

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2022

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. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Nohn Alice Bouyoe by and thru her Attorney-in-Fact,)
Mr. Charles Bouyoe, of the City of Paynesville, Liberia)
.....Movant)

Versus)

MOTION TO
DISMISS APPEAL

Togbah Living of Whein Town, City of Paynesville,)
Montserrado County, Liberia.....Respondent)

GROWING OUT OF THE CASE:)
)
)

Togbah Living of Whein Town, City of Paynesville,)
Montserrado County, Liberia.....Appellant)

Versus)

APPEAL

His Honor Yamie Q. Gbeisay, Assigned Circuit Judge,)
Civil Law Court, Temple of Justice, Monrovia, Liberia,)
and Nohn Alice Bouyoe by and thru her Attorney-in-Fact)
Mr. Charles Bouyoe, of the City of Paynesville, Liberia)
.....Appellees)

GROWING OUT OF THE CASE :)
)
)

Nohn Alice Bouyoe by and thru her Attorney-in-Fact)
Mr. Charles Bouyoe, of the City of Paynesville, Liberia)
.....Plaintiff)

Versus)

ACTION OF
EJECTMENT

Togbah Living of Whein Town, City of Paynesville,)
Montserrado County, Liberia.....Defendants)

Heard: October 20, 2020

Decided: August 4, 2022

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This case emanates from a final ruling of the Sixth Judicial Circuit, Civil Law Court, Montserrat County sitting in its June Term A.D. 2019. The records show that on August 7, 2020, final ruling was rendered in an action of ejectment in favor of the movant Nohn Alice Bouyoe, and against the respondent, Togbah Living; that although the trial court's final ruling was rendered on August 7, 2019, the presiding Judge, His Honor, Yamie Quiqui Gbeisay signed and made same available to the parties on August 13, 2019.

On August 19, 2019, the respondent filed his approved bill of exceptions and thereafter, filed his appeal bond and served and filed his notice of completion of appeal.

February 28, 2020, the movant filed a four (4) count motion to dismiss the respondent's appeal before the Supreme Court, alleging that the filing of the respondent's bill of exceptions on August 19, 2019, is outside the statutory period of ten (10) days as the trial court final ruling was rendered on August 7, 2019.

On March 23, 2020, the respondent filed a nine (9) count returns to the motion to dismiss contending *inter alia* that pursuant to Section 51.16 of the Civil Procedure Law, the Supreme Court is the wrong forum for the filing of the present motion to dismiss the appeal; that the proper forum is the trial court; and that the motion to dismiss the appeal should be denied because the respondent's bill of exceptions was filed and approved within the ten (10) days period given the fact the trial court's final ruling was signed and delivered to the parties on August 13, 2019, and not on August 7, 2019, the date on which the said ruling was rendered in open court.

Having reviewed the certified records this Court says that the issue presented herein is not a novelty. The cases *Kaba v. World Bank*, Supreme Court Opinion, March Term, A. D. 2014 and *Backarie Kakay et al v. the Intestate Estate of Randall Gbadye*, Supreme Court Opinion, March Term, A. D. 2017, are instructive as to the tolling of the ten days (10) statutory period in instances where the trial court's final ruling is not made available to the parties on the day it is rendered in open court.

The facts in the *Kaba v. World Bank Case* reveal that the trial court rendered its final ruling in favor of Manhattan Trading Corporation and against the World Bank on November 23, 2012, but did not make its final ruling available to the parties until December 3, 2012. Upon receipt thereof, the World Bank filed its bill of exceptions on December 7, 2012. The Manhattan Trading Corporation filed a motion to dismiss the World Bank's appeal on grounds that the bill of exceptions was filed outside of the statutory period of ten (10) and the trial court agreed with the Manhattan Trading Corporation and granted the motion to dismiss the World Bank's appeal. The latter applied for a writ of prohibition before the Chambers Justice of the Supreme Court to prohibit the enforcement of the trial court's final ruling and same was granted, thus prohibiting the enforcement of the trial court's ruling against the World Bank. The Manhattan Trading Corporation appealed the Ruling of the Justice in Chambers to the full bench of the Supreme Court.

On appeal, the Supreme Court affirmed the ruling of the Justice in Chambers and opined as follows:

“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 judge's ruling in its entirety”.

This position of Supreme Court was again reaffirmed in the case, *Backarie Kakay et al v. the Intestate Estate of Randall Gbadye*, Supreme Court Opinion, March Term, A. D. 2017, wherein the Court denied a motion to dismiss an appeal by stating that it would be impossible for the respondent to file a bill of exceptions absent a copy of the trial court's final ruling. The Court stated thus *“...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 movant/appellee received his copy on November 26, 2015, while the respondent/appellant received its copy on the 30th day of November 2015. Thus, it was impossible for the respondent/appellant to have filed its bill of exceptions and to proceed with the appeal process as of November 19, 2015.”

Hence, we hold that that in the present case, the trial court’s final ruling being made available to the respondent on August 13, 2019 and not on August 7, 2019, the date of rendition of the final ruling, the respondent was within the ten (10) day statutory period when he filed his bill of exceptions on August 19 2019.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal is hereby denied and the appeal ordered proceeded with on its merits. Costs are to abide the final determination of the appeal. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Viama J. Blama of NELAL appeared for the movant. Counsellor Wellington G. Bedell, Sr., of the Garlawolu & Associates Law Offices appeared for the respondent.