

**IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2017.**

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

Magna Diversified Company by and through)	
its General Manager, Morley Kamara of the)	
City of Monrovia, Liberia.....Movant)	
Versus)	Motion to Dismiss
Mandra Forestry Liberia represented by its)	
President Sio Kai Sing and all Corporate)	
Officers of the City of Monrovia.....)	
..... Respondent)	
)	
<u>Growing Out of the Case:</u>)	
)	
Mandra Forestry Liberia represented by its)	
President Sio Kai Sing and all Corporate)	
Officers of the City of Monrovia)	
.....Appellant)	
Versus)	Appeal
Magna Diversified Company by and through)	
its General Manager, Morley Kamara of the)	
City of Monrovia, Liberia.....Appellee)	
)	
<u>Growing out of the Case:</u>)	
)	
Magna Diversified Company by and through)	
its General Manager, Morley Kamara of the)	
City of Monrovia, Liberia.....Plaintiff)	Action of Damages
Versus)	
Mandra Forestry Liberia represented by its)	
President Sio Kai Sing and all Corporate)	
Officers of the City of Monrovia)	
.....Defendant)	

HEARD: March 22, 2017 DECIDED: August 3, 2017

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On June 24, 2016, the Sixth Judicial Circuit Court, Montserrado County, sitting in its March Term A.D. 2016, rendered final judgment in favor of the movant/appellee, the Magna Diversified, Company and against the respondent/appellant, the Mandra Forestry Liberia, in an action of damages instituted by the movant/appellee. In its final judgment, the trial court ordered the respondent/appellant to pay the amount of US \$2,000,000.00 (Two Million United States Dollars) as damages suffered by the movant/appellee. The

respondent/appellant excepted thereto, announced an appeal and subsequently filed its bill of exceptions on July 2, 2016, which was approved by the trial judge.

On August 19, 2016, the Mutual Benefits Assurance Company, a registered insurance company operating within the Republic of Liberia proffered an indemnity bond of US \$2,050,000.00 (Two Million Fifty Thousand United States Dollars) in favor of the respondent/appellant. This appeal bond was filed with the trial court and approved by the trial judge. Thereafter, on August 22, 2016, the respondent/appellant filed its Notice of Completion of Appeal and served a copy thereof on the movant/appellee thus vesting the appeal in the ambit of the Honorable Supreme Court.

On November 10, 2016, the movant/appellee filed in the office of the Clerk of this Court a motion to dismiss the respondent/appellant's appeal stating that the appeal bond was defective and invalid in that the face value of the bond belied the fact that the Mutual Benefits Assurance Company did not possess the requisite assets or financial capacity within Liberia to support the bond of US \$2,050,000.00 (Two Million Fifty Thousand United States Dollars). The movant/appellee further averred that the certificate issued by the Central Bank of Liberia authenticating the assets of the insurance company also did not reflect the true value of said assets. We herein quote count 3 subsection (i),(v),(viii) of the movant/appellee's motion to dismiss and which speaks to this issue:

“3(i) Because the value of the bond is insufficient to indemnify the Movant, since and in fact the purported value of the company's assets is put at US \$5,606,969.00 while their liabilities is said to be US \$1,170,776.00. This means that their actual unencumbered assets value is US \$4,434,193.00. However, of that amount US \$3,000,000.00 is said to be investments which whereabouts is unknown. The remaining US \$1,434,196.00 is further reduced by US \$621,037.00 which is purported to be real estate with no information specifying the location. Thus the balance of US \$813, 159.00 which is actual difference between US \$1,434,196.00, the remaining unencumbered assets of MBA, less US \$621,037.00, the amount representing real estate, is far below the value of the surety as proffered and cannot indemnify the movant as the balance from the analysis falls far below the Court set or approved bond of US \$2, 050,000.000 (Two Million Fifty Thousand United Dollars)

v) Because the Central Bank Asset Valuation Certificate attached to the bond is patently defective, for it expressly declares that same is based on the December 31, 2015, financial statements of Mutual

