

PHILIP G. WILLIAMS, Hearing Officer of the Ministry of Labour, and
MONIGER SEEKEY, Appellees/Movants, *v.* **NATIONAL PORT
AUTHORITY**, by and through its Managing Director, **ALPHONSO GAYE**,
Appellant/Respondent.

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

Heard: November 23, 2004. Decided: March 1, 2005.

1. The purpose for the issuance of an appeal bond is to indemnify the appellee from all costs arising from the appeal, while the notice of the completion of the appeal is to confer jurisdiction on the appellate court over the parties. A failure to comply with these requirements within the time allowed by statute is ground for dismissal of the appeal.
2. 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.
3. A failure to file a sufficient appeal bond within the specified time shall be a ground for the dismissal of the appeal.
4. 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 & filing of the 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.
5. The failure of the appellant to file an appeal bond and to serve the notice of the completion of the appeal deprives the appellate court of jurisdiction and the appeal will be dismissed.

The appellees filed a motion to dismiss the appeal taken by the appellant to the Supreme Court. The appeal was taken by the appellant from a ruling of the National Labour Court affirming the ruling of the hearing officer of the Ministry of Labour which had found that the appellant was liable to the co-appellee for unfair labour practice. The hearing officer had stated in his ruling that the appellant had dismissed the co-appellee in order to avoid the payment of pension. The co-appellee had alleged in his complaint that he had worked for the appellant for seventeen years and attained the age of sixty years when he was dismissed for no cause or reason.

Although the appellant announced an appeal to the Supreme Court, which was granted, it did not file a bill of exceptions with the court as required by law. Whereupon the appellees filed a motion with the lower court to dismiss the appeal. The motion was granted and the appeal ordered dismissed and the ruling of the hearing officer enforced. To this ruling, the appellant again excepted and announced an appeal to the Supreme Court. The appellant subsequently filed an approved bill of exceptions but failed to file an approved appeal bond and to serve and file a notice of the completion of the appeal. Hence, the appellees filed before the Supreme Court a motion to dismiss the appeal.

The Supreme Court sustained the contention of the appellees that the appellant had violated the appeal statute and it accordingly ordered the appeal dismissed. The Court noted that the statutory requirements for prosecuting an appeal, i.e., the filing of an approved bill of exceptions, the filing of an approved appeal bond, and the service and filing of a notice of the completion of the appeal, within the time frame allowed by law, were mandatory, and that a failure to comply with any of those requirements rendered the appeal dismissible. These acts, the Court opined, conferred jurisdiction on it and that in the absence of compliance with those requirements, the Court was without jurisdiction to hear and dispose of the appeal on the merits.

Charles Williams of the Dugbor Law Offices 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 motion to dismiss the appeal grows out of an appeal taken from the ruling of the National Labour Court dismissing the petition for judicial review filed before it by the appellant/ respondent, National Port Authority, hereinafter referred to as respondent, against the appellees/movants, Philip G. Williams of the Ministry of Labour and Monger Seekey, hereinafter referred to as movants.

The records before us reveal that movant, Monger Seekey, filed a complaint against the National Port Authority (NPA) on November 9, 1998 for unfair labour practice alleging, among other things, that he was employed by the respondent on July 1, 1983 as a lineman at the Marine Department, with a monthly salary of \$125.00 and that he had been dismissed without any cause or reason on the 13th day of October, A. D. 1998, after seventeen years of employment and after attaining the age of 60 (sixty).

The hearing officer at the Ministry of Labour awarded the co-movant the following:

- (a) LD\$21, 000.00 Sixty (60) months salary x LD\$350.00;

(b) US\$3,600.00 Sixty (60) months salary x US\$60.00;
 © 1 bag of rice;
 (d) Fifty-five percent (55%) or LD139.70 x 94 months; (March, 1992-January, 1998.....LD\$13,131;
 Total Liberian DollarsLD\$34, 131.80;
 Total United States DollarsUS\$3,600.00;
 Total benefit1 bag of rice or its equivalent.

The (hearing officer relied on section 9(a) (ii) and (b) of Title 19-A of the Labour Practices Law. The ruling stated that the co-movant was dismissed in order for respondent to evade the payment of pension.

The respondent herein, being dissatisfied with the ruling of the hearing officer at the Ministry of Labour, excepted to same and filed a petition for judicial review before the National Labour Court. The National Labour Court Judge, after hearing arguments on the petition and returns, upheld the ruling of the hearing officer in her final judgment, given on the 17th day of July, A. D. 2002. The respondent took exceptions to said final judgment and announced an appeal to the Supreme Court sitting in its October, A. D. 2002 Term. The National Labour Judge noted the exceptions and granted the appeal.

