FIRESTONE PLANTATIONS COMPANY, Respondent/Appellant, v. **JOHN BRAVY,** alias REED, Movant/Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT, MARGIBI COUNTY.

Heard: December 28, 1989. Decided: January 9, 1990.

1. Certificate of deposit may be defined as a written acknowledgment of a bank or banker promising to pay to the depositor or to the order of the depositor, or to some other person or to his order, whereby the relation of the debtor between the bank and the depositor is created.

2. For the purposes of cash bond, a cashier or manager's check is equivalent to a bank certificate and therefore meets the statutory requirement for giving of cash bond.

3. A bank certificate or other negotiable instrument, delivered to the sheriff as security for an appeal bond is under the control of the sheriff. That is, in the event of a final judgment for the appellant and the appellee defaults in satisfying that judgment, the sheriff is clothed with the authority to proceed against the issuer of the negotiable instrument (the bank for a bank certificate) to recover the face value of said negotiable instrument.

4. In order for an affidavit of sureties accompanying an appeal bond to satisfy the statutory requirement that the property offered as security be sufficiently identified to establish the lien of the bond, the property should be described by metes and bounds.

5. An affidavit of sureties is legally necessary only when a property bond is being perfected.

6. Any written security, which may be transferred by endorsement and delivered by delivery merely so as to vest in the endorsee the legal title and thus enable him to sue thereon in his own name is a negotiable instrument.

7. An appeal will be dismissed for failure to pay costs of court, file approved bill of exceptions, file an approved appeal bond or where such bond is defective and the non-appearance of the appellant at the call of the appeal.

8. The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except this Supreme court is a constitutional right and the Constitution further provides that the law should make it *easy,* expeditious

and inexpensive for the aggrieved party to exercise this right of appeal. So appeals should not be dismissed on technicalities or inaccuracies, but only for statutory grounds or other substantial grounds such as would materially and adversely affect the rights of the appellee or the enforcement of a final judgment of the Supreme Court if the appeal is not dismissed.

9. An appeal will only be dismissed for reason expressly provided by the statutes.

John Bravy, appellee, instituted an action of damages for wrong against the Firestone Plantations Company, appellant in the Thirteenth Judicial Circuit Court of Margibi County, alleging that properties to the value of $25,847.50 got missing as a result of an illegal search carried out at his home by the Plant Protection Force (security employees) of appellant. The trial court rendered judgment in the said amount of $25,847.50 in favor of appellee, to which appellant excepted and announced an appeal to the Supreme Court.

In perfecting its appeal, appellant secured a cash bond, (in the form of a certificate of deposit) drawn on Meridien Bank Liberia Limited, with Albert K. Maxwell and James B. Dono, named as authorized officials of the said Meridien Bank Liberia Limited. The said cash bond was approved by the trial judge. Appellee, as movant, filed a motion challenging the cash bond as being defective on the grounds that the language employed was improper and prayed the Supreme Court to dismiss appellant's appeal. Appellant, as respondent, resisted the motion.

After entertaining arguments, the Supreme Court held that the language employed in the certificate of deposit, posted as security to the appellant's appeal bond, was proper and met the statutory requirement for posting of cash bond. The Court also held that appeals will not be dismissed on mere technicalities or inaccuracies, but only for good reason or on substantial grounds. The motion to dismiss was *denied.*

Francis Y S. Garlawolu appeared for the appellee. *H Varney G. Sherman* and *Pei Edwin Gausi* appeared for the appellant.

MR. JUSTICE AZANGO delivered the opinion of the Court

This case emanated from the Thirteenth Judicial Circuit Court, Margibi County, sitting in its November Term, A. D. 1987, where John Bravy, alias Reed (appellee) instituted an action of damages for a wrong in which he alleged that on the orders of the appellant (the Firestone Plantations Company), its employees, to be specific the

Plant Protection Force (PPF), on July 2, 1987, at about 3:00 p.m. forcibly invaded his home and, conducted a search in absolute violation of his privacy. This violation, according to appellee, resulted into the loss of his properties to the value of twenty-five thousand eight hundred forty seven dollars and fifty cents ($25,847.50). Here is the statement of properties allegedly lost:

1) Cash in the sum of $20,823 25---- $20,823.25
2) One video set valued at--- 2,175.50
3) Thirty video cassettes at $50.00 each 1,500.00
4) One radio and record player 550.00
5) One damaged ice box 265.00
6) One damaged stove 225.00
7) One cassette recorder 175.00
8) One damaged washing machine 334.25

