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
BEFPRE HIS HONOR: YAMIE QUIQUI GBEISAY, SR. …….ASSOCIATE JUSTICE

Liberia Sheng Xin De Yuan Mining Company, Inc. represented by Mr. Zhang de Min, a.k.a, Mr. Parker of Gbarbaye Town, Gbarpolu County, Republic ofLiberia…….Petitioner

Versus) PETITION FOR RE-ARGUMENT

Mr. John P. Saah, also of the Gbarbaye Town, Weasua, Gbarpolu County, Republic of Liberia… …….Respondent

GROWING OUT OF THE CASE:

Mr. John P. Saah, also of the Gbarbaye Town, Weasua, Gbarpolu County, Republic of Liberia… ……..Movant

Versus) MOTION TO DISMISS APPEAL

Liberia Sheng Xin De Yuan Mining Company, Inc. represented by Mr. Zhang de Min, a.k.a, Mr. Parker of Gbarbaye Town, Gbarpolu County, Republic ofLiberia…….Respondent

GROWING OUT OF THE CASE:

Liberia Sheng Xin De Yuan Mining Company, Inc. represented by Mr. Zhang de Min, a.k.a, Mr. Parker of Gbarbaye Town, Gbarpolu County, Republic ofLiberia…….Appellant

Versus) APPEAL

Mr. John P. Saah, also of the Gbarbaye Town, Weasua, Gbarpolu County, Republic of Liberia… ……Appellee

GROWING OUT OF THE CASE:

Mr. John P. Saah, also of the Gbarbaye Town, Weasua, Gbarpolu County, Republic of Liberia… ……Plaintiff

Versus) ACTION OF DAMAGES FOR WRONG BY

Liberia Sheng Xin De Yuan Mining Company,) ATTACHMENT
Inc. represented by Mr. Zhang de Min, a.k.a, Mr.)
Parker of Gbarbaye Town, Gbarpolu County,)
Republic ofLiberia…….Defendant)

Heard: March 29, 2023 Decided: May 19, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

Rule IX of the Revised Rules of the Supreme Court provides in part that "for good cause shown to the Court by petition, a re-argument of a cause may be allowed only once when some palpable substantial mistake is made by inadvertently overlooking some fact, or point of law."

This petition for re-argument grows out of this Court's decision delivered on December 15, 2022 during its October Term on a motion to dismiss appeal filed by the respondent herein, Mr. John P. Saah, against an appeal taken by Liberia Sheng Xin De Yuan Mining Company, petitioner herein, from a final ruling of the 16th Judicial Circuit for Gbapolu County in an action of damages for wrong. In that Opinion, this Court found that the petitioner herein, filed its bill of exceptions on May 11, 2022 outside the statutory period of ten days which rendered its appeal dismissed. We quote succinct parts of that Opinion as follows:

> "The respondent (petitioner herein), resisting the motion to dismiss its appeal, conceded to the late filing of its bill of exceptions but contended that it received the trial court's final ruling on May 4, 2022, and not April 27, 2022, when the ruling was entered by the trial court. The respondent cited and relied on the case: *His Honor Yussif D. Kaba, Resident Circuit Judge, Civil Law Court, Sixth Judicial Circuit Montserrado County, and Manhattan Trading Corp v. World Bank, Supreme Court Opinion, March Term 2014* when the Supreme Court held that 'until the final judgment is delivered to the appellant, the ten days prescribed by law within which the appellant is required to file a bill of exceptions cannot be said to have commenced…
>
> … The best evidence in this case as stated earlier should have been the sworn affidavit of the respondent's counsel and a statement by the court confirming that the respondent's counsel took delivery of the edited

> version of the court's final ruling on May 4, 2022. These species of evidence should have come in support of the respondent's claim that its counsel did not receive copy of the trial court's final ruling on April 27, 2022, but instead on May 4, 2022. The Supreme Court has held that 'affidavits are not required in motions or allegations involving issues of law; but where issues of facts are involved, affidavits are required', *Standard Stationery Stores v. Gompu et al, 30 LLR 271 (1982)*"

This Court further noted in its Opinion, that the petitioner's bill of exception was signed by its counsel on May 10, 2022, approved by the trial judge on May 16, 2022 and filed on May 11, 2022. This notation made by the Court demonstrates the extent to which the petitioner was in violation of the *Civil Procedure Law Revised Code: 1: 51,7* as follows:

> "A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling or other matter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. ***The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Emphasis supplied.***

The petitioner has substantially averred that this Court inadvertently overlooked a point of law enounced in *Michael K. Kunakey v. His Honor Frank Smith et al, 31 LLR 256 (1983)* in which it held that "it was morally and legally binding upon the court's appointed counsel to timely transmit the records of the court to the plaintiff-in-error, petitioner in the trial court against whom judgment had been rendered, exceptions taken and appeal announced in order to afford him due and timely opportunity to prosecute his appeal"; and that this Court also inadvertently overlooked the fact that the clerk's certificate dated May 10, 2022 and issued by the 16th Judicial Circuit in favor of the respondent did not state the receipt date of the trial court's final ruling to the parties because April 27, 2022, the date on which the

final ruling was rendered did not *ipso facto* evidence the delivery of copies of the ruling to the parties.

