BOIMAH LARTEY, ALHAJI J. D. LASSANNEH, et al., Respondents/Appellants, v. **ALHAJI VARMUYAN CORNEH**, **ALAHAJI SUNDIFU**, **et al.**, Movants/Appellees.

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

Heard: June 7, 1983. Decided: July 8, 1983

1. Where an appeal is from a non money judgment, the penalty in the appeal bond should only cover costs of defending the appeal, and not the value sued for in the lower court.

2. Appeals to the Supreme Court will not be dismissed on mere technicality but for good reasons or substantive grounds.

3. The fact that security for costs was signed by only one appellant is immaterial since all that is necessary is that satisfactory security be given.

On appeal from a judgment in the lower court dismissing plaintiffs/appellants' complaint in an action of ejectment, appellees filed a motion to dismiss contending that the appeal bond in the amount of $15,000.00 was insufficient in value since it was not one and one-half times the value of the property, and that the bond was not signed by all of the appellees. The Supreme Court rejected both contentions of the appellees. The Court noted that the principle of one-and one-half times the judgment applied only where a money judgment was involved. The Court observed that in the instant case, the property was not awarded to any party as neither party had to pay for the property sued for. The winning parties, the Court said, were the appellees, who would have incurred only costs and no injury in case the appellants did not succeed in their appeal. The Court therefore held their contention to be without merit.

As to the second contention, that is, that all of the appellants should have signed the appeal bond, the Court held that the fact that all of the appellants did not sign the bond did not render the bond defective, noting that the point raised by the appellees was a mere technicality which could not be sustained. The bond was therefore upheld and the motion denied.

Robert G. W. Azango appeared for the movants/appellees. J. D. Gordon appeared for the respondents/appellants.

MR. AD HOC JUSTICE PEARSON delivered the opinion of the Court.

This is an appeal by the plaintiffs, now appellants/ respondents, from the judgment of His Honour E. S Koroma, assigned circuit judge, Sixth Judicial Circuit Court, Montserrado County, sitting in its June Term, A. D. 1982 in favour of appellees/movants dismissing the appellants' complaint in an action of jectment. Plaintiffs excepted to the ruling, and announced and perfected their appeal, September 2, 1982.

On June 6, 1983, appellees filed a twelve-count motion to dismiss the appeal contending that the bond is defective because only one of the appellants signed the said bond and that $15,000.00 was insufficient to indemnify the appellees from all costs if the appeal was not successful. The appellants contended essentially, on the other hand, that the motion was filed in bad faith for there is no legal and sufficient ground to dismiss their appeal. Appellants' counsel argued that he had fully conformed and complied with all jurisdictional steps required by law to perfect the appeal and that the appeal bond which has the penal sum of $15,000.00 sufficiently indemnified the appellees if the appeal was not successful since there was no money judgment rendered and requested that the court take judicial notice of the said appeal bond. He further argued that the Appellant who signed the bond did so in a representative capacity.

The issues as judged from the records submitted to us for review are:

1. Whether or not $15,000.00 is sufficient to indemnify appellees in whose favour a non monetary judgment was rendered?

2. Whether or not in a case involving several appellants, one of them could sign for the rest of the co-appellants on the bond?

The appellees contended and strongly argued before this Court that the value of the appeal bond should be the value of the property sued for by appellants instead of only $15,000.00 and cited this Court to the case: Niumo v. Freeman, 15 LLR 517 (1964), in which this Court held that:

"An appeal bond in a civil appeal must cover one and one-half times the principal amount at issue where indemnification is a primary purpose of the obligation; and defectiveness of such a bond in this respect constitutes ground for dismissal of the appeal."

In the text of said opinion, at page 519, this Court also said:

"The purpose of the requirement that an appeal bond in a civil case must cover one and one-half times the amount at issue is to indemnify the appellee from all loss or injury he might sustain by reason of the appeal. This Court has repeatedly held that, where indemnification is a primary purpose of the appeal bond, the amount named therein must be at least one and one-half times the amount for which judgment was rendered; and defectiveness of such a bond in this respect is sufficient ground for dismissal of the appeal."

In the case cited and relied upon by the appellees, the judgments were money judgments against the defendants and therefore the court referred to one and one-half times the amount of the judgments. But in the instant case, the ones to be indemnified are the defendants in whose favour the ruling was made. Neither the appellees nor appellants are to pay for the properties sued for, except that the appellants must indemnify the appellees from all costs which the appellees may sustain by reason of the appeal should the appellees prevail

in the appellate court. Since the appellees can only recover costs and not the value of the properties in dispute should they win in the appellate court, it is the considered opinion of this Court that the amount of $15,000.00 inserted in the bond as penalty is indeed sufficient for the purpose intended. Hence, all counts in the motion to dismiss concerning the $15,000.00 being insufficient are not sustained.

Further, we find ourselves unable to agree with the appellees' contention that the failure of all appellants to sign the bond as principals/appellants constitutes defectiveness of the bond for which it must be dismissed. This Court has held that appeals will not be dismissed on mere technicality but only for good reason or on substantive grounds. Biggers v. Good-Wesley, et al., 23 LLR 285 (1974). Also, legal authorities on the point have said that:

"Two or more defendants may unite in appealing or bringing error in a proper case, and perfect such appeal by joining in a single bond or undertaking, if this is done, all the appellants or plaintiffs in error must join in the bond or undertaking, and it must be so worded as to bind each of them, and the wording of the condition ordinarily must be such as to bind all the sureties as to all. However, under the practice in some jurisdiction, the fact the security for costs was signed by only one appellant, is immaterial since all that is necessary is that satisfactory security be given." 4 AM. JUR. 2d. Bonds, § 325.

The appeal bond having met all the requirements of the law, it is hereby upheld. Therefore, in view of the foregoing, the motion for the dismissal of the appeal is denied. The Clerk of this Court is hereby ordered to redocket this case for the ensuing term of this Court for final disposition of the said case on the merits. And it is hereby so ordered.

Motion denied.