

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

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

Nyimeda M. Badio of the City of Monrovia,)
Liberia..... Movant)
)
Versus) MOTION TO DISMISS
) APPEAL

William H. Badio Sr. and Mrs. Esther Big Ma)
Badio of VOA Road, Gbengbah Town,)
Paynesville, Liberia.....Respondents)

GROWING OUT OF THE CASE:)

Nyimeda M. Badio of the City of Monrovia,)
Liberia.....Plaintiff)

Versus) SUMMARY PROCEEDINGS
) POSSESSION OF REAL

William H. Badio Sr. and Mrs. Esther Big Ma) PROPERTY
Badio of VOA Road, Gbengbah Town,)
Paynesville, Liberia.....Defendants)

HEARD: October 29, 2019

DECIDED: Sept. 3, 202

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This case is before us on a motion to dismiss the appeal filed by the movant, Nyimeda M. Badio, against the respondents, William H. Badio, Sr. and Esther Big Ma Badio. The motion seeks to have this Court dismiss the appeal announced by the respondents from an adverse judgment entered against them by the Civil Law Court, Sixth Judicial Circuit, on ground that the respondents failed to complete the appeal process by not filing an appeal bond and a notice of completion of appeal in order to confer jurisdiction on this Court to hear and determine said appeal.

The facts are that the movant, Nyemada M. Badio, daughter-in-law of the respondents, filed before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, an action of summary proceeding to recover possession of real property against the respondents, alleging that the respondents were illegally occupying the house belonging to her and her late husband, Mr. Nyemada H. Badio, Jr., and that despite numerous notices to

the respondents to vacate said property, they refused to do so. The movant contended that she and her late husband acquired title to the property in 2004, when they purchased a parcel of land from Mr. James G. Glay and Mrs. Joana Glay, and constructed their dwelling home thereon. The movant prayed the court to oust and evict the respondents as title to the property was not in dispute.

The respondents filed their returns to the movant's petition, denying the allegations contained therein, arguing instead, that the property, subject of the summary proceeding petition was solely owned by their son, the movant's late husband, Mr. William H. Badio, Jr.; that the Co-respondent William H. Badio, Sr. had been appointed administrator of the Intestate Estate of his son as the movant had abandoned her husband prior to his death and deserted their marital home, vowing not to have anything to do with him; that the action of summary proceeding to recover possession of real property be dismissed because title was at issue. The respondents proffered a deed in support of their claim, that their son, William H. Badio, Jr., owned the property in fee simple.

In response to the respondents' returns, the movant filed a reply in which she essentially confirmed her contention that the property belongs to both her and her late husband, Mr. William H. Badio, Jr.; that the deed proffered by the respondents was littered with falsehood and fabrication; that in fact it was she who had obtained letters of administration to administer her husband's estate and if there was a problem between her and her late husband before his death, the law provided adequate remedy to the husband in the appropriate court, and that such problem could not be made a subject of the ejectment action. Besides, the movant stated that Mr. William H. Badio, Sr. lacked the authority to defend the action because even though he stated that he is the administrator of the Intestate Estate of Mr. William H. Badio Jr., he failed to produce his Letters of Administration.

Pleadings having rested, the judge of the lower court disposed of the law issues and ruled augmenting the action of summary proceeding to recover real property to an ejectment action in accordance with Section 1.2.2 of the Civil Procedure Law, since both parties claimed title to the disputed property. The trial was had and at its conclusion the respondents were adjudged liable to the movant. On November 23, 2018, final judgment was rendered in favor of the movant with the lower court ordering that the respondents be ousted and evicted from the disputed property and the movant put in

possession thereof. The respondents excepted to the judgment and announced an appeal to this Court.

On November 26, 2019, respondents filed their bill of exceptions and same was approved by the judge of the court below. On January 23, 2019, sixty-one days after the rendition of final judgment by the court below, the movant applied to the clerk of the Civil Law Court for a clerk certificate to the effect that the respondents had not filed an appeal bond and the notice of completion of appeal within the sixty days period mandated by the appeals statute for perfecting an appeal. The clerk of the Civil Law Court issued the clerk certificate stating that up to the time of the issuance thereof, the respondents had failed to file an appeal bond and a notice of completion of appeal.

