

THE CAVALLA TIMBER COMPANY, represented
by its General Manager, MR. ADAM TREITLON,
Appellant, v. HENRY BLAMO, Appellee.

MOTION TO DISMISS APPEAL FROM THE DEBT COURT FOR GRAND GEDEH
COUNTY.

Heard: May 21, 1981. Decided: July 30, 1981.

1. 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 prescribed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear for the hearing of the appeal, to file an appeal bond, or serve the notice of the completion of the appeal, as required by statute.
2. The following acts shall be necessary for the completion of an appeal; (a) an 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 the notice of the completion of the appeal. Failure to comply with any of these requirements within the time prescribed by statute shall be ground for dismissal of the appeal.
3. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action.
4. A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to during the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present the bill of exceptions signed by him to the trial judge within ten (10) days after rendition of the judgment. The judge shall sign the bill of exceptions, noting hereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court.
5. After the filing of the bill of exceptions, and the filing of the appeal bond as required by sections 51.7 and 51.8 of the Civil Procedure Law, 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. The original of such notice shall be filed in the office of the clerk of the trial court.
6. Failure by an appellant to file returns to the service of the notice of completion of the appeal is a material error constituting ground for dismissal of the appeal.
7. An appellant is required to superintend the appeal and is responsible for the completion of the requisites thereof.
9. Where the statutorily prescribed requisites for the completion of an appeal are not complied with, the appeal will be dismissed.
10. It is the service of the notice of the completion of the appeal which alone gives an appellate court jurisdiction over the appellee; and such service is evidenced only by the official returns of the ministerial officer.
11. When an appeal is announced to the Supreme Court from a judgment, a ruling or

a decision, the appellant's counsel after performing all the statutorily prescribed requisites for the completion of the appeal, is required to serve upon the appellee, a copy of the notice of the completion of the appeal, the original of which is required to have been issued by the clerk and served and returned by the ministerial officer.

12. The failure and neglect of a party litigant, which is not attributable to the court or its officer, cannot be assigned as a good cause for the appellant not performing his statutorily prescribed requisites for the perfection or completion of his appeal.
13. Where the clerk of court, upon investigation, states that he did not issue a notice of the completion of the appeal in a given case, and that the signature appearing on a copy of an alleged notice of the completion of the appeal, is not his genuine signature, the Supreme Court will dismiss the appeal on grounds that the notice of the completion of the appeal was not issued and served.

These proceedings emanate from the Debt Court, Grand Gedeh County, wherein appellee instituted an action of debt against appellant. After a regular trial, judgment was rendered against appellant from which he announced an appeal to the Supreme Court. Appellee moved the Court to dismiss the appeal for failure to proceed, to which appellant filed a resistance along with a motion for diminution of records. Appellant proferted with the motion for diminution of records, a copy of the notice of the completion of the appeal which he claimed to have been issued by the Clerk of the Debt Court, Grand Gedeh County.

Appellee in his motion to dismiss contended that appellee failed to file his bill of exceptions and the notice of the completion of the appeal, and as evidence thereof, he proferted a clerk's certificate issued by the clerk of the People's Debt Court, Grand Gedeh County.

Appellant, in resisting the motion, denied that the bill of exceptions was filed without the statutory period, in that he presented it to the trial judge within the statutory period for his approval and filing, but that the said judge prejudicially caused it to be filed late, contrary to law. Appellant further contended that, if appellee felt that the bill of exceptions was filed without the ten (10) days statutory period provided by law, then appellee should have moved the trial court for the dismissal of the appeal for failure to proceed as provided by law, but not in the Supreme Court. Appellant also denied appellee's contention that no notice of the completion of the appeal was served on him, was false and misleading, in that the notice of the completion of the appeal was duly issued and served on appellee as required by law, and that

a copy of said notice of the completion of the appeal was proffered with appellant's resistance to appellee's motion to dismiss the appeal.

After entertaining arguments *pro et con*, the Court granted appellant's motion for diminution of records so that the alleged notice of the completion of the appeal from the record of the People's Debt Court, Grand Gedeh County, could be ordered transmitted to this Court as a matter of law, practice and procedure. The clerk of the People's Debt court for Grand Gedeh County, being physically present in open court, was ordered to produce the court's file which contained the original records in the trial court.

