

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2021

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABAASSOCIATE JUSTICE

Henry A. Blake, Siaffa M. Blake, and Mulbah Blake,)
Administrators of the Intestate Estate of H. Richard Blake)
of the City of Brewerville, Montserrado)
County, Liberia Movants)

VERSUS

) MOTION TO DISMISS
) APPEAL

Wesley Joe, Arnold Wong Bay, George Amandu, Michael)
Otto and Amos Paasewe, also of the City of Brewerville,)
Montserrado County Respondents)

GROWING OUT OF THE CASE:)

Wesley Joe, Arnold Wong Bay, George Arnandu, Michael)
Otto and Amos Paasewe, also of the City of Brewerville)
Montserrado County Appellants)

VERSUS

) APPEAL

Henry A Blake, Siana M. Blake, and Mulbah Blake,)
Administrators of the Intestate Estate of H. Richard)
Blake of the City of Brewerville, Montserrado)
County, Liberia Appellees)

GROWING OUT OF THE CASE:)

Henry A Blake, Siaffa M. Blake, and Mulbah Blake,)
Administrator of the Intestate Estate of H. Richard)
Blake of the City of Brewerville, Montserrado)
County, Liberia..... Plaintiffs)

VERSUS

) ACTION OF EJECTMENT

Wesley Joe, Arnold Wong Bay, George Amandu, Michael)
Otto and Amos Paasewe, also of the City of Brewerville,)
Montserrado County Defendants)

Heard: November 2, 2021

Decided: January 27, 2022

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The present motion to dismiss the appeal growing from an action of ejectment raises one cardinal issue as the basis for said motion, *viz.*, failure by the respondents/appellants to serve and file a notice of completion of the appeal on the movants/appellees or their legal counsel along with the appeal bond.

The records show that following a jury trial, a unanimous verdict was returned in favor of the movants/appellees, and subsequently, the final ruling was rendered on August 4, 2017, to which the respondents/appellants noted their exceptions and announced an appeal to the Supreme Court.

The records further show that the respondents/appellants filed their bill of exceptions on August 14, 2017, and their approved appeal bond and service and filing of their notice of the completion of the appeal on October 2, 2017.

On October 5, 2017, while the appeal was pending, the movants/appellees filed a six (6) count motion to dismiss the appeal, stating therein that although the respondents/appellants had filed their bill of exceptions, appeal bond, and service and filing of their notice of completion of the appeal within the period allowed by statute, that is sixty (60) days following the date of the rendition of final ruling, the said appeal was still dismissible as a matter of law. The reasons stated by the movants/appellees' for said dismissal are found in counts 3 and 4 of the motion and which we quote as follows, to wit:

3. "... that movants/appellees, after a careful perusal of the appeal bond, says that they object to the appeal bond as it is defective in that as it is required by the laws in this jurisdiction, the surety must show [that it has] assets in the amount for which [it] intends to indemnify the appellees after final judgment has been rendered. In the instant case, the respondents/appellants' failed and refused to attach any [list of] assets, either in property value or bank balance so as to [ascertain] its worth in order to indemnify the movants/appellees from all costs and injury... "

4. "That movants/appellees say the failure of the respondents/appellants to have their surety attach their net worth to their appeal bond makes it defective... and a good ground for dismissal of the appeal for failure to proceed in keeping with chapter 51 subsection 51.16 of the Civil Procedure Law, Rev. Code".

Before delving into the motion to dismiss, we deem it necessary to first note that without withdrawing the motion to dismiss the appeal filed on October 5, 2017, the movants/appellees filed a second motion to dismiss the respondents/appellants' appeal on March 19, 2020, albeit it on different grounds, but without withdrawing the first motion to dismiss filed on October 5, 2017.

The respondents/appellants filed a single returns to the motion to dismiss, asserting that they *did* comply with the statute *in* that *their* appeal bond satisfied the minimum requirement of an insurance bond to the effect that the certificate issued by the Central Bank of Liberia to the respondents/appellants' insurer, which they attached to the appeal bond, established the insurer's ability to indemnify the movants/appellees if they were to prevail in their appeal before the Supreme Court.

This Court says that in the absence of a withdrawal of the first motion filed on October 5, 2017, by the dictates of the law, only the said motion can be considered, and the subsequent motion filed on March 19, 2020, disregarded as same is not legally before the Court. See *Civil Procedure Law*, Rev. Code 1:9.10

We now proceed to delve into the issue of whether the appeal bond filed by the respondents/appellants is defective so as to warrant the dismissal of the appeal.

As regards insurance companies authorized to issue appeal bonds, the Supreme Court has held in several Opinions, notably, the case *Robertson et al., v. Quiah Brothers et al.*, Supreme Court Opinion October Term 2011, wherein the Court, speaking through Mr. Justice Banks, opined thus:

"... 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 costs associated with the case in which it is serving as surety. According to this Court. the standards contemplated by the Statute are:

1. The exhibition or attachment to the bond of the articles of incorporation of the insurance company as evidence that the company does exist;
2. 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;
3. Clearance from the Ministry of Finance evidencing that all taxes due as at the time of the execution of the bond have been fully paid; and
4. 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... "

We note that the movants/appellants have not set forth any of the above quoted requirements as the basis of their motion to dismiss the appeal, but has advanced the argument that "the respondents/appellants failed and refused to attach any [list of]

assets, either in property value or bank balance so as to [ascertain] its worth in order to indemnify the movants/appellees from all costs and injury... that the failure of the respondents/appellants to have their surety attach their net worth to their appeal bond makes it defective... and a good ground for dismissal of the appeal ... "

The Supreme Court has held that the essence of an appeal bond is to ensure that the appealing party indemnifies the appellee from all costs or injury arising from the appeal if unsuccessful and to also ensure compliance with judgment of the appellate court or any other court to which the case is removed.

Moreover, in the instant case which emanates from an ejectment action where no money judgment was awarded, the Supreme Court has also held that the appeal bond is primarily to satisfy the costs of court. Hence, the movants/appellees not having challenged the insufficiency of the bond amount, but rather the alleged failure of the respondents/appellants' surety to present a listing of its assets which is not a ground for the dismissal of an appeal, this Court is not inclined to dismiss the appeal.

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

Motion Denied

When this case was called for hearing, Counsellors Joyce Reeves Woods and Amara M. Sheriff appeared for the Movant. Counsellor Jimmy Saah Bombo of the Central Law Offices appeared for the respondent.