

THE ORIGINAL AFRICAN HEBREW ISRAELITE, Represented by its Director,
LEONARD OWENS, Appellant/Respondent, v. **FRANCIS N. LEWIS AND WIFE**
EVA LEWIS Appellees/Movants.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Heard: April 2, 1984. Decided: May 10, 1984.

1. There is no rule that fixes the amount of an appeal bond at one and one half times the amount awarded in the judgment of the lower court, but such a bond is inadequate when the indemnity provided therein is less than the amount of the judgment.
2. Where there is neither an amount sued for nor an amount awarded in the judgment, a bond fixed in a reasonable amount will serve the purpose of indemnifying the appellee.
3. In determining the amount of an appeal bond the trial judge should, in addition to considering the amount of the judgment, in his sound discretion, include an amount sufficient to cover the court cost(s) since such amount is calculated only upon the making of the bill of cost.
4. The sheriff of the trial court, as the custodian of all bonds, is the proper officer of the court to certify whether property used to secure a bond has been released or whether the bond is still in his custody.
5. The Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute. This limitation is all the more mandatory where the statute in question specifies the only manner in which an act may be done.
6. A prior lien on real property does not ipso facto prevent said property from being used as security for a bond. As long as the value of the said real property is in excess of the amount of the prior lien it is sufficient to cover the bond for which it is being offered.
7. The bond shall also be accompanied by a certificate of a duly authorized official of the Ministry of Finance verifying that the property is owned by the surety or sureties named in the affidavit, and that the assessed value indicated therein is correct.
8. The Court is not inclined to dismiss an appeal unless there is a clear showing that the

appealing party has violated the statute controlling. Therefore, microscopic technicalities intended to defeat the ends of justice will not be entertained.

The appellant appealed from a judgment of the trial court cancelling a property grant and warranty deed issued by the appellees in favor of the appellant for the same real property. The judgment in the cancellation proceedings did not award money or any other damages to the appellees.

The appellees filed a motion to dismiss the appellant's appeal on the grounds: (1) that the appeal bond does not contain an amount fixed by the trial court; (2) that the real property offered as security for the bond is encumbered by a prior lien; and (3) that the appeal bond is not accompanied by a certificate from the Ministry of Finance in favor of the appellant. The motion to dismiss the appeal of the respondent in the above entitled cause of action was denied with cost against the appellees/movant. The Court reviewed the relevant provisions of the statute relating to appeals and thereafter opined that nowhere in the said statute is it stipulated that an appeal was subject to dismissal because of the failure or neglect of the trial judge to fix the amount in the bond.

As to the contention that the property used as security to the bond had a prior lien on it, the Court noted that the records proffered by the appellant revealed that the injunction action in which the property had been used in support of the bond had been finalized and that the property had been released. The property, it said, could therefor be used as security for the appeal bond.

Regarding appellees' final contention, the Court held that the same was without merits since the certificate from the Ministry of Finance, attached to the affidavit of sureties, met the requirements of the statute. Hence, the Court denied the motion.

S. Edward Caroler and Logan Broderick for appellees/ movants. A. W. Octave's Obey and William G. Boyenneh for the appellant/respondent.

MR. JUSTICE KOROMA delivered the opinion of the Court.

Francis N. Lewis and his wife Eva Lewis have moved this Court to dismiss the appeal of the Hebrew Israelite Foundation of Liberia on the grounds that: (1) the appeal bond does not contain an amount fixed by the trial court; (2) there is a previous lien of \$11,800.00 on the property offered in the surety affidavit which has not been removed, or withdrawn prior to offering it as surety in the case at bar, hence the said appeal bond is insufficient to indemnify the appellees; and, (3) the appeal bond is not accompanied by a certificate from the Ministry

of Finance in favor of the appellant, the Original African Hebrew Israelite Foundation of Liberia, represented by its director, Leonard Owens; instead, the statement of property valuation from the Ministry of Finance is in favor of Leonard Owens personally.

