

IN THE HONOURABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SRCHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A. Z. BANKS, IIIASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE

Afriland First Bank Liberia Limited, by & thru its
President/CEO, Mr. Hamadou O. Bayo, of the City)
of Monrovia, Republic of LiberiaMOVANT)

MOTION TO
DISMISS APPEAL

VERSUS

F.M.T. Construction Company, by & thru its CEO,
Mr. Gabriel K. Frimpong, and all Authorized
Officers of said entity, of the City of Monrovia,
Republic of LiberiaRESPONDENT

)

GROWING OUT OF THE CASE:

Afriland First Bank Liberia Limited, by & thru its
President/CEO, Mr. Hamadou O. Bayo of the City
of Monrovia. Republic of LiberiaRESPONDENT

NOTICE OF
EXCEPTIONS TO
APPELLANT'S BOND

VERSUS

F.M.T. Construction Company, by & thru its CEO,
Mr. Gabriel K. Frimpong, and all Authorized Officers
of said entity, of the City of Monrovia, Republic of
Liberia.....MOVANT 1

GROWING OUT CASE:

F.M.T. Construction Company, by & thru its CEO,
Mr. Gabriel K. Frimpong, and all Authorized Officers
of said entity, of the City of Monrovia, Republic of
Liberia.....PLAINTIFF

ACTION TO DAMAGES
FOR BREACH OF
CONTRACT

VERSUS

Afriland First Bank Liberia Limited, by & thru its)
President/CEO, Mr. Hamadou O. Bayo of the City of)
Monrovia, Republic of LiberiaDEFENDANT)

Heard: October 26, 2015.

Decided: June 24, 2016

MR. JUSTICE BANKS delivered the Opinion of the Court.

Counsellor Sylvester D. Rennie of the Law Office of Legal Watch appeared for the movant/appellee. Counsellor Cooper W. Kruah of the Henries Law Firm appeared for the respondent/appellant.

Often and repeatedly the Supreme Court is deprived or denied the opportunity of delving into and deciding cases appealed to it on the merit, unpleasantly to the detriment of parties to the proceedings, and many a times with grave negative impact on and undesirable deleterious consequences for the effective, substantial, and transparent administration of justice, attributed in large measure to a series of factors, primary amongst which are: (a) the reckless or sometimes sheer negligent procedural blunders committed by lawyers [*Kent v. Republic*, 6 LLR 50 (1937); *Deoud and The Board of General Appeals v. The Management of Firestone Plantations Company*, 36 LLR 445 (1989); *Ahmar v. Gbortoe*, 42 LLR 1127 (2004)]; (b) the failure of, indifference to, refusal by, or inability of the affected parties to adhere to the clear and unambiguous dictate and mandate of the statute, not fully digesting or appreciating the significance of their acts or actions, or the lack thereof, on their rights, the cases, and generally the rule of law. [*Ahmar v. Gbortoe*, 42 LLR 117 (2004)]; (c) the plain and open display of an apparent lack of knowledge of and appreciation for the law by some lawyers, judges and/or other court personnel; (d) situations which, although beyond the control of one or more of the disputing parties, such as the acts of God, or the illegal influence, or the corrupt or bias attitude or actions of trial judges or court staff, the lawyers or clients fail or neglect to alert the appellate court of or pursue the appropriate prescribed remedy or legal process; (e) the appellate court's strict and sometimes unbending interpretation of and rigid compliance with the letter of the statute and the procedural technicalities embedded therein, without according due regard to

uncontrollable intervening events not of the making of or attributable to the parties; and (f) the rather strict directive and prescriptions of certain of the procedural statutes which so circumscribe the appellate process that the slightest error by the appealing parties in fully adhering to the appeal requirements renders the appeal defective and dismissible.

The above are but a few of the factors that, over extended periods, have prevented the Supreme Court from exercising the full mandate accorded it by the Constitution and statute, the net effect of which is that some very atrocious rulings, decisions and judgments of the lower courts, and which negatively impacted the core of the administration of justice and inhibit the enjoyment of guaranteed rights. This was a situation not envisioned or contemplated by the framers of the Constitution or the crafters of statutes enacted by the Legislature pursuant to its constitutional mandate.

Indeed, the Constitution recognizes that the right of appeal is inviolable.

LIB. CONST., ART. 20(b)(1986). As such, it cannot be stifled by any branch of the Government, whether the Legislative, Executive or the Judiciary. *Jones and Thompson v. Pearson and Lef Investment Company*, 31 LLR 330 (1983); *Liberia Electricity Corporation v. Kpanan and Varpulah*, 37 LLR 316 (1993); *National Milling Company v. Bridgeway Corporation*, 36 LLR 776 (1990). In all of those cases, this Court recognized and took cognizant of the constitutional right of appeal, expressly granted under Articles 20(b) and 66 of the Constitution, designed to provide assurance that justice would not only be manifested in the lower courts and that those courts will meet and demonstrate the standard and expectations of the Constitution, but also that the opportunity would be accorded the Supreme Court to further guarantee, by an appellate review process of the decisions and judgments of the lower court, that justice, true justice, are seen and felt. *National Iron Ore Company et al. v. Yancy and Cooper*, 39 LLR 126 (1998); *A.D.C. Airlines v. Sannoh*, 39 LLR 431 (1999); *Hussenni v. Brumskine*, Supreme Court Opinion, March term 2013.

But this Court has also recognized that the constitutional provision governing appeals is not self-executing and that it requires legislative intervention in order to make it meaningful and implementable. Indeed, as this Court has said, the

provision itself recognizes that the exercise and enjoyment of the right are contingent upon an orderly and meaningful implementation process prescribed by the Legislature. *Blamo et al. v. Catholic Relief Services (CRS)*, Supreme Court Opinion, October Term, 2006. This is what the Article states, after according the right of appeal: "The Legislature shall prescribe the rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal." LIB. CONST., ART. 20(b) (1986). See also *The Intestate Estate of the late William M. Bowier v. Williams et al.*, 40 LLR 84 (2000).

