IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM A.D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH.....ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A. Z. BANKS, III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUGH.....ASSOCIATE JUSTICE

The Testate Estate of the late Samuel David George, by and thru its Administrator, Charles J. George, and Administrators Cum Testamento Annexo, Robert David George, III, and Newton O. George, thru their Attorney-In-Fact, C. Bushanda George, all of the City of Monrovia, Liberia.....MOVANT

VERSUS

Violet Smith Thomas by and thru her Attorney-In-Fact or Caretaker, Alex Smith, to be identified, and all those under her control to include the Managements of Eagle Electrical, Wonderful New Energy Industry, Greater Tomorrow Child Development International to be identified.....RESPONDENTS

GROWING OUT OF THE CASE:

MOTION TO DISMISS APPEAL

The Testate Estate of the late Samuel David George, by and thru its Administrator, Charles J. George, and Administrators Cum Testamento Annexo, Robert David George, III, and Newton O. George thru their Attorney-In-Fact, C. Bushanda George, all of the City of Monrovia, Liberia.....MOVANT

VERSUS

Violet Smith Thomas by and thru her Attorney-In-Fact or Caretaker, Alex Smith, to be identified, and all those under her control to include the Managements of Eagle Electrical, Wonderful New Energy Industry, Greater Tomorrow Child Development International, to be identified.....RESPONDENTS

GROWING OUT OF THE CASE

EXCEPTION TO APPEAL BOND

Violet Smith Thomas by and thru her Attorney-In-Fact or Caretaker, Alex Smith to be identified, and all those under her control to include the Managements of Eagle Electrical, Wonderful New Energy Industry, Greater Tomorrow Child Development, International

to be identified.....APPELLANTS)
)
VERSUS) APPEAL
)
The Testate Estate of the late Samuel David George,)
by and thru its Administrator, Charles J. George, and)
Administrators Cum Testamento Annexo, Robert)
David George, III, and Newton O. George thru their)
Attorney-In-Fact, C. Bushanda George, all of the City)
of Monrovia, Liberia.....APPELLEE)
)
GROWING OUT OF THE CASE:)
)
The Testate Estate of the late Samuel David George,)
by and thru its Administrator, Charles George, and)
Administrators Cum Testamento Annexo, Robert)
David George, III, and Newton George, thru their)
Attorney-In-Fact, C. Bushanda George, all of the)
City of Monrovia, Liberia.....PLAINTIFF) ACTION OF
) EJECTMENT
VERSUS)
)
Violet Smith Thomas by and thru her Attorney-In-Fact)
or Caretaker, Alex Smith, to be identified, and all those)
under her control to include the Managements of)
Eagle Electrical, Wonderful New Energy Industry,)
Greater Tomorrow Child Development International,)
to be identified.....DEFENDANTS)

Heard: October 24, 2016 Decided: February 24, 2017

Counsellor Amara M. Sheriff of J. Johnny Momoh and Associates Legal Chambers, Inc. appeared for the movant. No counsel appeared for the respondent.

MR. JUSTICE BANKS delivered the Opinion of the Court.

This case is before the Supreme Court for its determination of a motion to dismiss filed by the movant/appellee, praying this Court to dismiss the appeal taken by the respondents/appellants from an adverse ruling entered against them by the Assigned Circuit Judge for the Sixth Judicial Circuit Court, Montserrado County, at its March Term, A. D. 2016. The adverse ruling from which the appeal was taken related to the trial court sustaining exceptions taken by the movant/appellee to the appeal bond filed by the respondents/ appellants in fulfilment of certain of the requirements of the appeal statute

which provides that one of the mandatory steps for the completion of an appeal by a party against whom a judgment is rendered is that the party files an appeal bond in the form and manner prescribed by statute and approved by the trial judge. In seeking the dismissal by this Court of the appeal taken by the respondents/appellants, the movant/appellee sets out the following reasons, couched in the motion, quoted herein, to wit:

"1. Movant says that [it is] the plaintiff in an action of ejectment which was regularly tried by the petit jury [which] unanimously returned a verdict of liable against the defendants/movants/respondents, and said verdict being consistent with the evidence adduced and produced at trial, the presiding judge, in his final judgment, confirmed and affirmed the verdict of the trial jury.

2. Movant says that consequent upon count two (2) above [should actually be count 1 above], respondents excepted to the final judgment, announced an appeal, [and] filed an appeal bond [but that] due to the defects in respondents' appeal bond, the movant excepted to the appeal bond/surety and respondents did file a motion to justify but neglected to serve movants within the statutory period of three (3) days which is in gross violation of Section 63.6 of CPL, 1 LCLR.

