

PHILIPPA COKER et al., represented by and thru **CHRISTIANA V. COKER-SMITH**,
Appellants, v. **NAIF RASAMNY**, Agent of **K. RASAMNY BROTHERS**, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SECOND
JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard: April 3 & 4, 1984. Decided: May 10, 1984.

1. The failure to list the names of sureties on an appeal bond in alphabetical order is not a statutory ground for dismissal of an appeal, or to render the bond defective.
2. The affidavit of sureties on an appeal bond pledging real property as security must specifically state that the sureties are owners of the property, the assessed value of the property, a statement of any liens and encumbrances, and a complete description of each piece of property setting out the metes and bounds as required by statutes.
3. Sureties on an appeal bond pledging real property as security cannot merely state in their affidavit that they are the owners of realty and that the personal net worth of each exceeds the amount required by the appeal bond.
4. The affidavit of sureties on an appeal bond must specifically describe the real property offered as security by identifying each piece of real property by plot number and metes and bounds
5. The court has no jurisdiction to open and review the record of a case when the appeal bond has not conformed to the statutory requirements.
6. The description of the property must be contained in the affidavit itself and sworn to by the sureties under oath before a Justice of the Peace.
7. Where an appellant fails to process an appeal in keeping with the requirements of the statutes, the Court will dismiss the appeal for want of jurisdiction to open the record and review the appeal.

The appellant appealed the ruling of the lower court in an action of damages for injury to property. The appellee filed a motion to dismiss the appeal on the grounds that: (1) the appeal bond was defective as the sureties' affidavit did not, inter alia, include the description of the real property offered as security for the bond; (2) the affidavit did not state in its body that the properties offered as security were unencumbered and taxes thereon had been paid;

and (3) the names of the sureties were not arranged in alphabetical order. It is noteworthy that the appellant attached to the affidavit a separate piece of paper containing the statement of property valuation and description of each parcel of land offered as security on the appeal bond.

The Court overruled counts two and three, but sustained count one, maintaining that the appeal bond had not complied with the requirements of the statutes. The appeal was accordingly dismissed.

S. Edward Carlor for the appellants. E. Wade Appleton for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

The appellee has moved this Court not to hear this appeal on its merits, but to dismiss it for reasons as laid down in his motion to dismiss, as follows:

1. That the appeal bond is defective, in that the sureties' affidavit thereto attached does not conform to statutory provision;
2. That the affidavit fails to state in its body that the property offered as security is unencumbered and that taxes thereon have been paid; and
3. That the names of the sureties are not arranged in alphabetical order.

The affidavit of sureties as attached reads, as follows:

AFFIDAVIT OF SURETIES

"PERSONALLY APPEARED BEFORE ME, a duly qualified Justice of the Peace for Grand Bassa County, R. L., Frank E. McCormack, Stanley Dingwall and Bertha Dalmadia, property owners, and made oath according to law that all and singular the allegations contained in the attached statements of their property valuation issued from the Ministry of Finance, Grand Bassa County, R. L., in favor of Christiana V. Coker-Smith are true and correct to the best of their knowledge, information and belief"

Recourse to the record on appeal discloses that there is a statement of property valuation dated August 5, 1983, issued by the Bureau of Internal Revenues, Real Estate Tax Division, Ministry of Finance, signed by D. Reeves, Real Estate Tax Collector, and approved by J. L. Elliott, Collector of Internal Revenues, Grand Bassa County. This statement lists the properties of the respective sureties. It is therein stated that the "bond in favor of Christiana

V. Coker-Smith paid up to date." By this notation in the statement of property valuation, and the fact that a statement of property valuation was issued by the Ministry of Finance, in our opinion, it means that taxes on the property had been paid. The statement could not have been issued if taxes on the property had not been paid. Furthermore, the statement does not show on its face that said property, or any of them, has ever been offered as security on any other bond, neither has the appellee shown to this Court that there is a lien already on the property offered as security, nor has he shown that the value of the property is insufficient to cover the value of the bond because of other encumbrances on the property. Under the circumstances, the second count of the motion cannot be sustained.

Count three of the motion will also not be sustained because the failure to list the names of sureties on an appeal bond in alphabetical order, besides not being the duty of the appealing party or person furnishing the bond, is not a statutory ground for dismissal of an appeal, or render the bond defective. Recording of bonds in a book provided for the purpose, in alphabetical order, is the duty of the clerk and not of an appellant.

In his argument on count one of the motion, counsel for appellee contended that the appeal bond does not conform to the statute, in that the parcels of real property offered as security are not described by metes and bounds, a useful means of identifying real property and establishing whether or not there is a lien on the property.

