

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, III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE

Ben Massaquoi et al., of the City of Monrovia,
Montserrado County, Liberia.....Movants/Appellees)

Versus)

The Management of LCBC of the City of Paynesville,
Montserrado County, Liberia.....Respondent/Appellant)

GROWING OUT OF THE CASE)

The Management of LCBC of the City of Paynesville,
Montserrado County, Liberia.....Respondent/Appellant)

Versus)

Ben Massaquoi et al., of the city of Monrovia,
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Heard: April 3, 2018.

Decided: July 4, 2018.

MR. JUSTICE BANKS DELIVERED THE OPINION OF THE COURT.

Two of the mandatory requirements for the perfection of an appeal from a trial court or administrative tribunal to the Supreme Court is the filing of an appeal bond duly approved by the trial judge and the filing and service of a notice of completion of appeal, both within a specific time period required by law. The law requires that within sixty days from the date of rendition of a final judgment by the trial court, the appealing party must secure from the trial judge approval of an appeal bond which must thereafter be filed with the clerk of the trial court, and that within the same period of time (i.e. sixty days), but following the filing of the appeal bond, the appealing party must apply for and secure from the clerk of the trial court a notice of completion of appeal which the appealing party must then serve on the opposing party or counsel and thereafter file the said notice of completion of appeal with the clerk of the trial court, all within the sixty day period allowed by the appeal statute. Here is how the law structures the appeal bond requirement:

"Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Notice of the filing shall be served on opposing counsel. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action." *Civil Procedure Law, Rev. Code 1:51.8.* (Our Emphasis).

The parties to the instant proceedings are not at variance as to the facts and circumstances of this case. There is no dispute that Messrs. Ben Massaquoi and Lamin Daniels, movants/appellees herein, were plaintiffs in an action of unfair labor practices filed against the Liberia Coca Cola Bottling Company (LCCBC), the respondent herein, and defendant in the lower tribunal. The records also disclose that the parties, having realized that the contentions raised were squarely within the realm of a question of law that did require the taking of evidence, they both submitted legal memorandum to the hearing

officer at the Ministry of Labor. The Hearing Officer, after a review of the memorandum submitted by the parties, and being satisfied that the issue was one of law, ruled on June 24, 2014 sustaining the complaint and adjudging defendant/respondent Liberia Coca Cola Bottling Company (LCCBC) liable for unfair labor practices committed against the movants/appellees.

The parties also do not disagree that following the ruling of the Hearing Officer at the Ministry of Liberia, and in accordance of the procedure governing appeals from the said Ministry, the respondent filed a petition for judicial review before the National Labor Court for Montserrado County, the court that is statutorily clothed with exclusive appellate jurisdiction over all labor matter arising from the Ministry of Labor. *Decent Work Act, Rev. Code 18:10.2*. The Judge of the National Labor Court, Her Honor Comfort S. Natt, having reviewed the records of the proceedings had at the Ministry of Labor, ruled on June 6, 2016 disposing of the matter. In the said ruling, Judge Natt confirmed the decision of the Hearing Officer adjudging the respondent/appellant liable to the movant/appellee for unfair labor practices.

It is from the aforesaid judgment of the National Labor Court that the respondent/appellant announced an appeal, as required by law, filed a bill of exceptions on June 15, 2016 and an appeal bond and a notice of completion of appeal on August 6, 2016. The sole issue argued before this Court by the parties, and which goes to the core of whether this Court has jurisdiction to entertain hearing of the appeal on the merits, is centered on August 6, 2016 date, the date on which the respondent filed its appeal bond and the notice of completion of appeal. The movants contend that as the judgment of the National Labor Court was rendered on June 6, 2016, the respondent had up to August 5, 2016 to complete the filing of its appeal and that the filing of the appeal bond and notice of completion of appeal on August 6, 2016, one day outside the time provided for by law, the appeal is a fit subject for dismissal. We herewith reproduce verbatim the movants' contention as couched in the motion to dismiss the appeal, as follows:

MOVANTS' MOTION

Movants in the above entitled proceedings most respectfully move this Honorable Court and your Honors to dismiss and deny respondent/appellant's appeal for the following reasons to wit:

6. Based on the Clerk's Certificate above referred, Movant Counsel is filing this motion to dismiss appellant's appeal for the appellant/respondent failure to abide by and observe the cardinal requirements for perfecting the appeal, which states that the appeal process must be completed within sixty (60) days from the date of rendition of judgment. Movants say respondent's failure to file an appeal bond and notice of completion of appeal within sixty (60) rather than sixty-one days, as confirmed by the Clerk of that Court constitutes a gross violation of the statute and therefore a ground to dismiss the appeal. In this regard, the Honorable Supreme Court of Liberia has also said that, ..."the failure of the Appellant to file an approved appeal bond and to serve notice of completion of appeal deprives the appellate court of jurisdiction and the appeal will be dismissed." *Porte vs. Citibank N. A.*, 37 LLR 126; *Stephen P. Sarweh et al. vs. NPA*, 436. In the case at bar, the appellant/respondent met with the preliminary requirements of the appeal process but miserably failed and neglected to file an approved appeal bond and a notice of completion of appeal on Friday, August 5, 2016, instead of Saturday, August 6, 2016; therefore, respondent having failed to comply with the requirements of the law on appeal, movant's motion to dismiss the appeal is proper and supported by law for which the appeal must and should be dismissed as a matter of law. And movants so pray. WHEREFORE and in view of the foregoing, movant prays this Honorable Court to dismiss appellant/respondent's appeal and order the Court below to resume jurisdiction over the matter and enforce its judgment rendered on the 6th day of June, A. D. 2016, and grant unto movant such and other relief this Court and your Honors may deem just and equitable.

Respectfully submitted:

The above named MOVANT/APPELLEE
by & thru her Legal Counsel
YONAH, OBEY & ASSOCIATES
P. O. Box 3147, 152 Carey St.
2nd Fl., Milton & Richards Bld.
Monrovia, Liberia

Roland F. Dahn
COUNSELLOR-AT-LAW"

The respondent on the other hand, although in agreement with the movants that the final judgment was rendered on June 6, 2016, argued that it had up to August 6, 2016 to complete the appeal process. According to the respondent, the sixty (60) days period provided for the completion of the appeal from the final judgment of the trial court to this Court ended on August 6, 2016 and not on August 5, 2016, as argued by the movants.

As we have done with the movants' motion to dismiss the appeal, we similarly quote the respondent's resistance thereto, as follows:

"RESPONDENT/APPELLANT'S RETURNS

AND NOW COMES RESPONDENT/APPELLANT in the above-entitled cause of action, praying Your Honors and this Honorable Court to dismiss movant's motion for the following legal and factual reasons as sheweth to wit.

1. That as to counts one (1) & two (2) of the motion and the entire motion, respondent/appellant submits and says that same should be denied and dismissed because said counts lack factual and legal sufficiency as they relate to the respondent/appellant's compliance with the requirement of the law. Respondent/appellant submits further that as in keeping with law it scrupulously adhered to the requirements set out in Chapter 51, Sections 51.6, 51.7, 51.8 & 51.9 of the Civil Procedure Law, which has to do with announcement and completion of appeal process. These provisions of the law provide for the requirements for the completion of an appeal following the rendition of final judgment. Respondent/appellant says that following the rendition of final ruling in this case by Her Honor Comfort S. Natt, Judge of the National Labor Court, on June 6, 2016. Respondent/appellant announced an appeal in open court to the Honorable Supreme Court of Liberia sitting in its October Term, A.D. 2016. The said appeal was granted by Her Honor Judge Comfort S. Natt, following which respondent filed its bill of exceptions, appeal bond and notice of completion of appeal, all within sixty (60) days from the date of rendition of final judgment, as required by law. Chapter 51, Sections 51.6, 51.7, 51.8 & 51.9 of the Civil Procedure Law set out the requirements for the announcement of an appeal following rendition of final judgment, a requirement which Respondent scrupulously followed.

2. That as counts three (3) & four (4) of the motion, respondent/appellant submits and says that same presents no traversable issue and therefore need not be traversed in these returns.

3. That as to count five (5) of the motion, respondent/appellant submits and says that same is a fit subject for denial and dismissal because respondent did abide by all the requirements for the announcement and completion/perfection of an appeal as prescribed in Chapter 51 of the Civil Procedure Law. Respondent/appellant submits further that its bill of exception, appeal bond and notice of completion of appeal were filed within sixty (60) days, the statutory period required for the completion of an appeal.

Respondent/Appellant submits that final judgment in this case was rendered by Her Honor Comfort S. Natt of the National Labor Court, and immediately thereafter counsel for Respondent/Appellant announced an appeal to the Honorable Supreme Court of Liberia sitting in its October Term, A.D. 2016, and that within the statutorily prescribed sixty-day period, respondent/appellant's appeal bond and notice of completion of appeal were filed and served, that is to say, the appeal bond and notice of completion of appeal were filed on August 6, 2017.

