

A. K. OPPONG and **THE BOARD OF GENERAL APPEALS**, Appellants, v.
M. G. SHAHEEN TRADING CORPORATIONS, Appellee.

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

Heard: October 31, 1988. Decided: December 29, 1988.

1. For an affidavit of sureties accompanying an appeal bond to meet the statutory requirements that the property offered as security is sufficiently identified to establish a lien on the bond, the property should be described by metes and bounds.
2. Indication of the number of the plot of land and a description of its metes and bounds is a sufficient description of realty in an affidavit of sureties so as to make finding it on the ground an easy exercise.

Appellant filed a wrongful dismissal action against appellee before the Ministry of Labour. The hearing officer decided that case by default in appellant's favor. Appellee appealed to the Board of General Appeals of the Ministry of Labour, now defunct, which body affirmed the ruling of the hearing officer. Appellee did not file a notice of appeal to any reviewing court. Appellant subsequently filed a petition before the Civil Law Court for the Sixth Judicial Circuit, Montserrat County, to enforce the decision of the Board of General Appeals. The lower court reversed the decisions of the hearing officer and the Board of General Appeals, remanding the case to the hearing officer for a de novo hearing. Appellant appealed to the Supreme Court. Appellee filed a motion to dismiss the appeal on the ground that appellant's appeal bond was defective. In granting the motion to dismiss the appeal, the Supreme Court found that appellant's appeal bond did not meet statutory requirements. Motion granted

Francis Y. S. Garlawolo and J. Laveli Supuwood for appellant. Toye C. Bernard for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the court.

A . K . Oppong was complainant in an action of wrongful dismissal against M. G. Shaheen Trading Corporation before the Ministry of Labor. The hearing officer decided the complaint by default in favor of complainant. M. G. Shaheen Trading Corporation excepted to the ruling and announced an appeal to the Board of General Appeals. Accordingly, the Board of General Appeals reviewed the ruling of the hearing officer and rendered its decision confirming and affirming the decision of the

hearing officer, from which an appeal was announced. Thereafter, no notice of appeal nor petition was filed in the circuit court or the debt court for judicial review by the Appellant. Complainant A. Oppong, through his counsel, filed a petition for enforcement of the decision of the Board of General Appeals before the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, sitting in its December 1984 Term. The trial judge heard the petition and reversed the decision of the hearing officer which was confirmed by the Board of General Appeals with instruction that the case be remanded to the hearing officer of the Ministry of Labour for hearing de novo. It was from the ruling of the trial court, that A. K. Oppong, complainant/ appellant excepted and effected an appeal to this Court for review.

Before the hearing of the appeal, appellee brought to our attention that he had filed a motion to dismiss complainant/ appellant's appeal which contains four counts. Complainant/ appellant filed a four count resistance.

When the case was argued before us movant/appellee presented the below issues for our consideration:

1. That the property tendered by the surety, Lucretia Appleton is not accurately and properly described as to make it ascertainable and easily found on the ground, because, (a) the Statement of the Property Valuation issued by the Ministry of Finance indicated that the property lot No. 5A is located in Paynesville, Montserrado County, whereas the affidavit of sureties states that the property is located in the City of Monrovia, Montserrado County; (b) the location and description of the property in the affidavit of surety being different from the Statement of Property. Valuation renders the property unascertainable and unidentifiable, and thus fails to establish the lien of the bond and therefore the Bond is defective for which the Appeal should be dismissed.
2. That the affidavit of sureties carries A. K. Oppong, complainant/appellant, as one of the sureties along with Lucretia Appleton. But the said A . K Oppong has tendered no property of his own and therefore cannot be surety to his own appeal bond.
3. That the property tendered by Lucretia Appleton is exempted from the payment of all taxes. The law requires that the real property offered as bond should be unencumbered and taxes thereon should have been paid. The failure of the Appellant surety to pay taxes on the real property tendered as security on the bond to show evidence that said property is exempted from the payment of taxes rendered the bond defective and the appeal should be dismissed.

4. That the bond is further defective in that there is only one person as surety on the bond tendered by the Appellant. The law requires that a surety on the bond must be either two natural persons or an insurance company authorized to execute surety bond within the Republic of Liberia. In this case, only Lucretia Appleton has signed as surety on the bond which is contrary to the law and therefore in violation of the statute controlling.

Appellant/Respondent' s resistance contains nine (9) counts and was argued as follows:

1. That the movant's motion is merely filed for the purpose to delay and baffle the hearing and speedy determination of this appeal on its merits and same being unmeritorious, prays that the motion should be denied.

2. That appellee/movant's motion failed and neglected to state any factual or legal ground for the dismissal of appellant/ respondent's appeal.

3. That under our law, the dismissal of an appeal is restricted to statutory provisions and/or grounds, but that none of which exist nor/is alleged in the motion filed by appellee/ movant; hence, the bond is valid.

