

THE INTERNATIONAL AUTOMOBILE COMPANY, INC., by and thru its
President, **SAMUEL B. GRIFFITHS** and **SAMUEL B. GRIFFITHS**, et al.,
Appellants/Respondents/ Intervenor, v. **GABRIEL W. NAH**, Appellee/Movant.

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

Heard: April 27, 1983. Decided: July 6, 1983.

1. In order for a bond to be valid, it must have an obligor and an obligee.
2. A bond is incomplete without sureties, and sureties would not be bond if they subscribed their signature without firstly knowing from the face of the bond, what sum of money they have obligated themselves to.
3. The failure to have a surety's name appear on a surety bond, or the failure to have the surety sign even though his name appears is tantamount to neglect to file a proper appeal bond.
4. Where there is no surety on an appeal bond who undertook to pay any money in the event the principal fails to comply with the judgment as provided, there is no legal appeal bond before the Supreme Court.
5. Where the appeal bond contains no monetary clause, the bond is defective and a motion to dismiss will be granted.
6. For a party litigant to become a surety for himself, he must completely part with the property so offered as security, otherwise the bond will be considered bad.
7. An appeal bond which does not state in its body the amount of the bond and which is not accompanied by an affidavit of sureties, the statement of the total amount of the liens, description of the property offered as surety, sufficiently identifying the property to establish the lien on the bond, is bad and defective and renders the appeal dismissible.

Appellee/movant filed a motion to dismiss appellant's/ intervenor's appeal bond on grounds of defectiveness since the bond failed to mention the names of the sureties in the body thereof and a statement of a sum of money in the body of the bond to bind the sureties. The Supreme Court observed that the allegations in the motion were that the failure to have the names of a surety appear on a surety bond or to have him sign the said bond even though his names appears thereon, rendered the bond defective. The Supreme Court also held that the appeal bond was defective where it contained no monetary value, and where there were no sureties. In such a case, the Court said, there is no legal appeal before it and that the Court was without jurisdiction to hear the same.

John A. Dennis appeared for the appellants/respondents. M Fahnbulleh Jones appeared for appellee/movant.

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

On the 30th day of July, A.D.1982, the plaintiff, now appellee/movant, Gabriel W. Nah, instituted an action of ejectment against the co-appellant/co-respondent, Samuel B. Griffiths, to recover Lot No. 12 Block in the City of Monrovia, Montserrado County. Pleadings progressed as far as the reply and rested. The issue raised in the pleadings being mixed issues of law and facts, according to the records, were ruled to jury trial. Trial was had with a verdict in favour of plaintiff to which verdict, defendant excepted and filed a motion for a new trial.

While the motion was pending, the said and same Samuel B. Griffiths, defendant in the ejectment proceedings, this time as President of the International Automobile Company, Inc., on January 7, 1983, filed a motion to intervene, claiming that if the company was not allowed to intervene, it would be deprived of its possession and occupancy of the property. The plaintiff therein filed his resistance praying that the motion be denied for being unmeritorious. On the 18th day of January A. D. 1983, the motion for a new trial was heard and denied and on the following day, the motion to intervene was also heard and overruled to which rulings defendants noted exceptions. On the same date, a final judgment was entered confirming and affirming the verdict of the empanelled jury awarding the plaintiff therein \$1,000.00 as rent and \$2,000.00 as general damages. To this judgment, defendants therein excepted and announced an appeal to this Court. The records certified to us showed that the intervenor, through its president, Samuel B. Griffiths, and Defendant Samuel B. Griffiths, now respondents, in the ejectment suit blended the bill of exceptions, the appeal bonds and the notice of the completion of the appeal.

On April 21, 1983, the plaintiff/appellee filed this motion to dismiss appellants' appeal on the ground of defectiveness, in that the appeal bond failed to mention the names of the sureties in the body thereof and that no sum whatsoever was stated in the body of the bond to bind the sureties. The appellants/respondents, as usual, filed jointly a resistance claiming strict compliance with the statute controlling appeal bonds.

The sole issue presented by these contentions is whether or not the appeal bond tendered in this case is defective? The bond, which is the subject of the motion to dismiss is worded in this manner:

"APPEAL BOND

Know all men by these presents that we the international automobile company, Inc., by and thru its President Samuel B. Griffiths, intervenor/defendant (appellant) and Sureties, being freeholders and householders within the Republic of Liberia, do and hereby firmly hold

ourselves unto the respondent/plaintiff/(appellee), in the just and true sum of which is intended to cover cost. The condition of this obligation is to the effect that the said intervenor/defendant/appellant hereby indemnifies the said respondent/plaintiff/appellee from all cost and all injury, arising from the said appeal thus taken by the intervenor/defendant/appellant from the ruling denying his motion to intervene in the basic suit of ejectment, and will comply with the judgment of the court to which the appeal is taken or any other court, to which the said cause might be removed.

In witness whereof, we have hereunto set our signatures, this 8th day of March, AD. 1983.

In the presence of: Sgd: Kour Barnes Sgd: signature illegible Intervenor/Defendants (Appellant) Sgd:

signature illegible Sgd. S. B. Griffiths surety

Sgd: signature illegible Sgd: S. B. Griffiths, Jr., Surety

Approved: for \$4,500.00 (Four thousand five hundred dollars)

Sgd: J. Henrique Pearson Judge 11 /March/83. "

From an inspection of the appeal bond submitted in this case, we observed that the bond in question bore no named person as surety and did not carry a penal sum in its body; yet, the trial judge approved the same in the sum of \$4,500.00. We also observed that the bond was signed by the intervenor/co-appellant and defendant/co-appellant, S. B. Griffiths, alone as principal and surety.

