

**EDWARD KON ABRAHAM**, Justice of the Peace, Appellant, v. **KWEKU ASSIFUAH**,  
Appellee.

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

Heard: March 31, 1982      Decided: July 8, 1982.

1. The Supreme Court will refuse to hear an appeal where the records show that the notice of the completion of the appeal was neither issued nor served on the appellee.
2. The Supreme Court on its own initiative may dismiss an appeal for the lack of an appeal bond and a notice of the completion of the appeal.
3. An unapproved appeal bond is a legal nullity, bears no legal sanctity and gives no protection to the appellee.
4. A resistance to a motion may be filed by a party in writing prior to the call of the case, or when the case is called, a party may spread his resistance on the record prior to the commencement of the argument.
5. A motion for diminution of records should be filed before the call and hearing of the case. When an argument is heard and submitted for judgment, the counsel and their clients are deemed to have accepted the correctness of the records transcribed.
6. A request for diminution of the records and permission to file a resistance cannot be granted after the case has been argued and submitted for judgment

An action for non support was instituted against appellant in the justice of the peace court, growing out of which summary proceedings were filed against the justice of the peace. From the judgment in the summary proceedings, appellant announced an appeal to the Supreme Court. Appellee thereafter moved the Supreme Court to dismiss the appeal for failure of appellant to file an approved appeal bond and to serve upon appellee a notice of the completion of the appeal within statutory time. The Supreme Court heard arguments on the motion, at the conclusion of which appellant requested the court for permission to file his resistance to the motion as well as for permission to file a motion for the diminution of the records. The Supreme Court held that a request for the diminution of records and permission to file a resistance could not be filed after the call and hearing of the case. The Court therefore denied both applications and granted the motion to dismiss, holding that the

filing of an approved appeal bond was an important prerequisite to perfecting an appeal and that a failure to do so rendered the appeal dismissible.

*Roger C. A. Steele* and *James D. Gordon* appeared for petitioner. *James Doe Gibson* appeared for respondents.

MR. JUSTICE MABANDE delivered the opinion of the Court.

With the constant rise and fall of man, the progress of his profession should be characterized by order and wisdom; but experience with lawyers and litigants have imposed upon this Court the cause to view the opposite as the real characteristics of some of those who appear before us.

Before this Court is pending an appeal, the fundamental issue of which remains a mystery to even the appellant. The summary proceedings against the appellant justice of the peace arose out of an action of non support that was instituted in his court by the petitioner therein. Judgment in the summary proceedings was rendered against the appellant justice of the peace, from which he has appealed to this Court. Appellee thereafter filed a motion to dismiss the appeal.

The motion to dismiss the appeal was filed on December 27, 1981; an amended motion to dismiss the appeal was filed on March 23, 1982; and a notice to withdraw the motion to dismiss the appeal was filed on March 24, 1982. As a court does not raise issues for parties, we shall decide only the points in issue as raised by the litigants.

Appellee's one count amended motion to dismiss the appeal asserted that the appellant had failed to perfect his appeal by neglecting and failing to file an approved appeal bond and to serve upon appellee a notice of the completion of the appeal within statutory period.

On March 23, 1982, this case was called for hearing by this Court. Appellant Edward Kon Abraham, justice of the peace, appeared for himself and requested the Court to reassign the case for March 30, A. D. 1982, during which period, he told the Court, he would retain a counsel. The case was reassigned as requested by the appellant.

When all of the parties appeared as per assignment, counsel for appellant again asked the Court to have the case reassigned for the following day in order that he may get well acquainted with the facts of the case so as to adequately defend his client. The Court granted his request and the case was again reassigned for hearing on March 31, 1982 at 3 o'clock p.m. Appellant and his counsel appeared as per the assignment and fully participated

in the arguments. At the conclusion of the argument, appellant's counsel spread on the records of this Court the following request:

"Counselor James Doe Gibson for the respondent respectfully begs leave of this Honourable Court to permit him, by giving him a chance, to file his resistance to the motion filed by the counsel for the petitioner and, if there is any record missing, to also file a motion for diminution of records. And respectfully submits."

The issues presented by the amended motion to dismiss and the submission by the appellant's counsel are:

(1) whether an appellant who fails to file an approved appeal bond and a notice of the completion of the appeal within statutory period may still have his appeal heard by this Court?

(2) whether a party who has regularly argued a motion and submitted for judgment may thereafter request permission from the Court to file a resistance? And

(3) may a party make a request for diminution of records after he has concluded his argument?

Courts of justice loathe dismissing an appeal on any technical ground that may tend to bar the determination of the merits of the cause. Technicalities, often applied to dismiss appeals, tend to suppress the proper administration of justice. There are, however, basically prescribed procedures which every appellant must follow in order to have this Court consider his grievance on appeal. A party who for no reason neglects to follow the prescribed procedures is deemed to have abandoned them and thereby to have waived his right to appeal.

Resort to the records of this case showed that final judgment was rendered on September 21, 1981, but that up to and including the 21<sup>st</sup> day of December A. D. 1981, appellant, co-respondent in the lower court, had not filed an approved appellant's appeal bond or a notice of the completion of the appeal.

This Court has held in several of its decisions that where the records show that the notice of the completion of the appeal was neither issued nor served on a party, it would refuse to hear the appeal. Unless a notice is issued and served on an adversary, he would not have due notice of the perfection and pendency of the appeal for hearing. It affords a party his opportunity of having his day at the appellate trial. Failure to file it within the statutorily prescribed period renders an appeal dismissible.

In *Garteh v. Paimore*, 22 LLR 51 (1973), this Court dismissed an appeal on its own initiative for the lack of an appeal bond and a notice of the completion of the appeal in the records.

In the case *Vamply of Liberia v. Manning*, 25 LLR 188 (1976), this Court held that an unapproved appeal bond is not an instrument of indemnity; that it bears no legal sanctity and therefore gives no protection to the appellee; and that it is a legal nullity.

We therefore hold that failure to file an approved appeal bond is a material defect that renders an appeal dismissible.

A resistance to a motion may be filed by a party in writing prior to the call of the case or when the case is called, a party may spread his resistance on the records prior to the commencement of the arguments. A party who abuses his rights or neglects to take due advantage of the rights and privileges accorded him by law, should blame himself for his own inaction.

A motion for diminution of records should be filed before the call and hearing of a case. When a case is called for argument before this Court, a party giving justifiable reason for not filing a motion for diminution of records may call the attention of the Court to the absence of important records from the file and request the Court to order the clerk of the trial court to either supply them or forward the original file. When an argument is heard and submitted for judgment, the counsel and their clients are deemed to have accepted the correctness of the records transcribed. Co-respondents' counsel having shown to the Court no legal or physical impediment that interfered with his timely filing of the resistance and motion, although there were many postponements and numerous reassignments at his own request, is estopped from claiming that the transcribed records are in-correct. A court cannot grant a request for diminution of records and permission to file a resistance after the case has already been argued and submitted for judgment. Both requests of the co-respondents' counsel, i.e., for permission to file a motion for diminution of records and a resistance to the motion to dismiss the appeal are therefore denied.

We accordingly hold that the motion to dismiss the appeal should be and the same is hereby granted and the appeal is ordered dismissed. The Clerk of this Court is hereby commanded to send a mandate to the trial court instructing the presiding judge to resume jurisdiction over the case and to enforce its judgment. Costs are ruled against the respondents. And it is hereby ordered.

*Motion granted.*