

ABDULAI KARNEH, Appellant, *v.* REPUBLIC  
OF LIBERIA, Appellee.

MOTION TO DISMISS CAUSE ON APPEAL FROM THE CIRCUIT COURT OF  
THE NINTH JUDICIAL CIRCUIT.

Argued April 6, 1967. Decided June 16, 1967.

1. An appeal bond is inadequate when the indemnity provided therein is less than the amount of the judgment.
2. An appellant in his bond must state that he will duly prosecute his appeal.
3. Each noncorporate surety on a bond must submit an affidavit indicating financial responsibility.
4. The bond must provide for the aggregate of a judgment, when fines and costs have both been included in the judgment.
5. The approval by the trial judge of a bond does not validate an otherwise invalid bond.

In a criminal case charging malicious mischief, the defendant was found guilty after trial by jury, and fined \$500.00 together with other costs, amounting in all to \$525.00, upon which judgment was entered. He appealed from the judgment of the lower court, and posted an appeal bond in the amount of \$500.00. The appellee moved to dismiss, on the ground that the indemnification provided was insufficient, being less than the total amount of the judgment entered. *Motion granted, appeal dismissed.*

*Samuel B. Cole* for appellant. *Solicitor General Nelson W. Broderick* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

This case originated in the Ninth Judicial Circuit, Nimba County. It was tried and determined at the August 1965 Term of the aforesaid court. It is a case alleging malicious mischief in which the defendant, Ab-

dulai Karneh was charged with the willful and malicious demolition of a house, the purported personal property of one Samuka Karneh.

Under our Penal Law, 1956 Code 27:294(a), a person is guilty of a misdemeanor who wrongfully, unlawfully and maliciously destroys, defaces or by any means whatsoever injures any house, outhouse, farm, farm building, plantation, church, chapel, or the appurtenances of any such building.

Defendant was found guilty by a jury and judgment was rendered against him on September 9, 1965, ordering him to pay a fine of \$500.00 and in all the total sum of \$525.00. The defendant, now appellant, excepted to the verdict and judgment of the court below and now appeals to this Court.

When this case was called for hearing on April 6, the Court's attention was drawn to a motion to dismiss the appeal filed by the appellee, which motion, for the benefit of this opinion, we shall quote word for word:

"And now the Republic of Liberia, appellee, respectfully prays this Court dismiss the appeal in the above-entitled cause for the following legal and factual reasons, to wit:

"1. Because appellee says that appellant's appeal bond is insufficient as to amount which renders the bond fatally defective, appellee submits that the judgment being for \$525.00, the amount of the bond must conform to the judgment. Appellee respectfully requests this Court to take judicial notice of appellant's appeal bond, which is part of the records certified to this Court.

"2. And also because appellee submits that there is no averment in appellant's appeal bond that appellant will duly prosecute his appeal, which is mandatory in an appeal bond.

"3. And also because appellee says that appellant's appeal bond is not supported by affidavit specifying

the property by which his surety proposes to justify the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged, and all his other liabilities.

“4. Wherefore, appellee prays for the dismissal of appellant’s appeal and respectfully requests the Court to send a mandate to the court below, commanding it to resume jurisdiction and enforce its judgment.”

To this motion, the appellant filed an opposing affidavit in three counts, which we shall also quote :

“Appellant in the above entitled cause prays this Court deny the motion of appellee to dismiss his appeal, and for cause shows the following legal and factual reasons, to wit :

“1. That this being a criminal cause where the Republic of Liberia does not pay costs of court, the penalty of the appeal bond should correspond with the penalty of the crime for which defendant is charged. Malicious mischief is a misdemeanor punishable by a fine, not exceeding two hundred dollars, where the value of the property injured is more than one hundred dollars. Appellant submits that the penalty of the bond is above two hundred dollars, as required by law, hence, the bond is not defective.

“2. Under the statute law of the Country the judge approves an appeal bond upon being satisfied that the sureties are qualified, and the judge must have been satisfied with the qualifications of the sureties, who are all in Saniquelli, when he approved the bond.

“3. Appellant denies that the bond is defective and that said bond is strictly in conformity with statute controlling.

“Wherefore appellant prays that the motion be denied and that this Court consider the merits of the appeal.”

