CHASE MANHATTAN BANK, N. A., represented by its Attorney-In-Fact, MAXWELL & MAXWELL LAW OFFICES, Appellant, v. **CHICRI BROTHERS, INC**., represented by its Managing Director, CHICRI P. ABI-JAOUDI, Appellee.

Heard: May 23, 1989. Decided: July 14, 1989.

"1. The failure to place the required revenue stamp on an appeal bond within the period of time prescribed for perfection of an appeal constitutes a material defect and renders such bond invalid for purposes of the appeal.

2. There is no rule of law which fixes the amount of an appeal bond at one and one-half times the amount awarded in the judgment of the lower court.

3. Service of notice of completion of appeal after the expiration of the period of time statutorily prescribed for such service is ground for dismissal of the appeal.

4. A notice of the completion of an appeal which is not served and returned served within the statutorily prescribed period of time, is void.

5. The statute prescribing the period of time within which an appeal must be taken is mandatory.

At the call of the case for hearing of the appeal taken from the judgment in the action of debt, the Court's attention was called to a motion to dismiss the appeal filed by the appellee on grounds that (a) the appeal bond did not carry the required revenue stamp stipulated by law; (b) the bond was insufficient, because the surety, that is the check of $350.00 payable to the sheriff of Montserrado County, was not the surety required by statute; and (c) the appeal bond was filed sixty-one (61) days after the rendition of the judgment from which the appeal was taken.

In passing on the motion and the resistance, the Court held that there was no law which required that the amount on an appeal bond should be one and one-half times the amount awarded in the judgment in the lower court. The Court opined, however, that the appeal was dismissible because the bond was defective since it did not carry the required revenue stamp, and that the notice of the completion of the appeal was served outside of the time required by statute. Consequently, the motion was granted and the appeal dismissed.

The Maxwell and Maxwell Law Offices, represented by *George Odoi* and *H. Varney G. Sherman* appeared for the appellant. The Findley and Findley Associates represented by *Joseph P. H. Findley* appeared for the appellees.

MR. JUSTICE AZANGO delivered the opinion of the Court.

When the main case was called for hearing, our attention was called by the Clerk of Court to appellee's motion to dismiss. The motion reads, as follows:

1. That the appeal bond was not stamped as the law provides. That according to opinions of this Court, a failure to place the required revenue stamps on an appeal bond makes it materially defective and that a motion to dismiss an appeal on this ground will be granted.

2. That the appeal bond was further insufficient because the security, that is the check of three hundred and fifty dollars ($350.00), payable to the sheriff of Montserrado County was not the security required by our statute. That the statute provides that a bond given should be secured by one or more of the following: (1) Cash to the value of the bond as evidenced by a bank certificate; (2) Unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond; (3) Valuable to the amounts of the bond which are easily converted into cash; or (4) securities which meet the requirements of Section 63.2, Civil Procedure Law. That the check for Three Hundred Fifty Dollars ($350.00) is neither cash, nor is it cash deposited into a bank to the value of the bond as evidenced by a bank certificate.

3. That the Three Hundred Fifty Dollars ($350.00) was also inadequate as the amount should be Two Million One Hundred Fifty-One Thousand, Two Hundred Forty Dollars ($2,151,240.00) or 1'/2 x $1,434,160.00, the amount sued for.

4.That final judgment in the case was rendered on the 21" day of October, 1988 and by mathematical computation the appeal should have been completed within sixty (60) days from the date of the judgment from which the appeal was announced; that is on the 20' h day of December, A. D. 1988. As the returns of the sheriff shows, the notice of completion of the appeal was not served and the notice of appeal not completed until the 21st day of December, A. D. 1988, sixty-one (61) days after the judgment and announcement of the appeal. The appeal is therefore dismissible and should be dismissed.

Concerning these issues, Appellant Chase Manhattan Bank, N. A.'s counsel argued that we deny the motion on the following grounds consisting of twelve (12) basic points:

1. That Section 16.5(1) of the Revenue and Finance Law provides that all documents which ought to carry revenue stamps shall be allowed time (48) hours for the revenue stamp to be placed thereon in order to give said document legal effect. That this Court held in *Acolatse v. Dennis,* 22 LLR 147 (1973), Syl. 5, that when a document does not carry the required revenue stamp, courts of law should allow the party forty-eight (48) hours to rectify the omission. That the forty-eight (48) hours time to rectify omission of revenue stamp begins to run upon the filing and service of a paper attacking the insufficiency or omission of the revenue stamp.

