

LECONTEE TOMMY GWEH et al., Petitioners, v.  
LIBERIA OPERATIONS INC., by and thru its  
General Manager, Respondent.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS DENYING THE  
PETITION FOR A WRIT OF MANDAMUS.

Heard: April 28, 1993. Decided: July 23, 1993.

1. The application for a writ of mandamus to compel the clerk of court to serve notice of completion of appeal will not be granted where the application is made after the time required by statute for completion of appeal.
2. Where a judicial officer fails to perform his duty and such failure is adverse to a party, the party so affected must make every effort to compel the performance of such duty within the time specify by statute to complete that duty.

Petitioners, plaintiffs in the trial court, filed an action of damages against respondent in the Circuit Court Second Judicial Circuit, Grand Bassa County. After disposition of law issues, the complaint was dismissed in its entirety. Petitioners excepted and announced an appeal. Interestingly, after the expiration of the time allowed for perfecting appeal, petitioners filed a writ of mandamus against the clerk to show cause for his refusal to serve the notice of completion of appeal. The Chambers Justice denied the writ on grounds that the writ was filed after the sixty days allowed for completing the appeal process. On appeal to the full bench, the ruling of the Chambers Justice was affirmed, the Court holding that the petitioner had failed to exert the necessary efforts to compel the performance of the duty by the clerk in issuing and having served the notice of completion within the time period allowed by statute. Accordingly, the Court *denied* the petition and the writ.

*Francis Topor* appeared for petitioner. *Philip J. L. Brumskine*, counsel for respondent, did not appear.

MR. CHIEF JUSTICE BULL delivered the opinion of the

Court.

This case which originated in the Second Judicial Circuit, Grand Bassa County, has come before this Court because of the appeal taken from the ruling made on an application for a writ of mandamus by Mr. Justice David D. Kpomakpor, who was then the Justice presiding in Chambers.

Plaintiffs who are the petitioners herein, instituted an action of damages for injury to property in the Second Judicial Circuit Court for Grand Bassa County. Following a hearing of the law issues in the action of damages, petitioners' entire action was dismissed. Petitioners' counsel timely excepted to said ruling dismissing the action and announced an appeal to this Supreme Court. All of the procedural requirements under the appeal statute, that are necessary to empower this Supreme Court to hear this appeal, were completed by petitioners' counsel, except that the notice of completion of appeal, although applied for, was never issued by the clerk of the trial court and served in accordance with the relevant statute. Because the clerk of the Second Judicial Circuit Court failed to issue the notice of completion of appeal, petitioners applied to the Justice in Chambers of the Supreme Court for a writ of mandamus to compel the issuance of said notice.

When this matter was called for hearing before us, Counsellor Francis Torkpor appeared for the petitioners but Counsellor Philip J. L. Brumskine, counsel for respondent, did not appear. Since both parties filed briefs in this matter, this Court proceeded to hear argument from petitioners' counsel who was present, and thereafter reserved ruling. This Court, in this opinion, has given consideration to the argument of petitioners' counsel as well as the two briefs filed in this case.

This appeal, as mentioned earlier, is before this Court for review of the ruling of the Chambers Justice on the application for a writ of mandamus filed before him by petitioners. According to the records before us and the argument advanced by counsel for petitioners, who applied for the writ of mandamus, it appears that on the 27<sup>th</sup> day of May, A. D. 1988, petitioners' counsel prepared and handed to the clerk in the

court below, A. Henry Johnson, Esq., the notice of completion of appeal for his signature and for proper service. A fee of \$10.00 was paid to Clerk Johnson who failed to sign and deliver the notice of completion of appeal to appellant. Further, counsel argued before us that the clerk failed to issue the notice of completion of appeal because he demanded a fee of \$150.00, which petitioners' counsel refused to pay. The records reveal that the mandamus proceedings was applied for long after the expiration of sixty days after final judgment was rendered dismissing the action in the court below.

The final act for completion of any appeal is the issuance and service of a notice of completion of the appeal. This final act was not performed because the clerk below refused to sign the notice unless he was paid an amount of \$150.00. It was this refusal that prompted petitioners to apply for the mandamus to compel the clerk to issue the said notice.

In the brief filed by the respondent in these proceedings for the writ of mandamus, respondent has averred that the writ should have been applied for within the sixty-day period which the statute allows for the filing of an appeal bond. Instead petitioners filed his application for said writ 116 days after the rendition of final judgment in this matter by the trial judge.

