

LA FONDIARIA INSURANCE COMPANIES,
LTD., Appellant, v. DAVID HEVDAKOR, for
himself, and for his infant daughter,
Gbormah, Appellees.

MOTION TO DISMISS APPEAL. MOTION TO VACATE JUDGMENT.
(VENUE NOT GIVEN.)

Argued November 3, 1971. Decided November 27, 1971.

1. Before considering a motion challenging the jurisdiction of a lower court over the subject matter of an action, the Supreme Court in the future will first consider whether it has jurisdiction in the matter.
2. All precepts and processes, including notice of completion of an appeal, issuing out of the courts of Liberia are required to be served by the ministerial officer of each court.
3. A notice of completion of appeal is not a declaration requiring a revenue stamp to be affixed to it.
4. The Supreme Court prefers to consider causes before it on their merits rather than on mere technicalities; hence, motions brought to dismiss an appeal or to vacate a judgment on jurisdictional issues will not be considered unless absolutely necessary.

Two motions were entertained by the Court herein, one brought by appellees to dismiss the appeal on the grounds of improper service of notice of completion of the appeal and for failure to affix a revenue stamp to that notice, and the other motion herein made by appellant to vacate the judgment against it in a wrongful death action, contending the lower court lacked jurisdiction over the subject matter of the action. The Supreme Court was disinclined to deal with either motion, consequently denying both, preferring, the Court held, to properly deal with the substantive issues and the merits on the appeal pending before it, rather than the technicalities presently raised (though the Court considered, in its opinion, the grounds of appellees' motion untenable at law). *Motions denied.*

Christian Maxwell for appellant. *Joseph Findley* for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

Before this Court were two motions, a motion to vacate the judgment of the trial court for want of jurisdiction over the subject matter, filed by the appellant, and a motion to dismiss for failure to proceed, as well as to affirm the judgment of the lower court, filed by the appellees, growing out of an action of damages for wrongful death, which is presently on appeal before this Court.

Appellant contended that its motion attacking the jurisdiction of the trial court over the subject matter should be heard first, since this issue can be raised at any time prior to the rendition of final judgment. *Richards v. Commercial Bank*, decided March Term, 1971, in which two motions were filed, one for want of jurisdiction of the trial court over the subject matter, and the other to dismiss because all of the appellate steps had not been completed. The Court considered only the issue relating to jurisdiction of the trial court, on the ground that jurisdiction over the cause can be raised at any stage of the proceedings. It is the opinion of this Court that the motions should have been heard in reverse order, and since the Court was silent on the question of its own jurisdiction, the holding in that case should be confined strictly to its facts and relied upon as reaffirming the principle that a challenge to a court's jurisdiction over the subject matter of an action can be raised at any time. It is also the opinion of this Court that in order to determine whether the trial court had jurisdiction over the subject matter, even though this issue can be raised at any time, this Court must of necessity determine first whether it has jurisdiction to make such a determination. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of the reviewing court, and then of the

court from which the record comes, 3 AM. JUR., *Appeal and Error*, § 839. Hereafter, this Court will always consider first whether it has jurisdiction to review, before deciding the question of jurisdiction of the lower court.

Accordingly, the Court first heard appellees' motion to dismiss for failure to proceed, as well as to affirm the judgment of the lower court, because it raised in its first count the issue of whether this Court has jurisdiction to hear the appeal because of failure to serve the notice of appeal. In counts 1 and 2 of the motion, appellees contend that the notice of appeal was served by the sheriff of Grand Bassa County, contrary to the Civil Procedure Law, L. 1963-64, ch. III, § 5109, which provides that ". . . 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." Any service of a notice of completion of appeal in contravention of this statute, such as by the sheriff, renders the appeal defective and, in accordance with the same Civil Procedure Law, § 5111, subject to dismissal. Appellees did not deny receiving the notice of completion, for attached to his motion papers was a certified copy of the notice of appeal which was served and returned by the sheriff.

