IN THE HONORABLE SUPREME COURT OF THE REPUBLICOF LIBERIA, SITTING IN ITS OCTOBER 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
BEFORE HER HONOR: CEAINEH D. CLINTON JOHNSON…..ASSOCIATE JUSTICE

Reginald M. Holder, Sr., Richard F. Holder, Lagnfelt Holder and James Charles and all those acting under their authority ……Movants	)
Versus	) MOTION TO DISMISS) APPEAL
Mrs. Sando Pauline G. Holder of the USA, widow of the late S. Raymond Holder (nephew of Ethel Holder Bethune) and Anna Holder of the U.S.A. (niece of the late Ethel Holder Bethune, all represented by and thru their Attorney in-Fact Counsellor Benedict F. Sannoh, of the City of Monrovia ……..…….Respondents	)
GROWING OUT OF THE CASE:	)
Mrs. Sando Pauline G. Holder of the USA, Widow of the late S. Raymond Holder (nephew of Ethel Holder Bethune) and Anna Holder of the U.S.A. (niece of the late Ethel Holder Bethune, all represented by and thru their Attorney In-Fact Counsellor. Benedict F. Sannoh, of the City of Monrovia ……..…….Petitioners	) PETITION FOR) REVOCATION OF) EXTENDED LETTERS OF) ADMINISTRATION AND) PETITION FOR PROPER) ACCOUNTING
Versus	)
Reginald M. Holder, Sr., Richard F. Holder, Lagnfelt Holder and James Charles along with all those acting under their authority……Respondents	)

Heard: October 23, 2024 Delivered: December 19, 2024

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The records in this case reveal that the movants/appellees, Reginald M. Holder, Sr., Richard F. Holder, Lagnfelt Holder and James Charles, were respondents in a petition for revocation

of extended letters of administration and a petition for proper accounting filed in the Monthly and Probate Court for Montserrado County by the respondents/appellants/petitioner, Mrs. Sando Pauline G. Holder and Anna Holder of the USA.

On April 22, 2024, the Judge presiding over the case by assignment, His Honor U-Jay W. H. S. Bright, handed down a final ruling, adjudging the respondents, movants now before us, not liable and ordering that the movants be reinstated to their positions as administrators of the estate of the late Ethel Holder Bethune. The respondents/appellants noted exception and announced an appeal.

Movants/appellees have prayed this Court to dismiss the appeal for failure of the respondent/appellants to perfect their appeal within the statutory period. Movants allege that final judgment was rendered on April 22, 2024, and that the bill of exceptions should have been filed not later than May 2, 2024, but that the respondents/appellants did not present their bill of exceptions to the Judge until May 7, 2024, and that the respondents/appellants perfected their appeal after the sixty days prescribed by statute.

The respondents/appellants countered that the mixed up in dates was an error as the final ruling was not made available until April 26, 2024, and that the ten (10) day period after April 26, 2024 for the filing of the bill of exceptions consistent with the statute was May 6, 2024, and it was on this date that counsel for the respondents took the bill of exceptions for the Judge's approval, but the Judge attending a conference away from the court asked the counsel for the respondents/appellant to leave the bill of exceptions with the clerk of the probate court. The assigned trial judge thereafter, on May 7, 2024, called the counsel for the respondent, stating that he was not going to approve the bill of exceptions because it contained some objectionable language.

The Judge's decision declining to approve the bill of exceptions prompted the respondents/appellants to file a petition for a writ of mandamus before the Chambers Justice, petitioning him to compel the trial Judge to approve the bill of exceptions; the Chambers Justice, based on the concession of the parties in a conference with him, sent a mandate to the court below, ordering that Judge Bright approves the appellants' bill of exceptions *nunc pro tunc* as of the date it was first filed.

Firstly, there is a dispute as to when the bill of exceptions was presented to Judge Bright for approval and filing. The movants contend that considering that the counsel for the respondents/appellants admits receiving the Judge's ruling on April 26, 2024, the bill of exceptions should have been filed by May 6, 2024; however, it was presented to the Judge

for his approval on May 7, 2024, a day after the bill of exceptions is required filed by statute, and that the respondents/appellants having filed its bill of exceptions after ten days as required by statute, their appeal was dismissible.

