JOHN H. POWELL, Appellant, *v.* CHARLES H. DEPUTIE and MARIA DEPUTIE-WILLIAMS, Appellees.

MOTION TO DISMISS APPEAL FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: June 16, 1982. Decided: July 9, 1982.

1. Courts have the inherent right and power to interpret the law and once the Supreme Court, which is the Court of last resort, interprets any law or statute, that interpretation stands as a guide, principle or rule for deciding similar issues arising thereafter until otherwise recalled.

2. The neglect or omission of a party to do or cause to be done, any act essential to the progress of a case must be taken as a waiver of his rights and it would be prejudicial to the opposite party for the court to allow such waiver to be made and withdrawn at the pleasure of his opponent.

3. The statutory time allowed for the filing and service of the notice of the completion of an appeal is sixty (60) days. Failure to comply with this requirement shall be ground for the dismissal of the appeal.

4. It is the responsibility of the ministerial officer to serve notice of the completion of the appeal and to file his returns with the Clerk of Court.

5. Where a statute has been construed by the Supreme Court, and the legislature, although it had the opportunity of giving the statute a different meaning, failed to do so, its acquiescence in the judicial construction implies an approval thereof. Such approval gives the judicial construction the effect of legislation, especially where the Court's construction has been long standing or where a departure from settled construction would affect the rights acquired in good faith by parties relying on that construction.

The Monthly and Probate Court for Montserrado County, rendered a final judgment (decree) dismissing appellant's petition for letters of administration of the intestate estate of the late John J. Powell over the objection of Appellees Charles H. Deputie and Maria Deputie-Williams. Exceptions were noted and appeal announced from the ruling, but appellant failed to file his bill of exceptions, and serve notice of completion of appeal within the statutory time. Appellees therefore moved the Court to dismiss the appeal.

Appellant, in his resistance, argued that there is no time limit for the filing and service of the notice of the completion of appeal; and that this being the case, the notice should be served within reasonable time. The Supreme Court, noting its consistent adherence to the sixty (60) days requirement for the filing and service of the notice of the completion of the appeal, as a jurisdictional step for perfecting an appeal to the Supreme Court, overruled appellant's contentions, granted the motion and dis-missed the appeal.

John A. Dennis appeared for appellant. *S. Raymond Horace* appeared for appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court

This case is before us upon an appeal taken from the judgment of the Judge of the Monthly and Probate Court for Montserrado County dismissing appellant's petition for letters of administration to administer the intestate estate of the late John J. Powell on the ground that he did not establish any kinship with the late John J. Powell. The objection of the objectors was therefore sustained. The appellant has filed a one-count bill of exceptions. When the case was called for hearing, appellees' counsel informed us that he had filed a motion to dismiss the appeal. Appellant's counsel requested the Court's permission to spread his resistance on the minutes of Court. The request, having been granted by the Court, counsel resisted as follows:

"At this stage, counsel for appellant says that counts one and three of the motion to

dismiss are not sufficient grounds to dismiss the appeal. But count two is conceded as in keeping with statutory time. Civil Procedure Law, Rev. Code, 1: 8.2 and 51.9.

Section 8.2 of the Civil Procedure Law, quoted *supra*, relied upon by appellant, and found on page 103, states:

"*1. Requirement.* All pleadings, affidavits, and other papers required to be served in an action shall be filed. If a party fails to comply with this paragraph, the court, on motion by any party, may order any papers not filed to be regarded as stricken."

Appellant having conceded count two of the motion, that is, the filing of a bill of exceptions beyond the statutory time of ten days, said count is sustained.

Count one simply states the time of the rendition of the judgment (decree) dismissing the petition for letters of administration.

Count three relates to the service and filing of the notice of completion of the appeal after 106 days from the time of the rendition of final judgment (decree). In the first instance, the statute provides, as follows:

"The clerk of the court from which the appeal is taken shall make up a record containing certified copies of all the writs, returns, notices, pledges, motions, applications, certificates, minutes, verdicts, decisions, rulings, orders, opinions, judgments, bill of exceptions, and all other proceedings in the case. He shall transmit this record with a copy of the appeal bond to the appellate court within ninety days after rendition of judgment. The clerk of the appellate court shall docket the record forthwith and forward a receipt to the clerk who transmitted it." Civil Procedure Law, Rev. Code 1: 51.11.

