

JANIE HARRIS, JAMES REEVES-KENNEDY,
SUSANNA TETLEH, JAMES A. HOLDER,
G. SLAGMOLEH, et al., Appellants, v. DOUGHBA
CARANDA, Appellee.

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

Argued May 13, 1968. Decided June 14, 1968.

1. A rule of court establishes the machinery, and is a vehicle for the interpretation of laws, but does not itself constitute a law.
2. Where a rule of court conflicts with statute, and would produce an effect contrary to the statute, the rule must yield to the statute.
3. Rule IV, Part 4, of the Revised Rules of the Supreme Court, shall henceforth be deemed to have deleted from it the provision relating to dismissals of appeal, on failure to conform to its provisions.

In an action of ejectment, final judgment was rendered for the plaintiff, from which the defendants appealed. The appellee, in effect, moved to dismiss the appeal, contending that although the appellants had complied with the statutory requirements, still part of the record on appeal had not been transmitted to the appellate court, as a result of clerical failure in the court below, and appellants had failed to file a certificate, verified by oath, as required by the rules of the Supreme Court, attesting to proper supervision of the appeal. The application to dismiss the *appeal* was *denied* and the cause was to be heard.

No appearance for appellants. Appellee, *pro se*.

MR. JUSTICE SIMPSON delivered the opinion of the court.

An information was filed in this Court during the October 1967 Term by the relator, wherein he substantially alleged that on February 28, 1962, he instituted an action of ejectment against respondent in the Sixth Judi-

cial Circuit Court, Montserrado County. It was further alleged that on February 21, 1963, final judgment was rendered in his favor.

The bill of information, as filed, continued by averring that the bill of exceptions, appeal bond, and notice of completion of appeal, were all prepared and filed within the statutory time. However, profert was made of a certificate from the clerk of the aforesaid Circuit Court, to the effect that although the above-referred-to jurisdictional steps had been complied with, the record on appeal had not been transmitted to this tribunal. In this regard, the clerk held that the final judgment and three other sheets of the record were missing and, in the circumstances, the record could not be transmitted to this Court.

Predicated upon the above certificate, the relator has requested this Court to enter an order commanding the trial court to resume jurisdiction and cause its final judgment to be enforced.

The respondents have filed an affidavit to the information. In their affidavit the respondents have contended that the position of the relator is untenable in that the appeal is at this time properly before this Court, since all of the jurisdictional steps have been completed in strict accord with the statutes.

It was further contended by the respondents that the failure of the clerk of court to transmit to the appellate court the record on appeal was an act of neglect chargeable against the clerk for the nonexecution of a duty that devolved upon him by law, and that such an omission of the clerk should not be held against them.

In his argument before this Court, the relator, *pro se*, referred to Part 4 of Rule IV of the Revised Rules of this Court and contended that there had been failure on the part of appellants to file in the office of the Clerk of the Supreme Court a certificate, verified by oath, to the effect that the appellants had properly supervised the appeal.

It was, therefore, contended that the particular Rule of Court made the case defective for failure to file the requisite certificate.

For easy reference, we shall quote the whole of the above-referred-to Rule:

“Whenever an appeal to the Supreme Court is announced from a judgment, ruling or decision, counsel for the appealing party shall, after announcing appeal and performing all of the statutory acts incident to the completion of said appeal, and after taking all of the jurisdictional steps necessary within the time prescribed, serve a copy of the notice of appeal upon his adversary, the original of which must have been issued by the clerk and served and returned by the ministerial officer. Another copy which shall be accompanied by certificate verified by oath, to the effect that he has properly supervised his appeal, shall then be filed in the office of the clerk of the Supreme Court and shall be included in the records. These acts on part of appealing counsel shall in no way affect the statutory duties of the clerk of the trial court in respect to notices of appeal. Any counsel failing to observe this rule, *and as a result of which said failure his appealed case shall be dismissed*, [emphasis supplied] shall be punished by the Supreme Court in any manner as the circumstance of the particular case might warrant, even to suspension from practice.”

Paying particular attention to the last sentence, there exists a possibility of constructing the Rule to mean that failure to file the certificate with the clerk, though all jurisdictional steps shall have been completed, constitutes a ground for dismissal of the appeal.

Recourse to the statute evidences that the Legislature has specifically enumerated the grounds upon which an appeal may be dismissed. Referring to the Civil Procedure Law, 1956 Code 6:1020, we find,

“An appeal from a court of record may, upon motion properly taken, be dismissed for any of the following reasons:

“(a) Failure to file approved bill of exceptions within the time specified in section 1012 above;

“(b) Failure to file an approved appeal bond or material defect in an appeal bond (insofar as such failure or defect is not remedied in accordance with the provisions of section 1014);

“(c) Nonappearance of the appellant on appeal;
or

“(d) Negligent failure to have notice served on the appellee.

“An appeal shall not be dismissed on any other ground, except as otherwise expressly provided by law.”

As can also be seen from the last sentence of the statute, an appeal may be dismissed for no ground other than those listed, except expressly provided by law. A rule of court establishes the machinery or vehicle for the interpretation of laws, but does not itself constitute a law. In the circumstance, where the rule conflicts with the express wording of the statute and its application will give substantive effect contrary to the statute, then the rule must yield. This pronouncement, however, in no way shall be construed as granting to another branch of Government the right to prescribe rules to govern the Court by.

In view of the above, the last sentence of Rule IV, Part 4, shall henceforth read, “Any counsel failing to observe this rule, shall be punished by the Supreme Court in any manner as the circumstance of the particular case might warrant, even to suspension from practice.”

In view of the above, the application as made in the information must be denied, costs to abide final determination of the case. And it is hereby so ordered.

Denied.