The clerk of the People's Debt Court, Grand Gedeh County, denied in the presence of the parties and their counsels, that he ever issued a notice of the completion of the appeal upon application of appellant's counsel; hence, he told the Court that his signature, which appeared on the photocopy of the notice of the completion of the appeal in the possession of appellant's counsel, was forged. The clerk's denial was supported by the certificate or taxation of the records for appeal duly issued and signed by him and which was countersigned by counsel for both appellant and appellee and which said transcribed and certified records of the court were inventoried sheet by sheet, wherein no mention was made of the alleged and purported notice of the completion of the appeal, said to have been issued by the clerk of court.

In addition to the statement made by the clerk, the sheriff of the People's Debt Court, Grand Gedeh County, also appeared and informed the Supreme Court that he never served any notice of the completion of the appeal on the appellee or his counsel in this case.

In view of the explanation made by the sheriff of the People's Debt Court, Grand Gedeh County, coupled with the clerk's statement that he never issued any notice of the completion of the appeal, the Supreme Court held that no notice of the completion of the appeal was ever issued and returned served in the instant case. Accordingly, the Court *granted* the motion to dismiss for failure to proceed, and *dismissed* the appeal. Counsellor Francis G. Doe, Sr. was *adjudged guilty of contempt*, and fined in the sum of \$300.00 for his attempt to deceive and

mislead the Court when he signed the copy of the notice of the completion of the appeal, knowing that no such notice of the completion of the appeal was ever issued and served.

Nelson W. Broderick appeared for appellant. *Francis H. Topor and S. Edward Carlor* appeared for appellee.

MR. JUSTICE BORTUE delivered the opinion of the Court.

This action of debt was commenced in the Debt Court, Grand Gedeh County, Republic of Liberia. The appellee herein, complained that the appellant, defendant below, was indebted to him in the sum of \$36,200.00; that is to say, \$4,600.00 for services rendered the appellant by the appellee, and the balance amount of \$31,600.00 being the value of his trailer sold to appellant, and made profert of several documents with his complaint. The pleadings having rested, the trial was conducted on the 19th day of October, A. D. 1979, and the judge of the Debt Court for Grand Gedeh County rendered judgment adjudging appellant liable to the appellee in the sum of \$25,000.00. To this judgment of the court, appellant excepted and announced an appeal to this Court, sitting in its March Term, A. D. 1980, which appeal as a matter of right, was granted by the trial court.

It is against this appeal that counsel for appellee filed a two-count motion to dismiss for failure of the appellant to proceed on the 9th day of April, A. D. 1980.

On the 30th day of April, A. D. 1981, appellant filed a two-count resistance to appellee's motion to dismiss appeal for failure to proceed and simultaneously filed a three-count motion for diminution of records.

Appellee having filed a resistance to the motion for diminution of records on the 4th day of May, A.D. 1981, arguments on both sides were entertained by the court on the 7th day of May, A. D. 1981, and ruling thereon reserved. On May 31, A.D. 1981, the Court made a ruling, in which appellant's motion for diminution of records was granted in the interest of transparent justice, so that the alleged notice of the completion of the appeal from the records of the People's Debt Court, Grand

Gedeh County, could be ordered transmitted to this Court as a matter of law, practice and procedure. The clerk of the People's Debt Court for Grand Gedeh County being physically present in open court, was ordered to produce the court's file which contained the original records in the trial court.

On inspection and examination of the copy of the notice of the completion of the appeal proferted with appellant's motion for diminution of records and filed in the office of the Clerk of this Court, Clerk Oliver W. Solo of the People's Debt Court, Grand Gedeh County, denied in the presence of the lawyers in this case that he ever issued a notice of the completion of the appeal upon application of appellant's counsel. Hence, he told the court that his signature, which appeared on the photocopy of the notice of the completion of the appeal in the possession of appellant's counsel, was forged.

In count one of appellee's motion to dismiss, the counsel for appellee has contended and argued that the judgment in this case was rendered by the trial court on the 19th day of October, A.D. 1979, and that the second bill of exceptions was filed on the 30th day of October, A. D. 1979, contrary to statute which provides that a bill of exceptions must be filed within ten (10) days, and not after ten (10) days; hence, the same was not filed within statutory period of time.

In count two of the motion to dismiss, counsel for appellee argued that contrary to and in violation of the mandatory and positive provision of our statute, the appellant failed to complete and perfect his appeal thus taken within statutory time, that is to say, the notice of the completion of the appeal was not served on appellee and returned served, as evidenced by the certificate issued in favour of the appellee by Michael N. Wiaplah, Esquire, clerk of the People's Debt Court, Grand Gedeh County.