In contemplation of the statute, it is plain that the notice of the completion of an appeal has to be served on appellee and the returns filed with the clerk of court prior to the expiration of the ninety days. Therefore, to serve and file a notice of

completion of appeal after 106 days, as in the instant case, is a fatal and incurable blunder which renders an appeal dismissible. Count three of the motion is sustained.

The counsel for appellant strenuously argued before us that there is no time limit for the service and filing of the notice of the completion of an appeal. We shall address ourselves to this issue now, once and for all.

Courts have the inherent right and power to interpret laws and once the Supreme Court, which is the Court of last resort, interprets any law or statute, that interpretation stands as a guide or principle or rule for deciding similar issues arising thereafter until otherwise recalled. The decision of the Supreme Court is absolute and final on all issues brought before it. *Ibid, 1: 51.2.* The opinion of the Supreme Court has full force of law and is binding on all subordinate courts.

The issue of service and filing of the notice of the completion of an appeal within sixty days is an issue which this Court had decided since 1894 and, thereafter, had consistently held its position to now. It is therefore amazing for counsellors of this bar to now fruitlessly contend that there is no time limit. In the case *McAuley v. Laland,* 1 LLR 254 (1894), this Court held:

"With reference to the motion, the Court says that in all appeal cases it is the writ of summons or notice served upon the appellee and the returns thereto made, which give the Court jurisdiction over the case. The statute regulating appeals is imperative in directing that all appeals shall be taken within sixty days after the rendition of the final judgment of the court from which the appeal is prayed; thus, implying that the appellant does or cause to be done all that is necessary to bring the appeal and the appellee properly before the appeal court."

It is needless for this Court to enter into extensive arguments to establish the well known requirements of the law, as it should be obvious to every reflecting mind that an appeal is not complete until the appellee is duly summoned, which summons

places him under the jurisdiction of the court to which the appeal is taken. Therefore, the summons or notice forms a very integral part of an appeal and should be served within the time allowed for the completion of the appeal. And while we must admit the binding force of the legal maxim that 'the acts of the court should prejudice no man, we are of the opinion that the acts of the court should be carefully distinguished from the unauthorized, unlawful or neglectful actions of its officers or of the parties to the suit. The neglect or omission of one of the said parties to do or to cause to be done, any act essential to the progress of a case must be taken as a waiver of his rights, and it would be decidedly prejudicial to the lawful rights of the opposite party for the court to allow such waiver to be made and withdrawn at the pleasure of his opponent."

Counsel for appellant also contended that since the statute does not specifically provide the time limit within which to serve and file the notice of the completion of an appeal, the notice should be served and filed within a reasonable time. He, how-ever, did not state what is a reasonable time. In our opinion, to hold that the notice of the completion of an appeal should be served and filed within a reasonable time after the filing of an appeal bond, will be vocative of judicial precedent and the opening of a floodgate; for, appeal cases will lurk in the files of the lower court *in infinitum* contrary to the purpose for which courts are established - that of dispensing justice. The phrase "within a reasonable time" is ambiguous and therefore lends itself to an interpretation. The statute in vogue when this Court gave the construction in 1894 stipulated that "every appeal must be taken within sixty days after final judgment." *2 Hub. Chapter XX, Section 6, page 1578.* The 1956 Liberian Code of Law also provided that:

"Upon approval and filing of the bond, the clerk shall forthwith issue a notice to the appellee informing him that the appeal is taken and to what term of court and directing the appellee to appear and defend the same. The appeal shall then be complete." Civil Procedure Law, 1956 Code 6: 1013, p. 249

The Liberian Code of Laws Revised provides that:

"After the filing of the bill of exception and the filing of the appeal bond as required by sections 51.7 and 51.8, the clerk of the trial court on application of the appellant shall issue a notice of the completion of the appeal, a copy of which shall be served by the appellant on the appellee. The original of such notice shall be filed in the office of the clerk of the trial court." Civil Procedure Law, Rev. Code 1: 51.9.

The revised statute also lists as one of the requirements for the completion of an appeal the "service and filing of notice of completion of the appeal." It further mandatorily provides that "failure to comply with any of these requirements within the time allowed by statute shall be ground for the dismissal of the appeal." *Ibid.,* 1:51.4.

