MUNICIPAL DISTRICT OF BUCHANAN, Grand Bassa County, Republic of Liberia, by and thru its Mayor of. the City of Lower Buchanan, Grand Bassa County, Intervenor, v**.** **BRIDGEWAY CORPORATION**, by and thru its Managing Director, GEORGE HADDAH, Respondent, and **NATIONAL MILLING COMPANY**, by and thru its General Manager, Appellant/Respondent, v. **BRIDGEWAY CORPORATION**, by and thru its Managing Director, GEORGE HADDAD, Appellee/Movant.

MOTIONS TO INTERVENE AND TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE. SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard: May 24-25, 1989. Decided: July 14.1989.

1. No relief can be granted which is entirely distinct from and independent of or inconsistent with that specifically prayed for.

2. The right of appeal from a judgment, decree, decision or ruling of any court or administrative board or agency to the Supreme Court shall he held inviolable.

3. The dignity and honor °four courts and the judiciary cannot be maintained unless lawyers show honor to the responsibilities which they are sworn to uphold.

4. Every appellant shall give an appeal bond in an amount to be fixed by the court.

5. A party litigant should not be made to suffer on account of acts done or omitted to be done by a judicial official or officer of court.

6. Where an appellant's failure to fulfill the requirements for perfecting an appeal is due to a mistake or omission by an officer of the court, the defect is not fatal to the appeal, but same may be remedied by order of the appellate court so as to promote substantial justice.

7. The right of appeal does not lie within the discretion of the trial judge to grant or deny. It is a right granted and guaranteed by the Constitution. It is a right and not a privilege, and trial judges must never interfere with its exercise.

8. Mere technicalities will not be entertained by the Supreme Court to defeat the ends of justice by causing the dismissal of an appeal.

9. It is the responsibility of the trial judge to fix the amount of the appeal bond and the right of an appellant is not prejudiced by the refusal of the trial judge to perform this statutory duty.

10. A letter from the Chambers Justice to the trial judge, growing out of a remedial proceeding, such as mandamus, ordering the trial judge to perform or refrain from performing an act, is irregular and constitutes violation of the rights of the aggrieved party. A hearing of the petition and a ruling thereon, paving the way for an appeal, if necessary, is the appropriate thing to do.

11. Intervention is permitted when the applicant's claim or defense and the main action have a question of law or fact in common.

In July, 1987, Bridgeway Corporation instituted an action of damages against the National Milling Company of Liberia. Pleadings progressed and rested with the amended complaint, answer and reply. A trial was regularly held and the trial jury returned a verdict in favor of the plaintiff in the trial court, awarding it $593,927.28 as special damages and $2,500,000.00 as general damages. A motion for new trial was made, heard and denied. A bill of information, claiming that one of the names that appeared on the verdict was different from names of the jurors that were empaneled to try the case and that therefore the verdict should be set aside was also denied. The trial court thereupon entered its final judgment. A motion to rescind the judgment because it was void on its face was heard and denied. From said judgment, an appeal was announced to the Supreme Court and granted.

Following the approval of appellant's bill of exceptions, it appeared that the trial judge refused to fix an amount and approve the appeal bond. The appellant therefore petitioned the Chambers Justice for a writ of mandamus to compel the trial judge to approve the appeal bond. The Chambers Justice ordered the trial judge in a letter to approve appellant's appeal bond *nunc pro tunc* without a hearing of the petition for the writ of mandamus so as to afford the appellant the opportunity to appeal from a disposition of the petition for a writ of mandamus.

In approving the bond, the trial judge failed to fix any amount thereon, despite the fact that a bank certificate for $5,000.00 was offered with the bond to indemnify the appellee.

The appellee filed a motion to dismiss the appeal alleging that the bond was defective, in that no amount was fixed therein to indemnify appellee and that the $5,000.00 bank certificate was less than one and one half times the final judgment of the trial court. No resistance was filed to this motion.

In the meantime also, while the case was pending before the Supreme Court, the Municipal District of Buchanan filed a motion to intervene.

The Supreme Court consolidated the hearing of the motion to dismiss the appeal and the motion to intervene. With regards to the motion to dismiss the appeal, the Supreme Court held that the failure by counsel for appellant to file resistance to the motion to dismiss was an act of gross negligence, and it therefore penalized the said counsel by the imposition of fines upon them. The motion to dismiss the appeal was however denied on the grounds that failure to fix the amount on the bond was not the responsibility of the appealing partly but rather that of the trial court and the appellant could not be made to suffer for acts of admission or omission of officials or officers of the court. The case was therefore ordered docketed for hearing on the merits

The motion to intervene, filed by the Municipality District of Buchanan, was also denied on the ground that the applicant's claim or defense did not have questions of law and fact which were in common with the main action and, that consequently, the said motion had no triable issues to warrant granting the intervention.

