IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: ADINYIRA, JSC (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/22/2014

7TH NOVEMBER, 2017

ISAAC FRIMPONG ... PLAINTIFF/RESP/RESP/RESPONDENT

VRS

S. B. FACTURE ... DEFENDANT/ APPEL/APPLICANT/APPELLANT

JUDGMENT

PWAMANG, JSC:-

R 18 of the Court of Appeal Rules, 1997 (C.I.19) provides as follows;

18. Non-compliance with conditions of appeal

(1) Where the appellant has not complied with any of the requirements of rules 1.1 (4), 12 or 1.3 the Registrar of the court below shall certify these facts to tile Court, which may then order that tile appeal be dismissed with or without costs. ,

(2) If the respondent alleges that the appellant has failed to comply with a part of the requirements of rules 11(4), 12 or 13 and tile Court, is satisfied that tile appellant has so failed, it may dismiss the appeal for want of prosecution or make such other order as the justice of the case may require.

(3) An appellant whose appeal has been dismissed under this rule may apply by motion on notice that his appeal be restored, and the Court may order that tile appeal be restored upon such terms as it may think fit.

(4) A certificate of non-compliance of conditions imposed upon a would be appellant shall be in Form 11 in Part I of the Schedule.

On 27/10/2010 the appellant's appeal against the judgment of the High Court filed on 31/1/2002 was struck out by the Court of Appeal for non-compliance under R 18(1) of C.I 19. He applied pursuant to R 18(3) of C.I. 19 for the restoration of his appeal for it to be determined on the merits but on 13/12/2011 the Court of Appeal refused his application. From the record before us, it is apparent that at the hearing of the application to restore the appeal, there was conflicting evidence from the searches conducted by the parties as to whether the appellant had complied with the conditions of appeal as he claimed in his affidavit in support of his application. Whereas a search conducted by the appellant stated that there was no record of the settlement of the records, that of the respondent conducted on 22/2/07 indicated that the appellant had signed the bond for the appeal but had not paid for photocopies and binding. The Court of appeal held that appellant did not satisfy them that he had indeed fulfilled the conditions of the appeal at the time the appeal was struck out so on that ground they refused the application to restore the appeal.

It appears to us that the Court of Appeal did not advert their mind to the full ambit of R18(3) of C.I.19 which confers a discretion on the court to grant restoration of appeals which are dismissed even where the appellant did not as a matter of fact fulfil the conditions of appeal. We are of the view that if they did their approach to appellant's application would have been different. Because this matter has been pending for a

long time we have decided to assume the jurisdiction of the Court of Appeal pursuant to Article 129(4) of the Constitution and determine the application for restoration of the appeal. Our view of the matter is that since the appellant filed his Notice of Appeal on time, in fact 2 days after the decision of the High Court, and the search by the respondent indicates that he at least fulfilled part of the conditions of appeal, his constitutional right to appeal should not be taken away completely. In the circumstances, we allow the appeal and restore the Appeal filed on 31/1/2002 against the judgment of the Court of High Court dated 29/1/2002. Since it appears that the records of the High Court are not in order, we direct the Registrar of the High Court to issue fresh summons to settle the records of the appeal subject to fresh conditions to be fulfilled by the appellant.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

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GEORGE NARH FOR THE PLAINTIFF/RESPONDENT/RESPONDENT/ RESPONDENT.