THE MANAGEMENT OF THE INTERNATIONAL TRUST COMPANY OF LIBERIA, Appellant, v**. MOSES WIAH** et al. and THE BOARD OF GENERAL APPEALS, Appellees.

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

Heard: January 20, 1983. Decided: February 4, 1983.

1. Our statute provides four ways by which one may secure a bond. These are: (1) by offering cash to the value of the bond, or by depositing cash in the bank to the value of the bond as evidenced by a bank certificate or a certificate of deposit. This type of bond is commonly referred to as "cash bond"; (2) by giving unencumbered real property on which taxes have been paid up to date and which property is held in fee by the person(s) furnishing the bond; (3) by giving valuables to the amount of the bond which can be easily converted into cash; and (4) by two or more sureties who are owners of real property in the Republic of Liberia and who meet the requirements of the statute with respect to legally qualified sureties. Civil Procedure Law, Rev. Code, 1: 63.2.

2. Where the bond is insufficient, the remedy available to the appellee is to except to the sufficiency of the bond within three days so as to allow the appellant to move to justify.

3. Where the trial court loses jurisdiction by reason of the perfection of the appeal, and the bond is found to be insufficient, appellee cannot except to the sufficiency of the bond in the trial court.

4. A certificate of deposit is a written statement from a bank that the party therein has deposited the amount of money specified in the certificate, and that the same is held subject to his order in accordance with the terms thereof. It is the bank's promissory note.

5. The obligation of a guarantor is collateral and secondary to that of the principal to discharge the obligation for which he is primarily liable. A guarantor is not bound like a surety to do what the principal has contracted to do, but answers only for the consequences of the default of the principal.

6. The contract of suretyship is made at the same time and usually with that of the principal, while that of the guarantor is a contract separate and distinct from that of the principal.

Hence, unless authorized by statute, a guarantor cannot be sued jointly with the principal debtor.

7. Where the appealing party elects not to furnish a surety bond, the statute requires that he must part with the cash to the value of the bond; or he may part with the valuables offered to the amount of the bond, or he may part with unencumbered real property to the value of the bond; but he is not permitted to keep in his custody the security offered pending final decision of the court.

8. Generally there can be no surety without a principal. It is the principal who is originally and primarily liable for the payment of the debt or the performance of the act for which the surety is bound in an accessory or collateral capacity. Thus, it may be said that the surety, as distinguished from the principal, is the one who undertakes to pay the debt or perform any other act for which the principal has bound himself by contract in the event that the latter fails therein.

9. The general rule is that an appellant is not a competent surety on the appeal bond or undertaking, although one who is a nominal party to the appeal may act as surety. An appellant cannot be surety on his bond.

10. A corporation cannot act as surety on an appeal bond or undertaking unless empowered to do so by statute.

11. Where a statute empowers a corporation to act as a surety, it cannot act as its own surety, or if it is a party to the case appealed from or party to the appeal.

Growing out of a final judgment of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, confirming the decision of the Board of General Appeals in an action of unfair labor practice, the defendant, Appellant ITC, noted its exceptions and announced an appeal to the Supreme Court.

Upon perfection of the appeal, appellee filed a motion to dismiss the appeal on the grounds that the appeal bond is defective. Appellee contends that the bank certificate, evidencing the deposit of cash, and relied upon as security for the bond, was issued by The International Trust Company of Liberia, which is the same entity as appellant. In other words, appellant has deposited the cash with itself, contrary to the appeal statute. Appellee further contends that appellant has positioned itself as both principal and surety on its own bond.

The Supreme Court upon review of the records held that the bank certificate in support of

the bond is not a certificate of deposit as required by the appeal statute, but rather a contract of guaranty, which is contrary to the appeal statute. The Court also found that the bond was not signed by any surety; that it is not accompanied by affidavit of sureties; and that it has no certificate of property valuation, all of which are statutory requirements for the perfection of an appeal. Accordingly, the Supreme Court granted the motion and dismissed the appeal.

