

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN
ITS OCTOBER TERM, A.D. 2021

BEFORE HIS HONOR: FRANCIS S. KORKPOR. SR CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA ASSOCIATE JUSTICE

Tony Nnakusuc, of Plebo City, Maryland County, Republic of Liberia..... Movant)	
)	
Versus)	MOTION TO DISMISS APPEAL
)	
Thomas G. Bedell, of Plebo City, Maryland County, Republic of Liberia Respondent)	
)	
GROWING OUT OF THE CASE)	
)	
Thomas G. Bedell. of Plebo City, Maryland County, Republic of Liberia Appellant)	
)	
Versus)	APPEAL
)	
His Honor Nelson T. Tokpa, Resident Circuit Judge Fourth Judicial Circuit Court, and Tony Nnakusue of Plebo City, Maryland County, Liberia.....Appellee)	
)	
GROWING OUT OF THE CASE)	
)	
Tony Nnakusue, of Pleho City, Maryland County, Republic of Liberia..... Informant)	
)	
Versus)	BILL OF INFORMATION
)	
Thomas G. Bedell, of Plebo City, Maryland County, Republic of Liberia..... Respondent)	
)	
GROWING OUT OF THE CASE)	
)	
Thomas G. Bedell. of Plebo City, Maryland County, Republic of Liberia..... Plaintiff)	
)	
Versus)	SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF REAL PROPERTY
)	
Tony Nnakusue, of Plebo City, Maryland County, Republic of Liberia Defendant)	

Heard: November 2, 2021

Decided: January 27, 2022

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The office of a motion to dismiss an appeal is strictly an issue of law, and where the grounds provided for by law are satisfied, the Supreme Court will not enter upon the records and make a determination thereon based on the merits of the case

or its attendant facts and circumstances. In other words, when a motion to dismiss an appeal is filed before the Supreme Court, the facts of the case and the species of evidence adduced in support or substantiation thereof during trial before the lower court are silenced; the manner and form of the trial in the lower court is mooted; and unless the Supreme Court determines that the motion to dismiss the appeal is not supported by law, the appeal is dismissed irrespective of what is contained in the records certified to the Court.

We note that the primary contention of the Movant, Tony Nnakusue, is that the Respondent, Thomas G. Bedell, served his appeal bond and notice of the completion of the appeal outside the statutory period of sixty (60) days.

The movant averred that on December 4, 2019, the trial court entered final ruling on a bill of information which grew from an action of summary proceedings to recover possession of real property; that the Respondent, Thomas G. Bedell failed to announce an appeal in open court from the said final ruling of the trial court as required by law; that notwithstanding his failure to comply with the first jurisdictional step of the appeal process, the respondent filed his appeal bond along with other documents which he classified as "all other relevant documents" on Sunday, February 2, 2020, a non-working day; that the date of service of the appeal bond and the notice of completion of the appeal upon the respondent, that is to say, on February 5, 2020, was without the statutory period of sixty (60) days; that based on movant's calculation, the movant contends that the sixty (60) day period allotted to the respondent for the completion and perfection of his appeal expired on February 3, 2020.

In his resistance to the motion to dismiss the appeal, the respondent averred *inter alia*, that he did note his exceptions to the December 4, 2019 judgment rendered by the trial court, and announced an appeal therefrom; and thereafter filed his bill of exceptions on December 13, 2019; that he subsequently filed his appeal bond on February 3, 2020, evidenced by a clerk's certificate issued by the clerk of the trial court before whom said appeal bond was filed, and not on February 2, 2020 as claimed by the movant; that the February 2, 2020 date referenced by the movant as the date of filing of the appeal bond was an inadvertent error by the clerk; that the appeal bond along with the notice of completion of appeal were served upon the movant's legal counsel on the same February 3, 2020.

The contentions presented by the parties in their respective pleadings raise a single issue for determination by this Court, viz:

Whether the respondent satisfied the requirements of the appeal process which pertains to the appeal bond and the service and filing of a notice of completion of the appeal, thus obviating the dismissal of the appeal.

The Court deems it expedient to first reiterate our observation noted *supra* regarding the content of the pleadings filed by both parties before this Court, to the effect that a motion to dismiss an appeal is restricted to failure of the respondent to strictly comply with the mandatory steps or requirements of the statute governing the perfection of an appeal. As such, the content of said motion should be limited to the alleged breaches of the requirements of the appeal process as provided for by chapter 51, subsection 51.4 of our Civil Procedure law which states thus:

"§ 51.4. Requirements for completion of an appeal.

The following acts shall be necessary for the completion of an appeal:

- (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.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."

