

LIBERIA PETROLEUM REFINING COMPANY, by and thru its Managing Director,
PHILIP DAVIS, Appellant, v. **JOHN T. SICKRAH et al.** and the **BOARD OF
GENERAL APPEALS**, Ministry of Labour, Appellees.

MOTION TO DISMISS APPEAL FROM THE NATIONAL LABOUR COURT.

Heard: May 16, 1989. Decided: July 14, 1989.

1. Sureties to a bond shall be either two natural persons who are householders, or insurance company authorized to execute surety bonds within the Republic of Liberia.
2. It is statutorily mandatory that an affidavit of sureties must be attached to the appeal bond.
3. The service of the notice of completion of the appeal confers jurisdiction on the Supreme Court over an appeal case.
4. A sufficient description of realty in the affidavit of sureties means property so described as to make finding it on the ground an easy exercise.

From a ruling in favor of John T. Sickrah et al. at the Ministry of Labour for wrongful dismissal, the Liberia Petroleum Refining Company petitioned the National Labour Court for judicial review. Upon hearing the petition, the National Labour Court affirmed the ruling of the hearing officer. From this affirmation of the hearing officer's ruling, the Liberia Petroleum Refining Company appealed to the Supreme Court for final determination.

At the call of the case for hearing of the appeal, the appellees, John T. Sickrah et al., informed the Court that they had filed a motion to dismiss the appeal on grounds that (a) the appeal bond was defective and had been filed out of statutory time; (b) that the notice of completion of appeal was filed over and beyond the time allowed by statute; and (c) that the appeal bond fell short of the surety requirements provided by law.

In passing on the motion, the Supreme Court upheld the contentions of the movants, granted the motion to dismiss, and confirmed the ruling of the National Labour Court.

Theophilus C. Gould of the Brumskine and Associates Law Firm appeared for appellants/respondents. *Roger K Martin* of the Martin Law Firm appeared for appellees/movants.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

This case, an action for wrongful dismissal, emanated from the Ministry of Labour. The hearing officer who was the director of the Labour Standards Division ruled in favour of appellees, from which ruling appellant appealed to the National Labour Court by the filing of a petition for judicial review. The National Labour Court heard the petition for judicial

review and affirmed the ruling of the hearing officer. Appellant thereupon excepted to the judgment of the National Labour Court and announced an appeal to this Honourable Court.

At the call of the case for hearing of the appeal, the appellees informed us that they had filed a motion to dismiss the appeal because the appellant, even though having filed an approved bill of exceptions, had failed and neglected to fulfill the other statutory requirements, as follows:

(a) Appellant had failed to file an approved appeal bond within statutory time. Appellees averred that " . . . the judgment appealed from was rendered in open court on the 19th day of January, A. D. 1988. Defendant/appellant was required by law to have filed an approved appeal bond on or before March 19, 1988, but failed to do so as in keeping with the clerk's certificate attached.

(b) Appellant had filed a defective appeal bond after the statutory period required by law had expired, which bond was approved by the trial judge.

(c) The notice of completion of appeal was served on appellees sixty-three days after rendition of final judgment, which was over and above the statutory period.

(d) That appellant appeal bond fell short of the sureties requirements of law, and therefore the Honourable Supreme Court should dismiss the appeal.

Appellant filed an eight-count resistance which was withdrawn and subsequently substituted with an amended resistance containing ten counts, as follows:

"1. Appellant concedes the averments contained in counts 1 and 2 of the appellees' motion and says that same are the true and correct account of the proceedings both before the hearing officer of the Ministry of Labour and the National Labour Court respectively.

2. As to count 3 of the appellees' motion, appellant concedes that it filed its bill of exceptions on the 27th day of January, A. D. 1988 but denies that it neglected and failed to file an approved appeal bond within statutory time. The ruling of the Labour Court was delivered on the 19th day of January, A. D. 1988. As such, the statutory time began to run from January 20, 1988 and not January 19, 1988 as claimed by the appellees.

3. Still on count 3 of the appellees' motion, appellant further says that the allegation that its appeal bond should have been filed and completed on or before the 19th day of March A. D. 1988 is misleading, erroneous, baseless and a miscalculation in that said bond should have been completed and perfected on the 20th day of March, A. D. 1988 but since the 20th day of March A. D. 1988 was a Sunday, the law in vogue permits appellant to file said bond on the 21st day of March, A. D. 1988 which was Monday after the said Sunday. Appellant further says that the said 20th day of March A. D. 1988 was a holiday (Sunday) and therefore it perfected and completed the filing of its bond on the 21st day of March, A. D. 1988 in

keeping with law. Copy of said bond is hereto attached and marked exhibit 'A' to form a cogent part of this resistance.

