

an appeal, and on December 6, 2019, filed their bill of exceptions within the 10 days period as provided for in section 51.7 of the Civil Procedure Law; on December 20, 2019, filed their appeal bond; and on January 9, 2020, the respondents served a copy of the appeal bond and the notice of completion of appeal on the movant and filed same with the trial court, an indication of the completion of the appeal process pursuant to section 51.9 of the Civil Procedure law.

On October 9, 2020, the movant herein, filed with the Clerk of the Supreme Court an eight (8) count motion to dismiss the appeal alleging that the respondents' appeal bond is defective in that the appellant's surety, the Sky International Insurance Corporation is not authorized nor qualified to execute surety bonds within the interpretation espoused by the Supreme Court of section 63.2 of the Civil Procedure Law, since the surety does not have assets in Liberia to cover the amount stated in the appeal bond. Counts 5 and 6 of the motion to dismiss which speaks to this issue being germane to the disposition of this case, we quote herein below to wit:

5. "Movant says that a careful review of the respondent's appeal bond show that the appeal bond is defective on the basis that:
 - (i) The Sky International Insurance Corporation's tax clearance Certificate attached to the appeal bond had expired as of the date of filing; that is the tax clearance expired November 21, 2019;
 - (ii) The Sky International Insurance Corporation's annual operating license from the Central Bank attached to the appeal bond had expired from the date of filing; that is the license is for the period 2013;
 - (iii) The Sky International Insurance Corporation's financial statements attached to the appeal bond are not current as of the date of filing; that is the statements are for the period 2017, 2018 and October 2019;
 - (iv) The Central Bank of Liberia (CBL) receipt for annual operating levy attached to the bond is not an official tax receipt/flag receipt from the Liberia Revenue Authority (LRA) or the Government of Liberia.
6. Movant says that all of the above defects show that the Sky International Insurance Corporation was not duly authorized to serve as surety in keeping with the requirements provided by the Civil Procedure Law, section 63.2 and also articulated in the cases: *Robertson et., v. The Quiah Bros et al.*, Supreme Court Opinion, October Term 2011; and *Mentor Initiative v. Fardoun*, Supreme Court Opinion, October Term A.D. 2013."

On January 19, 2020, the respondents filed an eight (8) count resistance to the motion to dismiss, praying this Court to deny the dismissal of its appeal and stating reasons therefor, that the issue of the surety's tax clearance, financial statement, bank statement, and operating CBL's license are mere procedural technicalities and

that the amount of the bond is sufficient to indemnify the movant. The respondent also alleged that there being no legal support for the motion to dismiss, same should be ignored and dismissed. Like the motion to dismiss, we have decided to quote counts 1 thru 6 of the resistance, to wit:

“RESPONDENTS’ RETURNS

AND now come respondents of the above captioned and most respectfully pray as follow to wit:

1. Respondents say that the entire motion deserves no legal credence for the fact that appeal bond is to indemnify appellee and that movant being plaintiff in an action of ejectment, eviction of the respondents is the remedy, which cannot be avoided if movant prevails.
2. That count one of the motion raises no triable issue.
3. Respondents say that service of the appeal bond was delayed due to the difficulties in locating movant’s counsel in his new office for which the court officer assisted in serving of the notice of completion of appeal along with the appeal bond, which is a sufficient bond as required by statute.
4. As to count four of the motion, respondents say as the appellant, she and her surety bind themselves unto the appellee and that the license issued to the surety by the Central Bank of Liberia remains valid until revoked and never expired as alleged.
5. Respondents say that the issues of tax clearance, financial statement of the surety etc. are not necessary as their absence cannot prevent enforcement of any judgment against respondent if movant prevails.
6. As to counts six, seven and eight of the motion, respondents say that the claims are not supported by the opinions cited.

Having carefully noted the facts and circumstances and the applicable laws, we have determined that there are only two issues dispositive of this appeal, which are:

- 1) Whether a surety’s tax clearance, financial statement, bank statements and operating CBL’s license are mere procedural technicalities and not mandatory requirements for an insurance company to execute appeal bonds in Liberia.
- 2) Whether the defects in the respondent appeal bond renders the appeal dismissible as a matter of law.

In respect of the first issue the respondents have argued that there is no law that requires a surety to prove its liquidity through tax clearance, financial statements,

bank statements or operating CBL's license. On the other hand, the movant has counter-argued by citing Supreme Court Opinions, *Robertson et al., v. The Quiah Bros et al.*, Supreme Court Opinion, October Term 2011; and *Mentor Initiative v. Fardoun*, Supreme Court Opinion, October Term A.D. 2013, as the criteria for sureties to prove their qualification and authorization to issue surety bonds in Liberia.

