

**FIRST UNITED AMERICAN BANK** by and thru its Chairman of the Board and President, M.S. BHATTI, Appellant, v. **ALI SAKSOUK TEXTILE CENTER**, by and thru its Proprietor, ALI SAKOUK, Appellee.

Heard: May 5, 1997. Decided: August 15, 1997.

1. The attempt to raise in the Supreme Court issues of irregularities which allegedly occurred in the trial court, unsupported by any showing in the records, is contrary to law, since the Supreme Court can only take cognizance of matters of record.
2. An appeal from a court of record cannot be heard or decided on evidence extrinsic to the records.
3. When an appeal is taken from a court of record, the appellate court shall examine the matter in dispute upon the records only; it shall hear no additional evidence.
4. Where the appeal bond is not found in the records, the appellate court shall be obliged to disregard and discard such bond, because to consider such bond will require the court to conduct an investigation and receive evidence as to why the bond is not in the records, which act would reduce the court from an appellate level to a court of first instance.
5. In the absence of a certificate from the Ministry of Finance to the effect that (a) the sureties to appellant's appeal bond are owners of real properties, (b) taxes on said real properties are paid, and (c) the value of said properties, along with an affidavit of sureties, or cash such as cashier or manager's check being attached to the said bond, the bond does not meet the requirements of the controlling statutes.
6. The failure to timely file an approved bill of exceptions, post an appeal bond, or to timely serve a notice of the completion of appeal are grounds for the dismissal of an appeal.

In an action of damages for breach of contract, the trial jury returned a verdict in favor of the plaintiff/appellee, awarding the said appellee US\$4,000.00 as special damages and L\$100,000.00 as general damages. A motion for a new trial was filed, resisted, and denied, and judgment was rendered confirming the verdict. From this judgment, an appeal was announced and granted.

Thereafter, the appellee filed a one-count motion for the dismissal of the appeal, noting that while a bill of exceptions and a notice of completion had been filed by the appellant, the said appellant had failed to file an approved appeal bond as required by statute. In resisting the motion, the appellant contended that it had filed an approved appeal bond, duly signed by the trial judge, and filed by the same clerk who had issued a certificate to the effect that no appeal bond had been filed. The appellant attached a copy of the bond to the resistance and alleged that the bond had been removed from the file.

The Supreme Court upheld the motion to dismiss, holding (a) that to determine whether a bond was filed in the trial court, it would have to conduct an investigation of the matter and receive evidence, which acts would relegate its status from an appellate court to a court of first instance, and which, the Court said, it did not have the authority to do; (b) that the bond failed to meet the statutory requirements since it did not contain a certificate from the Ministry of Finance to the effect that the sureties to the appeal bond were owners of properties taxes had been paid on said properties, the value of said properties, or any cash such a cashier or manager's check to support the bond; and (c) that there was no affidavit of sureties attached to the bond. The Court noted that under the relevant statute, the failure to timely file an approved bill of exceptions, to post an approved appeal bond, and to serve and file a notice of completion of appeal were grounds for the dismissal of the appeal. The Court held that it therefore lacked jurisdiction over the case and was without authority to open the file and hear the case on the merits. Accordingly, it *granted* the motion to dismiss the appeal.

*J. D. Baryogar Junius* and *Snonsio Niagba* of the Legal Clinic appeared for the appellant. *Salia A. Sirleaf* of the Henries Law Firm appeared for appellee.

MR. JUSTICE TULAY delivered the opinion of the Court.

During the regular session of the December 1995 Term of the Sixth Judicial Circuit Court, Montserrado County, an action of damages for breach of contract was filed by the Ali Saskouk Textile Center, plaintiff/appellee, by and thru its proprietor, Ali Saskouk of the City of Monrovia, Liberia, against First United American Bank, defendant/appellant, by and thru its chairman of the board and president, M. S. Bhatti, also of the City of Monrovia, Liberia, on September 22, 1995.

Defendant/appellant filed an answer to said complaint, to which plaintiff/appellee filed a reply. Pleadings thereupon rested and trial was had on January 21, 1996. At the conclusion of the evidence, the trial jury brought a verdict in favour of the plaintiff/appellee, awarding it an amount of US\$4,000.00 (Four Thousand United States dollars) as special damages, and L\$100,000.00 (One Hundred Thousand Liberian dollars) as general damages. The verdict was excepted to by the defendant/appellant, and thereafter, on January 28, 1996, it filed a motion for new trial. The motion was resisted by the plaintiff/appellee on January 30, 1996. On February 5, 1996, the motion for new trial was heard and denied. On the following day, February 6, 1996, the court entered final judgment in the case, upholding and confirming the verdict of the trial jury. Defendant/appellant excepted to said judgment and announced an appeal to this Court, which was granted by the trial court.

