IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM A. D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR,SR……...CHIEF JUSTICE
BEFOR HIS HONOR : KABINEH M. JA'NEH.....ASSOCIATE JUSTICE
BEFOR HER HONOR :JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A. Z. BANK, III……..ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH……...ASSOCIATE JUSTICE

Hylton R. Parkinsons, Sr. and Johnetta L. Parkinson, of the United States Of America by and and thru their Son Jerome R. Parkinson, Attorney-in-Fact of the City of Monrovia……..Movants	)	
Versus	)	MOTION TO DISMISS APPEAL
Julius Parker of Monco, Inc. Intersection of U.N. Drive and Camp Johnson Road, Monrovia Liberia……..Respondent	)	
GROWING OUT OF THE CASE:	)	
Julius Parker of Monco, Inc.Intersection of U.N. Drive and Camp Johnson Road, Monrovia Liberia……..Appellant	)	
Versus	)	APPEAL
Hylton R. Parkinson Sr. and Johnetta L. Parkinson, of the United States Of America by and thru their Son Jerome R.Parkinson Attorney-in-Fact of the City of Monrovia……Appellees	)	

HEARD: October 24, 2016 **DECIDED:** December 16, 2016

MADAM JUSTICE JAMESETTA HOWARD WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The movants who were plaintiffs below sought an action of ejectment against the respondent, defendant below, for ¼ acre of land lying and situated at the corner of UN Drive, Camp Johnson Road, and Buzzy Quarter Community. Based on an agreement between the parties that the matter be settled by arbitration, a board of arbitration was set up to handle the dispute. The board's report awarded the disputed property to the movants/plaintiffs. The respondent filed objections to the arbitration report which the movants alleged the respondent failed to serve on movants' counsel up to the day and date of the argument of the objection. The movants alleged that without knowledge of the objections filed by the respondent to the report, they filed a motion to confirm the board of arbitration's award.

The judge consolidated both the respondent's objection to the award and the movants' motion to confirm the arbitration award for argument. In his ruling, the judge denied the respondent's objection and upheld the board's award. The respondent excepted to

the final ruling of the judge, announced an appeal to the Supreme Court for its review of the case.

It is no dispute that the judge's ruling was made available to the parties and received by them on August 14, 2015. Both parties having received a copy of the judge's final ruling, on August 14, 2015, the completion of the appeal process as per our appeal statue, Revised Code Civil Procedure Law, 1: 51.4 and 51.8, should have been completed within sixty (60) days, which means the respondent had up to October 13, 2015, to file his notice of completion of appeal.

The movants, in their motion to dismiss the appeal, have averred that the respondent/appellant filed its appeal bond on the October 14, 2015, one (1) day beyond the statutory period of 60 days, and that the notice of completion of appeal was filed on October 15, 2015, two (2) days after the statutory period of sixty (60) days.

The movants contends that in line with the statute and long line of Opinions of the Supreme Court, an appeal shall be dismissed upon the failure or neglect of the appellant to perfect his/her/its appeal within the statutory period. Accordingly, movants prayed the Supreme Court to deny and dismiss the respondent/appellant's appeal.

The respondent, in his resistance to the movants' motion to dismiss the appeal, prayed the Court to deny the movants' motion, contending that the movants miscalculated the sixty (60) days, having calculated the date of the appeal from August 14, 2015 (the day on which the judge's final ruling was made available) when in fact the movants should have commenced the calculation from August 15, 2015, the day after the ruling was received, pursuant to Civil Procedure Law, Rev. Code 1:1.7(1), which provision states that: "In computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by executive order, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday or a legal holiday." The respondent says that by the plain meaning of this statutory language, movants should have computed the sixty (60) days from August 15 instead of August 14. This, respondent says, would have placed the required sixty (60) on October 14, 2015, and not October 13, 2015, as alleged by the movants.

We do not comprehend the resistance of the respondent since it does not deny that the ruling was made available and received by the parties on August 14, 2015. The interpretation of the calculation as per Section 1.7(1), alluded to in respondent's resistance quoted above, is interpreted as the first day of toll beginning the following day, August 15, 2015. A simple tabulation then would be August 15 - August 31, 2015, which equals 17 days; September 1 – to September 30, which equals thirty (30) days;

and October 1 - October 14, which equals fourteen (14) days. When the days are added up, they come to a total of sixty-one days.

