

MANUELLA PADILLA VARGAS, Appellant, v. EZZAT N. EID, Appellee.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY

Heard: December 3, 2001. Decided: December 21, 2001.

1. Except as otherwise provided by statute, service of an answer or reply shall be made within ten days of service of the pleading to which it responds.
2. The court at every stage of a proceeding must disregard an error or defect in the proceeding which does not affect the substantive rights of the parties.
3. The filing of a petition without a date being stated thereon is a harmless error which does not affect the substantial rights of the parties in litigation.
4. The Liberian Constitution guarantees the right to a jury trial which shall be preserved inviolate.
5. A party may demand a trial by jury of an issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after commencement of the action and no later than ten days after the service of a pleading or an amendment of a pleading directed to such issue.
6. The inability of a sub-lessee to pay the rent and to procure an insurance policy to protect the demised property against risks are material breaches of the sublease agreement which warrant the cancellation of the agreement.

The appellant appealed from a default judgment entered against her in the trial court, in an action for cancellation of a sub-lease agreement, growing out of the appellant's failure to appear for the hearing of the case upon a regular assignment duly recorded on the records of the trial court. In her bill of exceptions, the appellant complained that the trial judge had erred in dismissing her returns to the petition and in placing her on a bare denial of the petition because she had failed to file and serve the said returns within the ten-day period allowed by statute. The appellant also alleged that the trial judge erred in (a) dismissing her motion to dismiss the petition for cancellation because of the appellee's failure to date the petition for cancellation, (b) denying her motion for a jury trial on the ground that the said motion had not been filed within ten days of the resting of the pleadings in the case, and (c) assuming jurisdiction over the cancellation proceedings while the certiorari filed against the trial judge was pending before the Supreme Court.

The Supreme Court said, with regard to the contention that the trial judge had erred in dismissing the appellant's returns and ruling her to a bare denial, that the trial court correctly dismissed the returns since the same was filed without the ten day period prescribed by statute for the filing of such pleading. The Court noted, however, that the dismissal of the appellant's returns and the ruling of her to a bare denial did not deprive her of the right to cross-examine the appellee's witnesses and that the appellant was therefore required to appear in court for the hearing. Her failure to appear, upon due assignment of the case, provided an appropriate basis for the entry of judgment by default against her.

With regard to the contention that the trial court had erred in dismissing appellant's motion to dismiss the petition for cancellation because of the failure of the appellee to date the said petition, the Court observed that the failure to date the petition was a harmless error which did not affect the substantive rights of the parties, and that the trial court was therefore correct in disregarding the defect and denying the motion to dismiss.

On the issue regarding the denial of the appellant's motion for a trial by jury, the Court held that the trial judge had acted properly in denying the said motion since the appellant had failed to file the motion within ten days of the resting of the pleadings as required by statute. In addition, the Court ruled that the appellant's contention that the trial court lacked jurisdiction over the case at the time of rendition of the judgment because the matter was pending before the Supreme Court was without merits since, although the petition for certiorari had been filed, no stay orders had been issued on the trial court prohibiting it from proceeding with the case. The Court opined that under the circumstances, the trial court continued to have jurisdiction over the case at the time it rendered judgment against the appellant. The Court therefore affirmed the judgment of the trial court, holding that the evidence was sufficient to support the judgment and that the failure of the appellant to pay the rent and to secure insurance on the premises against risk of damages was material breaches of the sublease agreement to warrant the cancellation of the said agreement.

Flaawgaa R. McFarland appeared for the appellant. H. Varney G. Sherman appeared for the appellee.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This Court, during its October Term, A. D. 1999, affirmed the judgment of the trial court in a petition for declaratory judgment filed by the appellant herein, Manuella Padilla Vargas,

against Ezzat N. Eid, appellee. In the declaratory petition, the appellant prayed the trial court to declare the rights of the parties in litigation regarding the payment and nonpayment of rent and the obligation of the parties to renovate certain subleased premises which were damaged as a result of the April 6, 1996 crisis. This Court held then that the appellant should pay to the appellee the amount of US\$175,000. representing past due and unpaid rentals with a 6% legal interest per annum for the wrongful withholding of the rentals.