The appellant/respondent has maintained that the motion to dismiss the appeal should be denied for the following reasons:

(1) that in the action filed by the appellees against the appellant in the court below, no amount is named as the value of any property alleged to have been fraudulently obtained from the appellees. Further, that the fixing of an amount in an appeal bond, according to practice and procedure, is the sole responsibility of the judge approving the bond and failure on his part to do so should not prejudice the interest of the party filing the bond.

(2) that no lien exists on the property of William Boyenneh, III, offered as security in the instant case, as said property which was previously used by the appellant for an indemnity bond was withdrawn before it was used with the appeal bond in the present case.

(3) that Leonard Owens being the director of the Original African Hebrew Israelite Foundation of Liberia, can never be divorced from the said organization, nor can the organization be divorced from him in the entitled cause of action.

In passing upon these arguments, we shall take recourse to the trial record of the case. In this exercise, we have observed that in the twenty-count complaint, the eight-count reply, and the final judgement of the trial court cancelling the property grant agreement and the warranty deed, there is no amount prayed for by, nor awarded to the appellees/movant.

This Court held in case *Buchanan-Estime v. Raymond Concrete Pile Company*, 19 LLR 485 (1970), that “the proper amount of the indemnification in an appeal bond is computed at one and one half times the amount of the judgment or... one and one half times the amount sued for when the judgment is one dismissing the complaint and no sum, therefore, appears in the judgment appealed from.” This holding of the Court then was predicated upon the 1956 Code.

In 1977, the Court held in the case *Thompson et. al. v. George et al*, 26 LLR 239, that “no rule fixes the amount of an appeal bond at one and one-half times the amount awarded in the judgment of the lower court, but such a bond is inadequate when the indemnity provided therein is less than the amount of the judgment.”

In the instant case, there was no amount sued for and there was no amount awarded in the

judgment as would require that the Court decides what amount should constitute the indemnity in the appeal bond. Hence, a liberal amount in the bond could reasonably serve the purpose of indemnifying the appellees from costs of court. In the instant case, an amount of \$11,800.00 is placed in the body of the bond for which The Original African Hebrew Israelite, appellant/principal, by its director, Leonard Owens, and William G. Boyenneh, III and Abraham Doe, sureties, bound themselves, their heirs, executors, administrators and assigns to the sheriff of Montserrado County to, pay to Mr. & Mrs. Francis N. Lewis of the City of Kakata to indemnify them from all costs or injury arising from the appeal if un-successful, and that they will comply with the judgment.

As to the costs of court, the amount of the appeal bond is controlled by the sound discretion of the trial judge. In the first instant, the amount is fixed in relation to the amount of judgment, which amount should not be less than the amount of the judgment. In the second instant, the sound discretion of the trial judge in fixing an amount sufficient enough to cover the court cost(s) is necessary since this amount is determined only upon the making of a bill of costs. The amount of \$11,800.00 stated in the body of the bond is more than reasonably sufficient to cover the cost(s) of court where indemnification is not required, as in the instant case, since there is no money judgment.

The statute requires that:

“Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Notice of the filing shall be served on opposing counsel. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action.” Civil Procedure Law, Rev. Code 1: 51.8.

The statute also requires that:

"After the filing of the bill of exceptions and the filing of the appeal bond as required by sections 51.7 and 51.8, the clerk of the trial court on application of the appellant shall issue a notice of the completion of the appeal, copy of which shall be served by the appellant on the appellee. The original of such notice shall be filed in the office of the clerk of the trial court." Id., 51.9.

Further in the statute we find the following:

”An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute.” Id., 51.16.

Nowhere in these sections herein above quoted and/or from sections 51.1 through 51.20 is it provided for dismissal of an appeal because of the failure or neglect by the trial court to fix the amount in the bond, especially when an amount several times the value of the judgment has been placed in the body of the bond by the appealing party. The grounds for dismissal of an appeal are specifically laid down by statute and the Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute, and this limitation is all the more mandatory where the statute in question specifies the only manner in which an act may be done. *George v. Republic*, 14 LLR 158 (1960). Count one of the motion is therefore overruled.

