FURMAN DUCROUX CONSTRUCTION, REALTY AND TRADING COMPANY, represented by its resident manager, NAFTALI FURMAN, Appellant, *v.* THERESA GRIFFITHS, Appellee.

APPEAL FROM THE DEBT COURT OF MONTSERRADO COUNTY.

Argued October 28, 1969. Decided January 29, 1970.

1. The service upon appellee of the notice of the completion of the appeal procedures confers upon the appellate court jurisdiction over the action.
2. In the absence of proper service of the notice of completion, as in the instant case, where the appellee was incorrectly named, the appellate court shall refuse jurisdiction, and shall dismiss the appeal when the motion is made.
3. Counsel for the appellant may not of his own volition seek to amend a defective notice of completion already served upon appellee, by causing a corrected notice to be served after receiving a copy of appellee's motion to dismiss the appeal by reason of such defective notice of completion of the appeal procedures.

In an action brought in the Debt Court for Montserrado County, a judgment was obtained by the plaintiff from which an appeal was taken by the defendant. During the pendency of the appeal, two motions were brought, dealt with simultaneously by the court in its opinion. The first was a motion by defendant for diminution of record, since two notices of completion of appeal had been served upon appellee, the second notice correctly naming the appellee, which was, however, served after appellant had received notice of the motion to dismiss the appeal on the ground that an incorrect party appeared thereon as appellee. The motion to dismiss the appeal is the other motion under consideration. The *motion for diminution* of record was *denied* and the *motion to dismiss* the appeal was *granted*. In addition, counsel for appellant and the clerk of the trial court who had participated in the preparation of and caused to be served, the second notice of completion of appeal, were punished by the Supreme Court.

Beauford Mensah for appellant. *John W. Stewart* and *James Dee Gibson* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the court.

This case originated in the Debt Court for Montserrado County, presided over by Judge Sebron J. Hall, during the March 1969 Term. After pleadings had rested, judgment was obtained by the plaintiff who is now the appellee. The defendant has attempted to appeal from this judgment.

Upon the call of the case, the Court noted that it had before it for initial review and determination, two motions; one for diminution of record filed by the appellants, and one to dismiss the appeal, filed by the appellee.

We shall first deal with the motion for diminution of record. In this motion the one count set forth by the appellant avers that a perusal of the record revealed that in the transmission thereof to this Court, the clerk of the court of original jurisdiction had omitted to include the notice of appeal directed to plaintiff-appellee. In the circumstances it was requested that this Court order the Debt Court to transmit to us the missing portion of the record.

Before going further we should like to, at this juncture, state that appellee's motion to dismiss was primarily predicated upon her contention that she had not been properly served with a notice of appeal, since the one included in the record had, through some blunder, named appellant as the person upon whom the notice had been served by the appellee, instead of the obvious converse.

The appellee in her motion to dismiss further stressed that by virtue of not having been served with the notice of completion of appeal in the form and manner directed by law, she could not be deemed to be under the jurisdiction of this Court for the purpose of appellate review of

the cause, since it is the notice, the service thereof in conjunction with the return properly made, that properly places her under the jurisdiction of the Court.

Since the two motions were inextricably interwoven, the Court deemed it in the interest of justice to send for the purportedly missing record and thereupon determine whether or not there had, in fact, been a notice of completion of appeal and return thereto as required.

It was at this stage of the proceedings that certain alarming facts were revealed to this Court. Upon receipt of the lower court's record, we discovered ourselves in possession of two distinct notices of completion of appeal, each containing a different appellee to whom they had been addressed. Because of this peculiarity the Court summoned the clerk who purportedly had prepared both notices. To our utter dismay, we were told by the clerk that on the evening that he had just been informed of the passing of his mother, he was confronted by counsellor Beauford Mensah, one of the counsel for appellant, who, at that time, when he was in the midst of his sorrow, importuned him to sign the document which turned out to be the second notice of completion of the appeal which has been filed at this Court by appellant's counsel, after having received his copy of the motion to dismiss the appeal. This second notice properly named the appellee as the party upon whom it had been served. We consider the action of both counsellor Mensah and the clerk of the Debt Court, Mr. Simeon Johnson, as being reprehensible. The motion for diminution of record is, therefore, denied, for the record as transmitted to this Court on August 28, 1969, contained the notice of completion of appeal which had been prepared by counsel for appellant in the trial court. At the close of this opinion the Court will further treat the matter of the improper action of the counsel and the clerk.

Adverting now to the motion to dismiss, the law states that after the filing of the bill of exceptions and the filing

of the appeal bond, the clerk of the trial court on application of the appellant shall issue a notice of the completion of the appeal *a copy of which shall be served by the appellant on the appellee. . . .* [Emphasis supplied.] Civil Procedure Law, L. 1963–64, ch. III, § 5301.

In *Brownell* v. *Brownell,* 5 L.L.R. 76 (1936), this Court held, in affirmation of *Morris* v. *Republic,* 4 L.L.R. 125 (1934), that it is the service of the summons or notice of the completion of the appeal *upon the appellee* that gives the appellate court jurisdiction over the appellee and the cause of action; in the absence of said service, or when it is discovered that the service was tardy, the appellate court should refuse jurisdiction.

Furthermore, this Court, again speaking on the subject of the proper party upon whom the notice of completion of appeal should be served, held in *Witherspoon* v. *Clark,* 14 L.L.R. 194, 202 (1960), speaking through Mr. Chief Justice Wilson, "We now come to the motion to dismiss. This Court has held in several of its rulings that it is the service of the notice of appeal which alone gives the appellate court jurisdiction over the appellees, and such legal service is evidenced only by the official return of the ministerial officer."

In view of the statute set forth above and the several holdings of this Court cited, this Court finds itself unable to do anything other than to sustain the motion of the appellee.

In addition, counsellor Beauford Mensah is hereby fined in the sum of $200 to be paid over to the Marshal of the Supreme Court for deposit in the Treasury, the official flag receipt to be presented to the office of the Clerk of Court evidencing compliance with this judgment. Due to the strained circumstances of the clerk, Mr. Simeon Johnson, at the time of his folly, due to the death of his mother, he is suspended from office for a period of one month without pay. The foregoing to be immediately

effected. Costs in these proceedings are ruled against appellant. And it is hereby so ordered.

Motion for diminution of record denied; motion to dismiss appeal granted.