

**CITIBANK, N.A. LIBERIA BRANCH, (In
Liquidation), Appellee/Movant, v. SAMUEL A.A.
BARROW, Petitioner/Respondent.**

APPEAL AND MOTION TO DISMISS APPEAL FROM THE NATIONAL LABOUR
COURT, MONTSERRADO COUNTY.

Heard: October 12, 1994. Decided: February 16, 1995.

1. The service of a notice of appeal upon the appellee by the ministerial officer of the trial court completes the appeal and places appellee under the jurisdiction of the appellate court. When not completed within the statutory time, the Court will dismiss said appeal for want of jurisdiction.
2. An appeal must be perfected within sixty days after final judgment by the service of the notice of completion of appeal upon the appellee.
3. The notice of completion of appeal must not only be issued by the clerk of the court within sixty days after judgment, but must be served within such time.
4. The provision of our Civil Procedure Law, Rev. Code 1:51.4, under requirements for completion of an appeal, is interpreted to mean that the serving and filing of the notice of completion of an appeal must be done within sixty (60) days from the date of the trial court's judgment.

From a ruling of the National Labour Court on a petition for judicial review, both Defendant CITIBANK and complainant Samuel A. A. Barrow, noted their exceptions and announced an appeal to the Supreme Court. Subsequently, Defendant CITIBANK, moved to dismiss appellant's appeal on the grounds that the appellant did not serve the notice of completion of appeal on him within 60 days as provided by statute. Complainant Samuel A. A. Barrow, now respondent, did not refute or deny the movant's allegation; rather, he contended that the motion is filed in bad faith and that the issue raised is a mere technicality and the Court should not look at technicality but instead go directly into the merits of the case.

The Court held that the serving and filing of the notice of completion of an appeal must be done within sixty (60) days, and that it is the service of the notice of completion of the appeal on the appellee that confers appellate jurisdiction over

the person of the appellee. Accordingly, the Court overruled the argument of technicality and the filing of the motion in bad faith as contended by the respondent/appellant, and *granted* the motion dismissing the appeal.

H. Varney G. Sherman and *Felicia V. Coleman* appeared for appellee/movant. *Jonathan Williams* appeared for the respondent/appellant.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This case emanated from the Ministry of Labour through the National Labour Court for judicial review and is now before us on appeal. According to the history of the case as argued before us, both the complainant Samuel A.A. barrow and the defendant CITIBANK excepted to the final ruling of the National Labour Court Judge and appealed therefrom. The Defendant CITIBANK now maintains that the appellant/complainant has not completed his appeal in that he did not serve the notice of completion of appeal on him within 60 days as provided by statute.

For the benefit of this opinion, we shall quote the relevant portion of the motion to dismiss which are embodied in counts 1 through 8 of the motion:

- "1. That petitions for judicial review were filed in the Labour Court for Montserrado County by both complainant Samuel A. A. Barrow and defendant Citibank, N.A., Liberia Branch (In Liquidation), respectively, from the ruling of the hearing officer, Ministry of Labour.
2. That both petitions for judicial review were jointly heard by the Labour Court on the 8th day of July, 1993.
3. That on the 2nd day of August, 1993, the Labour Court rendered its final judgment on both petitions for judicial review filed by Samuel A. A. Barrow (complainant in the Labour Ministry) and Citibank, N.A. Liberia branch (In Liquidation); to which final judgment both the complainant and defendant excepted and announced an appeal to

the Honourable Supreme Court of Liberia, sitting in its October, A.D. 1993 term, and said appeals were granted.

4. That petitioner/respondent Samuel A.A. Barrow filed and served his bill of exceptions and appeal bond within statutory time.
5. That even though the petitioner/respondent filed his notice of completion of appeal on October 1, 1993, yet he failed and neglected to serve a copy of said notice of completion of appeal on appellee/movant within sixty (60) days as required by statute and case law. Instead, petitioner/ respondent served copy of said notice of completion of appeal on appellee/movant on October 6, 1993, quite five (5) days out of statutory time for the service of notice of completion of appeal, in violation of statutes and case law which require that notice of completion of appeal when served more than sixty (60) days after rendition of judgment, warrants dismissal of the appeal. Copy of said notice of completion of appeal is hereto attached and marked exhibit "M/1".
6. That the Civil Procedure Law requires that the following acts shall be necessary for the completion of an appeal:
 1. Announcement of the taking of the: appeal;
 2. Filing of the bill of exceptions;
 3. Filing of an appeal bond;
 4. Service and filing of notice of completion of the appeal. Civil Procedure Law, Rev. Code 1:51.4.
7. That further to count six (6) above, the Supreme Court of Liberia held in the case: *Hannah v. Seas*, 16LLR 84 (1964) that:

'Where notice of completion of appeal was served and returned more than 60 days after rendition of judgment, the appeal. will be dismissed.

