

RAMI AHMAR, Movant/Appellee, *v.* **ALFRED GBORTOE**, Respondent/Appellant.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE
THIRTEENTH JUDICIAL CIRCUIT, MARGIBI COUNTY.

Heard: April 27, 2004. Decided: August 16, 2004.

1. The amount of an appeal bond is to be fixed by the court, with two or more legally qualified sureties, to the effect that the appellant will indemnify the appellee from all costs or injury.
2. It is the duty of the appellant's counsel to superintend the appeal and to see that all of the legal requirements are complied with.
3. When an act is required or allowed to be done at or within a specified time, the court for cause shown may, except as otherwise provided by law, at any time in its discretion (a) order the period enlarged if application is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the prescribed period permit the act to be done when the failure to act was the result of excusable neglect.
4. It is the responsibility of counsel for an appellant to move the court to enlarge the time for completion of the appeal if a problem existed that delayed the completion of the appeal on time.
5. The allegation of an event in the absence of any evidence of its occurrence, or any request for enlargement of time does not excuse the party for the untimely completion of the appeal.
6. Section 51.10 of the Civil Procedure Law allows for the tolling of the time for acts to complete an appeal if, after the appeal is announced, the counsel for appellant dies, becomes mentally or physically incapacitated, disbarred or suspended; and where none of those events occurred, the time cannot be tolled.
7. The essence of an appeal bond is to indemnify the appellee from all costs arising from the appeal, while the notice of completion of the appeal is to confer jurisdiction of the appellate court over the parties. Therefore, a failure to comply with the requirements, i.e. filing of an appeal bond and a notice of completion of the appeal, within the time allowed by statute are grounds for dismissal of the appeal by the Supreme Court.
8. When an appeal statute has been violated and the appellant fails to perfect his appeal within sixty (60) days as required by law, the appeal should be dismissed, since the statute prescribing the period of time within which an appeal must be taken is mandatory.
9. One of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the Court.

10. Completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal, and jurisdiction over the subject matter cannot be waived even by the appellee in the absence of statutory authorization.
11. The Court must consider primary its jurisdiction over any issue brought before it, since it is bound to take notice of the limit of its authority.

Appellant/respondent, Alfred Gbortoe, an employee of the appellee/movant, Rami Ahmar, filed an action of wrongful dismissal against the appellee who had accused him of shortage in his accounts. Because the respondent/appellant was later charged with misapplication of entrusted property, the labor commissioner suspended proceedings in the labor case pending the outcome of the criminal matter which was being tried in the 13th Judicial Court for Margibi County. The criminal charges having been dismissed by the court for lack of evidence and a clearance having been issued in favor of the respondent which the movant refused to honour to reinstate the respondent, the respondent continued his pursuit of the labour case. At the conclusion of the evidence, the hearing officer ruled that the respondent be reinstated or paid twenty-four (24) months' salary in lieu of reinstatement.

On a petition for judicial review, the movant also filed a motion to strike the returns filed by the respondent, stating as ground therefor that Rami Brothers was a corporation and therefore the movant could not be held liable for the acts of the corporation. The trial judge granted the motion, struck respondent's returns and dismissed the wrongful dismissal action, holding that the movant, Rami Ahmar, had been wrongly made a party defendant to the labour action. It was from this ruling that the respondent appealed to the Supreme Court.

During the pendency of the appeal, the movant filed a motion to dismiss the appeal, stating as the grounds for same that the respondent's bond was approved, filed and served on the sixty-first day following the judgment of the trial court, which was beyond the statutory period of sixty days required by law. The movant stated further that the appeal bond was defective in that no sum certain was stated therein and only one surety rather than a minimum of two required by statute was carried on the bond. Moreover, that the notice of completion of the appeal was filed on the sixty-first day and served on the sixty-fifth day from the date of the final judgment, in violation of the statute.

