JOSEPH MCGILL, Appellant, *v.* MOBIL OIL LIBERIA, INC., Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT, NIMBA COUNTY.

Argued March 31, 1977. Decided April 29, 1977.

1. That an amount stated in the body of an appeal bond is less than the amount approved by the trial judge does not invalidate the bond where the stated amount is much more than sufficient to reimburse the appellee if the case is finally determined in his favor.
2. Failure of the appellant to serve notice on the appellee of the filing of an approved appeal bond as required by statute is not ground for dismissal of the appeal, where appellee had actual notice of the filing of the bond and its contents.

This was an appeal from a judgment for defendant in an action for damages for breach of contract. Appellee filed a motion to dismiss on the ground that the appeal bond was defective and was not served on the appellee. The Court found no valid reason in support of appellee's arguments to dismiss the appeal, holding principally that the discrepancy between the amount stated in the body of the appeal bond and the larger amount approved by the trial judge was not under the circumstances a defect which invalidated the bond. *Motion denied.*

S. Edward Carlor and *Moses K. Yangbe* for appellant. *John B. Gibson, Sr.,* of the *Morgan, Grimes and Harmon Law Firm* for appellee.

MR. JUSTICE HORACE delivered the opinion of the Court.

On July 1, 1975, appellant instituted an action of damages for breach of contract against appellee in the Circuit Court for the Eighth Judicial Circuit, Nimba County.

The case was heard and determined against appellant, plaintiff in the court below, in September 1976 during the August 1976 Term of said court. The necessary jurisdictional steps to perfect his appeal were completed, and the appeal was duly docketed for hearing by this Court in its present term.

After the case was assigned, but before we could take up the matter, appellee filed a motion to dismiss the appeal. The motion reads in part as follows:

> "1. Because under the statute laws of Liberia in order to effect an appeal, every appellant shall give an appeal bond in an amount to be fixed by the court with two or more qualified sureties to the effect that he will indemnify the appellee from all costs or injury arising from the appeal if appellant is unsuccessful, and that he will comply with the judgment of the appellate court or any other court to which the case is removed. In this case, although the trial court judge, His Honor Napoleon B. Thorpe, fixed an amount of $8,000 for the appeal bond, the appellant has submitted a bond in the amount of $5,982.68 and no more, contrary to the amount for which the bond was approved and in contravention of the statute laws in such case made and provided, thereby rendering said bond totally and fatally defective and legally insufficient. Rev. Code 1.51.8.
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> "2. And also because appellee further submits the said appeal bond tendered by appellant is further fatally defective and bad in that under the laws of Liberia, an appeal bond shall be accompanied by a certificate of a duly authorized official of the Department of the Treasury (Ministry of Finance) that the propperty is owned by the surety or sureties claiming title to it in the affidavit of sureties and that it is of the assessed value thereon stated. In this case, the appellant has failed to file and have accompanied by his appeal bond such certificate. That is to say, there is no

certificate of any duly authorized official of the Finance Ministry. Civil Procedure Law, Rev. Code 1:63.2(4).

"3. And also because under the laws of the Republic of Liberia . . . appellee submits that upon the filing of an approved bond by the appellant, he shall serve notice thereof upon the adverse party. In this case appellant has failed and neglected to serve any notice of filing of his appeal bond upon appellee; and for this reason said appeal should be dismissed. Civil Procedure Law, Rev. Code 1:63.3."

Appellant's counsel, not having had the time to file a written resistance to the motion, requested the Court, in order to avoid delay in hearing the motion, to enter his resistance in the minutes of court. On the granting of the request, appellant's counsel entered the following resistance in the record:

"1. Counsel for appellant in resisting the motion to dismiss submits that as to count 1 of the motion, it is the duty of the trial judge to affix an amount as the penalty of the bond which the judge did by affixing $8,000 on the appeal bond; this fact is admitted by the appellee in count one of the motion.

"2. That in respect to the alleged insufficiency of the amount stated in the bond, there was no amount awarded by the trial court, and it was the plaintiff who filed the case in the court below and lost it. The amount of $5,982.68 stated in the body of the bond by the appellant is quite sufficient to cover the cost of court, which is the purpose of the appeal bond; therefore it is not a ground to dismiss the appeal. *Watco* v. *Alraine,* 24 LLR 224 (1975); Civil Procedure Law, Rev. Code 1:51.8.

"3. That count 2 of the motion with reference to alleged absence of a revenue certificate is false and unsupported by the records certified to this Court. Appellee has asked this Court to take judicial notice with-

out any profert of a clerk's certificate in support of this allegation. See certificate signed by Nellie C. Bryant, Cashier-Collector, Nimba County, in the amount of $15; and a certificate signed by Lewis T. Harris, Collector of Internal Revenue, Sanniquellie, Nimba County, dated January 2, 1976, [property] valuation $3,720 owned by Samuel K. Bellie.

"4. With respect to count 3 of the motion, failure to furnish appellee with a copy of the appeal bond is not a statutory ground for dismissal of an appeal. Civil Procedure Law, Rev. Code 1:51.16.

"5. That appellee did get a copy of the appeal bond from which he prepared the motion to dismiss, for it is impossible for him to have imaginatively prepared a motion without the appeal bond. Count 3 therefore is false and should be dismissed."

The statement that the amount stated in the body of the appeal bond, $5,982.68, was different from the amount approved by the trial judge, $8,000, upon inspection of the bond was found to be true. Appellee's counsel's contention is that the variance in the amounts shown on the face of the bond, that is the amount stated in the body of the bond, and the amount approved by the judge makes said bond defective and insufficient. Counsel for appellee contended that it is the amount approved by the judge that is important since the appeal statute specifically provides that "every appellant shall give an appeal bond in an amount to be fixed by the court." It does appear to us to be irregular for the trial judge to have approved an amount in excess of that appearing on the bond. He should have required appellant to put the correct amount in the bond before approving same. But be that as it may, we do not see how this situation prejudices the interest of appellee in the pending appeal, because the judgment in the case does not award any amount, and the only claim appellee could have if the case is finally determined in his favor is reimbursement of costs which would

be, even by the widest stretch of the imagination, far less than either of the two amounts shown in the appeal bond. Count one of the motion to dismiss is, therefore, not well taken.

Upon inspection of the record certified to us, we found a certificate issued by duly authorized officials of the Ministry of Finance certifying the assessed value of the properties and that the properties offered as a lien by the sureties to the appeal bond are owned by said sureties. Count 2 of the motion to dismiss, being a misrepresentation of the facts as shown in the certified record, is overruled.

With respect to count 3 of the motion to dismiss, it is true that the Civil Procedure Law requires that appellant shall, after filing his approved appeal bond with the clerk of the court in which the appeal is pending, serve notice of such filing on the adverse party. Rev. Code 1:63.3. There is no showing that this was done. Appellant contends, however, that failure to serve such notice is not a ground for dismissal of an appeal, since the Civil Procedure Law states very clearly on what grounds an appeal shall be dismissed. Rev. Code 1:51.8, 51.16. Moreover appellant has contended that appellee must have had notice of the filing of the appeal bond; otherwise, how could he have attacked said bond in his motion to dismiss? This argument seems to us to be reasonable.

After careful consideration of the issues raised in the motion, we are of the considered opinion that there are no tangible legal reasons why the grounds set out in appellee's motion to dismiss should be upheld, since indeed by refusing to do so neither injustice or prejudice would occur to appellee, nor would the denial of the motion bring about an absurd consequence. It is our holding, therefore, that the motion is denied and the case will be heard on its merits. Costs to abide final determination of the case. And it is hereby so ordered.

Motion to dismiss appeal denied.