

SADIE A. CUMMINGS, *et al.*, Appellants, *v.* JAMES
H. HUGHES, *et al.*, Appellees.

MOTION TO DISMISS APPEAL.

Argued November 15, 1967. Decided January 18, 1968.

1. Where errors and omissions ordinarily fatal to an appeal are shown not to have actually occurred but are merely reflected in the record on appeal as a result of clerical error in no way related to the fault of appellant, a motion to dismiss the appeal by reason of such apparent irregularities will be denied by the Supreme Court and the cause heard.

In an appeal arising out of contempt proceedings, appellees moved to dismiss the appeal, contending failure to perfect the appeal, in that the record forwarded to the appellate court did not indicate completion of service nor a revenue stamp affixed to the appeal bond, which had resulted, as sufficiently proved, from a clerical failure in the lower court, and not from any fault of the appellants. The *motion* was *denied* and the cause ordered heard on its merits.

Jacob Willis for appellants. *Richard Diggs* for appellees.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

This is an appeal emanating from the Second Judicial Circuit Court, Grand Bassa County. It involves contempt proceedings, in which one Sadie A. Cummings was summoned upon the orders of Circuit Judge Joseph P. H. Findley, presiding over the Second Judicial Circuit. She was required to appear and show cause why she should not answer in contempt of court for disobeying an injunction issued out of the office of the clerk of court upon the complaint of one James H. Hughes. A motion was brought by the appellees to dismiss the appeal.

When this case was reached and called for hearing, the Court's attention was drawn to the fact that a motion to dismiss the appeal had been filed by the appellees, hence we had no choice than to direct our attention thereto. The said motion reads as follows:

"Now, James H. Hughes et al., appellees, most respectfully pray this Court to dismiss the appeal on the appellants herein for the following legal and factual reasons, to wit:

"1. Because appellees submit that this Court has no jurisdiction of their persons in that they have not been summoned and the summons returned in keeping with law, that is to say, from inspection of the certified copy of the notice of completion of appeal, there is no returns to show that appellees herein have been summoned whereby this Court would have jurisdiction over their persons, as will more fully appear from the certified copy of a certificate issued by the assistant clerk of this Court under seal, and dated October 31, 1967, as exhibit 'A' of this motion.

"2. And also because appellees submit that the appeal be dismissed with cost against the appellants, in that the appeal bond is materially defective for not being stamped as the law requires, as will also more fully appear from the aforesaid certificate from the assistant clerk already proferted in count one of this motion."

This certificate referred to in the motion issued out of the office of the assistant clerk of this Court, certifying the fact that the record in the case sent forward to the Clerk's office from the lower court does not indicate that a twenty-five cent revenue stamp was affixed to the original appeal bond nor was any return endorsed on the back of the notice of the completion of the appeal, indicative of the fact that appellees or their counsel had been notified of the completion of the appeal, according to law.

This motion aroused our concern, because it is an un-

dertaking to bar this court's assuming jurisdiction over the appeal, if well taken. But our attention was further drawn to appellant's answering affidavit, counts three and four thereof, which we regard as germane in challenging the grounds of the motion. For the benefit of this opinion, we quote the two said counts:

"3. And also because appellants further contend that counts one and two of the motion to dismiss appeal are false in their entirety, in that a recourse to the original records in these proceedings shows that a notice of completion of appeal was duly issued, served, and returned on appellees' counsel, Samuel W. Payne, within the required statutory time of sixty days; and the original appeal bond does carry a twenty-five cent revenue stamp, as will more fully appear from the certificate issued by the clerk of the trial court, the Second Judicial Circuit, Grand Bassa County, herewith filed and marked Exhibit 'A,' to form a part of appellants' papers, as well as from certified copies of the notice of completion of the appeal with its return service endorsed thereon, as well as proof of issuance and service of the bond, marked exhibits 'b' and 'c' respectively.

"4. And also because appellants further contend that if the documents transmitted to this Court do not carry the endorsement of the return service of the notice of completion of the appeal, nor any indication on the appeal bond of a twenty-five cent revenue stamp, that this is a negligent and inadvertent act of the clerk of the trial court which should in no wise prejudice appellants' right of appeal; especially so since before transmitting the records to this Court the clerk of the trial court did not comply with the rule of court which requires notice to be given counsel for both parties, in writing or otherwise, to scrutinize the record prior to certification and transmittance of the record to this Court."