The Supreme Court agreed with the appellee, granted the motion and ordered the appeal dismissed. The Court held that the provision of the statute regarding appeals is mandatory and that the appellant should have filed his bond and the notice of completion of the appeal within sixty days. The Court stated further that the excuse given by the appellant for not completing the appeal, i.e., that he was abducted by rebels, aside from not being backed by the required evidence to warrant extension of the appeal time, was belated, in that if for any reasons the appellant could not complete his appeal within the time prescribed by law, he should have made application to the court ahead of the time allowed by the appeal statute

for enlargement of the time for completion of his appeal and not after a motion for dismissal of the appeal had been filed.

The Court noted also that in any event, the circumstances (i.e. his abduction by LURD rebels) alleged by the appellant as the reason for his inability to complete his appeal within the statutory time did not fall amongst any of the grounds stated by the appeal statute for extension of the appeal time. Accordingly, the Court dismissed the appeal.

James N. Gilayenneb and *Cooper W. Kruah* of The Henries Law Firm appeared for the appellant/respondents. *George S. B. Tulay* and *Fomba O. Sheriff* appeared for the appellee/movant.

MADAM JUSTICE COLEMAN delivered the opinion of the Court.

This motion to dismiss grows out of an appeal taken from a ruling of the court below dismissing a wrongful dismissal action filed by the appellant/respondent, Alfred Gbortoe, herein referred to as the respondent, against the appellee/ movant, Rami Ahmar, herein referred to as the movant

The records before us reveal that Respondent Alfred Gbor-toe filed a complaint against Movant Remi Ahmar, his alleged employer, for illegal dismissal, alleging that he was employed by the appellee on October 7, 1991, and dismissed on October 15, 1998, for an alleged shortage in his accounts in the amount of Liberian Dollars Forty Five Thousand (L\$45,000.00). The movant was later charged for misapplication of entrusted property in the 13th Judicial Circuit Court, Margibi County.

The action for wrongful dismissal was suspended by the labor commissioner pending the outcome of the criminal case being tried by the 13th Judicial Circuit Court. The criminal charges against the respondent were dismissed by the circuit court for lack of evidence, and the respondent obtained a clearance, absolving him of the criminal charges brought against him.

The movant, however, refused to reinstate the respondent based on the clearance from the circuit court. Thereafter, the respondent resumed the labor case filed before the labor commissioner. When the labor case was called for hearing, the movant requested the labor commissioner to dismiss the labor action on grounds that the wrong party had been sued. Movant Rami Ahmar alleged that respondent Gbortoe was employed by a corporation, the Rami Brother Centers, and not Rami Ahmar as an individual. The motion was resisted, argued and denied by the hearing officer. No appeal was taken from the said ruling. Thereafter, a hearing was held with the taking of evidence from both parties. The hearing officer, on August 13, 2001, ruled in favor of the respondent, ordering the movant to reinstate the respondent or make payment of 24 months salary in lieu of reinstatement, plus one month pay in lieu of notice.

A copy of the hearing officer's ruling was served on the movant on August 13, 2001. Subsequently, on September 19, 2001, movant filed a petition for judicial review before the Thirteenth Judicial Circuit Court. To the petition for judicial review, respondent filed returns and a motion to dismiss the petition for judicial review on grounds that the petition was filed out of statutory time.

Before the petition for judicial review and the returns could be heard, the movant filed a motion to strike respondent's returns, contending that Rami Brothers was a corporation and therefore appellee could not be held liable for the acts of the corporation. The motion to strike respondent's returns was heard on December 29, 2001, and the judge, His Honour Varnie D. Cooper, presiding by assignment, ruled that Rami Ahmar was wrongly made a defendant by the labor commissioner, and could not be held individually responsible for acts of the corporation. He further ruled granting the motion to strike respondent's returns and also dismissed the wrongful dismissal action against movant Rami Ahmar.

