

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. YUOHCHIEF 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: CEATNEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE

Gabriel C. Gweh and Marron Y. Gweh of the City of Paynesville,)
Montserrado County, Republic of Liberia.....Movants)
)
Versus) MOTION TO
) DISMISS
Augustine C. Jah also of the City of Paynesville, Montserrado County,)
Republic of Liberia.....Respondent)
)
GROWING OUT OF THE CASE:)
)
Augustine C. Jah of the City of Paynesville, Montserrado County,)
Republic of Liberia.....Appellant)
)
Versus) APPEAL
)
Gabriel C. Gweh and Marron Y. Gweh of the City of Paynesville,)
Montserrado County, Republic of Liberia.....Appellees)

Heard: March 18, 2025

Decided: August 14, 2025

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

In this motion to dismiss, Gabriel C. Gweh and Marron Y. Gweh, movants herein have prayed this Court to dismiss the respondent’s appeal on grounds that the respondent has abandoned his appeal, and that said abandonment warrants a dismissal by this Court. It is prudent that we consider the facts and circumstances of this case at bar to make a just and legal determination.

The facts relevant to this case as culled from the records before this Court reveal that this case originated from the Sixth Judicial Circuit, Civil Law Court “B” for Montserrado County.

The movant, plaintiff below filed an ejectment action against the respondent herein claiming that the respondent is illegally occupying a parcel of land that is rightfully and legally theirs.

The records show that after regular notices of assignments were issued out of the court for hearing and trial of the case, the respondent counsel, Counsellor David B. Gibson, Jr., appeared in court and prayed for continuance on grounds that he needed time to prepare his witnesses. The said motion was resisted, and arguments were heard, and the motion was denied by the trial court on grounds that since it was the plaintiffs (movants) who were by practice the first to produce witnesses, the defendant (respondent) counsel would have ample time to prepare his witnesses.

The records further show that the respondent counsel thereafter fully participated in the selection of the jurors and was in court when the movants' counsel presented his theory of the case to the jury. However, at the call of the case for continuation of the trial, neither the respondent nor his counsel appeared for the trial.

Several assignments were sent to the respondent re-assigning the case for continuation of trial, but the respondent and his counsel failed to appear for trial. The lower court construed the said absences of the respondent and his counsel as an abandonment of whatever defense they may have had against the movants and proceeded to hear the case pursuant to Rule Seven (7) of the revised rules of the Circuit Courts in Liberia which provides: *"The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial, shall file a motion for continuance, setting forth therein the legal reasons why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping with law, and its discretion. A failure to file a motion for continuance or to appear for trial after return by the Sheriff of a written assignment, shall be sufficient indication of the party's abandonment of a defense in the said case, in which instance the court may proceed to hear the plaintiffs side of the case and decide thereon or, dismiss the case against the defendant, and rule the plaintiff to cost, according to the party failing to appear. In no instance might a case be continued beyond the term for which it is filed and set down for trial, except upon a*

proper motion for continuance; provided, however, that should the business of the court be such that a particular case is not reached during the session, such case or cases shall be continued as a matter of course. Clearing the trial docket by the disposition of cases, shall be the foremost concern of the judge assigned to preside over the term.”

The court, after commencement of swearing in movants' witnesses, received a notice of withdrawal from Counsellor David B. Gibson, Jr. announcing his withdrawal from the said case. The court noted the withdrawal of Counsellor Gibson and ordered the movants to proceed with their production of oral and documentary evidence.

Upon the conclusion of the movants production of oral and documentary evidence, the jury returned a verdict of liable against the respondent and the trial court ruled confirming the said unanimous verdict of the jury and ordered the respondent ousted and evicted from the said property and ruled the costs of the proceeding against the respondent. The court then appointed a counsel to announce exceptions to the said verdict and announce an appeal on behalf of the respondent.

The final ruling of the court was rendered on April 14, 2021, to which ruling the appointed counsel noted an exception and announced an appeal on behalf of the absent counsel in open court. The Wright & Associates Law Firm, which is the law firm that respondent's counsel, Counsellor David B. Gibson, Jr. worked, proceeded to file a bill of exceptions, an appeal bond and a notice of completion of appeal on the movants on June 24, 2021.

The records also show that since the service of the notice of completion of appeal on June 21, 2021, by the respondent upon the movants, the respondent has failed and neglected to transcribe the records before this Court up to and including the calling of this case for argument before this Court.