Philip J. F. Brumskine, James Kumeh, Seward Cooper and *Peter Amos George* appeared for the appellant and intervenor. *H. Varney G. Sherman, Julia F. Gibson* and *Joseph Findley* appeared for the appellee/movant.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

Ever and anon, there arises some litigation in the course of judicial proceedings like a mighty billow raising itself to a magnificent height as out of the sea, arousing public excitements, curiosity, anxiety, and interest.

The bedrock of our democratic system of government is the proper administration of justice; and at the foundation of this justice system is the expectation by citizens and residents alike that they can obtain substantial justice in this jurisdiction. Justice Tubman, while writing for this Court said in the case *Fazzah v. National Economy Committee et al.,* 8 LLR 85 (1943), text at 9798, that: "The prayer for relief. . . consists of a petition or request to the court to decree the appropriate relief. The prayer for relief may be either: (a) special, or (b) general. The prayer for special relief enumerates and asks for the particular relief to which the complainant considers himself entitled. The prayer for general relief asks, in general form, for such relief in the premises as shall be agreeable to equity. Under a special prayer alone, only such relief will be granted as is specially prayed for. Under a general prayer alone, any relief may be granted, other than an interlocutory order, which is consistent with and grounded upon the allegations of the bill. Under a prayer for both special and general relief, any relief may be given which either prayer alone would justify, except, no relief can be granted which is entirely distinct from, and independent of, or inconsistent with, that specifically prayed for."

The Constitution of Liberia is clearly vocal on this issue. It states at Article 20 (a):

"No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases arising in courts not of record, under courts martial and upon impeachment, the parties shall have the right to trial by jury." LIB. CONST. (1986) art.20 (a).

This all important constitutional pronouncement does not stop there. It punctuates further in the same Article at Subsection (b) the following:

"The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal."

The rights pronounced by the Constitution of Liberia and quoted above form the core of the fundamental rights of that document. And the provisions make it clear that the forum charged with the responsibility and vested with the power to administer justice is the judiciary, comprising the Supreme Court and other subordinate courts of Liberia. Article 65 of the Constitution states:

"The judicial power of the Republic of Liberia shall be vested in a Supreme Court and such subordinate courts as the Legislature may from time to time establish. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature. Judgments of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of government..."

At Article 66, the powers and prerogatives of the Supreme Court are further expanded upon. The Article states: "The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies or any other authority, both as to law and fact, except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein."

We have resorted to these provisions of the Constitution, that sacred document, because we believe that they are indispensable to the decision which we have been called upon to make in this case. We have before us two motions: a motion to dismiss, filed by the appellee, Bridgeway Corporation, and a motion to intervene, filed by the City Corporation of Buchanan, both of which we have been requested to dispose of.

In disposing of the motions, we must keep as our focal point the proper administration of justice, for as mandated by the Constitution itself, this must be our first and foremost goal. The two motions, on agreement of the parties, were consolidated and as such argued before the Court. In disposing of the issues raised in the motions and to ensure that the proper administration of justice remains as the thrust of our decision, we must take recourse to the genesis of the case.

On the 71h day of July, A. D. 1987, Bridgeway Corporation, a Liberian corporation of foreign ownership, with headquarters in the City of Monrovia, County of Montserrado, instituted in the Sixth Judicial Circuit Court for Montserrado County, an action of damages against the National Milling Company of Liberia, a Liberian corporation, also of foreign

ownership. This action commenced with the filing of a complaint, venued in the September, A. D. 1987 Term of the court. A writ of summons was duly issued by the clerk of court and served upon the defendant, appellant herein, through its authorized officer, by the sheriff of the aforesaid court. In obedience to the summons and in response to the complaint, an answer was filed. Thereafter, however, the plaintiff, appellee herein, withdrew its complaint and filed an amended complaint, which was responded to by an amended answer, followed by an amended reply by the appellee. The law issues having been heard and disposed of, the case was ruled to jury trial.

The trial of the facts commenced at the September, A. D. 1988 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, presided over by His Honour J. Henric Pearson, then presiding by assignment. On September 30, 1988, after both sides had presented evidence, the jury returned a verdict in favor of appellee, awarding it $593,927.48 as special damages and $2.5 million as general damages. The appellant excepted to the verdict and filed a motion for new trial, which was denied. A bill of information was filed by the appellant wherein it contended that one of the empaneled jurors, Victoria King name was not written "King" but rather "Tisdell", for which reason appellant prayed that the verdict be set aside. The information and a motion for new trial having been denied, final judgment was thereafter rendered by the trial court confirming and affirming the verdict of the jury. The appellant, apparently still not being satisfied, filed a motion before the trial court to vacate and rescind the judgment because the judgment was void on its face and should therefore be declared a nullity. This motion was also denied. Whereupon the process of prosecuting an appeal to this Court was commenced.

