

JOHN CEE, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SECOND
JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard: April 17, 1989. Decided: July 14, 1989.

1. In a criminal case, a motion to dismiss for failure to file a notice of completion of appeal is venued and cognizable before the trial court and not the appellate court.
2. The Supreme Court will not entertain a motion by a criminal defendant to dismiss the cause of action for reason of failure of the indictment to charge an offense or for reason of wrong form of action until it has properly acquired jurisdiction over the matter.

On November 6, 1983, John Cee, defendant, was indicted by the grand jury of Grand Bassa County for the crime of theft of property. The indictment charged the defendant with depriving Private Prosecutor Gaye Gbo-Koon of the amount of \$4,000.00 by tricks and deception. The defendant was tried and found guilty as charged. When his motion for a new trial was denied, he thereupon excepted and announced an appeal to the Supreme Court.

After four years of the pendency of the appeal, the appellee, Republic of Liberia, moved this Court to dismiss the appeal on the ground that the defendant/appellant had failed to perfect his appeal by his failure to file a notice of completion of appeal as required by law.

In resisting the motion, the appellant contended that it was defective and should be denied because the certificate proffered with said motion was not issued by the clerk of the trial court, the Second Judicial Circuit Court of Grand Bassa County, but rather by the Clerk of the Supreme Court.

In the meanwhile, the appellant also filed a motion, praying the Court to refuse jurisdiction over the cause of action on the ground that the appellee failed to charge a criminal offense.

The two motions were consolidated, heard and denied.

Moses K White and *Patrick Saynee* appeared for the appellant. *McDonald J. Krukue*, Solicitor General of Liberia, appeared for the appellee.

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

On the 6th day of November A. D. 1983, the defendant, John Cee, was indicted for the crime of theft of property. According to the indictment, the defendant obtained the sum of Four Thousand Dollars (\$4,000.00) from private prosecutor, Gaye Gbo-Koon of Harlandsville, Grand Bassa County, under deception. The indictment further stated that the defendant issued a promissory note to the private prosecutor for a deed which did not contain the name of the appellant. The indictment also stated that the promissory note did not mention any special date for payment of the amount in question. These acts, the

indictment continued, were deceptive and were merely intended to deprive the private prosecutor of his \$4,000.00.

After a trial by jury and a verdict of guilty, on the 10th day of September A. D. 1984, appellant moved the court for a new trial. In the two-count motion, appellant contended that the verdict of the trial jury was manifestly contrary to the weight of the evidence adduced at the trial. Defendant further contended that the trial judge, in charging the jury, misquoted the prosecution witnesses, thus influencing the empaneled jury to bring a verdict of guilty against him.

In its three-count resistance, the prosecution maintained that the evidence adduced at the trial by the State substantially established beyond all reasonable doubts that the defendant received the amount of \$4,000.00 from the private prosecutor by tricks and deception. The prosecution therefore argued that the verdict was not contrary to the weight of the evidence adduced at the trial.

After a careful review of the evidence on both sides as well as the motion and its resistance for a new trial, the motion was denied. To this ruling the appellant excepted. Thereafter, a judgment of conviction was entered, and to which appellant also excepted and announced an appeal to this Court, filing thereafter a three-count bill of exceptions, the relevant portions of which we hereunder quote for the benefit of this opinion:

"The defendant contends that the cause was a civil issue as will fully appear by defendant's written species of evidence marked D1 and D2, identified, confirmed and admitted into evidence. Defendant argued further that on the r h day of September 1984, the trial judge gave a written charge which was excepted to, thereafter the jury retired to their room of deliberation and returned with a verdict of guilty against the defendant."

Again appellant excepted to the said verdict of guilty and announced an appeal to this Honourable Court of last resort.

On the 28th day of November A. D. 1988, after four (4) years, the prosecution, through the Solicitor-General of the Republic of Liberia, filed a motion in this Court to dismiss appellant's appeal on the ground that the appellant had failed miserably to perfect his appeal by not filing a notice of completion of an appeal in keeping with statute.

