AGIP (LIBERIA) CORPORATION, by and through its general manager, V. P. ARENA, Appellant, *v.* JOSEPH A. SODATONOW and his wife, RUPHINA GEDGBIKU-SODATONOW, Appellees.

MOTION TO DISMISS APPEAL FROM THE DEBT COURT, MONTSERRADO COUNTY.

Argued October 14, 1970. Decided January 22, 1971.

1. An insufficient appeal bond may be made sufficient, but only before the trial court, prior to the time when it loses jurisdiction in the matter, as, e.g., when the appeal in the matter has properly come before the appellate court.
2. Any person, not delinquent in tax payments to the Government, or clothed with total immunity against the processes of the law, may function as a surety to an appeal bond.
3. Any ministerial officer of a constituted court has the right to deputize police officers, or other persons, to serve process issuing out of that court.
4. Though the judge of the court where judgment was rendered has approved the indemnification provided for in the appeal bond, when such function has been assumed by the appellant, nonetheless, the burden falls on the appellant who must establish that the indemnity set in the bond is sufficient under the law.
5. All appeal bonds in civil matters must provide for indemnification to the appellee, in event of financial loss resulting from an unsuccessful appeal, in the amount of one and one-half times the judgment from which the appeal was taken.

During the pendency of an appeal arising from the Debt Court, a motion was brought by the prevailing plaintiffs to dismiss the appeal, primarily based on the alleged insufficiency of the indemnity provided for in the appeal bond approved by the trial court. Prior to the motion made to dismiss the appeal, appellant moved before the Supreme Court for leave to amend its appeal bond, to provide for greater indemnification in the event appellees sustained financial loss as a result of an unsuccessful appeal. The *motion to dismiss* the appeal was *granted.*

J. C. N. Howard for appellant. *Joseph J. F. Chesson* for appellees.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

This is a case that was tried and determined by the Debt Court for Montserrado County on an award brought in by a Board of Arbitrators appointed by the parties and the court. The award of the Board of Arbitrators was unacceptable to the defendant, now appellant, and it entered objections opposing it.

On February 18, 1969, Hon. Sebron J. Hall rendered judgment, in which he confirmed the award, making defendant liable to the plaintiffs in the sum of $37,856.67. The defendant has properly appealed, including the necessary appeal bond, which was filed.

On March 18, 1969, appellees' counsel moved to dismiss the appeal, alleging insufficient indemnification in the appeal bond and improper service of the notice of completion of the appeal, principally.

Prior to appellees' motion, appellant moved to modify its appeal bond, by being allowed to append the requisite sureties, affidavit and certificate of net valuation. This application for modification of the appeal bond was indeed filed before the motion to dismiss, but the Supreme Court was without power to give its consideration thereto, because statute barred it.

> "Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other Court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Notice of the filing shall be served on opposing counsel. A failure to file a sufficient appeal bond within the spe-

cified 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." Civil Procedure Law, L. 1963–4, ch. III, § 5108.

Under this section, although the application for modification of the appeal bond was filed prior to the motion to dismiss the appeal, this Court could do nothing in the matter because such an application should have been made before the lower court prior to the time it lost jurisdiction. In fine, this is one of the complications that the new Civil Procedure Law introduces and which we find ourselves unable to remedy by judicial interpretation in the matter of an insufficient bond being remedied only by the trial court before it loses jurisdiction.

The appellee's motion mainly is directed against: (1) the sufficiency of the indemnity provided for in the bond; (2) the fixing of the indemnity provided for in the bond by appellant, and (3) the service of the notice of the completion of the appeal.

When this case was called, appellees' counsel argued the motion very lengthily, stressing other grounds besides the ones recited above. In one argument, he maintained that the bond was insufficient because Hon. J. J. Mends-Cole signed the bond as one of its sureties, whereas he was a member of the House of Representatives, R.L., enjoying quasi-immunities in such capacity. This aspect of the motion we have refused to deal with at length in this opinion, because the law permits any citizen who is a freeholder or householder and does not enjoy complete immunity to stand surety to a bond except those delinquent in tax payments to the Government. Hence, such an argument is without basis.

