

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2022

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

Mr. Charles E. Sirleaf of Congo Town Back Road)
Montserrado County, Liberia.....1st Movant)

AND)

Bojelene Guest House Inc. represented by its Chief)
Executive Officer, Mr. Charles Sirleaf and all)
Corporate Officers of the City of Monrovia,)
Montserrado County, Republic of Liberia,)
.....2nd Movant)

Versus)

Motion to Dismiss
Appeal

Guaranty Trust Bank (Liberia) Limited, represented)
by its Managing Director, Mr. Ikenna Anekwe and)
all its Corporate Officers of 13th Street, Sinkor,)
Monrovia, Liberia.....Respondent)

GROWING OUT OF THE CASE: 1

Guaranty Trust Bank (Liberia) Limited, represented)
by its Managing Director, Mr. Ikenna Anekwa and all)
of its Corporate Officers of 13th Street, Sinkor,)
Monrovia, Liberia..... Appellant)

Versus)

Appeal

Mr. Charles E. Sirleaf of Congo Town Back Road)
Montserrado County, Liberia..... 1st Appellee)

AND)

Bojelene Guest House Inc., represented by its Chief)
Executive Officer, Mr. Charles Sirleaf and all)
Corporate Officers of the City of Monrovia;)
Montserrado County, Republic of Liberia...2nd Appellee)

Action of Damages for
Breach of deposit
Contract

Heard: March 23, 2022

Decided: August 4, 2022

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The movants, Mr. Charles E. Sirleaf and Bojelene Guest House Inc.; request this Court to dismiss the appeal announced by the respondent, Guaranty Trust Bank (Liberia) Limited, from an adverse judgment entered by the Commercial Court of Liberia in an action of damages for breach of contract filed by the movants. The movants contend that the respondent committed material and

incurable errors in the process of perfecting its appeal for which this Court should decline hearing the appeal on its merits. The respondent basically denied the movant's allegations, asserting that the motion to dismiss is filed for mere distraction because the respondent had satisfied the appeal process as required by the statute governing appeal from the Commercial Court.

The records certified to this Court reveal that the movants filed an action of damages for breach of contract against the respondent before the Commercial Court of Liberia substantially alleging that wrongful and illegal withdrawals of funds were made from the movants' bank accounts which the movants owned and operated with the respondent bank. The movants prayed the commercial court to adjudge the respondent bank liable in breach of their deposits contract, and award co-movant Charles E. Sirleaf special damages of US\$762,500.00 (Seven Hundred Sixty-Two Thousand Five Hundred United States Dollars) and L\$10,480,000.00 (Liberia Dollars Ten Million Four Hundred Eighty Thousand), and the co-movant Bojelene Guest House Inc., special damages of US\$88,000.00 (United States Dollars Eighty-eight Thousand). The movants also prayed the court for the award of general damages in amounts not less than US\$850,500.00 (United States Dollars Eight Hundred Fifty Thousand Five Hundred) and L\$10,480,000.00 (Liberian Dollars Ten Million Four Hundred Eighty Thousand), and punitive damages in an amount not less than US\$400,000.00 (United States Dollars Four Hundred Thousand).

The Commercial Court heard the case, and on December 23, 2021, entered a final ruling, adjudging the respondent liable to the movants for breach of deposit contracts. The court in its final ruling awarded the Co-movant Charles E. Sirleaf the amounts of US\$1,062,500.00 (United States Dollars One Million Sixty-Two Thousand Five Hundred) and L\$13,075,000.00 (Liberian Dollars Thirteen Million Seventy-Five Thousand) as special and general damages, and Co-movant Bojelene Guest House the amount of US\$110,000.00 (United States Dollars One Hundred Ten Thousand) as special and general damages. The court also awarded the movants punitive damages in the amount of US\$50,000.00 (United States Dollars Fifty Thousand) plus six percent interest.

The respondent excepted to the final ruling of the Commercial Court and announced an appeal. It is this appeal that the movants now challenge before this Court, alleging that the respondent failed to comply with the mandatory requirements of the appeal statute, and therefore the Court is without the authority to hear and determine the appeal on its merits. The movants allege that the respondent's appeal bond is fatally defective for a number of reasons

and that the respondent failed to serve the said appeal bond on the movants' counsel as required by law.

The movants substantially contend in the motion to dismiss that the respondent's appeal bond is materially and incurably defective for the following reasons: (1) that the affidavit of surety attached to the appeal bond is dated February 21, 2022, three days after the approval of the appeals bond on February 18, 2022, by two of the Judges of the Commercial Court, and that the name of the officer of the Sky International Insurance, Inc. who appeared before the Justice of the Peace, took the oath and signed the affidavit of surety attached to the appeal bond is not written on the said affidavit; (2) that instead of stating that it *is* surety of the appellant/respondent, and undertake to indemnify the appellees/movants, Sky International Insurance Corporation states *in* the affidavit of surety that it is surety for the appellees/movants and is indemnifying the appellant/respondent thereby, rendering the affidavit contradictory and fatally defective; (3) that the clerk of the Commercial Court issued a notice of the completion of appeal five days before the filing of the appeal bond, and (4) that the respondent's counsel failed to serve the appeal bond on the movants' counsel in keeping with Section 51.9 of the Civil Procedure Statute (1974).

The contentions raised in the movants' motion to dismiss present a single issue for our determination; that is, whether under the facts and circumstances presented in this case, the respondent's appeal is dismissible for defects in the appeal bond as alleged by the movants?

