

P. H. VASWANI, Appellant, v. **ATLANTIC MARKETING COMPANY**
(ATMARK), Appellee.

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

Heard: December 11, 1989. Decided: January 9, 1990.

1. Any piece of property offered as security on bond must be unencumbered.
2. Under our laws, procedure and practice, a bond is required for any appeal emanating from the National Labour Court to the Supreme Court.
3. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay may, upon notice, be set aside with cost.
4. Where there is no returns on the back of the notice of completion of appeal by the sheriff, it will be presumed that the notice of completion of appeal was not returned.
5. Where an appeal bond contains no indemnification clause, such omission is a material defect.
6. An appeal bond is totally defective when it fails to fix the monetary penalty for which the indemnification clause will bind both the principal and sureties, thereby holding them answerable to comply with their obligation.

Appellant instituted an action of wrongful dismissal against the appellee at the Ministry of Labour and judgment was rendered in appellant's favor. Appellee excepted and appealed to the National Labor Court. The National Labour Court, after hearing the appeal, reversed the judgment of the hearing officer, and the appellant appealed to the Supreme Court.

While the appeal was pending before the Supreme Court, the appellee filed a motion to dismiss the appeal for reason that the appeal bond was legally deficient. After hearing the motion and the resistance thereto, the Supreme Court sustained the motion, *dismissed* the appeal, and ordered the enforcement of the judgment of the labour court.

Elijah Garnett, Sr. appeared for the appellant/respondent. *Charles Walker Brumskine* appeared for the appellee/movant.

MR. JUSTICE BELLEH delivered the opinion of the Court.

This case has its origin from the Ministry of Labour where a ruling was rendered against appellee by the hearing officer. Appellee excepted to said ruling and appealed to the National Labour Court for a judicial review of the hearing officer's ruling. The National Labour Court, after hearing arguments from both sides, ruled against appellant herein, and thereby reversed the ruling of the hearing officer of the Ministry of Labour. Appellant being dissatisfied with the decision of the National Labour Court, excepted to it and announced an appeal to the Supreme Court of Liberia, which appeal was granted. The case was therefore brought before us for our review and final determination.

At the call of the case, this Court was informed that a motion to dismiss the appeal had been filed in the office of the Clerk of this Court. We hereunder quote the relevant portion of said motion for the benefit of this opinion:

"MOTION TO DISMISS APPEAL"

1. That the appeal bond is insufficient and defective in that the security for the bond, the real property offered by the surety Bernice N. Williams is encumbered for an amount of \$55,000.00 as an injunction bond in a motion of injunction before the Seventh Judicial Circuit as is more fully shown by copies of the sheriffs certificate and Clerk's Certificate, as well as the injunction bond hereto attached and marked exhibits "A", "B" and "C" respectively. Appellee, therefore, prays that the appeal be dismissed. Sections 51.8, 63.1(b) and 63.2(2) of the Civil Procedure Law.

2. That the condition of the bond, that the appellant will appear before the Supreme Court at the call of the case to prosecute same, is contrary to the statutes controlling. Copy of the appeal bond is hereto attached as exhibit "D". Appellee submits that appellant is obliged to give an appeal bond 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 any other court to which the case is removed. Appellee therefore prays that the appeal be dismissed. Section 51.8, Civil Procedure Law."

To the above motion to dismiss, the appellant filed the following resistance:

"AMENDED RESISTANCE TO MOTION TO DISMISS APPEAL"

1. As to count 1 of appellee's motion, appellant says that same should be ignored as the law on appeals with regard to bond only requires that the bond should be sufficient and approved by the court. Nothing is mentioned as to whether the property applied as security to the bond should be properly encumbered or unencumbered. Section 51.8, Civil Procedure Law Rev. Code 1.

2. Further to count 1 of the motion, appellant says that the filing of a bond by an appellant in the Supreme Court is not a statutory requirement in labor cases and therefore, the bond so filed by the appellant, as a matter of law and fact, is just a surplusage. *Kobina et al. v Abraham*, 15 LLR 502 (1964); Labour Practices Law; INA decree no. 21 Decree Establishing the National Labour Court.

