

**MAGBINE OF KENNON TOWN, Appellant, v.  
AMARA SOKO, Appellee.**

MOTION TO DISMISS APPEAL FROM THE DEBT COURT FOR NIMBA COUNTY.

Heard: June 15, 1981. Decided: July 30, 1981.

1. A notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded, and the grounds therefor.
2. The moving party shall furnish at the hearing all papers not previously filed and necessary to the consideration of the questions involved. Where such papers are in the possession of an adverse party, they shall be produced at the hearing by the latter on notice served with the motion papers. Only papers served in accordance with the provisions of this section shall be read in support of, or in opposition to the motion, unless the court for good cause shall otherwise direct.
3. Motions for a ruling or order affecting substantial rights ought regularly to be accompanied by an affidavit verifying the acts on which they are grounded, and when not so supported, they will not generally be granted.
4. Where the existence of certain facts are necessary to the jurisdiction of the court to hear a motion in a given case, it is necessary that all the facts, which are indispensable to establish the jurisdiction, be stated in the motion and the accompanying affidavits; without them the court cannot be justified in granting the order.
5. The records of which the court is bound to take judicial notice are (a) public law of Liberia; (b) private law of Liberia and foreign law; (c) notice of historical facts; (d) records in cases which have been decided by the Supreme Court of Liberia.
6. Where the jurisdiction of the court has been attacked in a contested case on appeal, the appellate court has no legal authority to open the case file, examine the records with the view of looking for evidence to support the contested issue of lack of jurisdiction over the appeal.
7. A clerk's certificate that is not stamped is invalid and a legal nullity.
8. Until the appellate court acquires jurisdiction over the appeal, it has no authority to open the case file and inspect the records. Therefore, those portions of the opinions recorded in *Kamara and Kabbah v. Khalill Niam Brothers*, 21 LLR 402 (1972), and *Talery and Cooper v. Wesley*, 21 LLR 116 (1972), as far as they relate to opening the case file, and inspecting the records to obtain evidence to substantiate the allegation of want of jurisdiction over the appeal are hereby canceled and recalled.
9. The special traverse, or traverse with an inducement of new matter is, in substance, an argumentative denial of the facts traversed, but in form a direct denial.
10. An answer must contain a general or specific denial of each material allegation of the complaint controverted by the defendant or of any knowledge or information thereof sufficient to form a belief.

When this case was called for hearing, the Court's attention

was drawn to a motion to dismiss the appeal on grounds that the appeal bond was not filed within sixty days as required by the statute. Appellants, in resisting the motion, contended that when its jurisdiction is attacked, the court has no authority to open the records on appeal, for the purpose of substantiating the factual allegations stated in the motion. Hence, appellee should have attached a copy of the appeal bond and the notice of the completion of the appeal to the motion, so as to enable the Court to decide the issue. Appellant also contended that the certificate of the clerk of court in support of the motion is invalid and inadmissible into evidence in that it does not bear a revenue stamp as required by law.

The Supreme Court held that when its jurisdiction over the appeal is questioned, it has no authority to open the case file and inspect the records. In so holding, the Court overruled and recalled its opinions in *Kamara and Kabbah v. Khalill Niam Brothers*, 21 LLR 402 (1973); and *Talery and Cooper v. Wesley*, 21 LLR 116 (1972) as far as they relate to opening the case file and inspecting the records to obtain evidence to substantiate the allegation of want of jurisdiction over the appeal. Accordingly, the Supreme Court *denied* the motion.

*MacDonald Krakue* appeared for appellant. *Raymond A. Hoggard* appeared for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

This appeal hails from the Debt Court, Nimba County, where a final judgment was rendered against the appellant on the 16<sup>th</sup> of October, 1978. When the case was called in this Court for argument, our attention was called to a motion to dismiss the appeal and a resistance filed thereto.

The motion to dismiss the appeal contained the following salient point, namely: that the appeal bond was not filed within sixty days from the date of rendition of the final judgment as required by statute. The two count resistance filed to the motion is to the effect that the copies of the appeal bond and the notice for the completion of the appeal, showing the alleged late filing and non service of the notice for the completion of the appeal

should have been attached to the motion as notice to the appellant and to enable the Court to decide the issue. Appellant also claimed that under the same parity of reasoning, where the appellee attacked the jurisdiction of the Court over the appeal, the Court has no authority to open the records for the purpose of searching for evidence to substantiate the factual allegations stated in the motion. Appellant also submitted that the certificate of clerk of court annexed to the Appeal Bond to support the averment in the motion does not bear the required revenue stamp as provided by the Revenue and Finance Law, and that therefore said document is invalid and inadmissible into evidence.

Appellee did not deny the absence of the required revenue stamp on the certificate of the clerk of court, but he asked the court to take judicial notice of the records in the case filed before it, only to inspect the documents which appellee referred to in the motion, as proof of his contention.

