

NANCY GOFFA and Family, Appellants/ Respondents, v. **FRANK E. TEAH**,
Appellee/ Movant.

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

Heard: April 13, 1998. Decided: August 6, 1998.

1. Failure of appellee to except in the court below to the financial sufficiency of the appeal bond constitutes a waiver of his right to objection thereto and warrants denial of a motion to dismiss the appeal filed in the Supreme Court.
2. The Constitution provides that the right of an appeal from a judgment shall be held inviolable and the rules and procedures in filing and hearing of an appeal shall be easy, expeditious and inexpensive. The object of this constitutional provision is to enable a party litigant appealing from a judgment to easily and inexpensively perfect his appeal for a hearing by the Supreme Court. Thus, it is intended to discourage dismissal of appeals on technical grounds and to enable the Supreme Court to hear an appeal on its merits.
3. Where the appellant fails and neglects to file an approved appeal bond and to file and serve a notice of completion of appeal, as required by law in perfecting an appeal to the Supreme Court, the appeal shall be dismissed.
4. The Supreme Court may dismiss an appeal upon motion for failure of the appellants to serve on appellee a notice of completion of appeal within sixty days as of the date of rendition of a final judgment as required by law.

This case originated in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, where a judgment was rendered against appellants/respondents and awarding the appellee, movant herein, US\$446,450.00 as special damages and US\$90,000.00 as general damages. The appellant/respondents excepted to the ruling and announced an appeal to the Honourable Supreme Court of Liberia. Subsequently, appellants filed their bill of exceptions, approved appeal bond, and notice of completion of appeal, which was served on the appellee on the 7th day of May, A. D. 1997, the same date of the filing.

The appellees filed a motion to dismiss the appeal on grounds that the appellants' appeal bond of US\$75,000.00 was insufficient to indemnify the appellee as the final

judgment rendered by the trial court on March 5, 1997, was for the sum of US\$446,450.00 and US\$90,000.00 as special and general damages, respectively. Appellee also contended that the notice of completion of appeal, filed and served on the 7th day of May, A. D. 1997, was filed two days beyond the statutory period of sixty days after the rendition of final judgment.

Appellants filed a seven- count resistance, contending that the valuation of the property in the bond indicates that it had sufficient surety, and that the notice of completion of appeal was served within the statutory period of sixty days. They argued that the property offered by the sureties was not encumbered, and that even though the notice of completion of appeal was filed on the 23^d day of May, A. D. 1997, with the clerk of the lower court, appellee's counsel had refused to accept and sign for the notice.

The Supreme Court sustained the contentions of the appellants, holding that the appellee had failed to state the amount which he believed the appeal bond should have been and that the appellee had failed to except to the financial sufficiency of the said bond in the trial court. The Court noted that the failure by the appellee to except to the bond in the trial court constituted a waiver and precluded him from challenging the said bond in the Supreme Court. The Court noted also that it was aware that the purpose of an appeal bond was to secure the appellee from costs and to assure the Court of compliance with its judgment, but held that in its opinion the amount of the bond was sufficient given the absence of any exceptions to its sufficiency in the trial court.

The Court referred to the constitutional provision holding the right of appeal to be inviolable, and opined that as the provision was designed to enable appeals by party litigants to be easy, expeditious, and inexpensive, and to discourage the dismissal of appeals on technical grounds so that the Court could hear cases on the merits, it would not subscribe to dismissing appeals on the technical grounds advanced by the appellee.

As to whether the Court had secured jurisdiction over the persons of the appellee because of the failure of the appellant to serve a notice of completion of appeal on the appellee within the time prescribed by statute, the Court stated that it frowned on the strict application of the procedural statute which had in the past deprived party litigants of their lives and valuable properties. The Court noted that in the instant case, counsel for appellee had even refused to accept the notice of completion of appeal and that the trial judge had instruct the sheriff to serve the said notice, since he

would not accept same directly from the appellant. The Court concluded that in order to discourage the dismissal of cases on procedural grounds, it was denying the motion to dismiss. Accordingly, the motion was denied.

Frederick A. B. Jayweh appeared for appellee/movant. Malley M Gray, Sr., appeared for appellants/respondents.

MR. JUSTICE SACKOR, SR., delivered the opinion of the Court.

This case originated from the Sixth Judicial Circuit Court, Montserrado County, where a judgment was rendered against the appellants/respondents, awarding the appellee, movant herein, US\$446,450.00 and US\$90,000.00 as special and general damages, respectively. The appellants/respondents excepted to and announced an appeal from the judgment in the action of damages for wrong by attachment, instituted by the appellee/ movant, Frank E. Teah.

On the 13th day of March A.D. 1997, appellants filed their bill of exceptions, and subsequently filed their approved appeal bond on the 2nd day of May A. D. 1997. On the 3rd day of May A. D. 1997, a notice of completion of appeal was filed, and thereafter served on the appellee on the 7 th day of May A. D. 1997.

Appellee filed a ten-count motion to dismiss appellants' appeal, counts 4 and 8 of which are deemed worthy of consideration in the determination of this case by the Court. Appellee/movant contended in Count 4 of his motion and argued before this Court that appellants' appeal bond of US\$75,000.00 was insufficient to indemnify the appellee in the final judgment rendered by the trial court on March 5, 1997 for the sum of US\$446,450.00 and US\$90,000.00 as special and general damages. Appellee/movant also contended in Count 8 of his motion that the appellants served their notice of completion of appeal on appellee/movant on the 7 th day of May A. D. 1997, two days beyond the statutory period of sixty days after rendition of the trial court's judgment, and contrary to the requirements of the law. Movant therefore requested this Honourable Court to dismiss appellants' appeal and sustain the judgment of the lower court.

