DAVID D. MENSAH, et. al., Appellants, v.**FRANCIS WILSON**, by and thru her Attorney-In-Fact, FRANCES WILSON-HOFF, Appellee.

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

Heard: June 18, 1986. Decided: July 31, 1986.

1. Whenever the appellate court is of the opinion that it should inspect the original papers or exhibits instead of copies, it shall make an appropriate order therefor, and for the safekeeping, transportation, and return of such originals in such manner as it deems proper.

2. Announcement of the taking of the appeal, filing of the bill of exceptions, filing of an appeal bond, and service and filing of notice of completion of appeal are specific statutory prerequisites for the completion of an appeal. Failure to comply with any of these prerequisites within the time allowed by statute shall be ground for the dismissal of the appeal. Hence, statute controlling appeal cases must be strictly construed.

3. Without a bill of exceptions, the appellate court will be deprived of the opportunity to review the act of a trial judge.

4. Where two documents, original in form, are relied upon by the opposing parties, and signed by the same person as author or issuer, and the signatures on the two documents are not in dispute, it is all but reasonable and logical that the one bearing the older date shall prevail over the other.

5. To render an appeal dismissible for failure to comply with the statute governing bill of exceptions, the statute relied upon must be closely examined so as not to distort the intent of the Legislature.

6. The filing of the bill of exceptions requires presentation to, and approval by the trial judge within ten days; or, filing a carbon original copy thereof with the clerk of the trial

8. The Supreme Court has appellate jurisdiction in all cases except as otherwise provided by the Constitution of the Republic.

9. The question of moving the Court to dismiss an appeal is one of law and based on jurisdictional ground, and unless an appellant complies with the statutes controlling appeals, the Supreme Court will be constrained to dismiss such appeals irrespective of whether or not the trial judge committed irregularities or reversible errors.

10. The law consists in reason, for reason is the life of the law. The entire statutes are made of reason and are held to be consistent in their bearings and cannot or ought not to be construed from their pure intent by mysterious movements to effect mysterious ends, not clearly demonstrated by the rules provided to establish facts and intention.

11. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Civil Procedure Law, Rev. Code 1: 51.7.

12. A writ of mandamus is the proper remedy to compel a trial judge to sign a bill of exceptions which has been presented to him within the time required by law, absent physical disability or legal impediment which precludes him from signing the said bill of exceptions.

13. 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 the completion of the appeal as required by statute.

Appellee filed a motion to dismiss appellants' appeal alleging that the appellants failed to file their bill of exceptions within the time allowed by statute. In resisting the motion, the appellants averred that the bill of exceptions was filed within the statutory time. The Court denied the motion, holding that the filing of the bill of exceptions entails the presentation of it to, and its approval by, the trial judge within ten days; or, filing a original carbon copy thereof with the clerk of the trial court along with a registered post office stamped receipt clearly

Joseph A. Dennis and *John H. Mathies* of the Peter Amos George Law Firm appeared for appellee/movant. *Francis Y. S. Garlawolu, J. L. Supuwood,* and *J. Edward Keonig* appeared for appellants/respondents.

MR. JUSTICE BIDDLE delivered the opinion of the Court.

When this case was called for hearing, our attention was drawn to a motion filed by appellee for the dismissal of the appeal on jurisdictional ground. For the benefit of this opinion we hereunder quote the two counts of said motion:

"1. Because plaintiff/appellee submits that the bill of exceptions is legally defective and bad; in that, the defendants/appellants failed and neglected to present to the trial judge their bill of exceptions within statutory time and file same with the clerk of court as is mandatorily required by statute, as will more fully appear by clerk's certificate dated March 4, 1985, hereto attached marked Exhibit "A" to form a cogent part of this motion.