We therefore agree with the movants then that the respondent/appellant having admitted that it filed its bond on October 14, 2015, that admission confirms the movants' averment that the appeal bond was filed on the 61st day and not on the 60th day. Hence we must say that the attempt by the appellant to mislead this court in the tabulation of the days from the date the final judgement was handed down on August 14, 2015, is an exercise in futility. The sixty (60) days, as of the date of August 14, 2015, and as rightly computed by the movants, expired on October 13, 2015.

In count 3 of the resistance, counsel for respondent, Counsellor J. Laveli Supuwood, admits that he perfected his appeal beyond the sixty day statutory period, but sought to excuse his late filing on the alleged manipulation and deception by counsel for the movants.

Counsel for the appellant alleged that on August 13, 2016, he called Counsellor Amara Sheriff, counsel for the movants, and informed him that he had a copy of the notice of completion of appeal for him; that Counsellor Sheriff responded that he was going across the bridge (Bushrod Island) and that he would stop by the office of Counsellor Supuwood to pick up a copy of said notice of completion of appeal. This conversation, Counsel for respondent alleged, was held in the afternoon, about 2:00 p.m. Having waited several hours, and Counsellor Sheriff did not show up or call, and all attempts to contact him by phone failed, according to Counsellor Supuwood, around 4:pm, he took the appeal bond and the notice of completion of appeal to the Civil Law Court to be filed, but everyone had left the court by then. On the next day, August 14, 2016, he said, he took the appeal bond to Judge Kaba at the Civil Law Court who approved it by affixing his signature thereon. Again, Counsellor Supuwood said he attempted to contact Counsellor Amara Sheriff to serve him with a copy of the bond and notice of completion of the appeal, but he said Counsellor Sheriff informed him that he was "across the bridge, around the Chicken Soup factory. Counsellor Sheriff's answer not sounding right to him, Counsellor Supuwood said he went along with his filing clerk, Mr. Sesay Kesselly, to Counsellor Sheriff's Law Office, the Sherman and Sherman Law Offices, Inc. There, he met a lady at the desk downstairs who told them that Counsellor Sheriff was at the office about five minutes before they got there but had left. Counsellor Supuwood said he tried to call Counsellor Sheriff by phone but to no avail. All attempts, Counsellor Supuwood said, to get someone at the Sherman and Sherman Law Offices, Inc., to sign for the document was not possible as the Office said it was Counsellor Sheriff's personal case and no one from the Law Office could sign for it. As a result, the appellant's counsel said Counsellor Sheriff could not be found on August 14,

2016. This he said was his reason for the service on August 15, 2016, the day he was able to make contact with counsellor Sheriff.

Counsel for the appellant prayed that, in the light of these facts, the motion to dismiss be denied as it was filed in bad faith.

Appeal from trial proceedings of the lower courts is a constitutional right that the Supreme Court should shy from denying. However, the Supreme Court has held that adherence to the appeal statute is mandatory for conferring jurisdiction on the Court. Therefore, an appeal will be dismissed for failure to perfect an appeal within the statutory time. *Sillah et al v. Sherman et al, 38 LLR 918,923 (1990); Varney et al v. Kollor, Supreme Court Opinion, October Term, A.D. 2015*. In the instant case, the sixty days allowed for completion of the appeal ended October 13, 2015.

Counsel for the respondent has alleged that the appeal was not perfected within the statutory period because of the bad faith of the movant's counsel who could not be found to be served on the last day for perfecting the appeal.

Before delving into the allegation level in respondent's resistance to the motion to dismiss, this Court deems it important to articulate its concern regarding lawyers who associate with law firms and who have arrangements allowing them to handle personal cases, in their names, but under the auspices of the law firms. Counsel for respondent alleged that he had made effort to effect service of the appeal bond and notice of completion of appeal on his adversary counsel through the Sherman and Sherman law firm wherein his adversary worked but that this authorized personnel of the firm had refused to sign for and accept the documents on the ground that the case was a personal one for the lawyer and not for the firm. Without according any evidence to the allegations or as to their truthfulness, we do not take kindly to such situation because it means that in order to be served papers on such counsels in their personal matters, the opposing counsel must follow them around wherever they might be. This defeats the whole purpose for service and the requirement of the law. The requirement of personal service in such situation would undoubtedly work severe hardship on opposing parties who have papers for service on these counsels and who might not have a vehicle to run after the opposing counsels who may have determined to avoid service of the documents on them. The arrangements with these counsels and their law firms must be that their representation to the court as to their place of work at particular law offices must require that service be accepted by authorized persons at their firms, who will ensure, on their behalf, that the papers are delivered to them in a timely manner. If persons at a firm who are authorized by law or by the firm to receive such papers denies the service, then the counsel effecting such service should execute an affidavit evidencing impossibility of service and have said unserved papers filed and left with the court; and indeed, in such a situation, service will be deemed to have been made.

