VAMPLY OF LIBERIA, Appellant, *v.* J. ROMEO MANNING, Appellee.

MOTION TO DISMISS APPEAL.

Argued May 26, 27, 1976. Decided June 17, 1976.

1. The Court will not do for parties what they neglect to do for themselves.
2. Failure to timely file an approved bill of exceptions, to post an appeal bond, or to serve a notice of completion of appeal, are all grounds for dismissal of the appeal.
3. An appealing party has no right to say at what term of the Supreme Court his appeal will be heard.

The appellee sought to recover for breach of contract by his employer. The Ministry of Labor, Youth and Sports through its Chief of Labor Relations found for the respondent. It was affirmed on appeal within the Ministry. Thereupon the matter came before the Circuit Court, which reversed the findings in the Ministry and awarded damages to appellee. An appeal was taken to the Supreme Court by the Company. A motion was made to dismiss the appeal.

The Court *granted* the motion, finding that the bill of exceptions was filed late, no appeal bond had been posted, and no notice of completion was ever served. The Court also fined counsel for appellant for their unprofessional handling of the case.

James Nagbe for appellant. *Edward Carlor* for appellee.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

According to appellate procedure, every party against whom a judgment is rendered in the Circuit Court, and who desires to appeal such judgment, is required to:

(1) orally announce an appeal in open court immediately after rendition of judgment, Rev. Code 1:51.6; (2) prepare and file in the clerk's office within ten days of the rendition of the judgment a bill of exceptions approved by the trial judge, Rev. Code 1:51.7; (3) prepare and file within sixty days of the date of the judgment an appeal bond to indemnify the adverse party from all costs or injury arising from the appeal, which bond must also be approved by the trial judge, Rev. Code 1:51.8; and (4) have the clerk of the trial court prepare and serve on the successful party within sixty days a notice of completion of the appeal, Rev. Code 1:51.9. It is this notice of the completion of the appeal which must be served and the return served upon the appellee by the sheriff of the trial court which gives the Supreme Court jurisdiction over the cause. The failure to comply with any one of these requirements is ground for dismissal of the appeal. This Court has dismissed appeals in a long line of cases for failure to comply with one or more of these necessary statutory requirements. *Johnson* v. *Roberts,* 1 LLR 8 (1861); *King* v. *King,* 7 LLR 301 (1941); *Coleman* v. *Barclay,* 10 LLR 108 (1949); *Whitfield* v. *Saab,* 14 LLR 175 (1960); *Morris* v. *Jebbah,* 15 LLR 278 (1963); *Sauid* v. *Gebara,* 15 LLR 598 (1964). These are but a few of the cases which this Court dismissed for the above-stated reasons.

As a result of dismissal by Vamply (Liberia) Inc. of employee J. Romeo Manning, who was under a contract in the Company's employ as Industrial and Public Relations Officer, the employee complained to the Ministry of Labor, Youth and Sports and the Labor Relations Division of that Ministry, to the effect that he had been wrongfully dismissed by his employer, and he sought redress under an appropriate provision of the Labor Law. The Chief Labor Relations Officer heard the matter, with counsel representing both sides, and filed the following ruling:

"Careful review and thorough examination of oral statements and evidence adduced during the trial of the controversial issues of illegal suspension which led to final dismissal of plaintiff Joseph Manning by Vamply (Liberia) Inc., revealed that the counsel for plaintiff had relied on chapter 16, section 1502, and also chapter 1, section 1501, 1502, par. 2.

"Record of the case indicated the jurisdiction of management's action, and it is in conformity with Chapter 16, section 1508, subsection 5, as there was no written contract in existence. And it is so ordered.

"(Sgd.) JOSHUA J. ROSS, SR.,
Chief, Labor Relations."

From this ruling of the Chief Labor Relations Officer, Mr. Manning appealed to the Board of General Appeals in the Ministry of Labor. That appellate body heard the case and ruled, confirming the Labor Relations Officer's decision to the effect that management had acted in conformity with the labor laws of Liberia in dismissing Mr. Manning.

This was the case brought by Mr. Manning which came before the Sixth Judicial Circuit Court, over which Judge Alfred B. Flomo presided. Representation of parties announced at the beginning of the hearing on May 29, 1975, is shown in the record certified to us to be as follows: the plaintiff represented by the Tolbert law firm, assisted by Counsellor Toye C. Barnard of the Henries law firm; and the defendant Company by the Dennis and Cassell law firm.