This Court in construing these statutes has consistently held that the statutory time allowed for the service and filing of the notice of the completion of an appeal so as to bring the appellee under the jurisdiction of the appellate court is sixty (60) days. *Morris v. Republic,* 4 LLR 125 (1934); *Dennis-Walker et. al. v. Dennis et. al.,* 12 LLR 279 (1956); *Tuan and Tuan v. Republic,* 13 LLR 3 (1957); *Whea and Dough-Bie v. Bonwein and Karl-strom,* 16 LLR 51 (1964); *Bedell v. Bedell,* 20 LLR 484 (1971); *Nestle Products, Ltd. v. Gallina Blanca S.A.* 24 LLR 203 (1975); *James v. Bonner,* 30 LLR 534 (1982), decided on February 5, 1982, during the October 1981 Term of the Court.

This Court has also construed the statutory provisions relating to the service of the notice of the completion of the appeal by the appellant on the appellee to mean that the ministerial officer whose responsibility it is to serve all precepts shall serve said notice of the completion of the appeal and file his returns with the clerk of the trial court.

The failure of the legislature to state different periods within which a notice of the completion of an appeal must be filed, is an indication that it has impliedly acquiesced in the judicial construction.

The authorities on this point maintained that:

"It is said that where a statute has been construed by a court of last resort, and the legislature, although it had the opportunity of given the statute a different meaning, failed to do so, its acquiescence in the judicial construction implies an approval thereof and gives the judicial construction the effect of legislation, especially where the court's construction has been long standing or where a departure from the settled construction would affect rights acquired in good faith by parties relying on that construction. This principle has been followed where a statute that has been construed by a court of last resort was repealed and later reenacted by the legislature in substantially the same form. In such a case the legislature is deemed to have adopted the court's construction...." 20 AM JUR. 2d., *Courts*, § 198.

Further, this Court has the privilege to settle the procedure of subordinate courts. *Jantzen v. Williams,* 14 LLR 231 (1934).

The argument further is that we should deviate or overrule the above precedent relating to the time limit of the service and filing of the notice of the completion of an appeal. We disagree with this proposal because there are no reasons that would warrant our deviation. There are no obvious errors perpetrated by the strict adherence to this precedent. The principle of law advanced by this precedent neither appears to be unreasonable, nor is any mischief created by this precedent to the community. Lastly, it is nowhere inconsistent with any constitutional and statutory provisions. 20 AM JUR. 2d, *Courts*, § 187.

We hold therefore and it is our opinion that the service and filing of the notice of the completion of an appeal shall be within sixty (60) days.

Count four of the motion is conceded as in keeping with the provisions of the Civil Procedure Law, Rev. Code 1: 51.11.

In view of the facts aforementioned and the laws cited, we hold that the motion to

dismiss the appeal should be and the same is hereby granted. And it is so ordered.

Motion granted; appeal dismissed.

MR. JUSTICE MABANDE *dissents.*

In 1938, John J. Powell departed this world to the great beyond. Quite recently, John H. Powell petitioned the Monthly and Probate Court for Montserrado County for letters of administration to administer the intestate estate of the late John J. Powell. From a ruling of the court dismissing the petitioner's petition for letters of administration, he has appealed to this Court. During the pendency of the appeal, Appellees Charles H. Deputie and Maria Deputie-Williams, through their counsel, J. C. N. Howard, Sr., filed a motion to dismiss the appeal.

At the call of the case, the group of scientists appearing for the parties were Counsellor John A. Dennis, for appellant, and Counsellors S. Raymond Horace, Sr., Clarence Harmon, and J. C. N. Howard, Sr., for appellees. The counsel joined issue on the single question as to whether the failure to file a notice of the completion of the appeal on the adversary withing 60 days after the rendition of final judgment renders an appeal compulsorily dismissible.

In the case *Roberts International Airport v. Taylor,* now consolidated for this judgment, Counsellor James D. Gordon, David Kpomakpor, and Julius Adighibe also joined issue on the identical question of law.

The relevant portions of the Civil Procedure Law, relied upon by counsel for the litigants, read thus:

"51.4. *Requirements for completion of an appeal.* The following acts shall be necessary for the completion of an appeal:

(a) Announcement of the taking of the appeal;

(b) Filing of the bill of exceptions;

(c) Filing of an appeal bond;

(b) Service and filing of notice of the completion of the appeal.

