**S. Y. TUAN** and **DORAH TUAN**, Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 20, 22, 1957. Decided June 14, 1957.

1. A notice of appeal which omits to state the term to which the appeal is taken is materially defective.

2. An appeal will be dismissed for lack of jurisdiction when the notice of appeal was not served within the statutorily prescribed period of time.

On appeal from a judgment upon an indictment for assault and battery with intent to kill, *appeal dismissed.*

*Albert D. Peabody* for appellants. *Assistant Attorney General J. Dossen Richards* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The above-entitled cause is before this Court for review on a bill of exceptions. The appellee submitted a motion to dismiss the appeal upon the following grounds :

"1. That the notice of appeal is materially and fatally defective, in that it does not notify the appellee to what term of this Court the appeal is taken, nor does it require or notify him to appear and defend in keeping with law.

"2. That the notice of appeal was served without the time prescribed by statute, in that final judgment was rendered on August 22, 1955, but the said notice of appeal was not served and returned until January 26, 1956, a period of approximately five months."

To this motion appellants filed a resistance erroneously based on the repealed Criminal Statute of 1938 which has no legal bearing or effect on the case at bar.

On inspecting the records in the case, we find that appellee's motion to dismiss the appeal is well founded. The said records reveal that final judgment was rendered on

August 22, 1955, and the notice of appeal was not served and returned until January 28, 1956.

The appellee is legally entitled to be served with notice by appellant, so as to inform appellee (1) that the appeal has been duly completed, and (2) at what term he should appear to defend his interest. This, however, should be done within sixty days after final judgment.

In *North* V. *Clarke,* 2 L.L.R. 491, 492 (1925), this Court said :

"We are of the opinion that it is the notice in appeal cases that gives the appellate court jurisdiction over the appellee, and this has been repeatedly set forth in the decisions handed down from time to time by this court."

It is obvious that the failure of appellants to exercise due diligence in causing the notice of appeal in this case to be served and returned within statutory time is an incurable legal blunder, for it is the notice of appeal duly issued, served and returned that confers jurisdiction over the appellee.

In *Morris v. Republic,* 4 L.L.R. 125 (1934), Syllabus "2" reads as follows :

"The service of a notice of appeal upon the appellee by the ministerial officer of the trial court completes the appeal and places appellee under the jurisdiction of the appellate court. When not completed within the statutory time, this Court will dismiss said appeal for want of jurisdiction."

In view of the foregoing we are of the opinion that the motion to dismiss the appeal in this case should be sustained, the appeal dismissed, and the judgment of the lower court affirmed. And it is so ordered.
*Appeal dismissed.*