

THE INTESTATE ESTATE OF THE LATE WILLIAM J. M. BOWIER, represented by its Administrator, J. EMMANUEL BOWIER and SAMUEL BOWIER, Appellants, v. HESTER WILLIAMS, GEORGE CLEMENT CLARKE, and THE ESTATE OF TRIPHINA BRATHWAITE-BOWIER, represented by GEORGE CLEMENT CLARKE, Appellees.

Intestate of Bower et al v Willaims et al [2000] LRSC 9; 40 LLR 84 (2000)

MOTION TO DISMISS APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 5, 2000. Decided: May 12, 2000.

1. Every appellee shall give an appeal bond in an amount to be fixed by the court, with two legally qualified sureties.
2. Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements of the appeal statute or an insurance company authorized to execute surety bonds in the Republic.
3. The object of the appeal bond statute is to ensure that the appellant indemnifies the appellee from all costs or injury arising from the appeal if unsuccessful, and to have the appellant comply with the judgment of the appellate court or any other court to which the case is removed.
4. The evil to be remedied by the appeal statute is payment or indemnification of the appellee from the costs of the litigation incurred by the appellee, and to ensure compliance by appellant with the final judgment in the case.
5. The language of section 51.8 of the appeal statute prescribes that after the lower court loses jurisdiction, a defective or insufficient appeal bond warrants and shall result in the dismissal of the appeal by the appellate court.
6. While the intent of the framers of the appeal statute is the protection of the constitutional right of the appellant, it is also designed to ensure the balance and protection of the constitutional right to a speedy and fair trial by the appellee.
7. Every statute must be construed with reference to the object intended to be accomplished by the Legislature.
8. 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 law.
9. A statute should be given that construction which is best calculated to advance its object by suppressing the mischief and securing the benefits intended.

10. The decision of the Supreme Court will be reviewed only on the basis of the evidence presented and immediate injury suffered by real party litigants with legal standing to sue, and not on the basis of imagined and hypothetical injury to future party litigants.

11. The Supreme Court will not be persuaded to proceed to recall any decision rendered by it because of imagined or hypothetical injury to future party litigants.

12. The appeal provisions of the Civil Procedure Law do not restrict the constitutional right of appeal; rather, the legislative intent is to ensure that in the process of exercising one's right of appeal, the constitutional right of the adverse party to a fair and speedy trial is protected.

13. The right to an appeal is not a self-executing constitutional right; rather, the constitutional provision is executed by an enabling statute to secure the enjoyment of the right.

14. The filing of an appeal bond secured by a manager's check is in violation of the Civil Procedure Law and the decisions of the Supreme court.

The appellants' action of ejectment against appellees was dismissed by the trial court on the grounds that (a) the administrator who purported to represent the appellant was without the jurisdiction of Liberia and could therefore not legally represent the estate, and (b) the other named representative of the estate was not an administrator of the estate and did not hold a power of attorney from the administrator. The appeal taken from the ruling of the trial court to the Supreme Court was also challenged by the appellees on the ground that the appeal bond was defective because it was secured by a bank manager's check rather than by two natural persons who possessed realty in Liberia.

The Supreme Court agreed with contention of the appellees and therefore dismissed the appeal. The Court held that the appeal statute was clear on its face, requiring that an appeal bond be secured by two natural persons as sureties and that they own real property in Liberia, or alternatively that the bond be secured by an insurance company duly authorized by law to act as surety to an appeal bond. The Court distinguished the appeal statute from the regular bond statute, observing that the posting of a bank manager's check which obtains under the ordinary bond statute fails to meet the requirements of the appeal statute.

The Court rejected the argument of the appellants that the appeal statute was unconstitutional since its requirements for sureties who owned real property in Liberia restricted the constitutional right to an appeal and made it difficult for non-domiciliaries to secure an appeal bond. The Court noted that the constitutional provision granting the right to an appeal bond was not self-executing and had to be buttressed by an enabling statute to ensure the proper exercise of the right and the protection of all the parties to the litigation.

