THE MANAGEMENT OF INTRUSCO CORPORATION, Appellant, *v.* **SAMUEL T. DUO**, Appellee.

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

Heard: November 18, 1982. Decided: February 3, 1983.

1. A bond secured by a check drawn on a bank must be evidenced either by a bank certificate indicating that the check was deposited with it as cash, or by a receipt from the sheriff.

2. For an appeal bond to be sufficient it must be in an amount adequate to indemnify the appellee from all costs and injury arising from the appeal and to comply with the judgment of the appellate court; otherwise the appeal will be dismissed.

3. To cure the uncertainty of the judgment on appeal, the expense, injuries and damages that may arise and accrue to the appellee from the appeal, it is mandatory that the appeal bond be one and one-half times the amount of the judgment.

From a final judgment rendered by the People's Civil Law Court for the Sixth Judicial Circuit, appellant appealed to the Supreme Court. Appellee moved the Court to dismiss the appeal on grounds that the appeal bond is insufficient, it not being one and one-half times the amount of the judgment; and that the bond is not accompanied by a bank certificate evidencing the deposit of cash to secure the bond. Appellant, in resisting the motion, contended that there is no statutory provision requiring an appeal bond to be one and one-half times the amount of the judgment.

The Supreme Court held that in order to indemnify the appellee from all costs or injury arising from the appeal if unsuccessful, and to comply with the judgment of the appellate court, an appeal bond must be one and one half times the amount of the judgment. In so holding, the Supreme Court overruled appellant's contentions, granted the motion to dismiss, and recalled its opinion in *West Africa Trading Corporation v. Alraine,* 24 LLR 224 (1975), in so far as it relates to one and one-half times the amount of judgment, as same is not consistent with the intent of the statute.

Tuan Wreh and *MacDonald J. Krakue* appeared for appellant/respondent. *M. M. Perry, Lawrence A. Morgan* and *Joseph W. Andrews* appeared for appellee/movant.

MR. JUSTICE SMITH delivered the opinion of the Court.

Based upon a judgment rendered by the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in favor of the appellee in this case, the appellant appealed from said judgment and perfected its appeal for review by this Court of last resort.
When the case was called for hearing, appellee called our attention to a motion filed to dismiss appellant's appeal for grounds substantially stated, as follows:

(1) That the appellant's appeal bond is insufficient to indemnify the appellee, in that, the amount of the bond is only $300.00 instead of one and one-half times the amount of the judgment, the amount of the judgment being $49,692.41.

(2) That there is no cash deposited with the sheriff nor a bank certificate or stock or other negotiable securities or valuables from appellant which he has deposited in the Government depository or a reliable bank and secured a receipt therefor, showing the amount deposited, the purpose of the deposit and a statement that the deposit will be released only upon the written order of the court as the law directs.

To this motion to dismiss, appellant filed a resistance, contending in substance that:

1. That the award of $49,692.41 is not supported by any evidence introduced before the hearing officer and the Board of General Appeals at the Ministry of Labor.

2. That the question of the salary was only raised for the first time before the Supreme Court.

3. That there is no amount certain awarded by the judgment from which the appeal was taken.

4. That there is no statutory provision for an appeal bond to be one and one-half times the amount of judgment.

5. That the $300.00 is sufficient to indemnify the appellee from costs and injury which the statute contemplates to be reimbursed, and

6. That the issuance by the bank of a certified check was in keeping with statute, and therefore there is no legal ground for dismissal of the appeal.

Among the other legal citations on both sides, appellee's counsel relied principally on the Civil Procedure Law, Rev. Code 1:51.8, and the case *Agip (Liberia) Corporation v. Sodatonow,* 20 LLR 222 (1971). The appellant's counsel also in his argument relied upon the self-same statute cited by appellee, and in addition cited the case *West Africa Trading Corporation v. Alraine (Liberia) Ltd.*, 24 LLR 224 (1975).

