

The Intestate Estate of the Late Alhaji Massaquoi by and thru its Administrator Philip T. Massaquoi all of the City of Monrovia, Liberia, APPELLANT VERSUS A.M.E. Church by and thru Bishops, Pastors & Clergy, Saku Dunor & Boakai, all of the City of Monrovia, Liberia,
APPELLEE

LRSC 59

APPEAL

Heard: June 13, 2014 Decided: December 4, 2014

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT.

This case before us portrays a glaring misuse and abuse of the appeal process. The case also speaks to the dismal manner in which some lawyers handle the interests of their clients and use the remedial process in an attempt to rectify their inexcusable negligence. We will return to this later in this Opinion.

The certified records before us reveal that on February 25, 2009, the Intestate Estate of Alhaji Massaquoi, the appellant, by and through its administrator, Philip T. Massaquoi, commenced an ejectment action against the African Methodist Episcopal Church (AME), the appellee, in the Civil Law Court, 6th Judicial Circuit Court, Montserrado County, sitting in its March Term, A.D. 2009. The records also reveal that after both parties rested pleadings, the Civil Law Court, presided over by His Honor Yussif D. Kaba, convened a pre-trial conference on December 28, 2009. Upon the conclusion of the pre-trial conference, it was agreed by the parties and confirmed by the court that the primary contention between the parties bordered on the determination of which deed, as per the metes and bounds, coincided with the ground location of the property in dispute, as the metes and bounds on the respective deeds were different, though the parties were laying claim to the same parcel of land. At the instance of the court, it was agreed by the parties that an investigative survey be conducted to determine which party's deed reconciled with, and conformed to the metes and bounds of the disputed property. The trial court thereafter requested each party to submit the name of a qualified licensed surveyor to constitute the investigative survey team. A third surveyor was to be designated by the Ministry of Lands Mines & Energy. The records show that the investigative survey team that was initially chaired by one Mr. Peter M. Blamo was qualified on February 4, 2010, but that due to disagreement as to the amount charged by Mr. Blamo for the survey, said surveyor was replaced by Mr. Reuben Johnson, whose investigative fees were considered more reasonable and affordable by the parties.

The records show further that the survey was conducted on the disputed property and upon the completion thereof, a report was submitted to the trial court which was read in open court on

September 16, 20 II, and subsequently adopted as part of the court's records. The findings of the report stated that the parcel of land claimed by the A.M.E Church coincided with and conformed to the land described in the deed presented by the A.M.E Church. On the other hand the deed presented by the Intestate Estate of the late Alhaji Massaquoi did not coincide with the location of the disputed property. The report reads as follow:

"The Board of Arbitration for the captioned case was constituted in November 2011 and a reconnaissance survey was carried out.

Present on the site for the survey exercise were the following personalities:

A) A.M.E. Church

Mr. Campbell

B) The Intestate Estate of the late Alhaji Massaquoi

Mr. T. Phillips Massaquoi

C) The Board of Arbitration

1. Surveyor Reuben Johnson: Chairman of the Board

2. Surveyor Eastman Quaqua: Member, representing the A.M.E. Church

3. Surveyor Lanson Massaquoi: Member, representing the Intestate Estate of the late Alhaji Massaquoi

Case approach

Each party was requested by the Chairman of the Board to present their respective documents (deeds) to substantiate their claims.

Parties presentation and endorsement/information on the deed presented

The representative of the Intestate Estate of the late Alhaji Massaquoi presented photo copy of a certified copy deed which contains one lot of land. Lot #36

From: Jonathan E. Coleman, Sr. To: Alhaji
Massaquoi

Signed: September 25, 1928

Registered signed and probated by Judge Davis Bright, Judge of the Monthly and Probate Court,

Montserrado County on October 4, 1928 in vol: 46 pages 841-842

Also the A. M. E. Church representative presented photo copy of a certified copy deed contained_ [sic] "Eleven-fourth" lot of land. From: Walter F. Walker and Annabel Dyon –Walker To: Missionary Extension of Board of the A.M.E. church

Signed May 23, 1923

In the presence of:

James Ldobar, Solomon Portor Hood and A. B. Ricks

Recorded in vol: 42 page 204

Technical Analysis of the Parties Presentation

The documents (photo copy of deeds) presented to the Board by the parties were examined and found to be a bona fide documents and fit for the investigative survey.