3. *Section 63.6 of the Civil Procedure Law, I LCL Rev., tit. 1,* entitled *"Justification of surety"* provides that within three days after service of notice of exception, the surety excepted to or the person on whose behalf the bond was given shall move to justify, *upon* notice *to the adverse party.* The surety shall be present upon the hearing of such motion to be examined under oath. If the court finds the surety sufficient, it shall make an appropriate endorsement on the bond.

4. Movant says the final ruling on the sufficiency of respondents' bond/ appeal bond was rendered on *30th Day of May, A. D. 2016,* and respondents excepted and to the final ruling and announced an appeal to the Honorable Supreme Court of the Republic of Liberia, and respondents' legal counsel, in person of Cllr. Emmanuel Berry, signed and received copy of the ruling on the same May 30, 2016. In substantiation of the averment contained herein is the copy of the ruling which contained the signature of respondents' counsel, marked as Exhibit "M/1", forming a cogent part of movant's motion.

5. Movant says that pursuant to count four (4) above, respondents filed [their] bill of exceptions on June 3, 2016 [which was] approved on June 3, 2016. In substantiation of the averment contained herein is the copy of respondents' bill of exceptions, marked as exhibit "M/2", forming [a] cogent part of movant's motion.

6. Movant says that contrary to the statute controlling appeal bond and notice of completion of appeal to be filed within the period of sixty (60) days, the respondents flied their appeal bond within the period of sixty-four (64) days, as can be computed as follows:

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1. May 30, 2016.....May 31, 2016 .....1 day
2. June 1, 2016..... June 30, 2016 .....30 days
3. July 1, 2016..... July 31, 2016 .....31 days
4. Aug 1, 2016 .....Aug. 02, 2016 .....2 days

Total number of days ..... = 64 days

And in substantiation of the averment contained herein is the copy of the appeal bond marked as *Exhibit "M/3",* forming [an] integral part of movant's motion.

7. Movant says that the respondents also filed the notice of completion of appeal beyond the statutory period of sixty (60) days, in that respondent filed the notice of completion of appeal within the period *Sixty Five (65)* days as can also be computed below:

May 30, 2016.....May 31, 2016.....1 day

June 1, 2016.....June 30, 2016.....30 days
July 1, 2016.....July 31, 2016.....31 days
Aug. 1, 2016.....Aug. 03, 2016.....3 days
Total Number of Days.....65 days

And in substantiation of averment contained herein is copy of the notice of completion of appeal, marked as *Exhibit "M/4"*, forming a cogent part of movant's motion.

8. Movant says that aside from the defects enumerated in counts four (4), five (5) six (6) and seven (7) above, judgments on post-trial motions are not appealable to the Honorable Supreme Court of the Republic of Liberia but rather rulings/judgments on post-trial motions are only subject of remedial process, specifically certiorari. WHEREFORE AND VIEW OF THE ABOVE, movant prays Your Honors and this Honorable Court to dismiss respondents appeal to the ruling on the exceptions to respondent appeal bond/surety because both the appeal bond and notice of completion of appeal were filed beyond the statutory period of sixty (60) days required by law. And grant unto movants any other further relief that in the judgment of this court will be fair, legal, just, and equitable under the circumstances."

At first glance, the motion to dismiss the appeal seems to present a simple and uncomplicated issue for disposition; that all this Honourable Court has to do is to only take note of the fact that the appeal bond and the notice of completion of appeal were filed beyond the sixty-day period allowed by the appeal statute, and that, as mandatorily required by the said statute, this Court should then proceed to dismiss the appeal. However, contrary to that first glance or impression, our further review of the records in the file reveals that the case is not as straightforward and uncomplicated as the motion to dismiss suggest. Indeed, even in the course of the arguments before this Court by counsel for appellee, he conceded that the case did not present the simplistic overtures as the motion to dismiss sought to impress upon the Court. In fact, the records disclosed that, in reality, the proceedings conducted in the trial court, from whence the appeal is supposed to have been taken, were so engulfed in a litany of not just mere errors but were also overwhelmed by a catalogue of some of the most serious substantive and substantial illegalities, committed both by the trial judge and counsels for the parties, that it is difficult, under the circumstances, to deal with the motion in any simplistic terms as the movant proposed we do, for to do so would be tantamount to affirming what in our view were grave and atrocious illegalities and the perpetration of gross and substantial injustice. Such a course would prick the conscious core nerve of the Court and we are not prepared to be haunted by such demoralizing and disheartening luxury. We could not, therefore, in the context of the facts revealed by the records, subscribe to the tenets of the motion to dismiss and

ignore the other matters out of which the motion grew, or ascribe to the obvious illegalities appearing in the records before this Court. Given the foregoing, we are not prepared, indeed we reject, under the circumstances narrated herein, the notion that we preclude ourselves from delving into the illegal acts committed by the lower court and counsel for the parties or blinding ourselves from exercising the constitutional obligation to jealously guide the justice process of our land.