MacDonald J. Krukue and Tuan Wreh appeared for appellant. Toye C. Barnard with Raymond A. Hoggard and George E. Henries appeared for appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

The records we have before us in connection with the motion to dismiss appellant's appeal show that the management of The International Trust Company of Liberia (ITC), appellant therein, had petitioned the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for a judicial review of an administrative decision rendered against the appellant by the Board of General Appeals, Ministry of Labor, growing out of a complaint of unfair labor practices filed against the appellant Company by its employees, appellees herein.

The court below heard the petition and on the 15th day of October, 1982, entered final judgment confirming the administrative decision of the Board of General Appeals. To this final judgment of the court, the appellant excepted and announced an appeal to the Honourable the Supreme Court of Liberia. The appeal was granted and appellant has perfected its appeal for review by this Court.

The appeal having been perfected, appellees have filed a motion to dismiss the appeal on the ground of defective appeal bond. For the benefit of this opinion, we quote hereunder counts one and two of the six-count motion which, in our opinion, cover the contention of the appellees in the motion. The other four counts are a repetition of the averments contained in counts one and two of the motion. The two counts read, as follows:

"1. Because appellees say that appellant has failed to perfect its appeal as provided by statute; in that, the statute has laid down certain procedures by which an appeal bond can be secured. One of the procedural requirements is 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. In the instant case, the appellant has elected to deposit cash in the bank and has attached a bank certificate to the appeal bond. But in doing so, the appellant has allegedly deposited the cash with itself and has issued its own certificate, which is contrary to the intent and purposes of the statute. There-fore, the appeal bond filed by the appellant is defective.

2. And also because appellees say that the appeal should be further dismissed, because the appellant is the appealing party in this case and cannot, at the same time, be a surety to its own appeal bond. Under the law, an appellant is not a competent surety on an appeal bond."

According to the averments of counts one(1) and two (2) of the motion, the appellees are contending substantially that, appellant allegedly deposited cash with itself as security for the appeal bond, contrary to the statute relating to depositing cash in the bank to the value of the bond, evidenced by a bank certificate, and that the appealing party cannot be both principal and surety at the same time to an appeal bond; for, under the law, an appellant is not a competent surety to an appeal bond.

To this motion of the appellees, appellant filed an eight count resistance contending in substance that all the procedural steps required by law to perfect an appeal have been taken by appellant, that is, by depositing cash in the bank as evidenced by a bank certificate. Therefore, appellant prayed the dismissal of appellees' motion for being unmeritorious. We only deem counts one, three and four of the resistance necessary for our consideration; the other five counts are repetition of the contention raised in the three counts to be considered.

In count one of the resistance, the appellant contends that appellees should have filed a notice of exception to the insufficiency of the appeal bond within three days after being notified of the filing of said bond, and not having done so, they have waived their right to raise any objection to the insufficiency of the bond.

Count one of the resistance cannot be sustained, because in the first place, appellees have not attacked the insufficiency of the bond; but rather, appellees contend that the appeal bond is materially defective. A defective bond is quite different in nature from an insufficient bond. Under justification of surety as found in Civil Procedure Law, Rev. Code 1: 63.6, a party should except to the sufficiency of a surety within three days to allow the said surety or sureties to file motion to justify; but the appellees are not questioning the sufficiency of the surety on the appeal bond. In fact, appellees could not have filed a notice of exception when the trial court had already lost jurisdiction by reason of the perfection of the appeal. Appellees contend that the appeal bond is defective because of the reason stated in counts one and two of the motion. It is, therefore, our holding that count one of the resistance should be, and the same is hereby overruled.

In count three of the resistance, appellant contends, and its counsel argued, that The International Trust Company of Liberia (ITC), appellant herein, is not the same entity as the International Trust Company Bank, which issued the bank certificate under attack; rather,

International Trust Company Bank is the banker of The International Trust Company of Liberia. That ITC Bank is banker for The International Trust Company of Liberia and INTRUSCO; hence, ITC Bank is capable of issuing a bank certificate to The International Trust Company of Liberia.

