

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Miss Lucia Derrick and James K. Wolovah of)
Bushrod Island, Montserrado County, Republic)
of Liberia.....Movants)
)
Versus) MOTION TO DISMISS APPEAL
)
Global Pharm Medical Center by and thru its)
representative of Point Four, Bushrod Island)
Monrovia, Liberia.....Respondent)
)
GROWING OUT OF THE CASE:)
)
Global Pharm Medical Center by and thru its)
representative of Point Four, Bushrod Island)
Monrovia, Liberia.....Appellant)
)
Versus) ACTION OF DAMAGES
) FOR WRONG RESULTING
) FROM MEDICAL MALPRACTICE
His Honor J. Kennedy Peabody, Resident Judge,)
Civil Law Court, Sixth Judicial Circuit, Civil Law)
Court, Temple of Justice, Monrovia, Liberia and)
Miss Lucia Derrick and James K. Wolovah of)
Bushrod Island, Montserrado County, Republic)
of LiberiaAppellees)

HEARD: MARCH 25, 2024

DECIDED: MAY 23, 2024

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

In this motion to dismiss, Miss Lucia Derrick and James K. Wolovah, movants herein have prayed this Court to dismiss the respondent's appeal on grounds that the said appeal violates the appeal statute. We take recourse to the records to make a just determination based on the facts and circumstances herein.

The movants in their motion alleged that they were plaintiffs in a medical malpractice action before the Sixth Judicial Circuit, Civil Law Court, Montserrado County and that the said court rendered final judgment in their favor on September 19, 2023, and the said judgment was served on the parties on September 21, 2023. The movants further alleged that the respondent filed its bill of exceptions within the statutory period but failed to file a valid appeal bond and service and filing of notice of completion of appeal within the statutory period. The movants further alleged that the respondent filed its first appeal bond on November 1, 2023, but the said bond was challenged by them, and the respondent subsequently filed a notice of withdrawal of the appeal bond and filed a different appeal bond. That movants further

contends that on November 18, 2023, that is three (3) days to the expiration of the statutory period to complete its appeal, the respondent filed a new appeal bond and notice of completion of appeal but the movants refused to sign or receive the said notice of completion of appeal, because the movants argued that according to the law they have at least three (3) days to review the appeal bond before they can sign the notice of completion of appeal. The movants further alleged that upon revision of the appeal bond, they discovered that the bond was defective and filed an exception to the respondent's bond.

The movants argued that there is no provision in the appeal process which allows the respondent to serve the appeal bond and notice of completion of appeal on the same day and that such act is in clear violation of the appeal statute.

The movants argued that the respondent must file a motion to justify, and that said motion must be heard and passed upon by the lower court within the statutory period of sixty (60) days but the said motion to justify was filed on the sixty-third day and as such the respondent's appeal bond remained defective after the statutory period hence the appeal must be dismissed.

The respondent filed its resistance arguing that there is no law in our jurisprudence that gives the appellee three days to review an appeal bond before signing the notice of completion of appeal; that its appeal bond and notice of completion of appeal was filed and served on the appellees' counsel on November 17, 2023, but in bad faith, the counsel opted to sign the bond on November 18, 2023 and refused to sign the notice of completion of appeal until after three days of reviewing the bond which is contrary to statute and the law and practices horary with age in our jurisdiction; that the movants/appellees should have signed the notice of completion of appeal and utilize the election to challenge same at the Supreme Court, if he observed any defect.

The respondent further argued that service of the notice of completion of appeal is not predicated on justification of an appeal bond after three (3) day of review but that the notice of completion of appeal comes after the filing of the appeal bond thereby completing the appeal process. The respondent urged this Court to deny the motion to dismiss its appeal because it completed its appeal within the statutory period as prescribed by law.

The single question we must answer to make a proper judicial determination of this motion to dismiss is:

Whether or not it is a practice in this jurisdiction for an opposing counsel to refuse a notice of completion of appeal until he reviews the appeal bond attached to the appeal within three (3) days and be satisfied before signing it?

The Court answers in the negative. Section 51.9 of the Civil Procedure Law captioned: Notice of Completion of appeal read thus **“after the filing of a bill of exceptions and the filing of appeal bond as required by Section 51.7 and 51.8, the clerk of the trial court on application of the appellant shall issue a notice of completion of appeal, a copy of which shall be served by the appellant on the appellee. The original of such notice shall be filed in the office of the clerk of the trial court.”** This section quoted above requires the appellant to make application to the clerk of the court and for the clerk of the court to issue a notice of completion of appeal, copy of which should be served on the appellee. There is no other requirement besides the fact that such service by law must be done within sixty (60) days. In the mind of the Court, the appellant met the bond requirement, and the Court does not see any legal basis for the dismissal of the appeal.

Section 51.16 captioned dismissal of appeal for failure to proceed under which this motion to dismiss is before this Court read thus: **“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 the 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 completion of appeal as required by the statute.” In other words, the statute is clear that the trial court has one ground to dismiss an appeal and that single ground is when the appellant failed to file a bill of exceptions within ten (10) days.

The statute above quoted further gives three (3) grounds for the appellate court to dismiss an appeal. The grounds are: **(1) For the appellant failure to appear at the hearing of the appeal. This ground is not applicable since the appellant has appear and is before Court. (2) For the appellant failure to file an appeal bond. This ground is also not applicable because the record is clear that indeed the appellant filed an appeal bond. (3) For the appellant failure to serve a notice of completion of appeal within statutory time.**

The records before us show that the appellant served their appeal bond together with the notice of completion of appeal on the opposing party on November 17, 2023, but the appellee’s counsel accepted the appeal bond but refused to accept the notice of completion of appeal contending that he needs three days to review the bond before signing for the notice of completion of appeal. The fact is that the final judgment in this case was delivered to the party on September 21, 2123. Consequently, November 18 and 19 without any iota of doubt squarely falls within the sixty days statutory period and that the appellant met up with the requirement of the sixty days statutory period when he served the appeal bond and notice of completion of appeal on the appellees’ counsel. The appellees’ counsel failure to receive the notice of completion of appeal is a practice of novelty in this jurisdiction in that there is no law that requires that an opposing counsel should receive an appeal bond which is duly served on him within statutory period and wait for three days to review same before receiving the notice of completion of appeal. That practice, the Court says, was in bad faith.

Moreover, assuming that there was a defect observed on the bond, counsel for the appellee was under duty to have received same and file whatever objection he had or his exception to the bond and that that defect would have then been determined by the Appellate Court since the notice of completion of appeal had been served. But for the appellees’ counsel to refuse and contend that he had three days to review the bond before signing the notice of completion of appeal is an ambush method of practicing law intended to push the appellant out of the statutory period.

Predicated on the above fact and circumstances the Court says that the appellant squarely met the requirements for the completion of an appeal before this Court under the statute and that the motion to dismiss lacks legal substance.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss being wanting both in law and practice in this jurisdiction, same is hereby denied and the Court shall proceed to hear the appeal on its merits. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR WELLINGTON G. BEDELL APPEARED FOR THE MOVANT. COUNSELLORS J. BIMA LASSANA AND H. CALVIN MOMOLU APPEARED FOR THE RESPONDENT.