The case is again before us, involving the same parties, but this time on appeal from the final judgment in a petition for cancellation of a sublease agreement executed by and between the parties on the 21st day of August, A. D. 1992. The said sublease agreement entered into full force and effect on November 1, 1992. On the 7th day of November, A. D. 2000, the appellee, Ezzat Eid, filed an eleven count petition for the cancellation of the sublease agreement executed by and between Appellee Eid as sublessor, and Appellant Vargas as sublessee, for a parcel of land with a three (3) story building thereon, situated and located on Tubman Boulevard, Sinkor, Monrovia. In the petition, the appellee alleged that the appellant had failed and neglected to comply with the terms and conditions of the sublease agreement by not paying the rent for the period covering November 1, 2000 through October 31, 2001. The appellee also alleged that a condition for occupancy, use and enjoyment of his property by the appellant under the sublease agreement was that the appellant would pay the rent when due and payable, failing which, the appellee asserted, he had the right to cancel the sub-lease agreement. The appellee specifically alleged in count 7 of the petition that the appellant was unable to pay the rent for the three years prior to the institution of the cancellation proceedings. Consequently, the demised property was placed under receivership, which continues to today's date, since the appellant has had no other source of income which would enable her to pay the outstanding rent. The appellee also maintained in the said count 7 that the revenues being generated from the management of the hotel by the receiver were insufficient to expeditiously pay or satisfy the judgment of the Supreme Court, and that he had received a communication from the appellant indicating her financial inability to pay the rent from any other source of income, other than the income generated from the hotel under receivership. The appellee therefore contended that the payment of rent for the use of the demised premises was never on time, that payment will never ever be current, and that appellee would therefore be unable to also pay his own rent to his Liberian landlord, as well as the payment of real estate taxes to the government pursuant to clause 6 of the sublease agreement.

Accordingly, the appellee prayed that the subject sub-lease agreement be cancelled and that he be put in possession of the sublease property. A writ of summons, prayed for in the

petition, was served on the 7th day of November, A. D. 2000. Returns to the petition were filed on November 18, 2000 and were served on the appellant on November 20, 2000. The appellant, petitioner in the cancellation proceedings, filed a reply and a motion to strike the returns of the appellant since the same were filed and served outside of the statutory period of 10 days. The appellant also filed a motion to dismiss the appellee's petition on the ground that the said petition was undated. The motion to strike and the motion to dismiss the petition were consolidated, and, following a hearing, the trial court rendered a consolidated ruling on the two motions. The trial court judge denied the appellant's motion to dismiss the petition, stating that the court had jurisdiction over the subject matter of the case notwithstanding the fact that petition was not dated.

The trial judge also ruled granting the appellee's motion to strike the appellant's returns and ruling the appellant to a bare denial of the facts contained in the petition, the ground stated therefor being that the returns were filed and served beyond the statutory period of ten days. Thereafter, a notice of assignment for the hearing of the cancellation proceedings was duly issued on the 10th day of April, A. D. 2001, and served on the 11th day of April, A. D. 2001, for hearing on April 12, 2001. However, on the 11th day of April, A. D. 2001, Mr. Justice Morris, then presiding in the Chambers of this Court, issued a stay order on the trial court pending the outcome of the conference which he had scheduled for April 26, 2001, predicated upon a petition filed with the Supreme Court for a writ of certiorari. The conference was held on May 28, 2001, after which the Chambers Justice lifted the stay order of April 11, 2001 and mandated the trial judge to resume jurisdiction over the case and to proceed with the hearing of the case in keeping with law.

The mandate of the Chambers Justice was read and the case was assigned for hearing on June 5, 2001. The records in the case indicate that the appellant filed a two count motion on June 4, 2001 at the hour of 3:13 post meridian for a jury trial. The appellee resisted the motion on the records of court on June 5, 2001, contending that the appellant had failed and neglected to demand a jury trial in writing and to serve on him such demand within 10 days after filing of the reply and the resting of the pleadings in December, A. D. 2000.

On the 6th day of June, A. D. 2001, His Honour William B. Metzger Sr., was presiding over the March Term, A. D. 2001, of the Civil Law Court. Sixth Judicial Circuit denied the motion for jury trial, stating that the demand was made contrary to the controlling statute. The case was then assigned for hearing on the 3rd day of August, A. D. 2001, at which time the appellant's counsel requested the trial court to postpone the hearing of the case to any time after the 3rd day of August, 2001, due to his scheduled travel to Ghana on August 5, A. D. 2001 and his expected return to Liberia on August 12, A. D. 2001. The counsel for appellee interposed no objection to the application but requested however that the trial the

trial court make an assignment of the case on the records (i.e. on the minutes of August 3, 2001) so as not to waste the court's resources in obtaining and serving a notice of assignment. The trial judge granted the application and reassigned the case on the records for hearing on Tuesday, the 14th day of August, A. D. 2001, at the hour of 11:00 ante meridian. The trial judge also cautioned the parties that "counsel for both parties being present in court, no other notice of assignment will be issued. Accordingly, the parties are required to be guided by this notice of assignment."

