

PENTI TARPEH, J. N. DOE, and A. B. DOE,
Executors of the Estate of C. B. WILLIAMS,
Appellants, v. BETEA KRU and MATTHEW D.
WOLO, Appellees.

APPLICATION FOR AN ORDER TO MONTHLY AND PROBATE COURT,
MONTSERRADO COUNTY, TO ENFORCE JUDGMENT.

Argued March 22, 1972. Decided April 21, 1972.

1. Delay in transmission of the record on appeal to the appellate court beyond the ninety days allowed therefor is not a ground for dismissal of an appeal.

An application was made by appellees for an order to the lower court to resume jurisdiction and enforce the judgment against appellants, who were the unsuccessful objectors to the probate of a deed to realty. Various procedural defects in perfecting the appeal were advanced by the applicants, including the failure to transmit the record to the appellate court within ninety days after judgment. *Application denied.*

Matthew D. Wolo for appellees. *Edward N. Wollor* and *J. N. Doe* for appellants.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

In disposing of the objections filed by Penti Tarpeh et al., objectors, against the probation and registration of a warranty deed for Lot No. 11, situated at Logantown, Monrovia, Montserrado County, the Commissioner of Probate for Montserrado County rendered final judgment against the said objectors, from which final judgment they announced an appeal to this Court.

For the benefit of this opinion we quote the relevant portion of the said judgment.

"The deed of respondent Matthew D. Wolo having been shown from the evidence to be legally invalid should not and is not admitted into probate. However, in order that the property of Solomon K. Wisseh may be legally administered in keeping with law, and since this court is empowered by law to supervise, control and administer estates whether they be testate or intestate, the Curator for Montserrado County is hereby ordered to immediately take over the control of the intestate estate of Solomon K. Wisseh and make its report as to what real and personal properties comprise said intestate estate within three weeks from the date of this judgment. Messrs. B. T. Kru and Wesseh Sanyone are ordered to deliver up and turn over all real and personal properties which they may have in their possession belonging to the intestate estate of Solomon K. Wisseh to the Curator. It having been conclusively established that respondent Matthew D. Wolo incurred some financial expenses for the heirs of Solomon K. Wisseh, he should present his claims to the Curator and should there be no monies found in said estate to pay said claims the Curator is hereby ordered to dispose of some of the real property found in said estate to settle said claims. Respondent Matthew D. Wolo should be and is given preference to that portion of land covered and described in the deed offered for probate should sale be necessary. The objections are therefore overruled and dismissed for want of sufficient legal proof. Costs of these proceedings ruled against objectors and respondents, to be paid equally.

"Given under my hand and Seal
of Court, this 31st day of July, 1970.
"CHAS. H. D. SIMPSON, SR."

Appellees at the call of this case for hearing, submitted an application for an order to authorize the trial court to resume jurisdiction and enforce its judgment on

many procedural grounds, including the failure to file an approved bill of exceptions.

The appellants have opposed the motion and claim their appeal is an order and was properly taken.

We observe that the final judgment in these proceedings was rendered on July 31, 1970, the approved bill of exceptions was filed on August 10, 1970, and an appeal bond was approved by the Commissioner of Probate, Montserrado County, on September 2, 1970, and the sheriff's official return to the notice of appeal in this case was made on September 8, 1970.

The affidavit of the sureties and also the statement of property valuation are attached to the appeal bond in this case, emanating from the office of Alfred B. Duker, Justice of the Peace for Montserrado County, and over the signature of a Treasury official, the acting Chief Accountant.

As far as we have gathered from the record certified to us in these proceedings, we observe that the jurisdictional steps, including the service, filing, and return of the ministerial officer to the notice of the completion of the appeal, were all taken between July 31, 1970, and September 8, 1970. As a result, the appeal was perfected within less than forty days from the rendition of final judgment. Consequently, the appeal in this case was completed well within the statutory time allowed.

It is clear from the foregoing that appellants did not fail in any procedural aspect. The delay in transmission of the appeal record beyond ninety days allowed by law therefor is no ground for the dismissal of an appeal.

In view of the foregoing, the application of appellees for an order of the court to the trial court to resume its jurisdiction and enforce its judgment is hereby denied. Costs to abide final determination.

Application denied.