

KHAE WAE JUAH, Appellant, v.
GBEH WREH, Appellee.

APPEAL FROM DECREE ON OBJECTIONS TO PROBATION OF A WILL.

Argued October 19, 1965. Decided January 20, 1966.

Omission of the amount of indemnification from an appeal bond is ground for dismissal of the appeal.

Appellee's *motion* to dismiss the appeal was *granted*.

Beysolow and Cooper Law Firm for appellant. *Joseph F. Dennis* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

At the call of this case for hearing a motion to dismiss the appeal was read. For the benefit of this opinion, we quote hereunder the body of said motion, which reads as follows:

"Gbeh Wreh, appellee in the above-entitled cause, respectfully moves this Honorable Court to dismiss the appeal as taken by the appellant for the following reasons, to wit:

"Because the appeal bond as filed by the appellant is materially defective, as there is no penal sum entered in the body thereof to bind the sureties for indemnification to the appellee in keeping with law. Appellee submits that a defective appeal bond is a legal ground for the dismissal of an appeal under our statutes. Copy of the said bond is hereto annexed as Exhibit A to form a part of this motion. The filing of an appeal bond is one of the jurisdictional steps required to be pursued as a prerequisite to the appellate

court's properly taking jurisdiction over the appeal. The appellant having failed to have perfected her appeal by the filing of a legal appeal bond, this Court cannot exercise jurisdiction over the appeal.

"And this the appellee is ready to prove."

"Wherefore, appellee respectfully prays that the appeal be dismissed and the trial court ordered to resume jurisdiction and enforce its judgment with all costs against the appellant."

In appellant's resistance to the motion, he tacitly admitted the truthfulness of appellee's contention, as is apparent on the fact of said resistance. We shall quote Count 1 of said resistance which reads as follows:

"1. Because appellant submits that the appeal as it stands is sufficient under the law because the *res* in litigation has no value from which the appellant could have computed and placed in said bond one and one half times said value, and the trial judge was the only competent person to have determined what should be the amount the bond should call for and this he did by approving it for \$500. Moreover when His Honor, John A. Dennis approved said bond, he did so in Cape Palmas as same was sent to him by mail, because immediately he gave judgment he left for Cape Palmas and upon signing said bond he sent it directly to the clerk of court as will more fully appear from Exhibits A and B hereto attached to form a part of this Resistance.

"And this the appellant is ready to prove."

In *Mark-Reeves v. Republic*, 15 L.L.R. 229, 233 (1963), this Court quoted with approval the following:

"It is essential to the existence of a bond that it contain an obligation which is an undertaking by the obligator to pay a sum of money to the obligee and accordingly a bond will be void in which the amount or penalty thereof is omitted and the judgment thereon cannot be sustained, as such omission is a defect which

cannot be supplied by oral proof of the amount intended." 11 C.J.S. 402-403 *Bonds* § 13.

The statute controlling appeals provides that:

"An appeal from a court of record may, upon motion properly taken, be dismissed for any of the following reasons:

"(a) Failure to file approved bill of exceptions within the time specified in section 1012 above;

"(b) Failure to file an approved appeal bond or material defect in an appeal bond (insofar as such failure or defect is not remedied in accordance with the provisions of section 1014 above);

"(c) Nonappearance of the appellant on appeal; or

"(d) Negligent failure to have notice served on the appellee.

"An appeal shall not be dismissed on any other ground except as otherwise expressly provided by law." 1956 CODE 6:1020.

The contention of appellee in this case is based on subsection (b) of the above statute which makes it crystal clear that appellant's appeal bond is defective, the penal sum having been omitted in the body of said bond.

In view of the foregoing it is our considered opinion that the appeal in this case should be dismissed with costs against the appellant. And it is hereby so ordered.

Appeal dismissed.