

**ELFRIC K. PORTE**, Appellant, v. **CITIBANK, N.A. LIBERIA BRANCH** (In Liquidation), by and thru its General Agent, H. VARNEY G. SHERMAN, Appellee.

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

Heard: November: 16, 1992. Decided: February 26, 1993.

1. Announcement of the taking of an appeal, filing of a bill of exceptions, filing of an approved appeal bond and the service and filing of notice of completion of the appeal are the requirements necessary for the completion of an appeal. Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal.
2. Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injuries arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. 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 final judgment. Notice of the filing shall be served on the opposing counsel. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient bond shall be made sufficient at any time during the period before the trial court loses jurisdiction of the action.
3. After the filing of the bill of exceptions and the filing of the appeal bond, as required by the procedural statute, the clerk of the trial court on application of the appellant shall issue a notice of the completion of the appeal, a copy of which shall be served by the appellant on the appellee. The original of such notice shall be filed in the office of the clerk of the trial court.
4. An appeal will be dismissed on motion when only the bill of exceptions has been filed and no other requirements of the appellate process have been complied with by the appellant.
5. Failure of the appellant to file an approved appeal bond and to serve notice of completion of the appeal deprives the appellate court of jurisdiction and the appeal will be dismissed.

The respondent filed a petition for specific performance in the civil law court. The petition was dismissed by the court for lack of jurisdiction over the subject matter upon a motion filed by movant. The respondent excepted to the ruling, announced an appeal and subsequently filed its bill of exceptions in keeping with statute, thereby removing the case from the jurisdiction of the trial court. Notwithstanding, respondent failed and neglected to file an approved appeal bond and issued a notice of completion of appeal as required by statute. Consequently, the movant filed a motion to dismiss the appeal announced in the trial court. The respondent, having been permitted to spread its resistance on the records, did not deny the allegation laid in the motion but, instead, contended that since movant had sufficient amount in its possession which for the respondent, said amount constitutes sufficient guarantee that it will comply with any judgment rendered against it. Respondent also averred that although a failure to file an appeal bond, serve and issue notice of completion of appeal are grounds for dismissal of an appeal, such dismissal is left to the discretion of the Court.

The Supreme Court held that the failure of appellant to file an approved appeal bond and serve a notice of completion of appeal deprives the court of jurisdiction. Accordingly, the Court *granted* the motion and dismissed the appeal.

*Snosio E. Nigba* appeared for the movant. *Flaamgaa R. MacFarland* appeared for the respondent.

MR. JUSTICE MORRIS delivered the opinion of the Court.

When this case was called for hearing, counsel for appellee reminded the court of a motion that he had filed to dismiss the appeal, which motion read thus:

"1. That a motion to dismiss the principal petition for specific performance for want of jurisdiction over the subject matter was granted by a ruling dated 11<sup>th</sup> June, 1992, and rendered by the assigned circuit judge presiding over the June 1992 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrat County. Copy of said ruling is hereto attached as exhibit "M/1".

2. That the appellant/respondent excepted to this ruling, announced an appeal and filed an approved bill of exceptions on June 22, 1992, thereby removing the matter from the jurisdiction of the Civil Law Court for the Sixth Judicial Circuit, Montserrat County to this Honourable Court. Copy of the bill of exceptions is hereto attached as exhibit "M/2".

3. That subsequent to filing of the bill of exceptions, appellant/respondent failed and neglected to file an approved appeal bond and to issue and serve notice of completion of appeal within the time required by statute (60 days after the ruling on the motion to dismiss and announcement of an appeal therefrom) as provided by the Civil Procedure Law, Rev. Code 1: 51. Copy of the clerk's certificate to the effect that appellant/respondent had failed to file an appeal bond and notice of completion of appeal is hereto attached as exhibit "M/3".

4. That Section 51.16 of the Civil Procedure Law provides that an appeal may be dismissed by the appellate court for failure of the appellant to file an appeal bond or to serve notice of the completion of the appeal as required by statute. Because of the failure of the appellant/respondent to file his appeal bond and to issue and serve notice of completion of appeal on or before August 10, 1992 (the 60<sup>th</sup> day after rendition of the ruling on the motion to dismiss in the trial court), appellee/movant herein prays for the dismissal of the appeal".

Counsel for respondent/appellant having been permitted to spread his resistance on the record resisted the motion as follows:

"1 Appellant/respondent says in essence, that in the instant case, where the appellee/movant has in his jurisdiction cash belonging to the appellant in the amount of \$150.00 United States dollars (which he has not denied), the appeal cannot be dismissed since there already exists a sufficient guarantee.

2. That this Honourable Court has held in many of its opinions, that failure to file an appeal bond or serve and issue notice of completion of appeal within the statutory period, may be the basis for the dismissal of an appeal and thereby grant a decree of discretion in the dismissal of an appeal.

Wherefore, and in view of the foregoing, counsel for appellant/respondent most respectfully request this Honourable Court to deny the appellee's motion to dismiss in its entirety and provide the appellant/respondent the adequate opportunity for hearing the main suit, and grant unto respondent all other rights as provided under the law. And respectfully submits". The following provisions are provided for under our statute: "The following acts shall be necessary for the completion of an appeal:

a. Announcement of the taking of an appeal

b. Filing of the bill of exceptions

c. Filing of an appeal bond

d. Service and filing of notice of completion of the appeal.

*Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."* Civil Procedure Law, Rev. Code 1:51.4. (Emphasis supplied)

The statute also provides that: "Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. 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. Notice of the filing shall be served on opposing counsel. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action". Civil Procedure Law, Rev. Code 1:51.8.

Further, with regard to the notice of the completion of the appeal, the statute provides that: "After the filing of the bill of exceptions and the filing of the appeal bond as required by sections 51.7 and 51.8, the clerk of the trial court on application of the appellant shall issue a notice of the completion of the appeal, a copy of which shall be served by the appellant on the appellee.

The original of such notice shall be filed in the office of the clerk of the trial court". Civil Procedure Law, Rev. Code 1:51.9.

The Supreme Court has held that: "An appeal will be dismissed on motion when nothing further has been done to perfect it within the statutory time allowed therefor, other than to have filed an approved bill of exceptions." *Karpeh and Nagbe v. Fisher*, 23 LLR 91 (1974) and *Kiawu v. Sombai*, 23 LLR 27 (1974). See also *Marb v. Sinoe*, wherein this Court said: "Failure of an appellant to file an approved appeal bond and to serve and file notice of completion of the appeal deprives the appellate court of jurisdiction and is cause for dismissal of the appeal". *Marb v. Sinoe*, 27 LLR 320 (1978).

The appellant/respondent has in essence admitted to his failure to file an approved

appeal bond and to issue a notice of completion of the appeal and to have same served on the appellee/movant. The contention of appellant's counsel, that this court has held in many of its opinions that failure to file an appeal bond or to serve notice of completion of an appeal, makes the dismissal of the appeal discretionary, cannot be conceded. Further, the failure of the appellant/respondent to file an approved appeal bond and to serve notice of the completion of appeal deprives this court of jurisdiction.

In view of the above, the motion to dismiss the appeal is therefore granted with costs against the appellant/respondent. And it is so ordered.

*Motion granted; appeal dismissed.*