We should emphasize however that in seeking to correct the serious abuse of the justice process, and reinstate sanity to the proceedings had in the lower court, and thereby ensure transparent and substantial justice, we do not propose to open the records of the actual trial had in the lower court and probe into the merits of the case that led to the jury's verdict. That segment of the proceedings in the trial court is not before us at this stage, and the law forbids us from embarking on such a course. We do not intend the illegal examples of the trial court and transgress the long standing laws that have become core components of the jurisprudence of this jurisdiction. Instead, what we propose to do, acting within the ambit of the law, is to only examine and correct the outrageous procedural errors committed by the trial judge and counsels for the parties in the course of the appeal process that so clearly appear on the face of the records and which seems to provide the basis to provoke injustice upon one or more of the parties. The course we propose, in our view, warrants that we summarily recite the facts in the case as they relate to the procedural mishaps, mentioned above, being cautious not become entangled in ascertaining whether the verdict brought by the jury and the affirmance of said verdict by the trial judge were correct or justified. Those are squarely matters for a regular appeal, and our summary recitation of the facts is designed solely to provide an appreciation of the background and circumstances that triggered the series of errors referenced hereinabove.

The case began with the institution in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, of an action of ejectment by the plaintiff, appellee herein, against the appellants. Following the disposition of the law issues and a regular jury trial, the jury returned a verdict in favour of the appellee. As no motion for a new trial was filed, and on the initiative of the appellee, the trial judge, within the time allowed by law, entered judgment on

December 7, 2015, affirming the verdict, adjudging the appellants liable to the appellee, ordering that they be ejected, ousted and evicted from the property claimed by the appellee, and directing that they, the appellants, pay damages to the appellee in the amount of US$250,000.00. From this judgment, the appellants took exceptions and announced an appeal to the Honourable Supreme Court, sitting in its March Term, 2016. The appeal having been granted, the appellants, on December 16, 2015, nine days after the judgment, filed with the clerk of the trial court their bill of exceptions which had been duly approved by the trial judge.

When, by February 16, 2016, the appellee had neither received copy of the appellants appeal bond nor copy of the notice of completion of appeal, its counsel addressed a letter to the clerk of court ascertaining whether any of the instruments had been filed with the court, and requesting that in the event none of those instruments had been filed with the court, the clerk should issue a certificate to the effect. On the self-same day of the request, the clerk of court issued a certificate stating that an inspection of the records revealed that none of the instruments enquired about had been filed with the court up to the date and time of the issuance of the certificate.

It was from this point that the errors and illegalities referred to hereinbefore commenced. It started with counsel for the appellee, in complete disregard of the appeal statute, which vests in the trial court jurisdiction or authority to dismiss an appeal only where there is a failure by the appellant to file an approved bill of exceptions within the statutory time, and in full face of the records revealing that the appellants had filed their approved bill of exceptions within nine days of the entry of judgment by the trial court, proceeding on February 18, 2016, two days following the issuance of the clerk's certificate, to file with the trial court a motion to dismiss the appeal, stating as reason for the request that the appellants had failed to file with the court an appeal bond and a notice of completion of the appeal. Here is what Section 51.16 of the Civil Procedure Law says with respect to the retention of jurisdiction of the trial court in regard to dismissal of appeals:

> "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." Civil Procedure Law, Rev. Code 1:51.16.

Yet, notwithstanding the clear and unambiguous wording of the statute quoted above, stating that the trial court only retains jurisdiction to entertain a motion to dismiss where there is a failure by an appellant to file a bill of exceptions within the time allowed by law, and that where a bill of exceptions is filed within the time allowed by law but the appellant fails to appear for hearing of the appeal, or to file an appeal bond [inclusive of a defective appeal bond], or to file and serve a notice of completion of the appeal, jurisdiction becomes vested solely in the Supreme Court to entertain a motion to dismiss the appeal, counsel for the appellee still proceeded to file before the trial court a motion to dismiss the appeal.

The filing of the motion by counsel for the appellee demonstrated that either he was not conversant with or knowledgeable in the law, that he had not acquainted himself with the manifold recent Opinions of the Supreme Court, or that he determined to flaunt the law, including the Opinions of this Court. *International Bank (Liberia) Limited (IBL) v. Leigh-Parker*, 42 LLR 140 (2004); *National Bank of Liberia v. Karloweah and Board of General Appeals*, 42 LLR 389 (2005). That statutory command regarding the loss of jurisdiction of the trial court to entertain a motion to dismiss the appeal once a bill of exceptions is filed within the time stipulated by the appeal statute, we should emphasize, has been in existence for more than four decades such that it is deemed in this jurisdiction to have become an elementary principle of law that every lawyer is presumed to know. We therefore look upon the filing by counsel for the appellee of the motion to dismiss the appeal as an attempt to have the trial court disregard the law and proceed to exercise jurisdiction over a matter which it had clearly been divested of by law, and which, by the same law, was exercisable exclusively by the Supreme Court. *Kuma & Kuma v. Skinner*, 33 LLR 175 (1985); *Cole and Brown v. Williams et al.*, 37 LLR 626 (1994); *The Management of United States Trading Company v. Morris, Natt et al.*, 41 LLR 191 (2002); *Firestone Plantations Company v. Kollie*, 42 LLR 159 (2004).

