

**JOSEPH GBARTOE, DUNBAR GBARTOE, and WARNIE CHEA, Appellants, v.
WASHINGTON DOE, Appellee.**

Gbartoe et al v Doe [2000] LRSC 15; 40 LLR 150 (2000) (21 July 2000)

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 24, 2000. Decided: July 21, 2000.

1. The failure of an appellant to file an approved appeal bond and to serve and file a notice of the completion of an appeal deprives the appellate court of jurisdiction over the case and is cause for the dismissal of the appeal.
2. The sole object of a general bond is to secure the appearance of the defendant.
3. The amount of an appeal bond shall be fixed by the trial court, and secured by two or more legally qualified sureties for the purpose of indemnifying the appellee from all costs and injury arising from the appeal, if unsuccessful, and to have the appellee comply with the judgment of the appellate court or any other court to which the case is removed.
4. The sureties to an appeal bond remain obligated and responsible, singular and jointly, to ensure that the appellant complies with the court's judgment and pays all costs and expenses if the appeal is unsuccessful.
5. The sureties to an appeal bond are deemed to pledge that the appellant shall indemnify the appellee from all costs, injury, and damages which the appellee may sustain should the judgment be rendered against the appellant.
6. The sureties to an appeal bond are joint and severally liable for the amount specified in the bond plus interest, and the appellee has a remedy against such sureties in damages for breach of contract should the sureties default in satisfying the judgment.
7. When the appellee does not challenge the capability of the sureties to pay the sum of the appeal bond or attack the sufficiency of the bond, the bond will be deemed enforceable.
8. A bond which is sufficiently descriptive in its construction to make its condition clear and intelligible, and capable of enforcement, although lacking in other respects, is nevertheless legal.
9. An appellee suffers waiver in failing to file any objections to the sureties to an appeal bond within three days, upon notice of the filing of the said bond.
10. The failure of an appellee to except to the financial sufficiency of the sureties to an appeal bond within three days of receipt of notice of the filing of the bond constitutes a waiver of his objections and warrants the denial of the motion to dismiss the appeal.
11. The clerk of the trial court from whence an appeal is taken is required by statute to transcribe and transmit to the Supreme Court the certified records of the trial within ninety days of the rendition of the trial court's final judgment.

12. The failure and neglect of the clerk of the trial court to transmit the certified records of trial, where the appellant has superintended his appeal, does not constitute a legal ground for the dismissal of the appeal.

Appellee Joseph Doe filed a petition for declaratory judgment against the appellants to have the rights of the parties declared to a parcel of land which the appellants also claimed title to by virtue of a lease agreement. From a judgment entered by the trial court in favor of the appellee, the appellant appealed to the Supreme Court. The appellee filed a motion to dismiss the appeal, alleging (a) that he was not served with a notice of the completion of the appeal to bring him under the jurisdiction of the Supreme Court; (b) that the appellants' approved appeal bond was defective, in that the bond was without an affidavit of sureties and lacked a clear description of the property offered as security, as required by law; and (c) that the appellants had failed and neglected to transmit the certified trial records to the Supreme Court within ninety (90) days, as required by the appeal statute.

The Supreme Court disagreed with the appellee and denied the motion to dismiss the appeal. The Court held, with regards to first contention, that the records showed that the notice of completion of appeal was received and signed for by the appellee. Regarding the contention that the appeal bond was defective, the Court held that although there was no affidavit of sureties, the bond was still sufficient and fulfilled the requirements of the statute since the bond and the statement of property valuation contained the description of the properties offered as security to the bond and the assessed value of such properties. The purpose of the bond, the Court said, was to indemnify the appellee from harm and injury, and that the appellee had not alleged that the sureties were incapable of paying the amount of the bond or that they were not liable to the ordinary process in damages in the event of default in satisfying the judgment.

With respect to the contention that the properties offered were not sufficiently described, the Court asserted that not only was the description sufficient, but also that the appellee had waived his right to challenge the bond by his failure to object to the bond within three days of receipt of the notice of the filing of the bond in the trial court.

Finally, on the issue of the failure of the appellants to have certified copies of the records transmitted to the Supreme Court within ninety days of the judgment of the trial court, the Court opined that it was the responsibility of the clerk of the trial court, and not the appellants, to transcribe and transmit the said records, and that the appellant having superintended the said records, they could not be held for the failure of the clerk. The Court therefore denied the motion to dismiss and ordered the case heard on the merits.

