

ARTHUR P. HARRIS, Curator of Intestate Estates, Grand Bassa County,
Petitioner, v. **JAMES Y. NIPPAE**, Respondent.

MOTION FOR ORDER TO THE PROBATE DIVISION OF THE CIRCUIT
COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY,
TO RESUME JURISDICTION AND ENFORCE ITS JUDGMENT IN
CONTEMPT PROCEEDINGS.

Argued October 9, 1956. Decided February 22, 1957.

When an appellant has failed to complete an appeal by timely issuance, service and return of notice, the appellate court is without jurisdiction and will order the lower court to resume jurisdiction and enforce its judgment.

Appellant, having been adjudged guilty of contempt below, appealed from that judgment to this Court, but failed to file the required proof of issuance, service and return of notice of appeal. Appellee moved that this Court order the court below to resume jurisdiction and enforce its judgment. The *motion was granted*.

T. Gyibli Collins for appellant. *Albert D. Peabody* for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.

During the month of August, 1954, one Francis Nippae, a brother to the present respondent, James Y. Nippae, and factoryman for the Oost Afrikaansche Compagnie at the settlement of Timbo, Grand Bassa County, died intestate. To secure the said Company's goods, its agent petitioned the court below to send the Curator of Intestate Estates to the factory to make an inventory and to authorize a representative of the said Company to accompany the Curator and to take delivery of the goods so as to prevent waste. The court below granted the petition on August 20, 1954. Accordingly the said Curator proceeded to the spot with the representative of the Oost Afrikaansche Compagnie and, after a partial checking, the goods and other personal property of the said Company were turned over to the representative in the presence of the said James Y. Nippae. When the Curator returned the next morning to complete the inventory, he found, to his surprise, that the house had been locked up and that James Y. Nippae had left for Monrovia.

The Curator then had no alternative but to return and make his report to the court below. Thereupon a writ was issued for the said James Y. Nippae to appear before the

court to answer in contempt proceedings. He appeared and, after trial, was adjudged guilty and fined the sum of fifty dollars. He excepted to the judgment and announced an appeal to this Court on June 13, 1955. Subsequently the Curator of Intestate Estates, observing that the time for the perfection of the appeal had expired, made application to this Court through counsel for an order to the court below to resume jurisdiction and enforce its judgment. From the time the appeal was announced one year and four months have elapsed. During that period of time only 'the bill of exceptions and appeal bond were filed. Nowhere in the records certified to this Court is it shown that the notice of appeal, issuance, service and return of which are necessary to give this Court jurisdiction, was ever issued, served and returned.

The law specifically provides that the appellant's bill of exceptions must be approved by the trial Judge and filed in the office of the clerk of the trial court within ten days after the rendition of judgment; the appeal bond must be approved and filed ; and return of the notice of appeal must be filed within sixty days after rendition of final judgment, or the appeal must be dismissed.

The notice of appeal, the issuance, service and return of which completes the appeal and gives this Court jurisdiction over the matter, is wanting in the records of this case. Therefore this Court has no alternative but to grant the instant motion. It is hereby granted with costs against the respondent. And it is so ordered.

Motion granted.