trial to your attention and requested a new trial, Your Honor denied the motion. Hence, this appeal.
7. Also because, your honor, after finding the defendant guilty, you sentenced him to death by hanging the same day, and, as if the defendant does not have a right to appeal, your honor, in your final judgment, requested the President, to sign the death warrant that has not been ordered approved by the Supreme Court of the land; counsels further contend that your honor erred when you totally ignored the plea of the mother of both the defendant and deceased for help so that she cannot lose her two (2) children. Counsels contend that this judgment, in their minds is based on gender bias. With this startling revelation, the defendant contends that the court was legally bound to order an investigation of the defendant's statement, which was not a rebuttal.

Given consideration to the records in these proceedings and the appellant's contentions in the bill of exceptions, we determine the following to be the issues determinative of this appeal:

1. Whether considering the evidence adduced during the trial, the trial judge had a duty to order a medical examination of the appellant to determine insanity.

2. Whether or not the state established its case beyond a reasonable doubt?

We shall now proceed to address the issues in the order presented.

Regarding the first issue, the appellant's counsel strongly argued that the trial judge was legally obliged to have ordered a medical examination of the appellant to determine his mental capacity since the appellant testified during the trial that he killed the victim under a spell. The prosecution also argued that the appellant's counsel's failure to have requested a medical examination of the appellant does not impose upon the trial judge the obligation to *sua sponte* submit the defendant to a mental examination.

To do justice to this issue, we hereunder quote the relevant statutory provision regarding the medical examination of a criminal defendant.

Criminal Procedure Law Revised Code 1:6.2 provides as follows:

“Psychiatric examination of defendant

If, during a criminal prosecution, there is reason to doubt the defendant's fitness to proceed, the court shall appoint at least one qualified physician to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding five days and may direct that a qualified physician retained by the defendant be permitted to witness and participate in the examination. The report of the examination shall include an opinion as to the defendant's capacity to understand the proceedings against him and, unless the examination is to determine whether the execution shall proceed, a statement whether the defendant is capable of assisting in his own defense. The report shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.”

Clearly, the law imposed a conditional obligation upon the court to order an examination of a defendant for mental fitness to proceed with the trial. The condition provided by the statute is that if, during the trial, reasons are presented to create doubt about the defendant's mental condition, the court should order an examination by a qualified physician. The question that begs for an answer then is whether, during the entire trial, sufficient evidence was exhibited to create doubt about the defendant's mental condition before and during the commission of the act constituting the crime or subsequently during the trial. A search of the evidence shows that apart from the defendant's self-serving evidence that at the time he committed the act, he

was overtaken by a demonic spirit in the form of his friend that encouraged him to take the life of his sister (the deceased) and to subsequently have sexual intercourse with her lifeless body, and the mother's allegation that her brother told her that the appellant was demon possessed, to the contrary, witnesses who were close to the appellant testified that he had never had a mental problem except that he was habitually stealing from his guidance. The uncle, however, denied reporting to the mother that the appellant was demon-possessed. In testifying for the prosecution, he told the court that he returned the appellant to his mother because of his habitual stealing. In the absence of the appellant producing additional witness to buttress the testimony of the mother that the uncle told her that the appellant was demon possessed or to produce other evidence tending to establish that abnormality was observed in the appellant's behavior, this, together with the appellant's comportment and the failure of the defense to request for a medical examination during the trial defeat any contention that the trial judge's failure to have ordered a medical examination of the appellant constitute a reversal error. This Court held in the case *RL v Gbandi 30 LLR 201, 211 (1982)* that "the court may only *sua sponte* send a defendant for psychiatric examination when his behavior and attitude at a criminal trial are abnormal as to warrant the court to doubt his fitness to stand trial." Besides this, the law presumes "every man sane until the contrary is shown by evidence presented". *Brown v. RL 21 LLR 65, 84 (1972)*.

Our search of the records further shows that the appellant's counsels did not raise the issue of insanity, apply for a medical examination of the appellant, or enter an exception to any adverse interlocutory ruling or order of the court regarding the mental condition of the appellant during the entire trial to competently raised the same as a contention in the bill of exceptions. The law is that a bill of exceptions must specify the exceptions made to the judgment, decision, order, ruling, or other matter during the trial, together with a statement of the basis of the exceptions, for a review by the Supreme Court. *Wlo Flo v RL 29 LLR 3 (1981)*. Considering what has been earlier said on this issue, we cannot give credence to this contention of the appellant.