And while the Supreme Court has opined in a limited number of Opinions that in certain exceptionally peculiar circumstances the trial court may still retain jurisdiction over the case to do certain other specific things, in addition to

the filing of the requisite documents for the completion of the appeal, such as investigating an individual who, not being a lawyer, poses as an attorney and signs court documents purporting to be an attorney, such circumstances do not exist in the instant case as to confer a continuing jurisdiction on the lower court to entertain either the filing of a motion to dismiss the appeal or arguments on a motion to dismiss the appeal. See: *Firestone Plantations Company v. Kollie*, 42 LLR 159 (2004).

But the errors did not stop there, as the case took on even greater intrigues thereafter. The records indicate that barely one day following the appellee filing of the motion to dismiss the appeal, that is, on February 19, 2016, the appellants filed with the court a motion for enlargement of time on the ground that their counsel had been ill and confined to rest up to March 1, 2016, a situation which they said constituted excusable neglect under the law and which thereby entitled them to an extension of the filing time for the appeal bond and the notice of completion of the appeal. The motion for enlargement of time was resisted, but the trial court, in a ruling made on February 25, 2016, granted the motion, ordered the filing time of the appeal extended, and directed that the appellants file their appeal bond within five days of the date of the ruling. Although the trial court did not indicate and time period within which the appellant, after filing the appeal bond, was to serve and file the notice of completion of appeal, we may assume that the lower court expected that the appellant would have served and filed that instrument within the outer limits set by the court for the filing of the appeal bond.

Further, in its ruling, the court also denied the motion to dismiss the appeal, holding that the motion was legally cognizable before the Supreme Court and not the trial court since the bill of exceptions was filed within the statutory time allowed for such filing.

However, because the ruling granting the motion for enlargement of time to the appellant to file their appeal bond and correspondingly the notice of completion of appeal and denying the motion to dismiss is not before this Court, we shall refrain from any further comments on the efficacy of the ruling, confining ourselves instead to the factual events as revealed by the records.

The records show that in compliance with the directive of the court, the appellants, on February 26, 2016, and one day following the trial court's ruling,

filed with the court their appeal bond, duly approved by the trial judge, and a copy of which was served on the appellee. Also, on March 1, 2016, four days after the filing of the appeal bond, the appellee filed with the court, at 10:50 a.m., what it denominated as "Exceptions to Appeal Bond". This new filing constituted the second error made by counsel for the appellee, for it completely disregard and ignored the clear wording of Section 63.5 of the Civil Procedure Law, the provision relied upon by the appellee for its challenge to the appellants' approved appeal bond. The section vests in a party the right to except to the sufficiency of a surety to a bond within three days of receipt of the notice of the filing of the bond. This is how the section reads:

> "*1. Exceptions.* A party may except to the sufficiency of a surety by written notice of exceptions served upon the adverse party within three days after receipt of the notice of filing of the bond. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs.
> *2. Allowance where no exception taken.* Where no exception to sureties is taken within three days or where exceptions taken are set aside, the bond is allowed.

The clear and unambiguous wording of Section 63.5 is that while it is discretional as to whether a party chooses to except to a bond, it is mandatory that once the decision is made to except to the bond the instrument excepting to the bond must be served on the party whose bond is being challenged within three days of the date of receipt of the notice of filing of the bond, and that where the instrument excepting to the bond is not served within the three day period, the bond is allowed. The provisions do not vest in the trial court judge the discretion of deciding whether to allow the bond or not where the exceptions are filed and served outside of the allowable statutory period. Rather, the provisions create a mandatory legal obligation on the judge to allow the bond and to dismiss or deny the instrument of exceptions filed to the bond outside of the statutory time. The Supreme Court has decided in a number of cases that in such situation, where the instrument challenging the bond is filed outside the statutory time, the party challenging the bond is deemed to have waived the right accorded by law to challenge the bond. *Goffa and Family v. Teah*, 39 LLR 137 (1998); *Forestry Development Authority v. Forestry Development Authority Workers Union and Scott*, 39 LLR 684 (1999); *Inter-Con Security Systems, Inc. v. Philips and Tarn,* 40 LLR 30 (2000); *Gbartoe v. Doe*, 40

LLR 150 (2000).

