

The **Intestate Estate of the late Ella Gibson** thru its Administrator and Former Administrators Lemuel McIntosh, Isabella Thompson-Collins, Inez W. Gibson and Diab Dayoub of the City of Monrovia, Liberia MOVANTS VERSUS The **Intestate Estate of the late Florence A. Gibson** by and thru its Administrator and Administratrix, Beneficiary Isaac Gibson, thru his Attorney-In-Fact Delecia Nagbe of the City of Monrovia, Mr. Eli Hykal, Lessee and Tenants of the aforesaid Intestate Estate and all of his Sub-Lessees and Tenants including but not limited to Farraj Mustapha Issa, Ali Ayadibi, Nicolas Fayad, ILC Stores, Sheriff Pharmacy, Roof Moustapha Issa Stores, Nour Stores two stores, and Indian Store one store

RESPONDENTS

MOTION TO DISMISS APPELANTS' APPEAL

HEARD: MARCH 19, 2008 DECIDED: MAY 2, 2008.

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This is a motion to dismiss an appeal taken from a ruling of the lower court, dismissing a petition for cancellation. The motion to dismiss alleges defect(s) in the appeal process. This Court has held that completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal. *K. Rasammy Bros. Vs Brunet*, 21 LLR 271, 277 (1972). Thus, in keeping with the normal procedure we will not review the trial records with the view of passing upon the merits of the case. Instead, we will only concern ourselves with the contentions of the parties regarding the alleged defect(s) in the appeal process in this case and give interpretation to the relevant portion of our appeal statute.

The certified records before us reveal that two sisters, Florence A. Gibson and Ella L. Gibson, jointly owned a parcel of land known as lot number 209, lying and situated at the corner of Broad and Randall Streets in the city of Monrovia, County of Montserrado, Republic of Liberia. They leased the said parcel of land to Eli G. Hykal, a Lebanese National doing business in Monrovia, Liberia, who constructed a structure thereon. The lease agreement for the premises was renewed from time to time between the parties. The records further show that following the death of the two sisters, the Probate Court for Montserrado County appointed Lemuel McIntosh and Isabella Thompson-Collins as administrator and administratrix to administer the intestate estate of the late Ella L. Gibson, while Delecia Nagbe, representing Isaac

Gibson, was appointed administratrix of the intestate estate of the late Florence A. Gibson.

Before the last renewed lease agreement for the premises entered into with Eli G. Hykal could expire, Counsellor M. Kron Yangbe, wrote a letter to Abdullah Abou Farage, sub-lessee of Eli Hykal, introducing himself as the lawyer representing the intestate estate of both the late Ella L. Gibson and Florence A. Gibson. In the letter, Cllr. Yangbe informed Abdullah Abou Farage that the lease agreement with Eli G. Hykal would expire on its own terms on February 1, 2007 and the property would revert to the lessors; an apparent indication that the lease agreement would no longer be renewed. The letter advised the sub-lessee to peacefully and quietly vacate the premises on or before the expiry date of the lease agreement.

On January 30, 1999, the intestate estate of the late Ella L. Gibson, represented by Lemuel McIntosh and Isabella Thompson-Collins and the intestate estate of the late Florence A. Gibson, represented by Inez Normah Gibson, entered into a lease agreement with Diab Dayoub, a Syrian national residing and doing business in the city of Monrovia, Republic of Liberia for a period of twenty years, with an optional period of ten years. The lease was to take effect on February 1, 2007.

On January 17, 2007 the petitioners herein, claiming to be the intestate estate of the late Florence A. Gibson, represented by and thru its administrator and administratrix, its beneficiary, Isaac Gibson, thru his Attorney-in- Fact, Delicia Nagbe, Eli G. Hykal and his tenants and sub-tenants, filed a petition to cancel and annul the lease agreement of January 30, 1999 entered into with Diab Dayoub. We quote below, counts 3, 4, 5, and 8 of the petition:

"3. That following the demise of the two sisters, the Probate Court of Montserrado County appointed Lemuel McIntosh and Isabella Thompson-Collins as administrator and administratrix for the intestate estate of the late Ella Gibson, while Delicia Nagbe, representing Isaac Gibson, was appointed as administratrix for his late mother, the late Florence A. Gibson. Copy of the letters of administration is hereto attached and marked as P/3."

"4. Petitioners say however, respondents Lemuel McIntosh and Isabella Thompson-Collins having mismanaged and overstayed their tenure beyond the statutory period, the very Probate Court which appointed them found it necessary to recall their letters of administration in the year A.D. 2005 as evidenced by copy of the Court's decree of revocation hereto marked as p/4 to form a cogent part of this petition."

