MERIDIEN BIAO BANK LIBERIA LIMITED, a Financial Institution organized and operating under the laws of Liberia, by and thru its Acting President and CEO, V. V. VAIDYANAATHAN, and Credit and Marketing Manager, LETITIA BROWN, and other Authorized representatives, Appellant, v. MAHA INDUSTRIES INCORPORATED, by and thru its General Manager, FARID HYKAL, 1st Appellee, FARID HYKAL, Shareholder, MAHA INDUSTRIES INCORPORATED, 2nd Appellee, JOSEPH KASHOUH, Shareholder, MAHA INDUSTRIES INCORPORATED, 3rd Appellee, and WAHIB KASHOUH, Shareholder, MAHA INDUSTRIES INCORPORATED, 4th Appellee.

MOTION TO DISMISS APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: November 14, 2001. Decided: December 20, 2001.

1. The amount of an appeal bond shall be fixed by the trial judge with two or more sureties, and shall be to the effect that the appellant will indemnify the appellee from all costs and damages arising from the appeal and that the appellant will comply with the judgment of the appeal court or any other court to which the appeal is removed.

2. Unless the court orders otherwise, the surety on a bond shall be either two or more natural persons who fulfill the requirements of the appeal statute, or an insurance company authorized to execute surety bonds within the Republic.

3. The Supreme Court has the constitutional and statutory responsibility to interpret the laws and not to legislate.

The appellant's action of debt brought against the appellees was dismissed by the Debt Court for Montserrado County on the ground that the failure of the appellees to pay the debt owed the appellant was due to force majeure. From this judgment the appellant announced an appeal to the Supreme Court. Thereafter, the appellees filed a motion to dismiss the appeal, alleging that the appellant had served a notice of completion of its appeal on them without first serving them with a copy of the appeal bond for their inspection and challenge, that the appeal bond was defective in that it had only one surety rather than two sureties as prescribed by law, and that the affidavit of sureties that accompanied the appeal bond was not sufficiently identifiable to create a lieu on the amount of the bond.

The Supreme Court rejected the appellees contentions, noting that the primary question for determination was whether the insurance company which stood surety for the appellant was authorized to execute surety bonds within the Republic. The Court held that under the laws of Liberia, an appellant could secure two sureties to its bond, being natural persons who owned unencumbered real property in Liberia, or that alternatively an insurance company authorized to execute surety bonds can in fact serve as surety to an appeal bond. In the instant case, the Court said, the articles of incorporation of the insurance company which stood the appellant's bond authorized the insurance company to execute appeal bonds, and that therefore it was statutorily a legally qualified surety. Hence, the Court denied the motion to dismiss and ordered the case reassigned for disposition on the merits.

Isaac E. Wonasue, Sie-A-Nyene Yuoh, and Frederick D. Cherue appeared for the appellant while Farmere C. Stubblefield of the Stubblefield and Associates Law Firm appeared for the appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

The records in this case show that on April 21, 1995, the appellant herein, Meridian BIAO Bank Liberia Limited, instituted an action of debt against the appellees in the Debt Court for Montserrado County, claiming the sum of US$1,220,444.31 and L$8,624.84. The trial judge, upon conclusion of the evidence, rendered his final on the 8th day of December, A. D. 1995, dismissing appellant's cause of action due to force majeure. The appellant excepted to the ruling and announced an appeal to this Court for appellate review. The appeal was granted and subsequently perfected as required by law.

At the call of the case for hearing, the appellees informed this Court that they had filed a motion to dismiss the appellant's appeal, alleging, among other things, the following:

1. That the appellant had served the appellees with a notice of completion of the appeal without previously serving them with a copy of its appeal bond so as to provide them with the opportunity to inspect the said bond and to properly determine its effectiveness and sufficiency.

2. That the appellant's appeal bond was defective and insufficient, in that it was filed with only one surety instead of two sureties as prescribed by section 51.8 of the Civil Procedure Law; and

3. That the affidavit of sureties that accompanied the appeal bond in the amount of 1.9 million dollars was not sufficiently identifiable to establish a lien on said amount, in that it was not accompanied by a bank certificate to the value of the bond.