The averments in count three of the resistance that, the appellant, The International Trust Company of Liberia, is a separate and distinct entity from ITC Bank is not supported by any documentary evidence under the principle of notice and in fairness to the appellees as well as the Court. Taking for granted that the management of The International Trust Company of Liberia, appellant, and ITC Bank, are two separate and distinct entities, does our law require a certificate of cash as guarantee for a bond, or that cash to the value of the bond must be deposited in a bank as evidenced by a certificate of deposit? Is the certificate under attack a certificate of deposit or a certificate in the form of contract of guaranty?

We do not agree, in the absence of any legal proof, that the appellant, ITC, is not the same entity that issued the certificate in question. We also disagree that the certificate in question was issued by ITC Bank, or any other bank for that matter, as claimed by the appellant, because the subject bank certificate does not indicate on its face that it was issued by ITC Bank and signed by its authorized officer, that is to say, the president or manager of said bank. Under the circumstances, count three of the resistance is not sustained.

In count four of the resistance, the appellant has said that there is no law that precludes an appellant from being his own surety. Whilst we intend to expound on this issue, we must state here briefly that we disagree with the appellant; for, if one elects to file a surety bond, the law requires two or more qualified sureties besides the principal. Therefore, in surety bond the principal cannot be both principal and surety at the same time.

For the benefit of this opinion, we hereunder quote word for word the appeal bond and the bank certificate as tendered by the appellant, which appellees have attacked for being defective; they read, as follows:

"APPEAL BOND

"KNOW ALL MEN BY THESE PRESENTS: That we, the management of ITC, appellant-Principal; and, by virtue of Bank Certificate Cash Guarantee to appellant's Appeal Bond, dated November 17, 1982, deposited in The International Trust Company of Liberia, Monrovia, Liberia; as evidenced by the aforesaid Bank Certificate hereto attached to the Bond, and are hereby bound unto the Sheriff for Montserrado County in the sum of $606,898.20 (six hundred and six thousand, eight hundred & ninety-eight dollars and twenty cents)--constituting one and one-half of the principal amount awarded the appellees, current

money of this Republic, to be paid to Moses Wiah et al., appellees or their legal representatives, jointly and severally firmly by these presents.

The condition of this obligation is, we will indemnify the appellees from all costs and all injuries arising from the appeal taken by the above named appellant from the ruling/judgment of His Honor Napoleon B. Thorpe on the 15th day of October, 1982, in the case. The Management of ITC v. the Board of General Appeals and Moses Wiah et al., judicial review, and will comply with the Final ruling/judgment to which said appeal is taken or any other court to which the said action may be removed.
The penalty of this bond is: $606,898.20 (six hundred and six thousand, eight hundred and ninety-eight dollars and twenty cents).

In Witness whereof, we have hereto subscribed this 30th day of November, 1982. "IN THE PRESENCE OF:

_____ sgd. (illegible)
THE MANAGEMENT OF ITC
APPELLANT-PRINCIPAL
_____ BANK CERTIFICATE CASH
GUARANTEE TO APPEAL
BOND NOVEMBER 17, 1982
"APPROVED FOR; $606,898.20

Sgd. Napoleon B. Thorpe
ASSIGNED CIRCUIT JUDGE, SEPTEMBER TERM, CIVIL LAW COURT, 1982, November 30, 1982."

