

ADELAIDE F. DAYRELL, Widow of the Late
J. T. DAYRELL, Jr., Petitioner, v. LUCINDA L.
THOMAS and ETHEL F. MOORE, by her Husband
J. W. MOORE, Executrices of the Estate of the Late
J. T. DAYRELL, Jr., Respondents.

PETITION FOR ENFORCEMENT OF THE JUDGMENT OF THE MONTHLY
AND PROBATE COURT, MONTSERRADO COUNTY.

Argued February 5, 1952. Decided March 7, 1952.

1. Fees to the clerk of court for preparation of the record to be sent to the appellate court are not part of a bill of costs.
2. Failure to pay for preparation of records to be sent to the appellate court, or failure to file said records, is tantamount to an abandonment of the appeal.
3. Where a party has failed to complete his appeal within the prescribed time, and it is not the fault of the clerk, it is proper for the successful party in the lower court to petition the appellate court for an order to enforce the judgment of the lower court.

On petition to order the Monthly and Probate Court of Montserrado County to enforce its judgment, *petition granted.*

Nete Sie Brownell for petitioner. *Richard A. Henries* for respondent.

MR. JUSTICE REEVES delivered the opinion of the Court.

After more than two hundred days had elapsed from the time an appeal to this Court was announced by respondents, and said appeal had not been perfected, petitioner prayed this Court for a mandate to enforce the judgment, on the following grounds:

1. That, after the filing of petition before the Monthly and Probate Court, Montserrado County, for the appointment of an administrator pendente lite of the estate of Joseph T. Dayrell, Jr., deceased, of the City of Monrovia, appellants aforesaid filed a

petition to prohibit the said administrator pendente lite from entering upon the discharge of his duties. This petition was heard and denied; whereupon this Court ordered the Probate Court to investigate the charges made therein against the present petitioners. The Probate Commissioner duly investigated the complaint of the widow against the sisters of her late husband and ruled in her favor. From this ruling the respondents below appealed to this Court. Although said appeal was announced in February, 1950, same has not been perfected; and it would appear that the respondents do not intend prosecuting said appeal, but intend holding said case in suspense to the serious inconvenience and loss of your petitioner.

2. That the attached certificate from the clerk of the Monthly and Probate Court, Montserrado County, will further show that there is no intention on the part of the respondents to prosecute said appeal.

Respondents filed a resistance containing the following points:

1. The clerk of the Monthly and Probate Court could not legally withhold the records in the case in question from the Supreme Court of Liberia.
2. Upon the final determination of said case, a bill of costs would be made against the losing party, who would be compelled to pay the same, including preparation of records for the Superior Court. Thus the clerk of the Monthly and Probate Court would receive payment for the preparation of the said records.
3. The clerk of the Monthly and Probate Court is without legal authority to keep in his office, after ninety days, records of a case wherein appeal is pending.

In view of the foregoing, respondents prayed that this Court order the records sent up for review.

Petitioner contended that this Court should deny the resistance of respondents, and enforce the judgment of the court below as prayed, because such resistance was vague and indefinite in that it failed to say wherein the appeal was complete or proffer evidence to show that the appeal was indeed complete. Petitioner also contended that respondents had not applied to this Court for any redress, assuming that the clerk of the Monthly and Probate Court had deprived them of their just rights in refusing to forward the appeal records. Counsel for petitioner argued that the mere statement that respondents completed their appeal failed to show color upon which a court could proceed to adjudicate such matters.

Petitioner also contended that, if the respondents neglected to pay for the preparation of the appeal, and the filing of same in the Supreme Court, such acts on their part were tantamount to an abandonment of the appeal; that petitioner should not be compelled to wait indefinitely for enforcement of a judgment rendered in her behalf; and that the failure of the respondents to pay for transmission of the records was tantamount to failure to perfect the appeal within the time limit.

Finally, petitioner contended that the argument raised in the third count of respondents' resistance had no legal foundation, since, under the law and practice of this Court, when a party has failed to perfect his appeal within the time prescribed by law, and there is no fault on the part of the clerk, the successful party may apply to the superior court for an order to enforce the judgment of the court below, which procedure the petitioner had followed.

After hearing petitioner's arguments and reading the aforesaid certificate, counsel for respondents announced that he had no further defense and thus gave notice of abandonment of the imperfect appeal.

It is indeed regrettable that the issue involved has been impeded by such indifferent handling of the appeal. Since two years this February the administrator pendente

lite of said estate has been restrained from functioning, to the loss and injury of petitioner. This Court cannot understand why respondents neglected the completion of said appeal, unless they wickedly and maliciously intended to have petitioner's interest delayed, as has occurred, and to have petitioner suffer loss and injury. Therefore, without making any comment on the statute of appeal, which is mandatory, this Court grants the petition herein with instructions that the Commissioner of Probate, upon the receipt of such mandate from the clerk of this Court, resume jurisdiction, and enforce the judgment without any further delay, with costs against the respondents; and it is hereby so ordered.

Petition granted.

