

Former Employees and Retirees of the Bong Mining Company (Beneficiaries of the Bong Mining Company Termination Benefits Trust) by and through the BMC Workers Committee by and through three of its Officials, J. Jaye Larblah, Chairman, David A. Clarke, Vice Chairman and G. Aagon Gwaikolo, Secretary MOVANTS
VERSUS The **Liberia Bank for Development & Investment (LBDI)**, by and through its President, Francis A. Dennis or any other authorized Official of the City of Monrovia, Liberia RESPONDENT

MOTION TO DISMISS APPEAL

HEARD: May 10, 2005 DECIDED: September 15, 2005.

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This Motion to Dismiss grows out of an appeal taken by the Liberian Bank for Development and Investment (LBDI) from a Summary Judgment entered against it by the Trial Judge of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The Summary Judgment arises out of an Action of Damages tiled by the Former Employees and Retirees of the Bong Mining Company (BMC Workers) against LBDI claiming the amount of Six Hundred and Seventy Seven Thousand, Seven Hundred and Ninety-Two United States Dollars and Twenty-Six Cents (US\$677,792.26) as special damages plus one hundred percent (100%) of the special damages as general damages. The basis for the Action of Damages is that the BMC Workers claimed that they left with LBDI the tax portions of their end-of-service compensations and benefit for a period of eighteen (18) months as deposits and that upon the expiration of the eighteen-month period, LBDI failed and refused to return the BMC Workers' money to them with interests. LBDI, on the other hand, admitted receiving the funds but claimed that the funds constituted tax owed to the Liberian Government and the Liberian Government took the funds from LBDI because the BMC Workers did not comply with the conditions for waiver of the income tax levied on their end-of-service compensations and benefits. But the BMC workers averred that they complied with the conditions for income tax waiver by placing the tax portion of their end-of-service compensation and benefit in an account with LBDI for a period of eighteen (18) months based on agreement reached between them and the Government of Liberia and in line with a standing regulation of the Ministry of Finance.

When pleadings rested, the Trial Judge heard and denied the Motion to Dismiss which was filed by the Appellant in the Court below. The Trial Court also heard two

other pre-trial motions: a Motion to Join filed by the Republic of Liberia which was denied; and a Motion for Summary Judgment filed by the BMC Workers which was granted. In ruling on the Motion for Summary Judgment, the Trial Judge held that LBDI erred when it gave the funds to the Liberian Government and that LBDI, as a bank, was liable to return the funds deposited with it by the BMC Workers. The Trial Judge did not determine the amount of liability because, according to him, there was a dispute over that issue. The Trial Judge ruled that the amount of liability will be determined at a separate proceeding. From this Ruling on the Motion for Summary Judgment, counsel for LBDI announced an appeal to the Supreme Court for review; but counsel for the BMC Workers objected on the grounds that the Ruling was interlocutory and not appealable. The Trial Judge overruled the objections and granted the appeal.

After LBDI processed its appeal papers, the BMC Workers filed this Motion to Dismiss claiming that the appeal bond is fatally and incurably defective. The Motion to Dismiss did not raise any contention with the alleged interlocutory nature of the Ruling on the Motion for Summary Judgment. A Resistance to the Motion to Dismiss was filed, Briefs were filed, and arguments, pro et con, were entertained by this Court.

The Motion to Dismiss and the Resistance thereto presented several issues; but the four issues which we consider germane for the determination of this case are:

1. Whether or not an appeal bond can be legally filed at a trial court after the appellant has requested and obtained a Notice of Completion of Appeal.
2. Whether or not an appeal bond is defective when the Statement of Property Valuation from the Ministry of Finance and the Notary Certificate thereon say that the appeal bond is in favor of the Appellee instead of the Appellant.
3. Whether or not the limitation on the Statement of Property Valuation, which is less than the security required for the appeal bond, makes the appeal bond defective?
4. Whether or not the appeal bond is defective when the statement of penalty or indemnity of the appeal bond is less than the amount for which the appeal bond is approved by the trial judge.