Mr. Justice David D. Kpomakpor denied the petition for the writ of mandamus stating that the act which petitioners sought to compel the clerk to perform, that is to say, to issue the notice of completion of appeals was an act which at the time of said application, the clerk was under no duty to perform. In support of his ruling, the learned Justice relied upon the case *Sheriff v. Seysey and Gbalazeh*, found in 22 LLR 25 (1973). In this case, petitioners sought to compel the trial judge to approve petitioners' bill of exceptions. The court held that the application for the writ of mandamus was not timely made because said writ should have been applied for within the ten days allowed by statute for approval of a the bill of exceptions.

These mandamus proceedings, in our opinion, present only one issue for our determination and that is: at what time should an application be made to the Supreme Court for a writ of mandamus to compel the clerk of the trial court to perform a

duty which he is by law required to perform?

Under our appeal statute after the filing of the appeal bond by appellant, "the clerk of the trial court on application of the appellant shall issue a notice of 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." Civil Procedure Law, Rev. Code 1: 51.9.

Judging from the records on appeal before us, the appellants' counsel does not appear to have exercised that degree of care and supervision which is required in the proper handling of this appeal. We observe that even after the clerk had illegally demanded from counsel the payment of \$150.00 (One Hundred Fifty Dollars) as a precondition for the issuance of the notice of completion of appeal, counsel waited for a period of 116 days after final judgment had been rendered in this matter before applying for the writ of mandamus to compel the clerk to issue the notice of completion of appeal. Petitioners' counsel knew fully well that in order to complete the appeal, service and filing of the notice of completion of the appeal is a mandatory requirement and the statute clearly requires that upon the filing of the appeal bond, counsel shall apply to the clerk to issue the notice of completion of appeal for service and filing. The 60<sup>th</sup> day after final judgment is the last day for the final act to be performed. Counsel knowing it is incumbent upon him to ensure that all steps necessary for the completion of the appeal which is under his supervision and control must be completed within sixty days after final judgment. This statute which presently governs the issuance of the notice of completion of appeal imposes a primary duty upon the appellant to supervise and participate in the final act or process which is necessary to the completion of the appeal. Neglect by appellants' counsel of this duty is fatal to the appeal.

Therefore, if for any reason it appears to counsel that any officer of the court who must perform some duty to complete the appeal process refuses to do so, it seems reasonable that the party so affected by the officer's refusal must make every effort to compel performance of such duty within the time specified

by the statute to complete said appeal.

We therefore fully agree with our learned colleague, Mr. Justice Kpomakpor, that application for a writ of mandamus to compel the clerk of the trial court to issue a notice of completion of appeal, which is necessary to complete the appeal process must be applied for before the expiration of sixty days after final judgment, the period granted by law to complete appeal.

We note with great disfavor the conduct of the clerk of the trial court from which the appeal was taken, including requesting illegal fees and issuing a false certificate.

We wish to emphasize that it is the primary duty of the Judicial Branch of our Government to ensure that justice is administered fairly, efficiently and expeditiously. It is therefore regrettable that whenever we are called upon to finally determine a matter before us, we are confronted with facts and circumstances due to negligence of counsel and dishonesty or dereliction of duty by court officers, have deprived party litigants of the justice which they seek in our courts. The matter now under review is a tacit example of such negligence on the part of counsel and dishonesty and dereliction of duty on the part of the clerk of the Second Judicial Circuit Court of Grand Bassa County, which has resulted in embarrassment and loss to innocent litigants who, in pursuance of their rights to obtain redress in our courts, have no alternative but to employ the aid of counsel and the services of court officers, who are paid by the state, only to experience disappointment.

Before concluding this opinion we wish to sound a strong and serious warning to all clerks of courts in general, and in particular to A. Henry Johnson, the clerk of the court of the Second Judicial Circuit, that henceforth, they must perform their official duties honestly, and with diligence, dedication and commitment. If this court is faced with any similar dishonest conduct of an officer of court, such officer will be forthwith dismissed.

It is with regret anytime this court has to reprimand a counsellor of the Supreme Court Bar who, for such neglect in the performance of his professional duties, causes embarrass-

ment, injury or loss to his client. We are convinced from the records before us that Counsellor Francis Torkpor was unduly negligent in the handling of the matter which these petitioners entrusted to him. We expect that hereafter this lawyer will perform his duty with a greater degree of professionalism.

In view of all that has been said above, it is our opinion that the ruling of the Chambers Justice should be and the same is hereby confirmed and affirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing it to resume jurisdiction and enforce its judgment. Costs of these proceedings are assessed against the petitioners. And it is hereby so ordered.

*Petition denied.*