In the instant case, our review of the records indicates that the exceptions to the appeal bond were filed by the appellee four days after the date of filing and service of the appeal bond. No allegations were made in the document excepting to the appeal bond that the appeal bond was not served on the appellee on the day and date of the filing of the appeal bond, such as would have the notice period commence from a date other than the filing date of the bond. Under the numerous decisions of the Supreme Court, the conclusion can therefore be drawn that the appeal bond was served on the appellee on the same day and date of the filing of the appeal bond. [See the case *Williams v. Kpoto,* Supreme Court opinion, October Term, A. D. 2012]. This means that if the appellee elected to exercise the discretion granted by Section 63.5 of the Civil Procedure Law, it should have filed and served the instrument excepting to the appeal bond not later than February 29, 2016. The filing on March 1, 2016 was tantamount to a waiver of the right to except to the appeal bond. *Goffa and Family v. Teah,* 39 LLR 137 (1998); *Forestry Development Authority v. Forestry Development Authority Workers Union and Scott*, 39 LLR 684 (1999) Yet, when the judge entertained arguments on the exceptions [a most questionable conduct on his part], he granted the exceptions and ordered that the appellee make corrections to the bond. It is from this decision that the appeal was taken, the second appeal in the same matter even as the first appeal was still before the Supreme Court undetermined.

But the records show that case takes on even additional fascinations and intrigues, for on the same day and date of the filing by the appellee of the instrument of exception to the appeal bond, that is, on March 1, 2016, and only two hours and thirty-five minutes after the filing of the instrument of exception to the appeal bond, at 1:25 p.m., the appellants served and filed their notice of completion of appeal. We take note that under the law of this jurisdiction, to which the Supreme Court has unequivocally subscribed, the filing and service of the notice of completion of appeal completely divests the lower court of any further jurisdiction over the case and instead vest such jurisdiction in the Supreme Court. *Kamara v. Kamara et al.*, 29 LLR 485 (1982); *Liberia Petroleum Refining Company v. Sickrah et al.*, 36 LLR 261 (1989); *Ankra et al. v. The Liberia Federation of Labour Unions and McGill*, 36 LLR 343 (1989). From that point

onward, it is only the Supreme Court that has jurisdiction to make a determination, either on the merits of the appeal, or, if the appeal is defective by virtue of a defective appeal bond, lateness in the filing of the appeal bond or lateness in the service and filing of the notice of completion of the appeal. *Ahmar v. Gbortoe*, 42 LLR 117 (2004). This means that from that point, the lower court was without the authority to hear any aspect of the case, whether relating to the challenge to the bond or otherwise. *National Bank of Liberia v. Karlowesh and the Board of General Appeals*, 42 LLR 389 (2005).

Yet, counsel for the appellants, in the face of the law, referenced above, and which by the passage of time has become ingrained in the jurisprudence of this jurisdiction, proceeded, on March 4, 2016, three days after the service and filing of the notice of completion of appeal, signed by the both counsels, to file what they denominated as "Movants Motion to Justify and Respondents' Resistance". We are taken aback that the appellants and their counsel seemed to have suffered some form of amnesia, such that they forgot that it was only three days earlier that they had served and filed the notice of completion of appeal. What did they expect by this new filing, that the trial court would oust the Supreme Court of its legally acquired jurisdiction over the case or that the trial court would reacquire jurisdiction of the case and dispose of the issues relating to the appeal bond, contained in the documents filed before that court, merely because the parties had acquiesced or agreed to such a course? Did they expect that the trial court would exercise jurisdiction concurrently with the Supreme Court over the case, with the expectation that whichever court first entertained the matter would have preference over the other? Let us make it abundantly clear that while it is true that this Court has said that an appeal bond may be challenged by the appellee within three days of the filing and service of the bond by the appellant, this Court has in like manner stated that once a notice of completion of appeal is filed and the lower court loses jurisdiction over the case, the prerogative fall upon the Supreme Court to determine whether the bond is defective or not as would render the appeal dismissible. *The Management of OK Dry Cleaning v. Cooper,* 35 LLR 59 (1988); *National Bank of Liberia v. Karloweah*, 42 LLR 389 (2005). Hence, once the appellants served and filed the notice of completion of appeal, they had no further right to file any other instruments in the lower court, whether in

justification of the bond or in resistance to the challenge to the legality or sufficiency of the bond. *Liberia Agricultural Company v. Twehway and Dennis*, 36 LLR 575 (1989). Their action, the same as was the action of the lower court in filing the documents, was indisputably illegal and void ab initio and the trial judge could therefore not entertain or act on the merits of such illegal and void instruments.

