

O. A. C., by and through its Manager, J. P. ENDE,
Appellant/Respondent, v. ROLAND SAMBOLA and
THE BOARD OF GENERAL APPEALS, Ministry
of Labour, Youth and Sports, Appellees/Movants.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTERRADO COUNTY.

Heard: May 4, 1981. Decided: July 30, 1981.

1. An Appeal shall not be dismissed where the delay in the approval of an appeal bond, or the completion and service of a notice of completion of appeal, is not in any way attributable to the negligence or fault of the appellant, or where there were some special circumstances, entirely beyond the control of the appellant, which prevented him from timely meeting with any of the procedural requirements for an appeal.
2. Where the failure to timely comply with procedural requirements for perfecting an appeal is attributable to the negligent acts of the appellant's counsel, the appeal shall be dismissed upon motion properly filed.

Appellees filed a motion to dismiss appellant's appeal on the grounds that appellant failed to file its appeal bond and serve a notice of the completion of the appeal within statutory time. In its resistance, appellant contended that delay in competing its appeal was occasioned by the trial judge, who had received the bond and asked counsel to return the next day, but that upon the counsel's return, the judge had left the jurisdiction, carrying with him the bond and other documents.

The Supreme Court found that the judge, whom appellant said had left the jurisdiction, was in fact in Monrovia, and that he had presided over the court and disposed of cases during the following week. Holding that the failure to comply with the statutory requirements for the filing of the bond and the notice of the completion of the appeal was due to the fault of the appellant's counsel in the trial court, the Supreme Court granted appellees' motion and dismissed the appeal.

Phillip A. Z. Banks, III, appeared for appellant. *Toye C. Bernard* appeared for appellees.

MR. JUSTICE MABANDE delivered the opinion of the Court.

Appellees, now movants, filed a motion to dismiss appellant's appeal for the failure of appellant, now respondent, to file its appeal bond and the notice of the completion of the appeal within statutory time.

Appellant/respondent, in its resistance, contended that if there was any fault or delay, it was the act of the trial judge to whom, as the law requires, it had submitted its appeal bond on August 18, A. D. 1979 for approval. Appellant further argued that the trial judge received the bond and directed one of the lawyers from appellant's counsel law firm to return for the same on the same day, being the 18th day of August, A. D. 1979. That upon the lawyer's return, appellant argued, the judge had left the jurisdiction, carrying with him all of the documents, including appellant's appeal bond, leaving instructions with the clerk of the court not to issue any certificate concerning the appeal bond which was with him. Yet the clerk of court issued such a certificate on August 21, A. D. 1979.

Where a delay in the approval of an appeal bond or the issuance and service of a notice of completion of appeal, is not in any way attributable to the negligence or fault of the appellant or where there were some special circumstances entirely beyond the control of appellant, which prevented him from timely meeting with any of the procedural requirements for an appeal, this Court does not impute negligence to or punish him, but will accord him the full right of appeal on the merits, for a just and fair hearing of the case.

The purpose of the procedural requirement of an appeal is not to suppress justice and fairness, but to enhance timely consideration of the merits of the cause. *Duncan v. Perry*, 13 LLR 210 (1958); *Freeman v. Cooper*, 19 LLR 9 (1968).

The records of the Sixth Judicial Circuit Court indicate that on August 18, A. D. 1979, the day on which the bond was reportedly submitted to the trial judge for approval was a Saturday. The afternoon on which the lawyer from appellant's counsel law firm was to return to receive the bond, was Saturday afternoon, but generally, circuit courts do not operate

on Saturday afternoons. Sunday being the 19th, there was no court sitting according to law. On the 20th, being Monday, the presiding judge who, according to the brief and argument of appellant's counsel had left the jurisdiction, was in fact in Monrovia and presided over court, and tried cases on every day of the week.

It is clearly evident therefore, that appellant's counsel has misinformed this Court as to the facts, hoping to influence its judgment.

Counsellors before this Court have been warned repeatedly to be honest and fair to their clients as well as opposing parties and not to mislead this Court.

All that history seems to teach some people is that an event had once occurred and is past. It is obnoxious to law and justice for a lawyer to use the judiciary as a means to suppress the rights of litigants.

Where a lawyer has failed to professionally and expertly handle the case of his client, it is only ethical and honest, on his part, to admit his faults and advise his client accordingly, and not to induce him in defending a groundless cause with hope to blame the judiciary for the outcome.

In a similar case, *Garteh v. Padmore*, 22 LLR 51 (1973), the appeal bond and the notice of the completion of the appeal were not timely processed by the appellant's counsel. In dismissing the appeal, the Court held that "this is attributable to the careless and imprudent manner in which some lawyers are wont to handle the interest of their clients because of sheer indifference on their part." Such was the case with appellant's counsel in the trial court.

The wilful and negligent acts of appellants' counsel, by their failure to perfect the appeal, renders it obligatory on this court to grant the motion to dismiss the appeal. *Vamply v. Manning*, 25 LLR 188 (1976).

The motion is hereby granted and the appeal is dismissed with cost against appellant. The Clerk of this Court is hereby ordered 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.