

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS OCTOBER 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

Johnson Teah of the City of Monrovia,)
Monterrado County, Republic of Liberia)
..... Movant)

Versus)

Philip Orega Awacotata and Sylvester to)
also of the City of Monrovia, Montserrado)
County, Republic of Liberia .. Respondents)

GROWING OUT OF THE CASE:)

Johnson Teah of the City of Monrovia,)
Monterrado County, Republic of Liberia)
..... Plaintiff)

Versus)

Philip Orega Awacotata and Sylvester to)
also of the City of Monrovia, Montserrado)
County, Republic of Liberia)
..... Defendants)

MOTION TO DISMISS
APPEAL

SUMMARY PROCEEDINGS
TO RECOVER POSSESSION
OF REAL PROPERTY

Heard: October 18, 2023

Decided: November 28, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

Our procedural code provides that the announcement of the taking of an appeal, filling of the bill of exceptions, the filling of an appeal bond, and the service and filing of a notice of completion of appeal are the necessary requirements for the completion of an appeal; and that the failure to comply with any of these requirements within the time allowed by statute shall be ground for the dismissal of the appeal. Civil procedure law rev. code CPLR 1:51.4. It is a settled principle in this jurisdiction that only strict compliance with the appeal statute confers jurisdiction on the Supreme Court of Liberia to entertain and delve into the merits of a matter certified for an appellate review. David Gotoba v. LBDI, Supreme Court Opinion, March Term, 2023; Catakaw et al v. Karweh, Supreme Court Opinion, March Term, 2010;

Sheriff v. Parwon et al, Supreme Court Opinion, March Term, 2015; Mr. Jaimanie F. Tyler v. Mr. Lincoln Davis, Supreme Court Opinion, October Term, 2019; Esther Yeanay Barkpei v. Joseph L. Tompoe, Supreme Court Opinion, March Term, 2020.

The movant herein, Johnson Teah, filed a seven-count motion to dismiss the appeal announced by the respondents, Philip Orega Awacotata and Sylvester, on the ground that the respondents, after having filed the bill of exceptions within the time required by the law, failed and neglected to timely fulfill the other mandatory statutory requirements for the completion of the appeal so as to confer jurisdiction upon this Court to delve into the merits of the respondent's appeal. Substantially, the movant averred that the respondents filed an action of summary proceedings to recover possession of real property before the Sixth Judicial Circuit, Civil Law Court, Montserrado County against the movant, and that after a hearing, the trial court on February 1, 2023, denied and dismissed the respondents' action; that the respondents excepted to the trial judge's final ruling, and announced an appeal, secured the approval of a bill of exceptions and filed same with the trial court, but failed to timely file an appeal bond and file and serve the notice of completion of appeal. The movant, therefore, prayed this Court to dismiss the appeal announced by the respondents.

In its eight-count resistance, the respondents substantially alleged that when the trial judge ruled on February 1, 2023, denying the respondents' action of summary proceedings to recover possession of real property, the respondents excepted the said final ruling and announced an appeal before the Supreme Court sitting in its March Term, A.D. 2023; that on February 6, 2023, respondents concurrently filed their approved bill of exceptions with the trial court and a bill of information before the justice presiding in chambers; that on the same day, the Chambers Justice order the issuance for a citation for a conference and included therein a stay of all proceedings pending the outcome of the conference; that the conference was finally had on the June 1, 2023 at which time the chambers justice declined to issue the writ prayed for by the respondents, lifted the stay order and ordered the trial court to resume jurisdiction of the case and proceed in keeping with law. The respondents further averred that they subsequently filed their

approved appeal bond and served and filed their notice of completion of appeal within the statutory time. The respondents argue further that the stay order placed by the chambers Justice stayed the running of the time provided for by the appeal statute, and therefore, the period started to run as of the time the said stay order was lifted. The respondents, therefore, pray this Court to deny and dismiss the movant's motion and proceed with the hearing of the appeal on its merits.

From careful scrutiny of the parties' averments as culled herein above and the relevant laws applicable in this jurisdiction, the issue that presents itself for determination is whether or not the Stay Order placed on the proceedings by the Justice in chambers freeze the running of the appeal statute and therefore the respondents were within the pale of the law when they filed the appeal bond and serve and filed the notice of completion of appeal after the lifting of the stay order.

This Court has held that issuing a temporary stay order by a justice in chambers gives the said justice jurisdiction over the matter and the parties. By acquiring jurisdiction over the matter, the trial court becomes impotent to act with respect to that until and unless the stay order placed on the matter is lifted *Farrel/Denco Shipping et al. v. Williams*, 35 LLR 476 (1988). By parity of reasoning, therefore, we are in agreement with the respondents' argument that in the face of the stay order, he could not secure the judge's approval of the appeal bond, nor could he act legally to file the said appeal bond and serve and file the notice of completion of the appeal.

Now, we turn to the question of whether the filling of the respondents' appeal bond and the notice of completion of appeal on June 23, 2023, when the Stay order was lifted by the justice in chambers, can be considered a legal nullity.

In the case, *Kailondo Petroleum v. Guaranty Trust Bank*, Supreme Court Opinion, October Term, 2022, this Court was confronted with similar question viz whether a 'stay order' can operate against the appeal statute. In this case the appellant had one day remaining to perfect his appeal when the chambers justice issued the stayed order on the 59th day of the

60 days statutory period. When the Chamber justice lifted the Stay Order, the appellant completed his appeal above the 1 day remaining. On a Motion to dismiss, this Court said that “the lifting of the stay order automatically restored the 1 day remaining on the statutory period which was lost as a result of the Chambers Justice’s stay order on all proceedings in the trial court. Hence, any failure to perfect the appeal within the remaining time restored, the one day, is a violation of the appeal statute as the Chamber Justice’s stay order did not *sua sponte* extend the 60-day period. Therefore, the filing of the notice of completion of appeal two days after the lost time was a violation of the 60 days statutory period”.

This case is analogous to the Kalando case; that is, when the trial judge in the instant case denied the respondents’ petition for summary proceedings to recover possession of real property on February 1, 2023, the respondents excepted and announced an appeal to the Supreme Court, filed their bill of exceptions on February 6, 2023 and a Bill of information before the justice in chambers who placed a Stay on all further proceedings pending the outcome of the conference. When the stay order was lifted on June 1, 2023, by calculation, the respondents were left with 56 days to complete their appeal process, which they did within the specific time on June 23, 2023.

In light of the above, this Court says that the lifting of the stay order on June 1, 2023, restored the remaining time on the statutory period, which was lost as a result of the Chambers Justice’s stay order on all proceedings in the matter before the trial court. The respondents having completed their appeal as contemplated by the Civil Procedure Law, Rev. Code: 1:51.4. the motion to dismiss the appeal is hereby denied and dismissed.

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 by the final determination of the appeal. IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Samuel W. Nyazeegbuo appeared for the movant, and counselor Gabriel W. Nah, Sr. of the Stubblefield, Nigba & Associate Law Firm, appeared for the respondent.