The Supreme Court has recognized this dilemma and has, in a number of cases resorted to a balancing approach to the appellate process as ensured that the avenue to substantial justice remained open, was not overburdened by mere simple and insignificant legal technicalities which would otherwise defeat the intent and spirit of the law, but with the proviso that no injustice was meted out to or suffered by any of the parties. *Liberia Electricity Corporation v. Tamba*, 36 LLR 225 (1989); *Municipal District of Buchanan v. Bridgeway Corporation*, 36 LLR 470 (1989).

When the violations are not mere legal technicalities and the Court has found itself, painstakingly, adhering to and complying with the tenets of the statute and the procedural requirements stated therein, as it is constitutionally bound to do, even with the full knowledge that the wheels of justice and the rights constitutional guarantees of one or more of the parties are thereby jeopardized or exposed to severe beatings and unintended consequences, the Court has gone to great length to explain why, finding itself in a rather helpless state, unable to exercise the jurisdictional authority vested in it to determine cases on the merit, the justice which in the normal it was obligated to accord seemed unreachable in the particular case. [*See Caranda v. Richards, Kimber v. Lloyd, Mirza v. Republic, and Walters v. Republic*, 13 LLR 75 (1957); CITATIONS]

This is particularly the case where the statute, not being in contravention of the Constitution, the Court is without the power or authority to challenge or question the wisdom of the statute or of the legislature in enacting the statute, no matter how offensive, insensitive, deleterious and/or pernicious the statute may seem to be in the eyes of the court. [See *Ganta Sawmill v. Tulay*, 31 LLR 358 (1984); *Cooper and Gleonder v. Bailey*, 31 LLR 366 (1983); *The Management of BAO v. Mulbah and Sikeley*, 36 LLR 404 (1989); *Kartoe and Williams v. Inter-Con Security System, Inc.*, 38 LLR 414 (1997)]; that the Court is without the authority to introduce exceptions to the legislation by construction [*Doe, Young and the National Democratic Party of Liberia (NDPL) v. Randolph*, 35 LLR 724 (1988)]; that under the law, the Court is precluded from extrapolating the intent of the legislature, going beyond the specific wording of the statute, rewording or reworking the statute, or adding to or subtracting from the legislation where the meaning is clear and unambiguous [*Shannon v. Liberia Trading Corporation*, 7 LLR 66, 81 (1974); *Buchanan v. Arrivets*, 9 LLR 1619 (1945); *George v. Republic*, 14 LLR 158 159 (1960); *Multinational Gas and Petrochemical Company v. Crystal Steamship Corporation*, 27 LLR 198, 205 (1978); *Weasua Air Transport Company v. Scott and The Board of General Appeals*, 29 LLR 65 (1981); *Kasaykro Corporation v. Stewart and Winter Reisner and Company*, 30 LLR 164 (1982); *Kennedy and Johnson-Whisnant et al. v. Goodridge and Hilton*, 33 LLR 398 (1985); *Firestone Plantations Company v. The Board of General Appeals and Wilson*, 34 LLR 385 (1987); and that the prerogative and the power to enact laws are not within the province or the authority of the courts but are clearly, by constitutional directive, vested in the Legislature. [*AI-Boley and Sluwarv. The Proposed Unity Party*, 33 LLR 309 (1985); *Doe et al. v. Randolph*, 35 LLR 724 (1988), *Commercial Fisheries Corporation v. Puk Yang Fisheries Co. Ltd. et al.*, 35 LLR 534 (1988), *The Liberia Company (LIBCO) v. Collins*, 36 LLR 493 (1989), *The International Trust Company of Liberia (ITC) v. Doumouyah et al.*, 36 LLR 358 (1989); *The Liberia Water and Sewer Corporation v. Kollie et al.*, 37 LLR 239 (1993); *Goodman Shipping and Stevedoring Corporation (GOSSCROP) v. National Port*

Authority, 37 LLR 505 (1994); *Meridien Biao Bank Liberia Limited v. Maha Industries Incorporated et al.*, 40 LLR 772 (2001), *Vijayaraman and Williams v. The Management of Xoonon Liberia (Ltd)*, 42 LLR 41 (2002); LIB. CONST, Art. 34 (1986). And barring a constitutional violation by a statute, any action by this Court in respect of any of the foregoing is seen as transgressing the very sacred instrument that give it existence. *Firestone Plantations Company v. Paye and Barbar*, 41 LLR 12 (2002).

It is given this backdrop that the Supreme Court has stated variously, and rightfully, that while the Liberian Constitution, at Article 20(b) grants to all persons, without exception, the right of appeal to the Supreme Court, the framers of the Constitution knew that the provision granting the right was not self-executing, and hence granted the Legislature the power to enact laws for the orderly exercise of the right and process for the taking an appeal. [*Brumskine v. Hussenni*, Supreme Court Opinion, March Term 2013. It is this constitutional mandate to the Legislature that forms the basis for the Civil Procedure Law, and specifically sections 51.4 and 51.7 which outline the procedure and certain compulsory and mandatory prerequisites for appealing a decision or judgment of a lower court to the Supreme Court. It is these procedural compulsory prerequisites and requirements that form the undertone for the challenge to the appeal taken to this Court in the instant case. This is how section 51.4 of the Civil Procedure Law, under the caption "Requirements for completion of an appeal", cited by the appellee as the authority upon it relies for seeking the dismissal of the appellant's appeal, captures the statutory prerequisites for an appeal:

"The following acts shall be necessary for the completion of an appeal:

- (a) Announcement of the taking of the appeal;
- (b) Filing of the bill of exceptions;
- (c) Filing of an appeal bond;
- (d) Service and filing of notice of completion of the appeal.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."

