

The Intestate Estate of Diana Coleman-Cooper v. the Estate of the Late Johnson
[2017] LRSC 3 (24 February, 2017)

The Intestate Estate of Diana Coleman Cooper by and thru its Administratrix, Sophie E. Brewer represented by her Attorney-in-Fact, Cllr. Stephen B. Dunbar, Jr. of the City Of Monrovia, Liberia (MOVANT/APPELLEE) V. The Estate of Bob Johnson, by and thru its Administrator Paul Johnson of the City of Monrovia, Liberia
 (PLAINTIFF/APPELLANT)

In the Honorable Supreme Court of the Republic of Liberia Sitting in its October Term,
 A.D. 2016

MOTION TO DISMISS APPEAL

Heard: October 24, 2016

Decided: February 24, 2017

Appeal from the Civil Law Court For the Sixth Judicial Circuit, Montserrado County,
 Republic of Liberia.

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

His Honour Yussif D. Kaba, Resident Circuit Judge, Sixth Judicial Circuit Court for Montserrado County, on July 30, A.D. 2015, entered two rulings granting (1) the motion filed by the herein movant/defendant to strike the reply filed by the Estate of Bob Johnson, represented by its administrator, Paul Johnson, the plaintiff below and respondent herein, and (2) granting the herein movant's motion to also dismiss respondent/plaintiff's ejectment cause.

Counsel appointed by the court due to the absence of the party plaintiff's lawyer, excepted to these rulings and announced an appeal to the Honourable Supreme Court.

More than four (4) months thereafter, the party appellee, the Intestate Estate of Diana Coleman Cooper by and thru its Administratrix, Sophie E. Brewer, also represented by her attorney-in-fact, Counsellor Stephen B. Dunbar, Jr. movant in these proceedings, on December 18, A.D. 2015, filed an eleventh-count motion before this Court to dismiss the appeal. The motion prayed the Supreme Court to dismiss the appellant's appeal for its failure to comply with the governing mandatory requirements of the appeal process in this jurisdiction.

For the benefit of this Opinion, we herewith reproduce the movant's motion to dismiss the appeal:

"1. That on April 6, 2015, Plaintiff Paul Johnson filed an Action of Ejectment in the Sixth Judicial Circuit, Civil Law Court for Montserrado County, against the Estate of Diana Coleman Cooper by and thru its Administratrix, Sophie E. Brewer, represented by her Attorney-in-Fact, Cllr. Stephen B. Dunbar, Jr. claiming ownership of a parcel of land lying and situated on 15th Street and Russell Avenue. The Writ of Summons and Complaint were served on the 8th day of April, 2015.

2. That further to Count One (1) above, Movant/Defendant avers that on April 17, 2015, Defendant/Movant filed and served an Answer and Motion to Dismiss the Complaint in which Movant/Defendant denied plaintiff's allegation of ownership of the property and requesting the Court to deny and dismiss the Complaint for lack of legal capacity of Paul Johnson to file the action in his personal capacity as the property is alleged to belong to the Estate of the late Bob Johnson; that the Complaint should have legally been filed by the Estate of Bob Johnson by and thru the Administrator of the said Estate, legally appointed by the Probate Court.

3. That the Answer was filed and served on the Plaintiff on May 25, 2015. However, the Reply was not served on Movant/Defendant until June 5, 2015, eleven days after the service of the Answer, and one day beyond the statutory time for service of a responsive pleading.

4. That on June 18, 2015 Movant/Defendant filed a Motion to Strike the Reply for late service together with a Motion to Dismiss the Complaint.

5. The Lower Court heard the Motion to Strike the Reply and to Dismiss the Complaint separately. Thereafter, the Lower Court rendered a ruling on July 30, 2015, granting both the Motion to Strike the Reply and the Motion to Dismiss the Ejectment Action. Court is requested to take judicial notice of its records in these proceedings.

6. That Plaintiff excepted to the ruling and announced an appeal to the Supreme Court, sitting in its October Term 2015. The appeal was granted. The Minutes of the Final Ruling were served on Plaintiff on the 18th day of August 2015. Plaintiff filed its Bill of Exceptions on August 28, 2015.

7. Pursuant to the prevailing law in this jurisdiction, the mandatory steps for completion of an appeal are announcement of taking of an appeal; filing of the bill of exceptions within ten days after the rendition of the judgment; filing of an appeal bond within sixty days after the rendition of the judgment; and service and filing of notice of completion of the appeal.

8. That other than the Bill of Exceptions that was filed by Plaintiff/Appellant, no other appeal process was initiated to complete the appeal as is required by Law. In light of the fact that the Final Ruling was served on Plaintiff/Appellant on the 18th day of August, 2015, Plaintiff/Appellant was required to have completed the appeal process on or before the 17th day of October 2015.

9. Further to Count eight (8) above, Movant says that up to and including the date of filing of this Motion to Dismiss Appeal, no Appeal Bond has been filed and no Notice of Completion of Appeal has been served and filed on Movant/Defendant. Copy of a Clerk's Certificate in substantiation that no bond or notice of completion of appeal has been filed is marked and attached as Exhibit "M/1" to form a cogent part of this Motion to Dismiss plaintiff's Appeal.

10. That this [Supreme] Court has held in numerous opinions that the failure of a party to fulfill any of the mandatory requirements for the completion of an appeal within statutory time is a ground for the dismissal of the appeal. *Moniger Seekey V. National Port Authority*, 42LLR, page 520 (2005).

