

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.CHIEF JUSTICE
BEFORE HER HONOR: JAMESSETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Decided: September 3, 2020

This Court has stated that in as much as it would want to review and make a determination of each case on appeal based on its merits, it is imperative that we accentuate that the appeal process must be strictly complied with to vest the Court

with the authority to review the case on its merits; short of strict compliance with the appeal statute, the Supreme Court cannot legally open the records of a case and make a determination thereon.

Requests for the dismissal of an appeal, whether traceable to the negligence of counsel for the appellant, the inability of the appellant himself or herself to meet the statutory requirements, or the defiant attitude or refusal, or the negligence by the appellant to comply with the command of the statute, or for whatever other reasons, not attributable to any acts or actions of the trial court, this Court has opined that the failure to fulfill or conform to the mandatory appeal requirements of the law renders the appeal dismissible. *Hussenni v. Brumskine*, Supreme Court Opinion, March Term (2013).

The present motion to dismiss the appeal of the Accident and Casualty Insurance Company (ACICO), the respondent herein, is predicated on its alleged failure to serve upon Seaweld Engineering Liberia Limited, the movant herein, with the notice of completion of the appeal.

The records show that on April 27, 2018, the presiding Judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, His Hon. Scheaplor R. Dunbar, rendered final ruling on a motion for summary judgment, thus bringing finality to the action of damages for breach of contract from which said motion grew. The respondent, the Accident & Casualty Insurance Company (ACICO), against whom the ruling was made, noted exceptions and announced an appeal to the Supreme Court. The records show an apparent compliance by the respondent with the necessary steps for the completion or perfecting of the appeal process.

However, on October 5, 2018, while the matter remained pending before the Supreme Court, the counsel for the movant filed a motion to dismiss the appeal, citing as grounds therefor, the respondent's alleged failure to serve the notice of completion of the appeal on the movant. The movant's contention is couched in a portion of count 3, and in count 4 of its motion, which we quote hereunder:

"MOVANT'S MOTION

3. "...The Appellee Movant's Motion was granted and a Judgment entered in favor of Appellee/Movant in the amount of US\$158,278.10 on April 27, 2018.

4. That to this Judgment on April 27, 2018, Counsel for the Appellant/Respondent excepted and announced an appeal to the Honorable Supreme Court sitting in its October Term A.D. 2018. Appellant/Respondent filed its approved Bill of Exceptions, Appeal bond, and the Notice of Completion of Appeal within statutory period, but, refused, failed and neglected to serve the Notice of Completion of Appeal on the Appellee/Movant, thus not perfecting its appeal by bringing the Appellee/Movant under the jurisdiction of this Honorable Court.

WHEREFORE AND IN VIEW OF THE FOREGOING, Appellee/Movant prays this Honorable Court to dismiss the Appellant/Respondent appeal and grant unto Appellee/Movant all that may be deemed just and equitable.”

On October 29, 2019, the respondent filed a six (6) count resistance to the motion to dismiss; we also quote hereunder the resistance:

“RESPONDENTS’ RESPONSE

AND NOW COMES RESPONDENT in the above entitled cause of action and most respectfully pray that your Honors will dismiss and deny the Movant’s motion to dismiss appeal and for legal and factual reasons showeth the following to wit:-

1. That as to counts one (1), two (2) and three (3) of the Motion, Respondent says that none of the averments contained therein are statutory grounds to dismiss an appeal and therefore same should be dismissed.
2. That as to count four (4) of the Motion, Respondent says that the averment, “That to this Judgment on April 27th, 2018, Counsel for Appellant excepted and announced an appeal to the Honorable Supreme Court sitting in its October Term, A.D. 2018, the Appellant/Respondent **filed** its approved Bill of Exceptions, Appeal Bond, and the Notice of Completion of Appeal within statutory period...” is an admission by the Movant that the entire appeal process was done within statutory time and therefore the motion to dismiss appeal should and must be dismissed.
3. Further to count two (2) of the Motion, Respondent says that failure of the Respondent to serve the notice of completion of appeal on the Movant was due to the fact that the Movant did not have an address found to be served.
4. Further to count three above and still traversing count two of the Motion, Respondent says that the attorney who filed the complaint, Attorney Musa S. Sidibey did not have a clear address for service of pleadings on him. The address of Attorney Musa S. Sidibey on the complaint and other papers filed by him in the main suit states:

Attorney Musa S. Sidibey
Battery Factory, Somalia Drive
Township of New Georgia
Montserrado County, R.L.

