JOSEPH B. DEOUD and THE BOARD OF GENERAL APPEALS, Ministry of Labour, Appellants, v. THE MANAGEMENT OF FIRESTONE PLANTATIONS COMPANY, by and thru its Representative, Appellee.

MOTION TO DISMISS APPEAL FROM THE NATIONAL LABOUR COURT.

Heard: April 26, 1989. Decided: July 14, 1989.

1. An exception shall be taken and an appeal shall be announced at the time of rendition of judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or if such an attorney is not present by a deputy appointed by the court for this purpose.

2. A letter to the trial judge, subsequent to the rendition of final judgment, excepting to the judgment and announcing an appeal therefrom does not satisfy the requirements of the statute that the exception be taken and appeal be announced at the time of the rendition of the judgment and in open court.

3. An announcement of taking an appeal is to guarantee an appeal to all parties against whom judgment is rendered, whether or not they are present or absent.

4. The right of an appeal from a judgement, decree, decision or ruling of any court or administrative hoard or agency, except the Supreme Court, shall be held inviolable.

5. Lawyers are presumed to be men of ability and integrity, ready and willing to see and admit their errors with too great an amount of probity and of honor, than to try to saddle their errors upon the shoulders of others.

On October 1, 1986, the National Labour Court entered judgment in favor of movant and against Co-respondent Joseph B. Deoud. The said co-respondent was represented as of record by the Toye C. Bernard Law Firm, of which Counsellor Harper S. Bailey was a member. At the time of the rendition of the judgment, Counsellor Bailey was physically present in the National Labour Court but failed to note exceptions to the judgment and to announce an appeal therefrom; and when the matter was suspended, he left the court and went to the law firm.

Apparently upon his arrival at the Toye C. Bernard Law Firm, he met Counsellor Toye C. Bernard and informed him that the judgment in the case at which he Harper S. Bailey had represented the firm and was physically present, was rendered against their client but that he did not register exception nor did he appealed therefrom.

Predicated upon the information, Counsellor Bernard addressed a letter to the judge of the National Labour Court in which he registered his exceptions to the judgment, announced an appeal therefrom and informed the judge that he will prepare his bill of exceptions for the judge's approval. Said bill of exceptions was apparently presented and approved by the National Labour Court judge.

At the call of the case by the Supreme Court for the hearing of the appeal, the management of Firestone Plantations Company moved the Court to dismiss the appeal on ground that the fundamental requirement for taking and perfecting an appeal to the Supreme Court, as recorded in the Civil Procedure Law, Rev. Code 1: 51.6, had been grossly violated by Co-respondent Joseph B. Deoud, in that he had failed and neglected to register exceptions to the judgment and to announce an appeal from said judgment in open court at the time of rendition of the same.

In the resistance to the motion, the lawyers for Co-respondent Joseph Deoud argued that the letter written to the National Labour Court judge by Counsellor Toye C. Bernard on the same day of the rendition of judgment met the statutory requirement and therefore the Supreme Court should consider the appeal as being properly taken and before the Supreme Court. The Supreme Court ruled that the letter did not fulfill the requirements of the statute to except the judgment and announce appeal in open court at the time of the rendition of the judgment. The Supreme Court therefore dismissed the appeal.

Additionally, the Supreme Court determined that given the high caliber of lawyers at the Toye C. Barnard Law Firm and their outstanding reputation, coupled with their many years of practice before the Supreme Court, they had deliberately attempted to mislead the Supreme Court by contending that the letter met the requirements of the statute. The Supreme Court deemed such conduct offensive and fined the lawyers $500.00 each.

Ephraim W. Smallwood of the Toye C. Barnard Law Firm announced representation for appellants. *H. Varney G. Sherman,* in association with *George Odoi,* appeared for appellees.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

Co-respondent/Appellant Joseph B. Deoud, respondent in the proceedings in the National Labour Court, lost his case when judgment was entered against him on October 1, 1986 in the aforesaid Labour Court and in favor of the appellee herein, the Management of Firestone Plantations Company. The case was argued in the Labour Court on September 18, 1986 with defendant, now appellee, represented by Counsellors Harper S. Bailey and Toye C. Barnard, with Counsellor Bailey being present in court. When judgment was rendered in the case, Counsellor Bailey was physically present in court, but for some reasons still unknown to us, the learned counsel for the appellant, though under no disability, neither excepted to the ruling nor announced an appeal therefrom, in order to pursue a possible review of the said judgment as provided for by the Civil Procedure Law, Rev. Code 1: 51.2 and 51.4.

The most relevant and precise provision of the law reads: "An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if

such an attorney is not present by a deputy appointed by the court for this purpose." Civil Procedure Law, Rev. Code 1:51.6.

Ordinarily, this case would have required only a "Judgment without opinion" decision in determining it. However, the manner in which Counsellors Toye C. Barnard and Ephraim Smallwood, legal counsels of the Co-respondent Joseph H. Deoud handled this case impelled us to write an opinion so that we may again warn lawyers who are in the habit of using this method of prosecuting their clients' cases.