Plaintiff/appellee further submits that final judgment was rendered on the 18th day of February, 1985, accordingly, appellants' bill of exceptions should have been presented to the trial judge for signing or approval within ten (10) days after rendition of the said judgment which should have been not later than the 28th day of February, 1985, but defendants/ appellants elected not to obtain the trial judge's approval until the 26th day of March, A. D. 1985, quite twenty-six (26) days after the statutory time, as is evidenced by the trial judge's approval date on the bill of exceptions included in the records certified to this Honourable Court by the lower court, which record plaintiff/appellee respectfully requests Your Honours to take judicial notice of. Because of defendants/appellants' failure to take one of the fundamental steps required by statute to complete their appeal, the failure to present their bill of exceptions to the trial judge for approval within ten (10) days and file same with the clerk of court, plaintiff/appellee strongly contends that defendants/appellants have committed an incurable legal blunder and therefore prays that the appeal of the defendants/appellants be dismissed with costs against the said defendants/ appellants.

2. And also because plaintiff/appellee submits that the bill of exceptions is further bad and defective and a fit subject for dismissal and she so prays; in that, plaintiff/ appellee contends

prays the dismissal of defendants/appellants' appeal with costs against the said defendant/appellants.

Wherefore, and in view of the foregoing, plaintiff/ appellee prays Your Honours to dismiss the appeal with costs against the defendants/appellants."

The said motion was countered by a five-count resistance, counts 1 and 3 of which we deem necessary for our consideration. They read:

"1. That said motion is a fruit of fraud and deceit designed to mislead this Court, in that the bill of exceptions subject of the motion was presented to Judge Eugene L. Hilton and duly filed on February 26, 1985, eight days after final judgment was rendered. A copy of said bill of exceptions is attached hereto and marked exhibit "A" to form part of appellants' resistance.

"3. Referring to count two of the motion, appellants maintain that failure to serve notice of change of counsel is no ground to dismiss an appeal under section 51.4, Rev. Code. The purpose of notifying opposing counsel is merely informational and any party to a lawsuit has a right to change counsel at any time during the proceedings. Thus, if the movant was not served with notice of change of counsel at the time, even though it was duly filed with the clerk of court, that purpose has been served by the movant's knowledge thereof and this is no basis for dismissing an appeal Count one of the resistance alleged that the said bill of exceptions was filed on February 26, 1985, eight days after rendition of final judgment which, according to appellants, was filed within statutory time. By inspection of the records transcribed, we observed that in spite of the certificate issued to appellee by the clerk of the court below on which appellee relied, the annexed copy of the bill of exceptions was also found signed by the same clerk of court on February 26, 1985, as the date on which it was filed.

To clarify our minds so as to arrive at a just conclusion on said motion since there is confusion regarding the date on the approved bill of exceptions and the clerk's certificate, and since the same clerk of court processed both documents, we were left with no alternative but to inspect the original records in the case. We are not without authority to do so, as our statute provides that:

"Whenever the appellate court is of the opinion that it should inspect the original papers or

Accordingly, on the orders of this Court, the original records were forwarded to us. Those records confirmed that the original copy of the approved bill of exceptions was signed and filed on February 26, 1985, by the identical clerk of court who, as we have pointed out earlier, issued certificate to appellee to the effect that up to the date of the issuance of his certificate to the appellee on March 4, 1985, appellants had not filed their bill of exceptions. During argument before us, counsel on both sides, when asked if they had doubts as to the similarities in the signature on the bill of exceptions and the certificate, counsels on both sides replied in the negative.

To determine whether or not this motion should be granted, the following issues must be resolved:

1. Whether or not a bill of exceptions is rendered invalid and hence subjects the appeal dismissible after ten days of the rendition of final judgment?

2. Whether or not the certificate of the clerk of court to the effect that a bill of exceptions has not been filed within statutory time should take precedence over the identical bill of exceptions approved by the trial judge and filed by the same clerk within statutory time?

3. Whether or not a motion to dismiss an appeal on grounds that appellant has failed to file his bill of exceptions, or have same approved within statutory time, is cognizable before the appellate court originally? and

4. Whether or not failure to serve notice of change of counsel on the appellee in an appeal case, where an approved bill of exceptions has been filed constitutes a ground for dismissal of the appeal?

Our Civil Procedure Law, Rev. Code 1:51.4, provides specific prerequisites for the completion of an appeal; they are:

(a) Announcement of the taking of the appeal,

(b) Filing of the bill of exceptions.

(c) Filing of an appeal bond

court will be deprived of the opportunity to review the act of a trial judge which might have adversely affected the substantial rights of the aggrieved party by the court below.

