

ALFRED AMOAH, Appellant, *v.* C. **EMMANUEL E. OBIAMIWE**, Appellee.

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

Heard: May 27, 1982. Decided: July 9, 1982.

1. The certificate from the Bureau of Revenue, Ministry of Finance, is intended to substantiate the fact that the property described in the affidavit of sureties is owned by the sureties and that it is of the assessed value as stated in the affidavit. Absence of this certificate renders the affidavit defective and a ground for dismissal of the appeal.
2. Notice of the completion of the appeal must be filed and served on appellee within sixty (60) days after announcement of appeal.
3. A counsel failing to observe and adhere to the jurisdictional steps for the perfection of an appeal, as a result of which the appeal is dismissed, shall be punished by the Supreme Court in any manner as the circumstances of the particular case might warrant even to suspension from practice.
4. It is the service of summons or notice of the completion of the appeal upon the appellee that gives the appellate court jurisdiction over the appellee and the cause of action. When it is discovered that the notice of completion of the appeal was served beyond the statutory period, the appellate court shall refuse jurisdiction.

These proceedings grew out of a final judgement in an action of damages for injury to reputation in the People's Civil Law Court to which appellant excepted and announced an appeal to this Honourable Court. Subsequent to the perfection of the appeal, appellee moved the Court to dismiss the appeal on grounds that the affidavit of sureties is not supported by a certificate of property valuation from the Ministry of Finance; and that the notice of the completion of the appeal was filed and

served beyond the statutory period.

Appellant, although admitting that a certificate from the Ministry of Finance did not accompany the bond, contended that this was not a prerequisite to the approval of the bond. Appellant also contended that even though appellee was not served with the notice of the completion of the appeal within sixty (60) days, it is no ground for dismissal of the appeal since the ninety (90) days for the clerk to send up the records on appeal had not expired.

The Supreme Court, holding that the steps required for the completion of an appeal are mandatory and jurisdictional, overruled the contentions of the appellant, sustained the motion, and dismissed the appeal.

Joseph W. Andrews appeared for appellant. *J. Emmanuel R. Berry* appeared for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court

The appellant in this case being dissatisfied with the final judgment rendered against him on the 5th day of December, 1978, in an action of damages for injury to the reputation, perfected his appeal to this Court for final review. The action of damages had been instituted against him in the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by appellee. When the case was called for hearing, our attention was called by appellee that he had filed a motion to dismiss the appeal.

Except as provided by law, this Court exercises appellate jurisdiction, and may review a case on appeal, upon records from the trial court when the case is properly appealed in accordance with our appeal statute. The appeal statute provides the necessary steps to be taken by the appellant in order to give this Court jurisdiction over the parties. If these steps are not strictly adhered to by the appellant in order to give the Court jurisdiction, the appeal will be dismissed.

Every person against whom any final judgment is rendered shall have the right to appeal from the judgment of the court, except from that of the Supreme Court. The decision of the Supreme Court shall be absolute and final. Civil Procedure Law, Rev. Code, 1: 51.2. The following acts shall be necessary for the completion of an appeal:

1. Announcement of the taking of the appeal;
2. Filing of the bill of exceptions;
3. Filing of an appeal bond;
4. Service and filing of notice of completion of appeal.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal. *Ibid.* 1: 51.4.

With respect to the announcement of the taking of an appeal, this must be done at the rendition of judgment, *Ibid.*, 1: 51.6, while the filing of the bill of exceptions must be done by the appellant within ten days after rendition of final judgment. *Ibid.*, 1: 51.7. The appeal bond must be in an amount to be fixed by the court, with two or more qualified sureties who are owners or one of them is owner of real property to the value of the bond. The sureties shall sign an affidavit of sureties to accompany the bond to the effect that the property is owned by them/him and is of the assessed value on which taxes have been paid and, with a statement as to what lien and other encumbrances are on said property. A certificate of property valuation must support the affidavit.