In the two-count resistance filed by appellant to appellee's motion to dismiss, appellant, by and thru his counsel, denied that the second bill of exceptions was filed on the 30th day of October, A. D. 1979, but rather that it was presented to the trial judge on the 29th day of October, A. D. 1979, for his approval and filing, but that the said judge prejudicially caused it to be filed for the 30th day of October, A. D. 1979, contrary to law. Appellant further contended that if appellee felt that the second

bill of exceptions was filed without the ten (10) day statutory period provided by law, which appellant denied, then appellee should have moved the trial court for the dismissal of the appeal for failure to proceed as provided by law, but not in this Honourable Court.

In count two of his resistance, appellant averred and argued that the allegation in count two of appellee's motion to the effect "that no notice of the completion of the appeal was served on him", was false and misleading. Appellant also stated in the said count two of the resistance that the notice of the completion of the appeal, dated December 11, 1979, was duly issued and served on appellee, as required by law; and that a copy of said notice of the completion of the appeal was proferted with appellant's resistance to appellee's motion to dismiss, with the sheriff's returns endorsed on the back of it. Appellant, therefore, prayed this Court to deny said motion.

Our Civil Procedure Law, Rev. Code 1:51.16 provides, as follows:

"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 of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or serve notice of the completion of the appeal, as required by statute."

Further, according to our statute extant, the legal requirements for the completion of an appeal are as follows:

"The following acts shall be necessary for the completion of 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.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal." *Ibid.*, 1.51.4.

Additionally, "a failure to file a sufficient appeal bond within the specified time, shall be a ground for dismissal of the appeal;

provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action." *Ibid.*, 51.8.

It was therefore legally incumbent upon the appellant to have superintended his appeal and see to it that the bill of exceptions, which according to the appellant had been presented to the trial judge on the 29th day of October, A. D. 1979, for his approval, was filed within statutory time; that is to say, on the said 29th day of October, A. D. 1979. But instead, appellant expected the trial judge to have filed the said bill of exceptions with the clerk of the People's Debt Court, Grand Gedeh County, when indeed and in fact this was the sole and legally binding duty of the appellant and/or his counsel to have performed. Yet, counsel for appellant argued that the said bill of exceptions was presented to the judge on the 29th day of October, A. D. 1979 for his approval and filing, as though it was the legal duty of the trial judge to have filed the same with the clerk of the trial court. Courts of justice will not do for a party litigant that which he ought to do for himself.

Our statute on the filing of bill of exceptions states, and we quote:

"A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present the bill of exceptions signed by him to the trial judge within ten (10) days after rendition of the judgment. The judge shall sign the bill of exceptions, noting hereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." *Ibid.*, 1:51.7

Count one of appellant's resistance to appellee's motion to dismiss is therefore overruled.

Clerk Oliver W. Solo of the People's Debt Court, Grand Gedeh County, told the Court that he did not issue any notice of completion of appeal in the instant case and this was supported by the certificate of taxation of January 14, 1980, duly issued and signed by him and which was countersigned by Counsellor David D. Gbala, Sr., one of counsels for the appellant, and

Counsellor Francis S. Doe, Sr., also one of counsels for the appellee herein. In the aforesaid certificate, the said lawyers certified and declared that, the records in this case as transcribed, certified and forwarded to this Court by Clerk Oliver W. Solo, were true and correct and in keeping with the records of the trial court; that the said records contained in their entirety seventy-two (72) sheets of paper; and that the said transcribed and certified records of the court were inventoried sheet by sheet, wherein no mention was made of the alleged and purported notice of the completion of the appeal said to have been issued on the 11th day of December, A. D. 1979, by the said Clerk Solo.

Strangely enough, the copy of the said notice of the completion of the appeal which is in the possession of appellant and his counsel has on its back a sheriff's returns endorsed, which state that the said notice of the completion of the appeal was served on Counsellor Francis G. Doe, Sr., one of counsels for the appellee, on the 11th day of December, A. D. 1979. Yet, the said counsel for the appellee, Counsellor Doe, on January 11, 1980, after a careful inspection of the inventoried and certified records hereinabove referred to and forwarded to this Court by the clerk of the People's Debt Court, Grand Gedeh County, certified along with Counsellor David D. Gbala, Sr. that the entire records in the case contained seventy-two (72) sheets of paper, among which the said notice of the completion of the appeal was not included. Nevertheless, Counsellor David D. Gbala, Sr. who also certified and taxed said records by his signature, indicated in the certificate of taxation that the entire records were composed of seventy-two (72) sheets of paper, when according to the appellant, the notice of the completion of the appeal was issued and returned served by the sheriff of the People's Debt Court for Grand Gedeh County on appellee's counsel, Counsellor Francis G. Doe, Sr.