This Court says that the argument advanced by the counsel for the respondents, to say the least is preposterous and demonstrates his lack of knowledge of the law, that is, section 63.2(1) of the Civil Procedure Law, and recent Opinions by the Supreme Court giving interpretation to this provision of the statute. This provision of the Civil Procedure Law provides that: *“Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements of this section or an insurance company authorized to execute surety bonds within the Republic.”*

In two (2) cases *Robertson et al., v. The Quiah Bros et al.*, Supreme Court Opinion, October Term 2011; and *Mentor Initiative v. Fardoun*, Supreme Court Opinion, October Term A.D. 2013, this Court, defined the phrase, “authorized to execute surety bonds” as follow:

“the phrase authorized to execute surety bonds within the Republic of Liberia does not mean a mere exhibition of the articles of incorporation of the insurance company containing a clause that it can serve as surety, or an exhibition of a certificate showing that it is authorized to do business in Liberia, or a statement from the Ministry of Finance indicating that the company has paid its taxes, for none of those points to the liquidity of the insurance company as would satisfy the purpose of an appeal or other bonds, which are intended to hold the successful or opposing parties harmless from injury, to make payment of the costs of court, and to satisfy the judgment of the court; the purposes stated both in the statute and in a litany of cases decided by this Court presuppose and imply that the insurance company is in good standing and has the liquidity or other means to satisfy the judgment and other cost associated with the case in which it is serving as surety. The standards contemplated by the Statute are:

- a) the exhibition or attachment to the bond of the articles of incorporation of the insurance company as evidence that the company does exist;
- b) Registration certificate of the insurance company with the appropriate government ministry or agency indicating that it is authorized to do business in Liberia and that it is in good standing;
- c) **Clearance from the Ministry of Finance evincing that all taxes due as at the time of the execution of the bond have been fully paid; and**
- d) **Evidence, such as certificate or other legal instrument from an appropriate legal authority such as the Central Bank or other insurance authority or similar government entity having regulatory responsibilities for insurance companies, that the insurance company possesses assets within the Republic of Liberia, sufficient to cover the**

obligation undertaken by the insurance company in the bond, exclusive of other bonds to which it is already serving as surety, commensurate with the amount stated in the bond”. [Emphasis Ours]

In view of the above, we hold that insurance companies executing surety bonds within the Republic of Liberia are mandatorily required to annex to said bonds, their articles of incorporation, operating license, tax clearance from the Ministry of Finance as proof of their authorization to issue said bonds, and certificate from the Central Bank of Liberia (CBL), or other regulatory entities attesting that they have sufficient assets in Liberia to cover the obligation undertaken in the bonds. Absent these instruments, insurance companies will not be considered as being authorized to issue appeal or surety bonds in Liberia.

As to the second issue which is whether the defects in the respondents’ bond render the appeal dismissible as a matter of law, this Court says that notwithstanding our holding herein above that the respondents’ surety is mandatorily required to attach and exhibit the above mentioned documents to prove its financial adequacy, howbeit, we take judicial notice of the unique facts and circumstances attendant to the present case as contained in the certified records, as regards the fact that the trial court judgment did not award any money in favor of the movant, the plaintiff who prevailed in the ejectment action before the trial court.

The Supreme Court has held that when the judgment appealed from does not state a monetary amount, the purpose of the appeal bond becomes only one of indemnification of the appellee from the costs of court, and the Supreme Court will usually prefer hearing cases on their merits rather than deciding them on motion to dismiss. *LAMCO J.V. Operating Company v. David Garmoyou et al.*, 34LLR 712 (1988); *LoneStar Cell v. Kelvin*, Supreme Court Opinion March A.D. 2019 Term; *Afriland Bank v. The Intestate Estate of Kama Blanton*, Supreme Court Opinion, March A.D. 2019, Term. Hence, we hold that there being no money judgment awarded in favor of the movant this Court is not inclined to dismiss the respondents’ appeal.

WHEREFORE AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal is hereby denied and the appeal ordered to be heard on its merits. Costs to abide final determination. IT IS HEREBY SO ORDERED.

Motion denied

When this case was called for hearing, Counsellors Ambrose Taplah and Morris M. Davies of Kemp and Associates Law Firm appeared for the Movant. Counsellor Thomson Jargba appeared for the Respondents.