As to the first issue regarding the effect of the issuance of the Notice of Completion of Appeal, and the subsequent filing of the Appeal Bond, in its Brief Counsel for the BMC Workers (Movants) cited numerous opinions of this Court confirming that the

issuance of the Notice of Completion of Appeal completes the jurisdictional steps required for the Supreme Court. On the other hand, Counsel for LBDI (Respondent did not cite us to any precedence of this Court in which a proceeding or activity is allowed at the Trial Court after the Supreme Court's jurisdiction over an appeal has been conferred through the issuance of the Notice of Completion of Appeal.

In a long line of opinions of this Court, we have said that once jurisdiction is conferred on the Supreme Court, anything done at the Trial Court is a legal nullity. The Notice of Completion of Appeal is the last act of the Trial Court to remove the matter from the Trial Court to the Supreme Court; and once the Notice of Completion of Appeal is issued and served, the Trial Court cannot legally entertain nor do anything else with the case. Not only did the Notice of Completion of Appeal confer jurisdiction on the Supreme Court over the matter at bar; the Notice of Completion of Appeal is also in the nature of a summons, because it brings the Appellee under the jurisdiction of the Supreme Court. For reliance, we cite some of the recent cases in which this point has been thoroughly discussed and decided by this Court. *Fofana et al. vs. Harmon*, 35 LLR 665 (1988) and *Porte vs. Citibank, N.A.*, 37 LLR 126 (1993).

What is interesting in this case is that Counsel for Respondents requested for the issuance of the Notice of Completion of Appeal several days before the sixty-day period for completing the appeal process had expired. The Ruling on the Motion for Summary Judgment was rendered on November 24, 2004; and this means that the last day for completing the appeal process was January 19, 2005 (the sixtieth day after: rendition of the Ruling). The Notice of Completion of Appeal was issued, upon the request of Counsel for Respondent, on January 7, 2005 — a full twelve (12) days before the period for the appeal process was to lapse. Then it was on January 12, 2005 that the Appeal Bond was approved by the Trial Judge and filed that same day — five (5) days after obtaining the Notice of Completion of Appeal. This Court does not understand why Counsel for Respondent was in such a hurry to obtain the issuance of the Notice of Completion of Appeal before filing the Appeal Bond.

The filing of an Appeal Bond by an Appellant after he has already obtained the Notice of Completion of Appeal from the Clerk of the Trial Court is tantamount to not having filed an Appeal Bond at all. And the law is clear that in the absence of an Appeal Bond, the appeal is materially defective and subject to dismissal. For reliance, see: *Fortune and Fortune vs. Massaquoi* 29 LLR 530 (1982); *Abrahm vs. Asifuah* 30 LLR 56 (1982); *Kuma vs. Skinner*, 33 LLR 175 (1985); *Liberia Produce Marketing Corporation vs. Korb and Swen*, 35 LLR 341; *Porte vs. Citibank, NA.*, 37 LLR 126(1993).

Even assuming that the appeal bond in this case had been timely and properly filed, Movants have attacked it for reason that it is fatally and incurably defective; and this brings us to the next two issues before this Court.

Movants claim that an insertion on the Statement of Property Valuation and its accompanying Notary Certificate stating that the Appeal Bond is in favor of the Appellee (Movants herein) makes the Appeal Bond fatally and incurably defective and this is sufficient to warrant the dismissal of the appeal. Respondent's only response is that such insertion is a harmless error.

A statement of property valuation is requested for and obtained by the title holder to the property; it is he who appears at the Ministry of Finance and gives all the information that is required to be placed on the statement of property valuation. If the title holder, as surety to an appeal bond, puts the name of a different person other than the Appellant as the person for whom he has placed his property at risk as security for the appeal bond, how can that bond be enforced against him in the event of default of the Appellant? He can always say that he never put his property up for the Appellant because it is clear from the face of the statement of property valuation and the notary certificate signed by the titleholder, as surety, that a person other than the Appellant is named thereon. Not only will such a situation cause uncertainty, it might even cause a complete loss to the Appellee; and it will certainly defeat the purpose for which the statute requires the posting of an appeal bond. For these and other reasons, this Court held in a previous case that where the statement of property valuation names principal other than the party litigant presenting it, the appeal bond is materially defective and the appeal should be dismissed. *Trowen vs. Tarpeh*, 29 LLR 49! (1982).