"BANK CERTIFICATE
CASH GUARANTEE TO PETITIONER'S APPEAL BOND

"KNOW ALL MEN BY THESE PRESENTS that we, The International Trust Company of Liberia (ITC), of the City of Monrovia, Republic of Liberia, hereby certify that, we undertake to fully indemnify Moses Wiah et al., the above named co-respondents, in an amount not exceeding $606,898.20 (SIX HUNDRED AND SIX THOUSAND EIGHT HUNDRED AND NINETY-EIGHT DOLLARS AND TWENTY CENTS)--constituting one and one-half of the principal amount awarded the co-respondents, out of monies available and set aside in this Bank for and in respect of all costs and injuries which the said co-respondents might suffer by reason of the judicial review prayed for by the petitioner against the said co-respondents in the event it is finally determined that the co-respondents are entitled to recover in the said judicial review; otherwise, these presents shall remain null

and void.

Issued in the City of Monrovia,
Liberia, this 17th day of November, A. D. 1982.
The International Trust Company of Liberia
Sgd. (illegible)
80 Broad Street
Monrovia, Liberia."

Our statute provides four ways by which one may secure a bond, that is: (1) by offering cash to the value of the bond, or by depositing cash in the bank to the value of the bond as evidenced by a bank certificate or a certificate of deposit. This type of bond is commonly referred to as "cash bond"; (2) by giving un-encumbered real property on which taxes have been paid up to date and which property is held in fee by the person furnishing the bond; (3) by giving valuable to the amount of the bond which can be easily converted into cash; and (4) by two or more sureties who are owners of real property in the Republic of Liberia and who meet the requirements of the statute with respect to legally qualified sureties. Civil Procedure Law, Rev. Code 1: 63.2. This type of bond is commonly referred to as "paper or surety bond". Our statute on the point reads as follows:

"(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." Ibid., 1: 63.1.

It would seem that appellant elected to tender its appeal bond as provided by subsection (a) or (d) of section 63.1 of the statute quoted supra, and hence, the other two ways by which a bond may be secured will not be discussed in this case.

There is, in the records, a paper or surety bond tendered by the appellant and approved by the trial Judge for $606,898.20. We also find in the records a bank certificate certifying that cash to the value of the appeal bond had been set aside to indemnify the appellees. With these documents and in view of appellees motion, the question that has arisen is, whether or not appellant has posted a valid appeal bond in keeping with the requirements of the statute quoted supra?

Recourse to what appellant termed to be its appeal bond and which was approved by the trial judge for the amount of $606,898.20 shows that said bond is not signed by any surety neither is it accompanied by affidavit of sureties nor certificate of property valuation as required by our statute on surety bond. Appellant's appeal bond in question to which the bank certificate is attached is defective, and therefore renders the appeal dismissible.

An inspection of the bank certificate reveals that it is not a certificate of deposit, because it shows on its face: "Bank Certificate Cash Guarantee to appellant's appeal bond, November 17, 1982"; instead, it is a contract of guaranty, which is not one of the requisites of our statute to secure a bond. A certificate of deposit is defined by Bouvier Law Dictionary to be: "A written statement from a bank that the party therein has deposited the amount of money specified in the certificate, and that the same is held subject to his order in accordance with the terms thereof." And according to Black's Law Dictionary 286 (4th ed), certificate of deposit is "a written acknowledgment by the bank or banker of the deposit with promise to pay to depositor, to his order, or to some other person or to his order. It is the bank's promissory note."

According to our statute on bond as quoted supra, the sheriff receiving cash, a bank certificate, stock or other negotiable security or valuables, shall deposit it or them into the government depository or a reliable bank, and secure a receipt therefor, showing the amount deposited 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: 63.1.

In the instant case, it is not shown on the face of the certificate that any cash was deposited by the appellant, nor does the certificate contain a statement of promise to pay the depositor, or to his order or to some other person as is required by statute; the certificate is also not signed by the president or manager of any banks, not even the ITC Bank which appellant claimed to be a separate and distinct entity from The Inter-national Trust Company of Liberia; instead, the certificate is in the nature of a contract of guaranty which is contrary to our statute on bonds and security, and, hence, unenforceable as against the guarantor unless proof is made of liability and default on part of the principal debtor.