In resisting the motion to dismiss their appeal, appellants filed a seven count resistance. We deem Counts 3, 4, 5, and 7 of the resistance relevant for the determination of this case.

Appellants contended in counts 3 and 7 of their resistance, and argued before this Court, that they secured the approval of their appeal bond with two sureties by the trial judge and filed same with the clerk of the lower court, as well as served a copy thereof on the opposing counsel, within the sixty days period required by law. They also argued before this Court that the property offered by the sureties had not been claimed by any person and that the appeal bond was sufficient to indemnify appellee against any loss arising out of this appeal.

In counts 4 and 5 of the resistance, appellants also contended that they had filed their notice of completion of appeal on the 3rd day of May, A. D. 1997, with the clerk of the of the lower court and their counsel had subsequently served a copy thereof on appellee's counsel, but that the latter had refused to accept and sign the said notice. Whereupon, appellants' counsel informed the trial judge, His Honour M. Wilkins Wright, who order the sheriff of the trial court to serve same on the appellee's counsel, Counsellor Frederick A. B. Jarweh. Appellants specifically contended in count 5 of the resistance that appellee's counsel refused to accept and sign the notice of completion of appeal from their counsel so as to enable the appellee to file his motion to dismiss their appeal. They further contended in count 4 of their resistance that they completed the filing and service of the notice of completion within sixty days. Appellants therefore respectfully prayed this Honourable Court to deny and dismiss appellee/ movant's motion.

The facts and circumstances in this case present two salient issues for the determination of this case. They are:

1. Whether or not this Court acquired jurisdiction over the person of the appellee upon the service of the notice of completion of the appeal.

27. Whether or not the appellants' appeal bond is sufficient to indemnify the appellee from any loss and injury arising from this appeal.

We shall discuss these issues in the reverse order. As to the issue of insufficiency of appellants' appeal bond, this Court observes that counsel for appellee failed to state the amount of appellants' appeal bond which he considered sufficient to indemnify him from all costs and injuries that he may sustain should the judgment of the lower court be confirmed by this Court. Further, we observe from the records the absence of appellee's exception to the financial sufficiency of appellants' appeal bond in the court below. In the case *Kerpai vs. Kpene*, 25 LLR 422 (1977), this Court held that "failure of appellee to except in the court below to the financial sufficiency of the

filing of the bond constitutes a waiver of his objection and warrants denial of a motion to dismiss the appeal." We are aware that the purpose of an appeal bond is to secure to the appellee his costs and to assure the Court of compliance of its judgment. However, we consider the amount of the bond of US\$75,000.00 sufficient to indemnify the appellee herein in the absence of any objection to the sufficiency of said bond in the trial court. Hence, the appellee's failure to except to the financial sufficiency of the approved appeal bond constitutes a waiver of his objection and therefore warrants a denial of his motion to dismiss appellants' appeal.

Article 20(b) of our Constitution clearly provides that the right of an appeal from a judgment shall be held inviolable, and that the rules and procedures in filing and hearing of an appeal shall be easy, expeditious and inexpensive. The object of this constitutional provision is to enable a party litigant appealing from a judgment to easily and inexpensively perfect his appeal for a hearing by this Court. Thus, it is intended to discourage dismissal of appeals on technical grounds and to enable this Court to hear an appeal on its merits.

Appellee relied on the case *Brown v. Monrovia City Corporation*, 38 LLR 500 (1997). In the *Brown* case, this Court dismissed the appeal on grounds that the appellants failed and neglected to file an approved appeal bond and file and serve a notice of completion of appeal as required by law in perfecting an appeal to this Court. In the instant case, the appellants filed an approved appeal bond which financial sufficiency appellee alleged to be inadequate. Appellants also filed and served a notice of completion of appeal which appellee also alleged was served on him two days beyond the statutory period of sixty days. The facts in the *Brown* case and the instant case are not analogous. Hence, the contention of appellee is not sustained.

We shall now decide the second and final issue in this case, which is, whether or not this Court acquired jurisdiction over the person of the appellee upon the service of the notice of completion of the appeal.

Appellee contended that appellants filed and served their notice of completion of appeal in this case on the 7th day of September A. D. 1997, two (2) days beyond the statutory period of sixty days, and contrary to the requirements of the statute. Hence, he said, the appeal should be dismissed for violation of the statute. Appellants, on the other hand, argued that their counsel served the notice of completion of appeal on appellee's counsel, but that he refused to receive and sign same, purposely to file this motion. Appellants contended that their counsel informed the trial judge concerning the refusal of appellee's counsel to accept and sign the notice of completion of appeal

and that the said judge ordered the sheriff to effect service thereof, which notice was then served on appellee's counsel on the 7th day of September A.D. 1997.

We agree that this Court may dismiss an appeal upon motion for failure of the appellants to serve on appellee a notice of completion of appeal within sixty days, as required by law, and we have so held in a long line of cases decided by this Court. However, be that as it may, this Court in the instant case, frowns on the strict application of our procedural statutes which in the past deprived parties litigant of their lives and valuable properties. Hence, we will deny appellee's motion and will hear appellants' appeal in determining the substantive rights of the parties. *ADC Airlines v. Sannoh*, 38 LLR 603 (1998).

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the motion to dismiss appellants' appeal should be, and the same is hereby denied and dismissed. The Clerk of this Court is hereby ordered to docket this case to be heard by this Court on its merits. Costs to await the final determination of this case. And it is hereby so ordered.

Motion denied.