

AGIP (LIBERIA) CORPORATION, by and through its general manager, V. F. ARENA, Appellant, v. JOSEPH A. SODATONOU and RUPHINA G. SODATONOU, his spouse, Appellees.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Argued March 17, 1970. Date of decision not indicated.

1. The Supreme Court has no authority to grant leave to make an insufficient appeal bond sufficient after the appeal procedure has been completed. Defects therein may be cured upon application made to the trial court before that tribunal loses jurisdiction in the proceeding.

A motion was brought to dismiss an appeal taken by the defendant after judgment in an action of debt. About one year after the filing of the motion to dismiss the appeal, appellant applied to the Supreme Court for leave to make sufficient its appeal bond, the deficiencies therein sought to be cured bearing no relation to the grounds upon which the motion to dismiss the appeal had been based. The *application was denied*, but with the reservation that the appellees could not thereafter incorporate into their motion to dismiss, the deficiencies in the appeal bond spelled out by the appellant in its application for leave to amend the bond.

*J. C. N. Howard* for appellant. No appearance for appellees.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

This is an action of debt arising in the Debt Court for Montserrado County, at its March Term, 1968. After judgment in the lower court, an appeal was taken.

Appellees filed a motion in this Court to dismiss the

appeal, dated March 18, 1969. Appellant opposed the motion and the case remains on our docket.

On February 26, 1970, appellant filed an application for the modification of his appeal bond, the correction sought, as set forth therein, being altogether different from the grounds of appellees' motion to dismiss, for the appeal bond was not the subject of attack by the appellees. To this application the appellees made no resistance, irrespective of the fact that appellant's application was made more than eleven months after the motion to dismiss. The appellant sought leave to submit the sureties' affidavit and a certificate of valuation of the property, as required by statute.

This is an application addressed to the Court. No resistance was filed against the application, and counsellor J. C. N. Howard appeared and argued for the application in the absence of any appearance for the appellees.

He contended that the appellees' motion to dismiss contained no reference to the bases of his application, nor had they made any resistance to his application; he prayed the Court grant him the permission to modify his bond so that it would accord with the provisions of the Civil Procedure Law.

Section 5108 of the Civil Procedure Law, L. 1963-64, ch. III, governs the matter herein:

"A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action."

This appellate court does not possess the right under the statute to modify an appeal bond by making it sufficient after the appeal is completed; hence, we have no alternative but to deny the application. However, in all fairness under the circumstances, the application is denied without prejudice to the applicant, in that the appellees may not unduly benefit by this opinion in seeking to have

their motion to dismiss amended to embrace the relief sought in the application thus denied.

The application to modify the bond is, therefore, denied. And it is hereby so ordered.

*Application denied, with reservation.*