Civil Procedure Law, Rev. Code 1:51.4

Moreover, and as noted hereinbefore, in addition to Section 51.4, an appealing party must also comply with the requirements stated in Section 51.7, which elaborates on the requirements in respect to the conditions and the timeframe within which the procedural prerequisites must be complied with in order that the appeal is heard by the Supreme Court. Section 51.7, states in part: "...The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Civil Procedure Law, Rev. Code 1:51.7.

This Court is mindful of and has also recognized in numerous of its Opinions that the intent of the Legislature in promulgating the sections quoted above, and as envisioned by the Constitution, is not to stifle the administration of substantial and transparent justice; rather, as articulated by the Constitution itself, the intent is to provide a procedural framework for the orderly access to and enjoyment of substantial justice. Thus, the Supreme Court, within the realm of the recognized intent of both the Constitution and the Act, has held continuously that where a motion to dismiss an appeal embeds any one or more of the legal grounds provided by the statute for the completion of an appeal, and the motion establishes

violations of any of the requirements stated by the statute, the Supreme Court is deprived of jurisdiction to entertain the appeal and hear the case on the merit, in which event the Court has no **alternative but to painfully dismiss the appeal**. *A.D.C. Airlines v. Sannoh*, 39 LLR 431 (1999); *Kanneh v. Manley et al.*, 41 LLR 25 (2002); *Knuckles v. The Liberian Trading and Development Bank*, 40 LLR 49 (2000); *Freeman and Wesseh v. Lewis et al.*, 103 (2000); *Gbartoe et al. v. Doe*, 40 LLR 150 (2000); *Pentee v. Tulay*, 40 LLR 207 (2000); *Constance et al. v. Ajavon et al.*, 40 LLR 295 (2001); *Meridien Biao Liberia Limited v. Maha Industries Incorporated et al.*, 40 LLR 774 (2001); *Chicri Abi-Jaoudi v. The Intestate Estate of the late Bendu Kaidii*, 40 LLR 779 (2001); *Liberia Electricity Corporation v. Lloyd*, 41 LLR 348 (2002); *Sarweh et al. v. National Port Authority (NPA)*, 42 LLR 436 (2004).

And even where the Court has, because of excusable circumstances, recognized in law, and the challenges are predicated upon insignificant procedural technicalities which do not affect the substantive rights of the parties or result in the perpetration of injustice, opted to apply the spirit and intent of the law, stating its strong preference for deciding such cases on their merits and not dismiss the cases for reason of mere technicality, [*McCauley v. Brown*, 2 LLR 359 (1920); *Dennis v. Gooding*, 10 LLR 122 (1949); *Biggers v. Good-Wesley*, 23 LLR 285 (1974); *Massaquoi v. Massaquoi et al.*, 34 LLR 518 (1988); *Cooper-Hayes v. International Trust Company of Liberia*, 37 LLR 277 (1993), [See also *Inter-Con Security Systems, Inc. v. Philips and Tarn*, 40 LLR 30 (2000), *Sillah et al. v. Sherman and Sherman*, 36 LLR 918 (1990), and *Citibank, N. A. v. Jos Hansen & Soehne (Liberia) Ltd.*, 35 LLR 69 (1988);

Forestry Development Authority v. Forestry Development Authority Workers Union (FDAWU), 39 LLR 684 (1999); *Blamo et al. v. Catholic Relief Services (CRS)*, Supreme Court Opinion, October Term, 2006. , as opposed to the strict wording of the statute, the Court has vehemently articulated, reiterated and maintained the deep and powerful conviction that the mandate of the appeal statute is mandatory and compulsory, and are not mere legal technicalities to be overlooked by the Court. *National Housing and Savings Bank v. Gordon*, 35 LLR 323 (1988); *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank*, 38 LLR 153 (1995).

In all of the cases mentioned, whether in them the Court dismissed the appeal or was otherwise motivated not to dismiss the appeal, it has applied a two-fold operating standard in making the decision: (a) a failure to comply with the mandatory statutory appeal provisions, not traceable to the negligence or other acts of the lower court, either by the judge or staff thereof, or other acts of God over which the appellant has no control, is not and cannot be regarded as mere procedural technicality; and (b) the negligence by the lawyer or client, but particularly the lawyer, in ensuring that certain mandatory statutory provisions are adhered to can form no basis for granting to the appellant an excuse for the failure to comply with the requirements of the statute or for any deviation by this Court from the clear mandate of the statute. *Hussenni v. Brumskine*, Supreme Court Opinion, March Term 2013.

The attack on the appeal pursued by the appellant in the instant case is predicated upon allegations of a failure by the appellant to file its bill of exceptions within the statutory time and that the said failure precludes any consideration of an excuse by this Court, given that there were exceptional circumstances which rendered the performance of such act also impossible. We should note that the filing of the bill of exceptions rests almost exclusively upon the lawyer and not with the client; and this is the painful reality in the instant case where the basis for the challenge to the appeal, and hence to the jurisdiction of this Court to hear the appeal, is the negligence of the lawyer and not with the client. It is the lawyer that must prepare the bill of exceptions; it is the lawyer that must seek the approval of the trial judge of the bill of exceptions; and it is the lawyer that must ensure that the approved bill of exceptions is filed with the court within the time allowed and prescribed by the appeal statute.

The records in the case reveal that the matter had its genesis in an Agreement concluded and executed between the movant/appellee and the respondent/appellant under the terms of which the movant/appellee agreed to extend, and did extend to the appellant, in the form of an over-draft, a loan facility to the value of US\$100,000.00 (One Hundred Thousand United States dollars). The Agreement also provided that the respondent/ appellant would repay the loan amount within a period of six months of the time the loan amount was made available to the respondent/appellant.

