

ENID BUCHANAN, Appellant, v. RAYMOND
CONCRETE PILE COMPANY, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT,
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 21, 1971. Decided May 27, 1971.

1. A motion brought by a lawyer who has not obtained his current lawyer's license, is a nullity in the law, and the Supreme Court will treat it as though no motion is before the Court.
2. An attempt to overcome such legal nullity, after the lawyer has qualified by obtaining his lawyer's license, by submission of an amended motion, is ineffectual, for the Court will consider it an attempt to amend a matter not validly before the Court.
3. A resistance to a motion need not be verified.

In the course of an appeal from the judgment of the lower court dismissing plaintiff's cause of action, appellee moved to dismiss the appeal, alleging failure to timely file a bill of exceptions. Appellant opposed the motion, denying the allegation and raising further the contention that the motion constituted a nullity, because appellee's counsel had not paid his lawyer's license fee. Apparently, he thereafter did qualify and submitted an amended motion, alleging in substance the same matter set forth in the motion originally brought to dismiss the appeal, and again opposed by appellant. *Motion denied.*

J. Dossen Richards for appellant. *Joseph F. Dennis* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

According to the record in these proceedings the above-entitled cause of action was instituted in the Civil Law Court for the Sixth Judicial Circuit, on February 13, 1970, the writ having been served and returned by the

Ministerial officer of the trial court; defendant filed its formal appearance and an answer. Pleadings progressed as far as plaintiff's reply. Defendant filed a motion to dismiss the action based upon the failure of plaintiff to join her husband in the action as a co-plaintiff. The motion was granted by the lower court to which plaintiff excepted giving notice that she would appeal to the Supreme Court at its ensuing October Term, 1970. Subsequently, plaintiff filed a submission for the lower court to reconsider its final decree granting the motion to dismiss, which was passed upon by the trial judge who rendered a ruling thereon denying it, to which plaintiff excepted and gave notice of intention to appeal to the Supreme Court at its October Term, 1970.

At the call of the case before this Court, the Court was informed of defendant's amended motion to dismiss the appeal on the ground of failure to file an approved bill of exceptions timely.

To this motion appellant filed an amended resistance consisting of three counts denying the allegations.

In defendant's answering affidavit, objection is raised to the amended resistance of appellant, in that it was not verified as required.

In the original motion to dismiss the appeal, appellant opposed by maintaining that counsel for appellee were not qualified lawyers.

In inspecting the record in this case, we have noticed that the amended motion, filed by appellee, is identically the same in substance as the former motion which it is intended to amend.

The basic issue underlying this case, at this stage, is whether or not the amended motion now under consideration is valid. At the time when defendant's counsel filed the former motion he was not legally qualified so to do, in that counsel for appellee was not licensed or authorized to practice law. The original motion therefore was not valid. To attempt to amend a nullity results in a nullity.

Consequently, there is no valid motion before this Court.

In count one of appellee's answering affidavit the contention is made that appellant's amended resistance is invalid because it has not been verified as is required by practice and procedure in Liberia, especially since the Revised Rules of the Supreme Court, Rule II, Part 1, in part provide: "All motions shall be in writing and shall contain a brief statement of the facts, and shall be verified by the party or his counsel. . . ." Therefore, the resistance should be verified, it is argued.

This contention of appellee's counsel might seem plausible, but having closely read the Rule, it does not seem to concern the resistance of the opposing party. Moreover, it is old, accepted practice that the respondent may, at the call of the motion for hearing, put his resistance into the record. Therefore, we consider the movant's contention unmeritorious. The position of this Court in *Davis v. Crow*, 2 LLR 309-311 (1918), further disputes the contention.

"In practice—a motion is an application to a court by one of the parties in a case, or his counsel, in order to obtain some rule or order of court. It is said to be a written application frequently made for an order; but is often made verbally. When the motion is made on some matter of fact it must be supported by affidavit that such facts are true.

"The proceeding upon the motion is for the adverse party to object to the grounds laid therein as being sufficient to warrant the order prayed for and this he may do verbally, which is the usual practice, but if he elects to put his objections in writing he is not bound by the strict rule which applies to pleadings. Such objections to motions are not technically a demurrer since a demurrer is made to some person's pleading."

With respect to the license required to practice law, our statute is clear.

"No person who does not hold a valid license as a

lawyer shall have official standing as an attorney or counsellor at law before any court or be allowed to practice law." Judiciary Law, 1956 Code 18:275.

Counsellor for appellee not being qualified or having failed to renew his license to practice law at the time the original motion was filed, subsequently sought to be amended, both partake of the same characterization as nullities in the law. As a matter of fact, there was no motion before this Court to be amended.

Therefore, in view of the foregoing, the motion to dismiss is hereby denied, with costs against appellee.

Motion to dismiss appeal denied.