3. Also as to count 1 of the motion, appellant says that same is legally impotent since two sureties signed the bond and the appellee did not challenge the ability of the Co-surety Sophia Wleh to satisfy the costs of court and comply with its judgment. One would wonder what injury will accrue to the appellee if it obtains judgment in its favour other than cost of court. *Dennis and Dennis v. Holder et al.*, 10 LLR 301(1950); *Van EE v. Gabbidon*, 11 LLR 65 (1951).

4. Appellant also says that the decree setting up the National Labour Court did not provide for bond on appeal.

5. Further as to count 2 of movant's motion, respondent says same should be dismissed as a legal nullity for the movant has manifestly waived his right to except to the sureties on the bond within three days as required by statute. Instead the notice of completion of appeal was issued on the 9th day of October 1987 and a copy served on the movant. Yet, he waited six months thereafter to except to the sureties on the bond, to be exact, on the 18TH day of April 1988, when the bond had already been approved by the judge. Failure of the appellee to except in the court below to the financial sufficiency of the sureties to an appeal bond within three days after receipt of notice of the filing of the bond constitutes a waiver of his objection and warrants denial of a motion to dismiss the appeal. The object of an appeal bond is to secure to the appellee his costs and to assured the court of compliance with the judgment. The intention of the Legislature in passing an act stating the grounds for dismissal of an appeal was to discourage the dismissal of appeals on technical grounds and to give to appellants an opportunity to have their cases heard by the .Supreme Court on the merits. Section 63.5, Civil Procedure Law; *Kerpai v Kpene*, 25 LLR 422 (1977).

6. Under the statute, an appeal bond is only defective when it is not accompanied by an affidavit of sureties from the Bureau of Revenue indicating that the sureties own the properties offered as security on the bond. *Kamara and Kabbah v. Khalill Niam Bros.* 21 LLR 402, 404 (1973).

7. Also, the Civil Procedure Law, which the labor law follows, forbids more than 10 (ten) days for filing a bill of exceptions or more than (60) sixty days for filing the appeal bonds or notice of completion of appeal. *Standard Motor Corp. v. Pratt*, 21LLR 381, 387 (1972).

In resisting appellee's motion to dismiss, appellant contended in count one of its resistance that there is no law which requires that property offered as security for a bond be unencumbered. Taking recourse to section 63.1 of the Civil Procedure Law, Rev. Code 1, with respect to "security for bonds," we observe that "except otherwise provided by statute, any bond given under this title shall be secured by one or more of the following:

(a) cash to the value of the bond or cash deposited in the bank to the value of the bond as evidenced by a bank certificate;

(b) unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond,

(c) valuables to the amount of the bond which are easily converted into cash; or

(d) sureties who meet the requirements of section 63.2."

Subparagraph (b) as quoted above, requires that any piece of property offered as security on a bond be unencumbered. Count one of the resistance is therefore overruled.

In count two of the resistance, appellant also contended that the filing of a bond by an appellant in the Supreme Court is not a statutory requirement in labor cases. We disagree with appellant on this point, in that, in section 23.2 of the 1986 statute amending the Labor Practices Law of Liberia and decree no. 21 of the INA relative to the "jurisdiction and procedure" in the National Labour Court, it is stated therein that "the procedure and enforcement by the National Labour Court shall be the same as in the debt courts except as modified herein."

Under this law and in keeping with our practices and procedure, a bond is required for any appeal emanating from the debt court to the Supreme Court. Hence, the contention of appellant is untenable. Count two of the resistance is therefore overruled.

In count three of the resistance, appellant further contended that "since two sureties signed the appeal bond in this case and appellee did not challenge the ability of Co-surety Sophia Wleh to satisfy the costs of court and comply with its judgment, one would wonder what injury will accrue to appellee if he obtains judgment other than costs of court?"

Taking recourse to Section 63.5 of the Civil Procedure Law, we observe that it is provided that "a party may except to the sufficiency of a surety by written notice of exceptions served upon the adverse party within three days after receipt of the notice of filing of the bond. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay may, upon notice, be set aside with costs."

