

AMUSA RUFUS JAGUN and
PETER A. OGHOGHO, Appellants, v.
VICTORIA THOMPSON,
by and through her husband, WILLIAM T.
THOMPSON, Appellee.

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

Argued April 19, 1971. Decided May 28, 1971.

1. Failure to file an approved appeal bond within sixty days after rendition of judgment is a ground for dismissal of the appeal, as is the failure to append to the appeal bond the affidavit of sureties and the certification required from the Revenue Service.

A motion was made to dismiss the appeal taken by defendants from the judgment entered in the lower court in an ejectment suit. The appellee moved on various procedural grounds, including failure to file the approved appeal bond within the sixty days required by the Civil Procedure Law. In the course of the motion the attention of the Court was drawn to certain alterations allegedly made in the record pertaining to the case on appeal. The Court conducted a hearing and fixed responsibility when the allegations proved true. The persons were adjudged in contempt of the Court and punished accordingly. The grounds of the motion to dismiss the appeal having been established, the *motion* was *granted* and the appeal dismissed.

A. Lorenzo Weeks for appellants. *Peter Amos George* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

On January 18, 1968, Victoria Thompson, by and through her husband, William Thompson, filed an action of ejectment against Amusa Rufus Jagun and Peter Oghogho, both resident in the City of Monrovia, a part of Montserrado County. This action was filed in the Civil Law Court for the Sixth Judicial Circuit, then in its March Term, 1968.

The case was eventually determined in the lower court in favor of plaintiff, now the appellee before this Court, during the June Term, 1969, of the aforesaid court, when it was being presided over by Hon. Emmanuel Gbalazeh the assigned circuit judge. Exceptions were taken to the final judgment and a bill of exceptions thereafter filed. Subsequently, on October 16, the appeal bond was prepared and a copy filed with the clerk of the lower court. However, in view of the fact that the trial judge returned to his resident circuit in Nimba County, appellants through their counsel, J. Dossen Richards, deposited in the mail a copy of the bond, sending it to the trial judge for his approval. Thereafter, a notice of completion of appeal was issued on October 16, 1969, and was returned served upon counsellors J. Dossen Richards, for appellants, and Peter Amos George, for appellee, on October 20, 1969.

In his return the sheriff of Montserrado County noted that the actual service upon the aforementioned counsellor was effected on October 7, 1969, through the court's bailiff. Subsequent to this time, to be precise, on March 9, 1970, appellee through counsel Peter Amos George, filed a two-count motion to dismiss the appeal. Count one of the motion averred that the appeal had not been perfected within the statutory time, for although final judgment was rendered on August 15, 1969, the appellants did not serve the notice of completion of appeal on appellee until October 17, 1969, sixty-three days after rendition of the final judgment, contrary to the statutory provision allowing a total of sixty days within which an appeal should be

perfected by appellants through compliance with statutory requirements.

In count two of the motion, the appellee further contended that the appeal was subject to dismissal since the provisions of Section 5108 of the Civil Procedure Law, L. 1963-64, ch. III, had not been strictly adhered to, in that the following were neglected: (a) a statement that one of the sureties is the owner, or that both combined are the owners, of the real property offered as security; (b) a description of the property, sufficiently identified to establish the lien of the bond; (c) a statement of the total amount of the liens, unpaid taxes and other encumbrances against each property offered.

Subsequently, on April 14, 1971, an amended resistance to the motion was filed by appellants. Count one thereof stated that counsellor Peter Amos George, appellee's counsel, was unauthorized to appear in court by virtue of the fact that on March 9, 1970, he was not qualified to practice law within this jurisdiction because he had not procured his annual license from the Government of Liberia until October 28, 1970, which was seven months and some days after he had filed certain motions in violation of the law. On this point, when the case was called, the Court ruled that the license for the entire year had been paid for by the counsellor prior to challenge, therefore, this particular count of the resistance was denied.

In count two, appellant continued by alleging that the appeal bond met the requirements of the statute, for a copy thereof was proffered in the office of the clerk of court on August 16, 1969, but the distance of the trial judge from the actual situs of the hearing prevented appellants from filing an appeal bond prior to October 16, 1969. Nevertheless, the notice of appeal, though filed on October 16, was not beyond the statutory time allowed since there was no negligence on their part contributing to the late filing.

