

ABU B. COLE, et al., Appellants, v.
ALHAJI LARMI, Sheriff of the City of
Monrovia, Appellee.

MOTION TO DISMISS APPEAL FROM THE MONTHLY AND PROBATE
COURT FOR MONTSEERRADO COUNTY.

Argued January 27, 1977. Decided February 18, 1977.

1. An appeal will be dismissed for failure to serve a notice of completion of the appeal even where such failure is due to the neglect of the clerk of the trial court in complying with appellant's direction to issue such notice.
2. It is the duty of appellants to superintend the appeal and to see that all legal requisites are completed.

This case is before the Supreme Court on a motion to dismiss the appeal based on appellant's failure to file and serve a notice of completion of the appeal. Appellants argued that appellee's motion should be denied because the appellants had directed the clerk of the trial court to issue such a notice and he had neglected to do so.

The Court held that it was the duty of the appellants to follow through and oversee the perfection of their appeal, and that the neglect of the trial court did not exonerate them from the statutory requirement of serving an appellee a notice of completion. The *motion* to dismiss was therefore *granted*.

Joseph P. Findley for appellants. *Christian Maxwell* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

This case is a matter emanating from the Monthly and Probate Court for Montserrado County. Appellants being dissatisfied with the ruling of the Commissioner of Probate noted exceptions and prayed an appeal to this

forum for final review. Upon assignment for the hearing of this matter, appellee filed a motion to dismiss the appeal. The two-count motion avers that, as shown by a certified copy of an inventory of transcribed records forwarded to the Supreme Court with the motion and marked exhibit "A," appellants failed to file and serve a notice of completion of appeal, thus depriving the Supreme Court of jurisdiction to hear and determine the case.

Appellants concede in their resistance that no such notice was issued or served, but oppose the motion to dismiss on the ground that they directed the clerk of the trial court to issue a notice of completion of the appeal even though this does not appear with the records included in exhibit "A." They aver that their directive is shown by a photocopy of a letter from them to the clerk, and also by a photocopy of a letter to the Supreme Court from the clerk, both of which they allege are filed with the resistance.

It is regrettable that because of the position taken by appellee in filing a motion to dismiss the appeal, the Court is not legally authorized to open the records. But reverting to the inventory transmitting transcribed records from the lower court, it is observed that the notice of completion of the appeal with the service of same, endorsed by the ministerial officer of that court, is conspicuously absent.

Although appellants' counsel has attempted to impute this to the negligence or mistake of the clerk of the trial court, yet it is the duty of the appellants to superintend the appeal and to see that all legal requisites are completed. *Johnson v. Roberts*, 1 LLR 8 (1861).

The Civil Procedure Law provides:

"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." Rev. Code 1:51.9.

In his argument on the motion to dismiss the appeal, counsel for appellee contends that the letter from the clerk to the Supreme Court in connection with diminution of records has no legal standing before this Court and is not to be considered as a notice of appeal. Further, counsel for appellee said that "the sending of a letter to the clerk to issue the notice of appeal as argued by appellant was not sufficient diligence as the law contemplates; that after having forwarded the directive to the clerk, as he said he did, he should have followed it up and seen to it that the appeal of the appellant was perfected, in keeping with statute."

The letter referred to by the movent addressed to the Supreme Court by the clerk of the Monthly and Probate Court, Montserrado County, states merely that on a day when he was absent from work, his assistant, in forwarding the records in the case inadvertently omitted "certain of the pleadings."

No reference is made in the letter to notice of completion of the appeal. Therefore the said letter has no bearing on the case at bar.

In view of the foregoing and the law controlling, it is obvious that appellants failed or neglected to safeguard their interest by superintending their appeal as the law directs. The Court is therefore left with no alternative but to grant the motion with costs against appellants. It is so ordered.

Motion to dismiss granted.