Evidence was taken on both sides, the witnesses were examined and cross-examined, and the trial came to a close. The judge rendered judgment, reversing the positions taken by the Chief of Labor Relations and the Board of General Appeals of the Ministry of Labor, Youth and Sports. For the benefit of this opinion we think it necessary to quote hereunder relevant portions of the ruling:

"On the whole, we have reviewed the entire record and have reached the conclusion that from the circumstances surrounding this matter which created the unpleasant atmosphere and endangered the relationship between the petitioner and the respondent, growing out of the dismissal of the expatriate by the Company and the appointment of another expatriate, sharing the responsibilities and duties of the petitioner, there are reasons to believe that the dismissal action was not based solely on the failure of the petitioner to submit a written report, more especially when the Police submitted a detailed report of the accident. We are, therefore, of the opinion that the Ruling of the Hearing Officer as well as that of the Board of General Appeals be reversed, and it is so adjudged.

"That the petitioner/appellant be reinstated or paid six months' salary in lieu of notice and accrued wages, leave pay, or allowances to which the petitioner was entitled under the contract. Costs against respondent.

"Feb. 23, 1976

"(*Sgd.*) ALFRED B. FLOMO,
Trial Judge."

To the final judgment exceptions were taken and an appeal announced to the Supreme Court of Liberia. This appeal announced in open court conformed to section 51.6 of Title 1 of the Liberian Code of Laws Revised as mentioned earlier on in this opinion, which is the initial step in our appeal process.

A bill of exceptions certified by the clerk of the trial court was approved by the judge on March 4, but was not filed in the Clerk's office until March 5, 1976, eleven days after rendition of judgment. Our Civil Procedure Law states specifically that "the appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of judgment. The judge shall sign the bill of exceptions, noting thereon such reservation as

he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Rev. Code 1:51.7.

The Supreme Court has said in a number of cases that the bill of exceptions must be filed by the appealing party within ten days of judgment, or the appeal will be dismissed. In *Webster* v. *Freeman,* 16 LLR 209 (1965), this Court held that where a bill of exceptions was tendered nine days after rendition of judgment and approved ten days after rendition of judgment in the trial court, but was not filed until more than ten days after final judgment and there were no special circumstances making timely compliance with the requirements for perfection of an appeal impossible, a ruling in chambers dismissing the appeal was properly affirmed by the Supreme Court.

We have further authority. *Passawe* v. *Larsannah,* 16 LLR 276 (1965); *Wright* v. *Richards,* 13 LLR 451 (1960); *Brooks* v. *Republic,* 11 LLR 3 (1951). This point of the bill of exceptions being filed more than ten days after judgment is to play an important part in the decision of this case, as will be seen later. We would also like to observe that an appeal in this case was taken to the October 1976 Term of the Supreme Court, although final judgment was rendered in February, in sufficient time for the initial step to have been taken timely to meet the March Term of Court which was the nearest time under existing circumstances for review of the case by the Supreme Court. This point is also important, as will be seen later.

Thus matters stood in respect of this case, when we were asked to hear a motion to dismiss the appeal. We ordered notices of assignment sent to counsel on both sides, and assigned hearing for 3 o'clock in the afternoon of May 25, 1976. At this point in the case we received a letter from Counsellor Julia Gibson, one of counsel for the appellants:

"Your Honor:

"This is to respectfully request that I be excused from Court today for illness.

"Herewith attached is a certificate from my medical doctor to justify my excuse.

"Kindest personal regards,

"Respectfully yours,
"(Sgd.) JULIA GIBSON,
Counsellor-at-Law."

We gave full credit to this request from Counsellor Gibson, and accordingly ordered Counsellor James N. Nagbe, a member of the law firm in which Counsellor Gibson works, and who had together with her signed the bill of exceptions, to appear and resist the motion. At that point we got another letter from Counsellor Gibson, also dated May 26, 1976, and that letter reads as follows:

"Your Honors:

"I received your reply to my letter of even date over the signature of the Clerk of Court, Mr. Robert B. Anthony.

"It is not true that there are two Counsellors conducting the case. Counsellor James N. Nagbe is associated with us on a part-time basis, as he is the legal counsel for the House of Representatives and has little time when the House is in session to spend in this office. I have conducted that case alone.

"If what has been recited in the motion to dismiss were true, I would not bother but a lot of dealings have gone on which are not representative of a counsellor of the Supreme Court. Take for instance the notice of assignment of the case which was received after 3 o'clock P.M. yesterday and our copy of the motion to dismiss was received even later. In fact, I just saw it this morning.

"For the past two weeks my throat has not only been swollen but real sores are still in my mouth. The doctor advised that I do as little talking as possible as the hoarseness persists. I have spent less time in my

office during the last two weeks than ever before since I started practicing law.

"If Your Honors will grant me time to prepare a brief to which documents can be attached to prove some of the unethical practices which are carried on, I am sure you will never regret granting me the request for continuance of the case.

"Respectfully yours,
"(Sgd.) JULIA GIBSON,
Counsellor-at-Law."

The case was finally heard on May 27, 1976.