Our statutes declare that nonservice of the notice of the completion of an appeal on the appellee or his counsel within sixty days is good grounds for dismissal of an appeal, and it is also provided by law that failure to stamp any legal document which the law requires to be stamped, unless remedied according to the provision of law provided, is also fatal to an appeal. Civil Procedure Law, 1956 Code 6:1010, 1020.

Moreover, it is the return of the notice of the completion of the appeal that confers jurisdiction upon this Court over the person of the appellee, the failure to do so also being grounds for dismissal of the appeal. § 1020(d), *supra*.

In addition to the foregoing statutes, our cases are numerous and clear. In *Richards v. Holt*, 12 L.L.R. 292 (1956), the Court held that an appeal bond which is not validated by a revenue stamp on its face is materially defective and where an appeal bond is shown to lack a revenue stamp on its face, a motion to dismiss the appeal will be granted.

In *Mardea v. Republic of Liberia*, 12 L.L.R. 289 (1956), the Court held that the jurisdiction of an appellate court over an appeal is conferred by notice of completion of the appeal, duly issued and served on the appellee, since such notice is in the nature of summons and an appeal will be dismissed on motion of the appellee where, before submitting himself to the jurisdiction of the appellate court the appellee shows that the appellant failed to file notice of the completion of the appeal.

All of these citations tend to indicate that appellees' motion to dismiss is based upon sound principles of law. However, let us turn to appellants' opposing affidavit and judge its sufficiency.

The certificate of the clerk of the trial court reads:

"Republic of Liberia

"Grand Bassa County

"Clerk's Office

"Buchanan

"Certificate"

"This is to certify that the notice of appeal was filed in my office by Sadie Cummings in the contempt proceedings against her. Same was filed on the 31st day of January, 1967, and returned on the same day of January, 1967, by the Sheriff.

"See return on back of the copy of notice of appeal; the appeal bond was also filed the 27th day of January, 1967, with the 25¢ stamp on the original.

"See certificate copy.

"Given from my hand and the Seal of Court this 14th day of November, 1967.

"[Sgd.] CHRISTIANNA V. COKER-SMITH,
Clerk of Court."

Appellant related that she completed all of the jurisdictional steps necessary in an appeal and that the notice of the completion of the appeal was served and returned. This is substantiated and verified by the foregoing certificate tendered by the clerk of the trial court, so it is conclusive that the failure or omission to transcribe on the back of the notice that the appeal was completed was caused by no neglect of the appellants. It is also established that the original appeal bond in the office of the clerk of the Second Judicial Circuit is stamped, so it is evident that the lack of a notation to this effect on the transcript of the record sent to this appellate court, reflects no omission of the appellants.

This Court said in *Karanga, et ano. v. Williams, et al.*, 11 L.L.R. 299 (1952), that proper issuance, service and return of a notice of appeal by an appellant are indispensable prerequisites to jurisdiction over an appellee, and not mere technicalities.

Since it has been clearly shown that the omission to note the return on the back of the notice of the completion of the appeal resulted from no neglect on the part of

appellants, when the said notice was actually served on counsel for the appellee, which has in no way been denied, and since it is also certified that the appeal bond is sufficiently stamped, the appellant must be absolved from any wrongdoing.

In *Wright v. Richards*, 11 L.L.R. 386 (1954), Mr. Justice Barclay, speaking for the Court said, at p. 387:

“Resisting the said motion, appellant contended that the original appeal bond filed with the clerk of the court below bears the required stamp affixed thereto and evidenced by a certificate from the clerk of the trial court to that effect. . . . Since it was shown that the original bond had the required stamp affixed thereto, which fact was not contradicted by appellee, the first count is overruled.”

The Court held in that case that where an appeal bond had a revenue stamp affixed, and the clerk of the trial court certified thereto, the appeal will not be dismissed merely because the appeal bond certified with the records on appeal does not indicate that a revenue stamp was affixed.

Based on all the foregoing, we have no alternative but to deny the motion to dismiss the appeal, with costs against the appellees and to continue the hearing of the case on its merits at the next Term of this Court. And it is hereby so ordered.

Denied.