

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, S.R.....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

Esther Yeanay Barkpei of Wood Camp, Paynesville,)
Montserrado County, Republic of Liberia.....)
.....Movant)
)
Versus)MOTION TO DISMISS
) APPEAL
Joseph L. Tompoe, also of the City of Paynesville,)
Montserrado County, Republic of Liberia.....)
.....Respondent)
)
GROWING OUT OF THE CASE:)
)
Joseph L. Tompoe, also of the City of Paynesville,)
Montserrado County, Republic of Liberia.....)
.....Appellant)
)
Versus) APPEAL
)
Esther Yeanay Barkpei of Wood Camp, Paynesville,)
Montserrado County, Republic of Liberia.....)
.....Appellee)
)
GROWING OUT OF THE CASE:)
)
Esther Yeanay Barkpei of Wood Camp, Paynesville,)
Montserrado County, Republic of Liberia.....)
.....Petitioner)
)
Versus) PETITION FOR
) SPECIFIC
) PERFORMANCE OF
) A CONTRACT
Joseph L. Tompoe, also of the City of Paynesville,)
Montserrado County, Republic of Liberia.....)
.....Respondent)

Heard: October 31, 2019

Decided: September 4, 2020

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On the 23rd day of March 2016, Esther Yeanay Barkpei, the movant herein, filed a six-count petition for specific performance before the Civil Law Court, Sixth Judicial Circuit for Montserrado County, Republic of Liberia, substantially alleging the followings:

That Joseph L. Tompoe, respondent herein agreed to sell one lot of land lying and situated at Wood Camp, Paynesville, Monserrado County to the movant; that the movant paid the amount of Seventy-five thousand Liberian Dollars (LRD75,000.00) to the respondent as the purchase price for the said one lot of land as exhibited by a payment receipt marked P/1; that the movant has performed her side of the contract, but the respondent has refused and neglected to survey the land and issue to the movant a title deed; and that specific performance is the proper remedy because the terms of sale and conveyance are clear on the face of the receipt issued by the respondent to the movant.

The respondent filed his six count returns denying the allegations of facts and law as are contained in the movant's petition for specific performance as follows:

That at no time did the respondent agree to sell one lot of land to the movant or receive money as value for the said land; that the receipt exhibited by the movant is self-serving; that there is no semblance of a contract between the parties; and that specific performance will not lie.

After the disposition of law issues, the case progressed to a full jury trial. Upon deliberation on the evidence, the trier of facts returned a unanimous verdict of liable against the respondent. The respondent entered exceptions to the unanimous verdict and filed a motion for a new trial. The motion for a new trial was resisted, argued, and denied. After that, on the 30th day of November 2017, Judge J. Boima Kontoe, presiding by assignment, entered a final judgment affirming the unanimous verdict of the trier of facts. There and then, the respondent entered exceptions and announced an appeal to the Honorable Supreme Court of Liberia.

The certified records show that the respondent filed his bill of exceptions on the 8th day of December 2017. Thereafter, he filed his appeal bond on the 29th day of January 2018, which is 60 days after the announcement of the appeal from the final judgment. The records further revealed that upon application, the movant herein obtained a clerk certificate on the 4th day of October 2018 to the effect that upto and including the time of the issuance of the said certificate, the respondent's appeal bond carries the case caption as 'summary proceedings to recover possession of real property' rather than a 'petition for specific performance' out of which the appeal grew, and that the respondent did not serve and file a notice of completion of the appeal.

Relying on the clerk certificate aforesaid, the movant filed this five count motion to dismiss the appeal on the 11th day of October 2018, essentially alleging that the respondent failed to file a valid appeal bond and to serve and file the notice of completion of appeal within the period provided for by statute. On the 2nd day of April 2019, the respondent filed his returns to the motion to dismiss the appeal, withdrew the same with reservation to refile, and filed his amended returns on the 8th day of April 2019. The amended returns mostly agreed that the respondent filed his appeal bond on the 29th day of January 2018. However, it is alleged therein that upon the filing of the appeal bond, the clerk of the lower court prepared the notice of completion of appeal; that on the 30th day of January 2018, the respondent served the notice of completion of appeal on the movant through her counsel and filed a copy with the clerk of the trial court; that on the 31st day of January 2018, arm robbers attacked the respondent's assistant and took away his laptop bag containing documents including the respondent's copies of the appeal bond and the notice of completion of the appeal. The respondent attached to his amended returns the exhibit of a notice of completion of appeal.

