

STEPHEN P. SARWEH et al., Appellees/ Movants, *v.* **NATIONAL PORT
AUTHORITY (NPA)**, represented by and its Managing Director,
Appellant/Respondent.

MOTION TO DISMISS APPEAL FROM THE NATIONAL LABOUR COURT
FOR MONTSERRADO COUNTY.

Heard: November 22, 2004. Decided: February 28, 2005.

1. Except as otherwise provided by law, any party asserting a claim may discontinue it without an order by filing with the court a stipulation in writing signed by the attorneys of records for all parties.
2. Whenever the appellant and the appellee, or the petitioner and the respondent shall in vacation by themselves, or either counsel, sign and file with the clerk an agreement in writing directing the cause to be withdrawn and specifying the terms on which it is to be withdrawn as to costs, shall pay to the clerk any fees that may be due to him and the ministerial officers, it shall be the duty of the clerk to enter the case withdrawn upon the approval of the Chief Justice or any Justice of the Court.
3. One of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the Court.
4. Completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal.
5. Jurisdictional requirement over the subject matter of a case cannot be waived even by the appellee in the absence of statutory authorization.
6. A court must of necessity, and if need be upon its own motion, always consider the question of its jurisdiction primary over any issue brought before it, since it is bound to take notice of the limits of its authority.
7. The failure of an appellant to file an approved appeal bond and to serve a notice of the completion of the appeal deprives the appellate court of jurisdiction and the appeal will be dismissed.
8. The issuance of an appeal bond is to indemnify the appellee from all costs arising from the appeal, while the notice of completion of appeal is to confer jurisdiction on the appellate court over the parties.
9. A failure to comply with these requirements within the time allowed by statute is ground for dismissal of the appeal.

10. When an appeal statute has been violated and the appellant fails to perfect his appeal within Sixty (60) days as required by law, the appeal should be dismissed since the statute prescribing the period of time within which an appeal must be taken is mandatory.
11. A failure to file a sufficient appeal bond within the specified time shall be a ground for the dismissal of the appeal.
12. 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; © filing of an appeal bond; and (d) service and filing of notice of 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.

The appellees/movants, Stephen P. Sarweh et al., employees of the appellant/respondent, National Port Authority (NPA), who had been placed on compulsory leave as a result of the Liberian civil war, filed a complaint before the Ministry of Labour alleging unfair labour practice against the respondent. The complaint averred that the movants and the respondent had entered into a memorandum of understanding wherein the respondent obligated itself to (a) pay them 55% of their monthly salaries, (b) pay their social security premium, and © allow them to use its transportation and clinical facilities. The respondent was also alleged to have promised not to undertake any new employment outside of the compulsory leave contract. The movants, for their part, undertook to waive two years of transportation allowance due them and to absorb their lawyer's fees.

The complaint accused the respondent of reneging on the commitments made in the memorandum of understanding and demanded payment of the amounts due them. When the respondent failed to appear, the hearing officer, on application made by the movants, entered default judgment in favour of the movants. The judgment was perfected and the respondent ordered to pay the movants as per the judgment. The respondent, not being satisfied with the judgment, filed a petition for judicial review with the National Labour Court, Montserrado County. Following a hearing, the National Labour Court affirmed the decision of the hearing officer and ordered the respondent to comply with the ruling of the hearing officer and make payment to the movants as per the said ruling. The respondent excepted to this latter ruling and announced an appeal to the Supreme Court.

Although it filed an approved bill of exceptions as required by law, the respondent failed to file an approved appeal bond and a notice of completion of the appeal. Whereupon, the movants filed a four-count motion before the Supreme Court to dismiss the appeal.

