

**Jihad A. Khalik**, represented by his Attorney-in –Fact, **Mohammed A. Fayed** of the City of Monrovia, Liberia, MOVANT v. **Mohammed K. Musahson** and **Saso Musahson**, also of the City of Monrovia, Liberia, RESPONDENTS

MOTION TO DISMISS APPEAL

**LRSC 18**

Heard: December 31, 2013 Decided: January 17, 2014

MR. JUSTICE BANKS delivered the Opinion of the Court.

The instant case involves a motion to dismiss an appeal taken to this Court by the appellants, Mohammed K. Musahson and Saso Musahson, from a judgment entered on the 25th day of October, A. D. 2007, by His Honour Yussif B. Kaba, Resident Circuit Judge presiding at the September Term, A. D. 2007, of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, in an action for cancellation of a Lease Agreement brought by the movant against the respondents/appellants. In the motion to dismiss, which was withdrawn and an amended motion filed in its stead, the movants set forth the following grounds for his prayer to this Court to deny and dismiss the appeal taken by the respondents/appellants:

1. That movant was petitioner in a cancellation proceedings filed and tried before the Civil Law Court during its September Term, A. D. 2007.
2. That final judgment in the said matter was rendered in favor of the movant/petitioner on the 25th day of October, A. D. 2007, to which judgment respondents took exception, and announced an appeal there- from to this Honorable Court. A copy of the said judgment together with appellants' bill of exceptions, appeal bond and notice of completion of appeal are hereto attached, marked in bulk as Exhibit M/1, to form a part of this motion.
3. That in their attempt to perfect the appeal to this Court, respondents filed a defective appeal bond in violation of Section 51.8, 1 LCLR, page 250, governing appeal bonds, which provides as follows:

Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful.

4. And also because contrary to section 51.8 of 1 LCLR, page 250, the appellants' appeal bond does not have two or more legally qualified sureties, but only one surety, which does not even own real property in the Republic of Liberia.

5. And also because, contrary to the provision in the above quoted law, the Cover Note entitled COVER NOTE NO. MICO-BOND -05-010", under interest, states as follows:

The Corporation shall indemnify the insured via the Appellate Court. The insured, according to the said Cover Note, are Mohammed K. Musahson & Saso Musahson, who are appellants in the instant case, and not the appellee Jihad A. Khalik, contrary to the provision of section

51.8, 11CLR, page 250. For such incurable defect, the entire appeal bond should be set aside and the appeal dismissed. Movant requests your Honours to take judicial notice of cover NOTE NO 17100 BOND-05-010, Appeal Bond.

6. And also because the affidavit of surety, attached to the purported appeal bond is also woefully defective because although clauses 2, 3, and

4 of the said affidavit refer to real and personal properties allegedly owned by the Medicare Insurance Corporation, which is surety to appellants' appeal bond, there is no iota of evidence attached to the appellants' appeal bond to indicate that Medicare Insurance Corporation has any personal or real property within the Republic of Liberia. Because of this legal blunder, the entire appeal bond is defective and same should be set aside and the appeal dismissed. Movant requests your Honour to take judicial notice of the affidavit of surety.

WHEREFORE AND IN VIEW OF THE FOREGOING, movant prays your Honors and this Honorable Court to deny and set aside appellants appeal bond and dismiss appellants' appeal, and grant unto the appellee such other and further relief as your Honors may deem just, legal and equitable in the circumstances of this case, with costs of these proceedings ruled against the respondents.

At the call of the case for hearing by this Court, notice was given to the Court of the filing of the above quoted amended motion to dismiss the appeal. The Court, noticing that no resistance had been filed by the respondents/ appellants up to the date of the hearing, made enquiries of counsel for the respondents/appellants about the absence of a resistance. Whereupon, counsel for respondents/appellants requested of the Court, and was granted, permission to spread on the minutes of the Court the respondents/appellants' resistance to the motion to dismiss the appeal. The following was thereupon recorded on the Minutes of the Court for the 14th day's Session of the Court, same being December 31, 2013:

Counsel for respondents, in resisting the motion filed by the appellee/movant, says the following:

1. That as to counts one and two of the motion, same present no triable issues.
2. That as to count three of the motion, respondents submit that consistent with statute, as required of matured persons, one of whom should be the owner of real property or an insurance company, the bond was filed using the insurance company as the surety, and the notice of completion of appeal was filed and served on the movant within the statutory time. Counsel for respondents request Court to take judicial notice of the record in these proceedings.
3. Respondents say that the bond reflects the following: (a) That the surety and the principal and/or representative jointly and their successors in business are obligated in the sum of US\$35,000. That the said payment indemnifies movant/petitioner/appellee from all costs and damages growing out of the appeal by respondents/appellants. Accordingly, this is what the bond is intended and appellee would be indemnified. The motion should therefore be disregarded. Respondent request the Court to take judicial notice of the court's file, especially sheet 168.

From the foregoing contentions, set out by the parties in the amended motion to dismiss and the resistance thereto, the sole issue which this Court believes it is called upon to address is whether the respondents/ appellants' appeal bond is defective and, if so, does the defect rise to the level to render the appeal dismissible. The parties do not dispute, and the movant in particular does not contend, that the respondents/appellants' bill of exceptions was not filed within the time allowed by the appeal statute. There is also no dispute that the appeal bond, approved by the trial judge, was filed or served on the movant within the sixty day time period allowed by the Civil Procedure Law or that the notice of completion of appeal was served on the movant/appellee and filed with the clerk of the Civil Law Court within the time required by the appeal statute. Rather, the sole contention of the movant is that the appeal bond is defective. In making this claim, the movant/appellee advanced the following points:

(a) That the appeal bond is not secured by two legally qualified sureties who own real property within the Republic of Liberia, as required by section 51.8 of the Civil Procedure Law; but instead, that the bond is secured by only one insurance company as surety.

(b) That "COVER NOTE NO. MICO-BOND -05-010, which is supposed to be the instrument by which MEDICARE INSURANCE COMPANY, the surety, undertook to indemnify the appellee in the event the case is decided by the appellate court against the appellants, actually undertakes to indemnify the appellants rather than the appellee.

(c) That the appellants have failed to show any instruments, and Medicare Insurance Company, the surety, has attached no documents to the appeal bond to show that the said surety is liquid or has assets or property in Liberia, real or personal, to the value of the appeal bond to indemnify the appellee from costs and injuries and to underwrite the costs of court.

Our resolution of the sole issue presented, that is, whether the appellants' appeal bond is defective and therefore warrants the dismissal of the appeal, requires that we address the above three contentions of the movant/appellee. We do so in the sequential order in which they appear.

Firstly, with regards to the contention that the appellants' appeal bond should have been secured by two or more sureties, alleged by the movant to be required by section 51.8 of the Civil Procedure Law, rather than one insurance company, as is the case with the appellants' appeal bond in this case, we hold that the contention is without any legal merits. We note that while it is true that Section 51.8 of the Civil Procedure Law states that "Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed" [Civil Procedure Law, Rev. Code 1:51.8], the Civil same law also explains, at Section 63.2, at sub-sections 1 and 2, what is meant by legally qualified sureties, the number of sureties required for a bond, where an insurance company serves as surety, and the requirements expected of such sureties, whether with regard to an appeal bond or other, in the following words:

1. 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.

2. Lien on real property as security. A bond upon which natural persons are sureties shall be secured by one or more pieces of real property located in the Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances. Such a bond shall create a lien on the real property when the party in whose favor the bond is given has it recorded in the docket for surety bond liens in the office of the clerk of the Circuit Court in the county where the property is located.

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 the assessed value of each property offered. A duplicate original of the affidavit required by this section shall be filed in the office where the bond is recorded.

4. Certificate of Ministry of Finance official. The bond shall also be accompanied by a certificate of a duly authorized official of the Ministry 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.

The issue of whether a bond, secured by an insurance company, must have two insurance companies as sureties is not new to this Court. Indeed, the argument has been made in a number of prior cases. But this Court has held in all of those cases that the section referenced by the movant is clear on its face that it did not need further interpretation by the Court. The statute is very clear in that regard. It states: "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." Civil Procedure Law, Rev. Code 1:63.2.

