

VARNA BOKAI, KARMO GBEAR, and GBANJA
SEKU, Appellants, *v.* REPUBLIC OF LIBERIA,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
GRAND CAPE MOUNT COUNTY.

Argued November 13, 1958. Decided December 19, 1958.

1. Where notice of appeal, informing the appellee that an approved bill of exceptions and appeal bond have been filed, has been duly served and returned by the sheriff, such notice will not be held invalid by reason of omission of a clause commanding the sheriff to summon the appellee to appear at a designated term of the Supreme Court.
2. A sheriff is without authority to pass upon the sufficiency of a notice of appeal presented to the sheriff for service and return.
3. Failure to affix a stamp to an appeal bond is not a ground for dismissal of a criminal appeal.

On appeal from a judgment of the court below in a prosecution for assault and battery with intent to do grievous bodily harm, appellee's *motion* to dismiss the appeal was *denied*.

T. Gyibli Collins for appellant. *Assistant Attorney General J. Dossen Richards* for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.

At the call of this case for trial, the clerk informed the Court that a motion to dismiss the appeal had been filed by the appellee and resisted by the appellant. The Court thereupon ordered the motion to dismiss the appeal and the resistance thereto read. The motion reads as follows:

"Now comes the Republic of Liberia, appellee in the above entitled cause, by and through J. Dossen Richards, Assistant Attorney General, and most respectfully moves and prays this Honorable Court to dismiss

the appeal taken by the appellants, and for legal reasons submits the following:

- "1. That this Honorable Court has no jurisdiction over the appellee because the notice of completion of appeal is materially defective, in that it does not contain a clause summoning the appellee to appear at the October, 1958, term, of this Honorable Court to defend in said case. Appellee submits that the omission of said clause is a fatal defect, since the notice of appeal to an appellate court is a counterpart of, and serves the same purpose as a writ of summons in a lower court, the service and return of which place the appellee under the jurisdiction of the court. The filing of an approved bill of exceptions and an approved appeal bond does not give this Court jurisdiction over the appellee, but only over the cause.
- "2. And also because appellee further submits that the notice of appeal is further defective because it is not directed to the ministerial officer of the trial court, and therefore Henry Bakana, Sheriff, Grand Cape Mount County, had no authority to serve said defective notice of appeal.
- "3. And also because appellee says that the appeal bond filed by the appellant is fatally and materially defective because it does not bear the required stamp according to law."

To the above motion the appellant filed the following resistance:

"Varna Bokai, *et al.*, appellants, resisting the application of appellee's counsel allege as follows:

- "1. That, as to Count '1' of said application, the appellants submit that, where appellee is clearly informed that the appeal is taken and to what term of court said appellee is to appear, the notice of appeal is sufficient and is tantamount, in substance, to a summons, since no particular form of words is necessary to constitute said notice.

- “2. That, as to Count ‘2’ of said application, said appellants submit that granting the notice is not directed to the sheriff, but nevertheless served by said ministerial officer as a legitimate duty, consequently said omission would not affect the validity of the appeal, particularly since the appellants had no duty to perform in the issuing of said notice.
- “3. That, as to Count ‘3’ of said application, the appellants submit that there is no statute which requires the stamping of appeal bonds in criminal cases. The Republic neither receives nor pays costs or any expense incurred in conducting appeals in such causes because of the doctrine of public policy adopted by Government in the administration of justice.”

The notice of appeal reads as follows:

“The appellee in the above entitled cause, will take legal and judicial notice that the above-named appellants, in the above-entitled cause, have this 22nd day of June, 1957, completed their appeal to the Supreme Court of Liberia by filing their approved bill of exceptions and approved appeal bond, thereby placing the above named appellee within the jurisdiction of the Supreme Court of Liberia at its October, 1957, term. And for so doing this shall constitute your sufficient notice of the completion of the appeal to the appellate court in keeping with law. Issued this 22nd day of June, 1957.”

An inspection of the above notice of appeal reveals that it does not contain a clause commanding the sheriff to summon the appellee to appear at the October, 1957, term, of the Supreme Court to defend in said cause, yet it gives the appellee notice of the filing of an approved bill of exceptions and an approved appeal bond, and the bringing of appellee within the jurisdiction of the Supreme Court, which notice of appeal, although not directed to the ministerial officer of the lower court, was by him served and

returned. In this particular instance, we are of the opinion that the requirement of giving notice has been met, and that such technicalities should not be permitted to defeat the rights of parties especially in criminal actions wherein the liberty of individuals is concerned.

As this Court said in *Page v. Jackson*, 2 L.L.R. 47, 48 (1911):

“This court is not inclined to look favorably upon technical points, which do not go to the merits of a controversy. A court of last resort should deal with the principles underlying every issue brought before it.”

This Court does not see wherein the rights of the appellee have been materially prejudiced by the omissions complained of.

In Count “2” of the motion to dismiss the appeal, it is further contended by the appellee that the sheriff of the court “had no authority to serve said defective notice of appeal.” It is the opinion of this Court that a sheriff has no authority to question the correctness or defectiveness of a process before service, and we quote the following:

“It is the duty of a sheriff or constable to serve or execute all process delivered to him for that purpose which appears on its face to have issue from competent authority, and with legal regularity, and the service of execution of which is within the lawful powers of his office. This duty is not affected by any private knowledge which he may have concerning the existence of the cause of action to which the process relates, or the validity of the proceedings in which the process was issued; nor can a sheriff refuse to serve a process regularly issued to him, because in his opinion it is irregular.” 35 CYC. 1534-35 *Sheriffs and Constables* § 6.

Counts “1” and “2” of the resistance are therefore sustained, and Counts “1” and “2” of the motion to dismiss the appeal are overruled.

Count "3" of the motion to dismiss the appeal alleges that the appeal bond does not bear the legally required stamp. To require a defendant in a criminal case to affix the legally required stamp on his appearance bond or appeal bond, as is done in civil cases, or even to purchase a subpoena for the production of his witnesses before court, would be incurring costs which, if he eventually succeeds in obtaining a judgment in his favor, he could not recover, the Government being a party to the case, upon the principle that the Republic of Liberia neither receives nor pays costs, as has been enunciated by this Court in *In re Dennis*, 2 L.L.R. 534 (1924). See also Constitution of Liberia, Article I, Section 7th.

We are therefore of the opinion that the motion to dismiss the appeal should not be granted, and it is hereby denied. And it is so ordered.

Motion denied.