

**FODAY KAMARA**, Appellant, v. **HIS HONOUR FRANCIS N. PUPO, SR.**, Judge,  
People's Debt Court, Montserrat County, and **BENJAMIN KPOGBA**, Appellees.

### JUDGMENT WITHOUT OPINION

Decided: February 4, 1983.

At the call of this case for argument, Counsellors James Doe Gibson appeared for the appellant/respondent whilst Counsellor Roland Barnes and J. Edward Koenig of the Johnson, Barnes and Koenig Law Firm appeared for the appellees/movants.

Counsel for appellees/movants called the attention of the Court to the motion filed to dismiss the appeal on the grounds that the appellant has failed to file an approved appeal bond, and to serve a notice of the completion of the appeal on the appellees/movants. Annexed to the motion were two certificates of the clerk of court dated the 14th of November 1982 and the 17 of November 1982, respectively, to the effect that no bill of exceptions or appeal bond was filed since the rendition of the final judgment, that is to say, on the 1st of September A. D. 1982.

Counsel for appellant/respondent requested permission of Court to spread upon the minutes of Court his resistance to the motion, which request was granted.

The resistance to the motion to dismiss the appeal is to the effect that a petition was filed before the Chambers Justice for a writ of mandamus for "the approval of the bill of exceptions and the appeal bond", but no returns were filed to the mandamus. He argued that in the absence of any returns to the petition, the contentions stated therein are deemed admitted. Further, he contended that to issue and serve notice of the completion of the appeal are the duties of the clerk of court and the sheriff of the trial court. Therefore, appellant should not be held responsible for the negligent failure of the officers of court.

Whilst it is true that the service of a remedial writ serves as a stay for further proceeding in the main case, but in this case counsel for appellant has argued that he has filed within statutory period an approved bill of exceptions and an approved appeal bond and, therefore, it was the duty of the clerk of court to issue a notice of the completion of the appeal for service thereof by the sheriff. Since indeed the counsel claimed that he has filed the bill of exceptions on time as well as the appeal bond, it is obvious that the filing of the writ of mandamus did not prevent either party, especially the appellant to have proceeded further by taking the jurisdictional steps timely as prescribed by statute.

It is the several holdings of this Court that it is the duty of the appealing party to timely superintend his appeal and according to the relevant statute, after filing of the approved bill of exceptions and the appeal bond, the appellant/respondent should apply to the clerk of court for issuance of notice of the completion of the appeal. Civil Procedure Law, Rev. Code 1: 51.9.

Appellant/respondent has not shown us the effort he made to have the clerk of court issue the notice of the completion of the appeal and to have it served on the appellee/movant in this case. In the absence of evidence to show that the appellant/respondent exercised due diligence by making timely application to the clerk of court for the issuance of the notice of the completion of the appeal, after the alleged filing of the approved bill of exception and approved appeal bond, without any acts of delay on the part of the clerk of court, we hold that the appellant/ respondent was negligent and failed to perfect his appeal within the time allowed by statute. Therefore, the negligent failure of counsel for appellant/respondent to file an approved bill of exceptions and an approved appeal bond within statutory period, or have the notice of the completion of the appeal served on appellee/ movant, are grounds for the dismissal for the appeal. *Ibid.*, 1: 51.16. Therefore, it is hereby adjudged that in view of the facts, the circumstances narrated above, and the law cited, the motion to dismiss the appeal is granted.

The Clerk of this Court is instructed to send a mandate to the trial court to resume jurisdiction and enforce its judgment. The costs are ruled against the appellant and it is ordered.

NOTE: Mr. Justice Koroma being ill when this case was called for arguments, hence did not sign this judgment