In resisting the petition, the respondent also substantially averred that the *Kunakey* case cited by the petitioner is distinguished from the present case in that the counsel in the former case attended the notice of assignment as per the date and time indicated therein, but that the trial judge being engaged in other matters verbally deferred the hearing to 2:00 p.m. of the self-same date at which time the petitioner failed to attend, which is not the contention at bar. In the instant case, it is undisputed that the parties received a regular of notice of assignment; and that the precedent applicable to the present case is *Isaaclyn N. Kollor v. James M. Varney et al, Supreme Court Opinion, October Term, A.D. 2015* in which this Court held that "the courts are therefore under no duty to ensure service of a ruling on an absent counsel, especially where the absent counsel is aware of the assignment, evidenced by the sheriff's report and the absent counsel's signature on the original copy of the notice of assignment. We must say here though Section 51.6 makes it incumbent upon trial judges to deputize one to take a final ruling on behalf of the absent party, the intended object of the law is accomplished. Non service of the ruling on the absent party does not toll the time or statute for perfecting an appeal, where there is evidence that the absent party has knowledge of the assignment but failed to show up".

In light of above, we certify a single issue for the determination of this petition which is whether or not this Court inadvertently overlooked a point of law or fact in its Opinion delivered on December 15, 2022?

The appellant has argued that this Court overlooked the principle in the *Kunakey Case, supra;* and the Court also overlooked the fact that the clerk's certificate issued by the 16th Judicial Circuit in favor of respondent did not bear a receipt date evincing the delivery of the trial court's ruling to the parties.

First and foremost, we must note that the *Kunakey Case* cited by the petitioner was neither part of the transcribed record nor cited in the petitioner's brief upon which the Court made the determination in the previous case. This is a strange practice before the Court. The statute unequivocally directs that "the appellate court shall not consider points of law not raised in the court below and argued in the briefs,

except that it may in any case, in the interest of justice base its decision on a plain error apparent in the record." *Civil Procedure Law Revised Code:1:51.15*

But assuming arguendo, that the *Kunakey Case* was advanced and argued by the petitioner in the first place, it still appears to us that the precedent is not operative where the evidence couched from the certified record established that a regular notice of assignment was served and returned served on the parties, but that they failed to attend the cause for a final ruling as in the instant case. Rather, the principle enounced in *Isaaclyn N. Kollor v. James M. Varney et al, Supreme Court Opinion, October Term, A.D. 2015*, that is, that "the courts are therefore under no duty to ensure service of a ruling on an absent counsel, especially where the absent counsel is aware of the assignment, evidenced by the sheriff's report and the absent counsel's signature on the original copy of the notice of assignment…" is the controlling and applicable law in the present suit. The effect of our holding in the *Isaaclyn Case* recalled *Kunkey Case* by implication of the doctrine of recency.

We must however note with emphasis that although the non-service of a ruling on the absent party who was in receipt of a regular notice of assignment does not toll the time or statute for perfecting an appeal, we have consistently upheld the command of the *Civil Procedure Law Rev. Code: 1; 51.6,* that is to say that "the essence of a court appointing attorney to represent a defaulting party at the rendition of final judgment is to fulfill the requirements of the statute which makes the granting of the right of appeal from every judgment mandatory, except that of the Supreme Court." *Beyan et al v. King Peter's Orphanage, Supreme Court Opinion, March Term, A.D. 2013*

The petitioner also argued that this Court overlooked the fact that the clerk's certificate proffered by the respondent failed to show a receipt date and it having received the trial court's final ruling from the court appointed attorney on May 4, 2022, it complied with the second mandatory jurisdiction step by filing its bill of exceptions on May 11, 2022. It suffices to say that we gave adequate consideration to this contention of the petitioner when we held that the best evidence in that case would have been an affidavit from the court appointed attorney. The petitioner not having met the test for the best evidence in previous case, its appeal was ordered dismissed on the strength of the respondent's clerk certificate confirming that the petitioner had failed to file its bill of exceptions within statutory time. We upheld

the principle in *the Intestate Estate of Thomas G. Collins v. Archie et al, Supreme Court Opinion, October Term, A.D. 2018* and prior precedents that "…allegations unsupported by evidence is not proof, for it is evidence alone which enables the court, tribunal or administrative agency to pronounce with certainty the matter in dispute..."

Based on the analyses and review of the parties' arguments as are contained in their respective pleadings, briefs and arguments made for this Court, we are of the considered opinion that the petitioner did not state any point of law or fact that we inadvertently overlooked. We so hold.

WHEREFORE and in view of the foregoing, the petition for re-argument is denied and dismissed as this Court did not overlook any fact or point of law. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and enforce the Judgment of this Court rendered on December 15, 2022. Costs are ruled against the petitioner. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor J. Johnny Momoh of the J. Johnny Momoh & Associates appeared for the petitioner. Counsellors Ade Wede Kekuleh and Jimmy Saah Bombo of the Central Law Offices, Inc. appeared for the respondents.