IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2018

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR. .....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH .....ASSOCIATE 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

The Intestate Estate of the late Thomas G. Collins, Sr., represented by Thomas G. Collins, Jr., of the City of Monrovia, Liberia.....MOVANT	)	
Versus	)	MOTION TO DISMISS APPEAL
Archie, Jerry and all those acting under their control of the city of Monrovia, Liberia.....RESPONDENTS	)	
GROWING OUT OF THE CASE:	)	
The Intestate Estate of the late Thomas G. Collins, Sr., represented by Thomas G. Collins, Jr., of the City of Monrovia, Liberia.....PLAINTIFF	)	
Versus	)	ACTION EJECTMENT
Archie, Jerry and all those acting under their control, of the city of Monrovia, Liberia.....DEFENDANTS	)	

Heard: October 17, 2018 Decided: December 20, 2018

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT.

The appeal statute in this jurisdiction consists of certain mandatory steps which must be complied with. These mandatory steps cannot be compromised by the courts, including the Supreme Court.

The controversy presented in the motion to dismiss the appeal, centers around the application of the law with regards to the completion of the appeal process. The movant, the Intestate Estate of Thomas G. Collins, Sr., has asked this Court to apply the strict mandate of the law on appeal and adjudge the respondents, Archie, Jerry, et al., liable for their failure to comply with the law, thereby dismissing their appeal. It is the contention of the movant that the service and filing of the notice of completion

of the appeal was filed outside of the time prescribed by law. The counsel for the respondents, although acknowledging that he had filed his notice of completion of the appeal outside of the sixty (60) day statutory period from the date of the rendition of final judgment, he contends that the said failure is excusable by law since he only received the ruling three (3) days following the date of its delivery. According to the counsel for the respondents, the statutory provision relied on by the movant is inapplicable due to the peculiar facts and circumstances surrounding his inability to comply with the provision of the appeal statute as regards the time for the service and filing of the notice of completion of the appeal, that is, the counting of the sixty day period commences as of the date he actually received the ruling as against the date it was delivered by the trial judge.

Therefore, the singular question determinative of this matter is whether or not under the circumstances as stated by the counsel for the respondents, the motion to dismiss the appeal should be denied.

A summary of the facts shows that the movant, the Intestate Estate of Thomas G. Collins, Sr., filed an action of ejectment against Archie, Jerry, et. al., in the Sixth Judicial Circuit, Montserrado County; that following the conduct of a regular trial consistent with due process of law, the jury returned a unanimous verdict of liable against the defendants, now respondents, and having denied a motion for new trial filed by the respondents, the trial judge entered final judgment on April 2, 2018. At the time of the rendition of the final judgment, the counsel for the respondents was absent, thus the trial court, in consonance with the law and precedent controlling, appointed Cllr. James Kumeh to take the final judgment on behalf of the respondents' counsel. There is no dispute as to the receipt of said final judgment by the respondents' counsel

A review of the records certified to this Court shows that both counsels for the parties signed for the final judgment on a copy of the minutes of the trial court by appending their respective signatures thereon and placed dates against said signatures. A perusal of the said copy of the minutes of the trial court shows that the counsel for the movant signed for the final judgment on the date of its rendition, that is, on April 2, 2018, while the counsel for the respondents also signed for the ruling, which he does not dispute, except that the date appearing against his name seem to have been altered. The counsel however argued that the date was April 5, 2018, three days after

the rendition of the trial court's final judgment. The records also show that the counsel for the respondents thereafter, filed his bill of exceptions on April 12, 2018, appeal bond on May 24, 2018, and service and filing of the notice of completion of appeal on June 5, 2018.

It is the service and filing of the notice of completion of appeal on June 5, 2018, that the movant argues falls outside of the sixty (60) day period provided for the completion of an appeal. The movant has argued the a computation of the number of days from the date of the rendition of the final judgment on April 2, 2018, to the date of the service and filing of the notice of completion of appeal sum up to sixty-four (64) days; this computation indicates that the respondents filed their notice of completion of appeal four (4) days after the expiration of the statutory period. As earlier stated, counsel for the respondents however argued that as he received the final judgment on June 5, 2018, as such, the statute began to toll on the 6th day of June, 2018.

The argument of the counsel for the respondents to the effect that the date of receipt of a final judgment commences the tolling of the period for the completion of an appeal is not a novelty in this jurisdiction. While the statute provides that an appellant must commence the appeal process by announcing its appeal and filing with the lower court a bill of exceptions within ten days as of the date of the rendition of final judgment, and completing the appeal process within sixty (60) days from the date which the appeal is sought, this Court has opined that these requirements are applicable when all the prerequisites for the appellant to perfect said appeal are available, including the presentment of the final judgment to the appellant by the trial court.

