

**IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,  
SITTING IN ITS OCTOBER 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**

Louise K. Bakalu, of the City of Paynesville,	)	
Montserrado County, Liberia ..... Movant	)	
	)	
Versus	)	Motion to Dismiss
	)	Appeal
Adama Fofana by and thru his Attorney-In-Fact,	)	
Sidiki Fofana of the City of Paynesville,	)	
Montserrado County, Liberia ..... Respondent	)	
	)	
<u>GROWING OUT OF THE CASE:</u>	)	
	)	
Louise K. Bakalu, of the City of Paynesville,	)	
Montserrado County, Liberia ..... Plaintiff	)	
	)	
Versus	)	Action of Ejectment
	)	
Adama Fofana by and thru his Attorney-In-Fact,	)	
Sediki Fofana of the City of Paynesville,	)	
Montserrado County, Liberia ..... Defendant	)	

Heard: October 27, 2020

Decided: March 3, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

Our Constitution, at Article 20(b) accords aggrieved parties the right to appeal the judgments and\or decisions from courts of record to the Supreme Court, and the Supreme Court has continuously upheld the sanctity of that right in its many decisions and judgments. *Woewiyu and Harvey v. The International Trust Company of Liberia*, (1998) LRSC 8; 38 LLR 568, 580 (1998); *National Iron Ore Company et al. v. Yancy and Cooper*, (1998) LRSC 27; 39 LLR 126 (1998) However, this constitutional right is not self-executing as Article 20 (b) further provides that the “...Legislature shall prescribe rules for the easy, expeditious and inexpensive filing and hearing of an appeal.” It is predicated upon the foregoing, that the Legislature enacted Chapter 51 of the Civil Procedure Law and provided thereunder, mandatory fundamental procedures in perfecting an appeal to the Supreme Court, failing of which renders said appeal dismissible as a matter of law. *Hussenni v. Brumskine*, Supreme Court Opinion, March Term (2013); *Blamo et. al. v. The Management of Catholic Relief Services*, Supreme Court Opinion October Term 2006; *Republic v. Nbolonda*, Supreme Court Opinion, March Term A.D. 2014; *Pioneer Construction v. Judge Morgan et al.*, Supreme Court Opinion, March Term A.D. 2014.

We quote hereunder the applicable provisions of said mandatory requirements for the completion of an appeal, to wit:

“The following acts **shall** (our emphasis) 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 the 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 will be ground for dismissal of the appeal...**” (our emphasis) Civil Procedure Law, Rev Code 1:51.4.

Our review of the records in this case leading to the present motion to dismiss the appeal reveals that on April 13, 2017, Mr. Justice Yussif D. Kaba, then Resident Circuit Judge, Sixth Judicial Circuit, Civil Law Court, Montserrado County, rendered final judgment in an action of ejectment, confirming the verdict of the jury in favor of Louise K. Bakalu, the movant herein as against the present respondent, Adama Fofana by and through his attorney-in-fact, Sedike Fofana; that the respondent readily noted exceptions to the final judgment, announced an appeal and was granted his appeal to this Court sitting in its October Term, A.D. 2017; that although the respondent filed his bill of exceptions within the 10 day period required by the statute, that is, on April 24, 2017, he however failed to comply with the last two mandatory steps, which are, the filing of an appeal bond and the service and filing of a notice of completion of appeal.

Sections 51.9 and 51.16 of our Civil Procedure Law are clear and unambiguous regarding the penalty for non-compliance with any of the mandatory steps in perfecting an appeal to this Court, including the last two statutory steps, the filing of an appeal bond and the service and filing of a notice of completion of appeal, to wit:

**“§ 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.

And:

**§ 51.16. Dismissal of appeal for failure to proceed.**

“An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions, for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute.”

The omission by an appellant in respect of the above deprives the appellee of the right to indemnification and infringes on the principle of notice to the appellee to attend upon the cause.

We note that although the motion to dismiss the respondent’s appeal was filed on April 9, 2019, the respondent failed to file a resistance thereto, up to and including the receipt of the notice of assignment for arguments before this Court on October 27, 2020. Instead, the records show that on October 20, 2020, upon being served the notice of assignment for arguments on the motion to dismiss, a letter was addressed to the Clerk of this Court and bearing the names of both Adama Fofana and Sedike Fofana, the principal and his attorney-in-fact, respectively, requesting time to allow for negotiations with the movant leading to a withdrawal of the respondent’s appeal. We deem it necessary to quote said letter, to wit:

Messrs. Adama Fofana & Sedike Fofana  
Paynesville City  
Montserrado County  
Liberia

October 20, 2020

Attorney Sam Mamulu  
Clerk  
Supreme Court of Liberia  
Temple of Justice  
Monrovia, Liberia

Dear Mr. Clerk:

IN RE: Louise K. Bakalu of the City of Monrovia, )  
Montserrado County, Republic of Liberia...MOVANT )

VERSUS

Adama Fofana by and thru his Attorney-In-Fact,  
Sedike Fofana of the City of Paynesville, Montserrado  
County, Republic of Liberia.....RESPONDENT

)MOTION TO  
) DISMISS  
) APPEAL  
)  
)  
)

This is acknowledging the receipt of the Notice of Assignment issued in the above captioned case that the case has been scheduled for argument on the 27<sup>th</sup> day of October, A.D. 2020.

We (respondents) have been negotiating with the movant to withdraw this matter.

In view of the forthgoing, we are appealing to the Honorable Supreme Court of the Republic of Liberia to grant us another period of time, while we are negotiating for a withdrawal.

Best regard.

Respectfully yours,

Messrs. Adama Fofana & Sedike Fofana

The request of the respondent and his attorney-in-fact, is strange to our practice and procedures in vogue, in that a party will sit supinely and only upon receipt of a notice of assignment for hearing or argument in a matter tending to dismiss his appeal, would then resort to requesting this Court for time to negotiate with the movant, instead of addressing the allegations in said motion. We note that the movant, was completely unaware and had no prior knowledge of this alleged negotiation. In fact, the records reveal that besides failing to file the necessary papers opposing the motion and the respondent did he appear in Court on the day assigned for arguments.

In addition to the above, there is no dispute that the respondent failed to file an appeal bond and serve and file notice of completion of appeal as required by the provision of the appeal statute. In view of this and given the length of time this motion to dismiss has remained pending, the appeal is dismissible as a matter of law, and we so hold.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal is hereby granted and the appeal is ordered dismissed. 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.

*Appeal dismissed.*

When this case was called for hearing, Counsellor Kuku Y. Dorbor of the Henries Law Firm appeared for the Movant. No Counsel appeared for the Respondent.