

Amara M. Sheriff and Catherine M. Sheriff of city of Monrovia, Liberia, MOVANTS Versus
Pastor Melvin Parwon and all those under his control also of the city of Monrovia, Liberia,
RESPONDENT

LRSC 25

MOTION TO DISMISS APPEAL

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

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT.

On September 28, 2011, the movants/appellees, Amara M. Sheriff and Catherine Sheriff filed an action of ejectment in the Sixth Judicial Circuit Court for Montserrado County against the respondents/appellants, Pastor Melvin Parwon et al., basically alleging that the respondents/appellants had illegally occupied the movants' property. Movants/appellees attached and exhibited a title deed as evidence of their ownership to the property.

On October 4, 2011, the respondents/appellants filed their answer claiming that they were the legitimate owners of the property in dispute, which they acquired through a lease with the National Housing Authority (NHA). The respondents/appellants attached and exhibited their lease agreement with the National Housing Authority, and receipts of rental payments to authenticate the averments in the answer.

On October 12, 2011, the movants/appellees filed their reply confirming the allegations stated in the complaint. Prior to the filing of their reply, the movants/appellees filed a motion for summary judgment on December 9, 2011 contending that the respondents/appellants had failed to establish title to the disputed property, as the lease agreement with the National Housing Authority did not vest title in fee simple to the respondents/appellants, but only a leasehold right for a specified period.

On December 12, 2011, the respondents/appellants filed resistance to the motion for summary judgment maintaining that the lease agreement and other instruments exhibited were evidence of their title to the property and that summary judgment could not lie since both parties were claiming ownership to the same property.

On December 28, 2011, the assigned Circuit Judge, His Honor Emmanuel M. Kollie of sacred memory, granted the motion for summary judgment on grounds that the lease agreement could not vest title in the respondents/appellants and entered judgment in favour of the movants/appellees. The respondents/appellants excepted to the ruling of Judge Kollie and announced an appeal to the Honorable Supreme Court and on December 29, 2011, filed the bill of exceptions and subsequently filed the appeal bond on February 27, 2012. However, the records show that the respondents/appellants filed the Notice of Completion of Appeal on March 9, 2011, eleven (11) days over and above the statutory period.

On July 12, 2012, the movants/appellees filed in the Clerk's office of this Honorable Court, a motion to dismiss the appeal on grounds that the Notice of Completion of Appeal was filed eleven (11) days outside of the statutory period. On June 6, 2014, the respondents/appellants filed a resistance stating that their counsel, Atty. Joseph Doe, had fallen ill and hospitalized. He then instructed a non-lawyer within his employ with the task of completing the appeal process, but who failed in the filing of the Notice of Completion of the Appeal with the time allowed by statute.

When this case was called for hearing on the Motion to dismiss the appeal, the counsel for movants/appellees cited the case *Standard Motor Corporation v. Leila Pratt* 21LLR 381, 384 (1972) in which this Court held that "as important as other jurisdictional steps necessary to the completion of appeal might be, service of notice of completion of appeal is most important because without it the appellate court is without jurisdiction over one of the parties and so would be unable to render judgment

against him should the case be decided in favor of the other party”.

The Counsel for the respondents/appellants admitted to the late filing of the Notice of Completion of the Appeal but argued the inapplicability of the statute due to the circumstances surrounding the illness of Attorney Doe thus, creating a situation of vis majeure, and excusable neglect. For reliance, the counsel cited the case *Intercon Security System Inc. v Philips et al.*, 40LLR 30, 35 (2000) wherein the Supreme Court held that “where the failure of an appellant to file an approved appeal bond and to file and serve a notice of completion of appeal within sixty (60) days period prescribed by statute is due to force majeure, the filing and service will be considered valid and a motion to dismiss the appeal will be denied”. Counsel for the respondents/appellants reasoned that the illness of Attorney Joseph Doe and the late filing of the notice of completion of appeal by a non-lawyer was a condition beyond the respondents/appellants’ control or a force majeure.

Having attended to the records and the arguments of the lawyers, this Court have determined that there is only one issue germane to the disposition of this motion, which is whether or not the condition of vis majeure existed as a result of the illness of the appellant’s lawyer to excuse him for the late filing of the notice of completion of appeal by a non-lawyer.

The Court will retrospect on the case *Intercon Security System Inc. v Philips et al.*, 40LLR 30, 35 (2000) and other applicable laws in addressing this issue. The facts in that case revealed that after final judgment was rendered against the appellant, the appellant excepted to the judgment of the trial court and announced an appeal to the Supreme Court. Thereafter, appellant filed the bill of exceptions but due to the outbreak of the civil war on April 6, 1996, was unable to file its appeal bond and notice of completion of appeal on grounds that the appellant had failed to file its appeal bond and notice of completion of appeal within the statutory period. The Court rejected the argument advanced by the appellee and denied the motion to dismiss by holding thus:

“the appellant was involuntarily prevented from complying with our appeal statute due to vis majeure, an irresistible force which was beyond the control of the appellant and that where the failure of an appellant to file an approved appeal bond and to file and serve a notice of completion of appeal within the sixty (60) days period prescribed by statute is due to force majeure the filing and service will be considered valid and motion to dismiss the appeal will be denied”. Id. 35

A recourse to the facts and circumstances in the *Intercon* case show that they are not analogous to this present case and neither is the Court’s rational therein applicable to the respondents/appellants. In *Intercon* case, the eruption of the civil crisis of April 6, 1996, saw competing warring factions create havoc in the country thus institutions of government to include the Judiciary were not functioning. This situation made it impossible for the courts and lawyers to perform their normal duties. In the present case however, the courts were fully functioning that even the ill counsel for the respondents/appellants was able to instruct a non-lawyer to pursue the filing of the Notice of Completion of Appeal or albeit, said non-lawyer could not legally sign such a document.

Statute provides that:

“When under this title or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time the court for cause shown may except as otherwise provided by law at any time in its discretion: (a) order the period enlarged if application is made before the expiration of the period originally prescribed or as extended by previous order or (b) upon motion made after the expiration of the prescribed period permit the act to be done when the failure to act was the result of excusable neglect”. Civil Procedure Law Rev. Code 1:1.7.2

The Supreme Court has held that:

“It is the responsibility of counsel for an appellant to move the court to enlarge the time for completion of the appeal if a problem existed that delayed the completion of the appeal on time”. *Ahmar v Gbortoe*

42LLR 132, 141-142; Massaquoi v. A.M.E Church, Supreme Court Opinion March Term A.D. 2014.

We affirm and confirm this holding of the Supreme Court and also hold that the Intercon Case is inapplicable to the present case in that the sickness of the appellant's lawyer though regrettable, did not create a vis or force majeure in the context of the Intercon Case for in as much as the respondents/appellants' lawyer was able to instruct the non-lawyer to perform a legal task, he could have also supervised the filing for enlargement of time.

WHEREFORE, and in view of the foregoing, it is the holding of this Court that the motion to dismiss the appeal should be and same is hereby granted and the appeal is dismissed as a matter of law. The Clerk of this Court is ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and enforce its judgment. Costs applied against the respondents/appellants. And it is so ordered.