The facts, as culled from the records, reveal that in compliance with the loan agreement, the movant/appellee began to make available to and allow the respondent/appellant to draw various amounts from the overdraft facility up to the value of US\$67,000.00 (Sixty Seven Thousand United States Dollars) of the agreed total amount of US\$100,000.00 (One Hundred Thousand United States dollars), with only US\$33,000.00 (Thirty-Three Thousand United States dollars) remaining to make up the full amount of the value of overdraft loan. According to the appellant, although it had made payment to the appellee of US\$30,000.00 of the amount of the extended to it by the appellee, with a balance of only US\$37,000.00 remaining to be paid, and that although the six month period for repayment of the loan had not expired, the appellee's chief executive officer, without the knowledge, consent or authorization of the appellant or any order of court or notice to the appellant, but under the pretext that the appellee held a lien on the inventory of the appellant by virtue of a mortgage agreement under the terms of which the appellant

granted the appellee the right to hold 20% of the appellant's goods as collateral until payment of the loan was made in full, invaded the appellant's warehouse and removed therefrom certain assorted goods of the appellant to the value US\$116,934.00 (One Hundred Sixteen Thousand Nine Hundred Thirty Four United States Dollars). The appellant further alleged that on a second occasion, on November 14, 2012, the appellee again broke into appellant's warehouse, damaged the back and front gates (four in number) value at US\$2,000.00, the locks value at US\$600.00, and the door of the warehouse value at US\$1,500.00, in addition to taking away some assorted goods value at US\$11,924.50 (Eleven Thousand Nine Hundred Twenty Four/50 United States Dollars).

The appellant denied that the loan agreement contained any such provision and made the allegation that the appellee had fraudulently inserted the challenged commitment into the document after the document had been signed. The appellant made the further claim that the appellee had refused to give it, the appellee, copy of the agreement and that it had only seen the agreement with the insertion therein after it had sued the appellee for damages which it had sustained as a result of the illegal invasion of its premises by the appellee chief executive office, the removal of certain of its goods and the damaging of certain of its property by the appellee in entering its premises and in the process of removing of the goods. It was as a consequence of the appellee's alleged invasion of the appellant's premises and the removal of its goods that the appellant instituted an action of damages for **wrong against** the appellee, praying the trial court to award it damages in the amount of US\$132,958.50 (One Hundred Thirty Two Thousands Nine Hundred Fifty Eight United States Dollars and Fifty Cents) in special damages, and US\$1,000,000.00 (One Million United States Dollars) as general damages.

The appellee, in its answer, denied that it committed the acts alleged by the appellant in the complaint and that it was answerable in damages to the appellant. The appellant, for its part, filed a reply reiterating its claim against the appellee and reaffirming its prayer for damages.

The pleadings having rested and the law issues having been disposed of,

the case was submitted to a jury trial. Following the production of evidence, the

jury returned a verdict of not liable in favor of the appellee, defendant in the lower court. A motion for new trial was filed and, upon arguments duly had thereon, the verdict of the jury was set aside and a new trial awarded to the appellant. At the second trial, the parties opted for a bench trial, that is, a trial without a jury. At the conclusion of the evidence, the judge determined that the appellant had failed to make *a prima facie* case by a preponderance of the evidence and hence entered judgment in favour of the appellee. To this judgment, entered on May 9, 2013, the appellant, being dissatisfied therewith, excepted thereto and announced an appeal to the Supreme Court.

It is this appeal, taken by the appellant, F. T. M. Construction Company, from the May 9, 2013 judgment of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, that the appellee seeks to have this Court dismiss, filing a motion to dismiss the appeal in order to achieve the said objective. The primary grounds for the motion are two-fold: (a) that the appellant's bill of exceptions was filed 11 days after the rendition of the lower court's judgment, which was one day beyond the ten day period mandatorily stated in the Civil Procedure Law for the filing of an approved bill of exceptions; and (b) that the appeal bond filed by the appellant was defective, in that there was no evidence of proof of any legal instrument from an appropriate authority showing that the insurance company which was serving as surety for the appellant possessed assets within Liberia sufficient to cover the amount stated in the appeal bond. We quote herewith, for the benefit of this Opinion, the said motion as follow, to wit:

AND NOW COMES MOVANT, Afriland First Bank, praying Your Honor and this Honorable Court to dismiss the Respondent's Appeal announced on May 9, A.D. 2014 to the Honorable Supreme Court of the Liberia, against the final judgment in the above captioned case, for the following legal and factual reasons, to wit:

1. Movant says that it is the Respondent in the main Action of Damages for Breach of Contract and during the March Term, A. D. 2014, this Court entered its final judgment of not liable in its favor as per the final ruling of His Honor

Peter W. Gbeneweleh delivered on May 9, A.D. 2014. The Court is requested to take Judicial Notice of the records in this proceeding.

2. Movants says that on May 9, A.D. 2014 and the following the rendition of the final judgment in the above captioned case, the Respondent by and thru one of its Counsels Cllr. Cooper W. Kruahexcepted to the final ruling of the presiding judge and announced an appeal to the Honorable Supreme Court of the Republic of Liberia. A copy of the May 9, A.D. 2014 final judgment is hereto attached and marked as Exhibit M/1 in bulk forming a cogent part of this Motion.

3. Movant further says that consistent with Section 51.4 of the Civil Procedure Law, 1 LCL Revised, found on Page 249, there are four requirements to be met by the appellant for the completion of an appeal and they are: (a) Announcement of the taking of the appeal; (b) filing of the bill of exceptions; (c) filing of an appeal bond; (d) Service and filing of notice of completion of appeal.