Thus, the Supreme Court, in explaining the rationale behind the statute and for its decision, has noted in each of the opinions where the contention was asserted that there should have been two or more sureties even though the surety to the bond was an insurance company, that the statute clearly separated the phrase two natural persons from the phrase an insurance company; it did not state two natural persons or two insurance companies; rather, it states two natural persons or an insurance company.

Moreover, the Court has pointed out that an insurance company is a legal person created by law, unlike a natural person, and, that as such, the Legislature intended that the

requirement of two sureties is applicable to natural persons and not to insurance companies authorized to serve as sureties.

Therefore, it is only where the appeal bond is being secured by natural persons that the law requires that they be two or more sureties, any one or more of whom must own real property in Liberia to the value of the appeal bond or higher. *Griffiths v. Wariebi*, 35 LLR 110 (1988); *Freeman et al v. Lewis et al*, 40 LLR 103 (2000). Accordingly, we hold, as we have done in prior cases, that the provision requiring two or more sureties does not apply to insurance companies serving as sureties, and as such a single insurance company can serve as surety to a bond, whether an appeal bond or any other bond. *Jackson et al v. Weaver*, 37 LLR 631(1994); *Cavalla Rubber Corporation v. Liberian Trading and Development Bank (TRADEVCO)*, 38 LLR 316 (1996). Accordingly, we dismiss the appellees contention that there should have been two sureties rather than one insurance company.

This then brings us to the second contention of the movant, which is that the Cover Note intended to guarantee and secure the appellants appeal bond, is defective and thus renders the entire appeal bond defective, in that the Cover Note states that it is indemnifying the appellants rather than the appellee. This is how the COVER NOTE, referred to by the movant/appellee, and attached to the appeal bond, reads:

Medicare Insurance Corporation  
Randall Street  
P.O. Box 1546-Tel. 513234 Fax:(231) 226808  
Monrovia, Liberia

Cover note no, Mico-bond-05-010

Type : Appeal Bond

Insured : Mohammed K. Musahson & Saso Musahson

Addressed : Verdier & Associates, Family Planning Bldg.

18th Street, Payne Avenue, Sinkor, Monrovia

Inception Date: 17<sup>th</sup> December 2007

Period: As the case may require

Interest: The Corporation shall indemnify the Insured via the Appellate Court, failure to appear before the Court, in connection with any financial obligation as may be required by the Court or any contingency thereof by this Guarantee, so long as such expenses do not exceed the sum Assured.

Sum insured: US\$35,000.00 (Thirty Five Thousand United States Dollars)

Condition: Regular information of the case at court and the insured and the surety shall be joint and severally liable.

Premium: As agreed

Situation: Republic of Liberia Approved for and on behalf Medicare Insurance Corporation.

The Court notes that the quoted instrument does name as the "insured" Mohammed K. Musahson and Saso Musahson. Hence, the movant makes the argument that as the Note names the appellants as the insured, it indemnifies the appellants and does not secure the appellee or bound the surety, Medicare Insurance Company, to indemnify the movant/appellee. Accordingly, the movant says, this defect renders the entire bond defective.

The respondents/appellants counter this claim by asserting that both the appeal bond and the affidavit of sureties, both signed by the authorized representative of the surety, Medicare Insurance Company, are very explicit as to who is to be indemnified in the event the appeal is not sustained. We quote both the appeal bond and the affidavit of sureties, starting first with the appeal bond. This is how the appeal bond reads:

#### RESPONDENTS APPEAL BOND

KNOW ALL MEN BY THESE PRESENTS: That we, MOHAMMED K. MUSAHSON and SASO MUSAHSON, Respondents/Appellants, of the City of Monrovia, Montserrado County, Republic of Liberia, and MEDICARE INSURANCE CORPORATION, a Corporation duly incorporated and authorized by law to engage in the Insurance Business within the Republic of Liberia, and certified to execute bonds, and surety, do hereby bind ourselves and our representatives, assigns and successors-in-business, jointly and severally unto Petitioner/Appellee in the sum of Thirty Five Thousand United States Dollars (US\$35,000.00).

The payment of the said Thirty Five Thousand United States Dollars (US\$35,000.00) indemnifies the Petitioner/Appellee from all cost, injury, damages or inconveniences, and that the Respondents/ Appellants will comply with the judgment of the Court to which said Appeal is taken, or any other Court to which said action may be removed.

