

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS OCTOBER 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. NAGBEASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

The Management of Younis Brothers Incorporated, represented)
 by its President, Fouad Khalifa, its authorized Officer and all)
 those operating under its authority, of the City of Monrovia,)
 Liberia.....Appellant)

Versus)

Pastor George to be identified, and all those operating on said)
 premises also to be identified, also of the City of Monrovia,)
 Liberia.....Appellees)

APPEAL

GROWING OUT OF THE CASE :

Pastor George to be identified, and all those operating on said)
 premises also to be identified, also of the City of Monrovia,)
 Liberia.....Movants)

Versus)

MOTION FOR RELIEF
FROM JUDGMENT

The Management of Younis Brothers Incorporated, represented)
 by its President, Fouad Khalifa, its authorized Officer and all)
 those operating under its authority, of the City of Monrovia,)
 Liberia.....Respondent)

GROWING OUT OF THE CASE :

The Management of Younis Brothers Incorporated, represented)
 by its President, Fouad Khalifa, its authorized Officer and all)
 those operating under its authority, of the City of Monrovia,)
 Liberia.....Plaintiff)

Versus)

ACTION OF
EJECTMENT

Pastor George to be identified, and all those operating on said)
 premises also to be identified, also of the City of Monrovia,)
 Liberia.....Defendants)

Heard: July 9, 2020

Decided: March 3, 2021

When this case was called for hearing, Counsellor Arthur Tamba Johnson appeared for the appellant. Counsellor Yahaya B. Kromah appeared for the appellees.

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT

This appeal grows out of an ejectment proceeding commenced in the Sixth Judicial Circuit, Civil Law Court for Montserrado County, by the appellant, Younis Brothers, Inc. against the appellees, Pastor George and others, in December 2015. On March 28, 2016, the appellant obtained judgment against the appellees by default through a unanimous verdict of the petit jury. The trial court, therefore, awarded the appellant Fifty Thousand United States (US\$50,000.00) Dollars as general damages for the appellees' wrongful withholding of the appellant's property; that the court ordered the appellees evicted from the subject property. The appellant alleged that while the eviction was in process as mandated in his final ruling, one month after, His Honor Peter W. Gbeneweleh, ordered the eviction halted, without prior notice to the appellant.

On May 9, 2016, the appellees filed a motion for relief from judgment before His Honor Peter W. Gbeneweleh. The motion was assigned for hearing and following argument pro et con, judge Gbeneweleh granted the motion on the basis that the court did not appoint a counsel to take the ruling for the appellees which would have afforded the appellees the opportunity to announce an appeal to the Honorable Supreme Court thereafter. This, in the mind of the court, was sufficient reason to start the case de novo; hence, the appellees were repossessed of the subject property. The appellant's counsel noted exception and announced an appeal to the Supreme Court en banc sitting in its October Term, A.D. 2016.

The certified records transcribed to this Court reveal that the appellant, Younis Brothers, Inc., filed an action of ejectment before the Civil Law Court, Sixth Judicial Circuit for Montserrado County, against the appellees herein on December 10, 2015, on the strength of a lease agreement entered with Messrs. Boakai V. Sirleaf and Mohammed A. Dukuly on September 1, 1966, which provided for a twenty (20) year period certain at a rental rate of Two Hundred United States (US\$200.00) Dollars per annum, with an automatic renewal of additional twenty (20) years at Three Hundred United States (US\$300.00) per annum. The appellant alleged in substance that predicted on said lease agreement, it constructed structures on the subject property which were used for business and warehouse purposes. The appellant further claimed in its three-count complaint that it operated its

businesses on the leased property without molestation and as a consequence of the civil conflict in Liberia, fled the country; that upon its return to Liberia, it found that the appellees had occupied its premises, using same for church activities and residential purposes in gross violation of its possessory right under the lease agreement of 1966. The appellant also averred in its complaint and maintained that it exerted all efforts to have the appellees vacate its premise but every ounce of its effort proved futile. In its complaint, the appellant prayed the trial court to award the amount of Fifty Thousand United States (US\$50,000.00) Dollars as general damages for the wrongful withholding of its property by the appellees, which has caused the appellant grave embarrassment and economic loss; that the appellees be ousted, evicted and the property turned over to the appellant.

