

MARTHA NAGBE, Appellant, v.
REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL
CIRCUIT, MARYLAND COUNTY.

Argued October 18, 1966. Decided December 16, 1966.

1. A motion on a matter of law requires no affidavit.
2. A bill of exceptions must be filed within the statutory period of time. 1956 CODE 8:373(c).
3. When an appeal bond is not signed by the appellant, the bond is defective and a motion to dismiss the appeal will be granted.

On appeal from a judgment of conviction on a verdict of "guilty" of assault and battery with intent to do grievous bodily harm, a *motion* to dismiss was *granted*.

David T. Browne for appellant. *Solicitor General Nelson W. Broderick* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The trial of this case was conducted in the Circuit Court of the Fourth Judicial Circuit, Maryland County, during the February 1963 term of court, with his Honor A. L. Weeks presiding by assignment, based upon an indictment found by the grand jurors in and for the above-named county.

The defendant-appellant having pleaded not guilty to the charge, an empaneled jury was selected and sworn according to law to try the said cause. The court having taken evidence on both sides, counsel for the parties having argued and submitted, the judge delivered his charge to the empaneled jury who retired and after due deliberation returned a verdict declaring the defendant guilty of the charge as laid in the indictment; to which verdict

defendant excepted and within statutory time filed motion for new trial which was denied; whereupon final judgment was rendered on April 9, 1963, against the defendant aforesaid, to which final judgment the said defendant excepted and announced his appeal to this Court for review and final disposition.

The case having been assigned for hearing, the appellee's counsel filed a two-count motion to dismiss the appeal in said case, which two counts of the said motion we quote as follows:

"1. That although final judgment in the said cause was rendered on April 9, 1963, appellant did not elect to file her bill of exceptions until April 26, 1963, or 17 days after final judgment, as evidence of which appellee requests this Honorable Court to take judicial notice of the copy of the bill of exceptions certified to by the clerk of the court below constituting a portion of the records in the case. Appellee submits that appellant should have filed her bill of exceptions within 10 days after final judgment according to law.

"2. And also because appellee submits that appellant's purported appeal bond is materially defective and bad and does not constitute a valid bond because it was not signed by appellant Martha Nagbe. Appellee respectfully requests this Honorable Court to take judicial notice of the copy of appellant's appeal bond certified by the clerk of the court below."

Countering this motion, appellant filed a five-count resistance of which we deem Counts 1, 3, and 4 relevant and worthy of our consideration, which counts we recite hereunder as follows:

"1. Because appellant says that all motions shall conform to the statutes in all matters of form. Appellee's motion based upon law and facts omitted to attach affidavit to said motion. For this incurable legal blunder, appellant prays this Court to deny said motion, and proceed to the hearing of the case at bar.

"3. And also because appellant avers that Count 1 of appellee's motion is misleading, for appellant's bill of exceptions was approved and filed within statutory period as contemplated by law, *vide*: copy of the original letter from the trial judge in the court below, to whom said bill of exceptions was submitted on April 9, 1963, the very date of the said bill of exceptions, and filed by the clerk of court, as more fully will appear from a certified original copy of the judge's letter to the clerk of the court below and marked Exhibit A to form part of appellant's resistance.

"4. And also because appellant says that Count 2 of appellee's motion is misleading in that, from an inspection appellant's appeal duly approved and filed was signed by appellant/defendant, Martha Nagbe, and her signature witnessed by her only counsel, David T. Browne, and other signature of sureties were respectfully witnessed, *vide*: the appeal bond in the office of the assistant clerk of the Supreme Court of Liberia."

In Count 1 of the resistance, appellant contends that, appellee having failed to attach an affidavit to his motion, quoted *supra*, same should be denied. This Court has held to the contrary:

"Where the motion contains only questions of laws and refers to matters which appear on the records of the court, an affidavit is unnecessary." *Kennedy v. Morris*, 2 L.L.R. 134 (1913).