Count four of the motion avers that a board of arbitrators was selected by the parties and the court, as professional accountants, to arbitrate the disputed accounts. The board rendered an award to the defendant in the

sum of $37,857.67. Upon this award, the court entered its judgment, which the appellant appealed, hence, his appeal bond should have indemnification equivalent to one and one-half times the amount of the judgment, which appellant refused to do, tendering an appeal bond in the sum of $750.00 only.

Count seven of the motion attacks the incompleteness of the appeal, because the notice of the completion of the appeal was served by a police officer instead of the Sheriff, who is the ministerial officer of the court and who alone is vested with authority to serve such precepts issued out of the court.

It seems to us that this count is merely made for filling up space because, to say the least, it is commonly known that every ministerial office of a constituted court enjoys the right under the law to deputize police, who serve as bailiffs in court, constables, or other persons, to serve papers issued out of the court. In such event, the only precaution required is to be certain that the service is made and the return thereto made by the principal. This count, therefore, being completely short of merit, we regard unnecessary to further treat in this opinion.

The issue is raised by appellees that although they were within the jurisdiction of the court, yet appellant's notice of the completion of the appeal was not served on the appellees personally, but on their counsel.

Counsel of record representing their clients in court may be served with all such notices, regardless of the availability of the parties, and this rule applies to notices of assignments in matters pending before the court. There is no rule which prohibits such service on counsel; therefore, it was proper for the service of the notice of completion of the appeal in this case to have been made on counsellor Chesson as the legal representative of his client. Hence, this contention of the appellees in the motion to dismiss is rejected.

The most salient issue raised and point made in this

motion to dismiss, is that of the insufficiency of the indemnity provided for in the appeal bond. It is regrettable that we are strongly moved to believe that the trial judge contributed to this defect. The law gives the trial judge the right, the exclusive right, to set the sum in the bond. When he has, the bond is to be signed by the principal and his sureties and returned to him after all necessary preliminaries for his approval. Even if the appellant assumes to specify the amount in the bond for indemnity independent of the trial judge's knowledge, it is still within his authority to question such act. All judges are conversant with the legal principle that they are to set the sum in the appeal bond. The reason for this rule is that the court is master of its record and knows the requirements of the law, and should be allowed to determine the amount in preference to anyone else. It is regrettable that there is nothing this Court can do to remedy this situation, but we anticipate that this opinion will sound a sufficient note of reminder to all concerned. The appellant is intrusted with the task of superintending his appeal to avoid such patent defects, so it becomes his responsibility for the consequences, as it is only the duty of this Court to pass upon the issues presented before it, in a legal and judicious manner.

Over and again this Court has emphasized the need of caution in appeals and over and again this Court has made it clear that all appeal bonds in civil matters must indemnify the appellee in the amount of one and one-half times the judgment from which the appeal is taken.

The judgment in the lower court in this case held the appellant liable for the sum of $37,857.67, so the bond should have been tendered for $56,786.51, to cover costs and financial injury, if appellees sustained any in consequence of the appeal.

The sum of $750.00 was inadequate and absolutely out of proportion to the judgment to indemnify the appellees against injury, when the judgment was over $37,000.00.

In *Morris* v. *Republic of Liberia,* 4 LLR 369 (1935), it was held that an appeal bond, the indemnity of which is less than the amount of the judgment is inadequate and the appeal should be dismissed.

In *Nassre* v. *Cooper-Kandakai,* 12 LLR 26, 27 (1954), Mr. Chief Justice Russell said:

> "Repeatedly, and not without avail, we have held fast to the mandatory statutory requirements for appeals to this Court (L. 1938, ch. III, § 1). Violation of the provisions of this statute renders an appeal materially defective. In this case the appellant was required to indemnify the successful party, in a sum one and one-half times the amount involved in the litigation, from all injuries, damages or losses said party might sustain by the appeal.
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> "In consequence of appellant's omission of an essential element of the appeal bond herein, we must dismiss the appeal and order the lower court to enforce its judgment."

Considering all of the issues raised and in view of all that has been said, we are of the unanimous opinion that the motion to dismiss should be granted. Therefore, the motion is hereby granted and the appeal dismissed, with costs against the appellant.

Motion to dismiss appeal granted.