

JOSEPH FAZZAH, Appellant, v. MAHMOUD
KARBAR, Appellee.

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

Argued April 16, 1942. Decided May 8, 1942.

Where there is no approved appeal bond the appeal will be dismissed.

On motion to dismiss appeal on ground that no approved appeal bond was filed, *motion granted*.

H. Lafayette Harmon for appellant. *Charles T. O. King* for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

As was the case in several other causes heard and determined here at the November term of Court last past and at the present term, this appeal is attacked by appellee for defects in its preparation by motion to dismiss the same because:

- (1) No approved appeal bond was filed, and
- (2) The approval appearing on the copy of the appeal bond certified to the appellate Court was an inadvertence of the clerk of the trial court in the preparation of the record. The original appeal bond filed in the trial court was not approved when filed or at the time that the records were transmitted to this appellate tribunal.

Along with this motion, the appellee filed a certificate from the clerk of the Circuit Court for the First Judicial Circuit, from whence the appeal came, in support of his allegation; and said certificate reads as follows:

“OFFICE OF THE CLERK OF COURT,
FIRST JUDICIAL CIRCUIT COURT,
MONTSERRADO COUNTY.

April 7, 1942.

“*CERTIFICATE.*

“To all whom these presents shall come, Greetings:
“This is to certify that the Appeal Bond in the case:
Joseph Fazzah, appellant, versus Mahmoud Karbar,
appellee, Action of Debt, was not filed in my Office
already approved by His Honour Judge Smallwood;
but that it was not until the early [part] of this year,
upon His Honour’s return from his Circuit assigned,
at Grand Bassa County, when Counsellor H. L. Har-
mon came to my office and got the bond from me for
the purpose of having His Honour’s approval to same,
I having written to Counsellor Harmon previously
that the endorsement showing that the Bond was ap-
proved at the time of filing was a mistake taken from
the approving date of the bill of exceptions; and this
fact was brought to the notice of Counsel for both
appellant and appellee.

“Issued this 7th day of April A. D. 1942.

“[Sgd.] CARNEY JOHNSON
Carney Johnson
Clerk of Court.
(Seal of Court).”

Appellant’s counsel contended that since said copy of
the appeal bond showed that the bond was approved,
this Court should not go behind it and take notice of the
original bond filed in the trial court. He also argued
that the original bond had been approved by the trial
judge.

Inspecting the record, we find that in point of fact the
copy of the bond certified to this Court bears the ap-
proval of the judge; but obviously it was a mistake of the
clerk, as his certificate testifies, for the approval date

appearing on said copy is October sixteenth, and the execution date October twenty-fourth, so that the said bond would appear to have been approved eight days before it was executed. Quite an impossibility!

It is, to say the least, highly improper for a clerk of court to allow a lawyer to come into his office and take therefrom an appeal bond or any other document and have it altered, improved, changed, or tampered with in any way whatever after copies thereof have been sent forward to the appellate Court; and, what is more, we cannot understand the judge approving an appeal bond *nunc pro tunc*, as was done in this case, the cause having been sent forward to the appellate Court, without an order of such appellate Court.

We have so often repeated and upheld the provisions of the statute of appeals in reference to appeal bonds that it would be redundant to reiterate it here, but the rule and principle of law are enunciated in *King v. King*, 7 L.L.R. 301, decided December 30, 1941, and *Adorkor v. Adorkor*, 5 L.L.R. 172, decided in 1936.

It is therefore our opinion that the motion should be sustained, the appeal dismissed, and appellant ruled to costs; and it is hereby so ordered.

Motion granted.