S. B. MENSAH, Respondent/Appellant, v**. LIBERIA BATTERY MANUFACTURING CORPORATION,** through its President and Managing Director, **RAJAN P. S. DHALIWAL**, and **RAJAN P. S. DHALIWAL**, Movants/Appellees.

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

Heard: November 8, 1989. Decided: January 9, 1990.

1. Failure to timely file an approved bill of exceptions, to post an appeal bond or serve a notice of completion of appeal are all grounds for the dismissal of the appeal.

2. It is the duty of the appellant's counsel to superintend the appeal and see to it that all the legal requirements are complied with.

3. The court will not do for party litigants that which they are under obligation to do for themselves.

4. An appellant may not be penalized for the negligence of a judge or clerk, provided that he has taken appropriate legal measures to avert the dismissal of his appeal.

The appellant, Mr. S. B. Mensah, sought to recover for damages for wrong against the appellees, the Liberia Battery Manufacturing Corporation and Rajan P**.** S. Dhaliwal. After the conduct of a trial in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, the trial court rendered judgment in favor of the appellees. From the judgment of the trial court, an appeal was taken to the Supreme Court by the appellant. However, when the case was called for hearing, the Court was informed that a motion to dismiss the appeal had been filed by the appellee. After hearing the motion to dismiss the appeal, the Supreme Court granted the same, finding that the bill of exceptions was filed late and noting that the lawyers for appellant had not properly handled the appeal of their client.

Philip A. Z Banks, III and *S. Edward Carlor*appeared for the appellant. *Toye C. Barnard*and *E. Winfred Smallwood* appeared for the appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

When this case was called for hearing, Counsellors Philip A Z. Banks, III and S. Edward Carlor appeared for the appellant. Counsellor Toye C. Barnard appeared for the appellees and informed the Court that he had filed a motion to dismiss the appeal on the ground that the bill of exceptions was not filed within the statutory time after the rendition of the final judgment on November 30, 1988.

According to the motion, appellant S. B. Mensah filed one bill of exceptions on the 9th day of December 1988, but it was not signed by the trial judge and therefore the filing of a second approved bill of exceptions after December 10, 1988, was without statutory time.

In his resistance to the motion to dismiss, appellant confirmed December 10, 1988 as the last day for obtaining approval of this bill of exceptions which he said he submitted for said approval on the 8th day of December, 1988. The rest of the story as told by the appellant in count one of his resistance is indeed amazing. Appellants contends that:

"At the time of the submission, however, the trial judge had been assigned to preside over the November Term of the First Judicial Circuit Criminal Assizes, Court B, and the trial judge being at the time presiding over a matter requested plaintiff/ appellant to leave the bill of exceptions for his review later on in the evening with the instruction that he should come on the 9th day of December at the court to receive the approve bill of exceptions.

" The appellant's counsel, as it is true in almost every case, would not accept any responsibility for what clearly appears to be negligence on his part. Instead of approving the document when presented, as is the practice, appellant claimed that "the trial judge made notations on several copies of the bill of exceptions as follows:

"Received for approval, August 12, 1988 (8/12/88). J. Henric Pearson. These notations were made at the top right hand corner of the first page of the bill of exceptions."

Count 3 of the resistance to the motion charged the clerk of the trial court with issuing an unmeritorious certificate in favour of counsel for appellees to the effect that no bill of exceptions had been approved by the trial judge. This the clerk did, according to the appellant, for monetary consideration. Interestingly and strangely enough, appellant's counsel chose to make this serious charge against the reputation of the clerk, without any attempt to share a sparkle of light upon this allegation.

It is difficult for us to understand why the bill of exceptions was not approved within statutory time, and neither the resistance nor the argument of appellant was helpful. For example, in count four, besides "being assigned to reside over the Criminal Assizes Court B, the trial judge, appellant said in the resistance to the motion, was ill on the 9t h of December, 1988, which thereby caused him to travel to Gbarnga, and the said day being a Friday, the trial judge did not return until Monday, which was the 12thday of December, 1988, when he immediately forwarded the approved bill of exceptions to the clerk of court for filing of the original *nunc pro tunc.*

In count 5 of the resistance and his brief, appellant contented that the clerk of the trial court had committed errors in handling his bill of exceptions and that the appellant should not be made to suffer when he had exercised all diligence and was not answerable for said errors.

