MOSES B. ANKRA et al. and The MINISTRIES OF LABOUR AND JUSTICE, Appellants, v. THE LIBERIA FEDERATION OF LABOUR UNIONS (LFLU), thru its Secretary General, MR. AMOS N. GRAY, SR., and J. B. McGILL, Labour Center, Appellees.

MOTION TO DISMISS APPEAL FROM THE NATIONAL LABOUR COURT.

Heard: May 30, 1989. Decided: July 14, 1989

1. Any provision of statute or rule of court authorizing or requiring a bond to be given by a party shall, unless the contrary is clearly expressed, be construed as excluding the Republic or a domestic municipal corporation, or a public officer, or agency in behalf of the Republic or of such a corporation from giving such bond.

2. Where the state is merely a nominal party appellant and not a party appellant in interest, the appellants shall comply with all the steps, including the filing of appeal bond and the service of notice of completion of appeal, to perfect their appeal.

3. The notice of completion of appeal must not only be issued by the clerk of the court within sixty days after judgment, but also be served within such time.

4. It is the service of the notice of appeal which alone gives an appellate court jurisdiction over the appellee; and such service is evidenced only by the official returns of the ministerial officer.

5. Where an appellant has failed to file a duly approved appeal bond and has failed to serve notice of completion of appeal upon the appellee, the appeal will be dismissed upon motion properly taken.

The Liberia Federation of Labor Unions in 1988 conducted elections for a new corp of officers. Following the conclusion of said election and predicated upon the protest of Moses B. Ankrah, President of the National Wood Timber Construction & General Workers' Union, and John Diggs, the Liberia Federation of Labor Union (LFLU), received a letter from the Minister of Labour in June, 1988, informing the LFLU of protest filed against the conduct of the convention and the election. As such, the Minister of Labour invited the newly elected officers of LFLU to an investigation. Upon receiving the invitation to said investigation, the newly elected officers requested a postponement to another date due to previous engagements of the union. In answer to this request for postponement, the Minister of Labour wrote the LFLU a second letter, informing it that the protesters had asked the Minister to halt the travel of the LFLU General Secretary, Amos N. Gray and others from attending the International Labor Organization Conference scheduled to be held in Geneva, Switzerland. To this letter, the elected officers of the LFLU answered, stating that in keeping with law the LFLU had one calendar month to reply to a protest and that the complaint had been taken to the wrong forum. They contended that the rules

provided that all remedies under the rules of the federation should be exhausted before taking the matter outside of the union or to a court.

During the hearing of the complaint, the elected officers through their representative, requested the hearing officer to recuse himself on grounds that he took part in the convention while representing the Ministry of Labour as observer. The refusal of the hearing officer to recuse himself prompted the filing of a petition by the elected officers to the National Labour Court, questioning the authority of the Labour Ministry to investigate protest matters. The National Labor Court, in ruling on this issue, held that the Ministry of Labour lacked jurisdiction to conduct investigation into protests against elections results. The Court therefore granted the petition and ruled that the Ministry of Labour and the protesters were restrained from further investigating the protest relative to the elections results. To this ruling, the appellants excepted and announced an appeal to the Supreme Court.

In the final determination of the appeal, the Supreme Court granted appellees' motion to dismiss the appeal on the ground that the appeal was never perfected as the notice of the completion of the appeal, which alone could give the appellate court jurisdiction over the appellees, was issued and served outside of the time required by statute. The motion was therefore *granted* and the appeal *dismissed.*

J. Laveli Supuwood appeared for the appellants. *Moses K Yangbe* appeared for the appellees.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

Early in the year 1988, the Liberia Federation of Labor Unions (LFLU) conducted elections to elect a new corp of officers for the positions of President General, Vice President, Secretary General, Chairman Trusteeship Committee, and Chaplain. At the end of the elections, the following officers were elected: Jones N. Davies, President General; Aloysius Kieh, Vice President; Amos N. Gray, Sr., Secretary General; Alexander S. Kawah, Treasurer; Joseph Nimine, Chairman, Trusteeship Committee; George Sasa, Chaplain General; and Edward Kennedy were elected as the new corp of officers of the LFLU.