2. That Section 63.5 of the Civil Procedure Law provides that exceptions to a bond must be made within three (3) days after notice of filing of the bond. That any interested party, especially the proponent of a bond may move the court for new or additional bond. That failure of the appellee to except to the bond within three (3) days after receipt of notice of

the filing of the bond constitutes a waiver of his objections and warrant a denial of a motion to dismiss the appeal.

3. That while it is true that the statutes and opinions of this Honourable Supreme Court require that an appeal bond carry a revenue stamp, the appellant's appeal bond was approved on December 13, 1988 and served on the same day as per receipt attached. Appellee should have challenged that appeal bond within the statutory three day period and appellant allowed forty-eight (48) hours after the filing and service to challenge or to rectify the omission. However, appellee decided to challenge the appeal bond thirty-eight (38) days after the filing and service of the appeal bond and a full thirty one (31) days after the issuance of the notice of the completion of the appeal on December 20, 1988. Appellant submits that appellee had ample time at the trial court to challenge the appeal bond (December 13-20, 1988) and should have done so and thereby enable appellant to enjoy the statutory privilege of rectifying the omission within forty-eight (48) hours. The failure and neglect to do so is a good reason to deny and dismiss the motion to dismiss and appellant so prays. Besides, upon receiving the appellee's motion to dismiss, appellant promptly made the revenue stamps sufficient, as per clerk's certificate.

4. Appellant further argued that its appeal bond is secured by a manager's check and the Supreme Court has held that a cashier's or manager's check attached to an appeal bond is equivalent to a bank certificate in connection with a cash bond. Unlike an ordinary check, a manager's check or cashier's check is a bank's own check drawn on itself and signed by an authorized official as a direct obligation of the bank and with representation that the face value of said cashier's or manager's check has been segregated from the general funds of the bank. A manager's or cashier's check is evidence of cash deposited and held by the bank for purposes of honoring the cashier's or manager's check and is therefore equivalent to a bank certificate. More than this, the manager's check at issue in the instant case was issued by another bank, that is, Citibank, as evidenced that appellant has deposited funds in another bank with which to indemnify appellee.

5. That the object and purpose of the appeal bond is to secure to the appellee his costs and to assure the Supreme Court of compliance with its judgment. This holding of the Supreme Court is a direct interpretation of the statute. Now the only judgment for appellee against appellant is a judgment of "not liable" confirming the judgment of the court below as appellee made no counterclaim in the court below nor did appellee cross appeal. Therefore, there is no judgment amount which appellant needs to assure the Supreme Court of compliance with. What is left then is merely the costs of court and appellant submits that the cost of court cannot under any parity of reasoning be in excess of Three Hundred Fifty Dollars ($350.00) in this case.

6. That no rule fixes the amount of appeal bond at one and-one half times the amount of the judgment and the Supreme Court has held that an appeal bond which is equivalent to the amount of judgment is sufficient. And where there is no judgment amount awarded to the appellee, the amount fixed by the trial judge in compliance with the statute without any challenge from the appellee before the trial court even though appellee had sufficient time to do so, the appeal bond is considered sufficient.

7. That appellant concedes that the sixtieth (60) day after the rendition of the judgment by the trial court is December 20, 1988 and appellant did have the Clerk of the Court issue the notice of completion of appeal on the said 20th day of December, 1988, placed same in the hands of the sheriff for service as per copy of the notice of completion of appeal proffered hereto as an exhibit. That the Supreme Court has held that all precepts and process including notice of completion of appeal, issuing out of the courts of Liberia are required to be served by the ministerial officer of each court. That if the notice of completion of appeal is not returned served by the ministerial officer of the trial court, the Supreme Court will not hear the appeal; making it mandatory that the original of the notice of completion of appeal should be served and returned by the ministerial officer of the trial court and the appellee himself may serve only a copy of said notice of completion of appeal.