4. As to count 4 of the appellees' motion, appellant denies the defectiveness of its bond for the law relating to appeal bonds provides that the sole purpose is to indemnify the appellees in case judgment is obtained in their favour. In the instant case, the property used in the appeal bond was the property of the appellant, Liberia Petroleum Refining Company, located in Gardnersville. As indicated in the appeal bond, it was sufficient to indemnify the appellees from all costs, injury and loss that they might sustain if judgment were rendered in their favour. Description of real property as to metes and bounds is not required if real property pledged is sufficient for the purpose of indemnification.

5. Further as to count 4 of the appellees' motion, appellant says that the appellees are guilty of waiver and laches for they had three (3) days within which to have requested justification of sureties before the court below lost its jurisdiction. Their failure to do so renders them guilty of waiver and laches and consequently, they cannot now request this Court to dismiss the case on mere technical ground which this Court frowns upon.

6. Further to count 4 of the motion, as regards the contention that the property should have been described in the affidavit of sureties, the Supreme Court has long rejected this as a mere technicality which should not prevent this Court from hearing appeal on its merits especially when appellant has complied with all legal requirements for perfection of the appeal bond, and the appeal generally.

7. As to count 5 of the appellees' motion, appellant says same should be dismissed for, under the law, the failure of the appellant to serve notice on the appellees of the filing of an approved appeal bond as required by statute is no ground for dismissal of the appeal where appellee had actual notice of the filing of the bond and its contents. In the instant case, the appellees obtained a certificate on the 21st day of March, A. D. 1988 to the effect that no appeal bond or notice of completion of appeal was filed. However, on the same day and date, the appellant's appeal bond was approved by Judge Arthur K. Williams and filed by the very clerk who should have informed the appellees that the appeal bond had subsequently been filed and therefore should have withdrawn his certificate.

8. As to count 6 of the appellees' motion, appellant says that the sole purpose for a bond as a requirement upon appeal in a civil action is to indemnify appellees from all costs or injury arising out of the appeal if unsuccessful and to comply with the judgment of the appellate court to which the case is removed.

9. Appellant further says that for the appellant, Liberia Petroleum Refining Company, a solely owned government company to file an indemnity bond is a surplusage; therefore, even if a defect were present in said bond which of course is denied, the appeal would not be

vitiated since the bond would be unnecessary for all intents and purposes since indeed and in fact the appellant, Liberia Petroleum Refining Company, is a wholly government owned entity.

10. Appellant denies all and singular all other averments of both law and facts as are contained in appellees' motion which have not specifically traversed by this resistance.

Starting in the reverse order of appellees' issues, the law is that sureties on a bond shall be either two natural persons who are householders or insurance company authorized to execute surety bonds within the Republic of Liberia. Appellant's bond, from examination, meets none of the above legal requirements. The Civil Procedure Law, Rev. Code 1: 63.2(1) states that unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements of this section or an insurance company authorized to execute surety bonds within the Republic. Appellant could therefore only secure its appeal bond in straight conformity with the statute which appellant failed to do.

It is true that the service of the notice of completion of the appeal confers jurisdiction on the Supreme Court over an appeal case. Civil Procedure Law, Rev. Code 1: 51.9; *Bedell v. Bedell*, 20 LLR 484 (1971). Therefore, counsel for appellees should have accepted the notice of completion of appeal and then thereafter raise an issue or make notation thereof by filing a notice with the clerk of the trial court. Professional ethics frown on impoliteness by counsel in this regard. We however revert to the main issues in the motion.

Final judgment was rendered in open court on the 19th day of January A. D. 1988. Appellant was required by law to have filed an appeal bond on or before March 19, 1988. Instead, appellant tendered an appeal bond on March 21, 1988, which was approved on said date and filed with the clerk of court. Appellees contend that the appeal bond is not valid since the statutory period required by law had expired and that appellees had already secured a certificate from the clerk's office to that effect. Moreover, the appeal bond tendered did not have attached to it an affidavit of sureties describing the property put up to secure the bond. Hence, appellees say, the bond is defective and should therefore be dismissed. This Court has said on numerous occasions that "a sufficient description of realty in the affidavit of sureties means property so described as to make finding it on the ground an easy exercise; the Court suggested the best means to be the number of the plot of land and its description by metes and bounds.-*West Africa Trading Corporation v. Alraine (Liberia) Ltd.*, 24 LLR 224 (1975). The statute provides that the affidavit of sureties shall accompany the bond and must contain specific provisions. Civil Procedure Law, Rev. Code 1: 63.2.

It is statutorily mandatory that an affidavit of sureties is attached to the appeal bond. As much as we would like to proceed with the hearing of the appeal, we have been paralyzed by the negligent behavior of the appellant in not timely perfecting the appeal and in failing to attach an affidavit of sureties to the appeal bond.

In view of the foregoing, and the controlling laws cited, we hold that the motion being sound and supported by the statute, the same ought to be and is hereby granted. Costs are ruled against the appellant. And it is hereby so ordered.

Motion granted; appeal dismissed.