

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS MARCH TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOH .....CHIEF JUSTICE  
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

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Praise O. Tony Lawal of the City of Monrovia, Montserrado )  
County, Liberia ..... Movant )  
)  
Versus ) MOTION TO DISMISS  
) APPEAL

The Intestate Estate of James A. Gittens, represented by and )  
thru its Administrators and Administratrix, A. Lorenzo Gittens, )  
Jr., and A. Rudolph Gittens, of the City of Monrovia, )  
Montserrado County, Republic of Liberia.....Respondent )

GROWING OUT OF THE CASE:

The Intestate Estate of James A. Gittens, represented by and )  
its Administrators and Administratrix, A. Lorenzo Gittens, Jr. )  
and A. Rudolph Gittens, of the City of Monrovia, )  
Montserrado County, Republic of Liberia.....Petitioners )

Versus ) BILL IN EQUITY FOR  
) THE CANCELLATION OF  
Praise O. Tony Lawal of the City of Monrovia, Montserrado ) LAND DEED  
County, Liberia .....Respondent )

HEARD: MARCH 25, 2024

DECIDED: MAY 23, 2024

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

This motion to dismiss is before this Court from a ruling made by the Sixth Judicial Circuit Court, Montserrado County on August 17, 2022, in a Bill in Equity for the cancellation of land deed proceedings case in which the trial judge ruled against the Intestate Estate of James A. Gittens, respondents herein.

The facts as alleged by the movant are that the Intestate Estate of James A. Gittens, represented by its Administrators and Administratrix A. Lorenzo Gittens, Jr., and A. Rudolph Gittens filed a petition for a Bill in Equity for the cancellation of land deed against one Praise O. Tony Lawal, Movant herein, praying the court to cancel the respondent's purported land sale deed made by the respondents in their own name alleging that the said deed was fake and fraudulently manufactured.

The petition was heard by the trial court and the trial court ruled against the petitioner denying the petitioner's petition ruling that it would be contrary to the spirit of fairness, justice, and right dealing, if the court were to grant the petitioner's petition and cancel the respondent's deed. The respondent further excepted to the trial court ruling and announced an appeal therefrom on August 17, 2022.

The respondent filed an approved Bill of exceptions on August 25, 2022, and subsequently filed their appeal bond and notice of completion of appeal on the 26<sup>th</sup> day of October 2022.

The movant filed this motion to dismiss before this Court on grounds that the respondent subsequently filed both their appeal bond and filing and service of a notice of completion of appeal outside the statutory period as prescribed by law.

The certified records before us reveal that the respondent's counsel filed a motion for the enlargement of time to enable him file his appeal bond and notice of completion of appeal, but the motion was not resisted and was never heard by the court below and therefore, the issue raised in the motion was not traversed nor passed upon by the judge.

The sole question determinative of this case is whether this Court is legally situated to sustain the movant's motion to dismiss the respondent's appeal where the court below failed to pass on the issues raised by the motion for enlargement of time? We do not think so.

From the records before us, it is without doubt that the respondent's notice of completion of appeal was filed beyond the statutory period; however, the respondent filed a motion for enlargement of time in which he set out justification for his lateness. The motion for enlargement of time under Chapter 1.7 (2) of the Civil Procedure Law which is largely subject to the discretion of the trial judge ought to have been heard and determine as to whether the said motion for enlargement of time had legal substance. The said Chapter 1.7 (2) of our Civil Procedure Law provides: **When under this title or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, except as otherwise provided by law, at any time in its discretion: (a) order the period enlarged if application is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the prescribed period permit the act to be done when the failure to act was the result of excusable neglect.** The trial judge was under legal duty to hear the motion for enlargement of time and make a determination as to whether or not the averment contained therein amounted to excusable neglect. That absent the hearing on the motion for enlargement of time, the Supreme Court declines to make a determination on the motion to dismiss.

The failure of the court to hear the motion cannot be attributed to the respondent. The error, neglect or omission of the court is not the fault of either party and therefore the party cannot be made to suffer the attending consequences. In addition, the records further revealed that the movant herein and respondent in the motion for enlargement of time failed to resist the motion for enlargement of time and it is our law that pleadings not resisted are deemed admitted. Civil Procedure Law, Rev. Code 9:8.3.

In the instant case, the failure of the respondent herein to file its appeal bond and notice of completion of appeal within the statutory period may have had justifiable reason or not, which should have been determined by the court below. The movant herein failure to resist the respondent's motion for enlargement of time in the court below also amounts to admission to the averments contained in the said motion for enlargement of time and this Court in the interest of justice cannot dismiss the said appeal based on the facts and circumstances of this case.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss is hereby denied and the case remanded to the court below for hearing of the motion for enlargement of time. The Clerk of this Court is hereby ordered to send a mandate to the judge presiding in the court below to resume jurisdiction over this case and give effect to this Judgment. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR J. JOHNNY MOMOH APPEARED FOR THE MOVANT. COUNSELLOR M. WILKINS WRIGHT APPEARED FOR THE RESPONDENT.