The certificate from the Bureau of Revenues, Ministry of Finance, is intended to substantiate the fact that the property described in the affidavit of sureties is owned by the sureties and that it is of the assessed value as stated in the affidavit. *Ibid.*, 1:51.8; 63.2(3). Failure to file a sufficient appeal bond shall be ground for the dismissal of the

appeal. *Ibid.*, 1:51.8; *Levin v. Juvico Supermarket*, 23 LLR 201 (1974).

Appellee's motion to dismiss appellant's appeal contains three main issues, which we shall discuss and dispose of in the order in which they are listed.

In count one of the motion, appellee contended and has argued that the final judgment, having been rendered on the 5th of December, 1978, appellant should have filed his appeal bond on or before February 3, 1979; instead, appellant did not file said bond until February 5, 1979, two days after the statutory time of 60 days has elapsed. A clerk's certificate under the signature of Clerk Robert B. Anthony of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, has been proffered to the motion to the effect that from the date of the rendition of the final judgment, that is, December 5, 1978, the appellant had not filed his appeal bond in his office.

Recourse to the appeal bond as proffered with the motion shows that the same was filed in the clerk's office on the 3rd day of February, 1979, which was the last day for the filing of the bond, and that the said Clerk Robert B. Anthony himself initialed the filing date of the bond. Appellee's contention not being supported by the records in this case, count one of the motion is not sustained.

According to counts two and four of the motion to dismiss, appellee argued that the appeal bond was not accompanied by a certificate from the Bureau of Revenues, and, therefore, the sureties have no property as they alleged in the affidavit of sureties, which renders the appeal bond defective. Counsel for appellant did not deny that the bond is not accompanied by a certificate of property valuation, but contended that although a certificate of property valuation is required by law to accompany an appeal bond, this is not a prerequisite to the approval of the bond. The certificate of property valuation being absent and not forming a part of the records, we consider the argument of counsel for appellant as being unmeritorious, and, hence, we sustain counts two and four of the motion to dismiss the appeal.

Count three of the motion to dismiss the appeal relates to the failure of appellant to serve on the appellee the notice of the completion of the appeal within the statutory time of sixty (60) days.

From a recourse to the record, we observed, and appellant admitted, that the notice of the completion of the appeal was served on appellee on February 5, 1979, two days after expiration of the statutory time within which to complete the appeal. While arguing, appellant's counsel contended that although, according to the sheriff's returns, appellee was served on the 5th day of February, 1979, with the notice of the completion of the appeal, the statutory time of 90 days for the clerk to send up the appeal records had not expired. This was another poor argument, which cannot claim the consideration of this Court.

In keeping with the law we have already cited, when an appeal is announced, all jurisdictional steps must be taken by the appellant within 60 days to complete the appeal. Our statute also provides that after the filing of the bill of exceptions and the filing of the appeal bond as required by 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. Civil Procedure Law, Rev. Code 1: 51.9.

Whenever an appeal to the Supreme Court is announced from a judgment, ruling, or decision, counsel for the appealing party shall, after announcing appeal and performing all of the statutory acts incident to the completion of said appeal, and after taking all of the jurisdictional steps necessary within the time prescribed, furnish his adversary with a copy of the notice of appeal, the original of which must have been issued by the clerk and served and returned by the ministerial officer. Proof of service shall be evidenced by the ministerial officer's returns inscribed on the back of the notice of appeal. These acts on the part of the appealing counsel shall in no way affect the statutory duties of the clerk of the trial court in respect to notice of appeal. Any counsel failing to observe this rule, and as a result of which failure his appeal

case is dismissed, shall be punished by the Supreme Court in any manner as the circumstances of the particular case might warrant, even to suspension from practice.

Rule 4, Part 4 of the Supreme Court Rules, Notice of Completion of Appeal.

It is the service of the summons or notice of the completion of the appeal upon the appellee that gives the appellate court jurisdiction over the appellee and the cause of action; in the absence of said service, or when it is discovered that the said service was made beyond the appeal limit, the appellate court should refuse jurisdiction.

