BOIMAH TAYLOR, Appellant, *v.* PASI and WONKOR YARSEAH, Appellees.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Argued January 31 and February 1, 1977. Decided February 18, 1977.

1. An appeal will be dismissed for failure to serve on appellee a notice of completion of appeal.
2. Lack of proper description by metes and bounds of the property offered as a lien of the appeal bond is also ground for dismissal of the appeal.
3. In representing a client, a lawyer owes a duty to observe the rules of the Code of Moral and Professional Ethics, and in particular, to avoid careless errors in handling an appeal.

Appellees moved to dismiss the appeal, claiming that no notice of completion of the appeal had been served and that the appeal bond was defective for lack of a description of the property offered as a lien of the bond. The Court upheld both appellees' contentions, and took the opportunity to call attention to the prevalent carelessness of lawyers in handling cases before the courts to the prejudice of their clients. The Court announced that henceforth a lawyer guilty of acts of neglect or of mishandling a case would be subject to discipline by fine, suspension, or disbarment. The *motion* to dismiss was *granted.*

Eddie S. Watson for appellant. *S. Edward Carlor* for appellees.

MR. JUSTICE HORACE delivered the opinion of the Court.

This is a case that emanates from the Circuit Court for the Ninth Judicial Circuit, Bong County. Appellees, plaintiffs in the court below, instituted cancellation pro-

ceedings against appellant, defendant in the court below. Appellant having lost the case in the trial court appealed to the Supreme Court for review and final determination.

Appellees have moved to dismiss the appeal on two grounds; namely, (1) that no notice of completion of appeal had been served on appellees. This point was confirmed by a certificate from the clerk of the trial court to the effect that no notice of completion of appeal had been served because appellant did not provide financial means to facilitate the service of same; (2) that the appeal bond was defective because there was no proper description by metes and bounds of the property offered as a lien of the bond in the affidavit of sureties.

Appellant filed his return in which he contested the points in the motion to dismiss on the following grounds: (1) That he had paid the clerk of the trial court in full for the transcription of the records including payment for the issuance of the notice of completion of appeal and he therefore had no further duty to perform. The negligence of the clerk of court should not prejudice his interest. (2) That the description of the properties offered as a lien of the bond was sufficient guarantee that the sureties would indemnify the appellees. That the important thing in the description of the property in the affidavit of sureties is the statement of property valuation issued by the Ministry of Finance. That this Court has in a long line of cases warned against dismissing cases on technicalities.

It should be observed that appellant has not denied that appellees were not served with notice of completion of appeal, but that its issuance was a legal duty imposed upon the clerk of court. The certification of the clerk of court made profert with the motion to dismiss states clearly that the notice of completion of appeal was not served, not that it was not issued, and gave reasons for the nonservice. There is no showing anywhere that payment was made for transcription of the record including

payment for issuance of the notice of completion of appeal except the mere allegation made in appellant's returns.

With respect to the second point of appellants' returns that the requirement that the description of the property offered should be by metes and bounds in the affidavit of sureties is a mere technicality, we can only call his attention to the fact that this Court has interpreted the statute on the description of property in an affidavit of sureties. *West Africa Trading Corporation* v. *Alraine,* 24 LLR 224 (1975).

Ordinarily this case would have been decided by a judgment without opinion, but because of a pervailing condition that is becoming rather alarming in the practice before our courts, we decided to have an opinion written and filed in this case in order to make our position clear for the future.

We have observed that about fifty percent of the cases coming before us on appeal are decided on motions to dismiss rather than on the merits of the case. What concerns us is that most times the motions to dismiss carry one or more of the grounds laid in the statute for dismissal of an appeal, particularly nonissuance or nonservice of notice of completion of appeal and defective appeal bonds because of lack of sufficient description of the property offered to establish a lien of the bond. In spite of our many decisions on these points, counsel practicing before us continue to make the same errors. In the circumstances, it is not unreasonable to conclude that lawyers do not read the opinions of the Supreme Court, or that they are totally indifferent to the pronouncements of this Court. What is more important, however, is the fact that when these lawyers carelessly handle causes before this Court, or any other courts for that matter, the interests of their clients suffer and some person is deprived of rights which they can ill afford to lose.

It is obvious from what is happening—quite too often

in the practice now—that lawyers are unmindful of their obligation to their clients and the ethics controlling the practice as laid down in the Code of Moral and Professional Ethics in the Rules for governing Procedure in the Courts.

In the first place a lawyer upon oath in being admitted to the practice of law in this jurisdiction is bound, among other things, not to counsel or maintain any suit or proceeding which shall appear to him to be unjust, nor any defense such as he believes to be honestly debatable under the laws of the land; to employ for the purpose of maintaining the causes confided to him such means only as are consistent with truth and honor and never to seek to mislead a judge or jury by any artifice or false statement of fact or law; to maintain the confidence and preserve inviolate the secrets of his clients and not to accept compensation or reward in connection with the business of his client except from him or with his knowledge and approval; never to reject from any consideration personal to himself the cause of the defenseless or oppressed, or delay any client's cause for unjustifiable reasons, or for money. If he is obligated to all of these, how much more represensible is his wanton neglect or gross carelessness in the handling of his client's business?

The last sentence of Rule 4 under the Code of Moral and Professional Ethics reads thus: "Having undertaken such defense, the lawyer is bound by all fair and honorable means to present every defense that the laws of the land permit, to the end that no person may be deprived of life, liberty, property, or privilege but by due process of law." That rule relates particularly to criminal causes, but we feel it is applicable to all causes which a lawyer undertakes to represent either as plaintiff or defendant.

Rule 8 reads:

"A lawyer should endeavor to obtain full knowledge

of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. Whenever the controversy will not admit of fair judgment, the client should be advised to avoid or end litigation; it is unprofessional for a lawyer to advise the institution or continuation of an unmeritorious suit."

Rule 11 states:

"A lawyer should refrain from any act whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client."

Certainly, these obligations are unknown to some of our practicing lawyers, or they are being ignored.

When so many appeals have been dismissed on jurisdictional grounds, especially for improper and insufficient description of property in affidavits of sureties, it is inexcusable for a lawyer to be guilty of such neglect or carelessness in handling his client's cause.

In the instant case it came out during the argument that counsel who appeared before us did not handle the appellant's interest in the lower court, and so we sympathize with him and must say that he did his best in a difficult situation. But the lawyer who handled the case in the court below and failed to follow up his client's interest should be condemned for such gross carelessness.

Because of the alarming rate of recurrence of the same conditions which cause so many appeals to be dismissed, we have decided not to sound a further warning against such practices—that has been often done—but to take a definite position. In future where it appears to us that an appeal must be dismissed because of gross carelessness or neglect of a lawyer handling a litigant's interest, or where it appears in the appeal record that the case was carelessly and inefficiently handled in the trial court, we will severely discipline such lawyer either by fine, sus-

pension, or disbarment. No exceptions will be made to this decision. Let all lawyers practicing before the courts of Liberia take note.

However much we sympathize with the appellant in the instant case, in view of the many precedents set by us in similar circumstances, we have no alternative but to grant the motion to dismiss the appeal. The Clerk of this Court is hereby directed to send a mandate to the court below to resume jurisdiction and enforce its judgment. Costs ruled against appellant. It is so ordered.

Motion to dismiss granted.