

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2026

BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HER HONOR: CEANEH D. CLINTON-JOHNSON.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : BOAKAI N. KANNEH.....ASSOCIATE JUSTICE

Urban Marketing by and thru Allen Brown of the City)
of Monrovia, LiberiaMovant)
)
Versus) MOTION TO DISMISS
) APPEAL
Mr. Cedrick Illunga of the City of Monrovia, Republic)
of Liberia.....1st Respondent)
)
and)
)
The Intestate Estate of the late John Hilary Tubman)
Represented by its administratrixes Malita Tubman,)
Elizabeth Tubman and one Kevin Walters of the City of)
Monrovia, Liberia 2nd Respondents)
)
GROWING OUT OF THE CASE:)
)
The Intestate Estate of the late John Hilary Tubman)
Represented by its administratrixes Malita Tubman,)
Elizabeth Tubman and one Kevin Walters of the City of)
Monrovia, Liberia Movant)
)
Versus) MOTION TO RESCIND
)
Urban Marketing by and thru Allen Brown of the City)
of Monrovia, LiberiaRespondent)

Heard: March 31, 2026 Decided: August 28, 2026

MR. JUSTICE KANNEH DELIVERED THE OPINION OF THE COURT

The instant motion to dismiss appeal filed by Urban Marketing by and thru Allen Brown, seeks to dismiss the appeal proceedings initiated by both Mr. Cedrick Illunga and the Intestate Estate of John Hilary Tubman by and thru its administrators Malita Elizabeth Tubman and Kelvin Walter, 1ST and 2nd respondents respectively, for their failures to adhere to the mandatory requirements of the appeal statute for the perfection of an appeal. Precisely, the movant has vehemently opposed the hearing of their appeal by this Court of *denier resort* on grounds that the respondents having announced appeal and filed separate bill of exceptions in consonance with the timeframe as dictated by the appeal statute, failed to file their appeal bonds and notice of completion of appeal. Hence, the movant has insisted that consistent with the holding of this Court in *Wright v. White*, 38 LLR 366, 369 (1997), the failure to timely serve and file an approved appeal bond and serve and file a notice of completion of appeal is a ground for the dismissal of an appeal.

To the contrary, the 1st respondent, Mr. Cedrick Illunga, filed his resistance to the motion to dismiss appeal on March 30, 2026, contending *inter alia* that on November 28, 2025, a final ruling was rendered by the trial judge of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, in favor of Urban Marketing in a declaratory judgment action filed by Urban Marketing before the said court; that on the self-same date of November 28, 2025, the 1st respondent filed a motion to rescind the trial court's ruling and same was granted on January 9, 2026. Thus, the trial judge having vacated his ruling and relieved the 1st and 2nd respondents of the judgment emanating therefrom, there is no legal basis for the perfection of an appeal.

For its part, the 2nd respondent did not file a resistance to the motion to dismiss appeal and brief before this Court. Rule IV, Part 6, under "Failure of Counsel to Appear" says in part that: "...If the parties fail to appear but have filed briefs, the Court may open the records and at its selection render a judgment with or without opinion". "If a party appears, and the other party does not appear, but files a brief, the Court will proceed to hear the argument of the party appearing, and render its decision on the basis of the briefs filed and the argument of the party appearing. If one party appears, and non-appearing party has not filed a brief, the non-appearing counsel shall be given forty-eight (48) hours to file a brief and appear for hearing of the case, and the party shall be simultaneously informed of the non-appearance of this counsel and the postponement of the hearing for forty-eight (48) hours. If, when the case is again called for hearing, the party or counsel again fails to appear or file a brief, the Court shall proceed to hear the argument of the appearing party and rule thereon." *Monrovia Oil Trading Corporation (MOTC) v. NC Sanitors, Inc*, Supreme Court Opinion, October Term 2023.

