

**CHARLOTTE DENNIS-WALKER, MARIA DENNIS, JANETTE
DENNIS-TAMBA, et al., Appellants, v. JAMES W. DENNIS and HARRIETTE
DENNIS-HAZELY, et al., Appellees.**

APPEAL FROM THE PROVISIONAL MONTHLY AND PROBATE COURT
FOR THE DISTRICT OF CAREYSBURG.

Argued March 12, 13, 1956. Decided June 29, 1956.

Where notice of appeal is not served within the statutory period of sixty days, the appeal will be dismissed.

Appellants filed objections in the court below to an accounting by appellees as administrators of an intestate estate. The objections were dismissed. Appellants appealed to this Court from the order of the court below dismissing the objections. Appellees moved this Court to dismiss the appeal. On proof that appellants had failed to file their notice of appeal within the statutorily prescribed sixty-day period, the motion to dismiss the appeal was *granted*.

Kolli S. Tamba for appellants. *J. Dossen Richards* for appellees.

MR. JUSTICE HARRIS delivered the opinion of the Court.

James W. Dennis of the City of Careysburg, Montserrado County, died intestate, and in keeping with law the Provisional Monthly and Probate Court for the District of Careysburg appointed James W. Dennis and Harriette Dennis-Hazely to administer the intestate estate and to submit their report thereon. The said administrators, having been vested with authority to administer the said estate by virtue of their appointment, acted accordingly and submitted their report which was formally objected to by the present appellants. Their objections were resisted by the appellees. A hearing was held and the objections were dismissed. To this ruling the objectants entered exceptions and prayed an appeal to this Court.

When the case was called for hearing before us, appellee informed the Court that a motion to dismiss the appeal had been filed. The said motion contains two counts, of which we regard the first as more important than the second. We quote Count "1" hereunder :

"1. Because appellees say that the said appeal is not taken in harmony with the

provisions of our statutes regulating appeals in civil cases, in that, although the law provides that an appellant in a civil action shall, within sixty (60) days after rendition of final judgment, have issued, or superintend the issuance of a notice of the completion of his appeal, which notice shall be served upon appellee within the time hereinbefore stated ; and, even though this Court has, in one of its more recent decisions, stressed and emphasized the point that any And all notices of the completion of appeals that are not issued and served within the sixty-day period, shall be considered invalid, and the appeals which they purport to perfect shall be dismissed, yet appellants have not complied with this provision of law; because final judgment was rendered on September 20, 1954, and the notice of the completion of the appeal was not issued until December 14, 1954, so that a period of eighty-five days elapsed between the rendition of final judgment to the issuance of the notice of the completion of the appeal."

To the above the appellants filed a resistance containing three counts, the first of which we deem necessary to quote, as follows:

"1. Because appellants submit that Count `1' of said motion is grossly misleading and without any factual foundation in that the records will show not only that the appeal bond was approved by the trial judge on November 15, 1954, but also that said bond was filed in the office of the clerk of the Provisional Monthly and Probate Court of the District of Careysburg on November 17, 1954.

"Appellants respectfully submit that, on November 16, 1954, when they went to the office of Mrs. Julia Freeman, the clerk of the aforesaid court, to file their appeal bond, she, the said clerk, had left Careysburg and had come to Monrovia because information had reached her that her daughter, Marjorie Phelps, had severely mauled her younger sister, Julia, so that she had to be taken to the hospital; and when on November 17, 1954, said bond was presented to her and a fee paid for filing, she told appellants that she was not *au fait* as to how a notice of appeal should be formulated, and that she would therefore have to come to Monrovia to get enlightened on the point. At this time, Counsellor Kolli S. Tamba, of counsel for appellants, had been delegated by government to attend the 127th meeting of the governing body of the International Labor Office which convened in Rome on November 8, 1954. In the circumstances, and especially as the said clerk did not *refuse* as such to issue the notice of appeal, the appellants were unable to apply for a writ of mandamus against said clerk.

"Appellants submit that, while it is true that litigants should surround their causes

with all the safeguards of the law, yet in these peculiar circumstances appellants respectfully pray that this Court will graciously refrain from dismissing the present appeal upon what, in the context of the facts here recounted, is an immaterial technicality.

Appellants therefore pray Your Honors to deny appellees' motion and set the cause down for hearing on its Merits."

It will be observed that the resistance of appellants to the motion to dismiss, in the first part of Count "1," *supra*, alleges that the appeal bond was approved and filed within the statutory time—an allegation which was never denied by appellees.

The point stressed by the appellees in their motion to dismiss is that notice of completion of the appeal was served on them without the statutory time. The only resistance the appellants had to offer to this was that, when they went to file their notice of appeal, the clerk told them that she was not sure as to how a notice of appeal should be formulated, and that she would therefore have to come to Monrovia to get enlightened on the point. The above allegation of the appellants with respect to the clerk was denied by her in a certificate which we quote hereunder.

"This is to certify that the charge as alleged against me as clerk of the Provisional Monthly and Probate Court of the District of Careysburg, by Counsellor Kolli S. Tamba in his resistance to appellees' motion to dismiss appellants' appeal, is false and misleading, and has the tendency with wicked designs to work against the smooth operation of my office.

"I hereby deny the said allegations as alleged against me in their resistance.

"I beg further to state that no child of mine has ever been so sick as to prevent me from carrying on the duties of my office, nor did I say I had to go to Monrovia to find out how notice of appeal should be formulated, because I have been filing appeals from this court to the Supreme Court for more than five years.

"I further, herewith attach self-explanatory letters from both Counsellor Tamba and Attorney Urey in connection with the said case and my reply thereto.

"All of which I am ready to prove.

"Given under my hand and seal of office in the City of Careysburg, this 31st day of

March, 1955.

"[Sgd.] JULIA P. FREEMAN,

Clerk, Provisional Monthly and Probate Court, District of Careysburg."

The law requires the notice of the completion of an appeal to be issued and served on the appellee within sixty days after the rendition of final judgment. 1841 Digest, pt. II, tit. II, ch. XX, sec. 6; 2 Hub. 1578. From the records certified to this Court in this case it is shown that final judgment was rendered on September 20, 1954; notice of the completion of the appeal was issued on December 14, 1954, and served and returned on December 21, 1954, a period of eighty-five days from the time of the rendition of final judgment and far beyond the statutory time allowed.

It is, therefore, the opinion of this Court that the motion to dismiss the appeal must be granted ; and it is hereby so ordered with costs against appellants.

Appeal dismissed.