

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT THE
MARCH TERM, 1976

WEST AFRICAN TRADING CORPORATION,
Appellant, v. ALRINE (LIBERIA), LTD.,
Appellee.

MOTION FOR REARGUMENT.

Argued March 9, 1976. Decided April 23, 1976.

1. Legislative intent must be gathered from the meaning of the words used in a statute.
2. A description of the real property pledged in an appeal bond must be set forth in the affidavit of the sureties and is a mandated requirement; failure to do so makes the appeal subject to dismissal on the ground of a defective appeal bond.
3. Setting forth a description of real property pledged in a document accompanying the appeal bond, such as the certificate from the Bureau of Revenues, does not cure the defect caused by the failure to describe the property in the affidavit of the sureties.
4. A case will not be dismissed by the Court on a mere technicality.
5. Reargument will only be granted when it is shown that a prior decision overlooked a salient point of law or fact raised at the prior hearing.

The appeal herein was dismissed because of a defective appeal bond. The appellant brought a motion for reargument, contending that the failure to describe the real property pledged in the sureties affidavit was properly supplemented by the description set forth in the certificate from the Bureau of Revenues which accompanied the bond. It was claimed that the Court in dismissing the ap-

peal had overlooked the certificate, therefore laying the basis for reargument.

The Court held that the need for describing the real property pledged in the affidavit of the sureties was mandated by statute and such failure cannot be eradicated by setting forth a description in an accompanying document. The *motion* for reargument was *denied*.

Momo F. Jones for appellant. *Toye C. Barnard* and *Moses K. Yangbe* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

On September 25, 1974, appellee moved this Court to dismiss the appeal in the above-entitled cause of action. The motion was opposed.

This motion was heard during the March 1975 Term of this Court and the appeal dismissed on the grounds stated in the opinion.

On May 7, 1975, appellant filed the motion for reargument now before us. The principal contention is that the issue of the description of the realty pledged as security for the appeal bond should not have been adjudged by the Court as it was by dismissal of the appeal because of a defective appeal bond. It is claimed that the certificate from the Bureau of Internal Revenues was overlooked by the Court in considering the sufficiency of the description of the real property pledged.

Because of this argument, it is, therefore, necessary to revert to our opinion earlier rendered in this case for the Court by Chief Justice Pierre.

"We shall now consider count three of the motion to dismiss. In this count the appellee has stated that the affidavit of the sureties, attached to the bond, does not contain a sufficient description of the property pledged to establish the lien of the bond, in accord with statu-

tory requirements. . . . Our Civil Procedure Law contains the applicable section.

“*Legally Qualified Sureties.*

“‘3. *Affidavit of sureties.* The bond shall be accompanied by an affidavit of the sureties containing the following:

“(a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security;

“(b) A description of the property, sufficiently identified to establish the lien of the bond;

“(c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and

“(d) A statement of assessed value of each property offered.’ Rev. Code 1:63.2.

“An inspection of the bond shows that there is an affidavit sworn to March 25, 1974, filed with it, and for the purpose of this opinion we shall quote from it:

“‘Personally appeared before me, a duly qualified Justice of the Peace, Emmanuel Lue and Henry Temah, at my office in the City of Monrovia, Montserrado County, who being duly sworn, depose and say:

“‘1. That they are the sureties whose names appear on the plaintiff/appellant’s bond to which this affidavit of sureties is attached.

“‘2. That they are freeholders and householders within the Republic of Liberia and own real property to the value of the said bond over and above their liabilities.

“‘3. That the assessed value of their properties is \$6,020.

“‘4. That the foregoing statements are true and correct to the best of their knowledge.’