Total------ $25,847.50

When this case was called for hearing in the court below, counsel for appellant defended itself by submitting that the search was not illegal in that it was carried out on the orders of a court of competent jurisdiction; that the officers who conducted the search were not exclusively its employees, for the team consisted of members of the joint security; and that since appellee was present when the search was being carried out, he could have objected to the removal of the listed missing items from his premises or would have immediately reported the alleged losses to the police had any such losses occurred. Notwithstanding, on April 25, 1989, judgment was rendered in favour of the appellee for the amount of twenty-five thousand, eight hundred forty-seven dollars and fifty cents ($25,847.50); but to this judgment, appellant excepted, announced and prayed for an appeal to the Honorable Supreme Court of Liberia.

Having secured a cash bond on Meridien Bank Liberia Limited, which the judge in the court below approved on May 2, 1989, appellant filed its appeal before this Court on May 20, 1989. In response to the filing of the appeal by appellant, appellee filed a four-count motion to this Court to dismiss the appeal, contending that the appeal bond is fatally defective and, as the basis for his motion, gave the following legal and factual reasons:

1. That appellant's appeal bond tendered, submitted to and approved by the trial judge on the 2" day of May, A.D. 1989, bound Albert K. Maxwell and James B. Dono, two natural persons, as sureties with the use of the following words:

The condition of this obligation is that we will pay and satisfy the final judgment of the Honourable Supreme Court and indemnify the plaintiff/appellee from all costs and injuries and damages arising from the appeal taken by defendant/appellant from the ruling/judgment of his Honor Sebron J. Hall, Resident Circuit Judge, presiding over the February, A. D. 1989 Term of the Thirteenth Judicial Circuit Court on the 25th day of April, 1989 in the above captioned cases should the final judgment of the Supreme Court be for the plaintiff/appellee. The penalty of this bond is thirty eight thousand, seven hundred seventy-one dollars twenty-five cents ($38,771. 25)."

Hence, two natural persons having signed the appeal bond, obligating themselves to indemnify the appellant, they were duty bound under Section 63.2 of the Civil Procedure Law, to have attached thereto property valuation, sureties' affidavit, and revenue certificate to the effect that they are householders and free-holders within the Republic of Liberia.

2. That the appeal bond is further defective in that notwithstanding, appellant had tendered a paper bond and the same approved, said appellant adroitly posted a piece of paper referring to it as a Certificate of Deposit-Appeal Bond, purportedly from the Meridien Bank, obligating itself as guarantor thus:

`Know all men by these presents that we, Meridien Bank Liberia Limited, banking institution doing business in Monrovia, Liberia, hereby certify that Firestone Plantations Company, Harbel, Liberia, the above named appellant, will comply with judgment to the sum of thirty-eight thousand seven hundred seventy-one dollars twenty five cents ($38,771.25)." Appellee submits that under our statute, the Meridien Bank is not authorized to serve as surety, but rather an insurance company or two natural persons. Appellee further submits that a bank can only show by certificate a deposit that the sureties or insurance company has specifically deposited adequate amount to indemnify an appellee in a given case, but not the bank as surety as in the instant case.

Section 63.2 of the Civil Procedure Law specifically states who may offer security as sureties, as follows: "Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirement of this section or an insurance company authorized to execute surety bond within the Republic of Liberia.

Thus, section 63.1 of the Civil Procedure Law only refers to the type of securities but not the class of sureties to offer....these securities on a bond.

Appellee submitted that the so-called bank certificate failed to state who specifically deposited the alleged amount, whether the appellant itself or the sheriff of the Thirteenth Judicial Circuit Court or the two signatories to the said document; hence, the appeal bond is incurably defective. The appellee continued by submitting that the appeal bond is further defective because no mention is made in the body of the paper bond that the purported bank certificate of James B. Dono and Albert K. Maxwell is that of two natural persons who actually exist, no affidavit duly sworn and subscribed to before a justice of the peace or notary public to the effect that these two (2) persons named above actually exist, whether they are employees of the Meridien Bank Liberian Limited and that the signatures appearing thereon are theirs. Hence, the absence of an affidavit to verify the signatures and also to confirm the availability of the money in the bank, renders the appeal bond dismissible to all intents and purposes.