To that ruling, respondent Alfred Gbortoe excepted and announced an appeal to this Honourable Court. During the pendency of the appeal, movant filed a motion to dismiss the appeal on procedural grounds, stating that the steps taken by the respondent for perfection of the appeal were not in conformity with the statute governing the completion of appeals.

The motion to dismiss prayed this Court to dismiss the appeal for the following reasons: (1) That the respondent's appeal bond was approved, filed and served out of the statutory period of sixty (60) days, the final judgment having been rendered on December 29, 2001 and that said appeal bond should have been approved, filed and served on or before February 27, 2002, but instead the bond was approved, filed and served on February 28, 2002, one day beyond the Sixty (60) day period allowed by statute; (2) That the appeal bond was defective in that it was not approved for any certain sum of money and the bond carried only one surety instead of two or more sureties as required by Section 51.8 of the Civil Procedure Law, Title 1, Liberian Code of Law Revised; (3) That the notice of completion of appeal should have also been filed and served within sixty (60) days after rendition of final judgment, that is, on or before February 27, 2002 but instead, the notice of completion of appeal was filed on February 28, sixty-one (61) days after final judgment and served on March 4, 2002, a period of sixty-five (65) days after rendition of the final judgment.

The respondent filed a four (4) count resistance to the motion to dismiss, stating that even though the bond should have been filed within sixty (60) days from the date of the final judgment but, the respondent was incapacitated between February 19, 2002 to February 25, 2002 when the respondent was abducted by the Liberians United For Reconciliation and Democracy (LURD) rebels during an attack on Bong Mines. This event, respondent stated, created a situation of impossibility of performance occasioned by an intervening cause over which respondent had no control. Therefore, he said, he could not complete the appeal within the statutory period.

The respondent further stated in his resistance that under our statute when an intervening impossibility occurs, the statute tolls. Hence, an additional seven (7) days ought to have been added to the period for the time lost. Therefore, the respondent had up to March 6, 2002 to complete the appeal process.

Finally, the respondent denied the allegation that only one surety signed the appeal bond and indicated that the bond was signed by two qualified sureties, in persons of Peter Sonpon and Momo Henries, for the sum of Liberian Dollars One Hundred Twenty-Five Thousand (L\$125,000.00).

In April 2003, when the motion to dismiss the appeal was called for hearing, counsel for respondent requested this Court for consolidation of the motion to dismiss the appeal and the appeal in keeping with Section 6.3 of the Civil Procedure Law, 1 LCLR 78, as both the motion to dismiss the appeal and the appeal contained common issues of law and facts.

The movant, in resisting the application for consolidation, requested this Court to deny the application of the respondent as the motion to dismiss the appeal and the appeal did not have common issues of laws or facts. The motion to dismiss the appeal challenged the jurisdiction of the Supreme Court over the party and the subject matter, while the appeal would review errors arising out of the trial of the case on its merits. The movant further contended that where the jurisdiction of the court over the party or subject matter is challenged, the court should first hear and decide the jurisdictional issue before proceeding to hear the appeal on its merits. If the court so determines that it has jurisdiction over the party and the appeal, then the appeal can be heard.

After argument *pro and con* on the application to consolidate the appeal and the motion to dismiss the appeal, this Court granted the application and consolidated the appeal and the motion to dismiss the appeal. The consolidated motion to dismiss the appeal and the appeal on its merits are now before us for determination.

We will first dispose of the motion to dismiss the appeal and determine whether this Court acquired jurisdiction over the person and appeal, and if we so determine, then we will review the issues raised by the respondent on the appeal. The issues related to the motion to dismiss the appeal are:

1. Whether the appeal bond meets the requirements of the statute?
2. Whether the alleged abduction of the respondent by LURD rebels tolled the time for completion of the appeal?
3. Whether the appeal bond and the notice of completion of appeal were filed and served outside of the statutory period, thereby making the appeal dismissible?