11. That in a recent opinion in the case, *Housseini and Housseini vs. Kaydea*, Supreme Court Opinion, March Term 2012, decided July 5, 2012, this Court held that the Supreme Court is the proper venue to file a Motion to Dismiss an Appeal after the approval of the Bill of Exceptions by the Lower Court.

WHEREFORE, and in view of the foregoing legal and factual reasons, Movant prays and moves Your Honors to grant this Motion to Dismiss Plaintiff/Appellant's Appeal announced on July 30, 2015 and, by so doing, to dismiss Plaintiff/Appellant's Appeal, rule Plaintiff/Appellant to pay all costs of these proceedings, and grant to Movant such other and further relief as Your Honors deem legal, just and equitable."

In this jurisdiction, the requirements for perfection of an appeal are statutorily set. It is mandatory that those requirements be strictly complied with at all times. Civil Procedure Law, Rev. Code 1:51.4, relevant and controlling in this regard, provides thus:

"The following acts shall be necessary for the completion of an appeal:

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

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal.”

This Court, in interpreting the appeal statute, has articulated in numerous Opinions that non-compliance with any of the prescribed steps of the appeal and within the time allowed by statute is ground for dismissal of the thereof. Said differently, the authorizing appeal statute in this jurisdiction mandates the strict dismissal of an appeal where there is want of compliance with the law. [Moniger Seekey V. National Port Authority, 42 LLR, 520 (2005); Sarweh et al. v. National Port Authority, 42 LLR 436, 444 (2005). We reaffirm this principle of law.

We digress momentarily to observe that the notice of assignment of this case was returned duly served on counsels for the parties in these proceedings. We however note that the lawyer for the respondent/appellant neglected and failed to either file returns to the motion or to appear for hearing. We take it that the party respondent was no longer interested in further pursuit of the cause. This Court must once again cease this opportunity express its displeasure with conduct of lawyers are in the constant of filing bill of exceptions simply in order to remove the case from the trial court’s jurisdiction and to hold disposition of the cause in abeyance. It was precisely for this reason that this Court decided to open the records and dispose of the case.

A review of the records certified to this Court clearly demonstrates that as of July 30, 2015, when the Sixth Judicial Circuit Court for Montserrado County rendered its judgment, from which respondent/appellant appealed, and the service of said rulings on the respondent/appellant on August 18, A.D. 2015, a period of over one hundred (100) days has elapsed without the appellant completing the mandatory steps listed in the statute on appeal. As stated in count eight (8) of the motion to dismiss, an allegation not denied and therefore deemed admitted, a copy of the trial court’s final judgment was duly served on the respondent/appellant on August 18, A.D. 2015. Following receipt thereof, the respondent/appellant, consistent with law, filed its bill of exceptions within the ten (10) day statutory period. It was mandatory that the respondent/appellant completed the appeal process by filing the appeal bond and the notice of completion of the appeal on or before October 17, A.D. 2015.

However, the respondent/appellant has failed and neglected to comply with the remaining requirements. We see in the transcribed records to this Court a Clerk’s Certificate dated 19th day of October A.D. 2015, the full text of which is as follows:

“THIS IS TO CERTIFY THAT AFTER A CAREFUL PERUSAL OF THE RECORDS OF THIS HONORABLE COURT, IT IS OBSERVED THAT THE ABOVE NAME APPELLANT/RESPONDENT HAS FAILED TO FILE IN THIS COURT HIS

APPELLANT'S BOND AND NOTICE OF COMPLETION OF APPEAL SINCE THE ANNOUNCEMENT [OF ITS APPEAL] ON JULY 30, 2015, AND SERVICE OF THE RULING ON AUGUST 18, 2015. HENCE, THIS CLERK'S CERTIFICATE.

GIVEN UNDER MY HANDS AND SEAL OF COURT THIS 19TH DAY OF OCTOBER A.D. 2015, AT THE HOUR OF 2:00 P.M.

ELLEN HALL/CLERK OF COURT

[signature]

ATTESTED BY:

Nancy Washington

File Clerk/Civil Law Court

Montserrado County, R.L.

Emma Washington

Asst. File Clerk, Civil Law Court

Montserrado County, R.L.”

The Clerk's Certificate, herein above reproduced, stands as unassailable evidence of respondent/appellant's neglect and failure to perfect its appeal. As a consequence of this irremediable defect, the movant/appellee is before this Honorable Supreme Court seeking not only the dismissal of the respondent/appellant's appeal but also the affirmance by this Court of last resort of the July 30, 2015 judgment of the trial court dismissing respondent/appellant/plaintiff's ejectment cause.

We concur with the movant that this motion is before the proper judicial forum. We reaffirm the long held principle of law that the filing of the bill of exceptions within the time prescribed by statute and the approval thereof by the trial judge removes the case to the appellate court. In *Karpeh and Nagbe v. Fisher*, this Court reiterated that “[a]n appeal will be dismissed on motion when, as in this case, only a bill of exception has been filed and no other requirements of the appellate process are complied with by the appellant.” 23 LLR 91, 96 (1974); *Housseini and Housseini vs. Kaydea*, Supreme Court Opinion, March Term 2012, decided July 5, 2012.

Wherefore, the motion filed by the movant/appellee/defendant, being sound in law, is hereby granted and the appeal dismissed. Accordingly, the final judgment entered on July 30, A.D. 2015 by the Sixth Judicial Circuit Court for Montserrado County, dismissing respondent/plaintiff's ejectment cause is hereby affirmed.

The Clerk of this Court is hereby ordered to send a mandate to the judge presiding in the court below to the effect of this Judgment. **AND IT IS SO ORDERED.**

MOTION GRANTED.