“Does this affidavit contain a description of the sureties’ property ‘sufficiently identified to establish

the lien of the bond' as the statute requires? We interpret this part of section 63.2(b) to mean offering the property as security in order that the appellee be protected against loss as a result of costs of injury sustained by the appeal. BLACK'S LAW DICTIONARY has defined description relating to real property to mean 'that part of a conveyance, advertisement of sale, etc., which identifies the land or premises intended to be affected.' In giving effect to the text of this statute, we must consider that description of land merely means designating the particular space occupied, or to be occupied so as to enable anyone to find it, should this become necessary. Hence, in deeds which convey real property we have description by metes and bounds, to sufficiently and correctly identify the particular plot of land.

"With this as a background it is our opinion that description as used in this section means that land offered as security for appeal bonds must be described in the affidavit of the sureties sufficiently well to identify the particular piece of property intended to be encumbered by the bond. It is not sufficient to say that a surety owns an acre on a particular street; that property must be described in a manner to make finding it on the ground an easy exercise. We hold that this is best accomplished by stating the number of the plot and the metes and bounds. In such circumstance there would be no difficulty in designating the land with certainty. The description of property intended to be used as security in appeals must be of such certainty and definiteness that locating the property would not be difficult; nor would satisfying any obligation by virtue of the security which the property offers be denied to the appellee.

"Unless the affidavit of the sureties describes the property offered in the foregoing manner, it cannot be said to have conformed to the requirements of the

law, because the property would not have been 'sufficiently identified to establish the lien of the bond.' A lien being a charge, or security, or encumbrance upon property of one person, to secure some debt or obligation to another, there should be such certainty as to the particular property intended, as to leave no doubt in any one's mind.

"The requirements of the law with respect to the affidavit of sureties which accompanies appeal bonds are mandatory, and must be met literally. We have no authority to hold otherwise. The Court's power to construe and interpret statutes does not go beyond giving effect to the words in the text of the particular statute; legislative intent must be gathered from the meaning of the words used. The lawmakers must be said to have intended only what they wrote and nothing more or less; hence, the Court has no alternative but to insist upon strict compliance with the law as it was passed." 24 LLR 224, 227-229 (1975).

Commenting further on the issue raised in count 1 of the motion for reargument regarding the alleged inadvertent omission on the part of this Court to pass on the issue of law as stated before, we must declare here that there were only three main issues raised in the petitioner's resistance to the motion to dismiss the appeal. They were: (1) the institution of the action to recover \$147,499, which was not supported by the verdict of the jury, but was upheld by the trial judge, and her later fixation of the bond at \$5,000; (2) that count 3 of the motion was based on a mere technicality, because the sureties whose names appear on the bond were the same sureties that subscribed to the affidavit of the sureties; (3) that the motion was made for the purpose of delaying the hearing of the case on its merits; and that the motion did not state any of the statutory grounds for a dismissal of causes before this Court.

There was no reference in the resistance to a certificate

of the Bureau of Revenues showing the number of the lot. Nevertheless, the March 1975 Term opinion did refer to and comment on what the statute requires in relation to what constitutes sureties and what should be set forth in an affidavit of the sureties.

Hence, not only do we further hold that the argument of petitioner is unacceptable, but we again state that the statute requires that the surety bond shall be accompanied by an affidavit of the sureties containing a description of the property sufficiently identified to establish the lien of the bond. It is this document, the affidavit of the sureties, that must contain a description of the realty and that is to accompany or be attached to the appeal bond, and not a Bureau of Revenues certificate.

Let us now look at the section of our Civil Procedure Law that relates to the Bureau of Revenues certificate.

"The bond shall also be accompanied by a certificate of a duly authorized official of the Department of the Treasury [now Minister of Finance] that the property is owned by the surety or sureties claiming title to it in the affidavit and that it is of the assessed value therein stated, but such a certificate shall not be a prerequisite to approval by the judge." Rev. Code 1:63.2(4).

This provision of our law has two functions only: (1) the certificate procured from the Ministry of Finance certifies that whoever subscribes to an affidavit of sureties does in actual fact own the property he has described in the affidavit; (2) that it has an assessed value. Nowhere does it require that the certificate from the Bureau of Revenues must carry the description of the property set forth in the affidavit of the sureties. If it is done, it becomes surplusage. The description of the property must appear in the affidavit of the sureties. We feel that these provisions complement one another in order to insure the security of the appellee.

