

SAMUEL A. W. FREEMAN and MUNAH WESSEH, Appellants, v. JOSEPH N. LEWIS, DEBORAH B. TECQUAH, and PATRICK C. LEWIS, Appellees.

Freeman et al v Lewis et al [2000] LRSC 11; 40 LLR 103 (2000) (21 July 2000)

MOTION TO DISMISS APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSEERRADO COUNTY.

Heard: April 5, 2000. Decided: July 21, 2000.

1. Every appellant is required to give an appeal bond in an amount fixed by the trial 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 any other court to which the case is removed.
2. A failure to file a sufficient appeal bond within the specified time allowed by statute shall be ground for the dismissal of the appeal.
3. Unless the court orders otherwise, the sureties to a bond shall be two persons who fulfill the requirements of section 63.2(1) or an insurance company authorized by law to execute surety bonds within Liberia.
4. A bond upon which natural persons are sureties shall be secured by one or more pieces of property located in the Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances.
5. A bond creates a lien on the real property given as security when the party in whose favor the bond is given records it in the docket for surety bond liens in the office of the clerk of the circuit court in the county where the property is located.
6. A surety bond must be accompanied by an affidavit of surety which shall contain the following: (a) a statement that one of the sureties or both combined are the owners of the real property offered as security; (b) a description of the property, sufficiently identified to establish a lien on the property; (c) a statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and (d) a statement of the assessed value of the property offered.
7. A surety bond must also be accompanied by a certificate of a duly authorized official of the Ministry of Finance certifying that the property is owned by the surety or sureties claiming title to it in the affidavit and that it is of the assessed value stated therein.
8. Where the language of a statute is clear and unambiguous there shall be no need for construction.
9. Every statute must be construed with reference to the object intended to be accomplished by it.

10. In order to ascertain the object of a statute, it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one.

11. A statute should be given the construction which is best calculated to advance its object by suppressing the mischief and securing the benefits intended.

12. The posting of cash as security to an appeal bond does not meet the requirements of an appeal bond, and therefore renders the appeal bond defective and insufficient.

13. The language of an appeal bond statute prescribing a penalty for insufficiency or defectiveness of the bond after the lower court loses jurisdiction is mandatory and not left to the discretion of the appellant.

Appellants, whose appointment as administrators of an estate was terminated and their letters of administration revoked by the Monthly and Probate Court for Montserrado County, on petition filed by the appellees, appealed the trial court's ruling to the Supreme Court for review. A motion to dismiss the appeal was filed by the appellees, asserting as the reason therefor that the cash bond posted by the appellants had failed to meet the statutory requirements for an appeal bond, which mandates that the bond be secured by one or more sureties who shall be natural persons holding title to real property in Liberia, or by an insurance company duly authorized by law to execute surety bonds in Liberia.

The Supreme Court upheld the contention of the appellees and dismissed the appeal, holding that the appeal bond posted by the appellants which was secured by cash was in violation of the appeal statute whose requirements were mandatory and not intended to be complied with at the discretion of the appellants. The Court noted that the statute governing appeal bonds clearly required that natural persons be sureties to the bond and that such persons hold real property in the Republic, which property had to be used as security to the bond, and be accompanied by an affidavit of sureties and a statement from the Ministry of Finance that the sureties were the owners of the property or properties. The statute did not provide for the posting of a cash bond in fulfillment of one of the requirements for completion of an appeal to the Supreme Court. The Court observed that a failure by the appellants to strictly comply with the statute was ground for the dismissal of the appeal. Accordingly, the motion to dismiss was granted and the appeal was ordered dismissed.

Roger K. Martin, Sr. appeared for movants/appellees. Frederick D. Cherue appeared for respondents/appellants.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

This cause of action commenced in the Monthly and Probate Court for Montserrado County, wherein appellees, movants in the court below, filed a petition for the revocation of letters of administration against the appellants and prayed the said Monthly and Probate Court that appellees be appointed instead as administrators of the estate. The petition for revocation of letters of administration was granted on March 24, 1999. To this ruling, the appellants excepted and announced an appeal therefrom to the Supreme Court. The bill of exceptions were duly filed and approved. Subsequently, on May 24, A. D. 1999, appellants secured an appeal bond in cash, in the sum of L\$1,500.00. Appellants completed the appeal process within statutory time.

