ALIMA FOFANA ALFRED NUOND et al., Appellants/Respondents, v.
VICTORIA T. HARMON, Appellee/Movant.
MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, GRAND GEDEH COUNTY
Heard: November 23, 1988. Decided: December 29, 1988.

1. After the filing of the bill of exceptions and appeal bond, on application of appellant, the clerk of court shall issue a notice of completion of appeal, a copy of which the appellant shall serve on appellee.

2. A ministerial officer may also serve a copy of the notice of completion of an appeal.

3. When a notice of completion of appeal is not served within statutory time, an appeal will be dismissed for lack of jurisdiction.

4. Real property offered as security on an appeal bond must be sufficiently described so as to identify it clearly, and thereby establish the lien on the bond.

5. Sufficient description of the realty in the affidavit of sureties means property that is described by the number of the plot of land, and by metes and bounds, so as to make finding it on the ground an easy exercise.

6. When an appeal bond is inadequate and defective because the property pledged as security is not so described as to make finding it an easy exercise, a motion to dismiss the appeal it will be granted.

Appellee, movant herein, brought a summary investigation suit against respondents/appellants for recovery of land. Judgment was rendered against respondents/appellants to which they excepted and announced an appeal to the Supreme Court. At the call of the case, movant/appellee informed the Court that she had filed a motion to dismiss the appeal because appellants had failed to serve a notice of completion of appeal upon movant and that the appeal bond was materially defective and insufficient. The Supreme Court found that the records showed that a notice of completion of appeal had not been served on movant/appellee and that appellants' appeal bond failed to meet all statutory prerequisites in order to be considered valid. Consequently, the Court granted the motion and dismissed the appeal.

Ignatius Weh for appellants. Alfred B. Flomo for appellee

MR. JUSTICE AZANGO delivered the opinion of the Court.

This case has its genesis in the circuit court in Zwedru, Grand Gedeh County, where movant/appellee brought a summary investigation suit against respondents/appellants for the recovery of one town lot in the City of Zwedru, Grand Gedeh County, from the Zwedru Marketing Association. On June 15, 1987, judgment was rendered against appellants in the court below to which ruling, the appellants excepted and announced an appeal to the Honourable Supreme Court of Liberia sitting in its October Term, A. D. 1987, for the following factual and legal reasons to wit:

1. On the 10th day of June, A. D. 1987, madam Victoria T. Harmon, petitioner in the court below, instituted this suit against madam Alima Fofana, Alfred Nuond and others, the respondents in the court below for recovery of one town lot of land or property of the Zwedru City Market, Liberian Marketing Association, Inc, which she claimed was leased by her to some Mandingoes, Morris Kamara, Amos Kamara and others, and rented for tailor shop in 1985. The property in dispute is the property which was, due to the construction of Zwedru City Market, retrieved from one Charles Breeze. Although appellee Victoria T. Harmon claimed part of the property from her was replaced by the City Corporation of Zwedru, but she being treasurer of the Marketing Association, Inc. in the county, permission was granted her to build her shop there tentatively in 1982 by the county superintendent Johnny G. Garley and the then city mayor Alutius Tarlue of Grand Gedeh County, respectively.

2. That Judge Cooper while presiding over the May Term of Court, was also retained lawyer for appellee, Victoria Harmon; hence all pleadings in this case were only submitted by the counsels of respondents/appellants. Nothing was filed from the petitioner/appellee besides her formal complaint. Pleadings went over statutory period as required and irregularities filed on June 11, and 12 th , A.D. 1987 respectively. Instead of Judge Cooper passing or disposing of law issues before ruling the case to trial as required by statute and case laws, he proceeded to render final judgment contrary to law thereby committing reversible error. Hence his ruling was partial and illegal.