IN WITNESS WHEREFORE, we MOHAMMED K. MUSAHSON and SASO MUSAHSON and MEDICARE INSURANCE CORPORATION, by and through its Managing Director have set our hands and affixed our signatures hereto this 18 day of December A.D. 2007.

IN THE PRESENCE OF:

Mohammed K. Musahson

Saso Musahson

J. Sando Momolu

Managing Director

Medicare Insurance Corporation

APPEAL BOND APPROVED FOR US\$35,000.00

Approved: Yussif D. Kaba

ASSIGNED CIRCUIT JUDGE"

As for the affidavit of surety, this is how the said instrument reads:

AFFIDAVIT OF SURETY

PERSONALLY APPEARED BEFORE ME, a duly qualified and commissioned Justice of the Peace for and in Montserrado County, Republic of Liberia, MEDICARE INSURANCE CORPORATION, by and thru its Managing Director, being sworn, depose and says as follows:

1. That MEDICARE INSURANCE CORPORATION duly organized and existing under the laws of the Republic of Liberia and authorized to execute Surety Bonds within the Republic of Liberia as per photocopy of the Articles of Incorporation and Current Business registration Certificate from the Ministry of Commerce attached hereto and marked as exhibits R/1 in bulk, and forming a cogent part of this Affidavit of Surety by reference.
2. That of all the properties, both real and personal, owned by MEDICARE INSURANCE CORPORATION, properties to the total value of Thirty Five Thousand United States Dollars (US\$35,000.00) have being set aside as security for the Appeal Bond in the above captioned case.
3. That there are no liens, unpaid taxes or any other encumbrances on or against any of the properties, real or personal, to the value of Thirty Five Thousand United States Dollars (US\$35,000.00) set aside as security for the Appeal Bond.
4. That MEDICARE INSURANCE CORPORATION is the bonafide owner of all of the said properties, real and personal in the total value of Thirty-Five Thousand United States Dollars (US\$35,000.00) set aside as Security for the APPEAL BOND.
5. That the said MEDICARE INSURANCE CORPORATION, holds itself firmly bound to the sheriff of the Civil law Court of Montserrado County in the said amount of Thirty Five Thousand United States Dollars (US\$35,000.00) upon demand and upon judgment in the above cause of action.
6. That all and singular the averments herein contained are true and correct both in substance and in *fact*, and as to those matters of information received, he believes them to be true and correct. SWORN AND SUBSCRIBED TO BEFORE ME THIS 19TH DAY OF DECEMBER, A.D. 2007.

JUSTICE OF THE PEACE, MONTSERRADO COUNTY  
FOR MEDICARE INSURANCE CORPORATION, SURETY  
J. SANDO MOMOLU  
MANAGING DIRECTOR

It is based on the averments contained in the two quoted documents, filed by the appellants with the clerk of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, that the appellants maintain that the bond sufficiently secures the appellee, and that the Cover Note does not affect that security or alter the promise of indemnification of the appellee.

While we believe that the movant is correct in stating that the Cover Note seeks to indemnify the appellants rather than the appellee, we hold that it is a mere technicality which, when weighed against the other instruments exhibited by and attached to the appeal bond cannot be deemed to be of such magnitude as to warrant the dismissal of the appeal. We see the error as a harmless error, although a careless one and an act of negligence made by the surety and counsel for respondents/appellants. We therefore do not sustain the contention of the movant that for such error the appeal should be dismissed.

The third contention set forth by the movant in respect of the appellants' appeal bond is that the insurance company, Medicare Insurance Company, purporting to serve as surety to the appeal bond, has failed to show that it has the resources to cover the value of the bond, and that in light of this failure, which renders the appeal bond not in fulfillment of the law, the appeal should be dismissed. We are therefore called upon to ascertain from the records before us whether the surety, Medicare Insurance Company, has shown that it has the resources to cover the amount of the appeal bond, which in turn must be sufficient to cover the value of the judgment plus costs and interests, where applicable, in fulfillment of the requirement of the law, as under both the statutory law and the decisions of the Supreme Court, if the property which serves as security to the bond lacks value or sufficient value to cover the judgment and costs and interest, the bond is subject to dismissal. *Thompson et al v. George*, 26 LLR 239 (1977); *Chase Manhattan Bank v. Chicri Brothers*, 36 LLR 391(1989).