On the 31st day of June, 1968, the LFLU received a letter from the Minister of Labour, Honourable Peter Naigow, informing the LFLU that Mr. Moses B. Ankrah, President of the National Wood Timber Construction and General Workers Union and John Diggs, protested the conduct of the convention and the elections. He therefore invited the said newly elected officials of LFLU to an investigation. In response, the newly elected officers of the co-appellee union requested the Ministry to postpone the investigation to another date due to prior engagements of the LFLU. The co-appellee, LFLU, was again written the second letter by the Minister of Labour informing it that the protesters had asked the Minister to halt the travel of the LFLU General Secretary, Mr. Amos N. Gray. Sr. and others

from attending the annual International Labour Organization conference which was scheduled to be held in Geneva, Switzerland. To this letter the elected officials of co-appellee replied stating, among other things, that in keeping with the law controlling the LFLU and the constitution of the LFLU, the LFLU had one calendar month to reply to a protest, and that the complaint was taken to the wrong forum since the law provides that all remedies under the rules of the LFLU should be exhausted before taking the matter outside of the LFLU or to a court.

During the hearing of the complaint, the elected officials, through their representative, requested the hearing officer to recuse himself on grounds that he took part in the convention, representing the Ministry of Labour in the capacity of an observer, but the hearing officer refused.

As a result of his refusal, the elected officials' representatives petitioned the National Labour Court, questioning the authority of the Labor Ministry to investigate election protest matters. The National Labour Court in ruling on this issue held that: "The Ministry of Labour lacks jurisdiction to conduct an investigation into protests against election results. The protesters should therefore first file their protests with the Executive Board of the LFLU in keeping with its constitution, coupled with the Labor Practices Law, Lib. Code 18-A: 4103(2) & (3). The petition is therefore granted, and the Ministry of Labour and the protesters are restrained from further investigating the protest relative to the results of the election in issue." To this ruling, the appellants excepted and announced an appeal to the Honourable Supreme Court of Liberia on a three-count bill of exceptions.

At the call of the case for hearing and final determination by the Honourable Supreme Court of Liberia, the Court's attention was called to a motion to dismiss the appeal. The appellees contended that the final judgment was rendered on the 25' h day of August A. D. 1988, by His Honour Arthur K. Williams, judge of the National Labour Court and that appellants had filed their approved bill of exceptions on the 5th day of September, 1988, but had failed to file an approved appeal bond within sixty (60) days, that is, on the 24th day of October, A. D. 1988. Appellee further maintained that the appellants had failed to have issued and served a notice of the completion of the appeal within the statutory time. Consequently, they said, this Court lacked jurisdiction over the appeal and the appellees; hence, the appeal should be dismissed.

In the resistance, the appellants contended that the main party to this action was the Government of Liberia and that since the Government of Liberia is not required to file an appeal bond, the appeal bond filed in the case was a mere formality not required by any statute.

From the contentions raised by both parties, the first issue before us for consideration is, whether or not the Government of Liberia is statutorily required to file an appeal bond? The

next issue is, whether an appeal bond is required to be filed where the Government of Liberia is not the real party in interest but merely a nominal party appellant? The final issue is whether a notice of completion of appeal is required to be served and filed within sixty days where the Government of Liberia is the real party in interest or a nominal party, along with others, as appellants?

The answer to the first question is no. The State is not statutorily required to file an appeal bond. *Republic v Collins,* 13 LLR 457 (1960). Additionally, the statute provides that "Any provision of statute or rule of court authorizing or requiring a bond to be given by a party shall, unless the contrary is clearly expressed, be construed as excluding the Republic, or a domestic municipal corporation, or a public officer or agency in behalf of the Republic or of such a corporation." Civil Procedure Law, Rev. Code 1: 63.8.

This provision of the statute being very clear and unambiguous, we rule and hold that the State is not statutorily required to file an approved appeal bond as contended by the appellees. The State must, however, meet the basic guidelines spelled out by this Court in the *Collins* case whenever it intends to appeal; that is, to take exceptions to the judgment, ruling or order, announce an appeal, and file approved bill of exceptions with the clerk of the trial court within ten (10) days. We are therefore of the opinion that the appeal bond filed in this case was for mere formality and, therefore, not sufficient ground for the dismissal of the appellants' appeal.

Appellees contended that the notice for the completion of the appeal should have been served on the appellees on or before this 24th day of October, 1988, within sixty (60) days, the final ruling having been rendered on August 25`h, 1988. Instead, the notice for the completion of the appeal was served on the appellees on the 27th day of October, 1988, sixty-three (63) days after the rendition of the final ruling.

The appellants, in counter-argument, maintained that there is no time limit required by statute within which an appellant should serve a notice of completion of appeal on an appellee. The only requirement is that after filing of the appeal bond and the bill of exceptions, a copy of the notice of completion of the appeal must be served on the appellee.