3. It is worthy to note that the piece of property taken from the petitioner/appellee government was replaced on the other side of the road opposite the said Zwedru market; petitioner/appellee former property or lot was connected with another piece

of property and was at the rear now forming part of the Zwedru city market. Because of her former position as treasurer of the Marketing Association, some days she was granted permission to sell on that piece of property until the association was ready to claim the said property. Since indeed the Liberia Marketing Association local branch is ready for the use of the property, where is the bone of contention, especially so when the present city mayoress and the county superintendent of Grand Gedeh County, Honourable Johnny G. Garley have already investigated petitioner's complaint, and in the open counsel directed her to surrender the said property or piece of property to the Liberia Marketing Association, local branch of Zwedru City. With regard to her own property or lot which was taken from her by the city corporation of Zwedru and replaced another town lot opposite the market site, it is about time for the petitioner to develop and improve the property was already given to her by the superintendent of Grand Gedeh County.

4. Consequently, it is clear that the tract of land covered in appellee's complaint and leased to the mandingo tailors is altogether different from the survey made in 1982 in the appellant's market area. That instead of remaining on her original tract of land given to her in 1982, she wants more than her one lot. Appellee's intention is to defraud and cheat appellants out of their market area.

5. Appellants further submit that the oral testimony of appellee never was allowed by the trial judge, Judge Cooper, to be recorded when made or said in the open court. When the court's attention was called to the fact that petitioner/ appellee statements are not recorded in the minutes of court, the judge said "I am the master of this court and records, your request is hereby overruled; although, appellants and their counsels are not barred, they were not permitted to cross-examine appellee. Therefore, it is the object of the appellants to make it known that advantage was taken of them.

6. And that appellant further submits that appellee's failure to rebut their testimonies to the fact that the present piece of property appellee is already occupying is not for appellee. Appellants therefore strongly contend that the interlocutory ruling of Judge Cooper made and claimed to be his final ruling was not in conformity with the facts and circumstances, as required by law, at the trial of the case.

At the call of the case at bar, movant/appellee's counsel informed the Honourable Supreme Court that they had filed a two-count motion to dismiss the appeal, portion of which we hereunder quote for the benefit of this opinion:

"Because movant submits that this Honourable Court lacks jurisdiction to entertain

this appeal and to review the records in these proceedings, in that the respondents/ appellants have failed to issue and serve upon movant a notice of completion of the appeal as required by law, as will more fully appear from the certified copy of the original of the purported notice of completion of appeal which does not indicate any acknowledgment of said notice by movant nor anyone on her behalf. Movant maintains that a return of a ministerial officer to a notice of completion of appeal is not a statutory requirement and the purported returns of sheriff Solo G. Doe are false, malicious and misleading as no such notice was ever served upon movant."

Contrary to count one of the movant's petition, the respondents/appellants contend that:

"The assigned circuit judge whose erroneous ruling is the subject of this appeal, being that the legal counsel for the movant and movant herself left Monrovia for Robertsport where they stayed permanently, the said judge had all legal processes channeled through himself according to the sheriffs returns. Hence, one reason why movant's motion should not be entertained.

As to count one of both the petition and the returns, we have recognized with very great concern that the most important issue presented before this Honourable Court for consideration, based upon the contentions of both parties, is whether or not a ministerial officer is statutorily responsible to serve a notice of completion of an appeal. Before addressing this issue, let us first consider the statutory provision. According to the Civil Procedure Law, Rev. Code 1:51.9 after the filing of the bill of exceptions and the filing of the appeal bond as required by §§51.7 and 51.8, respectively, the clerk of the trial court on application of the appellant shall issue a notice of completion of the appeal, a copy of which shall be served by the appellant on the appellee." (Our emphasis). This provision of the statute is very clear and unambiguous. It has also been held by this Court that a ministerial officer may also serve a copy of the notice of completion of an appeal. However, the issue here is whether or not the notice of completion of an appeal was served on the appellee. Our records have shown that the said notice of the completion of appeal was not served on the appellee; hence the statutory provision as quoted, supra, was not complied with.

Wherefore and in view of the foregoing, this Court is of the conclusive opinion that the contentions of respondents/appellants can not be entertained. We conclude, therefore, that the notice of completion of an appeal was not served on the movant/ appellee as alleged. And even if the said notice of completion was served, we cannot

under any circumstances sustain such argument or contention, because it has not been proven to our satisfaction that the said notice of completion was duly served.

