

Moore v Wilson [2012] LRSC 7 (5 July 2012)

Ramsee Moore of the City of Monrovia, Montserrado County, Republic of Liberia MOVANT
Versus **Mary K. Wilson** also of the City of Monrovia, Republic of Liberia
RESPONDENT

MOTION TO DISMISS APPEAL

Argued: October 31, 2011 & March 13, 2012 Decided: July 5, 2012

Mr. Justice Ja'neh Delivered the Opinion of the Court.

His Honor, Peter W. Gbeneweleh, presiding by assignment over the March Term, 2009 of the Sixth Judicial Circuit of Montserrado County, and sitting both as Judge and Jury in a Damages Suit for Wrong, on May 25, 2009, entered final judgment, concluding as follows:

Wherefore and in view of the foregoing, it is the ruling of this Honorable Court, that the Defendant is hereby adjudged liable. The Plaintiff is hereby awarded the following:

- (a) USD26,000.00 as costs of his damaged vehicle
- (b) USD6,000.00 representing car rental services totalling the sum of USD32,000.00 as Special Damages
- (c) USD5,000.00 as General Damages amounting to a grand total of USD37,000.00 United States Dollars.

The Court's appointed counsel excepted to the ruling and announced an appeal on behalf of the Respondent/ Appellant, Mary K. Wilson, to the Honorable Supreme Court of Liberia, sitting in its October Term A.D. 2009. The appeal was granted by the court as a matter of law.

But on June 15, 2011, Movant/ Appellee, Ramsee Moore, in a three (3) – count motion, moved the Supreme Court to dismiss the appeal, and enumerated therefor the following factual and legal grounds to wit:

1. That Movant is the plaintiff in the trial court which is the Sixth Judicial Circuit, Montserrado County, and Republic of Liberia.
2. That Movant says that the case was tried without a jury and judgment of LIABILITY was entered in favor of the plaintiff and Court's appointed counsel for the Defendant/Appellant excepted and announced an appeal to the Supreme Court sitting in its October Term, A.D. 2009. Your Honors are respectfully requested to take judicial notice of the minutes of court hereto attached and marked as EXHIBIT M/1 IN BULK to form cogent part of this Motion.

3. That movant says that the jurisdictional steps provided for an appeal to be effective before this Honorable Court are found under chapter (51), specifically section (51.4) of the statute as follows: The following acts shall be necessary for the completion of an appeal: (a) Announcement of the taking of an appeal; (b) Filing of the bill of exceptions; (c) Filing of an appeal bond and (d) Service and filing of notice of completion of appeal.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal. Movant submits that the Respondent/appellant failed and neglected to comply with the statute, specifically the filing of an appeal bond and the service and filing of notice of completion of the appeal (or which a certificate was obtained from the trial Court a copy of which is hereto attached and marked EXHIBIT M/2 to form a cogent part of movant's motion; hence the purported appeal is a fit subject for dismissal and movant so prays. [Emphasis Supplied].

The Movant attached a Clerk's Certificate, dated December 10, A.D. 2009, in support of the grave averments of failure as contained in count three of Movant's motion, herein above quoted. We remark here that the certificate appeared to have been duly signed by Ellen Hall, Clerk of Court, Sixth Judicial Circuit, Montserrado County, Republic of Liberia. We shall return to examine this Certificate later in this Opinion.

But resisting the Motion to Dismiss the Appeal, the Respondent/ Appellant has disagreed with the substantive arguments as set forth in Movant/ Appellee's motion to dismiss the appeal. Respondent Mary K. Wilson in a three count returns has contended as hereunder stated to wit:

(1) That Respondent says that counts one (1) and two (2) of the Motion and the averments therein contained present no controversy.

(2) As to count three (3) of said Motion and its averments, same also present no contradiction.

(3) But Respondent says and submits that because of what is contained in the Motion and counts one (1) and Two (2) of these Returns, the Motion as placed before Your Honors must be dismissed and vacated because by the face, text and content of said Motion, this matter is not properly before you.

In other words, you have not acquired jurisdiction since the jurisdictional steps as claimed by Movant have not been taken.

On the strength of the contentions laid out in the Returns, Counsel for Respondent/ Appellant, Counselor Frederick Doe Cherue, has respectfully prayed this Court to dismiss and deny the Motion to Dismiss the Appeal.