We wonder why appellant's copy of the said notice of the completion of the appeal was endorsed by the sheriff of the People's Debt Court, Grand Gedeh County, for the purpose of showing proof of service, while the original notice of the completion of the appeal which, as a matter of law should have been returned by the sheriff with the returns endorsed at the back thereof could not be found in the records of this case; and of

course, as the clerk stated, he never issued a notice of the completion of the appeal in this case. The procedure adopted by the appellant was, therefore, quite strange and irregular as there is no legal basis for the sheriff's returns to the said notice of the completion of the appeal to have been endorsed on appellant's copy of said notice of the completion of the appeal, if at all it was issued by the clerk of the trial court upon application of the appellant.

With respect to the notice of the completion of the appeal, our statute extant provides that, and we quote:

"After the filing of the bill of exceptions and the filing of the appeal bond as required by Sections 51.7 and 51.8, 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.

The original of such notice shall be filed in the office of the clerk of the trial court." *Ibid.*, 1:51.9. Count two of the appellant's resistance to appellee's motion to dismiss the appeal for failure to proceed, being unmeritorious, is hereby also overruled.

In *Where v. Korkor*, 13 LLR 8 (1957), this Court decided that:

"Failure by an appellant to file a return of service of notice of appeal is a material error constituting ground for dismissal of the appeal.

"An appellant is required to superintend the appeal and is responsible for the completion of the requisites thereof.

In *Findley v. Republic*, 13 LLR 538 (1960), this Court opined that:

"Where the statutory prescribed requisites for completion of an appeal are not complied with, the appeal will be dismissed."

In *Witherspoon et. al. v. Clarke et al.*, 4 LLR 194 (1960), this Court held that:

"It is the service of the notice of appeal which alone gives an appellate court jurisdiction over the appellees; and such service is evidenced only by the official returns of the ministerial officer.

"When an appeal is announced to the Supreme Court from a judgment, a ruling or a decision, the appellant's counsel,

after performing all the statutorily prescribed requisites for completion of the appeal, is required to serve upon the appellee a copy of the notice of appeal, the original of which is required to have been issued by the clerk and served and returned by the ministerial officer." See also, *Brownell v. Brownell*, 5 LLR 76 (1936).

The failure and neglect of a party litigant, which is not attributable to the court or its officer, cannot be assigned as a good cause from performing his statutorily prescribed requisites for the perfection or completion of his appeal; and that it is our holding that where a clerk of court during an investigation informed the appellate court that he did not issue a notice of the completion of the appeal in a given case, as in the instant case, and that the signature appearing on a copy of an alleged notice of the completion of the appeal was not his genuine signature, and such statement of the clerk remains unrebutted, the allegation that said notice of completion of appeal was issued, will be overruled and a motion to dismiss the appeal sustained.

In addition to the statement made by the clerk of the People's Debt Court, Grand Gedeh County, the sheriff of that court appeared in our Chambers upon instruction of this Court in connection with the alleged issuance and service of the said notice of the completion of the appeal, and when asked as to whether or not he ever served a notice of the completion of the appeal in this case on the appellee or his counsel, he informed the court that he never served any notice of the completion of the appeal on the appellee or his counsel in this case.

In view of the explanation made by the sheriff of the People's Debt Court, Grand Gedeh County, coupled with the clerk's statement that he never issued any notice of the completion of the appeal, this Court is not convinced that the purported notice of the completion of the appeal was ever issued on the 11th day of December, A. D. 1979, and therefore concludes that no notice of the completion of the appeal was ever issued and returned served in the instant case. The motion to dismiss the appeal is therefore hereby granted and the appeal dismissed with costs against the appellant. Because of the fact that Counsellor Francis G. Doe, Sr. attempted to deceive and mislead this Court when he signed the said copy of the notice of the completion of

the appeal of December 11, 1979, knowing that no such notice of the completion of the appeal was ever issued and served, he is hereby adjudged guilty of contempt of this Court and fined the sum of \$300.00 to be paid within forty-eight (48) hours into the Bureau of Internal Revenues, Ministry of Finance, Republic of Liberia, and that upon his failure to comply with the judgment of this Court, he shall be suspended from the practice of law directly or indirectly until said fine shall have been fully paid and a Flag Receipt therefor deposited with the Marshal of this Court to be exhibited to the Members of the Bench.

The Clerk of this Court is commanded and instructed to send a mandate to the trial court to resume jurisdiction over the case and enforce its judgment. And it is hereby so ordered.

Motion granted; appeal dismissed.