The Court also rejected the request that it should recall its previous opinion which had declared that the posting of a bank manager's check as security to an appeal bond rendered the bond defective, noting that not only had the appellants failed to present any real, present, and immediate injury, but also that the appellants' reference to injury to non-domiciliaries who were not before the Court was imagined and hypothetical. The Court opined that it could not recall previous opinions handed down by it solely on the basis of imagined or hypothetical injury.

Accordingly, the Court granted the motion to dismiss the appeal and ordered the appeal dismissed.

H. Varney G. Sherman of Sherman and Sherman Law Firm appeared for appellants. N. Oswald Tweh of Tweh, Pierre and Associates appeared for appellees.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

This action of ejectment was commenced in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, wherein the appellants sought to oust and eject appellees from a portion of real property and to have the trial court confirm appellant's title to the said portion of real property, being two lots bearing the numbers 27 and 29, located and lying in Sinkor, Monrovia.

Appellees, defendants in the court below, filed an answer together with a motion to dismiss appellants complaint in the action of ejectment. The said answer and motion to dismiss were withdrawn and an amended answer and motion to dismiss were filed in their stead. Basically the contention raised by the appellees in the amended motion to dismiss were:

(1) That the letters of administration issued to J. Emmanuel Z. Bowier and the late Triphina Brathwaite-Bowier, one of the heirs and widow of the said decedent, appointing them as administrator and administratrix of the intestate estate of the late Willie J. M. Bowier, had expired by their terms and by operation of law. Therefore, appellees said, J. Emmanuel Z. Bowier lacked the capacity, as co-administrator, to sue in behalf of the said intestate estate.

(2) That even assuming that the said letters of administration were still valid, Co-administrator J. Emmanuel Z. Bowier was without the bailiwick of the Republic of Liberia and could not sue on behalf of the intestate estate in his capacity as co-administrator, but rather through another person, upon authorization under a power of attorney.

(3) That Co-appellant Samuel Bowier could not legally commence an action on behalf of the said intestate estate because he was neither an administrator of the said intestate estate nor a legal heir of the deceased.

The court below granted the motion to dismiss and dismissed the action on the grounds that (1) J. Emmanuel Z. Bowier lacked the capacity to sue, whether in his own name or in his representative fiduciary capacity, since he was without the Republic of Liberia. Instead, the court said, Co-administrator Bowier should have issued a power of attorney to a resident of the Republic of Liberia to institute the said action. (2) That Co-appellant Samuel Bowier, not having been appointed by the probate court as administrator of the subject intestate estate, lacked the legal capacity to sue on behalf of the said intestate estate.

Appellants excepted to the trial court's ruling and announced an appeal to this Court. In addition to performing other procedural steps to complete the appeal process, the appellant filed an appeal bond in the amount of L\$2,500.00. After appellees were duly notified of the completion of the appeal process, they filed a motion to dismiss the appeal on the ground that the appeal bond was fatally defective. The appellees contended that the manager's check in the amount of L\$2,500.00, secured as an appeal bond by appellant, was in violation of section

51.8 of the Civil Procedure Law which requires that an appeal bond shall consist of two or more legally qualified sureties.

Appellants filed a twenty-count resistance before this Court substantially contending (1) that this Court should declare section 51.8 of the Civil Procedure Law contrary to and repugnant to Article 20(b) of the 1986 Constitution of Liberia:

(2) that this Court should recall its decision and opinion rendered at the close of the March, A. D. 1996 Term in the case Cavalla Rubber Corporation v. The Liberian Trading and Development Bank, [\[1996\] LRSC 20](#); [38 LLR 316](#) (1996). That opinion upheld and confirmed section 51.8 of the Civil Procedure Law and recalled Wilson v. Wilson, [\[1976\] LRSC 13](#); [24 LLR 534](#) (1976) and Stubblefield et al. v. Nasseh [\[1977\] LRSC 7](#); , [25 LLR 443](#) (1977) which permitted and allowed cash, certified checks, manager's checks and bank certificates as security for appeal bonds. This Court now has the duty and responsibility to determine several issues, the first being whether or not section 51.8 of the Civil Procedure Law is unconstitutional.