The records further show that on December 30, 2015, the appellant obtained a Clerk's Certificate from the Civil Law Court for failure of the appellees to file an answer to the appellant's complaint. On January 29, 2016, upon information by the appellant to the court that the appellees did not file their answer to the complaint, the appellant moved the court to rule the appellees to bare denial which was granted by the court as evidenced by the Sheriff's returns which reads thus:

"On the 27th day of January A.D. 2016, Court's Bailiff, Kpehe M. Nyei, of the Civil Law Court duly carried out this notice of assignment and was served on the counsel for the plaintiff and one of the defendants (Abraham Fahnbulleh), who was authorized by defendant (Pastor George), who signed and received their copy. Hence, I now make this as my official returns to the clerk of this court. Dated this 27th day of January A.D. 2016

Signed: Kpehe M. Nyei

On March 22, 2016, the case was called for hearing following the issuance of a regular notice of assignment on March 4, 2016, but again, the appellees did not appear in court; hence, a request was made by the counsel for the appellant for a default judgment and same was granted. Subsequently, the imperfect judgment was made perfect by the counsel for the appellant following the production of evidence.

The appellant produced three witnesses, namely: Fouad Khalifa, Lawrence Johnson and Mohammed Dukuly.

The appellant's first witness, Mohammed Dukuly, a family member of the lessor of the appellant, confirmed through his testimony, the averments contained in the appellant's complaint. The witness testified that the appellant leased the subject property from his family and constructed structures on the property for business purposes, but due to the civil crisis in Liberia, the appellant had to flee Liberia; that pastor George and other occupants, after the civil conflict, illegally entered the premises and erected makeshift structures thereon; that all attempts made by the appellant to have the appellees vacate the property did not materialize. The appellant's second and third witnesses provided testimonies that corroborated with the testimony of the appellant's first witness; confirming that the appellant did lease the subject property in 1966, constructed structures for business purposes, but fled the country due to the civil crisis and that upon the appellant's return, it found the appellees illegally occupying the subject property and efforts to have them leave the property proved futile.

When the appellant rested with the production of both oral and documentary evidence, waived argument due to the absence of the appellees, the trial court charged the jury accordingly. Following deliberations by the petit jury, it returned with a unanimous liable verdict against the appellees and awarded the appellant Fifty Thousand United States (US\$50,000.00) Dollars for the appellees' wrongful withholding of the appellant's property.

On March 28, 2016, the trial judge, His Honor Peter W. Gbeneweleh, entered his final ruling on the records, confirmed the liable verdict of the petit jury and ordered the appellees ousted, evicted and ejected from the appellant's property. We reproduce the judge's final ruling to form a material part of this Opinion:

"The plaintiff named by and through his legal counsel of the City of Monrovia, Montserrado County, filed an action of ejectment against the defendant, Pastor George, to be identified and all those operating on the said premises to be identified, also of the City of Monrovia, Montserrado County, defendants, on December 10, 2015, whereupon a writ of summons was duly issued out of this court, same was placed in the hands of the sheriff for service; in keeping with the sheriff's returns the defendants refused to accept the aforesaid writ of summons as indicated at the back of the original writ of summons. On the 4th day of March, 2016, this court again issued out a notice of assignment and same was placed in the hands of the sheriff for service

on the defendants, again in keeping with the sheriff's returns, the defendants failed and refused to accept the notice of assignment as indicated at the back of the original notice of assignment.

At the call of the case on March 22, 2016, at the hour of 9:00 A.M., the defendant and/or his counsel were not in court nor send any excuse to warrant the continuance of these proceedings. Counsel for the plaintiff therefore requested court to invoke the appropriate rules of the circuit court which was granted by this court and the sheriff of this court proceeded to the door of the circuit court room and called the defendant but he failed to answer, this court have no other alternative but to order a default judgment in favor of the defendant and an imperfect judgment was ordered in favor of the plaintiff to be made perfect by the production of evidence in keeping with law. Counsel for the plaintiff moved court for the selection of a trial jury which was granted by this court. Plaintiff's witnesses herein named in persons of Fouad Khalifa and Lawrence Johnson were introduced, qualified, testified and discharged by this Honorable Court with the thanks of court. Thereafter, this court admitted into evidence of court's marked P/1 and P/2 meaning the lease agreement of September 1, 1966, and a title deed for the subject property to form a cogent part of these proceedings on the part of the plaintiff's claims. Thereafter, the trial jury was ordered returned into their room of deliberation to bring a verdict upon which they returned with a unanimous verdict in favor of the plaintiff holding the defendant liable to pay the amount of US\$50,000.00 as general damage for withholding plaintiff's property for the past years without any justifiable cause.

Wherefore, and in view of the foregoing, it is the holding of this Honorable Court that the defendant is hereby liable to pay plaintiff the amount of US\$50,000.00 as general damages for withholding of plaintiff's property without any justifiable cause and thereby the defendant be ousted, evicted and ejected from plaintiff's premises. The clerk of this court is hereby ordered to prepare a writ of possession and place same in the hands of the sheriff for service on the defendant to be ousted, evicted and ejected from plaintiff's premises. The clerk is also ordered to prepare a bill of costs to be taxed by both counsels meaning the plaintiff and the defendant and place same in the hands of the sheriff for service on the defendant, in the event where the defendant failed to satisfy the judgment of this Honorable Court, a writ of execution is prepared by the clerk of this court and same is placed in the hands of the sheriff for service on the defendant. Costs of these proceedings are ruled against the defendant. And It Is Hereby So Ordered."