Benefits Assurance (MBA) Company which shows that the MBA has assets with total designated value of US \$5,604,969.00 and liabilities of US \$1,170,776.00. Therefore, the purported unencumbered assets or shareholder equity was then US \$4,434,193.00, which included real estate valued at US \$621,037.00. However, sixty-eight percent of the unencumbered assets amounting to US \$3,000,000.00 are in a subcategory named "Investment," which is unspecified. This so-called investment of US \$3,000,000.00 is reflected as unchanged in both the 2014, and 2015 statements and purportedly generated \$100,000.00 per annum but listed a net income of \$93,336.00 that MBA reportedly generated in 2015. The 3,000,000.00 is also listed as non-current assets, meaning that it is a long term investment; its where about is however, not stated entirely, and remains unknown, and is thus outside of the reach of the court. This, in addition to the fact that the real estate which value is put at US \$621,037.00 and the unspecified \$3,000,000.00 investment are the primary assets securing the surety even though only very limited detail is indicated as to the Two Hundred Thousand Dollars (\$200,000.00) said to be invested in: Leasing Company of Liberia; 2,500,000.00 is invested in a Joint Venture Trade Financing; and 300,000.00 is an investment in the equity of Mutual Benefit in Niger SA, which is again out of the country and beyond the reach of the court. The so called 3,000,00.00 investment is the equity of Mutual Benefit Niger SA, is a foreign investment, and thus does not qualify to be used as surety in Liberia. That means whatever, is remaining as assets to be applied to secure surety has become further encumbered especially given that there is no indication of the bonds issued over the period of 8-11 months, coupled with other liens (including taxes) that has attached since December 31, 2015, as a result of the operations of the insurance company, integrity of the proof that MBA has assets within the country sufficient to indemnify the movant is doubtful and unpersuasive.

viii) Because the blanket indication by the CBL of its reliance on the Mutual Benefit Assurance December 31, 2015, Financial Statement; coupled with the fact that the CBL also absolves itself of any resulting liability undermines the very essence of having an independent third party determining the solvency or assessing the capacity of an insurance company posing as surety."

On December 13, 2016, the respondent/appellant filed its resistance stating that its indemnity bond of US \$2,050,000.00 (Two Million Fifty Thousand United States Dollars) is valid and sufficient to cover the trial court's final judgment of US \$2,000,000.00 (Two Million United States Dollars); that the Mutual Benefit Assurance Company financial assets of US \$5,604,969.00(Five Million Six Hundred Four Thousand Nine Hundred Sixty Nine United States Dollars) is sufficient to support the indemnity bond; that the issuance the Asset Valuation Certificate by the Central Bank of Liberia (CBL) is sufficient proof of the Mutual

Benefit Assurance Company's financial assets of US \$5,604,969.00(Five Million Six Hundred Four Thousand Nine Hundred Sixty Nine United States Dollars); and that the movant/appellee had failed and neglected to state or prove any statutory grounds for the dismissal of the respondent/appellant's appeal. Like the movant/appellee's motion, we herein below quote count 10 (Ten) of the respondent/appellant's resistance on this issue:

“Further to the entire motion, respondent says the sole purpose of an appeal bond is to secure appellee his cost and damages arising from the appeal and assure the appellate court of compliance with its judgment or the judgment of any other court to which the case is removed. Chicri Abi-Jaoudi v. The Intestate Estate of the late Bendu Kiadii, 40LLR 777(2001). Respondents says it posted an approved appeal bond in the amount of US \$2,050,000.00 (Two Million Fifty Thousand United States Dollars) to indemnify the Movant in the event respondent appeal is unsuccessful. The Central Bank of Liberia, the regulatory agency for all insurance companies in Liberia, certified that Mutual Benefits Assurance Company, respondent's surety, had sufficient assets to cover its obligation under the appeal bond. The Certificate issued by the Central Bank of Liberia, clearly satisfied the standard set by this Court in Robertson v Quiah Brothers, Supreme Court Opinion, October Term, A.D. 2011. Respondent appeal bond having met the requirements of the law, movant's motion should be denied and dismissed and the case ordered heard on its merit. And Respondent so prays.”

