

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS MARCH TERM, A.D. 2025

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
BEFORE HER HONOR: CEANEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE

Abdullah Sonnie and Sadia Fon.....Movants)
)
Versus) MOTION TO DISMISS
)
Peter King et.al.....Respondents)
)
GROWING OUT OF THE CASE:)
)
Peter King et.al.....Appellants)
)
Versus) APPEAL
)
Abdullah Sonnie et al.....Appellees)

Heard: March 18, 2025

Decided: August 14, 2025

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The parties before this Court for the determination on this motion to dismiss an appeal, are Abdullah Sonnie and Sadia Fon, the movants and Peter King et. al, the respondents herein.

The records certified to this Court show that on June 13, 2024, the final ruling of the trial judge of the Monthly and Probate Court for Montserrado County was delivered, granting the petition filed by the movants to amend letters of administration by removing Peter King et. al, the respondents herein as administrators of the Intestate Estate of Robert King, whereupon, the respondents noted exceptions to this final ruling and announced an appeal to the Full Bench of the Supreme Court.

It is undisputed, that on June 21, 2024, the respondents filed their approved bill of exceptions and thereafter filed an appeal bond and on July 4, 2024, completed the mandatory steps under the appeal statute by the service and filing of their notice of completion of appeal, thereby placing their appeal legally before the Supreme Court.

However, on November 24, 2024, the movants filed before this Court, a four-count motion to dismiss the respondents’ appeal, arguing essentially that although the respondents completed all of the mandatory steps under Section 51. 4 of the appeal statute for the perfection of their appeal, notwithstanding they failed to superintend the transcription of the records to this Court for a period spanning approximately eight (8) months, which inaction,

they alleged is tantamount to an abandonment of their appeal, thereby constituting a legal ground for the dismissal of the appeal.

Four (4) months after the filing of the said motion to dismiss, that is, on March 31, 2025, the respondents filed an eight-count resistance thereto contending therein that they did superintend the transcription of the records in August, 2024 by making payment to the clerk of the trial court; that upon receipt of the motion to dismiss, the respondents did a follow up with the clerk of the lower court to inquire as to the status of the transcription of the records and discovered at that time, that the clerk having omitted to include in the records the appeal bond, this contributed to the delay in the transcription of the records to this Court; that the transcription of the records is the sole responsibility of the clerk of the lower court from which the appeal is taken; hence, the respondents having superintended the transcribing of the records by making payment to the clerk, they (respondents) cannot be held liable for the failure of the clerk of the lower court to transcribe the records to the Supreme Court; and that failure to transcribe the records is not a statutory ground for the dismissal of an appeal. The respondents therefore prayed this Court to deny the motion to dismiss and proceed to hear their appeal on its merits.

The Civil Procedure Law, Rev. Code 1:51.11 provides that: “*The clerk of the court from which the appeal is taken shall make a record containing certified copies of all the writs, returns, notices, pledges, motions, applications, certificates, minutes, verdicts, decisions, rulings, orders, opinions, judgments, bill of exceptions, and all other proceedings in the case. He shall transmit his record with a copy of the appeal bond to the appellate court within ninety (90) days 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.*”

In upholding the provision of the statute quoted *supra*, the Supreme court has held in numerous cases that the failure of the clerk of the trial court to forward the records on an appeal to the Supreme Court within ninety days, as required by statute, is not attributable to neglect of the appellant, if he has exerted every effort to have the records transmitted within the time prescribed by law; and the clerk’s failure does not under the circumstances constitute a basis for dismissal of the appeal; that the Supreme Court will rarely dismiss a case because of the lateness of the records reaching it when all of the other requirements have been met; that it is the responsibility of the clerk of the trial court, and not the appellants, to transcribe and transmit the records, especially after the respondents/appellants had superintended the records; and that the only grounds upon which an appeal can be dismissed are those specified by statute. *The Intestate Estate of A.B. Mars v. Alexander R. Freeman and Einaine Freeman*, Supreme Court Opinion, March Term A.D. 2023; *Gbartoe et.al v. Doe*, 40 LLR 150, 156 (2000); *Brown v. General Construction, Inc.*, 40 LLR 284, 286 (2000); *Liberia Telecommunications Corp v. Tyler*, 37 LLR 223, 225 (1993).