Yet, the matter becomes even more ridiculous by the further revelation in the records that counsel for the appellee, on April 7, 2016 [thirty-seven days after the service and filing of the notice of completion of appeal] applied to the trial court for assignment for hearing of the "Movant's Exceptions to Appeal Bond"] and that on April 14, 2016 [forty-four days after the service and filing of the notice of completion of appeal], proceeded to file in the same lower court what it termed as "Respondent Resistance". We are flabbergasted by the seeming display of ignorance revealed in the records and must therefore pose the query, how could counsel for the appellee expect that the trial court could entertain the matter in the face of the service and filing of the notice of completion of appeal, which action deprived the lower court completely of any further jurisdiction over the case?

But the situation becomes even more perplexing and unbelievable by the further revelation in the records that, in response to the request of counsel for the appellee, the assigned judge, His Honour Peter W. Gbeneweleh, presiding at the March Term, 2016, of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, ordered the issuance of a notice of assignment for hearing of the exceptions to the appeal bond, the motion to justify and resistance thereto, slated for April 14, 2016. We cannot comprehend how the trial judge could have believed that in the face of the service and filing of the notice of completion of appeal, he still had jurisdiction of the case and that he could therefore legally assign and hear the exceptions to the appeal bond, the motion to justify and the resistance thereto forty-seven days after the trial court had lost jurisdiction over the case. This Court has said over and again that the first obligation of a court is to determine if it has jurisdiction over a case before it proceeds to make any other determination in the case, for if the court is without jurisdiction, especially of the subject matter, every action of the court taken in the course of the proceedings is void *ab initio*, and as such without any

legal efficacy, unrecognizable and unenforceable. *Firestone Plantations Company v. Kollie,* 41 LLR 63 (2002); *The Intestate Estate of the late Chief Murphy-Vey John v. The Intestate Estate of the late Bendu Kaidii*, 41 LLR 277 (2002). It is irrelevant whether the parties agreed to the court's exercise of such jurisdiction as this Court has said in manifold Opinions that the parties cannot confer jurisdiction on a court where the law has withheld such jurisdiction or clearly states that the court has no such jurisdiction. *Scanship (Liberia) Inc./LMSC v. Flomo*, 41 LLR 181 (2002).

We are taken therefore astonished and rather disappointed at the exhibition by the trial judge, firstly, for his open disregard for the law which he took a solemn oath to uphold, and secondly, by his display of seeming indifference towards and contempt for the records of the court or the flaunting of gross negligence in not taking cognizance of the fact, clearly shown in the records, that the notice of completion of appeal was filed since March 1, 2016, and that he was thereby placed on the alert that the trial court no longer had jurisdiction of the case to entertain either the exceptions to the bond or the motion to justify and the resistance thereto. This was a clear affront to and abuse of Judicial Canon No. Ten, which reads:

> "A judge should be temperate, attentive, impartial, *and since he is to administer the law, interpret it and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts*."

In entertaining arguments in regard to the exceptions to the bond and the motion to justify and the resistance thereto, the judge unmistakably demonstrated that he did not review the records in the case file and that he was unaware of or unappreciative of the facts revealed in the records, which under the quoted Judicial Canon, should have formed the basis for him determining whether he could legally entertain arguments in the matter. The fact that counsels for the parties chose to ignore or disregard the law and the facts or to display ignorance or indifference towards those critical elements of the case could not serve as any justification for the judge adopting a similar attitude or posture. Yet, this was exactly what the judge did in entertaining arguments on the exceptions to the appeal bond, the motion to justify, the motion to dismiss the exceptions to the appeal bond, and the resistance thereto.

What is even more disturbing is that after entertaining arguments on the

exceptions to the appeal, the motion to justify, the motion to dismiss the exceptions to the appeal bond and the resistance thereto, the trial judge still did not deem it befitting to review the records in the file so that he could be apprised of the status of the proceedings. We are convinced that had he done so he would have noticed that the court was without jurisdiction to act in the case and he would have ruled otherwise than as he did. Instead, to our utter amazement, the trial judge, on May 30, 2016, again in open defiance of the law governing appeals, and forty-six days after the loss of jurisdiction by the court over the case, proceeded to enter rulings (a) on the exceptions to the appeal bond, declaring that the bond was defective and that as such the appellants should correct the bond within three days of the date of the ruling; (b) denying the motion to justify; and (c) denying the motion to dismiss.

We are further baffled and bewildered by the judge's action as it evidences inconsistencies in his thought process. We wonder how in an earlier ruling the judge denied the appellee's motion to dismiss the appellant's appeal on the ground that only the Supreme Court had jurisdiction to effect dismissal of appeals on account of alleged defective appeal bonds but subsequently, after the notice of completion of appeal had been served and filed with the clerk of the court, believed that the court, his court, still had jurisdiction to entertain matters relating to the appeal bond filed by the appellant.

It was from all of those rather ridiculous and illegal actions of the trial judge, void *ab initio* in their entirety, that the appellants, having participated in and being a part of those actions, took exceptions and announced an appeal to the Supreme Court, which announcement of appeal, although opposed by the appellee, was granted by the trial judge. It is in respect of this new appeal from the illegal and void rulings of the lower court that the appellee herein filed the motion to dismiss.