In his resistance, the appellant maintained that the motion was fatally bad and defective and should be denied in that the certificate did not come from the Clerk of the Second Judicial Circuit Court of Grand Bassa County, but that the purported certificate, proffered and marked exhibit "A" was issued by the Clerk of the Supreme Court. Appellant further claimed that the motion carried no affidavit as required by statute and therefore it should be denied.

From the review of the records before us, we also observed that on the 23rd of March A. D. 1989, the appellant filed a five-count motion praying this Court to refuse jurisdiction over

the subject matter of the cause and dismiss said cause on the ground that the indictment failed to charge a criminal offense.

Considering, the two motions filed by both the prosecution and defense, we have decided to consolidate them since in fact both motions are calling for the dismissal of the appeal or the entire cause of action. The statute provides that in order to avoid unnecessary delay a court of record may order consolidation of two or more causes or issues. Civil Procedure Law, Rev. Code 1:6.3(1).

From the review of the contentions raised by both parties, we recognize only two (2) important issues, as follows:

1. Under our law and practice can the Clerk of the Supreme Court issue a certificate to indicate that an appellant has failed to file a notice of completion of appeal?
2. Is the Supreme Court the proper forum for filing a motion to dismiss the appeal in a criminal case where the appellant has failed to file a notice of the completion of the appeal?

In our attempt to answer these questions, we shall do so in the reverse order, commencing with issue number two, which is, does the Supreme Court have jurisdiction over a motion to dismiss an appeal in a criminal case where the appellant has failed to file a notice of the completion of the appeal? The answer is in the negative because, according to section 24.16 of the Criminal Procedure Law, Rev. Code 2, "the supervision and control of the proceedings on appeal shall be in the appellate court from the time the notice of completion of the appeal is filed." This means that prior to the filing of the notice of the completion of an appeal, the trial court still has jurisdiction over the proceedings in all criminal matters until the notice of the completion of the appeal is filed by the appellant.

Moreover, section 24.17 of the Criminal Procedure Law, Rev. Code 2, provides that "an appeal may be dismissed by the trial court on motion for failure of the appellant to complete the appeal and file notice of its completion as required by this chapter, and by the appellate court for failure of the appellant to appear on the hearing of the appeal." The appellee has motioned the Supreme Court to dismiss the appellant's appeal for his failure to file a notice of completion of the appeal, contrary to the statute.

In the instant case, the appellant had met some of the statutory requirements in perfecting his appeal, but he had failed to file the notice of the completion of the appeal. This means that the trial court still had jurisdiction over the entitled cause of action, i.e. theft of property. Therefore, all motions arising from the instant case should have been filed with the trial court and not the Supreme Court which has no jurisdiction over the cause of action. Besides, our statute states the grounds upon which the Supreme Court can dismiss an appeal in a criminal case, and this is where the appellant, after having met all the statutory requirements in perfecting an appeal, fails to appear on the hearing of the appeal. Contrary to this

provision, the appellant in the case at bar failed to file a notice of completion of the appeal, meaning that the Supreme Court has not acquired jurisdiction over the proceeding. Therefore, appellee Republic of Liberia should have filed its motion in the trial court and not in the Supreme Court.

As to the motion filed by the appellant praying this Court to refuse jurisdiction over the entitled cause of action because the appellee had failed to charge an offense or had filed a wrong cause of action, the Court deems it unnecessary to belabor this issue because whether or not the appellee, Republic of Liberia, had filed a wrong action has been rendered moot since this Court has already decided that it has no jurisdiction over the proceeding and that the trial court still has such jurisdiction. As such, this Court cannot entertain the appellant's motion to dismiss the cause of action either because the trial court lacked jurisdiction over the subject matter of the case or because of the failure of the appellee, Republic of Liberia, to charge an offense.

Wherefore, and in view of the foregoing facts and circumstances, the motions praying this Court to dismiss the appeal due to appellant's failure to file a notice of completion of an appeal and to refuse jurisdiction because the indictment had failed to charge a criminal offense, are hereby denied. And it is hereby so ordered.

Motions denied.