With regards to the second issue, we take recourse to the records. During the trial, the State produced four (4) witnesses.

The prosecution's first witness, Detective Mohammed Kromah, testified that on the morning of September 25, 2013, they received information that a dead body was in a toilet, pit/latrine. Based on the information provided, he and other police officers went to the crime scene, and they gave the order for the body to be taken out of the toilet hole. They saw blue and white flashlights, clothes, and a stick at the crime scene. Two lappers were found in the toilet hole, blue and white trousers, and a shirt were found in the hallway on the line containing blood stains, and a lady identified it as belonging to the defendant. The sticks were placed in the door frame of the latrine, but because of the force that was applied to the door, they were broken into pieces. The hoe handle was found in the room, and the t-shirt was found on the defendant with a blood stain. After the body was taken out, it was identified as being the body of Krubo K. Gayflor (victim). He further informed the court that they interviewed Madam Sonnie Jallah, the stepfather, Kessellee G. Gayflor, and the appellant during their investigation. According to the witness, the three persons interviewed were given their Miranda Rights, but at first, the appellant refused to talk to the police on the 25th, 26th, and 27th of September 2013. On the 28th of September 2013, the appellant finally decided to speak to the investigators. When the appellant decided to speak, the Police ensured that the Public Defender, Atty. Tobey Raynes must be present before allowing the appellant to talk to the Police. When the appellant's counsel appeared at the Police station, the appellant gave a voluntary statement to the Police in the presence of his counsel, admitting to the commission of the crimes alleged. The appellant signed the statement, and his counsel endorsed it.

The prosecution's second witness, Madam Sonnie Jallah, testified that she woke up on Wednesday morning, September 25, 2013, and observed appellant Dennis Dukuly walking in and out of the room to the parlor. When she noticed his movements, she asked him about the victim, whether she was brushing her teeth or bathing, and he responded that he could not find the victim. Thereafter, she and the appellant embarked on looking for the victim, later joined by the father and other people, but they could not find the deceased. Later, the deceased was found in a toilet hole, and the police were

called to come to the scene. The witness further testified that the appellant committed the crimes because she heard him confessing on the radio.

The prosecution's third witness, Jayguh Woiyan, a Physician Assistant at the Tellewoyan Memorial Hospital, serving in the capacity of District Health Officer for Voinjama District, testified that he is a trained Clinician in the examination and management of rape cases. He further told the court that he has training in forensic examination of rape survivors. The witness further testified that on September 25, 2013, his boss, Dr. Aaron Y. Kollie, called him and instructed him to go with the County Attorney to examine a reported dead body. Upon his arrival at Karzar Community, he saw a large crowd surrounding a dead body that was lying on a tarpaulin covered with banana leaves. They requested that the banana leaves be removed from the body and washed to remove the feces. Subsequently, the victim was taken to the Tellewoyan Memorial Hospital for examination, at which time it was established that the victim was dead. The witness testified that during the examination, they observed several abnormal findings on the victim's body, including scrapes on the forehead and a stiff body except for the neck, contrary to the condition of a normal dead body, which means that the neck might have been broken. They also discovered that the victim was bleeding profusely from the vagina, and there was a tear/laceration in the vagina and the anus. The witness testified that their examination revealed that the neck might have been broken, but he could not determine how or who did it. He further testified that a forceful penetration might have caused the laceration/tear in the vagina, but he could not also determine as to what or who caused it.

The prosecution's fourth witness, Selee G. Kessellie, was the appellant's stepfather and the victim's stepfather. He testified that on the 24th of September 2013, he left the victim asleep along with the appellant in the same room and went to work at 10:45 PM at the Tellewoyan Memorial Hospital. Still, to his almost surprise, he was informed on the morning of September 25, 2013, that his stepdaughter could not be found. Thereafter, he went home and subsequently informed the Police. He further decided to put up an announcement on Radio Kintoma, but it was closed when he got to the radio station. So, he sent photographs of the victim to the various

border points with the aim of finding her. Later, the appellant confessed, admitting to the commission of the crimes. He testified that since he started knowing the appellant, he had noticed some stealing habits in him.

