

**JOSEPH K. DAUSEA and LOUSEAE D. KARGOU, Appellants, v. GERALD  
BENNETT COLEMAN, Appellee.**

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

Heard: MAY 28, 1985. Decided: June 21, 1985.

1. In order to perfect an appeal under our appeal statute, the appellant must have taken the following basic procedural steps: Announcement of an appeal, filing of an approved bill of exceptions, filing of an approved appeal bond, and service and filing of a notice of completion of appeal, all within the time prescribed by statute.
2. If the failure to complete the statutory prerequisites for perfection of an appeal is due to neglect or recalcitrance of a judge or a clerk of the court, the appellant will not be penalized, if it is found that the appellant has taken all the appropriate legal measures to avert the dismissal of his appeal.
3. It is a general principle of law that once a letter has been either delivered to the post office clerk or mailed at the place so designated, the responsibility of the person who so delivered the mail ceases.
4. Signing of the bill of exceptions *nunc pro tunc* by the trial judge indicates recognition of the principle attached to mailing and gives validity to the document.

The appellants, having lost an ejectment suit in the trial court, announced an appeal therefrom. However, the trial judge, immediately following his pronouncement of judgment, departed from the jurisdiction of the court. The appellants therefore mailed the bill of exceptions to the trial judge, under registered mail, for his approval, and filed a copy of the bill of exceptions along with the registered receipt, with the clerk of the trial court. The bill of exceptions was approved by the judge *nunc pro tunc* and returned the same which was filed with the clerk of court.

Notwithstanding the above, appellee filed a motion before the Supreme Court to dismiss the appeal, alleging that the appeal had not been perfected as required by law, and praying that the Court refuse jurisdiction over the matter.

The Supreme Court denied the motion and allowed the appeal, noting that as the failure by appellants to complete the statutory prerequisites for perfection of his appeal was not due

to neglect, and that as they had taken the appropriate legal measures to avert the dismissal of their appeal, they should not be penalized. The Court observed that the appellants had mailed the bill of exceptions, under registered mail, before the expiration of the period prescribed by statute, with a copy thereof being filed with the clerk of the trial court. The Court opined that in taking those steps, the appellants had met the requirements of the law and that they were therefore relieved of any further responsibility once the bill of exceptions was delivered to the post office and mailed to the judge under registered mail. The judge, the Court said, had approved the bill of exceptions *nunc pro tunc* and that the same had been filed with the clerk of court upon its return by the judge. Under such circumstances, the Court concluded, the appellants must be deemed to have perfected their appeal within the statutory time. The Court therefore *dismissed* the motion and allowed the appeal.

*Moses Agbaje, Sr.* appeared for the respondents/appellants. *Toye C. Barnard* of the Toye Barnard Law Offices appeared for the appellee/movant.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This action grew out of ejectment proceedings instituted against Joseph K. Dausea and Louise D. Kargou, defendants/ appellants, by Mr. Gerald B. Coleman, plaintiff/appellee. The records show that the parties were contesting their respective claims over property rights to a parcel of land situated between 14 and 15 streets, near Gibson Avenue, in Sinkor. A verdict was bought down against the defendants/appellants, and judgment rendered thereon. From the verdict and the judgment confirming the same, appellants announced an appeal to this Court.

The appellee filed a three-count motion requesting this Court to refuse jurisdiction over the case and to dismiss the appeal, while appellants presented a three-count resistance showing reasons why the motion should be denied.

The basic issue presented from our review of the records is whether the counsel for appellants perfected his appeal within the time provided by our statute, so as to give this Court appellate jurisdiction over the case.

Our statutes provide several basic procedural steps to be taken before all appeal can be perfected. They are the announcement of an appeal, the filing of a bill of exceptions, the filing of an approved appeal bond and the service and filing of a notice of completion of the appeal.

According to the records, the presiding judge in the lower court rendered judgment against appellants on the 20th of February, 1985, and immediately left the circuit for another assignment in Sinoe County, thus making it virtually impossible for appellants to have the judge approve the bill of exceptions before the expiration of the required ten (10) days period. As a result, the appellants in pursuit of filing their appeal to this Court and because the judge had left for Sinoe County, mailed the unapproved bill of exceptions to him in Sinoe County, by and thru the Monrovia Port Office, under register receipt No.3-04398, together with a covering letter dated February 26, A. D. 1985. They further filed the copies of the papers (bill of exceptions and letters) with the clerk of said court, pending the arrival of the approved copies from the trial judge in Sinoe County. The records further show that they did all of these within of the ten day period allowed by statute. The judge, upon receipt of the bill of exceptions, approved and returned it to appellants. It was subsequently filed.

Under our statutes, if failure to complete the statutory prerequisites for perfection of an appeal is due to neglect or recalcitrance of a judge or a clerk of a court, the appellant will not be penalized, if it is found that he has taken all appropriate legal measures to avert the dismissal of his appeal. For reliance see *Sauid v. Gebara*, 15 LLR 598 (1964); *Cole v. Cole*, 15 LLR 608 (1964).

In the *Sauid v. Gebara* case, which involved a contract, a final judgment was rendered by the trial court on May 28, 1963. The notice of completion of the appeal was not issued and served on the appellee until August 1, 1963, a full 65 days after the rendition of the judgment. In that case also, there was no evidence of ill health of appellant, or that the judge had failed or refused to sign the papers. Rather, appellant sat down supinely and permitted the statutory time to lapse. In that case therefore, the court dismissed the appeal. The present case, however, presents a different set of interesting facts. Firstly, before appellants could file his papers, the presiding judge of the court left the circuit for another court in Sinoe County. Secondly, they did not take repose thereby because of the absence of the judge; instead, they mailed the unapproved papers under registered mail to the judge in Sinoe County with-in the prescribed time. Under these circumstances, this Court has distinguished the *Sauid v. Gebara* case from this case.

It is a generally accepted principle that once a letter has been either delivered to the post office clerk or mailed at the place so designated, the responsibility of the person who so delivered the mail ceases. For reliance, see 72 C. J. S., § 51, p. 1065.

Moreover, the judge in signing the bill of exceptions clearly wrote the phrase *nunc pro tunc* which in our opinion not only served as an indication that the trial judge recognized the

principle attached to mailing but also added validity to the document.

Based on the circumstances surrounding the case, narrated supra, and the law controlling, it is our considered opinion that the appellants did perfect their appeal within statutory time. The motion to dismiss the appeal is therefore *denied*. And it is hereby so ordered.

*Motion denied.*

