

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,  
SITTING IN ITS OCTOBER TERM, A. D. 2024.

BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... CHIEF JUSTICE  
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE  
BEFORE HIS HONOR : YUSSIF D. KABA..... ASSOCIATE JUSTICE  
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE  
BEFORE HER HONOR: CEATNEH D. CLINTON JOHNSON..... ASSOCIATE JUSTICE

The Management of the National Port Authority	)	
represented by and thru its Managing Director	)	
Mr. Sekou H. Dukuly, Freeport of Monrovia,	)	
Liberia.....1 <sup>st</sup> Movant/Appellee	)	
	)	
And	)	
	)	
Mr. Sekou H. Dukuly of the city of Monrovia	)	
Montserrado County, Liberia	)	
.....2 <sup>nd</sup> Movant/Appellee	)	
	)	
And	)	
	)	
Mr. James Richard Bernard, Deputy Managing	)	
Director for Administration, National Port Authority)	)	
City of Monrovia, Montserrado County, Liberia	)	Motion to Dismiss
.....3 <sup>rd</sup> Movant/Appellee	)	Appeal
	)	
Versus	)	
	)	
Gabriel Bull, Former Comptroller, National Port	)	
Authority City of Monrovia, Liberia	)	
.....1 <sup>st</sup> Respondent/Appellant	)	
	)	
And	)	
	)	
Mr. Sabato Dennis; Mr. Patrick Sumo Jackson;	)	
Mr. Logan Davis; Mr. Terrence T. Doe, et, al, of	)	
The National Port Authority	)	
..... 2 <sup>nd</sup> Respondents/Appellants	)	

Heard: October 22, 2024

Decided: December 19, 2024

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

It is the law that “when actions involving a common question of law or fact are pending before a court of record, the court, upon motion of any party or *sua sponte*, may order a joint trial of any or all the matters in issue or the consolidation of the actions; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” Civil Procedure Law, Revised Code 1:6.3; also see the case: Attorney Garrison Doldeh Yearlu, Jr. et al., v. The Executive Branch of Government, Supreme

Court Opinion, March Term, A.D. 2024. Predicated on this law, this Court consolidated the two motions to dismiss filed by the movants herein, the Management of the National Port Authority, represented by and through its Managing Director, Mr. Sekou H. Dukuly, against the respondents, on the one hand, Mr. Sabato Dennis, Mr. Patrick Sumo Jackson, Mr. Logan Davis, Mr. Terrence T. Doe, et, al, and on the other hand, Mr. James Richard Bernard, Deputy Managing Director for Administration, all of the National Port Authority, City of Monrovia, Montserrado County, Liberia of The National Port Authority, for hearing since both motions involved the same questions of law.

The records revealed that after the trial court heard and granted the movants herein motions to dismiss the respondents' actions of damages for wrong, libel, and slander, the respondents entered exceptions to the said ruling and announced and perfected their appeal to this Court. Subsequently, the movant filed these motions to dismiss the respondents' appeals because the insurance company that issued the insurance bond is licensed to engage in life insurance and not to issue surety bonds, that the bank statement attached to the bond is defective for reason that it is not current; that the appeal bond is also patently defective because the tax clearance had expired, and the Applicatory affidavit attached to the bond is not verified by a justice of the peace as required by law. The movants want this Court to dismiss the respondents' appeal for these reasons.

In resistance, the respondents contend that the bank statement accounts for US\$50,336.80, which is more than the amount posted as security for the bond, and that the insurance company that posted the bond has the competence to engage in issuing surety bond as provided by Civil Procedure Law Rev. Code 1:63.2; that the failure of the respondent surety to attached a current business registration certificate to the bond posted for and on behalf of the respondent was due to the delay in obtaining the said registration certificate although the surety had made payment therefor before the filling of the appeal bond; and that the tax clearance attached to the appeal bond was current at the time the surety issued the said appeal bond. The respondent, therefore, prays that the movants' motion be denied and the appeal be heard.

Considering the averments in the motion to dismiss and the resistance thereto, and the argument proffered by the parties in their respect briefs, the issue that presents itself for resolution here is:

1. Whether the respondents' appeals are dismissible for the reasons advanced by the movants.

To address this issue, we shall review the various contentions raised in the motion and the resistance and apply the relevant law applicable thereto.

Considering the movants' contention that the respondent's surety, the American Underwriter Group, is not qualified to issue an appeal bond because the license issued by the Government to the respondent conferred no authority upon the respondent's surety to issue a surety bond. The movant, therefore, reasoned that the license authorizing the respondent's surety to issue a policy for life insurance could not be used to issue a policy for an appeal bond. Hence, the movant's motion to dismiss.