The single basic question which this Court believes require resolution is whether under the circumstances narrated above the motion to dismiss can be entertained by this Court, especially in the face of what we have determined to be the obvious invalidity of the actions which transpired in the lower court subsequent to the rendition of the judgment affirming the verdict of the trial jury.

In the motion to dismiss the appeal, the movant averred that as the ruling

of the trial court, which we have said was illegal and void *ab initio*, was made on May 30, 2016 and the bill of exceptions filed on June 3, 2016, the appellants should have filed and served its appeal bond and notice of completion of appeal not later than July 29, 2016, the period being the sixty days allowed by statute. In violation of the statute, the appellee asserted, the appellants filed their appeal bond on August 2, 2016 and their notice of completion of appeal on August 3, 2016, a period of sixty-four and sixty-five days, respectively, from the date of the ruling from which the appeal was taken.

During arguments before this Court, the appellee's conceded that as the first notice of completion of appeal had been served and filed before the trial court, which act had divested the trial court of any further jurisdiction over the case, the clerk of the trial court was without the legal authority to file and the trial judge was similarly without the legal authority to either permit or condone the filing of documents in justification of the appeal bond, the motion to dismiss the exceptions and the resistance thereto, entertain arguments on the exceptions to the appeal bond, the motion to justify, the motion to dismiss the exceptions and the response thereto. He conceded that the trial court acted illegally in entertaining such matters and ruling thereon, and he acknowledged that consequently as there was no matter legally before the lower court upon which it could make a ruling, no appeal could have been taken therefrom, as could have necessitated the filing of a motion to dismiss the said appeal. Such concession having been made and the same being fully supported by and in harmony with the law, it is the holding of this Court that the motion to dismiss the appeal cannot be entertained and is therefore denied and dismissed.

Additionally, the Court takes cognizance of its many holdings that the Supreme Court and the lower court cannot concurrently exercise jurisdiction over the same case. *Kunakey v. Smith et al.*, 31 LLR 256 (1983). Under the laws of this jurisdiction, statutory and case, once the appeal process is completed, the lower court loses jurisdiction over the case, ceding same to the Supreme Court which thereupon alone assumes such jurisdiction until it disposes of the case or otherwise remands the case to the lower court with instructions that it resumes jurisdiction and take such further action as mandated, in accordance with law. The lower court is without the legal authority, either *sua sponte* or at the instance of the parties, to resume or reacquire jurisdiction over a case when

the appeal process has been completed, the Supreme Court has acquired jurisdiction over the case, and the case remains undetermined by the appellate court. As noted before, any such action by the trial court is illegal and void ab initio.

It is important to emphasize this point because the net effect of the course pursued by the parties and the judge in the lower court is that they took it upon themselves effectively to (a) oust the Supreme Court of its legal and legitimate appellate jurisdiction, and (b) prolonged and extend the appeal process unreasonably and against the period contemplated by the law. The Civil Procedure Law clearly sets out that a losing party in the lower court has a period of only sixty days within which to appeal the judgment or ruling of the lower court. The appellant is required to file the approved appeal bond and the notice of completion of appeal within the sixty day period, failing which the appeal is subject to dismissal. *Monrovia City Corporation et al. v. Brown*, 38 LLR 512 (1998). This Court, in interpreting the appeal statute has said that its provisions are mandatory and that they must therefore be strictly adhered to. *Kanneh v. Manley et al.*, 41 LLR 25 (2002); *Liberia Electricity Corporation v. Lloyd*, 41 LLR 348 (2003).

In the instant case, the sixty day period allowed by the Civil Procedure Law for the filing of the appeal bond and the service and filing of the notice of completion of appeal had already expired. We also do not herein query the lower court for entertaining and granting, on February 25, 2016, the appellants' motion for enlargement of time to enable them to file their appeal bond, a prerequisite to serving and filing the notice of completion of appeal, as those issues are not before this Court. What we do have issue with is that after the granting of the motion and directing the appellants to file their appeal bond within five days of the date of the granting of the motion, which order the appellants complied with the following day, February 26, 2016, the trial judge and the parties acted or pretended as if the court still had jurisdiction over the case and that it had the authority to retain jurisdiction and entertain hearings of motions and other proceedings relating to the appellants' appeal bond even though the notice of completion of the appeal had several months earlier been served and filed. How does the judge explain how, after the notice of completion of appeal had been served and filed on March 1, 2016, entertaining

arguments on the bond issue and rulings thereon almost three months after the service and filing of the notice of completion of the appeal? This was a display of ignorance, arrogance or disregard for the law and the facts in the case subsequent to the verdict of the jury and the judgment confirming the said verdict.

