

MARTIN FAGAINS, Appellant, v.
HORTENSE V. HARRIS-FAGANS, Appellee.

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

Argued March 30, 1971. Decided May 28, 1971.

1. A court bailiff is an assistant to the sheriff and, therefore, when he serves precepts he is functioning as a ministerial officer of the court, as long as the return, after service by him, is executed by the sheriff.

Appellee moved to dismiss appeal, contending that a bailiff of the court in which judgment had been entered served the notice of the completion of appeal and, since he was not a ministerial officer of the court, such service, therefore, was improper and subjected the appeal to dismissal. *Motion denied.*

P. Amos George for appellant. *J. J. F. Chesson* for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

At the call of this case, it was noted that appellee had filed a motion to dismiss the appeal. In substance, appellee contends that the notice of the completion of the appeal was issued and served by a bailiff whose name is Daniel P. Greene and not by the sheriff of the court. He contends that only the ministerial officers of the court may so serve and that a bailiff is not a ministerial officer. He also cites authority therefor.

We see that on March 17, 1969, the notice of the completion of the appeal was issued by John B. P. Morris, Clerk of the Civil Law Court and signed by P. Amos George, counsel for appellant, and J. J. F. Chesson, ap-

pellée's counsel. On the reverse side of this notice, we find the return.

"On the 17th day of March, 1969, Daniel P. Greene, Bailiff, served the notice of appeal on the within named counsellors-at-law, P. Amos George for appellant, counsellor J. J. F. Chesson, for appellee. Said counsellors received copies of the within notice of appeal, and I now make this as my official returns.

"Served and reported by Daniel P. Greene, Bailiff.

"JAMES W. BROWN,
Sheriff, Montserrado County.

"Certified true and correct copy of the original.

"JOHN B. P. MORRIS,
*Clerk of the Civil
Law Court.*"

In our jurisdiction, a court bailiff has always been regarded as an assistant of the sheriff and functions in this capacity. In this regard, a bailiff is authorized to serve precepts, the return to which is to be made by the sheriff.

"Except as otherwise provided by law, service of all process shall be made by the ministerial officer of the court which issued the process or by his deputy, or in the absence or inability of both, by some person specifically appointed by the court for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel will result therefrom." Civil Procedure Law, L. 1963-64, ch. III, § 336.

The record in this case shows (1) that the notice of the completion of the appeal was issued by the clerk authorized so to do; (2) that the notice was served by Bailiff Daniel Greene, who is an authorized bailiff assigned to the Sixth Judicial Circuit Court; and (3) that according to our definition, he is clothed with such ministerial functions; (4) that not only did Daniel Greene serve the notice of the completion of the appeal, but the

return thereto was made by the sheriff. We fail, therefore, to see any ground for the dismissal of the appeal.

The motion is, therefore, denied and the appeal is to be heard on its merits. Costs are to abide final determination of the case.

Motion to dismiss appeal denied.