

RANJIT KUMAR BISWAS, Appellant, *v.* **PEARL ETHNA BURNETTE-BAKER**,
Co-Lessor, Heir and Administratrix of the Intestate Estate of the late SAMUEL N.
BURNETTE, SR., by and thru her Husband, J. NYEMA BAKER, and SAMUEL N.
BURNETTE, JR., Co-Lessor, Heir and Co-Administrator of the Intestate Estate of the late
SAMUEL N. BURNETTE, SR., APPELLEES.

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

Heard: October 13, 1982. Decided: February 3, 1983.

1. A cashier's or manager's check attached to an appeal bond is equivalent to a bank certificate and meets the statutory requirements for such a certificate in connection with a cash bond.
2. A manager's check payable to the Republic of Liberia and not the Sheriff does not render the bond defective, the Sheriff being an official and ministerial officer of the Republic of Liberia; nor does it make the bond fail in its indemnification of appellee where it is accompanied by an undertaking to indemnify the appellee, signed by the appellant and approved by the trial judge.
3. The appeal statute, section 51.8 of the Civil Procedure Law, is not in conflict with and is not repugnant to the general security statute, section 63.1 thereof, and must be read together and harmonized to give effect to a consistent legislative policy, which is for the appellant or the person securing the bond to provide some means of guarantee to either the appellee or the obligee.
4. Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two statutes should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of the prior

general one; and where the general act is later the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.

5. The proper forum authorized to dispose of a contested will is the circuit court and not the probate court.

6. 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 shall 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.
7. Except as otherwise provided by statute, any bond given under 63.2 of the Civil Procedure Law, Rev. Code 1, 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.
8. The sheriff receiving cash, a bank certificate, stocks or other negotiable securities, or valuables shall deposit it or them in the government depository or a reliable bank and secure a receipt therefor showing the amount deposited and the purpose of the deposit and containing a statement that the deposit will be released only upon the written order of a judge of the court." Rev. Code, 1: 51.8

An action for the specific performance of a contract instituted in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, was dismissed on law issues, whereupon appellant took exceptions and appealed to the Supreme Court. Appellees moved to dismiss the appeal on grounds that the bond does not meet the requirement of the Civil Procedure Law which requires that appeal bond should be secured by two or more legally qualified sureties, Rev. Code, 1: 51.8; secondly, that the bond is not an appeal bond within the contemplation of the statute relating specifically to appeal, nor is it a legal bond as is specified by general bond statute in that, the manager's check posted is payable to the Republic of Liberia for the account of appellant instead to the Sheriff of the lower court for account of the appellees; and thirdly, that the appeal is fatally defective because it has been drawn in accordance with the statute of general application relating to bond which should not and cannot legally apply in matters of appeals.

The Supreme Court in passing upon the motion, held that a cashier's or manager's check attached to an appeal bond is equivalent to a bank certificate and meets the statutory requirements for such a certificate in connection with a cash bond, and hence overruled appellees contention in this regard. With respect to the contention that the manager's check posted, is payable to the Republic of Liberia for the account of the appellant and not the Sheriff thereby rendering said appeal bond defective, the Supreme Court also overruled appellee's contention and held that the sheriff is an official and a ministerial officer of the Republic of Liberia, and so the fact that the check is made to the order of the Republic of Liberia does not make it fail in its indemnification of the appellees, especially when the check carries the words 'Liberia Mining Company Limited, only as an appeal bond' in the case to the Supreme Court. With respect to the two statutory provisions on appeal, § 51.8 and § 63.1, the Supreme Court also held that where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication. In view of the above, the Supreme Court *denied* the motion to dismiss the appeal.

