

STANDARD STATIONERY STORES, Appellant, *v.* **JOHNSON GOMPU**, et al.
and the BOARD OF GENERAL APPEALS, Appellees.

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

Heard: May 10, 1982. Decided: July 9, 1982.

1. For a real property offered as security to be sufficiently described within the meaning of the statute, the number of the plots and the metes and bounds of the particular lot must be shown in the affidavit.
2. Affidavits are not required in motions or allegations involving issues of law; but where issues of facts are involved, affidavits are required.
3. The certificate from the Ministry of Finance which accompanies an appeal bond is only to show the ownership and value of the property offered and is not part of the affidavit of sureties.

Appellant Standard Stationery Stores appealed from a final judgment of the Civil Law Court of the Sixth Judicial Circuit, Montserrat County, affirming the decision of the Board of General Appeals. Appellees moved to dismiss the appeal on grounds that the affidavit of sureties did not contain the metes and bounds of the property and that the notice of the completion of the appeal was not served on appellees within the statutory time. The appellees also argued that the affidavit accompanying appellant's resistance to the motion to dismiss was not verified.

The Supreme Court sustained appellees' contentions, *granted* the motion, and *dismissed* the appeal.

P. Amos George and J. K. Burphy appeared for appellants. *S. Edward Carlor* appeared for appellees.

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

This appeal was brought to us by the appellant, Messrs. Standard Stationery Stores of the City of Monrovia, in protest against a final judgment rendered against it on the 13th day of November, A. D. 1981 by the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to which court, the appellant had earlier filed a petition to set aside the decision of the Board of General Appeals of the Ministry of Labor.

A perusal of the judgment in question reveals that the appellant, together with a sister corporation, had earlier been sued by its employees at the Ministry of Labour for unfair labor practices in which the employees claimed overtime allowances amounting to \$21,460.13.

The hearing officer, according to the records, ruled against the sister corporation, the Middle East Trading Corporation (METCO), finding it liable to the Standard Stationery Stores employees in the sum of \$21,460.13. METCO excepted to this ruling and appealed to the Board of General Appeals on the ground that the Standard Stationery Stores, and not METCO, was liable to the employees. In its decision, the Board of General Appeals affirmed the ruling of the hearing officer. Again METCO took exceptions and appealed to the People's Civil Law Court, which court, though affirming the sum awarded by both the hearing officer and the Board of General Appeals, modified the decision of the Board and that of the hearing officer by exonerating METCO completely from liability and holding, instead, Standard Stationery Stores, the appellant herein, absolutely and severally liable to the workers for the sum claimed. This decision of the Civil Law Court, rendered on the 13th day of November, A. D. 1981, was excepted to by Standard Stationery Stores and an appeal announced to this Court for appellate review.

A look at the records also reveals that before the appeal was called for hearing, the appellees filed a motion to dismiss the said appeal. In their motion to dismiss the

appeal, the appellees contended that: (a) the affidavit of sureties attached to the appellant's appeal bond did not contain any metes and bounds of the property allegedly offered by appellant's sureties as security as is mandatorily required by statute; (b) that the appellants in violation of the statute, practice and procedure neglected to serve copy of their bond on the appellees within the statutory time to enable appellees to inspect the same as a matter of notice; and (c) that the affidavit accompanying the appellants' resistance was not verified since indeed the said resistance contained mixed issues of both law and facts.

In its resistance, the appellant maintained that: (a) the description of the property by metes and bounds was not a mandatory requirement by statute as long as the property was sufficiently described and identified to establish a lien thereon; (b) the bond became effective when approved by the court after it had been filed with the clerk of court in which the action is pending, and notice of the filing of the bond served on the adversary party; (c) a resistance to a motion in the appellate court need not be verified; and finally (d) its appeal bond had met the legal requirement as the numbers of the lots were stated in the certificate from the Ministry of Finance and that same was a part and parcel of the affidavit of sureties.

With this factual background, it now becomes necessary to address ourselves to the issues we consider necessary in the disposition of this case. The issues that present themselves before us for consideration and determination are: (1) whether or not under the laws of Liberia, real property offered as security and mentioned in an affidavit of sureties accompanying an appeal bond must be described by metes and bounds so as to render the appeal bond enforceable? (2) whether or not a resistance to a motion in the appellate court requires affidavit? and finally (3) whether or not the certificate from the Ministry of Finance which accompanies an appeal bond is a part and parcel of the affidavit of sureties?

Dealing with the first issue, it is observed that the Civil Procedure Law, Rev. Code, 1: 63.1 and 63.2 appear silent on this issue. It only provides that an appeal bond must be accompanied by an affidavit of sureties with a description of the real property

offered as security thereunder, sufficiently identified to clearly establish the lien of the bond. *Ibid.*, 1:63.2(3). Even though the laws of Liberia do not specifically spell out that real property mentioned in an affidavit of sureties accompanying an appeal bond has to be described by metes and bounds, *Ibid.* 1:63.1 and 63.2, yet a careful interpretation of the said sections point to one objective only, that is, that for real property to be sufficiently described so as to render the appeal bond enforceable, the description of the property will of necessity have to include the metes and bounds in order to make such property easily identifiable.

The next question then that immediately comes to our minds is when is a piece of real property offered as security said to be sufficiently described for identification within the meaning of Section 63.2 (3) quoted *supra*. The answer to this question lies in the opinion of this Court given in the case *Lamco J. V. Operating Company v. Verdier*, 26 LLR 180 (1977). In that case, this Court held that:

“The statutory requirement that an affidavit of sureties accompanying an appeal bond contain a description of the property offered as security ‘sufficiently identified to establish the lien of the bond’ means that the number of the plot and the metes and bounds of the particular lot must be shown in the affidavit.”

