

MUSAH, of Gike Sardo Chiefdom, Appellant, v.  
OLDLADY KIYEE BELOR, and her son,  
MYER NIMLEY, of Butike, Pallipo  
Chiefdom, Appellees.

APPEAL FROM THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,  
GRAND GEDEH COUNTY.

Date of argument not indicated. Decided January 22, 1971.

1. For failure to serve notice of the filing of an approved appeal bond when an appeal has been taken from a Magistrate Court or Justice of the Peace Court, the appeal may be dismissed upon motion.

In an appeal taken from the Magistrate Court to the Circuit Court, appellant filed an approved appeal bond, but did not serve notice of its filing upon opposing counsel. A motion was brought before the Circuit Court to dismiss the appeal. The motion was granted and judgment entered, from which an appeal was taken to the Supreme Court. Judgment affirmed.

*Frank W. Smith* for appellant. *David D. Gbala* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The above-entitled cause was instituted in the Magistrate Court of Nyaake, Weebo District, Grand Gedeh County, against appellant, by appellees Oldlady Kiyee Belor and her son, Myer Nimley. The matter was duly assigned for hearing by the magistrate who, after hearing evidence, disposed of said cause on March 25, 1970, with final judgment in favor of appellees.

Appellant noted exceptions and announced an appeal to the Seventh Judicial Circuit Court, Grand Gedeh

County. Accordingly, defendant filed his approved appeal bond on April 8, 1970.

Appellees moved to dismiss the appeal in the circuit court, alleging primarily failure to serve notice of filing of the appeal bond, unqualified sureties on the appeal bond, insufficient indemnification provided for in the bond, and failure to name appellees as those to whom the obligation therein runs. Appellant opposed the motion.

Following argument by counsel, the court handed down the following ruling for the appellees, dismissing the appeal, to which the appellant excepted, and took an appeal to this Court.

“We come now to the point in which appellees argued that the appeal is incomplete. Appellees argued that in keeping with our Civil Procedure Law, in cases from the Magistrate’s Court on appeal after rendition of final judgment, the appellant should announce his appeal at once and he should secure the approval of the magistrate or justice of the peace who tried the case on the appeal bond and file it in the court of appellate jurisdiction. The notice of the filing of such shall be served upon the opposing counsel, the bond shall be in an amount fixed by court and shall be conditioned in compliance with the final judgment, together with costs, interest and damages for delay. Since the amount awarded in the judgment of the lower court is \$100.00 and the bond approved by the magistrate is \$251.25, this principal of law in our mind has been carried out in keeping with our statutes. But because the appellant has failed to serve the notice of appeal which would bring appellees under the jurisdiction of this court, the motion to dismiss the appeal is hereby sustained, and the judgment of the court below is hereby confirmed.”

Our Civil Procedure Law, L. 1963-64, ch. III, section 5205, is applicable.

“The hearing upon an appeal from a judgment of a

magistrate or a justice of the peace shall be a trial *de novo*, except that issues of law may be determined on oral argument without the introduction of evidence.”

And section 5203:

“Within fifteen days after announcement of the taking of an appeal, the appellant shall secure the approval of the magistrate or justice of the peace who tried the case to an appeal bond and shall file it with the court. Notice of the filing shall be served upon the opposing counsel. The bond shall be in an amount fixed by the court and shall be conditioned on compliance with the final judgment together with costs, interest, and damages for delay. Failure to furnish a bond as required by this section shall be ground for dismissal; provided, however, that an insufficient bond may be made sufficient at any time before the trial court loses jurisdiction of the action.”

It is plain that failure to furnish a bond as required by this section shall be a ground for dismissal. One of the requirements attached to the filing of an appeal bond, in matters of appeal from a judgment of a magistrate or justice of the peace is that notice of the filing of the bond shall be served upon the opposing counsel. Failure on the part of appellant to meet this requirement will, upon motion properly made, furnish grounds for the dismissal of the appeal.

In view of the foregoing, the ruling of the trial judge is hereby sustained, with costs against the appellant.

*Affirmed.*