4. That the allegation contained in Appellee/Movant' s motion that the property of surety Lucretia Appleton is not accurately and properly described as to make it ascertainable and easily on the ground are false and misleading because the Affidavit of Sureties supporting the appeal bond clearly and distinctly described the property of Lucretia Appleton by the metes and bound for the fact that the property is located in the City of Monrovia, Montserrado County as per the Affidavit and that the Statement of Property Valuation states that the property is located in Paynesville, Montserrado County is no material variance, no contradiction, to invalidate the appeal bond.

5. That the law only require that the property pledged as security be fully described in the affidavit of sureties by metes and bound and the fact that both Paynesville and Monrovia cities are in Montserrado County makes the description of said property more clear, especially so, Oldest Congo Town being within the city limit of Monrovia and the City of Paynesville being recently created as a city, was originally within the City of Monrovia. Therefore, mere technicalities which do not affect the merits of the case nor the right of the parties are not favored by law as a basis for deciding cases on

appeal.

6. That the purported motion to the effect that the affidavit of sureties carries A. K . Oppong, the Appellant, as one of the sureties and that the said A. K . Oppong has tendered no property of his own and therefore cannot be surety of his own appeal bond, such contention of the appellee/movant in this respect is immaterial and contemptible in law to constitute any legal ground for the dismissal of an appeal.

7. That the appellee/movant has not attacked the sufficiency or insufficiency of the amount of indemnification stated in said bond for appellant/respondent is not legally required to be to be property owner to sign his own appeal bond and the fact that the appellant signed the affidavit of sureties as a surety is a mere surplusage of sureties as a surety is a mere surplusage and harmless error does not affect the merits of the case nor the right of appellee/movant.

8. That under our law, if the property of one surety to a bond especially an appeal bond is sufficient to cover the amount of indemnity in said bond, the bond is valid and cannot be disturbed.

9. That the allegation herein made by appellee/movant to the effect that the respondent/appellant failed to provide evidence that the property tendered by Lucretia Appleton is exempted from the payment of all taxes is futility and raises no legal ground for the dismissal of this appeal.

Therefore, in our consideration of this motion and the resistance the sole question to be answered is whether or not complainant/appellant's appeal bond meets the statutory requirements?

The Civil Procedure Law, §51.8, 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 will 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 of the action." Civil Procedure Law, Rev. Code 1:51.8.

Moreover, the law states: "An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill or exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute." Civil Procedure Law, Rev. Code 1:51.16.

In *March v. Sinoe*, 27 LLR 320 (1978), this Court strongly stated that lawyers should be careful how they handle their client's interest. Yet, some lawyers have persistently handled cases with a "don't care" attitude. As in this case, appellant's counsel negligence has resulted into the appeal bond being presented for approval with these defects:

1. Property not accurately and properly described.
2. Bad Affidavit of Sureties (one property valuation instead of two).
3. Failure to present proof that Lucretia Appleton is exempt from the payment of taxes.
4. One person as surety on the bond tendered.

An appeal bond can be filed, but it must meet the statutory requirements to be valid: "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 Civil Procedure Law, Rev. Code 1:51.8.

"Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal." Civil Procedure Law, Rev. Code 1:51.4. Appellee's contention is that 51.4 (c) is not complied with:

The Civil Procedure Law explicitly states who may be sureties to an appeal bond: "Who may be sureties. 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." Civil Procedure

Law, Rev. Code 1:63.2. Appellant did not offer an property valuation neither did his name appear on the bond.

This Court has held in the case *Doe v. Dent-Davies*, 27 LLR 306 (1978), that "In order for an affidavit of sureties accompanying an appeal bond to fulfill the statutory requirement that the property offered as security be sufficiently identified to establish the lien of the bond, Civil Procedure Law, Rev. Code 1:63 (3), the property should be described by metes and bounds." To all intents and purposes, the property offered here is not clearly and sufficiently described. In *West African Trading Corporation v Alraine (Liberia) Ltd*, 24 LLR 224 (1975), this Court held: "A sufficient description of realty in the affidavit of sureties means property so described as to make finding it on the ground an easy exercised; the Court suggested the best means to be the number of the plot of land and its description by metes and bounds."

We also note appellant's contention that if the property of one surety to a bond, especially an appeal bond, is sufficient to cover the amount of indemnification on said bond, the bond is valid and cannot be disturbed. But this is not the case. One of the sureties on appellant's appeal bond is himself; and he offered no property valuation neither has he affixed his name to the bond as surety.

Therefore, and in view of the foregoing, this Court sees it both just and equitable to grant the motion to dismiss this appeal. The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction over the matter and to enforce its judgment. Costs disallowed. And it is hereby so ordered.

Motion granted; appeal dismissed.