Priscilla Palleh Wolor-Adutwum, **Gregory N.F. Adutwum** and **Yvette A.A. Adutwum** MOVANTS/APPELLEES VERSUS **Roland T. Wollor** and his wife RESPONDENTS/APPELLANTS

LRSC 1

MOTION FOR RE-ARGUMENT

HEARD: October 21, 2009 DECIDED: January 21, 2010

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The petitioners in this petition for re-argument have filed this petition claiming that some issues were overlooked when this Court rendered its Opinion during the March 2008 Term of this Court.

We shall consider Count 3 of the Petition for Re-argument as it is particularly determinative of our consideration of the appellants' Motion for Re-Argument.

"Further to the above, petitioners say re-argument will lie because Your Honors' Mandate is not too clear, in that, it does not clearly state whether or not the case is to be tried on the merits or that the purported final judgment should be enforced, or that the Appellee should go and file the Motion to Dismiss appeal in the trial court, or what? On the one hand, Your Honors denied the Appellee's motion to dismiss the appeal, and on the other hand, Your Honors refused to hear the appeal; so then, what is the outcome and status of the case? Therefore, to provide clarity and avoid the parties coming back by way of Bill of Information, Your Honors should kindly grant re-argument."

Reference Count 3 of the petition for re-argument stated above, we wonder if the appellants are not clear as to the Opinion and Mandate of this Court, or they object to the procedure the Court adopted in disposing of the matter.

In this Court's Opinion of June 27, 2008, we ruled this matter on two issues:

1. Whether the Supreme Court has jurisdiction to hear this motion [to dismiss] in view of the attending circumstances?

2. Whether the Supreme Court should entertain the appeal in view of the attending circumstances?

Ruling on the first issue, this Court denied the motion to dismiss and held that the motion to dismiss the appeal should have been filed before the trial court and not the

Supreme Court since the Supreme Court only assumes jurisdiction after the Notice of Completion is served and filed. The appellee not been served the notice of completion of appeal, the motion was untimely or prematurely filed before the Supreme Court. The lower court was not divested of jurisdiction when the motion was filed. The following cases were cited: *Dennis vs. Saadeh, 27 LLR 301, 304, 305, (1978); Deoud and the Board of General Appeals vs. The Management of Firestone plantations Company, 36 LLR, 445 (1989); Dahn et al. vs. Weayen, 29 LLR, 119, 123, (1981); Russel and Gbeh vs. Nah, 21 LLR, 515, 517, (1973).*

Notwithstanding the denial of the Motion to Dismiss the Appeal, this Court, on the second issue, dismissed the appeal in view of the records before it and the attending circumstances. We believe the main contention of the counsel for appellants' motion for re-argument is that this Court having denied the motion to dismiss, it was under an obligation to hear the appeal. On the contrary, we say, "no".

The Supreme Court has the authority to take cognizance and review all certified records before it. The certified record sent up to this Court in this matter on appeal shows the following sequence of events leading up to the matter before us. This Court took into account these events in deciding its second issue. The records show that:

1. On March 22, 2007, appellees filed a petition for Letter of Administration Cum Testamento Annexo.

2. On April 16, 2007, Co-appellant Roland T. Wollor filed his Returns asking the court to deny the appellees' petition.

3. On May 24, 2007, court made final ruling, rendered in favor of the appellees. An exception to the ruling was made by the appellants' counsel and noted by the court. Counsel for appellants made no announcement of appeal from this final ruling in open court as required by the statute.

4. On August 17, 2007, a Writ of Summons for Summary Proceeding to Recover Possession of Real Property was filed in the Monrovia City Court by the appellees against the appellants. The appellees sought to evict the appellants from the property on 67 Robert Street, Mamba Point. The Writ of Summons ordered the appellants to appear in court on the 21st of August 2007.

5. On August 22, 2007, Counsellor Micah Wright, counsel for the appellants (now Roland Wollor and wife) wrote the Judge requesting permission to appeal the court's

final ruling.