Having expressed the view above, we proceed to address the substance of the allegations made by the respondent.

We note firstly, the counsel for the respondent, despite his allegations, did not file an affidavit stating the impossibility of service on the movants counsel, and the circumstances that rendered service impossible. He also showed no evidence in form and manner acceptable to the Court or of any provisions under the Civil Procedure Law that was followed by him and which would have allowed the Supreme Court to accept the excuse of the counsel and thus provide a basis for denial of the motion to dismiss the appeal. The Supreme Court has repeatedly held that it cannot take evidence, and that it takes cognizance only of matters found in the certified record of the proceedings had in the lower court. Hulsmann v. Johnson, 2 LLR 20,21(1909); Kanga and Kanga v. Williams, 11 LLR 299, 301 (1952); Gallina Blanca, S.A. v. Nestle Products, Ltd, 25 LLR 116, 121 (1976); Donzoe v. Thorpe, 27 LLR 166, 172 (1978); IBM v. Tulay, 33 LLR 105, 111 (1985); In Re: The Petition of Benjamin J. Cox, 36 LLR 837, 850 (1990); Gonsahn et al v. Vinton et al, 37 LLR 47, 56 (1992) ; Chambers v. NEC et al., Supreme Court Opinion, March Term 2015 .

Besides, the appellant's counsel, in the allegation made in his resistance to the motion to dismiss, says that on August 13, 2016, he called the movant's counsel, Counsellor Amara Sheriff, informing him that he had a copy of the notice of completion to be served on him, and that Counsellor Sheriff responded that he would pass by the respondent counsel's office to receive the papers after he got back from Bushrod Island, but that having waited several hours and, Counsellor Sheriff did not show up or call, he made all further attempts to contact him failed by phone but that these efforts failed. We see that Counsellor Supuwood said in the same count 3 that he took the appeal bond and the notice of completion of appeal to the Civil Law Court but that everyone had left the court as it was after 4:00pm, and on the next day, October 14, 2016, he took the appeal bond to Judge Kaba at the Civil Law Court who then approved the bond.

The statutory steps for completing an appeal are the following:

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

Can one complete a step of the appeal, particularly the notice of completion of the appeal, without fulfilling the previous step? Could counsel for the respondent have gone out to serve the notice of completion of appeal on October 13, without obtaining the approval and filing of the appeal bond? We think not.

We are puzzled by this explanation given by the counsel of the respondent. Reading count 3 of the resistance, we thought Counsellor Supuwood would have said he went to the court on October 13, 2015, to file the papers along with an affidavit attesting to the difficulty he had in serving Counsellor Sheriff within the statutory time allowed by statute. But we see that he admits that on the next day, October 14, 2016, he took the appeal bond to Judge Kaba to approve. This means that the bond was not approved on the 13th of October 2015, when Counsellor Supuwood alleged that he attempted to serve the movant's counsel with the notice of the completion of the appeal. Indeed, this allegation made by counsel for the respondent, in and of itself, points to the defectiveness in the date of the approval of the bond and in the invalidity of the bond at the time the respondent's counsel sought to serve and unapproved and invalid bond on counsel for the movants, and hence rendered the appeal dismissible.

We do not believe that Counsellor Supuwood was diligent in the handling of his client's appeal and we find no justifiable reason stated in his resistance to warrant a denial of the motion for dismissal of the appeal as prayed for by the movants/appellees. We therefore grant the movants/appellees' motion dismissing the appeal, with the order to the court below to resume jurisdiction and proceed to enforce its judgment. AND IT IS HEREBY SO ORDERED.

WHEN THE CASE WAS CALLED FOR HEARING, COUNSELLOR AMARA M. SHERIFF OF J. JOHNNY MOMOH AND ASSOCIATES LEGAL CHAMBERS, INC. APPEARED FOR THE MOVANTS/APPELLEES. COUNSELLOR J. LAVELI SUPUWOOD APPEARED FOR THE RESPONDENT/APPELLANT.