

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITING IN ITS OCTOBER TERM, A.D. 2022

BEFORE HER HONOR: SIE-A-NYENE G. YUOH. CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA..... ASSOCIATE JUSTICE

Abubakar M.S. Kiawu, Director, Debt Management,)
Ministry of Finance and Development Planning (MFDP), Republic)
of Liberia.....Movant)

VERSUS)

Honorable Samuel D. Tweah, Minister of Finance and)
Development Planning, and all Deputies and Assistant Ministers)
Ministry of Finance and Development Planning (MFDP), all of)
the City of Monrovia, Liberia.....Respondents)

) MOTION TO DISMISS
) APPEAL

GROWING OUT OF THE CASE:)

Abubakar M.S. Kiawu, Director, Debt Management,)
Ministry of Finance and Development Planning (MFDP), Republic)
of Liberia.....Petitioner)

VERSUS)

Honorable Samuel D. Tweah, Minister of Finance and)
Development Planning, and all Deputies and Assistant Ministers)
Ministry of Finance and Development Planning (MFDP), all of)
the City of Monrovia, Liberia.....Respondents)

) PETITION FOR THE
) ENFORCEMENT OF
) JUDGMENT

GROWING OUT OF THE CASE:)

Abubakar M.S. Kiawu, Director, Debt Management,)
Ministry of Finance and Development Planning (MFDP), Republic)
of Liberia.....Complainant)

VERSUS)

Honorable Boima S. Kamara, Minister of Finance and)
Development Planning, and all Deputies and Assistant Ministers)
Ministry of Finance and Development Planning (MFDP), all of)
the City of Monrovia, Liberia.....Defendants)

) WRONGFUL
) DISMISSAL

Heard: October 20, 2020

Decided: December 15, 2020

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT

The issue determinative of this case is whether or not in view of the facts and circumstances obtained therein, is the appeal dismissible as a matter of law?

This Court by answering this singular issue will take recourse to the certified records transcribed to it to provide a clear narrative that will form the basis for our judgment.

On September 2, 2019, the movant filed a petition with the Civil Law Court for the enforcement of judgment against the respondents, which grew out of a ruling of the Examining Committee of the Civil Service Agency (CSA) of Liberia had on May 30, 2019, in favor of the movant for wrongfully been dismissed by the respondents. On September 12, 2019, the respondents filed a twenty-two count returns to the petitioner's petition for enforcement of judgment, requesting the trial court to deny the entire petition for reason that the Examining Committee of the Civil Service Agency lacks the legal and administrative authority to overturn the "legal opinion of the Ministry of Justice on issues rendered by said Ministry concerning a matter affecting the Government of Liberia", using Section 22.2(c) of the Executive Law as their reliance. The respondents also contended that Section 82.9 of the Administrative Procedure Act relied on by the petitioner was misinterpreted in that as to the instant case, the agency that should have filed the petition for the enforcement of judgment is the Civil Service Agency that heard the petitioner's complaint and not the petitioner himself.

On September 20, 2019, the movant filed a motion to strike the respondents' returns to the petition for enforcement of judgment alleging essentially that the counsels for the respondents, Counsellors Michael I. Diggs and Eric Morlu, who filed the returns are not licensed

to practice law in Liberia as evidenced by the list of licensed lawyers (counsellors) issued by the Liberian National Bar Association for practicing lawyers in good standing, which list did not include their names. The movant annexed to its motion to strike said list containing 84 names of counsellors “qualified” by the Liberian National Bar Association as counsellors in good standing. On October 8, 2019, the motion to strike was assigned for hearing, pleadings having rested. On November 19, 2019, the trial judge, His Honor Yamie Quiqui Gbeisay, ruled and granted the motion to strike. Owing to the absence of the respondents' counsels, the trial court appointed Attorney Edward Z. Fahnbulleh to take the ruling on behalf of the respondents. The judge's ruling is cited verbatim herein to form a cogent part of this Opinion.

