

MINES MANAGEMENT ASSOCIATES, Appellant, v. JAMES FREEMAN, Appellee.

**MOTION TO DISMISS APPEAL.**

Argued November 21, 1978. Decided December 14, 1978.

1 If the ground laid in a motion to dismiss an appeal is meritorious, the Supreme Court does not have jurisdiction over appellant's motion to vacate the judgment from which the appeal was taken.

2 A certificate issued by the Real Estate Division of the Ministry of Finance that a surety offering property as security on an appeal bond is the owner of such property will be accepted by the courts as correct where no evidence is offered to prove the contrary.

3 Property of a decedent offered by his administratrix as security for an appeal bond is acceptable for that purpose where, on a motion to dismiss the appeal, no evidence is offered by the appellee to show that the administratrix was without authority to use the property in that manner.

4 Where there is real property offered by the sureties on an appeal bond which sufficiently indemnifies the appellee against loss and assures the court of compliance with its judgment, and where ownership of such property has not been claimed by another, there is no defectiveness in the appeal bond which uses such property as security.

On appeal of this case to the Supreme Court, the Court was confronted with two motions, a motion to dismiss by the appellee and a motion to vacate the judgment filed subsequently by the appellant. The Court decided that as a matter of jurisdiction, it was required first to decide the motion to dismiss the appeal. That motion was based on the contention that neither of the two sureties on the appeal bond held title to the property offered as security. The Court found the contrary to be true, and therefore upheld the validity of the appeal bond. The *motion* to dismiss was *denied*.

*Moses Yangbe and S. Edward Carlor* for, appellant.

*M. M. Perry* for appellee.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court. 297

When this case was called we discovered two motions on file: one to dismiss filed by the appellee on June 2, 1978, and the other, to vacate the judgment of the trial court filed by the appellant on July 20, 1978. Both were resisted, and both were sought to be argued before us.

The question as to which should take precedence over the other was argued, and we hold that the determination of the issue involves a jurisdictional question, because if the ground laid in the motion to dismiss is meritorious, we could not have jurisdiction over the motion to vacate the judgment, which is the subject of the appeal sought to be dismissed. Therefore, before addressing ourselves to the motion to vacate the judgment, let us examine the motion to dismiss to see if there is legal ground for granting it.

The appeal bond approved and filed to guarantee the appellee against loss is claimed by the motion to be misleading and unenforceable, because the two sureties whose property appears to be offered as security, to wit : Marima Curry and Zondell B. Jallah, do not hold title in themselves to the pieces of property offered. In support of this claim, the motion alleges that the certificate of the Ministry of Finance attached to the affidavit of sureties shows one of the two pieces of property to be owned by

Thomas M. Curry in the case of one of the sureties; in the other case, although the Revenue certificate shows Peter B. Jallah to be the owner of the second piece of property offered in the bond, the affidavit of sureties shows the same property to be owned by Zondell B. Jallah, the second surety.

In the case of these two sureties, both are widows respectively of the men named as rightful owners of the two pieces of property; that is to say, widows of Thomas M. Curry and Peter B. Jallah, both of them now dead. In the resistance to the motion it is contended that in the case of the surety Marima Curry, as administratrix of her late husband's intestate estate, she was clothed with authority to be surety to the bond, and could in such capacity offer property of the estate as she had done; and in the case of the surety Zondell Jallah, the property qualification which she used as surety to the bond is property actually owned by her, as can be seen from the affidavit of sureties, and therefore it was a harmless clerical error for the affidavit of sureties in the description clause to have referred to the property as owned by this surety's late husband, Peter B. Jallah.

Let us examine the latter of the two sureties first. An inspection of the certificate issued out of the Real Estate Division of the Ministry of Finance, shows that the property offered by Zondell Jallah is a quarter of an acre of land in Bishop Brooks, Monrovia, registered in her own name and valued at \$10,675. The question of whether or not this surety owned the property which she used as part guaranty to qualify her as a surety would seem to have been resolved by this document issued out of the Real Estate Division of the Ministry of Finance, and signed by the Deputy Commissioner and the Assistant Minister for Revenues. Besides the mere allegation in the motion to dismiss to the effect that the surety did not own the property she offered to support the bond, there is no showing that this document from the Ministry of Finance was not correct. Mere allegation is not proof, especially against a document executed by proper and competent authority.

In the case of the other surety, Marima Curry, as we have said previously, was administratrix of her late husband's intestate estate, and in that capacity she had offered her late husband's property to secure the appellee against loss growing out of the appeal. The appellee has contended that without an order of the Probate Court she was without legal authority to do so; but unfortunately he offered no evidence to show that she did not have such a court order to that effect. Nor did he claim that she was legally forbidden to be a surety and offer the estate's property as security in her capacity as administratrix.

Moreover, this Court has said that "the object of an appeal bond with sureties is to secure to the appellee his costs and to assure the court of compliance with its judgment." *Dennis v. Holder*, 10 LLR 301, 307 (1950). Therefore, where there is real property offered by the sureties which sufficiently indemnifies the appellee against loss and assures the court of compliance with its judgment, and where ownership of such property has not been claimed by another, we hold that there is no defectiveness in the appeal bond which uses such property as security.

It is therefore our opinion that the bond in this case is not defective, and this being the only ground laid in the motion to dismiss, the said motion must have to be denied. And it is so ordered.

*Motion denied.*