A bill of exceptions was filed, and it seems as if it was after this step that complications with the appeal process began. We will not go into the evidence and will not open the trial records to examine any of the errors assigned against the trial judges, either regarding the disposition of the law issues or the conduct of the trial. The issues which have been raised in the motion to dismiss, filed by the appellee, preclude us from doing so. Our task is to concentrate on the motion to dismiss and the motion to intervene, with the aim of administering substantial justice.

When the case was called for hearing before this Honourable Court, it was brought to our attention that a motion to dismiss the appeal had been filed by Bridgeway Corporation, the appellee. We were also informed that a motion to intervene in the proceeding had been filed by the City Corporation of Buchanan. We shall proceed to dispose of them accordingly.

In the motion to dismiss, the appellee prayed this Honourable Court to dismiss the appeal for the following reasons:

1. That the trial court did not fix the amount on the appeal bond as required by the Civil Procedure Law, Rev. Code 1: 51.8.

2. That the appeal bond, as shown on its face, was in fact not approved for any specific account.

3. That the bank certificate attached to the bond did not conform with the provisions of the Civil Procedure Law, Rev. Code 1: 63.1(a).

4. That the bank certificate conformed to the provisions of section 63.2 rather than section 63.1 (a) of the Civil Procedure Law.

5. That the requirement that the sheriff deposits the cash, stocks and bank certificate with the government depository or a reliable bank and obtain a receipt therefor was also not met, and according to the appellee there is no indication in the bond or on the face of the certificate that the sheriff has even received the bank certificate referred to in the appeal bond.

6. That finally, the amount of $5,000.00, the value and consideration of the bond is insufficient and inadequate. The appellee asserts that the judgment being $3,034,927.48, the appeal bond should have been not less than $3,293,927.48; including court costs, the sheriffs collection fee and other costs; and that in any event the appeal bond should have been one and one-half times the principal award or $4,460,891.23.

There is no resistance filed on the records of court to the motion to dismiss, and we are rather surprised that counsels of the highest repute in our community could commit such acts of negligence towards their client's interest. The records show that the appellant was represented at the actual trial of the case, prior to the verdict of the jury, by the Philip J. L. Brumskine Law Chambers, the Jones and Jones Law Offices in persons of Counsellors M. Fahnbulleh Jones, Victoria Lang Sherman and Emmet Harmon, and that following the verdict of the empaneled jury, the P. Amos George Law Firm and the Tubman Law Firm were added. Yet no formal written resistance was filed by any of the aforesaid lawyers, although there were attempts made at the arguments to spread a resistance on the records. Notwithstanding, however, we are bound to look at the merits of the motion and make a determination thereon.

This Court has spoken out repeatedly against the negligent handling of a client's case by his lawyer and has not hesitated, when appropriate, to fine such lawyers.

The instant situation warrants a similar position by this Court, for not to treat the case with the degree of magnitude it deserves would be to condone such behavior. Accordingly, we are hereby imposing upon each law firm or each independent practicing lawyer representing the appellant a fine of Three Hundred Dollars ($300.00) and One Hundred Dollars ($100.00) respectively, to be put into the governments revenue not later than seventy-two hours as of the date of this decision.

We now revert to the motion to dismiss the appeal. At first glance, the motion seems to set forth proper legal basis for this Court to refuse jurisdiction over the appeal and to accordingly dismiss the appeal. Ordinarily, we would be constrained to do just that. But the case presents other complexities and irregularities which must be dealt with. We begin with the statutory requirements for the taking of an appeal. Our statute is vocal on the process of prosecuting an appeal. The Civil Procedure Law, Rev. Code 1: 51.4, in outlining the appeal process, states the following:

"The following acts shall be necessary for the completion of an appeal:

(a) Announcement of the taking of the appeal;

(b) Filing of the bill of exceptions;

(c) Filing of an appeal bond;

(d) Service and filing of notice of completion of the appeal."

Before proceeding to address the issues raised in the motion, we must comment further on the behavior of counsels for appellant. It must be noted in no uncertain terms that the dignity of the judiciary is dependent not solely upon the conduct of the courts and the justice we administer, but also largely upon the conduct of lawyers in the handling of their clients' matters. Indeed any proper administration of justice is dependent upon the way in which a lawyer handles a client's case.

