

INTERNATIONAL BANK (LIBERIA) LIMITED (I.B.L.), formerly
INTERNATIONAL TRUST COMPANY (I.T.C), represented by its President, Movant, *v.*
MARIE LEIGH-PARKER, Respondent.

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

Heard: May 5, 2004. Decided: August 16, 2004.

1. An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve a notice of completion of appeal as required by statute.
2. The word “may”, as used in the provision of the appeal statute, grants the Supreme Court the discretionary power of determining whether to dismiss an appeal for noncompliance with all of the procedural steps for perfecting an appeal.
3. It is incumbent on the clerk of the trial court to issue the appropriate notice of completion of appeal when the respondent or appellant files his or her appeal bond and the document entitled “notice of completion of appeal”.
4. “Amend” means to improve, to change for the better by removing defects or faults; to change, correct, revise; correction of an error committed in any process, pleading, or proceedings at law, or in equity, and which is done either as of course or by consent of the parties, or upon motion to the court in which the proceeding is pending.

Appellant/respondent’s action of damages for breach of contract, filed against the appellee/movant in the Civil Law for the Sixth Judicial Circuit, Montserrado County, was dismissed by the trial judge on the ground that the action was time barred by the statute of limitations. Appellant announced an appeal from the judgment and subsequently perfected her appeal therefrom on the 59th day after the rendition thereof, inclusive of the filing and service of an appeal bond and a notice of completion of appeal.

Thereafter, however, the appellant withdrew the notice of completion of appeal and filed an amended notice of completion of appeal. Between the period of the withdrawal of the first notice of completion of appeal and the filing of the amended notice of completion of appeal, the clerk of the trial court, upon the request of the appellee, issued a clerk’s certificate to the effect that the no notice of completion of appeal had been issued, served and returned served, but that the records revealed that the appellant had filed in the court a document entitled “notice of completion of appeal” in which she requested the clerk to spread upon the records of the trial court that the appeal was completed.

On the basis of the said certificate the appellee filed a motion to dismiss the appeal, contending that the Supreme Court lacked jurisdiction over the matter since the appellant had not completed the appeal within the sixty day period required by law, and that she had instead completed said appeal on the sixty second (62nd) day (July 22nd 2002), rather than July 20th 2002 which was the sixtieth day.

The Supreme Court denied the motion, noting, firstly, that under its decided previous cases, matters involving procedural legal technicalities concerning a period in which an act is to be performed, as in the instant case, would be decided on a case by case basis. The Court then opined that the appeal statute granted the Supreme Court discretionary powers to decide whether it would or would not dismiss a case where the procedural requirements for completion of an appeal were not complied with.

In the present case, the Court said, the appellant had complied with the statute by filing both her appeal bond and the notice of completion of appeal on the 59th day of the date of rendition of the judgment of the trial court. The Court concluded that the clerk of the trial court was therefore in error in issuing a certificate to the effect that no notice of completion of appeal had been issued, served and returned served, especially given that it was the responsibility of the clerk of court, upon receipt of the appellant's appeal bond and the notice of completion of appeal, to issue the notice of completion of appeal for service.

The amended notice of completion of appeal issued by the clerk, the Court further opined, presupposed that a notice of completion of appeal had been filed and was being amended. The negligence committed by the appellant and her counsel, in the opinion of the Court, was insufficient to dismiss the appeal, although it warned the appellant and her counsel against such negligence. Hence, the motion to dismiss was *denied*.

C. Alexander B. Zoe and *Sylvester S. Kpaka* appeared for the respondent. *J. Johnny Momoh* and *G. Moses Paegar* appeared for the movant.

MR. JUSTICE GREAVES delivered the opinion of the Court.