Assuming that The International Trust Company of Liberia, the appellant, that issued the certificate was a guarantor as the certificate indicates and the appellant as principal was someone other than the management of ITC, Common Law writers have held, and we quote:

"A guarantor not being a point contractor with the principal, is not bound like a surety to do what the principal has contracted to do, but answers only for the consequences of the default of the principal. There are certain well-defined distinctions and defenses in the nature of the legal obligations created. A surety is primarily and jointly liable with that of the principal debtor. His obligation is created concurrently with that of the principal debtor. An action can be maintained against both jointly, even without statutory authority so to do. But the obligation of a guarantor is collateral and secondary to that of the principal debtor to discharge the obligation for which he is primarily liable. The contract of surety is made at the same time and usually with that of the principal, while that of the guarantor is a contract separate and distinct from that of the principal. Unless authorized by statute, a guarantor cannot be sued jointly with the principal debtor." 38 AM. JUR. 2d, Guaranty, §15.

In this cases, the principal and the guarantor being the self-same entity, in the event of any default, against whom would the contract of guaranty be enforced without infringement upon the rights of the guarantor? In fact, our law does not require a contract of guaranty in securing an appeal bond, and therefore any appeal bond secured contrary to the statute is defective to all intents and purposes.

Appellees contend, and their counsel strongly argues, that the appellant is both principal and surety on its own appeal bond by reason of the certificate which it issued on its own behalf, contrary to the statute. Our distinguished colleague who is dissenting from us feels that the appellant being a banking institution, there was nothing wrong with it setting aside the amount of the bond in the bank to indemnify the appellees. Counsel for appellant contended that the management of ITC is a separate and distinct entity from The International Trust Company Bank where the amount of the bond is allegedly set aside to indemnify the appellees.

In the first place, if ITC Bank is not the same entity as the Management of ITC, appellant in this case, and it is true that appellant deposited money in ITC Bank, sufficient to indemnify the appellees, appellant should have issued a manager's check drawn on the ITC Bank, certified by ITC Bank, and presented to the court or sheriff. This would have definitely satisfied the provisions of the statute, requiring the offering of cash to the value of the bond; otherwise, cash to the value of the bond should have been deposited and a certificate of

deposit issued by the bank, satisfying that the appellant, the management of The International Trust Company of Liberia, had deposited cash to the value of the bond in keeping with statute. The certificate under attack reveals that it is not issued by the ITC Bank nor does it bear the signature of the president or manager of any bank; to the contrary, it shows on its face that The International Trust Company of Liberia, appellant herein, issued the certificate and not any bank, and, therefore, it is no bank certificate of deposit as contemplated by statute. From our interpretation of the statute on bonds and security, it is not intended for the appealing party to be his own surety at the same time. The different ways by which a bond may be secured in our jurisdiction makes no mention that a principal furnishing a bond can at the same time be his own surety. The only requirement, as already stated, is that the person furnishing the bond may either give cash to the value of the bond, or may deposit cash in the bank to the value of the bond as evidenced by a certificate of deposit; or give unencumbered real property on which taxes have been paid up to date and which property is held in fee by the person furnishing the bond; or he may give valuables to the amount of the bond; or he may secure the bond by two or more qualified sureties. There is no where provided in the statute that the person furnishing the bond should set aside and retain the amount of the bond in his custody.

In the second place, we hold that where the appealing party does not elect to furnish surety bond, the statute requires that he must part with the cash to the value of the bond; part with the valuables offered to the amount of the bond, or he may part with the unencumbered real property to the value of the bond; but he is not permitted to keep in his custody the security offered pending final decision of the court.

