

ITP Ltd., a Liberian Corporation, represented by its Attorney-In-Fact,
COUNSELLOR HENRY REED COOPER, Petitioner, v. **G. BACCUS**
MATTHEWS, Minister of Foreign Affairs, Respondent.

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

Heard: October 31, 1994 Decided: February 16, 1995.

1. The failure of the appellant to file and serve a notice of completion of appeal within 60 days is a ground for the dismissal of the appeal.
2. In equity, fraud may be presumed from circumstances, but in law it must be proved.
3. Service of notice of completion of appeal upon the appellee by the sheriff completes the appeal and establishes the jurisdiction of the Supreme Court. An endorsed acknowledgment of such service by the appellee is sufficient proof thereof and the appeal is not dismissible solely by reason of the sheriffs failure to make separate returns.
4. A certificate from the record regarding the non-service and filing of the notice of completion of appeal will not be disturbed.

From a final judgment of the Civil Law Court, Sixth Judicial Circuit, appellant announced an appeal to the Supreme Court. When the case was called for hearing, the appellee/ movant brought to the attention of the court that it has filed a motion to dismiss the appeal because no notice of completion of appeal was issued, filed and served on appellee; and that the notice of completion of appeal issued by the assistant clerk of court and allegedly served on the movant's employee, one Mr. Joseph V. Flomo, Jr. is fraudulent.

The court upon review of the records noted that there is a notice of completion of the appeal on the file which showed that it was issued and served on one Joseph V, Flomo, Jr. of the appellee's office prior to the expiration of the 60 days as required by statute. The Court also noted that since the appellee has denied the service of the notice of completion of the appeal on its employee, and has attached an affidavit sworn to by Mr. Joseph V. Flomo, an investigation was needed in order to arrive at a fair and just determination of the circumstances. With respect to the allegations of

fraud, the court also noted that fraud in law must be proved, which also an investigation, all of which will lead to delay in the trial of the appeal. The Supreme Court held that since service of notice of appeal upon the appellee by the sheriff completes the appeal and establishes the jurisdiction of the Supreme Court, an endorsed acknowledgment of such service by the appellee is sufficient proof thereof and the appeal is not dismissible solely by reason of the sheriffs failure to take separate returns. Against this background, the contentions of the parties, and the need to expedite the trial of the appeal, the Supreme Court *denied* the motion and ordered the appeal proceeded with

Moses K Yangbe, in association with *Henry Reed Cooper*, appeared for appellee/movant. *Lloyd Kennedy* of the Ministry of Foreign Affairs, in association with *Oswald Tweb*, appeared for the appellant/respondent.

MR. JUSTICE MORRIS delivered the opinion of the Court.

When this case was called for hearing, the appellee/movant brought to our attention that he has filed an eight-count motion to dismiss the appeal because the appellant has failed to serve a notice of completion of appeal on the appellee. For the benefit of this opinion, we shall only quote counts 3, 4, 5 and 8 of the motion which we feel are relevant for the determination of his case.

"3. Appellee/movant says that appeal may be dismissed by the Appellate court after filing of a bill of exceptions, for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of completion of the appeal as required by statute. However, where the Republic of Liberia or its agency is a party, the law exempts it from filing an appeal bond, but it must have served a notice of completion of appeal on the appellee within 60 days from the date of the final judgment from which it appealed. To the contrary appellant/respondent has failed to have served on appellee/movant, a notice of completion of the appeal within the time allowed by statute, since the date of the final judgment (May 23,1994) as will more fully appear from a copy of the clerk's certificate hereto annexed and marked as exhibit "D", forming an integral part hereof. Appellee/movant says that it is the notice of completion of appeal which brings appellee under the jurisdiction of the appellate court which was not done in this case

4. And also because, on the 25 th of July, A. D. 1994 the clerk of the Civil Law Court, Sixth Judicial Circuit Montserrado County, Mrs. Irene Ross-Railey thoroughly inspected the records of this case and give a certificate to the effect that since the rendition of the final judgment on the 23rd of May, A. D. 1994 no notice of completion of appeal was issued, served, returned served nor filed in the case file.