Appellee cited the cases *Kamara and Kabbah v. Khalill Niam Bros.*, 21 LLR 402 (1973) and *Talery and Cooper v. Wesley*, 21 LLR 116 (1972). Appellee also argued that appellant did not deny the averments stated in the motion and in the absence of a denial, same are deemed admitted.

According to the statute on motion papers, it is stated that:

"A notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded, and the grounds therefor . . . . .

The moving party shall furnish at the hearing all papers not previously filed and necessary to the consideration of the questions involved. Where such papers are in the possession of an adverse party, they shall be produced at the hearing by the latter on notice served with the motion papers. Only papers served in accordance with the provisions of this section shall be read in support of, or in opposition to the motion, unless the court for good cause shall otherwise direct." Civil Procedure Law, Rev. Code 1:10.4.

And also:

"Motions for a ruling or order affecting substantial rights ought regularly to be accompanied by an affidavit verifying

the acts on which they are grounded, and when not so supported, they will not in general be entertained by the court for affirmative action. Where the existence of certain facts are necessary to the jurisdiction of the court to hear a motion in a given case, it is necessary that all the facts which are indispensable to establish the jurisdiction be stated in the motion and the accompanying affidavits; without them the court cannot be justified in granting the order." 37 AM. JUR., *Motions*, §14.

In our opinion, in the absence of an allegation that the documents mentioned in the motion are in the possession of the opposing party, or of the inability of the movant to profer them in order to fully comply with the requirements of the authorities quoted above, appellee should have perfected copies of the appeal bond and the notice for the completion of the appeal, instead of leaving the burden on the Court to search the records in the case file over which appellee claimed the Court had no jurisdiction.

Appellee requested the Court to take judicial notice of its records in the case file. The records of which the Court is bound to take judicial notice are as follows: (a) public law of Liberia; (b) private law of Liberia and foreign law; (c) notice of historical facts; (d) record in cases which have been decided by the Supreme Court of Liberia. Civil Procedure Law, Rev. Code 1: 25.1; *Phelps v. Williams*, 3 LLR 54 (1928).

Where the jurisdiction of the Court has been attacked in a contested appeal case pending before the Court, the appellate court, in our view, has no legal authority to open the case file and examine the records with the view to looking for evidence to support the contested issue of lack of jurisdiction over the appeal.

The cases *Kamara and Kabbah v. Khalill Niam Bros.* and *Talery and Cooper v. Wesley*, reported in 21 LLR, referred to above, and relied upon by the appellee, where similar attacks were made on the certificate of the clerk of the trial court, this Court made the following comments, *inter alia*:

"We wish to note that examination of the records disclose that the certificate is un-stamped and is, therefore, under the statute, invalid and a legal nullity." *Talery and Cooper v. Wesley*, 21 LLR 116 (1972); Revenue and Finance Law,

1956 Code 36:5.70.

In the two cases cited by appellee, this Court declared the two unstamped certificates of the clerk of court illegal in keeping with the Civil Procedure Law, Rev. Code 1:16.1. Notwithstanding, the Court opened the records in the case files and discovered that the contention regarding absence of required revenue stamps was apparent on the records.

We are not inclined to adhere to the procedure adopted by this Court in the cases cited *supra*. Since our authority is questioned over the appeal, we are of the considered opinion, that until we decide our jurisdiction over the appeal, we have no authority to open the case file and inspect the record.

Therefore, those portions of the opinions in *Talery and Cooper v. Wesley*, 21 LLR116 (1972) and *Kamara and Kabbeh v. Khalil Niam Bros.*, 21 LLR 402 (1973), cited earlier, in so far as they relate to opening the case files and inspecting the records so as to obtain evidence to substantiate the allegation of want of jurisdiction over the appeal, while the Court is hearing the jurisdictional issue, are canceled, same are hereby recalled.

Appellee has also strongly contended that since the appellant had not specifically denied the contentions alleged in the motion, they should be deemed admitted. We found the following passage in connection with this point of contention of appellee:

"The special traverse, or traverse with an inducement of new matter, is in substance an argumentative denial of the facts traversed, but in form a direct denial."

Under the law, it is generally required that the answer contain a general or specific denial of each material allegation of the complaint controverted by the defendant or of any knowledge or information thereof sufficient to form a belief.. 71 C.J.S., *Pleadings*, §§144 & 146, pp. 308 & 309. Appellant has raised new issues in the resistance and we are of the opinion, that a traverse in a responsive pleading as well as in a resistance constitutes a denial of the allegation to which it responds.

In view of the facts and the authorities cited above, we have no alternative but to deny the motion. The Clerk of this Court is therefore ordered to re-docket the case to be heard on its merits.

Costs to abide final determination of the case. And it is so ordered.

*Motion denied.*