"5. And petitioners further say that despite the setting aside of their letters of administration, Lemuel McIntosh and Isabella Collins ignored the order of the Probate Court and without any authority whatsoever, entered into a lease agreement with 2 nd respondent Diab Dayoub to take over the building which was not built by him as evidenced by a copy of the fraudulent and illegal lease agreement hereto marked as p/5 to form a part of this petition."

"8. Petitioners say as a result of this fraudulent lease agreement the legal counsel for Diab Dayoub has written the tenants, second group of petitioners to vacate the premises by the 31st day of January A.D. 2007, although Lemuel McIntosh and Isabella Thompson-Collins have no capacity, legal standing and the authority to lease the said property to a third party; they having been removed by the Probate Court on the 28 th day of April A.D. 2005 and replaced by Delicia Nagbe in 2005 as evidenced by the Probate Court's ruling and the letters of administration issued to Delicia Nagbe."

The respondents filed returns to the petition for cancellation along with a motion to dismiss; they later withdrew and filed an amended returns. We quote Counts 5, 6, 7, 10, and 14 of the amended returns:

"5. That as to count three of the petition with special reference to the purported letters of administration dated May 19 th 2005, the holder of the letters of administration was appointed for a period of 12 months; ... the 12 months period ended the 19 th, day of May 2006, about seven months and seven days prior to the filing date of these cancellation proceedings; the period for which the alleged administratrix was appointed having expired prior to the institution of this action, the administratrix is without any legal authority to maintain this action as administratrix for Isaac Gibson; for such lack of capacity so to do, this action should crumble with cost against petitioners."

"6. That further to count three of the petition and again with reference to the letters of administration marked as exhibit P/3 of the petition, same was filed by Delecia Nagbe on behalf of Isaac Gibson to administer the intestate estate of Ella L. Gibson and Florence A. Gibson."

"7. Respondents content that in order to entitle one to administer the intestate estate of a deceased person, the petitioner must have interest in the estate either as a creditor, or an heir of the deceased. Isaac Gibson and Delecia Nagbe have no interest in the estate of Ella L. Gibson and Florence A. Gibson as creditor or heir and the petition for letters of administration was not served on the nephews, sister and nieces of both Ella L. Gibson and Florence A. Gibson, namely; Lemuel McIntosh and Isabella Thompson-Collins who would have interposed objection if they had due notice prior to the granting of the letters of administration. This is another crystal clear lack of capacity on the part of Delicia Nagbe for Isaac Gibson to administer the intestate estate of both Ella L. Gibson and Florence A. Gibson for which this case should be dismissed."

"8. That further as to the petition and the affidavit solely relied upon by co petitioner Isaac Gibson as evidence of adoption by Florence A. Gibson, in the conspicuous absence of a decree signed by a Judge of the 4th Judicial Circuit, Maryland County, granting a petition for adoption of Isaac Gibson by Florence A. Gibson, there is absolutely no competent evidence of adoption; Isaac Gibson not being an adopted son nor heir of Florence A. Gibson, he has no capacity to question the administration of the intestate estate of both Florence A. Gibson and Ella L. Gibson, nor is he legally qualified to bring these cancellation proceedings nor is he qualified to question the administration of both intestate estates of the deceased relative to Lot No. 209"

"9. That further to count three of the petition, reference to the removal of Lemuel McIntosh and Isabella Thompson-Collins, same is subject of litigation in the Monthly and Probate Court for Montserrado County out of which a petition for certiorari grew, filed in the Chambers of the Honourable Supreme Court. At the hearing of this case a certificate will be produced from the Clerk of the Honourable Supreme Court in support of this allegation."

"14. That further to counts five and six, of the petition regarding the lease agreement signed by respondent and Diab Dayoub dated the 30th day of January A.D. 1999, on the day and date the letters of administration was issued to respondents, the lease agreement was still valid in both law and equity, and had not been questioned nor cancelled by a court of competent jurisdiction about four (4) years prior to the date of the purported revocation of the letters of administration by the Monthly and Probate Court in 2005. Respondents contend that the revocation of the letters of administration is not retroactive; hence, count five of the petition is not only untenable but misleading and should be overruled."