The single question before us for determination is this: Was appellant diligent and without fault and therefore entitled to the relief sought by him, given the surrounding circumstances of this case? Our answer must be in the negative.

According to the procedure well established in this jurisdiction, every party against whom a judgment is rendered in a court other than the Supreme Court is required, if he desires, to exercise his right to appeal, prepare and file in the clerk's office within ten days of the rendition of the judgment a bill of exceptions approved by the trial judge. Civil Procedure Law, Revised Code 1:51.7. The failure to comply with any one of the other jurisdictional steps is ground for dismissal of the appeal.

These jurisdictional steps are: (i) orally announcing of an appeal in open court *(Ibid,* 1:51.6); (ii) preparing and filing within sixty days of the date of the judgment an appeal bond to indemnify the adverse party from all costs or injury arising from the appeal, which bond must also be approved by the trial judge *(Ibid,* 1:51.8); and (iii) having the clerk of the trial court prepare and serve on the successful party within sixty days a notice of completion of appeal *(Ibid, 1:51.9).*

This Court has dismissed many cases for failure by the appellant to comply with one or more of these statutory requirements. See, for example, *Johnson v. Roberts,* 1 LLR 8 (1861); *King v. King,* 7 LLR 301 (1941); *Coleman v. Barclay, 10* LLR 108 (1949); *Morris v. Jebbah,* 15 LLR 278 (1963); *Sauid v. Gebara,* 15 LLR 598 (1964); and *Vamply of Liberia v. Manning,* 25 LLR 188 (1976).

In *Vamply of Liberia, supra,* the trial judge approved the bill of exceptions on March 4, but appellant did not file it with the clerk's office until March 5, 1976, eleven days after rendition of judgment. Section 51.7 of the Civil Procedure Law also provides that the judge signs the bill of exceptions and notes thereon such reservations as he may wish to make. The signed bill of exceptions is then filed with the clerk of the trial court. Had the appellant in the instant case followed the mandate of the provision of the statute just cited, we would be undoubtedly deciding another case and not this one. This Court held in *Webster v. Freeman,* 16 LLR 209 (1965), that the appeal will be dismissed where the appellant fails to file the bill of exceptions within ten days after the judgment is entered.

The appellant in the instant case was quick to point out that no party litigant should be held answerable for errors of the clerk of court or of the court, due to no lack of diligence by him or fault of his. Appellant also reminds us to refrain from dismissing causes on mere technical grounds which are generally employed to frustrate the administration of substantial justice.

Now, is appellant without fault as he claims, and was the clerk of the trial court responsible for appellant not meeting the statutory period? In the case at bar, it appears that appellant filed two distinct bill of exceptions in the case. On one of them, the names of appellant's legal counsel are typed on the lower right hand corner; but they, for reasons unknown to us, did not sign it. On the lower left hand corner, these lines are typewritten: "Approved if counts of the exceptions are in harmony with trial records." Below this line, we have, "J. Henric Pearson Assigned Circuit Judge Presiding/ 8/12/88." Under this line, we have "Filed December 9, 1988." Finally, there is this line: "Certified True Correct Copy of the Original, The Clerk of Court." Of course, this bill of exceptions is not approved or signed by the trial judge, not even the original is in the court's file. This bill of exceptions is different from the other one found in the file with what appear to be initials of the name of the trial judge; count 8 is not exactly the same in both documents. Also, this document has only ten counts while the other with the initials has eleven counts. The discrepancies continue. For instance, the copy in the court's file, unlike the others, had count 11 obliterated completely.

On the second bill of exceptions, the names of appellant's counsel are typewritten and they did sign at the usual lower right hand corner. However, on the lower left hand corner, the date, the approval lines and the name of the judge are missing or omitted. Instead, we find at the top left hand corner written in ink the following:

"Rec'd and approved, 8/12/88"

We also find illegible initials, purported to stand for the name of the trial judge.

One would have thought that the discrepancies would end there, but not so; there are more to be found in the file. For instance, the movant attached to his motion to dismiss the following certificate, which states that the first bill of exceptions filed on December 9 was not approved by the trial judge:

"Clerk's Certificate

"This Certifies That upon Careful Perusal of the Records in the above Entitled Cause of Action, it Is Observed That the Plaintiffs Bill of Exception Filed on December 9, 1988 Has Not Been Approved by the Presiding Judge, His Honor J. Henric Pearson, Hence, this Clerk's Certificate.

