

KEMA KPENE, Administratrix of the Estate of Kindi
Worrel, Petitioner, v. BENDU KERPAI, et al.,
Respondents.

MOTION FOR ENFORCEMENT OF JUDGMENT.

Argued October 21, 1976. Decided November 19, 1976.*

1. The failure of the clerk of the trial court to forward the records on an appeal to the Supreme Court within 90 days, as required by statute, is not attributable to neglect of the appellant, if he has exerted every effort to have the records transmitted within the time prescribed by law; and the clerk's failure does not under the circumstances constitute a basis for dismissal of the appeal.

On an appeal in an action of ejectment, appellee moved for enforcement of the lower court's judgment on the ground that appellant had not fulfilled the jurisdictional requirements for perfection of the appeal. Counsel for appellants, the respondents in the motion proceedings, contended that he had fulfilled all requirements for the appeal, but that the records had not been forwarded by the clerk of the trial court. The Supreme Court treated the motion as a motion to dismiss, and *denied* the *petition* for enforcement.

Stephen B. Dunbar for petitioner. *Moses K. Yangbe* and *Toye C. Barnard* for respondents.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

At the call of this case in keeping with the notice of assignment, the parties being present, respondents' counsel prayed the Court for permission to include his resistance to the petition for enforcement of the judgment filed

* Mr. Chief Justice Pierre did not participate in this decision.

by petitioner's counsel, in the minutes of the court, which request was accordingly granted.

In his resistance, counsel for respondents argued that all of the statutory requirements for the taking of an appeal had been met; that is to say the filing of an approved bill of exceptions, the filing of an approved appeal bond, and the filing of a notice of the completion of appeal—all within statutory time. He further stated that he not only had

“paid for the records, but also gave the clerk of court an amount for the purchasing of the paper on which to type the records of court which was taxed by the respective parties, that is to say petitioner and respondent; and the notice of completion of appeal was signed by Counsellors Barnard and Dunbar, and therefore all that is required by the appellants/respondents in this case by law has been complied with. It was the duty of the clerk of court to forward the records to the clerk of this court and obtain a receipt for the transmission of the said record by the clerk of the trial court. The nontransmission of the records by the clerk of the trial court is not a legal ground for dismissal of the appeal or for this Court to order the trial court to enforce its judgment. Counsel for respondents submits that the petition is unmeritorious; and if the clerk of court felt that any records should have been paid for, it was his duty to send his bill to the respondents for payment; but this is not even the situation in this case since nowhere is there evidence that the clerk of the trial court requested the respondents to pay any expense or cost for preparing the records and same was refused by respondents.”

It is contended by respondents that the petition does not constitute legal grounds for the dismissal of an appeal and even if it did, that respondents have already met the requirements in taking all of the jurisdictional steps required by statute for the perfection of their appeal before

this Court. That averment was not challenged nor denied by the petitioner herein. The statute governing dismissal of an appeal reads as follows:

“§ 51.16. Dismissal of appeal for failure to proceed. An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute.”
Rev. Code I:51.16.

Although petitioner in his petition has not asked nor prayed the Court for the dismissal of the appeal in these proceedings, yet the motion for enforcement of the lower court's judgment, if granted, would be tantamount to the dismissal of the appeal, which has already been perfected by the respondent as aforesaid.

The failure of the clerk of the trial court to have forwarded the records to the Supreme Court of Liberia within ninety days is a fault of the clerk of the trial court and cannot be attributed to the respondents' neglect, for the reason that, according to their resistance, they exerted every effort to have the records transmitted within the time prescribed by law.

In view of the foregoing, the petition in these proceedings is hereby denied, and the appeal should be, and the same is hereby ordered to be taken up and disposed of by this Court if time permits during its present term. And it is hereby so ordered.

Petition denied.