On the 14th day of August, A. D. 2001, the case was called for hearing. The records reveal that the appellant and his counsel were absent. Whereupon, counsel for the appellee invoked section 42.1 of the Civil Procedural Law on default judgment because of a failure to proceed to trial, as well as Rule 7 of the 1999 Circuit Court Rules on abandonment. The trial judge granted the appellee's application and a default judgment was entered against the appellant. A plea of not liable was then entered in favour of the appellant and the appellee was permitted to perfect his imperfect judgment by the production of evidence. The hearing of the cancellation proceedings was concluded on August 14, 2001 and a notice of assignment was duly issued on August 15, 2001 for rendition of a final judgment on August 17, 2001. On the 16th day of August, A. D. 2001, Mr. Justice Wright, then presiding in Chambers, issued a stay order against the trial judge and cited the parties to a conference slated for August 20, 2001, as the result of a bill of information filed by the appellant, growing out of a petition filed for a writ of certiorari. On the 20th day of August, A. D. 2001, the Chambers Justice lifted his stay order and mandated the trial judge to proceed with the rendition of his final judgment. On the 21st day of August, A. D. 2001, a notice of assignment was issued for a ruling in the case on the 22nd day of August, A. D. 2001. The records in the case reveal that counsel for appellant was absent at the time of the rendition of final judgment in this case, and that the trial judge therefore deputized Attorney William K. Ware, Sr. to take the final judgment for and on behalf of the appellant. In the judgment the trial judge granted the petition for cancellation and consequently cancelled the sublease agreement between the parties with immediate effect. The clerk of the court was ordered to issue a writ of possession to enable the appellant to repossess his property. The court appointed counsel excepted to the judgment and announced an appeal to this Court, which was followed by the filing of a seven-count bill of exceptions.

The appellant alleged in count one of the bill of exceptions and argued before us that the trial judge had erred when he dismissed her entire returns and placed her on a bare denial. On the other hand, the appellee contended that the trial judge had properly dismissed appellant's returns and ruled her to a bare denial of the petition since the appellant had failed to file and serve her returns/answer within ten (10) days of receipt of the petition. Our statute governing the service of pleadings in this jurisdiction prescribes, as follows:

“Except as provided in section 11.3(1) service of an answer or reply shall be made within ten days of service of the pleading to which it responds.” Civil Procedure Law, Rev. Code 1:9.23.

In addition to the quoted statute, this Court has held that the service of a responsive a pleading shall be made within ten (10) days after the service of the pleading to which it responds. *Kanneh v. Firestone Plantations Company*, 37 LLR 211 (1993), decided on July 23, 1993. Consequently, count 1 of appellant’s bill of exceptions is not sustained. The failure of the appellant to file and serve her returns within the statutory time of ten (10) days, rendered her returns dismissible, thereby placing her on a bare denial. However, notwithstanding the ruling of the appellant to a bare denial, she was still was required by law to appear for the trial and to cross-examine appellee and his witnesses without introducing any affirmative evidence. Civil Procedure Law, Rev. Code 1:9.1(2).

The appellant also alleged and argued that the trial judge committed a reversible error when he denied her motion to dismiss the appellee’s petition for cancellation because it was filed undated. In countering this contention, the appellee argued that the filing of the petition without a date was a harmless error since the said petition was signed and verified by the appellee. Section 1.5 of the Civil Procedure Law provides for harmless errors. The relevant portion of this statutory provision reads, *inter alia*: “The Court at every stage of the proceeding must disregard an error or defect in proceeding which does not affect the substantial rights of the parties.” Predicated thereon. This Court holds that the filing of the petition, without a date being stated thereon by the appellee, was a harmless error which did not in any way affect the substantial rights of the parties in litigation. Count 3 of appellant’s bill exceptions is therefore overruled and we hold that the trial court properly disregarded the defect in the petition and denied appellant’s motion to dismiss appellee’s petition for the cancellation of the sublease agreement.

In count 4 of the bill of exceptions, the appellant alleged that the trial judge committed a reversible error when he denied her motion for a jury trial, thereby denying her right to a jury trial, guaranteed by article 20(a) of the Liberian Constitution. The appellee counter-argued that the trial judge rightly denied the motion since the said motion was filed beyond the statutory period of (10) days after pleadings had rested in December 2000. We agree that article 20(a) of our Constitution guarantees the right to a jury trial, and that section 22.1(1) of our Civil Procedure Law provides that the right to a jury trial shall be preserved inviolate.

Recourse to section 22.1 of the Civil Procedure Law revealed that sub-paragraph 2 thereof provides:

“Any party may demand a trial by jury of an issue triable of right by a jury by servicing upon the other parties a demand therefor in writing at any time after commencement of the action and no later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be endorsed upon a pleading of a party...”