Another submission made by the appeal in its motion to dismiss is that the appeal bond is defective because the sheriff has no control over the so called security, which ought to have been offered by a duly qualified surety, and submitted to the sheriff for deposit to a Government depository.

To this motion, a resistance embodying five (5) counts was filed by the appellant, stating, in substance, the following:

1. Respondent says that the motion in its entirety is legally bad, defective and constitutes a misconception of the law on bonds. Respondent submits that in keeping with Section 63.1 of the Civil Procedure Law, a bond may be, secured by one or more methods as provided therein, and in the instant case, respondent elected to and did secure its bond by means of cash deposit in the Meridien Bank. The signing of the bank's certificate by Messrs Albert K. Maxwell, Manager of International Department and James B. Dono, authorized signatory of said bank, cannot legally be interpreted or inferred that the two officers of the bank are natural sureties of Firestone Plantations Company. On the contrary, the signatures of the two officers of the bank evidenced that cash of thirty-eight thousand seven hundred seventy-one dollars twenty-five cents ($38,771.25) has been deposited in the said bank by appellant; and secondly, the signatures showed the authenticity of the bank's certificate. Hence, count one (1) together with the entire motion should be denied.

2. And respondent further submits that the motion is defective and a fit subject for dismissal. Respondent says that the averment in said motion to the effect that the Meridien Bank is not authorized to serve as surety but rather an insurance company or two natural persons is absolutely irrelevant and immaterial since Section 63.2 of the Civil Procedure Law is inapplicable. Respondent contends that it deposited with the said bank and obtained a bank's certificate in keeping with Section 63.1 of the Civil Procedure Law. Hence count 2, together with the entire motion, should be denied by this Honourable Court.

3. And appellant/respondent submits that count 3 of the motion is a novelty, in that under the law, and in keeping with the practice within this jurisdiction, an affidavit is not required to substantiate a cash deposit with a bank; instead it is required that the respondent should show evidence of such deposit by a bank's certificate or receipt from the sheriff. In the instant case, respondent showed evidence of its deposit at the Meridien Bank by the bank's certificate; and so count 3 of the motion should be overruled.

4. Respondent/appellant denied all and singular the allegations of law and facts contained in the Motion to dismiss which have not been specifically traversed in the resistance. From the foregoing facts and circumstances, the only issue that the Court will address itself to is:

Whether or not the appellants/respondent's appeal bond failed to meet the statutory requirements and therefore renders it defective?

In order to provide an answer to the above question, we will carefully discuss appellee's motion in light of the relevant laws regarding the use of bonds in our judicial system, beginning with the first two counts.

In counts one and two of his four-count motion, appellee argues and contends that: (a) the signing of the appeal bond and the certificate of deposit by Messrs. Albert K. Maxwell and James B. Dono, Manager-International Department and an Authorized Signatory, respectively of the Meridien Bank, appellant's bankers, makes them sureties to indemnify him and were therefore duty bound in keeping with law, and have appended thereto the property valuation, sureties affidavit and revenue certificate to the effect that they are householders and freeholders within the Republic of Liberia; (b) since Meridien Bank Liberia Limited is not an insurance institution, it cannot legally execute surety bond or serve as surety within the Republic of Liberia; and (c)

the bank certificate issued by the Meridien Bank does not indicate who specifically deposited the amount of the bond in the bank.

This Court cannot subscribe to these views, for they are in absolute disharmony with the statutes governing the use of bonds in this jurisdiction. We will further like to make it clear here and now that the requirement of two sureties in securing a bond to perfect an appeal is only applicable to cases in which the appellant gives real property as security for the bond.

In the instant case, appellant posted a cash bond and obtained a certificate of deposit signed by two officers of the bank evidencing that the amount of thirty-eight thousand seven hundred seventy-one dollars twenty-five cents ($38,771.25) was being held to the credit of the appellee, if the appellee should obtain judgment.

The fact that Messrs. Albert K. Maxwell and James B. Dono signed the bond and the certificate of deposit in their respective capacities as Manager-International Department and authorized signatory does not them make them sureties to the bond but rather their signatures served to authenticate the genuineness of said documents.

To throw more light on the issue of the certificate of deposit, let us resort to appropriate authorities for a definition. A certificate of deposit is "a written acknowledgment of a bank or banker promising to pay to the depositor, or to the order of the depositor, or to some other person or to his order, whereby the relation of the debtor between the bank and the depositor is created." 10 AM. JUR. 2d., *Banks,* §455. "A certificate of deposit is a writing having the requisites of negotiability and consisting of an acknowledgment by the bank of receipt of money with the engagement to repay it." U.C.C. §3-104 (2).

