

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.O. 2021

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETT AH. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBEASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABAASSOCIATE JUSTICE

Thierno Mountaga Barry represented by)
his authorized representative and legal)
counsel, Cllr. J. Johnny Momoh of J.)
Johnny Momoh and Associates Legal)
Chambers, Inc. of the City of Monrovia,)
Montserrado County, Liberia Movant)

Versus) **MOTION TO DISMISS APPEAL**

His Honor Jomah S. Jallah, Stipendiary)
Magistrate of the Monrovia City Magisterial)
Court, Larry Gormuyor, Ministerial Officer)
and Eric F. Nagbe, all of the City of)
Monrovia, Liberia Respondents)

GROWING OUT OF THE CASE:)

His Honor Jomah S. Jallah, Stipendiary)
Magistrate of the Monrovia City Magisterial)
Court, Larry Gormuyor, Ministerial Officer)
and Eric F. Nagbe, all of the City of)
Monrovia, Liberia Appellants)

Versus) **APPEAL**

Thierno Mountaga Barry represented by) his
authorized representative and legal)
counsel, Cllr. J. Johnny Momoh of J.)
Johnny Momoh and Associates Legal)
Chambers, Inc. of the City of Monrovia,)
Montserrado County, Liberia Appellee)

GROWING OUT OF THE CASE:)

Thierno Mountaga Barry represented by) his
authorized representative and legal)
counsel, Cllr. J. Johnny Momoh of J.)
Johnny Momoh and Associates Legal)
Chambers, Inc. of the City of Monrovia,)
Montserrado County, Liberia Petitioner)

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Versus) SUMMARY PROCEEDING)

His Honor Jomah S. Jallah, Stipendiary)
Magistrate of the Monrovia City Magisterial)
Court, Larry Gormuyor, Ministerial Officer)
and Eric F. Nagbe, all of the City of)
Monrovia, LiberiaRespondents)

Heard: November 2, 2021

Decided: January 27, 2022

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This motion to dismiss appeal grows out of a petition for summary proceeding filed by movant/appellee herein, Thierno Mountaga Barry, against His Honor Jomah S. Jallah, Stipendiary Magistrate of the Monrovia City Court, the Ministerial Officer in the said court, Larry Gornuyor, co-respondents/appellants and Eric F. Nagbe. the substantive party complainant in the underlying action of summary proceeding to recover possession of real property. His Honor Judge Scheaplor **R.** Dunbar presiding over the Sixth Judicial Circuit, Civil Law Court Annex "**B**" for Montserrado County heard the petition for summary proceeding and handed down final ruling on February 19, 2021 in favor of the movant/appellee. The co-respondent/appellant Eric F. Nagbe noted exception on the record and announced an appeal to the Supreme Court of Liberia. The respondent/appellant received the said final ruling on February 25, 2021, and on March 4, 2021, he filed his bill of exceptions with the trial court. On March 31, 2021, the co-respondent/appellant Eric F. Nagbe filed his appeal bond and notice of completion of appeal at precisely 9:47 a.m. and unserved notice of completion of appeal at precisely 9:47 a.m. Thereafter, on September 9, 2021, upon the request of the movant/appellee, the assistant clerk of the trial court, Lee Kieh, certified by a certificate that the co-respondent Eric F. Nagbe filed his notice of completion of appeal on March 31, 2021 at 9:47 a.m., but that said notice of completion of appeal was not served on the movant/appellant. The said clerk certificate reads as follows:

After a careful perusal of the case file in the above mentioned cause of action it was revealed that the notice of completion of appeal was issued on the 31st day of March, A.O. 2021 and filed with the clerk of court on March 31, 2021 at 9:47 a.m., but the said notice of

completion of appeal was not served on the petitioner/appellee and there is no returns of the sheriff as to the service of the notice of completion of appeal. Please find attached copy of the notice of completion of appeal as contained in the casefile.

Hence, this clerk's certificate

Given under our hands and seal of this
Honorable Court, this 9th day of September,
A.O. 2021
Lee Kieh
Asst. Clerk of Court
Civil Law Court "B" for Mont. Co. R. L.

Signed: _____

File Clerk

Recorder

On the strength of the above quoted clerk's certificate, the movant/appellee filed on September 13, 2021 this eight-count motion to dismiss appeal before this Court. We also quote excerpt of the motion to dismiss appeal as follows:

4. That the law extant in this jurisdiction is that an appeal will be dismissed for failure of the appellant to file and serve an approved appeal bond and notice of completion of appeal within sixty (60) days after the rendition of final judgment to which the appellant has announced or taken an appeal therefrom. In the instant case, the respondent has failed to file and serve an approved appeal bond and notice of completion of appeal within the sixty (60) days statutory requirement for the filing and service of approved appeal bond and notice of completion of appeal.