Subsequently, on April 25, 2016, a writ of possession, growing out of the ejectment action was issued out of the court, placed in the hands of the sheriff, commanding the sheriff to have the defendants ousted, ejected and evicted from the subject property.

On May 9, 2016, the co-appellee, Pastor George, filed a nine-count motion for relief from judgment before His Honor Peter W. Gbeneweleh. The movant alleged, among other things that, the entire trial procedure was characterized by fraud and misrepresentation of material facts; that the empaneled jury heard the case without the court naming its secretary, chairperson and alternative jurors inconsistent with practice in this jurisdiction, and that a default judgment is an imperfect judgment that must be made perfect by the production of sufficient evidence by the plaintiff to substantiate its claims but to the contrary, the plaintiff annexed to its complaint a title deed for property owned by the late Momolu Dukuly for a property lying and situated in Logan Town; whereas, the property, subject of these proceedings, is located on the Somalia Drive, in the Free Port Community near CEMENCO; hence, should not have been evicted. The movant concluded that because the trial judge also failed to appoint a counsel to take the final ruling for the absent party to accordingly announce an appeal in its behalf, it should be relieved from the judgment of the trial court.

On May 18, 2016, the appellant filed resistance to the motion, denying all of the averments contained therein and maintained that the motion did not contain any of the grounds provided in the statute for relief from judgment; that the court was out of term and therefore, could not make a determination in the case and furthered that the period for taking of an appeal was exhausted. On May 18, 2016, the motion was called for hearing and following argument by the parties, the court ruled on May 24, 2016, granting the motion for relief from judgment. Excerpts from the ruling are quoted herein to form a material part of this Opinion:

“...after the argument of the parties, this court says that there is only one major issue determinative of this motion which is whether or not a counsel was appointed to take the final judgment of the absent movant to afford him the opportunity to announce an appeal to the Honorable Supreme Court?...Our Civil Procedure statute also states at Chapter 51, Section 51.6, page 250 an appeal shall be taken at the 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 deputy appointed by the court for this purpose.

That it was an inadvertence on the part of the entire trial process that a lawyer was never appointed to take the judgment of the absent party to afford him the opportunity to appeal which is a constitutional provision that should not be held inviolable.

Wherefore, and in view of the foregoing, it is the considered opinion of this court that the motion for relief from judgment shall be and same is hereby granted and the resistance denied. The matter is reverted to status quo ante, that is to say, to commence a new trial and repossess the movant. Cost disallowed. And It Is Hereby So Ordered”.

The counsel for the appellant noted exception and announced an appeal to the Supreme Court sitting in its October Term, A.D. 2016. On June 3, 2016, the appellant filed a four-count bill of exceptions which is incorporated in this Opinion:

BILL OF EXCEPTIONS

“Appellant/plaintiff in the above entitled cause of action excepts to Your Honor’s ruling on the motion for relief from judgment and for which appellant/plaintiff announced an appeal to the Honorable Supreme Court of the Republic of Liberia for the following factual and legal reasons as follows to wit:

1. That Your Honor committed reversible error when you entertained the defendant’s motion for relief from judgment even though this case has been completed and final judgment entered by Your Honor and the possession was carried out by this court. Moreover, the defendant was served a writ of summons and assignments for all of the proceedings in the matter and the said defendant failed to appear and file any responsive pleadings to which a judgment by default was rendered and an imperfect judgment made perfect before a trial jury which a verdict of liable was returned against the defendant.
2. That Your Honor committed reversible error when you ruled that the defendant be repossessed when the defendant major argument was that he was not accorded the opportunity to appeal. Appellant says that had the defendant filed an answer or appear in any of the stages of the proceedings such contention would have had merits, but the defendant’s failure to appear throughout the trial after series of notices of assignment were served on him, this court cannot by law grant the motion for relief from judgment. Moreover, assuming

without admitting that the defendant was not present to appeal and the right to appeal was not allowed, the only relief that may have been available to defendant was to be given the opportunity to appeal, not to repossess the defendant.

3. That Your Honor also erred reversibly when you ordered a new trial even though there was no error in the trial but rather the period for appeal had lapsed and that eviction had already been carried out by this court. Appellant says that to order a new trial was a reversible error.
4. Your Honor also erred when you ruled that there should be a new trial in the face of the facts that the appellees defiantly refused to appear in court at any time of the trial when the notice of assignment for the hearing of the case was served on the appellees. Appellant says that the fact that the appellees did not file any pleading and failed to appear at any stage of the proceedings, their appearance at this stage of the case which had been concluded is considered moot and that the motion filed by the appellees was not the proper form of action, but rather to seek a remedial relief at the Honorable Supreme Court of Liberia. Your Honor ignored all of these facts and law thereby committing reversible error.

