

IN THE COURT OF APPEAL
R. M. CIVIL APPEAL NO. 48/72.

BEFORE: The Hon. Mr. Justice Fox, J. A.
 The Hon. Mr. Justice Graham-Perkins, J. A.
 The Hon. Mr. Justice Robinson, J. A.

SHAGOURY'S HARDWARE & LUMBER LTD. - Defendant/Appellant .

vs.

LAWRENCE DALEY - Plaintiff/Respondent.

Mrs. Pamela Benka-Coker for Plaintiff/Respondent.

May 8, 1973.

FOX, J. A. : When this appeal came up for hearing on the 1st. of December, 1972, Mr. Von Cork appeared for the appellant. There was no appearance for the respondent. There was no sufficient evidence in the record that security for costs had been paid into court as required by section 256 of the Judicature (Resident Magistrates) Law, Chapter 179. The court thought then that the absence of representation on behalf of the respondent may have been in some way due to this failure. Consequently, the appeal was adjourned sine die. The court directed the appellant to secure from the clerk of the courts, Kingston, an affidavit to the effect that the costs had indeed been paid into court and to serve a copy of the clerk's affidavit upon Messrs. Silvera & Silvera, the attorneys-at-law who, on the record, appeared for the respondent. These directions were to be carried out before the case was relisted.

When the appeal was called on for hearing today, Mrs. Pamela Benka-Coker appeared for the respondent. There was no appearance on behalf of the appellant. The usual notices had been sent by registered mail to Mr. Von Cork, Mr. Keith Jarrett, the attorneys on the record on behalf of the appellant, and to the appellant company at its office at Main St. in May Pen.

Mrs. Benka-Coker pointed out that although from the clerk's affidavit the security for costs were duly paid into court, on the basis of an affidavit filed in the Registry on the 29th December, 1972, from Mr. Monteith, an associate of Messrs Silvera & Silvera, it appeared that the defendant had failed to comply with the further provision of section 256 requiring grounds of appeal to be drawn up and served upon the respondent within 21 days after receiving notice of the filing by the resident magistrate of his reasons for judgment. Mrs. Benka-Coker submitted that the appeal should be dismissed on this ground as well as on the ground of the absence of the appellant.

We agree. The appeal is dismissed on the ground that there has been a failure duly to prosecute the appeal, and on the ground also that by virtue of the provisions in section 256 upon the failure to serve the respondent with grounds of appeal, the appellant's right to appeal has ceased and determined. The respondent will have the costs of this appeal fixed at \$40.

GRAHAM-PERKINS, J.A.: I agree.

ROBINSON, J.A.: I agree.
