

ISAAC DOPOE, Plaintiff/Appellant, v. **CITY SUPERMARKET**,
Defendant/Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: June 23, 1986. Decided: July 31, 1986.

1 A dissatisfied and unsuccessful party has the absolute right of appeal, except in criminal cases where the right of appeal by the plaintiff, which is the Republic of Liberia, is restricted or limited to an adverse judgment in an order granting a motion by the defendant to dismiss the indictment or an order granting a motion for judgment or acquittal.

2 An appeal may be dismissed by the trial court on 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 the completion of the appeal as required by statute.

3 According to modern practice the dismissal of an appeal, especially on technical and microscopic grounds, is disfavored in law courts.

4 There is a marked legal difference between the grounds for the completion or perfection of an appeal and that of the dismissal thereof.

5 When a mode of procedure is provided by statutes, the same should be strictly followed. Hence, while the omission of revenue stamps may invalidate a document, it is not a statutory basis for the dismissal of an appeal.

6 A court of justice will take judicial notice of its own records and thereby obviate the need for the production of any further evidence. And in its review of a matter,

such court is limited to the defenses and issues raised in the written pleadings before it.

Appellee filed a motion to dismiss appellant's appeal. The appellee subsequently withdrew its motion and filed a two-count amended motion to dismiss, alleging the absence of a revenue certificate certifying that the sureties to the appeal bond are owners of unencumbered real property, and the absence of revenue stamps affixed to the appeal bond. The motion was *denied* by the Supreme Court on the grounds that the Appellate Court is reluctant to dismiss an appeal on what the Court termed purely microscopic technicalities. The case was therefore ordered proceeded with on its merits.

E. Winfred Smallwood appeared for the appellant. *The P. Amos George Law Firm* appeared for the appellee.

MR. JUSTICE DENNIS delivered the opinion of the Court.

A dissatisfied and unsuccessful party has the absolute right of appeal in civil cases, unlike criminal cases where the plaintiff, being the Republic of Liberia, is restricted or limited to an adverse judgment in two instances: (1) an order granting a motion by the defendant to dismiss the indictment, or (2) an order granting a motion for judgment of acquittal, which is the circumstance in this case. Vide: Civil Procedure Law, Rev. Code 1: 24.3.

On the 2nd day of December, A. D. 1985, defendant/appellee filed a motion to dismiss plaintiff/appellant's appeal, to which a resistance was filed. Thereafter, on December 13, 1985, the said motion to dismiss was withdrawn from the consideration of the Court with reservation. Subsequently, the original motion was amended and re-filed, and consisted of the following two counts:

1 That in the absence of a revenue certificate certifying that the sureties to the appeal bond are owners of unencumbered real property, the said appeal bond is

defective.

2 Further to the motion praying the dismissal of this appeal, defendant avers the absence of a revenue stamp affixed on the appeal bond, for the omission thereof, the more requests the dismissal of the appeal of plaintiff/ appellant.

Appellant, contesting the legal genuineness of the motion to dismiss the appeal, submitted that there are prescribed legal grounds for the dismissal of an appeal and that the absence or omission of a revenue certificate is not one of such grounds.

The prescribed statutory grounds for the dismissal of an appeal in civil cases are the following:

"An appeal may be dismissed by the trial court on 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 the completion of the appeal as required by statute". Vide: Civil Procedure Law, Rev. Code 1: 51.16.

According to modern practice, the dismissal of an appeal, especially on technical and microscopic grounds, is disfavored in courts of law.

There is a marked legal difference between the grounds for the completion or perfection of an appeal, and that of the dismissal thereof.

The purpose of affixing a revenue stamp on a legal document is not only for the raising or the collection of revenue, but it is a mandatory preliminary step. Vide: Stamp Acts of 1915 and 1937. While the omission of a revenue stamp invalidates the document, it is not a statutory basis for the dismissal of an appeal. The statute clearly provides the mode of procedure for dismissal of an appeal, as enumerated earlier, and that should be strictly followed.

Count two of the amended motion is hereby overruled and count three of the amended resistance is sustained since the certificate of the clerk of court was the basis upon which the original copy of the appeal bond was stamped.

Courts of justice may take judicial notice of their own records and thereby obviate the need for the production of any further evidence. The records in this case conclusively and convincingly prove that the original appeal bond is stamped. Vide: *Phelps v. Williams*, 3 LLR 54 (1928).

Count two of the motion to dismiss referred to the omission of a revenue certificate from an official of the Ministry of Finance attached to the appeal bond, indicating that the sureties are owners of the property.

Courts of justice are limited only to the defenses and issues raised in the written pleadings. Hence, in resolving this and other issues contained in both the amended motion to dismiss, we hold that neither one of the two counts in the amended motion to dismiss establishes a basis under our statute for dismissal of an appeal. Accordingly, the amended motion to dismiss is hereby overruled and the amended resistance sustained. Vide: *Clark v. Barbour*, 2 LLR 15 (1909); Civil Procedure Law, Rev. Code 1: 51.16.

In view of the foregoing, the amended motion to dismiss is hereby denied. The case is ordered proceeded with on its merits. Cost to abide the final determination of the case.

Motion denied.