The respondents have relied on, and rightly so, this provision of the appeal statute and a litany of Opinions of this Court to include *Liberia Telecommunications Corps v. Tyler*, 37 LLR 223, 225, (1993), where this Court held “the failure of the clerk of the trial court to transcribe the records on an appeal to the Supreme Court within ninety days, as required by statute, is not attributable to neglect of the appellant, if he has exerted every effort to have

the records transmitted within the time prescribed by law, and the clerk's failure does not under any circumstances constitute a basis for the dismissal of the appeal," and have argued fervently that the transcription of the records to this Court is the sole responsibility of the clerk of the lower court from which the appeal is taken; hence, as per the dictates of the appeal statute, the respondents having paid the clerk to transcribe the records, they (respondents) cannot be held liable for the failure of the clerk of the lower court to transcribe the records to this Court.

Our review of the respondents' resistance to the motion to dismiss reveals that the respondents have alleged in counts 5 and 6 that they made payment to the clerk of the trial court as a means of superintending the transcription of the records to this Court. This allegation was never denied nor rebutted by the movant. This Court has held in a long line of Opinions that allegations not denied are deemed admitted. *In Re: Contempt Proceedings Against Daniel Tubman et al*, Supreme Court Opinion, October Term, A.D. 2022; *TIC v. MOJ*, 42 LLR 174, 178 (2004). Hence, the movant's failure to deny or rebut the allegation that the respondents paid the clerk to transcribe the records, is deemed an admission that the respondents indeed made payment to the clerk of the lower court for the transcription of the records to this Court. Moreover, a further review of the records reveals that the clerk of the trial court transcribed the records to this Court on February 25, 2025, more than three months after the filing of the present motion to dismiss appeal, substantiating the respondents' allegation that they did superintend the transcription of the records, but it was the negligence of the clerk of the trial court which led to the late transcription of the records to this Court.

Further, it is undisputed by both the movant and respondent that the mandatory requirements necessary for the completion of an appeal as provided for under Section 51.4 of the Civil Procedure Law were fully complied with by the respondents; that the said requirements are:

- a. Announcement of the taking of an appeal;
- b. Filing of the bill of exceptions;
- c. Filing of an appeal bond; and
- d. Service and filing of the notice of completion of appeal

Notwithstanding the statutory grounds for the dismissal of an appeal, this Court has opined in several of its Opinions that "where the appellant notes exceptions to an adverse judgment, prays for an appeal and files an approved bill of exceptions and a legal bond, thus depriving the lower court of jurisdiction, but the appellant does not superintend the records to the appellate court within the timeframe as required by law, the appellate court will dismiss the appeal and grant a petition by the successful party below to have the judgment of the lower court enforced especially where the failure of the appellants/respondents to transmit the records amounted to an abandonment of the appeal". *Elizabeth Marsh v. The United Muslims*, Supreme Court Opinion, October Term, A.D. 2024.

Hence, the records having established that the clerk of the trial court transcribed and transmitted the records, this confirms that the respondents did pay the clerk of the trial court to transcribe and transmit the records as a means of superintending the appeal records, but

it was due to the negligence of the clerk which delayed the transcription and transmission of the records to this Court, the latter is not inclined to dismiss the appeal.

Before concluding this Opinion, this Court mandates the Office of the Court Administrator to conduct an investigation into the circumstances that led to the delay by the clerk of the Monthly and Probate Court for Montserrado County in transcribing the records to this Court, and if found wanting, to take appropriate administrative action.

We must also warn clerks of the lower courts to be meticulous in complying with the law where transcription and transmission of the records have been superintended by the appellant as failure to perform their tasks with the utmost diligence will lead to stringent administrative actions from this Court.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal is hereby denied and the appeal is ordered proceeded with on its merit. Costs are to abide final determination of the appeal. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors James N. Gilayeneh, Jr., Joseph P. Gibson and M. Wilkins Wright appeared for the movants. Counsellor Amara A. Kanneh appeared for the respondents.

Motion denied.