

**Mary Cooper Tablah** by and thru her Husband **James Tablah** and **Lella C. Johns**  
by and thru her Husband **Julius C. Johns** of the City of Monrovia, Liberia  
MOVANTS **Nelson Korte** and **James Daypor**, both of Monrovia Liberia  
RESPONDENTS

MOTION TO DISMISS. MOTION DENIED

HEARD: March 28, 2006 DECIDED: August 18, 2006.

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

The Movants/Plaintiffs in this case are Mary Cooper Tablah, by and thru her husband, James Tablah, and Lella C. Johns, by and thru her husband, Julius Johns, who filed an Action of Ejectment against Nelson Korte and James Daypor, Respondents/Defendants in the Sixth Judicial Circuit, Montserrado County on September 20, 1996.

Pleadings rested and law issues were disposed of A Notice of Assignment was issued for the trial of the case and the Sheriff's Returns showed that Counsel for Respondents/Defendants refused to sign for and receive the Notice of Assignment. Whereupon a default judgment was prayed for and entered against Respondents/Defendants, and a jury trial was conducted resulting into a verdict in favor of the Movants/Plaintiffs. The Jury awarded the amount of Twenty Five Thousand Liberian Dollars (L\$25,000.00) to the Movants/Plaintiffs for "the unlawful withholding of their property" by the Respondents/Defendants. The Trial Court entered final judgment confirming and affirming the verdict of the Jury and ordered the Respondents/Defendants "ousted, evicted, and ejected" from Movants/Plaintiffs' property.

Respondents/Defendants filed a Bill of Information on September 8, 1997 alleging that they never had their day in court. The Bill of Information was assigned, argued and denied. The Respondents/Defendants then announced an appeal from the ruling denying their Bill of Information, but took no further step(s) to pursue and perfect their appeal.

The Movants/Plaintiffs have filed this Motion to Dismiss before the Supreme Court praying for the dismissal of the Respondents/Defendants appeal.

We deem Counts 2, 3, and 4 of the Motion to Dismiss relevant for the disposition of this case:

*"2. That Appellants should have filed approved Bill of Exceptions in the office of the Clerk of the Trial Court within 10 days, that is, on or before the 4<sup>th</sup> day of December 1997, but Appellants failed and neglected so to do, therefore, on Monday the 9<sup>th</sup> day of December 1997, 15 days from the date of the Final Ruling, Appellees obtained a Clerk Certificate to the effect that Appellants had not filed approved Bill of Exceptions within 10 days, as will more fully appear from copy of the Clerk Certificate hereto attached, marked as Exhibit 'C' forming cogent part of this Motion."*

*"3. That Appellants also neglected to file approved Appeal Bond within 60 days, serve Notice of Appeal within 60 days as of the date of the Final Judgment on November 25, 1997, as will fully appear from the Clerk Certificate hereto attached and marked as Exhibit 'D' forming cogent part of this Motion."*

*"4. That the Appeal Bond should have been filed within 60 days, that is on or before January 24, 1997 and Notice of Appeal should have been returned served on or before Saturday, the 24<sup>th</sup> day of January, 1997. To the contrary, Appellants have failed, which failure constitutes valid ground for dismissal of the Appeal for lack of jurisdiction and failure to proceed in keeping with Section 51.16 of the Civil Procedure Law, page 249."*

The Respondents/Defendants in their resistance to the motion to dismiss, as well as in their brief filed with this Court, do not deny that they failed to file a bill of exceptions within ten days of the date of rendition of the judgment in keeping with statute. The Respondents/Defendants also do not deny that they took no further steps in pursuance of their appeal. Their contention however, is that the Motion to Dismiss should have been filed in the Sixth Judicial Circuit Court, consistent with **Civil Procedure Law, 1 LCL Revised (1973), Sec. 51.16.**

The lone issue for our determination is whether or not under the facts in this case, the Motion to Dismiss is maintainable before the Supreme Court?

**Civil Procedure Law, 1 LCL Revised (1973)**, on requirements for the completion of an appeal, provides:

*"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;*

*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."*

Civil Procedure Law, 1 LCL Revised (1973) Section 51.16 provides:

*"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 completion of the appeal as required by law."*

The Appellant having not filed a bill of exceptions with the trial court within the time allowed by statute, the case has not been removed from the trial court's jurisdiction. The motion to dismiss, therefore, is not properly before this Court. Cole and Brown v. Williams, 37 LLR 626, (1994); ADC Airlines v. Benedict F. Sannoh, 39 LLR 431 (1999).

The motion to dismiss is therefore denied.

The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction over the case and to give effect to this ruling. Costs against the Movant. AND IT IS HEREBY SO ORDERED.