We have held on numerous occasions that lawyers hold a high degree of responsibility towards the proper representation of their clients. We cannot maintain the dignity and honor of our courts and the judiciary unless lawyers show honour to the responsibilities which they are sworn to uphold. This is mandated by the oath they take and by the Code of Ethics which govern their conduct. Rule 3 and Rule 4 of the Code state:

Rule 3

"A lawyer assigned as counsel for an indigent person or a prisoner ought not to ask to be excused for any trivial reason; nor should money unduly influence his decision to represent or determine the quality of his representation. He should always exert his very best professional effort on behalf of such clients."

Rule 4

". . .Having undertaken such defense, the lawyer is bound by all fair and honourable means to present every defense that the laws of the land permit, to the end that no person may be deprived of life, liberty, property or privilege, but by due process of law."

The appellee does not contend that the first two requirements of the procedure were fully complied with; it contends basically instead that the third requirement was not fully

complied with by the appellant; that is, that the bond is insufficient and inadequate. The appellee's first two contentions in this regard are that (a) the trial judge did not fix the amount in the bond and that (b) the bond was not approved for any amount. These two points will be dealt with simultaneously.

The Civil Procedure Law, Rev. Code 1: 51.8, which expands on the appeal requirement of section 51.4 (c), states as follows:

"Every appellant shall give an appeal bond in an amount to be fixed by the court,…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."

Our view of the foregoing provision is that the responsibility to fix the amount of the appeal bond lies squarely and exclusively with the court and not the party litigants. Indeed, it is mandatory for the trial judge to state the amount for which he is approving the appeal bond, but this the trial judge refused to do in this case. This Court rules that the party litigant cannot do that for the trial judge.

The records before us revealed that the trial judge refused to approve of appellant's appeal bond but was later approved when he was ordered to do so by the Justice in Chambers. Even when he approved it, the trial judge refused to state the amount for which he had approved it. Had he put in an amount for which he was approving the bond, we would have a different situation and perhaps a different result. The trial judge, rather than approving of the bond and fixing the amount of said bond, as required by statute, proceeded to make the following notations: "Predicated upon a letter dated February 7, 1989, reference J/AJB-4/013/-89 under the signature of James K. Belleh, Associate Justice presiding in Chambers, which letter orders my approval of this appeal bond *nunc pro tunc,* I herewith approve of the said appeal bond with reservation that the Court did not fix an amount on this bond as is required under section 51.8 of the Civil Procedure Law. "

The trial judge then proceeded to append the word "Approved" to the documents and to affix his signature thereto. Below the line he wrote the word "Judge".

The entire episode presents a dilemma. First, the trial judge, rather than fixing the amount on the bond and approving it, decided not to fix the amount of the bond and not to give his approval. Indeed, in his own handwriting he rejected the bond. He was brought up on remedial process and when ordered by the Justice in Chambers to approve the bond, he proceeded to make record, seemingly disagreeing with the manner utilized by the Justice in Chambers in ordering him to approve of the bond. He therefore referred to a letter of the Justice in Chambers rather than a mandate from the Justice in Chambers. Thus, rather than carry out fully the orders of the Justice in Chambers and the mandate of the statute, he made a notation that he had not fixed any amount for the bond. Did he expect for the appellant to

fix the amount of the bond for him? We dare to think not, for that would not be in conformity with the statute quoted above.

Even though the records indicate that the Justice in Chambers ordered the issuance of the writ of mandamus, copy thereof being served on Bridgeway Corporation through their counsel, and returns thereto being duly filed, the Justice's letter indicates "we are of the opinion that there is no necessity for having a regular hearing of the petition for mandamus. Secondly, the right of appeal is guaranteed under the Constitution of Liberia."

Let us look at the letter of the Justice in Chambers. Was it a ruling from which an appeal should have been had? We should be careful how we handle such delicate issue. It is the rule of our law that the object of our civil law provision shall be to promote the just, speedy and inexpensive determination of every action. While we have not inadvertently overlooked the legal authority relied upon by counsel for movant in the above entitled cause of action, which would be sustainable in dismissing the appeal in this case, have considered all the important points in the arguments as well as considered that the Chambers justice has not heard nor rendered a ruling, thus boycotting and obstructing any position or maneuvering process, privilege or right of appellant. We feel that the Chambers Justice should have regularly disposed of the mandamus proceeding. A ruling from the Justice in Chambers would have been appropriate thus giving way to an appeal if necessary.

"Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty." Civil Procedure Law, Rev. Code 1: 16.21(2).

This writ when granted compels the judge or official to whom it is directed to perform an act. The Chambers Justice ordered that the act be performed but failed to make a ruling. This we consider was irregular. The issuance of the mandamus concerns itself with the issue of appeal bond and should not have been treated lightly. We believe that the Justice in Chambers could have made a clear cut definitive ruling on the matter since it was a question of law for which we opined the parties should not suffer.

