

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI
ON THE 28TH DAY OF FEBRUARY, 2023, BEFORE HER LADYSHIP AFIA N.
ADU-AMANKWA (MRS.) J.**

SUIT NO. E11/20/22

FRANCIS TELFAR

PLAINTIFF/RESPONDENT

VRS.

MARCUS DAH-HUSS

DEFENDANT/APPELLANT

JUDGMENT

On 18th May, 2021, the plaintiff/respondent (hereinafter called the plaintiff) issued a writ of summons at the District Court, Takoradi, against the defendant/appellant (hereinafter called the defendant) for the following reliefs:

- “a Recovery of cash the sum of GHc52,800.00 being amount of money due the Plaintiff on 1st June, 2020 under a lease agreement between the parties;*
- b Interest on the amount stated supra from 1/6/20 till date of final payment;*
- c An order to eject the Defendant and all who claim title through the Defendant for non –payment of rent;*
- d Cost inclusive of legal cost”.*

It was the plaintiff's case that he and the defendant entered into a lease agreement in which he leased his nine (9) bedroom house with two boys' quarters to the defendant for six years. By the terms of the agreement, the defendant was to pay rent on two yearly basis in advance. According to the plaintiff, since the second payment fell due on 1st June, 2020, the defendant had failed to comply

with the agreement despite repeated demands on him to do so. On 14th July, 2021, the defendant admitted liability and accordingly, judgment was entered in favour of the plaintiff for the recovery of GHc52, 800.00 and interest on the said sum from 1st June, 2020 till date of final payment. On 9th August, 2021, the trial judge further made the order that:

“Based on Section 17 on (sic) the Rent Act, the Defendant is given up to the 1st of October to vacate the said premises subject to rent and to vacate his tenants out of the said house”.

Dissatisfied with this order, the defendant appeals to this court on two grounds, namely:

“i. The judgment is against the weight of evidence on record.

ii. The trial Magistrate misdirected herself when she failed to read through the agreement before finding out from the Defendant/Appellant when he arrived in the Court room whether what she had shown him was the agreement.

iii. Further grounds of appeal will be filed on receipt of the proceedings”.

It is to be noted that the defendant has filed no further grounds. In the course of considering the issues for determination, I have observed that the notice of appeal was filed out of time, given that it was filed at the registry of the District Court on 16th December, 2021. Noting that neither counsel for the parties had raised this point in their submission to the court, I directed them to address further the court on the effect of filing a notice of appeal out of time in compliance with **Order 51 r. 14(4) of the High Court (Civil Procedure) Rules, 2004, C. I. 47**. The said rule states:

“The Court in deciding the appeal shall not be confined to the grounds of appeal set out by the appellant; but the Court shall not rest its decision on

any ground not set out by the appellant unless the respondent has had sufficient opportunity to contest the case on that ground”.

The parties complied with the court's orders and filed their submissions accordingly. It appears that counsel for the appellant failed to appreciate the issue at stake and addressed matters irrelevant to the crux of the order. He was concerned that the defendant would lose his fortune because he had admitted knowledge of a forged document he did not have the advantage of reading. The thrust of counsel for the respondent's submission on the issue was that the defendant, having filed the notice of appeal four months from the date of the decision, had no valid appeal before the court and the appeal ought to be dismissed.

Appeals are statutorily conferred. The plaintiff's right to appeal the decision of the District Court is conferred by **section 15(1)(c) of the Court's Act, 1993, Act 459** and regulated by the **High Court (Civil Procedure) Rules, 2004 (CI 47) specifically Order 51**. An appellant vested with the statutory right of appeal must comply with all provisions of the statute creating that right. **Order 51 r.3 (1) of C. I. 47** states:

“Subject to rule 4, a person wishing to appeal under section 21(1) of the Courts Act, 1993 (Act 459) against a decision of a District Court shall file a notice of appeal within three months from the date of the decision appealed against”.

This rule is subject to rule 4, where the court, on an application to it, can extend the time to appeal.

The order, the subject of this appeal, was made on 9th August, 2021, and the notice of appeal was filed on 16th December, 2021, four clear months from the date of the judgment. There is no indication from the appeal record that the plaintiff applied to the court to extend the time to appeal. That being the case, the notice of appeal was filed out of time without any valid extension to give life

to the appeal. This court is bereft of jurisdiction to entertain the appeal given its incompetency, having been filed long after the three months stipulated by the rules. The result is that there is no appeal before this court to be determined on its merits.

The appeal is struck out as incompetent.

(SGD.)
H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT.

COUNSELS

D. A. Otoo appears for the Defendant/Appellant.
F. F. Faidoo appears for the Plaintiff/Respondent.