LIBERIA AGRICULTURAL COMPANY (LAC), by and thru its General Manager, K. D. GERHART, Appellant/Respondent, v. **SAMUEL TWEHWAY** and the Labour Commissioner, **JAMES B. DENNIS**, Appellees/Movants.

MOTION TO DISMISS APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: May 17, 1989. Decided: July 14, 1989.

1. To be valid, a bank certificate of deposit securing an appeal bond should not be limited to any particular time in the future, but it must be written in such a way as will allow it to remain effective until final determination is made of the appeal for which it is offered.

2. In this jurisdiction, it is the trial judge who approves appeal bond; the trial court loses jurisdiction over a matter on appeal after a notice of completion of a appeal is issued by the clerk of the trial court and served on the appellee. The matter then is said to be pending on appeal before the appellate court.

3. As long as a matter is pending before the appellate court, the appellant cannot return to the trial or lower court, which had already lost jurisdiction, in order to make an inadequate appeal bond adequate.

4. If a party fails in any cause to do that which the law requires him to do for himself, the court will not assume to grant him these rights which, by his own negligence, he has failed to secure for himself.

Co-appellee/movant, Samuel Twehway instituted an action against the appellant/respondent with the labor commissioner of Grand Bassa County for illegal dismissal. The labor commissioner determined the case and awarded the appellee the amount of $10,452.99 as compensation for his illegal dismissal. The appellant appealed from this ruling to the Debt Court for Grand Bassa County, which upheld the ruling of the labor commissioner. From the judgment of the debt court, upholding the ruling of the labor commissioner, the appellant appealed to the Supreme Court for final review and determination.

Apparently, all the appeal formalities were executed and completed within statutory time when the notice of completion of appeal was issued, served and filed. The appeal bond in the instant case being a bank certificate, and although valid on its face, placed a time limit on its validity without due consideration to whatever time a final determination of the appeal, for which said bond was offered, would have been made. Consequently, prior to the determination of the appeal, the time for which the bank certificate (which served as security to the appeal bond) was issued, expired.

After one month, while the appeal remained pending without an appeal bond, the bank authorities, who had issued and placed a time limit on the bank certificate, attempted to do

what they termed a renewal of the bank certificate. This act on the part of the bank authorities was considered by the appellees as an attempt to make adequate or sufficient an inadequate or insufficient appeal bond, which act did not conform with the practice and time of making an appeal bond sufficient. The appellees therefore moved the Supreme Court to dismiss the appeal for failure on the part of appellant to file an appeal bond. The Supreme Court, finding magnitude in the motion, upheld the same and dismissed the appeal.

Henrietta Koenig for the appellee. *Roger K Martin* for the appellant.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

Samuel Twehway, formerly an employee of the Liberia Agricultural Company (LAC) of Grand Basses County, filed an action of illegal dismissal before the labour commissioner of that County, Mr. James Dennis, against LAC. The Labor commissioner heard the complaint and ruled in favor of Co-appellee Twehway, awarding him $10,452.99 (Ten Thousand Four Hundred Fifty-Two Dollars and Ninety-Nine Cents). The appellant company being dissatisfied with the said ruling, excepted and announced an appeal to the debt court in that County, which heard the petition for judicial review and affirmed the ruling of the labour commissioner. The company was still dissatisfied with the said decision of the debt court and therefore appealed further to this Court of final resort. The company went through the usual formalities of appeal to this Court in civil matters; and it filed its approved appeal bond secured by a bank certificate of deposit, and the notice of completion of the appeal by the clerk of the said court was issued and served. The bank certificate of deposit, issued by a prominent bank here, has provoked the present controversy for being insufficient to support the appeal bond, and therefore, it is quoted herein *verbatim et literatim:*

"Meridien Bank (Liberia) Ltd.
Corner of Mechlin and Ashmun Streets,
P. O. Box 408,
Tel. 222180 & 223111
Telex 445644 Monrovia,
Liberia January 3, 1988
TO: The Sheriff
The Debt Court
Grand Bassa County
LIBERIA