In spite of the foregoing, the appellee has requested that we dismiss the appeal because the judge did not fix an amount on the appeal bond and the appeal bond was not approved for any specific amount. Under the circumstances we believe that it would be a travesty of justice to grant the request to dismiss the appeal. This Court has said repeatedly that a party litigant should not be made to suffer on account of acts done or omitted to be done by a judicial official or officer. In the case *Sauid v. Gehara,* 15 LLR 598 (1964), this Court held:

"Where an appellant's failure to complete the statutory prerequisites for perfection of an appeal is due to the neglect or recalcitrance of a judge or clerk of court, the appellant will not be penalized if he has taken all appropriate legal measures to avert the dismissal of his

appeal, including timely application for compulsory process or mandate from the Chambers of the Supreme Court to the negligent or recalcitrant judge or clerk ..."

In addition, this Court held in the case *Fazzah v. Roger Shoe Company,* 12 LLR 214 (1955), that:

"Where an appellant's failure to fulfill the requirements for perfecting an appeal is due to a mistake or omission by an officer of the court, the defect is not fatal to the appeal, but may be remedied by order of the appellate court so as to promote substantial justice."

The promotion of substantial justice is indeed the mandate given to us by the Constitution, as enshrined in the provisions of Chapter III and Chapter VII, referred to earlier in this opinion. By these provisions of the Constitution, this Court, stationed at the helm of our judiciary, is made the ultimate custodian of our justice system. Our responsibility is to ensure that all aggrieved persons and those who have been accused of committing a grievance have ready access to this justice system; and where the trial court has done an act, or omitted to do an act statutorily imposed upon it, which would preclude a party from having full access to our justice system, inclusive of which is the right of an appeal, we have the vested power, under the Constitution, to effect the necessary corrective measures. We must emphasize here that under our justice system, the right of an appeal does not lie within the discretion of the trial judge to grant or deny. It is a right granted and guaranteed by the Constitution and we have sworn to uphold that right. It is a right, not a privilege and trial judges must never interfere with its exercise.

When the trial judge refused to approve the appellant's appeal bond and when he subsequently gave approval, upon the orders of the Justice presiding in Chambers, but refused to fix the amount of the appeal bond, he not only interfered with the exercise by appellant of its constitutional right and altered the status quo, but he also by that action precluded access by appellant to the full utilization of the appeal process prescribed under our justice system.

We have stated on several occasions that judges are umpires, superintending the justice system; their task is to referee the dispute; their goal is the administration of justice. They must listen only and decide disputes on the basis of the evidence presented by the parties. They must never take sides or show bias towards any party to a dispute and must never be seen to do so. They must always remain neutral and must never raise issues for any party or adjudicate issues not raised by the parties. When an appeal bond is presented to him, therefore, he has the statutory obligation of fixing the amount of the bond at a reasonable level and approving it. He cannot refuse to perform these mandatory functions lest he be accused or viewed by any party of being biased or showing favors towards any of the parties.

The appellee further contends that the appeal should be dismissed as the certificate exhibited with the bond does not conform with the provisions of the Civil Procedure Law, Rev. Code

1: 63.1(a). According to this contention, the statute does not require a letter of guarantee but rather a certificate evidencing "cash deposited in the bank to the value of the bond". The contention further is that the statute refers to a specific amount as indemnity to the credit of the sheriff and not to "monies deposited, and now available and set aside in a bond."

We must note first that the document is captioned "certificate of cash deposit and our letter of guarantee No. G-183. . ." As the instrument clearly says "certificate of cash deposit", we fail to see how the inclusion of the additional words "and our letter of guarantee No. G-I 83", makes it less a certificate of cash deposit as required by statute and more a letter of guarantee. At the most the use of the addition is no more than surplusage, which does not change the validity of the document. This Court has held that surplusage does not vitiate. In fact, the appellee, in the same count, has referred to the instrument as a certificate. The contention that the instrument is a letter of guarantee rather than a certificate of cash deposit required by the statute is therefore without any merit and must be overruled.

Moreover, we have stated on numerous occasions that mere technicalities will not be entertained by the Court to defeat the ends of justice, *Simonovitch et al. v. The Liberian Construction Company,* 19 LLR 299 (1969); *Levin v. Juvico Supermarket,* 23 LLR 201 (1974); and *Biggers v. Good-Wesley,* 23 LLR 285 (1974).

