

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

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

The Testate Estate of Dr. Joseph N. Togba, represented)	
by its Executrix and Executors, Helyn Juah Togba, John W.)	
Togba and Joseph T. Togba, III, all of the City of Monrovia,)	
Liberia.....Movant)	
)	
Versus)	
)	MOTION TO DISMISS
Reginald Goodridge et al of the City of Monrovia,)	APPEAL
Liberia.....Respondents)	
)	
<u>GROWING OUT OF THE CASE:</u>)	
)	
Reginald Goodridge et al of the City of Monrovia,)	
Liberia.....Appellants)	
)	
Versus)	APPEAL
)	
The Testate Estate of Dr. Joseph N. Togba, represented)	
by its Executrix and Executors, Helyn Juah Togba, John W.)	
Togba and Joseph T. Togba, III, all of the City of Monrovia,)	
Liberia.....Appellee)	
)	
<u>GROWING OUT OF THE CASE:</u>)	
)	
The Testate Estate of Dr. Joseph N. Togba, represented)	
by its Executrix and Executors, Helyn Juah Togba, John W.)	
Togba and Joseph T. Togba, III, all of the City of Monrovia,)	
Liberia.....Plaintiff)	
)	
Versus)	ACTION OF
)	EJECTMENT
Reginald Goodridge et al of the City of Monrovia,)	
Liberia.....Defendants)	
)	

Heard: October 30, 2019

Decided: September 4, 2020

When this case was called for hearing, Counsellor G. Wiefueh Alfred Sayeh of the Sayeh and Sayeh Law Office, Inc. appeared for the movant. Counsellor Mamee S. Gongbah of the Liberty Law Firm appeared for the respondents.

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

This case is before the Honorable Supreme Court of Liberia on a motion to dismiss an appeal filed respondents/appellants, Reginald Goodridge et al, against the final ruling of His Honor Yussif D. Kaba, then Resident Circuit Judge of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, Liberia, in favor of the Testate Estate of Dr. Joseph N. Togba, movant/appellee herein. The movant wants this Court to dismiss the respondents' appeal on ground that the notice of completion was not served on the movant/appellee as required by law.

The movant, in its six-count motion to dismiss the appeal before this Court, contends that the respondents failed and neglected to file their notice of completion consistent with Sections 51.4 and 51.16 of the Civil Procedure Law which provide requirements for completion of appeal and service of the notice of completion, respectively. In its attempt to convince this Court, the movant provided the following information in the manner they occurred: that the final ruling of the trial court out of which the appeal grew was had on the 27th day of March, 2019; that the respondents served the notice of completion on the movant/appellee on the 6th day of June, 2019, and filed same with the clerk of court on the 5th day of June, 2019, a period, the movant says is far beyond the time allotted by statute in this jurisdiction for the perfection of the appeal process.

The respondents argued to the contrary and contended strongly that they did not transgress the statute controlling the appeal process because the movant's counsel refused to receive the appeal bond together with the notice of completion of appeal when they were presented to him for reason that the caption of the case inserted in the appeal bond was not proper. The respondents further contended that the fact that the movant's counsel refused to receive and sign the notice of completion presented to him on April 30, 2019, constituted a constructive service; hence, could not be held liable for breach of the statute on the completion of the appeal process. The respondents concluded that in as

much as the movant did not attach a clerk's certificate to its motion to substantiate its claims, the motion should be dismissed by this Court.

The certified records before us show that on the 28th day of March, A.D. 2019, the trial Judge entered on the records the court's final ruling. Counsellor Arthur Johnson, court's appointed lawyer, noted exception and announced an appeal to the Honorable Supreme Court of Liberia, sitting in its October Term, A.D. 2019. On April 3, 2019, Counsellor Mamee S.W. Gongbah, Jr., counsel of records, filed the defendant's bill of exceptions and on April 30, 2019, filed defendant's appeal bond; but filed defendant's notice of completion of appeal on June 5, 2019. By a calculation of the time interval recorded in the files of this case, the respondents had gone sixty-eight (68) days to complete the appeal process; far beyond the sixty (60) days required by statute. Section 51.4 of the Civil Procedure Law in this jurisdiction provides the requirements for the completion of an appeal process, which states that:

1. "Announcement of the taking of the appeal;
2. Filing of the bill of exceptions;
3. Filing of an appeal bond; and
4. Service and filing of the notice of completion of the appeal".