In addressing this issue, we take judicial notice of the fact that the case out of which the motion grows emanates from the Commercial Court of Liberia; that Article IV, section 2 and 3 of the Act Establishing the Commercial Court which regulates the taking of appeals from the Commercial Court, state:

"2. An appeal from a judgment of the commercial court shall not serve as a stay on enforcement of the judgment, provided that the amount of the judgment shall be placed in an interest bearing escrow account with a commercial bank to be designated by the commercial court pending the disposition of the appeal.

3. Payment of the full amount of judgment shall be a condition precedent for the completion of an appeal from a judgment of the commercial court, *but the appeal bond, which may be required of the appellant, shall be exclusive of the amount of the judgment paid.*"[emphasis]

In interpreting the provision of the commercial court Act stated above, this Court has held that the wordings of the statute [Commercial Court Act] in

regard to the payment of a judgment amount is mandatory while the requirement of the appeal bond is discretionary; that where said discretion is applicable, the requirement for the filing of the bond shall be only for the purpose of satisfying the cost of court and not for the satisfaction of the judgment amount or to indemnify the successful party. *Pioneer Construction Company v. Her Honor Morgan et al.* Supreme Court Opinion, March Term, A. D. 2015.

This means that in an appeal emanating from the commercial court, as in the present case, the payment by the appellant of the judgment amount into an escrow account pending the disposition of the appeal essentially obviates the need for the filing of an appeal bond, and where the appellant may be required to file an appeal bond, such bond does not serve the purpose of indemnifying the appellee as in other cases, but serves only to satisfy the cost of court associated with the proceeding.

In its motion to dismiss the respondent's appeal, the movants herein do not contend that the respondent failed to deposit the judgment amount in an escrow account in fulfillment of the mandatory prerequisite for the perfection of appeal from the commercial court. Had such an allegation of substantial and material deviation from the statute been made in the motion to dismiss, it would have warranted an inquiry by this Court. But the entirety of the motion centers on defects in the appeal bond which is, in the real sense, a surplusage under the circumstance of this case. For this Court to dismiss the respondent's appeal on account of defects in the preparation, filing and service of the appeal bond which is not a mandatory requirement in the filing of an appeal from a judgment of the commercial court, it would run afoul of our established policy of not allowing unsubstantial technicalities to defeat the ends of justice or prevent this Court from probing into the merits of cases appealed to it.

More beside, it is settled law that the purpose and object of the appeal bond is to indemnify the appellee from cost and injury arising from the appeal, and assure that the appellant will comply with judgment of the court. *Kennedy and General Petroleum Corporation v. Carlton Petroleum Corp.*, 38 LLR 360, 363 (1997); *MCC et al. v. Brown*, 38 LLR 512, 515 (1998); *American Life Insurance Co. v. Sandy*, 32 LLR 242,248 (1984); *The Intestate Freeman and Wesseh v. Lewis et al.*, 40 LLR, 103, 110 (2000); *Ahmar v. Gboe*, 42 LLR 117,126 (2004); *William and Seekey v. NPA*, 42 LLR 520,525.(2005); *Manhattan Trading Corp. v. World Bank*, Supreme Court Opinion, March Term 2016. Therefore, the primary object which the appeal bond serves, that is, to

indemnify the appellee (movants herein) and assure that the appellant (respondent herein) will comply with the court's judgment having already been met as in the instant case, the appeal bond no longer becomes a mandatory requirement, and even if furnished, will not be of substantial weight in the appeal process so as to justify a dismissal of the entire appeal solely on account of defects contained in it.

In this case, the respondent, in keeping with Article IV, Section 2 and 3 of the Act establishing the Commercial Court, have deposited the judgment amount in an escrow account thereby adequately indemnifying the movants and assuring them that the judgment appealed from will be satisfied in the event of a favorable decision on the appeal.

Therefore, even if we were to go through the rigor of ascertaining the defectiveness of the respondent's bond for reasons alleged in the movants' motion to dismiss, we nonetheless would not dismiss the respondent's appeal for reason that the said respondent has deposited the judgment amount in accordance with the statute of the Commercial Court and the mandatory requirement of the appeal law; that is, indemnifying the appellee in the judgment amount set out by the commercial court.

In addition to challenging the defectiveness of the appeal bond, the movants further averred that the appeal be dismissed because the respondent's counsel failed to serve the appeal bond on the movants' counsel.

The legal consequence of the failure of an appellant to effect service of the appeal bond on the appellee has been addressed by this Court. In the case *Hussenni v. Brumskine*, Supreme Court Opinion, March Term, 2013, the Court, speaking through Mr. Justice Phillip A. Z. Banks, III, stated that the appeal statute does not state that a failure to serve an appeal bond on the appellee is a ground for the dismissal of an appeal. Dismissal of the bond is only where the bond is filed outside the statutory period of sixty days. The requirement that service of the approved bond be made on an appellee by the appellant is for the purpose of giving the appellee the opportunity to challenge the appeal bond in the lower court if there be found any defect and for the appellant to have the opportunity to rectify said defect before the appeal period expires considering that an appellant who fails to follow said procedure risk having his bond challenged in the Supreme Court which may dismiss the appellant's appeal because of an incurable defect in the bond. In keeping with this principle, we decline to dismiss the respondent's appeal for failure of the respondents' counsel to serve the appeal bond on the movants' counsel.

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

WHEN THIS CASE WAS CALLED FOR HEARING THE MOVANTS WERE REPRESENTED BY COUNSELLORS J. JOHNNY MOMOH AND MILLER B. CATAKAW OF THE J. JOHNNY MOMOH &. ASSOCIATES LEGAL CHAMBERS, INC. THE RESPONDENT WAS REPRESENTED BY COUNSELLOR SUNIFU S. SHERIFF OF THE JUST LEGAL SERVICES, INC.

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