"Issued this 12th Day of
December, A. D. 1988.
"Laurence C. D. Meyh
CLERK, CIVIL LAW COURT"
SEAL OF COURT

Still on December 13, 1988, the clerk again issued yet this second one:

"Clerk's Certificate
"This certifies that upon careful perusal of the records in the above entitled cause of action, it is observed that not been careful to note that the initial of His Honour J. Henric Pearson was on said document to prove that the approved original copy was with him. Hence, I then mistakenly issued certificate thereto stating that said bill of exceptions was filed on December 9, 1988 while the original copy of bill of exception was received on the December 12, 1988, but carrying the filing date of December 9, 1988 which I did to cope with both documents filed by me as clerk of the Civil Law Court, Sixth Judicial Circuit, Montserrado County Republic of Liberia.

"Hence this clerk's certificate:
"Given under My Hand and Seal of
Court this 13thday of December A. D. 1988.
"Laurence C.D. Meyh
CLERK, CIVIL LAW COURT MO. CO.,

R. L.
SEAL OF COURT "CERTIFIED TRUE CORRECT COPY OF THE ORIGINAL
"THE CLERK OF COURT"

In the face of all of these glaring irregularities, is appellant justified in claiming that he was diligent and that these apparent irregularities were all the court's fault for which he should not be responsible? This Court held in *Sauid, supra,* that an appellant may not be penalized for the neglect of a judge or clerk of court, provided appellant has taken appropriate legal measures to avert the dismissal of his appeal. 15 LLR 598 (1964).

One basic question that comes to mind at this stage is, whether what happened can really be described as error or errors? It should be remembered that according to the appellant himself, the trial judge left the Civil Law Court and went over to the Criminal Assizes, Court "B". This is only one floor down in the same building. It appears to us that something was not right; either the judge did not want to approve the bill of exceptions or that it was probably presented to him very late. The appellant contended that the bill of exceptions was filed late because the judge was sick, he had to travel out of the City and perhaps because the document was presented to the judge on a Friday. Even if all of these were true, we wonder whether they were established as legal grounds so as to take appellant's case out of the statute. Although appellant's counsel has attempted to blame the clerk of the trial court for his mistakes, it is the duty of the appellant's counsel to superintend the appeal and see that all the legal requirements are complied with. *Cole v. Larmie* 25 LLR 450 (1977). In dealing with trial judges regarding bill of exceptions or appeal bond, lawyers should be very diligent and vigilant, especially where, as in the instant case, the appellant waits until the eighth day before taking his bill of exceptions to the judge for approval. The appellant here should have come up on mandamus when he observed that the judge prefers keeping the document rather than approving it. The same manner and time in which he allegedly initialed it on the extreme top left hand corner, he could have done the same thing and returned it. Of course, like the other one, the bill of exceptions he initialed did not provide the usual space for the judge's approval. The space was left blank.

While it is true that section 51.7 of the Civil Procedure Law requires the trial judge to note on the bill of exceptions such reservations as he may wish to make, this obligation is generally discharged perfunctorily. Some judges will even withhold, with impunity, any reservations on the approved bill of exceptions. Finally, if the appellant had submitted a single bill of exceptions, instead of two with the kind of

discrepancies we have enumerated, perhaps we would have been constrained to take a second look at it and come out with a different result. Before ending this opinion, we are reminded of the principle of law which is as old as the law itself: Party litigants should not expect the court to do for them that which they are under obligation to do for themselves. *Blacklidge v. Blacklidge,* 1 LLR 371 (1901).

Mr. Chief Justice Gbalazeh has withheld his signature from the judgment in this case because he feels very strongly that the lawyers of Mr. S. B. Mensah, appellant, should be more severely reprimanded for the manner in which their client's interest was handled and that the motion to dismiss be denied, since the bill of exceptions was filed only one day late. While we are in agreement with the Chief Justice, that lawyers who do not exercise the required diligence with respect to their client's matters should be penalized, including those in the instant case, his position that the motion should be overruled since the filing of the bill of exceptions was filed only one day late is unacceptable. In our view, such a solution would do more harm rather than good, except for Mr. Mensah.

In view of the foregoing, it is crystal clear that appellant failed or neglected to safeguard his interest by not superintending his appeal as the law directs. We are therefore left with no alternative but to grant the motion with costs against appellant. And it is so ordered.

Motion granted; appeal dismissed.