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

Counsellor S. Raymond Horace commenced his argument by defending that the genius of the law is expounded by rules of decision-making throughout Liberia and the Anglo-American jurisdiction have always relied on *stare decisis* to sustain predictability on existing law. He further argued that the history of the judiciary of this land evidences a long line of cases in which the Supreme Court has assured the nation's reliance on precedents by its numerous holdings that failure to file a notice of the completion of the appeal within 60 days renders an appeal dismissible.

In a similar and powerful philosophical rhetoric, Professor David Kpomakpor dissuaded this Bench to decline the re-adoption of the rejection of the doctrine of stare decisis. In concluding his oratorical argument, Counsellor Kpomakpor contended that the "public interest theory" demands continual adherence to precedents with respect to this issue.

Counsellor Kpomakpor argued that sections 51.4 and 51.9 of the Civil Procedure Law, relating to the completion of an appeal, must be read and interpreted conjunctly as has previously and always been done by this Court. He further contended that sections 51.4 and 51.9 set a limitation of time for the filing of the notice of completion of the appeal to only 60 days. In concluding his argument, he contended that while section 51.6 limits the taking of an appeal to "at the time of rendition of the judgment", section 51.7 requires that "the appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of

the judgment". These time limitations, he argued, are logically applicable, under the doctrine of proximity, to section 51.9, which requires the notice of the completion of the appeal. All of these acts are the very acts enumerated as acts necessary to be done for the completion of an appeal under section 51.4. The previous decisions on this very question, he claimed, are in consonance with the doctrine of *idem semper antecedenti proximo refertur,* which means "the same is always referred to its next antecedent."

Counsellor John A. Dennis opened his argument by conceding that he filed the notice of completion of the appeal after the 60 day period. He, however, argued that while *stare decisis* should continue to be recognized as a needed judicial rule to guarantee consistency in the rules of decision, the Court should not adopt a strict adherence to the principle of *stare decisis* when its application may result in grave and far-reaching damaging effects to the nation and its people. In his legalistic rhetoric, he contended that *stare decisis* has on numerous occasions been rejected in both our Liberian jurisdiction as well as in the Anglo American jurisdiction, from which we imported the legal doctrine.

In concluding his argument, Counsellor Dennis argued that section 61.9 is not ambiguous as far as limitation of time is concerned, in that it sets no time limitation, and therefore, if this Court construes the law to include a time limitation on it, the Court should adopt the universal principle of "reasonable time". Continuing his argument, Counsellor Dennis further contended that the clauses of section 51.4 are expressly referred to in section 51.9 as one of the requirements for the completion of an appeal, and that where the Legislature intended to limit those necessary and enumerated acts, it has specifically enumerated them and expressly stated the terms in sections 51.6, 51.7 and 51.8. But, he said, the Legislature intentionally placed no such fetters in section 51.9, and that to construe that section 51.9 requires the filing and service of a notice of the completion of the appeal within a 60 day period would be a judicial encroachment on legislative functions and a violation of the doctrine of *inclusio unius est exclusio alterius,* meaning "the inclusion of one is the exclusion of another". This principle of law is also *stare decisis*, he finally concluded.

Counsellor Julius Adighibe argued that the dynamic cherishing force of the law is to progressively enhance the rights of the people and discard the evils in prior decisions that may tend to harass and suppress the people when continually adopted under the principle of *stare decisis*. In closing, he argued that every section of a statute such as the ones in point in the instance case, may be independently construed to fairly and justly achieve its purpose, unless the statute itself compulsorily refers to another section of the same statute or another statute, or where the section itself is so ambiguous that only by reference to another section can the ambiguity be possibly cleared.

I am of the opinion that while there are doctrines of law, not all concepts are always applicable to the same thing at the same time.

In the case *Cheng and American International Underwriters v. Tokpa,* 29 LLR 22 (1981), decided July 30, 1981, this Court, in rejecting the blind adherence to the doctrine of *stare decisis*, held that "*stare decisis* does not impose multiplicity of errors by demanding that this Court continues to use known errors due to the oversight of the change of law when those opinions were delivered. We are therefore not required to maintain the same mistakes and sustain new errors".

The concept of *stare decisis* is intended to invite public reliance on prior decisions in order to guide their conducts with reasonable certainty. A court should hesitate to renounce precedents unless the just enforcement of the law demands it.