5. Further to count three above, Respondent says the above address does not state a particular place because Battery Factory, Somalia Drive is a vast area in the Township of New Georgia. The law provides in Section 8.1 (4) of ILCLR that: Name of Attorney or party: Each paper served or filed shall be signed by the attorney for the party serving or filing the paper and his *address must be stated thereon.....*” (emphasis ours). The Supreme Court in a long line of opinions has opined that the address of attorneys on pleading must clear and direct to enable service of responsive pleading.
6. Further to count four (4) of Motion, Respondent says that the failure of the Movant’s initial attorney to clearly state the location of his office for the purpose of service of pleadings on him. The failure of the Respondent to serve the notice of completion of appeal on Attorney Musa S. Sidibey was due to the fact that he could not be found to be served...”

We note that both the movant and the respondent in their respective pleadings did not state any date(s) as to the filing of the bill of exceptions, the appeal bond and the notice of completion of the appeal. Our review of the records however show that the filing date(s) of the respondent’s bill of exceptions was on May 7, 2018, and that on June 25, 2018, the respondent filed both its appeal bond and notice of completion of appeal with the clerk of the trial court in consonance with the time allowed by statute. We note the absence of the signature of the movant or its counsel on the notice of completion of appeal, as required by the practice extant in this jurisdiction, which is an indication that a copy of said notice had not been served on the movant.

The movant contends that service of the notice of completion of appeal is a vital and mandatory component of the appeal process; that a failure to so do renders the appeal process fatally defective and the appeal dismissible.

On the other hand, the respondent avers that it complied with the dictates of the appeal statute when it filed its bill of exceptions, appeal bond, and notice of completion of appeal with the clerk of the trial court; that all the steps of the appeal process were executed within statutory time; that the movant’s lawyer provided an address that made it impracticable to locate him for service of the notice of completion of appeal. The said address reads as follows:

"Attorney Musa S. Sidibey
Battery Factory, Somalia Drive
Township of New Georgia
Montserrado County, R. L."

The records and arguments, *pro et con*, before this Court presents a single issue for our determination, *viz*,

Whether the failure to serve the notice of completion of appeal on the movant prior to its filing, renders the appeal dismissible as a matter of law?

The contending positions of the parties herein require us to revert to the appeal provisions of the Civil Procedure Law. Chapter 51, subsection 51.4 outlines the requirements for the completion of an appeal as follows, to wit:

"§ 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."

As to the requirement for Service and filing of notice of completion of appeal, the same law states thus:

"§ 51.9. Notice of completion of appeal.

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 law is unambiguous as to the mandatory requirements of the steps for completing the appeal process, and the Supreme Court has extensively expounded on the said issue in numerous Opinions, to the effect that service of the notice on the appellant and filing of the original copy thereof in the office of the clerk of the trial court are conjoined processes that cannot exist independently of each other;

that the doing of one without the other is tantamount to not completing the appeal process at all. *Kenya Kamara v. Pan African Group*, Supreme Court Opinion, March Term (2018); *Hussenni v. Brumskine*, Supreme Court Opinion, March Term (2013); *Pentee v. Tulay*, 40 LLR 207, 211 (2000); *LAMCO J.V. Operating Co. v Fleming*, 34 LLR 632, 638 (1988)

The respondent does not dispute that the notice of completion of appeal was not served on the movant, but rather argued and give reason therefor, that the legal counsel for the movant purposely concealed himself to avoid being served the notice of completion of the appeal. Predicated on this allegation, the respondent has prayed this Court to deny the motion to dismiss the appeal.

As to the allegation that the movant's counsel concealed himself to avoid service of the notice of completion of appeal upon him, this Court reiterates the settled principle of law in this jurisdiction that mere allegations will not move the court to act; allegations must be substantiated by evidence, and said evidence must have the relevance of establishing the truth or falsehood of the allegation. *Civil Procedure Law*, Rev. Code 1:25.4; *Kpoto v. Williams*, Supreme Court Opinion, March Term (2008). Moreover, the law imposes the burden of proving an allegation as resting with the party making said allegation, except that when the subject matter of a negative averment lies peculiarly within the knowledge of the opposing party, the averment is taken as true unless disproved. But this latter exception does not obtain in the present case.

