

MADAM MUYAH *et al.*, Appellants, v. REPUBLIC
OF LIBERIA, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, EIGHTH
JUDICIAL CIRCUIT, BONG COUNTY.

Argued November 10, 1970. Decided January 21, 1971.

1. When no bill of exceptions has been filed by the appellant in an appeal, the proper remedy for the appellee lies in a motion brought before the trial court for it to enforce its judgment in the matter.

A motion was made to dismiss an appeal in a case arising from the charge of receiving stolen goods. No bill of exceptions was ever filed, nor an appeal bond, nor the notice of completion of the appeal. The Supreme Court denied the motion, on the ground that the proper remedy lay in a motion brought before the trial court for it to enforce its judgment, since the failure to file a bill of exceptions signed by the trial judge meant that the lower court still retained jurisdiction in the matter.

Joseph F. Dennis for appellants. *The Solicitor General* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

A motion has been made to dismiss the appeal, arising from a case in which appellants were indicted at the Eighth Judicial Circuit Court, Bong County, for the crime of receiving stolen goods. They were arraigned, pleaded not guilty to the indictment and were tried at the November Term of the said Court, 1966, Hon. Daniel S. P. Draper presiding.

Exceptions were taken to the court's ruling and decision which was made on December 5, 1966. The record

came forward on appeal for the March Term, 1967, of this Court.

Upon the call of this case, the Court's attention was drawn to a motion by the Solicitor General, George Henries, and the Attorney General, James A. A. Pierre, to dismiss the appeal. In substance, the appellee points to the total failure of appellants to perfect their appeal, which includes not having filed a bill of exceptions in the lower court.

Counsel for appellants contends that the remedy the appellee should have sought, was by way of motion before the trial court to enforce its judgment.

Governing procedure in the event of failure to comply with appellate requirements is our Civil Procedure Law, L. 1963-64, ch. III, § 5116:

"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 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."

It would appear, therefore, that the proper remedy in this case would be by way of motion before the trial court for it to enforce its judgment. Generally, if it appears that the bill of exceptions has been filed, but other steps for the completion of the appeal have not been taken, in that case it is proper for a motion to be brought before this Court to dismiss the appeal, requiring the lower court to resume jurisdiction and enforce its judgment, because the act of filing the bill of exceptions obviously removes the trial court's jurisdiction in the proceedings pending before the appellate court.

Count one of the motion alleges, among other things, that the appellants have failed to file a bill of exceptions signed by the trial judge, nor an appeal bond approved

by the judge, nor a notice of completion of appeal, as required by law.

The grounds for dismissal of an appeal by this Court are specified by statute, Civil Procedure Law, L. 1963-64, ch. III, § 5104. The instant case is not therein covered.

A motion should have been brought before the trial court to enforce its judgment, this appellate court never having acquired jurisdiction. The motion is, therefore denied.

Motion to dismiss appeal denied.