As to the issue whether the appeal bond meets the requirements of the statute, the records before this Court show that the appeal bond filed by the respondent was signed by two sureties, in persons of Peter T. C. Sonpon and Henry Momo. The bond was approved for the sum of Liberian Dollars One Hundred Twenty-Five Thousand (L\$125,000.00). In the mind of the Court, this amount is sufficient to indemnify the movant from any cost or

injury arising from the appeal. The appeal bond therefore met the requirements as provided for under section 51.8 of the Civil Procedure Law, 1 LCLR 251- 252, which requires the amount of the appeal bond to be fixed by the court, with two or more legally qualified sureties, to the effect that the appellant will indemnify the appellee from all cost or injury.

The second issue for our consideration is whether the alleged abduction of the respondent by LURD rebels tolled the time required for completion of the appeal? Counsel for the respondent conceded that the appeal bond was approved, filed and served beyond the statutory period of sixty (60) days. He however contended that it was impossible to file the appeal bond in the time required by law due to respondent Gbortoe's abduction by LURD rebels between February 19 and 25, 2002. The respondent's counsel also argued before this Court that he completed the appeal bond in sixty (60) days in spite of the abduction of the respondent and took same to the presiding judge for approval, but that the judge was not found in the court as he was commuting between Monrovia and Kakata on a daily basis for the fear of the LURD rebels. The respondent's counsel further argued that he waited for the arrival of the judge but to no avail, and he proceeded to Monrovia for the approval of the bond *nunc pro tunc*, which request was denied. The respondent's counsel maintained that the time lost due to *force majeure* ought to be added to the period he had to complete the appeal since the respondent was not at fault for the untimely filing of the appeal bond and notice of completion of the appeal.

In *Mensah v. Liberia Battery Manufacturing Corporation*, 36 LLR 879 (1990), relying on *Cole v. Larmi*, 25 LLR 450 (1977), this Court held that:

“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.”

The question is did the respondent's counsel take the appropriate legal measures to avert the dismissal of the appeal by superintending the appeal and seeing to it that all the legal requirements were complied with? We think not. The records before us are devoid of any evidence that the respondent's counsel took any legal measures to request for additional time to complete the appeal. The statute provides for enlargement of time by the court if notice is given and cause shown that an act could not be done due to excusable neglect. The respondents counsel did not file a motion for enlargement of time before the trial court after the alleged abduction of the respondent by LURD, which allegedly made it impossible to have timely perfected the appeal as required by law.

It was only alleged that the respondent was abducted by LURD rebels between February 19 and 25, 2002. We note that respondent's counsel had allowed fifty-two days to elapse by February 19, 2002, the alleged date on which respondent Gbortoe was adducted, and yet the bond was not filed and served. However, he still had up to February 27, 2002 to have his bond approved, filed and served; yet, he failed to do so. If we accept the allegation that the respondent was abducted for six (6) days and that as a result he could not complete the appeal process on time, this could be considered an excusable neglect. The statute makes

provision for such situation, as provided for under section 1.7 (2) of the Civil Procedure Law, 1 LCLR 25, which states:

“Enlargement. When under this title or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may except as otherwise provided by law, at any time in its discretion: (a) order the period enlarged if application is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the prescribed period permit the act to be done when the failure to act was the result of excusable neglect.”

It was therefore the responsibility of the respondent’s counsel to have moved the court to enlarge the time for the completion of the appeal if the alleged abduction delayed the completion of the appeal on time. There is nothing in the records to show that any application for enlargement of time or any information to the court that the respondent was abducted and said abduction might delay or did delay the completion of the appeal on time. The first time the information was made known that the respondent was abducted was in the resistance to the motion to dismiss the appeal filed before this Court. We think that this information and excuse are belated.

The appellant’s counsel did not properly and carefully superintend the appeal of the respondent so as to ensure compliance with all the legal requirements for perfection of the appeal before this Court. Hence, the alleged abduction of the respondent, in the absence of any evidence, or any request for enlargement of time does not excuse the respondent for the untimely completion of the appeal.