3. That as count six of the motion. Respondent/appellant submits that the filing of its Appeal Bond and Notice of Completion of Appeal is in keeping with law. The law in this jurisdiction hoary with age requires that an appeal must be perfected within sixty days from the day of rendition of final judgment. Final judgment in this case was rendered on June 4, 2016, and that respondent/appellant announced an appeal therefrom in open court, filed its bill of exceptions within ten days and subsequently filed its appeal bond and notice of completion of appeal within sixty (60) days from the date of the final judgment. Respondent/appellant submits that it has complied with all the statutory requirements set out in the Civil Procedure Law for the completion/perfection of an appeal process.

4. That as to the entire motion, respondent/appellant further submits and says that the mere obtaining of a clerk certificate by the movant/appellee indicating the date of filing of an appeal bond and notice of completion of appeal without first calculating and realizing the number of days within which the appeal bond and notice of completion of appeal should have been filed is insufficient ground for the dismissal of an appeal. Hence, count Six (6) of the motion and the entire should be denied and dismissed. And respondent/appellant so prays.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondent/Appellant prays this Honorable Court to:

- A. Deny and dismiss movant/appellee's motion in its entirety; and
- B. Restore unto appellant/defendant all and any further relief that is deem legal and just in the interest of transparent justice and fairness.

Respectfully submitted:

Liberia Coca Cola Bottling Company (LCCBC)

APPELLANT

By & thru its legal counsel

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Dated this 26th of March, A.D. 2018

From the foregoing, the sole issue joined by the parties, as noted earlier, is whether the respondent filed its appeal bond and notice of completion of appeal within the time allowed by law. Or put differently, given the undisputed fact that the final judgment was handed down on June 6, 2016, was August 6, 2016 the last day for the completion of the appeal from said judgment?

A manual count from June 6, 2016 to August 6, 2016 clearly shows that the appeal bond and the notice of completion of appeal were secured or executed and filed one day beyond the allowable statutory period. Here is how the count goes:

June 2016

6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

24, 25, 26, 27, 28, 29, 30

July 2016

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

August 2016

1, 2, 3, 4, 5, 6

The foregoing constitutes the complete calendar of the number of days from the date of the final judgment was rendered to the date the respondent filed its appeal bond and notice of completion of appeal. In computing the sixty (60) days for the completion of an appeal, we must first exclude June 6, 2016, since the statute provides that the date on which the judgment was rendered shall not be counted. Here is what the law provides:

"Computation. In computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by executive order, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded from the computation." Civil Procedure Law, Rev. Code 1:1.7(1).

Our computation of the above mentioned calendars showed that a summation of the days beginning from June 7, 2016 to August 6, 2016 amounts to sixty one (61) and since the law requires that the completion of the appeal process should be done within sixty (60) days, the respondent filed its appeal bond and notice of completion of appeal one day outside of the time required by law. We are therefore in agreement with the movants that the last day for

the respondent to have filed its appeal bond or notice of completion of appeal, as mandated by law, was on August 5, 2016, the sixtieth for the completion of the appeal as seen from the calendars above.

There is nowhere in the resistance of the respondent/appellant, filed before this Court, or in its lengthy brief of the appellant/respondent, showing reasons acceptable in law as to why it could not have filed its appeal bond and notice of completion of appeal on or before August 5, 2016, the sixtieth day for the completion of appeal. There is no evidence or indication in the records that August 5, 2016 was a Sunday or a legal holiday as would have suspended the toiling of the statute to the next day, August 6, 2016; neither is there stated justifiable reasons, primarily predicated on the negligence of the court or officers of the court, which made it impossible for the filing of the appeal bond and notice of completion of appeal on or before August 5, 2016. Had any such negligence been shown to have been committed by the court or any of its officers, we would view the default or lateness of the filing in a different light and excusable. This Court has said repeatedly that *"an appellant may not be penalized for the neglect of a judge or clerk of court, provided [the] appellant has taken appropriate legal measures to avert the dismissal of his appeal."* [CITATIONS]

Instead, the respondent/appellant strenuously argued that given the fact that the final judgment was rendered on June 6, 2016, it had up to August 6, 2016, to complete the appeal process. Here is how the respondent stated the contention in its brief: "Respondent/appellant submits and says that Chapter 51 of 1 LCLR sets out the requirement for the perfection of an appeal following the rendition of final judgment in any case. Respondent/Appellant submits that its appeal from the final judgment of National Labor Court as entered on June 6, 2016 by Her Honor Comfort S. Natt was perfected in keeping with Sections 51.6, 51.7, 51.8 & 51.9 of Chapter 51 of the Civil Procedure Law. A calculation of the sixty (60) days allowed by statute for completion of the appeal process from the date of the final ruling of the National Labor Court shows that respondent/appellant scrupulously acted within statutory time, which allowed the filing of respondent/appellant appeal bond and notice of completion of appeal on August 6, 2016. Because Respondent/Appellant did not violate the statutory requirements as provided for in Chapter 51, Sections 51.7, 51.8 & 51.9 of the

