

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

Mr. Jaimanie F. Tyler by and thru his Attorney-in-Fact, Sam Horace of the City of Monrovia, LiberiaMovant	)	
	)	
Versus	)	MOTION TO
	)	DISMISS
	)	<u>APPEAL</u>

Mr. Lincoln Davis of the City of Monrovia, Montserrado County, Republic of Liberia.....Respondent	)	
	)	

GROWING OUT OF THE CASE:

Mr. Lincoln Davis of the City of Monrovia, Montserrado County, Republic of LiberiaAppellant	)	
	)	

Versus	)	<u>APPEAL</u>
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Mr. Jaimanie F. Tyler by and thru his Attorney-in-Fact, Sam Horace of the City of Monrovia, LiberiaAppellee	)	
	)	

GROWING OUT OF THE CASE:

Mr. Jaimanie F. Tyler by and thru his Attorney-in-Fact, Sam Horace of the City of Monrovia, LiberiaPlaintiff	)	
	)	

Versus	)	ACTION OF <u>EJECTMENT</u>
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Mr. Lincoln Davis of the City of Monrovia, Montserrado County, Republic of Liberia.....Defendant	)	
	)	

Heard: October 29, 2019

Decided: February 7, 2020

When this case was called for hearing, Counsellor Amara M. Sheriff of the J. Johnny Momoh & Associates Legal Chambers, Inc. appeared for the movant. No counsel appeared for respondent.

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 fulfill 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.”

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 made reference to a letter dated..... over the signature one Tinisi Davis, widow of the appellant, substantially informing the Court of the death of the appellant on 17th day of September 2019 and requesting the Court for time to secure the services of a lawyer to prosecute the matter on behalf of the appellant. This Court, in reaction to the said communication, noted that when the matter was called during the March Term, 2019, the appellant did not appear. 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 secured 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 2019, a 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. 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 based on 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 6th day of November, A.D. 2018, movant/appellee, Jaimanie F. Tyler, filed a three-count motion to dismiss the appeal against the respondent/appellant. The substance of the motion averred that on the 22nd day of August 2018, the Civil Law Court, Sixth Judicial Circuit, Montserrado County, rendered a final judgment in an ejectment action wherein the respondent/appellant was held liable and copy of the final judgment was served on the respondent/appellant on September 3, 2018; that up to and including the sixtieth day as provided for by statute after notice of the final judgment and the notification of appeal therefrom was served on the counsel for the appellant/respondent, the said appellant/respondent failed to file his appeal bond and notice of completion of appeal, notwithstanding that a bill of exceptions was filed within statutory time. The movant/appellee annexed to its motion to dismiss the appeal exhibit of the final judgment of the lower court. The movant/appellee, therefore, prays the Court to deny and dismiss the respondent/appellant's 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 accurate 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 hinders 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 lacks the jurisdiction to hear the appeal and therefore grant the motion to dismiss the appeal given 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.