

HENRY G. RUSSELL and WESSEH GBEH,  
Appellants, v. GABRIEL W. NAH, Appellee.

MOTION TO DISMISS APPEAL.

Argued January 10, 1973. Decided February 2, 1973.

1. Once plaintiffs' separate actions have been consolidated, their causes become one action pending before the courts.
2. Filing an unapproved bill of exceptions in the form of a copy after mailing the original to the judge for signature is a nullity.
3. An appeal has not been perfected and is subject to dismissal when, as in the present case, no appeal was announced at the time of judgment, an approved bill of exceptions and appeal bond were not filed in time, and the notice of completion never was filed.

A motion was brought to dismiss the appeal, alleging failure to timely file the bill of exceptions, appeal bond, and notice of completion of appeal. The appellants contended that they had timely filed a bill of exceptions by filing a copy after mailing original to the trial judge for approval and that an application for mandamus should have been granted to compel the trial judge to approve the bill of exceptions, though the relief was sought months after rendition of judgment. *Motion granted, appeal dismissed.*

*Nete-Sie Brownell* for appellants. *M. Fahnbulleh Jones* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The appellee filed a motion to dismiss the appeal alleging substantially in the five counts thereof that an appeal was not announced, the bill of exceptions was tendered late for approval, as was the appeal bond.

Appellants have filed resistance to the motion and in

count one have contended that Henry Russell and Wesseh Gbeh are not joined in interest, since they filed separate actions of ejectment in the trial court. However, attached to the motion to dismiss as exhibit "A" thereof is a document called "application" filed by the appellants. It seems Moses K. Yangbe, as counsel for the plaintiffs, consolidated the separate actions of the two plaintiffs in an application for arbitration. It is strange, therefore, that the plaintiffs have raised such contention.

In count two the appellants contend that judgment was rendered on the arbitrators' award in the absence of the plaintiffs and their counsel; that mandamus was applied for to compel the trial judge to approve the bill of exceptions and appeal bond as shown by the petition annexed. The petition for mandamus shows that it was applied for in the chambers of Chief Justice Pierre on December 28, 1971, and prays that the trial judge be compelled to approve the bill of exceptions and the appeal bond. No order for the alternative writ was issued.

During argument appellants' counsel contended that the Chief Justice should have ordered the writ issued, even though the petition had been filed long after judgment had been rendered on April 19, 1971.

Mandamus is a remedial writ, and is issued in the discretion of the Justice in chambers, and not as a matter of right. But had issuance been ordered on December 28, 1971, how could approval of the bill of exceptions and appeal bond have validated an appeal in a case in which judgment had been rendered on April 19 before? When the petition was filed it was already beyond the ten days within which approval is required of a bill of exceptions and the 60 days for approval of an appeal bond.

Count three of the resistance contends that the bill of exceptions was filed in time, by leaving a copy in the office of the clerk and mailing the original to the judge in Lofa County. We must first remark that a bill of exceptions is useless without the trial judge's approval

thereof. No purpose was served by leaving an unapproved copy with the clerk of court. Other counts in the resistance relate to matters which would have been reviewed in the appeal, but because of the position which we have taken these need not be considered.

The Civil Procedure law is emphatic as to what the requirements are for taking and completing an appeal: (a) announcement of the taking of an appeal; (b) filing of the bill of exceptions; (c) filing of an appeal bond; (d) service and filing of notice of completion of the appeal. L. 1963-64, ch. III, § 5104. This section concludes: "Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."

Furthermore, section 5106 following reads: "An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or if such attorney is not present, by a deputy appointed by the court for this purpose." It has not been denied by appellants that when judgment was rendered they failed to announce an appeal, as has been alleged in the motion to dismiss.

The bill of exceptions which, according to the Civil Procedure Law, *supra*, § 5107, should have been presented for approval ten days after rendition of judgment on April 19, 1971, was not presented for approval according to the record till more than ten days after judgment was rendered. The appeal bond was filed beyond the sixty days allowed therefor after rendition of judgment. Civil Procedure Law, *supra*, § 5108. The appeal bond was prepared and dated August 3, 1971, and judgment was rendered in April of that year. There is no notice of completion of appeal found in the record, but if one was ever filed it would have had to be filed after the appeal bond, constituting another cause for dismissal. *Lartey v. Lartey*, 8 LLR 194 (1944).

From the foregoing it is clear that we do not have jurisdiction over this cause. The motion to dismiss is, therefore, granted and the appeal is dismissed, with costs against the appellants. It is so ordered.

*Motion to dismiss appeal granted.*