

**Mrs. Mary Nebo** of the City of Monrovia Liberia APPELLEE/MOVANT Versus **Paul Ilo et al** also of the City of Monrovia, Liberia APPELLANTS/RESPONDENTS

**LRSC 12**

**MOTION TO DISMISS APPEAL**

HEARD: NOVEMBER 14, 2012 DECIDED: FEBRUARY 19, 2013

MR CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

The certified records in this case reveal that on November 16, 2010, Mr. and Mrs. George Nebo filed a petition for the cancellation of a lease agreement in the Civil Law Court, 6th Judicial Circuit, Montserrado County, presided over His Honor Peter W. Gbeneweleh, against Paul Ilo, Alphonso W. Nyangbch, Suamana A. Dukuly, Mohammed Korbeh, George W. Kumakah, Mama Aquoi, Mary Smarte, Joseph Zian and Ras Solomon Fahnbulleh. The trial court, after hearing the petition pro et con, entered a final ruling on November 17, 2011 portion of which we quote as follows:

As herein stated above, the agreement between the Petitioners and George Kumakah expired April I, 2011 prior to the date of this final judgment or degree in the cancellation proceeding. Since this agreement has expired on its own term, there is no need for this court to decree its cancellation. The Petitioners are at liberty to bring an action of summary proceeding to recover possession of real property against George Kumakah since his lease agreement expired April I, 2011.

The intent of the parties as clearly shown in clause three (3) of each of the agreements, (is) that both parties shall have the right to cancel the lease subject to three months' notice and prior to rental payment. This court cannot change the intent of the parties.

Wherefore, and in view of the foregoing, the petition for cancellation is hereby granted, and the respondents' lease agreements excluding George Kumakah, whose agreement expired April I, 2011, are hereby cancelled. Costs in these proceedings (are ruled) against the respondents, and it is hereby so ordered.

From this ruling, the counsel representing Paul Ilo et al., announced an appeal to the Supreme Court sitting in its March Term, A.D. 2012. The appeal was granted. The records show that Paul Ilo et al., by and thru their counsel, filed an approved bill of exceptions on November 18, 2011.

On January 19, 2012, Mrs. Mary Nebo, movant/appellee, by and thru her counsel, filed a six-count motion, with this Court praying for the dismissal of the appeal announced by Paul Ilo et al., now respondents/appellants. In the motion to dismiss the appeal, the movant/appellee has contended that she filed a suit for the cancellation of a lease agreement against the respondents/appellants at the Sixth Judicial Circuit, Civil Law Court, Montserrado County; that the Civil Law Court rendered final ruling against the respondents/appellants on November 17, 2011; that the respondents/appellants excepted to the trial court's ruling and announced an appeal to the Supreme Court sitting in its March Term, 2012; that the appeal was granted; and that the respondents/appellants filed their bill of exceptions on November 18, 2011, in statutory time. The movant/appellee has contended, however, that the respondents/appellants failed to file an appeal bond and to serve and file a notice of completion of appeal as required by statute. The movant/appellee attached to her motion to dismiss, a certificate from the Clerk of the Civil Law Court to substantiate that the respondents/appellant did not file an appeal bond and did not serve and file a notice of completion of appeal. The movant/appellee therefore prayed this Court to dismiss the respondents/appellants' appeal, order the enforcement of the ruling of the Civil Law Court entered on November 17, 2011, and grant unto the movant/appellee any other and further relief deemed just, legal and equitable. We quote the clerk's certificate proffered by the movant/appellee:

CIVIL LAW COURT

MONTERRADO COUNTY

DECEMBER TERM, A.D. 2011

BEFORE HIS HONOR EMMANUEL M. KOLLIE, ASSIGNED CIRCUIT JUDGE

In Re: Mrs. Mary Nebo of Paynesville, Mont. Co., R.L PETITIONER VERSUS Paul Ilo et al. also of the city of Paynesville, Montserrado County R.L. RESPONDENTS

CANCELLATION OF LEASE AGREEMENT

CLERK'S CERTIFICATE

This is to certify that after a careful perusal of the records of this Honorable Court, it is observed that the above-named Respondents have failed to file in this court their notice of completion of appeal and (their) appeal bond in the above entitled cause of action up to

and including the issuance of this Clerk's Certificate. HENCE THIS CLERK'S CERTIFICATE.

GIVEN UNDER MY HAND AND SEAL OF COURT, THIS 18<sup>TH</sup> OF JANUARY, A.D. 2012 AT THE HOUR OF 11:21 A.M.

COURT'S SEAL:

ELLEN HALL  
CLERK OF COURT

ATTESTED:  
NANCY WASHINGTON  
FILE CLERK CIVIL LAW COURT  
MONTSERRADO COUNTY. R.L.

The respondents/appellants, thru their counsel, resisted the motion to dismiss the appeal. They contended that the movant/appellee filed her motion to dismiss the appeal with the Supreme Court and simultaneously filed the same motion to dismiss the appeal with the Civil Law Court. They further contended that at the time the movant/appellee filed the motion to dismiss the appeal with the Supreme Court, there was no appeal pending before the Supreme Court. The respondents/appellants have therefore requested this Court to deny and dismiss the motion to dismiss the appeal and order the matter proceeded with on the merit by regularly hearing the appeal.

