

CASES ADJUDGED
IN THE
**SUPREME COURT OF THE
REPUBLIC OF LIBERIA**

AT THE
OCTOBER TERM, 1992

**ABU F. DONZO, Petitioner, v. ZAFFAR A.
AHMED, Respondent.**

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 11, 1992. Decided: February 26, 1993.

1. The civil procedure law does not state any time period within which a judge shall sign a bill of exceptions, or when the said bill of exceptions shall be filed with the clerk of the trial court. The only time stated in section 51.7 of the law relates to the time the bill of exceptions should be presented to the trial judge, which is ten days from the date of rendition of final judgment.
2. Every case involving the breach of a procedural technicality concerning the period of time within which an act is to be performed must be considered on a case by case basis, and all of the facts and circumstances which resulted in such breach should be carefully scrutinized, especially where the time specified to do an act is not clearly provided by statute.
3. Neglect and carelessness on the part of a lawyer which results in procedural technicality will not prevent the court from making a fair determination of the case on its merits.
4. A lawyer breaches his moral and professional ethics when he carelessly and negligently handles a cause to the detriment of his client.
5. No action or suit which is instituted in a court of law shall be permitted to continue indefinitely. Rather, every case must end within a reasonable time in

accordance with the rules and procedure applicable to the said action. Notwithstanding, the rules and procedures must promote the just, speedy, and inexpensive determination of every matter.

6. In determining an action brought before it, the court is under a duty to consider the spirit and intent of the procedural statute as opposed to its letter.

On December 9, 1991, movant, petitioner in the trial court, filed a petition for cancellation of a lease agreement against respondent Zhang Guan Fu. After a regular trial, a decree was entered in favor of movant cancelling the lease agreement between the parties. The respondent, through his attorneys-in-fact, excepted to the judgment and announced an appeal to the Supreme Court. On April 27, 1992, movant filed a motion in the trial court to dismiss the appeal for failure to file a bill of exceptions within the time allowed by statute. One day following the filing of the motion to dismiss, and fifteen days after final judgment had been rendered, the respondent's representative filed a bill of exceptions stating that its failure to timely file the bill of exceptions was due to the absence of his client. The judge approved the bill of exceptions *nunc pro tunc*. Thereafter, on May 4, 1992, movant filed a motion to strike the bill of exceptions. When the above motions were assigned for hearing, one of the respondent's attorneys-in-fact petitioned the Chambers Justice for a writ of prohibition to restrain and prohibit the trial judge from hearing the above motion, and stated as grounds therefor that the trial judge had lost jurisdiction of the case following the approval of the bill of exceptions *nunc pro tunc*. The Chambers Justice heard and granted the writ. The movant excepted to the ruling of the Chambers Justice and appealed therefrom to the Full Bench, but subsequently withdrew same and filed a motion to dismiss the appeal which was announced in the trial court.

The Supreme Court determined that respondent's failure to timely file its bill of exceptions was attributable to the neglect of respondent's attorney, which act constituted a violation of Rule 30 of the Moral and Professional Code of Lawyers. As regards the bill of exceptions, the Court stated that while section 51.7 unequivocally states that a party appealing from an adverse judgment must present a bill of exceptions to the trial judge for

approval within ten days after the rendition of the adverse judgment, section 51.4 (2), which relates to the filing of the approved bill of exceptions, does not state the exact time within which the bill of exceptions shall be filed. The Court also stated that even though several cases have been dismissed for failure to present a bill of exceptions for approval and filing within ten days, any further interpretation of the appeal statute along that line will not only lead to a narrow, strict, and technical application of the rules and procedures, as found in the procedural statute, but will further give rise to a contradiction of Rev. Code 1: 1.4 which states: "The provision of this title shall be construed to promote the just, speedy and inexpensive determination of every action." The Court also opined that no action shall be allowed to continue indefinitely, but that every case shall end within a reasonable time. The Supreme Court also held that the trial judge's approval of the bill of exceptions, one day after the motion to dismiss had been filed, was irregular and therefore a reversible error. The Court accordingly denied the motion.

Roger K. Martin for petitioner. *David Kpomakpor* for respondent.