5. That also as to count four (4) above, movant says that the Supreme Court of Liberia in several lines of cases [states] that a failure to comply with any of the requirements for an appeal is ground for the dismissal of the appeal. For reliance, see Knuckles versus Liberia Trading and Development Bank 40 LLR 49; Freeman and Wesseh versus Lewis et al, 40 LLR 102; Gbartoe et al versus Doe, 40 LLR

150; Pentee versus Tulay, 40 LLR 207; Chicri Abi Jaoudi versus the Intestate Estate of the late Bendu Kiadii, 40 LLR 777.

6. That also as to counts four (4) and five (5) above, movant says that the Supreme Court of Liberia held in the case: Renney Pentee, appellant versus George S. B. Tulay, appellee, 40 LLR 207 that the duty to have a copy of the notice of the completion of appeal served on the appellee is squarely placed on the appellant; not the sheriff of the trial court; and because the duty is imposed on the appellant to serve the notice of completion of appeal on the people, the returns of the sheriff, previously required as to the service of the notice, has been replaced by the signature of the appellee on the face of the notice of completion of appeal. Accordingly, the court held that the signature of the appellee on (the) face of the notice of completion of appeal confirms the appellee knowledge of the completion of appeal. In the instant case, as evidence by the clerk's certificate the signature of the appellee is not on the face of the notice of completion of appeal filed by the clerk and contained in the case file in the court below.

7. Movant says that it is the service of the notice of completion of appeal on the appellee, in the instant case movant, that confers jurisdiction of the Supreme Court over the person of the appellee, as movant. Accordingly, the Supreme Court lacks jurisdiction over the person of the movant for which the appeal announced and taken by the respondents in the court below should be denied and dismissed and the judgment appeal[ed] from order enforced.

8. That this motion is... made in good faith and not in any way intended to delay and baffle these proceedings.

Wherefore and in view of the foregoing, movant prays Your Honors to deny and dismiss the respondents' appeal announced and taken from the final judgment rendered by His Honor Scheaplor R. Dunbar on the 19th day of February, 2021; order said judgment enforced; and grant unto movant any other and further relief as Your Honors may deem just, legal and equitable in the premises.

On November 1, 2021, the respondents/appellants filed their returns to the motion to dismiss. We quote the six count returns as follows:

1. That as to count I of movant's motion, respondent says that he served the movant and movant signed the notice of completion of appeal. Not only did movant and respondent signed the notice of completion of appeal, the clerk of the Civil Law Court and the clerk of the Honorable Supreme Court for certification that the appeal process was completed. Attached herein is respondent's Exhibit marked as "R/1, representing the notice of completion of appeal.

2. Further to count 1 of this resistance, respondent says that when he received the motion to dismiss appeal, respondent approached the Civil Law Court "B" clerk, Mr. Wolo and the Circuit Court Judge, [His] Honor Scheaplor R. Dunbar and presented the respondent's copy of the notice of completion of appeal signed by movant's office staff whose signature and name are indicated on all of the documents (notice of completion of appeal and the appeal bond) which the respondent's appeal bond was signed by the movant's counsel's office. Respondent herein attached copy of the first sheet of th appeal bond signed by the movant's counsel's office staff and the respondent, clerk of comt, Civil Law Comt "B", (filed by the clerk), and filed by the clerk of the Honorable Supreme Court of Liberia, Atty. Sam Mamulu, marked as "R/2".

3. That as to the entire motion filed by the [movant], respondent says that the grounds and evidence adduced by the movant are insufficient grounds for this Honorable Supreme Court to grant any request made by the movant. Respondent says that the appeal process was completed in keeping with the statute and law controlling.

4. Further to counts 1 to 3 of this resistance, respondent says that both the appeal bond and the notice of completion of appeal were filed and signed by the movant and respondent on the same date indicated on

the faces of these evidence and instruments (notice of completion of appeal and photocopy of the first sheet of the appeal bond)

5. That the respondent, while presenting to the Civil Law Court the original copies of the notice of completion of appeal and the first sheet of the appeal bond, [he] obtained a receipt from the clerk of the Civil Law Court in person of Mr. Nah J. Wolo. Attached herein is a copy of the receipt issued by the clerk to respondent's counsel, Cllr. Arthur T. Johnson marked as R/3 to form another cogent part of this resistance.

