

BHUPENDRA KUMAR and **VIRIENDRA KUMAR**, Manager and Agent, respectively, of WAKOLOR ENTERPRISES (OUR SHOP), Appellants, *v.* **FRANK A. SKINNER, JR.**, President and Proprietor of WAKOLOR ENTERPRISES (OUR SHOP), Appellee.

MOTION TO DISMISS APPEAL FROM THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Heard: November 24, 1982. Decided: February 3, 1983.

1. The failure to affix a revenue stamp on a clerk's certificate renders the certificate invalid as legal evidence to support a motion to dismiss.
2. On a motion to dismiss an appeal for non service of notice of the completion of the appeal, where the appeal records are not transmitted to the Supreme Court under seal of the trial court, the Supreme Court can rely on the conclusion of the trial court that the notice of the completion of the appeal was duly issued served and returned served.

This appeal emanates from a denial of a motion for relief from judgment and stay of execution filed in the Fifth Judicial Circuit, Grand Cape Mount County. Appellee filed a motion to dismiss the appeal on the grounds that no notice of the completion of the appeal had been filed and a copy thereof served on him within the statutory period. The Supreme Court noted that there was evidence that the notice of the completion of the appeal was issued, served and filed, and, hence, there was no legal justification to grant the motion to dismiss. The motion was therefore denied.

Raymond A. Hoggard appeared for appellant. *M. Fabnbulleh Jones* appeared for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

Appellee has filed this motion to dismiss the appeal on the ground that although the appellants had announced an appeal, filed bill of exceptions and appeal bond within the time allowed by statute, yet the appellants had failed and neglected to file notice of completion of appeal and have copy thereof served on the appellee for 211 days, from the date of the rendition of final judgment from which they appealed; and that because of appellants' failure to serve notice of completion of appeal on the appellee, this Court lacks jurisdiction over the person of the appellee and of the subject matter. Appellee, therefore, prayed for the dismissal of the appeal and confirmation of the judgment of the trial court.

Appellants filed a resistance to the said motion and proferted copy of the notice of completion of appeal which Court Bailiff Daniel Gio, served and made notation that the said notice of completion of appeal was served on appellee on May 3, 1982, but he refused to sign the same. Appellants also proferted to their resistance a receipt dated May 1, 1982, for \$15.00, issued by the clerk of the trial court, to facilitate the service of the notice of completion of appeal by the sheriff's office. Appellants also attacked the validity of the certificate of the clerk of the trial court, a copy of which appellee had attached to his motion, on grounds that it did not bear a revenue stamp. Appellants substantiated this allegation by a certificate issued by the Clerk of the People's Supreme Court to the effect that the certificate of May 1, 1982, issued by the clerk of the trial court and annexed to appellee's motion to dismiss, carried no revenue stamp. Also proferted with the resistance are the records and the ruling of His Honour Eugene Z. Hilton, Assigned Circuit Judge, Fifth Judicial Circuit, in which the judge observed that the notice of the completion of appeal having been filed, the trial court had lost jurisdiction.

In his argument, counsel for appellee revealed that the appeal record had not been sent up to the Supreme Court. Despite the fact that there is no appeal case pending before us, growing out of a motion for relief from judgment, there being no such appeal records transmitted and the case docketed by the Clerk of this Court, there is evidence, in our opinion, that the notice of completion of appeal was issued, served and filed by the appellants in keeping with the exhibits annexed to the pleadings. Therefore, there is no legal justification for the granting of the motion to dismiss. The clerk's certificate from the trial court not bearing any revenue stamp as required by law is invalid and cannot serve as a legal evidence to support appellee's allegation contained in the motion to dismiss.

In view of the foregoing, and because it has been shown, and we are convinced from the exhibits proffered to the motion and the resistance that the notice of completion of appeal was issued, served and returned served and filed in the office of the clerk of the trial court, the motion to dismiss appellants' appeal is denied with costs against the appellee.

The Clerk of this Court is directed to have the appeal docketed if and when filed for hearing during the ensuing March Term of this Court, 1983. And it is hereby so ordered.

Motion denied.