

ROYAL PHARMACY, by and thru JOSEPH DIXON, Movant, *v.* **SYLLA & COMPANY BAKERY**, by and thru its Attorney-In-Fact KAFUMBA KONNEH,
Respondent

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

Heard: November 23, 1995. Decided: January 26, 1996.

1.The failure to state in the affidavit of sureties the metes and bounds of the property offered for security on a bond is not a ground for the dismissal of the appeal where the property offered has been demarcated, mapped and recorded, and where the affidavit states the lot number, location, quantity of land, its assessed value and owner.

2.The property pledged as security to an appeal bond, within the contemplation of Section 63.2(3)(b) of the Civil Procedure Law, Revised Code 1, must be described in a manner that would make it easy to locate when necessary.

Growing out of an appeal announced to the Supreme Court from the final judgment in an action of summary proceedings to recover possession of real property, appellee filed a motion to dismiss the appeal on the grounds that the appeal bond failed to sufficiently describe in the affidavit of sureties the property securing the bond. In support of his contention, movant cited the Court to *West African Trading Corporation v. Alraine*, 24 LLR 224 (1975) and *Kerpai v. Kpene*, 25 LLR 422 (1977), in which the Supreme Court, in its interpretation of § 63.2(3)(b) of the Civil Procedure Law, held that the description of property offered as security in a bond must be made only in the affidavit of sureties.

The Supreme Court *denied* the motion to dismiss, holding that the description of the property in the affidavit of sureties was sufficient. In so holding, the Court disagreed with its previous interpretation of Section 63.2(3) of the Civil Procedure Law in the *Alraine* and *Kpene* cases, which were relied upon by movant, and which required that for any property to be sufficiently described, its metes and bounds must be stated in the affidavit of sureties. The Court held that where the property has been demarcated, mapped, and recorded, it is sufficient to state the lot number, location, the quantity of the land, its assessed value, and the owner.

Eugene D. M. Freeman appeared for appellant/respondent. *Weifueh Sayeh* appeared for the appellee/movant.

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

The appellant/respondent appealed to this Court from a final judgment rendered against him in an action of summary proceedings to recover possession of real property, rendered by His Honour F. Nyepan Topor, then presiding over the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The appellee/movant has filed a motion to dismiss this appeal for reason that the appeal bond is defective, in that the affidavit of sureties which was attached to said appeal bond failed to sufficiently describe the property which secured the bond as the law provides.

The single issue which we are called upon to consider in the motion is whether or not the affidavit filed with the appeal bond meets the requirements of the statute with respect to affidavits of sureties attached to appeal bonds. For purposes of this opinion we shall quote below the relevant portion of the statute:

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

(b) A description of the property, sufficiently identified to establish the lien of the bond.”
Civil Procedure Law, Rev. Code 1: 63.2(3)(b).

There are two reported cases found in our Law Reports which have interpreted the portion of the statute quoted above. These are the same two cases that appellee/movant has relied upon to have this appeal dismissed. The first of these two cases is *West African Trading Corporation v. Alraine (Liberia) Ltd.*, 24 LLR 224 (1975). In that case, Mr. Chief Justice Pierre delivered the opinion of the Court. The *West African Trading Corporation v. Alraine (Liberia) Ltd.* case involved a motion to dismiss appellant’s appeal because the affidavit of sureties attached to the appeal bond was defective. The affidavit of sureties contained the following: “(1) that the sureties are the persons whose names appeared on the attached appeal bond; (2) that they are freeholders and householders in the Republic of Liberia and own real property to the value of the said bond over and above their liabilities; (3) that the assessed value of their properties is \$6,020.00; and (4) that the foregoing statements are true and correct to the best of their knowledge.” A revenue certificate which contained the description of the properties offered as security was also attached to said bond. However, the Court did not pass upon the revenue certificate in that case.

Mr Chief Justice Pierre correctly opined that land offered as security for appeal bonds must be described in the affidavit of sureties, sufficiently well to identify the particular piece of property intended to be encumbered by the bond. We agree with this portion of the opinion

of the late and venerable Chief Justice. However, we find ourselves unable to agree with that portion of the opinion which said that the best way to accomplish finding the property, which is mentioned in an affidavit of sureties, is to state the number of the plot and its metes and bounds. On the basis of that opinion, the motion to dismiss the appeal was granted and the appeal was dismissed.

