

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

In re Jerome G. Korkoya, of the City of)
 Marshall, County of Margibi, Liberia)
 Movant) **MOTION TO DISMISS**
VERSUS) **APPEAL**
)

Prof. Bestman Larmena, of the City of)
 Marshall, County of Margibi, Liberia)
 Respondent)
)

GROWING OUT OF THE CASE:)
)

Prof. Bestman Larmena, of the City of)
 Marshall, County of Margibi, Liberia)
 Appellant) **APPEAL**
)

VERSUS)
)

Jerome G. Korkoya, of the City of)
 Marshall, County of Margibi, Liberia)
Respondent)
)

GROWING OUT OF THE CASE:)
)

In re: Jerome G. Korkoya, of the City of)
 Marshall, County of Margibi, Liberia)
 Plaintiff)
)

VERSUS) **ACTION OF EJECTMENT**
)

Prof. Bestman Larmena, of the City of)
 Marshall, County of Margibi, Liberia)
 1st Defendant)
)

AND)
)

Degeorge Cooper, also of the City of)
 Marshall, Margibi County, Liberia)
 2nd Defendant)
)

Heard: March 19, 2020

Decided: September 4, 2020

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This Motion to Dismiss appeal grows out of an action of ejectment instituted by the movant, Jerome G. Korkoya, against Beageorge Cooper and the Respondent, Prof. Bestman Larmena in the 13th Judicial Circuit, Margibi County. On the defendants' application in the underlying ejectment action, His Honor, Yamie Quiqui Gbeisay, presiding by assignment, ordered a separate trial of the defendants. The respondent herein, being the 1st defendant, waived trial by a jury. After a full bench trial, the trial court, on the 23rd day of April 2019, held the respondent liable and ordered him evicted, ousted and ejected from the 10.5 acres of land, subject of the ejectment action. The trial court also awarded the movant in special and general damages in the amount of Twenty-five Thousand United States Dollars (US\$25,000.00). From this final judgment of the trial court, the respondent entered exceptions and announced an appeal to this Court of last resort.

The records show that on the 29th day April 2019, the respondent filed his bill of exceptions, appeal bond, and a notice of completion of the appeal, thus conferring what appears to be jurisdiction on the highest court of appeal.

Notwithstanding the apparent compliance with the mandatory procedures governing the completion of the appeal, the movant filed before this Court a nine-count motion to dismiss appeal stating two reasons therefor. The movant alleged that the appeal bond is defective in that the tax clearance annexed to the appeal bond expired on the 16th day of March 2019, that is, more than a month before the filing of the appeal bond on the 29th day of April 2019. In addition to allegedly filing a defective appeal bond, the movant also alleged that the respondent failed or neglected to serve on him the notice of completion of appeal as a requirement of law.

In resisting the motion to dismiss the appeal, the respondent essentially averred and contended the followings:

That the expiration of the tax clearance does not render defective the appeal bond; that the movant suffered waiver for his failure to entered exception to the appeal bond within the period provided for by law; that the movant failed to challenge the capacity of the surety on the appeal bond; and that the respondent served the notice of completion of the appeal on Attorney A. Teage Jalloh, one of the movant's counsels.

After a careful review of the facts in this case and applicable laws, we deem the following three issues as dispositive of the motion to dismiss the appeal to wit:

1. Whether the movant's failure to interpose exception to the appeal bond constitutes a waiver under the facts and circumstances of this case to warrant a denial of the motion to dismiss appeal?
2. Does the expiration of the tax clearance's validity render the appeal bond defective and the appeal dismissible?
2. Whether the evidence shows that the respondent served the movant the notice of completion of the appeal consistent with the law?

We shall address these issues in the order in which they are presented.

The Civil Procedure Law provides that a party excepting to an appeal bond must file his exception within three days after the bond's filing and service. Failure to do so shall be considered a waiver, and the bond shall be allowed. However, where the appeal bond is filed along with the notice of completion of the appeal, thereby ousting the trial court of jurisdiction, the proper remedy available is a motion to dismiss the appeal in the Supreme Court. The transcribed records in these proceedings show that the respondent herein filed his appeal bond and the notice of completion of appeal on the 29th day of April 2019; that is on the same day. Under these circumstances, we do not see it plausible and practicable for the movant to have filed his exceptions before the trial court since that court's jurisdiction seized after the filing of the notice of completion of the appeal. The only remedy available to the movant was to challenge the appeal bond before the Supreme Court by a motion to dismiss.

“...In these cases, the appeal bond was filed along with the notice of completion of appeal and it is the law extant that where the appeal bond is filed along with the notice of completion of the appeal, the notice of completion of appeal removes the case from the jurisdiction of the trial court onto the Supreme Court. As such, the appellee did not have an opportunity to challenge the bond in the trial court and the appellee's challenge to the appeal bond can only now be heard in the Supreme Court.” *Manhattan Trading Corp. v. World Bank, Opinion Supreme Court Opinion, March Term, A.D. 2016*

We note that although the facts and the result in *Manhattan Trading Corp. v. World Bank* is not the same as the present case; the above-quoted principle applies to the facts and laws controlling.