Our inspection of the records in the file of this case, and specifically the appeal bond, which the movant attached to the motion and which we have quoted hereinbefore, reveals that Medicare Insurance Company, as surety, undertook to bind itself, along with the appellants, jointly and severally, in the sum of Thirty-Five Thousand United States Dollars (US\$35,000.00) to indemnify the appellee from all costs, injury, damages or inconveniences which the appellee may suffer as a result of the appeal and to comply with the judgment of the appellate court or any other court to which the case may be taken in the event the judgment is affirmed. The bond was approved by the Assigned Circuit Court Judge who heard and disposed of the case. We are of the view that this aspect of the bond met the statutory requirements stipulated in section 51.8 of the Civil Procedure Law.

But there are also other associated statutory requirements, including that the surety/sureties must execute an affidavit of surety confirming that the surety owns property in Liberia, that the property is to the value of the bond, that the property is clear of any liens and encumbrances, including taxes due the Government of Liberia. The affidavit of surety attached to the bond by the appellants, in fulfillment of the statute, and which we have quoted hereinbefore, states that the surety is Medicare Insurance Company, that the surety is duly incorporated under the laws of Liberia and is authorized to serve as surety to bonds, that the surety is the bonafide owner of real and personal property to the value of US\$35,000.00 which has been set aside as security for the appeal bond, that there are no liens, unpaid taxes or any other encumbrances on or against the property set aside, to the value of the bond, as security for the appeal bond, and that the surety



therefore holds itself firmly bound to the sheriff of Montserrado County to the value of the bond upon demand and upon judgment.

On its face the affidavit of surety would seem to have fulfilled the requirements of the statute. But the movant/appellee challenges that it does not. The movant points out that nowhere has the appellants or the surety attached to the bond any such evidence of the property, real or personal, which the surety claims it is the bona fide owner of and which could serve as the security to the bond. We agree with the contention of the movant and believe that it is sufficient to dismiss the appeal.

We are aware that this Court has held that it will not ordinarily allow unsubstantial technicalities to defeat the ends of justice or prevent it from probing into the merits of cases appealed to it. Indeed, this Court dealt clearly and extensively with the issue in the case *Robertson and Reeves v. Quiah Brothers et al.*, decided at its October Term, 2011. In that case, the movant sought the dismissal of the appeal of the appellants, giving as ground that the appellants had violated Judicial Order No. 1, issued by the Supreme Court of Liberia. Judicial Order No. 1 stated:

REPUBLIC OF LIBERIA

FROM: His Honour Johnnie N. Lewis

CHIEF JUSTICE OF THE SUPREME COURT OF LIBERIA

SUBJECT: CIVIL PROCEDURE LAW, SECTION 63.2{1}

CRIMINAL PROCEDURE LAW, SECTION 13.2

DATE: 20 AUGUST 2007

In order to give meaning and interpretation to Civil Procedure Law, 1 L.C.L. Rev. tit.1, § 63.2{1} {1973}, and Criminal Procedure Law, 1 L.C.L. Rev., tit. 2, § 13.2 (1973), and to ensure that the Republic of Liberia is fully indemnified in case of conviction of a defendant in a criminal case where restitution is ordered, or where the defendant fails to appear for hearing and/or sentencing, every circuit judge, stipendiary magistrate, associate stipendiary magistrate and justice of the peace shall require, at a minimum, the following where a defendant presents an insurance company as his/her surety in any criminal case:

1. Articles of Incorporation of the insurance company;
2. Registration of the insurance company with the appropriate government ministry;
3. Clearance from the Ministry of Finance evincing that taxes have been fully paid; and
4. Evidence of assets of the insurance company, within the Republic of Liberia, to commensurate with the amount charged in the writ or the indictment.

This Order takes immediate effect.

The movant in the Robertson case stated that the appellants had violated Judicial Order No. 1, in that, amongst other things, the Insurance Company serving as surety had failed to show: (1) proof of its financial potency, *i.e.*, bank account balance; (2) payment of Ministry of Finance tax or that the insurance company was not obligated to the Government of Liberia; and (3) proof of assets that the Insurance Company relied upon.