The second of these cases, *West African Trading Corporation v. Alraine*, 25 LLR 3 (1977), was a motion filed for the re-argument of the first *West African Trading Corporation v. Alraine* case, which was decided and recorded in 24 LLR 224 (1975). The motion for re-argument was filed to reargue the motion to dismiss the appeal which was decided and reported in 24 LLR. The motion for reargument was based upon the Court's failure to pass upon the revenue certificate which contained a full description of the metes and bounds of the property that was pledged as security to the bond. Mr. Justice Robert Azango delivered the opinion in the motion for reargument. In his opinion, the Justice quoted word for word the opinion of Mr. Chief Justice Pierre as recorded in the first opinion in 24 LLR 224. However, in the second opinion, 25 LLR 3 (1977), Mr. Justice Azango stated that the description of the property offered as security on a bond must be made only in the affidavit of sureties. The two cases are identical in their interpretation of the Civil Procedure Law, Rev. Code 1:63.2(b).

These are the two opinions which movant's counsel strenuously argued before us in support of his motion to dismiss this appeal. We should like to examine once more in this opinion the bond statute. *Id.* Our understanding of this statute is that the property pledged as security in the appeal bond must be described in a manner that would make it easy to locate when necessary.

The affidavit of sureties attached to the appeal bond in the motion to dismiss contains the following description of the property: Lot Number, 45; Location, Benson Street, Monrovia; acreage, 1/8 and property owner, Fode Kabba. It is common knowledge that Central Monrovia has been demarcated by the Bureau of Lands and Surveys; maps have been drawn of the demarcated areas and the numbers and description of all lots have been recorded. Any one wishing to locate lot number 45 on Benson Street in Monrovia may do so from the records at the Bureau of Lands and Surveys. It is therefore not reasonable to say that the property described in the instant case cannot be easily located. We do not agree with the interpretation given to section 63.2(3)(b) of the Civil Procedure Law in the *West African Trading Corporation* case, reported in 24 LLR 224 (1975) and 25 LLR 3 (1977), respectively, that the description of the property is sufficient only if the property is described by stating the number of the plot and the metes and bounds. It is our holding that in all areas where the property has been demarcated, mapped, and recorded, it is sufficient to state the lot

number, location, the quantity of the land, its assessed value and the owner. Such description is sufficient to enable anyone to easily find the encumbered property.

The description of the property in the affidavit of sureties attached to the bond in this case is sufficient for such property to be located, if and when it becomes necessary.

In view of the foregoing, the motion to dismiss appellant's appeal is and the same is hereby denied. Costs are to abide the final determination of the appeal. And it is hereby so ordered.

Motion denied.

MR. JUSTICE BADIO *dissents.*

I did not feel free signing the judgment in this case relating to the motion to dismiss the appeal, because of the position we took in similar motion and under like circumstances.

The issue involved in this case relate to the question of whether or not the full description of a property in the affidavit of surety has any effect on the appeal bond.

On November 21, 1995, the movant/appellee filed a three count motion which declared *inter alia* that the appellant's appeal bond is defective because the surety affidavit lacks the description of the property pledged to establish the lien of the bond as required by statute. Our Civil Procedure Law contains the following:

Legally Qualified Sureties:

“3) *Affidavit of Sureties.* The bond shall be accompanied by an affidavit of 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. Civil Procedure Law, Rev. Code 1:63.2

Annexed to the bond filed on February 28, 1994 are (a) affidavit of sureties, and (b) a statement of property valuation issued by the Tax Division of the Ministry of Finance. For the purpose of this opinion, we quote the affidavit:

“Personally appeared before me a duly qualified Justice of the Peace for Montserrado County, in my office in the City of Monrovia, Fode Kabba and Abu Donzo, sureties, one being the freeholder and householder to the attached appeal bond in favour of Sylla and Company Bakery, by and thru its attorney-in-fact, Kafumba Konneh, plaintiff/ appellant in then above entitled proceedings, and made oath according to law that one is the owner of the real property described as follows:

<u>Lot No.</u>	<u>Location</u>	<u>Valuation</u>	<u>Acreage</u>	<u>Property Owner</u>
45	Benson Street	\$13,000	1/8	Fode Kabba

as per metes and bounds of the property indicated on the statement of property valuation of February 16, 1994 issued by the Real Estate Tax Division, Ministry of Finance signed by the Justice of the Peace and the affiants- Fode Kabba and Abu Donzo.”

Now, the affidavit does not contain a “description of the property sufficiently identified to establish the lien on the bond.” Black’s Law Dictionary defines description as it relates to real property as: “That part of a conveyance, advertisement of sale etc., which identifies the land or premises intended to be effected; of land, to give the metes and bounds.” To give effect to that law, we must state briefly that a description of land is to trace or outline, in detail, the exact metes and bounds of a land. Therefore, deeds which convey real property must contain description by metes and bounds to identify the particular plot of land sufficiently and correctly. Using this as background, it is necessary to indicate that the Civil procedure Law, Rev. Code 1: 63.2(3)(b) means that the affidavit of sureties which accompanies the bond must verify the truthfulness of the contents of the bond to which it is annexed and describe the piece or plot of land sufficiently to be easily identified. In essence, the affidavit must show clearly that the affiant, being under oath before an officer of law authorized to administer oaths, testified as to what is contained in the document-- that is the bond-- as being within his personal knowledge. Therefore, the affidavit of sureties constitute a very pertinent and indispensable part of the appeal bond and without a proper description on oath, sufficient to identify the property and establish the lien of the bond, the bond is invalid.