6. On September 1, 2007, appellees wrote a letter to the Probate Judge protesting that the letter of August 22, 2007, written to the Judge by CIIr. M. Wilkins Wright had no legal basis.

7. Despite the appellees' letter of September 1, 2007, the appellants filed a Bill of Exception on September 2, 2007 which was approved by the Judge on the same day, and 99 days after his final ruling.

8. On October 9, 2007, the appellees filed a motion to dismiss the appellants' appeal before this Court en banc. This motion was served on the appellants' counsel on October 15, 2007, a week before appellants' Notice of Completion of Appeal was filed and served and before the lower court lost jurisdiction.

9. On October 22, 2007, One Hundred and Fifty (150) days after the court's final judgment was rendered, appellants filed their Notice of Completion of Appeal.

10. On March 20, 2008, appellants file their Resistance to appellees' Motion to Dismiss the Appeal and attached thereto a letter of Confirmation from CIIr. Momodou T. B. pJawandoh.

11. On March 24, 2008, a letter was written by Cllr. Momodou T. B. Jawandoh to the Clerk of the Supreme Court revoking his letter of confirmation.

With the events outlined above, this Court is again poised to ask if the statutory procedures set by law for taking an appeal was met so as to confer jurisdiction on the Supreme Court?

Dismissal of a case at the appellate level constitutes a harsh sanction and this Court prefers to address the merits of an appeal whenever possible. However, where this Court, on review of certified records before it, determines that the appellants showed bad-faith and abuse of the judicial process, it will not hesitate to sua sponte dismiss the appeal. This Court has ruled that a court may decide on its own jurisdiction whenever the facts appear to its satisfaction either before or after rendition of judgment, *Firestone Plantation Company vs. Kollie* 41 LLR, 63, (2002). In the case, Jappeh vs. Aiphia Thian, 35 LLR, 82, 89, (1988), this Court also said, one of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the appellate court. Completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court

jurisdiction over the subject matter and the parties in an appeal; and jurisdictional requirements cannot be waived even by the appellee in the absence of statutory authorization. This being the case, the Court must of necessity, and even upon its own motion, always consider the question of its jurisdiction. " *See also 4 Am Jur. 2d. § 74 Power of court to determine own jurisdiction; No consent; 5 Am Jur. 2d. § 804.1. Dismissal by Court.*

This Court says clearly that the appellants did not follow the statutory steps for taking of an appeal, and this Court has ruled that it will dismiss an appeal filed in contravention of statutory prerequisites." LAMCO vs. Fleming, 33 LLR, 171, 173, (1985).

We quoting excerpts from our previous opinion delivered June 27, 2008.

"We will not allow any counselor, however brilliant and experienced, to persuade us into holding that because of some mere allegations unsupported by the records in the case, an announcement from judgment can be made by letter. We hold that the Supreme Court has no authority to add to, subtract from or make exceptions to mandatory provisions of any statute such as Counsel in this case would have us to do."

With our power to review the certified records of cases on appeal and make a determination thereof, and with our discretion to dismiss an appeal sua sponte where the Court lacks jurisdiction, this Court took note of the blatant violation of rules, procedures and laws governing the appeal process which confers jurisdiction on it.

In view of this Court's Opinion that the appellate court is without power to decide a case where a party fails to appeal from a decision or judgment, this Court fails to see any substantial issue overlooked in it's Ruling so as to grant the petition for re-argument. Our Ruling of June 27, 2008 is thereby confirmed, denying the appellees' Motion to Dismiss, but sua sponte disallowing the hearing of the appeal for lack of this Court's jurisdiction to hear the appeal based on a review of the records and attending facts and law enumerated above.

WHEREFORE, the Clerk of this Court is ordered to instruct the Court below to resume jurisdiction and give effect to this ruling. AND IT IS HEREBY SO ORDERED.

Counsellor David B. Gibson, Jr. of the Wright, Jangaba and Associates Law Firm appeared for the Petitioners/appellants and Counsellor Viama J. Blama appeared for

the movants/appellees.