After a careful examination of the records, including the motion to dismiss the appeal and the resistance thereto; and upon examining the evidence and the relevant laws, this Court says that there is only one issue dispositive of the motion to dismiss the respondent/appellant's appeal. The issue is whether or not the respondent/appellant's appeal bond is insufficient and defective to warrant the dismissal of the appeal.

A recourse to and a review of the respondent/appellant's appeal bond reveals that the appeal bond is in the amount of US \$2,050,000.00 (Two Million Fifty Thousand United States Dollars) an indemnity for the final judgment of US \$2,000,000.00 (Two Million United States Dollars) and, in addition thereto, there is an Asset Valuation Certificate from the Central Bank of Liberia attached to the bond certifying that the insurance company which issued the bond has assets to the value of US \$5,604,969.00 (Five Million Six Hundred Four Thousand Nine Hundred Sixty Nine United States Dollars).

Notwithstanding the above, the appellee/movant has challenged the appeal bond basically imputing doubt on the Central Bank of Liberia's issuance of the Asset Valuation Certificate in favor of the Mutual Benefits Assurance Company and that said certificate does not comply with the principles enounced by this Court in the case *Robertson et al., v. The Quiah Bros et. al.*, Supreme Court Opinion, October Term A.D. 2011. In that case, the Supreme Court interpreted section 63.2 of the Civil Procedure Law and defined the phrase "insurance company authorized to execute surety bonds within the Republic" as an insurance company that has demonstrated its financial capacities by exhibiting a certificate from the Central Bank of Liberia or other financial institutions showing their financial assets within Liberia.

In the case *Mentor Initiative v. Fardoun*, Supreme Court Opinion, October Term, 2013, the Supreme Court affirmed its holding in the *Robertson case* by holding thus:

"... an insurance company authorized to execute surety bonds within the Republic of Liberia presupposes and implies that the insurance company is in good standing and has the liquidity or other means to satisfy the judgment and other cost associated with the case in which it is serving as surety." Hence, the standards contemplated by the Statute are:

- 1. The exhibition or attachment to the bond of the articles of incorporation of the insurance company as evidence that the company does exist;*
- 2. Registration certificate of the insurance company with the appropriate government ministry or agency indicating that it is authorized to do business in Liberia and that it is in good standing;*
- 3. Clearance from the Ministry of Finance evidencing that all taxes due as at the time of the execution of the bond have been fully paid; and*
- 4. Evidence, such as certificate or other legal instrument from an appropriate legal authority such as the Central Bank or other insurance authority or similar government entity having regulatory responsibilities for insurance companies, that the insurance company possesses assets within the Republic of Liberia, sufficient to cover the obligation undertaken by the insurance company in the bond, exclusive of other bonds to which it is already serving as surety, commensurate with the amount stated in the bond"*

This Court affirms and confirms these principles stated in the cases cited *supra* and hold that every insurance company issuing appeal bonds must be in compliance

with the standards enounced therein, thus demonstrating its liquidity to satisfy the judgment and other costs associated with a case.

