

**EDITH DENNIS**, by and thru her husband, **WILMOT DENNIS**, Appellant/Respondent,  
v. **INTRUSCO**, by and thru its President, **RUDY KNOTHS**, and **INSURANCE**  
**COMPANY OF AFRICA**, by & thru its Vice President, **GIZAW H. MERIAM**,  
Appellees/Movants.

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

Heard: April 27, 1983. Decided: July 6, 1983.

1. One of the primary purposes of an appeal bond is to indemnify the appellee from all costs and injuries that may result from the appeal.
2. In a case of non money judgment, only a nominal sum that is sufficient within the sound discretion of the trial judge to cover costs of trial and appellate courts together with damages appellee may sustain by reason of the appeal should be the penalty of the appeal bond, without any regard to the amount that is not awarded by the trial court.
3. Appellant must superintend the appeal fully in accordance with the appeal statutes.
4. The approval of the appeal bond by the trial judge does not immune the appeal bond from attack.

Appellant/respondent filed an action for damages for breach of contract in the lower court. The jury did not award any amount in the verdict which was confirmed in the final judgment. On appeal, a motion to dismiss the appeal was filed alleging that the amount of the appeal bond posted by appellant/respondent should have been one and a half times the value of the amount claimed in the complaint. The Supreme Court denied the motion on the ground that in the case of a non money judgment, the law does not require that the appeal bond to be one and one-half times the amount sued for by the plaintiff; rather, that a nominal sum capable of covering costs of the trial and appellate courts is sufficient to indemnify the appellee.

John A. Dennis appeared for the appellant/respondent. Cooper & Togbah Law Firm appeared for the appellees/movants.

MR. JUSTICE YANGBE delivered the Opinion of the Court.

Appellant filed an action of damages against appellee in the Civil Law Court, Sixth Judicial Circuit, Montserrado County to recover the sum of \$210,000.00 for breach of contract. The jury did not award any amount in the verdict which was confirmed in the final judgment. The judgment was excepted to and the case appealed to this Court for final review and decision. When the case was reached on the calendar for arguments on the 27 th of April

1983, counsel for appellees called our attention to the motion to dismiss and the resistance thereto, and asked the Court to entertain arguments on the said motion and resistance. The Court granted the request and ordered counsel on both sides to proceed with their respective arguments.

In their one count motion, appellees contended that the amount stated in the complaint and sought to be recovered is \$210,000.00; therefore, the penalty of the bond should have been one and one-half times the same, that is \$313,000.00 instead of \$1,300.00, the latter being the penalty of the appeal bond.

Appellant resisted the motion to the effect that the trial court did not render a money judgment, hence, \$1,300.00 is quite sufficient and is intended to cover only costs and subsequent injury which might arise from the appeal.

We note from the final judgment of the trial court the absence of a sum stated therein which evidently confirms the contention of appellant that no money judgment was rendered by the trial court in this case.

One of the primary purposes for a penalty in an appeal bond is to indemnify the appellee from all costs and injuries that may result from the appeal. Hence, the penalty must be sufficient to comply with the judgment of the appellate court, if the appellant is unsuccessful. Therefore, in determining the penal sum in an appeal bond, in a case of non money judgment as in the instant case, only a nominal sum that is sufficient within the sound discretion of the trial judge to cover costs of trial and appellate courts together with damages appellee may sustain by reason of the appeal should be the penalty of the appeal bond, without any regard to the amount that is not awarded by the trial court. Consequently, the sum of \$1,300.00 affixed in the appeal bond by the trial court, in our opinion, is quite sufficient to indemnify the appellees as stated hereinabove.

The appellant also contended that it is the sole, if not the absolute, responsibility of a trial judge to affix the penalty of an appeal bond and his manner of doing so is unquestionable and it should not prejudice the interest of a party. Further, it was the court that named the penal sum in the bond as the law required.

Whilst it is true that the trial judge must affix the penalty of an appeal bond (Civil Procedure Law, Rev. Code 1:51.8), it is also the duty of every litigant, for his own interest, to so surround his case with the safeguards of the law as to secure him against any serious miscarriage and thereby pave the way to securing the great benefit which he seeks to obtain under the law.

Appellant must superintend the appeal fully in accordance with the appeal statute. *Blackledge v. Blackledge*, 1 LLR 371 (1901). Therefore, the approval of the appeal bond by

the trial judge does not immune the appeal bond from attack. Hence, the contention of appellant in this respect is untenable and is overruled.

In view of the facts and circumstances herein stated, however, and the law controlling cited above, the motion to dismiss the appeal is denied and the resistance is sustained.

The Clerk of this Court is ordered to re-docket this case for hearing on the merits during the ensuing 1983 October Term of this Court. Costs to abide final decision. And it is so ordered.

*Motion denied.*