

THE LIBERIAN PRODUCE MARKETING CORPORATION, by and thru its Managing Director, FRANCIS B. DUNBAR, Appellant, v. **JOSIAH KORH** and **GARRETSON SWEN**, Appellees.

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

Heard: July 4, 1988. Decided: July 29, 1988.

1. Every appellant must give an appeal bond in an amount fixed by the court with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs and injury arising from the appeal.
2. A failure to file a sufficient appeal bond within the time specified by law renders the appeal dismissible; provided that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action.
3. The limitation placed on a letter of guarantee for its expiration on a specified date renders the letter of guarantee invalid after the expiration of the date and creates a defect in the bond as of the date of expiration.

Appellees filed a motion to dismiss the appeal taken by the appellant from a judgment rendered against it by the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in an action of damages for injury to the reputation. The ground stated in the motion for requesting the dismissal of the appeal was that the bond was defective, in that the date stated in the letter of guarantee to the bond for its validity had expired, rendering the bond invalid. Appellant countered the contention of the motion to dismiss by asserting that the bank letter of guarantee, which had expired, had been replaced by a bank certificate stating that it was for an indefinite period and which thereby validated the bond.

The Supreme Court rejected the contention of the appellant and sustained the ground stated in the motion to dismiss, noting that the limitation placed on the guarantee, which did not contemplate a delay in the hearing of the appeal, rendered the bond invalid by its own terms after the expiration of the date of validity stated in the bond. The Court observed that after the expiration of the date stated in the letter of guarantee, the bond was no longer effective. The Court stated that the certificate subsequently filed by the appellant did not have the effect of restoring the validity of the bond. The appeal was therefore dismissed.

Francis Galawolo and Henrietta Koenig appeared for the appellees. Johnnie N Lewis appeared for the appellant.

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

Appellant announced an appeal to this Court from an adverse judgment in an action of damages for injury to the reputation rendered against it by the Civil Law Court, Sixth Judicial Circuit, Montserrado County. After going through the other formalities for an appeal to this Court, it filed an appeal bond on September 12, 1984.

On September 25, 1985, the appellees filed a motion before this Court to dismiss the appeal and stated therein as reasons the following, which we quote hereunder.

1. That appellant's appeal bond tendered security for satisfaction of the money judgment rendered against appellant in the within damages case, has woefully elapsed, in that appellant's appeal bond, supported by a letter of guarantee No. 016, dated August 29, 1984 states verbatim:

This letter of guarantee is valid for one calendar year effective August 29, 1984. All documents justifying the claims must be accompanied by a statement duly signed by the presiding judge of the People's Civil Law Court, Montserrado County, R. L. and presented to this office not later than August 29, 1985. Thus, appellees submit that August 29, 1985 having expired, appellant's appeal bond is null anti void ab initio and of no legal force and effect, as will more fully appear from photocopy of said letter of guarantee, appeal bond and surety affidavit, herein marked exhibits A, B, C, & D, forming a part of this motion."

On October 8, 1985, appellant filed a three count resistance to the appellees motion to dismiss its appeal, as follows:

1. Because appellant's appeal bond tendered as security for satisfaction of the money judgment rendered against ' appellant in the above cited case, remains legally valid and is of full force and binding effect throughout the pendency of this appeal, as is evidenced by appellant's bank certificate issued by the Agricultural Cooperative and Development Bank, Ref. No. ACDB/CE0-018-09/84, and dated September 12, 1984, and hereto attached and marked exhibit "A", which certificate of September 17, 1984 superceded the letter of guarantee dated August 29, 1984.

2. And also because appellant submits that its bank certificate is of indefinite duration and is not, time limited, which appellant most respectfully asks this Honourable Court to take judicial notice of appellant contends that its bond, meeting the requirements of the statute should not be disturbed.

3. Appellant further contends that appellees' motion should be denied because the latter part of count one seeks to mislead this Honourable Court when it assert that appellant's bond is null and void ab initio and of no legal force and effect." For, when the bond was approved by the trial court, it was then adequate, genuine and valid, as it still continues to be valid. See Civil Procedure Law, Rev. Code 1: 63.3. Further, that appellees not having raised the contention of voidness ab initio or exception to surety cannot now raise same. See also Civil Procedure Law, Rev. Code 1: 63.5.