We observed from the records in this case that pleadings rested upon the filing of a reply on November 25, 2000, and that the appellant filed her motion for a jury trial on June 4, 2001. Thus, the motion was filed five months after pleadings rested. The statute quoted above provides that a party desiring a jury trial may demand such trial at any time subsequent to the commencement of an action but in any case not later than ten (10) days following the service of a pleading or an amended pleading which is directed to such issue. This Court, during its October 1998 Term, denied the appellant’s petition for certiorari to review and correct the ruling of the trial court denying appellant’s motion for a jury trial, stating as the ground for the denial that the said motion was filed beyond the statutory period of ten (10) days. This Court therefore mandated the trial court to resume jurisdiction over the petition for declaratory judgment and to proceed with its hearing without the aid of a jury. We wonder why the appellant had again failed to avail herself of the statute and the recent decisions of this Court involving the same parties and subject property.

Count 5 of the bill of exceptions alleged that the trial judge did not have jurisdiction over the cancellation proceedings on August 14, 2001 due to the pendency of a petition for a writ of certiorari filed by the appellant. In counter argument, counsel for the appellee strongly contended that the trial judge had jurisdiction over the case when he proceeded with the hearing thereof on August 14, 2001, noting that the petition was filed, but that there was no stay order to restrain the trial judge from further hearing the petitioner’s petition for cancellation of the sublease agreement. The records in this case are devoid of any evidence that a stay order was issued by this Court to prohibit the trial judge from further hearing the case on August 14, 2001. Hence, count 5 of appellant’s bill of exceptions is not sustained. We therefore hold that the trial judge did have jurisdiction over the case when he proceeded with the hearing thereof on August 14, 2001.

The appellant alleged in count 6 of her bill of exceptions that the final judgment rendered on August 22, 2001 by Judge William B. Metzger, Sr. was not supported by the evidence adduced during the trial. The appellee countered this allegation by asserting that he had established his case in the cancellation proceedings during the trial. In this connection, we observed from the records of the case that the appellant’s counsel requested the trial court on August 5, 2001 to defer hearing of the case until the 13th day of August 2001, because of his travel to Ghana and the scheduled date of his return to Liberia on August 12, 2001. The

appellant's application was granted and the case was assigned for hearing on the 14th day of August, 2001. Further, that the trial court placed on the minutes of the court that the presence of both parties constituted a notice of assignment. It was only when the appellant and his counsel failed to appear for the trial of the case that the trial court granted the appellee's application for a default judgment, which was subsequently perfected by the production of evidence.

We also observed from the records before us that the appellant has not satisfied our judgment in the sum of US\$175,000.00. representing past due and unpaid rent, and that the demised premises are presently placed under a receivership due to appellant's financial inability to satisfy our judgment in the declaratory judgment proceedings. Moreover, the appellant has refused and neglected to pay her annual rent of US\$50,000.00 for the period November 1, 2000 to October 31, 2001, as demanded by appellee in his letter dated November 1, 2000. The appellant, in her reply dated November 6, 2000, stated that she was financially paralyzed to meet her rental obligation due to the receivership of the demised property for the enforcement of this Court's judgment. The inability of the appellant to regularly pay her rent, coupled with her failure and neglect to procure an insurance policy to protect the demised property against all risks are material breaches of the sublease agreement, which warranted the cancellation of the aforesaid sublease agreement and the repossession of the subject property by the sublessor, appellee herein.

In view of the above, the judgment of the trial court is hereby confirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over this matter and to enforce its judgment. Costs of these proceedings are hereby ruled against the appellant. And it is hereby so ordered.

Judgment affirmed.

THE REPUBLIC OF LIBERIA, by and thru the Minister of Justice and Attorney General, and Prosecuting Attorneys of the City of Monrovia, Liberia, Petitioner, v. THE LEADERSHIP OF THE LIBERIAN NATIONAL BAR ASSOCIATION OF THE REPUBLIC OF LIBERIA, by and thru its President, J. EMMANUEL WUREH, and all Executive Members, Respondents.

PETITION FOR THE ISSUANCE OF THE WRIT OF MANDAMUS.

Heard: October 29, 2001. Decided: December 21, 2001.

1. The Liberian Constitution grants absolute immunity from any government sanctions or interference to lawyers in the performance of legal services and prohibits them being prevented from or punished for providing legal services regardless of the charges against or the guilt of their clients.
2. The Liberian Constitution contemplates that legislative contempt shall be for only those actions which obstruct legislative functions or which obstruct or impede members or officers of the Legislature from discharging their legislative duties.