

VICTOR COLE and LEO T. BROWN, Appellants, v. **ISAAC K. WILLIAMS et al.**, Appellees.

INFORMATION PROCEEDINGS.

Heard: April 26, 1994. Decided: September 23, 1994.

1. Where a lower court has rendered final judgment in a case before it and appeal is announced from said judgment, his approval of the bill of exceptions removes said case from his trial jurisdiction and any paper or papers to be filed, should be filed in the appellate court even if it is a motion to dismiss the appeal.
2. A motion to dismiss or an information is only filed before a trial court when there has not been any approval of the bill of exceptions by the trial court. For, the approval of the bill of exceptions constitutes the foundation for an appeal.
3. When a trial court approves a bill of exceptions, the appeal operates as a supercedeas and divests the trial court of jurisdiction unless otherwise ordered by the appellate court.
4. It is error for a trial court, having once given a judgment to which an exception was taken and notice of appeal from said judgment given, to resume jurisdiction over said cause and parties.
5. An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the 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 the completion of the appeal as required by statute.

These appellate proceedings emanate from an appeal taken from the final ruling in a petition for summary proceedings instituted against the magistrate of the Monrovia City Court before the Civil Law Court, Sixth Judicial Circuit, Montserrado County. According to the records, the president and vice president for administration of the Federation of Transport Union of Liberia, filed a complaint against the appellees for criminal mischief in the Monrovia City Court. Upon issuance of the writ, the defendants obtained and filed a criminal appearance bond for Forty-Five Thousand (\$45,000.00) Dollars, to which exceptions were promptly filed by the City Solicitor on grounds that the bond filed by the defendants/appellees did not meet the

requirements of the statute. The exceptions were argued and ruling reserved, but because of the refusal of the Magistrate to rule upon the exception after three weeks, the private prosecutors filed summary proceedings against the Stipendiary Magistrate.

The petition for summary proceedings was heard and denied by Judge M. Wilkins Wright and an appeal therefrom was announced to the Supreme Court. Subsequently, Judge Wright approved appellant's bill of exceptions. Notwithstanding the approval of the bill of exceptions, Judge Wright entertained a bill of information filed by the appellees, touching the same case that had been appealed from. The respondents challenged the authority of the judge to entertain the information since the case out of which it grew, had been appealed from, bill of exceptions approved by the trial judge and filed by the clerk. From a ruling on the information by the trial judge, appellants filed this bill of information to the full bench.

The Supreme Court held that where a lower court has rendered final judgment in a case and an appeal announced therefrom, the approval of the bill of exceptions removes the said case from the jurisdiction of the trial court, and all paper filed there after should be filed in the appellate court. Therefore, the alleged information should have been filed in the appellate court since the trial court had already lost jurisdiction. Accordingly, the Supreme Court *reversed* the judgment of the trial court and ordered the information filed in the trial court stricken from the records.

George S. B. Tulay appeared for the appellants. *T. C. Gould* appeared for the appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellants in their capacity as president and vice president for administration of the Federation of Transport Union of Liberia, filed a complaint against the appellees for criminal mischief. The writ was issued and served on the 20th day of July, 1992. The records show that on the same day a criminal appearance bond was filed by Isaac K. Williams, George Doe and Patrick Doe, the appellees for Forty Five Thousand (\$45,000.00) Dollars.

The City Solicitor on the same day of the filing of the bond, filed an exception to the bond because he alleged that the bond filed by the defendants/appellees did not meet the requirements of the statute as provided for in the Civil Procedure Law, Rev. Code 1:63.5, under approval of bond and justification of sureties and *Id*, 1:63.1, 63.2, and 63.3, under security for bonds, legally qualified sureties and approval by court; filing for service.

On August 10, 1992, counsel for appellants filed summary proceedings against Stipendiary Magistrate, Frederick A. B. Jayweh of the City Court of Monrovia and the appellees as correspondents. The summary proceedings indicated that the petitioners were private prosecutors in the criminal mischief case against co-respondents Isaac K. Williams et. al., involving Twenty Eight Thousand dollars (\$28,000.00); that the defendants/ appellees filed a bond which was excepted to by the petitioners' counsel and said motion was argued two weeks prior as was attached to the petition and marked exhibits 'A' and ' B' ; that correspondent Magistrate has refused to make a ruling on the bond issue but, instead, he has decided to go into the leadership issue of the Transport Union of Liberia, which is not before him.

The petition for summary proceedings was heard and denied by Judge M. Wilkins Wright and an appeal therefrom was taken to the Supreme Court on the 14th day of August A.D. 1992. The bill of exceptions was approved by the circuit judge and filed on the 25th day of August A. D. 1992. A bill of information was filed on the 26th day of August A.D. 1992 touching the same case that has been appealed from. The respondents to the information contended seriously that the judge has no authority to entertain such an information since the case out of which it grew, had been appealed from, bill of exceptions approved by the trial judge and filed by the clerk. Therefore, nothing was before him out of which an information would grow. Therefore, the bill of information should be dismissed with costs against informant.

We observed also from the records that a bill of exceptions was approved by the judge and filed by the clerk of court on the 25th day of August A. D. 1992, prior to the filing of the information. The respondents argued that the court has no jurisdiction to entertain the information since there was no case before it out of which said information grew, because the summary proceedings had been appealed from, and the bill of exceptions approved by the trial judge and filed by the clerk. It is our thinking, and we so hold , that where a lower court has rendered final judgment in a case before it and an appeal is announced from said judgment, the judge's approval of the bill of exceptions removes said case from his trial jurisdiction and any paper or papers to be filed should be filed in the appellate court even if it is a motion to dismiss the appeal. Therefore, the alleged information should have been filed in the appellate court since the trial court had already lost jurisdiction.

A motion to dismiss or an information is only filed before a trial court when there has not been any approval of the bill of exceptions by the trial court. For, the approval of the bill of exceptions constitutes the foundation for an appeal. It is our

holding also that when a trial court has approved a bill of exceptions, the appeal operates as supersedeas and divests the trial court of jurisdiction unless otherwise ordered by the appellate court. This court holds:

"It is error for a trial court having once given a judgment to which exception was taken and notice of appeal from said judgment given to resume jurisdiction over said cause and parties." *White v. His Honour M N. Russell*, 3 LLR 198 (1930).

Also, the statute provides that:

"An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the 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 the completion of the appeal as required by statute." Civil Procedure Law, Rev. Code 1:51.16

Wherefore, and in view of the foregoing, it is our holding that the trial judge had no jurisdiction to have entertained the information after he had approved the bill of exception. His judgment is therefore reversed and the so-called information ordered stricken from the records. Costs against informants/ appellees. And it is hereby so ordered.

Informant granted, judgement reversed