Appellee made profert of the appeal bond in question to his motion, and we hereunder quote the same for the benefit of this opinion:

"APPEAL BOND

"KNOW ALL MEN BY THESE PRESENTS, that we, the Management of Intrusco Corporation, appellant/ principal; and by virtue of manager's Check No. 89401, dated June 18, 1982, drawn on the International Trust Company of Liberia, Monrovia, Liberia; are bound unto the sheriff for Montserrado County in the sum of $300.00 (Three Hundred Dollars) current money of this Republic to be paid to Samuel T. Duo, appellee or his legal representative, jointly and severally firmly by these presents.

The condition of this obligation is, we will indemnify the appellee from all costs and all injury arising from the appeal taken by the above named appellant from the ruling of His Honor Frederick K. Tulay on the 19th day of May, A.D. 1982, in the case: Samuel T. Duo of Monrovia, Liberia, versus the Management of Intrusco Corporation, also of Monrovia, Liberia, WRONGFUL DISMISSAL, and will comply with the judgment of the court to which said appeal is taken or any other court to which the said action may be removed.

"IN WITNESS WHEREOF, we have hereunto subscribed this 18th day of June, A. D. 1982 . . . ."

This bond was signed by the Management of Intrusco Corporation as appellant/principal, the authorized signature on the manager's check No. 89401 subscribed thereon. It was witnessed by two witnesses, and was approved for $300.00 by His Honour Frederick K. Tulay, Assigned Circuit Judge, March 1982 Term, with a $5.00 revenue stamp affixed on the original.

The appellee also made profert to his amended motion to dismiss the management's recommendation issued to him after his dismissal, bearing the signature of the President of Intrusco Corporation, the veracity of which was not denied by counsel for appellant. In the said recommendation, dated February 10, 1981, it is stated that the appellee was employed by the appellant on August 21, 1963, and that his last salary earned at departure on January 30, 1981, was $973.33 per month.

The appellant on its part, proferted with its resistance as exhibit "A" the court's final

judgment which it contends does not award any amount certain. Here is the relevant portion of the judgment which we quote hereunder for the benefit of this opinion:

"In view of the circumstances prevailing in the case, this court says that the dismissal of Samuel T. Duo was wrongful by Intrusco and therefore said defendant/appellee is hereby adjudged liable for wrongful dismissal which we consider was intended to avoid the payment of pension; petitioner/appellant having served respondent company for over seventeen (17) and half years. Defendant/appellee is therefore ruled to pay appellant four years salary plus six per cent interest of that amount for the thirteen (13) months during which this case has been pending, that is to say, from the date of appellant's dismissal to the day of this judgment. The four years' salary is to be calculated on the basis of the average of the salary received by appellant for six months prior to his dismissal. The amount multiplied by four (4) plus six percent of that amount for the time appellant was dismissed to that hereby awarded appellant. Costs ruled against appellee and so ordered".

We understand this portion of the judgment of the court below to mean that since the last salary earned by appellee, as shown by the recommendation, was $973.33, the four years' salary as awarded would be calculated by multiplying the monthly salary of $973.33 by forty-eight (48) months plus six percent interest from the time of the dismissal to the date of judgment to ascertain the amount of judgment. However, we are not reviewing the case on its merits to discuss that aspect of the absence of an amount certain in the judgment. We have been prevented from doing so under the law, based upon appellee's motion to dismiss the appeal in which he attacked appellant's appeal bond for insufficiency of indemnification, and which motion should be given preference. We shall, therefore, turn to the motion to dismiss and the resistance thereto.

We noticed, and it should be remembered, that the copy of the alleged manager's check, No. 89401, as mentioned in the bond offered as security to indemnify the appellee from all costs and injury, and to comply with the judgment of the court, was not made profert to any of the motion papers. It should also be remembered that Intrusco Corporation, appellant herein, is subsidiary to the International Trust Company of Liberia, the Bank on which the said manager's check is drawn. When counsel for appellant was asked during argument as to the whereabouts of the said check, he replied that it was in the bank without showing any receipt or certificate of deposit. And so if the alleged manager's check in the amount of $300.00 was deposited"in the bank" as replied by appellant's counsel, then it goes without saying that the appellant is in custody of the security which it offered to indemnify the appellee.