A careful perusal of the record in this case shows that appellant's appeal bond was filed on the 9th day of October 1987. The notice of completion of appeal was also filed on March 10, 1988 at 2:30 p.m. Moreover, there is no indication as to when the said notice of completion of appeal was served on appellee, since there was no returns made at the back of said notice of completion of appeal by the sheriff of the National Labour Court.

Hence, it must be presumed that the notice of completion of appeal was never returned because returns of the sheriff of any precept is indeed considered evidence that such precept was served. Under these circumstances, the contention of appellant that appellee did not timely challenge the sufficiency of appellant's appeal bond after being served three days cannot be sustained. Had the sheriff returned the notice of completion of appeal and indicated the date of service thereon, we are of the opinion that appellee would have been in the position to except to the sureties within statutory time and challenge their ability to comply with the judgment if appellee so desired. Therefore, count three of the resistance is also overruled.

The appeal bond submitted by appellant and transmitted to this Court on appeal reads thus:

"APPELLANT'S APPEAL BOND " KNOW ALL MEN BY THESE PRESENTS: That we, P.E. Vaswani, principal/appellant, of the City of Monrovia, Liberia and Bernice Williams and Sophia Wleh, sureties, all of the City of Monrovia, Montserrado County and Republic aforesaid, being freeholders within the Republic of Liberia, do hereby bind ourselves firmly by these presents that the said P. E. Vaswani, principal/appellant will well and truly follow up their appeal in the Supreme Court of the Republic of Liberia, or any other court to which said cause may be removed, for the payment of the sum of \$50,000.00 in the judgment rendered against appellant in an action: petition for judicial review."

The condition of this bond (appeal) is that P. H . Vaswani, principal/appellant will appear before the Supreme Court for October Term A. D. 1987 at the call of the case to prosecute the case in an action of wrongful dismissal. Then and there these presents shall become null and void. Otherwise to remain in full force and effect."
"The penalty of this bond is \$50,000.00."

A careful perusal of the appellant's appeal bond reveals that the appeal bond contains no indemnification clause, an omission, which in our opinion, is a material defect. The statute controlling appeal from lower courts to the Supreme Court of Liberia positively prescribes the manner in which an appeal before this Court may be entertained and the omission of any essential requisites renders said appeal bond null and void.

The appeal bond filed by appellant is totally defective in that said appeal bond failed to fix any monetary penalty for which the indemnification clause will bind both the principal and the sureties, thereby holding them answerable to comply with their obligation. The omission of such an indispensable prerequisite in said appeal bond makes it totally defective and renders the appeal dismissible.

Generally the object of an appeal bond with qualified sureties is to assure to the appellee his costs and to assure the court of compliance with its judgment. Nowhere in the bond filed by appellant does he obligate himself to indemnify the appellee from all costs and injury arising from the appeal and that he will comply with the judgment of the court to which the cause may be removed. Therefore, counts one and two of the motion are sustained.

In count four of the resistance, appellant contended that "the decree setting up the National Labour Court did not provide for bond on appeal." This issue having been raised in count two of the resistance and thus passed upon previously in this opinion,

we are of the opinion that further comment on the same issue is unnecessary and, therefore, count four is overruled.

Count five of the resistance relates to appellant's failure to have excepted to the sureties within statutory period after the service of the notice of completion of appeal. This issue having also been discussed in count three of the resistance further comment is equally not necessary. Hence, said count five of the resistance is overruled.

In count six of the resistance, appellant contended that "under the statute an appeal bond is only defective when it is not accompanied by an affidavit of sureties from the Bureau of Revenue indicating that the sureties own the properties offered as security." In count one of the resistance, the question of what constitutes a sufficient bond under our law having been dealt with by us in this opinion, we also feel that further comment is unnecessary. Hence, count six is overruled. Count seven of the resistance not being material to the issue, same is hereby overruled.

In view of the authorities cited, coupled with the circumstances surrounding this case, the motion to dismiss the appeal being sound in law, the same is hereby granted and the appeal dismissed. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction and enforce its judgment. Costs ruled against appellant. And it is so ordered.

Motion granted; appeal dismissed.