Upon inspection of the appeal bond filed in the case at bar, we observe that the properties offered by the sureties as security, fall far below the standard envisaged by the statute.

Instead, the affidavit of sureties in question reads:

“AFFIDAVIT OF SURETIES

PERSONALLY APPEARED BEFORE ME., Martha Kashouh and Sayuo Gargard sureties, to the attached bond, duly sworn and depose and say:

1.1. That they are freeholders and householders within the Republic of Liberia and own the properties offered as security to the attached bond;

1.2. That the said properties each consists of a dwelling house situated, and lying within the City of Monrovia, Montserrado County, Liberia;

1.3. That there are no claims, unpaid taxes and other encumbrances upon the said properties.

PROPERTIES LOCATION: Paynesward and Caldwell

PROPERTIES ARE DESCRIBED AS FOLLOWS:

1.4. That the assessed value of each of the properties is \$30,000.00 and \$1,500.00 respectively, all of this they say to be true and correct in substance as well as in fact to the best of their knowledge.”

This description, in our opinion, leaves much to be desired, to say the least. A casual and slipshod description, such as the one found in the affidavit of sureties in this case, will not help the authorities or parties to locate the whereabouts of such property for the sake of placing a lien thereon and determining the value thereof. As a matter of fact, a glance at the affidavit of sureties in question, clearly shows in count thereof that each property is said to consist of a dwelling house situated in the City of Monrovia. Notwithstanding the above, the locations of said properties are again stated in count three of said affidavit of sureties to be in Paynesward and Caldwell, respectively, without providing a detailed description of the properties in question. Despite these inconsistent locations which constitute these obvious deficiencies, appellant contends that its appeal bond meets the legal requirements!

In *Richards v. Liberia Bank for Development*, 29 LLR 526 (1981), this Court held that:

“Every deed must contain the names of the grantor and the grantee, the lot number, the name of the place where the specific property is situated and an expert description of how it can properly be demarcated.”

In our considered opinion, the said affidavit lacks the description of the property as required by the statute, which has been held to be essential to the completeness of an appeal bond. Where the property offered as security is not properly described, it is unlikely that it will be easily identified, and nor can such bond be enforced – Vide: *Zayzay v. Jallah et al.*, 24 LLR 486 (1976).

After a thorough examination of the records now before us, we have been compelled to conclude that the description of the real property in this case cannot satisfy the statutory intentions and our interpretation thereof. We therefore declare the bond defective and, thus, of no legal consequence in this case. The contention of appellees in count one of their motion to dismiss the appeal is accordingly sustained, while the contention of the appellant in count two of its resistance is dismissed.

With regard to the second issue, that is, whether or not a resistance to a motion in the appellate court requires affidavit, this Court has generally held that a motion on a question of law does not require any affidavit. This holding is not only in line with the practice at common law where affidavits were generally not required in judicial pleadings unless to back up allegations of fact, but is also in conformity with the Liberian Civil Procedure Law, Rev. Code 1: 9.4(1). Indeed, the general rule of law is that affidavits are not required in motions where the allegations involve only issues of law; but that where issues of facts are involved, affidavits are a necessary component. *See Nagbe v. Republic*, 17 LLR 656 (1966). Therefore, the contention of counsel for the appellees during argument of the case before this Bar that appellant's resistance to appellees' motion to dismiss the appeal was defective for lack of supporting affidavit, does not hold any water and thus of no legal significance. *Raymond Concrete Pile Company v. Buchanan*, 20 LLR 330 (1971). Consequently, appellants' resistance to appellees' motion before this Court need not be verified as same contains only legal issues. Our conclusion on this second issue is not only an endorsement of our earlier decisions on similar issues but also in harmony with common law practice and our own Civil Procedure Law, quoted *supra*.

As to the third issue, the appellant contended that the numbers of the lots were stated in the certificate issued by the revenue department and that it was a part of the affidavit of sureties. According to the provisions of our statute, the affidavit of sureties is a separate and distinct requirement of the law when it comes to meeting the legal prerequisites for the filing of an appeal bond as same goes to the contents of the affidavit and the sufficiency of the description of the property, Civil Procedure Law, Rev. Code, 1: 63.2(3), while the revenue certificate from the Ministry of Finance which accompanies an appeal bond is only to show the ownership and value of the property so offered. *Ibid.*, 63.2.4. Unlike the affidavit of sureties, the revenue certificate does not contain the metes and bounds or the description of the property. Assuming, without admitting, that the lot numbers had been stated in the revenue certificate, they could not have been considered a part of the affidavit of sureties.

While it is always the intention of this Honourable Court not to dismiss cases on procedural grounds so as to enable the Court to pass on substantive considerations for the sake of legal justice, we highly regret our inability to pass upon the several issues brought up for review on appeal, in view of the serious failure of the appellant to meet a cardinal jurisdictional prerequisite, which has precluded us from hearing the case. Vide: *Taylor v. Pasi and Wonkor*, 25 LLR 453 (1977); and *Doe v. Dent-Davies*, 27 LLR 306 (1978).

Under the circumstances and the controlling principles of law, the motion to dismiss the appeal is hereby granted. The Clerk of this Court is instructed to send a mandate to the lower court ordering it to resume jurisdiction over this matter and proceed to enforce its judgement forthwith. And it is hereby so ordered.

Motion granted.