



ASSOCIATE JUSTICE
SUPREME COURT OF LIBERIA



JUDICIAL BRANCH
TEMPLE OF JUSTICE
MONROVIA, LIBERIA

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2017.

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

Kabineh M. Ja'neh represented by and)
through his attorney-in-fact, Yussif)
D. Fofana of the city of Monrovia,)
Liberia.....Movant)

Versus)

MOTION TO DISMISS
APPEAL

Mrs. Annie Constance and Brown)
to be identified, also of the city)
of Monrovia, Liberia.....Respondents)

GROWING OUT OF THE CASE:)

Mrs. Annie Constance and Brown)
to be identified, also of the city)
of Monrovia, Liberia.....Appellants)

Versus)

APPEAL

Kabineh M. Ja'neh represented by and)
through his attorney-in-fact, Yussif)
D. Fofana of the city of Monrovia,)
Liberia.....Appellee)



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GROWING OUT OF THE CASE:

Kabineh M. Ja'neh represented by and
through his attorney-in-fact, Yussif
D. Fofana of the city of Monrovia,
Liberia.....Plaintiff

Versus

Mrs. Annie Constance and Brown
to be identified, also of the city
of Monrovia, Liberia.....Defendants

ACTION OF EJECTMENT

JUDGMENT WITHOUT OPINION

HEARD: October 24, 2016

DECIDED: October 4, 2017

When this case was called for hearing, Counsellor Cooper W. Kruah of Henries Law Firm appeared for the movant. No lawyer appeared for the respondents.

Pursuant to Statute and Revised Rules of the Supreme Court that motions be heard and disposed of before the main case, except where the Court on its own or upon the requests of the parties to consolidate both the motion to dismiss and the main case, the motion to dismiss the respondents appeal was called on December 1, 2015. Counsellor Lawrence Yeakula of Liberty Law Firm appeared for the respondents and made a submission on the records of the Court, requesting continuance for a period of one (1) month to enable the parties amicably resolve the matter between them without further litigation. In response to this submission, the movant's lawyer, Counsellor Cooper Kruah, interposed no objection. The Court granted Counsellor Yeakula's submission for continuance but with the proviso that if the parties failed to file a statement of voluntary withdrawal within the period of one (1) month the Court will proceed with the case and make a determination thereon.



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SUPREME COURT OF LIBERIA



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The Court observes that ten (10) months thereafter, that is, on October 24, 2016, when the case was again assigned and called for hearing, the records not only showed the absence of any evidence of a resolution of the matter, but also that no notice of voluntary withdrawal had been filed notifying the Court that the matter had being amicably settled.

Also, on the said day of October 24, 2016, lawyer(s) representing the respondents did not appear for the hearing. The absence of the respondents' lawyer(s) prompted the Court to ascertain from the Clerk whether or not the respondents' lawyer(s) were served with the notice of assignment, to which the Clerk responded in the affirmative. Therefore, pursuant to the Revised Rules of the Supreme Court, Article IV, Part 6(c), the hearing of the motion was ordered proceeded with, and that movant's lawyer proceeded with his side of the argument.

The Revised Rules of the Supreme Court provide as follows:

"if a party appears, and the other party does not appear, but files a brief, the Court will proceed to hear the argument of the party appearing, and render its decision on the basis of the briefs filed and the argument of the party appearing. If one party appears, and the non-appearing party has not filed a brief, the non-appearing counsel shall be given forty-eight (48) hours to file a brief and appear for hearing of the case; and the party shall be simultaneously informed of the non-appearance of counsel and the postponement of the hearing for forty-eight (48) hours. If, when the case is again called for hearing, the party or counsel fails to appear or file a brief, the Court shall proceed to hear the argument of the appearing party and rule thereon." Revised Rules of the Supreme Court, Article IV, Part 6(c).

Accordingly, in presenting his argument, the movant's lawyer averred that while the respondents had filed their bill of exceptions, they took no further steps to perfect



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the appeal. Hence, this failure deprived the Supreme Court of jurisdiction to hear the case on its merits.

A review of the records shows that on April 9, 2013, the assigned Circuit Judge for the Sixth Judicial Circuit Court, Montserrado County, sitting in its March Term A.D. 2013, entered final judgment in favor of the movant. The respondents noted their exceptions, announced an appeal therefrom, and on April 19, 2013, filed their bill of exceptions. The records also show however, that this was the only step taken by the respondents in the process of perfecting their appeal to this Court, thus lacking in the filing of an appeal bond and the filing and service of the notice of completion of the appeal, the other remaining mandatory steps.

On October 8, 2013, almost six (6) months thereafter, the movant obtained a clerk's certificate from the Sixth Judicial Circuit Court, Montserrado County, which indicated that other than the filing of the bill of exceptions, the respondents had taken no further steps to perfect their appeal.

Given the fact that the filing of the bill of exceptions *ipso facto* divested the trial court of jurisdiction over this case, and that in such a case the statute provides that a motion for the dismissal of the appeal shall be filed before the Supreme Court, the movant, on December 2, 2013, filed a motion to dismiss the appeal before the Supreme Court sitting in its October Term, A. D. 2013. The Court, having reviewed the averments in the motion to dismiss and finding that same is irrefutably in consonance with the applicable laws, it is hereby



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ADJUDGED:

That the motion to dismiss the appeal be and same is hereby granted, and the appeal is dismissed. The Clerk of this Court is ordered to send a mandate to the Sixth Judicial Circuit Court, Montserrado County, mandating the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. IT IS HEREBY SO ORDERED.

GIVEN UNDER OUR HANDS AND THE SEAL
OF THE SUPREME COURT OF LIBERIA, THIS
4th DAY OF OCTOBER, A. D. 2017.

Francis S. Korkpor, Sr.
CHIEF JUSTICE, SUPREME COURT OF LIBERIA

Jamesetta H. Wolokolie
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA

Philip A.Z. Banks, III
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA

Sié-A-Nyene G. Yuoh
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA

Note: Mr. Justice Kabineh M. Ja'neh recused himself from the hearing and deliberation of this case. Hence, he did not sign this judgment.