

**VINCENT SORSOR OF LAMCO TRADING CENTER, Appellant, v. S. EDWARD
PEAL, Appellee.**

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

Heard: April 23, 1985. Decided: June 20, 1985.

1. If a party fails to appear to oppose a motion or fails to furnish the papers demanded on due notice, the motion will be granted on proof of due service of the notice and the required papers.
2. Where an appeal bond contains no monetary provision, the bond is defective and a motion to dismiss the appeal will be granted.
3. It is the duty of the appellant to see that the appeal bond contains an amount. This is part of his duty to superintend the appeal and see that all of the legal requisites are completed.

Appellant appealed from a judgment in an action of ejectment brought against him by the appellee. However, the appeal bond filed by the appellant contained no amount. Appellee therefore filed a motion to dismiss the appeal. No resistance was filed to the motion, nor did counsel for appellant appear for the hearing of the motion before the Supreme Court, although duly notified thereof.

Thus, in the absence of appellant's counsel, the Court proceeded to hear the motion and to grant the same. The Court held that the appeal bond should have specified an amount, sufficient to indemnify the appellee in the event the appellant lost the appeal. This, the Court said, was a requirement of the appeal statute, and the failure by appellant to comply with this requirement rendered the appeal dismissible. The motion was therefore *granted* and the appeal *dismissed*.

Joseph P. H. Findley appeared for the appellee. No one appeared for the appellant.

MR. JUSTICE NYEPLU delivered the opinion of the Court.

When this motion to dismiss appellant's appeal was called for argument, Counsellor Joseph P. H. Findley appeared for the appellant/movant. Counsellor J. Emmanuel Berry, who is counsel of record for the appellant, did not appear or file resistance to the motion, even though he received and signed the notice of assignment for the hearing of the motion. The one-count motion to dismiss is quoted as follows for the benefit of this opinion:

1. "Because appellee submits that the appeal bond as filed by the appellant is

insufficient, in that it does not comply with the mandatory statutory requirements. The appellant's appeal bond, a statutory requirement for the perfection of an appeal does not carry any amount; that is to say, what amount would be paid to appellee in case the appellant is not successful in his appeal. Appellee contends that the statute requires that 'Every appellant shall give an appeal bond in an amount to be fixed by the Court. . . .' A failure to file a sufficient appeal bond within the time specified shall be ground for dismissal of the appeal The bond not carrying an amount is therefore insufficient and the appeal should be dismissed."

This one-count motion was not opposed by the appellant. Under the Civil Procedure Law, Rev. Code 1 :10.7, if a party does not appear to oppose a motion or fails to furnish the papers demanded on due notice, the motion shall be granted on proof of due service of the notice and the required papers.

Upon careful examination of the bond, attached to appellee's motion, we find that this fatal defect exists. In our opinion, it was incumbent upon appellant to have prevailed on the trial judge to insert in the bond an amount, sufficient to indemnify the appellee, such that in the event appellant loses his appeal, the appellant will pay the sum certain specified in the bond. In the case *Mingle v. Richards*, reported in 11 LLR 323 (1953), this Court held that where an appeal bond contains no monetary provision, the bond is defective and a motion to dismiss the appeal will be granted. It was the duty of the appellant to see that the bond contains an amount because it is the duty of appellants to superintend the appeal and to see that all legal requisites are completed. *Cole v. Larmi*, 25 LLR 450 (1977).

For want of so important a prerequisite, this Court will not assume jurisdiction over this case. Therefore, it is our opinion that the motion to dismiss the appeal should be, and the same is hereby granted, with costs against the appellant. And it is so ordered.

Motion granted; appeal dismissed.