The certificate is already alluded to herein above. The same court's records were inspected recently, and discovered on file, was a notice of completion of appeal, shown to have been issued on the 22nd of July, A. D. 1994 by Francis Nah, Assistant Clerk of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, who allegedly signed same for and on behalf of Mrs. Irene Ross-Railey Clerk of the Civil Law Court. We obtained a copy from the courts records, which attached hereto as exhibit "D"...

5. Appellee/movant says that this alleged notice of completion of appeal is a fake document and designed purposely to mislead this Honourable court, in that, Francis Nah, as assistant clerk of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, has no authority to sign as such, whilst Mrs. Irene Ross-Railey, the Clerk of the court, is physically present at work and not incapacitated

8. Appellee/movant submits that under the law, fraud vitiates all transactions and the notice of completion of appeal not having been served on the appellee or its counsel, this Honourable Court has no jurisdiction over appellee and the case therefore, should be dismissed... We shall also quote counts 5, 6, 7, 8, 9, 12, 14, 16, 20 and 22 of the returns:

"5. Because as to count 3 of the motion to dismiss appeal, appellant/respondent says that the notice of completion of appeal was served and filed within the statutory period of sixty (60) days. Recourse to the records of the case reveals that the notice of completion of appeal, signed and acknowledged by the appellant/respondent and the appellee/movant, was filed on July 22, 1994. Hereto attached as exhibit "R-2" is a copy of the notice of completion of appeal. Hence, appellant respectfully request this Honourable Court to dismiss the motion to dismiss appeal.

6. Further to count 3 of the motion to dismiss appeal, appellant/respondent says that it is preposterous and beyond the imagination of mortal man for the notice of completion to be filed with the signature of the appellee/ movant and yet not be served on the appellee/movant.

7. Further to count 3 of the motion to dismiss, appellant/ respondent says that by filing and serving the notice of completion of appeal (Exhibit "R-1"), it had fully complied with the mandatory statutory requirements for perfecting an appeal before this Honourable Court and have brought the parties under the jurisdiction of this Honourable Court and there remains nothing else to be done. Hence, the motion to dismiss being devoid of legal merit should be denied

8. Because as to count 4 of the motion to dismiss appeal., appellant/respondent denies that the clerk of the Civil Law Court issued a certificate on July 25, 1994 to the effect that since the rendition of final judgment on May 23, 1994, no notice of completion of appeal was issued, served, returned served nor filed in the case file. (Emphasis ours).

9. Further to count 4 of the motion to dismiss appeal, appellant/respondent submits that the certificate issued by the Clerk of the Civil Law Court was to the sole and only effect that no notice of completion of appeal was served. Appellant/respondent respectfully requests this Honourable Court to take judicial notice of the clerk's certificate dated July 25, 1994: "to the contrary appellant/ respondent has failed to have served on appellee/movant notice of completion of appeal within the time allowed by statute since the date of the final judgment (May 23, 1994) as will fully appear from copy of Clerk's certificate hereto annexed and marked as exhibit "D", forming an integral part hereof: Appellee/movant says that it is the notice of completion of appeal which brings appellee under the jurisdiction of the appellate court which was not done in this case "

12. Also further to count 4 of the motion to dismiss appeal, appellant/respondent submits that the notice of completion of appeal issued on July 22, 1994 by Francis Nah, assistant clerk Civil Law Court, Sixth Judicial Circuit Court Montserrado County, for and on behalf of the clerk of the Civil Law Court, Irene Ross-Railey, was served on and acknowledged by the appellee/movant. This honourable court is requested to take judicial notice of the notice of completion of appeal dated July 22, 1994, appellant/ respondent exhibit is "R-2".

