LEWIS ROBERTS, JOSEPHINE ROBERTS, and VICTORIA ROBERTS, *alias* MUSULINE, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 8, 1959. Decided April 24, 1959.

1. A Circuit Judge who has been elevated to be an Associate Justice of the Supreme Court may not thereafter sign an appeal bond as Circuit Judge.
2. If the Judge before whom a defendant in a criminal case has been tried is unable, for any reason, to sign the appeal bond, then any other Judge regularly sitting in or assigned to the Circuit may sign the bond.

Appellants were convicted of the crime of conspiracy in the court below, and appealed the judgment of conviction to the Supreme Court. Before a hearing was had on the merits of the appeal, appellee moved to dismiss the appeal, which *motion* was *denied.*

O. Natty B. Davis for appellants. *Assistant Attorney General J. Dossen Richards* for appellee.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.*

During the August, 1956, term of the Circuit Court of the First Judicial Circuit, Montserrado County, Lewis Roberts, Josephine Roberts and Victoria Roberts *alias* Musuline, appellants, then defendants in the court below, were indicted for the crime of conspiracy. On February 6, 1957, a petty jury returned a verdict of guilty against said appellants, following a hearing of the facts presented at a trial, and on a plea of not guilty entered by the defendants.

To this verdict of the jury, exceptions were entered and

* Mr. Justice Pierre was absent because of illness and took no part in this case.

a motion for a new trial filed, the denial of which brought forth a motion in arrest of judgment, which was also denied by the trial Judge and followed by final judgment confirming the jury's verdict. Thereupon appellants appealed to this Court for review of the errors complained of as having been committed by the Judge at the trial.

Before hearing could be had by this Court on the merits of the appeal, appellee, through J. Dossen Richards, Assistant Attorney General of Liberia, filed a motion to dismiss said appeal, and in the lone count of said motion, alleged the following:

> "1. Because appellee says that appellants have failed to file a legally approved appeal bond, that is to say that, although the case was tried in the lower court by His Honor, William E. Wardsworth, now Mr. Justice Wardsworth, from whose judgment an appeal was taken to this Honorable Court, yet said appeal bond was presented to and approved by His Honor, Samuel B. Cole, Resident Judge of the First Judicial Circuit, Montserrado County, appellee respectfully contends that the appeal bond should have been presented to and approved by the trial Judge, and appellant's failure to comply with the provision of the statute renders the purported appeal bond materially and fatally defective. Appellee respectfully requests this Court to take judicial notice of the records of this case certified to it."

Upon the assignment for hearing, appellants, through their counsel, filed resistance against the dismissal of said appeal and countered the position taken by appellee in one count, which reads as follows:

> "1. Because appellants say that final judgment from which this appeal is taken, was rendered on March 12, 1957, by His Honor, William E. Wardsworth, presiding by assignment over the February, 1957,

term of the Circuit Court of the First Judicial Circuit, Montserrado County, as per records certified to this Honorable Court; and on March 14, 1957, he, the said Judge Wardsworth, was elevated and commissioned as Associate Justice of the Honorable Supreme Court of Liberia, exactly two days after rendition of final judgment, thereby becoming disabled from continuing the duties and functions of a Circuit Judge. Whereupon appellants presented their appeal bond to the nearest Circuit Judge, His Honor, Samuel B. Cole, Resident Circuit Judge of the First Judicial Circuit, presiding in Chambers, for his approval without prejudice to appellee, but in strict conformity with the spirit and intent of the statute in such cases made and provided."

Appellee filed an answering affidavit joining issue on the resistance filed by appellants, and submitted the following in support of his motion to dismiss the appeal:

"1. Because appellee says that the reason given by appellants for violating the statute in such cases, and the decisions of the Honorable Supreme Court construing and interpreting said statute, is legally untenable because, where the statute has mandatorily and positively prescribed what should be done, no room is left for parties litigant to create exceptions to the positive provision of the statute. Appellee submits that, under the circumstances as outlined by the appellant in his resistance, the better practice would be either to request the trial Judge to approve the appeal bond, *nunc pro tunc,* or to request the Justice presiding in Chambers of this Honorable Court to give an order to the Circuit Court of the First Judicial Circuit to approve said appeal bond or give such relief as to the Justice might seem just and legal, and the exigency of

the case required, but not to take the law into their own hands as they have erroneously done in this case."