Wherefore, and in view of the foregoing, appellant/plaintiff most respectfully prays Your Honor and this Honorable Court to approve appellant's bill of exceptions for review by the Honorable Supreme Court of the Republic of Liberia sitting in its October Term, A.D. 2016".

From the foregoing bill of exceptions, the crux of this case which should form the basis for our decision is: whether or not the trial judge erred to grant appellees' motion for relief from judgment because of the court's failure to appoint a counsel to take the final ruling for the absent party thus ordering a new trial?

The Civil Procedure Law, Chapter 41, Section 41.7(2) laid down the grounds upon which a party may be relieved from the final judgment of a trial court. They are:

- a) Mistake, inadvertence, surprise, or excusable neglect;
- b) Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title;
- c) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- d) Voidness of the judgment; or

- e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or in-equitableness in allowing prospective application to the judgment.

The records in this case set out that following the filing of the appellant's resistance to the motion for relief from judgment, the court heard argument thereupon and the judge, His Honor Peter W. Gbeneweleh, granted the motion and ruled that the court inadvertently did not appoint a counsel; meaning that, the court's failure to appoint a counsel to take its final ruling in the original action of ejectment which could have afforded the affected party the opportunity to announce an appeal to the Supreme Court, was inadvertent.

This Court notes the concern of the judge that the court's failure, when indeed he was the presiding judge over the case at bar to appoint a counsel to take the ruling on behalf of the absent party as an error. However, the failure of the trial court to appoint a counsel to take its final ruling to afford the absent party the opportunity to announce an appeal to the Supreme Court is not a ground for awarding a new trial; rather, the trial court should have allowed the appellees to announce an appeal *nunc pro tunc*. Therefore, the Supreme Court having carefully reviewed the ruling of the trial court in the action of ejectment and being in full agreement therewith, same should not be disturbed.

While our practice and procedure advise courts to appoint a lawyer to receive a ruling for an absent party, but the law does not favor any party that neglects its own legal interest by responding to responsive pleading in which such party would have defended its rights before the court. In the instant case, the writ of summons and the complaint of the appellant were duly served on the appellees/movants as evidenced by the Sheriff's returns cited herein under:

SHERIFF'S RETURNS

"On the 17th day of December, A. D. 2015, Kpehe M. Nyei, Bailiff of the Sixth Judicial Circuit, Civil Law Court, duly carried out this writ of summons and was served on the within named defendant/Abraham Fahnbulleh, who signed as one of the defendants to be identified and received their copy with the complaint attached. One of the defendants, Pastor George, who authorized Abraham Fahnbulleh to

sign for them. Hence, I now make this as my official returns to the clerk of this court. Dated this 17th day of December A.D. 2015.

Signed: Kpehe M. Nyei

But, the appellees/movants woefully failed to file an answer to the complaint. The records further reveal that owing to their failure to file their responsive pleading to the complaint, the judge, His Honor Peter W. Gbeneweleh, entered an imperfect judgment to allow the plaintiff present the theory of its case thereby making the imperfect judgment perfect through the testimonies of its witnesses and species of evidence adduced during the trial. Moreover, the court should have taken cognizance of the records in the case with particular reference to the Sheriff's returns in that on December 17, 2015, the Sheriff, through Bailiff Kpehe M. Nyei, of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, carried out and served the writ of summons and the complaint on the appellees, and this fact was never rebutted by the appellees or pulled no challenge to the form and manner of the Sheriff's returns. The Supreme Court opined that: "the court is usually guided by the returns of the sheriff which are presumed to be correct for all intents and purposes unless challenged, in which case the court is to conduct an investigation into the manner of service". *Renney Pentee v. Zoe et al*, 38 LLR 485 (1997). It should be further noted that such inadvertence does not affect the materiality of the outcome of this case. Besides, this Court has held that: "A motion for relief from judgment does not affect the finality of the judgment or suspend its operations". *Kafumba Konneh et al v. Marchall*, 40 LLR 429 (2001). We are therefore in disagreement with the trial judge to have reversed himself and ordered a new trial.

WHEREFORE, and in view of the foregoing, the ruling of the trial judge on the motion for relief from judgment is reversed and the ruling awarding the disputed property to the appellant is affirmed. The appellees are hereby ordered ousted, evicted and ejected from the disputed property forthwith and the appellant repossessed thereof. The appellant is awarded the amount of Thirty Thousand United States (US\$30,000.00) Dollars for the wrongful withholding of the appellant's property by the appellees. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. Costs are ruled against the appellees. AND IT IS HEREBY SO ORDERED.

