

The **National Port Authority (NPA)** by and thru its Managing Director, and all those Acting under his control APPELLANT VERSUS **METCO Africa Ltd.** by and thru its General Manager and thru its Attorney-in-fact Nicholas Fayad  
APPELLEE

Appeal

Heard: November 27, 2006 Decided: January 11, 2007

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

The lone issue WHETHER APPELLANT COMPLIED WITH THE STATUTORY REQUIREMENTS OF APPEAL AS A BASIS FOR APPELLATE REVIEW is determinative of the Motion at bar.

Chapter 51, Section 4 of the Civil Procedure Law, Title I, provides the following mandatory sequential steps for taking and completion of an appeal in this jurisdiction:

- "(a) Announcement of the taking of the appeal
- "(b) Filing of the bill of exceptions
- "(c) Filing of an appeal bond
- "(d) Service and filing of notice of completion of the appeal;"

Section Four quoted above further stipulates that:

"Failure to comply with any of these requirements within the time allowed by statute shall be a ground for dismissal of the appeal."

In the case at bar, a Motion To Dismiss appellant's appeal was filed on November 12, A.D. 2007. The Motion is substantially set forth below as follows:-

"1. Because Appellee/Movant says that under the laws in this jurisdiction, an appellant's appeal bond must be secured and approved by the trial judge and subsequently filed with the clerk of the court within sixty (60) days as of the day and date of the rendition of judgment. Notice of such filing should be filed with the clerk of the trial court, served and returned served within the said sixty days.

"2. Notwithstanding the above, Appellee/Movant says that the Appellant/Respondent's Appeal Bond which is the subject of this Motion including

the Bill of Exceptions was filed out of the statutory period; that is, it was filed and approved sixty-two (62) days; served and returned served within sixty-three (63) days after the rendition of judgment..." In support of this Count, appellee/movant attached a Clerk's Certificate dated October 1, A.D. 2004.

Further, the appellee/ movant has maintained in Count three (3) that

"..... an appeal is dismissible by the court for the failure of the Appellant to file an appeal bond and to serve same with the notice of the Completion of an Appeal as required by statute..." and cited in support of said position SECT. 15.16, ON DISMISSAL OF APPEAL FOR FAILURE TO PROCEED, 1LCLR, PAGE 253; Webster v Freeman 16 LLR Page 244; Hannah v Seaz, 16 LLR, Page 84.

Also, the appellee/movant says in Counts four (4) and Five (5) as follows:-

".....that the ruling on the Motion for the Enlargement of Time and the Motion for Relief was given on 16 November, 2004 and Appellant's Bond was tendered and approved on 17, January, 2005, sixty-two days as of the rendition of judgment." And also,

".....that because the Appellant/Respondent's Appeal Bond is fatally defective because of its failure to meet the statutory requirement, the appeal should be dismissed and the Appellant/Respondent ruled to all costs of these Proceedings."

Countering the Motion, the Respondent filed a seven (7) Count resistance denying movant's motion to dismiss. Counts four and six which are worthy of our consideration, aver as follows:

4. Respondent says upon rendition of the final judgment on November 16, 2004, ....Respondent/Appellant in these proceedings excepted to the said final Ruling, and announced an appeal therefrom to this Honourable Court, which appeal was granted by the Lower Court on the self same date of November 16, 2004. Respondent further says that Respondent's Bill of Exceptions was approved and filed by the Lower Court on November 25, 2004, nine (9) days after the rendition of the final judgment, on November 16, 2004; hence, the Bill of Exceptions was filed within the statutory period of ten (10) days...."

6. "That as to counts three (3), four (4) and five (5) of the Movant's Motion, Respondent says that while the Respondent agrees that an appeal may be dismissed

by the Supreme Court for the failure of an Appellant to file a Notice of Completion of Appeal and an Appeal Bond within the Statutory period of sixty (60) days as of the date of rendition of judgment, this provision of the law is not applicable to the instant case because both the Bill of Exceptions in these proceedings and the Notice of Completion of Appeal were filed within the statutory period. The service of the Notice of Completion of Appeal on the movant in these proceedings was carried out by the Ministerial Officer of the court as required by law. Further, Respondent also says and contends that the 16th day of January, 2005 which was the sixty (60th) day after the rendition of final judgment by the Lower Court in these proceedings, fell on a Sunday, thereby necessitating the filing of the Notice of Completion of Appeal on the next working day which was Monday, the 17th day of January 2005, in keeping with law..."

From the pleadings, both the appelle/movant and the respondent/appellant have made no contention that the statutory requirements on appeal must always be certified. To the contrary, it is respondent/appellant's argument that it did certify the statutory requirements as set forth.

A review of the records certified to us show that on November 16, 2004, the Lower Court rendered final judgment in favour of the appelle/movant and an appeal was announced therefrom. The records further indicate that on January 17, 2005, a Notice of Completion of Appeal was filed as required by statute.

A simple mathematical calculation shows that counting from November 17th (the next day following the day of announcement of the appeal) to 30th of November, amounts to 14 (fourteen) days. As December 1st to 31st, equals-31(thirty-one) days and January 1st to 17th obviously being 17 (seventeen) days the sum total of  $14+31+17 = 62$  days. This calculation clearly shows that the Respondent/Appellant perfected his appeal in 62 days. This is a clear violation of the statute controlling.

As quoted above, the language of the statute regulating appeal is definite, straightforward and mandatory. The statute is so lucid as to need no further interpretation.

As regard Respondent/Appellant's contention contained in count 6 of its resistance that January 16, 2005, being the last day for filing and service of the Notice of Completion of Appeal having fallen on Sunday, a legal holiday, same should have been excluded from the computation. This argument also does not adequately remedy the situation for the appellant/movant. Even if the deadline to file the Notice

of Completion of Appeal fell on Sunday, January 16, 2005, same would not have cured the defect because, minus Sunday, Monday, the 17th of January, would still amount to sixty one days (61) days. So whether it is Sunday, the 16th or Monday, the 17th, appellant/Respondent in either case, is still in excess of the statutory period of sixty (60) days. For strict compliance with the aforesaid statute is mandatory. The Legislative intent was never to make it a discretionary act.

WHEREFORE AND IN VIEW OF THE FOREGOING, appellee/movant's Motion to dismiss the appeal, same being in harmony with the laws controlling, is hereby granted and the appeal dismissed with cost against the Appellant/Respondent.

THE CLERK OF THIS COURT IS HEREBY ORDERED TO SEND A MANDATE TO THE COURT BELOW INSTRUCTING THE JUDGE PRESIDING THEREIN TO RESUME JURISDICTION AND ENFORCE THE COURT'S FINAL JUDGMENT. AND IT IS SO ORDERED.

COUNSELLOR COOPER W. KRUAH OF THE HENRIES LAW FIRM, APPEARED FOR THE APPELLANT WHILE COUNSELLOR FREDERICK D. CHERUE OF THE DUGBOR LAW FIRM APPEARED FOR THE APPELLEE.