We therefore hereby re-confirm the holding of the *Trowen vs. limpsii* case and hold that the naming of Appellees (Movants herein) in the Statement of Property Valuation and the Notary Certificate as the persons in whose behalf the titleholder (surety) posted his property as security for the Appeal Bond is a fatally and incurably defective error, which makes the Appeal Bond and the entire appeal dismissible.

The next attack made by Movants on the Appeal Bond is that the penalty or indemnity stated on the Appeal Bond is less than the amount required for the Appeal.

Bond and that this also makes the Appeal Bond fatally and- incurably defective. This error, Respondents claim, is another harmless error; but this Court just can not

understand how this error could have been made.

In the Appeal Bond itself, it is stated that the sureties are bound to Appellees (Movants herein) in the amount of Three Hundred Thousand Liberian Dollars (L\$300,000.00); but in a latter paragraph of the same Appeal Bond, it is stated that the monetary penalty (indemnity) is for Five Thousand Liberian Dollars (L\$5,000.00). The Statement of Property Valuation says that the property is being offered for a limit of Ten Thousand Liberian Dollars (L\$10,000.00). This Court has held that an appeal bond is a contract of the surety with the Appellee, enforceable in damages for breach as would any other contract. *Sarnob vs. Fahnbulleh*, 30 LLR 258 (1982). Now, assuming that it became necessary to enforce against the Appeal Bond in this case, for which of the three amounts should the surety be held responsible?

The inconsistencies between the amount stated on the Statement of Property Valuation and the amounts stated in the Appeal Bond and the fact that the Appeal Bond itself carries two different amounts as the penalty (indemnity) thereof, make said Appeal Bond too uncertain to be enforceable as a contract. This Court has held that where there is no amount in the body of the appeal bond, it is fatally and incurably defective. *Jackson, et al. vs. Eastman-Mason*, 21 LLR 216 (1972). This Court has also held that where an appeal bond has no monetary penalty, it is fatal and incurably defective. *The International Trust Company, Inc. and Griffiths vs. Nab* 31 LLR 156 (1986). The reason for these holdings is that such appeal bond lacks the consideration to make it an enforceable contract. *Orson vs. Peal*, 33 LLR 190 (1985).

Under the same parity of reasoning for holding that the absence of monetary penalty in an appeal bond makes it incurably defective, this Court holds that the statement of more than one monetary penalty (indemnity) in an appeal bond makes the consideration thereof so uncertain as to make that appeal bond fatally and incurably defective.

WHEREFORE and in view of the foregoing, the Appeal Bond is hereby declared fatally and incurably defective; the Motion to Dismiss is granted; and the appeal is hereby dismissed. The Clerk of Court is ordered to send a mandate to the Trial Court to resume jurisdiction and proceed with the determination of the amount of damages in the Action of Damages consistent with the Ruling on the Motion for Summary Judgment. The right is still reserved to either of the parties to appeal from whatever final judgment is rendered by the Trial Court at which time the entire case may be reviewed on its merits. Costs ruled against Respondents. AND IT IS HEREBY SO ORDERED.

COUNSELLORS C. ALEXANDER B. ZOE, SAMUEL R. CLARK, WILLIAM K. WARE, SR., OF COOPER AND TOGBAH LAW OFFICE AND DAVID A. B. JALLAH AND ZUBALLAH A. KIZEKU OF THE DAVID A.I3. JALLAH LAW FIRM APPEARED FOR THE RESPONDENT/APPELLANT.

COUNSELLORS J. JOHNNY MOMOH, P. NYENAWELIE GIBSON, ALBERT SIMS, EMMANUEL S. KOROMA, MOMODU T. B. JAWANDOH, G. MOSES PAEGAR OF THE SHERMAN & SHERMAN, INC. APPEARED FOR THE APPELLEE.