

AARON J. TUCKER for his Minor Child, C. VIVIAN
TUCKER, Appellant, v. BENJAMIN O'CONNOR,
Appellee.

APPLICATION FOR ORDER TO THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY, TO RESUME JURISDICTION
AND ENFORCE ITS JUDGMENT.

Argued March 20, 1961. Decided May 18, 1961.

LEWIS PICOT, for his Minor Son, GERAN
GROUET, Appellant, v. JOSEPH CARDONA and
LAWRENCE A. MORGAN, Nominated Executors of
an Instrument Offered for Probate as the Will of Odette
Cardona, Deceased, Appellees.

Argued March 21, 1961. Decided May 18, 1961.

1. 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.
2. Where an appellant fails to appear when the case is called for hearing the appeal may be dismissed.

In two separate appeals, motions to dismiss were granted and the *appeals dismissed*.

No appearance for appellants. *Lawrence A. Morgan* for appellees.

MR. JUSTICE HARRIS delivered the opinion of the Court.*

In the first of the above-entitled cases it will be observed that the defendant-appellee filed an application for an order to the court below to resume jurisdiction in the matter and enforce its judgment. The said application contains only one count which reads as follows:

"Because on September 29, 1959, the plaintiff insti-

* Mr. Chief Justice Wilson was absent because of illness and took no part in these cases.

tuted an action of injunction against the defendant in the court below, enjoining, restraining and prohibiting him from erecting a dwelling house on said Half-Lot Number Ro9 that defendant has lawful title in and to said parcel of land. The action was heard by Judge A. Lorenzo Weeks, then presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, at its September, 1959, term. On October 27, 1959, the application filed by the defendant for the dissolution of the injunction was duly read, and the court in passing on said application did order the injunction dissolved. Plaintiff excepted to the judge's ruling and prayed an appeal to the Supreme Court at its March, 1960, term. Said appeal was ordered granted but, despite this, plaintiff-appellant has taken the advantage of one jurisdictional step in the premises in that he merely filed his bill of exceptions, which consists of one count, and the judge approved of same on November 2, 1959. Since then, plaintiff-appellant has failed to file his appeal bond within statutory time as the law directs, and neither has defendant-appellee been served with a notice of completion of appeal as the law requires; and up to the filing of this application, nearly 120 days, plaintiff-appellant has failed to complete his appeal."

In proof of the facts stated in the above-quoted application, defendant-appellee made profert a certificate with the hand and seal of the Assistant Clerk of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, the body of which reads as follows:

"From a careful inspection and perusal of the records as filed in the office of the clerk of the civil law court in the case:

Aaron Tucker for his Minor	Plaintiff,	} Action of
Child, C. Vivian Tucker,		
<i>versus</i>		
Benjamin O'Cornor,	Defendant	} Injunction.

"This is to certify that said injunction was on the 27th day of October, 1959, dissolved with an appeal announced by counsel for plaintiff; same granted.

"A bill of exceptions was on the 2nd day of November, 1959, duly approved and filed in this office, and no other step has been taken in said cause up to the issuing date of this certificate.

"Given under my hand and seal
of court in the City of Monrovia,
this 5th day of February, 1960.

[Sgd.] RAYMOND A. HOGGARD,
Assistant Clerk of the Civil Law Court."

There are three jurisdictional steps to the completion of an appeal to the Supreme Court, namely:

1. The filing of an approved bill of exceptions within ten days after the rendition of judgment.
2. The filing of an approved appeal bond within 60 days after final judgment.
3. The issuance, service and return of the notice of the completion of an appeal upon the appellee so as to bring him under the jurisdiction of the appellate court.

In the present case, the first of these three prerequisites to the completion of an appeal was complied with; but the other two, that is to say, the appeal bond which indemnifies the appellee from all injury he might sustain by means of the appellant's appeal, and the notice of the completion of the appeal which alone gives this Court jurisdiction over the person of the appellee, not having been carried out, this Court for the lack of jurisdiction over the person of the appellee, dismisses the appeal with costs against the appellant. And it is hereby so ordered.

In the second case, when the matter was called for trial the clerk informed the Court that a motion to dismiss the appeal had been filed by the appellee, which the Court ordered read, and which reads as follows:

"Because although the notice of appeal in this case

was issued and served on July 14, 1958, and this case has been pending for trial in this Court since its October, 1958, term, having been bulletined since said term of Court, the said appellant has failed to appear or file his brief in keeping with the rule of the Court; which rule provides: 'When a case which has been bulletined is reached. . . . If the appellant fails to appear when the case is called for hearing, the Court may, on motion of appellee or on its own motion dismiss the appeal.' Appellees submit that, appellant having violated this rule by his non-appearance and failure to file his brief, the said appeal should be dismissed with costs against the appellant."

Perusing the records in this case, we find that the notice of assignment was duly issued by the clerk of this Court and served and returned by the marshal thereof, on March 21, 1961, and duly acknowledged by counsel on both sides. Further perusal of the minutes shows that when the case was called for hearing the appellant did not appear, nor was he excused by the Court.

"When a case which has been bulletined is reached for argument and neither party appears, it may be dismissed at the cost of the appellant. If the appellant fails to appear when the case is called for hearing, the court may, on motion of appellee, or on its own motion, dismiss the appeal." R. Sup. Ct. IV (6), 13 L.L.R. 693, 697 (1959)."

Upon the authority of this rule, the Court dismisses the appeal with costs against the appellant. And it is so ordered.

Appeals dismissed.