When this case was called for argument before this Court, the respondent's counsel, Counsellor M. Wilkins Wright, surprisingly, requested this Court to make a submission on the

records, the said request was granted and he informed this Court thru the following submission on the records: *“Counsellor M. Wilkins Wright respectfully informs Your Honors that the Wright & Associates Law Firm is not aware of this case and that Counsellor David B. Gibson, Jr., handled this case but later resigned from the Wright & Associates Law Firm. At the time Counsellor Gibson handled this matter, he may have been with the Wright & Associates Law Firm. Since his resignation, no other lawyer in the Firm has participated in the case or otherwise handled it. Therefore, the Wright & Associates Law Firm respectfully request Your Honors to be discharged from representing the respondent and that any further communications in this matter be served on the respondent personally and he will identify his own counsel. Except the record can show otherwise or the respondent rehires the Firm, the Wright & Associates Law Firm disassociates itself from this matter. And respectfully submits.”*

The movants counsel resisted the above submission made by the respondent’s counsel: *“In resisting the submission just made by one of the counsels for the respondent, one of the counsels for the movants request Your Honors to deny the said submission as same is made in bad faith, in that on June 23, 2021, Counsellor Jospeh P. Gibson signed the appeal bond on behalf of the Wright & Associates Law Firm, and also on April 23, 2021, Counsellor M. Wilkins Wright filed a petition for a writ of error before Chambers Justice Joseph N. Nagbe, and the said petition was heard by Justice Yussif D. Kaba and a mandate was sent to the lower court to allow the Wright & Associates to perfect its appeal. A bill of exceptions, an appeal bond, and a notice of completion of appeal were filed in June of 2021, but the case file is still at the Civil Law Court and has not been forwarded to the Supreme Court. Wherefore, counsel for movants requests Your Honors to grant the movants motion to do justice to the movants. And respectfully submits.”*

The movants have relied upon Rev. Code 1:51.11 which provides: *“ the clerk of 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, bill 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 (90) days after rendition of judgment.”

This Court says, the provision of the statute cited by the movants is not ground for dismissing an appeal per se. However, each case will be treated upon its unique facts and circumstances. This case presents facts and evidence that will leave any reasonable mind to conclude that the respondent deliberately abandoned his case and as such the said motion to dismiss the appeal must be granted.

The records are clear that at the lower court, the respondent and his counsel failed to timely and properly pursue his case which led the court to render a default judgment against him on ground that he abandoned his case. The records further reveal that the same law firm from which the respondent counsel, Counsellor David B. Gibson, Jr. worked, filed a bill of exceptions, appeal bond and notice of completion of appeal on his behalf, but the firm has however failed in the last three years to have his records transcribed to this Court.

Moreover, what is significant in this case besides the submission made by the respondent counsel as quoted above is the fact that the respondent has provided no response in the records to show reasons why his appeal should not be dismissed and to refute the movants' argument. Even at the lower court, the respondent failed to provide any defense to the property subject of this dispute; the respondent has also failed to file any paper before this Court in his defense but instead try to engage in delay tactics.

We, therefore, do not have any valid legal reason to deny the dismissal of this appeal as the respondent failure to deny the averments contained in the movants' motion to dismiss his appeal or provide counter argument against the movants' argument is deemed an admittance to the said argument. Rev. Code 1:25.8.

This Court says, considering the facts and circumstances of this case in its entirety, the movants' argument that the respondent appeal should be dismissed due to abandonment is sound in law and in reasoning as the respondent has shown a total lackadaisical attitude towards this entire case from its inception till now and has shown total disregard to assignments issued out of the lower court and the assignments issued by this Court for the hearing of this matter.

We hold that while it is the responsibility of the clerk of the court from which the appeal is taken from to transcribe the records to the appellate court, the respondent/appellant's failure to defend his rights and interest by filing the appropriate papers and to timely pursue his appeal is certainly an abandonment of the said matter. *The Intestate Estate of the Gobbeh Kamara and Satta Kamara by and thru its Administrators, Musa Seimavual et al. v. The Intestate Estate of J. Lamark Cox Sr., by and thru its Administrator, J. Lamark Cox, Jr.*, Supreme Court Opinion, October Term 2023.

Moreover, the respondent was under a duty to superintend his appeal and see that all legal requisites are completed as this Court will not entertain a case legally deficient in its records. It is the duty of the appellant in appeals to see that documents relating to same are duly transmitted to the appellate court. Where the records are incomplete, the court, upon application, will dismiss the appeal." *Ross v. Minus*; 1 LLR 208, 209 (1887); *Manakeh v Toweh*, 32 LLR 207, 213 (1984).

Where a defendant excepts to an adverse judgment, prays an appeal, and files an approved bill of exceptions and a legal appeal bond, thus depriving the lower court of jurisdiction, but 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. *Manakeh v Toweh*, 32 LLR 207, 213 (1984).

The respondent having abandoned his appeal based on the facts and circumstances of this case; the appeal is hereby dismissed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the appeal is hereby dismissed. The Clerk of this Court is ordered to send a Mandate to the judge presiding in the court below to enforce its final ruling of April 14, 2021. Costs are ruled against the respondent. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLORS MOMOLU G. KANDAKAI AND PHILIP Y. GONGLOE APPEARED FOR THE MOVANTS. COUNSELLORS M. WILKINS WRIGHT, JOSEPH P. GIBSON AND JAMES N. GILAYENEH, JR. OF THE WRIGHT AND ASSOCIATES LAW FIRM APPEARED FOR THE RESPONDENT.

Motion granted.