

241

IN THE COURT OF APPEAL

R.M.C.A. NO. 12/74

Before: The Honourable Mr. Justice Edun - Presiding
The Honourable Mr. Justice Hercules
The Honourable Mr. Justice Zacca.

ORETT MCNAMEE v. GRETA WEBB

Mr. D. A. Salmon for Appellant
Dr. A. Edwards for Respondent

JUNE 21, 1974

EDUN, J.A.:

Attention of learned attorney for the appellant in this appeal was drawn to the fact that he had not complied with section 256 of chapter 179 in lodging the sum of one dollar for the due prosecution of the appeal. Though there has not been a recital of the fact that the one dollar had been lodged as security for the due prosecution of the appeal, yet there has been the sum of twenty-five dollars lodged instead of twenty-four as required by section 256. Section 256, if I may repeat, requires the appellant to lodge only twenty-four dollars as security for the payment of any costs that may be awarded against the appellant.

In the notice of appeal in this matter the second paragraph reads thus:

" And take further notice that the defendant/
appellant has this day paid into court the
sum of twenty-five dollars as security for the
payment of any costs that may be awarded against
him in accordance with section 256 of the Judi-
cature (Resident Magistrate's) Law Cap. 179.

It does appear that there is not the recital of the fact that a dollar had been lodged as security for the due prosecution of the appeal but it cannot be overlooked that that particular law, section 256, requires that only twenty-four dollars should be lodged as security for the payment of any costs. The fact remains, in my view, that the dollar has been lodged in time and with the notice of appeal and I would be inclined to hold that the appellant has complied with section 256 of Cap. 179. The provisions of the law conferring a right of appeal shall be construed liberally and the non-recital of the reasons for the extra dollar was due to inadvertence or ignorance.

I am willing to listen to the arguments in the appeal.

HERCULES, J.A.:

I am afraid I do not agree with the decision just given by the learned presiding judge of this court. It is not only a matter of law but it is a matter of practice that an appellant should make it clear in his notice of appeal that he is complying fully with section 256 by stating specifically that he is lodging one dollar for the due prosecution of his appeal and twenty-four dollars as security for costs. If he recites that he has lodged one million dollars as security for costs I am not prepared to infer or to presume or to deduce for him or on his behalf that any sum in excess of twenty-four dollars is intended to include lodgment for the due prosecution of the appeal. The one dollar for the due prosecution of the appeal has been held by this court to be a condition precedent in Christian v. Brown R.M.C.A. 46/1972 (unreported) and in Patterson & Niceby v. Lynch R.M.C.A. 18/1973 (also unreported). That this has been lodged must be clearly recited.

In addition to the fact that the law has not been shown to have been complied with, it is my view that attorneys-at-law filing appeals must know the law and observe it, and I cannot be a

-3-

party to permitting any slipshod practice on the part of any attorney seeking to get a hearing of the Court of Appeal. The omission goes to the jurisdiction of the court and, in the circumstances, I would refuse to hear this appeal.

ZACCA, J. A.:

I am also of the view that the appeal should not be allowed to be heard. In my view, the notice of appeal clearly states that the twenty-five dollars has been lodged as security for the payment of any costs that may be awarded against the appellant in accordance with section 256 of the Judicature (Resident Magistrate's) Law Cap. 179. In my view, no inference can be drawn from that to say that out of that amount one dollar has, in fact, been lodged for the due prosecution of the appeal. The court has no discretion in this matter. If the one dollar has not been lodged within the time permitted for the due prosecution of the appeal then the appeal cannot be heard. I am not prepared to hear this appeal.

EDUN, J.A.:

By majority it is held that the plaintiff/appellant not having complied in this appeal with section 256 of the Judicature (Resident Magistrate's) Law, Cap. 179 and the appeal is dismissed, costs to the respondent, forty dollars.