The notice of completion of the appeal was not served as required by law, therefore movant/appellee's position here is consistent with the court's determination in the case, Buchanan v. Arrivets, 9 LLR 15 (1945) that "neglect to serve a notice of appeal on the appellee and failure to return same by the sheriff is a good cause for the dismissal of an appeal. After the failure of an appellant to serve a notice of appeal has been attacked by motion to dismiss the appeal, the Court may not cure the omission by an order to issue and serve such notice."

Additionally, in the case Karnga v. Williams et al., 11 LLR 299 (1952), we ruled that "proper issuance, service, and return of a notice of appeal by an appellant are indispensable prerequisites to jurisdiction over an appellee, and not mere technicalities." In the case Tuan v. Republic, 13 LLR 3 (1957), we also held that "an appeal will be dismissed for lack of jurisdiction when the notice of completion of appeal was not served within the statutorily prescribed period of time." Based upon the above quoted citations and circumstances, this Court has no jurisdiction over the appellee since the statutorily prerequisites were not met.

Turning to count two of the movant/appellee's motion, the movant contends that:

"The appeal bond tendered by respondents/appellants is fatally and materially defective and insufficient to support the appeal in that Assumana Keita and Esther G. Tarlue, purporting to be sureties to the appeal bond, are legally incompetent to become sureties in this case because both of them are members of the Zwedru Marketing Association and parties to this case. Mrs. Esther G. Tarlue, being the general superintendent of said Marketing Association and Assumana Keita, a member of the board of directors of said Zwedru Marketing Association. Therefore they cannot be sureties in this case. Assumana Keita and Esther G. Tarlue, purported sureties to the appeal bond, are not legally qualified because they do not own any deeded property or land in Zwedru City, as is more clearly revealed by the affidavit of sureties to said appeal bond. Moreover, the said bond does not sufficiently describe the property offered as security by metes and bounds, the quantity of land owned by each of them, nor any statement as to the encumbrances on or title to said pieces of property.

In counter argument, the respondents contend in counts 2, 3 and 4 of the returns that:

"The movant's motion is considered a waiver and lashes with regard to the statutory period when a bond shall be attacked. Respondents further contend that the entire summary proceeding with regard to the general superintendent of market, Esther G. Tarlue, never mentioned her name in the petitioner's petition. Moreover, the statute does not deny any member of an association of becoming a surety in any given case; hence, petitioner's petition is a fit subject for dismissal". Respondent argued that in as much as the revenue certificates revealed the sureties va-luation with the Ministry of Finance, the entire contention of the movant is baseless and immaterial. Therefore, the entire motion of payment should be dismissed with costs against the movant"

From careful perusal of the contention raised by both the movant/appellee and the respondents/appellants, this Court has apparently recognized another important issue for its consideration. The issue is whether or not respondents/appellants' appeal bond met all statutory prerequisites in order to be considered valid. Our response is a resounding no. According to the Civil Procedure Law, an appeal bond must contain "[a] description of the real property offered as security thereunder sufficiently identified to clearly establish the lien of the bond; the date of such recording. . .." Civil Procedure Law, Rev. Code 1:63.2 (2)(e)(1).

It has also been provided that "sufficient description of the realty in the affidavit of sureties means property so described as to make finding it on the ground an easy exercise; the Court suggested the best means to be the number of the plot of land and its description by meets and bounds." West Africa Trading Corporation v. Alraine, 24 LLR 224 (1975). Furthermore, it was held that "if property pledged is not so described as to make finding it an easy exercise, it will be deemed inadequate and the appeal will be dismissed on motion by reason of a defective bond". Id.

In view of the above quoted law and the underlying circumstances in the instant case, we are of the opinion that the appeal of appellant should be dismissed since, in fact, the appellants failed to give a very distinct description by which the property can easily be identified as required by law.

Wherefore and in view of the foregoing, this Court is of the conclusive opinion that the bond did not meet all the legal prerequisites and, therefore, is defective. As a result of the above, the appeal is hereby denied and the motion to dismiss is hereby granted to all its intents and purposes since, in fact, this Court has no jurisdiction over appellee.

The court below is hereby mandated to take jurisdiction and enforce its ruling. The Clerk of this Court is hereby ordered to inform the court below of this judgment. And it is hereby so ordered.

Motion granted.