

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF 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
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

The Intestate Estate of the late Gobbeh Kamara and Satta Kamara)
represented by & thru its Administrators, Musa Seimavula, Abraham)
Dongbo, Philip M. Kamara and Daniel D. Seimavula of the Township)
of Gardnersville, Monrovia, Liberia.....Movant)

Versus

) MOTION TO
) DISMISS APPEAL

The Intestate Estate of the late J. Lamark Cox, Sr. represented by its)
Administrator, Mr. J. Lamark Cox, Jr. of the City of Monrovia, Republic)
of Liberia.....Respondent)

GROWING OUT OF THE CASE:

The Intestate Estate of the late J. Lamark Cox, Sr. represented by its)
Administrator, Mr. J. Lamark Cox, Jr. of the City of Monrovia, Liberia)
.....Appellant)

) APPEAL

Versus

The Intestate Estate of the late Gobbeh Kamara, and Satta Kamara)
represented by and thru its Administrators, Musa Seimavula, Abraham)
Dongbo, Philip M. Kamara and Daniel D. Seimavula of the Township)
of Gardnersville, Monrovia, Liberia.....Appellee)

HEARD: October 18, 2023

DECIDED: November 28, 2023

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

This motion to dismiss appeal emanates from a judgment rendered by the Sixth Judicial Circuit Court, Montserrado County on the 4th of April, 2022, denying a motion to intervene filed by the respondent herein against the movant in an ejectment action filed by the movant. The movant requests this Court to dismiss the appeal announced by the respondent from the said judgment on two grounds: that the respondent failed to superintend its appeal by failing to submit the certified copy of its records before this Court within the period of ninety (90) days as prescribed by Section 51.11 of the Civil Procedure Law; that up to the filing of this

motion to dismiss appeal that the respondent has not still submitted its certified records before this Court and that the tax clearance attached to the respondent's appeal bond expired on April 19, 2022 and the said appeal bond was filed on April 22, 2022.

In resisting the motion to dismiss its appeal, the respondent admits that it has, up to the time of the hearing of this motion not transcribed its certified records before this Court but argues that this is not a ground for a dismissal of appeal as per the statute, and that it has met every statutory step for the completion of an appeal before this Court; that the movant's allegation regarding the expiration of its tax clearance attached to its appeal bond is a mere technicality that does not affect the substantial rights of the movant. The respondent has vehemently argued that this Court should deny the motion to dismiss its appeal and proceed to hear the case on its merits.

Recourse to the records reveals that the movant filed an action of ejectment against one Mr. Sualiho Toure et. al and that during the course of the trial, the respondent herein filed a motion to intervene arguing that it is the legitimate owner of a 2.8 lot of land in the disputed area of the said ejectment suit and that the outcome of the ejectment suit may have the propensity of affecting its property rights and therefore, it should be allowed to intervene in the said suit. The said motion to intervene was heard and denied by the trial judge on grounds that since the respondents are claiming that they are the legitimate owners of the property that was subject of the ejectment action, they should have instead filed a motion to join or file an independent action instead of a motion to intervene. The respondent excepted to the ruling of the trial judge and announced an appeal therefrom.

In keeping with the appeal statute, the respondent filed its bill of exceptions along with its bond and served the movant a copy of the notice of completion of appeal, completing the jurisdictional steps required for the taking of an appeal and the said appeal was properly venue before this Court.

The main contention of the movant here is the respondent has abandoned its appeal by its failure to transcribe the certified records to this Court within ninety (90) days in keeping with law as provided for in the Civil Procedure Law, Section 51.11 and that up to the time of the issuance of assignment to the parties for argument on this motion, the respondent has still not transmitted the certified records of his appeal from the lower court to this Court and that this attitude on the part of the respondent is reckless, deliberate and a complete disregard and abandonment of its appeal; therefore, this Court should refrain from hearing respondent's appeal on its merits and dismiss the appeal.

In response to the motion, the respondent argues that it fully complied with all the statutory requirements for the completion of an appeal and filed and served a notice of completion of appeal on the movant and that the subsequent delay in transmitting the certified records to this Court is not a ground for dismissing an appeal. In its support, the respondent cited the case *Tubman v. Lacquoi*, 21 LLR, 519 (1973). In the case cited by the respondent, this Court refused to grant a motion to dismiss the respondent's appeal for failure of the respondent to transmit his records to the Supreme Court in a period spanning eight (8) months up to the time of the hearing of the motion by the Court; this Court held therein that "*lateness in transmitting the record on appeal to the Supreme Court is not a ground for dismissal of an appeal*". It is this holding that the respondent has relied on and now seeks to have us deny the movant's motion. However, a further look into the very case cited by the respondent reveals that the Court after holding that lateness in transmitting the record on appeal to the Supreme Court is not a ground for dismissal sounded a caveat that its holding is in no way intended to ***encourage indifference or indolence on the part of the clerks of court and party-appellants***. [Emphasis Ours].

