

RUFUS KENNEDY, represented by DEXTER TIAN, and **GENERAL PETROLEUM CORPORATION (GETCO)**, represented by its authorized representative, Appellants, v. **CARLTON PETROLEUM INCORPORATED**, by and thru its Director, JOHN W. GBEDZE, Appellee.

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

Heard: April 30, 1997. Decided: July 22, 1997

1. It is mandatory under the Civil Procedure Law that every party against whom a judgment is rendered in the trial court shall secure the approval of an appeal bond and file the same with the clerk of the trial court within 60 days of the date of rendition of the judgment.
2. Ordinarily, the notice of completion of appeal must not only be issued by the clerk of the trial court within 60 days after judgment, but must also be served within such time.
3. The essence of an appeal bond is to indemnify the appellee from any injury he may sustain should the appeal be unsuccessful.
4. The sole purpose of securing and serving a notice of completion of appeal is to give the Supreme Court jurisdiction over the appellee.
5. The failure of an appellant to file an approved appeal bond and secure and file a notice of completion of appeal within 60 days deprives the Supreme Court of jurisdiction over the appellee and constitutes grounds for the dismissal of the appeal.
6. While the Supreme Court has the constitutional and statutory right to hear and determine causes that are brought before it, it cannot discharge this duty where the Court does not have jurisdiction over a party litigant due to the failure of an appealing party to file an appeal bond and serve and file a notice of completion of appeal within 60 days of the date of the trial court's judgment.
7. The failure of an appellant's counsel to file a resistance to a motion to dismiss an appeal and to appear for the hearing of said motion constitute neglect and an abandonment of the cause, which are grounds for dismissal of the appeal.

The appellants, who were defendants in an action of ejectment in the lower court and against whom the trial jury had returned a verdict and on which the trial court had entered judgment, appealed to the Supreme Court for a review of the verdict and judgment. However, the appellants failed to file an approved appeal bond and to serve and file a notice of completion of appeal within 60 days, as required by the Civil Procedure Law. As a consequence of this failure, the appellee filed a motion to dismiss the appeal.

No resistance was filed to the motion to dismiss the appeal and no appearance was made by the appellants or their counsel for hearing of the motion, although said counsel had acknowledged receipt of the notice of assignment for the hearing of the motion. The Court therefore permitted counsel for appellee to argue appellee's side of the motion.

In its opinion, the Court opined that the failure by the appellants to file a resistance to the motion to dismiss and to appear for the hearing of the motion, upon due notice, constituted abandonment of the case and grounds for the dismissal of the appeal. The Court noted further that the requirements of the statute regarding the filing of an approved appeal bond and the service and filing of a notice of completion of appeal were mandatory, and that a failure to comply with said requirements within the 60 day period specified by the statute constituted grounds for dismissal of the appeal. Additionally, the Court said, the failure to serve and file a notice of completion of appeal within the statutory time deprived the court of jurisdiction over the person of the appellee and, as such, the Court was prevented from going into the merits of the appeal. The Court therefore *granted* the motion to dismiss the appeal and *ordered* the appeal *dismissed*.

James E. Jones appeared for the appellants. *James E. Pierre* of Brumskine and Associates appeared for the appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellee, movant herein, Carlton Petroleum Incorporated, by and thru its director, John W. Gbedze, of the City of Monrovia, instituted an action of ejectment against the appellants/respondents, Rufus Kennedy, represented by Dexter Tiah, and the General Petroleum Corporation (GEPCO), represented by its authorized representative, also of Monrovia, at the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, sitting in its September Term, A. D. 1996, presided over by His Honour William G. Metzger, Assigned Circuit Judge. The appellee obtained a verdict of US\$60,000.00, which said verdict the trial judge, on the 12th day of November, A. D. 1996 confirmed and affirmed, awarding the appellee/movant the sum of US\$60,000.00 and the possession of the premises. The appellants/respondents excepted to the judgment and announced an appeal to this Honourable Court of last resort for appellate review and determination.

When the case was called for hearing, counsel for appellants/respondents did not appear. Counsellor James E. Pierre, who appeared for the appellee/movant, by application, brought to the attention of the Court a motion to dismiss appellant's appeal. This Court, pursuant to Rule IV, Part 6 of the Revised Rules of Court of 1972, permitted counsel for appellee to argue appellee's motion. We also observed that there was no resistance filed to the motion to dismiss appellants' appeal.