This Court, while declaring that Judicial Order No. 1 was invalid because it was issued not by the Supreme Court but by the Chief Justice, acting alone, it noted that the intent of the appeal statute was to secure the appellee, and therefore that the requirements laid out in Judicial Order No. 1, being reflective of the intent of the Legislature when it enacted the appeal statute, the Court was adopting the principles underlining the requirements which were stated in the Judicial Order, but as a part of its opinion interpreting the statute rather than as a promulgation of Judicial Order No. 1. We quote immediately below what the Court said in the *Robertson case*, and which we herewith adopt as an integral part of this Opinion, as follows:

Notwithstanding what we have said above regarding Judicial Order No. 1, and our declaration of its illegality or its lack of legally binding and enforceable effect, we do believe that the Legislature intended that insurance companies serving or desiring to serve as sureties to a bond, whether criminal appearance bond, bail bond, civil bond, appeal bond or any other bonds required under the laws of Liberia, would be held to certain minimum standards, have certain qualifications, and meet certain requirements as would secure the opposing party against uncertainty, injury or further damages. Section 63.2 states that the insurance company must be authorized to execute surety bonds within the Republic. Civil Procedure Law, Rev. Code 1:63.2.

We do not believe that use of the term authorized, referred to in section 63.2, is meant merely that there should be an exhibition of the articles of incorporation of the insurance company containing a clause that it can serve as surety, or an exhibition of a certificate showing that it is authorized to do business in Liberia, or a statement from the Ministry of Finance indicating that the company has paid its taxes, for none of those points to the liquidity of the insurance company as would satisfy the purpose of an appeal or other bonds, which are intended to hold the successful or opposing parties harmless from injury, to make payment of the costs of court, and to satisfy the judgment of the court, the same as there are requirements for natural persons whom the statute provides can serve as sureties. The purposes stated both in the statute and in the litany of cases decided by this Court presuppose and imply that the insurance company is in good standing and has the liquidity or other means to satisfy the judgment and other costs associated with the case in which it is serving as surety. The object of an appeal bond with sureties, this Court has said, is to secure costs to the appellee and to assure the court of compliance with its judgment. *Komara v. Wolloh*, 29 LLR 177 (1981), text at 180; *The Intestate Estate of the Late William J. M. Bowier et al. v. Williams et al.*, 40 LLR 84 (2000), text at 89; *Freeman and Wesseh v. Lewis et al.*, 40 LLR 103 (2000), text at 107. The purpose stated in those opinions and by the statute would be defeated if the insurance company could not demonstrate that it is a registered entity, that it

has the capacity and the liquidity or assets to underwrite the obligation undertaken by it in a bond, appeal or otherwise.

What then is the expected standard which the statute contemplates? We believe the statute contemplates the following:

1. The exhibition or attachment to the bond of the Articles of Incorporation of the insurance company as evidences 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 evincing that all taxes due at the time of the execution of the bond have been fully paid; and
4. Evidence, such as a 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.

Consistent with the constitutional and statutory mandate to make rules and issues orders for the promotion of justice, that are not inconsistent with the Constitution and statutes of the Land, and as we believe must have been the clear intent of the Legislature, we hold the above to be the standard to which insurance companies must adhere in serving as surety to a bond and this is the standard which all judges of our lower courts must ensure are adhered to."

We hold the views expressed in the quoted opinion to be true today, the same as when the opinion was delivered by this Court. The mere fact that the respondents/appellants and the surety, Medicare Insurance Company, exhibited the articles of incorporation and the business registration of the surety did not meet the standard required under the law. In the *Robertson* case, we clearly stated that as conditions for an insurance company serving as surety to a bond, whether appeal or any other type of bond, the company must, amongst other things, firstly, not just allege that it has real and personal property, but that it must exhibit "evidence, such as a certificate or other legal instruments from an appropriate legal authority, such as the Central Bank of Liberia 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 as surety, commensurate with the amount stated in the bond"; and secondly, that it must exhibit a Clearance from the Ministry of Finance evincing that all taxes due at the time of the execution of the bond have been fully paid.