The essence of an appeal bond is to indemnify the appellee from all costs and injury arising from the appeal, if the appellant's appeal is unsuccessful, and to guarantee that the appellant will comply with the judgment of the appellate court or any other court to which the case is removed. In proffering an indemnity bond, the law only requires that the bond be sufficient to cover the judgment awarded and that the surety issuing an insurance bond demonstrate that it has the financial capacity within Liberia to support the value of the bond. *American Life Insurance Company v. Sandy*, 32LLR 242, 243(1984); *Chase Manhattan Bank v. Chricri Bros. Inc.*, 36LLR 391, 400 (1989); *William and Seekey v. NPA*, 42LLR 520, 525(2005); *The National Bank of Liberia v. Karloweah et al.*, 42LLR 389, 397(2005); *Robertson et al., v. The Quiah Bros et al.*, Supreme Court Opinion, October Term A.D. 2011; *Mentor Initiative v. Fardoun*, Supreme Court Opinion, October Term, A.D. 2013; *Taye v. Kiawu*, Supreme Court Opinion, October Term, A.D. 2014; *Manhattan Trading Corporation v. World Bank*, Supreme Court Opinion, March Term, 2016.

The movant/appellee has however argued that the Central Bank of Liberia should have specifically itemized the insurance company's assets in its Asset Valuation Certificate in order to show that the insurance company did possess the requisite financial assets in Liberia or is sufficiently liquid, as to do otherwise would be *ultra vires* and a procedural technicality to frustrate the appeal process.

The Central Bank of Liberia, pursuant to its Act and the New Financial Institutions Act of 1999, is the principal regulator of all banking and non-banking institutions. The requisite provisions of these Acts provide that:

“the Central Bank of Liberia shall have functional independence, power and authority to regulate bank and non-bank financial institutions as well as non-bank financial services institution.” The Central Bank of Liberia Act §4(6); The New Financial Institution Act of 1999, §3.

It was in recognition of the Central Bank of Liberia's regulatory authority over such an institution as the one standing as surety for the respondent/appellant that the Supreme Court mandated that all insurance companies obtain a certificate (an

Asset Valuation Certificate) from the Central Bank of Liberia or other financial institutions in order to authenticate their financial assets in Liberia. As regards the movant/appellee's challenge to the authenticity of the Bank's certificate, the Supreme Court, in its Opinions cited above, never intended for the Central Bank of Liberia to present a detailed financial *dossier* or an inventory report as advanced by the movant; rather, the intent of the Bank's certificate is to certify and confirm that the Central Bank of Liberia has knowledge of the existence of the insurance company and that the insurance company possesses sufficient assets and the financial capacity in Liberia to "cover the obligation undertaken by the insurance company in the bond..." *Mentor Initiative v. Fardoun, Supreme Court Opinion, October Term, A.D. 2013*. To deviate from this standard and embark upon the exercise advanced by the movant/appellee would be an over-stretch of the law and the regulatory powers of the Central Bank of Liberia. We hold here therefore, that in the present case the criteria and the standard as set forth in the herein cited opinions regarding the issuance of surety bonds by an insurance company were satisfied and that the Central Bank's certificate issued in favor of the surety is sufficient proof of the surety's financial capacity to indemnify the movant/appellee.

Wherefore and in view of the foregoing, we hold that the indemnity bond of US \$2,050,000.00 (Two Million Fifty Thousand United States Dollars) issued by the Mutual Benefits Assurance Company in favor of the respondent/appellant is sufficient for the purpose of indemnification and that the Asset Valuation Certificate from the Central Bank showing that the Mutual Benefits Assurance Company has assets to the value of US \$5,604,969.00 (Five Million Six Hundred Four Thousand Nine Hundred Sixty Nine United States Dollars) is sufficient proof to establish that the said company does have the financial capacity to support the bond. Accordingly, the motion to dismiss is denied and the appeal ordered docketed to be heard on its merits. AND IT IS SO ORDERED.

When this case was called for hearing, Counsellors Mark M.M. Marvel and Abraham B. Sillah of Heritage Partners and Associates, in association with Counsellor Amara M. Sheriff of J. Johnny Momoh and Associates Legal and Consultancy Chambers appeared for the movant/appellee. Counsellor Sayma Syrenius Cephus of SEMAR Law Offices, in association with Counsellor Scheaplor R. Dunbar of Pierre, Tweh and Associates Law Offices appeared for the respondent/appellant.