In September 1999, appellees filed a motion to dismiss appellants' appeal, counts 2, 3, and 4 of which the Court herewith quotes.

"(2) Movants further say that in respondents attempt to secure their appeal bond, they posted cash in the sum of one thousand, five hundred Liberian dollars (L\$1,500.00) and based on said cash, they filed their appeal bond on the 24th day of May, A. D. 1999..."

(3) Movants respectfully submit that the law on securing appeal bond is clear and unambiguous as found under section 51.8, pages 250 and 251 of 1 LCLR. Movants contend that in keeping with the above quoted statutory provision controlling the manner in which an appeal bond shall be secured, coupled with several opinions of this Honourable Court on this issue, the respondents appeal bond is glaringly and incurably defective, and as such the appeal is unsecured according to law and should be dismissed as a matter of law.

(4) Movants further contend that securing an appeal bond is distinguished and distinct from securing an appearance bond or any other bond under chapter 63, section 63.1, and 63.2 of 1 LCLR, at pages 266 and 267, which do not apply to securing an appeal bond."

Respondents filed resistance to the motion, counts 7,11,12, and 17 of which we deem germane to this controversy, and which we hereunder quote:

(7) . . . Respondents say and maintain that the securing of the cash bond, referred to in the said count of the motion, is a legal requirement by law and the fulfilling of same cannot be an issue or a ground for the dismissal of an appeal.

(11) As to count (4) of the motion, respondents say that the averment therein portrays movants' misapplication and misunderstanding of the law, as chapter 63, sections, 63.1 and 63.2 (paragraphs 1 & 2) talk about bonds in general and clearly define the sureties referred to in section 51.8. Respondents say that this Honourable Court and all other subordinate courts in this jurisdiction have constantly read and interpreted section 51.8 and section 63.1 and 63.2 conjunctively in passing upon issues relative to bonds

(12) Further to count (11) herein above, respondents say that section 51.8 talks about the securing of a bond to be fixed by the court. It also talks about security of a bond. Also, section 63.1 speaks about the security for a bond. Section 63.2 talks about legally qualified sureties and says, unless the court orders otherwise, what the security on a bond should be. Respondents say that in defining bonds, whether it be appeal bond or otherwise, these three sections must be interpreted together in order to determine a genuine bond. Therefore, to say that sections 63.1 and 63.2 are not applicable to appeal bonds, is misleading and legally unfounded.

(17) And respondents say and submit that their appeal should be maintained because the bond, as filed, is permitted by law, that is, as far as the issue of indemnity is concerned. A party will make a deposit of money in lieu of giving bail. Respondents having given a bond, duly approved by the judge, the statutory requirement for an appeal bond has been met as interpreted by the Supreme Court. The motion to dismiss must therefore crumble."

From the foregoing, the issue which is determinative of this action is whether or not money or cash can be given as security for an appeal bond. We shall answer the question as stipulated by statute.

The Civil Procedure Law, as contained in volume I of the Liberian Code of Laws Revised, provides in section 51.8, under Appeal Bond, as follows:

“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 with the clerk of the court within 60 days after rendition of judgement. 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 the dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action.”

The foregoing provision of the statute clearly states that an appellant shall give an appeal bond. . .with two or more legally qualified sureties. . .” The statute, at section 63.2 goes on to define legally qualified sureties in the following terms.

1. Who may be sureties. Unless the court orders otherwise a surety on a bond shall be two persons who fulfill the requirements of this section or any insurance company authorized to execute surety bonds within the Republic.”

