

DAVID M. FUMBAH, Appellant, v. MADAM
GARWU KARBEH, Appellee.

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

Argued November 17, 1969. Decided January 30, 1970.

1. In order for an appeal bond to be valid under the provisions of section 6301 *et seq.* of the Civil Procedure Law, L. 1963-64, ch. III, when natural persons are the sureties therefor, the bond must be secured by real property they own, whose assessed valuation free of encumbrances, shall be at least equal to the amount of the bond. The bond is thereafter to be recorded in the office of the clerk of the Circuit Court in the county where the realty is situated, together with the factual information required to be given at the time of recordation under the aforesaid section 6302, as set forth in subdivisions 2a, b, c, d, and e thereof.
2. The Supreme Court holds to the maxim, "that which is not legally done is not done at all."

The appellee was the successful petitioner in an action for reformation of a lease, and the respondent appealed from the judgment entered against him in the trial court. During the pendency of the appeal the appellee brought a motion to dismiss the appeal, on the ground that the appeal bond was defective under the provisions of sections 6301 *et seq.* of the Civil Procedure Law, L. 1963-64, ch. III. The *motion was granted* and the *appeal was dismissed*.

Michael M. Johnson for appellant. *MacDonald M. Perry* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the court.

During the June 1969 Term of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, Madam Garwu Karbeh, a resident of the City of Monrovia, in the County of Montserrado, filed a bill in equity for relief

against fraud, against one David M. Fumbah, of the City and County aforesaid.

The petitioner alleged that in 1966 she requested the respondent to negotiate a house spot for her at Perry Street in the Bishop Brooks area of the City of Monrovia, and to do this gave the respondent sundry sums of money. In accordance with the request, the lease was negotiated but the name of the respondent appears thereon as lessee instead of the name of the petitioner, who had requested him to act in her behalf. The petition additionally averred that subsequent to entry upon the premises petitioner proceeded to improve the property and subsequent thereto lived thereon for a considerable period of time. It was not until a substantial period of time had elapsed that respondent accosted her and endeavored to evict her from the premises. Thereupon, this petition was filed, praying the court to effect reformation of the agreement by removing therefrom the name of the respondent and substituting hers in his stead.

Thereafter, respondent answered the petition, alleging the averments contained therein were false and misleading, for both parties to the action had lived together on the premises in question but due to certain questionable acts of the petitioner she had been asked by the respondent to quit the premises. The answer further said that the agreement of lease was executed between respondent and the lessors for consideration out of the resources of the respondent and predicated upon his request for lease of these premises in his own behalf.

After pleadings had rested and the case was ruled to trial, Judge Emmanuel N. Gbalazeh, presiding by assignment over the aforesaid court, proceeded into the hearing of the matter, predicated upon the equity jurisdiction with which he was clothed.

The trial culminated in a decree in favor of the petitioner when the judge ordered the reformation as had been requested. Exceptions were thereupon made to the

decree and an appeal to this Court prayed for and received as a matter of right.

Thereafter, the respondent, now appellant, proceeded to perfect the appeal. The bill of exceptions, appeal bond and notice of appeal were thereafter prepared and filed. However, when the case was called for hearing by us, we observed that a motion to dismiss the appeal had been filed by the appellee predicated upon one count, which states:

“Because appellee says that the purported bond as filed by the appellant does not conform with the statutory requirement relating to the tender of the bond by natural persons; that is to say, the appellant failed to make any showing that the sureties on the appeal bond were real property owners.”

For authority the movent cited the Civil Procedure Law, L. 1963-64, ch. III, with specific reference to sections 6201 through 6203.

The appellant filed a three-count affidavit in opposition to the motion to dismiss. The first count was not a specific traverse and, therefore, does not merit our attention. The second count contended that the motion should be overruled because appellee in the motion had failed to close the count, or the prayer, with the legally required sentence, “All of which appellee is ready to prove.”

Count three was a general denial of the allegations contained in the motion and the law relied upon. Let us turn, therefore, to the law relied upon by appellee in his motion to dismiss for the purpose of determining whether or not it entitled him to have his motion sustained. The following is found in L. 1963-64, ch. III, Civil Procedure Law, § 6301 *et seq.*:

“6301. *Security for bonds.* Except otherwise provided by statute, any bond given under this Title shall be secured by one or more of the following:

“(a) Cash to the value of the bond; or cash de-

posited in the bank to the value of the bond as evidenced by a bank certificate;

“(b) Unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond;

“(c) Valuables to the amount of the bond which are easily converted into cash; or

“(d) Sureties who meet the requirements of section 6302. . . .”

“6302. *Legally qualified sureties.*

“1. *Who may be sureties.* Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements of this section or an insurance company authorized to execute surety bonds within the Republic.

“2. *Lien on real property as security.* A bond upon which natural persons are sureties shall be secured by one or more pieces of real property located in the Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances. Such a bond shall create a lien on the real property when the party in whose favor the bond is given has it recorded in the docket for surety bond liens in the office of the clerk of the Circuit Court in the county where the property is located, or if it is in the Hinterland, in the office of the clerk of the Circuit Court in the nearest county. Each bond shall be recorded therein by an entry showing the following:

“(a) The names of the sureties in alphabetical order;

“(b) The amount of the bond;

“(c) A description of the real property offered as security thereunder, sufficiently identified to clearly establish the lien of the bond;

“(d) The date of such recording;

“(e) The title of the action, proceeding, or estate.

“3. *Affidavit of sureties.* The bond shall be accompanied by an affidavit of the sureties containing the following:

“(a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security;

“(b) A description of the property, sufficiently identified to establish the lien of the bond;

“(c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and

“(d) A statement of the assessed value of each property offered.

“A duplicate of the original affidavit required by this section shall be filed in the office where the bond is recorded. . . .”

From the above-cited law, it is quite clear that the provisions heretofore applying to the filing of appeal bonds have been substantially modified by the inclusion of additional prerequisites to the making of a valid appeal bond. In the case at bar, the appellant had produced no evidence when attacked to show this Court that the natural persons signing as sureties have real property equal to the amount of the bond and that the bond had been recorded in the docket for surety bond liens in the office of the clerk of the Sixth Judicial Circuit, describing the real property that was being used as collateral to secure the obligation, which recordation would include the provisions stipulated in the aforesaid section 6302 (2 a, b, c, d, e). It is quite clear that counsel for appellant was totally unfamiliar with the provisions of the new Civil Procedure Law when he prepared, filed and argued the motion to dismiss.

Since it is patently clear that the bond before the court is defective for failure to comply with the statutory requirements, we must hold that which is not legally done is not done at all. Therefore, this Court must refuse

jurisdiction over the hearing of the merits of the case and sustain the motion to dismiss. Costs in these proceedings are ruled against appellant. And it is hereby so ordered.

Motion granted, appeal dismissed.