To answer the foregoing question, this Court must first decipher the legislative intent of section 51.8 of the Civil Procedure Law and compare the same with Article 20(b) of the 1986 Constitution. A scrutiny of the Civil Procedure Law reveals that bonds and securities generally are provided for in chapter 63 and appeal bonds are specifically provided for in chapter 51. Section 51.8 of the Civil Procedure Law, captioned Appeals from courts of records, provides:

"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 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; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction".

The language contained and employed in section 51.8 is clear, straightforward and unambiguous. The provision requires that every appellant shall give an appeal bond in an amount to be fixed by the court with two legally qualified sureties. The term "legally qualified sureties" is defined in section 63.2 (1) of the Civil Procedure Law. The section reads:

"(1) Who may be sureties. Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements this section or an insurance company authorized to execute surety bonds within the Republic."

The object of section 51.8 is stated with clarity, that is to say that the appellant "...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..." In other words, the statute sought to remedy the evil of the cost of litigation associated with or generated by the appeal process or of disobedience to the court's judgment by requiring filing of a bond to indemnify the appellee of the costs of litigation

incurred by him/her and to ensure compliance by the appellant with the final judgment in the case.

From the language of the quoted statutory provision, that is, section 51.8 of the Civil Procedure Law, it is apparent that the clear intention of the National Legislature is that the object of this provision of law can be secured only by two legally qualified sureties defined as two natural persons who are free holders, or an insurance company authorized to serve as surety.

In chapter 63, section 63.1 of the Civil Procedure Law, the National Legislature stipulates what shall be considered as security for a bond. The section lists the following:

(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;

(b) Unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond.

(c) Valuables to the amount of the bond which are easily converted into cash, or

(d) Sureties who meet the requirements of 63.2.

Why did the Legislature provide in 63.1 that a bond in civil cases shall be secured by cash, unencumbered real property, valuables, or legally qualified sureties but in section 51.8 restricts what may be offered as security to an appeal bond by prescribing that an appeal bond shall be secured only by legally qualified sureties? This Court believes that the expressed objective of an appeal bond, as provided in section 51.8, which seeks to ensure compliance with the final determination of the action and payment of litigation costs incurred by an appellee, is to prevent the abuse of the constitutional right of appeal which is available to an appellant in all causes of action cognizable before the courts of this Republic.

Notwithstanding the right of an aggrieved party to an appeal, the rights of the appellee must also be secured and not frustrated by the pursuit of the appeal process. The language of section 51.8 is mandatory and not discretionary. It prescribes that after the lower court loses jurisdiction, an insufficient appeal bond mandates the appellate court to dismiss the appeal. We are convinced that the intent of the framers of the statute (i.e. section 51.8 of the Civil Procedure Law), in addition to protecting the constitutional right of appeal of an appellant, is to ensure that the constitutional right to a speedy and fair trial of the appellee is balanced and protected.

We are convinced also that in the wisdom of the National Legislature the best method of ensuring that the object of section 51.8 of the Civil Procedure Law is secured and achieved is by mandating that an appeal bond be secured by legally qualified sureties. That is, an appeal bond shall be secured by either two natural persons who are freeholders of unencumbered real property or an insurance company authorized to execute surety bonds within this Republic. This mode of security for appeal bonds better serves the achievement of the object of section 51.8 of the Civil Procedure Law. The fact that the Legislature specifically provided for the security of an appeal bond, and did so with a clarity of language which is mandatory in tone, are clear and unambiguous indications of the legislative intent.

This Court notes in passing that the wisdom of the National Legislature to secure an appeal bond by legally qualified sureties is vindicated by the open and notorious fact that the LUBI Bank, which issued the manager's check to secure appellants' appeal bond has been ordered to suspend operations by the Central Bank of Liberia. Hence, at this moment in time the security for the appeal bond under review is worthless.

