

L. P. M. C., by and thru its Managing Director or Legal Representative, Appellant, v. **E.C. UKATU & SONS TRADING STORE SKT**, by and thru its General Manager, JAMES UKATU, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Heard: December 8, 1988. Decided: December 29, 1988.

1. Counsellors who fail to appear on assignment of hearing before the Supreme Court are subject to disciplinary penalties.
2. The power to hold a member of the bar in contempt is an inherent power of the Supreme Court of Liberia and cannot be questioned by any entity.
3. The Supreme Court does not have to answer questions from any source as to what it considers contemptuous.
4. It is the duty of lawyers to maintain the respect due courts and judicial officers; any breach of that duty constitutes contempt.
5. Deceit by a lawyer that amounts to an abuse of the functions of his office may be punished as contempt.
6. Where the conduct of a lawyer, whether in or out of court, is disrespectful to a judge, such conduct constitutes contempt; if the conduct is in court and in connection with the hearing of a case, it is direct contempt; and if it is outside the court, it is constructive contempt.
7. An appeal may be dismissed by the trial court on motion for failure to file a bill of exceptions within the statutory time.
8. An appeal may be dismissed by the appellate court after the filing of exceptions, for failure of appellant to appear on the hearing of the appeal, failure to file an appeal bond or to serve the notice of completion of appeal.
9. Where a plaintiff fails to prosecute his cause, a defendant may move for dismissal of an action or claim against him.

Appellee is a general trader, trading in produce such as coffee and cocoa which he stores, with other merchandise, in his warehouse. Appellant, the national coffee and cocoa producer and marketer, obtained a search warrant to search appellee's premises. The sheriff did not serve the warrant on his first attempt because appellee's general manager was not on the premises. The next day, appellant carried armed soldiers and its security officers to appellee's warehouse, broke down the doors and took away a quantity of produce. Appellee sued for

damages and was awarded Thirty-Eight Thousand Four Hundred and Fifty Dollars (\$38,400.00) in specific and general damages. Appellant appealed to the Supreme Court. When the case was called for hearing, neither appellant nor its counsel was present. The Court found that appellant had failed to prosecute its case, and determined that the acts of appellant's counsel were contemptuous. The Court dismissed the appeal, affirmed the judgment of the trial court and levy a fine against appellant's lawyers. Motion to dismiss appeal granted and ruling of lower court affirmed with modifications.

Counsel for appellant failed to appear. Francis Y S. Garlawolo appeared for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

The appellee, E. C. Ukatu and Sons Trading Store is a corporate entity engaged in general merchandise, which includes the purchase and sale of cocoa and coffee within the Republic of Liberia. Consistent with this responsibility, appellee stored sundry produce, cocoa and coffee in its warehouse, situated in Sergeant Kollie Town, Bong County, for commercial purposes. The appellant prayed for a search warrant on October 9, 1987, before the Ninth Judicial Circuit Court. The warrant having been issued was placed in the hands of the deputy sheriff for service on the appellee. The sheriff took the search warrant to appellee but the general manager, Mr. Ukatu, was absent. Therefore same was not served. Instead, the sheriff returned without effecting the search.

However, on the following day, when the sheriff returned to serve the precept, it was discovered that appellant had carried armed soldiers together with its own security officers, who violently broke the warehouse doors, took and carried away the following items at the value indicated below:

- a) 38 bags cocoa net lbs. 6,587 x 50 - \$ 3,343.50
- b) 80 bags clean coffee net lbs. 1,8045 x 70 - \$13,331.50
- c) 37 bags French Coffee net lbs 4,625 x 35 - 1,618.75
- d) 5 bags Liberian clean coffee net lbs. 625 x 25 - 156.25

GRAND TOTAL: \$18,450.00

The appellant filed a responsive pleading and stated in count three (3) that its employee, Menjor Gilbert, carried the produce to appellee's compound. The said count is hereby quoted verbatim:

"Further to count two, defendant says that Menjor Gilbert delivered a batch of coffee to defendant's warehouse, allegedly from plaintiffs, claiming to have been taken under the search warrant and that when invited by defendant to identify, evaluate, weigh and price the said coffee, plaintiff disclaimed ownership thereto in the presence of witnesses, including a police officer. The batch of coffee is still in defendant's warehouse, forming no part of defendant's inventory. Since plaintiff failed to take the proper steps, at the appropriate time,

to secure his interest, he cannot now claim the alleged damages against defendant. Count two must also be dismissed, as must the entire suit."