The statute further provides that: "failure to comply with any one of these requirements within the time allowed by statute shall be ground for dismissal of the appeal". We also quote Section 51.9 of the Civil Procedure Law for its relevance to this Opinion:

"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".

In support of the statute defined herein above, the Honorable Supreme Court has opined that: "the filing of the notice of completion of the appeal beyond sixty days is a violation of the statute and a ground for the dismissal of an appeal, unless the last day for filing is on a Sunday or a national holiday, in which case the notice shall be filed on the next business day". *Renny Pentee v. George S. B. Tulay*, 40 LLR 207 (2000).

The respondents' argument that the counsel for the movant refused to receive their appeal bond and the notice of completion of the appeal on the 30th day of April, 2019, for which they filed their notice of completion on the 5th day of June, 2019, about two months beyond the filing date is out rightly rejected by this Court because the statutory period of sixty (60) days had elapsed. This is an

incurable error this Court cannot countenance. Further, this Court is inclined to ask what step did the respondents take when the counsel for the movant allegedly refused to receive their appeal bond and the notice of completion of the appeal. For, there is no piece of evidence in the records that lay out a complaint either by an affidavit to show that the movant's counsel did indeed and in truth refuse to receive and sign the respondents' notice of completion of the appeal process when presented to the movant's counsel on April 30, 2019. This Court has advised in several of its Opinions that in situation of such, the complaining party must provide an affidavit proffered by a witness to substantiate its claim. The Supreme Court has consistently held that: "Mere allegations are not proof, and factual allegations pleaded must be proved at the trial. It is evidence alone which enables the court to decide with certainty the matter in dispute". *A. W. Morgan v. Isaac Barclay*, 42 LLR 259 (2004). Cases in accord: *Konnah and Tiawan v. Carver*, 36 LLR 319 (1989) and *V. H. Timber v. Naca Logging corporation*, 42 LLR 527 (2005).

We must emphasize that the service and filing of the notice of completion of the appeal is a cardinal step of the requirements that must be complied with by the appellant at all times. This Court will not conduct an appellate review of a case when the appeal requirements are not fully met. It is the completion of the appeal process that properly places the case before the Supreme Court for hearing when case emanates from the trial court. In the case: *Dahn et al. v. Waeyen*, 29 LLR 119, the Supreme Court held that: "the statutory requirements for the perfection of an appeal are mandatory and must be fully met; otherwise, this Court will refuse jurisdiction".

Given all we have enunciated, we conclude that in as much as this Court is keen to look into the merits of a case laid before it, we must say with emphasis as we have done in cases past that the Supreme Court is not willing to ignore grave errors made in the appeal process; especially out of the negligence of the appellant or its counsel. This Court has held that: "The Supreme Court has maintained the position that where any of the grounds stated in the statute as constituting a basis for dismissal of an appeal is not adhered to by the appellant, the appeal will be dismissed". *Hussenni v. Brumskine*, Supreme Court Opinion, March Term 2013.

Wherefore, and in view of the foregoing facts and laws controlling, coupled with the fact that the appellant filed its notice of completion of appeal beyond the statutory period of sixty (60) days, the motion to dismiss said appeal is therefore granted, the appeal dismissed and the final judgment of the lower court is affirmed and ordered enforced. The Clerk of this Court is ordered to send a Mandate to the court below commanding the Judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. Costs are ruled against the respondents/appellants. AND IT IS HEREBY SO ORDERED.