We shall now return to the task at hand, which is determining the legislative intent. The general rule of 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." 36 CYC 1110.

It is therefore the holding of this Court that section 51.8 of the Civil Procedure Law is clear and unambiguous and requires no further construction. The language implored by the National Legislature is clear and precise, and sufficiently states the clear intent of the lawmakers. The intent of the lawmakers is that an appeal bond shall be secured by legally qualified sureties.

We shall now go to the issue of the constitutionality of section 51.8. The records in this case reveal that appellants herein elected to file an appeal bond secured by manager's check #7223 issued on 12/03/98 by the Liberia United Bank Incorporated (LUBI) in the amount of L\$2,500.00 (Two Thousand Five Hundred only Liberian Dollars), payable to the sheriff of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County.

Appellees contended that the security for appellants' appeal bond is in contravention of section 51.8 of the Civil Procedure Law. Appellants, by way of resistance, said that although this Court upheld the use of manager's checks, bank certificates/ guarantees, or certified checks as appropriate security to an appeal bond in *Wilson v. Wilson*, [\[1976\] LRSC 13; 24 LLR 534](#) (1976) and *Stubblefield et al. v. Nasser* [\[1977\] LRSC 7; 25 LLR 443](#) (1977), that position was later reversed and both of the mentioned cases were recalled in the case *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank*, [\[1996\] LRSC 20; 38 LLR 316](#) (1996), decided at the rendition of the March 1996 opinions of the Supreme Court. Notwithstanding the foregoing, the appellants elected to comply with the rule stipulated in the two recalled opinions of this Court in securing the appeal, and now seek by their request to this Court, to have the Court declare section 51.8 of the New Civil Procedure Law contrary to and in complete contravention of article 20(b) of the Liberian Constitution.

Appellants contended further in count thirteen (13) of their resistance that non-domiciliaries are permitted and allowed by statutory laws to engage in commercial and other activities in the Republic, thereby bringing such persons under the jurisdiction of Liberian courts, and that this permission is granted notwithstanding the fact that the 1986 Constitution prohibits the ownership and title to real property by non-Liberians. Appellants assert that this Court's decision rendered in 1996 in the *Cavalla Rubber Company v. The Liberian Trading and Development Bank (TRADEVCO)* case interprets section 51.8 of the Civil Procedure Law in such a manner that it restricts the right of appeal accorded to non-domiciliaries by requiring that only property valuation bonds or insurance company guarantees could secure an appeal bond. Thus, they say, non-domiciliaries, being non-freeholders, will be subjected to extreme

difficulties in securing the consent of freeholders to use their properties as security to an appeal bond.

The appellants maintained also that this Court's current interpretation of section 51.8 of the Civil Procedure Law prevents all such non-domiciliaries from securing an appeal bond by not allowing cash or other financial instruments to be used, as stipulated in section 63.1 of the aforesaid Civil Procedure Law. Additionally, they said, this Court's interpretation of the said statutory provision on appeal bonds effectively restricts and denies all such appealing non-domiciliaries the constitutional right of appeal to the Supreme Court. Hence, they prayed that this Court recalls the decision in *Cavalla Rubber Company v. The Liberian Trading and Development Corporation (TRADEVCO)* and reinstate the decisions in *Wilson v. Wilson and Stubblefield et al. v. Nasser*. Also, they prayed that this Court goes one step further and declares section 51.8 of the Civil Procedure Law unconstitutional.

The first request of the appellants suggests that this Court's decision of 1996 in the *Cavalla Rubber Company v. The Liberian Trading and Development Bank (TRADEVCO)* case is incorrect and erroneous and needs to be corrected. This Court notes that that decision was rendered approximately five (5) years ago and that Counsellor H. Varney G. Sherman who was one of the counsels for the adverse party, that is, counsel for appellant, is also one of the counsels for appellants in the current proceedings. It is therefore the opinion of this Court that counsel for appellants was in full knowledge of this Court's interpretation of section 51.8 of the Civil Procedure Law and the recall of *Wilson v. Wilson and Stubblefield et al. v. Nasser*. Yet, he chose to secure the appeal bond in these proceedings by a method which was contrary to this Court's decision. Given the foregoing, we believe that the manager's check was intentionally secured as an appeal bond.

