

Paul Raspal and Upjit Singh Sachdeva of Monrovia, Liberia, MOVANTS Versus **Bindu Fatumata Dukuly** of the City of Monrovia, Liberia, RESPONDENT

LRSC 23

MOTION TO DISMISS APPEAL

HEARD: APRIL 1, 2 015 DECIDED: APRIL 17, 2015

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

The respondent, Bindu Fatumata Dukuly, complained that she negotiated and signed a lease agreement with the co-movant Paul Raspal and in negotiating the lease, co-movant Paul Raspal represented to her that he was entering the lease on behalf of his son whom he named as Upjit Singh. The lease was then entered for a period of twenty years. Respondent, Dukuly said that she found out later that the co-movant, Paul Raspal had in fact made a misrepresentation to her and the person named as the lessee was in fact Upjit Singh Sachdeva (commonly called Jeety) who had been behind her for a bout fifteen years to lease her property but she had constantly refused because of personal reasons. Learning that Mr. Paul Raspal had "fraudulently misled her" into entering the agreement with Upjit Singh Sachdeva, (Jeety), she filed a petition for cancellation of the lease for fraud before the Sixth Judicial Circuit, Montserrado County.

The judge heard the petition and ruled that there was no ground sufficient in law and fact to order cancellation of the lease agreement. He therefore denied the petition on February 25, 2013, and the petitioner, now respondent, appeal from the said ruling.

The appellees/movants filed a motion to dismiss the appeal by the Supreme Court for reason that this Court lacks the jurisdiction to hear the appeal. Movants state in their motion that the ruling of the lower court was made on the 25th day of February A .D. 2013, transcript of the ruling made available and received by the respondent on March 5, 2013, but the respondent , after receipt of the transcript of the ruling and filing of the bill of exceptions, failed to file an Appeal Bond and Notice of Completion of Appeal with the court until May 11, 2013; that is, sixty seven (67) days from the date the ruling was received, and in violation of Chapter 51 of the Civil Procedure law, (1973) which required an appeal to the Supreme Court to be perfected within sixty days. The movants therefore prayed this Court to deny the respondent's appeal for lack of jurisdiction.

The respondent filed her resistance admitting to her lateness in perfecting her appeal but said her lateness was due to an excusable neglect; that her lawyer, Counsellor Marcus R. Jones who had handled her case from the inception was suspended from the practice of law on February 20, 2013, five days before the final argument in her case and so her case was handled by junior lawyers in his Law Firm and who miscalculated the time for the appeal process. She prayed the court to dismiss the motion for this reason as it would be in the interest of justice, equity and fair play.

This Court unfortunately has not been able to see from the reason given by the respondent that which it could consider reason sufficient to deny the motion to dismiss the appeal. Where the lawyer of respondent had been suspended just before the final argument of the case and the junior lawyers having argued and lost the case, the respondent upon announcing an appeal should have asked the court for enlargement of time to find a more experienced lawyer to handle the appeal process where she did not have confidence in the ability of the junior lawyers to effectively handle her appeal. There is no law disallowing a "junior lawyer" from perfecting an appeal process; and where said lawyer is negligent and fails to perfect the appeal within

the statutory time, it is no excuse for denying the motion to dismiss the appeal.

It is a trite law that a ground for dismissal of an appeal at the Supreme Court is one lack of jurisdiction. Completion of the prerequisites for the perfection of an appeal within sixty days is necessary to give the Supreme Court jurisdiction over the subject matter and the parties on appeal. Statutory authorization granting an enlargement of time is set out Section 51.10 of our Civil Procedure Law and this court has further granted enlargement of time for perfecting an appeal and failure to take timely steps outside of statutory periods based on excusable neglects such as acts that can be attributed to the court, or other unforeseen circumstances. *A. Polo Harris v. Callava Rubber Corporation*, Supreme Court Opinion, March Term A.D. 2012; *Mountain and Chambers v. CATCO and UNIPAC*, 38LLR 73, 77 (1999).

Section 51.10 of our Civil Procedure Law provides for tolling of time for as required to complete an appeal. It states:

"If after an appeal is announced, the counsel for the appellant dies or becomes physically or mentally incapacitated is disbarred or suspended before the expiration of the time for filling of the bill of exceptions or an appeal bond, the time for the doing of such act shall commence to run anew from the date of the death, incapacitation, disbarment, or suspension of such counsel. A bill of exceptions or appeal bond shall not be filed by a new attorney of record within the extended time allowed by this section until he has applied for and received permission of the court".

In this case, Counsellor Marcus Jones was suspended before the appeal was taken and was not the lawyer that announced the appeal from the lower court's ruling; the respondent allowed the lawyers in his firm whom she now refers to as "junior lawyers", to continue her case and perfect the appeal. These lawyers failure to perfect the appeal within the statutory time cannot be considered by this Court as an excusable neglect and the Court is statute barred to assume jurisdiction in the hearing of the appeal.

Several Opinions of the Supreme Court have held that the dismissal of a case constitutes a harsh sanction and the Court prefers to address the merits of an appeal whenever possible. However, where the statute in this jurisdiction prescribes the period of time within which an appeal must be taken, the Court cannot disregard the settled law.

Since it is not disputed that the appellant failed to perfect the appeal within sixty (60) days as required by law, and the excuse advanced by the appellant for such failure, not being tenable in view of this Court, it is the opinion of this Court that the motion to dismiss the appeal be granted and appeal dismissed.

The Clerk of this Court is mandated to send an order to the court below to give effect to this judgment. Costs are ruled against the appellant/respondent.

When this case was called for hearing, Counsellor Cooper W. Kruah of the Henries Law Firm appeared for the movants. Counsellor C. Alexander B. Zoe of the Zoe and Partners Law offices appeared for the respondent.