

GERTRUDE TALERY and MARVINE COOPER,  
by and through her husband, MOMOLU S. COOPER,  
Appellants, v. ABRAHAM T. WESLEY, Appellee.

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

Argued May 2, 1972. Decided May 19, 1972.

1. Defects appearing on the face of an appeal bond need not be certified by the clerk of court.
2. Defective appeal bonds render appeals subject to dismissal.

A motion was made to dismiss the appeal, based on insufficiency of the bond in that it lacked an affidavit of the sureties and a certificate from the Revenue Services. An argument was raised by appellants that an untaxed clerk's certificate in support of the appellee's allegations rendered the motion defective. *Motion granted, appeal dismissed.*

*Philip Brumskine* for appellants. *Nete-Sie Brownell* for appellee.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

A motion to dismiss the appeal was filed attacking the appeal bond in that it lacks an affidavit by the sureties and a certificate from the Revenue Services. Appellee has appended a certificate from the clerk of the lower court bearing out his contentions.

In a three-count resistance the appellants have contended that the certificate from the clerk's office, in support of the motion to dismiss the appeal, is not stamped as the law required it should be and, therefore, the motion should be denied. They have cited their basis of authority:

"Documents and instruments subject to revenue stamp tax. Each document or instrument listed in this section shall have affixed to it a revenue stamp for which a stamp tax shall be paid in the amount prescribed herein: . . . (10) Certificate, notarial or court \$.50." Revenue and Finance Law, 1956 Code 35:570.

As far as we have been able to find, this is the first time this ground has been used for requesting dismissal of a motion, or disallowance of any document certified by a clerk of court. In the absence of precedent, however, the statute relating to the stamp tax is still law and cannot be ignored when attention to its violation is called. Therefore, we have no hesitancy in declaring that the certificate which is shown to be without the necessary stamp required by statute is invalid and, therefore, a nullity.

The question which now confronts us is, what effect does the absence of this certificate have upon the motion which it sought to support? Was a certificate necessary to support facts which are apparent on the face of the motion? The law requires that a bond shall be supported by an affidavit of the sureties. It also requires that to the bond shall be annexed a certificate to show that the sureties own the unencumbered property offered as security in the bond. There is no provision in this statute, nor is there any other statute which requires that these defects, when they appear in a bond, should be certified by the clerk of court.

"Security for bonds. Except as otherwise provided by statute, any bond given under this title shall be secured by one or more of the following: (a) Cash to the value of the bond or cash deposited in the bank to the value of the bond as evidenced by a bank certificate; (b) Unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond; (c) Valuables to the amount of

the bond which are easily converted into cash; or (d) Sureties who meet the requirements of section 6302." Civil Procedure Law, L. 1963-64, ch. III, § 6301.

"Legally qualified sureties.

"1. Who may be sureties. Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements of this section or an insurance company authorized to execute surety bonds within the Republic. . . .

"3. Affidavit of sureties. The bond shall be accompanied by an affidavit of the sureties containing the following: (a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security; (b) A description of the property, sufficiently identified to establish the lien of the bond; (c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered. . . . A duplicate original of the affidavit required by this section shall be filed in the office where the bond is recorded.

"4. Certificate of Revenue Services. The bond shall also be accompanied by a certificate of the Revenue Service that the property is owned by the surety or sureties claiming title to it in the affidavit and that it is of the assessed value therein stated, but such a certificate shall not be a prerequisite to approval by the judge." *Id.*, § 6302.

By virtue of the sections relied upon by the appellee in his motion to dismiss on these grounds, all that was necessary was to look to the appeal bond itself, which is found in the record certified to us from the trial court, to verify whether or not the bond was indeed wanting in these requirements. Under these sections an appeal bond which is not accompanied by an affidavit of sureties and a certificate from the Revenue Services indicating that the sureties owned the property offered as security in the

bond is defective and, therefore, invalid for an appeal. Such is the case with the bond before us.

Moreover, this Court has held over and again that a defect in an appeal bond is a proper ground for dismissal of an appeal. *Sauid v. Gebara*, 15 LLR 598 (1964); 1956 Code 5:1020(b). In *Russ v. Republic*, 5 LLR 189, 190 (1936), the Supreme Court said:

“The Court does not favor deciding causes before it upon motions to dismiss, but would rather go into the merits of the case, and decide same according to the law and evidence. . . .’ *Adorkor v. Adorkor*, 5 LLR 172, 173 (1936).

“But, so long as litigants, or their legal representatives, are careless and indifferent in preparing their causes for this Court, we are compelled to uphold and support the provisions of the law, and the interpretation of those principles as made from time to time.”

The motion to dismiss this appeal being well founded, we have no alternative but to grant it and dismiss the appeal. It is so ordered.

*Motion to dismiss appeal granted.*