In their arguments on this point, both oral and written, the appellants showed no injury to their rights as a result of this Court's interpretation of section 51.8. Instead, what was argued vehemently was hypothetical injury to the rights of a non-domiciliary which could occur in the future. Counsellor Sherman's clients are natural citizens of this Republic. The non-domiciliary and transient person in whose favor the said counsel argued was not before the Court. Hence, the request to the Court to recall the said opinion was made not on real and manifest injury to the rights and privileges of a party litigant before this Court but on the behalf of a future injury to the rights of a possible party litigant who could appear before this Court. The arguments do not portray or present evidence of a direct and immediate injury to the present party litigants, but instead present an imagined future injury to one not before the Court.

This Court says therefore that the arguments made by counsel for appellants present no evidence of direct and immediate injury to the rights of his clients which resulted from this Court's decision in the *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank (TRADEVCO)* case. This Court is not, and will not be persuaded by imagined and hypothetical injury to future party litigant, and will not proceed to recall any decision rendered by it by such arguments. Decisions rendered by this Court will be reviewed only on the basis of evidence of present and immediate injury suffered by real party litigants with the legal standing to sue. Hence, we hereby confirm and affirm this Court's decision in the *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank (TRADEVCO)* case, rendered during the March, A. D. 1996 Term of this Court.

The second issue raised by the appellants is that section 51.8 is in contravention of and completely contrary to article 20(b) of the 1986 Constitution and therefore unconstitutional. This issue suggests that this Court exercises its constitutional power of judicial review. As we have previously stated in this opinion, section 51.8 of the Civil Procedure Law does not restrict the constitutional right of appeal. Instead, the legislative intent was to ensure that in the process of exercising one's right of appeal, the constitutional rights of the adverse party to a fair and speedy trial is protected. Further, this Court is of the opinion that the constitutional provision granting the right to an appeal is not self-executing. Hence, section 51.8 and other similar provisions are enabling statutes designed to secure the enjoyment of the constitutional right granted by article 20(b). Accordingly, in consideration of the lack of evidence of any immediate and present danger preventing and restricting the exercise of the constitutional right of appeal by appellants as a result of section 51.8 of the New Civil Procedure Law, this Court holds that section 51.8 of the Civil Procedure Law is constitutional and complementary to article 20 (b) of the 1986 Constitution of Liberia.

The final issue which this Court must decide is whether or not an appeal bond secured by a manager's check renders the appeal bond fatally defective? We answer in the affirmative. The filing of an appeal bond secured by a manager's check is in complete violation of chapter 51.8 of the Civil Procedure Law and the opinion of this Court, rendered in the case *Cavalla Rubber Corporation v. The Liberia Trading and Development Bank*.

Pursuant to the said section 51.8, an appeal bond found to be defective or insufficient after the lower court has lost jurisdiction shall result in the dismissal of the appeal by the appellate court. As we stated supra, appellants knowingly and intentionally elected not to comply with the statutory and decisional laws which govern appeal bonds, and failed to present any evidence of present and immediate injury to their right of appeal, suffered as a result of compliance with section 51.8 of the Civil Procedure Law and the opinion of this Court in the *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank (TRADEVCO)* case. Simply put, appellants knowingly and intentionally set out on a legal journey, by an illegal mode of travel, filled with the risk of losing their rights. We are of the opinion and therefore hold that pursuant to the mandate of section 51.8 of the Civil Procedure Law, the appellants' appeal bond is fatally defective and the appeal is hereby dismissed.

Wherefore, and in view of the forgoing, the motion to dismiss is hereby granted. The Clerk of this Court is ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, ordering the judge presiding therein to resume jurisdiction over the case, enforce the court's decision, and give effect to this opinion and judgment. Costs are assessed against the appellants. And it is hereby so ordered.

Motion to dismiss appeal granted.