

**CAROLINE SMYTHE**, Appellant, v. **JOSEPH J. MENDES-COLE**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Argued November 4, 1957. Decided December 20, 1957.

When an appellant has failed to file an approved appeal bond within the statutorily prescribed period of time, a motion to dismiss the appeal will be granted.

On appeal from a judgment of the court below in an ejectment action, *appeal dismissed*.

*J. Dossen Richards* for appellant. *J. C. N. Howard* for appellees.

MR. JUSTICE HARRIS delivered the opinion of the Court.

Joseph J. Mendis-Cole, the appellee in the above cause, entered an action of ejectment in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, against the above named appellant, defendant in the court below. The case was heard and determined in favor of the plaintiff below, now appellee; to which the defendant in the court below, now appellant, has appealed to this Court of last resort upon a bill of exceptions containing four counts. At the call of the case for hearing at this bar, counsel for the appellant informed the Court that he had filed an application for relief before the Justice presiding in Chambers, which appeal had been forwarded to the full bench for hearing. Counsel for appellee also informed this Court that he had filed a motion to dismiss the appeal. We quote hereunder the relevant count in the application for relief which relates to the bond :

"That, in keeping with law, she prepared her bill of exceptions and appeal bond. The latter was sent to Robertsport, Grand Cape Mount County, to Judge Beysolow under register cover by the late Counsellor S. David Coleman, then counsel for appellant. Appellant is of the belief that, if the bond was returned by the Judge to Counsellor Coleman, same cannot be found, nor does there appear to be any trace of it in the local Post Office. Judge Beysolow has informed appellant's Counsel that he approved the said bond, but unfortunately there is no trace of said bond."

From the records before this Court, it is observed that the said application for relief was filed with the Justice presiding in Chambers eight months and five days after the

rendition of final judgment and appeal taken and whilst Judge Beysolow, the trial Judge against whom the appellant could have obtained a remedial process to compel him to approve the bond upon a proper showing that the bond was actually submitted within statutory time, was still living. Taking into consideration the above, as well as the questions propounded to the counsel for the appellant and his answers given, this Court is of the opinion that due diligence was not exercised by the appellant as far as securing the filing of an approved appeal bond ; the application is therefore denied.

The next point to claim the attention of this Court is the motion to dismiss the appeal. The said motion contains the following as grounds for dismissal of the appeal :

"1. Final judgment was rendered on April 13, 1955, and the bill of exceptions was not approved and filed until April 28, 1955, quite fifteen days after the rendition of final judgment.

"2. On May 20, 1955, appellant filed an unapproved appeal bond."

The motion was never formally resisted by the appellant's counsel, who, in his argument before this Court, stressed the point that a bill of exceptions may be approved and filed any time after the rendition of final judgment within the sixty days allowed for the completion of such an appeal.

This Court holds the view that, ten days after the rendition of final judgment, the bill of exceptions of the party appealing shall be submitted for the approval of the trial judge and filed in the office of the clerk of Court; and any bill of exceptions filed after the ten day period is not in keeping with statute, and is therefore filed without statutory time. The fact that the appeal bond is not approved is verified by the records certified to this Court; and in that connection we quote hereunder the following :

"Every appellant must give security, to be approved by the court, that he will indemnify the appellee from all injury arising from the appeal, and will comply with the judgment of the court to which the appeal is taken, or any other to which the cause may be removed, or his appeal shall be dismissed." 1841 Digest, pt. II, tit. II, ch. XX, sec. 8 ; 2 Hub. 1578.

For the foregoing reasons, and in view of the law quoted above, the motion is

granted ; the appeal is dismissed ; and appellant is ruled to all costs. And it is hereby so ordered.

*Appeal dismissed.*