These are the requirements of the law and they must be fully complied with. This Court has said that while it recognizes that the right of appeal is granted both by the Constitution and by the statutory laws of Liberia. LIB. CONST., ART 20(b) (1986); *Vargas v. Reeves*, 39 LLR 368 (1998); *Catholic Justice and Peace Commission et al. v. The Republic of Liberia*,

Supreme Court Opinion, March Term, 2006, delivered August 18, 2006, the appellant must ensure at all times that the compulsory elements, the appeal requirements for the perfecting of an appeal, are strictly complied with. *United Security Insurance Company (Ltd.) v. Gartoe*, 35 LLR 625 (1988). Indeed, as far back as 1939, one of Liberia's most esteemed Chief Justices, His Honour Louis Arthur Grimes, speaking for the Court on the issue of appeal bonds, clearly espoused that the conditions laid out in an appeal bonds statute must be strictly complied with no matter who the parties involved are and that the Supreme Court lacks the authority to discharge any of the requirements. See *Cavalla River Co. Ltd. V. Fazzah*, 7 LLR 12 (1939). We hold that principle to still be operative today.

It is worthy to note that the position of the Supreme Court on the strict compliance with the statute on appeal is not a new phenomenon. This Court is known to have held that position for almost as long as the Court itself has existed. In the second recorded case in the Liberian Law Reports, the case of *Yates v. McGill Brother*, reported in 1 LLR, at page 2, decided in 1861, the Supreme Court held that any omission in fulfilling any of the requirements in the appeal statute was fatal and that the case would be dismissed for that reason. Similarly, in *Johnson, Turpin and Dunbar v. Roberts*, 1 LLR 8 (1861); *McBurrough v. Republic*, 1 LLR 385 (1901); *Whea and Dough-Bie v. Bonwein and Karlstrom*, 16 LLR 51 (1964); *Hannah v. Seaz*, 16 LLR 84 (1964); *Buchanan v. Raymond Concrete Pile*, 20 LLR 622 (1972); *Sannoh v. Fahnbulleh*, 30 LLR 258 (1982); *MIM Liberia Corporation v. Townen*, 30 LLR 611 (1983); *United Security Insurance Company (Ltd.) Inc. v. Gartoe*, 35 LLR 625 (1988); *Abi Jaoudi v. The Intestate Estate of the Late Bendu Kaidii*, 40 LLR 777 (2001), the Supreme Court has maintained the position, as it was constitutionally bound to do, that where any of the grounds stated by the statute as constituting a basis for dismissal of an appeal is not adhered to by the appellant, the appeal will be dismissed. And even when this Court has held that it will not be guided or bound by mere technicalities of insubstantial omissions, especially where those omissions would not have the effect a party suffering injustice [*Citibank, N.A. v. Joe Hansen & Soehne (Liberia) Ltd.*, 35 LLR 69 (1988)], and has opted instead to probe into the merits of the case rather than dismissing the appeal [*Firestone Plantations Company v. Bravy*, 36 LLR 893 (1998)], particularly where property rights are involved, the Court has stated very clearly and unambiguously that non-compliance with the mandatory statutory requirements for appeal cannot be deemed as mere technicality and that a case will in fact be dismissed where there are violations of the substantive statutory requirements by the appellant. *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank*, 38 LLR 153 (1995).

The object of the appeal statute, this Court has also said, is to ensure that the appellant indemnifies the appellee from costs and injury arising from the appeal and that the appellant will comply with the judgment of the court. *The Intestate Estate of the late William J. M. Bowier et al. v. Williams et al.*, 40 LLR 84 (2000); *Chicri Abi Jaoudi v. The Intestate Estate of the late Bendu Kaidii*, 40 LLR 777 (2001). Further, this Court held in the case *American Life Insurance Co. v. Sandy* that "[a]nother purpose of the requirement for an appeal bond or undertaking, based upon considerations of public policy, is to discourage frivolous and vexatious litigation. *American Life Insurance Co. v. Sandy*, 32 LLR 242, 249