Brownell v. Brownell, 5 LLR 76 (1936); *Morris v. Republic*, 4 LLR 125 (1934); *Roberts v. Brown*, 15 LLR 415 (1963).

We should like to sound a warning to the members of this Bar against the negligent and careless manner in which some lawyers come to this Court to the detriment of their clients. *Under Rule 4, Part 4, of the rules of this Court*, we shall not permit any lawyer to go unpunished in the future, who has neglected to strictly observe the appeal statute to give this Court jurisdiction, a result of which neglect, may lead to the dismissal of a case to the detriment of the party-appellant.

In view of the failure of the appellant in this case to give the Court jurisdiction to hear his appeal by neglecting to serve on the appellee with the notice of the completion of the appeal within the time allowed by statute, we have no alternative but to grant the motion to dismiss the appeal for want of jurisdiction with costs against the appellant.

The People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, is one of the most important courts for the protection of the economy of this country. In that court, investors and business establishments, not only look for and expect justice, but they also rely on this court for the protection of their property rights. The rich and the poor, both far and near, look to the People's Civil Law Court in the nation's capital as the place of hope for justice under the rule of law. Therefore, the clerk and all other employees of the court, for that matter, who are in charge of the court's record must be devoid of all forms of corruption. We have no evidence of

any foul play on the part of counsel for appellant and the clerk leading to the issuance of the clerk's certificate made profert to appellee's motion. However, the fact that Clerk Robert Anthony had filed the appeal bond in his office on February 3, 1979, and then issued a certificate on the 5th of February, 1979, to the effect that no appeal bond had been filed in the case, his act was intended to mislead this Court. He is, therefore, hereby fined the sum of \$200.00 to be paid within forth-eight (48) hours and a revenue flag receipt therefor exhibited to the Justice in Chambers, through the office of the Marshal of this Court. Upon his failure to comply within the time mentioned, the said clerk will be suspended for time indefinite. Mr. Justice Mabande disagrees with the majority holding and, hence, will read his dissenting opinion. And it is hereby so ordered.

Motion granted; appeal dismissed.

MR. JUSTICE MABANDE *dissents.*

I have voted that the appeal be heard on its merits. To me, the facts and laws relied upon by the majority do not, in the context of the entire motion to dismiss and the resistance thereto, support a denial of the opportunity to appellant to have his appeal considered.

The movant's/appellee's five-count motion alleges appellant's failure to file his appeal bond within statutory time, the lack of a revenue certificate attached to the bond, his failure to file the notice of the completion of the appeal within sixty (60) days, and the sureties not being owners of the properties offered as liens.

During the trial, it was proved by appellant's counsel and conceded by appellee, that appellant filed every appeal document within the required statutory time. In this respect, the majority and I agree. I, however, disagree with the majority that there is any statutory time within which a notice of the completion of the appeal must be filed and served. The statute states:

“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 shall be filed in the office of the clerk of the trial court.” Civil Procedure Law, rev. Code 1: 51.9.

No definite time is set by the controlling law for compliance with this provision, i.e., the time within which to serve a notice of the completion of the appeal.

The purpose of filing and serving a notice of the completion of the appeal is firstly to notify the trial court that the appeal is exclusively pending before the appellate court, and secondly, to notify the adversary party that appellant has completed the filing of all required documents for an appeal. The failure to serve such notice at the same time a bond is filed deprives the adversary of no right. The appeal was not called at that time, hence, no surprise or disadvantage was suffered by the appellee. The trial records are not transcribed within the 60 day period in issue.

After an appeal bond is filed, a party can do nothing about the appeal until the records are transmitted or the appellant fails to pay the clerk for the transmission of the records, resulting into an unusual delay in having the appeal heard. Only then can an appellee claim that advantage was taken of him, and only then can he seek the dismissal of an appeal.

The majority is simply writing a time element into the statute and applying extended legal technicality to deny the appeal. This an appellate court cannot legally do. I therefore dissent.