On February 13, 1996, defendant/appellant filed its bill of exceptions, which was approved by the trial judge on February 16, 1996. On November 26, 1996, plaintiff/appellee filed a one-count motion to dismiss defendant/appellant's appeal. It is this motion that is before us for determination.

For the purpose of this opinion, we deem it necessary to quote plaintiff/appellee's motion to dismiss appellant's appeal.

"AND NOW COMES Ali Saskouk Textile Center, appellee and respectfully moves this Honourable Court in manner following to wit:

That after a ruling in the lower court was rendered on February 6, A. D. 1996 awarding judgment in favour of plaintiff, appellant announced and filed an appeal without filing an appeal bond; in other words, appellant filed a notice of completion of appeal on the 2nd day of April, 1996, without filing any appeal bond in fulfillment of the statutory requirement with respect to the filing of an appeal, as can be more fully seen from the attached clerk's certificate.

WHEREFORE, and in view of the foregoing facts and circumstances, appellee most respectfully prays this Honourable Court to dismiss the appeal with costs against appellant."

The clerk's certificate attached to said motion is also quoted as follows:

"JUDICIAL BRANCH

JUDGES CHAMBERS

CIVIL LAW COURT

REPUBLIC OF LIBERIA MONTSERRADO COUNTY. IN THE SIXTH JUDICIAL CIRCUIT MONTSERRADO COUNTY SITTING IN ITS JUNE TERM A.D. 1996

BEFORE HIS HONOUR WILLIAM L. METZGER, SR. ASSIGN CIRCUIT JUDGE.

First United American Bank by and thru its Chairman of the Board and President, M.S. Bhatti, also of the City of Monrovia Liberia Defendant/Appellant Versus Ali Saskouk Textile Center, by and thru its Proprietor, Ali Saskouk, of the City of Monrovia, Liberia, Plaintiff/Appellee

ACTION OF DAMAGES FOR BREACH OF CONTRACT

THIS IS TO CERTIFY THAT FROM A CAREFUL PERUSAL OF THE RECORDS IN THE ABOVE ENTITLED CAUSE, DEFENDANT/APPELLANT HAS NOT FILED AN APPEAL BOND SINCE RENDITION OF FINAL JUDGMENT ON FEBRUARY 6, A. D. 1996, UP TO AND INCLUDING THE DATE OF THE ISSUANCE OF THIS CERTIFICATE.

HENCE THIS CLERK'S CERTIFICATE

GIVEN UNDER MY HAND AND SEAL

OF COURT THIS 29TH DAY OF

AUGUST A. D. 1996.

IRENE ROSS RAILEY

CLERK/CIVIL LAW COURT, MO. CO.

R.L.

SEAL OF COURT

To this motion, defendant/appellant filed a three count resistance. For the benefit of this opinion, we also quote the three counts in defendant/appellant's resistance:

(1) That as to count one of the motion, respondent/appellant, says that same should be denied because respondent/appellant did file an appeal bond on April 2, 1996, which was approved by Her Honour Frances Johnson-Morris, the present Chief Justice, who at the time was presiding over the Civil Law Court, Sixth Judicial Circuit, Montserrado County, sitting in its March Term, A. D. 1996. See copy of said bond attached.

(2) Respondent/appellant further says that the motion should be dismissed for lack of sufficiency in law; in that it is the same clerk who filed said bond on April 2, 1996, and thereafter issued a certificate dated August 29, 1996, four (4) and one-half months after said bond was approved by the then presiding judge and filed before a certificate was issued that no appeal bond has been filed. For this we humbly request this Honourable Court to order the presiding judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, presiding to conduct an investigation because said bond has mysteriously disappeared from the file.

(3) Respondent/appellant further says that it is because Her Honour, Chief Justice Frances Johnson-Morris knows her own signature and can verify same on the copy of attached appeal bond.

WHEREFORE and in view of the foregoing, respondent/appellant prays for the dismissal of the motion and that the appeal be heard.

Respectfully submitted

Respondent/appellant,

by and thru his legal counsel:

THE LEGAL CLINIC, CAREY STREET MONROVIA.

Counsellor J. D. Baryougar Junius

Dated this 3<sup>rd</sup> day of May, A. D. 1997.

\$4.00 Revenue Stamps affixed on the original."

Attached to the respondent/appellant's resistance is an appeal bond, which we also herewith quote:

"APPEAL BOND

KNOW ALL MEN BY THESE PRESENCE THAT We, the United American Bank, by and thru its chairman of the board and president, M. S. Bhatti, defendant/appellant, SURETIES, all of the County of Montserrado and Republic of Liberia, do bound ourselves, our heirs, executors, administrators and assigns unto the sheriff or his deputy for Montserrado County in the amount of \$156,000.00, current money of this Republic of Liberian being one and half of the amount awarded the appellee or their legal representatives, for which payment we bind ourselves and our personal representatives, jointly and severally firmly by these presents.