The substantive arguments raised in the motion to dismiss, the returns thereto as well as those contained in their respective brief generate the following dispositive questions:

(1) Does the failure of an appellant, to comply with the statutory steps of perfecting an appeal, as the respondent in this case, warrant dismissal of the appeal?

(2) Can the Supreme Court properly entertain a Motion to dismiss an appeal where the jurisdictional steps of perfection of appeal had not been strictly followed?

As to the first issue: whether the appeal shall be dismissed as a matter of law where an appellant fails to comply with the mandatory steps required by statute in respect to perfecting an appeal, we answer in the affirmative.

Section 51.4 of LLCLR (Liberian Code of Laws Revised) title I (Civil Procedure Law) (1973) is precise in its requirement that four actions must be undertaken by a party litigant appealing a decision to the Supreme Court. According to said section 51.4, those four statutory actions *are*:

(a) Announcement of the taking of an appeal; (b) Filing of the bill of exceptions; (c) Filing of an appeal bond and (d) Service and filing of notice of completion of appeal

The aforementioned statutory provisions stringently impose a duty on the court of justice to dismiss an appeal should the appellant fail to take any of the four stated actions. The mandatory imposition of the statute is manifest in the statutory expression: "Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal. [Emphasis supplied].

We understand the quoted provision to mean that where an appellant has neglected to properly and timely comply with any of the four imposed statutory duties required for perfecting the appeal process, the court shall dismiss said matter of appeal as a matter of law.

Reverting to the records certified before us, we note that there is no denial that the court's appointed lawyer, Counselor D. Milton Taylor, excepted to, and announced an appeal to the adverse ruling. This means that the first statutory requirement, that is to say "Announcement of the taking of an appeal, was fully satisfied in the instant case as Counselor Taylor in open court did announce an appeal from Judge Gbeneweleh's final ruling of May 25, 2009.

Similarly, there is no incongruity that the Respondent/ Appellant filed the Bill of Exceptions within the ten (10) day period provided by statute. The record before us evidences the fact that Respondent/ Appellant tendered the Bill of Exceptions

on June 4, 2009, and that Judge Gbeneweleh approved it on the same date, June 4, 2009.

But hereafter, the records are copiously clear that the Appellant/Respondent mournfully failed to obey the other two remaining statutory dictates; that is to say, the Appellant/Respondent blatantly ignored the mandatory Filing of an appeal bond" and also failed to conform to the legal requirement of Service and filing of notice of completion of appeal. The Clerk's Certificate, dated December 10, 2009, indicates that the Respondent/ Appellant failed to file [the] notice of completion of appeal up to and including the issuance of this Clerk's Certificate.

We quote the said Certificate substantially as follows:

This is to certify that from a careful perusal of the records of this Honorable Court, it is observed that the Defendant in the above entitled cause of action has failed to file in this Court her notice of completion of appeal in the above entitled cause of action, up to and including the issuance of this Clerk's Certificate. Hence this Clerk's Certificate.

It is therefore safe to say that after the Bill of Exceptions was approved, the Respondent/ Appellant took no further steps to obtain and file the Appeal Bond and also to serve and file the notice of completion of appeal as fixed by statute. In other words, the Respondent/ Appellant following approval and filing of the Bill of Exceptions in the case at bar filed neither the Appeal Bond in keeping with section 51.8, nor caused the service and filing of the Notice of Completion of the Appeal as required under section 51.9 of the Civil Procedure Law.

Under these facts and circumstances, Respondent/ Appellant is incontestably in breach of the two mandatory requirements necessary for the perfection of an appeal in this jurisdiction.

It is important to state here that in the case before us, Respondent/ Appellant has conceded its failure to file the Appeal Bond, and its neglect to cause the service on the Movant/ Appellee of the Notice of Completion of the Appeal and to file said Notice with the clerk of court as mandated by statute.

