

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2018

BEFORE HIS HONOR: FRANCIS S. KORKPOR, Sr.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA HOWARD-WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, IIIASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE

Amos B. Chappy and Linda Chappy of the City of Monrovia, LiberiaMOVANTS	)	
	)	
VERSUS	)	MOTION TO DISMISS APPEAL
	)	
Pastor Andrew Conteh also of the City of Monrovia, Liberia.....RESPONDENT	)	
	)	
<u>GROWING OUT OF THE CASE</u>	)	
	)	
Pastor Andrew Conteh also of the City of Monrovia, Liberia.....APPELLANT	)	
	)	
VERSUS	)	APPEAL
	)	
Amos B. Chappy and Linda Chappy of the City of Monrovia, LiberiaAPPELLEES	)	
	)	
<u>GROWING OUT OF THE CASE</u>	)	
	)	
Amos B. Chappy and Linda Chappy of the City of Monrovia, LiberiaPLAINTIFFS	)	
	)	
VERSUS	)	ACTION OF EJECTMENT
	)	
Pastor Andrew Conteh also of the City of Monrovia, Liberia.....DEFENDANT	)	
	)	

HEARD: April 3, 2018.

DECIDED: May 10, 2018.

MR. JUSTICE BANKS delivered the Opinion of the Court.

The framers of the Liberian Constitution of 1986 envisioned that the right to an appeal from a judgment of a subordinate court and/or administrative tribunal is not one that is or should be a subject of negotiation or left to the discretion of the tribunal that has the obligation to ensure such right is exercised; rather, they, the framers of the Constitution, promulgated that the right to an appeal is inviolable, inferring that the right cannot be arbitrarily denied. The mandatory conferral of an appeal right upon an appellant is captured at article 20(b) of the Constitution, as follows: *"The right of an appeal*

from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable..."

However, notwithstanding the Constitution states the right of appeal is inviolable, the framers, realizing the need for the exercise of the right to be done in an orderly manner, and seeing that the right was not self-executing, in the self-same article 20(b) of the Constitution mandated the Legislature to enact appropriate enabling legislation which shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal. The provision reads: *"The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal."*

In fulfilment of the constitutional mandate quoted above, and pursuant to the further authority to make laws, enshrined in article 34 of the Constitution of 1986, the Legislature enacted Section 51.4 of the Civil Procedure Law which set out basic rules, procedures and guidelines for the exercise of the right of an appeal. In that Section of the law, a number of requirements are set out which must be complied with in order that a party taking an appeal from a court of record to the Supreme Court must fulfil in order that the Supreme Court can acquire jurisdiction over the appeal and be vested with the authority to hear the appeal on the merits. The Section provides:

"§ 51.4. Requirements for completion of an appeal.

The following acts shall be necessary for the completion of an appeal:

- (a) Announcement of the taking of the appeal;
- (b) Filing of the bill of exceptions;
- (c) Filing of an appeal bond;
- (d) Service and filing of notice of completion of the appeal.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."

No court of this Republic, including the Supreme Court, can alter, amend, modify or grant a waiver to the requirements laid in the Act promulgated by the Body vested with the constitutional authority to enact such law. In that respect, the Supreme Court is mandated to strictly adhere to the law promulgated by the Legislature unless it finds that the law is unconstitutional. See Article 2 of the Constitution of Liberia (1986). In adherence to the constitutional mandate

and constraints, this Court has held on manifold occasions that it is without the authority to legislate or make laws, or to add, depart or to take away from the statute, or to extrapolate legislation no matter how the court may feel about a particular law. *Mensah et al. v. Wilson*, 34 LLR 100 (1986); *Wilson v. Firestone Plantations Company and the Board of General Appeals*, 34 LLR 134 (1986); *The Central Bank of Liberia v. Liberian Trading and Development Bank Ltd. (TRADEVCO)*, Supreme Court Opinion October Term A.D. 2012. In consonance therewith, the duty of this Court is to ensure strict compliance to the dictates of the law save in cases of excusable circumstances under which the very law permits the court to accord exceptions to the requirements.

It is given the foregoing that the movants have called us to apply the strict and mandatory provisions of the appeal statute to the instant case. The factual circumstances of this case are not disputed. The movants herein were plaintiffs below in an action of ejectment filed against the respondent, defendant in the court below. Following a full trial, consistent with due process of law, a final judgment was entered in favor of the movants on January 28, A. D. 2016. The respondent/appellant excepted to the judgment, announced an appeal therefrom and filed a bill of exceptions on February 8, 2016. Thereafter, however, the respondent/appellant failed to comply with the other mandatory statutory requirements regarding securing and filing an approved appeal bond and serving and filing a notice of completion of appeal.

The movants, noting that the bill of exceptions was approved by the trial judge and filed within the time provided for by the appeal statute, that therefore the trial court had lost jurisdiction for the purpose of entertaining a motion to dismiss the appeal, filed before this Court a motion to dismiss the appeal stating as grounds therefor that the respondent/appellant had failed to file an approved appeal bond and serve and file a notice of completion of appeal as mandatorily required by law. The relevant provision of the appeal statute states: "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 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 the completion of the appeal as required by statute." *Civil Procedure Law, Rev. Code 1:51.16*

In the five-count resistance filed by the respondent, he admitted the factual circumstances narrated in the motion and conceded the legal soundness of the motion but he blamed his failure to comply with the appeal statute on the negligence of his lawyers. According to the respondent, following the filing of the bill of exceptions by Cllr. Richard K. Flomo, Sr., his counsel in the lower court, the said counsellor fell sick and could not continue with the other steps to perfect the appeal; that he then added Cllr. Willington Bedell, an attorney at law at the time, to continue with the process but that Cllr. Bedell failed to perfect the appeal even though Cllr. Bedell received payment to perform the service of perfecting respondent/appellant's appeal. The respondent therefore prayed this Court to grant him an enlargement of time to enable him to file the delinquent documents and thereby allow him to perfect his appeal.