Counsel for the respondents/appellants in his argument before the Court, stated that the date of May 7, 2024, in his resistance was an error as it is used interchangeably with May 6, 2024; that May 6, 2024 was the actual date the bill of exceptions was presented to the court for the judge's approval and filing, but the judge being out attending a conference, and upon him being called by counsel of the respondents, he instructed that the counsel left the bill of exceptions with the clerk of the court; that it was on May 7, 2024, that the Judge, called to inform counsel for the respondents that he was not approving the bill of exceptions because of the derogatory language used in the bill of exceptions. Counsel for the respondents/appellants insists in his argument before us that the bill of exceptions was filed on the tenth day, May 6, 2024.

This Court says that a perusal of the court's file shows that the Judge had refused to approve the bill of exceptions and have same filed on May 6, 2024 by the clerk of the probate court. As the movants have presented no evidence of the date the bill of exceptions was presented to the Judge or an affidavit from the Judge countering otherwise as to the date the bill of exceptions was presented to him, it will be presumed by this Court that the bill of exceptions was filed on May 6, 2024, as the court's records reflect, and therefore the Mandate of the Chambers Justice ordering that the bill of exceptions be filed *nunc pro tunc* means it took effect as of May 6, 2024.

The movants state that in addition to the respondents/appellants failure to file the bill of exceptions as per the statute, the respondents/appellants failed to file an approved appeal bond and serve and file a notice of completion of appeal on the movants within sixty days as required by the appeal statute and this makes the appeal dismissible by the Supreme Court as the Court does not have jurisdiction in the absence of the respondents/appellants adhering to the appeal requirements.

The appeal bond, the movants further contend, besides being served and filed on July 22, 2024, that is after sixty days when the final ruling was delivered by the lower court, is in fact irrelevant and does not relate to, refer to, or apply to the movants as far as indemnification in this matter is concerned because the said bond states the following:

> "That we, Sando Holder and Anna Holder, the beneficiaries by and thru its Attorney-in-fact, Cllr. Benedict F. Sannoh, Appellant/Principal and Sky International Insurance Corporation, Surety, do hereby jointly, severally and firmly bound ourselves, legal representatives, assigns and successors-in-interest unto THE WITHIN NAMED

APPELLEE THE MANAGEMENT OF THE LIBERIA WATER AND BOTTLING COMPANY to the sum of US$5,000.00 (Five Thousand United States Dollars) to indemnify the said Appellee or its legal representative(s) for all damages, costs and expenses as it may incur during the duration of this appeal should the final judgment rendered by the Monthly and Probate Court, Montserrado County be affirmed and confirmed by the Honorable Supreme Court of the Republic of Liberia. (Emphasis Supplied). See Appeal Bond page one paragraph one (1) at the bottom of the page."

As the movant has stated, it is clear from the above quoted portion of the appeal bond that the bond the respondents presented is of no relevance to the case and do not indemnify the appellee in any aspect as is required by the appeal statute. The indemnitees/movants for whom the bond was filed, to indemnify them from any costs relating to the appeal, surely cannot claim on the bond. This Court has held that counsels for parties are under an obligation to diligently and properly supervise their clients' cases, especially when these cases on appeal are guided by strict compliance with the appeal statute Mensah v. Liberia Battery Manufacturing Corporation*, 36* LLR 879, 885 (1990),*Gold Diamond Mines and Energy Workers Union v. Nation Union of Hospitality* et al., Supreme Court Opinion, March Term, A. D.2024; *Monrovia Oil Trading Corp. v. N.C. Sanitors,* Supreme Court Opinion, March Term, A. D.2023. From a reading of the bond, the respondents/appellants have not bounded themselves to the movants/appellees for an amount to cover the movants' costs and expenses as it may occur during the period of the appeal, but rather it was the LIBERIA WATER AND BOTTLING COMPANY, which is not a party in this case.

In this case, however, since it is the respondents that filed the petition in the probate court below and their petition was denied, their appeal bond to this Court would be only to cover the costs of court, and in which case this court has often hesitated to dismiss an appeal in this regard. Besides, as counsel for the respondents contends, the movants had three days to file exception to the bond in the court below as required by the Civil Procedure Law, Rev. Code 1: 51.8; the movants, however, when served the bond on July 22, 2024, they filed their exceptions to the movants' bond within the three day statutory, that is on July 25, 2024, but their exceptions was filed in the Supreme Court instead of the trial court, and this is contrary to the appeal statute which requires exceptions to bonds filed to be done in the trial court once the statutory time for completion of the appeal has not expired.

