

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE 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

Comfort Ross and Yatta Ross of the City of)
Paynesville, Montserrado County, Republic)
of Liberia.....Movants)

Versus)

MOTION TO DISMISS
APPEAL

Albert Z. Burnette, also of the City of)
Paynesville, Montserrado County,)
Republic of LiberiaRespondent)

GROWING OUT OF THE CASE:)

Comfort Ross and Yatta Ross of the City of)
Paynesville, Montserrado County,)
Republic of Liberia.....Plaintiffs)

Versus)

EJECTMENT

Albert Z. Burnette, also of the City of)
Paynesville, Montserrado County, Republic)
of Liberia.....Defendant)

HEARD: October 30, 2019

DECIDED: Sept. 4, 2020

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The movants, Comfort Ross and Yatta Ross, ask this Court to grant their motion to dismiss the Respondent Albert Z. Burnette’s appeal on ground that his surety, Sky International Insurance Company, failed to fully satisfy the criteria set for an insurance company serving as surety to bonds as outlined by this Court in *Reeves v. Quiah Brothers, Supreme Court Opinion, October Term, 2011*. Movants specifically allege that the respondent’s surety, Sky International Insurance Company, failed to attach a clearance from the Ministry of Finance or the LRA evidencing that all taxes due as at the time of the execution of the bond had been fully paid and also that Sky International Insurance Company failed to attach evidence that it possesses assets within

the Republic of Liberia sufficient to cover the obligation undertaken in its bond, exclusive of other bonds to which it is a surety.

The action out of which the motion grows is an action of ejectment filed by the movants against the respondent in the Civil Law Court, Sixth Judicial Circuit alleging that the respondent was illegally possessing and asserting ownership right over two (2) acres of land that belong to the movants. The movants prayed the Civil Law Court to oust and eject the respondent from the two acres of land and to also award them sufficient damages to serve as deterrence to others who may intend to use similar method to take by force other people's legitimate property.

In response to the movants' complaint, the respondent denied the allegation that he was illegally possessing and asserting ownership over the disputed property, contending that he acquired the property through an honorable purchase from his grantor, Cecelia V. Ross, on June 23, 1995. The movants filed a reply in which they averred that the respondent's grantor, Cecelia V. Ross, never owned land in the area as claimed by the respondent and that the deed exhibited by the respondent was a product of fraud.

Pleadings having rested and a trial had, at the conclusion of the trial, the jury returned a verdict of non-liaible in favor of the respondent. Thereupon, movants filed a motion for a new trial essentially contending that the jury's verdict was contrary to the facts and evidence adduced at trial. His Honor Scheapolor Dunbar granted the movants' motion for a new trial. A new trial was subsequently had.

At the conclusion of the new trial, the jury entered a verdict of liable against the respondent and awarded the movants general damages of US\$50,000.00 (Fifty Thousand United States Dollars). Respondent in turn filed a motion for new trial arguing that the jury verdict was against the weight of the evidence adduced during trial. The trial judge denied respondent's motion for a new trial and entered judgment on April 5, 2019, affirming the jury's verdict.

Respondent excepted to the judgment entered by the trial court, announced an appeal to the Supreme Court, file his bill of exceptions, appeal bonds and notice of completion of appeal within the time prescribed by the appeal statute.

Movants seek to dismiss the respondent's appeal on allegation that the respondent's surety, Sky International Insurance Company, failed to comply with the criteria set by this Court in the case *Reeves v. Quiah Brothers*,

Supreme Court Opinion, October Term, 2011, for insurance companies serving as sureties to bonds. Movants argue that Sky International Insurance Company's tax clearance was invalid at the time of the filing of the respondent's appeal bond, as its tax clearance was issued on November 16, 2018 for a period of 120 days, commencing from the date of issuance to March 16, 2019, the date of expiration; that the appeal bond was filed on April 24, 2019, about forty days after the expiry date of the tax clearance; that the Sky International Insurance Company also failed to furnish evidence from the CBL or any other insurance regulatory entity that it has sufficient assets to cover the obligation of US\$50,000 (Fifty Thousand United States Dollars) undertaken in the appeal bond.

In resisting movants' motion to dismiss the appeal, the respondent contends that SKY International Insurance Company is qualified to issue bonds in Liberia having met all of the requirements contained in section 11.3 of the Insurance Law of Liberia, and that SKY International insurance Company is in good standing with the Central Bank of Liberia. Respondent also argues that the defect in the tax clearance as mentioned by the movants is not a ground for dismissing an appeal.

In the case before us, the records reveal that the respondent filed and served the appeal bond on April 23, 2019, after announcement and taking of the appeal, and filed his notice of completion of appeal on the movants on April 25, 2019, which was the twentieth day of the sixty days required for the completion of the appeal process. The service of the notice of completion of appeal on the movants meant that the case was removed from the jurisdiction of the trial court and hence, the movants could not file exceptions to the sufficiency of the surety in the court below. The Supreme Court having jurisdiction to hear the motion to dismiss the appeal must decide whether the appeal is dismissible as alleged by the movants.