On January 24, 2019, the respondents filed a motion for enlargement of time before the Civil Law Court, requesting the court to afford them additional time to file their appeal bond and notice of completion of appeal on ground that the co-respondent, William H. Badio, Sr., who was the principal defendant in the court below, lacked the financial means to file an appeal bond within the time prescribed by the appeal statute. The motion was resisted by the movant who argued that the reason stated in the motion was not one of the grounds provided by statute for a motion for enlargement of time.

The trial court had arguments on the motion for enlargement of time, and ruled thereon, denying same on grounds that since the appellants had filed a bill of exceptions which was approved by the court, the court lacked jurisdiction to hear the appellants application for enlargement of time; more besides, the statute does not consider lack of financial means a ground for granting enlargement of time for the completion of the appeal process.

We quote portion of the ruling made in the court below:

“.....This court says, the practices and procedures in this jurisdiction, and the law controlling is that once the trial judge signs the bill of exceptions, the trial court loses jurisdiction and though the matter is in transition, it is technically before the Supreme Court of Liberia. This court does not see by this law how this Judge can grant the motion for enlargement of time. More besides, to grant such a motion will certainly open a pandora box in this jurisdiction because all other persons who judgment is brought against will file motion for enlargement of time based on financial reason. If the author of the statute intended financial consideration to be a ground for enlargement of time, they would have so stated.”

Though we agree with the trial court's dismissal of the motion for enlargement of time for completion of the appeal process, we however disagree with the aspect of its ruling that states that the appellants having filed a bill of exceptions which the trial court had approved, the court was without jurisdiction to hear the appellant's motion for enlargement of time. We deem it appropriate to provide compelling clarification on this aspect of the judge's ruling.

The Supreme Court has in a long line of cases held that if the appeal process is initiated in the lower court by the filing of the bill of exceptions and the statutory time for perfection of the appeal has not expired, or the appellant terminated the jurisdiction of the trial court by the filing of a notice of completion of the appeal, the lower court is clothed with the authority to handle matters pertaining to the appeal within the time allowed by statute: *Huseini v. Kaydea*, Supreme Court Opinion, March Term 2012; *Mulbah v. Russell*, Supreme Court Opinion, March Term 2014.

However, our Civil Procedure Law, section 51.16, states that a trial court has no jurisdiction to entertain a motion to dismiss an appeal after a bill of exceptions has been filed and approved by the trial court within the statutory time. This applies to only dismissal of an appeal where the bill of exceptions has been filed with the lower court. Other matters relating to acts in completing the appeal process such as that raised by the appellants is cognizable before the trial court during the period allowed for appeal by statute, or until the appellants remove the appeal from the jurisdiction of the trial court by the filing of a notice of completion of appeal.

In this case, the appellants/respondents do not dispute that they failed to complete their appeal process within the statutory time of sixty days. The appellants/respondents, however, contend that lack of funds to secure and file the appeal bond within the time provided by law constitutes excusable neglect within the contemplation of section 1.7.2(b) of the Civil Procedure Law for which the trial court should have granted the motion for enlargement of time for the filing of the appeal bond and the notice of completion of appeal.

Section 1.7.2(b) of the Civil Procedure Law states that "when under this title or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, except as otherwise provided by law, at any time in its discretion:...(b) Upon motion made after the expiration of the prescribed period permit the

act to be done when the failure to act was the result of excusable neglect [*emphasis ours*].”