Appellee has contended in his motion to dismiss and has argued that no cash was deposited

in any bank or government depository and a receipt therefor obtained showing the purpose of the deposit and a statement therein that the deposit will only be released upon orders of court.

According to our statute on bonds and security, any bond, except as otherwise provided by law, may be given 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 Sec. 63.2: 1 LCL Rev., Sec. 63.1 - *Surety for Bond*, p. 266.

In this case, the appellant elected to offer as security a check in the amount of $300.00 said to have been deposited into the bank. A "check", as defined by Black's Law Dictionary, is a commercial device intended for use as a temporary expedient for actual money, and generally designed for immediate payment, and not for circulation. It is an order or request for the payment of money." BLACK'S LAW DICTIONARY 301 (4th ed). From this definition, it can be correctly said that the $300.00 manager's check, represented cash which was drawn on the appellant bank and, therefore, the deposit of said check with the bank, as contended by the appellee, should have been evidenced by a bank certificate in keeping with the appeal bond as quoted supra. *Ibid.,* 1: 63.1 The appellant not having shown any bank certificate or a receipt from the sheriff of Montserrado County, to whom the principal/appellant was bound by virtue of its bond, indicating that the check was deposited with a bank as cash, evidenced by a bank certificate, the contention of appellee as contained in count four of the motion is well taken.

On the issue of insufficiency of the appeal bond, although it was not shown that the manager's check, bearing No. 89401, was ever deposited with any bank as provided by statute, which alone is an indication that there was no bond tendered by appellant, yet let us assume that a cash bond in the amount of $300.00 was offered. Could this amount be considered sufficient to indemnify the appellee from all costs or injury and comply with the judgment? Our answer is "no".

The appellee has contended in his motion and has strongly argued before us that the $300.00 made mention of in the appeal bond is insufficient to indemnify him, because the amount of the judgment is $49,692.41, and, therefore, the amount of the bond should have been one and one-half times the amount of judgment, which the law contemplates as being sufficient to indemnify appellee in a civil case. As mentioned earlier in this opinion, counsel for appellee cited Civil Procedure Law, Rev. Code 1:51.8; and the case *Agip (Liberia) Corporation v. Sodatonow,* 20 LLR 222 (1971) in support of appellee's con-tention. In that case, the amount of judgment was $37,856.67 and the amount of the bond tendered was $750.00. This Court held that the bond should have been one and one-half times the amount of judgment. In the text of that opinion, at 226, this Court held, and we quote:

"The law gives the trial judge the right, the exclusive right, to set the sum in the bond. When he has, the bond is to be signed by the principal and his sureties and returned to him after all necessary preliminaries for his approval. Even if the appellant assumes to specify the amount in the bond for indemnity independent of the trial judge's knowledge, it is still within his authority to question such act. The appellant is entrusted with the task of superintending his appeal to avoid such patent defects, so it becomes his responsibility for the consequences.... "

With this holding, the Court dismissed the appeal, citing as its authority for doing so the case: *Morris v. Republic*, 4 LLR 369 (1935), and the case: *Nassre v. Cooper-Kandakai,* 12 LLR 26, 27 (1954). In the said opinions, this Court maintained that one and one-half times the amount involved is required to indemnify the successful party from all injuries, damages or losses he might sustain as a result of the appeal. Civil Procedure Law, Rev. Code 1: 51.8, as cited by counsel for both parties, provides that a failure to file a sufficient appeal bond within the specified time shall be a good ground for dismissal of the appeal.

For the benefit of this opinion, we hereunder quote the *Civil Procedure Law, Ibid.,* 1:51.1 which counsel for both parties relied upon and cited in support of their respective contention and argument; it reads as follows:

"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" (emphasis ours).