The Supreme Court, agreeing with the soundness of the points raised in the motion to dismiss the appeal, granted the motion and ordered the appeal dismissed. The Court rejected the contention of the respondent that it had not perfected the appeal because subsequent to the lower court's judgment, it had reached an oral understanding with the movants and had proceeded on the basis of that understanding to make payment of portions of the amounts due them as well as the costs of the National Labour Court. The Supreme Court noted that the statute prescribes how a case may be voluntarily discontinued or withdrawn, not merely by a payment arrangement between the parties and the payment of court costs, but in addition by stipulation duly signed by the attorneys of record of all the parties. The Court observed also that the withdrawal of a case from the appellate court has to be on the written agreement amongst the parties, filed with the clerk of the Court, and approved by the Chief Justice or one of the Associate Justices of the Court. As none of these was done in the instant case, the Court said, and as the act by the respondent was contrary to the law, those acts could not be given legal effect and were not binding on the parties.

Addressing the issue of the failure of the respondent to file an approved appeal bond and to file and serve a notice of the completion of the appeal, as required by law, the Court observed that those were mandatory statutory requirements and prerequisites for it having to acquire jurisdiction over the case. In the absence of the respondent fulfilling those requirements, the Court opined, it was without jurisdiction over the case and accordingly the appeal was subject to dismissal, and the Court so ordered.

Roland Dahn of the Law Offices of Yonafi, Obey & Associates, Inc. appeared for the movants. *Cooper W. Kruah* of The Henries Law Firm appeared for the respondent.

MR. JUSTICE GREAVES delivered the Opinion of the Court.

This case comes before us by way of a four-count motion filed by the movants/appellees, Stephen P. Sarweh et al., hereinafter know as movants, to dismiss the appeal of the respondent/appellant, National Port Authority's, herein

known as the respondent. The facts show that a formal complaint addressed to the Honourable Minister of Labour, dated November 8, 1996, under the signatures of Stephen P. Sarweh et al. compulsory leave employees of the National Port Authority (NPA) was filed against the National Port Authority (NPA) for unfair labour practices.

Movants, some of the seven hundred ninety (790) employees of the respondent, were placed on compulsory leave for one (1) year due to financial constraints as a result of the Liberian civil crisis which began on December 24, 1989. The Compulsory Leave period was from March 1992-March 1993.

A memorandum of understanding was signed between the respondent and representatives of the movants. In accordance with the memorandum of understanding, probated March 2, 1992, the movants were each promised 55% of their monthly salaries, while on leave; payment of their social security premiums; the use of the respondent's transportation and clinical facilities; and that no new employment would be made outside of the compulsory leave contract. On their part, the movants agreed to waive two (2) years of transportation money due them in order to absorb their lawyers' fees, etc.

Following the signing of the memorandum of understanding by the parties, the movants alleged that management began to renege on its promises as contained therein and began dismissing the compulsory leave employees while they were on leave and replacing them with new employees. When the parties failed to come to an understanding after a series of meetings to resolve the matter, movants proceeded to file a complaint at the Ministry of Labour for unfair labour practice. During the hearing before the hearing officer at the Ministry of Labour, a default judgment was rendered in favor of the movants as a result of respondent's failure to appear for said hearing.

Thereafter, the hearing officer ruled that all accrued salaries, salaries arrears, transportation allowances, and other benefits due the movants, including what was deducted from their salaries/wages by the American Life Insurance Company (ALICO), be refunded. All of these amounted to Twenty Seven Million, Four Hundred Twenty Nine Thousand, Nine hundred Seventy Eight Liberian Dollars (LD\$27,429,978.00) and One Million Four Hundred Fifty Nine Thousand, Six Hundred Fifty Two Dollars Eighty Cents United States Dollars (US\$1,459,652.80), plus Twenty-five Thousand Six Hundred Fifty (25,650) bags of rice.

Upon the receipt of the ruling of the hearing officer, the respondent, on March 10, 2000, filed a petition for judicial review with the National Labour Court

within the time required by law. The movants filed their returns to the petition for judicial review on March 17, 2000.