The condition of this obligation is that we will indemnify the appellee from all costs and injuries arising from the appeal taken by the named appellant and will comply with the judgment of the court to which said appeal is taken or any other court to which the said action may be moved.

IN WITNESS WHEREOF, WE have set our hands and signatures this 2<sup>nd</sup> day of April, A. D. 1996.

IN THE PRESENCE OF:

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

APPROVED: \_\_\_\_\_

HER HONOUR FRANCES JOHNSON-MORRIS \$3.00

Revenue Stamps Affixed on the original copy.

Filed April 2, 1996 Irene Ross Railey Clerk of court.

The issues for consideration in determining this motion and the resistance thereto are:

- (1) Whether or not the failure to file an appeal bond, in keeping with the statute controlling, is ground for dismissal of the appeal?

(2) Whether or not appellant's appeal bond meets the requirements of an appeal bond under the statutes controlling?

(3) Whether or not the appeal bond attached to appellant's resistance can be considered by this Court or any appellate court as an appeal bond?

We shall treat these issues in a reverse order, thus making as the first issue for consideration whether or not the appeal bond attached to appellant's resistance can be considered by this Court or any appellate court as an appeal bond.

To this issue we say and hold no. The appeal bond attached to the appellant's resistance cannot be considered as an appeal bond by this Court. The records transmitted to this Court by the clerk of the trial court does not include any appeal bond. In the case *Garguae v. Jallah and Morris*, 20 LLR 163 (1971), this Court held that: "The attempt to raise issues of irregularities in the court below, unsupported by any showing in the records, is contrary to the law, for the Supreme Court will only take cognizance of matters of record." The resistance of appellant, together with its attached appeal bond, is not part and parcel of the record transmitted to this Court by the clerk of the trial court; hence, this Court cannot take cognizance of it.

Also, in the case *Franco-Liberian Transport Company and Sautet v. Bettie*, 13 LLR 318 (1958), this Court said: "An appeal from a court of record cannot be heard or decided on evidence extrinsic to the record." We quote the following statutory provision in support of this position: "When an appeal is taken from any court of record, the appellate court shall examine the matter in dispute upon the record only; it shall hear no additional evidence." Civil Procedure Law, 1956 Code 6: 1060. In further support of the statute, see *Franco-Liberian Transport Company and Sautet v. Bettie*, 13 LLR 318 (1958), text at 321-322. Since the appeal bond attached to the appellant's resistance is not found in the records certified to us from the trial court, we are obliged to disregard and discard said appeal bond, because for us to consider same as an appeal bond will require us to institute an investigation and receive evidence as to why said appeal bond is not in the records. This will be tantamount to reducing this Court from an appellate level to that of a court of first instance. We cannot afford to do this.

The second question is whether or not appellant's appeal bond meets the requirements of an appeal bond under the statutes controlling? The appeal bond attached to the appellant's resistance has no property valuation certificate from the Ministry of Finance and no surety affidavit attached to it. Also there is no cash, such as a cashier or manager's, attached to it. Not even a check number is mentioned in said bond.

In the absence of a certificate from the Ministry of Finance to the effect that the sureties to the appellant's bond are owners of real property/properties, that taxes on said real properties

are paid, the value of said properties, an affidavit of sureties, or cash such as cashier or manager's check attached to appellant's appeal bond, we are constrained to say that appellant's appeal bond does not meet the requirement of an appeal bond under the statutes controlling. The position taken by us is supported by the Civil Procedure Law, Rev. Code 1: 63.1, 63.2. Also, *Royal Exchange Assurance v. Barriero*, 25 LLR 306 (1976), text at pages 312-315, further supports the position that appellant's appeal bond does not meet the requirements of the statutes controlling.

We now proceed to the last issue, which is whether or not the failure to file an appeal bond in keeping with the statute controlling is ground for the dismissal of an appeal? Section 51.4, Lib. Code Rev., Vol. 1, published February 1, 1973, captioned *Requirements for Completion of an Appeal*, states:

"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. Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."

In the case *Vamply of Liberia v. Manning*, 25 LLR 188 (1976), this Court held that failure to timely file an approved bill of exceptions, to post an appeal bond, or to serve a notice of completion of appeal, are all grounds for the dismissal of the appeal. We therefore hold that the failure to file an appeal bond in keeping with the statutes controlling shall be a ground for dismissal of the appeal.

Wherefore, and in view of all we have said herein above and the laws cited supra, we are completely impotent to open the file of this case and to hear the appeal, as the case is not properly before us and we lack jurisdiction over it. The motion to dismiss is therefore granted, and costs are assessed against the appellant. And it is hereby so ordered.

*Motion granted; appeal dismissed.*