In the case *Kaba v. World Bank,* Supreme Court Opinion, March Term, A. D. 2014, a judgment was rendered in the lower court without delivering a copy of said judgment to the parties on the date of its rendition, although the judge only read the 'wherefore' portion. When the judgment was subsequently delivered to the parties, the appellant filed its bill of exceptions which was approved by the trial judge. Thereafter the appellee filed a motion to dismiss in the lower court on grounds that the appellant's bill of exceptions was filed out of the statutory ten days period and said motion was granted by the trial judge. On appeal, this Court reversed the judgment of the trial judge by ruling thus:

> "That while the law provides that the bill of exceptions should be filed within ten days as of the date of rendition of the final judgment, the law also provides that the final judgment be read in its entirety and must be considered as a whole so as to bring all of its parts into harmony. Until the final judgment is

delivered to the appellant, the ten days prescribed by law within which the appellant is required to file a bill of exceptions cannot be said to have commenced. The trial judge in this case not having delivered his ruling in its entirety to the appellant as at the date he only read the wherefore portion of that final ruling, the ten day period for the filing of the bill of exceptions commenced when the appellant actually received the full copy of the trial judges' ruling in its entirety."

In a more recent case, *Backarie Kakay, et al.*, v. *the Intestate Estate of Randall P. Gbadye,* Supreme Court Opinion, March Term, 2017, this is what the Court, speaking through Mr. Justice Philip A.Z. Banks, III, said on the subject:

"A review of the records before us shows that although the judgment of the trial judge was rendered on November 19, 2015, the parties did not receive copies of said judgment at its rendition, rather they received their respective copies on different dates. The records show that the appellee/movant received his copy on November 26, 2015 while the appellant/respondent received its copy on the 30th day of November A.D. 2015. Thus, it was impossible for the appellant/respondent to have filed its bill of exceptions and to proceed with the appeal process as of November 19, 2015."

We affirm the above quoted precedents as to the contention of the counsel for the respondents regarding the commencement of the tolling of the appeal statute as of the date of receipt of the final judgment and not necessarily the date of its rendition or delivery in open court.

The Opinions of the Supreme Court find support in the provision of the statute providing that a bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to during the trial, and relied upon for the appeal, together with a statement of the basis of the exceptions. The absence therefore, of the full text of the trial court's final judgment or actual receipt by the parties, hinder a party from preparing the bill of exceptions and also prevents the tolling of the statute as of the date of its rendition.

However, we quickly note, that the issue before us, as those in the cases cited, deal with the proof or evidence by a party to establish that the full text of the judgment was not available or not received on the date of its rendition or any satisfactory proof, and in the case of the present respondents, the non-receipt of the trial court's final judgment on April 2, 2018. Such inquiry into the respondents' allegation is factual in nature and can only be verified by the requisite documentary evidence which must be found in the certified records before this Court.

It is the law in this jurisdiction that he who makes an allegation or presents claims against another must substantiate same by preponderance of the evidence. In sundry Opinions, this Court reiterated the long held legal principle that allegations are

simply intended to set forth a cause of action; that allegations unsupported by evidence, is not proof, for it is evidence alone which enables the court, tribunal or administrative forum to pronounce with certainty the matter in dispute, and no matter how logical a complaint might be stated, it cannot be taken as proof without evidence. 1LCL Rev. Code 1:25; *Frankyu et al. v. Action Contre La Faim, 39 LLR 289, 296 (1999); Salala Rubber Company v. Onadeke, 24 LLR 441, 444 (1976); Gibson v. Williams, 33 LLR 193, 196 (1985).*

The records are void of any evidence proffered by the respondents indicating that the full text of the judgment from which they appealed was not available on April 2, 2018. In fact, as earlier indicated, the counsel for the movant signed for a copy of the trial court's final judgment on the self-same date of its rendition, that is, April 2, 2018, clearly indicating that it was made available by the trial court. In an attempt to establish that the final judgment was not available on the date of its rendition, counsel for the respondents attached a 'request for clerk's certificate' as proof of the receipt thereof on April 5, 2018. But the records are void of any showing that said certificate was ever issued by the clerk of the trial court. Moreover, the said request was made almost four months following the service and filing of the notice of completion of appeal and the issuance of a clerk's certificate to the movant indicating that the respondents had not completed their appeal within statutory time. The respondents having argued that the ruling was not delivered on the date of its rendition, one would have expected that the acquisition of such clerk's certificate would have preceded the service and filing of the notice of completion of appeal. But this was not done by the respondents.

What is disturbing to this Court is that a review of the copy of the minutes of the trial court, on which both counsels appended their signatures with dates against same, clearly shows that the date against the respondents counsel's signature had been altered from April 2, 2018 to April 5, 2018. Although there was an attempt to change the '2' to '5', the number '2' remains visible underneath the number '5' written on top of it. This act is deceptive and fraudulent, thus tampering with a official record of the trial court. We shall say more on this later in this Opinion.

But assuming *arguendo* that the counsel for the respondents actually did receive the final judgment on April 5, 2018, a computation of the final date for the service and filing of the notice of completion of appeal was June 4, 2018 and not June 5, 2018;

thus, the service and filing of the notice of completion of appeal on June 5, 2018, was also outside of the time allowed by statute.