The respondent's amended returns demonstrate the respondent's neglect and failure to perfect his appeal within the mandatory time. It is averred in the amended returns that the respondent filed his appeal bond on the 29th day of January 2018; same being the 60th day of the appeal, and that he served the notice of completion of appeal on the counsel for the movant on the 30th day of January 2018, that is one day after the 60 days for the completion of the appeal process had lapsed, contrary to the clear and unambiguous provisions of the appeal statute. If the respondent's amended returns were anything to go by, he was still outside of the statute's ambit. This Court speaking through Madam Justice Wolokolie held in the case *Harris v. Barkemeni*, *Supreme Court Opinion, March Term, A.D. 2012* that:

“Our Civil Procedure Law, section 51.7 requires that one who excepts to the trial court's final ruling and announces the taking of an appeal should present a bill of exceptions signed by him to the trial Judge within ten days after the rendition of judgment. Section 51.8 requires the appealing party to secure the approval of a bond by the trial judge and file same with the clerk of the court within sixty days. The bond is to the effect that appellant 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 any other court for which the case is removed. Section 51.9 requires that after the filing

of the bill of exceptions and the appeal bond, the appealing party shall make application to the clerk of court to issue a notice of completion of appeal, a copy to be served by the appealing party on the appellee. The whole appeal process laid down by our statute, beginning with the announcement of the taking of an appeal, is required to be completed within sixty days. Section 51.16 of the CPLR also provides that failure of the appealing party to complete the appeal process within the time allowed shall be grounds for dismissal of the appeal. *Sauid v. Gebara* 15LLR 598, 603 (1964).”

As far as the respondent’s amended returns admits, the service of the notice of the completion of appeal on the movant one day after the 60th-day statutory requirement violates the last requirement of the appeal statute. This Court has determined that the appellant must serve the notice of completion of appeal on the appellee and file a copy of the served notice with the court's clerk within the time allowed by statute. Failure to comply with this last mandatory requirement of the appeal statute constitutes grounds for the dismissal of the appeal. *Snetter-Carey v John, Supreme Court Opinion, October Term, A.D. 2013*

In the case *Liberia Baptist Theological Seminary v. Lincoln S. Brownell, Jr.* decided on the 25th day of June 2020, this March Term of the Supreme Court, we reiterated our firm position on the strict compliance with the appeal statute as follows:

“.... it is very important that an appellant, in pursuing an appeal takes the utmost 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 a 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 unwavering 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.” *Mankeh v. Toweh*, 32LLR 207 (1984); *Ezzedine v. Saif Services*, Supreme Court Opinion, March Term, A.D. 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.”

As in the instant case, which is analogous to *Liberia Baptist Theological Seminary v. Lincoln S. Brownell, Jr. supra*, the records establish that the respondent did not complete the last mandatory step by service and filing of a notice of completion of the appeal, thus divesting the Supreme Court of jurisdiction to hear and decide on the merits of the appeal and as such, the appeal is dismissible as a matter of law.

Despite this conclusive admission by the respondent that the notice of completion of appeal was not served on the movant and filed with the court within the time allotted by statute, the respondent will have this Court to believe that he filed the notice of completion of appeal with the trial court. No notice of completion of appeal is apparent in the transcribed records. When questioned during the hearing of this motion as to whether he taxed the records before its transmission by the lower court's clerk to this Court, the counsel for the respondent answered in the negative. Indeed, the purpose of taxing the records in the lower court before it is transmitted to this Court is to ensure that it is intact. The Respondent counsel's failure to tax the records considering the absence of a notice of completion of appeal constitutes an acceptance that the records were transcribed entirely and that no such notice of completion of appeal was filed. More besides, can this Court verified the claim by the respondent's counsel that a notice of completion of appeal was filed considering that this Court does not entertain evidence. The respondent's failures to surround his appeal with the requisite protective tools constitute a waiver, and therefore he is estopped from raising such an issue at this stage of the trial.

It having been established that the respondent failed and neglected to serve and file his notice of completion of appeal within the time allowed by statute, the appeal is dismissible.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal is granted, and the appeal is dismissed as a matter of law. The Clerk of

Court is ordered to send a mandate to the court below to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs ruled against the appellant. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Kuku Younger Dorbor of the Henries Law Firm appeared for the movant. Counsellor S. L. Lofen Keneah appeared for the respondent.