As much as we empathize with the respondent's allegation that Cllr. Bedell carelessly and recklessly handled his case, which resulted in his failure to perfect his appeal, an allegation which we shall address later in this opinion, we are not persuaded by the course pursued by the respondent's counsel in requesting for enlargement of time. Our law does not only provide the grounds upon which a party must rely in seeking an enlargement of time for the performance of certain acts prescribed by law, but it also articulates the procedure which must be followed by a party seeking enlargement of time. This is how the statute lays out the requirement:

"2. Enlargement. When under this title or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, except as otherwise provided by law, at any time in its discretion: (a) order the period enlarged if application is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the prescribed period permit the act to be done when the failure to act was the result of excusable neglect." Civil Procedure Law, Rev. Code 1:1.7(2)

The provision of the statute quoted above requires, firstly, that in seeking an enlargement of time a party should have made an application to the court and since our law requires that "Every application to the court for an order shall be made by motion" *ID 10.1 (2)*, it means that the respondent should have filed

motion for enlargement of time; that requirement is not fulfilled by the party by including such prayer in the resistance filed in response to a motion to dismiss the appeal which states multiple grounds for denial of the motion to dismiss.

Secondly, the respondent should have venued the motion for enlargement of time before the trial court for two reasons: 1) because it was before that court that the appeal bond and the notice of completion of were to be filed by law and 2) since the grounds on which the respondent has predicated his request for an enlargement of time contained factual allegations which required the taking of evidence, only the lower court could have investigated and confirm the allegations after the production of the evidence.

Thirdly, the respondent could either have filed said motion before the expiration of the 60 days period for the perfection of an appeal or filed same after the expiration of said period at which time he would have had the opportunity to establish the circumstances which he believed were excusable by law.

The respondent's failure to pursue such a course cannot be remedied or cured by his request, couched in his resistance to the motion to dismiss, filed before this Court. As we have stated, not only is the Supreme Court not the proper forum for the filing of a motion for enlargement of time under the circumstances presented herein, but also since the allegations contained in the resistance upon which his request for enlargement of time is based are factual in nature and require evidence taking, this Court cannot entertain same. This Court is precluded from the taking of evidence; it does not have the authority to investigate or take evidence for the first time in regard to a matter on appeal. *Bah and A. Bah Business v. Henries et al.*, 41 LLR 87 (2001); *Jawhary v. His Honor, Kabineh M. Ja'neh and Oumou Sirleaf-Hage*, Supreme Court Opinion October Term A.D. 2012.

We at the Supreme Court cannot establish the respondent's allegations that Cllr. Willington Bedell received payment for the perfection of the appeal but failed to pursue the respondent's appeal. We believe that this allegation requires a full investigation to afford Cllr. Bedell the opportunity to defend against same. We are equally aware that Rule 24 of the Code For Moral and Ethical Conduct For Lawyers requires that a lawyer word of honor is sacred and

his dealings in all matters and on all occasions should be such as non-repugnant to his oath, and degrading to his profession. *In Re: Attorney James K. Saybay*, Supreme Court Opinion, October Term, A. D. 2013.

A lawyer-client relationship is one that is contractual in nature and the lawyer's failure to honor his/her side of the bargain professionally is amendable to an action of damages for breach of contract. Additionally, the Code of Moral and Ethical Conduct For Lawyers imposes a duty on a lawyer to his/her client. It states:

"A lawyer should refrain from any act whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client." See Rule 15

It is our considered opinion therefore that if the respondent believes that his lawyer, Cllr. Bedell abused the confidence reposed in him by receiving payment for the perfection of the appeal and failed to perform the service for which he was engaged, that is, to perfect the respondent's appeal, the respondent has the option of filing a formal complaint before the Grievance and Ethics Committee against Cllr. Bedell. This is particularly the case since the records do not reveal that such event did occur, except for the fact that they are alleged by the respondent/appellant. If the events alleged were established as a matter of record, the Supreme Court could take judicial notice of the records. However, under the circumstances reveals by the records, where the evidence is lacking in the records, it is only the Grievance and Ethics Committee that can investigate and recommend punitive action against the lawyer, if the respondent/appellant chooses not to seek damages, in which case, he would still have to present evidence at the trial. Where he opts to seek redress via the Grievance and Ethics Committee, that body, the Grievance and Ethics Committee, has the authority and mandate to investigate all such claims and to make appropriate recommendation to the Supreme Court, including the imposition of a fine, suspension and disbarment of the lawyer, depending upon the gravity of the ethical transgression. Absent such any investigation report from the Grievance and Ethics Committee showing that the allegations contained in the respondent's resistance are true and correct, we cannot proceed to pass on same.

Therefore, the respondent having conceded to the factual and legal soundness of the motion to dismiss the appeal, and this Court having held that the request for enlargement of time was improperly made and did not conform to the law, the motion to dismiss appeal should be and same is hereby granted.

Wherefore and in view of the foregoing, the movants' motion to dismiss the respondent/appellant's appeal is hereby granted. The Clerk of this Court is hereby mandated to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction and give effect to this opinion. Costs are ruled against the respondent. AND IT IS HEREBY SO ORDERED.

Counsellor Joseph P. Gibson of Wright and Associates Law Firm appeared for the movants/appellees. Counsellor Anthony D. Mason of the Henries Law Firm appeared for the respondent/appellant.