Recourse to the records reveal that the final ruling of the trial judge in the declaratory judgment action before the lower court was delivered on November 28, 2025; that following the delivery of the final ruling by the trial judge, both the 1st and 2nd respondents noted exceptions to the said ruling and filed separate bill of exceptions which were approved by the trial judge on different dates; specifically, the 1st respondent filed its bill of exceptions on December 8, 2025 and the 2nd respondent filed its bill of exceptions on January 12, 2026; and that it was after the approval of the bill of exceptions filed by both the 1st and 2nd respondents that the trial judge proceeded to rescind his ruling.

This Court takes judicial notice of the law that the trial judge can rescind his ruling during term time as the purpose of a motion to rescind is to call the attention of the

judge to inadvertence in or misapplication, misinterpretation and misconstruction of the facts and/or the law in any particular case. It goes to the substance of the matter which is being determined by him. *Joseph Feahn v. Her Honor Mardea T. Chenoweth et. al*, Supreme Court Opinion, March Term 2023. However, a trial judge cannot legally grant a motion to rescind his final ruling following the approval of the bill of exceptions filed by the appealing party.

The Supreme Court has held in a long line of cases that “A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling or other matter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court. *Civil Procedure Law Revised Code: 1: 51.7; Liberia Sheng Xin De Yuan v. Mr. John P. Saah*, Supreme Court Opinion, March Term 2023.

The Civil Procedure Law Rev., Code 1:51.16 Dismissal of an appeal for failure to proceed, provides, that “an appeal may be dismissed by the trial court on a motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal to file an appeal bond or to serve notice of completion of appeal as required by statute”. *Mr. Mohammed Dunzo v. Marima Fofana Beyla*, Supreme Court Opinion, March Term 2025.

In the case, *ACTIVA International Insurance, thru its Managing Director, Mr. Austin Gahr v. His Honor James E. Jones, Judge, Debt Court for Montserrado County, Republic of Liberia and Hans Armstrong et. al*, Supreme Court Opinion, October Term 2025, this Court held thus:

“Once a trial judge receives and signs a bill of exceptions approving same within the statutory period, his authority to execute the judgment is removed unless and until pursuant to a mandate of the Supreme Court. *Housseini v. Kaydea*, Supreme Court Opinion, March Term, 2012.

The signing of the bill of exceptions by the trial judge is an approval of said exceptions taken by the appealing party against the ruling of the trial judge in the matter before the court and this takes the matter out of the trial court’s jurisdiction

and except upon a failure of the appealing party to proceed to perfect its appeal within the period allowed by statute which would ultimately render the said appeal dismissible, the trial court can no longer perform any action affecting the case, except ministerial acts of approving the appeal bond or entertaining a challenge, if there is any legally before it or serving notice of the completion of the appeal on the other party. Any acts done by the trial court after the signing of the bill of exceptions that are outside the scope of the appeal process without a mandate from the Honorable Supreme Court must be declared void.”

We affirm the holding in the above-cited case and hold that in keeping with this precedent, the trial judge could not have legally rescinded his judgment in the declaratory judgment action following the filing of the bill of exceptions by the 1st and 2nd respondents.

Moreover, it is also a settled principle in this jurisdiction that only strict compliance with the appeal statute confers jurisdiction on the Supreme Court of Liberia to entertain and delve into the merits of a matter certified for an appellate review. *David Gotoba v. LBDI*, Supreme Court Opinion, March Term, 2023; *Catakaw et al v. Karweh*, Supreme Court Opinion, March Term, 2010.

Hence, the respondents’ failure to file their appeal bonds and to serve and file their notice of completion of appeal within the sixty-day statutory period for the perfection of an appeal constitutes a ground for the dismissal of the appeal.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the motion to dismiss the respondent’s appeal is granted and the appeal is ordered dismissed as a matter of law. 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 give effect to the Judgment of this Opinion. Costs are ruled against the respondents. AND IT IS HEREBY SO ORDERED.

Motion granted.

When this case was called for hearing, the movant was represented by Counsellor Sayma Syrenius Cephus of the AFDASA Consultancy, Inc. The 1st respondent was represented by Counsellors J. Johnny Momoh of the J. Johnny Momoh and Associates Legal Chambers. No Counsel appeared for the 2nd respondent.