Field Measurement and Survey

During the field survey exercise of members of the Board consisted of boundary location of physical features such as structure affixed to the disputed land and roads/street. After the field survey exercise was completed, an index diagram (map) was prepared depicting the situation as it is on the ground. (see map)

Observations/Findings

1. That the parcel of land claimed by the AME Church on the ground coincides with land described in the deed presented by the Church (AME) in evidence of title, this is indicated on the attached map by area bordered brown (A, B, C, D, E, F).
2. That the deed presented by the heir of the late Alhaji Massaquoi does not coincide with the ground location.
3. That the said deed commenced from Northeastern angle of W.

Walker property (ies) whose deed having to be a mother deed for the AME Church, that mean the Massaquoi acknowledged W. Walker to the rightful owner of the land occupied/being claimed by AME Church according to his (Massaquoi) deed.

4. That the metes and bounds in the deed presented by the heirs of the late Alhaji Massaquoi does not form a close traverse.

5. Note: to describe a parcel of land, the traverse must form a close geometrical figures by starting from a known point, and closing back on that point

6. That the current boundaries on the ground for the AME Church was demarcated/adjudicated in line with National Land Registered and Cadastral Survey Program since 1978. Hence there exist no more land dispute on that ground.

Conclusion

Based on the six (6) count observations noted above by the members of the Board of Arbitration we (members) are of the conclusion that the investigative survey was conducted in keeping with normal professional ethics and procedures, and the Board concludes, that, from all indications, the warranty deed from Walter F. Walker and Wife (Annabel Dyon-Walker) to Missionary Extension of Board of the AME Church is authentic, and the metes and bounds of said deed conformed with the ground location of the land.

Recommendation

The members of the Board of Arbitration recommend, that, since the area claimed by the AME Church falls/coincides/confirms with the demarcation map of the National Land Registration Program of the Republic of Liberia, said land should be claimed by AME Church and that this Honorable Court should inform the Church to perfect its title"

The appellant excepted to the investigative survey report quoted supra and on September 16, 2011, filed a three (3)

count objection to the report, contending that the report was technically flawed with factual errors. On September 28, 2011, the appellee filed its resistance to the appellant's objection contending that the investigative survey report cannot be set aside as it was established that the appellant had no property within the locale of the disputed property as indicated in the report.

A notice of assignment for the hearing on the objection and the resistance thereto was served on the parties. At the call of the case on October 21, 2011, counsel for the appellant was absent from the bailiwick of the court without filing an excuse or obtaining a leave from the court to justify his excuse. The appellee's counsel who was in court for the hearing, invoked the Civil Procedure Law Rev. Code 1:10.7 relating to 'Default on Motion'. His Honor Peter W. Gbeneweleh, assigned circuit judge presiding over the 2011 September Term of the Civil Law Court, granted the appellee's submission by ruling thus "If a party making a motion fails to appear, the motion shall be denied provided the motion papers are submitted to the court. The plaintiff counsel filed an objection to the report of the arbitration, but failed and neglected to appear at the call of the case for the hearing

of his objection filed before this Honorable Court. The failure of the objector's counsel to appear before this Honorable Court to argue his objection is a default on his motion".

The trial court then concluded its ruling by denying the appellant's objection, sustaining the appellee's resistance and reserving the ruling on the investigative survey report for a later date. We agree with this ruling of the trial judge entering a default on motion against the appellant which is in consonance with the law.