“Court's ruling

The Court: the petitioner herein on September 2, 2019, filed a petition in this court to enforce the final judgment of the Civil Service Agency. To this petition the respondents filed returns on September 12, 2019. The said returns was signed Counsellors Eric Morlu and Michael I. Diggs. On September 20, 2019, the petitioner filed a motion to strike the respondents' returns contending that the counsellors who signed the returns are not licensed lawyers and also are not in good standing with the Liberian National Bar Association to practice law. The motion rested and the court entertained argument pro et con. The both counsels were allotted grace period to prove to this court that they are licensed lawyers that is to say their license for the year is up to date.

This court says rule five of the general rule applicable to all courts in Liberia requires that all persons practicing law before the courts as Attorney-At-Law and Counsellor-At-Law must obtain annual license and pay annual due to the Liberian National Bar Association. The rule is enforced by the Honorable Supreme Court of Liberia Opinion in the case: William A. Tubman versus Moses A. Greenfield found in 29 LLR, page 517, decided February 1982; syl. 1 and syl. 2. Syl. 1 reads thus “the Supreme Court of Liberia will not recognize

any person as a counsellor of a party who has not obtained a lawyer license as required by law.” Syl. 2 says “a paper filed by a lawyer who has not obtained a current lawyer license is a nullity in law and the Supreme Court will treat it as though it is not before the court”.

In line with the above citation, this court hereby ordered stricken the returns filed by both Counsellors Eric Morlu and Michael I. Diggs on the court's records as though it never existed. Let the word go forth that lawyers in the employ of the Government of Liberia are not exempted from the requirement to pay license or due with the National Bar Association. By that, the petitioner's petition will be enforced and granted and is hereby ordered enforced to the letter. The clerk of this court is hereby ordered to issue the appropriate precept to have said judgment enforced. And it is hereby so ordered”.

The Court's appointed counsel noted exception and announced an appeal to the Honorable Supreme Court sitting in its March Term A. D. 2020. The records show that on December 6, 2019, the respondents filed their bill of exceptions with the Civil Law Court, Sixth Judicial Circuit, Montserrado County, after it was approved by the trial judge on December 4, 2019, in which they firmly contended that the final ruling of His Honor Yamie Quiqui Gbeisay, Sr. had on November 19, 2019, fell outside of the term of court because the September Term of court had already expired; that the actual forty-two (42) days of trial in the September Term A.D. 2019, ended on November 4, 2019 and the ten (10) days of chambers session ended on November 16, 2019; hence, the judge is in error and in total violation of Section 3.8 (1)(2) of the New Judiciary Law of Liberia when he ruled against the respondents on November 19, 2019. The respondents further contended in their bill of exceptions that the trial judge erred when he terminated the case in light of the movant's motion to strike the respondents' returns whereas in such case the respondents should have been ruled to bare denial;

that a precept that is to be served on an agency of the Executive Branch of Government, said precept must concomitantly be served upon the Ministry of Justice and that the failure of the movant to include the Ministry of Justice as a party respondent, the trial judge's ruling against the respondents violates Section 22.2(c) of the Executive Law of Liberia.

On January 2, 2020, the movant applied to the Clerk of the Civil Law Court requesting the Clerk therein to confirm whether the respondents did file their bill of exceptions on December 4, 2019 rather than November 30, 2019, the last day for the filing of said bill of exceptions. On the selfsame day, a Clerk's Certificate confirming that the respondents did file their bill of exceptions on December 4, 2019, was issued by the Clerk of the Civil Law Court.

Consequently, on January 10, 2020, the movant filed a ten-count motion to dismiss the respondents' appeal with the Clerk of the Supreme Court of Liberia. The movant alleged that the trial court entered its final ruling on the motion to strike the respondents' answer on November 19, 2019, and that the counsels for the parties received and signed for the court's final ruling on November 20, 2019; that the respondents should have filed their approved bill of exceptions on November 30, 2019, in line with the ten-day statutory period; that the respondents filed their approved bill of exceptions on December 4, 2019, in violation of Section 51.7 of the Civil Procedure Law, 1LCLR, and as a consequence, the movant obtained a Clerk Certificate to the effect.