In our attempt to effectively and efficiently resolve this issue, we pause to ask the following question: does the statute require any definite period of time within which a notice for the completion of an appeal must be served? Let us take a look at the statute controlling appeals. Civil Procedure Law, Rev. Code 1:51.4 provide:

"The following shall be necessary for the completion of an appeal:

a) Announcement of the taking of the appeal;

b) Filing of the bill of exceptions;

c) Filing of an appeal bond;

d) Service and filing of notice of the completion of the appeal."

Failure to comply with any of these requirements within the time allowed by statute shall be grounds for dismissal of the appeal."

This Court being under the constitutional duties to interpret the laws of this Republic, held in the case *Gallina Blanca* S.A. *v. Nestle Products, Ltd.,* 24 LLR 203 (1975), that: "Ordinarily, the notice of completion of the appeal must not only be issued by the clerk of the court within sixty days after judgment, but must also be served within such time."

This holding of the court clearly shows that the sixty-day period allocated by the statute is not only for the filing of an appeal bond and bill of exceptions, as contended by appellants, but it also includes all necessary steps for the completion of an appeal to be met within the sixty-day period; thus meaning that the serving of the notice of the completion of an appeal is no exception. The statute states further that all of the requirements for the completion of an appeal must be done within the required statutory time, which is sixty days. Therefore, this portion of the statute being very clear and unambiguous, the contention of the appellants to that effect must be declared legally baseless and unfounded. And, therefore, the mere fact that the notice for the completion of the appeal was served on the 27t h day of October, A. D. 1988, instead of the 24t h day of October, 1988, means that the notice for the completion of the appeal had not been served in keeping with the statute.

In an attempt to further expound on the importance of the service of the notice of the completion of an appeal, let us consider the question: What is the necessity or purpose of the service of the notice for the completion of an appeal? In the case *Witherspoon and Greene v. Clarke et al.,* 14 LLR 194 (1960), this Court held: "It is the service of the notice of appeal which alone gives an appellate court jurisdiction over the appellee; and such service is evidenced only by the official returns of the ministerial officer." In the instant case, the returns of the sheriff reads: "On the 27t h day of October, A. D. 1988, Court Bailiff James Nimely carried out this notice of completion of appeal and duly served it on both counsels, Counsellors Supuwood and M. Kron Yangbe, and the both of them signed and received copies. I therefore make this as my official returns to the clerk's office, National Labour Court." This portion of the returns shows that the notice of the completion of the appeal was not served within the statutory time of sixty days. This means that this Court did not legally acquire jurisdiction over the appeal.

With respect to the failure to serve and file the notice of the completion of the appeal and the effect thereof on an appeal, this Court has held, as follows:

"Where an appellant has failed to file a duly approved appeal bond, and has failed to serve notice of completion of appeal upon the appellee, the appeal will be dismissed." *Jallah and*

Johnson v. Miller, 13 LLR 88 (1957). "An appeal from a court of record may, upon motion properly taken, be *dismissed for want of service of notice of appeal."* (emphasis added). *Roberts v. Brown, 15* LLR 415 (1963).

We observe that the notice of the completion of the appeal was not served on the appellees within the statutory time -of sixty days, hence the said notice was not served since that which is not legally done is not done at all.

In this particular case under review, the Ministries of Justice and Labour are parties and appellants in this case, but in fact they are merely nominal parties who had been joined in the summary proceedings below simply because the technical rules of procedure required them to be so joined or else the action would have been defective. BLACK'S LAW DICTIONARY 946 (5th ed). In the normal course of things, the said Ministries, being nominal parties merely, have not demanded any specific relief, but they have been so joined in this matter because of the connection with the Government of Liberia. They are not substantial or real parties in interest in the matter from which this appeal grows, but they exist as parties only in name. Consequently, the fact that the said Ministries are joined with the real appellant in interest does not mean that the latter cannot file an appeal bond as required by law. Even conceding that appellants cannot file an appeal bond, notwithstanding, they are certainly not precluded from filing a notice of completion of appeal which, in any case, should have been filed within sixty days.

Hence, the arguments that appellants could not file an appeal bond since they are joined with the Government of Liberia and the contention that the statute does not give time limit for filing notice of completion of appeal cannot stand.

Wherefore, and in view of the foregoing facts and circumstances, and the laws cited supra, the motion to dismiss the appeal should be, and the same is hereby granted to all its intents and purposes, and the appeal is hereby dismissed. Costs disallowed. And it is so ordered.

Motion granted; appeal dismissed