Given all of what has been said above, the issue which now confronts this Court is what directive should the Court give in respect of the case? In that regard, we note that no issue was raised before this Court relative to the lower court granting the appellants' motion for enlargement of time to enable them to file their appeal bond and correspondingly their notice of completion of the appeal. Also, no issue is raised before this Court regarding the trial court's grant of five days to the appellants to file their appeal bond and thereby perfect their appeal. The question of the enlargement of time is therefore a non-issue. Thus, if this Court were to remand the case to the lower court, the proper point for the lower court to begin is where exceptions were filed to the appellants appeal bond, for it was at that point that the appellants served and filed the notice of completion of appeal which thereby divested the lower court of any further jurisdiction over the case.

Ordinarily, we would remand the case to the trial court with the directive that it allows the appellants to file resistance to the exceptions to the appeal bond or file a motion to dismiss the exceptions. The lower court would then entertain arguments on the issues raised and make a ruling thereon, from which the parties may seek redress from the Supreme Court. But this would be cumbersome and too time consuming, and would expose the case to further unusual delays, with the possibility of results of injustice.

This Court has said in a number of cases that acting on authority conferred on it by the Constitution and the statutory laws of this nation, it may enter such judgment as the lower court should have entered, especially where the facts are so obvious on the face of the records that the result is predictable. *The Ministry of Foreign Affairs v. The Intestate Estate of the late Jarbo Sartee*, 41 LLR 285 (2002); *Emirates Trading Agency Company v. Global Import and Export Company,* 42 LLR 204 (2004). In that connection, we take judicial notice of the records, as we have the authority to do, both statutorily and under case law, that the appellants, in obedience to the orders of the trial court, contained

in the ruling on the motion for enlargement of time, filed and served their appeal bond on February 26, 2016. *Dopoe v. City Supermarket*, 34 LLR 215 (1986). We also take judicial notice of the records that on March 1, 2016, four days after the filing and service of the appeal bond, the appellee filed exceptions to the appeal bond filed by the appellants, relying on Section 63.5 of the Civil Procedure Law as the basis for the challenge to the appeal bond. We take further judicial notice that the statute relied on by the appellee to assert the challenge to the appellants appeal bond provides for a period of three days within which to challenge the bond. In the event the challenge is not asserted within three (3) days of the date of receipt of the notice of the filing of the bond, the party asserting the challenge is deemed to have waived the right to challenge the bond and the bond is therefore allowed.

In the instant case, this means that since the appeal bond was filed and served on February 26, 2016, the challenge should have been filed not later than February 29, 2016, the three day period allowed by law. The filing of the exceptions or challenge not having been done within the time allowed by law, the appeal bond, by the same token, is allowed to stand under the law. Accordingly, given that this is how the trial court should have ruled had it had the requisite jurisdiction, and by the authority vested in this Court to make such ruling or enter such judgment as the trial court should have, we herewith enter such ruling as the lower court is allowed to enter, holding that the appeal bond is allowed, as prescribed by Section 63.5 of the Civil Procedure Law, for the purpose of the appeal taken by the appellants.

We should point out however that in allowing the bond, we do so strictly as a matter of the law relating to the time for challenging a bond. We do not go into the issue of whether the bond was sufficient or defective. We hold only that as the records reveal that the exceptions to the bond were filed beyond the period allowed by law, the law directs that the bond be allowed. Under such circumstances, this Court has refrained from examining whether the appeal bond is sufficient or defective. This is the position that this Court has articulated in its recent cases. *Inter-Con Security Systems, Inc. v. Philips and Tarn,* 40 LLR 30 (2000); *Gbartoe v. Doe*, 40 LLR 150 (2000). This Court upholds that position in this Opinion. As such, we do not see the necessity in remanding the case for disposition of the issue surrounding sufficiency or defectiveness of the

appellants' appeal bond, and we so declare. Accordingly, it is the holding of this Court that the appeal bond is allowed, that the appeal is thereby properly before this Court, and that the case should be docketed for disposition by this Court on the merits, that is, review of the evidence, the verdict of the jury, and the judgment of the trial court affirming the verdict.

Wherefore and in view of the foregoing, the motion to dismiss the appeal filed by the appellee is denied and dismissed; the rulings made by the trial judge, being illegal, invalid and void *ab initio*, are reversed; that the bill of exceptions filed from the verdict and judgment having been done within the time allowed by law is properly before this Court; and that the appellee, not having filed its exceptions to the appellants' appeal bond within the time allowed by law, thereby forfeiting and waiving the right to except to the said bond, the appeal is ordered granted and the case ordered docketed to be heard by this Court on the merits.

The Clerk of this Court is hereby ordered to docket this case for hearing by this Court on the merits. Costs are to abide the final determination of the merits of the case. Costs of these proceedings to abide the final determination of the case. AND IT IS HEREBY SO ORDERED.