Relative to the second issue, the respondent argued that the tax clearance's invalidity does not or cannot affect his surety's capacity to indemnify the movant. According to the respondent, a taxpayer has a 30-day window to regularize his tax obligations after the expiration of tax clearance. This period not having expired, the surety's tax clearance is

sufficient to support the bond. These contentions demonstrate the respondent's counsel neglect or failure to come to terms with the recency of this Court's Opinions regarding the minimum standards for filing a bond. In the case of *Reeves v. Quaih Brothers, Supreme Court Opinion, March Term, 2013*, this Court expounded on the legislative intent of the requirement of a bond in all cases:

“We do believe that the Legislature intended that insurance companies serving or desiring to serve as sureties to a bond, whether criminal appearance bond, bail bond, civil bond, appeal bond or any other bonds required under the laws of Liberia, would be held to certain minimum standards, have certain qualifications and meet certain requirements as would secure the opposing party against uncertainty, injury or further damages.”

Based on the principle articulated hereinabove, the Court sets the following minimum standards in *Reeves v. Quaih Brothers, id.* to wit:

- “1. The exhibition or attachment to the bond of the Articles of Incorporation of the insurance company as evidence that the company does exist;
2. Registration certificate of the insurance company with the appropriate government ministry or agency indicating that it is authorized to do business in Liberia and that it is in good standing;
3. Clearance from the Ministry of Finance evidencing that all taxes due as at the time of the execution of the bond have been fully paid; and
4. Evidence, such as a certificate or other legal instrument from an appropriate legal authority such as the Central Bank or other insurance authority or similar government entity having regulatory responsibilities for insurance companies, that the insurance company possesses assets, within the Republic of Liberia, sufficient to cover the obligation undertaken by the insurance company in the bond, exclusive of other bonds to which it is already serving as surety, commensurate with the amount stated in the bond.”

It is worth noting further that this Court has decided several other cases after *Reeves v. Quaih Brothers, id.* on the minimum standards of a bond, including *IBLL v SIRR Marketing Inc. Supreme Court Opinion, March Term, A.D 2015*, *Manhattan Trading Corp. v. World Bank, Supreme Court Opinion, March Term, A.D. 2016*, among others. Therefore, we hold that an invalid tax clearance that accompanies an appeal bond renders the same defective. It follows that filing of a defective appeal bond also makes the appeal dismissible.

Coming to the last issue for the Court's determination, the respondent has argued that contrary to the clear showing on the transcribed records, that he served the notice of completion of appeal on the movant on the 29th day of May 2019. He claimed that the trial court's clerk erroneously dated the notice for the 29th day of April 2019, the date he filed the bill of exceptions, and the appeal bond. This allegation does not find support in

the records under scrutiny. Assuming for the sake of argument, that the respondent did serve the movant the notice of completion of appeal on the date alleged by him, the respondent fatally neglected to attach to his returns an affidavit from the clerk to substantiate this allegation of inadvertent date placed on the notice of completion of the appeal. To merely aver such assertion during an argument before the Bench does not vitiate the certified records' evidence. It is the maxim of law that oral testimony cannot vitiate documentary evidence. Put succinctly, the respondent's allegation is not persuasive to vary the date of service on the notice of completion of the appeal. The statute controlling the service and filing of a notice of completion of appeal provides that the appellant shall do the service of notice as a condition precedent to the filing of said notice with the clerk of court. We quote the relevant statute as follows:

“After the filing of the bill of exceptions and the filing of the appeal bond as required by sections 51.7 and 51.8, the clerk of the trial court on the application of the appellant shall issue a notice of the completion of the appeal a copy of which shall be served by the appellant on the appellee. The original of such notice shall be filed in the office of the clerk of the trial court.” Civil Procedure Law, Rev. Code: 1:51.9

In further interpreting Section 51.9 of the Civil Procedure Law *id*, this Court speaking through Madam Justice Wolokolie laid to rest the controversies about the service of the notice of completion of appeal on the appellee. We quote excerpt from the case *Snetter-Carey v John, Supreme Court Opinion, October Term, A.D. 2013* as follows:

“...The service in the revised code requires the notice to be served by the appellant himself, and the original copy of the said notice, evidencing service, filed with the court clerk. The step set out in section 51.9 of the revised statute mandates that the appellant himself, and not the court, serve a notice of completion of the appeal, substantiated by the signature of the appellee on the original copy, which is thereafter filed with the clerk of court. The original copy filed with the clerk of court, reflects the filing date, evidence as to whether the notice was filed within the statutory period of sixty days. Evidence which is proper and which this Court finds acceptable to warrant a fulfillment of the final step of the appeal that would confer jurisdiction on it to review a matter sent upon appeal is that which conforms to Section 51.9 as referred to above. Anything to the contrary, which is not in fulfillment of the statute, warrants a dismissal of the appeal by this Court.”

Reaffirming this Court's position elaborated in *Snetter-Carey v John, id* giving meaning to Section 51.9 of the statute being analogous to the present case, we are persuaded to uphold and grant the movant's application to dismiss this appeal for the reasons stated herein.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss appeal is granted, and the appeal is denied. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and give effect to this Opinion. Costs ruled against the respondent. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor M. Wilkins Wright of Wright & Associate appeared for the movant. Counsellor Eugene L. Massaquoi appeared for the respondent.