8. That the purpose of the notice of completion of appeal is to give the appellee notice that the appeal process, i.e. filing bill of exceptions and approved appeal bond have been completed and that the appellee should appear at the ensuing term of the Supreme Court to defend the judgment of the trial court. The fact of the issuance of the said notice of completion of appeal by the clerk of the trial court completes all the jurisdictional steps for conferring of the jurisdiction of the Supreme Court over the matter and the Supreme Court is therefore duty bound to hear the matter and dispose of it

9. That because December 20, 1988 was the 60th day, the last day for completion of the appeal process, appellant sent a copy of the notice of completion of appeal to the appellee itself in addition to having the trial court's ministerial officer serve the original notice of completion of appeal on appellee's counsel. The copy of the notice of completion of appeal was received by the appellee as is evidenced by acknowledgment in attorney-in-fact's dispatch book.

10. That the trial court's ministerial officer made diligent efforts to serve the original notice of completion of appeal on appellee's counsel, Counsellor Joseph Findley but he was not available in his office during the afternoon of December 20, 1988 and no other person would accept said notice of completion of appeal as Counsellor Joseph Findley had announced himself as an individual representing the appellee and not the Firm. It was not until the following morning when the trial court's ministerial officer met Attorney Pryde Davis that said Attorney Pryde Davis reluctantly accepted the notice of completion of

appeal. To substantiate the averments is an affidavit of the trial court's ministerial officer, attached hereto.

11. That this Supreme Court has never before dismissed an appeal for late service of the notice of completion of appeal even though the said notice of completion of appeal was issued within the statutory time. In all cases in which time Supreme Court has dismissed an appeal for reasons relating to notice of completion of appeal, said notice of completion of appeal was issued outside of the statutory period and served outside of the statutory period. This instant case is distinguishable because the notice of completion of appeal was issued within the statutory period, a copy served by appellant's attorney-in-fact on appellee itself within the statutory period and the original served by the trial court's ministerial officer on appellee's counsel one day thereafter only because appellee's counsel could not be found.

12. Appellant says that appellee's contention is that the Supreme Court does not have jurisdiction over its person for reason that the original notice of completion of appeal was served on appellee's counsel one (1) day after the 60th day, notwithstanding the fact that a copy of said notice of completion of appeal was served on appellee itself on the said 60th day is without merit.

First, appellant submits that the service of the copy of the notice of the completion of the appeal on the appellee on the 60th day after judgment satisfies the language and intent of the statute and the opinions of this Supreme Court and the service of the original notice of the completion of the appeal by the trial court's ministerial officer on the appellee's counsel on the 61s' day after judgment does not vitiate the appeal.

Further, appellant submits that this Supreme Court had jurisdiction over the subject matter of the appeal as seen as an approved bill of exceptions was filed. The filing of the approved appeal bond and the issuance of the notice of the completion of the appeal by the clerk of the trial court completes the appeal process since the service of the notice of completion of appeal is merely the notice of the appellee to appear at the Supreme Court and defend the judgment. Therefore, the Supreme Court ought not to abdicate its jurisdiction over this appeal only because the trial court's ministerial officer delayed in serving the notice of the completion of the appeal by one day for reasons beyond his control.

As we proceed to give legal analysis and examinations to these issues for possible consideration and determination in the light of the authorities relied upon by the parties and apply them to the facts as are presented, we wish to remark that "eternal vigilance is the price of liberty and he who knows the way of the Father and doeth not shall be beaten with many strips".

It is also important to remind legal counsels appearing at this bar that to prosecute or defend the interest of their respective clients, by virtue of their employment as such, have implied

authorities to do all acts necessary and proper to the regular and orderly conduct of the case and the protection and promotion of their client's interest, which affect the remedy only, and not the cause of action and which are ancillary or incidental to the general authority conferred. They are the agents of their clients to conduct their suits to judgment and their acts in conducting a suit are presumed to be authorized by the party they represent.

You must possess the skill and knowledge possessed by other members of the profession and must execute the case entrusted to your professional management with a reasonable degree of care, skill and despatch. If you fail to possess such skill and knowledge or to exercise such care and skill and despatch and an actual loss occurs to your client, a cause of action arises in favor of your client, an action of damages could be sustained against you. For you are held liable for the want of professional skill and diligence in practice and for negligence. You who undertake to conduct a litigation impliedly contract to exercise due care, skill, and knowledge of the law in the conduct of such litigation and this renders you liable for any loss and/or injury which your client suffers in consequence of your failure to do so. If you fail to litigate with that reasonable degree of care, skill, diligence and learning expected of the average legal counsel at this bar, you must remember that you are also liable for any mistake of the law which indicates a lack on your part of the attainment and diligence commonly possessed and exercised by legal practitioners of ordinary skill, and capacity.