There are four requirements for the taking of an appeal in our jurisdiction. Section 51.4, 1 LCLR Civil Procedure Law provides:

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.

From the language of the quoted statute, we see that it is mandatory that an appealing party meticulously follows and complies with the requirements laid down for the completion of an appeal; otherwise, the appeal will be dismissed. Over the years this Court has strictly followed the dictates of the statute; where an appealing party has failed to comply with any of the requirements, the appeal has been dismissed without delving into the merits or demerits of the main case.

In the case before us, the movant/appellee has contended that the respondents/appellants failed to comply with the last two requirements of the quoted statute, that is, they failed to file an appeal bond and they also failed to serve and file a notice of completion of appeal. We must note that the respondents/appellants have not denied that they failed to file their appeal bond and they also failed to serve and file their notice of completion of appeal.

Section 51.8, 1 LCLR, 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 appeal bond within the specified time shall be a ground for the 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 over the action.

Section 51.9, 1 LCLR 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.

As we have stated, these statutory provisions impose a duty on this Court to dismiss an appeal where the appealing party fails or neglects to scrupulously observe any of the four (4) mandatory requirements in time.

In support of her motion to dismiss the appeal, the movant/appellee obtained a certificate from the Clerk of the Civil Law Court where the trial took place and where all the requirements of the appeal announced by the respondents/appellants should have been complied with. The certificate confirmed that the respondents/appellants failed to file (in the trial court) their notice of completion of appeal and (their) appeal bond.

This Court has held that where assertions are made in a certificate from court confirming the performance or nonperformance of an act by a party, as in the case before us, and there is no challenge, the certificate is deemed admitted. Reliance: *Chenoweth vs. Liberia Trading Corporation*, 16 LLR 3, (1964); *Tucker vs. Brownell*, 24 LLR 333, (1975.)

The respondents/appellants did not challenge the certificate issued by the clerk of the trial court in this case which indicated that they failed to file their appeal bond and to serve and file their notice of completion of appeal. The said clerk certificate is therefore deemed admitted in line with the decisional laws of this Court quoted *supra*.

The respondents/appellants contended that the movant/appellee filed her motion to dismiss the appeal with the Supreme Court, and simultaneously filed the same motion to dismiss the appeal with the Civil Law Court; and that at the time the movant/appellee filed the motion to dismiss the appeal with the Supreme Court, there was no appeal pending before the Supreme Court.

True, we see that a motion to dismiss the appeal announced by the respondents/appellants was filed by the movant/appellee's lawyers on her behalf before the Civil Law Court on January 18, 2012. And on January 19, 2012, a day later, similar motion to dismiss the same appeal was filed before this Court by the same lawyers representing the same movant/appellee. But we do not see this as a harmful and reversible error. This is because the Civil Law Court no longer had jurisdiction over the case at the time the motion to dismiss the appeal was filed before it. Thus, any submission or application made before the Civil Law Court after the filing of the bill of exceptions seeking any redress or action was a nullity and of no useful purpose. The Civil Law Court lost jurisdiction over the case as at the time the bill of exceptions were filed before it.

The controlling law in this jurisdiction is that the trial court loses jurisdiction over the case after an approved bill of exceptions has been filed. *Knuckles vs. The Trading and Investment*

Bank. Ltd, 40 LLR 49, 54 (2000); Kanneh vs. Manley, 41 LLR 25, (2002); Ramsee Moore vs. Mary Wilson decided March Term 2012.

In the Ramsee Moore case, Mr. Justice Ja'neh, speaking for this Court said:

(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 the reason that said motion has been improperly venued. The trial judge having approved the bill of 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 any further to enforce the judgment appealed [from] without being authorized to do so by the Supreme Court .

In view of the foregoing, we say that the motion to dismiss the appeal filed before the Civil Law Court was of no useful purpose since that court, upon the filing of the bill of exceptions lost jurisdiction over this case. At that point, a motion to dismiss the appeal could only be cognizable before the Supreme Court. We therefore hold that the movant/appellee's motion to dismiss the appeal is properly before us.

We further hold that the respondents/appellants not having fully complied with the appeal process by failing to file their appeal bond and by failing to serve and file their notice of completion of appeal, their appeal must be and same IS hereby dismissed.

WHEREFORE, and in view of what we have said herein above, the respondents/appellants having failed to perfect their appeal by their failure to file an appeal bond to serve and file a notice of completion of appeal, their appeal is hereby dismissed. The Clerk of this Court is ordered to send a mandate to the trial court ordering the judge therein presiding to enforce the ruling appealed from. Costs are ruled against the respondents/appellants. It is so ordered.

COUNSELLORS A. KANNIE WESSO AND THEOPHILIUS C. GOULD  
APPEARED FOR THE APPELLEE/MOVANT. COUNSELLOR THOMPSON N.  
JARGBA APPEARED FOR THE APPELLANTS/RESPONDENTS.