

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2022

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

International Bank (Liberia Limited), represented by its CEO)
Mr. Henry F. Saamoi, and all authorized Officer, of the City)
of Monrovia, Liberia..... Movant)

VERSUS

) MOTION TO DISMISS
)

Nadim Duncan and Dossen K. Duncan, of the City of)
Monrovia, Republic of Liberia..... Respondents)

GROWING OUT OF THE CASE:

Nadim Duncan and Dossen K. Duncan, of the City of)
Monrovia, Republic of Liberia.....Appellants)

VERSUS

) APPEAL
)

International Bank (Liberia Limited), represented by its CEO)
Mr. Henry F. Saamoi, and all authorized Officer, of the City)
of Monrovia, Liberia..... Appellee)

GROWING OUT OF THE CASE:

Nadim Duncan and Dossen K. Duncan, of the City of)
Monrovia, Republic of Liberia.....Appellants)

VERSUS

) PETITION FOR ADVERSE
) CLAIM

International Bank (Liberia Limited), represented by its CEO)
Mr. Henry F. Saamoi, and all authorized Officer, of the City)
of Monrovia, Liberia..... Appellee)

GROWING OUT OF THE CASE:

International Bank (Liberia Limited), represented by its CEO)
Mr. Henry F. Saamoi, and all authorized Officer, of the City)
of Monrovia, Liberia..... Plaintiff)

VERSUS

) ACTION OF DEBT BY
) ATTACHMENT

Vision Construction Company, represented by its President/)
CEO, Mr. Richard J.B. Duncan, Jr. of the City of Monrovia,)
Liberia.....1st Defendant)

AND

Nadim Duncan and Dossen K. Duncan, of the City of)
Monrovia, Republic of Liberia..... 2nd Defendant)

HEARD: November 3, 2021

DECIDED: November 4, 2022

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The records show that the International Bank Liberia (Limited) the movant herein, filed an action of debt by attachment in the Commercial Court against Mr. Richard J.B. Duncan Jr. Following a regular trial, the Commercial Court on March 22, 2017, rendered its final ruling holding Mr. Richard J.B. Duncan liable to the movant and ordered the attached property auctioned to recover the debt owed the movant bank. A writ of execution was accordingly issued in favor of the movant and the Sheriff of the trial court immediately commenced the auctioning process.

While the auctioning process was ongoing, Nadim Duncan and Dossen K. Duncan the respondents herein, filed a petition for adverse claim in the Commercial Court against the movant alleging inter alia that the property belongs to the Intestate Estate of Richard J.B. Duncan Sr., and not Richard J.B. Duncan Jr., who happens to be one of the Co-Administrators of the estate. The movant filed its answer along with a motion to dismiss the petition for adverse claim and the Commercial Court granted the motion on the basis that the respondents had sufficient knowledge of the public auction of the property and in addition thereto, the respondents failed to plead/attach the late Richard J.B. Duncan Sr., deed to their petition to prove their claim.

The respondents noted exceptions to the trial court's final ruling on their adverse claim, filed a bill of exceptions but failed to file an appeal bond, and the service and filing of a notice of completion of appeal as required by Section 51.4 of the Civil Procedure Law. Based upon this failure, the movant filed a motion to dismiss the appeal in the Supreme Court on grounds that the respondents failed to comply with the appeal statute.

In response to the motion, the respondents filed resistance conceding to the legality of the motion, but contended that their previous lawyer was negligent in perfecting their appeal and the Court should tamper justice with mercy and hear their appeal.

This Court says that it takes judicial notice of the respondents counsel's concession of the legality of the averment in the motion to dismiss the respondents' appeal to the effect that the respondents did indeed fail to file an appeal bond and service and filing of a

notice of completion of appeal as required by Sections 51.8 and 51.9 of the Civil Procedure.

Section 51.8 of the Civil Procedure Law provides that:

“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.”

Section 51.9 of the same law states:

“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 Supreme Court has consistently held as follows:

“...in as much as the Court has repeatedly expressed its strong preference for deciding cases on its merit and, consequently, is hesitant to dismiss a case by reason of a mere technicality it is very important that an appellant, in pursuing an appeal takes the outmost care to ensure that the statute is strictly complied with; that the Counsel for the appellant must continuously and meticulously examine the appeal statute and make sure that it is complied with to the letter and to the full intent of the Legislature as the Court is not prepared to sacrifice the appeal statute or turn a blind eye to accommodate the errors of the appellant in perfecting his appeal. To the converse, the position of the Supreme Court has been strict compliance; and any omission in fulfilling the requirements enounced in the appeal statute is deemed fatal and a warranty for the dismissal of the appeal as the Supreme Court has been un-wavering and uncompromising in its position that non-compliance with the mandatory statutory

requirements for appeal cannot be deemed as mere technicality and that a case will in fact be dismissed where there are violations of the substantive statutory requirements by the appellant." *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.

Also, the Supreme Court has held that the hearing of an appeal before this Court or any appellate court is a journey that must be taken step by step as mandated by law and when any one of those steps is missing or is defective, the journey cannot be completed. Further, the appeal process is a succession of events each of which has its individual role to play and in complying thereto, it contributes to the successful accomplishment of a common goal, which goal is to complete the appeal process in strict conformity with the law controlling and has cautioned lawyers that the appeal statute should be strictly complied with to avoid the risk of an appeal being dismissed since the law is clear as to when and how the appeal process should be conducted in order that a case can be properly venue before the Supreme Court for appellate review. *Blamo et.al. v. The Management of Catholic Relief Services* Supreme Court Opinion October Term 2006; *Republic v. Nbolonda*, Supreme Court Opinion, March Term A.D. 2014; *Pioneer Construction v. Judge Morgan et al.*, Supreme Court Opinion, March Term A.D. 2014.

This Court in making no differentiation in the application of the principle of law articulated that: "it is incumbent on an appellant to ensure that he has in place a qualified legal team to adequately take advantage of the law, especially with the timeframe prescribed by the law for timely appealing any decision." *Jonathon Boye Charles Sogbie v. NEC*, Supreme Court Opinion, October Term A.D. 2016; *Kamara v. NEC*, Supreme Court Opinion March Term, A.D. 2017; *National Elections Commission (NEC) v. Siebo, Jr.*, Supreme Court Opinion, March Term A.D. 2017.

In light of the above, we hold that the Supreme Court will not relax the mandatory provisions of the appeal statute to accommodate the negligence of the respondents' lawyer.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal is hereby granted and the appeal is ordered dismissed. Costs are ruled against the respondents. AND IT IS HEREBY SO ORDERED.

Motion granted

When this case was called for hearing, Counsellor Abraham J. Eldine appeared for the movant. Counsellor Morris M. Davis Jr., of Kemp & Associates Legal Consultancy Chambers appeared for the respondents.