MR. CHIEF JUSTICE BULL delivered the opinion of the Court.

On December 9, 1991, Abu F. Donzo, petitioner, filed a petition for cancellation of a lease agreement against Zhang Guan Fu in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. On December 19, 1991, the respondent in the cancellation proceedings, Zhang Guan Fu, executed a limited power of attorney in favor of Shen Guo Yong and Zaffar A. Ahmed, appointing these two individuals as his attorney-in-fact to represent him in the cancellation proceedings pending in the Civil Law Court. The cancellation proceedings was heard in the court below during the March, A. D. 1992 Term, presided over by His Honour Judge M. Wilkins Wright. A decree was entered in favour of petitioner by Judge Wright on April 13, 1992, cancelling the lease agreement between the parties. Counsellor

Joseph Findley, representing the respondent, excepted to the judgment and announced an appeal to this Court.

On April 27, 1992, petitioner below filed a motion to dismiss respondent's appeal for failure to proceed in accordance with section 51.16 of the civil procedure statutes. Section 51.16 provides for dismissal of an appeal by the trial court on motion for failure of the person taking the appeal to file a bill of exceptions within the time allowed by statute. On April 28, 1992, fifteen days after final judgment, respondent filed a bill of exceptions which the judge approved *nunc pro tunc*. A motion to strike the said bill of exceptions was also filed on May 4, 1992 by the petitioner. When the trial judge assigned these two motions for hearing, one of Zhang Guan Fu's attorneys-in-fact fled to Mr. Justice Boima K. Morris, the Justice presiding in Chambers, and filed a petition for a writ of prohibition to prohibit the trial judge from hearing the two motions mentioned above on the ground that the said trial judge lost jurisdiction over the subject matter the moment he approved respondent's bill of exceptions *nunc pro tunc*. Mr. Justice Morris granted the prohibition whereupon, the respondent in prohibition, petitioner in the cancellation proceedings, excepted to the Chambers Justice's ruling and prayed for an appeal to the bench en banc, which appeal he later withdrew. After the withdrawal of the appeal, the petitioner in the cancellation proceedings, Abu F. Donzo, has come to this Court praying to dismiss the appeal announced below in the trial court by respondent Zhang Guan Fu.

This matter before us presents some rather interesting facts. We have a case here where a party who is the respondent in the cancellation suit was once being represented by counsel, Counsellor Joseph Findley. The respondent later appears to have been represented by an attorney-in-fact; then finally by another counsel, Counsellor David Kpomakpor of the Sherman and Sherman Law Offices, who replaced respondent's original counsel, Counsellor Joseph Findley. The proceedings for cancellation of lease agreement was decided in favour of petitioner Abu F. Donzo. Counsellor Joseph Findley, excepted to the final decree and announced an appeal. The records before us show that Counsellor Findley abandoned the appeal process by

deliberately failing to tender a bill of exceptions to the trial judge after final judgment was rendered. Therefore, by the time Counsellor Kpomakpor took over the case, it was statutorily too late for him to file the bill of exceptions. The records before us further show that Counsellor Findley's reason for not presenting a signed bill of exceptions for approval was because he did not know the *whereabouts of his client*. (Emphasis ours). This fact was not refuted in the records before us. The third interesting fact of this case is that the wording of the bill of exceptions, which was finally presented to the trial judge for approval, leaves no doubt in our mind that it was a trained lawyer who advised and supervised one of respondent's attorneys-in-fact, Mr. Zaffar A. Ahmed, in preparing said bill of exceptions. Apparently, the bill of exceptions presented to the trial judge was not the work of a layman.

We must observe that the lawyer on both sides, as well as the trial judge, have either deliberately or innocently committed inexcusable acts, which we shall address later in this opinion.