Appellee's motion is supported by this Court's decisions in *Adorkor* v. *Adorkor,* 5 L.L.R. 172 (1936), and *Russ* v. *Republic,* 5 L.L.R. 189 (1936). The former of the two cited opinions, treating on appeal bonds and by whom they should be approved, says, at 5 L.L.R. 175:

"Passing on to count two of the motion, since the issue set forth and contained therein has not been specifically passed upon by this Court we are glad of the opportunity of doing so now; as we have said above, the statute law governing appeals, as found in the Acts of the Legislature approved January 13, 1894, requires the performance of certain prerequisites which must be performed by every person, including appellant, who may desire to take out an appeal to this Court. The said act is mandatory and must be strictly observed and followed by appellant; the relevant part thereof (section 1) reads as follows, to wit: 'Appeal bonds are to be approved by the Court from which the appeal is taken, within sixty days after final judgment. . . .' "

This statute had never before been invoked for interpretation by this Court, as is clearly and distinctly admitted in the *Adorkor* decision, *supra,* relied on by appellee.

Attention must therefore be directed to the above-quoted opinion to determine whether or not an interpretation, laying down a general principle and application of the statute controlling on the point, was clearly and distinctly made by this Court. It is clear, and without any ambiguity, that this opinion is in accordance with the provisions of the statute relating to approval of appeal bonds, insisting only that it must be approved by the trial judge. It does appear that the circumstances surrounding the *Adorkor* case substantially point to a trial Judge who was not legally incapacitated to perform a service that was

mandatorily required by the statute. The said Circuit Judge, E. Himie Shannon, who tried and rendered final judgment in the case in point, left his assignment before the expiration of the sixty-day period required by statute, within which an appeal bond is to be tendered and approved; and the appellant, instead of exhausting all of the legal means that were available to him to contact the trial Judge for his approval of said bond, elected to forego this formality, though legally required, and tendered said bond to a Circuit Judge who was not the trial Judge, and obtained his approval.

The case now under review presents an entirely different circumstance, in that, rather than being still available for performance of the service of approval, even if he had left his assignment before the expiration of the statutory time, His Honor, Judge Wardsworth, the trial Judge, had become incapacitated by virtue of a change of official status from a Circuit Judge to that of a Justice of the Supreme Court, and this within two days after the rendition of final judgment in this case.

The opinion of this Court handed down in the *Adorkor* case, ***supra,*** makes no provision whatsoever for the contingency that has arisen in this case; hence, as was thought before arguments progressed further in this case, either of the alternatives advanced by appellants and appellees, though not specifically based on any statute, had to be followed; or else a different course from either, as this Court, in its own judgment, may have thought appropriate.

Commenting on the alternatives advanced by both parties, we will first treat that advanced by appellee in his answering affidavit. The point of requiring the trial Judge, though his status had been changed from a Circuit Judge to that of a Supreme Court Justice, to sign the bond ***nunc pro tunc,*** because of the statute mandatorily requiring such a bond to be signed by the trial Judge: could not be reasonably insisted upon; nor is it logically tenable, for the reason that Judge Wardsworth, now Justice

Wardsworth not having been presented with the appeal bond before his elevation as an Associate Justice, could not have approved a bond before it was tendered to him; nor could he, after he had been officially transferred, perform the services of a Circuit Judge when he was an Associate Justice of the Supreme Court. This alternative, therefore, could not apply in this case under the circumstances obtaining. The other alternative, which suggests seeking an order from the Justice presiding in Chambers of the Supreme Court to the Resident Judge of the Circuit Court of the First Judicial Circuit, or to apply it more broadly, to a Circuit Judge available to sign said bond, would seem to have been a logical alternative in the absence of any statute providing how a situation of this kind could be remedied; but this was strongly contested by appellants' counsel, who held that no order of the Supreme Court, can be obtained from a Justice of this Court except for the correction of an error committed by a subordinate court, and that, since no error had been complained of, this alternative of appellee was untenable and therefore unauthorized.