14. Further to count 5 of the motion to dismiss appeal, appellant/respondent denies that an assistant clerk of court has no authority to sign documents in the absence of the clerk of court. Appellant/respondent submits that if this contention of appellee/movant is upheld then the whole machinery of a court may be brought to a total standstill whenever the clerk is absent, as was the case when the assistant clerk of the Civil Law Court issued the notice of completion of appeal on July 22, 1994.

16. Because as to count 6 of the motion to dismiss appeal, appellant/respondent says that the letter marked appellee/ movant's Exhibit "E" is of no probative value and relevance to the matter at bar. Appellant/respondent submits that because the clerk was in office at a particular time and signed a letter doesn't *ipso facto* disprove that she was not in office the entire day or that she was not available when the assistant clerk

signed the notice of completion of appeal on the same day.

20. Because as to count 8 of the motion to dismiss appeal, appellant/respondent says that fraud is never merely alleged but must be proven. Appellant/respondent submits that the appellee/movant has not proven fraud in its entire motion but wants this Honourable Court to dismiss an appeal based on mere allegation of fraud.

22. Further to count 8 of the motion to dismiss, appellant/ respondent says that said count, along with the entire motion, should be dismissed as it does not contain any ground for dismissal of an appeal "

This motion has presented two main issues. The first is that no notice of completion of appeal was issued, served and filed; and the second is that the notice of completion of appeal issued by the assistant clerk of court and allegedly served on the movant's employee, one Mr. Joseph V. Flomo, Jr. is fraudulent and therefore the appeal should be dismissed.

With reference to count one, the court says that under normal circumstances, the failure of the appellant to intercede for the issuance, service and filing of the notice of completion of appeal within 60 days is a ground for the dismissal of the appeal as repeatedly held by this court. However, it would appear that the, situation is different in this case, in that there is a notice of completion of the appeal issued and served on one Joseph V, Flomo, Jr. of the appellee's office on the 22nd day of July, 1994 prior to the expiration of the 60 days as required by statute. The appellee has denied the service of the notice of completion of the appeal on its employee, and has attached an affidavit sworn to by Mr. Joseph V. Flomo, Jr.

The court also observed that the 22nd day of July, 1994 was on a Friday and that the 25th day of July 1994, the day the certificate for non-filing of the notice of completion of appeal was issued by the clerk of the Civil Law Court, was on a Monday. In order to arrive at a fair and just determination, an investigation needs to be instituted in order to ascertain the reason why the assistant clerk of court had to issue and sign the notice of completion of appeal instead of the clerk.

The second reason which deals with count 8 of the motion relates to fraud which according to appellee/movant vitiates all transactions. There again the question of investigation comes in because "in equity fraud may be presumed from circumstances but in law it must be proved." *John v. Republic*, 7 LLR 261 (1941). To the mind of the court, to establish fraud in this case evidence would have to be taken which will entail

an investigation thereby delaying the trial of the appeal. "Since service of notice of appeal upon the appellee by the sheriff completes the appeal and establishes the jurisdiction of the Supreme Court, an endorsed acknowledgment of such service by the appellee is sufficient proof thereof and the appeal is not dismissible solely by reason of the sheriffs failure to take separate returns. *Kanneh v. Republic*, 17 LLR 639 (1966)

In view of these contentions, and in order to expedite the trial of this appeal, the motion is hereby denied and the appeal ordered proceeded with. The assistant clerk of court for his failure to have placed the notice of completion of the appeal prepared by him and served on Joseph V. Flomo Jr., the employee of the movant, in the record, is suspended off the job for two weeks effective immediately.

We would like to sound a warning to all appellants to superintend and to make sure that their notice of completion of appeal is prepared by the clerk or acting clerk and have same placed in the records of the file prior to the expiration date of the statutory period of 60 days. Otherwise, any certificate from the record regarding the non-service and filing of the notice of completion will not be disturbed. And it is hereby so ordered.

Motion denied.