

CASES ADJUDGED  
IN THE  
SUPREME COURT OF THE  
REPUBLIC OF LIBERIA

AT THE  
MARCH TERM, 1970.

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K. RESAMNY BROS., represented by its agent,  
NAIF RESAMNY, Appellant, *v.* AUGUSTE  
BRUNET, Appellee.

MOTION FOR LEAVE TO MAKE APPEAL BOND SUFFICIENT IN AN APPEAL  
FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
GRAND BASSA COUNTY.

Argued April 30, 1970. Decided June 12, 1970.

1. Any appeal undertaken subsequent to the publication of a new statute regulating appeal procedures, must comply with the new requirements, or risk the consequences attendant upon such neglect.
2. The new Civil Procedure Law, L. 1963-64, ch. III, § 5108, requires that an insufficient appeal bond must be made sufficient at any time during the period before the trial court loses jurisdiction.
3. A matter pending in the appellate court signifies that the trial court no longer has jurisdiction over the proceeding, hence, the Supreme Court cannot grant leave to correct an insufficiency in the appeal bond, for such function is restricted to the trial court, as above related.
4. Where no affidavit of the sureties is submitted with the appeal bond, the sureties are to be considered not qualified under the statute.
5. The failure to submit a certificate from the Bureau of Internal Revenues with the appeal bond renders the bond further defective.

During the pendency of an appeal, the appellant made a motion before the Supreme Court for leave to make the appeal bond posted sufficient under the new Civil Procedure Law, which had not been observed in that the affidavit of the sureties and the certificate from the Internal

Revenues Bureau were lacking in the papers initially filed in the lower court. The appellee also made a motion to dismiss the appeal for the very insufficiency which appellant was seeking leave to correct. (Although the appellee could have, in his opposition to appellant's motion, sought relief in the form of a cross-motion praying for dismissal, he moved independently. The Court did not consider that motion in this opinion, but directed its attention to appellant's motion and the appellee's opposition thereto.) The *motion* was *denied*.

*John Stewart* for appellant. *Peter Amos George* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

According to the record forwarded to this Court, one Auguste Brunet, petitioner below, now appellee, filed a petition in the Second Judicial Circuit Court, Grand Bassa County, on May 6, 1968, praying the court for an interpretation of a lease agreement.

The case was disposed of by the court below in favor of the petitioner on April 23, 1969. Respondent has appealed from the judgment.

When the case was called for hearing, the Court found that both appellant and appellee had filed motions, the appellant seeking leave to make its appeal bond sufficient and the appellee, while opposing the foregoing motion, making another motion to dismiss the appeal because of the defects recounted in appellant's motion to make its appeal bond sufficient.

The appellant related that its appeal bond lacked the affidavit of the sureties, and the certificate of the Bureau of Internal Revenues, but that the oversight had now been corrected and the necessary instruments had been filed in the lower court.

In his resistance, the appellee alleged that the law does not give the appellant the right to make his bond sufficient in the appellate court after the trial court has lost jurisdiction, because that which the law does not give it withholds. The appellee filed a motion almost simultaneously with his resistance, praying for the dismissal of the appeal on the ground of an insufficient appeal bond, but this motion has not yet come under our consideration; hence, we cannot give it our attention in this opinion.

This is a case that began on June 9, 1969, approximately six calendar months after the publication of the new Civil Procedure Law. Publication made its provisions binding on all appeals subsequent thereto, except for matters pending prior to publication.

In *Sauid v. Gebara*, 15 LLR 598 (1964), it was held that where the sureties subscribing to an appeal bond are not statutorily qualified the bond is materially defective and the appeal will be dismissed. This bond at issue is admittedly insufficient, and by statute its correction should have been made in the lower court before the trial court lost jurisdiction over the matter. L. 1963-64, ch. III, § 5108. Since the motion to dismiss is not a subject now under consideration, we refrain from taking action thereon in this opinion.

The motion for leave of Court to make the appeal bond sufficient is, therefore, denied; costs against appellant. And it is hereby so ordered.

*Motion denied.*