Civil Procedure Law, movant/appellees' motion to dismiss the appeal should be denied and dismissed and that the Honorable Supreme Court of Liberia should proceed to hear appellant's appeal on its merits....A calculation of sixty days from June 6, 2016 to August 6, 2016, is exactly sixty (60) days. The law provides that upon the announcement of an appeal from a final judgment, the appeal must be perfected/complete within sixty (60) days, and that in order for the appeal to be considered perfected/complete, one must announce the appeal in open court following the rendition of final judgment, file a bill of exceptions within ten days of the rendition of final judgment, and file an appeal bond and notice of completion of appeal within sixty (60) days from the date of rendition of the final judgment. Respondent/Appellant submits that it complied with all the statutory requirements as indicated herein above, and that movant/appellee's motion is ill-intended for the sole purpose of undercutting the ends of justice."

We applaud the brilliance with which counsel for respondent has narrated the procedure for the taking of an appeal from a judgment of a lower court to this Court and we agree with the learned counsel *"that in order for the appeal to be considered perfected/complete, one must announce the appeal in open court following the rendition of final judgment, file a bill of exceptions within ten days of the rendition of final judgment, and file an appeal bond and notice of completion of appeal within sixty (60) days from the date of rendition of the final judgment."* We are puzzled, however, as to how the counsel arrived at August 6, 2016 as being the last day for the perfection or completion of the appeal from a final ruling rendered on June 6, 2016. As indicated above, since counting from June 7, 2016 means that the month of June had 24 days, and as July had 31 days, there was a total of 55 days as at July 31, 2016. If five (5) days were added to the 55 days, which would then total 60 days, it means that the 60th day was on August 5, 2016, not August 6, 2016, as the respondent/appellant contends.

Upon enquiry made by the Court, and counsel for the respondent/appellant, realizing that the calculation made by counsel was completely out of tangent, counsel then sought to advance another theory for the lateness of the filing of the appeal bond and the notice of completion of appeal, which is, that although the ruling was made on June 6, 2016, it was actually not delivered to

the respondent/appellant until June 7, 2016 and therefore a computation from said date means that August 6, 2016 was the sixtieth day for the completion of the appeal.

This allegation of the respondent's counsel not only contradicts the position taken by the respondent in its resistance to the motion and the brief filed before this Court, but it also lacks the requisite evidentiary showing that the final judgment was in fact and indeed delivered on June 7, 2016 rather than June 6, 2016. Absent evidence either showing the date of receipt of the final ruling, verified by the signature of the lawyer receiving same, or a clerk's certificate indicating that the final judgment was not ready as of the date of its rendition, we consider same to be mere allegation unsupported by the records and therefore not cognizable in a court of law. It is trite law that allegations are simply intended to set forth a cause of action; they do not, standing alone, amount to proof or constitute facts. *The Management of International Bank v. Wilfredo C. Ochoada, Supreme Court Opinion, October Term, A. D. 2012.*

This Court has consistently held that the mandatory requirements of the appeal statute are not mere technicalities and that where they are violated or not adhered to, absent excusable circumstances, the appeal should be dismissed. *Foday Kamara Butchery v. Pupo et al., 36 LLR 181 (1989); Cavalla Rubber Corporation v. The Liberian Trading and Development Bank, 38 LLR 153 (1995); Afriland First Bank Liberia Limited v. F.M.T. Construction Company, Supreme Court Opinion March Term, A. D. 2016.* The contention advanced by the respondent/appellant, being therefore without any legal merits and not supported by the records, same is dismissed and the contentions in the motion upheld.

We must again express concern with the manner in which some lawyers have negligently handled their clients' cases. Lawyers must not only be committed to diligently pursuing the clients' cases, but they must be made aware that the dismissal of the clients' cases due to the negligence of the lawyers, as occurred in the instant case, should expose the lawyer to disciplinary action under the rules of court and to damages to the parties aggrieved by the negligence of the lawyers.

Wherefore and in view of the foregoing, the movants' motion to dismiss the respondent/appellant's appeal is hereby granted and the appeal dismissed.

The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over this case and in harmony with this opinion proceed to enforce its judgment. Costs are ruled against the respondent. AND IT IS HEREBY SO ORDERED.

Motion granted

When the case was called for hearing Counsellor Roland F. Dahn of the Yonah, Obey & Associates, Inc., appeared for the movants/appellees. Counsellor Luther N. Yorfee of the Sherman & Sherman, Inc., appeared for the respondent/appellant.