At this stage, it has therefore become necessary for us to define what exactly is a bond. A bond is a written instrument with sureties guaranteeing the faithful performance of acts or duties contemplated. 71 N.E. 2d 742. Usually, statutes requiring a bond as a condition of some step or judicial proceeding to secure the performance of duties of the principal obligor require that such a bond be executed with one or more sureties who may be two natural persons or artificial persons authorized to execute bonds. Civil Procedure Law, Rev. Code 1: 63.2 -Who may be Sureties.

A surety is one who undertakes to pay money or perform other acts in the event that his principal fails therein, whereby the surety becomes directly and immediately liable. 11 C.J. S., Bonds, § 9. In this connection, in order for a bond to be valid it must have an obligor and obligee. In Liberia, based upon the statute just cited, the legal holding is that sureties are required to make bonds legally binding -Van Ee v. Gabbidon, 11 LLR 65 (1951); Cavalla River Company v. Fazzah, 7 LLR 13 (1939). In the Cavalla River Company case, the sureties' names were placed in the body of the bond but they did not sign the bond. The Court, speaking through Mr. Chief Justice Grimes, said:

"An appeal bond which fails to name and be signed by two or more sureties who are householders or freeholders within the Republic of Liberia is fatally defective, and the appeal should be dismissed."

The failure to have a surety's name appear on a surety bond or even if the name did appear but the surety did not sign his name is tantamount to a neglect to file a proper appeal bond, which is one of the steps to give the Supreme Court jurisdiction to hear the case on appeal. *Delaney v. Republic*, 4 LLR 251 (1935). Therefore, since there is no surety on the subject bond who undertook to pay any money in the event the principal failed to comply with the judgment as provided, it cannot be overemphasized that there is no legal appeal bond before this Court.

The next question for our consideration is: which of the amounts the law contemplates as being the penal sum for which the sureties have obligated themselves? Is it the amount fixed by the court at the time of the approval of the bond or the amount fixed in the body of the bond before it is signed by the sureties and their witnesses? In other words, which of the amounts is the penal sum of the bond? Our statute on appeal bond states:-

"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. Civil Procedure Law, Rev. Code 1:51.8.

The statute just quoted imposes two separate and distinct duties upon the trial judge. In the first place, he is required to fix the amount which should be laid in the body of the bond which duty must be done before the sureties subscribe their signatures; because they are supposed to know and accept the penal sum by which they are jointly bound with the appellant. In the second place, the judge again is required to approve the bond, which he cannot do until after the principal and the sureties have signed the instrument. The bond itself is incomplete without sureties, and sureties would not be bound if they subscribed their signatures without firstly knowing from the face of the bond, what sum of money they have obligated themselves to. *Mark-Reeves v. Republic*, 15 LLR 229 (1963). Mr. Justice Tubman speaking for the Court in the case *Blebo v. Republic*, 7 LLR 33, 35 (1939), held:

"It is essential to the successful prosecution of an appeal, under the provisions of the statute just cited, that an appeal bond should bind the appellant in some sum certain as a penalty

for failure to perform the conditions of the said appeal bond. A failure so to engage the appellant renders an appeal bond fatally defective because, if no sum is mentioned or contracted to be paid, no sum certain can be imposed under a bond in case of failure to prosecute the appeal."

Our statute further provides that an appeal bond which does not state in its body the amount of the bond and which is not accompanied by an affidavit of sureties containing the statement of the total amount of the liens, description of the property offered as surety, sufficiently identifying the property to establish the lien of the bond, is bad and defective and thus renders the appeal so taken a proper subject for dismissal. Civil Procedure Law, Rev. Code 1: 51.8 and 63.2(2) and (3). Where an appeal bond contains no monetary clause, the bond is defective and a motion to dismiss the appeal will be granted. *Mingle v. Richards*, 11 LLR 323 (1953).

In the present case, as we have said before, there is no sum certain fixed in the body of the bond and although the trial judge approved it for \$4,500.00, he acted without legal authority and this act of the trial judge was therefore a nullity; he did so without any named sureties in the body of the bond or without the signatures of any subscribing sureties. The signatures on this appeal bond purporting to be those of sureties are nothing but those of the Co-respondent/appellant S. B. Griffiths, president of

International Automobile Company, Inc., the intervenor/coappellant; and S. B. Griffiths, defendant/co-appellant in the ejectment suit, who are one and the same person. This Court has held that for a party litigant to become a surety for himself he must part completely with the property so offered as security; otherwise the bond will be considered bad. *Tubman v. Greenfield*, 29 LLR 200 (1981) and *The Management of Intrusco Corporation v. Duo*, 30 LLR 537 (1982).

We have not been able to go into the merits of this case. This is because the appellee's motion to dismiss, being jurisdictional, was thus entitled to priority. We therefore grant the appellee's motion to dismiss the appeal. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering it to resume jurisdiction over this case and enforce its judgment. Costs are assessed against the appellants/respondents. And it is hereby so ordered.

Motion granted; appeal dismissed