Rule IV, Part 4, of the Revised Rules of the Supreme Court, provides that in addition to the appellee being given a copy of the notice of appeal by the appellant, the original should also be served by the sheriff of the trial court, and such service returned by him endorsed on the back thereof. This Rule is not in conflict with the statute; in fact it complements the statute. Therefore, since the statute and the Rule of Court are not in conflict, it is our opinion that the Rule should also be followed by having the ministerial officers of the trial court serve and return the notice in accordance with law. *Cooper v. C.F.A.O.*, decided November 26, 1971. All precepts

and processes of court in Liberia are required to be served by the ministerial officer and such service returned by him. Civil Procedure Law, *supra*, §§ 336, 342. The reason for the rule, as stated in a long line of cases decided by this Court is to show proof of service. *McC-Auley v. Laland*, 1 LLR 254 (1894); *Melton v. Republic of Liberia*, 2 LLR 25 (1909); *Brownell v. Brownell* 5 LLR 73 (1936); *Witherspoon v. Clarke*, 14 LLR 14 (1960). In view of the foregoing, counts 1 and 2 of appellees' motion are not sustained.

Appellees also contend in count 3 of the motion that the notice of completion was defective because it did not carry a revenue stamp, contrary to the Stamp Duties Statute, citing Revenue and Finance Law, 1956 Code, 35:570, contending that a notice of completion of appeal is a declaration and, therefore, should have a tax stamp affixed to it. It is our opinion that a notice of appeal is a *notice* and not a declaration and, hence, is not one of those documents or instruments subject to such tax. This being so, the notice of appeal was not defective. It seems necessary to sound a warning first given by this Court sixty years ago in *Page v. Jackson*, 2 LLR 47, 48 (1911), and again forty-two years ago in *Pratt v. Haxeley*, 3 LLR 127, 128 (1929), that this Court is not inclined to look favorably upon technical points which do not affect the merits of the controversy. The court of last resort should deal with the principles underlying every issue brought before it. Causes properly on the calendar of this Court should be heard speedily and fully, and should be disposed of upon their merits.

In passing it must be noted that in count 6 of appellant's resistance to the motion to dismiss for failure to proceed, it was pointed out that appellees had not affixed a revenue stamp to the certificate from the clerk of the court, marked exhibit "B," and filed with the motion. Appellees' failure to put a 50-cent revenue stamp on this

document was in violation of the statute. Revenue and Finance Law, 1956 Code, 35:570.

Since the arguments upon which appellees based the motion to dismiss for failure to proceed are untenable in law, the motion is hereby denied, with costs against appellees.

After establishing that the appeal was properly before it, the Court proceeded to hear appellant's motion to vacate the judgment of the trial court for want of jurisdiction over the subject matter. Appellant contended in the motion that inasmuch as there is no statute in Liberia providing for damages or compensation for wrongful death, the trial court was without jurisdiction to try the cause of action growing out of the accidental death of appellees' wife and mother respectively. Appellant in the motion and in his argument referred to the ruling of the trial judge on the issue of jurisdiction over the subject matter, and stated that the judge "sought to confuse the issue of survival of actions with that of wrongful death" as they related to the jurisdictional issue raised in the Court below, but neglected to make profert of the ruling of the trial judge, thus making it necessary for us to check the record of the case already pending on appeal. Appellees argued that the trial court did have jurisdiction over the subject matter because, according to Civil Procedure Law, L. 1963-64, ch. III, § 3, there is only one form of civil action, and a review of the judgment should be done by appeal, rather than on a motion to vacate the judgment. Because of the importance of the issues raised by both parties, and since the case is presently on appeal, this Court prefers to hear the appeal, as it does not favor deciding cases before it upon motions to dismiss or vacate judgments unless it is absolutely necessary, but would rather go into the merits of the case and decide it according to the law and evidence. Therefore, the question of the jurisdiction of the lower court

is held in abeyance until this Court hears the appeal. Under the circumstances, the motion to vacate for want of jurisdiction of the trial court over the subject matter is also denied, award of costs to abide final determination of the case.

Motions denied.