By the same parity of reasoning we cannot agree with the appellee that the bond is defective for lack of statement of a specific amount. The body of the bond states an amount deposited in the bank up to $5,000.00. The language is clear as to the amount deposited and available. The technicality raised by the appellee, in our view, is not of any sufficient magnitude to warrant a dismissal of the appeal. There is no showing, even if we assumed for a moment that the amount was sufficient, how the appellee could not be secured. We hold the opinion that the appellee would be sufficiently secured by the wording and the fact that other more desirable words could have been used does not render the certificate less sufficient to secure the appellee. In any event, the issue was made complicated by the judge's refusal to fix an amount in the bond. Since the judge refused to fix an amount in the bond, with the effect that the bond was thereby rendered void by no fault of the appellant, all other matters, technical or otherwise, relating to the bond, are rendered moot. For the foregoing reasons, we cannot uphold the contention of the appellee.

The appellee further contends that the certificate conforms to the provisions of Section 63.2 rather than Section 63.1 of the Civil Procedure Law of Liberia and, hence, is contrary to the statute relating to security for bond. The contention is that whereas Section 63.1(a) relates to the person giving the bonds, that he/she has deposited cash to the value of the bond, Section 63.2 relates to two natural persons. The contention is also that the certificate reads that "The International Trust Company... hereby certify that we undertake to fully indemnify Bridgeway Corporation in an amount not exceeding Five Thousand Dollars ($5,000.00) ."

Again we must emphasize that we do not regard this legal technicality to be of any significance to affect the security or the right of the appellee in the event the case is ruled in favor of the appellee, if we assume the adequacy of the amount of the bond. Unfortunately, no amount was fixed by the court and we therefore cannot make a determination as to the sufficiency of any amount which was not fixed by the court. We do say here, however, that the certificate specifically states that an amount was deposited with the International Trust Company of Liberia and is set aside for the purpose of securing Appellee Bridgeway Corporation against all cost and injury arising out of the appeal; and the International Trust Company has undertaken to make that amount available to indemnify the appellee consistent with the bond had the latter been properly approved by the trial judge and an amount fixed therein. As we have said before, although other perhaps more desirable wordings could have been used, the words used do not detract from the obligation or from the security or in anyway affect the indemnification of the appellee. These kinds of technicalities cannot be entertained to defeat the constitutional mandate of this Court to ensure the proper administration of transparent justice. Moreover, as stated before, the issues have been rendered moot by the action of the trial judge in refusing to fix an amount in the bond.

As to the issue of the sheriff receiving the bank certificate, the original file of the court does show that the original copy of the bank certificate is in the custody of the clerk of the trial court who is also a proper custodian of the records and documents of the court. The fact that he, rather than the sheriff, has the bank certificate is not an incurable or substantial error upon which the case may be dismissed. In any event, we must emphasize that the judge's action has rendered the other issues rather moot, although we have decided to view them in other respects so that guidance can be given to subordinate courts in regards to the issues raised herein.

Lastly, the appellee contends that the consideration for the bond is insufficient as it is only Five Thousand Dollars. The value of the bond, we are told, should have been $4,640,891.22 but in any case not less that $3,293,927.48. The basis for the first figure is the theory that the bond should be one and one-half times the judgment. The basis for the second is that the bond should at least have been the principal of the judgment plus the cost of court which the appellee asserts would well have been over $200,000.00.

It is rather unfortunate that this issue cannot be squarely dealt with here, for as we have stated in this opinion the trial judge had failed and refused to carry out his statutory duty of fixing the amount of the bond. Had he done so, whatever the amount fixed by him, we would have been in a position to determine whether in our opinion the bond was sufficient or not. It was not the responsibility of the appellant to set the penalty on the bond. That responsibility was for the judge.

This is important since this Court has also held that "to be adequate, an appeal bond need to provide for indemnification in the amount approved by the trial judge, the pledge by affidavit of two legally qualified sureties, and conforms to the statute otherwise, and need not provide for indemnification in the traditional amount of one- and-one-half times the sum sued for." *Cooper et al. v. C.F.A.O. et al.* 20 LLR 397 (1971). It cannot be the fault of the appellant and cannot provide a basis for dismissal of the appeal where the trial judge deliberately refuses to fix the amount of the bond.

In the present case the trial judge refused to fix the amount of the bond although he had the statutory duty to do so. Section 51.8, Civil Procedure Law, Rev. Code 1; *Amierable v. Cole,* 13 LLR 17 (1959); *Weeks v. Ketter and Gurley,* 13 LLR 223 (1958). This we believe was an error. The trial judge, having made such an error, considered in our opinion to be reversible, we feel compelled to deny the motion to dismiss.

The motion to intervene should also be denied because the entire motion contains no triable issue to warrant permitting the movant to intervene. Permitting the movant to intervene would cause us to reverse the judgment of the trial court and remand the case to enable the intervenor to produce evidence before the trial court. It is true that some residents of the City Corporation of Buchanan are employees of appellant. The law requires, however, that to intervene your interest must be direct. The City of Buchanan says that some unknown citizens have in their possession certain index facts which they wish to raise as defense. This goes without saying that the intervenor has no question of law or facts in common with the defense interposed in the lower court.