Appellee/movant strongly contended that appellants' appeal is subject to dismissal for reasons that the final judgment was rendered on the 12th day of November, A. D. 1996, but that appellants filed their approved appeal bond on the 16th day of January, A. D. 1997, five (5) days beyond the statutory period of 60 days. The counsel for movant also strenuously argued that the notice of completion of the appeal was not filed and served until the 10th day of February, A. D. 1997, thirty (30) days without the statutory period of 60 days. Movant obtained and attached a clerk's certificate dated the 15th day of April, A. D. 1997, marked exhibit "C". Appellee/movant therefore requested this Honourable Court to grant its motion and dismiss appellants/respondents' appeal because of the latter's failure to file an approved appeal bond and to secure, file and serve a notice of completion of the appeal within 60 days, as required by law.

The salient issue for the determination of this case is whether or not appellants' appeal bond and the notice of completion of the appeal were filed and served within 60 days as required by law?

A careful perusal of the records revealed that final judgment in the ejectment suit was rendered on the 12th day of November, A. D. 1996, but that appellant's approved appeal bond was not filed until the 16th day of January, A. D. 1997, five days beyond the statutory period of 60 days. The records also revealed that the notice of the completion of the appeal was secured, filed and served on February 10, 1997, 30 days beyond the statutory period of 60 days.

The Civil Procedure Law, Rev. Code 1: 51.8, provides:

"the appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. . ."

It is clear from the language of the portion of the above quoted statute that it is mandatory that every party against whom a judgment is rendered in the trial court, except the Supreme Court, shall secure the approval of an appeal bond and file same with the clerk of the trial court within 60 days of the date of the judgment. This has been and is still a statutory obligation of an appealing party and a requirement for the hearing of an appeal by this Court of denier resort.

In the case *The Liberia Federation of Labour Unions and McGill v. Ankra 'et al, and the Ministries of Labour and Justice*, 36 LLR 343 (1989), decided July 14, 1989, Mr. Chief Justice Gbalazeh, speaking for the Court, said:

"Ordinarily, the notice of completion of appeal must not only be issued by the clerk of the court within sixty days after judgment, but must also be served within such time." See also *Gallina Blanca S.A. v. Nestle Products, Ltd*, 24 LLR 203 (1975). Civil Procedure Law, Rev. Code 1:51.16.

The essence of an appeal bond is to indemnify the appellee from any injury he may sustain should the appeal be unsuccessful and the sole purpose of securing and serving a notice of completion of appeal is to give the Supreme Court jurisdiction over the appellee. Thus, this Court has held:

"Moreover, it is the requirement of the law that failure of the appellants to file an approved bond and secure and file a notice of completion of the appeal within 60 days deprives the Supreme Court of jurisdiction and of course ground for dismissal of the appeal." *Sherman and Sherman v. Sillah et al.*, 36 LLR 918 (1990), decided January 9, 1990.

It is our constitutional and statutory obligation to hear and determine causes that are brought before us, but we are reluctant in some instances, as in the instant case, to discharge such duties imposed upon us by the organic and statutory laws of the land where this Court does not have jurisdiction over a party litigant, due to the intentional failure of an appealing party to file an appeal bond and to secure, file and serve a notice of completion of the appeal within 60 days, as contemplated and mandated by the appeal statute in this jurisdiction.

Furthermore, we observed that there was no resistance filed to the appellee's motion to dismiss appellants' appeal, and we take notice of the non-appearance of appellants' legal counsel, although he had acknowledged the notice of assignment for the hearing of the motion. The failure of appellants' counsel to file a resistance to the motion to dismiss its appeal and to appear for the hearing of said motion is a neglect of appellants' legal interest and an abandonment of the cause, which are indeed grounds for the dismissal of appellants' appeal. For reliance, see Civil Procedure Law, Rev. Code 1: 51.16, *Dismissal of Appeal for Failure to Proceed*.

The motion of appellee being legally sound, and in compliance with the controlling laws, we hold that the failure of appellants to file an approved appeal bond and to secure, file and serve a notice of completion of the appeal within 60 days are grounds for the dismissal of appellants' appeal as this Court of final resort did not acquire jurisdiction over the appellee. The motion is hereby granted and the appeal is dismissed.

Wherefore, and in view of the foregoing, it is our considered opinion that the motion to dismiss appellants' appeal should be and the same is hereby granted. The appeal is ordered dismissed.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and enforce its judgment. Costs are assessed against the appellants.

Motion granted; appeal dismissed.