The rejection of the doctrine of *stare decisis* has long crept into the law, when in their effort to maintain justice and fairness, courts conceived that where a rule of law, established by prior decisions, is no longer sound because of changing circumstances or the tradition of the people, or a discovery of error in the decisions, they may no longer consider the rule to be a binding precedent. This Court has long rejected continual reliance on the doctrine of *stare decisis*. it has recalled over 37 prior decisions when it was discovered that those rules were erroneous and no longer in the public

interest. The judiciary is not expected to adhere to and enforce repressive prior decisions solely in the interest of *stare decisis*; hence, flexibility should be adopted in approaching this question.

Since we had adopted the Anglo American view of the law, it is important to note that in both jurisdictions strict adherence to *stare decisis* has given way to the growth and development of rules of decision for the protection of the rights and liberties of their people.

Recently, in the case *Kuyete v. Wardsworth*, 28 LLR 163 (1979), decided December 20, 1979, this Court held: "It is also our considered opinion that the holding of this Court in the case *Zormelo v. Dennis*, 20 LLR 117 (1970), is not in accordance with the provision of the Constitution and there is nothing we can do but to overrule same."

In the March term, 1981, adherence to the principle of stare decisis was rejected in many of the Court's opinions, two of which were *Magbine v. Solo*, 29 LLR 292 (1981) and *Liberian Bank For Development And Investment v. Holder*, 29 LLR 310 (1981), both decided on July 30, 1981. In the *Magbine* case, this Court, in recalling the earlier case *Kamara v. Khalill Niam Brothers,* 21 LLR 402 (1973), which had held that "the Supreme Court is disinclined to dispose of cases on procedural issues which bar substantive consideration often at the expense of justice" held that "therefore, those portions of the opinions recorded in 21 LLR 116 and 402, cited earlier, as far as they relate to opening the case file, inspecting the records to obtain evidence to substantiate the allegation of want of jurisdiction over appeal while the Court is hearing the jurisdictional issue, are canceled, and same are hereby recalled."

Also, in the *Holder* case, the Supreme Court held that the finality of a judgment of the Supreme Court does not exclude the right to reverse prior opinions and that:

"The finality of a judgment of the Supreme Court is a constitutional power bestowed upon it; however, if its judgment is clearly unconstitutional or it becomes ineffective by change of law or legal process, it may be so declared or reversed only by a

subsequent Supreme Court judgment after hearing an actual controversy."

What replenishes the growth of the law and liberty of the American people is their continual and constant review of their laws and decisions to mete out justice and promote liberty. They place no emphasis on *stare decisis* when rights and liberties may be curtailed by strict adherence to it.

In Great Britain, where the doctrine of stare decisis was originally conceived, the House of Lords, Britain's highest and last court of resort, pronounced to the world on July 26, 1966 that it was abandoning the binding force of precedent. The relevant portion of the pronouncement through one of its members reads, as follows:

"The use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. . . their Lordship nevertheless recognize that a rigid adherence to precedent may lead to injustice in a particular case and unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so."

He continued his statement by emphasizing that the change was important for cases in which the House of Lords shall "con-sider that the earlier decision was influenced by the existence of conditions which no longer prevail, and that in modern conditions the law ought to be different."

It would therefore be anachronistic for the Supreme Court, after years of reversing prior decisions, to now hold that *stare decisis*, a legal monster which has suppressed and harassed the legitimate rights of litigants to have their appeals considered on the merits, and which has caused the loss of thirty million dollars since its creation, be strictly adopted by a holding that a notice of the completion of the appeal must be filed within 60 days after rendition of judgment, in spite of this unwarranted judiciary legislated statute.

In the case *Taylor v. Yarseah*, 25 LLR 453, 455 (1977), Mr. Justice Horace, speaking for this Court in a similar case, frowned on the frequent dismissal of appeals in these words:

"We have observed that about fifty percent of the cases coming before us on appeal are decided on motions to dismiss rather than on the merits of the cases."

He reaffirmed "that this Court has in a long line of cases warned against dismissing cases on technicalities."

Legal technicalities are still advanced to misconstrue section 51.9 to the detriment of litigants. The judiciary should never expect in the name of stare decisis that litigants and lawyers will comply with a statute that does not exist or rules of decisions that are suppressive of their right to be heard.

On account of the numerous authorities above cited in our judiciary, as well as those of the Anglo American jurisdictions, I disagree with the decision of my distinguished colleagues and respectfully dissent.