

THE MANAGEMENT OF THE LIBERIA TELECOMMUNICATIONS  
CORPORATION, Appellant, v. AMOS TYLER Appellee.  
MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH  
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 19, 1993. Decided: July 23, 1993.

1. The failure of the clerk of the trial court to forward the records on an appeal to the Supreme Court within ninety days, as required by statute, is not attributable to neglect of the appellant if he has exerted every effort to have the records transmitted within the time prescribed by law; and the clerk's failure does not under the circumstances constitute a basis for dismissal of the appeal.
2. This Court will not dismiss a case where the failure to transmit the records from the trial court to the Supreme Court is attributable to the action of the clerk of court.
3. The time limit given, under the statutes for the transmission of transcribed records to the appellate court is ninety days.

Appellee filed a motion to dismiss appellant's appeal, alleging failure to have the records of the trial court transmitted to the Supreme Court within ninety days as required by statute. The appellant interposed the motion contending that its failure to timely transmit the records to the Supreme Court was attributable to the clerk. The Court held that where the failure to timely transmit the records of the trial court to the Supreme Court is attributable to the clerk and not the appellant, the appeal will not be dismissed. The motion was therefore *denied* and the appeal *granted*.

*Farmer G. Stubblefield* appeared for movant/appellee. *John N. Morris* appeared for respondent/appellant.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This motion has been filed by the appellee to dismiss the appeal of the appellant because, according to him, the appellant has failed to have the records in this case transmitted to this Court within 90 days in keeping with law, and cited the cases *Dunbar v. Roberts*, 1 LLR 8 (1861), and *Studer v. Tubman*, 24 LLR 151 (1975), in support of his motion.

The appellant, on the other hand, in resisting, maintained that the motion should be denied because it has complied with all the statutory requirements governing the processing of an appeal from the trial court to this Court. Appellant noted that it had filed its bill of exceptions and appeal bond, served the notice of completion of the appeal within statutory time, and made photocopies of the records and placed same in eight (8) hanging folders with fasteners, and delivered them to the clerk of the trial court who deliberately refused to transmit them to this Court. Appellant also argued that the transmission of records from the

trial court to this Court is a statutory obligation placed on the clerk of court in keeping with the Civil Procedure Law, Rev. Code 1:51.11.

The two cases relied upon by the appellee in requesting this Court to dismiss the appeal are not analogous to the case at bar, for in *Studer v. Tubman*, 24 LLR 151 (1975), the Court observed that the notice of completion of the appeal had been tardily filed, as were the statements of the property valuation accompanying the bond. There was no affidavit of sureties to the bond filed. Hence, the appeal was dismissed.

With reference to the case *Dunbar v. Roberts*, 1 LLR 8 (1861), there were material defects in the records forwarded to this Court from the trial court, in that the evidence in the case was completely omitted. There was no copy of the bond filed in the records. The case was legally deficient in its records, therefore the Court dismissed the appeal because of said deficiency.

The statute governing the dismissal of an appeal specifically provides the grounds on which an appeal may be dismissed by either the trial court or this Court as provided under section 51.16 of the Civil Procedure Law, Rev. Code 1, "*Dismissal of an appeal for failure to proceed*," and we quote hereunder: "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."

With reference to the transmission of records from the trial court to this Court, the statute provides:

"The clerk of the court from which the appeal is taken shall make up a record containing certified copies of all the writs, returns, notices, pledges, motions, applications, certificates, minutes, verdicts, decision, rulings, orders, opinions, judgments, bill of exceptions, and all other proceedings in the case. He shall transmit this record with a copy of the appeal bond to the appellate court within ninety days after rendition of judgment. The clerk of the appellate court shall docket the record forthwith and forward a receipt to the clerk who transmitted it." Civil Procedure Law, Rev. Code 1:51.11.

In consonance with this provision of the statute, this Court held: "The failure of the clerk of the trial court to forward the records on an appeal to the Supreme Court within ninety days, as required by statute, is not attributable to neglect of the appellant, if he has exerted every effort to have the records transmitted within the time prescribed by law; and the clerk's failure does not under the circumstances constitute a basis for dismissal of the appeal. *Kpene v. Kerpai*, 25 LLR 322 (1976).

"The time limit given, under the statutes for the trans-mission of transcribed records to the appellate court is ninety days, but this court will very rarely dismiss a case because of the

lateness of the records reaching it when all of the other legal requirements have been met. This, of course, is not intended to encourage indifference or indolence on the part of the clerk of court and party appellant". *Samuels v. Samuels*, 12 LLR 193, 196 (1954).

In this case, the appellant maintained that the appeal records were photocopied in its office and placed in eight (8) hanging folders with fasteners and given to the clerk of the trial court within the ninety days but that the clerk failed and neglected to forward them. This Court therefore says that the failure of the clerk of the trial court to forward the records in this case to the Supreme Court cannot be attributed to the failure of the appellant to superintend his appeal, but to the neglect of the clerk to forward them.

In view of the foregoing facts and circumstances surrounding this case, the motion to dismiss is hereby denied and the appeal ordered proceeded with. And it is hereby so ordered.

*Motion denied, appeal granted.*