

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

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. 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

Trosteen Mokollie of the City of Monrovia,)
County of Montserrado, Republic of)
LiberiaMovant)
)
Versus) MOTION TO DISMISS APPEAL
)
The Management of Lonestar Cell/MTN of)
the City of Monrovia, Montserrado County,)
Republic of LiberiaRespondent)
)
GROWING OUT OF THE CASE:)
)
The Management of Lonestar Cell/MTN of)
the City of Monrovia, Montserrado County,)
Republic of LiberiaPetitioner)
)
Versus) PETITION FOR JUDICIAL
) REVIEW'
)
Trosteen Mokollie of the City of Monrovia,)
County of Montserrado, Republic of)
LiberiaRespondent)
)
GROWING OUT OF THE CASE:)
)
Trosteen Mokollie of the City of Monrovia,)
County of Montserrado, Republic of)
LiberiaComplainant)
)
Versus) UNFAIR LABOUR PRACTICE
) \WRONGFUL DISMISSAL
)
The Management of Lonestar Cell/MTN of)
the City of Monrovia, Montserrado County,)
Republic of LiberiaDefendant)

Heard: November 2, 2021

Decided: January 27, 2022

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On September 17, 2021, the movant/appellee, Trosteen Mokollie filed before this Court an eight count motion to dismiss appeal against the respondent/appellant, the

Management of Lonestar Cell/MTN, substantially alleging that he was the complainant in an unfair labour practice/wrongful dismissal case before the Ministry of Labour; that at the conclusion of the labor hearing, the Hearing Officer awarded him the amount of US\$32,903.00 in lieu of reinstatement; that the respondent/appellant noted exception and filed a petition for judicial review before the National Labour Court in and for Montserrado County; that on June 5, 2018, Her Honor Comfort S. Natt entered final judgment affirming the ruling of the Hearing Officer: and that the respondent/appellant filed its approved bill of exceptions, but, that it failed and neglected to file its appeal bond and notice of completion of appeal in keeping with law as evidence by the clerk's certificate. The movant/appellee therefore prays the Supreme Court to dismiss respondent/appellant's appeal, confirm and affirm the ruling of the court below, rule costs of these proceedings against the respondent/appellant and grant unto him all other relief which this Court may deem just, legal and equitable.

In response to the movant/appellant's averments as synopsisized hereinabove, the respondent/appellant contended that the lawyer who was assigned the case did file the appeal bond and notice of completion of appeal, but that he inadvertently left the casefile at his residence and traveled to the United States of America where he is currently residing; that respondent/appellant concedes that the counsel taking the casefile to his residence and not returning it to the office lends to an element of doubt as to whether the appeal bond and notice of completion were filed; that such action of the counsel is tantamount to negligence and by extension the law firm accepts and takes responsibility for such negligence; that the totality of the facts and circumstances surrounding the filing of the appeal bond and notice of completion of appeal are irregularities in breach of the lawyer's moral and professional ethics, however such irregularities are also extenuating facts and circumstances that may be considered by this Court as excusable neglect; that this Court may not insist on the strict application of the procedural laws for the determination of substantive rights, but instead in the exercise of its discretionary powers, this Court may decide whether to dismiss a case where procedural requirements for completion of an appeal are not complied with on a case by case basis. The respondent/appellant prays this Court to refrain from insisting on the strict application of procedural rules in the interest of transparent justice and to decide the case on its merits; therefore, this Court should refuse to grant movant/appellee's motion to dismiss appeal.

AFFIDAVIT OF ATTESTATION

I, Dede D. Nyeplu, II as affiant am informed and believes, and on such information and belief, and in good faith, state the following:

1. That I am a Counselor-at-Law admitted to the Supreme Court of Liberia Bar and have been a practicing attorney in the City of Monrovia, Liberia since March 2010.

2. That I was the lawyer who handled the above-entitled case and represented the appellant Lonestar Cell/MTN before the Labour Standards Division of the Ministry of Labour in the Unfair Labour Practices lawsuit. and before the National Labour Court in the Petition for Judicial Review appeal.

3. That on the 14th day of June 2018, I filed a Bill of Exceptions before the National Labour Court within ten (10) days as required by statute, which Bill of Exceptions was approved by Her Honor Comfort S. Natt, Resident Judge.

4. That subsequent to my filing of the Bill of Exceptions, I also filed the appeal for the judgment amount of Thirty-Two Thousand Nine Hundred Three United States Dollars (US\$32,903.00), which was also approved by Honor Judge Comfort S. Natt on July 20, 2018, and thereafter served and filed the Notice of Completion of appeal, thereby concluding the statutory required steps for perfecting the appeal to the Honorable Supreme Court.

5. That I am informed that the current Clerk of the National Labour Court issued a Certificate that the Appeal Bond and Notice of Completion of Appeal were not filed. The issuance of such Certificate is both inadvertent and incorrect. On the contrary, the Appeal Bond and Notice of Completion of Appeal were presented by me to, and the said documents were filed on July 20, 2018 by Trokon Bleadeah, the then Clerk of the National Labour Court.