In the certificate of deposit under consideration, the bank certified as follows: "Know all men by these presents - That we, Meridien Bank Liberia Limited, a banking institution doing business in Monrovia, Liberia, hereby certify that Firestone Plantations Company, Harbel, Liberia, the above named appellant, will comply with judgment up to the sum of $38,771.25, out of monies set aside and available at this bank, if final judgment shall be rendered in favour of John Bravy, the above named appellee, the same being one and a half times the judgment of $25,847.50 awarded the appellee in the above case. . .." The issue before this Court is: Does the signing of such a document by the two bank officers make them sureties indemnifying appellee? The answer is in the negative.

The bank certificate itself was drawn on Meridien Bank and addressed to The sheriff, Thirteenth Judicial Circuit Court, Kakata, Margibi County, Liberia. The caption of the case as stated on the certificate is "Firestone Plantations Company, Harbel, Margibi County, Appellant, versus John Bravy Appellee, Action for Damages.

Considering the wording of the first paragraph of the bank certificate and the caption of the case, it is but reasonable and logical to conclude that it is appellant, the Firestone Plantations Company, that deposited the money in the Meridien Bank. This conclusion negates appellee's contention that the bank certificate does not indicate who specifically deposited the money in the bank.

In the case *Liberia Mining Company v. Bomi Workers Union,* 25 LLR 198 (1976), this Court held that for the purposes of a cash bond, a cashier's or managers' check is equivalent to a bank certificate and hence meets the statutory requirement for giving of cash bond. In the same view, the certificate of deposit issued by the bank in the instant case evidencing the availability of the amount of $38,771.26 to defray all expenses incurred by appellee should judgment be rendered in his favour meets the statutory requirement for giving a cash bond.

On the issue of whether or not the Meridien Bank, though not an insurance institution, is competent enough to execute surety bond or serve as a surety within the Republic of Liberia, the law is perfectly clear and well settled. The statute provides that "except as otherwise provided by statute, any bond given under this title shall be secured by one or more of the followings:
"(a) cash to-the value of the bond; or cash deposited in the bank to the value of the bond as evidenced by a bank certificate." Civil Procedure Law, Revised Code 1:63.1.

It is therefore the conclusive opinion of this Court that counts one and two have no legal basis and are hereby overruled.

In count three of the motion to dismiss, appellee argues that the bond is defective because the bank certificate is not supported by any affidavit to substantiate (a) the existence of the signatories of Albert K. Maxwell and James B. Dono; and (b) whether the signatories are employees of Meridien Bank. Appellant's notion that a cash bond should be supported by an affidavit is a complete novelty in this jurisdiction. Therefore, we are not in agreement with appellee's view.

In the *case Doe v. Dent-Davies,* 27 LLR 306 (1978), we held that "in order for an affidavit of sureties accompanying an appeal bond to fulfill the statutory requirement

that the property offered as security is sufficiently identified to establish the lien of the bond, the property should be described by metes and bounds" in keeping with Section 63.2 (c) -of the Civil Procedure Law. From this ruling, it is clear that an affidavit is legally necessary only when a property bond is being perfected. Count three of the motion is therefore overruled.

On the issue of the sheriffs lack of control over the security, which issue was raised in count four (4) of the motion, we would like to remind appellee that a certificate of deposit is an instrument that has the requisites of negotiability; that is, it is a "written security which may be transferred by indorsement and delivered by a delivery merely so as to vest in the endorsee the legal title and thus enable him to sue thereon in his own name". BLACK' S LAW DICTIONARY (4thed). Thus, the endorsement and subsequent delivery of the certificate to the sheriff puts him in control of the security - the amount on the bank as holder in due course. Should there be a default in payment in the event that the final judgment of this Court is in the appellee's favour, the sheriff is clothed with the legal authority to proceed against the bank in order to recover the amount.