4. Movant says that further to count three (3) above, the respondent has failed to file its bill of exceptions in keeping with Section 51.7 of the Civil Procedure Law, 1 LCL Revised, found on Page 250, and quoted [herewith]: "A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to on the trial and relied upon for appeal together with the statement of the basis for the exception. The appellant shall present a bill of exceptions signed by him to the judge within ten days after the rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court". Upon the failure of the respondent to file its bill of exceptions on or before May 19, 2014 which should have been ten (10) days after the final ruling, the respondent has failed to complete this major component of the appeal process and as such, movant obtained a Clerk's certificate evidencing that the respondent failed to file its bill of exceptions within the statutory period. Movant then attaches the Clerk's Certificate evidencing that the respondent has failed to file its bill of exceptions within ten days after the final judgment was rendered and said Clerk Certificate is marked as Exhibit M/2 forming a part of this motion.

5. Movant submits and says that as a consequence for the failure of the respondent to file its bill of exceptions within the statutory period of ten days after the final judgment of May 9, A.D. 2014 and in keeping with Section 51.16 of the Civil Procedure Law, 1 LCL Revised, found on Page 253, and quotes "An appeal may be dismissed by the trial court on motion for failure of the

appellant to file a bill of exceptions within the time allowed by statute, and by the appellant court after filing of the bill of exceptions for the failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of completion of appeal as required by statute". Predicated on the above citation, movant has filed this motion to dismiss the appeal announced by the respondent for its failure to meet the statutory period of filing a bill of exceptions within ten (10) days after the final judgment was rendered.

6. Movant then request Your Honor to dismiss the appeal announced by the respondent on May 9, A.D. 2014 for the respondent's failure to file its bill of exceptions within statutory period.

WHEREFORE, AND IN VIEW OF THE FOREGOING, movant prays Your Honor and this Honorable Court to dismiss the appeal announced by the respondent on May 9, A. D. 2014 for respondent's failure to file its bill of exceptions within the statutory period of ten days after the rendition of final judgment, and grant unto movant all relief that Your Honor may deem just, legal and equitable as the law provides."

The Court notes from a careful reading of the motion that two issues are presented by the movant for the consideration of the Court. Firstly, whether the appellant violated the appeal statute by filing its bill of exceptions without the time allowed by law? And secondly, whether the appellant appeal bond fails to meet the standard set out in the appeal statute and the decisions of this Honourable Court such that the bond is rendered defective and the appeal thereby rendered dismissible?

The appellant, upon receipt of the motion to dismiss the appeal, filed a five-count resistance thereto, wherein it denied, both that it had filed its bill of exceptions beyond the statutory time and that its bond was defective. The basic contention of the appellant is that it complied fully with the requirements of the statute in that only did its bond meet the conditions of the appeal statute but also that it had filed all of the required appealed documents within the time period prescribed by the statute. In order to capture the full essence of the appellant's resistance to the motion, we quote the said resistance verbatim, as follows to wit:

"Now comes the respondent in the above entitled cause of Action and most respectfully prays Court and Your Honour to ignore, descend, overrule, deny and dismiss the so called motion of the movant for reasons as showeth to wit:

1. That as to counts one (1), two (2) and three (3) of movant/appellee's motion, respondent/appellant says same have no traversable issue.

2. That as to counts four (4) and five (5) movant/appellee's movant, respondent/appellant avers and says that said counts are a legal fallacy and a misrepresentation of the fact, in that, respondent/appellant filed its bill of exception on the 19th day of May, A.D. 2014 which is evidenced by the presiding judge's approval of the bond, even though the transcribed copy of the presiding judge's ruling on the 9th day of May A.D. 2014, received by the respondent/appellant on the 16th day of May, A. D. 2014. Respondent/appellant most respectfully requests Your Honour to take judicial notice of the copy of the bill of exceptions and copy of the covered page of the transcribed ruling of the presiding judge used as exhibit by the respondent/ appellant in these proceedings.

3. That as to counts six (6), seven (7), eight (8) and nine (9) of movant/appellee's motion, respondent/appellant says that this case involves no money judgment and that it is a nominal case. Respondent/appellant asserts and says that the insurer has a re-insurance that covers an estimated value of total (including fixed and current assets) US\$2,000,000.00 which is reflected and attached to the bond. Respondent/appellant insurance company is a duly qualified company with its articles of Incorporation. Business registration documents, with the legal authority to issued bond even though the Bank statement was inadvertently left out, it is not material to the extent that it can affect the bond. In the case *Margaret E. Robertson, Letitia A. Reeves et al versus the Quiah Brother et al* delivered during the October term, A.D. 2011, the Supreme Court opined that as long as the insurance company meets with the requirement to issue bail bond, as in the instant case, the insurance company bond is valid and justifiable. Attached is the copy of the bond statement marked "I)/ 1" that was inadvertently left out to form a cogent part of the records.

4. And as to counts ten (10) of movant/appellee's motion and further to count two (2) above, respondent/appellant says that the appeal that was announced on the 9th day of May, A.D. 2014, after the ruling was given by the presiding judge, an appropriate fulfillment of the bill of exception was filed within statutory period followed by effective appeal bond and

subsequent notice for completion of appeal bond.

5. Further to counts five (5) above, respondent/appellant avers and says that the appeal bond carries all on its face, all of the relevant signatories, including the insured, insurers, verified and approved by the circuit judge. Wherefore and in view of the foregoing law, facts and circumstances, respondent/appellant prays Your Honour and this Honourable Court to deny dismiss and set aside movant/appellee's motion to dismiss appeal and grant unto respondent/appellant all relief that Your Honour may consider just, legal and equitable, and so pray."