The requirements regarding which natural persons may become sureties to secure an appeal bond, referred to in section 63.2 (1) quoted supra, are set out in section 63.2(2) and quoted hereunder:

“2. Lien on real property as security. A bond upon which natural persons are sureties shall be secured by one or more pieces of real property located in the Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances. Such a bond shall create a lien on the real property when the party in whose favor the bond is given has had it recorded in the docket for surety bond liens in the office of the clerk of the circuit court in the county where the property is located. Each one shall be recorded therein by an entry showing the following:

- (a) The names of the sureties in alphabetical order;
- (b) The amount of the bond;
- (c) A description of the real property offered as security thereunder, sufficiently identified to clearly establish the lien of the bond;
- (d) The date of such recording;
- (e) The title of the action, proceeding, or estate.

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

- (a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security;

- (b) A description of the property, sufficiently identified to establish the lien of the bond;
- (c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and
- (d) A statement of the assessed value of each property offered;

A duplicate original of the affidavit required by this section shall be filed in the office where the bond is recorded.

4. Certificate of Treasury Department official. The bond shall also be accompanied by a certificate of a duly authorized official of the Department of the Treasury that the property is owned by the surety or sureties claiming title to it in the affidavit and that it is of the assessed value therein stated, but such a certificate shall not be a pre-requisite to approval by the judge.”

From the foregoing provisions of the Civil Procedure Law, that is, sections 51.8 and 63.2, the intent of the lawmakers is clear, unambiguous, and straight forward. The language of the stated provisions requires that there be two legally qualified sureties who are at least two natural persons who shall present unencumbered real properties or an insurance company authorized to execute surety bonds in Liberia. The law is also equivocally clear as to what the sureties should give as security to appeal bonds. The views of this Court were previously expressed by this Court in the cases *The Intestate Estate of the late Willie J. M. Bowier and Samuel Bowier v. Williams et al.* [2000] LRSC 9; , [40 LLR 84](#) (2000), delivered on April 5, 2000 during the delivery of advance opinions at the March, A. D. 2000 Term of this Honourable Court, and the *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank (TRADEVCO)*, [1995] LRSC 42; [38 LLR 153](#) (1995), decided at the March Term, A. D. 1995.

We noted in those opinions that to remove any confusion, the lawmakers distinguished bonds and bail bonds generally from appeal bonds. Bonds and bail bonds are provided for in section 63.1 and chapter 7, sections 7.16, 7.17 and 7.48, while appeal bonds are provided for, and the requirements set forth, distinguished, and defined in sections 51.8 and 63.2. In these latter sections, the legislative language is clear. This Court has held that when the language of statutes is clear and unambiguous there shall be no need for construction.

The general rule of statutory construction states: “Every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object, it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one; and the statute should be given that construction which is best calculated to advance its object, by suppressing the mischief and securing the benefits intended.” 3 CYC 1110.

In view of the foregoing, it is the considered opinion of this Court that the cash bond of L\$1,500.00, filed in the monthly and probate court as security to the appeal bond does not meet the requirement for an appeal bond as stipulated and provided for in chapter 51, sections 51.8 and chapter 63, section 63.2, of the Civil Procedure Law. Hence, the said appeal bond filed by the appellant is hereby declared to be defective and consequently insufficient.

The question now is what are the consequences of a defective or insufficient appeal bond? Chapter 51, section 51.8 of the Civil Procedure Law states that the object of an appeal bond is to ensure that the appellant's sureties will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that appellant will comply with or satisfy the judgment of the appellate court. The provision goes on to state a penalty for a defective or insufficient appeal bond after the lower court loses jurisdiction. The penalty is dismissal of the appeal. The language of the sentence which contains the penalty for an insufficient or defective appeal bond after the lower court loses jurisdiction clearly shows that the provision is mandatory and that compliance is not left to the discretion of the appellant. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal, provided however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action.

This Court is therefore under a legal duty to declare that due to the defectiveness of the appellants' appeal bond, appellee's motion to dismiss the appellants' appeal is hereby granted and the appellants appeal is ordered dismissed. The Clerk of this Court is ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over the case and enforce its judgment, thereby giving effect to this Court's decision. And it is hereby so ordered. Costs are assessed against the appellants.

Motion granted; appeal dismissed.