The Supreme Court has held that "once a case has not been completed, the counsel of record is bound to honor all assignments issued and served on him until the case is finally decided, or he will be presumed to have abandoned the case." *Vijayaraman et al., v Xoanon Liberia Ltd.* 42 LLR 47, 56 (2004). The *Vijayaraman* also stated the principle of law found in §10.7 of the Civil Procedure Law that "the phrase failed to appear, plead or proceed to trial does not mean that once [a party] has appeared, pleaded and proceeded to trial, default cannot be granted against him at a subsequent stage of the trial." That Opinion stated further that "there is no statute or case law in the Liberian jurisdiction that defines or determines the number of absences that warrant the granting of default on a motion or judgment and if a party fails to appear for resumption of trial upon notice of assignment default can lie against him." *Id.* p. 58. We therefore hold that the trial judge's action in granting the default motion against appellant was within the pale of the law and we also confirm the Supreme Court's previous holdings which states that "all lawyers are required to be prompt and faithful in answering assignments for their clients and tardiness or absenteeism will not be accepted or encouraged on a bare-face explanation of unforeseen and unavoidable circumstances. This Court has been unequivocal and explicit on the principle that an excuse is granted only after the court favorably acts upon the request." *Vijayaraman et al., v Xoanon Liberia Ltd.* 42 LLR 47, 57 (2004); *L.B.D.I v. Natt*, Supreme Court Opinion, October, Term 2006; *Oxfam v. Natt*, Supreme Court Opinion, March Term, 2008.

Returning to the present appeal proceedings, the records show that after the issuance and service of several notices of assignment between the period of October 21 to November 11, 2011 for the ruling on the investigative survey report, the appellant's counsel failed to appear allegedly due to funeral engagement in Nimba County. Thereafter, His Honor Peter W. Gbeneweleh, on November 11, 2011, rendered a final judgment upholding the findings of the investigative survey report, dismissing the ejectment action and ordering the issuance of a writ of possession in favor of the appellee. The records further show that on the date of rendition of judgment, that is, November 11, 2011 the appellant's counsel was again absent necessitating the court to appoint Atty. Abraham B. Sillah to take the ruling for the appellant in keeping with law. It is the law, that the trial judge is statutorily required to appoint a lawyer for an absent party for the purpose of having him announce an appeal from the judgment or ruling affecting the rights and interests of a party litigant. Civil

Procedure Law Rev. Code 1:56.6, *United Logging Company v. Mathies* 41LLR 395, 401 (2003). The court performed and completed its statutory obligation when Attorney Sillah, the court's appointed lawyer excepted to the ruling and announced an appeal to the Honorable Supreme Court which signified the commencement of the appeal process and the tolling of the appeal statute as of November 11, 2011. The records however show that having willfully neglected to file his bill of exceptions within the statutory time or move for enlargement of the statutory period to file his bill of exceptions, the appellant's counsel strangely and surreptitiously elected to petition the Chambers of the Honorable Supreme Court on December 29, 2011, for a writ of error. The counsel contended that he was not served a notice of assignment for the hearing of the objection to the investigative survey report and the resistance thereto, and that the court's final ruling was erroneous. Madam Justice Jamesetta Howard Wolokolie, presiding in chambers, convened a conference with the parties on January 9, 2012 and from all indications from the records declined to issue the alternative writ. The law is very clear that no party is entitled to the issuance of a remedial writ as a matter of right. Further, there are numerous opinions of this Court which state that the issuance of the writ is within the sole discretion of the Justice and refusal to issue the writ even without the Justice citing the parties for a conference can never be characterized as and does not constitute an abuse of the Justice's discretion. *Saab et al., v. Harb & Smith* 29LLR 113 (1981); *Waggay v. Radio et al.*, 36LLR 242 (1999); *Meridien BIAO Bank v. Andrews et al.*, 40LLR 111 (2000); *Jawhary v. Ja 'neh*, Supreme Court Opinion, October Term A.D 2012.

The Court hereby notes from the records that prior to the citation issued on January 4, 2012, from the Chambers of Madam Justice Wolokolie for the conference with reference to the appellant's petition for a writ of error, on January 9, 2012, the appellee had filed a motion to dismiss the appellant's appeal on December 30, 2011 on grounds that the appellant had failed and neglected to file its bill of exceptions within the time allowed by statute. With the denial by the Chambers Justice to issue the writ, the parties returned to the trial court for the hearing of the motion to dismiss the appellant's appeal. Thereafter on January 17, 2012, the appellant's counsel filed its resistance to the motion to dismiss restating that he was ill and that the court's appointed counsel, Atty. Abraham Sillah neglected to deliver the court's final ruling to his office. Here, the records reveal through a clerk's certificate issued in favor of the appellee, and by the appellant's own admissions that the appellant did receive the court's final ruling howbeit on December 9, 2011, which was eighteen (18) days after the final judgment was rendered on November 21, 2011.