We are of the opinion that the facts and circumstances

apparent in cases cited are not analogous to the present case. This does not mean we have altered our view not to dismiss cases before us on a mere technicality.

In point of fact, we still do maintain that we shall refuse to dismiss causes before this Court on technical grounds. Certainly, one could not consider the application of a statutory provision, as was done in this case, to be a mere technicality.

It must be borne in mind that we are bound by the statutes applicable to a case, as well as by precedent. The statutory provisions relating to legally qualified sureties on appeal bonds are mandatory, and are not left to the discretion of the Court or a party. A failure to comply with such requirements will justify dismissal of an appeal upon motion properly made.

In count 3 of the motion for reargument, movent has contended that this Court grant reargument because all along appeal bonds have not contained a description of the property in the sureties' affidavit, which has only stated that the sureties whose names appear on the bonds are the sureties, and that the assessed value of their properties appear in the certificate of the Bureau of Revenues.

Commenting on this issue, we must reiterate that a rehearing will not be granted unless it is shown either that some question decisive of the cause duly submitted by counsel has been overlooked or that the Court based the prior decision on a wrong principle of law. A case for action must be shown; that is, it must appear that the judgment was erroneous. The Court must be satisfied that owing to a mistake of law or misunderstanding of facts, its decision has done an injury in the particular case, or that the case is one where the principle involved is important and serious doubt exists as to the correctness of the decision.

In count 4 of the petition, it is also contended that "this Court grant the reargument on the original motion and resistance, because it has overlooked in its ruling the

certificate of the Bureau of Revenues showing the description of the property." Appellant further contends that the affidavit and certificate form part of the bond, since they are attached thereto and referred to in the bond.

Addressing ourselves to this issue, we must express our disagreement with the contention of petitioner's counsel. The issue as to the effect of the certificate of the Bureau of Revenues cannot for the first time be considered in this opinion, since it was not raised earlier in the resistance. A rehearing may be granted for the purpose of considering new matter, set forth in the original proceeding which may materially affect the merits of the main controversy. It must be shown that it was raised before and not considered in the original opinion.

Counsel has continually contended that the needed description of the property is set forth in the certificate if not in the affidavit. This contention, again, cannot be upheld. If the description of the property in the affidavit of the sureties was insufficient, the affidavit is defective for such failure.

Perhaps there is a lack of a plain understanding of the issues involved in this case; it is necessary that we re-emphasize our views here: (1) A rehearing will ordinarily be refused where the questions presented by the petition were fully argued and considered by the court in the former hearing. (2) A party asking for a rehearing will not be permitted to set up a new ground different from one raised in the original hearing. (3) A rehearing may be granted for a clear mistake of law in the decision, or where it appears that the appellate court was mistaken as to the facts. (4) A rehearing of a motion is not a matter of right; it is a question addressed to the sound discretion of the court. If in the opinion of the majority of the Justices, the opinion rendered has been reached after considering all the important points presented in the record, reargument will not be allowed.

We have held that courts do not decide substantive

issues upon immaterial technicalities. However, dismissal of an appeal on the ground of noncompliance with statutes is not a technicality.

Decision interpreting the Constitution or acts of the Legislature should be followed, in the absence of cogent reasons to the contrary. And it has been said that the court of last resort of a state will not overrule one of its prior decisions in construction of a statute where the Legislature has held several sessions since such decision without modifying or amending the statute. And a well-settled rule of practice will not be set aside where it would probably cause great inconvenience and confusion in the practice, and where it can easily be changed by the Legislature if there is any necessity therefor.

Under the circumstances, we have been unable to discover any reasons that would justify granting reargument. The motion for reargument is, therefore, denied. Costs are ruled against petitioner. And it is so ordered.

Motion denied.