As stated supra, respondents also filed a motion to dismiss the petition for cancellation. The motion contends essentially that: a) the Probate Court of Montserrado County had issued letters of administration on May 19, 2005 to administer the intestate estate of the late Ella L. Gibson and Florence A. Gibson for a period of twelve months or one calendar year; that that period having expired on May 19, 2006, about seven months and seven days prior to the filing of the petition for cancellation, the petitioners are without any legal authority to maintain this action; b) that Isaac Gibson who claims to be the adopted son and sole beneficiary of the intestate estate of the late Florence A. Gibson was never adopted, and that the issue of Isaac Gibson's parentage is a subject of litigation before the Probate Court of Montserrado County for final judgment, therefore, co-petitioner Isaac Gibson lacks legal authority to maintain this action; and c) that Delecia Nagbe has no legal capacity to bring this action on behalf of Isaac Gibson because Delecia Nagbe failed to show any power of attorney authorizing her to bring this action.

At the call of the motion to dismiss on March 10, 2007, the petitioners (respondents in the motion), with leave of court, resisted the motion to dismiss on the minutes of court, contending essentially that the motion raises factual issues which the court must hear and receive evidence on in order to determine. They also contend that the motion was not made in accordance with § 11:2, 1 LCL Rev. tit. 1 (1973) *Civil Procedure Law*.

On March 23, 2007, the trial judge ruled granting the motion, thereby dismissing the petition for cancellation of lease agreement "with reservation to refile, if the need arises." We quote excerpts from the trial judge's ruling:

"From the perusal of the case file, it is observed that the late Florence A. Gibson filed a petition before the Monthly and Probate Court of the Fourth Judicial Circuit, Maryland County, with an attached affidavit to adopt Isaac Gibson as heir or adopted son. However, there is no showing with supporting court's decree granting the petition as required by law. Under the circumstance this court is of the considered opinion that the intent of the late Florence A. Gibson to adopt Isaac Gibson was not realized, since there is no showing to the effect that the court of Maryland County ever granted the petition. Hence, movants' contention that Isaac Gibson lacks legal capacity to have filed the action of cancellation proceedings being supported by law and records of this case, same is hereby up-held and sustained.

Counsel for the movants also contents that the administratrix, Delecia Nagbe, lacks legal capacity to file the action of cancellation proceedings on the ground that the letters of administration ordering her to close the estate within 12 (twelve) months, had since expired, and as such, said administratrix is no more in office. By this contention, this court, upon its perusal of the letters of administration under review observed that said letters of administration was obtained on May 10, 2005. According to the Probate Court of Montserrado County, the administratrix was to close the estate within twelve (12) months meaning from May 10, 2005, up to May 10, 2006. There is no showing on the records of this case that said administratrix had closed the intestate estate under review in obedience to the order of the Monthly and Probate Court for Montserrado County.

This court is bound by law to take judicial notice of all historical facts For reliance see Section 25:2, 1LCLR, Civil Procedure Law. This court on its perusal observed that by the order of the Monthly and Probate Court, the intestate estate of the late Florence A. Gibson should have closed on May 10, 2006. Records show that said administratrix has failed and neglected to have acted as in keeping with the order of the Monthly and Probate Court. As such, the petitioner, by operation of law is out of office and therefore had no legal capacity to file the petition for cancellation proceedings.

Wherefore and in view of the foregoing, movants' motion to dismiss petitioners' petition is hereby granted and petitioners' petition is dismissed without reservations to refile, if the need arises. Costs of these proceedings are hereby ruled against the respondents/petitioners. It is hereby so ordered."

The appellees/movants, who were respondents in the petition for cancellation, have filed a motion before this Court, maintaining that although the final judgment in this case was rendered on March 23, 2007, to which appellants/respondents noted exceptions and announced an appeal to the Supreme Court, and the bill of exceptions were filed within statutory time, yet the appellants/respondents failed to file an appeal bond and to serve notice of completion of appeal within the statutory period of sixty (60) days as required by law; that the notice of completion of appeal was instead filed by the appellants/respondents on June 7, 2007 and served on appellees/movants the same day.

The appellees/movants strenuously argued in their brief filed with this Court that the failure of appellants/respondents to file an approved appeal bond and to serve notice of completion of appeal within sixty (60) days from the date of the rendition of the final judgment are valid grounds for the dismissal of the appeal for want of jurisdiction of the Honorable Supreme Court over the appeal.

The appellants/respondents do not deny that their appeal bond and the notice of completion of appeal were filed outside the statutory period of sixty (60) days. The appellants/respondents, however, attribute the delay in filing their appeal bond as well as in serving the notice of completion of appeal in statutory time to "the unnecessary bureaucratic bottleneck ... at the Ministry of Finance". According to the appellants/respondents, they filed their application to the Ministry of Finance for a statement of property valuation in the month of April, 2007, but the document was unreasonably delayed and was only issued on May 28, 2007. The appellants/respondents therefore argued that they cannot be held legally responsible for the act of a government agency as in the instant case and therefore the filing of the appeal bond on the date indicated was not the fault of appellants/respondents.