According to the records, Her Honour Comfort S. Natt, judge, National Labour Court, disposed of the petition for judicial review and the returns on April 10, 2001. In her ruling, the National Labour Court Judge confirmed and affirmed the ruling of the hearing officer. To this ruling, respondent National Port Authority (NPA) excepted and announced an appeal to the Supreme Court during its October Term, A. D. 2001. The appeal was granted.

In keeping with its announcement of an appeal in open court, respondent filed a bill of exceptions, but failed to file an appeal bond and a notice of the completion of the appeal. A clerk's certificate to the effect that respondent had not filed an appeal bond and a notice of the completion of the appeal with the clerk of the National Labour Court for Montserrado County, was issued by G. Abednego N. Simpson, clerk, National Labour Court, Montserrado County, Republic of Liberia.

Accordingly, the movants filed a four-count motion before this Court on April 8, 2002, to dismiss the appeal on procedural grounds. The motion to dismiss prayed this Honourable Court to dismiss the appeal for several reasons, among which are: that the defendant management had announced an appeal to the Honourable Supreme Court of Liberia and filed an approved bill of exceptions with the clerk of the National Labour Court, but had failed to file an appeal bond and a notice of the completion of the appeal as required by section 51.4 © and (d) of the Civil Procedure Law, 1 LCLR 249. The movants stated that the failure of the respondent to file an appeal bond and a notice of the completion of the appeal rendered the said appeal dismissible in accordance with law. The movants therefore prayed for the dismissal of the appeal.

To said motion to dismiss, the respondent filed a five-count resistance, wherein it admitted to not filing an appeal bond and a notice of completion of the appeal as required by law. But it alleged that same was due to an arrangement between the movants and the respondent for an out-of-court settlement. The respondent further alleged that as a result of the arrangement, some of the movants received some payments, including their legal counsels' fees. The respondent therefore prayed that the motion be dismissed. The respondent also attached documents to the resistance showing some payments that were made to some compulsory leave employees and their legal counsel, representing out-of-court arrangement. In view of these, the respondent prayed

that the motion be denied.

The issues to be determined by this Court are:

1. Whether or not the alleged payment arrangement between the respondent and the movants and the payment of court costs, in the absence of stipulation for voluntary discontinuance approved by the court, bind the parties?
2. Whether or not the failure of respondent to file its appeal bond and a notice of the completion of the appeal within statutory time is a ground for the dismissal of the appeal?

We now look at the first issue, i.e., whether or not the alleged payment arrangement between the respondent and the movants and the payment of court costs, in the absence of a stipulation for voluntary discontinuance approved by the court, bind the parties as alleged by respondent. Our Civil Procedure Law provides, under Section 11.6(1)(b), 1 LCLR, *Voluntary Discontinuance: Without an order*, that: "Except as otherwise provided by law, any party asserting a claim may discontinue it without an order...(b) by filing with the court a stipulation in writing signed by the attorneys of records for all parties."

The Revised Rules of the Supreme Court also provides, at Part 2, *Continuance And Withdrawal*, that: "Whenever the appellant and appellee, or the petitioner and respondent shall in vacation by themselves, or either counsel, sign and file with the clerk an agreement in writing directing the cause to be withdrawn and specifying the terms on which it is to be withdrawn as to costs, shall pay to the clerk any fees that may be due to him and the ministerial officers, it shall be the duty of the clerk to enter the case withdrawn upon the approval of the Chief Justice or any Justice of the Court, and to give to either party requesting it a certificate of withdrawal." The records in this case show that while the motion to dismiss the respondent's appeal was pending before the Supreme Court, the respondent, in the absence of a voluntary discontinuance or any written documents, decided to pay some of the money owed the movants and to also pay the costs of court to the sheriff of the National Labour Court, growing out of the judgment rendered against it by the hearing officer of the Ministry of Labour and confirmed and affirmed by the National Labour Court. The act of the respondent being contrary to law, same cannot be given any legal effect and therefore cannot bind the parties in keeping with the laws cited supra.