We regret our inability to concede this contention of appellant's counsel, and hereby express as our opinion that, in a situation such as the one that existed in this case, caused by a decision of this Court, based on the statute controlling, and providing that only the trial Judge shall approve an appeal bond, and the fact that the controlling decisions of the Supreme Court make no exceptions to the rule, an appellant would seem to have no other alternative for relief. It does seem to be within the bounds of sound reasoning that an appeal for relief should be made to the source which has created the impasse, even though no error had been committed or charged to have been committed in the servicing of said appeal bond—said source being the Supreme Court. In the light of this contention of appellants, they felt that the course taken by them in applying to the nearest Circuit Judge for approval of said

appeal bond, the trial Judge having become incapacitated because of his elevation, was the proper one to take.

Resolving this problem created by the controversial issues presented by both parties, neither being in the position at the time to support their respective contentions by any law, providing an exception to the rule laid down by the statute and upheld by this court in the *Adorkor* case, it was therefore left with the Court to make an interpretation that would serve as a guide for the future.

At this point, appellants' counsel called the attention of this Court to the following statutory provision:

> "If by reason of absence from the Circuit, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the Circuit may perform these duties, except where otherwise provided by statute." 1956 Code, tit. 8, § 322.

Submitting this citation as complete legal justification on the part of his clients in seeking the approval of said appeal bond by His Honor, Samuel B. Cole, who was in regular assignment as Resident Judge of the Circuit Court of the First Judicial Circuit, Montserrado County, there being no statute to the contrary, appellee contested this provision in the Liberian Code of Laws as an entirely new insertion into our statute Laws that had not previously been passed by an Act of the Legislature. He, however, withdrew from consideration of this court this contest and submission, and all arguments in support thereof and relating to the above-quoted statutory provision, leaving still for consideration of this Court the motion to dismiss the appeal and the resistance thereto.

Though not necessarily in review of the issue raised by appellee and subsequently withdrawn, but as a guide to what may be our interpretation of the legality or illegality of any provision of the 1956 Code, until a statute to the

contrary is enacted by the Legislature, we will quote, word for word, the Act of the Legislature passed and approved March 22, 1956:

> "That from and immediately after the passage of this act, the Code of Laws containing 37 titles . . . being a compilation of the laws of Liberia from her colonial days to December 31, 1955, compiled by authority of the Government of Liberia, by a project Staff of Cornell University, U.S.A., reviewed and passed upon by a special Commission of Eminent Lawyers set up in the Department of Justice by Executive appointment, which Code embraces all of the general laws of the Republic of Liberia in force on December 31, 1955, except the laws enacted by the Fourth Session of the Forty-second Legislature which are not listed in the last sentence of Section 200 of the General Construction law title of said Code, be, and the same are hereby declared to be the general laws of the Republic of Liberia and given full force, validity and effect as same, replacing all existing general statutory laws of the Republic to that date, except the laws enacted by the Fourth Session of the Forty-Second Legislature which are not listed in the last sentence of Section 200 of the General Construction law title of said Code." 1956 Code, Vol. 1, pp. xiii–xiv.

We are obliged to say, in passing, that this statute enacting the Code of 1956, not having in the slightest degree amended or altered a provision of the Constitution, admits of no questioning as to its sufficiency as a law, until amended or repealed by subsequent legislation.

It does seem now settled as a rule under our statutes that, where a trial Judge is incapacitated and therefore cannot give approval to an appeal bond within the statutory time after judgment, any presiding Circuit Judge can be resorted to for said approval, it being understood that this rule does not in any way alter the statute requiring tendering said bond within sixty days after final judgment.

In the instant case, His Honor, William E. Wardsworth, who tried said case having, two days after making final judgment in said case, been elevated to the position of Associate Justice of the Supreme Court, and being incapacitated to sign said bond, appellants rightly applied to the resident judge then presiding over the circuit within which said trial was had, namely His Honor Samuel B. Cole, to approve said bond.

The motion, therefore, of appellee, that said appeal should be dismissed because said bond was not approved by the trial Judge, when the facts and cirmustances disclosed by the record clearly go to establish that the trial Judge was incapacitated and could not legally approve said bond is hereby denied. And it is so ordered.

Motion denied.