We might here remark that besides the late filing of the bill of exceptions which could not be corrected at this point, and which is a ground for dismissal of an appeal, ninety days are allowed for the trial record to be taxed on both sides and certified by the clerk to be sent to the Supreme Court. Those ninety days had already expired on May 23, and the certified record of the trial was already in the Supreme Court. But we shall say more about this later. Moreover, the Rules of the Supreme Court allow twenty-four hours for resistance to all motions and the twenty-four hours were afforded the appellant's counsel; but instead of filing resistance, these two letters were written.

The four counts of the Motion to dismiss are succinctly stated as follows:

"1. That on the 23rd of February, 1976, His Honor Alfred Flomo rendered judgment against the respondent Company, and in favor of the petitioner, J. Romeo Manning. The respondent Company took exception and announced an appeal to the Supreme Court.

"2. That the respondent Company failed to comply with the prerequisites controlling appeals by not filing a bill of exceptions within ten days of rendition of judgment.

"3. That the respondent Company failed to file an appeal bond within sixty days after judgment; and

also that the respondent did not prepare and have served upon the petitioner a notice of completion of appeal.

"4. That the respondent Company failed to file these necessary documents to complete the appeal, the petitioner regards as an abandonment of the appeal. He, therefore, prays that the Supreme Court dismiss the appeal."

As we have said earlier, no resistance to this motion was filed. In the afternoon of May 27, 1976, the case was called, after having been postponed from the day before. Counsellor Nagbe, an associate of Counsellor Gibson and who had also signed the bill of exceptions, contended that because the appeal had been taken to the October 1976 Term of Court, the case should not be heard in the March Term.

Appeals from judgments of all courts except the Supreme Court are mandatory rights of every party dissatisfied with a judgment; and no one can be denied an appeal without depriving him of basic rights to which he is entitled. But there is no law which gives an appealing party the right to say in what term of the Supreme Court his appeal shall be heard; so long as the trial record has been certified and sent to the Supreme Court, and the case has been docketed, the Court can hear the matter.

There are several issues in this case which we would have liked to hear argument on, and which might have been of interest had these been brought up for our review. For instance: (a) Did an employment contract still exist between the Company and Mr. Manning, when the accident with the Company's vehicle took place? (b) Did Mr. Manning's refusal to prepare a written report for the acting manager as he was requested to do, amount to a serious breach of duty within the meaning of the Labor Law? (c) Was his refusal to prepare the written report of the accident, in harmony with the Accident Report Form (5) which he (Manning) had prepared and circu-

lated on April 4, 1975? (d) Did the circular letter of February 21, 1975, by the Company, informing the employees of the Company of Manning's continued service as Industrial and Public Relations Officer constitute an extension of the employment contract signed in 1972, and renewed for one year in 1973?

We certainly would have liked to give some answers to those questions, had the appeal been completed. But unfortunately, we are prevented from going into the matter in the face of the motion to dismiss, which we are compelled to grant in keeping with law, and the many decided cases of this Court.

The Supreme Court's inability to hear the appeal in this case is an exemplification of professional carelessness and indifference of the clients' interest on the part of appellant's counsel. For instance: Counsellor Nagbe's insistence that hearing of the case in the Supreme Court be postponed till the October Term was meaningless, in face of the fact that no matter how long the hearing was deferred, the result would have had to be the same. How could we avoid dismissing this case when: (1) the bill of exceptions was filed late, which is a ground for dismissal; (2) no appeal bond was ever filed, and this is another ground for dismissal of the appeal; (3) no notice of completion of the appeal was filed to give the Supreme Court jurisdiction over the appealed case, and this is also a ground for dismissal. No matter how long we waited to hear this case, these serious mistakes and omissions could not have been corrected, after the appeal record had been closed at the end of sixty days after rendition of judgment, the certified record already in the Supreme Court, and the case docketed.

Counsellor Gibson's reference in her letter to unethical practices carried on in the case is no excuse for the failure to file an appeal bond or a notice of completion of appeal. If there were unethical practices, or irregularities in the trial court, what had prevented the bringing of these be-

fore the Justice in chambers for appropriate redress? The Court cannot do for parties what they fail and neglect to do for themselves.

In view of the foregoing, the appeal is dismissed, with costs against the respondent/appellant. The Clerk of this Court is ordered to send a mandate to the trial court commanding the judge therein to resume jurisdiction and enforce the judgment handed down February 23, 1976.

Because we look unfavorably upon the unprofessional manner in which the appellant's counsel have handled the appeal in this case, we have decided to set an example by imposing upon Counsellors Julia Gibson and James Nagbe fines of $50 each, as future notice to all counsellors who show such unconcern of their client's interest. These amounts are to be paid into the Bureau of Revenues, and official receipts filed in the Marshal's office on or before June 30, 1976. And it is so ordered.

Motion granted.