Moreover, this Court has held that the time required by statute for the completion of an appeal is mandatory except in cases provided in section 51.10 of the Civil Procedure Law for tolling of time for acts required to complete an appeal. *Ahmar v. Gbotoe*, 42 LLR 117, 126 (2004); *Raspal and Sachdeva v. Dukuly*, Supreme Court Opinion, March Term 2015. For clarity, Section 51.10 of the Civil Procedure Law, reads:

“ If, after an appeal is announced, the counsel for the appellant dies or becomes physically or mentally incapacitated or is disbarred or suspended before the expiration of the time for filing of a bill of exceptions or an appeal bond, the time for the doing of such act shall commence to run anew from the date of the death, incapacitation, disbarment, or suspension of such counsel. A bill of exceptions or appeal bond shall not be filed by a new attorney of record within the extended time allowed by this section until he has applied for and received permission of the court” (CPLR 51.10).”

Chapter 1, “General Provisions”, Section 1.7.2 (b) of the Civil Procedure Law, relating to enlargement of time for an act to be performed, is not applicable to the tolling of the statute in this case as the appeal statute, section 51.10, specifically provides for the acts that are permissible for tolling the time of the appeal statute. The argument proffered by the respondents that their failure to file the appeals bond and notice of completion of appeal was due to the inability of the Co-respondent William H. Badio, Sr. to obtain the amount of One Thousand United States Dollars (US\$1,000.00) needed for the filing of the appeal bond cannot be considered under section 1.7.2(b) of the Civil Procedure Law and is legally untenable under the facts and circumstances. As the judge of the lower court ruled, if the Legislature intended for financial consideration to be a ground for enlargement of time, it would have made it one of the conditions in Section 51.10 of the Civil Procedure Law.

A review of our precedents reveals no case in which the Supreme Court has considered extending the time required for the filing of appeal papers beyond the statutory time on account of the financial inability of an appellant to secure his appeal bond within the sixty-days period mandated by the appeal statute, and the appellants/respondents have cited us to none. The counsel for the respondents attempt to appeal to the emotion of the Court, by his statement that the Co-respondent, William H. Badio, Sr. is a 94-year-old retiree with no income, and that all efforts exerted by him to raise the

amount of US\$1000.00 to secure the appeal bond within the statutory time was unsuccessful, cannot be upheld by the Court, because as the trial judge correctly stated, granting a motion for enlargement of time solely on the basis that the appellant lacks the funds to timely secure the appeal bond will flood the courts dockets with motions for enlargement of time for financial reasons. Besides, a 94-year-old retiree who has no income to secure an appeal bond within the time provided by statute is no worse a financial condition than a 30-year-old unemployed party litigant who similarly lacks the income to timely secure an appeal bond. Leaving such discretion with the judges would set a dangerous precedent in abrogating the timely and mandatory nature of our appeal statute. The question would be, if the appellants cannot raise the funds in sixty days, at what time will they be able to raise the funds?

If this Court were to toll the time set by the statute for perfection of an appeal based on the financial incapacity of an appellant, this would run contrary to the intent of the appeal statute and would defeat the timeliness of an appeal and the conclusion of matters brought before our courts.

We therefore hold that an extension of the time for completion of an appeal because of an appellant's lack of funds to obtain an appeal bond is far-fetched from the grounds laid out in our Civil Procedure Statute, Section 51.10, and therefore uphold the ruling of the lower court denying the respondents' motion for enlargement of time because they lack funds to perfect their appeal.

Accordingly, and in line with the mandatory requirement of the appeal statute and the appellees having conceded that they failed to file their appeal bond and notice of completion of appeal within the time provided by statute law, the movant's motion to dismiss the respondents appeal is hereby granted and the appeal ordered dismissed.

The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over the matter and give effect to this Judgment. Costs are ruled against the respondents/appellants. **AND IT IS HEREBY SO ORDERED.**

APPEAL DISMISSED

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS MILTON D. TAYLOR AND FREDERICK L.M. GBEMIE OF TAYLOR & ASSOCIATES, INC. APPEARED FOR THE MOVANT. COUNSELLOR G. WEIFUEH ALFRED SAYEH OF THE SAYEH AND SAYEH, INC. APPEARED FOR THE RESPONDENTS.