

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'NEH.....ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A. Z. BANKS III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

Kenya Kamara, of the City of Monrovia, Liberia)

.....MOVANT)

Versus) MOTION TO DISMISS

Pan African Capital Group, also of Monrovia,) APPEAL
Liberia.....RESPONDENT)

GROWING OUT OF THE CASE:)

Pan African Capital Group, also of Monrovia,)
Liberia.....APPELLANT)

Versus) APPEAL

Kenya Kamara, of the City of Monrovia, Liberia)
and Her Honor Comfort S. Natt, Judge, National)
Labor Court and Hon. Jackson P. Quoigbian,)
Hearing Officer, Ministry of Labor.....APPELLEES)

GROWING OUT OF THE CASE:)

Pan African Capital Group, also of Monrovia,)
Liberia.....PETITIONER)

Versus) PETITION FOR JUDICIAL

Kenya Kamara, of the City of Monrovia, Liberia) REVIEW
and His Honor Jackson P. Quoigbian, Hearing)
Officer, also of Monrovia.....RESPONDENT)

HEARD: October 24, 2017

DECIDED: August 6, 2018

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

When a motion is filed to dismiss an appeal for violation of the appeal statute, this Court has consistently expressed its strong preference for deciding the appeal on its merit, hesitant to dismiss the appeal. But where there is a glaring violation of the substantive provision of the appeal statute, the Court in disposing the motion has usually opted to either enter a Judgment Without Opinion (JWO) or alternatively dealt strictly and summarily with the issue surrounding the motion to dismiss; and thereafter, make a determination as to whether the respondent/appellant has violated

the mandatory provisions of the appeal statute; thus, justifying the dismissal of its appeal.

The instant case now before us presents a peculiar scenario wherein we are called upon to review all the prevailing circumstances giving rise to this motion to dismiss and then make a determination as to whether the dismissal of the respondent/appellant's appeal is justifiable both in law and equity.

The facts of this case being undisputed by the parties reveal that on October 6, 2014, the movant/appellee, Kenya Kamara, and the respondent/appellant Pan African Capital Group entered an employment contract wherein the former agreed to serve as an investment associate for the latter. One year thereafter, that is February 2, 2015, the respondent/appellant transmitted a communication to the movant/appellee, informing the movant/appellee that it would not be extending her employment contract which had expired as of January 6, 2015, due to economic recession in the country precipitated by the ebola crisis. On February 23, 2015, the movant/appellee, through the Dean and Associates Law Firm, transmitted an official reply to the respondent/appellee's communication, wherein the movant/appellee stated that as of January 7, 2015, the movant/appellee's employment contract with the respondent/appellant had automatically renewed on its own terms by the conduct of the parties; that the termination of said employment contract was illegal and that the respondent/appellant provide full remuneration to the movant/appellee for the unexpired contractual term.

On February 27, 2015, the respondent/appellant addressed two letters to the movant/appellee and her counsel, wherein it rescinded the letter of termination dated January 6, 2015, and requested the movant/appellee to resume her duty as of March 4, 2015.

On March 3, 2015, and upon receipt of the respondent/appellant's communication, the movant/appellee transmitted a communication to the Minister of Labor, Hon. Neto Z. Lighe. In her communication, she expressed fear that upon her return to work the interaction growing out of her complaint would leave the respondent management with a decision to find fault, for the singular purpose of relieving her of her post. The movant/appellee requested the Minister to intervene by ordering the respondent/appellant to pay her for the unexpired contractual term.

The Minister of Labor, upon receipt of the movant/appellee's communication, arranged a conference between the parties. At the conclusion of same, the

Minister instructed the respondent/appellant to allow the movant/appellee resume her duty and also ensure that the movant/appellee would not be subjected to any form of intimidation, harassment or an illegal dismissal.

The records show that notwithstanding the above, the movant/appellee refused to resume her duty. She maintained her preference to be paid for the unexpired term of the employment contract despite the intervention of the Ministry of Labor. It is noteworthy to mention here that our Labor Law provides for no such preference by an employee under the circumstances.

On March 12, 2015, the respondent/appellant transmitted another communication to the movant/appellee; the communication instructed the movant/appellee to resume her post and that failure to comply with the respondent/appellant's directives within ten (10) days would result in the movant's dismissal.

The records show that the movant/appellant did not adhere to these directives, and on March 30, 2015, the respondent/appellant terminated the movant/appellee's contract; thus, giving rise to the movant's action of unfair labor practice, on grounds that she was illegally dismissed.