On January 20, 2012, the trial court, then presided over by the late Judge Emmanuel Kollie, denied the appellee's motion to dismiss the appeal and granted the appellant time to perfect its appeal on grounds that he believed that the appellant was sick and also that the Supreme Court is the only Court with the authority to bring finality to the proceedings. Below is excerpt from the judge's ruling expressing his reason(s) for granting the appellant time to perfect its appeal, which this Court

finds very strange and unusual:

"when a case is supposed to be tried expeditiously, it means the laws and the facts must be invoked to the satisfaction of the judgment. No one has control over sickness and it is something unannounced but that does not mean that we believe that the respondent was sick. We however can imagine that something went on somehow that brought the prevailing circumstances of respondent's prevention to file his bill of exceptions."

Judge Kollie then concluded his ruling stating:

"the respondent is hereby allowed upon our own volition, time to file his bill of exceptions for the determination of this matter. We observed that the law being read in the appellee's argument also has interpretation taking other circumstances into consideration by way of implication. Howbeit, since this case needs to be settled once and for all, it is our holding that it travels to where it will not be reversed.

This Court disagrees with the position of Judge Kollie. There is no showing in the records that the appellant's lawyer applied for continuance or enlargement of time due to his alleged illness. Yet, Judge Kollie, while disposing of the motion to dismiss the appeal, granted the appellant's lawyer time to file his bill of exceptions even though counsel for the appellant had not filed the requisite papers for continuance or enlargement of time. It is trite law that a party not being ready for the hearing of a case should file a motion for continuance, giving legal reasons for the consideration of the court. *Bhatti v Zoe* 38 LLR 22, 25 1995. Also, 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* 42 LLR 132, 141-142 (2004). This Court wonders how Judge Kollie could sua sponte enlarge the time for the appellant's lawyer to file his bill of exceptions without stating any legal grounds therefor, and especially when courts are enjoined and forbidden to do for party litigants that which they are legally obligated to do for themselves. *Blacklidge v. Blacklidge et al.* 1 LLR 371 (1901); *Bility v. Lewis* 30 LLR 512 (1982); *Williams v. Kpoto* Supreme Court Opinion October Term A. D 2012. This Court has further said that "it is the duty of litigants for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way for securing of the great benefits which they seek to obtain under the law." *Id.*

We will now address the appellant counsel's contention regarding the untimely delivery of the court's final judgment to the appellant. This Court maintains that it was the duty of the appellant's counsel to pursue his client's case or move for enlargement of the statutory time. The law imposes a duty

upon an absent counsel, in this case the appellant's lawyer, to move for enlargement of time upon receipt of the final judgment beyond the statutory period often (10) days, so as to enable him to file his bill of exceptions nunc pro tunc. *West Africa Rubber Trading Company v. Metzger* 39LLR 151, 160 (1998). Also, the failure of the court-appointed counsel to forward the judgment to the counsel of record within the period of ten (10) days cannot be assigned as an error committed by the trial court. *Jd.* The Supreme Court has held that "a trial court's duty ends when a counsel who is present is designated to take a ruling for an absent party and that it is morally and legally binding upon the said designated counsel to timely transmit the records of the court to the party against whom judgment has been rendered." *Cooper Heir v. Swope*, 39LLR 220, 237 (1998); *Kunakey v. Smith* 31LLR 256, 259 (1983). We confirm and affirm the principles of law in these cases, and maintain that the appointment of a lawyer to receive the court's ruling does not shift the burden on the trial court to ensure that the ruling is transmitted to the absent counsel neither does it abrogate the duty of an absent counsel to move for enlargement of time.