In 50 AM. JUR., Suretyship, § 3, it is provided that: "The relation created by the suretyship agreement is a tripartite one between the party insured, the principal obligor/debtor, and the surety; and generally speaking, there can be no surety without a principal. The principal is the one who enters into the main contract with the obligee and who is directly interested in and benefitted thereby. He, and not the surety, is the one to whom or from whom the consideration for the main obligation flows, and so one who receives and retains the consideration or benefit of a contract cannot occupy the position of a surety. It is the principal who is originally and primarily liable for the payment of the debtor or the performance of the act for which the surety is bound in an accessory or collateral capacity. Thus, it may be said that the surety, as distinguished from the principal, is the one who undertakes to pay the debt or perform any other act for which the principal has bound himself by contract, in the event that the latter fails therein."

For further authority as to whether the appealing party can be a competent surety for himself, we have the following:

"The general rule is that an appellant is not a competent surety on the appeal bond, or undertaking although one who is a nominal party to the appeal may act as surety. An appellant cannot be surety on his bond… ." 4A C.J.S., Appeal and Error, § 536.

The management of The International Trust Company of Liberia is a corporation organized and operating under the laws of the Republic of Liberia, and here is what legal authorities say:

"CORPORATION. A corporation cannot act as surety on an appeal bond or undertaking unless empowered to do so by statute. However, statutes do sometimes empower corporations to act in such capacity. Thus, there are statutes creating corporations for the express purpose of acting as sureties on bonds and undertakings, and these corporations can generally act as sureties on appeal bonds and undertakings, but not if it is a party to the judgment appealed from or to the appeal. The offer of a corporation to become surety on an appeal bond should not be accepted if there is any doubt as to the power of the corporation to act in that capacity" (emphasis ours) 4A C.J.S., Appeal and Error, §536.

Appellant contends, and its counsel strongly argued that the International Trust Company Bank is banker for the appellant, International Trust Company of Liberia. This could be true, but there is no showing that International Trust Company Bank is an insurance company authorized by law to execute surety bonds within the Republic of Liberia in keeping with Civil Procedure Law, Rev. Code, 1: 63.2(1). When a question was propounded by the bench to counsel for appellant to say which officer of the bank signed the certificate, he answered that it might have been the Vice President, but could not exactly say because the document was prepared in his absence.

From all that we have discussed and the legal authorities cited, it is our considered opinion that there is neither a surety bond filed by the appellant nor a cash bond tendered to indemnify the appellees in keeping with our statute.

In the case Talery and Cooper v. Wesley, 21 LLR 116 (1972), this Court held that defective appeal bonds render appeals subject to dismissal. See also Cole v. Peabody, 13 LLR 252 (1958).

In as much as we would have liked to hear this case on its merits and decide the same upon the evidence, we are forbidden by law from doing so, because of the negligence and failure of the appellant to adhere to the mandatory requirements of the appeal statute in order to have given this Court jurisdiction to do so. The subject appeal bond of the appellant being

materially defective, the motion to dismiss the appeal must be, and the same is hereby granted and the appeal dismissed, with costs against the appellant. And it is hereby so ordered.

Motion granted.

MR. JUSTICE YANGBE dissents.

This Court has held in many cases that an appeal should not be dismissed on any ground except those specifically provided by statute. It is universally agreed that statute regulates all procedures in courts and where the statute is fully complied with there is no reason to inject anything into the statute that is not provided therefor. According to the statute on security for bond, it is provided as follows:

"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) Valuable 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 others 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 1:63.1.

Any bond given under this title shall be secured by one or more of the following enumerated above; therefore, it is obvious that appellant had a choice to elect paragraph (a) only of the statute hereinabove.

According to subparagraph (c) above, the sheriff receiving cash, stock or any other negotiable sureties, or valuable shall deposit it or them in the government depository or a reliable bank and secure a receipt showing the amount and the purpose for them and

containing a statement that the deposit will be released only upon a written document from a judge of the Court.

In my opinion, it is not the intent of statute, in case of a cash bond where the appellant is authorized to deposit the cash in the bank and exhibit evidence by a bank certificate for such deposit, and again authorized the sheriff to deposit the same amount in the bank and obtain a certificate; to hold otherwise, will be an obvious contradiction. In this case, no stock or other negotiable sureties or valuables were offered as a bail bond, therefore, the portion of the statute, that is, (c) above is not applicable.