The respondents, for their part, argued that the license issued to the surety of the respondent is one that authorized the said insurance company to issue a composite insurance policy, which includes an appeal bond. The respondent, therefore, argued that the bond proffered on behalf of the respondent is qualified to serve as an appeal bond as provided for under the Civil Procedure Law Rev. Code 1:63.2; the respondents also argued that in the alternative, the records attached to the insurance bond demonstrate that the surety has the resources to indemnify the movants if a judgment is entered in favor of the movant; the respondent, therefore, submits that the movants' motion rise technical issue without showing any injury to their substantial right and hence, the motion should be denied.

We take judicial notice of the bond proffered by the respondents. We note that attached to the insurance bond is a business registration certificate issued by the Liberia Business Registrar, in which the surety's main activity is indicated as life insurance. However, the insurance license issued to the surety defined its function as a non-banking financial institution with authority to carry out 'Composite' insurance business in Liberia. We pause to inquire

as to what is meant by composite as it is contained in the license. The Merriam-Webster's Collegiate Dictionary, eleventh edition, defined composite as "made up of distinct parts." Applying this definition to the insurance license under review, the competence of the surety of the respondents is to carry out multiple unnamed insurance services for insurance businesses in Liberia. Connecting this to the business registration certificate that named life insurance as the main business of the surety, it can be conclusively said that it does not exclude other insurance businesses that the respondents' surety may elect to engage in.

Assuming that the main business named in the business registration certificate of the surety negates the reference in their insurance license to carry out composite insurance business, considering the securities put forth by the insurance company to indemnify the movant in the event the movant prevails at the end of the case, dismissing this action on the technical ground that there is a limitation in the business registration certificate, will defeat the statutory purpose of the requirements for filing an insurance bond. This Court, in the case: Mentor Initiative et al. v Fardoun, Supreme Court Opinion, October Term, A.D. 2014 , and relying on the case: Robertson et al., v. The Quiah Bros et al., Supreme Court Opinion, October Term 2011, interpreting the Civil Procedure Law Rev. Code 1:63.2, espoused that 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 cost 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". In the instant case, the instruments filed supporting the bond show 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 judgment. We will not allow the technical question of the type of insurance the surety is authorized to engage in to defeat the end of justice. We, therefore, reaffirm the holding of the Supreme Court as quoted above.

On the issue of the tax clearance, a search of the records shows that the insurance bond was filed and approved by the court on August 21, 2024. The tax clearance, included in the insurance bond, carries an expiration date of September 28, 2024, indicating that when the insurance bond was filed with the court, the tax clearance was valid. The argument of the movants during the hearing that the expiry of the tax clearance was long after the filling of the insurance body cannot be entertained here because, at the time of filling of the bond, the tax clearance had not expired and, therefore, was valid and demonstrates that the surety was in good standing.

The movants also challenged the bank statement attached to the surety bond as not being current; that is to say, the bank statement is dated more than six (6) months before the bond was executed. According to the movants, this renders the bond defective and grounds for dismissing the appeal. The respondents, for their part, submit that although the bank statement predates the filing of the appeal bond, the amount indicated in the bank statement remains untouched and available up to and including the time of the filing of this motion. This Court says the respondents' argument finds no support in the records under review. Being an appellate Court, this Court can only review the trial court's records as transcribed and forwarded to it and cannot take nor hear evidence anew *Griffiths v Wariebi* 35 LLR 110, 119 (1988).

The purpose of filing the bank statement is to demonstrate that the insurance company has sufficient liquid assets to support the commitment to the bond. In this light, the statement must be current. Besides, the statement does not support the respondents' assertion that the balance, as reflected in the bank statement, was available when the bond was proffered. This Court held in the case *Davis, Sr. et al. v. LTA*, Supreme Court Opinion, October Term, 2016 that "...The statement that predates the judgment for which it seeks to serve as surety does not guarantee that the amount stipulated therein is current, as the same could be depleted before the date of the judgment."

A scrutiny of the records shows that the movants herein are the appellee in the appeal and the defendants in the main suit. The dismissal of the action tends to extinguish the respondents' claim, and therefore, an appeal by the respondents leaves only the cost of court for which indemnification will be required. This court has held that "In instances where the movant is not entitled to money judgment and stands to suffer no grave injury, except the payment of costs of court, if the matter was to be heard by this Court on the merits, a dismissal of the appeal on the sole basis that the surety failed to adduce evidence of liquidity to satisfy its obligation in the bond is not warranted by substantial justice and fairness." *Lonestar v. Nathaniel Kelvin*, Supreme Court Opinion, March Term, 2019. We, therefore, find no justification to grant the movants' motion on this issue.

Wherefore, and in view of the foregoing, the movants' motion to dismiss the respondents' appeal is denied, and the appeal order proceeded on its merits. Cost to abide the final determination. IT IS HEREBY SO ORDERED.

Motion denied.

WHEN THE CASE WAS CALLED FOR HEARING, COUNSELOR ARTHUR T. JOHNSON APPEARED FOR THE RESPONDENTS, AND COUNSELOR PRINCE M. KRUAH APPEARED FOR THE MOVANTS.