The records before us reveal that on the 21st day of August, A. D. 2001, respondent Marie Leigh-Parker filed an action of damages for breach of contract against the movant before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, relative to a bank account opened with movant some-time in the year 1978 by respondent and her husband. After pleadings had rested, His Honour Wynston O. Henries, Resident Circuit Judge, then presiding over said court for the September, A. D. 2001 Term, assigned the case for the disposition of law issues, heard same and ruled dismissing movant's answer, thereby placing her on bare denial of respondent's (plaintiff below) complaint. Movant subsequently filed a petition for a writ of certiorari before the Chambers Justice, Mr. Justice Wright, who, after a conference with the parties, sent a mandate to the lower court judge mandating him to

resume jurisdiction in the matter, set aside his ruling on the law issues, and rehear and dispose of every issue of law in the answer and reply.

On the 21st day of May, A. D. 2002, His Honour Yussif D. Kaba, assigned to the Civil Law Court during its March Term, 2002, in obedience to the said Chambers Justice's mandate, resumed jurisdiction over the matter, heard and disposed of the law issues and dismissed respondent's entire action on the ground that her claim was barred by the statute of limitations. To said ruling respondent excepted and announced an appeal to this Court sitting in its October Term, A. D. 2002.

On the 19th day of July, A. D. 2002, the 59th day after the lower court had rendered its ruling, the respondent filed and served her appeal bond and also a document entitled "Notice of Completion of Appeal" on movant. The respondent subsequently withdrew said document and upon request the Clerk of Court issued an amended notice of completion of appeal on the 22nd day of July, A. D. 2002, which was served and filed as the law requires.

On the 22nd day of July, A. D. 2002, before respondent filed the amended document, the clerk of the lower court issued a Clerk's Certificate upon the request of movant to the effect that no notice of completion of appeal had been issued, served and returned served. But the said certificate went further to state that "It is observed from the records of this court that on July 19, 2002, at the hour of 2:55 p. m. appellant filed with this court a document entitled "Notice of Completion of Appeal" in which appellant requested the clerk of this court to take note and spread on the minutes of the court that the appellant/plaintiff in the above entitled cause of action had completed her appeal on the 19th day of July, A. D. 2002.

Movant then filed before this Court, on the 12th day of September, A. D. 2002, a fifteen (15) count motion to dismiss respondent's appeal, alleging, amongst other things, that this Supreme Court lacked jurisdiction over the appeal in that respondent did not complete the appeal process by filing and serving the notice of completion of appeal within sixty (60) days after the rendition of a final judgment by the court below; and that respondent filed her notice of completion of appeal on the 62nd day after rendition of the trial court's final judgment, which makes the appeal dismissible. The respondent, in her resistance countered the argument by stating that she had completed the appeal process by the document filed on the 19th day of July, A. D. 2002, the 59th day after the rendition of ruling in the court below, which was entitled "Notice of Completion of Appeal"; that the certificate given to movant by the clerk of the lower court was contradictory; that it was the duty of the clerk to have issued the said notice of completion of appeal when she received the said document entitled "notice of completion of appeal; and that even though she failed to do so, yet by virtue of the service on movant by respondent of the document titled "notice of completion of appeal "on the 19th day of July, A. D. 2002, the 59th day after the trial court's ruling, which movant has not denied, under our law and practice notice had been given by respondent to movant of her completion of the appeal process. Respondent further contended that the facts and circumstances in this matter brings it within the *Sannob v. A.D.C. Airlines*, 38 LLR 615 (1998)

and *Donzo v. Ahmed*, 37 LLR 103 (1993), cases decided by the Supreme Court of Liberia in the October, 1997 and October, 1992 Terms of this Court, in which the Court considered and scrutinized the peculiar facts and circumstances that obtained in the lower court involving those cases, and denied the motions to dismiss.

The lone issue in this matter, as we see it, is whether under the facts and circumstances existing in this matter, respondent's appeal should be dismissed?