Section 51.8 of the Civil Procedure Law, 1LCLR, provides 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. Section 63.2.1 states 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 do business in Liberia. In *Reeves v. Quiah Brothers*, *ibid*, this Court set out four criteria to be met by insurance

companies serving as sureties to bonds in order to satisfy the legislative intent underlining sections 51.8 and 63.2.1 of the Civil Procedure Law. The Court outlined the following:

- “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;
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;
4. Evidence, such as a certificate or other legal instrument from an appropriate legal authority such as the Central Bank of Liberia or other insurance authority or similar government entity having the regulatory responsibilities for insurance companies, that the insurance company possesses, within the Republic of Liberia, sufficient assets 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.”

The contention of the movants is that Sky International Insurance Company which served as surety to the respondent’s appeal bond did not meet criteria 3 and 4 set in the Quiah Brothers case, in that the said surety did not attach to the bond at the time it was obtained a tax clearance from the Liberia Revenue Authority evidencing that all taxes due as at the time of the execution of the bond had been fully paid, and also that the surety did not attach any evidence from the Central Bank of Liberia that it has sufficient assets to cover the obligation undertaken in the bond.

Our review of the records reveals that Sky International Insurance Company attached the following instruments to the bond: an insurance license issued by the Central Bank of Liberia authorizing the Sky International Insurance Company to operate as a non-banking financial institution and to carry out composite insurance business in Liberia; a business registration certificate issued by the Liberia Business Registry; a tax clearance certificate issued by the Liberia Revenue Authority (LRA) on November 16, 2018, with a validity period of one hundred and twenty (120) days; and the amended articles of incorporation of Sky International Insurance Company.

The tax clearance attached to the bond indicates that SKY International Insurance Company was cleared of its tax obligation for a period of 120 days, commencing from November 16, 2018 and ending March 16, 2019, and the appeal bond was approved by the trial judge on April 24, 2019,

nearly forty days after the expiration of the tax clearance, evidencing the contention of the movant that the tax clearance attached to the bond by the respondent's surety was not current as at the time of the execution of the bond.

In *Mentor Initiative et al. v Fardoun*, Supreme Court Opinion, October Term 2013, this Court was faced with an almost identical contention as that involved in this motion. In that case, the respondent/appellant's surety attached to its appeal bond a tax clearance that had expired two days before the approval of the bond by the trial judge. On a motion to dismiss the respondent's appeal filed before this Court, the respondent argued that its failure to attach a current tax clearance to the appeal bond was due to delay by the Ministry of Finance to promptly issue tax clearance after taxes had been paid. This Court rejected the respondent/appellant's argument, stating that the records was devoid of any application made by the said respondent to the Ministry of Finance for the issuance of the tax clearance or an indication of the date and time of said application. The Court, recognizing the importance of a current tax clearance to the validity of an appeal bond, dismissed the appeal for failure of the respondent to file a current and valid tax clearance upon execution of the bond.

In the instant case, the tax clearance had expired almost forty days before the approval of the appeal bond by the trial judge. In other words, at the time of the approval of the bond, the Insurance Company was non-tax compliant. The records contain no application by the respondent to the Liberia Revenue Authority requesting the issuance of a current tax clearance.

The respondent argues that a defective tax clearance is not a ground for the dismissal of an appeal. We reject this argument as it disregards the rationale underpinning Sections 51.8 and 63.2.1 of the Civil Procedure Law as interpreted by this Court in the Quiah Brothers Case. The requirement of attaching a current and valid tax clearance to an appeal bond to which an insurance company is a surety is intended to ensure that the overall objective of the appeal bond, which is to ensure that the appellant is in a financial position to indemnify the appellee from all costs and injury arising from the appeal, is complied with by the insurance company acting as surety for the appellant. *Intestate Estate of the Late William JM Bowier et al., v. Williams et al.* 40 LLR 84, 89 (2000); *Mentor Initiative et al. v Fardoun* , Supreme Court Opinion, October Term 2013. Failure by the respondent to attach a current tax clearance to his appeal bond upon its execution made his appeal bond defective and dismissible.

The Court having found that the respondent's failure to attach a current and valid tax clearance to his appeal bond makes his appeal dismissible, the Court declines from further proceeding into the movants' objections to the validity of the respondent's appeal bond as the Supreme Court has held that there must be compliance with all statutory provisions in the preparation and submission of bonds on appeal; a failure to comply with any of the requirements renders the appeal dismissible. *Gabbidon v. Toe*, 23 LLR 43, 44(1974); *Jackson et al. v. Weaver*, 37 LLR 631, 634 (1994).

WHEREFORE, AND IN VIEW of the foregoing, the respondent having failed to file with his appeal bond a current tax clearance, the bond filed by the respondent is defective and the appeal therefore dismissed. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and give effect to the Court's Judgment. Costs are ruled against the respondent. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLORS MILTON D. TAYLOR, S.L. LOFEN KANEAH, JR. AND FREDERICK L.M. GBEMIE OF THE TAYLOR AND ASSOCIATES INC., AND THE NACH LEGAL SERVICES APPEARED FOR THE MOVANTS. COUNSELLOR JAMES N. KUMEH OF THE TORCH PROFESSIONAL CONSULTANCY INC. APPEARED FOR THE RESPONDENT.