Our law on appeal is strict, mandatory, and clear. It says that failure to comply with any of the requirements within the time allowed by statute shall be ground for dismissal of an appeal. The acts necessary for the completion of an appeal are stated by statute as follows:

- 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 appeal.*

§54.4 ILCL Rev., tit. 1 (1973), *Civil Procedure Law*.

§51.8, 1LCL Rev., tit. 1 (1973), *Civil Procedure Law* provides:

"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 (60) 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." [Emphasis supplied]

§ 51.9, 1 LCL Rev., tit. 1, (1973) *Civil Procedure Law* provides:

"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. "

In line with the provisions of the statute quoted above, the Supreme Court has held in a long line of cases that failure to file adequate approved appeal bond in statutory time is ground for the dismissal of the appeal. *Fraser v. Beysolow*, 11 LLR 327 (1953); *Salawo v. Republic*, 12 LLR 258 (1956); *James v. Wright* 12 LLR, 397 (1956); *Webster v. Freeman*, 16 LLR 44, (1964).

This Court has also held in many cases that the jurisdiction of an appellate Court over an appeal is conferred by the notice of completion of appeal, since such notice is in the form of a summons, and that an appeal will be dismissed on motion of the appellee where, before submitting himself to the jurisdiction of the appellate court the appellee shows that the appellant failed to file and serve notice of the completion of an appeal. *Madea, alias Basso Woman v. Republic*, 12 LLR 289,(1956); *Kamara v. Kamara et al*, 29 LLR 485 (1982); *Toe v. Williams et al*, 30 LLR, 306 (1982).

There is no doubt that in the case before us the appellants/respondents failed to file their appeal bond in the required period and that they also failed to file and serve

their notice of completion of appeal in the required period. Their contention, however, is that their failure to meet these mandatory requirements of our appeal statute on time is not due to fault on their part, but rather it is due to delay by the Ministry of Finance to have processed their document on time.

The question is, should the appellants/respondents be excused from the late filing of their appeal bond and the late serving of their notice of completion of appeal because, according to them, the Ministry of Finance failed and/or neglected to timely issue to them statement of property valuation? We hold that the appellants/respondents cannot be excused.

First of all, the records before us do not show that the appellants/respondents actually applied to the Ministry of Finance on time for a statement of property valuation to be used on their appeal bond, and that the Ministry of Finance delayed in the issuance of said instrument. The appellants/respondents do not say when, in the month of April, they applied at the Ministry of Finance to issue them the statement of property valuation. Furthermore, there is no sworn affidavit from anyone that such request was timely made to the Ministry of Finance as alleged by the appellants/respondents. Must we just accept, without a clear showing, that the appellants/respondents made a timely request to the Ministry of Finance for a property valuation statement and that that Ministry's undue delay caused them not to file their appeal bond and serve their notice of completion of appeal in required period? No! Under the circumstance, we cannot accept this contention. It is a cardinal principle that he who alleges must prove and without prove a party's contention cannot be sustained. To accept an unsubstantiated allegation that the appellants/respondents' failure to file their appeal bond and to file and serve their notice of completion of appeal in statutory time was due to delay by the Ministry of Finance is to open a loophole in our appeal statute which could be used by many party litigants and their lawyers to defeat the intent and purpose of the appeal statute which requires strict adherence.

Secondly, the issuance of a property valuation statement upon request made by a tax payer is an official duty of the Ministry of Finance which can be compelled by mandamus. Under our law, mandamus is that special proceeding to obtain a writ requiring the respondent to perform an official duty. §16.21(2) 1 LCL Rev., tit 1, (1973) *Civil Procedure Law*. Therefore, appellants/respondents had adequate remedy under the law if, according to them, they requested the Ministry of Finance to issue them a property valuation statement and that Ministry failed and/or neglected to timely perform its official responsibility. There is no indication that any action was

taken by the appellants/respondents to compel the Ministry of Finance to act accordingly. We therefore hold that the appellants/respondents' failure to file their appeal bond within statutory period is without factual and legal justification and therefore they cannot be excused.

WHEREFORE, the motion to dismiss the appeal for the appellant/respondents' failure to timely file an appeal bond and also to timely file and serve a notice of completion of appeal is hereby granted. The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction over this case and enforce its ruling. Costs are ruled against the appellants/respondents. It is so ordered.