Both plaintiff and defendant with their witnesses took the stand, testified and rested evidence. Thereafter, the judge rendered judgment, awarding unto appellee the sum of Thirty-Eight Thousand Four Hundred Fifty (\$38,450,00) Dollars, that is, Eighteen Thousand Four Hundred Fifty (\$18,450,00) Dollars as specific damages and twenty thousand (\$20,000.00) dollars as general damages. To this judgment, the defendant/appellant excepted and appealed to the Supreme Court of Liberia.

However, at the call of the said case, by the Honourable Supreme Court of Liberia, neither appellant nor its counsel appeared, in spite of the fact that the marshal of the Honourable Supreme Court of Liberia made several attempts to have the said notice of assignment served on the counsel and management, respectively. The returns of the marshal states that.

"On the 16th day of November, A.D. 1988, the within notice of assignment was served on counsellor Francis Y. S. Galawolu, counsel for the plaintiff, who signed and received his copy; counsels for the defendant, counsellors Clarence E. Harmon and Moses K. White did not sign and stated no grounds for their refusal to sign said notice of assignment. I now make this as my official returns."

Because of the failure of the appellant or its counsel to appear, without giving reasons for their inability to appear, upon the call of the case, the appellee, Ukatu & Sons Trading Store, through its counsel, counsellor Francis Y .S. Garlawolo, motioned the Court to hold the lawyers of the appellant, and the appellant in contempt for their refusal to sign for the notice of assignment, and for deliberately refusing to appear in this Court to argue their case. The appellee further contended that the Court should dismiss the entire cause on grounds that appellant has failed to prosecute his case by electing not to appear for the hearing of the said cause of action.

From a careful review of the evidence adduced at trial in the instant case, this Court without any reservation whatsoever is of the conclusive opinion that the attitude of counsels for the appellant, LPMC, counsellors Clarence E. Harmon and Moses K. White, is contemptuous. It is contemptuous because the said counsellors, being counsellors of the bar of the Honourable Supreme Court of Liberia, are under an obligation, by virtue of their oath, to exhibit good behavior towards this Honourable Court at all times. This Court held in the case *Davies v. Liberian American Swedish Minerals Company (LAMCO)*, 14 LLR 535 (1961), that "Counsellors who fail to appear on assignment of hearing of an appeal before the Supreme Court are subject to disciplinary penalties." Moreover, this Honourable Court has held in the case *In Re C. Abayomi Cassell, Contempt Proceedings*, 14 LLR 391 (1961), that:

"The power to hold a member of the bar in contempt is an inherent power of the Supreme Court of Liberia, and cannot be questioned by any international organization or foreign

state, nor does the Court have to answer questions from any source as to what it considers contemptuous. It is peculiarly the duty of a counsellor-at-law to maintain the respect due the courts and judicial officers; and any breach of this duty constitutes contempt. Deceit by a counsellor-at law amounting to an abuse of the functions of his office may be punished as contempt. Where the conduct of a counsellor-at-law, whether in or out of court, is disrespectful to a judge, such conduct constitutes contempt. If it be in court and in connection with the hearing of a case, it is direct contempt; and if it be outside the court, it is constructive contempt."

In the instant case, the counsel for appellant, being fully aware of their responsibilities towards this Honourable Court, has refused to sign for the notice of assignment, and did not attempt to give any reason for their refusal to sign for the said notice of assignment. Additionally, without any justification whatsoever, they failed to appear in court.

Wherefore, and in view of the foregoing, counsels for appellant, counsellors Clarence E. Harmon and Moses K. White, are hereby held in contempt and fined the sum of One Hundred (\$100.00) Dollars each.

As to the motion to dismiss the entire cause of action, the Civil Procedure Law provides:

"An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute." Civil Procedure Law, Rev. Code 1:51.16.

Based upon the above quoted statute and principles of law, and the circumstances in the instant case, the motion of appellee is hereby granted to all its intents and purposes, and the appeal is hereby dismissed.

The judgment of the court below awarding appellee the sum of Thirty-Eight Thousand Four Hundred Fifty (\$38, 450, 00) Dollars, that is, Eighteen Thousand Four Hundred Fifty (\$18, 450, 00) Dollars as specific damages and Twenty Thousand (\$20,000.00) Dollars as general damages, is hereby confirmed and affirmed.

The Clerk of this Court is hereby ordered to inform the court below of this judgment. And it is hereby so ordered.

Motion granted; appeal dismissed.