The records are devoid of evidence to substantiate that the respondent's counsel ever attempted to serve the notice of completion of appeal on the counsel for the movant, but same proved futile due to the movant's legal counsel alleged concealment of himself; without evidence, the respondent's allegation remains just a mere accusation without any consequence, and we hold to that effect.

Secondly, our Civil Procedure Law also specifies how papers may be served and upon whom service may be made; we quote relevant provisions of the law, to wit:

"Service of papers

1. General requirement. Every order required to be served, every pleading, every written motion other than one which may be heard ex parte and every

written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties affected thereby; but no service need be made on parties in default for failure to appear except as provided in section 9.2(2).

3. Upon an attorney. Except as otherwise required by law or order of court, papers required to be served upon a party in a pending action shall be served upon his attorney by one of the following methods:

- (a) By delivering the paper to the attorney personally;
- (b) By mailing the paper to the attorney by registered mail at the address designated by him for that purpose or, if none is designated, at his last known address;
- (c) If the office of the attorney is opened, by leaving the paper with a person in charge;
- (d) By leaving the paper at the residence of the attorney within the Republic with a person of suitable age and discretion; providing that the person to whom the paper is delivered is then residing therein..."

4. Upon a party. If a party has not appeared by attorney or his attorney cannot be served, service shall be upon the party himself by one of the following methods:

- (a) By delivering the paper to the party personally;
- (b) By mailing the paper to the party at his last known address by registered mail;
- (c) By leaving the paper at the residence of the party within the Republic with a person of suitable age and discretion; providing that the person to whom the paper is delivered is then residing therein.

5. When service by mail is complete. Service by mail shall be complete upon deposit of the paper in a post office or official depository of the post office within Liberia. The date of such deposit shall be evidenced by the post office receipt showing the mailing of the paper by registered mail to the addressee at his last known address." Rev. Code 1:8.3

The above quoted provisions of the law are clear; where service of a paper cannot be made upon an attorney of record personally, same may be served by registered mail to the address or last known address. Alternatively, in instances where a paper

cannot be served on an attorney, as alleged by the respondent in the instant case due to the vagueness of the attorney's address, the law provides that said paper may be served on the appellee itself.

Moreover, the records show that all of the pleadings filed by the movant contained the cell phone number of the movant's counsel along with the very same address that the respondent claims was impracticable to locate due to vagueness; that the respondent had served several pleadings and papers on the movant during the trial of the case using the said address. We therefore find it completely contradictory for the respondent to assert that its failure to serve the notice of completion of the appeal on the movant was attributable to the vague address provided by the movant.

Given all the afore-stated remedies provided by law as to the manner of service of papers, as well as the unequivocal and mandatory provisions of the law pertaining to appeals, this Court disagrees and is not persuaded by the argument of the respondent, that just by the filing of the notice of completion of the appeal, it satisfied the dictates of the appeal statute. The failure of the respondent to ensure that a copy of the notice of completion of appeal was served on the movant as provided for by law, amounts to non-compliance with the mandatory provisions of the appeal statute, and thus renders the appeal dismissible as a matter of law, and we so hold.

Further, it is trite law, that notice is a fundamental principle of law. The failure by the respondent to serve the notice of the completion of the appeal on the movant, the latter was without notice to attend upon the cause; more importantly, this Court has repeatedly held that it is the serving and filing of the notice of completion of appeal that confers jurisdiction on the Supreme Court to hear the appeal. *Hejazi Corp. v Intestate Estate of Cooper*, Supreme Court Opinion, March Term (2010). Hence, the Court is without jurisdiction to enter upon the records and make a determination thereon.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal is hereby granted, and the appeal is dismissed as a matter of law. The Clerk of this Court is ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and give effect to the

Judgment of this Opinion. Costs are ruled against the respondent. AND IT IS
HEREBY SO ORDERED.

Motion Granted

When this case was called for hearing, Counsellor Peter W. Howard of the Howard
and Partners, Inc. appeared for the Movant. Counsellor G. Wiefueh Alfred Sayeh
of the Law Offices of Sayeh & Sayeh appeared for the respondent.