J. D. Baryougar Junius of the Legal Clinic appeared for the appellants. Charles K. Williams of the Dugbor Law Firm appeared for the appellee.

MR. JUSTICE SACKOR delivered the opinion of the Court.

During the October Term, A. D. 1997 of this Court, Mr. Justice Wright, presiding in Chambers, granted a petition for a writ of prohibition filed by Joseph Gbartoe, restraining and prohibiting His Honour Varnie D. Cooper, Assigned Circuit Court Judge for the Sixth Judicial Circuit Court, Montserrado County, from evicting the petitioner from a parcel of disputed property. The then Chambers Justice granted the prohibition upon the strength of a lease agreement entered into and executed on October 1, 1982 between Chea Warnie, as

lessor, and Joseph Gbartoe, as lessee, for a twenty (20) year period, beginning from October 1, 1982, up to and including October 1, 2002.

The appellee, Washington Doe, filed an action for a declaratory judgment against Joseph Gbartoe, Dunbar Gbartoe and Warnie Chea, appellants, in the Sixth Judicial Circuit Court, Montserrado County, claiming ownership to a certain property situated and lying in Old Krutown, West Point. The appellants also claimed title and possession of the selfsame property by virtue of a lease agreement. The appellants also alleged that they constructed two houses on the parcel of land pursuant to the lease agreement and lived therein up to 1990 when they fled from Monrovia due to the Liberian civil conflict.

His Honour Joseph W. Andrews, Assigned Circuit Court Judge presiding over the Sixth Judicial Circuit Court, heard the action for declaratory judgment and rendered a final judgment in favor of the appellee. Counsel for appellants excepted to the judgment and announced an appeal to this Court of denier resort.

The records in the case show that the appellants perfected their appeal to this Court within the period prescribed by statute, and duly paid the clerk of the trial court the required fees for the preparation and transmission of the records of the case to this Court.

When this case was called for hearing, counsel for appellee informed the Court of the filing of a motion to dismiss the appellants' appeal. The appellee raised and argued three issues before the Court. The first contention of the appellee was that the ministerial officer of the trial court did not serve him with a copy of the notice of the completion of the appeal to bring him under the jurisdiction of this Court. The appellants, on the other hand, contended that the appellee did receive and sign for the notice of completion of appeal, as shown by "Exhibit S/1", and that as a result of said service the appellee was placed under the jurisdiction of this Court.

Our Civil Procedure Law provides that the clerk of court, upon request of the appealing party, shall issue a notice of completion of appeal, a copy of which shall be served by the appellant on the appellee. The law also provides that the appellant shall file the original of such notice in the office of the clerk. Civil Procedure Law, Rev. Code 1:51.9. In the case *Marh v. Sinoe*, [\[1978\] LRSC 58](#); [27 LLR 320](#), Syl. 1 (1978), text at pages 320 and 326, this Court held that "failure of an appellant to file an approved appeal bond and to serve and file a notice of completion of the appeal deprives the appellate court of jurisdiction and is cause for dismissal of the appeal."

It is clear from the statutory provision and the decisions of this Court, cited supra, that the appellant shall serve the appellee with a copy of the notice of completion of the appeal, and that the appellant shall file with the clerk of the trial court the original of such notice. Also, "Exhibit S/1" shows that the appellee received and signed for the notice of completion of appeal on August 4, 1999. Thus, he was brought under the jurisdiction of this Court. The contention by the appellee that he was never served with copy of the notice of completion of appeal by the ministerial officer of the trial court is therefore not sustained.

The appellee's second contention was that the approved appeal bond filed by appellants was legally defective, in that the said bond was without an affidavit of sureties, as required by law. In their counter argument, the appellants contended that they had filed an approved appeal bond for the amount of L\$80,000.00, that the bond showed a clear description of the property offered as security to the bond, and that a copy of the said bond was served on appellee without any objections to the sureties within the three-day period allowed by law. Thus, they asserted, appellee suffered a waiver.