Nevertheless, Appellant/Respondent has robustly questioned the jurisdiction of the Supreme Court substantially arguing that where there was failure to comply with the other statutory steps, particularly the service on the appellee of the notice of completion of the appeal and the filing of said notice with the clerk of the trial court, as obtained in the current case, the Supreme Court, under such circumstances, has neither acquired jurisdiction over the appellee nor on the cause. According to Appellant/Respondent, in every case where there was no timely and proper service of notice of completion of the appeal, the Supreme Court is without jurisdiction; that without jurisdiction, the overriding opinions of legal

authorities hold firmly that this Court, or any court of law has no authority to render a valid and enforceable judgment. It is settled law that any act of a court beyond the jurisdiction conferred upon it by law is null and void. *Camer Liberia Corporation v. A. H. Basma and Sons (Liberia) Incorporated*, 32 LLR 100, 112 (1984).

That having not acquired jurisdiction, to place a Motion to dismiss an appeal before the Supreme Court, as Movant/ Appellee in the instant case has elected to do, would be improper. Hence the motion to dismiss the appeal, not being properly placed before the Supreme Court, must be vacated and dismissed forthwith.

There are two related issues to be considered here: Firstly, at what stage in the instant case did the trial court lose jurisdiction over the cause and the parties? In the absence of service and filing of the Notice of Completion of the Appeal, does the Supreme acquire jurisdiction to entertain a motion to dismiss an appeal where the Bill of Exceptions was timely filed and approved by the trial judge?

In *Brownell v. Brownell*, 5 LLR 67, 79 (1936), a matter adjudicated more than seventy years ago in 1936, Mr. Justice Dossen, speaking for this Court held that the service of notice of completion of appeal confers jurisdiction on the Supreme Court. So too this Court reiterated in *The management of International Trust Company v. Thomas Jarjay, et al.*, 33 LLR 63, 69 (1985) that it is the service of the notice of completion of appeal that confers jurisdiction of the Supreme Court over an appeal. In *Jarboe v. Jarboe*, 24 LLR 352, 357 (1975), the Supreme Court of Liberia in an opinion by Mr. Justice Henries held that: It is the service of the notice of completion of appeal which alone gives the appellate court jurisdiction over the matter. This long held principle is enunciated in *Morris v. Republic*, 4 LLR 125, 126 (1934); *Brownell v. Brownell*, 5 L LR, 76, 79 (1936); *Witherspoon and Greene v. Clarke et al* 14 L LR 194, 197 (1960).

It is also settled law in this jurisdiction that where a party fails to comply with the mandatory requirements as set forth by statutes for completion of appeal, the appellee party in such case has not been brought under the jurisdiction of the Supreme Court: *Lamco J. V. Operating Company et al v. Doe-Kpar*, 32 LLR 458, 462 (1984).

It would seem that Respondent/ Appellant, relying on this jurisdictional issue, has contended that in the face of Appellant's failure to comply with the mandatory appeal step of service and filing of the notice of completion of the appeal, which is absolutely necessary for conferral of jurisdiction on the Supreme Court, this Court on account of this non service did not acquire jurisdiction over the parties. It is Respondent/ Appellant's argument that Movant/ Appellee's motion seeking to dismiss the appeal was therefore improperly filed at the Supreme Court. The Supreme Court, not having acquired jurisdiction over the case and the parties, as contended by the Respondent/ Appellant, the Supreme

Court is without any scintilla of authority to entertain a motion to dismiss the appeal.

This poses the natural question as to where should the motion to dismiss the appeal be properly filed given the facts and circumstances of this case. It must be remembered here that this Court has held in an array of Opinions that the trial court loses jurisdiction over the case after the filing and approval of the Bill of Exceptions: *Knuckles v. The Trading and Investment Bank, Ltd*, 40 LLR 49, 54 (2000); *Ahmar v. Gbortoe*, 42 LLR 132,143 (2004); *Kanneh v. Manley*, 41 LLR 25, 31 (2002); *Webster et al v. Freeman*, 16 LLR 44 (1964).

In the case before us, Respondent/Appellant has not denied that after the filing and approval of the Bill of Exceptions, Respondent/Appellant neglected and failed to file an Appeal Bond and to serve and file the Notice of Completion of the Appeal.