CERTIFICATE OF DEPOSIT-APPEAL BOND 51150-106

Liberia Agricultural Company (LAC) by and thru its General Manager, K. D. Gerhart of the City of Buchanan, Grand Bassa County APPELLANT VERSUS Samuel Twehway, and

Labour Commissioner James B. Dennis, Labour Ministry, Grand Bass County APPELLEE (PETITION FOR JUDICIAL REVIEW ACTION OF ILLEGAL DISMISSAL)

"KNOW ALL HEN BY THESE PRESENTS: That We, MERIDIEN BANK (Liberia) Ltd., a banking institution doing business in Liberia hereby certify that the Liberian Agricultural Company (LAC), the above named appellant, will comply with the judgment together with cost up to the sum of $15,679.49 out of monies available at this bank if final judgment be rendered in favor of Samuel Twehway, the above named appellee, the same being the principal sum of $15,679.49 awarded the appellee in the above case plus costs. Drawing under this certificate will be made at sight against a statement officially signed by yourselves certifying that judgment has been made against Liberian Agricultural Company (LAC) in the above case and giving full details.

This certificate is issued for the purpose of the appeal bond on the Liberian Agricultural Company (LAC), the said appeal bond in this case and is valid until July 4, 1988, after which time it will be considered null and void, but it is renewable upon application prior to its expiration.

This instrument will be returned to the bank when the purpose for the issuance of the instrument has been fulfilled

Very truly yours,
Meridien Bank (Liberia) Ltd.
Albert K. Maxwell, Manager
INTERNATIONAL DEPARTMENT
Jane B. Dono
ASSISTANT MANAGER
CERTIFIED AND CORRECT COPY OF THE ORIGINAL
Joseph W. Walker
CLERK OF COURT"

As this appeal was pending and after the trial court had already lost jurisdiction over the matter, the bank certificate above, which was limited to July 4, 1988, expired by its own force and effect long before the appeal was called for hearing and determination. Consequently, on August 4, 1988, relying on the stipulations in the expired certificate, another bank certificate of deposit was issued to extend the expiry date for appeal bond no. 51150-106, which had already expired. The new bank certificate provided as follows:

"August 4, 1988
The Sheriff
The Debt Court

Grand Bassa County, Liberia
Greetings:

"Re: Certificate of deposit-appeal bond No. 511513-106.

We are pleased to advise that the expiry date of the above mentioned appeal bond has been extended up to July 4, 1989 with effect from July 4, 1988.

Regards,

Very truly yours,

INTERNATIONAL DEPARTMENT

James B. Dono
ASSISTANT MANAGER
Albert K. Maxwell
AVP, MANAGER"

Notwithstanding the extension of the effect and validity of the bank certificate of deposit which seeks to support the appeal in this case, on September 2, 1988, Mr. Twehway filed this motion to dismiss the appeal, stating substantially that:

1. The purported appeal bond filed by appellant became null and void since July 4, 1988 when it expired, and therefore was of no legal force and effect;

2. That as the strength and effect of the instrument was limited to July 4, 1988, and same could only have been rendered sufficient before the lower court lost jurisdiction over the matter; and in this case, the lower court lost jurisdiction since January 8, 1988 when the clerk of the said court issued a notice of completion of appeal and the matter had reached this Court, and therefore the bond could not be legally made sufficient thereafter;

3. That the appeal bond dated January 8, 1968, was supported by unverified certificate of deposit stating verbatim "This certificate is issued for the purpose of the appeal bond in this case and is valid until July 4, 1988, after which time it will be considered null and void, but it is renewable upon application prior to its expiration date"; and

4. That the sureties had failed .to sign to create a legal obligation for appellant, and had also failed to file an affidavit of sureties along with the appeal bond and therefore could not confirm that appellant had a deposit with the bank or that it is a surety, and the bond is void of its signature as surety, hence not a true bank certificate at all.