The requirements of the law with respect to affidavit of sureties, which must accompany the bond, must be complied with literally. We have no authority to hold or even interpret the law otherwise. As a Court of last resort, we must interpret the law as it is written by the law makers, considering very intelligently and precisely the intent of the legislators. In other words, the legislators placed emphasis on affidavit of sureties because its office is to confirm the sureties’ declaration under oath that the metes and bounds indicated in that document

and the bond are true and correct and that the descriptions are for the property offered as security.

My colleagues hold the view that because the property was described by metes and bounds in the property valuation certificate, the certificate serves the purpose of the intent of the law. That analysis must be considered arbitrary because the statute directs that “title bond shall also be accompanied by a certificate of a duly authorized official of the Department of the Treasury (Ministry of Finance) 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 certificate shall not be a pre-requisite to approval by the judge. Civil Procedure Law, Rev. Code 1:63.2(2)(4). In essence, the property valuation certificate certifies that the individuals whose names appear in the bond as sureties, and who, in fact, subscribed to the affidavit of sureties are truly the owners of the properties described, and that those properties are registered with the real estate division of the Ministry of Finance, and are of the assessed value stated by them in the affidavit of sureties. It is not a certificate sworn to under oath by the owners of the property. In fact, the law on qualification of sureties does not require that the property valuation certificate from the Division of Real Estate must include the description of the property as set forth in the affidavit of sureties. But if it is done as in this case, it must be regarded as a surplusage. In other words, any false description could be indicated on the certificate issued by then Real Estate Division without penalty, unlike the surety affidavit which would expose the sureties to penalty for false representation. I must emphasize again that the description of the property must appear in the affidavit of sureties. 25 LLR 3; 25 LLR 422; 27 LLR 306.

Incidentally, I observe that my colleagues decided to discuss at length this Court’s ruling on similar issues - that is, the law relating to surety affidavit and statement of property valuation as recorded in *Kerpai v. Kpene*, 24 LLR 224 (1975) and 25 LLR 422 (1977), evading of course their conclusion that the description indicated in the statement of property valuation served the general intent of the law makers. I observe further that they discussed briefly that the surety affidavit now in question did sufficiently identify the property offered by Fode Kabba since indeed it mentioned lot no. 45, situated on Benson Street in Monrovia, without indicating the description by metes and bounds as required by law. From that principle, one can derive several corollaries which could be confusing. In short, we must look at the intrinsic requirement of the law and not extrinsic or extraneous factors which could suggest some required result.

The description of the real property offered by an appellant as security must be identified sufficiently to establish the lien on the bond, and that requirement must appear in the bond and the affidavit of sureties. Civil Procedure Law, Rev. Code 1:63.2(2)(c) and 63.2(3)(b). As I

have already noted, the property valuation statement of the Ministry of Finance must be prepared by duly authorized officials of the Real Estate Tax Division to indicate that the property is owned by the sureties whose names appear on the appeal bond and are claiming title to it in the affidavit. Also, the statement must show that the property is of the assessed value stated in the affidavit of sureties. But the statement is not a prerequisite to the approval of the bond. In essence, the certificate is only necessary to clarify that the sureties own the property mentioned in the bond and described in the affidavit of sureties and also that it is of the assessed value indicated in the affidavit. That is the only requirement and the office of that certificate from the Finance Ministry, nothing else. We, as interpreters of the statutes or laws of this country cannot, under any circumstance, construe the law as being suggestive of any circumstance or condition other than the explicit wordings of the statutes. Any attempt by us to misconstrue and misinterpret the law, as done in the opinion of the majority, must be regarded as *ultra vires*.

As a matter of course, the two basic requirements mentioned above, i.e., the affidavit of sureties and the statement of property valuation, did not spring full-blown from any single imagination and they do not suggest perplexing meaning to warrant discretionary analysis or interpretation; they were studied sufficiently and their individual significance broadly considered, especially from a legal standpoint, as well as what their individual function should be. We therefore repeat that the requirements of the statute, with respect to affidavit of sureties, are mandatory and must be literally complied with since, indeed, the statute is not ambiguous.

Because of the laws cited and the accompanied circumstances outlined herein, I have refused to sign the majority opinion and feel that the appeal should have been dismissed.