Appellees countered the resistance with the filing of an answering affidavit on July 1, 1986. In the answering affidavit, they contend substantially as follows: That the letter of September 12, 1984, unlike the letter of guarantee No. 016, is a mere notice of information to the effect that appellant has an account with the surety bank in excess of the value of \$45,000.00 (Forty-Five Thousand Dollars), and that therefore it cannot legally serve as security for indemnification of the money judgment; that the material difference between the letter of guarantee No. 016 of August 29, 1984, and that of September 12, 1984, is that the former was duly verified by a surety Affidavit consistent with law, whereas the latter was not so verified, and, therefore cannot legally serve as sufficient security; that appellant has no legal bond or security before this Court because of the limitations of the guaranty of August 29, 1985; and that the approval of an appeal bond by the trial court by no means consummated the perfection of the same, and, it therefore devolved upon the appellant to superintend his appeal to its conclusion after approval of the bond by the trial judge. Accordingly, appellees said, the appellant's contention that appellees should have first objected to the inadequacy of the said bond in the lower court is both novel and "inefficacious in law."

The foregoing contentions in the motion to dismiss the appeal and the answering affidavit leave us with one issue of substance to resolve: Whether or not appellant has a valid appeal bond before this court to justify hearing the appeal in this case on its merits.

The appellant contends that it has a valid appeal bond before us, whereas the appellees say, on the contrary, it doesn't. In deciding which party is right in these proceedings, we will review the documents which form the basis of the contentions

in the motion to dismiss the appeal, and thereafter determine whether or not they constitute a valid appeal bond. We begin with the letter of guarantee No. 016, of August 29, 1984, issued on behalf of appellant by the Agricultural and Cooperative Development Bank, over the signature of its president, Mr. Wilson K. Tarpeh. We quote said letter of guarantee verbatim:

LETTER OF GUARANTEE NO. 016 VALUE \$45,000.00

BY ORDER AND FOR ACCOUNT OF LPMC,

MONROVIA, LIBERIA

WE HEREBY FINANCIALLY GUARANTEE LIBERIAN PRODUCE MARKETING CORPORATION, BY ITS MANAGING DIRECTOR, MR. ALEXANDER F. JEFFY, FOR AMOUNT NOT EXCEEDING \$45,000.00

AGAINST LIBERIAN PRODUCE MARKETING CORPORATION'S APPEAL BOND NOTICE OF COMPLETION FILED IN THE CASE OF THE JOSIAH KORH AND GARRETSON SWEN VERSUS THE LIBERIAN PRODUCE MARKETING CORPORATION (LPMC)

THIS LETTER OF GUARANTEE IS VALID FOR ONE CALENDAR YEAR EFFECTIVE AUGUST 29, 1984. ALL DEMANDS JUSTIFYING THE CLAIMS MUST BE ACCOMPANIED BY A STATEMENT DULY SIGNED BY THE PRESIDING JUDGE OF THE PEOPLE'S CIVIL LAW COURT, MONTSERRADO COUNTY, REPUBLIC OF LIBERIA AND PRESENTED TO THIS OFFICE NOT LATER THAN AUGUST 29, 1985. (our emphasis)

Truly yours,

Wilson K. Tarpeh

PRESIDENT"

This letter of guarantee No. 016 was supported by an affidavit of sureties to the effect that the Agricultural and Cooperative Development Bank, represented by its President, Mr. Wilson K. Tarpeh, was surety to appellant's appeal bond, having made oath according to law that it was the surety for appellant as per its letter of guarantee NO .016, issued in favour of LPMC, with a value of \$45, 000.00, and dated August 29, 1984.

In addition to those documents, the ACDB, on September 12, 1984, issued yet another letter of guarantee in favor of LPMC, which latter document was approved by ACDB's president, Mr. Wilson K. Tarpeh. The said document reads as follows.

RE: OUR LETTER OF GUARANTEE NO. 016 VALUE \$45,000.00 BY ORDER AND FOR ACCOUNT OF LPMC, MONROVIA, LIBERIA.

WE HEREBY CERTIFY THAT LIBERIAN PRODUCE MARKETING CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR MR. ALEXANDER H. JEFFY, MAINTAINS AN ACCOUNT WITH THIS BANK WHICH COVERS OVER THE VALUE OF OUR ABOVE LETTER OF GUARANTEE, LIBERIAN DOLLARS \$45,000.00.

WE THEREFORE FAITHFULLY PROMISE TO PAY OVER TO THE SHERIFF OF MONTSERRADO COUNTY, ALL DEMANDS FOR CLAIMS AND SETTLEMENT IN RESPECT OF THE LPMC'S APPEAL BOND AND NOTICE OF COMPLETION FILED GROWING OUT OF THE CASE JOSIAH KORH AND GARRETSON SWEN VERSUS LIBERIAN PRODUCE MARKETING CORPORATION."