A careful inspection of the motion to dismiss reveals that none of the above statutory provisions quoted above was alleged in the said motion. However, in count one, paragraph two of said motion, appellee alleged and argued that: "Appellants elected not to obtain the trial judge's approval" of the bill of exceptions "until the 26th day of March, A. D. 1985, quite twenty-six (26) days after the statutory time as is evidenced by the trial judge's approval date on the bill of exceptions.

Since appellee has admitted that the bill of exceptions was both approved and filed without statutory time, we now come to consider the first issue which is: whether said motion should have been venued before the appellate court? In many of the opinions of this Court, appeals have either been dismissed by the Supreme Court for failure to file bill of exceptions *(Yates v. McGill[1861] LRSC 2; ,* 1 LLR 2 (1861)), or filing a bill of exceptions not signed or approved by the trial judge *(Anderson v. Dennis[1872] LRSC 6; ,* 1 LLR 505 (1872)), or failure to file an approved appeal bond within statutory time. *Smythe v. Mends-Cole,* 13 LLR 81(1957); *Benson v. Togba,* 13 LLR 345 (1959).

However, none of the foregoing situations obtains in the instant case. As we have observed earlier, the original bill of exceptions was signed and filed by the clerk of the trial court on February 26, 1985, final judgment having been rendered on February 18, 1985. In other words, the filing date as found on the original copy of the bill of exceptions shows that the same was filed two days before the expiration of the statutory time within which a bill of exceptions must be submitted to the trial judge for his approval. And yet, the very clerk of court who filed the aforesaid said bill of exceptions also, for reasons best known to himself, issued a certificate to appellee on March 4, 1985 verifying non-filing of the bill of exceptions by appellant which is the basis of this motion. Where two documents, original in form, are relied upon by the opposing parties and signed by the same person as the author or issuer, and the signatures on the two documents are not in dispute, it is all but reasonable and logical that the one bearing older date shall prevail over the other.

"The law consists in reason, for reason is the life of the law. The entire statutes are made of reason and are held to be consistent in their bearings and cannot or ought not to be construed

exceptions, is without legal efficacy and therefore null and void *ab initio*. Such action on the part of clerk was intended to effect mysterious ends by mysterious movements, thereby bringing to disrepute the dignity of this Court.

To render an appeal dismissible for failure to comply with the statute governing bill of exceptions, the statute relied upon must be closely examined so as not to distort the intent of the Legislature. The relevant portion of the statute controlling bill of exceptions is quoted herewith:

". . . The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Civil Procedure Law, Rev. Code 1: 51.7.

Strictly construing this statute as we must, it is our interpretation thereof that the Legislature intended that a bill of exceptions must be signed and presented to the trial judge for approval within ten days after the rendition of final judgment and may, under certain circumstances not suggestive of negligence, be approved after it has been tendered within the ten days allowed by statute. And where the appellant submitted his bill of exceptions within ten days but it has not been approved by the trial judge, the appellant may seek mandamus as a remedy, unless physical disability or legal impediment precludes the trial judge from signing the bill of exceptions. *Nurse v. Republic,* [1971] LRSC 2; 20 LLR 159 (1971). Therefore, the controlling factor in deciding such issue is when was the bill of exceptions submitted to the trial judge for his approval and not necessarily when it was approved, for a bill of exceptions could have been posted within statutory time to the trial judge who, for some justifiable reason or good cause, had left the trial jurisdiction before the bill of exceptions was tendered for his approval. In such a case, it is expected that the appellant would have posted said bill of exceptions to the last known address of the trial judge and the post office date stamped on the letter shall be accepted by this Court as the date it was tendered. *King et. al. v. King[1941] LRSC 19; ,* 7 LLR 301 (1941), at 307.

Hence, reason being the life of the law, it would be unreasonable to expect, under the prevailing circumstances surrounding our mailing and transportation system, that a bill of exceptions mailed within statutory time to a trial judge resident in a far away country would

We shall now consider the next issue which is whether or not a motion to dismiss an appeal on ground that appellant had failed to file a bill of exceptions within statutory time, or have same approved and filed within statutory time, is cognizable before the Supreme Court as a Court of first instance?