With these admonitions in passing, we shall now dispose of the issues in the light of these questions:

1. Whether or not the notice of the completion of the appeal was served within the statutory period so as to give this Court jurisdiction over the subject matter?

2. Whether or not a revenue stamp was affixed to the appeal bond as required by law?

3. Is there in fact a thumb rule that fixes the amount on an appeal bond to be one-and-one half times the amount of the judgment?

4. The effect of an admission.

Reference to issue No. 1, i.e. the failure to place revenue stamps on the appeal bond or to be allowed forty-eight (48) hours to affix same to the document, we hold that count one (1) of the motion should be sustained for the Court has taken the position in opinions decided by it that it is a rule of law which clearly provides that:

It is mandatory that all civil appeal bonds carry stamps on their faces to make them valid. The absence of a stamp on the face of an appeal bond has been held by this Court to constitute a material ground for the dismissal of an appeal, as summarized in the following syllabus:

`1. The omission to stamp an appeal bond in accordance with provisions of the Stamp Act is a material error. *Freeman v. Republic,* 2 LLR 189 (1915); *Richards v. Holt,* 12 LLR 292 (1956).

It seems to us that of the several grounds stated in the motion to dismiss, this ground is sufficient to invalidate the bond upon which the appeal was completed. We are therefore of the opinion that the motion should be granted, for a recourse to the records indicates that the appeal bond bears no revenue stamp.

Thus, in the instant case the appeal bond is void and of no legal effect. A failure to place the required stamp on the appeal bond within the period of time prescribed by the statute for perfecting an appeal constitutes a material defect and renders such bond invalid for purposes of the appeal. *Gibson and Gibson v. Tubman,* 13 LLR 217 (1958).

As to counts 1, 2, 3 and 4 of appellant's resistance to the motion, whilst we are in agreement with the correct interpretation of the statute which provides that when a pleading is served without bearing the revenue stamp required by statutes, a period of forty-eight (48) hours is allowed for rectifying the insufficiency of a revenue stamp, that the time begins to run as soon as the responsive pleading attacking the insufficiency is received, and that the act of rectifying the omission commences with the filing by the proponent of the pleading of an application to the court for permission to rectify the insufficiency, *Construction & Maintenance Services, Inc. v. Richards,* 26 LLR 321 (1977), and that though a document may require a revenue stamp, it is error for a trial court to rule it inadmissible without allowing forty-eight (48) hours for the party to rectify the omission, *Acolatse v. Dennis,* 22 LLR 147 (1973), we are, however, not in agreement that these authorities are applicable to the instant case, given the fact that this is a motion to dismiss a defective bond because of the lack of revenue stamp which has been raised before the appellate court. That is to say, an appeal from a court of record may, upon motion properly made, be dismissed for any of the following reasons:

1. Failure of announcement of appeal;

2. Failure to file a bill of exceptions;

3. Failure to file an approved appeal bond;

4. Failure to file and serve a notice of the completion of the appeal or material defect on an appeal bond.

In addition, any material defect in the bond is a ground to dismiss the appeal. *Gibson and Gibson v. Tubman,* 13 LLR 217 (1958), text at 220.

Thus, a failure to place the appropriate stamp on an appeal bond within the time prescribed for perfecting the appeal is a material defect in said bond and thereby renders the same invalid on appeal. Counts 1, 2, and 3 of appellant's resistance are therefore overruled.

Reference to count 2 of the motion and the resistance thereto filed by appellant, the legitimacy of the check having been conceded by movant, it is needless to belabor the point of the inadequacy of the cash bond. This argument is therefore disregarded.

That as to the contention asserted in count five (5) of the resistance, the Court takes the position that the argument is well taken. There is no rule of law in this jurisdiction which fixes the amount of an appeal bond at one and one-half times the amount awarded in the judgment by the lower court. However, it would seem to us to be an inconsistent and contradictory argument to aver that the only judgment rendered in favor of appellee and against appellant is a judgment of "not liable" which was confirmed by the court below as appellee had neither made a counterclaim in the court below nor announced a cross-appeal to this Honourable Court; that there is no judgment amount which appellant needs to assure the Supreme Court of compliance with; and that therefore what is left then is merely the costs of court to be satisfied. Appellant submitted that the costs of court under any parity of reasoning cannot be in excess of Three Hundred Fifty Dollars ($350.00) in this case.