Julius Adighibe and *Nelson W. Broderick* appeared for appellant. *Daniel Draper* appeared for appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellant instituted an action for specific performance of a contract before the People's Civil Law Court for the Sixth Judicial Circuit during the September Term 1981 against the appellees/movants. His Honor judge Frank W. Smith then presiding over the December 1981 Term 1981 heard argument, *pro et con*, on the law issues and dismissed the action. Appellant appealed from said ruling on a seven-count bill of exceptions to this Court. When the case was called for hearing, the appellees brought to the attention of Court that they had filed a motion to dismiss the appeal because of defective appeal bond. The three-count motion in substance alleged that the bond did not meet the requirement of the Civil Procedure Law which requires that appeal bond should be secured by two or more legally qualified sureties; Civil Procedure Law, Rev. Code 1: 51.8; secondly, that the bond is not an appeal bond within the contemplation of the statute relating specifically to appeal, nor is it a legal bond as is specified by general bond statute in that, the manager's check posted is payable to the Republic of Liberia for the account of appellant instead to the sheriff of the

lower court for the account of the appellees; and thirdly, that the appeal is fatally defective because it had been drawn in accordance with the statute of general application relating to bond which should not and cannot legally apply in matters of appeals.

The appellant, in resisting the motion to dismiss the appeal, argued that appellees' motion should be dismissed for the following reasons, to wit:

(1) Because the reasons given in said motion are not among the grounds for the dismissal of an appeal as provided by section 51.16 of the Civil Procedure Law.

(2) That section 63.1 of the Civil Procedure Law relating to security for bonds is of general application and includes all kinds of bonds, appeal bonds not excepted and not necessarily by an unencumbered realty as contended in count one (1) of the motion.

(3) That the purpose of an appeal bond is to indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that the appellant will comply with the judgment of the appellate court or any other court to which the cause may be removed and that all these conditions are fulfilled in appellant's appeal cash bond. Further, the Supreme Court has held that a certified check which is even inferior to a bank manager's check when used as a security is valid as a legal appeal bond.

The purpose of the notation by the bank issuing the manager's check is merely to indicate that the money had been taken from the account of appellant and applied by the bank as cash appeal bond which can only be cashed upon the authority of the court; hence, said check was delivered to the sheriff of the lower court against a receipt.

(4) That notwithstanding the fact that the manager's check is made in the name of the Republic of Liberia, yet it is equally clear from the said appellant's appeal cash bond that the purpose of the manager's check No. 046295 in the sum of \$3,000.00 is for the appeal bond and to indemnify appellees from all costs and injury arising from the appeal taken and therefore complies with the spirit and intent of bond as contemplated by law.

(5) That there is no conflict or repugnancy between section 63.1 relating to security for bond and section 51.8 relating to appeal bond and therefore an appeal bond may be tendered in cash or other security as provided by section 63.1 and not necessarily by natural persons owning properties as contended in count 3 of the motion for the object of the law is to promote a just, speedy and fair administration of justice to all parties alike and that courts should refrain from entertaining legal technicalities that do not affect substantial rights of the parties.

This Court, in the cases *Liberia Mining Company v. Bomi Workers Union*, 25 LLR 198 (1976) and *Stubblefield et al. v. Nasseh*, 25 LLR 443 (1977), held that a cashier's or manager's check attached to an appeal bond is equivalent to a bank certificate and meets the statutory requirements for such a certificate in connection with a cash bond. The object of an appeal bond is to indemnify the appellee from all costs and injury the appellee may sustain by reason of the appeal and to comply with courts judgment. *Dennis and Dennis v. Holder et al.*, 10 LLR 301 (1950); and Civil Procedure Law, Rev. Code 1:51.8. Hence, counts one and three of the motion must crumble to counts two and three of the resistance and are therefore not sustained.

In count two of the motion, appellees contend that the manager's check posted is payable to the Republic of Liberia for the account of the appellant and not to the sheriff thereby rendering said appeal bond defective. This case is identical to the case, *Liberia Mining Company v. Bomi Workers Union*, cited above. In that case the manager's check was payable to the Republic of Liberia and this Court held that although according to the customs in this jurisdiction wherein the check is usually payable to the sheriff, yet there was an undertaking signed by the appellant which accompanied the check and the Court read both the manager's check and the paper bond approved by the trial judge together and held: "Reading the check and the undertaking together, it cannot but be concluded that the check is intended for the sheriff for Montserrado County. The sheriff is an official and a ministerial officer of the Republic of Liberia, and so the fact that the check is made to the order of the Republic of Liberia does not make it fail in its indemnification of the appellee, especially when the check carries the words 'Liberia Mining Company Limited, only as an appeal bond' in the case to the Supreme Court. This argument of the appellee, therefore, has no merit."

