

JOHNNY JONES, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
GRAND CAPE MOUNT COUNTY.

Argued May 8, 1956. Decided June 29, 1956.

1. An appellate court has no jurisdiction over an appeal when the notice of appeal has not been duly completed within the statutorily prescribed period of time.
2. Where a court lacks jurisdiction over an appeal no valid judgment can be rendered thereupon, and a motion to dismiss the appeal will be granted.
3. It is incumbent upon appellants to comply with the requisites for timely completion of appeals and to insure that no material omissions occur in the papers submitted to appellate courts.

On appeal from a judgment rendered against the appellant as defendant in the court below on charges of assault and battery with intent to do grievous bodily harm, appellant failed to file any notice of appeal. A *motion* to dismiss the appeal was *granted*.

T. Gyibli Collins for appellant. *Joseph W. Garber* and *J. Dossen Richards* for appellee.

MR. JUSTICE PIERRE delivered the opinion of the Court.

Upon appeal taken from a judgment rendered against the present appellant in the above entitled cause, tried in the Circuit Court of the Fifth Judicial Circuit, Grand Cape Mount County, this case has been brought before us. When it was called for hearing at the present term, appellee's counsel filed a motion to dismiss the appeal, and submitted the following ground for the motion:

"Because appellee says that the appeal as taken by the appellant should be dismissed because she has failed to file and have served on the appellee a notice of appeal in keeping with the statutes in such cases made and provided, as will more fully appear by a certificate issued by the clerk of this Court herewith filed and forming a part of this motion."

A certificate signed by the clerk of the Supreme Court was submitted with the motion, and confirmed the allegation that no notice of appeal had been filed up to

the time the case was called for hearing, more than eleven months after judgment had been rendered in the court below. This Court has repeatedly ruled that the filing of a notice of appeal, is an indispensable prerequisite to the completion of an appeal. As stated in the syllabus of *Morris v. Republic*:

"The service of a notice of appeal upon the appellee by the ministerial officer of the trial court completes the appeal and places appellees under the jurisdiction of the appellate court. When not completed within the statutory time, this Court will dismiss said appeal for want of jurisdiction." *Morris v. Republic*, 4 L.L.R. 125 (1934).

And, speaking for this Court in another case, Mr. Justice Dossen said:

"It is also admitted that the [lower] court correctly ruled in accordance with statutory law that 'it is the service of the notice of appeal which gives the court jurisdiction.'" *Brownell v. Brownell*, 5 L.L.R. 76, 79 (1936).

Syllabus "8" of the *Brownell* decision, *supra*, states: "Although a party cannot be held responsible for an immaterial error or omission made by a clerk of court transcribing the records on appeal, yet a material error or omission in the preparation of the record on appeal due to the neglect of a party to the action is ground for dismissal of the appeal."

It should be conceded by any reasonable mind, and it is elementary in our practice, that unless a party is brought under the jurisdiction of the court, its judgment against him is void. That being so, appellants should always be diligent in handling their cases, on appeal so as to avert any omissions in the records sent up to the appellate courts.

"Party appealing should superintend the appeal and see that all legal requisites are completed." *Johnson v. Roberts*, 1 L.L.R. 8 (1861).

The Criminal Appeal Act, which was passed and approved December, 1938, is the most recent authority on this important point. Section 9 thereof reads as follows:

"Except as provided in Section 4 of this Act, an appeal to the Supreme Court from a judgment of conviction or other determination of a criminal suit effected in accordance with the provision of Section 7 hereof shall be effective as a stay of execution of the judgment or other determination. And the Clerk of the Court in which the judgment was entered shall within thirty days after it is filed without charge certify to the Supreme Court the full and complete record of the case

including the *notice of appeal*, bill of exceptions, interlocutory orders and rulings and judgments, and a complete transcript of the evidence entered upon the records and the final judgment and sentence." L. 1938, ch. XXIV, sec. 9. (Emphasis supplied.)

Much as we would have liked to pass upon the several issues raised in appellant's brief, the absence of the notice of appeal has prevented our being able to open the records. The motion is therefore sustained, and the appeal is dismissed. And it is so ordered.

Appeal dismissed.