It is a settled principle of law that the dismissal of appeals is limited to the following four (4) causes:

1. Failure to announce the taking of the appeal;

2. Failure to file a bill of exceptions;

3. Failure to file an approved appeal bond or where said bond is fatally defective;

4. Failure to file and serve a notice of the completion of the appeal. Civil Procedure Law, Rev. Code 1: 51.4.

None of the aforementioned causes is applicable to the case at bar. In *Dennis and Dennis v. Holder,* 8 LLR 301 (1950), this Court, citing the case *of Johns v. Cess-Pelham and Witherspoon,* 8 LLR 296 (1944), reiterated the intention of the Legislature in passing the Act of 1930 when it said: "To all intents and purposes, it is obvious that the intention of the Legislature in passing that act was to discourage the dismissal of appeals on technical legal grounds and to give the appellants an opportunity to have their cases heard by this court on their merits in order that substantial justice could be done to all concerned."

This view has been re-echoed in a number of cases in this jurisdiction, including *Firestone Plantations Company v. Greaves,* 9 LLR 147 (1946) and *Cole v. Williams, 10* LLR 191 (1949). A generally accepted principle of law is that "Appeals will not be dismissed on mere technicalities or inaccuracies, but only for good reason or on substantial grounds. Thus, a motion to dismiss an appeal must be made on some legal grounds recognized by statute or rules of court or otherwise present substantial defect of such a nature as to preclude a fair determination of the case on appeal or the motion will be denied". 5 C.J.S., *Appeals & Error, §1353.*

Finally, this Court must address the issue of the language of a certificate of deposit, even though the issue was not squarely raised in the motion and resistance, it was argued lengthily. The question is the clause "will comply with judgment up to the sum of thirty eight thousand seven hundred seventy-one dollars twenty five cents ($38,771.25). The use of the term "will comply" or "will pay" was a subject of lengthy argument before us.

The law writers have said that: "A certificate of deposit ordinarily is defined as a written acknowledgment by a bank of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor or to some other person or to his order, whereby the relationship of debtor/creditor between the bank and the depositor is created. No particular form is necessary to constitute a certificate of deposit. For instance, a letter of advice written by the cashier of a bank to another bank stating that a person therein named had deposited with the former bank a sum of money therein stated, to the credit of the latter bank for the use of another, has been held to be a certificate of deposit."7 AM JUR *Banks, §* 491 (1937).

The use of the words "will comply" or "will pay" constitute the promise to pay, which the law requires. The certificate of deposit need not be in any particular form; it should acknowledge receipt of a deposit and promise to repay it; should be signed by a duly authorized officer of the bank of issuance and should be supported by an adequate consideration, and it will be presumed in the absence of contrary evidence that it was so supported. 9 C.J.S., *Banks and Banking, §* 313.

We therefore hold that the language employed in the certificate of deposit posted as security to appellant's appeal bond was proper and the use of the words "will comply with judgment" or "will pay", does not negate or nullify said certificate of deposit but to the contrary is in compliance with the intent of the law, the promise to pay.

Appeals are not to be dismissed on mere technicalities or inaccuracies for the intention of the Legislature in passing an Act stating the grounds for dismissing an appeal was to discourage the dismissal of appeals on technical grounds and to give to appellants an opportunity to have their cases heard by the Supreme Court on their merits. *Kerpai et. al. v. Kpene,* 25 LLR 422 (1977). The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except this Supreme court is a constitutional right and the Constitution further provides that the law should make it easy, expeditious and inexpensive for the aggrieved party to exercise this right of appeal. Article 20 (b), Liberian Constitution. We have therefore consistently held, and we reaffirm that appeals will not be dismissed on mere technicalities. *Biggers v. Good-Wesley,* 23 LLR 285 (1975).

Throughout his motion, appellee vehemently argued that appellant's appeal bond is defective. What this allegation should ordinarily entail is that the appeal bond lacks something essential to complete it, something that the law requires. We find no such defect in the appeal bond in this case. To cause the Supreme Court to dismiss an appeal, the movant must place his case squarely within one of the grounds expressly provided by the statutes or the motion will be denied. It is therefore our view that the motion be and same is hereby denied.

Wherefore, and in view of the foregoing, the motion to dismiss is hereby denied.

Our distinguished colleague, His Honour, the Chief Justice being in disagreement with the interpretation of the clause "will pay" has accordingly prepared a dissenting opinion to that effect. However, our opinion being supported by legal authorities, shall continue to be the law of the land. And it is hereby so ordered.

The Clerk of this Court is hereby ordered to have the main case docketed for the March A. **D.** 1990 Term of this Honourable Court for hearing and determination.

Motion to dismiss denied

Editors' Note: Mr. Chief Justice Gbalazeh dissented in this case, but did not file a dissenting opinion. He merely did not sign the final judgment.