Before we attempt to consider count one of the motion,

we have thought it necessary to consult the records before us and inspect the appeal bond which is the subject of the motion. The bond reads:

“Know all Men by these Presents: That we, Abdulai Karneh, the above named appellant, and Saku Kayata, surety, both of the Republic of Liberia, each being a freeholder and/or householder within said Republic, are held and firmly bound unto the Sheriff for Nimba County in the sum of five hundred (\$500.00) dollars to be paid unto the above-named appellee or its legal representative, for which payment we bind ourselves and our personal representatives, jointly and severally, firmly by these presents:

“The condition of this obligation is that we will indemnify the appellee for all costs and from all injuries arising from appeal taken by the above mentioned appellant and will comply with the judgment of the Court to which said appeal is taken, or any other, to which said action may be removed.”

Inspection of the said bond does verify the fact that it was tendered for the amount of \$500.00, whereas the judgment of the court imposed the aggregate sum of \$525.00.

In *Morris v. Republic of Liberia*, 4 L.L.R. 369, Mr. Justice Dixon, speaking for this Court, 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.

Relating the appeal bond in this case to the law just quoted, it is positively shown that the said bond is insufficient on its face with regard to the amount set forth in the judgment. The law regards an appeal bond to be a contract in which one binds himself for the performance of an obligation or legally required duty and when it is shown to be insufficient in any of its aspects, it becomes void of any legal value. Count one of the motion, therefore, being well taken is hereby sustained.

Our Criminal Procedure Law, 1956 Code, tit. 8, § 86 provides:

“If the defendant is admitted to bail, after conviction and upon appeal, the condition of the bond shall be:

“(a) That he would duly prosecute his appeal;

“(b) That he will surrender himself in execution of the judgment or sentence. . . .”

We have been unable to understand why a party in litigation appealing his cause would by his own neglect fail to conform to the requirements of the statutes in such cases. It is very clear that the paper presented in this case purporting to be an appeal bond, the subject under attack by motion to dismiss, is deficient in many of its important requirements. However, we shall treat this later in our opinion. The law makes it mandatory that appellant should aver his will and intention to duly prosecute his appeal, and neglect to so aver in the bond renders it deficient. There is nothing that this Court can do under the circumstance to cure this legal error; hence, count two of the motion must also be sustained.

The last count of the motion under consideration, which attacks the failure of appellant to support his bond by affidavit specifying the property by which his sureties propose to justify, and the encumbrances thereon, seems in our opinion to be substantial, because under our Criminal Procedure Law, 1956 Code 8:90, it is provided that an affidavit should be submitted:

“Every surety, except a corporate surety, which is approved as provided by law, shall specify by affidavit the property by which he proposes to justify and the encumbrances thereon. . . . No bond shall be approved unless the surety thereon appears to be qualified.”

The failure to submit an affidavit as required, therefore, makes the sureties not qualified under the section quoted from.

During the argument, appellant's counsel endeavored to urge the question that, the case being a criminal one, he was not liable for costs on appeal, and also that in a prosecution for malicious mischief, which is a misdemeanor, the fine to be imposed cannot exceed two hundred dollars, hence, his bond was not defective. This argument advanced by counsel for appellant is absolutely inconsistent with reason, law and the grounds of the motion to dismiss, because the payment of costs was never contemplated in appellee's motion, nor was it argued before this Court.

But whereas the Government of Liberia neither receives nor pays costs, yet this does not prohibit imposition of fines on a defendant in criminal cases when the law so provides, as in the case at bar. Where the judgment of the trial court embraces both fine and the value of the property destroyed, it is incumbent upon the appellant to tender a bond for the aggregate.

Arguing further, appellant insisted that where the trial judge is satisfied with the qualifications of the sureties to a bond and approves the bond, it is adequate. In our opinion, the counsel for appellant only intentionally blinded himself against the pure and simple dictate of the law, merely to drive his point through, which this Court will not allow.

The three counts, therefore, in appellant's opposing affidavit being all untenable in law and vague in argument, have no validity.

The motion to dismiss the appeal is sound in law, and under the circumstances we are left with no alternative but to sustain it and dismiss the appeal. And the clerk of this Court is hereby ordered to send a mandate to the court below to this effect. And it is hereby so ordered.

*Appeal dismissed.*