6. That considering the conflicting information on the Certificate by the current Clerk of the National Labour Court, I request and pray that the issuance of the said Certificate ought to be investigated by the National Labour Court.

7. That the Appeal Bond and Notice of Completion of Appeal as filed does not appear in the Office of Dunbar & Dunbar because upon filing the Appeal Bond and Notice of Completion of Appeal, I inadvertently left the file, containing the said documents at my residence and did not take the file to the Office.

8. That this affidavit of attestation is representative of my knowledge of the facts as stated herein and is true and correct.

Signed this 28th day of October 2021 in the City of Towson, State of Maryland, United States of America.

Cllr. Dede D. Nyepu, II

Affiant

SWORN AND SUBSCRIBED to before this 29th
day of October 2021

Pamela C Whye

JUSTICE OF THE PEACE/NOTARY PUBLIC
BALTIMORE COUNTY
STATE OF MARYLAND

My Commission Expires May 10, 2022

We note that Counsellor Dede D Nyepu, II filed an affidavit of attestation which contradicts the averments contained in the returns filed by the respondent/appellant and the counsel's for respondent/appellant argument before the Court. While it is the position of the co-respondent/appellant in the resistance and the argument before the Court that the notice of the completion of appeal and appeal bond were not served and filed with the court due to the negligence of Counsellor Dede D. Nyepu, II, in his affidavit of attestation, especially count 4 thereof averred that he did serve and file the notice of completion of appeal, thereby completing the statutory required steps for perfecting the appeal. This averment by Counsellor Dede D. Nyepu, II does not find support in the trial court's records and is an attempt to mislead this Court. This act by a Counsellor of the Supreme Court Bar is reprehensible and therefore, this Court frowns

upon the same since it is violation of Code of Moral and Profession Ethics of Lawyers. We will say more about this later in this Opinion.

Considering the plea of the respondent/appellant in its resistance and argument before this Court that the act of Counsellor Dede D. Nyeplu, II, one of counsels for respondent/appellant by his alleged in advertence in leaving the casefile at his residence and travelling to the United States of America constitutes excusable neglect, this Court takes recourse to what an excusable neglect in the eye of the law is. An excusable neglect is defined as a failure which the law will excuse to take some proper step at the proper time (esp. in neglecting to answer a lawsuit), not because of the party's own carelessness, inattention, or willful disregard of the court process, but because of some unexpected or unavoidable hindrance or accident or because of reliance on the care and vigilance of the party's counsel or on a promise made by the adverse party. Page 1061, Eighth Edition, Black's Dictionary.

In the instant case, the respondent/appellant did not plead any unexpected or unavoidable hindrance or accident for which the appeal bond and the notice of completion of appeal were not served and filed as provided for by law. In fact, according to the counsel for the respondent/appellant the action of one of the counsels for the respondent/appellant is tantamount to negligence and by extension the law firm accepts and takes responsibility for such negligence. Additionally, our appeal statute places a duty on the lawyer to surround his client's case with all of the necessary safeguards in order to avoid injury to the client. It is the duty confers upon the lawyer to file the bill of exceptions, the appeal bond, and the notice of completion of appeal. The failure of the lawyer to execute these functions due not to unexpected or unavoidable hindrance or accident cannot in any way be considered as an excusable neglect. It was no accident or unavoidable hindrance, from the facts of this matter, that precluded the lawyer from filing the instruments referred to in this matter at the time the same were to be served and filed. As a matter of fact, the circumstances outlined in the resistance can be considered as nothing less than gross negligence. Should this Court consider the act of the lawyer as an excusable neglect we will be opening a floodgate which will render the appeal statute ineffectual thereby defeating the law. This, we are not prepared to do.

Coming back to the affidavit of attestation filled by Counsellor Dede D. Nyeplu, II, we say that the said instrument was filed to mislead the Court which is a violation of the oath of all lawyers are required to take during the call to the bar. The lawyer swears during his admission that he'... will never seek to mislead a judge or a jury by artifice

or false statement of fact or law." Clearly, Counsellor Dede D. Nyeplu,II. is in violation of this sworn oath that he took before God and man as evidence by clause 3, 4, 5, 6 and 7. In the light of the above, Counsellor Dede D. Nyeplu, II is fined the amount of US\$500.00 for the false and misleading information that he swore to in his affidavit of attestation.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss appeal is granted, and the appeal is dismissed. The Clerk of this 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. Cost ruled against the respondents/appellants. AND IT IS HEREBY SO ORDERED!

When this case was called for hearing, Cllr. Abraham B. Sillah, Sr. of the Heritage Partners & Associates, Inc. appeared for movant/appellee. Counsellor Stephen B. Dunbar, Jr. of the Dunbar and Dunbar law offices appeared for the respondent/appellant.