Chapter 63 of our Civil Procedure Law refers to general security or bonds other than an approved appeal bond. The sole object of such general bonds is to secure the appearance of a defendant in court. Section 51.8 of the Civil Procedure Law specifically provides that the amount of an appeal bond shall be fixed by the trial court, with two or more legally qualified sureties, for the sole purpose of indemnifying the appellee from all costs and injury arising from the appeal, if unsuccessful, and complying with the judgment of this Court or of any other court to which the case is removed.

A careful perusal of appellants' appeal bond reveals that the sureties on said bond remain obligated and responsible, jointly and severally, to ensure that the appellants shall comply with the judgment and pay all costs and expenses if the appeal is un-successful; and further, that the sureties shall remain obligated until judgment is satisfied and they are thereafter discharged. The sureties pledged in the approved appeal bond that the appellants shall indemnify the appellee from all losses, injuries and damages that appellee may sustain should judgment be rendered against the appellants by this Court.

A financial sufficiency of an approved appeal bond in civil cases is a prevailing feature, in that, the objects of the appeal bond in such cases are the indemnification of the successful party and the payment of all costs arising from the appeal. Both the appeal bond and the statement of property valuation contained the assessed value of the property pledged as security and a sufficient description of the said property to easily identify it. Yet, the appellee contended that the appellants' appeal bond was fatally defective because of the failure of the appellants to accompany the bond with an affidavit of sureties pursuant to section 63.2 (3). Civil Procedure Law, Rev. Code 1:63.2.

Section 63.7 of the Civil Procedure Law provides that sureties to a bond are jointly and severally liable for the amount specified in the bond plus interest, and that the appellee shall have a remedy against the sureties on a bond for damages for breach of contract, should the sureties default in satisfying a judgment. In the case at bar, it is not the argument of the appellee that the appellants are not liable to the ordinary process of the court, or that they are not capable of paying the sum of L\$80,000.00 set forth in the approved appeal bond. It follows therefore that as the financial sufficiency of the appeal bond has not been attacked by the appellee, the bond is, in our opinion, enforceable.

As to the description of the property, this Court has held that "a bond which is sufficiently descriptive in its construction to make its conditions clear and intelligible, and capable of enforcement, although lacking in other respects, is nevertheless legal". *Williams v. Johnson et al.*, 1 LLR 247 (1893); *Van Ee v. Gabbidon*, 11 LLR, text at 72 (1951). We therefore deem the appellants' appeal bond legal, since the bond is sufficiently descriptive and its conditions are clear, intelligible and capable of enforcement. The attack upon the appeal bond in this respect is not sufficient to justify dismissal of the appeal.

We are also in agreement with the contention of the appellants that the appellee suffered a waiver because of his failure to file any objections to the sureties to the appeal bond within 3 days of receipt of the notice of the filing of said bond, as required by law. This Court held in *Kerpai v. Kpene* that the "failure of appellee to except in the court below to the financial sufficiency of the sureties to an appeal bond within 3 days after receipt of notice of the filing of the bond constitutes a waiver of his objection and warrants denial of a motion to dismiss the appeal." *Kerpai v. Kpene*, [\[1977\] LRSC 4; 25 LLR 422](#), Syl. 6 (1977).

The third and final argument of the appellee is that the appellants had failed and neglected to transmit the records in the case to the Supreme Court within the 90 day period required by the appeal statute and, consequently, that they had abandoned their appeal to this Honourable Court. The appellants, on the other hand, vehemently contended that the clerk of the trial court is statutorily required to transcribe and transmit the records in this case to the Honourable Supreme Court. They maintained that they paid the necessary fees to the clerk for the preparation and subsequent transmission of the records to this Court, and that the failure of the clerk to perform his duty is not ground for the dismissal of their appeal.

We are in agreement with the contention of appellants that the clerk of the trial court from which the appeal is taken is required by statute to transcribe and forward to this Court certified trial records of a case on appeal within 90 days after the rendition of a final judgment. The appellee did not deny the averment of the appellants that they had paid the necessary fees to the clerk of the trial court to perform his statutory duty. The appellants superintended their appeal to this Court, and the failure and neglect of the clerk of court is not a legal ground for dismissal of appellants' appeal.

Wherefore, in view of the foregoing, the motion of appellee to dismiss the appellants' appeal is hereby denied and the appeal ordered heard on its merits. Costs are to abide the final determination of the case.

Motion to dismiss appeal denied.