The respondent’s counsel in their resistance to the motion to dismiss the appeal alleged that under our statute, when an intervening impossibility occurs the statute is tolled. The statute provides for tolling of time for acts required to complete an appeal. However, the statute specifies the conditions for tolling of the time to complete an appeal. Specifically, section 51.10 of the Civil Procedure Law, 1 LCLR 251, allows for tolling of the time for acts required to complete the appeal if, after the appeal is announced, the counsel for appellant dies, becomes mentally or physically incapacitated, disbarred or suspended. None of these conditions stated above occurred, and therefore the time cannot be tolled under the facts and circumstances alleged by respondent’s counsel.

The third issue for our determination is whether or not the bond and the notice of completion of appeal were filed and served outside of the statutory period, thereby making the appeal dismissible. The essence of an appeal bond is to indemnify the appellee from all costs arising from the appeal, while the notice of completion of appeal is to confer jurisdiction of the appellate court over the parties. Therefore, the failure to comply with these requirements within the time allowed by statute is ground for dismissal of the appeal.

In *Mensah v. Liberia Battery Manufacturing Corporation*, cited *supra*, this Court held, at syllabus 1, that:

“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.” See also *Chase Manhattan Bank v. Chicri Brothers*, 36 LLR 391, Syls. 3, 4 & 5 (1989); *National Port Authority v. Doe*, 36 LLR 429, syl. 1 (1989); *Ankra et al. v. Liberia Federation of Labour Unions*, 36 LLR 343, syls. 3, 4 & 5 (1989); Civil Procedure Law, Rev. Code 1:51.4.

In the instant case, the respondent failed and neglected to file and serve an approved appeal bond and the notice of completion of appeal within the statutory period of sixty (60) days. The bond was filed and served sixty-one (61) days after final judgment while the notice of completion of appeal was filed sixty-one (61) days and served sixty-five (65) days after final judgment. Counsel for respondent could not justify why the notice of completion of appeal was not served on opposing counsel until March 4, 2002, which was sixty-five (65) days after final judgment even though the opposing counsel worked and lived in Monrovia.

When an appeal statute has been violated and the appellant fails to perfect his appeal within sixty (60) days as required by law, the appeal should be dismissed, since the statute prescribing the period of time within which an appeal must be taken is mandatory. *Nancy v. Curry*, 14 LLR 152 (1960).

This Court held in the case *MIM Liberia Corporation v. Toweh*, 30 LLR 611 (1982) “one of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the Court. Completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal; and jurisdictional requirement over the subject matter cannot be waived even by the appellee in the absence of statutory authorization. This being so, a court must of necessity and if need be upon its own motion always consider the question of its jurisdiction primary over any issue brought before it, since it is bound to take notice of the limit of its authority.”

In *Porte v. Citibank NA*, 37 LLR 126, syl. 5 (1992), the Supreme Court opined that “failure of the appellant to file an approved appeal bond and to serve notice of completion of appeal deprives the appellate court of jurisdiction and the appeal will be dismissed.”

As much as we would like to delve into the merits of respondent’s appeal, we are unable to do so on grounds that this Court has not acquired jurisdiction over the parties and the subject matter of the appeal due to the failure of the respondent to file and serve an approved appeal bond and the notice of completion of appeal within the time allowed by law; thus depriving this Court of the power to hear and determine the appeal on its merits and constitute ground for the dismissal of the appeal.

Wherefore and in view of the laws we have cited, the motion to dismiss the appeal is hereby granted and the appeal is dismissed. The Clerk of this Court is hereby ordered to send a mandate to the trial court commending the judge presiding therein to resume jurisdiction over the case and give effect to this ruling. Costs are ruled against the respondent. And it is hereby so ordered.

Motion granted; appeal dismissed.