On its face, this is a simple matter of an application or petition to this Court to dismiss an appeal on the ground that the party wishing to have this Court hear his appeal has not complied with one of the essential requirements necessary for the completion of an appeal. This essential requirement is the filing of a bill of exceptions in order to facilitate the completion of the appeal. The statute provides that the person who desires to take an appeal from a final judgment must present a bill of exceptions, signed by him, to the trial judge within ten days after rendition of judgment. *The signed bill of exceptions shall be filed with the clerk of court*. Failure to file a signed bill of exceptions is a ground for dismissal of the appeal. Civil Procedure Code, Rev. Code 1:51.4(b) and 51.7. As stated above, Counsellor Findley, representing Zhang Guan Fu, deliberately refused to present a signed bill of exceptions for approval. The records in this case further reveal that the trial judge was aware of Counsellor Findley's failure to timely present a bill of exceptions and also of his reason for not presenting a bill of exceptions for the judge's approval. The lawyers who now represent Zhang Guah Fu were also aware of Counsellor Findley's reason for not

presenting to the trial judge a bill of exceptions, and these lawyers, without any doubt, participated in the preparation of the bill of exceptions which was finally presented to Judge Wright for his approval.

This Court has in a long line of cases dismissed appeals for failure to file the bill of exceptions within ten days after rendition of judgment. In our view, these provisions of the statute, that is to say, sections 51.7 and 51.4(b) of the Civil Procedure Law, Rev. Code 1, have been too rigidly interpreted by this Court. Section 51.4 lists the requirements for the completion of an appeal. Sub-section (b) of section 51.4 refers to filing of a bill of exceptions and further provides that the failure to comply with that requirement (e.g. filing of a bill of exceptions within the time allowed by statute) shall be ground for dismissal of the appeal. Section 51.7 and sec. 54.4 (b) must be read together. Section 51.7 states that the bill of exceptions shall be presented to the trial judge within ten days after rendition of judgment and the judge shall sign the bill of exceptions and the bill of exceptions shall be filed with the trial court. There is no mention of any time period within which the judge shall sign the bill of exceptions presented to him, neither is there any mention of the time when said bill of exceptions shall be filed with the clerk of the trial court. The only time stated in section 51.7 relates to the act of presenting to the trial judge the bill of exceptions which must be done within ten days after final judgement. When the bill of exceptions are presented, the judge shall sign same and make thereon whatever reservations he may have to these exceptions.

We are aware that this Court has rendered a number of opinions dismissing appeals on the ground that a bill of exceptions was not filed within the time provided for its filing, that is to say, within ten days from the date of the judgment.

In all of those opinions, this Court has interpreted section 51.7 to mean that a bill of exceptions must be presented to the trial judge within ten days after the judge's ruling; that said judge must sign same within the ten days from the date the bill of exceptions was presented to him, and that the party who presented the bill of exceptions must obtain it from the judge and

file same with the clerk within the ten days required to present same. In short, presentation, approval, and filing must be completed within ten days after rendition of judgment. In our opinion this conclusion does not reflect the clear meaning of the provision of sec 51.7 of the civil procedure statute. In these opinions this Court has applied a strict and narrow interpretation to the filing provision relating to bills of exceptions. Some of these cases are the following: (1) *James v. Davies-Johnson*, 3 LLR 223 (1931); (2) *Webster v. Freeman*, 16 LLR 209 (1965); (3) *Quintana v. Robello*, 21 LLR 150 (1972); (4) *Liberia Battery Manufacturing Corporation and Dhaliwal. v. Mensah*, 36 LLR 879 (1989) and (5) *Liberia Petroleum Refining Company v. Williams*, 36 LLR 927 (1989) .

We believe that the time has now come for us to look seriously at, and consider the spirit and intent of our civil procedure statute. The spirit and intent of our civil procedure statute are clearly expressed by the works contained in the Civil Procedure Law, Rev. Code 1:1.4. This section reads as follows:

“Section 1.4. Construction

The provision of this title shall be construed to promote the just, speedy and inexpensive determination of every action.

(Emphasis ours). Civil Procedure Law, Rev. Code 1:1.4

The Liberian Law Reports, as well as our unreported cases, are replete with opinions that have determined the interest and rights of party litigants by a narrow, strict and technical application of the rules of procedure as are found in the procedural statute. These opinions have, over the past half century, deprived a number of our compatriots and foreign friends of their prized and valuable possessions. This Court does not favor such strict application of the procedural laws for the determination of substantive rights.