6. That as to the entire motion from count 1 to 8, respondent denies all and asks Court to dismiss the said motion for lack of evidence and merits.

Wherefore and in view of the foregoing, respondent/appellant prays Your Honours and this Honorable Supreme Court of Liberia to dismiss the motion to dismiss appeal and grant respondent all other relief that are legal and rule all costs of these proceedings against the movant.

The respondents/appellants have drawn the attention of this Court to their exhibit "R/3", a receipt issued by the clerk of the trial court as their countermand to the clerk's certificate obtained by the movant/appellant on September 9, 2021 to the effect that the respondents/appellants filed their notice of completion appeal without serving same on the movant/appellee. We also deem it necessary to quote the substantive statements as contained in the said receipt as follows:

Received from Cllr. Arthur T. Johnson original copy of the notice of completion of appeal and a photocopy of the first sheet of the appellant/petitioners' appeal bond which were signed by both the appellant and the appellee in the below captioned cause of action.

Thiemo Mountaga Barry represented by his Authorized Representative and Legal Counsel, Cllr. Johnny Momo of J. Johnny Momoh and Associates Legal Chambers, Inc.... Petitioner versus His Honor Jomah S. Jallah, Stipendiary Magistrate of the Monrovia City

Magisterial Court, Larry Gormuor, Ministerial Officer and Eric F. Nagbe.....Respondents in Summary Proceedings.

Signed: _____

Nah J. Wollor

Clerk of Court "B"

Date: Oct. 26, 2021

Time: 2:42 p. m.

An inspection of the copy of the notice of completion of appeal received by the clerk in the court below on October 26, 2021 shows that Leord B. Wright signed for and received the notice of completion of appeal in behalf of the movant/appellee. It is important to note that during argument before this Court, the counsel for the movant/appellee recognized Leord B. Wright as the receptionist employed with his law chambers. Moreover, the respondents' exhibit R/1, same being the notice of completion of appeal received by the clerk of the trial court on October 26, 2021. shows that Leord B. Wright received and signed the said instrument at precisely 10:42 a. m. on March 31, 2021 indicating that the respondents/appellants served the notice of completion of appeal on the movant/appellee within the time allowed by the appeal statute.

A careful consideration of the motion, the resistance and the argument of the parties presents a single determinative issue as follows:

Whether, considering the facts and circumstances in this matter, the respondents/appellants fulfill the mandatory requirement of the appeal statute on service and filing the notice of completion of appeal?

We shall proceed to address this issue by quoting the controlling statute in determination of this case. Civil Procedure Law Revised Code: 1 :51.9 provides as follows:

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 completion of 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 the instant case, the movant/appellee's counsel has acknowledged before the Court that Leord B. Wright who received the notice of completion on March 31, 2021 an employee of the counsel's law chambers. Furthermore, the counsel for movant/appellant does not deny that Leord B. Wright signed and received the respondents/appellants' notice of completion of appeal on the said date and time, but contends that the evidence of service of the notice of completion of the appeal is not contained in the casefile. In support of this argument, movant/appellee relies on the clerk's certificate dated September 9, 2021.

On the other hand, the respondents/appellant argue that the filing of motion to dismiss appeal was premature on ground that the records of case were not taxed by the counsels as it ought to have been in keeping with practice and procedure. The respondents/appellees also argue that had the records been taxed by the counsels, it could have been discovered by the parties that served notice of completion of appeal was missing and that correction would have been made. We are in agreement with the respondents/appellants' contention that the purpose of taxation of records is to certify that the parties have inspected the records and copies of all the writs, returns, notices, pledges, motions, applications, certificates, minutes, verdicts, decisions, rulings, orders, opinions, judgments, bills of exceptions and all other proceedings in the case are contained therein. Then and in that case, the clerk shall transmit the certified records to the appellate court. The *Civil Procedure Law Revised Code: 1:51.11* is supportive of this principle of law.

It having been established by the evidence before this Court that the respondents/appellants served on the movant/appellant the notice of completion of appeal within the statutorily required time of sixty days, it is the opinion of this Court that the respondents/appellants have satisfied all the jurisdictional steps as required by the appeal statute to confer jurisdiction on the Supreme Court to open the casefile and determine the case on its merits.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss appeal is denied and dismissed. The Clerk of this Court is ordered to docket the appeal for the hearing and determination of this Court. AND IT IS HEREBY SO ORDERED.

Counsellor J. Johnny Momoh of J. Johnny & Associates Legal Chambers, Inc. appeared for the movant/appellee. Counsellor Arthur T. Johnson appeared for the respondents/appellants.