(1984). It is important, therefore, that an appellant, in pursuing an appeal, takes the utmost care to ensure that the statute and other laws are strictly complied with. *Manakeh v. Toweh*, 32 LLR 207 (1984); *Ezzedine v. Saif*, 33 LLR 21(1985); *Lamco J.V. Operating Company v. Fleming*, 33 LLR 171 (1985); and *Sillah et al. v. Sherman*, 36 LLR 918 (1990). Thus, while this Court has repeatedly expressed its strong preference for deciding cases on its merit and, consequently, is hesitant to dismiss a case by reason of a mere technicality, *McCaulley v. Brown*, 2 LLR 359 (1920); *Dennis v. Gooding*, 10 LLR 122 (1949); *Biggers v. Good-Wesley*, 23 LLR 285 (1974), *Massaquoi v. Massaquoi et al.*, 34 LLR 518 {1988}; *Cooper-Hayes v. International Trust Co.*, 37 LLR 277 {1993}., [See also *Inter-Con Security Systems, Inc. v. Philips and Tarn*, 40 LLR 30 {2000}, *Sillah et al. v. Sherman and Sherman*, 36 LLR 918 {1990}, and *Citibank, N. A. v. los Hansen & Soehne (Liberia) Ltd.*, 35 LLR 69 {1988}, it has also made it clear that the substantive mandatory and compulsory statutory requirements are not mere technicalities and will therefore not be overlooked by the Court. *National Housing and Savings Bank v. Gordon*, 35 LLR 323 (1988); *Cavalla Rubber Corporation v. The Liberian Trading and Development Bank*, 38 LLR 153 {1995}.

In the instant case, all that we find are the appeal bond, the affidavit of completion of appeal, the business registration of the surety and the articles of incorporation of the surety. No other evidence is attached that shows or demonstrates that the surety owns property, real or personal, or other assets such as bank accounts, etc., indicating that it is has sufficient liquidity to meet the obligation stated in the bond and the affidavit of surety. How else is the movant/appellee assured or guaranteed that the surety is liquid and has the capacity to honour the judgment of the court. It is not sufficient that the requirements are met by the mere allegation of the surety. This is why the statute specifically requires that the surety must attach other evidence to show that he/she or it has sufficient assets to cover the value of the bond. The appeal bond in the instant case lacks very key mandatory requirements and therefore does not meet the prerequisites laid down in the law for the completion of the appeal.

Let us, here again, as we have done on many other previous occasions, admonish lawyers practicing in this jurisdiction, especially in matters being appealed from judgments of the lower courts, that "it is the duty of the appellant's counsel to superintend the appeal and see that all of the legal requirements are complied with. *Mensah v. Liberia Battery Manufacturing Corporation*, 36 LLR 879, 885 {1990}. Counsel for appellant must therefore continuously and meticulously examine the statute and make sure that it is complied with to the letter and to the full intent of the Legislature. For as much as this Court would like to probe into the merits of each case brought before it, and while the acts committed by the trial judge or other officers of the trial court may provide a basis for the temptation to indulge in such probe, this Court has held consistently the steadfast position that it is not prepared to sacrifice the statutes or any other law of the land to accommodate and turn a blind eye to the errors made. To probe into the merits of the case, under these circumstances, would in effect be tantamount to overriding or overturning the statute or to making law, both of which this Court has said in a wide variety of cases it is without the authority to do. *Kontoe and Williams v. Inter-Con Security Systems, Inc.*, 38 LLR 414 (1997).

No court can do for parties what the parties have a legal obligation to do for themselves. In *Liberia Agricultural Company v. Hage et al.*, this Court said: It is the duty of litigants, for their own interest, to surround their causes with the safeguards of the law as to secure them against any serious miscarriage of justice and thereby pave the way to secure the great benefits which they seek to obtain under the law. Litigants must not expect the courts to do for them that which is their duty to do for themselves." 38 LLR 259, 269 (1995).

Accordingly, and being in agreement with the movant/appellee in that the appeal bond is defective, we hold that the respondents/appellants have not met the requirements of the appeal statute and that the appeal should be and is hereby dismissed.

The Clerk of this Court is hereby ordered to send a mandate to lower court directing the judge presiding therein to resume jurisdiction over this case and to enforce that court's judgment. Costs are adjudged against the respondents/appellants. AND IT IS HEREBY SO ORDERED.

Counsellor Fomba O. Sheriff of Tulay and Associates Law Firm appeared for the movant/appellee. Counsellor Theophilus C. Gould of Kemp and Associates Legal Consultancy Chambers appeared for the respondents/ appellants.