We quote portion of the undertaking in the case at bar:

"KNOW ALL MEN BY THESE PRESENTS, that Ranjit Kumar Biswas plaintiff/appellant in the above entitled cause of action hereby posts cash Appeal bond in keeping with law evidenced by the attached "manager's Cheek" No. 046295 in the amount of \$3,000.00 (THREE THOUSAND DOLLARS) bearing the date of February 5, 1982, issued by the Chase Manhattan Bank Monrovia, Liberia, in support of his appeal against the ruling of His Honour Frank W. Smith, Assigned Circuit Judge presiding in the December Term A. D. 1981, of the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Republic of Liberia, in the above entitled cause of action.

The condition of this obligation is that we will indemnify the defendants/appellees from all costs and injury arising from the appeal taken by the named plaintiff/appellant, and will

comply with the judgment of the court to which said appeal is taken or to any other court which said action may be removed."

The appellant then signed and the judge approved. We hold that reading the undertaking together with the manager's check, the appellees are indemnified as provided by law. Count two of the motion is therefore not sustained and counts four and five of the resistances are sustained. Count one of the resistance is not conceded because if the appeal bond is defective, it is one of the grounds to dismiss an appeal. Civil Procedure Law, Rev. Code 1: 51.16.

The appellees cited the case *Roberts and Roberts v. Roberts*, 7 LLR 358, 363 (1942), in which this Court upheld the legal principle that:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of the prior general one; and where the general act is later the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."

In that case, the majority opinion held that the Probate Commissioner had no legal power to hear and dispose of a case involving objection to the probate of a will because the statute specifically provided that a contested will shall be forwarded to the court of quarter sessions, now the circuit court, to be decided by the jury. Chief Justice Grimes, on the other hand, contended that the question heard and disposed by the commissioner of probate was a purely legal issue and under the general statute, all questions of mere law shall be decided by the court and the jury shall decide all questions of mere fact. All mixed questions of law and fact shall be decided by the jury under the direction of the court. The provision of the statute relied upon by the majority opinion states that, "said probate court shall cause the probate of any will, or testamentary paper that shall possess the features of one and shall have a record of wills proven in the court. Contested wills shall be sent to the Court of Quarter Sessions to be tried by jury, upon its merits, and by them either rejected, set aside, or quashed, or approved; and if rejected, the same may be removed by an appeal to the Supreme Court on petition made by any person aggrieved, according to the laws which relate to appeals; and if found valid, shall be sent back to the probate court to be placed on its records. Said court shall grant letters of administration, and shall have all power necessary to settle estates; and to do all other matters and things of a court of probate. (Stat. of Liberia, Old Blue Book,

Art. II, sec. 1.)"

The majority opinion held that even though the general statute provided that the court should pass upon all legal issues, yet the statute just recited specifically provided that all contested wills shall be sent to the Court of Quarter Sessions, now the Circuit Court, to be tried by the jury and that once a will is contested, it should be sent to the Circuit Court to be tried by the jury and by them either rejected or approved. These two statutes conflict and are repugnant to each other; and, therefore, the court held that the special statute in such case would prevail. The court also held that the proper forum to dispose of a contested will is the circuit court and not the probate court.

In the case at bar, the provision of the appeal statute, the Civil Procedure Law, Rev. Code 1: 51.8, is not repugnant to the general security provision of section 63.1 thereof, since the object of both statutes is for the appellant or the person securing the bond to provide some means of guarantee to either the appellee or the obligee. Sections 51.8 and 63.1 provide thus:

§ 51.8. "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 shall 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."

§ 63.1. "Except as 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.

“The sheriff receiving cash, a bank certificate, stocks or other negotiable securities, or valuables shall deposit it or them in the government depository or a reliable bank and secure a receipt therefor showing the amount deposited and the purpose of the deposit and containing a statement that the deposit will be released only upon the written order of a judge of the court.” Civil Procedure Law, Rev. Code 1: 51.8 & 63.1.

Considering the facts aforementioned and the applicable laws as cited, the motion to dismiss the appeal ought to be and the same is hereby denied. And it is so ordered.

Motion denied.