From the appeal bond statute quoted *supra,* it is evident that the purpose of the appellant filing an appeal bond is to give security in order to: (1) indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful; and (2) comply with the judgment of the appellate court or of any other court to which the case is removed.

To ensure strict compliance with the aforesaid conditions, the statute requires that an appeal bond must be sufficient, and a failure to file a sufficient appeal bond is good ground for dismissal of the appeal. The question that has arisen from this statute is, what constitutes a sufficient appeal bond? But before dealing with the question of the sufficiency or insufficiency of an appeal bond, it should be made clear that we are hearing a motion to dismiss and not the merits of the appeal; therefore, the question of the absence of an amount certain in the judgment to effect its validity, as argued by counsel for appellant, would have been proper argument for our consideration had we been allowed to open the records and review the case on its merits. However, the statute herein above quoted makes it mandatory that a failure to file a sufficient appeal bond is a good ground for dismissal of the appeal.

Not concerning ourselves with the amount of judgment to effect its validity, because we feel that this argument goes to the merits, we shall now address ourselves to the questions of what constitutes a sufficient appeal bond, and whether or not, the requirement that one and one-half times the amount sued for, should constitute the amount of the appeal bond, is supported by law.

Appellee averred in his motion that before his dismissal, he was earning an annual salary of $11,679.96 or $973.33 monthly, as confirmed by appellant's own letter of recommendation. Appellee therefore prayed the court to award him five years' salary for his wrongful dismissal, which amount he calculated and alleged to be $57,399.86. However, the trial judge in his final judgment, awarded appellee four years' salary instead of five years' salary as prayed for, calculated on the basis of the annual salary received by appellee at the time of his dismissal, plus six percent interest from the date of dismissal to the date of judgment. In our opinion, the amount sued for was certain and the final judgment of the court below creates no doubt in arriving at the amount of judgment in keeping with the formula of calculation provided by the judgment.

It should be remembered that an appeal bond lays down two conditions: (1) to indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and (2) to

comply with the judgment of the appellate court or any other court to which the case is removed. Therefore, an appeal bond must be sufficient to meet these conditions; otherwise, the appeal will be dismissed. In the absence of a court interpretation of the above quoted statute, how could one ascertain and arrive at the total amount of bill of costs when indeed the case has not ended? How can the amount sued for be excluded when the appellant and his sureties have obligated themselves to comply with the judgment? By what means could the costs or injury sustained by the appellee be determined in order to make the amount of bond sufficient at the time of its filing when the case has not been finally determined? It is because of the absence of an amount certain in the statute to be taken as sufficient to satisfy the judgment appealed from, if unsuccessful on appeal, and to indemnify the appellee from all costs or injury which he may sustain from the appeal, that this Court, under the circumstances and based upon the several opinions cited supra, set the pace to cure the uncertainty of expenses, injuries and damages which may arise and accrue to an appellee from the appeal so taken, by making it mandatory that the appeal bond be one and one-half times the amount of the judgment.

It is therefore our considered opinion that one and one-half times the amount of the judgment, or an amount over and above the amount of the judgment, would make an appeal bond sufficient. It is also our considered opinion that any appeal bond in a civil case which does not carry one and one-half times the amount of the judgment or an amount over and above the amount of the judgment is insufficient to indemnify an appellee, and this would constitute a sufficient ground to dismiss the appeal. It is our further opinion that the holding of this Court in the case *West Africa Trading Corporation v. Alraine (Liberia) Ltd.,* 24 LLR 224 (1975), as it relates to only one and one-half times the amount of judgment, not being consistent with the intent of the statute is hereby overruled and recalled.

In view of the foregoing and the authorities cited herein above, the motion to dismiss the appeal is hereby granted and the appeal dismissed with costs against the appellant. And it is hereby so ordered.

Motion granted.