However, unlike the letter of guarantee of August 29, 1984, the latter letter of guarantee of September 12, 1984, was not supported by a surety affidavit.

With these three documents at its disposal, the appellant thereafter proceeded to secure the approval of the appeal bond dated September 12, 1984. The said bond stipulated that "the Libel Produce Marketing corporation, represented .by and thru its Managing Director, Mr. Alexander H. Jeffy, defendant/appellant/principal, and Agricultural Cooperative and Development Bank, represented by its president, Mr. Wilson K. Tarpeh, surety herein, as per the Bank's letter of guarantee No. 016, value at \$45,000.00, issued in favour of LPMC, dated August 29, 1984, as well as the Bank's certificate, dated September 12, 1984, are held and firmly bound unto the sheriff of Montserrado County in the sum of \$45,000.00 (Forty-Five Thousand Dollars) current money of this Republic, being one and-one-half of the amount awarded the appellees 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 plaintiffs/appellees from all costs and injuries arising :from the appeal taken by the above named defendant/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 removed."

The appellees do not question the validity of the said bond up to and including August 29, 1985; it is, however, the validity of the bond as of that date that they challenge and doubt, and have therefor prayed the court to dismiss the appeal. They contend, as aforesaid, that the letter of guarantee of August 29, 1984 is the basis of

the validity of the appeal bond; that the said letter of guarantee limited its own validity to only one year from the date of issuance, which is the said date of August 29, 1985; and that therefore said bond expired as of August 29, 1985. The letter of September 12, 1984, they say, simply notified appellees that appellant maintained an account with its former surety, ACDB, and did no more, as it was not supported by sureties at all.

We are in agreement with appellees' argument regarding the validity of the appellant's appeal bond filed September 12, 1984. We believe that the validity of the said bond is based on the guarantee of the letter of guarantee, No. 016, of August 29, 1984, and the manager's certificate, duly, supported by a sworn affidavit of sureties, as directed by law. Our statute on the subject stipulates that "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 appellees 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..." Further, a failure to file sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient may be made sufficient at any time during the period before the trial court loses jurisdiction of the action. Civil Procedure Law, Rev. Code 1: 51.8

The limitations placed upon the letter of guarantee of August 29, 1984 were senseless since it failed to contemplate delay in the time for hearing the appeal. It is expected that all bonds should remain valid pending the final determination of the appeal. Placing a limitation on the letter of guarantee was like giving it a slow poison that eventually killed it upon the expiration of the date of the limitation, i.e. August 29, 1985. On that date the validity of the bond expired by its own force for failure because of the failure of the financial guarantee on which it was based. Hence, appellees were right when on September 23, 1985, about a month after the expiration of the bond, they filed the motion to dismiss this appeal because of the failure or defect of the appeal bond.

The letter of guarantee of September 12, 1984, had no legal value of its own to support an appeal bond before this Court, since its previous strength depended upon and was tied to the letter of guarantee, No. 016, of August 29, 1984. The letter of September 12, 1984 merely gave notice of accounts owned by appellant with it, and further stated that the ACDB would indemnify appellees in case appellant lost the appeal, without more. It was not supported by an affidavit of surety duly sworn to and filed by legally qualified sureties as the law requires. The letter of guarantee of

August 29, 1984 was a sufficient one because it was supported by a valid affidavit of sureties with secured funds of one-and-one-half times the value of the judgment rendered against appellant. That is the requirement of the law cited supra, and this Court must ensure that it has been carried through to the letter. This Court has held on several occasions that a bond, sufficient to support an appeal, and adequate in value to indemnify appellant, must be approved by the trial judge and it must be supported by qualified sureties who must file an affidavit of sureties. *Cavalla River Co. v. Fazza*, 7 LLR 13 (1939); *K Rasamny Bros. v. Burnet*, 21 LLR 271 (1972); *Issa v. Varig Airlines*, 21 LLR 86 (1972); *Standard Motor Corp. v. Pratt*, 21 LLR 381 (1972); *Brown v. Grandee and Doe*, 21 LLR 157 (1972); *Abraham v. Cooper*, 21 LLR 157 (1972).

From the statute and cases cited supra, it is clear that a failure to file a sufficient appeal bond within the statutory time is a valid ground for the dismissal of an appeal. Therefore, we are compelled to dismiss appellant's appeal, and the Clerk of this Court is accordingly ordered to dispatch our mandate to the trial court to resume jurisdiction over the case and to enforce its judgment. Costs are ruled against the appellant. And it is hereby so ordered.

Motion granted; appeal dismissed