The role of the Supreme Court in our democracy is appellate as provided by statute, except in those cases provided by the Constitution over which the Court has original jurisdiction. (Article 66, Constitution of Liberia, 1986). The question of moving the Court to dismiss an appeal is one of law, based on jurisdictional ground, and unless an appellant complies with the statutes controlling appeals, the Supreme Court will be constrained to dismiss such appeals irrespective of whether or not the trial judge committed irregularities or reversible errors to the detriment of party litigants during trial. This means the Court, for want of jurisdiction, would be deprived of the opportunity to go into the merits. Hence, statute controlling appeal cases must be strictly construed.

There is a growing tendency in our jurisdiction, especially on the part of appellees through their counsel, to deprive this Court of the opportunity to go into the merits of cases decided in the court below under the guise of availing themselves of the benefit of the statutes controlling appeals. And in most instances, the trump card of the appellees has always been the certificate issued by the clerk of the trial court.

The cases relied upon by appellee in this case were all decided prior to 1973, that is, before the coming into force of the present statute governing appeals. In the old statute, it was provided that:

"Section 1020: Dismissal of Appeal--An appeal from a court of record may, upon motion properly taken, be dismissed for any of the following reasons:

"(a) Failure to file approved bill of exceptions within the time specified in section 1012 above".

Section 1012 therein referred to states in part:

" . . . The appellant must tender a bill of exceptions, signed by him, to the trial judge, within ten days after rendition of judgment. The judge must sign the bill of exceptions (and the appellant shall be entitled to a writ from the appellate court compelling the trial judge to sign

under the old statute (Civil Procedure Law, 1956 Code 6: 10121020) are incorporated into section 51.4 herein above referred to. But the repealed statute was silent on the issue of where the motion to dismiss the appeal should originate. Hence, and hitherto, almost every motion for the dismissal of an appeal for a failure to file an approves bill of exceptions has been venued originally before the Appellate Court, because under section 1020, it was provided that: "An appeal from a court of record may, upon motion properly taken (or venued before it originally-emphasis ours) be dismissed" for failure to file an approved bill of exceptions within the time specified in section 1012.

But the current statute is not silent on this point. Under section 51.16 of the revised statute, title 1, it is provided:

"Dismissal of Appeal for Failure to Proceed: 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 the completion of the appeal as required by statute".

From the wording of the above quoted statute, it is clear that the Legislature did confer original jurisdiction on a trial court of record to dismiss an appeal only on the ground of appellant's failure to file a bill of exceptions in keeping with the provision of the statute controlling, upon motion by the appellee before the trial court. Of course, the rationale for this statute is that, the trial court does not lose jurisdiction over the case until a bill of exceptions presented to trial judge within the time allowed by statute is approved by him and filed by the appellant.

As we observed earlier, every appellee moving this Court to dismiss an appeal on the ground that appellant has failed to file his bill of exceptions within statutory time has done so on the strength of a certificate issued to that effect by the clerk of the trial court. By what parity of reasoning would such a certificated movant decline or fail to exhaust the available remedy, especially so when provisions have been made by the statute above quoted, we cannot discern. It can however be deduced that in many a case, such as the one at bar, the supposed certificate is obtained under mysterious circumstances with ulterior motive, for the sole purpose of misleading this Court or preventing it from knowing what actually occurred during trial in the court below. But as a court of dernier resort, it is our duty, and for the preservation of our

Court. Apart from appellee's failure to cite the law in support of her contention, we fail to find support for such contention in our statute. We therefore hold, as it has been held, that the only grounds upon which appeals can be dismissed are those specifically provided for by the statute controlling, and that the Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute. *Cess-Pelham v. Republic,* [1960] LRSC 53; 14 LLR 161 (1960); *Cooper v. Brapoh,* [1965] LRSC 15; 16 LLR 297 (1965). Count 2, not having stated a legal ground for dismissal of the appeal, is hereby overruled.

Wherefore, in view of the foregoing facts and circumstances, and the law controlling, it is the opinion of this Court that the motion to dismiss be, and the same is hereby, denied, and the case is ruled to be heard on its merits. And it is hereby so ordered. *Motion denied*