Lastly, count three of the resistance contended that the

provisions of law requiring an affidavit of sureties and a certificate of the Revenue Service had been complied with in every single aspect thereof and that any averment to the contrary on the part of appellee was designedly done to mislead the Court.

Subsequently, appellee filed an answering affidavit, joining issue with several factual averments contained in the amended resistance by substantially alleging that the affidavit of sureties and property valuation as found in the record of this Court were a forgery, for the original certificate of property valuation bore the date, October 20, 1969, and had been fraudulently altered to October 17, 1969. As a means of supporting this grave allegation, counsel for appellee proferted a copy of the certificate of property valuation issued by the Real Estate Tax Division of the Treasury Department, which stated that it had been issued on October 20, 1969. In addition, a letter dated October 20, 1969 from the surety, Beatrice Mark, was attached, addressed to the Director of the Division of Real Estate Taxes, requesting a valuation of real property owned by her to be issued by that division and given to a counsellor James N. Doe for Mr. Peter Oghogho, to be used for his appeal bond. The answering affidavit of counsel also proferted a statement by counsellor J. Dossen Richards, a counsellor of this bar, who stated by certification that he was counsel for Oghogho et al., and had conducted the trial in behalf of defendants at the court below. He further certified that on October 17, 1969, he signed the notice of completion of appeal on the subject case and that because he was not totally familiar with the new Civil Procedure Law, he had not attached to the appeal bond the affidavit of sureties and property qualification as required.

Actually, any of the averments contained in the motion to dismiss would have been sufficient in ordinary circumstances to effect the dismissal of the appeal. However, this case presented a serious charge against the assistant

clerk of the lower court and the counsel for appellant, especially so since the said assistant clerk of court of the Sixth Judicial Circuit had prepared and filed a certificate before this Court in which he alleged that counsellor A. Lorenzo Weeks had importuned him to transmit to this Court supplementary records which included the documents allegedly forged. Due to the gravity that the Court attached to the alleged tampering, the Director of the Real Estate Tax Division was invited to a summary investigation held in open Court, at which time he substantiated the averment contained in the answering affidavit to the effect that his division had in fact, upon request of Beatrice Mark dated October 20, 1969, proceeded to issue the requisite certificate of property valuation bearing the identical date of the surety's letter which was October 20, 1969. Upon our request he brought with him to Court the records of his office to further support the statement made by him.

Thereupon, Mr. Edward N. Carey, assistant clerk of the trial court, was interrogated by us. Mr. Carey proceeded to make several conflicting statements which evidenced that he had been a party to tampering with official records. Additionally, Mr. Peter Oghogho was called upon to state the actual date that counsellor A. Lorenzo Weeks was retained by him to conduct this case. He was also asked questions relating to compliance with the steps for bringing the case before this Court and he thereupon made several conflicting statements that had the tendency to belittle the dignity and solemnity of this Court in their veiled attempt to screen the dishonorable acts of his counsel.

Thereupon the Court adjudged Mr. Edward N. Carey and Mr. Peter Oghogho in contempt and ordered them imprisoned.

It was quite obvious that in an attempt to comply with the requirements of section 5108 of the Civil Procedure Law, counsellor A. Lorenzo Weeks, a member of the bar

of this Court, had unlawfully employed the services of the assistant clerk of court, Mr. Edward N. Carey, to effect a change on the date that the certificate bore, altering it from October 20, 1969, to October 17, 1969, after motion had been made to dismiss the appeal.

The motion, being well founded in law, is granted on both counts thereof and the case dismissed. Additionally, counsellor A. Lorenzo Weeks is hereby fined in the amount of \$200.00 for contempt of Court. Edward N. Carey and Peter Oghogho, having now been incarcerated for a period of time which we deem sufficient to properly apprise them of the gravity of the offenses by them committed against this Court, are hereby ordered released and discharged from further answering the charge of contempt. And the Clerk of this Court is hereby ordered to issue a release and place same in the hands of the Marshal for proper execution of these orders and at the same time the Marshal is to collect the aforestated amount from counsellor Weeks within seventy-two hours of the time of the rendition of this judgment, failing which the said counsellor shall be suspended from the practice of law, directly or indirectly, within this Republic until the provisions hereof have by him been complied with. Costs are ruled against appellants.

*Motion to dismiss appeal granted;
contempt of Court adjudged.*