The records from the court below show that respondent filed a document entitled "notice of completion of appeal" with the clerk of court below on the 59th day after rendition of a ruling by the said court and same was served on the movant, which movant does not dispute. The movant proceeded to the clerk of the lower court to obtain a certificate to show that respondent had not filed a notice of completion of appeal before it. She complied by issuing one which reads thus:

"Clerk's Certificate

"This is to certify that from a careful perusal of the records of this Honourable Court, it is observed that no notice of completion of appeal was issued, served and returned served in the above captioned case up to and including the issuance of this clerk's certificate. But it is observed from the records of this court that on July 19, 2002, at the hour of 2:55 p. m. Appellant filed with this court, "notice of completion of appeal" in which appellant requested the clerk of this court to take note and spread upon the minutes of this court that the appellant/plaintiff in the above entitled cause of action has completed her appeal on the 19th day of July, A. D. 2002. Hence this clerk's certificate".

Given under my hand and seal of court

this 22nd day of July, A. D. 2002

Court's Seal

Ellen Hall

Ellen Hall

CLERK OF COURT

Checked By:

Nancy Washington

FILED CLERK, CIVIL LAW COURT

MO. CO., R.L.

Margaret Brown

ASST. FILE CLERK

CIVIL LAW COURT

MO. CO., R.L.

This Court, in the cases *A.D.C. Airlines v. Sannob*, 38 LLR 615 (1998) and *Donzo v. Ahmed*, 37 LLR 103 (1993) has opined that "each case coming before the Supreme Court involving

the breach of a procedural technicality concerning a period an act is to be performed must be considered on a case by case basis, and all of the facts and circumstances giving rise to such breach must be carefully scrutinized". Section 15.16 of the Civil Procedure Law, 1 LCLR, on Dismissal of Appeal for Failure Proceed, states: "an appeal *may* be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of completion of appeal as required by statute". This Court has also opined in the interpretation of this statute that the word "may", as used in the provision of the appeal statute, grants to this Court the discretionary power of determining whether or not to dismiss an appeal for noncompliance with all of the procedural steps for perfecting an appeal. (See 51.16 1 LCL Revised); *A.D.C. Airlines v. Sannob*, 38 LLR 618, syl. 5.

The facts and circumstances prevailing in the instant case would work injustice to the respondent if the respondent's appeal were to be dismissed. Section 51.9 of the Civil Procedure Law, 1 LCLR 251, Notice of Completion of Appeal, 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 completion of appeal, a copy 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". In compliance with this statute, the respondent, on the 59th day filed both her appeal bond and the document entitled notice of completion of appeal. This Court wonders whether it was the form/wordings of the document that warranted the clerk of the trial court to issue a certificate of the type before us or because of other consideration(s). Movant argued that the notice of completion of appeal was not filed until July 22, 2003, on the 62nd day instead of the 60th day, in violation of the statute. The respondent contended that the notice of completion of appeal filed on the 62nd day was an amendment to the one filed on the 59th day. We hold that it was incumbent on the clerk of court to issue the appropriate notice of completion of appeal when the respondent filed her appeal bond and the document entitled "notice of completion of appeal on the 59th day." See *Wright v. White*, 37 LLR 360, Syl. 2. Also, the 59th day notice of completion of appeal document gave the movant constructive notice of the completion of the appeal process by respondent. The amended notice of completion of appeal issued by the clerk of court and as subsequently filed by the respondent presupposed that a notice of completion of appeal had already been filed and was being amended due to defects in form. Amend. "To improve; to change for the better by removing defects or faults; to change, correct, revise". BLACK'S LAW DICTIONARY 74 (5th ed). Also, the correction of an error committed in any process, pleading, or proceeding at law, or in equity, and which is done either as of course or by the consent of parties, or upon motion to the court in which the proceeding is pending". Amendment, *Ibid*, page 74. Both the clerk of the lower court and counsel for respondent were negligent in this

matter relative to the manner in which the clerk's certificate was issued (wordings) and the respondent's counsel failure to superintend the issuance of his client's notice of completion of appeal before the lower court respectively, and they are hereby strongly warned by this Court not to repeat such an act (s) or this Court shall not hesitate to take punitive measures against them.

In view of the foregoing, it is our opinion that the motion to dismiss the appeal should be, and the same is hereby denied. Costs are disallowed pending the final disposition of this matter. And it is hereby so ordered.

Motion denied.