The appellant filed its resistance to the motion to dismiss, contending as follows:

1. That the appellees were not deprived of the opportunity to inspect the bond and determine its effectiveness and sufficiency and that the appellees did indeed inspect the said bond prior to the filing of their motion.

2. That a surety on an appeal bond may be either two natural persons or an insurance company, and that the bond posted by the appellant and secured by Madison Insurance Company as surety satisfies the requirement provided for under sections 51.8 and 63.2 of the Civil Procedure Law.

3. That a bond secured under section 63.2 of the Civil Procedure Law does not require a bank certificate to the value of the bond to be given to the sheriff.

The decisive issue for the determination of this case is whether or not the appeal bond posted by the appellant, with only Madison Insurance Company as surety thereon, renders the said bond defective and insufficient.

Section 51.8 of the Civil Procedure Law provides that the trial judge shall fix the amount of an appeal bond given by every appellant, with two or more legally qualified sureties, to the effect that the appellant will indemnify the appellee from all costs and damages arising from the appeal and that the appellant will comply with the judgment of this Court or any other court to which the case is removed. Section 63.2(1) also defines legal sureties. We hereunder quote the relevant statutory provision for the benefit of this opinion.

"Who may be sureties: Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements of this section, or an insurance company authorized to execute surety bonds within the Republic"

The question that comes to the mind of this Court is whether or not appellant's surety, Madison Insurance Company, is authorized by law to execute surety bonds in Liberia? Article II, section 9 of the articles of incorporation of the aforesaid company provides, inter alia:

"To become surety and to execute any bail bond or guarantee in lieu of bail or other bond or guarantee for whatever purpose the same may be required. To execute fidelity and surety bonds within the Republic of Liberia in accordance with the Civil Procedure Law, Liberian Code of Laws Revised, title 1, chapter 63, bonds and security, section 63.2, pages 255 to 267, 'Legally qualified sureties: to serve as surety in attachment cases or to serve as surety in garnishment or assets belonging to borrowers."

We observed from the above quoted provisions of the articles of incorporation that the appellant surety, Madison Insurance Company, is statutorily authorized to execute surety

bonds within this Republic. The appellees, however, contended that appellant's appeal bond has only one surety and that a bond which has only one surety instead of two or more sureties, pursuant to section 51.8, is defective, inadequate, and insufficient. They therefore requested this Court to dismiss the appeal. We disagree with the contention of the appellees that because the appellant's appeal bond has only one surety it is insufficient. The controlling statutory provision states that an insurance company can be authorized to execute surety bonds within this Republic. The language of section 51.8 of the Civil Procedure Law is clear; it states that an appeal bond may be secured by either two or more sureties or an insurance company authorized to execute such bonds in Liberia.

This Court is mindful of its constitutional and statutory duties and responsibilities to interpret the laws and not to legislate. The intent of the lawmakers is to afford a party appealing to this Court the opportunity to secure an appeal bond with either two or more natural persons as sureties or an insurance company which is authorized by law to execute surety bonds as in the instant case. Indeed, this Court recently held that the legislative intent of the provision of section 51.8 of the Civil Procedure Law is that an appeal bond may be secured by either two natural persons as legally qualified sureties who are owners of unencumbered real properties or an insurance company authorized by law to serve as surety. The Intestate Estate of the Late Willie J. M. Bowier v. Williams et al., 40 LLR 84 (2000), decided on May 12, 2000 at the March Term, A. D. 2000 of this Court; Freeman and Wesseh v. Lewis et al., 40 LLR 103 (2000), decided on July 21, 2000 at the March Term, A. D. 2000 of this Court.

Wherefore, and in view of the foregoing, it is the holding of this Court that the motion to dismiss should be and the same is hereby denied. The Clerk of this Court is hereby ordered to redocket this case for hearing on its merits. Costs are to abide the final determination of the case. And it is hereby so ordered.

Motion denied.