

OMARU SESAY, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

MOTION TO DISMISS APPEAL ON JUDGMENT OF CONVICTION FOR
SMUGGLING.

Argued January 26, 30, February 2, 1956. Decided February 17, 1956.

Where an appellant fails to appear to prosecute an appeal from a judgment, the appellee may move not only to dismiss the appeal, but also to affirm the judgment upon opening the record and showing grounds for such affirmance.

Appellant was convicted of smuggling and appealed to this Court. At the call of the case for hearing, no appearance was made for appellant. Appellee filed a motion for dismissal of the appeal and affirmance of the judgment. Subsequently counsel appeared for appellant, and the *motion was denied*.

T. Gyibli Collins for appellant. *The Solicitor General* for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.

Omaru Sesay, the appellant herein, was indicted upon charges of smuggling, and pleaded not guilty, whereupon a jury was empanelled to try the issue thus joined between him and the Republic of Liberia. After trial of several days, the jury returned a verdict of guilty and the trial judge rendered judgment thereupon. From the said judgment, and other rulings of the trial court, an appeal has been taken to this Court.

At the call of this case for hearing before us no one appeared for the appellant; and the appellee filed a motion for dismissal of the appeal and affirmance of the judgment on the ground that the appellant had failed to appear to prosecute same. Subsequently counsel for appellant appeared and entered upon the record a resistance, the third and fourth counts of which are as follows :

"3. And also because appellant says that the alleged absence of his counsel of record in this case was due to circumstances beyond control in that said absence, on the one hand, was due to the demise of the late S. David Coleman, one counsel of record ; and said absence, on the other hand, is due to the incarceration of S. Raymond Horace, the other counsel of record ; and in view of which facts a further postponement of the hearing of the appeal should have been taken into consideration of the moving party to the motion.

"4. Appellant submits that the motion as filed by appellee is irregular and contrary to the provisions of Rule XI (2) of the Revised Rules of this Court, in that where, as in this case, the records have been transmitted to this Court and the appeal perfected, the appellee should move, not for dismissal of the appeal, but for affirmance of the judgment; but, in order to do that, he should open the records and show the grounds for his motion for affirmance of judgment; and his failure to do so renders his motion defective ; and it should therefore be dismissed."

During oral argument of the motion the Solicitor General asserted that Counsellor J. Dossen Richards, who had appeared on behalf of the appellant, had also represented the said appellant during the trial of the case below ; but Counsellor Richards declared, upon his honor, that although his name might have been announced, as is usually done, yet he never took any active part in the trial below, notwithstanding that his name appears in the bill of exceptions as of counsel for the appellant.

Appellee's motion for dismissal of the appeal and affirmance of the judgment alleges that

". . . although appellant was, since May term 1954, of the Circuit Court of the First Judicial Circuit, convicted, sentenced and granted an appeal to this Court in the October, 1954 term, yet the appellant aforesaid has failed to appear to prosecute the said appeal."

This allegation would give the impression that, since the appeal was taken, the appellant has never appeared to prosecute his appeal. The records in the case, however, reveal that the appellant did appear during the March, 1955 term of this Court, and did urge the trial of his case, because he is a transient passenger going to Lebanon by way of Liberia, but for want of time the Court did not hear the matter.

The rule of this Court cited in Count "4" of appellant's resistance reads, in pertinent part, as follows:

"The following procedure shall be had in the case of the non-appearance of parties, namely (1) Where no counsel appears and no brief has been filed for the appellant, when the case is called for trial, the appellee may move to dismiss it, or, if the appeal is from a judgment, he may move for affirmance; but in such case he shall open the record and submit to the court his grounds for so moving: . . ." R. Sup. Ct. XI

(2), (2 L.L.R. 661, 666).

Law is reason ; and reason is the soul of the law; and, when reason ceases to exist, the law also ceases. Each case must be considered with regard to the peculiar circumstances surrounding it.

Under the peculiar circumstances surrounding the case the Court considers the subsequent appearance of appellant's counsel as an appearance. Considering the peculiar circumstances surrounding the case, as aforesaid, the subsequent appearance of counsel for the appellant and the rule of Court quoted, *supra*, the Court denies the motion and continues the case to the March, 1956 term to be tried upon its merits. And it is so ordered.

Motion denied.