But in a three (3) count returns, Respondent/ Appellant nonetheless has resisted Movants/ Appellees' motion on the primary ground that the motion to dismiss the appeal is wrongly venued. Respondent/ Appellant, both in the resistance and its brief filed and argued before this Court, has argued forcefully that Movants/ Appellees, having alleged that Respondent/ Appellant failed to file Appeal Bond as well the service and filing of the Notice of Completion of the Appeal, a motion to dismiss the appeal by operation of law is exclusively cognizable before the trial court. This being the law controlling, according to Respondent/ Appellant's contention, that the Supreme Court is precluded from entertaining the motion for want of jurisdiction under the circumstance.

We cannot accept Respondent/ Appellant's argument that the Motion to Dismiss the Appeal is improperly venued. It is the law in this jurisdiction that the trial court, upon the approval of the Bill of Exceptions, loses jurisdiction over the subject matter of the appeal and upon motion, may dismiss the appeal. Section 51.16, I LCLR (Liberian Code of Laws Revised) title I, Civil Procedure Law, (1973), 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.

In the case *Firestone Plantations Company v. Kollie*, 42 LLR, 159, 168(2004), Mr. Chief Justice Cooper, speaking for a unanimous Court, adequately addressed the issue before us when he said:

If a party does not file a bill of exceptions within ten days after the rendering of a final judgment and the announcement of an appeal from a trial court, the trial court may dismiss the appeal and enforce the judgment.

While it is the law in this jurisdiction that the approval of the Bill of Exceptions divests the trial court of jurisdiction, we construe this to refer to prohibition placed

on the trial court in respect of execution of the judgment rendered and appealed and it assumes that the Bill of Exceptions was approved and filed within the time allowed by statute. And where the Bill of Exceptions was duly approved and filed within the time fixed by statute, there can be no return by the trial court to enforce the judgment entered and appealed without the appellate intervention of the Supreme Court. This intervention can be made by the Supreme Court when said Court has been properly moved by a party in interest.

We desire here to distinguish the recent case from *Husseini et al v. Kaydea et al.*, decided at this very forum of the Supreme Court. In that case, we denied Movants/ Appellees' motion to dismiss the appeal, holding, as advocated by the Movants/ Appellees in that case, that the motion should have been filed in the trial court. But that case is not analogous to the current case.

In that case, the Respondent/ Appellant's Bill of Exceptions was approved and filed days beyond the statutory period. So that is clearly unlike the recent case where the Bill of Exceptions was approved and filed within the time allowed by statute. Our statute is clear that where the Bill of Exceptions is filed beyond the statutory time, which in effect amounts to non approval and filing of the Bill of Exceptions in the eye of the law, the trial court is not divested but retains jurisdiction over the parties and the case to dismiss the appeal. However, where the Bill of Exceptions is filed within the statutory time, as in the instant case, it is only the Supreme Court that has jurisdiction and the authority to entertain the motion to dismiss the appeal. The jurisdiction which the trial court retains when a Bill of Exception is approved and filed within statutory time is solely to facilitate the completion of the appeal and not to dismiss the appeal.

Hence, we do not disagree that the service and filing of the Notice of Completion of the Appeal confers jurisdiction on the Supreme Court. We however construe this to mean that the Supreme Court is without jurisdiction to entertain matters on the merits of the appeal and to render judgment thereon but upon strict compliance with all the prerequisites of the appeal process, particularly, the proper service and filing of the Notice of Completion of the Appeal. Thus, while the Supreme Court would be without jurisdiction to entertain the case on the merits, on account of improper service and filing of the Notice of Completion of the Appeal, the statute vests in the Supreme Court jurisdiction to dismiss the appeal and thereby not entertain the merits of the appeal.

Consequently we are unable to agree with the RESPONDENT /APPELLANT who has urged this court not to give any credence to the motion to dismiss the appeal for reason that said motion has been improperly venued. The trial judge having approved the Bill Exceptions within the time allowed by statute, not only did the trial court lose jurisdiction over the matter of the appeal, but thereafter was legally impotent to proceed to any further to enforce the judgment appealed without being

authorized to do so by the Supreme Court. Movant/ Appellee's motion is therefore granted and the appeal is hereby dismissed.

THE CLERK OF THIS COURT is hereby ordered to send a mandate to the lower Court to give effect to this judgment. AND IT IS HEREBY SO ORDERED.

Counselor Theophilus Gould of Kemp & Associates Legal & Consultancy Chambers appeared for appellant while Counselor Frederick D. Cherue appeared for appellee.