We must hasten to state ardently, that certain steps of the appeal statute are mandatory and must be strictly complied with. The statute did not only expressly enumerate, on a step by step basis, the requirements for the taking of an appeal to this Court, but it also provides, in unmistaken terms, the timeframe authorized by the drafters for the completion of each and every step contained therein.

This what the law says:

> "The following acts shall be necessary for the completion of an appeal:
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> (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." *Civil Procedure Law, Rev. Code 1:51.4*

Each of the procedural steps enumerated above is further captured in the statute detailing the content, procedure and time frame required to complete every step as follows:

> "§ 51.6. Announcement of taking of the appeal.
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> An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose.
>
> § 51.7. Filing of the bill of exceptions.
>
> A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by

him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court.

§ 51.8. Appeal bond.

Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Notice of the filing shall be served on opposing counsel. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action.

§ 51.9. Notice of completion of appeal.

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 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."

The Opinions of this Court are replete regarding the appeal process and the necessity of strict compliance with the provisions of the mandatory provisions of the appeal statute. In the case *Blamo et al. v. Catholic Relief Services*, this Court speaking through Madam Justice Gladys Johnson in a unanimous Opinion held thus:

"The law is clear as to when and how the appeal process should be conducted in order that a case can be properly before the Supreme Court for Appellate review. The process is a succession of events each of which event has its individual role to play and in playing it contribute to the successful

accomplishment of a common goal which goal is to complete the appeal process in straight conformity to the law controlling Taking an appeal is a journey to the Supreme Court, step by step and when any one of those steps is missing or is defective, the journey cannot be completed. When the loser in the Court below makes an announcement of taken an appeal and said appeal is granted, it is expected that the Appellant will file (a) Bill of Exceptions. When the Judge approves the Bill of Exceptions, this is the first step in the journey to the Supreme Court. This first step removes trial jurisdiction from the Trial Court. The Trial Court's only obligation becomes that of playing the role required by law to enable Appellant to proceed with his journey. The Trial Court becomes unauthorized by law to conduct any more hearing into the case he had already adjudicated. The only exception herein is that in the event that the Trial Judge rescinds or modifies his own judgment in conformity with law and the practice, the Bill of Exceptions becomes void, and properly vacated by the Trial Judge. Butler-Abdullah Vs. Pearson et al 36 LLR (1989). The Appellee can only return to the Trial Court with a Motion to dismiss the appeal if and only if the Appellant has failed to take that all important first step-filing which is the Bill of Exception within 10 days after the announcement of appeal. Should the Appellant file the Bill of Exceptions, or appeal bond, but not within the required time, the appeal could be dismissed. but only upon Motion filed before the Supreme Court and not the Trial Court as the Appellee had contended in Count (1) of his Resistance. The Supreme Court's jurisdiction began in this case when the Appellant filed his Bill of Exceptions. This is the practice in this jurisdiction." *Blamo et al v Catholic Relief Services, Supreme Opinion, October Term, A.D. 2006*

We affirm the principle of law cited in the *Blamo case,* and hold that the failure of the respondents to serve and file their notice of completion of appeal within 60 days as provided for in 1LCL Revised Sec. 51.6, 51.7, which failure rendered the appeal process faulty and incomplete, the Supreme Court is left with no other alternative but to dismiss the appeal as a matter of law.

Before concluding this Opinion, we revert to the action of Cllr. Sesay in altering the date of receipt of the trial court's ruling by changing the number '2' to '5'. Such act is deceptive, and unbecoming of a lawyer, especially of this Court's Bar. Counsellor Sesay's conduct also violates several rules and standards of the legal profession and his Oath as a lawyer, in particular rules 24 & 29 which state:

"Rule 1.

It shall be unprofessional for any lawyer to advise, initiate or otherwise participate directly or indirectly in any act that tends to undermine or impugn the authority, dignity, integrity of the courts or judges thereby hindering the effective administration of justice."

"Rule 29.

(1) Lawyers should expose without fear or favor before the Bar Association, corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client, first giving notice to the said member of the Bar of the client's intention to seek redress, a copy of said notice which should also be furnished to the Bar Association."

For his act described *supra*, Counsellor Swaliho A. Sesay is hereby fined the amount of US$500.00 (five hundred United States dollars) to be paid into Government's revenue within 72 hours as of rendition of this Opinion and receipt of payment thereof deposited with the Office of the Marshall of the Supreme Court. Counsellor Sesay is also warned that any repetition of the acts described herein, will lead to stricter action against him.

Wherefore and in view of the foregoing, the motion to dismiss the appeal is hereby granted and the respondents/appellants' appeal denied and dismissed as a matter of law. The final judgment entered by the Sixth Judicial Circuit, Montserrado County on April 2, 2018, against the respondents in the action of ejectment is hereby affirmed.

The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over this case and give effect to this Opinion. Costs are ruled against the respondents. And it is so ordered.

When this case was called for hearing, Counsellors Philip Y. Gongloe and Momolu G. Kandakai of Gongloe and Associates appeared for the movant. Counsellor Alhaji Swaliho Sesay appeared for the respondents.