Because of the constitutional emphasis placed on a party's right to appeal, our Civil Procedure Law, Rev. Code 1: 51.8 provides that a failure to file an appeal bond within the specified time (60 days) shall be a ground for dismissal of the appeal; *however, an insufficient bond, when challenged by the appellee, may be made sufficient at any time during the period before the trial court loses jurisdiction of the action; (emphasis ours)*. This court has also held that an

appellee who fails to file exceptions to an appeal bond in the court below within three days after the appeal bond is served upon him and there remains time before the appeal process has ended, or a notice of completion of appeal has not been served and filed, constitutes a waiver of the appellee's objections and said exceptions to the bond cannot be filed in the Supreme Court. *Kerpai et al. v. Kpene,* 25 LLR 422, 430 (1977); Griffiths v. Wariebi, 35 LLR 110, 117 (1988); *Inter-Con Security Systems Inc v.* Phillips and Tarn*, 40 LLR 30, 36 (2000).*

In this case, the Court sees that the challenges to the respondents/appellants bill of exceptions, appeal bond and notice of completion of appeal are all based on conflict with calculations by the parties as it relates to the dates of the respondents perfecting the appeal processes. Our review of the records shows that the respondents had up to August 20, 2024, to complete their appeal.

The records of the case reveal that the final ruling of the probate court dismissing the respondents petition for proper accounting and revocation of letters of administration by the movants was handed down on April 22, 2024; a counsel appointed on behalf of the absent respondents excepted to the ruling. The counsel for the respondents alleged that the Judge's ruling was available and given to them on April 26, 2024. Under ordinary circumstances, the statutory time for filing the bill of exceptions would have than been May 6, 2024, and the bond and notice of completion of the appeal, June 25, 2024.

The respondents state, however, that the assigned Judge called on May 7, 2024, informing their counsel that he was not approving the bill of exceptions because of the offensive language contained in the document; that this led to the counsel for the movants filing before the Justice in Chambers a petition for a writ of Mandamus on May 8, 2024 to compel the Judge to approve the bill of exceptions and have same filed.

From the records of the case, on May 10, 2024, the Chambers Justice invited the parties to conference for May 16, 2024, at Chambers and as admitted by the parties, they agreed to come up with a stipulation to avoid issuance of the writ and thereby a delay of the appeal process; that counsels for the parties presented a stipulation on June 28, 2024, agreeing that the Chambers Justice instruct the Judge in the court below to approve the bill of exceptions *nunc pro tunc* as of the date the bill of exceptions was first presented, and same was signed by counsels for both parties and approved by the Chambers Justice. Thereafter the stipulation was filed with the Clerk of the Supreme Court on July 2, 2024, and he had same sent down to the probate court, on July 3, 2024. The Mandate of the Chambers Justice was read in open court, on July 11, 2024; that in obedience to the Mandate of the Chambers Justice, the bill of exceptions was approved by His Honor Judge Bright *nunc pro tunc o*n July 22, 2014. Sequel

to the approval of the bill of exceptions, the respondents filed their appeal bond on July 22, 2024, and notice of completion of appeal on July 30, 2024.

However, before the respondents filed the notice of completion of appeal in the court below on July 30, 2024, and served same on the movants on July 31, 2024, the movants had on July 25, 2024 filed their motion to dismiss the respondent's appeal and a motion to dismiss the bond on July 28, 2024, before the Supreme Court.

Because of the dichotomy regarding the legal period of the appeal, this Court must revert to the records of this case to determine its jurisdiction to hear the appeal.

We note from the records that the final ruling of the case by the probate court was April 22, 2024, and in which case under normal circumstances, the bill of exceptions was to have been filed by June 4, 2024, and perfection of the appeal up to June 21, 2024. The respondents says that the Judge did not deliver copies of the final ruling on the date the final ruling was delivered; that the copies were made available to their counsel on April 26, 2024, and that made the perfection of their appeal beyond June 21, 2024.

