

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA 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

In re: Intestate Estate of the T.Q. Harris by and thru
its Administrator, Arthur Z. Harris, Paynesville,
Montserrado County, Liberia Movant

Versus

Alex Mulbah, Isaac Logan, Sam Biah and all those
acting under their authority and control, Paynesville,
Montserrado County, Liberia
.....Respondents

GROWING OUT OF THE CASE:

Alex Mulbah, Isaac Logan, Sam Biah and all those
acting under their authority and control, Paynesville,
Montserrado County, Liberia
.....Appellants

Versus

Intestate Estate of the T.Q. Harris by and thru
its Administrator, Arthur Z. Harris, Paynesville,
Montserrado County, Liberia Appellee

GROWING OUT OF THE CASE:

Alex Mulbah, Isaac Logan, Sam Biah and all those
acting under their authority and control, Paynesville,
Montserrado County, Liberia
.....Movants

Versus

Intestate Estate of the T.Q. Harris by and thru
its Administrator, Arthur Z. Harris, Paynesville,
Montserrado County, Liberia Respondents

GROWING OUT OF THE CASE:

In re: Intestate Estate of the T.Q. Harris by and thru
its Administrator, Arthur Z. Harris, Paynesville,
Montserrado County, Liberia Plaintiff

MOTION TO
DISMISS APPEAL

APPEAL

MOTION FOR
NEW TRIAL

The facts as culled from the records are not controverted. The records are devoid of any resistance to the motion to dismiss the appeal. Each time this case was called for argument including October 29, 2019 instant, there was a noticed absence of a counsel for the respondent. During the sitting on October 29, 2019, when the Court inquired as to whether there was any justification for the absence of a counsel to represent the interest of the respondent/appellant, the Clerk informed the Court that there was no excuse in the case file. It is worth noting that during the March Term, A.D. 2019, the attorney who represented the appellant in the court below, by leave of this Court, informed the Court that the appellant/respondent has not as yet secure the services of a counsellor to represent him before this Court. This Court there and then mandated the Clerk to direct and the Clerk directed on the 2nd day of May, A.D.2019, communication to the appellant informing him that before the next sitting of this Court on this matter, the said appellant should secure the services of a lawyer to represent his interest. We, therefore, found during October sitting that sufficient time has been given to the appellant/respondent to find a counsellor-at-law to represent his interest, and therefore, this Court cannot allow this matter to be left in abeyance forever without a determination. The Court invokes Rule IV Part 6 (a) and (c) of the Revised Rules of the Supreme Court to enter upon the records and make the appropriate decision without further notice of assignment issued to the parties. The rule provides as follows:

“The clerk shall issue notices of assignment to be served on counsel for each case docketed, which notice shall be served and returned by the Marshall before hearing.

“If a party appears and the other party does not appear, but files a brief, the Court will proceed to hear the argument of the party appearing, and render its decision on the basis of the briefs filed and the argument of the party appearing. If one party appears, and non-appearing party has not filed a brief, the non-appearing counsel shall be given forty-eight (48) hours to file a brief and appear for hearing of the case; and the party shall be simultaneously informed of the non-appearance of this counsel and the postponement of the hearing for forty-eight (48) hours. If, when the case is again called for hearing, the party or counsel again fails to appear or file a brief, the Court shall proceed to hear the argument of the appearing party and rule thereon.”

We shall now proceed to examine the records in this case. The records reveal that on the 18th day of October, A.D. 2018, movant/appellee, the Intestate Estate of T. Q. Harris filed an eight-count motion to dismiss the appeal

against the respondents/appellants. The substance of the motion averred that on the 1st day of June, 2018, the Civil Law Court, Sixth Judicial Circuit, Montserrado County, rendered a final judgment in an ejectment action wherein the respondents/appellants were held liable and ordered evicted, ousted and ejected from the appellee's property, subject of the litigation. That respondents/appellants excepted to the final judgment of the trial court and announced an appeal to the Supreme Court. On the 13th of June, 2018, the respondents/appellants filed their approved bill of exceptions but failed to fulfill the last two steps by filing the appeal bond and a notice of completion of the appeal. On the 10th of September, 2018, the movant/appellee applied for and obtained a clerk's certificate to the effect that the respondents/appellants have failed to file their appeal bond and a notice of completion of the appeal. The movant/appellee annexed to its motion to dismiss appeal exhibits of the final judgment of the lower, respondents/appellants' bill of exception, and the clerk's certificate in support of the allegations as are contained in the motion. The movant/appellee, therefore, prays the Court to deny and dismiss the respondents/appellants' appeal and to order the trial court to resume jurisdiction and enforce its judgment.