In respect of the foregoing, the appellant in its brief filed before this Court condensed its contentions on the motion to dismiss into a single issue, which it states to be: "Whether or not the appeal is dismissible where the bill of exceptions and the appeal bond and notice of completion of appeal were filed within the statutory period?" The issues, as framed by the appellant, misread the several contentions advanced by the appellee in the motion to dismiss. As culled from the contents of the motion to dismiss, the issue in relation to the appeal bond is not that it was filed without the statutory time, but rather that the bond was defective in that it lacked instruments from the relevant authority to show proof of assets held by the surety to indemnify the appellee from costs and injury as required by the appeal statute. This issue is quite different from the issue regarding the bill of exceptions, which is centered on the contention that the bill of exceptions was filed without the time allowed by statute, which failure renders the appeal dismissible. Given the difference between the parties in regard to the issues for resolution by the Court, we must determine, upon the entire facts, as revealed from the certified records the issue(s) which are properly before the Court for resolution. Indeed, such course is warranted not only because the parties do not present the same number of issues, but also because the issue regarding the alleged defectiveness of the bond, presented by the movant, may not warrant consideration by the Court since the disposition of that issue hinges upon how this Court resolves the first issue, which is whether the appellant complied with the requirement of the appeal statute in regard to the timeliness of the filing of the bill of exceptions; for if the Court decides that the bill of exceptions was filed without the statutory time, then there is no useful utility in delving into the issue as to whether the appellant's appeal bond is defective or not. Indeed, if such be the case, then under the recent decisions of this Court, this Court must decide whether in fact the

Court has the jurisdiction to decide at this level upon the dismissal of the appeal. Accordingly, we proceed to address this crucial issue and any other ancillary issue flowing therefore. This is consistent with the view stated by this Court in multiple Opinions that it need not resolve every issue presented by the parties but rather will focus only on the more critical issue(s) dispositive of the matter. *Vargas v. Morris et al.*, 39 LLR 18 (1998); *Kamara and Kollie v. Kindi et al.*, 39 LLR 102 (1998); *Halaby et al. v. Messrs. Import-Export Company*, 41 LLR 136 (2002); *Scanship (Liberia) Inc./LMSC v. Flomo*, 41 LLR 181 (2002).

From our review of the certified records it is clear that the judgment in this matter was delivered by the lower court on May 9, 2014. The parties not only do not deny this to have been the case but they openly admit in the instruments filed before this Court that the judgment was indeed handed down on the date mentioned herein. Where the parties differ is whether the bill of exceptions was filed outside of the period allowed by the appeal statute. The appellee contends that it was, while the appellant contends that it was not. What is rather interesting is that while the appellant admits that its counsel was in court at the time of the rendition of the judgment and that the counsel did except to the judgment and announced an appeal therefrom, which was granted by the court, it states that the transcript of the judgment was not available to the parties at the time since it was not ready and that in fact that it [appellant] only received the transcript of the judgment on May 16, 2014. What is even more interesting is that the appellant made the claim only as a matter of information in its brief rather than as a legal contention in justification for its bill of exceptions being filed without the time allowed by the appeal statute, as would warrant the attention of the Court.

Indeed, nowhere in the resistance does the appellant make the allegation,

advance the argument or set forth the contention that the lower court's judgment was not delivered to it until May 16, 2014, and that as a consequence thereof, it legally had up to May 26, 2014 to file its approved bill of exceptions. Rather, the contention is that the bill of exceptions was filed on May 19, 2014, ten days after the rendition of the lower court's judgment, and therefore that the said bill of exceptions was filed within the statutory time. Hence, it says, the motion to dismiss was without legal merit. Predicated thereupon, while we do not dispute that the information provided may have been the case, we have chosen not to deal with it as an issue since the appellant has chosen to present it as nothing more than matter of information and to focus instead exclusively on the claim that the bill of exceptions was filed within the time allowed by the appeal statute.

In that connection, the appellant maintain that the bill of exceptions was filed on May 19, 2014, ten days after the rendition of judgment by the trial court. But the records do not support that contention. In fact, quite to the contrary, the records reveal that on request made by counsel for the appellee, the clerk of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, on May 20, 2014, at the hour of 9:37 a. m. issued a Clerk's Certificate stating: "This is to certify that after a careful perusal of the record of this honourable court, it is observed that the plaintiff in the above captioned case has failed to file in this court its bill of exceptions in the above entitled cause of action up to and including the issuance date of this Clerk's Certificate. Hence, this [Clerk's] Certificate." This official instrument of the trial court is signed by Ellen Hall as Clerk of Court, and is attested to by Nancy Washington and Emma Washington as File Clerk and Assistant File Clerk, respectively, of the mentioned Circuit Court. Nowhere in the records, either in the resistance to the motion to dismiss or in the appellant's brief, do the appellant challenge the Clerk's Certificate as untrue, fraudulent, or a misrepresentation. Rather, the appellant claim is that because the trial judge approved of the bill of exceptions on May 19, 2015, that act by the trial judge constituted the date of filing of the instrument with the court.

We disagree with the contention of the appellant and emphasize that the date of approval of a bill of exceptions by the trial judge does not constitute the date of filing of the document with the court. The two are separate and distinct as clearly revealed by the statute. The statute states in that regard that: "The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Civil procedure Law, Rec. Code 1:51.7. We note that nowhere in the provision does it state that the date of signing of the bill of exceptions shall constitute the date of filing of the bill of exceptions. Rather, the law sets out two separate requirements: Firstly, that the bill of exceptions must be presented to the judge for his signature within ten days of the rendition of the judgment; and secondly, that the appellant must file the said bill of exceptions with the clerk of the trial court. The former requirement is not and must not be confused with the second requirement; for if one requirement constituted the other, then there is no utility in having the clerk of court affix his or her signature upon the instrument along with the date the instrument was presented to the clerk. Instead, the signing by the trial judge and affixing of the date would fulfil the requirement of the law. Such was never the intent of the law and the framers never contemplated that such would obtain in respect of the requirements stated in section 51.7.