We also hold that the ruling of Judge Emmanuel Kollie denying the appellee's motion to dismiss the appeal and sua sponte enlarging the statutory time for the appellant to file its bill of exceptions without the appellant filing the requisite papers to enlarge the time was a reversible error and same is hereby reversed. We further hold that the ruling of Judge Kollie is vague, elusive, lacks clarity and without the pale of the law. Judges are herewith cautioned that they are masters of their courts and hence, they should avoid the suspicion of arbitrary conclusion, promote confidence in their intellectual integrity and contribute useful precedent to the growth of the law by stating the reasons for their actions. Their judgments should be complete and certain in themselves, indicating with reasonable clarity the decision which the court has rendered. Reliance: *Judicial Canon No. 34*; *The Management of the United States Trading Company v. Morris et al.*, 42LLR 191, 200 (2002).

To ensure that the judgments of our trial courts are complete and certain with all legal precisions, the Supreme Court issued *Judicial Order No.4* in November 2012 as the standard as to how judges ought to craft their rulings or final judgments. The Order provides, inter alia: "Every final ruling/judgment rendered by a judge in the disposition of a cause of action shall henceforth be by a detailed ruling containing clear and concise summaries of the facts and the evidence of the case, the relevant law citations relied upon, and the rationale upon which the ruling is made." The Order also states that "the final ruling/judgment shall be a separate and properly type-written document which shall be attached to the records of the case. Accordingly, commencing November 12, 2012, and thereafter, no judge of a circuit or specialized court shall dictate a final ruling/judgment to form part of the minutes of court." We hope that judges will cleave to these principles and exert their best efforts in contributing towards the growth of the law by researching and clearly articulating their rulings and not renege on their duties that are clearly within their scope of authority by transferring the responsibility thereof to the Supreme Court.

The records show that the appellee excepted to Judge Kollie's ruling and applied for a writ of prohibition before the Chambers Justice, His Honor Kabineh M. Ja'neh, requesting that Judge Kollie be prohibited from executing his decision to grant the appellant additional time to perfect its appeal. On March 21, 2012, a conference was convened by Justice Ja'neh, who also, from all indications in the records declined to issue the alternative writ.

With the denial of the Chambers Justice to issue the writ, the parties thereafter returned to the trial court this time being presided over by Judge Yussif D. Kaba, who on April 27, 2012, granted the appellant five days to file a bill of exceptions on grounds that he could not undo the decision of Judge Kollie. It is the law hoary with age that no circuit judge has the power to review, modify or rescind any decision of any circuit judge who is of the same official hierarchy on any point already passed upon by him, whether that decision is right or wrong. The only remedy is an appeal to an appellate court, which in our jurisdiction, is this Supreme Court. *Gaga v. Pratt et al.*, 6 LLR 246, 254 (1938); *Republic of Liberia v. Aggrey*, 13 LLR 469, 479 (1960); *Kanawaty et al., v. King* 14 LLR 241, 242 (1960); *Kpoto v. Kpoto*, 34 LLR 371, 382 (1981); *Sarnor v. Sherman*, Supreme Court Opinion March Term, 2012. This Court upholds the principles of law in these cases, but says that while we agree with the reason advanced by Judge Kaba as to why he could not undo the erroneous ruling of Judge Kollie with whom he had concurrent jurisdiction, this Court however maintains that the period to file the bill of exceptions having expired, the act of Judge Kaba granting the appellant's counsel additional five days being a continuation of the erroneous ruling of Judge Kollie which we have herein reversed, is also reversible error and of no legal effect.

Having earlier stated that the appellant's counsel willfully and deliberately neglected to file a bill of exceptions within the statutory time or moved the trial court to enlarge the period, the Court hereby holds that the bill of exceptions filed over and above the statutory time is a legal nullity. The Supreme Court has held that "where the appellant fails or neglects to file bill of exceptions within the time permitted by law, the trial court retains jurisdiction. The approval and filing of the bill of exceptions as such becomes a ceremonial gesture, having no legal effect and should be treated as if it was not filed at all." *Dopoe v. City Supermarket*, 34LLR 215, 216 (1986); *Knuckles v. TRADEVCO*, 40LLR 49, 54 (2000); *Firestone v. Kollie*, 42LLR 159, 168 (2004); *International Bank Ltd. v. Leigh-Parker*, 42LLR 140, 145 (2004); *Housseini v Kaydea*, Supreme Court Opinion, March Term, A. D 2012. We hereby confirm the holdings of the Supreme Court as enounced in these cases and hold that the bill of exceptions filed on April 30, 2012, deprived the Supreme Court of jurisdiction to entertain this appeal.