After Counsellor Bailey sat in court and listened to the reading of the ruling of the Labour Court Judge, he left without excepting to it or announcing an appeal therefrom. Apparently, when he arrived in his office and informed his law partner that a judgment had been rendered against their client and that he had neither excepted thereto nor announced an appeal, Counsellor Barnard addressed the following letter to Judge Williams:

"October 1, 1986
His Honour Arthur K. Williams
Judge, National Labour Court, R. L.
Temple of Justice Monrovia, Liberia

Dear Judge Williams:
IN RE: The Management of Firestone Plantations Company PETITIONER Versus Board of General Appeals, Ministry of labour, and Joseph B. Deoud RESPONDENTS (JUDICIAL REVIEW UNFAIR LABOUR PRACTICE)

We observe that in your ruling today in the above entitled case, it was recorded that the respondent is represented by the Toye C. Barnard Law office in person of Counsellor Toye C. Barnard and Soe H. Bailey. This representation is inaccurate since I was not present in Court when the ruling was given.

In view of the above, and since no exception was taken to Your Honour's ruling, I am herewith respectfully requesting that respondent's exceptions to Your Honour's ruling be recorded and that respondent hereby announces an appeal from your ruling to the Honourable Supreme Court of Liberia, sitting in its October Term, A. D. 1986.

We will in due time prepare our bill of exceptions and present same to your Honour for approval.

Respectfully Yours,
Sgd. Toye C. Barnard
COUNSELLOR-AT-LAW."
TCB: sb".

Quite frankly, before I read this letter, I never thought for a moment that any lawyer of our bar, especially of Counsellor Barnard's stature could have gone to such depth, but he did.

Counsellor Smallwood, a partner of the Toye C. Barnard Law Firm who appeared to oppose the motion to dismiss their appeal, instead of conceding the contents of the motion as being legally sound, argued for its denial because the exceptions noted and appeal announced in their letter of October 1, 1986 to the trial judge adequately satisfied the requirement of section 51.6 of the Civil Procedure Law. According to Counsellor Smallwood, not only were the noting of exceptions and announcing of an appeal in the letter of October 1, 1986, the date on which final judgment was entered in the case, within statutory time, but said letter could have even been written a few days after the judgment was rendered. Another equally disturbing argument advanced by Counsellor Smallwood was the constitutional requirement for inexpensive filing and hearing of an appeal. The necessary elements in the statute, section 51.6, Civil Procedure Law are time, place and manner. When exceptions should be noted, an appeal announced, where and how? We will revert to the statute. "An appeal shall be taken *at the time of rendition of the judgment by oral announcement in open court."* (Emphases added.) This portion of Section 51.6 makes it mandatory that at the rendition of the judgment the *parties be present,* obviously to secure the right to appeal: "Such announcement may be made by the party if he represent himself or by the attorney representing him, or, if such attorney is not present by a deputy appointed by the court for this purpose."

Counsellor Smallwood contended that the letter written by Counsellor Barnard, his partner, which attempted to fulfill the requirement of section 51.6, did in fact do just that. His argument was that the sending of the letter on the same day of the rendition of the judgment satisfied the requirement of the statute. When asked to comment as to how many days, after the rendition of the judgment, he would consider late and out of the statutory period, Counsellor Smallwood replied "a few days." When the Bench insisted that he name a specific number of days, he replied, "three days, I guess."

A perusal of the resistance of the appellant to the motion to dismiss indicated that the legal counsels of the appellees had not contended, and are not contending herein, that Counsellor Bailey was not a member of the Toye C. Barnard Law Firm, or, for that matter, Counsellor Bailey was not physically present in court when final judgment was entered, or that he was under some disability. In fact, the record certified to us revealed that it was Counsellor Bailey who argued the case on September 18, 1986. Although Counsellor Barnard was not in court when the case was argued and the judgment rendered in the lower court, yet the record made by Counsellor Bailey was in keeping with the practice extant in this jurisdiction. Counsellor Barnard avoided charging Counsellor Bailey of being an intermeddler. He accepted the

representation of their client by his colleague in the court below but refused to accept responsibility for his blunder.

Before bringing to an end this opinion, the words of Mr. Chief Justice Grimes speaking for this 'Court are appropriate here:

"Lawyers are presumed to be men of ability and integrity, ready and willing to see and admit their blunders and with too great an amount of probity and of honor to try to saddle their blunders upon the shoulders of others.

Mr. Benson's explanations at this Bench have been pusillanimous, far-fetched and erroneous. He has betrayed lack of knowledge of certain fundamental principles of law, e.g., the law governing objections and exceptions, and an equal unfamiliarity with the progress being made in the modeling of the practice and procedure of our courts, which it is his duty to follow in order that he may be fully conversant therewith . . . ." See *In re J. Allen Benson, Attorney-At-Law, Respondent,* 5 LLR 343 (1936), text at page 347. We cannot say more.

Some years ago, this Court experienced an incident similar to that of the instant case, where the appellant failed to file a bill of exceptions and the Court warned: "In remanding this case for a new trial, we must again sound a solemn warning to practitioners before our courts. Incompetence, carelessness, and other improper handling of a litigant's interests that reflect discredit and opprobrium on the legal practice and the judiciary will no longer be tolerated ..." See *Otto v. Republic,* 21 LLR 390 (1972), at page 393.

It is the duty of party litigants, in order to protect their own interests and not rely on the courts, to so surround their causes with the safeguards of the law so as to secure them. See *Gaiguae v. Jallah el al.,* 20 LLR 163 (1971) at 165.

Finally, because the legal counsel for the appellants adroitly attempted to mislead this Court, the Toye C. Barnard Law Firm is fined $500.00 (Five Hundred Dollars) to be paid into the Bureau of Internal Revenues within forty-eight hours after the rendition of this decision.

Wherefore, it is our opinion and decision that the motion to dismiss appellant's appeal be, and the same is hereby granted with costs against the appellants. And it is so ordered.

Motion granted.