At the hearing of the movant/appellee's complaint at the Ministry of Labor, both parties appeared and provided evidence justifying their respective positions. At the conclusion of the hearing, the Hearing Officer, ruled against the respondent/appellant and awarded the movant/appellee the amount of US 80,126.63 (Eighty Thousand One Hundred Twenty-Six United States Dollars and Sixty-Three Cents). The respondent/appellant excepted and appeal this award to the National Labor Court of Montserrado County. On May 9, 2017, the said award was affirmed with modification by the National Labor Court, increasing the amount from US\$80,126.63 (Eighty Thousand One Hundred Twenty Six United States Dollars and Sixty Three Cents) to US\$87,399.96 (Eighty Seven Thousand, Three Hundred Ninety-Nine United States Dollars and Ninety-Six Cents).

The records show that lawyers representing the respondent/appellant, Counsellors David B. Gibson and F. Juah Lawson of the Renaissance Law Group excepted to the Labor Court's ruling, announced an appeal to the Supreme Court and thereafter filed a bill of exceptions within the ten (10) days statutory period prescribed by Section 51.7 of the Civil Procedure Law. Pursuant to Sections 51.8 and 51.9 of the appeals statute, the Renaissance Law Group on

June 14, 2017, filed an approved appeal bond and a notice of completion of the appeal long before the statutory period of sixty (60) days elapsed.

The records also show that although the appeal bond and notice of completion of appeal were filed long before the efflux of the sixty (60) days statutory period, the Renaissance Law Group however for reasons not explained in the records, neglected and failed to serve the notice of completion of appeal on their adversary as mandated by section 51.9 of the Civil Procedure Law. The said law provides that:

“After the filing of the bill of exceptions and the filing of the appeal bond as required by sections 51.7 and 51.8, the clerk of the trial court on application of the appellant shall issue a notice of the completion of the 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.”

The failure of the respondent/appellant’s lawyers to adhere to the above quoted provision of the Civil Procedure Law and its interpretation by the Court, the movant/appellant filed before the Court a six (6) count motion praying the dismissal of the appeal on grounds that the respondent/appellant had failed to comply with Section 51.9 of the Civil Procedure Law quoted herein above.

This Court observes that the Renaissance Law Group in filing resistance to the motion conceded that the notice of completion of appeal was not served but then however, attempted to justify their position by stating that the movant/appellee was constructively served when she appeared at the trial court to tax the records. It is the argument of the respondent/appellant’s lawyer, the Renaissance Law Group, that given the fact the notice of completion of appeal was in the records which was taxed by the movant/appellee, the said movant/appellee received notice of the filing of the notice of completion of the appeal and as such she was constructively served.

This Court says that it out-rightly rejects the argument of the respondent/appellant’s lawyers because Section 51.9 of the Civil Procedure Law regarding the filing and service of the notice of the completion an appeal is clear, unequivocal and that the said provision needs no further indepth analysis. The Supreme Court in a plethora of Opinions has sufficiently dealt with this issue. *Lamco J. V. Operating Company v. Fleming*, 33LLR 171(1985); *CITIBANK, N. A. Liberian Branch v. Barrow*, 37LLR 727 (1995); *Pentee v. Tulay*, 40LLR 207 (2000). In view of the aforesaid, this argument advanced by the respondent/appellant’s lawyers, to say the least, is

unpersuasive and inherently flawed. More besides, the respondent/appellant lawyers sheer negligence in this regard does not only expose their innocent client to the rigorous application of the law, the dismissal of the appeal, but it also hamstrung the substantive justice of this case on the altar of procedural law.

This Court says that the issue now before the Supreme Court is not whether the notice of completion of the appeal was served constructively or not; rather, whether given the peculiar facts and circumstances of this case, the Court should apply the rigidity of the appeal statute over the substantive rights of an innocent party litigant.

In answering this issue, this Court acknowledges and recognizes that non-compliance with the requisite provision of Civil Procedure Law regarding an appeal is sufficient grounds for the dismissal of the appeal. *Manakeh v. Toweh*, 32LLR 207 (1984); *Ezzedine v. Saif* 33LLR 21 (1985); *Blamo et al., v. The Management of Catholic Relief Services*, Supreme Court Opinion, March Term 2006; *Hussenni v. Brumskine*, Supreme Court Opinion, March Term, A.D. 2013; *National Elections Commission (NEC) v. Siebo, Jr.*, Supreme Court Opinion, March Term A.D. 2017.

