MACDONALD C. ACOLATSE, Appellant, *v.* THE CHASE MANHATTAN BANK, Appellee.

MOTION TO DISMISS APPEAL.
Argued April 17, 1974. Decided May 3, 1974.

1. A stipulation entered into between parties before a court, agreeing to the manner in which payment is to be made by the debtor, does not *per se* make such stipulation a judgment of the court.
2. Nor does the judge's signature thereon, indicating his approval, *ipso facto* make such stipulation a judgment.
3. To constitute such stipulation a judgment by consent, the document should be acknowledged as such in court and entered in the record by order of the judge.
4. In those cases where final judgment has been rendered, no appeal can be taken from a subsequent ruling implementing or enforcing the judgment of the court.
5. And in those cases where an appeal has been taken from an interlocutory ruling implementing a final judgment, such appeal will be dismissed on motion.
6. In general, in order for a judgment to be valid it is necessary that the judgment has resulted from the act and adjudication of the court as shown in the record of the case.

A writ of execution was issued against appellant, who was the defendant in the Debt Court, for having defaulted in payments due the appellee under the provisions of a stipulation they had entered into before the presiding judge, whose signature appears on the stipulation in apparent approval thereof. The defendant made a motion for relief against judgment and execution thereof, which was denied by the court. The defendant thereafter appealed to the Supreme Court from the ruling. While the appeal was pending the plaintiff in the action moved to dismiss the appeal, alleging primarily that the appeal was taken from a ruling which implemented the final judgment in the case, resulting by reason of the aforesaid stipulation. The appellee contended that an appeal cannot be taken from a ruling implementing or enforcing a final judgment and, therefore, should be dismissed. The

Supreme Court found no judgment in the case had been rendered by the stipulation, and the appeal, therefore, was not taken from an interlocutory ruling enforcing a final judgment. The motion to dismiss the appeal was *denied*.

Appellant *MacDonald Acolatse, pro se. Joseph Williamson* for appellee.

MR. JUSTICE HENRIES delivered the opinion of the Court.

When a writ of execution was issued against the appellant by the judge of the Debt Court for Montserrado County as a result of his having defaulted in making payments in accordance with a stipulation made between the appellee and himself, he filed a motion for relief against judgment and execution thereof, which was denied. From this ruling he appealed to this Court, but before the case was called to be heard, the appellee filed a motion to dismiss the appeal.

Stated briefly, the appellee has contended that the stipulation entered into between the parties and approved by the judge was tantamount to a declaratory or consent judgment which was final and from which no appeal was taken; that the ruling on the motion from which an appeal was taken was interlocutory and that since only final judgments are reviewable on appeal, the interlocutory ruling is not appealable and, therefore, the appeal should be dismissed.

The appellant has contended that there was never any judgment to be enforced and, therefore, there should be no execution thereof. Furthermore, appellant contends that the grounds stated in the appellee's motion to dismiss are not statutory grounds for the dismissal of an appeal.

Since the ruling on the motion for relief against judgment is on appeal before us, the merits of which have not been heard, we shall refrain from discussing it in this

opinion. This leaves us with two issues: (1) whether the stipulations approved by the judge amounted to a judgment; and (2) whether an appeal can be dismissed on the ground that the ruling appealed from is a ruling enforcing a final judgment. We shall traverse them in reverse order.

With respect to the last issue, we must be consistent and hold that where a final judgment has been rendered and no appeal has been taken from it, an appeal from a subsequent ruling enforcing or implementing the said judgment will not be allowed, and, therefore, a motion to dismiss the appeal will be granted, despite the fact that this ground is not statutory. See *Hunter* v. *Hunter,* decided April 26, 1973; *Bonner* v. *Bank of Monrovia,* decided January 31, 1974. In the former case a judgment had been rendered and in the latter a judgment by default had been rendered. We must stress here that this ground for dismissal is valid only if a judgment has been rendered, to which no exception has been taken and no appeal therefrom announced.

Having said this, let us now go to the issue of whether the stipulation in this case, standing alone, can be considered or regarded as a judgment. We hold that a stipulation entered into between parties agreeing to the manner in which future payments are to be made by the debtor does not *per se* constitute a judgment, and the judge's signature thereon, indicating his approval, does not *ipso facto* make it a judgment.

> "A stipulation is an agreement, admission, or concession made in a judicial proceeding by the parties thereto, or their attorneys, in respect of some matter incidental thereto, for the purpose, ordinarily, of avoiding delay, trouble, and expense." 50 AM. JUR., *Stipulations,* § 2.

This is all that a stipulation is. For it to become a judgment, other requirements must be met. It is our opinion that for a judgment to be designated as such it

must be a final determination of the rights of the parties in an action, whether it is for money or for some other kind of relief, and it must be rendered by a court and entered.

Our Civil Procedure Law covers rendition and entry of judgments.

> "1. Time and manner of rendition. All judgments shall be announced in open court. . . .
>
> "2. What constitutes entry. A judgment is entered when it is announced by the judge in open court. Rev. Code 1:41.2.

We can also cite authority.

> "A judgment is rendered where the written decision of the court has been properly filed with the clerk of court and especially where it has been recorded. 46 AM. JUR., 2d, *Judgments,* § 57.
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> "Judgment records are designed to stand as a perpetual memorial of the court's action and to afford a means of proving the judgment. 46 AM. JUR., 2d, *Judgments,* § 155.
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> "Some entry or record of a judgment is necessary to its completion. In order to give validity or vitality to a judgment, some written evidence that it has been rendered, contained in the papers or on the docket, is essential." 46 AM. JUR., 2d, *Judgments,* § 128, 108.

The records certified to this Court do not show that a judgment based on the stipulation was ever rendered or entered.

The appellee has contended that the stipulation is tantamount to a consent judgment. This contention is correct as far as it goes, but, according to legal authorities, a judgment by consent is in effect an agreement or contract of the parties, *acknowledged in court and ordered to be recorded by the court.* 40 AM. JUR., *Judgments,* § 144. Moreover, a stipulation or consent to the entry of judgment should clearly indicate the fact of agreement and the judgment agreed upon, and the judgment should

follow the stipulation or agreement. 40 AM. JUR., *Judgments,* § 145.

Accordingly, a stipulation must be followed by a judgment which must be recorded by order of the court. There is no evidence to show that the stipulation in this case meets these requirements, and consequently it cannot be regarded as a final judgment.

The form and contents of a judgment record are regulated by the practice of the court in which the judgment is rendered. It has always been the practice in the Debt Courts, and indeed of all trial courts of this Republic, to enter judgments upon the record. In *Vonjama* v. *Massaley,* 9 LLR 96 (1945), and *Brown* v. *Cavalla River Co., Ltd.,* 12 LLR 136 (1954), judgments were rendered after stipulations had been filed by the parties. In order for a judgment to be effective, it is necessary that it appear to be the act and adjudication of the court. It is a manifestation of the court's decision that constitutes the rendition of a judgment.

In this case there was no judgment rendered by the stipulation, and the motion to dismiss the appeal before us on the ground that it is an appeal from a ruling enforcing a final judgment is not legally tenable and is, therefore, denied. The Clerk of this Court is ordered to redocket the case for a hearing on its merits. Costs to abide final determination. It is so ordered.

Motion to dismiss appeal denied.