In appellant's appeal bond, it (appellant) has declared that: "The condition of this obligation is that we will pay and satisfy the final judgment of this Honourable Supreme Court and indemnify the defendant/appellee from all costs and injuries and damages arising from the appeal taken by plaintiff/appellant from the ruling/judgment of Her Honour Charlene A. Reeves, Judge of the Debt Court for Montserrado County, on the 21st day of October, A. D. 1988 in the above captioned case should the final judgment of the Honourable Supreme Court be for the defendant/appellee."

We believe that the position of appellant argued at this bar is inaccurate thinking and speculative, as it is presumptive for appellant to declare that the indemnity to cover what defendant/ appellee will suffer (all costs, injuries and damages arising from the appeal taken by plaintiff/appellant from the ruling or the judgment of Her Honour Charlene A. Reeves on the 2P' day of October, A. D. 1988) will be Three Hundred Fifty Liberian Dollars ($350.00).

"Indemnity" is defined as an obligation "to secure a person against future loss or damages; to make up for that which is past; to make good; to reimburse. It is an obligation or duty resting on one person to make good any loss or damages another has incurred while acting at his request or for his benefit". 14 R.C.L. 437.

The issue now is whether or not the Three Hundred Fifty Liberian Dollars ($350.00) which is the penalty of the appeal bond is adequate enough to reimburse or pay for all obligations incurred by appellee for all past expenses appellant has incurred, taking into consideration that the action was instituted on the 13th day of July, A. D. 1987, answer filed on the 27th day of July, A. D. 1987 together with procurement of exhibits annexed thereto, Plaintiffs reply filed on the 29"' day of July, A. D. 1987, filing of motion to strike, resistance filed

thereto, to ruling on law issues by the lower court on August 21, 1987, filing of motion to introduce a new evidence, which was also resisted, conduct of trial up to the court's final judgment rendered on the 2P' day of October, A. D. 1988; preparation and transmission of all trial records to this Court; and finally hearing of the case before this Court of last resort.

Is it possible therefore to consider that Three Hundred Fifty Liberian Dollars ($350.00) would be sufficient and adequate to compensate the time and energy exerted to achieve all of this? The answer would certainly be in the negative. Hence, it would be paradoxical to conclude "that what is left then is merely the costs of court and that the cost of court cannot under any parity of reasoning be in excess of Three Hundred Fifty Dollars ($350.00) in this case.

As to the contentions contained in counts 7, 8, 9, 10, 11, 12 and 13 of appellant's resistance, while they may appear to have reasonable substance, when an appeal statute has been violated due to the negligence of a litigant's counsel, said counsel should not expect the court to do for him that which is his binding duty to perform. In other words, appellant having failed to perfect his appeal within sixty (60) days as required by law, there is nothing this Court can do.

We have consistently held that:

1. Service of a notice of the completion of an appeal after the expiration of the period of time statutorily prescribed for such service is ground for dismissal of the appeal.

2. That an appellee's acknowledgment of untimely service of the notice of the completion of appeal does not constitute a waiver of the appellee's right to move the Court for the dismissal of such an appeal on the ground of untimeliness. *Toure v. Fahs,* 15 LLR 252 (1963).

3. That a notice of the completion of an appeal which is not served and returned served within the statutorily prescribed period of time is void. *Ibid.*

4. That the statute prescribing the period of time within which an appeal must be taken is mandatory. *Nancy v. Curry,* 14 LLR 152 (1960).

5. That where the notice of the completion of the appeal is served and returned more than sixty (60) days after rendition of judgment, the appeal will be dismissed. *Whea et al. v. Karl Strom* 16 LLR 51 (1964); *Hannah v. Seaz,* 16 LLR 84 (1964).

6. That it is the duty of appellant to superintend the appeal and to see that all legal requisites are completed. *Cole et al v. Larmi,* 25 LLR 450 (1977).

7. That in representing a client, a lawyer owes a duty to observe the rules of the Code of Moral and Professional Ethics and, in particular, to avoid careless errors in handling an appeal. *Taylor v. Pasi,* 25 LLR 453 (1977).

In view of all that we have observed, it is our holding that the motion to dismiss this appeal is meritorious. The appeal is therefore dismissed with costs against appellants. And it is hereby so ordered.

Motion granted: appeal dismissed.