On January 23, 2020, the respondents filed a twelve-count resistance to the motion to dismiss their appeal and contended *inter alia* that the court's appointed lawyer, Edward Z. Fahnbulleh, then Attorney-At-Law, received the ruling, noted exception and announced an appeal to the Supreme Court, but lawyers for the respondents learned of the ruling

five to six days after the ruling was delivered and immediately called Attorney Fahnbulleh who confirmed his involvement and later advised Counsellor Diggs to proceed to the trial court to sign for the ruling; that the motion should be denied because to grant same would amount to allowing the case not been decided on its merits in that it involves a former and dismissed employee of the Ministry of Finance and Development Planning who under questionable and suspicious circumstances authorized the payment of Five Hundred Thousand United States (US\$500,000.00) Dollars to the wrong individual after being advised by his supervisors not to pay; and that the motion should also be denied on ground that the motion to dismiss was filed ten days prior to the respondents completing the appeal process.

At this juncture, we note that the respondents did not deny that they filed their approved bill of exceptions on December 4, 2020 but justified that their action was a consequence of the date of receipt of the court's final ruling. By this contention, this Court was constrained to conduct review of the transcribed records to ascertain its truthfulness. We must note, however, our review did not show a scintilla of proof to convince this Court that respondents received the trial court's final ruling on a date other than November 20, 2020, as asserted by the movant, neither did we see a sworn affidavit issued by the court's appointed counsel, Edward Z. Fahnbulleh, annexed to respondents' resistance indicating therein the exact date Attorney Fahnbulleh received the trial court's final ruling. This Supreme Court has held that: "affidavits are not required in motions or allegations involving issues of law; but where issues of facts are involved, affidavits are required". *Standard Stationery Stores v. Gompu et at*, 30 LLR 271 (1982).

Given all we have said, we must emphasize that how articulated it may sound, an allegation not supported by evidence in order to remove every aspect of doubt, remains in the realm of mere allegation. The Honorable Supreme Court of Liberia, speaking on issues of allegations has held that: “allegations are simply intended to set forth a cause of action; that allegations unsupported by evidence, is not proof, for it is evidence alone which enables the court, tribunal or administrative agency to pronounce with certainty the matter in dispute and no matter how logical a complaint might be stated, it cannot be taken as proof without evidence”. *The Intestate Estate of Thomas G. Collins v. Archie et al*, Supreme Court Opinion, October Term, A. D. 2018; *Frankyu et al v. Action Contre La Faim*, 39 LLR 289 (1999); *Gibson v. Williams*, 33 LLR 193 (1985).

Notwithstanding this strong contention by the respondents, the records before this Court are void of any modicum of evidence or affidavit that could support said contention. In the absence of evidence this Court is not inclined to take the side of the respondent. For, it is a legal maxim that: “a compass is to a pilot as evidence is to a lawyer”.

The appeal statute clearly established the mandatory requirements, viz,

“The following acts shall 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 an 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 shall be ground for dismissal of the appeal”.

But the records before us reveal that the respondents announced an appeal and filed their bill of exceptions on December 4, 2020, while

same should have been filed on November 30, 2020, consistent with law. The respondents, not having complied with this provision of the appeal statute, same been mandatory; nor provided evidence in respect of their contention that they did not receive the trial court's final ruling on November 20, 2020, the respondents' appeal is denied and dismissed, in keeping with law.

WHEREFORE, and in view of the foregoing facts and circumstances, the motion to dismiss the appeal is granted and the appeal ordered dismissed. 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 enforce its final ruling. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Tiawan S. Gongloe and Momolu G. Kandakai of the Gongloe and Associates, Inc. appeared for the movant. Counsellors Michael I. Diggs, Eric B. Morlue and George S. W. Sagbeh, in-house counsels, appeared for the respondents.