Therefore, where there is a challenge to the appeal process premised on a breach of any of the requirements enumerated above, in as much as this Court would want to review and make a determination on the merits of each case on appeal, it is imperative that the appeal process be strictly complied with to vest the Court with the legal authority to review the case on its merits. Short of strict compliance with the appeal statute, the Supreme Court cannot legally open the records and make a determination thereon.

The movant's challenge to the time of service of the appeal bond and the notice of completion of appeal is to the effect that same were done without the statutory period of sixty (60) days, and has proffered as proof thereof, the instruments bearing the date of receipt and the name of the lawyer who represented the respondent at the trial court.

On the other hand, the respondent contends that date and name of the movant's lawyer, as inscribed on the face of both the appeal bond and the notice of the completion of the appeal are fraudulent in nature on grounds that all the pleadings filed by said lawyer bore his signature unlike on the appeal bond and the notice of completion of the appeal where his name is printed out; that he obtained an "affidavit of confirmation of facts" and a clerk's certificate affirming that the respondent himself served the appeal bond and notice of the completion of the appeal on the movant's lawyer, and that the both instruments were filed on February 3, 2020, the last date for filing.

Having reviewed the records and the instruments attached as proof thereof in support of the respective parties' assertions, we have made some keen observations that present doubts as to some of the allegations contained in the motion, *vis a vis* what is revealed by the records.

Firstly, we note that in count 8 of his motion to dismiss the appeal, the movant concedes that the appeal bond and notice of the completion of the appeal were received by his lawyer on February 5, 2020. Then he subsequently states in count 12 of his motion that the appeal bond and notice of the completion of the appeal were served on the lawyer on Thursday, March 5, 2020. Finally in count 17 of his motion, the movant again concedes that the appeal bond and notice of the completion of the appeal were served upon the movant's counsel on February 5, 2020.

The dates stated in the movant's motions are at variance, and this Court has opined that variance is the disagreement between allegations and proof; it denotes some difference or disagreement between two parts of the same proceeding which ought to agree; *Cole v. His Hon. Wah et al.*, Supreme Court Opinion, October Term, 2013; *Saar v. Republic*, 29 LLR 35 (1981); that a statement made by a person which is wholly at variance and inconsistent with what was previously said and done tends to show that the person is unworthy of credit. *NEC v. Chambers*, Supreme Court Opinion, March Term, 2015.

Secondly, the movant alleged that the respondent failed to announce the taking of an appeal to the Supreme Court; hence, he contends that the appeal is dismissible as a matter of law for the respondent's failure to comply with the first jurisdictional step of the appeal process, in addition to the service of the appeal bond and notice of the completion of the appeal outside the statutory period of sixty (60) days.

However, the records certified to this Court speak otherwise. The records established that the respondent noted exceptions to the trial court's final ruling, announced the taking of an appeal therefrom to the Supreme Court, and subsequently, timely filed and served the appeal bond and notice of the completion of the appeal. Even assuming *arguendo*, that the respondent had failed to note exceptions to the trial court's final ruling and announce the taking of an appeal in open court as required by law, could the movant rely on said failure to file a motion to dismiss the appeal before the Supreme Court? Certainly not! The proper venue to have filed the motion to dismiss the appeal on the basis stated herein would have been the trial court, and in support thereof the law provides that "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 notice of the completion of the appeal as required by statute**". (emphasis ours) *Civil Procedure Law*, Rev. Code 1:51.16

Moreover, the certificate of the clerk of the trial court authenticated that the appeal process was completed within statutory period, thus properly setting forth the appeal before the Supreme Court for determination on its merits.

While the movant has argued that his lawyer received the appeal bond and notice of the completion of the appeal on March 5, 2020, he attached no affidavit from said lawyer to substantiate this assertion. It is settled law that mere allegation without proof to substantiate same will not move the Court, because it is only evidence that enables the court to decide with certainty the matter in dispute. *Cooper et al. v. Cooper et al.*, 39 LLR 750, 757 (1999).

Given the inconsistencies of the averments in the movant's motion, we hold that same shall be construed in favor of the respondent, that is to say, we shall accept the respondent's contention that he served the appeal bond and notice of the completion of the appeal on the movant's counsel on February 3, 2020, especially so since this is also the date of filing of both instruments as authenticated by the clerk of the trial court.

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

Motion Denied

When this case was called for hearing Counsellors Milton D. Taylor and Frederick L. M Gbemie of the Law offices of Taylor & Associates, Inc. appeared for the Movant. Counsellor Wellington G. Bedell, Sr. of the Garlawolu and Associates Law Offices, Inc. appeared for the respondent.