Our distinguished colleague, His Honour Emmanuel N. Gbalazeh, Chief Justice of the Supreme Court of Liberia, not being in agreement with the findings and conclusion of our holding has prepared a dissenting opinion to be read and filed with the records of this Honourable Court.

In view of the foregoing, the motion to dismiss the appeal as well as the motion to intervene are hereby denied and the appeal ordered docketed for hearing. And it is hereby so ordered.

Motions to intervene and to dismiss denied.

MR. CHIEF JUSTICE GBALAZEH *dissents.*

I have refused to add my name to the majority opinion in this case because I am convinced that the relevant laws have been misapplied to the facts in arriving at the conclusion and judgment. The facts as we know them are that Bridgeway Corporation, a domestic corporation doing business in Liberia, now appellee, in July 1987, brought an action of damages for breach of contract in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against the National Milling Company of Liberia, another domestic corporation doing business here also, now appellant.

A regular jury trial was had and in the end, Bridgeway obtained judgment in the amount of $2.5 million dollars as general damages and $593,927.48 as special damages. Meanwhile, the National Milling Company excepted to the judgment and announced an appeal to this Court of last resort. Within statutory time the National Milling Company, through its legal counsels, completed the appeal formalities and presented its appeal bond of $5,000.00 for approval, but the trial judge considered the said sum too inadequate to indemnify the appellee in case it obtained judgment and, therefore, refused to approve the bond. Thereupon, counsels representing the National Milling Company applied to the Justice in Chambers for a writ of mandamus to compel the trial judge to approve the bond, asserting that the refusal of the trial judge to approve the bond amounted to raising issues *sua sponte,* contrary to the doctrine of neutrality binding judges, and that the trial judge should approve the bond as presented.

The Justice in Chambers, His Honour James K. Belleh, conceded the argument of the National Milling Company since it was never resisted, and subsequently ordered the trial judge to approve the said appeal bond *nunc pro tunc* without more. The trial judge, His Honour J. Henric Pearson, true to his profession, wouldn't refuse the mandate of a superior court, and therefore approved the said appeal bond for $5,000.00 to indemnify appellee in case it obtained judgment.

After the approval of appellant's appeal bond, Bridgeway Corporation, the appellee, filed this motion to dismiss the appeal on February 28, A.D. 1989, claiming substantially that the appeal bond was too inadequate to indemnify appellee in case it obtained final judgment. Appellee further maintained that in fact there was no appeal bond filed since indeed the statute requires the judge to fix the amount of the appeal bond according to his own discretion, bearing in mind the object of indemnifying the appellee in case of positive judgment on the appeal.

No resistance has been filed to the said motion to dismiss to date, and it is apparent that the appellant had abandoned the said appeal.

On October 23, 1988, the Reliance Management Consultants, Inc., represented by and through Messrs Rafic Eldine and Ahmed Ezzedine, sole distributors for the National Milling Company of Liberia, filed a motion to intervene through the P. Amos George Law Firm. However, on April 17, 1989, the said motion to intervene was withdrawn by Mr. Ahmed Ezzedine, an executive of the said movant corporation, while indicating in the notice of withdrawal that he had the occasion to file the said notice of withdrawal himself because his counsel, P. Amos George, had delayed in doing so as he was instructed.

Meanwhile, on April 10, 1989, the City Corporation of Lower Buchanan also filed a motion before us seeking to obtain our permission to allow it to intervene in this case, and to be allowed further to file an answer to plaintiffs complaint upon being granted a chance to

intervene. It contended that it sought the interest of thousands of its own citizens and residents that stand to suffer the consequences of the huge amount of judgment awarded the Bridgeway Corporation against the National Milling Company which operates in its vicinity and employs thousands of its residents. But Bridgeway Corporation resisted the said motion to intervene and prayed this Court to deny same.

At the call of the motion to intervene, with all counsels being present in Court, we unfortunately discovered that a motion was earlier filed by the appellee to dismiss the appeal and that same had not been resisted to that time. We therefore thought it wise to consolidate both the motion to dismiss the appeal and the motion to intervene. Civil Procedure Law, Rev. Code 1: 6.3..

The foregoing gives a succinct picture of the facts of this matter, and two important issues concern me in this dissent in order to make my position clear on the question of my refusal to sign the majority opinion.

The two issues claiming my attention here are the question of the intervention and secondly, the question of the motion to dismiss this appeal.