Now to issue number two, which is whether or not the failure of the respondent to file an appeal bond and a notice of the completion of the appeal

within statutory time is a ground for the dismissal of the appeal.

According to the records in this case, the hearing officer awarded the movants Twenty Seven Million, Four Hundred Twenty Nine Thousand Nine Hundred Seventy Eight Liberian Dollars (L\$27,429,978.00), representing the movants' reinstatement and notice pay, etc.; One Million, Forty Nine Thousand, Six Hundred Fifty Two United States Dollars and Eighty Cents (US\$1,049,652.80), representing transportation allowance, increment in salary and other accrued benefits; and Twenty-Five Thousand Six Hundred Fifty (25,650) bags of rice. The respondent filed a petition for judicial review with the National Labour Court. To this petition returns were filed by the movants. After hearing the petition and the returns thereto, the presiding judge of the National Labour Court confirmed and affirmed the ruling of the hearing officer, and to this judgment, the respondent excepted and announced an appeal to the Honourable Supreme Court. The respondent thereafter filed an approved bill of exceptions, but failed to file an appeal bond and a notice of the completion of the appeal, as required by law.

In the resistance to the motion to dismiss, the respondent admitted that an appeal bond and a notice of the completion of the appeal were not filed, but it argued that they were not filed due to an arrangement reached between the movants and the respondent for an out-of-court settlement, for which some money was paid to some of the movants, even though there is no record or evidence on the case file showing an agreement/contract for an out-of-court settlement between the parties.

This Honourable Court is bound by the records before it and will not consider verbal explanation or sympathy in reaching a decision in all matters before it. This Court held in the case *MIM Liberia Corporation v. Toweh*, 30 LLR 611, 618, 629 (1982) that: "One of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the Court. Completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal; and jurisdictional requirement over the subject matter cannot be waived even by the appellee in the absence of statutory authorization. This being so, a court must of necessity, and if need be upon its own motion, always consider the question of its jurisdiction primary over any issue brought before it, since it is bound to take notice of the limits of its authority."

In the case *Porte v. Citibank, N.A.*, 37 LLR 126, 129-130 (1992), the Supreme Court opined that "the failure of the appellant to file an approved appeal bond

and to serve notice of completion of appeal deprives the appellate court of jurisdiction and the appeal will be dismissed.”

Also, in the case *Ahmar v. Gbortoe*, decided at the March Term, A. D. 2004, this Court opined that “the issuance of an appeal bond is to indemnify the appellee from all costs arising from the appeal, while the notice of completion of appeal is to confer jurisdiction on the appellate court over the parties. Therefore, failure to comply with these requirements within the time allowed by statute is ground for dismissal of the appeal.” In the case *Nancy v. Curry*, 14 LLR 152 (1960), this Court also opined that: “When an appeal statute has been violated and the appellant fails to perfect his appeal within Sixty (60) days as required by law, the appeal should be dismissed since the statute prescribing the period of time within which an appeal must be taken is mandatory.”

Section 51.8 (Appeal Bond) of the Civil Procedure Law, Rev. Code 1, states:… “A failure to file a sufficient appeal bond within the specified time shall be a ground for the dismissal of the appeal.” Section 51.4 (Requirements for Completion of an Appeal) states similarly that: “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; and (d) service and filing of notice of 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.”

Wherefore, and in view of the laws we have cited, the motion to dismiss the appeal is hereby granted and the appeal dismissed. The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction and give effect to this ruling. The amount already paid by respondent must be deducted from the amount awarded movants since it is considered as payment in compliance with the ruling of the lower court. The trial court is also hereby ordered to make a determination as to the amount paid to movants, deduct same from the principal amount and have the respondent pay the balance to the movants in satisfaction of the final judgment of the lower court. Costs are ruled against respondent. And it is hereby so ordered.

Motion to dismiss granted; appeal dismissed.