

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS MARCH TERM, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF JUSTICE  
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE  
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

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The Intestate Estate of A. B. Mars, represented by its )  
Administrators and Administratrix, Alexander Korkai )  
Freeman, Momolu S. Freeman, Ecelo Elaine Freeman, )  
Gene Chandler Freeman, Marcilee B. Dixon, )  
Momolyn Dixon, and Moice Dixon, of the City of )  
Monrovia, Republic of Liberia..... Movant )

VERSUS )

MOTION TO DISMISS )  
APPEAL )

Alexander R. Freeman and Einaine Freeman, )  
Co-administrators of the Intestate Estate of Alexander )  
B. Mars, Sr., of the City of Monrovia, Republic of )  
Liberia..... Respondent )

GROWING OUT OF THE CASE: )

Alexander R. Freeman and Einaine Freeman, )  
Co-administrators of the Intestate Estate of Alexander )  
B. Mars, Sr., of the City of Monrovia, Republic of )  
Liberia.....Appellant )

VERSUS )

APPEAL )

The Intestate Estate of A. B. Mars, represented by its )  
Administrators and Administratrix, Alexander Korkai )  
Freeman, Momolu S. Freeman, Ecelo Elaine Freeman, )  
Gene Chandler Freeman, Marcilee B. Dixon, )  
Momolyn Dixon, and Moice Dixon, of the City of )  
Monrovia, Republic of Liberia.....Appellee )

Heard: March 21, 2023

Decided: April 12, 2023

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This motion to dismiss presents a single issue for our determination *viz.*: whether or not an appeal is dismissible for failure of the appellant to transcribe the records to this Court.

The Supreme Court has opined in numerous of its Opinions that where a motion to dismiss an appeal is presented for determination, the Supreme Court is estopped from entering upon the records to make any determination of the substantive issues on appeal; that even in instances where the Court elects to consolidate the motion to dismiss the appeal with the main appeal, the Court must first determine the justifiability of the contention(s) presented in the motion; except the Court determines that the contentions are not tenable for the dismissible of the appeal, it cannot proceed to make determination of the appeal on its

merits. *Vrex Remodeling, Inc., v LPRC et al.*, Supreme Court Opinion, March Term, 2016; *Doe et al v Ash-Thompson et al.*, 33 LLR 251 (1985). Hence, we shall revert to the records only as it pertains to the contention of the parties relative to the motion to dismiss the appeal.

The movant herein, the Intestate Estate of A. B. Mars, represented by its administrators, Alexander Korkai Freeman, Momolu S. Freeman and administratrixes Ecelo Elaine Freeman, Gene Chandler Freeman, Marcilee B. Dixon, Momolyn Dixon, and Moice Dixon, is requesting this Court to dismiss the appeal of the respondent, the Intestate Estate of Alexander B. Mars, Sr., also represented by Alexander R. Freeman and Einaine, its co-administrators, on the singular basis that respondent failed to transcribe the records to the Supreme Court within 90 days as required by Statute. The movant further asserts that because of the respondent's failure to transcribe the records, it had to undertake the transcribing of the records to this Court, and in substantiation thereof, attached a clerk's certificate to that effect.

The movant has relied on the case "*National Housing and Savings Bank v. James D. Gordon*, 35 LLR 323, 326 (1988)" as a ground for the dismissal of the respondent's appeal.

In the aforementioned case, the records reveal that following the final ruling of the National Labor Court adjudging the respondent/appellant therein, the National Housing and Savings Bank liable to the movant/appellee James D. Gordon, the respondent/appellant noted its exceptions to the final ruling and announced appeal to the Supreme Court on November 28, 1986, and thereafter perfected its appeal within statutory time. However, the certified records of the trial were not transcribed and transmitted to the Supreme Court, thus prompting the movant/appellee to file a motion to dismiss the appeal on ground of the respondent/appellant's failure to transcribe the certified records to the Supreme Court.

The Supreme Court opined that the failure of the respondent/appellant to transmit the records amounted to an abandonment of the appeal. The Court cited an earlier case *viz. Dayrell v. Thomas and Moore*, 11 LLR 98 (1952) as the basis of its decision. In the *Dayrell* case, the Supreme Court opined that the failure of the appellant to pay for transmission of the records to be sent to the appellate court is tantamount to an abandonment of the appeal.

In the present case, the respondent asserts that the obligation of transcribing the records to the Supreme Court following the completion of the appeal process is statutorily ascribed to the clerk of the trial court from which the appeal emanates; that assuming that it was the responsibility of the respondent to transcribe the records to the Supreme Court, their failure to do so was attributable to circumstances which amount to excusable neglect; that following the completion of the appeal process, co-administrator Alexander R. Freeman became ill and incapacitated, whereas co-administrator Einaine Freeman is without the bailiwick of the Republic of Liberia. On the basis of the aforementioned assertion, the respondent prayed this Court to deny the motion to dismiss its appeal.