This Honourable Court relying on the case *Morris v. Republic*, 4 LLR 125 (1934) further went on to say that:

“The service of a notice of appeal upon the appellee by the ministerial officer of the trial court completes the appeal and places appellee under the jurisdiction of the appellate court. When not completed within the

statutory time, the court will dismiss said appeal for want of jurisdiction.

8. That also in the case *Gallina Blanco, S.A. et. al. v. Nestle Products. Ltd., et al.*, 24 LLR 20 (1975) and the case *Geddina v. Harb et al.*, 19 LLR 407 (1970), the Supreme Court held that an appeal must be perfected within sixty days after final judgment by the service of the notice of appeal upon the appellee. Also that the notice of completion of appeal must not only be issued by the Clerk of the Court within sixty days after judgment but must be served within such time “.

We also quote counts four and five of the resistance to this motion:

- “4. Because respondent says as to count 5, same is misleading in that all attempts to personally serve either Counsellor H. Varney G. Sherman or Attorney Felicia Coleman was not possible until the 6th day of October A. D. 1993, at 11:20 a.m. Respondent most respectfully request court to take judicial notice of the returns on the back of the notice of assignment for the hearing of argument in the main case with specific reference to the fact that on the 20th day of May A.D. 1994 even though Counsellor H. Varney G. Sherman was in his office on that day, the Marshal was told that he had traveled and therefore the secretary refused to receive and sign for the assignment;
5. Because respondent says further to count 4 above, that the motion to dismiss was filed in bad faith with the intent to delay and baffle justice in that Counsellor H. Varney G. Sherman had constructive service of the notice of the completion of appeal, that is to say he knew or should have known that attempts were being made to serve him the notice of the completion of the appeal. Respondent says under the doctrine of equitable estoppel Counsellor H. Varney G. Sherman is estopped from raising the issue that he was not personally served within the sixty days provided under the statute. This makes counts 5,6,7 and 9 of the motion fit subject for

dismissal and this Respondent so prays."

The respondent has not refuted or denied the fact that he served the appellee/movant on the 65th day after the rendition of the final judgment. Instead, he is saying that it is a mere technicality and that the court should not look at technicalities but should rather go into the merits and demerits of the case. As to counts 1, 2, 3 and 4 of the motion, the appellant/respondent contends that same are factual issues and therefore offer no triable issues. As to counts 5, 6, 7 and 8 which relate to the dismissal of the appeal for non service of notice of completion of appeal within statutory time, the appellant/respondent argued that same was pleaded in bad faith because the date on which the affidavit was sworn to before Justice of the Peace Mary Howe, was the 20th day of May A. D. 1994, the day on which Counsellor H. Varney G. Sherman sworn to the affidavit. To the mind of the court, there is no rule against the filing of a legal document including the swearing to an affidavit on a day that a lawyer is expected to travel, especially so when such counsellor is traveling by plane in the afternoon.

Recourse to the copy of the notice of completion of appeal shows that same was served and received by Counsellor Felicia V. Coleman on October 6, 1993 at 11:20 a.m. The provision of our Civil Procedure Law, Rev. Code 1:51.4, under requirements for completion of an appeal, has been interpreted by this Court to mean that the serving and filing of the notice of completion of an appeal must be done within sixty (60) days. As further quoted above in the motion, it is the service of the notice of completion of the appeal on the appellee that confers appellate jurisdiction over the person of the appellee. We therefore dismiss the argument of technicality and the filing of the motion in bad faith as contended by the respondent/ appellant.

In view of the above, it is the opinion of this Court and we so hold, that the appellant/respondent having failed and neglected to serve the notice of the completion of the appeal within the statutory time of sixty (60) days so as to bring the appellee/movant under the jurisdiction of the court, said appeal

is hereby dismissed with costs against appellant. The Clerk of this Court is hereby ordered to send a Mandate to the Court below ordering the judge presiding therein to resume jurisdiction and give effect to this judgment, And it so ordered.

Motion granted; appeal dismissed.