On the 20th day of August, A. D. 2002, the movants filed a five (5) count motion to dismiss respondent’s appeal as announced on the 17th day of July, A. D. 2002. Attached to said motion was a certificate from the office of the clerk of the National Labour Court, which reads thus:

“IN RE: Monger Seekey of the City)
 of Monrovia, Liberia...RESPONDENT)
 Vs.)PETITION FOR
 National Port Authority (NPA)) JUDICIAL
 by and thru its Managing) REVIEW
 Director of the City of Monrovia,)
 Liberia.....PETITIONER)

CLERK’S CERTIFICATE

A careful perusal and inspection of the case file of this Honourable Court in the above entitled cause of action reveals that since the final ruling was rendered on the 17th day of July, A. D. 2002, neither the petitioner nor his legal counsel has ever filed with the clerk of the National Labour Court any bill of exceptions up to and including the date and time of the issuance of this clerk’s certificate. Hence, this clerk’s certificate to the effect.

GIVEN UNDER MY HANDS AND
 SEAL OF THIS HONOURABLE
 COURT THIS 1ST DAY OF

AUGUST, A. D. 2002.

SEAL OF COURT G. Abednego N. Simpson, Sr.

CLERK,

NATIONAL LABOUR COURT, MO. CO.

REPUBLIC OF LIBERIA”

The movant’s motion to dismiss the appeal was predicated upon the failure of respondent to file its bill of exceptions within ten days as contemplated by law. Civil Procedure Law, Rev. Code 1:51.7 and 51.16. The National Labour Court Judge heard the said motion, granted same, and ordered the appeal dismissed and the ruling enforced in keeping with its ruling of the 6th day of October, A. D. 2002. The respondent again excepted to the ruling and announced an appeal to the Supreme Court, Sitting in its March Term, A. D. 2003. The judge again granted said appeal. The respondent subsequently filed a four (4) count bill of exceptions on the 25th day of October, A. D. 2002, which was approved by the National Labour Court Judge.

The movant again obtained a clerk’s certificate from the office of the clerk of the National Labour Court on the 6th day of May, A. D. 2003, which reads thus:

IN RE: National Port Authority (NPA), by
& thru it’s Managing Director)
Monrovia, Liberia.....APPELLANT)
Vs.) APPEAL
Her Honor Comfort S. Natt, Judge)
National Labour Court, Hon. Philip)
G. Williams, Hearing Officer,)
Ministry of Labour, and Monger)
Seekey, Monrovia, Liberia)
.....APPELLEES)

CLERK’S CERTIFICATE

From a careful perusal of the file containing records in the above captioned case, it is revealed that the appellant has not filed any appeal bond and a notice of completion of appeal with the clerk of the National Labour Court up to and including the date of the issuance of this clerk’s certificate. Hence, this warrants the issuance of a clerk’s certificate to the effect.

GIVEN UNDER MY HAND & SEAL OF
THIS HONOURABLE COURT, THIS
6TH DAY OF MAY, A.D. 2003.

SEAL OF COURT G. Abednego N. Simpson, Sr.

CLERK

NATIONAL LABOUR COURT MO. CO.
REPUBLIC OF LIBERIA

The movants filed a three (3) count motion to dismiss the respondent's appeal before the Supreme Court, attaching the said certificate of May 6, 2003. In the motion to dismiss, the movants invoked Sections 51.8, 51.9 and 51.16 of the Civil Procedure Law, Rev. Code 1, I LCLR 250, 251 and 253, respectively.

The respondent conceded during argument before this Court and in its brief that indeed it had made error to the effect that it had neither filed its appeal bond nor its notice of the completion of the appeal.

The lone issue in this matter is whether or not the respondent's failure to file an appeal bond and a notice of completion of the appeal renders the appeal dismissible.

In the case *Abmar v. Gbortoe*, decided at the March Term, A. D. 2004, this Court opined that the purpose for 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. Also, in *Nancy v. Curry*, 14 LLR 152 (1960), this Court held 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, I LCLR 250-251, states that: "A failure to file a sufficient appeal bond within the specified time shall be a ground for the dismissal of the appeal." Also, Section 51.4 of the Civil Procedure Law [*Requirements for Completion of an Appeal*], I LCLR 249, states: "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 & 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." Also in the case *Port v. City Bank NA.*, 37 LLR 126 (1992), text at pages 129 and 130, the Supreme Court opined that "the failure of the appellant to file an appeal bond and to serve notice of completion of appeal deprives the appellate court of jurisdiction and the appeal will be dismissed."

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 over the case and give effect to this opinion (enforce its judgment). Costs are ruled against the respondent. And it is hereby so ordered.

Motion granted; appeal dismissed.