No suit which is instituted in a court of law should be permitted to continue indefinitely. Rather, every case must end within a reasonable time. However, the rules and procedure applicable to a controversy in a court must specify time limits for doing certain acts intended to prosecute or defend a suit. What is important is that these rules or procedures must promote a just, speedy and inexpensive determination of every matter which

comes before the court. (Emphasis ours).

From the facts in the case before us, we come face to face with the behavior of one of our most experienced and reputable lawyers who has handled his client's interest with such deliberate acts of neglect and total disregard for the kind of professional behavior which is expected of a lawyer admitted to the bar of this Court. This act of course permits the adversary to seek the application of one of the harsh provisions of our procedural statute, the appeal statute. How can a lawyer of the caliber of Counsellor Joseph Findley fail to perform a legal duty on behalf of his client because he does not know the whereabouts of said client? Does a lawyer need to know where his client is before he can prepare and present a bill of exceptions to a judge for approval? This action of Counsellor Findley is one which this Court frowns upon, and we cannot permit it to pass unnoticed.

Counsellor Findley directly violated Rule 30 of the lawyers Code of Moral and Professional Ethics which prohibits a lawyer from throwing up the unfinished task to the detriment of his client. We cannot and must not continue to condone the breach of the professional code of conduct by our lawyers, nor is it sufficient to only reprimand or caution those lawyers who are so derelict in the performance of their professional responsibilities. We therefore have no alternative but to fine Counsellor Findley the sum of L\$1,000.00 which must be paid into the Government's revenue within 72 hours from the date of this opinion.

We mentioned earlier in this opinion that there can be no doubt that respondent's lawyers prepared the bill of exceptions for the respondent in the trial court and that these lawyers knew that Counsellor Findley had abandoned his client's case when these exceptions were prepared and presented to the trial judge. We cannot understand why the lawyers elected to stay in the background and attempt to impress this Court that they had no knowledge of the injustice their clients had suffered at the hands of Counsellor Findley. This attempt to deceive this Court is looked upon with disfavor. It would have been better had these lawyers appeared in court and resist the motion to dismiss the appeal for reason that the respondent's lawyer had abandoned his interest for no valid cause, and appeal to the judge's sense of

justice and fairness to permit them to tender a bill of exceptions on behalf of respondent so that justice may be done in the premises.

We also observed that the trial judge approved the bill of exceptions one day after the motion to dismiss the appeal had been filed. The judge also knew that Counsellor Findley failed to file a bill of exceptions in time. The records show that Counsellor Findley telephoned Judge Wright twelve days after he had rendered judgment in this case and informed him that he had not filed a bill of exceptions because he did not know the whereabouts of his client. Judge Wright's knowledge of these facts should have prohibited him from approving the bill of exceptions. The judge's approval of the bill of exceptions under these circumstances was indeed irregular and cannot be upheld. This case is replete with irregularities which have resulted in the miscarriage of justice, to say the least.

This matter is one that must be decided upon a fair determination of the substantive rights of the parties. We therefore cannot permit a procedural technicality which has been invoked because of the deliberate neglect of counsel of one of the parties to prevent us from making a fair determination of this case on its merits. In order to arrive at such fair determination, we must hear the appeal. We are of the opinion that each case of this nature that comes before us involving the breach of a procedural technicality, concerning the period of time an act is to be performed, must be considered on a case by case basis, and all of the facts and circumstances that resulted in such breach should be carefully scrutinized. Such should be the case especially where, from the reading of the statute, the time specified therein to do the act required is not clearly stated.

In view of the foregoing, it is our opinion that the motion to dismiss the appeal should be, and the same is hereby denied. We hold that Counsellor Joseph Findley breached his fiduciary duty as a lawyer to his client and is hereby fined the sum of L\$1,000.00 to be paid into government revenues within 72 hours from the date of this opinion, and obtain a flag receipt evidencing such payment. Said receipt must be exhibited to the Marshall of this Court for registration. Upon Counsellor Findley's failure to

pay the fine imposed, within the time specified herein, the Clerk of this Court is hereby ordered to prepare a commitment, place same in the hands of the Marshal of this Court to have him committed into common jail until this amount is paid in full. And it is hereby so ordered.

Motion denied