

JOSEPH A. SODATONOU and wife, RUPHINA  
GADEGBCKU SODATONOU, Appellants, *v.*  
AGIP (LIBERIA) CORPORATION, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, SIXTH  
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 9, 1971. Decided May 27, 1971.

1. An appellant is held solely responsible for the perfection of his appeal.
2. Negligent failure to have notice of completion of appeal served on the appellee, under the 1956 Code applicable herein, is ground for dismissal of the appeal.

In the course of an appeal by the defendants in an injunction suit, a motion to dismiss the appeal was brought, alleging failure to serve notice of completion of appeal. Appellants contended that clerical court failure had caused the omission and they had sought an order *nunc pro tunc* from the Justice in chambers to remedy the condition, who left the country on government business without disposing of the application, and thereafter from his successor, who did not act upon it. They gave no reason for the inaction of the successor Justice. The Supreme Court pointed out this omission to ascribe cause of the inaction and holding appellants accountable for procedural failure *granted the motion and dismissed the appeal.*

*Joseph J. F. Chesson* for appellants. *J. C. N. Howard*  
for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of  
the Court.

The record reveals that the declaration, upon which the case is based, was filed against defendants by plaintiff on September 26, 1967, before the effective date of the new

Civil Procedure Law, hence, this appeal is governed by the 1956 Code to make clear which statute controls.

The ruling of the trial judge was rendered for plaintiff on January 11, 1968, from which appellants have appealed.

Appellee filed a two-count motion to dismiss the appeal, contending failure of timeliness in completing the appeal, evidenced by an absence of the appeal bond and notice of completion, to which the lower court clerk's office attests by certificate.

Appellants oppose the motion by arguing in their papers that they attempted to remedy the clerical tardiness in the lower court by applying, successively, to Justices Wardsworth and Roberts in chambers for an order *nunc pro tunc*, permitting such service, but Justice Wardsworth left the country on government business and Justice Roberts never acted thereon.

The reason why the application to order the issuance, service and return of the notice of appeal could not be given the necessary attention by Mr. Justice Wardsworth has been set forth, but there is no reason shown why Mr. Justice Roberts, to whom the application was subsequently referred, did not act. An appellant is held responsible for the perfection of his appeal. *Turpin et ano v. Roberts*, 1 LLR 8 (1861).

Appellants failed to show the reasons why their application was not disposed of, and the mere allegation does not relieve them of the responsibility of protecting client's legal interest to the very utmost.

The grounds for dismissal of appellants' appeal are set forth in the governing statute.

"An appeal from a court of record may, upon motion properly taken, be dismissed for any [of] the following reasons:

"(a) Failure to file approved bill of exceptions within the time specified in section 1012 above;

"(b) Failure to file an approved appeal bond or

material defect in an appeal bond (insofar as such failure or defect is not remedied in accordance with the provisions of section 1014 above);

“(c) Nonappearance of the appellant on appeal;  
or

“(d) Negligent failure to have notice served on the appellee.” Civil Procedure Law, 1956 Code, 6:1020.

In view of the foregoing, the motion to dismiss is hereby granted, with costs against appellants.

*Motion to dismiss appeal granted.*