

MOMO COLE and MIAMAH COLE, Appellants, v.  
ALBERT D. PEABODY, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Argued October 14, 1958. Decided December 19, 1958.

1. An appeal bond which omits to specify the amount of the penalty or indemnification is materially defective.
2. When a counsellor or attorney at law has violated a rule of court by giving personal recognizance on an appeal bond, the bond will be deemed materially defective.
3. Where an appeal bond is materially defective the appeal will be dismissed.

On appeal from a judgment in an action for damages for libel, *appeal dismissed*.

*Richard A. Henriess* for appellants. *Albert D. Peabody*, appellee, *pro se*.

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

Albert D. Peabody, the appellee in this case, instituted an action of damages against Momo and Miamah Cole, appellees herein, for the alleged publication of libellous and defamatory remarks contained in a certain submission filed with the clerk of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, a copy of which was sent to the Smallwood Law Association of this City.

Pleadings progressed as far as the surrejoinder. Thereupon His Honor, Judge John H. Marshall, ruling on the law issues, dismissed defendant's answer as well as subsequent pleadings on both sides, and ruled the case to trial on points of fact as follows:

"Plaintiff's complaint charges defendants with libel against him. The answer and subsequent pleadings

of defendants allege that plaintiff has sustained no damages as result of any libellous submission made and filed by defendants. Further, the defendants allege that the complaint is premature in that it is not based upon a previous judgment of court; in support whereof, reference is made to an opinion of the Honorable Supreme Court.

“From an inspection of said opinion, as well as the other mixed questions of law and facts, that is to say, the relevant portion of said opinion, the court does not feel these are sufficient in law to abate plaintiff’s complaint or dismiss defendant’s answer as well as other subsequent pleadings on both sides in support thereof.

“The case is therefore ruled to trial on the following points of fact, to wit:

“The plaintiff, who has alleged that he has been damaged by a certain publication which he claims to be libellous, shall be required to prove same at the trial. Since the defendants have not denied making and publishing said submission throughout their pleadings, but have contended that plaintiff has not sustained any damages thereby, as he complains of, they shall likewise prove that he has not been damaged in keeping with their said answer and subsequent pleadings in the case.

“The defendants are to also prove that it was the intention of plaintiff to defraud Momo Cole and Mi-amah Cole out of their uncle’s property, as stated in their submission, since they do not deny making and publishing said submission. And it is hereby so ordered.”

To this ruling no exceptions were taken by either side.

Witnesses testified; and, both sides having rested, the trial Judge rendered final judgment holding defendants liable, and awarding plaintiff damages in the sum of two hundred dollars with costs. Although the record certi-

fied to us does not so indicate, we assume that exceptions were taken to said final judgment, and that an appeal was prayed for to this Court for review.

On January 31, 1958, appellee filed a motion for dismissal of the appeal, said motion consisting of two counts which we quote below as follows:

- "1. Because appellee says that the appellants in this case have departed from and thereby violated the provisions of the statute laws of Liberia governing appeals from the lower courts to the Honorable Supreme Court of Liberia, in that the appeal bond filed in this case is materially and incurably defective because said appeal bond fails to carry any monetary value or penalty upon which could be predicated the indemnification clause which should bind both the sureties and principles, thereby holding them answerable for the non-compliance of their obligations. Appellee submits that the omission of such an indispensable requisite on the part of the appellants to insert the required sum in said appeal bond makes said bond totally defective and without any legal value, as is more clearly evidenced by copy of the certificate from the clerk of the trial court hereto annexed, marked Exhibit 'A,' forming a part of this motion.
- "2. And also because appellee says that the aforesaid appeal bond of the appellants is further defective and bad, in that, wherein Rule 25 of the set of rules governing the Circuit Courts of the Republic of Liberia, which was adopted by the Provisional Monthly and Probate Court of the Territory of Marshall on the 15th day of April, 1943 to govern said court prescribes, among other things: '. . . nor shall any counsellor or attorney give recognizance in any matter, civil or criminal, in which he is employed.' The appeal

bond in this case is in violation of said rule, for it is signed by Hector Harmon who, from the commencement of this action to the end of its trial in the court below, was employed, retained and actively functioned as the attorney at law for the defendants, now appellants. Appellee says that such an illegal act should render the bond defective, bad and dismissable, as is more fully shown from a certificate from the office of the clerk of the trial court which is hereto attached, marked Exhibit 'B,' and forms a part of this motion."

Upon the call of the case, appellee appeared; no one appeared for appellants, nor was any resistance filed. Appellee argued and submitted.

Failure to file an approved appeal bond or fatal defect in said bond constitutes grounds on which an appellate court may dismiss an appeal. Bail is defined as the security given by a defendant for his compliance with the judgment of a court. A bond which omits to stipulate any sum of money provides no security, and therefore is fatally defective. The contention of the appellee in Count "1" of his motion is borne out by the appeal bond filed in this case, the relevant portion of which reads as follows:

"Know all men by these presents that we, Momo Cole and Miamah Cole, the above named defendant-appellants, and Hector Harmon of Marshall Territory, and James H. Lewis of Marshall Territory, sureties, each being a freeholder or householder within the County of Montserrado, Republic of Liberia, are held and firmly bound unto the sheriff for Montserrado County in the sum of \$\_\_\_\_\_ to be paid to Albert D. Peabody, the above-named plaintiff-appellee, or his legal representative, for which payment we bind ourselves and our personal representatives jointly and severally firmly by these presents."

Count "1" of said motion is hereby sustained. Count

"2" alleges further defects in said appeal bond, in that, as appellee charges, Rule 25 of the Circuit Court Rules, which have been adopted by the Provisional Monthly and Probate Court of the Territory of Marshall, prohibits any counsellor or attorney employed in a civil or criminal case from giving recognizance. Rule 25 has been violated by appellants, because the appeal bond is signed by Hector Harmon, the attorney for the defendants, appellants in this case, which renders said appeal bond further defective and fatal. Because this contention of appellee is substantially borne out by the record certified to us in this case, Count "2" of said motion is also sustained.

In the absence of any resistance from appellants to appellee's motion for dismissal of this appeal and in view of appellants' failure to appear at the call of said case, and of the fatal defects appearing in and upon the face of said appeal bond, the motion to dismiss is hereby granted and the appeal dismissed with costs against the appellants. And it is so ordered.

*Appeal dismissed.*