As stated herein supra, the allegations of facts as are contained in the movant/appellee's motion were not controverted or denied by the respondent/appellant; hence they are presumed to be true and correct. The law in vogue in this jurisdiction is that the failure by a party to deny any averments of the opposing party, such unchallenged averments, will be taken to be true and correct. Civil Procedure Law, Rev. Code 1: 9.8.2, *Kamara et al v Kindi*, 39 LLR 102, (1998).

We must note with emphasis that the respondent/appellant's failure to file an appeal bond and a notice of completion of appeal is not excused because he was represented by an attorney-at-law in the court below. There exists no prohibition or restriction in the law that incapacitates an attorney-at-law from filing an appeal bond and a notice of completion of appeal in the lower court. An attorney has the competence to perform all of these functions. The Court, therefore, cannot accept as an excuse for the failure to file an appeal and a notice of completion of appeal the fact that the party was not represented by a

counsellor-at-law or could not procure the service of a counsellor-at-law. The conduct of the attorney-at-law not to have ensured the timely filing of the appeal bond and a notice of completion of appeal is wanting and derelict. This Court frowns on such derelict and unprofessional conduct in the absence of a showing that the party failed to cooperate in securing an appeal bond. In numerous opinions of this Court, including *Mensah v. Liberia Battery Manufacturing Corporation*, 36 LLR 879 (1990), we have held as follows:

“it is the duty of the appellant’s counsel to superintend the appeal and see that all of the legal requirements are complied with.”

In furtherance of the principle enunciated in *Mensah supra*, we have consistently sounded warnings that any lawyer found derelict and wanting in perfecting an appeal, this Court shall impose the appropriate sanction against that lawyer. *Taye v. Kiaw*, Opinion of the Supreme Court, October Term, A.D. 2014, *The Management of Lonestar Cell/MTN v. Nathaniel Kevin*, Opinion of the Supreme Court, March Term, A.D. 2019. As mentioned earlier, the records before us do not show that Attorney Joseph S. Doe who represented the respondent/appellant in the court below demonstrated reasonable effort to superintend the perfection of the appeal. The records also reveal that Attorney Doe has not shown to the satisfaction of the Court that he made reasonable effort to ensure compliance with the mandatory steps for the perfection of the appeal and the respondent/appellant failed to cooperate with him. We, therefore, reiterate our warning to lawyers that future dereliction of this kind shall lead to ethics proceedings against them.

The records have established that the respondent/appellant failed to file an appeal bond and a notice of completion of the appeal, this Court is left with no other alternatives, but, to grant the motion to dismiss the appeal in view of the facts and circumstances as obtained in the instant case.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal is granted. Appeal dismissed. The clerk of this Court is ordered to send a mandate to the lower court to resume jurisdiction and give effect to this opinion. AND IT IS HEREBY SO ORDERED.

Versus	)	ACTION OF
	)	EJECTMENT
Alex Mulbah, Isaac Logan, Sam Biah and all those	)	
acting under their authority and control, Paynesville,	)	
Montserrado County, Liberia	)	
.....Defendant	)	

Heard: October 29, 2019

Decided: February 7, 2020

When this case was called for hearing, Counsellor Mamee S. Gongbah of the Liberty Law Firm appeared for the Movant. No counsel appeared for the respondents.

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This Motion to Dismiss appeal dwells on the mandatory steps required under chapter 51 of the Civil Procedure Law, Revised Code. It is not concerned with merit. The focus of this opinion is directed at the inquiry as to whether the appellant/respondent fulfills all the steps required under the law for this Court to acquire jurisdiction over the case for an appellate review. Questions relating to the motion to dismiss an appeal are well settled in this jurisdiction. Where there are contentions between the parties as to the fulfillment of the mandatory steps provided for in the statute, then and in that case, the Court shall endeavor to critically dissect the contentions vis-à-vis the point of departure from the well-settled principle as provided for by the statute. It is provided by the statute and by numerous opinions of this Court including Stevens v. N H S Bank et al, Opinion of the Supreme Court, March Term, A.D. 2012, these mandatory steps are listed as follows:

“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.”