Appellees maintained that the Supreme Court had already acquired jurisdiction over the matter after service of the notice of the completion of the appeal. Appellees also maintained

that the lower court lost jurisdiction over the case when the clerk issued the notice of the completion of the appeal and same was served on appellees; and that therefore, appellant could not return to that court after July 4, 1988 to make the appeal bond sufficient. The appellant, on the other hand, contended that having secured the bond by bank certificate of deposit, the fact that six (6) months had elapsed during the pendency of the appeal could not warrant the dismissal of said appeal; that in any case, bonds are secured in order to guarantee performance of the judgment by appellant if he loses, and that the surety on the bond cannot be reached when the appellant's assets had not been exhausted to satisfy the judgment; and that it is inconceivable that appellant's assets could be exhausted in this case, after an adverse ruling.

Having heard the arguments, we have resolved with every certainty that only one main issue is relevant to the determination of this motion to dismiss this appeal, and it is: Whether or not an appeal bond secured by a bank certificate of deposit is valid, where the issuing bank limits the effect and validity of the said certificate by its own time limit other than the time of a final determination of the said appeal, which is hardly predictable.

The answer to that question is simply, no. To be valid, a bank certificate of deposit securing an appeal bond should not be limited to any particular time in the future, but it must be written in such a way that will allow it to remain effective and valid until a final determination is made. Thereafter, if the said determination is in favor of the appellant, the bank certificate of deposit is returned to the bank as its property. But if the appellant loses the appeal, then the bank certificate will be utilized by both the sheriff and the court to indemnify the appellee, as the issuing bank had promised.

As appeal bond is required of almost every appellant, and according to our laws the essence is to serve as guarantee and or security 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 court to which the case is removed."* Civil Procedure Law, Rev. Code 1: 51.8. (Emphasis supplied).

In the appeal bond filed along with the bank certificate of deposit in this case, the appellant had undertaken that: "The condition of this obligation is that we will indemnify the respondents appellees from all costs and from all injury arising from the appeal taken by the above named petitioner/appellant *and will comply with the judgment of the court to which said appeal is taken or any other court to which said action may be removed."* (Our emphasis).

Both the provisions of the statute and of the obligations of the appeal bond are to the effect that the appellant will not only indemnify the appellee from all costs arising from the appeal, but that he will also comply with the judgment of the court to which said appeal is taken or any other court to which said action may be removed.

The latter provision anticipates both a prolonged and an indefinite period, the conclusion of which cannot be limited to any definite date in the future. It is a period whose duration is controlled by several factors which are hardly regulated by the appellate court itself and such factors include, among other things, the position of the case on the trial docket of the appellate court, the sitting of the court, and other irresistible unforseen circumstances preventing a timely determination. And when one considers that appellant had undertaken an obligation in the appeal bond to comply with the judgment of this Court and also the judgment of any other court to which the action may be removed, without any limitation on said statement, it is only fair that the bank certificate of deposit accompanying such an appeal bond should not be limited in effect, but rather it should remain effective to serve its purpose until a final determination of the appeal; if its purpose is truly to indemnify the appellee after an adverse judgment for the appellant.

In this jurisdiction, it is the trial judge that approves any appeal bond. The trial court loses jurisdiction over a matter on appeal after the notice of completion of appeal is issued by the clerk of the trial court and served on the appellee. Thereafter, the matter will be said to be pending on appeal before the Supreme Court for a final determination. *Standard Motor Corporation v. Pratt,* 21 LLR 381 (1972); *K. Rasamny Bros. v. Brunet,* 20 LLR 3 (1970); *Jarboe v. Jarboe,* 24 LLR 352 (1975).

As long as a matter is pending before the appellate court, the Supreme Court in this case, the appellant cannot return to the lower court which had lost jurisdiction, in order to make an inadequate appeal bond sufficient. A matter on appeal before this Court remains pending as of the time of the issuance of the notice of completion of appeal, and remains pending here until it has been finally determined. Within that period, the appellant will not be allowed to return to the lower court to make adequate or sufficient his bond.

