

OLIVE TOTIMEH-HANSEN, Appellant/Respondent, v. **PRINCE HANSEN**,
Appellee/Movant.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SECOND
JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard: May 18, 1983. Decided: July 7, 1983.

1. An appeal will be dismissed where there is no appeal bond filed and where there is no notice of the completion of the appeal served and returned in accordance with law.
2. Failure of an appellant to file an approved appeal bond and to file and serve a notice of completion of appeal deprives the appellate court of jurisdiction and is cause for the dismissal of the appeal.

Appellee/movant filed a motion to dismiss appellant's /respondent's appeal on the ground that appellant had failed to file an appeal bond and to serve a notice of the completion of the appeal on him. The appellee stated that these defects deprived the Supreme Court of jurisdiction over the appeal and rendered the said appeal dismissible. On examination of the records and citations, and taking into consideration the arguments of both counsel, the Court determined that there were merits in and legal basis for the motion to dismiss, and the defects averred by appellee did in fact exist. The Court therefore granted the motion to dismiss and accordingly dismissed the appeal.

E. Wade Appleton appeared for the appellant/respondent. B. Mulbah Togbah appeared for the appellee/movant.

MR CHIEF JUSTICE GBALAZEH, delivered the opinion of the Court.

This appeal hailed from the Second Judicial Circuit Court of Grand Bassa County where, on December 15, 1982, a final judgment was rendered against the appellant/respondent. When the case was called before this Court for argument, our attention was drawn to a motion to dismiss the appeal and the resistance filed thereto.

The motion to dismiss the appeal consists of two salient points, namely: (1) that no appeal bond was filed by the appellant and (2) that no notice of completion of appeal was ever served on the appellee as the law mandatorily requires. The three-count resistance filed to this motion was in agreement with the content of the motion to the effect that this Court had no jurisdiction over the parties as well as the subject matter in that no notice of completion of appeal had ever been issued by the appellant and served on the appellee. The appellee cited Tuan and Tuan v. Republic, 13 LLR 3 (1957), Sillah v. Republic, 14 LLR 194 (1960), and Williams v. Republic, 14 LLR 290 (1961) in support of his contention that where there was no appeal bond nor a notice of completion of appeal issued and served, this Court lacked jurisdiction over the matter.

The appellee strongly argued that the appellant has not disputed the averments contained in the motion and that as such the motion should be deemed admitted. According to the statute on dismissals of appeal, "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 serve notice of the completion of the appeal as required by statute" Civil Procedure Law, Rev. Code :51.16. On the cases cited by the appellant in support of his appeal, this Court would like to make the following comments: "An appeal will be dismissed for lack of jurisdiction when the notice of completion of the appeal was not served within the statutorily prescribed period of time"... Tuan v Republic, 13 LLR 3 (1957) and "where no appeal bond has been filed and notice of completion of appeal has not been served, the appeal will be dismissed on motion after expiration of the statutory time for completion". Tucker v. O'Connor, 14 LLR 328 (1961). In all the cases cited by the appellant, this Court had unequivocally declared that an appeal will be dismissed where there is no appeal bond and no notice of completion of appeal served and returned served in accordance with the Civil Procedure Law, Rev. Code 1:51.8 & 51.9. These are the procedures and principles that the appellee would like us to adopt and apply in this case. Since our jurisdiction is questioned over the appeal, we are of the considered opinion that the appeal should be dismissed for failure to observe the statutory procedures and principles laid down in our laws. This Court, in Marh v. Sinoe, 27 LLR 320 (1978), held that "failure of an appellant to file an approved appeal bond and to file and serve notice of completion of the appeal deprives the appellate court of jurisdiction and is cause for dismissal of the appeal."

With respect to the appellee's contention that appellant has not in fact denied the allegations averred in the motion and that in the absence of a denial, same should be deemed admitted, we are in complete agreement with the appellee on his contention as this is in harmony with the relevant statute, which states that: ...averments in a pleading to which a responsive pleading is required are admitted when not denied in a responsive pleading ".... Civil Procedure Law, Rev. Code 1:9.8(3).

In view of the facts and authorities cited herein above, we have no alternative but to grant the motion to dismiss the appeal.

The clerk of this Court is, therefore, hereby ordered to send a mandate to the judge presently presiding in the lower court to resume jurisdiction and give effect to its judgment with costs ruled against the appellant. And it is hereby so ordered.

Motion granted