In disposing of the present motion to dismiss, coupled with the facts contained in the case referenced by the movant, this Court firstly notes that the records on appeal have already been transcribed to the Supreme Court, albeit at the instance of the movant, unlike the scenario in the *National Housing and Savings Bank* case where the records were never transcribed by the appellant neither did it pay for the transmission of said records to the Supreme Court, even up to the time of the filing of the motion to dismiss the appeal. It was on this basis, that is, the appellant's failure to superintend the transcribing of the records to be sent to the Supreme Court, which the Court considered to be tantamount to an abandonment of the appeal. We affirm the decision of the Court in the *National Housing and Savings Bank Case*, but hold that the facts and circumstances therein are not analogous to the instant case.

This Court says that the principal basis for the dismissal of an appeal is encapsulated under Section 51.16 of the Civil Procedure Law which states thus:

“Dismissal of appeal for failure to proceed

An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve and file a notice of the completion of the appeal as required by statute.”

It is undisputed by both the movant and respondent that the mandatory requirements necessary for the completion of an appeal as provided for under § 51.4, of the Civil Procedure Law were fully complied with by the respondent; the said requirements are

- a. Announcement of the taking of an appeal;
- b. Filing of the bill of exceptions;
- c. Filing of an appeal bond; and
- d. Service and filing of the notice of completion of appeal.

The transcribing of the records to this Court is provided for in our Statute as follow:

“The clerk of the court from which the appeal is taken shall make up a record containing certified copies of all the writs, returns, notices, pledges, motions, applications, certificates, minutes, verdicts, decision, rulings, orders, opinions, judgments, bill of exceptions, and all other proceedings in the case. He shall transmit this record with a copy of the appeal bond to the appellate court within ninety days after rendition of judgment. The clerk of the appellate court shall docket the record forthwith and forward a receipt to the clerk who transmitted it.” *Civil Procedure Law*, Rev. Code 1:51.11.

In consonance with the provision of the statute quoted above, this Court has opined that the failure of the clerk of the trial court to forward the records on an appeal to the Supreme Court within ninety days, as required by statute, is not attributable to neglect of the appellant, if he has exerted every effort to have the records transmitted within the time prescribed by law; and the clerk's failure does not under the circumstances constitute a basis for dismissal of the appeal. *Liberia Telecommunications Corp. v Tyler*, 37 LLR 223, 225 (1993).

In the *Liberia Telecommunication Corp* case referenced immediately above, the respondent/appellant made the requisite copies of the entire records and presented same to the clerk of the trial court, but the clerk failed to transmit the records within the time prescribed by law. The Court espoused that it will very rarely dismiss a case because of the lateness of the records reaching it when all of the other legal requirements have been met.

Similarly, in the case *Gbartoe et al v. Doe*, 40 LLR 150, 156 (2000), the issue of the respondenst/appellants' failure to have certified copies of the records transmitted to the Supreme Court within ninety days of the judgment of the trial court was presented before this Court. Again the Supreme Court maintained that it was the responsibility of the clerk of the trial court, and not the appellants, to transcribe and transmit the said records, especially after the respondents/appellants had superintended the records.

In addition to the position of the Supreme Court relative to the duty of transcribing the records, this Court has further opined that the only grounds upon which an appeal can be

dismissed are those specified by statute. *Brown v. General Construction, Inc.*, 40 LLR 284, 286 (2000).

Again, the fact and circumstances of the present appeal differ from those of the cases cited *supra* in one respect *viz.*: the superintending of the records. In all the cases cited herein, the respondent/appellant superintended the making of the requisite copies of the records; in the present case, it is the movant who superintended the making of the requisite copies for transmittal to the Supreme Court; even the respondent admits that it did not superintend the process, albeit, attributing this failure to circumstances that amount to excusable neglect. We disagree with the respondent, as the records are void of any evidence indicating that co-administrator Einaine Freeman was without the bailiwick of Liberia during the process of having the records transcribed and transmitted to the Supreme Court, or that co-administrator Alexander R. Freeman was incapacitated due to illness.

It is a cardinal principle of law, enunciated by both the statutory laws and the decisional law of the Supreme Court, that mere allegation is not proof. *Morgan v. Barclay*, 42 LLR 259, 272 (2004); that a party who alleges a fact or set forth a claim has the burden of proving or substantiating the allegations by a preponderance of the evidence. *V. H. Timber v. Naca Logging Company et al.*, 42 LLR 527, 536 (2005). Hence, we hold that the respondent's plea of excusable neglect is untenable.

However, as mentioned herein, notwithstanding the respondent's failure to superintend the transcribing of the records, the fact that this task was performed by the movant thereby enabling the clerk of the trial court to transcribe and transmit the records within the statutory time of ninety (90) days, the Supreme Court will refrain from dismissing the appeal, reserving to the movant, the right to file the appropriate action for refund.

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

*Motion denied*

*When this case was called for hearing, Counsellor Kuku Y. Dorbor of the Henriès Law Firm appeared for the movant. Counsellor Tommy N. Dougba appeared for the respondent.*