Therefore, the validity of a time limited bank certificate of deposit supporting an appeal bond might expire while the appeal is still pending undetermined and this Court will not allow the appellant to return to the court below to augment the validity of his bank certificate of deposit. Consequently, a motion filed to dismiss the appeal for failure to file an appeal bond will be sustained. *Jackson v. Eastman-Mason,* 21 LLR 216 (1972); *K. Rasamny Bros. v. Brunet,* 20 LLR 3 (1970); *Standard Motor Corporation v. Pratt,* 21 LLR 381 (1972).

It is for these reasons we hold that a bank certificate of deposit backing an appeal bond should not be limited by time, other than the time of the final determination of the appeal, which it seeks to serve.

In the matter under review, appellant filed an appeal bond supported by a bank certificate of deposit issued by a renowned local bank, the Meridien Bank (Liberia) Ltd., on January 3, 1988. The said bank certificate of deposit is not questionable otherwise, except for the fact

that it was limited, contrary to what we said *supra*. Here is the language of the subject bank certificate of deposit:

"This certificate is issued for the purpose of the appeal bond of the Liberian Agricultural Company (LAC). The said appeal bond in this case is valid until July 4, 1988 after which it will be considered null and void, but it is renewable upon application prior to its expiration date." (Emphasis ours)

From our explanations given above, the limitation on the validity of the said bank certificate of deposit to July 4, 1988, was a very serious and incurable defect indeed, despite the stipulation for a renewal in the future. The danger in limiting the effect and validity of that bank certificate is that it in fact finally expired on July 4, 1988, while this appeal is still pending before us today; it expired almost one year before the hearing of this motion and the giving of this ruling while the substance of the appeal itself, for which the bank certificate of deposit was issued, still remains pending undetermined to date.

In order to cure the said defect of its appeal bond, appellant wrongly decided to make use of the provision in the said bank certificate of deposit allowing for a renewal. Accordingly, the appellant applied to Meridien Bank for its renewal, and therefore the bank issued a purported renewal certificate on August 4, 1988, which was also limited in time and reads thus;

"We are pleased to advise that the expiry date of the above mentioned appeal bond has been extended up to July 4, 1989 with effect from July 4, 1988."

Thus, we say that from July 4, 1988, when the bank certificate first expired, to August 4, 1988, when it was renewed, covering an entire period of one month, there was in fact no bank certificate of deposit supporting appellant's appeal bond; and therefore, there was no appeal bond at all.

According to our earlier discussions herein, the appellant could not at that time legally make the said appeal bond sufficient, because only the trial court to which it cannot legally return, had authority to make the said bond sufficient once more. And this is a legal impossibility which even the appellant concedes.

Therefore, there is no appeal bond up to now to support appellant's appeal. Consequently, the appeal must be dismissed for violating the statute on appeal and appeal bonds. Civil Procedure Law, Rev. Code 1: 51.4 & 51.6; *The Liberian Produce Marketing Corporation v. Korh and Swen,* 35 LLR 341 (1988).

This Court has held that if a party fails in any cause to do that which the law requires him to do for himself, the court will not assume to grant him those rights which, by his own negligence, he has failed to secure for himself. Therefore, the failure to timely file an appeal or the filing of an insufficient appeal bond or none at all, resulting from the failure to comply

with the statutory requirements are grounds for dismissal of an appeal upon motion by the appellee, as in this case before us. *Ammons et al. v. Barclay,* 18 LLR 212 (1968); *Talery et al. v. Wesley,* 21 LLR 116 (1972); *Fumhah v. Karbeh,* 19 LLR 423 (1970).

Hence, we hold that the appeal bond filed by appellant is, in our opinion, nonexistent, and therefore, the motion to dismiss the appeal is sustained and the said appeal is hereby dismissed.

The Clerk of this Court is therefore ordered to send a mandate to the court below to resume jurisdiction and enforce its judgment. Costs disallowed. And it is hereby so ordered.

Motion granted; appeal dismissed.