Indeed, this Court, in giving interpretation to section 51.7, has said repeatedly that unless a bill of exceptions approved by the trial judge is filed with the clerk of court within ten days of the rendition of the trial court's judgment, the bill of exceptions is rendered invalid and the appeal subject to dismissal on that account. *Butler-Abdullah v. Pearson et al.*, 36 LLR 592 (1989); *A.D.C. Airlines v. Sannoh*, 39 LLR 431 (199); *Kanneh v. Manley et al.*, 41 LLR 25 (2002). Thus, a bill of exceptions, although approved by the trial judge one day after the rendition of judgment need not be filed with the clerk of court until the tenth day following the rendition of judgment. But by the same token, a bill of

exceptions approved on the tenth day after the rendition of the trial court's judgment must be filed with the clerk of court on the same day; otherwise, if filed on a later date, the filing is deemed to be without the statutory time. If such was not the case, it would mean that although the trial judge may have approved a bill of exceptions within the ten day period allowed by the statute for such approval, the appellant would be under no legal obligation to file the said bill of exceptions with the clerk of court until the sixtieth day following the rendition of judgment, the last day allowed for the appeal process. Again, the framers of the law had no such intention and no such intention can therefore be attributed to them.

Accordingly, since the records revealed, including a clerk's certificate duly issued by the clerk of the lower court, that up to 9:37 a.m. on the 20th day of May, A. D. 2014, no bill of exceptions had been filed with the office of the clerk of court, and further, as the appellant's own bill of exceptions revealed that the said document was filed with the clerk of the trial court on May 20, 2014, at the hour of 2:47 p.m., the same being more than five hours after the issuance of the clerk's certificate, we hold that the bill of exceptions was filed on the 11th day following the rendition of the judgment of the trial court, and that as such the filing was beyond the time allowed by the statute. By that late filing, and since, as indicated before, the date of approval of the bond did not constitute and cannot be equated to the date of filing of the bill of exceptions, the appeal is rendered dismissible. *Firestone Plantations Company v. Kollie*, 42 LLR 159 (2004).

However, notwithstanding our agreement with the appellee/movant that the bill of exceptions was filed late, we were at a loss as to why the appellee/movant had chosen to file the motion to dismiss before the Supreme Court rather than before the lower court which, under the statute retained jurisdiction over the case with authority to dismiss the appeal. The Civil Procedure Law provides, at section 51.16, that: "An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the

appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute."

Clearly, the allegation set forth in the motion as to the filing of the bill of exceptions is that the document was filed beyond the statutory time. The records substantiate that fact and as we have said the appeal was rendered dismissible. The statute clearly sets out where the bill of exceptions is filed beyond the period stipulated by the law, the forum before which the motion to dismiss is to be filed is the trial court. Consistently with the clear directive of the statute, the Supreme Court has, in a great number of Opinions, especially of recent time, articulated its adherence to the statute, espousing that the motion to dismiss in such circumstances should be filed before the lower court; [See *Pioneer Construction Company v. Morgan et al.*, Supreme Court Opinion, March term, 2015] and that where the movant chooses to file the motion before the Supreme Court, this Court will not entertain the same on the merit notwithstanding the assertions in the motion are true and renders the appeal dismissible, as in the instant case, but instead the Court will deny the motion and direct the parties to revert to the trial court, the appropriate legal forum vested statutorily with the power and the authority to entertain such matter, for the disposition of the motion. Civil Procedure Law, Rev. Code 1:51.16.

We are therefore in agreement with the contention of the appellant, though raised belatedly, that this Court lacks the jurisdiction to hear or entertain the motion since the basis for the motion to dismiss is that the appellant filed its bill of exceptions eleven days after the rendition of judgment by the lower court. We have seen no intervening circumstances recognized in the law that warranted the filing of the motion before the Supreme Court or that would necessitate the Supreme Court assuming jurisdiction of the motion and disposing of the same on the merits. We therefore reiterate and affirm that position held by this Court in the cases cited above, being similar to the instant case, that as this Court is without the jurisdictional authority under the statute and the circumstances revealed in this case to hear motion on the

merits or to dismiss the appeal. All that we have done herein, in light of the defense

made by the appellant that it filed its bill of exceptions within the ten-day period allowed by the statute, is to give clarity as to legal requirements of the law in the face of the contention advanced by the appellant regarding whether it had filed its bill of exceptions within or without the statutory time, a factor that is a prime in determining whether the Supreme Court has or lacks the requisite jurisdiction to hear and entertain the motion to dismiss the appeal.

Having determined that the appellant did file its bill of exception without the statutory time and that by virtue of that lapse the Supreme Court lacks the jurisdiction to entertain and determine the motion to dismiss on the merits, we are inclined to dismiss the motion and hereby order the motion dismissed, and the case remanded to the lower court for the disposition of the motion filed before it, noting that the lower court should take into full consideration what we have said herein about the bill of exceptions having been filed by the appellant without the statutory time and to act appropriately in disposing of the motion to dismiss the appeal.

We would like to note before concluding this Opinion that the movant/appellee, while conceding the contention of the appellant and acknowledging that under the circumstances of this case, the motion should properly have been filed before the lower court, this Court that it was compelled to file the motion before this Court because although it had filed a motion to dismiss the appeal in the court below, the judge of the lower court had refused to take up the motion and dispose of the same on time, thereby allowing the appellant to file its appeal bond, approved by the trial court judge, and the notice of completion of the appeal, which as of the date of the filing of the notice of completion of the appeal divested the lower court of any further jurisdiction over the case, such that it could no longer delve into the motion to dismiss the appeal. Hence, the appellant states, it was constrained to withdraw the motion which it had filed in the lower court to instead file the said motion before this Court, the appellate Court, and including therein the further ground that the appeal bond was defective, further warranting

the dismissal of the appeal.