Notwithstanding the aforesaid, the Supreme Court has also recognized that the Civil Procedure Law shall be construed to promote the just, speedy, and inexpensive determination of every action (). Accordingly, the facts and circumstances prompting the filing of every motion to dismiss an appeal is carefully scrutinized as the Court will hesitate on the rigid application of procedural rules to defeat the administration of justice and equity. *Donzo v. Ahmed*, 37LLR 103(1993); *Holder et al., v. Hage*, Supreme Court Opinion October Term A.D. 2013; *The Management of Commium v. Flomo*, Supreme Court Opinion, October Term, A.D. 2014; *Civil Procedure Law*, Rev. Code 1:1.1; id §1.4.

A case in point that has addressed a scenario as the one now before us is the case, *Donzo v. Ahmed*, 37 LLR 103 (1993). In the *Donzo* case, the movant instituted an action of cancellation of lease against the respondent and obtained a final judgment cancelling same. The respondent's lawyer, the late Counsellor Joseph Findley, excepted to the trial court's final judgment, announced an appeal but neglected to file a bill of exceptions within the statutory period of ten days for reason that his client could not be found to prepare the bill of exceptions. For this failure, the movant filed a motion in the trial court to dismiss the appeal and enforce the judgment of the trial court.

But before the motion to dismiss the appeal could be assigned for hearing, newly retained lawyers representing the respondent filed a bill of exceptions which was accordingly approved by the trial judge *nunc pro tunc*, thus divesting the trial court of jurisdiction. The movant then proceeded to the Supreme Court and filed a second motion to dismiss the appeal stating *inter alia* that the respondent's bill of exceptions was filed beyond the statutory period and as such the appeal should be dismissed. The respondent resisted the motion arguing that Counsellor Findley deliberately abandoned his client's case by neglecting to file the bill of exceptions.

The Supreme Court, disposing of the motion to dismiss the appeal, acknowledged the rigidity and strict compliance rules to the appeal statute, but declined to grant the motion to dismiss on grounds of equity and fairness. The Supreme Court, in rendering its Opinion on this issue, held as follow:

"The provisions of the Civil Procedure Law shall be construed to promote the just, speedy and inexpensive determination of every action. This Court does not favor strict application of the procedural law for the determination of substantive rights. 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 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."

Another case with a similar scenario like this present case and the *Donzo* Opinion is the case *Holder et al. v. Hage*, Supreme Court Opinion October Term A.D. 2013. In the Holder case, Judge Holder committed several irregularities in the administration of the late Milad R. Hage Testate Estate matter to the extent that he combined the deceased children's deeded property with the testate estate and ordered that same be managed by the executor of the testate estate, Bassam H. Jawhary. Lawyers representing the deceased's children and his widow excepted to the trial court's judgment but neglected to perfect the appeal. Thereafter, the widow and the children of Milad R. Hage filed a writ of prohibition requesting the Chambers Justice to prohibit Judge Holder from including their deeded properties as part and parcel of the testate estate of their late father. The Chambers Justice, after attending to the facts, granted the writ on grounds that the writ of prohibition was applicable to undo

the irregular judgment entered by Judge Holder. However, on appeal, the Supreme Court disagreed with the applicability of the remedial writ of prohibition but noted that given the gross irregularities committed by the trial judge and executor of the Testate Estate, the Court would permit the interest of justice and equity to supersede the strict application of the procedural rules, and thereby reverse the decision of the trial judge. The Court held as follows:

"In its quest for the administration of transparent justice in this country, we have from time to time not insisted on the strict and rigid application of procedural rules in the interest of justice and equity. Thus, where the professional competence, quality, adequacy and/or effectiveness of lawyers in representations of their clients' interest in a particular case have been questioned, we have decided that the interest of justice supersede the technical application of the procedural rules and hear such cases on its merits, especially where the conduct of the trial by the trial judge seemed to have engulfed serious injustice upon one of the parties to the suit."

The two cases narrated *supra*, clearly shows that where there is a breach in the procedural law which is clearly occasioned by wanton neglect on the part of a lawyer or the trial court, resulting to grave injustice, and defeat rights granted under the Constitution, the Supreme Court in its administration of transparent justice may not always insist on the strict and rigid application of the procedural rules. Rather, the Supreme Court, in the interest of transparent justice will permit equity and fairness to prevail and decide the case on its merits.

Given the peculiar facts and circumstances of this case, the Court will not be rigid in applying the appeal statute which otherwise would defeat the substantive rights and interest of justice. Therefore, the motion to dismiss the appeal is denied and dismissed and the parties ordered to proceed with the appeal of the case on its merits.

Given that the conduct of Counsellors David B. Gibson and F. Juah Lawson amounted to gross negligence and a breach of their fiduciary duty as lawyers to their client, they are hereby each fined the sum of US\$200.00 (Two Hundred United States Dollars) to be paid into government revenues within 72 hours from the date of this Opinion. AND IT IS HEREBY SO ORDERED.