The issue that we must decide to judicially bring an end to this controversy is: whether or not the appellant's failure to transcribe the records from the trial court to the Supreme Court within more than a year's period is tantamount to an abandonment of the respondent's appeal and whether such abandonment is a ground for dismissal of its appeal?

We answer this question in the affirmative and hold that respondent/appellant's failure to transmit the records to this Court in a period spanning almost eighteen (18) months amounts to an abandonment of the appeal.

The appeal from which this motion to dismiss sprouts was completed by the respondent on April 22, 2022 and up to the time of the hearing of this motion, the records are yet to be transmitted to this Court, more than a year since the respondent fully complied with the statutory steps required for completion of an appeal. We cannot help but wonder why the respondent will be so wanton and careless in protecting its interest. It was the respondent who, genuinely believing that its rights had been violated by the trial court excepted and announced and perfected its appeal before this Court of last resort in order to have its rights protected. We are now left to wonder why the respondent did not superintend its case to make sure that the records were transmitted to this Court.

Even, for the sake of argument, were we to consider that the respondent counsel, due to his busy schedule forgot to make follow up with the clerk as to the transmittal of the records of

his case before this Court, won't counsel, immediately upon receipt of the movant's motion to dismiss his appeal make sure his records are transmitted before this Court? Again, we are stunned that even after the respondent counsel received the movant's motion to dismiss and filed a response thereto, he did not, even after assignment for the hearing of this motion was served on him, transmit his records to this Court; this leaves us no other option but to reasonably conclude that the respondent has no interest in its appeal and that its actions are tantamount to abandonment of its appeal.

The respondent has argued that it has fully complied with every statutory step for the completion of an appeal before this Court and that lateness to transmit the records to this Court is not a ground for the dismissal of an appeal but a thorough review of our laws compels us to disagree. Our Civil Procedure Law, Section 51.11 states that: ***the clerk of the court from which the appeal is taken shall make up a record containing certified 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. He shall transmit this record with a copy of the appeal bond to the appellate court within ninety days (90) after rendition of judgment. The clerk of the appellate court shall docket the record forthwith and forward a receipt to the clerk who transmitted it.***

One may argue that the statute cited does not speak to whether an appeal should be dismissed if the records are not transmitted to this Court in ninety (90) days, and that the statute says the clerk and not the respondent/appellant should transmit the records to this Court. However, this Court, in the case Nat'l Housing & Savings Bank v. Gordon, 35 LLR 323 (1998), dismissed an appeal after the respondent's failure to transmit his records to this Court in ninety (90) days as prescribed by statute, holding that: ***"where defendant excepts to an adverse judgment, prays for an appeal, and files an approved bill of exceptions and a legal appeal bond, thus depriving the lower court of jurisdiction, but defendant does not have the records sent to the appellate court, the appellate court will grant a petition by the successful party below to have the judgment of the lower court enforced."***

This Court in the case mentioned supra further held that: ***"even if a failure to have the records of the appeal transmitted to this court is not a statutory ground for dismissing an appeal, every court has right to dismiss any cause for abandonment, either as to a plaintiff or an appellant, and no reasonable mind can say that the dismissal is unjustified when in fact without it a defendant or an appellee will be left without justice,***

either to be discharged from a complaint or to have the lower court judgment in favor of an appellee's enforced." Nat'l Housing & Savings Bank v Gordon, 35 LLR 323, (1988)

That the statute provides that the Clerk of court shall transcribe and transmit the records to the appellate court within 90 days after rendition of judgment; however, this Court has opined that the appellant is under a duty to superintend the transcription of the records of the case to the appellate court.

That in the instant case, the respondent having failed to superintend the transcription of the records for eighteen (18) months after the final judgement in the court below, it is an abandonment of its appeal.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss is granted and the appeal is 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 ruled against the respondent. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR JIMMY SAAH BOMBO OF THE CENTRAL LAW OFFICES APPEARED FOR THE MOVANT. COUNSELLOR AARON KPARKLIN APPEARED FOR THE RESPONDENT.