In view of the foregoing citation of law, Count 1 of appellant's resistance is hereby not sustained. In Count 3 of appellant's resistance, she strongly contends that her bill of exceptions was duly approved and filed within the statutory period, basing her contention on the strength of a letter from the trial judge to whom said bill of exceptions was submitted on April 9, 1963—the very date of the said bill of exceptions—and filed by the clerk of court. Before proceeding any further, we deem it ex-

pedient to quote the letter over the signature of the trial judge addressed to the clerk of the trial court, which reads as follows:

“JUDICIAL BRANCH
“CIRCUIT JUDGE OF LIBERIA

“JUDGE’S CHAMBERS

“MONROVIA

“April 19, 1963.

“The Circuit Court Clerk

“Fourth Judicial Circuit Court,

“Maryland County, R.L.

“Mr. Clerk:

“Upon the receipt of this bill of exceptions in the case:

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| <p>“Republic of Liberia, Plaintiff “<i>versus</i> “Martha Nagbe, Defendant</p> | } | <p>Crime: Assault & Battery with intent to do grievous bodily harm</p> |
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“You will please have same filed for the approval date thereon, and for so doing this shall be your legal instructions.

“Faithfully yours,
[Sgd.] “A. LORENZO WEEKS,
“*Assigned Judge.*

“Certified true and
correct copy of the original,
[Sgd.] “ROOSEVELT S. T. BORTUE,
“*Assistant Clerk, Supreme Court of Liberia,*
“October 17, 1966.”

It is peculiar to observe the date when appellant is alleged to have submitted her bill of exceptions for approval to the trial judge who was then presiding, as per

assignment, over the February 1963 term of the Circuit Court of the Fourth Judicial Circuit, Maryland County; yet from the heading of the judge's letter, same was written in Monrovia and dated on the 19th day of April 1963. However, be it as it may, despite the judge's directive as contained in the above-quoted letter, the bill of exceptions shows, on its face, "April 26, 1963," as the filing date thereof. This contravenes the statute controlling (1956 CODE 8:373(c)), as the said filing date shows a period of quite 17 days without statutory period.

In view of the foregoing, Count 3 of appellant's resistance is hereby overruled.

In Count 4 of her bill of exceptions, appellant contends that Count 2 of appellee's motion is misleading because her appeal bond, duly approved and filed, was signed by appellant and witnessed by her counsel, David T. Browne. Recourse to the purported appeal bond in these proceedings shows that opposite the names affixed to said bond as sureties we find the abbreviation ["Sgd."], but in the case of Martha Nagbe, appellant-principal, there is no such indication. As a matter of fact, on the face of the bond in question, on the line and in the space provided for appellant's signature we find "(Martha Nagbe)" without any showing that the instrument was actually signed by appellant as the law requires.

The appeal bond, not having been signed by the principal-appellant, same is defective and renders the case a fit subject for dismissal.

It is regrettable to observe the negligent and indifferent manner in which appellant's counsel handled her interest in this case. It is legally imperative that lawyers should superintend their appeal records and see that everything legally necessary is completed within statutory time. With respect to the bill of exceptions, the appellant's counsel should have seen to it that the clerk of the lower court conformed to the directive of the trial judge. The clerk's failure to comply with the judge's orders should

have been referred to the Chambers Justice or mandamus proceedings instituted to compel such compliance. Counsel for appellant failed to assert his client's rights under the law at the proper time and is guilty of laches. Moreover, in the case of purported appeal bond in this matter, even after the appeal record had been transmitted by the clerk of the trial court to the appellee court, if counsel for appellant had exercised diligence, he would have discovered the defect, subject of appellee's motion under review, and upon timely application, could have obtained permission to make the same bond valid or sufficient by having appellant affix her signature.

In *Blacklidge v. Blacklidge*, 1 L.L.R. 371, 371-372 (1901), this Court said:

"It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to the securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves."

In view of the foregoing, it is the considered opinion of this Court that the appellee's motion to dismiss the appeal in this case has support in law. Therefore appellee's motion is hereby granted, the appeal is dismissed and the lower court is ordered to resume jurisdiction and enforce its judgment. And it is hereby so ordered.

Appeal dismissed.