For his part, the appellant produced three witnesses, including the persons of the appellant (Dennis Dukuly), Madam Elizabeth Jallah, and Flomo Gayflor Zayzay. Appellant himself took the stand and testified that his father left for work, leaving him appellant and the deceased at home; that while he was sleeping, a spirit friend came to him, but before his spirit friend could reach him, fire came in front of him and changed his spirit. He testified that the spirit friend entered the deceased, so he took the stick and struck the deceased. After stroking the deceased, his spirit friend starts to control him, which leads him to have sex with the deceased; the witness testified that after having sexted the deceased, then he noticed that the deceased was unconscious/dead, and being afraid, he secretly dumped her lifeless body in a toilet. He further testified that the spirit friend had been with him for seven years and that his mother was aware of it. The witness also testified that other than this spirit friend that often batters him, he has experienced no medical defect that may have caused him to act abnormal, nor has he been crazy before. He further testified that he stole from a lady who refused to pay him after drawing water for her, which may have been the cause.

Defendant's second witness, Elizabeth Jallah, the mother of both the victim and appellant, testified that she was in Monrovia when the incident occurred in Lofa; that while on her way from Monrovia, she met the County Attorney who interviewed her concerning the attitude of her son. She testified that she only knew of the appellant's stealing attitude. She testified that the appellant was three years old when he was taken to Monrovia to live with his uncle and that in 2007, the uncle brought the appellant back and indicated to her that the appellant was demon-possessed. She further testified that her pastor told her to take the appellant for herbal treatment, which she was planning to do. She testified that when he visited the prison, she was told that her son wanted to kill himself after noticing that he had killed his sister, the deceased. In concluding her testimony, she pleaded with the court to free the appellant because both the victim and the appellant are her children.

The defense's third witness, Pastor Flomo Gayflor Zayzay, the appellant's uncle, testified that he knew the Appellant from his birth date. He further testified that the appellant was four years old when he was taken to Monrovia to live with his aunt and that a few years later, his aunt brought him back because the appellant was in the constant habit of stealing. He testified that the appellant lived with him on two different occasions and that during those periods, while he noticed that the appellant used to steal, he did not observe any abnormality in the appellant's mental condition and that he had never heard of the appellant being attack by a demonic spirit.

We note that in the bill of exceptions and the brief filed before this Court, the appellant argued that the evidence did not show that the appellant harbored any malice, express or implied, against the deceased.

It is the law in this jurisdiction that to constitute malice aforethought in a murder case, there need not be an old quarrel or a long period of resentment, envy, or spite. The law presumes malice when someone is deliberately injured during an unlawful undertaking. *Krahn-Gbo v RL 8 LLR 141, 150 (1943)*. It is the law that when another deliberately kills a human being, the law will presume malice even though no particular enmity has been proven, *Dahn v. RL 34 LLR 565, 575 (1988)*. Malice is not grudge, resentment, or vindictiveness against another alone, but it is also a manifestation of a wicked, evil spirit evoked upon the occasion of the act done. It is that malevolence which comes from a depraved heart, regardless of social duty and fatally bent on mischief; and if any act or conduct of the accused is a wicked act or an act denoting depravity at the time, and results in injury to another person, it is a malicious act in law". Malice can be implied from the appellant's own testimonies that he struck the victim with a stick, and the victim became unconscious, and in that moment, raped her unconscious body; after rapping the victim, he calculated and planned his next course of action as regard the lifeless body of his sister (the deceased). He purposely took the body to the latrine and dumped it, came back home, and joined the rest of the family members and sympathizers in looking for the victim. When confronted, he lied that he had not seen the victim. This, in our mind, clearly demonstrates implied malice. Malice aforethought may be either express or implied. Legal malice does not necessarily mean a malicious or malevolent

purpose or personal hatred or hostility toward another; it is a state of mind that shows a heart unmindful of social duty and fatally bent on mischief or which prompts a person to do an injurious act willfully to the injury of another. Logan v RL 33 LLR 434, 449 (1985). We are inclined by the circumstances revealed by the records to conclude that the appellant committed the acts constituting the offense with malice aforethought.

Finally, we note that the trial judge sentenced the appellant to death by hanging. However, considering all the facts and circumstances in this case, we are inclined to modify that sentencing to life imprisonment.

Wherefore and in view of the foregoing, the ruling of the trial court adjudging the appellant guilty of the crimes of statutory rape and murder is affirmed, however, with the modification that the appellant is sentenced to life imprisonment. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therefore over to resume jurisdiction and give effect to the judgment of this Opinion. IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELORS BESTMAN D. JUAH AND T. JOSEPH B. DEBBLEH APPEARED FOR THE APPELLANT. COUNSELORS LUTHER J. SUMO, ALHAJI SWALIHO A. SESAY, PATO JABBAH AND J. ADOLPHUS KARNUAH, II APPEARED FOR THE APPELLEE.