The appeal bond that is posted by the appellant in this case, and quoted in the majority opinion, is simply to obligate appellant, and to obtain some evidence of approval thereof by the trial judge as well as for the full compliance with the judgment rendered against it in this case, in case the judgment is upheld by the Supreme Court. According to that bond, the space provided thereon for surety to sign, it is written "BANK CERTIFICATE CASH GUARANTEE TO APPEAL BOND, NOVEMBER 17, 1982" and above it the representative of appellant sign as appellant principal and not surety. Therefore, it is crystal clear that according to the records before us, appellant did not sign any appeal bond as surety in the case in which it is a party. As I have said earlier, this is a cash bond and according to statute I have quoted supra, "Cash to the value of the bond; or cash deposited in the bank to the value of the bond by a bank certificate", is what the statute requires.

The law cited by appellees and relied upon in the majority opinion to the effect that appellant can not be a surety to the bond in the case in which it is a party, in my opinion, is not applicable in this case because the bond in this case is a cash bond which does not require a natural person in keeping with the statute. Ibid., 1: 63.2.

According to the two count motion, as quoted in the majority opinion, for the final determination of the controversial issue raised in the motion, there is no attack on the bank certificate for not bearing the authorized signature, the sole contention of the appellees is that appellant is a party to the suit and therefore, although it is a banking institution, it should have deposited the amount in another bank and obtain a certificate therefor.

It is holding of this Court repeatedly in several cases, including Clark v. Barbour, 2 LLR 15 (1909), that court of Justice will only decide upon issues joined between the parties specifically set forth in their pleadings.

There was no attack on the bank certificate for not bearing authorized signature; therefore, it should not be injected sua sponte by the Court in its decision and should restrict itself only

to the points of contentions raised in the motion. For, to do otherwise, will be a departure from the cardinal rule laid in the second volume of our law reports since 1909 and a violation of the doctrine of stare decisis.

With respect to appellant's depositing the money with its bank, and at the same time being a party to this suit, there is no inhibition in the statute that a banking institution which is a party to a suit should not deposit money in its bank and obtain a certificate therefor as evidence of cash bond. We should remember that what the law does not prohibit, it permits. Additionally, it is admitted in the motion to dismiss, that appellant is a banking institution and it is obvious that appellant was incorporated for that purpose under the laws of the Republic of Liberia. The holding, therefore, that appellant should have deposited the funds in another bank and obtain a certificate because it is a party appellant is to the effect that appellant should not exercise the function of the banking institution for which it was incorporated, especially so, when there is no complaint before us that appellant has acted ultra vires.

In its resistance, appellant contended that it has complied with all the requirements of the appeal statute.

It is quite clear that the question of inadequate indemnification of the amount of the bond is not assailed in the motion and no allegation has been made about the bank's inability to reproduce the amount when it become necessary to comply with the terms and conditions of the recognizance.

I would like to make further reference to the contention that appellant should have deposited the money into another bank and obtained certificate as evidence thereof because appellant is a party in this case. In Tubman v. Greenfield, 29 LLR 199 (1981), decided by this Court during March Term, 1981, the appellant in that case had two sureties on the appeal bond namely, John Hilary Tubman and Isabella Gibson, who were not fee simple owners of any realty within the Republic of Liberia. Appellant himself signed the appeal bond as surety and offered unencumbered real properties of his own with affidavit of sureties signed by himself and supported by a certificate from the Bureau of Internal Revenue of the Republic of Liberia. In that case, the appellant had physical custody of the properties and only exhibited evidence of the unencumbrancy of the properties, the valuation thereof and locations. This court held the bond valid and denied the motion to dismiss the appeal. Similarly, the cash in this case was deposited with the appellant bank referred to above.

In view of what I have stated and the law cited above, I have withheld my signature from the judgment in this case. Hence, I dissent.