In the case: *Paynesville City Corporation v. The Aggrieved Workers of Paynesville City Corporation*, Supreme Court Opinion March Term A. D 2013, the Supreme Court held that "courts must of necessity, and if need be, upon their own motion always consider the question of their jurisdiction primary over any issue brought before them, since they are bound to take notice of the

limits of their authority." The Supreme Court also defined jurisdiction "as the right of a court to exercise its power in causes of a certain class or the right of a tribunal to exercise its power with respect to a particular matter. Jurisdiction is the power of a court to hear and determine a cause of action presented to it, the power of a court to adjudicate the kind of cases before it". These precedents are also entrenched in other opinions, wherein this Court opined that one of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the Court. *K. Rasamny Bros. v. Brunet* 21LLR 271, 277 (1972); *MIM Liberia Corporation v. Toweh* 30LLR 611 (1982); *Saweh et al., v. NPA* 42LLR 448, 457 (2005). This Court further opined that "jurisdiction is conferred by law. It therefore goes without saying that the Supreme Court, as any tribunal of justice, could acquire jurisdiction, be it original or appellate and properly exercise it only as granted by law." *Housseini v. Kaydea*, Supreme Court Opinion, March Term, 2012.

Having herein reversed and declared a nullity the ruling of Judge Emmanuel Kollie on the motion to dismiss, which in effect granted the appellant time to file the bill of exceptions after the expiration of the statutory period, we hereby hold that the appellant's bill of exceptions filed after the statutory period is a legal nullity which divest this Court of jurisdiction to entertain the appellant's appeal. As the final arbiter of justice in the Republic of Liberia having the authority to enter a ruling and judgment which the trial court should have entered, this Court hereby affirms and confirms the judgment of the Civil Law Court that the survey report having clearly shown that the metes and bounds of the deed did not conform to the location of the property in dispute, and that the proper and legitimate owner of the disputed property is the appellee, the A.M.E Church. Further, absent a valid bill of exceptions this Court sees no reason(s) to disturb or set aside the final judgment of the trial court finding in favour of the appellee.

As the regulator of the practice of law within his jurisdiction we will be remiss by concluding this Opinion without passing on the attitude of the appellant's lawyer, Counsellor William A.N. Gbaintor with respect to what we deem as his dismal performance in handling his client's case by unexcused absences and more disturbingly, filing the bill of exceptions outrageously outside of the statutory period. More besides, Counsellor Gbaintor's abuse of the remedial process to rectify his inexcusable neglect of his client's case, if allowed to go unchecked sets a dangerous precedent that we must purge from among us. The Counsellor's action violates Rule 21 of the Code for Moral & Ethical Conduct of Lawyers which provides inter alia that "it is the duty of the lawyer to be punctual in his attendance to court, and to be prompt and faithful in answering assignments received by him, notifying the time for hearing of his client's case. It is also his duty to the public and to his profession to avoid tardiness in the performance of his professional duties." The actions by Counsellor Gbaintor are not only demeaning but it is unacceptable of a gentleman of his caliber. Thus, this Court hereby fines Counsellor William A.N. Gbaintor the amount of US\$300.00 (United States Three Hundred United States Dollars) with the caution that any repetition of similar acts might lead

to suspension or disbarment. The amount of the fine is to be paid within seventy-two (72) hours into government's revenue following the reading of this Opinion and the receipt of payment filed with the office of the Marshall of this Court.

WHEREFORE AND IN VIEW OF THE FOREGOING, it is the holding of this Court that the appellant having failed to file its bill of exceptions within the statutory time, the trial court's judgment is hereby affirmed and confirmed. The Clerk is hereby ordered to send a mandate to the trial court to resume jurisdiction over this case and its judgment. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

Appeal denied

The appellant was represented by Counsellor William A.N. Gbaintor of the Gbaintor Law Firm. The appellee was represented by Counsellors Rosemarie Banks James and Emmanuel B. James of the International Group of Legal Advocates & Consultants.