The appellees/movant have also contended that the property of William G. Boyenneh III valued at \$11,800.00, which is the only property offered as security in the appeal bond, had been previously offered in a preliminary injunction case between the same parties and has not been withdrawn prior to being offered in the present case. To this effect, he has proferted a certificate under the signature of the clerk of the trial court.

The appellant/respondent has resisted this contention to the effect that the property in question had been released from the indemnity bond in the preliminary injunction before being offered in the cancellation proceedings. The appellant/respondent also contended that the preliminary injunction had been finalized and the bond released by the court upon application of the defendants in said case. In support of this contention, the appellant/respondent has proferted exhibit "A" with the resistance, which is the minutes of the court.

In reviewing the exhibits offered by the parties in support of their respective positions, we observed that the certificate given by the clerk of court is dated March 5, 1984 and makes reference to the minutes of court of the 25th day jury session, September Term 1982, same being on the 20th day of October 1982 when he certified that up to that date the bond had not been released and that the injunction case was still pending. However, the exhibit proferted by the respondent, sheet 13 of the minutes of court, showed on its face the 5th day's jury session, September Term 1983, Friday, September 23, 1983, when the court

ordered the sheriff to release the bond in question to the Original African Hebrew Israelite Foundation, defendant in the action of preliminary injunction against a receipt.

In order to decide what to accept among the proffers in support of the contentions of the parties, we take recourse to the said instruments. The first thing we observe is that there is no conflict between the facts stated in said proffers. The clerk of court certified that on October 20, 1982, the motion for preliminary injunction was still pending and the bond offered with the motion to vacate or modify had not been released up to that date. On the other hand, the court record made one year later in September, 1983, shows that the bond had been released. If both documents had made reference to the same year and date then this Court would have cause to go beyond both documents in an effort to establish the truthfulness or falsity of either, or both.

In accepting the evidence proferted by the appellant/ respondent as applicable to the case at bar, we also want to state that the sheriff of the trial court, being the custodian of all bonds, would have been the proper officer of the court to have certified that the bond in question was still in his custody and had never been ordered released. This not having been done, the certificate as proferted cannot prevail over that which was proferted by the appellant/respondent in this case.

During the arguments before this Bench, counsel for appellees/movant was asked about the value of the lien that was previously on the property now offered as security in the case at bar. He answered that it was not more than \$3,000.00. This being true, and since the property offered as security in this case carries a value of \$11,800.00, this puts the value of the property at \$8,800.00 over and above the value of the bond offered in the preliminary injunction. There being no money judgment in the cancellation proceeding, we can simply conclude that the amount of \$8,800.00 is far in excess of the costs of the trial court. Count two of the motion to dismiss is therefore overruled.

The final contention of the appellants/movant finds no support in the facts of the case or the law. The statutory requirement as to the issuance of a certificate by an official of the Ministry of Finance is clear and unequivocal. It states that "the bond shall also be accompanied by a certificate of a duly authorized official of the Department of the Treasury that the property is owned by the surety or sureties claiming title to it in the affidavit and that it is of the assessed value therein stated" Civil Procedure Law, Rev. Code 1: 63.2(4). The certificate from the Ministry of Finance accompanying the affidavit in this case clearly meets these requirements. Count three of the motion is therefore overruled.

This Court is on record and will continue to place itself on record as rejecting, in no

uncertain language; all microscopic technicalities intended to defeat the ends of justice. The statute having laid down grounds upon which an appeal may be dismissed, this court is not inclined to dismiss an appeal unless there is a clear showing that the statute controlling has been violated by the appealing party.

Wherefore and in view of the foregoing, the motion to dismiss the appeal of the respondent in the above-entitled cause of action is hereby denied with cost(s) against the appellees/movant. And it is hereby so ordered.

Motion denied.