

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

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF 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

The Intestate Estate of Joseph N. Boley represented by its)
Administrator Mr. Thomas N. Boley et al. of the City of Zwedru)
Grand Gedeh County, Republic of Liberia.....Movant)

Versus) MOTION TO DISMISS
) APPEAL

Oldman Gaye et al. also of the City of Zwedru, Grand Gedeh)
County, Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:)

Oldman Gaye et al. also of the City of Zwedru, Grand Gedeh)
County, Republic of Liberia.....Appellants)

Versus) APPEAL
)

The Intestate Estate of Joseph N. Boley represented by its)
Administrator of Mr. Thomas N. Boley et al. of the City of)
Zwedru, Grand Gedeh County, Republic of Liberia.....Appellee)

HEARD: October 19, 2023

DECIDED DECEMBER 7, 2023

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

This motion to dismiss is before this Court from a ruling made by the Seventh Judicial Circuit Court, Grand Gedeh County on April 7, 2023, in a cancellation proceedings case in which the trial judge ruled against Oldman Gaye Gbarwo et al. respondents herein.

The facts as alleged are that the movant, the Intestate Estate of Joseph N. Boley, represented by its Administrator Mr. Thomas N. Boley et al. filed a petition for cancellation against one Oldman Gaye Gbarwo et al., respondents herein praying the court to cancel the respondents purported land sale deed made by the respondents in their own name alleging that the said deed was fake and fraudulently manufactured.

The petition was heard by the trial court and the trial court ruled granting the petition ruling that Public Land Sale Deed and cancelling the land sale deed in question. The respondents/appellants excepted to this ruling and announced an appeal therefrom on April 7, 2023.

The respondents/appellants later filed their bill of exceptions on April 25, 2023, and subsequently filed their appeal bond and notice of completion of appeal on June 12, 2023.

The movant filed this motion to dismiss before this Court on grounds that the respondents filed both their bill of exceptions and appeal bond outside the statutory period as prescribed by law.

The respondents on the other hand have argued that even though they filed their bill of exceptions and their appeal bond and their notice of completion of appeal outside of the statutory period, it was because of no fault on their part. They allege that they filed their bill of exceptions, their appeal bond all in statutory time but the judge was absent from the court and hence did not sign their bill of exceptions on time nor the appeal bond.

The respondents therefore urge this Court to deny the motion to dismiss and hear the appeal on its merits.

Considering the above, the single issue presented for our determination given the facts and circumstances of this case is whether the failure of the respondents to file their bill of exceptions, appeal bond and notice of completion of appeal within the statutory period renders their appeal dismissible?

This issue has been answered numerous times in our jurisdiction and this case presents no exceptions and therefore, we answer with a resounding yes.

This Court has held countless time that the appeal statute is strict and must be always adhered to and that departure or failure to timely comply with any of the requirements enumerated under Civil Procedure Law Revised Code: 1:51.4 for the completion an appeal is a ground for the dismissal of the appeal. *Esther Yeanay Barkpei v. Joseph L. Tompoe*, Supreme Court Opinion, March Term, A.D. 2020, *Trosteen MoKollie v. The Management of Lonestar Cell/MTN*, Supreme Court Opinion, October Term, A.D. 2021; *Kailondo Petroleum v. G.T Bank*, Supreme Court Opinion, October Term, 2022.

Recourse to the records certified to this Court shows that the trial court rendered final judgment on April 7, 2023, the respondents were required as a matter of law to file their bill of exception on or before April 17, 2023 but the evidence shows that the respondents filed their bill of exceptions on April 25, 2023, that is eight (8) days outside of the statutory period which is a clear violation of the appeal statute.

We note that both their appeal bond and notice of completion of appeal were also filed outside of the statutory period and we are left to wonder, to what avail did the respondents file an appeal bond or notice of completion of appeal, as the initial late filing of their bill of exceptions renders the rest of the required appeal steps moot.

There are four steps required for the completion of an appeal process, the first step is to except and announce an appeal in open court, the second step is to file a bill of exceptions within ten (10) days after the rendition of judgment, the third step is to file a valid appeal bond within sixty (60) days after the rendition of the judgment and the last step is to file a notice of completion of appeal on the opposing counsel.

We must mention that the appeal steps are in sequential order and that forfeiture of any step renders the remaining steps moot as the appeal will crumble.

In the instant case, the trial judge erred in signing the respondents/appellants bill of exceptions after it was filed outside of the statutory period; however, that action

of the trial judge, though perfunctory, divests the lower court of jurisdiction of the said matter and places jurisdiction in this Court and given the facts and circumstances of this case as evidenced by the records before us, we are inclined to dismiss this appeal, as strict adherence or compliance with the requirements for the completion of appeal is a matter of settled law in this jurisdiction and a departure or failure to timely comply with any of the requirements enumerated under Civil Procedure Law Revised Code: 1:51.4 for the completion of an appeal is a ground for the dismissal of an appeal. *Esther Yeanay Barkpei v. Joseph L. Tompoe*, Supreme Court Opinion, March Term, A.D. 2020, *Trosteen MoKollie v. The Management of Lonestar Cell/MTN*, Supreme Court Opinion, October Term, A.D. 2021.

Before we close this opinion, we must mention that we note the respondents/appellants argument that their failure to file their bill of exceptions within the statutory period was due to the absence of the judge from the court. To support this claim, the best evidence would have been a sworn affidavit of the respondents/appellants counsel and a statement by the court confirming that the respondents counsel filed their bill of exceptions within the statutory period, but the judge was absent from the court to sign their bill of exceptions. These species of evidence would have come in support of the respondents claim that their counsel filed their bill of exceptions within the statutory period. *Liberia Sheng Xin De Yuan Mining Company v. John P. Saah*, Supreme Court Opinion, March Term, 2023.

However, our perusal of the records reveals no such evidence and as such we cannot give credence to the said claim as this Court can only decide cases based on the evidence available from the certified records. *Knuckles v TRADEVO et al*, 40 LLR, 511, 525 (2001).

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss appeal is granted, and the appeal is dismissed. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge therein to resume

jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the respondents/appellants. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR MAMEE S.W. GONGBAH AND COUNSELLOR DAVID KOLLEH APPEARED FOR THE MOVANT. COUNSELLOR MOIFIE B. KANNEH APPEARED FOR THE RESPONDENT.