This argument of parties coming before us contesting dates that an appeal began to run because a judge failed to give each party a copy of the final ruling on the date of delivery of the ruling, and contention on the day and date the ruling was made available to the parties is becoming a recurrent issue. This issue of the time the copies of the rulings are made available to the parties is often controversial because the appellees /movants often based their motion to dismiss the appellants' appeal on the date the ruling was delivered, although copies were not given to the parties on the delivery date, or on the day and date the appellees received their copy of the final judgment.

This Court says, where counsel for the respondents in this case stated that a copy of the final ruling was made available to him on April 26, 2024, and the movants have shown no evidence as to when the court made copies available to the appellant, and because this Court is not in a position to take evidence to substantiate when the ruling was made available, we hold that where a final ruling is not delivered to the parties on the date and day of rendition of the ruling, the appeal statute will began to run on the day appellants received their copy off a final ruling, except where it is shown that the trial court gave notice of the availability of the ruling to the parties.

Since there is no evidence that the respondents were made aware of the availability of the final ruling and they failed to take delivery of their copy, a motion to dismiss the respondents/ appellant's appeal based on the date the movants received copy of the ruling is untenable.

The records reveal that the final ruling was made available to the respondents on April 26, 2024, the end date for filing of the bill of exceptions would have been May 6, 2024, and the entire appeal process to end June 25, 2024. However, the respondents says that Judge Bright refused to approve the bill of exceptions because of the denigrating language said to be placed in the bill of exceptions, and this prompted counsel for the movants to file before the Justice in Chambers a petition for mandamus on May 8, 2024. Legally, the appeal statute continued to run until the Chambers Justice issue a stay order. The statute therefore began to run from April 26, 2024, the day when respondents received the Judge's ruling, and it continued until May 16, 2024 when the Chambers Justice, issued out a notice for conference with the parties and during which conference the parties agreed to enter a stipulation to avoid the issuance of the writ which would have delayed the case. This understanding in effect tolled the statute. This means than that the appeal statute ran from April 26 – May 16, 2024, that is twenty (20) days into the appeal period, leaving a period of forty-two (40) days left for the respondents to complete their appeal. Since this Court has held that computation of the appeal period is halted upon a stay by the Justice in Chambers and lifted when the Mandate of the Chambers Justice is read in open court below, this gave the appellant time, (in this case forty more days) to perfect their appeal. This clarity of the law was recently espoused in *Kailondo Peteoleum v. Guaranty Trust Bank*, Supreme Court of Liberia Opinion, October Term, 2022.

The stipulation was filed and both of the parties signed same with the Chambers Justice affixing his approval on June 28, 2024. A Mandate was subsequently sent to the probate court with the stipulation attached, and this Mandate was read in open court on July 11, 2024. The reading of the Mandate of the Justice in Chamber on July 11, 2024 lifted the stay on the appeal period and the respondents therefore had forty days to complete their appeal *nunc pro tunc.*

The records show that as per the Chambers Justice's Mandate, the assigned Judge Ujay Bright approved the bill of exceptions as mandated, the respondents presented their appeal bond on July 16, 2024, and it was approved by the Resident Judge, Necular Edwards, on July 22, 2024, and same served on the movants the same day, and on July 31, 2024, the respondents had the notice of completion of the appeal served on the movants, who had by then, on July 25, 2024, filed before the Supreme Court a motion to dismiss the respondents/appellants appeal on the ground that the respondents failed to file their appeal bond and notice of completion of appeal within the statutory period of sixty days.

This Court says that the respondents having forty days left to complete their appeal as of July 11, 2024, when the Chambers Justice's Mandate was read in the Probate Court, this means

that they had up to August 20, 2024 to perfect their appeal; that the respondents having perfected their appeal by the serving of the notice of the completion of appeal on the movants on July 31, 2024, the respondents were within the remaining forty days of the appeal period. Therefore, the movants' contention that the respondents had up to June 26, 2024 to have completed their appeal within the appeal period of sixty days allowed by statute is untenable.

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

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR M. WILKINS WRIGHT OF THE WRIGHT AND ASSOCIATES LAW FIRM, INC. APPEARED FOR THE MOVANTS. COUNSELLOR BENEDICT F. SANNOH OF SANNOH AND PARTNERS APPEARED FOR THE RESPONDENTS.