In countering this argument, counsel for appellants contended that the property of each of the sureties is described on a paper attached to the statement of property valuation from the Ministry of Finance, and this has fulfilled the requirement of the law. The appellants further contended that the two lawyers for appellee, Counselors James G. Johnson and E. Wade Appleton were not licensed for the year 1984 and, hence, their motion was a nullity.

For the benefit of this opinion, we quote the relevant portion of the statute on "affidavit of sureties" bond. It reads as follows:

"Affidavit of Sureties. The bond shall be accompanied by an affidavit of the sureties containing the following:

"(a) Statement that one of them or that both combined are the owners of the real property offered as security;

"(b) A description of the property, sufficiently identified to establish the lien of the bond;

"(c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances

against each property offered; and

"(d) A statement of the assessed value of each property offered." Civil Procedure Law, Rev. Code I:63.2(3).

From this provision of the statute quoted supra, it is mandatory that the affidavit to the bond meets the statutory requirements enumerated above in order for the bond to be sufficient.

In the case *Gabbidon v. Toe*, 23 LLR 43 (1974), this Court held that: "Sureties on an appeal bond pledging real property as security cannot merely state in their affidavit that they are the owners of realty, and that the personal net worth of each exceeds the amount required by the appeal bond. The sections setting forth the requirements necessary for validation of an appeal bond, after approval thereof, are to be complied with as the Legislature intended, and may not be treated casually by an appellant."

Also, in the case *West Africa Trading Corporation v. Alraine (Liberia) Ltd.*, 24 LLR 224 (1975), this Court interpreted the statute as it relates to the description of property in an affidavit of sureties. Here is what the Court said, speaking through Mr. Chief Justice Pierre:

". . . We interpret this part of section 63.2(b) to mean offering the property as security in order that an appellee be protected against loss as a result of costs or injury sustained by the appeal. Black's Law Dictionary has defined description relating to real property to mean 'that part of a conveyance, advertisement of sale, etc., which identifies the land or premises intended to be affected.' In giving effect to the text of this statute, we must consider that description of land merely means designating the particular space occupied, or to be occupied so as to enable anyone to find it, should this become necessary. Hence, in deeds which convey real property we have description by metes and bounds, to sufficiently and correctly identify the particular plot of land.

"With this as a background it is our opinion that description as used in this section means that land offered as security for appeal bonds must be described in the affidavit of the sureties sufficiently well to identify the particular piece of property intended to be encumbered by the bond. It is not sufficient to say that a surety owns an acre on a particular street; that property must be described in a manner to make finding it on the ground an easy exercise. We hold that this is best accomplished by stating the number of the plot and the metes and bounds . . ."

Reviewing the subject affidavit, as quoted supra, we find no such description of the property

of any of the three sureties who swore and subscribed to same before the Justice of the Peace. In the absence of such description to identify the particular property of each of the sureties being offered as security to indemnify the appellee, the contention of the appellee is well taken.

Counsel for appellants argued that the description of the property is on a separate sheet of paper attached to the property valuation certificate from the Ministry of Finance, and is a part of the affidavit; hence, the affidavit has sufficiently identified the property.

Taking a closer look at the attached sheet of paper, argued by appellants' counsel to be the description of the property attached to the property valuation statement from the Ministry of Finance, we discovered that the said document had not been signed by the Collector of Real Estate Tax Division or the sureties themselves, or by anyone for that matter. But more than this, the statute quoted *supra* requires that the property be described in the affidavit and signed by the sureties under oath before the Justice of the Peace, and not otherwise.

With respect to appellants' contention that the two lawyers: Counsellors E. Wade Appleton and James G. Johnson, who signed the motion, were not licensed for the year 1984 to practice law, the court suspended the argument and required the counsels for appellee to produce their 1984 lawyer licenses at the resumption of the case. On April 4, 1984, when the case resumed Counsellor Appleton who argued the motion presented to Court the following:

4. Official receipt bearing No. 550438 in favor of Counsellor E. Wade Appleton for \$300.00 as license fee for January to December 1984, dated March 3, 1984;

5. Official license to practice law for 1984 in favor of Counsellor E. Wade Appleton, bearing No. 42195, dated March 3, 1984;

6. Official receipt bearing No. 466116 in favor of Counsellor James G. Johnson for the amount of \$300.00, for 1984 lawyer license, January to December 1984; and

7. Official license to practice law for 1984 in favor of Counsellor James G. Johnson, bearing No. 49543.

The licenses having been presented, appellants' resistance with respect to the lawyers' licenses is not sustained.

In view of the foregoing, and the legal authority cited, it is our opinion that the motion to

dismiss the appeal should be, and the same is hereby granted for want of jurisdiction for this Court to open the record and review the appeal. The appellants' appeal is hereby dismissed with costs against the appellants. And it is hereby so ordered.

Motion granted; appeal dismissed.