AUGUSTUS F. CAINE, SEKU FREEMAN et al., Petitioners, *v.* HIS HONOUR M. FULTON YANCY, JR., Circuit Judge presiding by assignment over the February Term, A. D. 1982, of the People's Fifth Judicial Circuit, Grand Cape Mount County, the Clerk of Court, People's Fifth Judicial Circuit, Grand Cape Mount County, and MOMOLU LAMIE FAHNBULLEH et al., Respondents.

PETITION FOR A WRIT OF MANDAMUS TO THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Decided September 28, 1982.

1. A surety on a bond shall be any insurance company authorized to execute surety bonds within the Republic of Liberia, or two or more natural persons who are owners of one or more pieces of property located within the Republic of Liberia.
2. As long as the property is owned by the sureties, is located within the Republic, and is of the assessed value equal to the total amount of the bond, exclusive of all encumbrances, such sureties are legally qualified.
3. It is the trial judge, and not any other judge, who shall approve the bond.
4. Where the trial judge leaves the circuit, proof that it was deposited in a post office of the Republic within the time allowed by statute will be sufficient evidence of it having been submitted within statutory time.
5. Recording of a bond on the docket for surety bond liens in the office of the clerk of the circuit court is intended merely to create a lien on the real property, but it is not a prerequisite to the approval of the bond.
6. Granting or refusing of an appeal is not left with the discretion of the trial judge. Mandamus shall lie to compel him to perform such duty.
7. For purposes of a bond, it is not required that the property offered be located in the county in which the case is tried, or where the subject of the trial is located.

The petitioner in these proceedings sought mandamus to compel the co-respondent judge to approve of its appeal bond presented to him, following the rendition by him of a final judgment against the petitioner and an appeal therefrom to the Supreme Court. The co-respondent judge, when presented with the appeal bond for his approval, refused to approve the same, contending that the property used to secure the bond was situated in Montserrado County rather than in Grand cape Mount County

where the case was heard and the judgment rendered. The judge also stated that any judge, especially the resident judge of the circuit in which the case was tried could approve the bond.

The Justice in Cambers *granted* the petition and ordered the judge to approve the bond, stating that the contentions upon which the judge based his refusal to approve the bond was legally untenable. The Justice noted that in this jurisdiction, an appeal was a matter of right and that where any act of refusal of a trial judge has the tendency to defeat that right, mandamus would be granted to compel him to act.

Nelson W. Broderick appeared for petitioners. Respondent *Judge Fulton W. Yancy pro se* appeared for the respondents.

SMITH, J., presiding in chambers

The records in these proceedings disclose that the co-respondent judge rendered judgment in an ejectment case against the petitioners who announced an appeal therefrom. The appeal was granted and a bill of exceptions filed. But before the appeal bond was ready, the co-respondent judge had left the circuit for his residence at Harper, Maryland County. The petitioners in these proceedings elected not to mail the appeal bond to the judge in Harper, but instead to dispatched their counsel to Harper with the appeal bond for the judge's approval of the same. The co-respondent judge refused to approve the appeal bond on the grounds that the property offered as security was located in Monrovia, Montserrado County, and not in Grand Cape Mount County, where the case was pending and tried, and that he was no longer in jurisdiction because he had left the circuit and was assigned to another circuit. The co-respondent judge also stated that any other judge, especially the resident judge, could approve the bond under the law. The co-respondent judge relied on the dissenting opinion of Chief Justice Grimes in the case *Adorkor v. Adorkor,* 5 LLR 172, 177 (1936), but the said dissenting opinion is not controlling.

Under our appeal statute "every appellant shall give an appeal bond in an amount to be fixed by the court with two or more legally qualified sureties to the effect that he or they will

indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he/they will comply with the judgment of the appellate court, or of any other court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment" (emphasis mine). Civil Procedure Law, Rev. Code 1: 51.8. According to this statutory provision, the sureties to the appeal bond must be legally qualified. The purpose of the bond is to indemnify the appellee, and the appellant must secure the approval of the bond by the trial judge and not any other judge. The question posed by this provision of the statute is, who is a legally qualified surety?

In keeping with the statute, *Ibid.*, 1: 63.2(1) and (2), the answer to the above question is clear; for, a surety on a bond shall be any insurance company authorized to execute surety bond within the Republic of Liberia, or two or more natural persons, who are owners of one or more pieces of property located within the Republic of Liberia (not necessarily in the county in which the case is tried, or where the subject of the trial is located). However, the property so offered must have the assessed value equal to the total amount of the bond, exclusive of all encumbrances. In order to create a lien on the real property, it is the duty of the party in whose favor the bond is given, to have it recorded in the docket for surety bond liens in the office of the clerk of the circuit court in the county where the property is located, and this is not a prerequisite to the approval of the bond. Under this provision of the statute, it is not necessary that the property offered as security be located in the county in which the civil action is pending. As long as the property is owned by the sureties and is located in the Republic, and is of the assessed value equal to the total amount of the bond, exclusive of all encumbrances, such sureties are legally qualified.

As to the question of which judge shall approve the appeal bond in keeping with Statute, *Ibid.*, 1: 51.8, as cited herein above, it is the trial judge, and not any other judge, who shall approve the bond. Also see the cases: *Adorkor v. Adorkor*, 5LLR 172 (1936), and *Russ v. Republic*, 5 LLR 189 (1936). The bill of exceptions and the appeal bond must be approved by the trial

judge, and if the trial judge had left the circuit, proof that it was deposited in a post office of the Republic within the time allowed by statute, will be sufficient evidence of it having been submitted within time. *Adorkor v. Adorkor*, 5 LLR 172(1936).

From the several legal citations made hereinabove the contention of the co-respondent judge as contained in his returns and argued before us is legally untenable.

The granting or refusal to grant an appeal is not, in this jurisdiction, left with the discretion of the trial judge. Appeal is a matter of right and where any act of the judge tending to defeat this right by his refusal to perform the judicial duty required of him by law, mandamus will lie to compel him to perform such mandatory duty.

In view of the respondent judge's refusal to approve the appeal bond, which was a mandatory duty required of him, the petition for a writ of mandamus be, and is hereby granted, and the peremptory writ of mandamus is ordered issued, compelling the co-respondent judge to approve the appeal bond *nunc pro tunc* immediately upon distribution of copies of this ruling to the parties.

Since the appeal bond was not mailed to the respondent judge for approval, and the petitioners elected to send their counsel by air to secure the approval of the bond, refund of the $143.00, claimed by the petitioners against the co-respondent judge, is legally untenable and cannot, therefore, be ordered; but rather, such amount being incidental to the taking of the appeal, may be recovered as costs against the appellees in the court below, if the appellants, petitioners in these proceedings, are successful on appeal. Costs disallowed. And it is hereby so ordered.

Petition granted.