We observe from arguments made before this Court the movant/appellee the claim that in fact it did file before the trial court a motion to dismiss the appeal, but that due to the failure by the trial judge to dispose of the motion on time, on the excuse that he was too overwhelmed with other matters to deal with the motion, the appellant proceeded to file an appeal bond, approved by the trial judge, and a notice of completion of the appeal, which was duly served on the appellee. The appellee argued that with the filing of the notice of completion of appeal by the appellant, the trial court lost jurisdiction over the case and, hence, it was left with no alternative but to withdraw the motion filed before the lower court to file the said motion to dismiss the appeal before the Supreme Court.

Our inspection of the records certified to this Court confirms the assertions made by the appellee/movant that it had filed a motion to dismiss before the lower court. The records show that on *May 22, 2014*, two days after the appellee/movant obtained a clerk's certificate indicating that the appellant had failed to file its bill of exceptions within the time allowed by law, the appellee/movant filed with the trial court a motion to dismiss the appeal. This was forty-two (42) days prior to the filing of the appellant's appeal bond on *July 3, 2014*, and forty-nine (49) days prior to the filing of the notice of completion of the appeal on *July 9, 2014*.

The records also reveal that on *July 11, 2014*, eight (8) days after the filing by the appellant of the appeal bond and two (2) days following the filing and service of the notice of completion of the appeal, the appellee filed with the trial court a notice of withdrawal of its motion to dismiss the appeal.

It is difficult understanding or appreciating any reason for the failure of the lower **court** to hear and dispose of the motion to dismiss. The judge knew or should have known that once the notice of completion of the appeal was filed he no longer had jurisdiction of the matter and that the motion to dismiss the appeal would thus be put into jeopardy, at least as far as the lower court is concerned.

That was more the reason to expeditiously dispose of the matter. The failure to dispose of the motion was plain negligence and carelessness by the trial judge. And while this Court has said in a number of Opinions that appeals will not be dismissed on mere insignificant technicalities [*Liberia Electricity Corporation v. Lewis and Greenfield*, 34 LLR 112 (1986); *Dopoe v. City Supermarket*, 34 LLR 343 (1987); *Liberia Electricity Corporation v. Tamba*, 36 LLR 225 (1989); *Municipal District of Buchanan v. Bridgeway Corporation*, 36 LLR 470 (1989)], it has also said that the mandatory requirements of the appeal statute are not mere technicalities and that where they are violated or not adhered to, absent inexcusable circumstances, the appeal should and will be dismissed. *FodayKamara Butchery v. Pupo et al.*, 36 LLR 181 (1989); *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank*, 38 LLR 153 (1995). Therefore, such act as was demonstrated by the lower court judge was gross transgression of our justice system and cannot be countenance by this Court as it makes a mockery of our judicial and justice system, ridicules the courts in the eyes of the public, and leaves a negative impression upon the society as to how and the manner in which the judiciary administers justice. We must admonish our trial judges that acts which expose our judicial and justice system to public ridicule will also expose the violator to reprimand by the Court, as it has the authority to do under the Constitution, the Judiciary Law, the Judicial Canons and the Rules of Court.

We are equally disturbed that following the filing and service of the notice of completion of the appeal, the appellee proceeded to withdraw the motion to dismiss the appeal which motion it had filed before the lower court when the court still had jurisdiction of the proceedings under the law. This action, although understandable in the circumstances, was also without the pale of the law. Certainly counsel should have known that once the notice of the completion of appeal was served and filed, it was without the right to file any instrument before the court and the court lacked the authority to act on such instruments, being still possessed of authority only as relates to clerk's certificates to authenticate a challenge to the appeal made before the Supreme Court. The clerk of the trial court was similarly without the authority to file such

instrument at the stage at which it was filed. Hence, we hold that the withdrawal, being illegal, was void *ab initio* and for all intent and purposes, the motion to dismiss the appeal, filed by the clerk of the lower court, remained valid and in full effect.

Additionally, as the Supreme Court cannot simultaneously exercise jurisdiction over the same matter legally before the lower court, and for the reasons which we have stated herein, the motion to dismiss the appeal filed before this Court is denied and dismissed. Further, this Court having determined that the motion to dismiss the appeal, filed before the trial court is valid and remains in full effect, the case is remanded to the lower court to resume jurisdiction and dispose of the motion, giving full and complete consideration to the views expressed herein, and to accordingly dismiss the appeal.

Further, because we have stated earlier that the disposition of the motion on the issue of the failure to file the bill of exceptions within the statutory time, there is no need or utility in delving into the issue of the appeal bond, we refrain from any further comments on the issue of the appeal bond, consistent with the manifold Opinions of this Court espousing the discretionary power of the Court to refrain from dealing with all of the issues presented and to instead confine itself only to those issues relevant to and dispositive of the case.

This Court must again express its concern with the manner in which lawyers handle such delicate matters, as appeals, which places cardinal rights of their client in jeopardy. We are bewildered as to how a lawyer could confuse the date of approval of a bill of exceptions with the date of filing of a bill of exceptions, or how a lawyer could calculate the period between the date of judgment of May 9, 2014 and the filing of the bill of exceptions on May 20, 2014 as ten days. We view this act as sheer negligence and callousness on the part of the appellant's lawyer, for it is that negligence that deprived the Supreme Court of the requisite jurisdiction over the case to delve into the merits

and to decide whether the trial court acted properly and legally in the decision made against the appellant.

As noted earlier, it is such negligence that has not only restricted the Supreme Court's exercise of jurisdiction conferred by the Constitution to review the judgments of lower courts, but has also placed the rights of parties, guaranteed by the same Constitution, at serious risks. We must therefore again admonish lawyers that this Court will pursue serious actions against such displacement of negligence in the handling of their clients' cases.

In view of all we have said above, the Clerk of this Court is hereby ordered to send a mandate to the lower court directing the judge presiding therein to resume jurisdiction over the case and to give effect to this Opinion. Costs are to abide the final determination of the case by the lower court, in accordance with the Opinion expressed herein.