Concerning the motion to intervene, I am in total agreement with my colleagues in denying the same. I see no legitimate legal ground warranting the granting of a motion to intervene in the premises. Civil Procedure Law, Rev. Code 1: 5.61 and 5.62.

It is on the question of the motion to dismiss that I have very serious disagreements with my colleagues, and for which I have totally refused to join them in the majority opinion. I am quite aware of the constitutional provisions relating to the granting of appeals, and I am also aware that the Legislature is therein given authority to prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal. LIB. CONST. (1986), Art. 20.

Notwithstanding, my colleagues are ignoring the fact that our Legislature had already made statutes governing all our appeals: "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 which 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; 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.

For generations now, this Supreme Court has handed down important opinions on interpretations of the said statutes, and except the majority first declares the said appeal statutes unconstitutional and recall all our previous opinions on the said subject, they cannot question the laws our lawmakers have provided.

While I am not insisting that the amount of the appeal bond must be one-and-one-half times that of the judgment appealed from, yet I am convinced, and this Court has held that the amount of the bond should at least be sufficient to pay the sum of the judgment appealed from, plus the cost of the proceedings on appeal.

"A bond shall become effective when approved by the court. Approval may be granted when the party furnishing the bond presents *prima facie* evidence to show that the sureties are qualified or that the security offered on the bond is adequate, genuine, and as represented by such party. An approved bond shall be filed with the clerk of the court in which the action is pending. A notice of the filing of the bond shall be served on the adverse party." Civil Procedure Law, Rev. Code 1: 63.3; *Thompson et al. v George et al.,* 26 LLR 239 (1977).

The *Thompson* case specifically ruled 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. *Ibid.*

Apparently, my colleagues have decided to set that holding aside, and are providing that whosoever appeals should be given that right, at whatever cost, however small, in comparison to the amount of the judgment since it is a constitutional right, which is unimpeachable. Hence, on this appeal, they are allowing a bond of $5,000.00 to stand against a judgment obligation of almost $3 million against appellant.

Furthermore, this Court has persistently charged appellant with supervising the appeal procedure until completed to his own advantage. In 1952, Mr. Justice Reeves speaking for this Court in the *French Cables* case said: "It is the duty of an appellant to superintend the lawful prerequisites of the appeal." *Campaignee des Cables Sud-Americaine v. Johnson,* 11 LLR 264 (1952). Also, sixteen (16) years after the *Campaignee des Cables Sud-Americaine* case, this Court held in *Davis v. Gibson,* 19 LLR 50 (1968) that:

"When it has been established that appellant has been grossly negligent in supervising the appeal procedure, and has displayed the same neglect in defending a motion to dismiss the appeal, even though the omissions attacked by the appellee are proved to have been caused by clerical omission in the court below, the letter of the law, in such case, will be enforced by the Supreme Court, and the errors will be imputed to the party defending against the motion to dismiss."

Yet, my colleagues create the impression in their opinion that in fact the trial judge bears responsibility to get sureties for appellant, approve any bond presented for appeal, and thereafter, give an appellant every chance to reach us here on appeal. To accept such a ruling is to open serious floodgates that will soon cause much damage to civil procedure in appeals in this jurisdiction.

The majority has especially remained silent on the fact that the motion to dismiss was never resisted, and that the appellant had even created the impression of an abandonment. In the case *Kent* v. *Republic,* 6 LLR 50 (1937), this Court held: "Whenever the counsel for appellant appears at the bar of this Court and abandons a cause, the appeal will be dismissed and the trial court permitted to resume jurisdiction and execute its judgment."

In such cases the Court usually allows the motion which has not been resisted, but in which there was proof of service of the required papers on the opposite side. This position of the Court is clearly supported by the statute, which provides:

"If the party making the motion fails to appear, the motion shall be denied provided the motion papers are submitted to the court. If a party does not appear to oppose a motion *or fails to furnish the papers demanded on due notice, the motion shall he granted on proof of due service of the notice and required papers."* (Emphasis mine). Civil Procedure Law, Rev. Code 1: 10.7. In this particular case, there is ample evidence of due service of the motion papers as conceded by appellant, and also conceded by the majority opinion, which in fact fines the counsels representing appellant for their negligence in failing to file resistance to the said motion to dismiss.

A final anomaly I wish to point out here is that the majority opinion raises issues not raised by the parties at all. The said majority opinion contends that, in fact, the amount of general damages awarded is excessive, although awarded by a jury which was not objected to by appellant in the lower court. The majority opinion has given an exhaustive discussion of the alleged wrongs committed by the trial judge, which would not have been if the files were not opened. And the motion to dismiss herein called on us not to open the said files for lack of jurisdiction and therefore, only the issue of that motion, and not the amount awarded nor other issues on the merits or demerits of the case, should have been discussed. Hence, this dissent.