Mr. & Mrs. Edwin Ta ye of the United States Of America, Represented by and thru their Daughter, Princess M. Taye, Attorney-In-Fact Of Airfield, Sinkor, Monrovia, Montserrado County, Republic of Liberia, Movants/**Appellees** Versus **George Kiawu** and all those under his authority also of Airfield, Sinkor, Monrovia, Montserrado County, Republic of Liberia, Respondents/ **Appellants**

LRSC 55

MOTION TO DISMISS APPEAL

Heard: October 20, 2014 Decided: December 4, 2014

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

This motion has its genesis in an action of ejectment filed during the March Term A.D. 2012, in the Sixth Judicial Circuit Court, Montserrado County, before His Honor Yussif D. Kaba, Resident Circuit Judge.

The appellees, Mr. and Mrs. Edwin Taye, of the United States of America by and through their Attorney -in-Fact and daughter, Princess M. Taye, filed an action of ejectment against the appellants, George Kiawu and all those acting under his authority.

In the two-count complaint filed by appellees, the appellees averred substantially that they are owners of a parcel of land containing 1.86 lots lying and situated at Oldest Congo Town, Sinkor, Montserrado County, Republic of Liberia; that the appellants have encroached thereon by constructing a zinc fence around the subject property and further illegally undertaking construction of some buildings on said land without appellees' will and consent. The appellees/plaintiffs prayed the Court to oust, eject and evict appellants/ defendants from their property and put them in possession as well as award them damages in the amount of one hundred thousand United States Dollars (US$ 100,000.00) and grant to them any and all relief the court deemed just and equitable.

The appellants/defendants filed a seven count answer to the complaint averring that they are the owners of the parcel of land which forms part of two lots owned by George Kiawu, one of the defendants, who purchased said lots from one Boima Tombakai and Morris Kallon in 1985. Appellants/Defendants therefore prayed that the appellees/plaintiffs' compliant be denied and dismissed.

A jury trial was duly held and a unanimous verdict returned against the appellants/defendants and a judgment entered thereon finding the defendants/appellants liable in the ejectment action. The court ruled ordering the clerk of court to issue out a writ to have the appellants ejected from the disputed property, and award the appellees/plaintiffs fifty thousand United States Dollars

(US$50,000.00) as damages for wrongful withholding.

The defendants, appellants/respondents, excepted to the judgment and announced an appeal. The appeal was granted.

The appellees/movants have filed this motion to dismiss the appeal, contending that the appellants/respondents' appeal bond, a bank guarantee and bank statement, offered by the Medicare Insurance Company are incurably defective; that the appellants/ respondents' surety placed a time limit on the said instrument, the validity of which expired while the appeal is still pending before the Supreme Court; that the said surety's bank certificate and statement offered as bond by the appellants ceased to be effective from April 3, 2013 and before the matter was heard by the Supreme Court and a final determination made thereon. Relying on the case, LAC v. Twehway, 36 LLR 575, 580 (1989) decided by the Supreme Court, the appellees contend that the bond put up by appellants to ensure compliance with the judgment of the court below and court costs relating to the appeal, having expired, the bond was now null and void. The appellees/movants therefore asked that the Supreme Court dismiss the appeal for the defectiveness of the bond.

The respondents/appellants, in their resistance, prayed to have the motion to dismiss denied because the appellees failed to provide legal justification for the dismissal, and besides, the bond was filed in adequate time and the appellees had three days within which to challenge the bond in the trial court, but they failed to do so.

In his argument before us, counsel for the movants/appellees countered that the final judgment in the matter was rendered on the 14th day of February, A.D. 2013, and the appellants had up to the 15th of April 2014, to perfect their appeal. The appellees/movants said that the respondents/ appellants having announced their appeal and filed their bill of exceptions in the time required by statute, appellants subsequently served the appellees' counsel on April 1, 2013 with both the appeal bond and the notice of completion of appeal. Counsel for appellees submitted that the statutory requirement of completion of the appeal not having expired, he initially filed a notice of exceptions to the bond before the judge of the trial court, but realizing that with the notice of completion of the appeal having been filed and served on him, and in consonance with numerous Supreme Court's opinions that a case is removed from the trial court and placed before the Supreme Court when the notice of completion of appeal is filed an d served, he elected to abandon the motion for justification of the bond filed before the trial court.

This matter having been called up by the Supreme Court on October 20, 2014, for the purpose of hearing the motion to dismiss, the parties argued their briefs and the following issues were raised for determination by this Court:

1. Where the appellants filed and served the notice of completion of appeal before the sixty days period allotted by the statute for completion of an appeal, can the appellees challenge the appeal bond in the trial court?

2. Whether the appeal bond having expired before the hearing and final determination of the matter by the Supreme Court warrants a dismissal of the appeal?

The first issue of whether the appellees should have challenged the bond in the trial court since the sixty days period for perfecting the appeal had not expired was vehemently argued by the appellees' counsel. We agree with the appellees that the case was removed from the trial court and it lost jurisdiction to hear any aspect of the matter on appeal including a challenge of the appellants' bond the moment the notice of completion of appeal was served on the appellees and filed with the trial court.

This Court has adequately addressed in a long line of cases this settled issue of the removal of the entire matter on appeal from the trial court when the last step of the appeal process, the notice of completion of appeal, is served and filed: Karpeh-Buchanan v. Buchanan Ratazzi et al., 15 LLR 510, 514 (1964); Jaboe v. Jaboe, 24 LLR 352, 357 (1975); Standard Motor Corporation v. Pratt, 21 LLR 381 (1972); Kamara v. Kamara et al., 29 LLR 485, 489 (1982); Management of ITC v. Jarjay et al., 33 LLR 63, 69 (1985); Carey v. John, Supreme Court's Opinion, October Term, A. D. 2013.

In the Karpeh -Buchanan case cited above, Mr. Justice Pierre, delivering the opinion on behalf of the Supreme Court said, "The notice of completion of appeal is in the nature of a writ of summons, which the law requires to be served upon the appellee, notifying him to appear before the appellate court. Service of this notice gave the appellate court jurisdiction in the matter, and the trial court cannot continue thereafter to exercise any jurisdiction . "After the service of the notice of completion of appeal, the lower court can no longer have jurisdiction in the matter and can take no further action therein, and no trial court can ever have or exercise concurrent jurisdiction with the Supreme Court in any case. When he served eight years later as Chief Justice, Justice Pierre reiterated this principle in the case, Standard Motor Corp v. Pratt, 21 LLR 381, 383-384 (1972), when he stated that upon completion of all the jurisdictional steps by the appellant, and especially the service and return of the notice of completion of appeal, the trial court completely loses jurisdiction over the case. In every such instance, the case is legally before the Supreme Court for hearing and determination.

In the case where both the appeal bond and the notice of completion of appeal are served on the appellees the same day, although the sixty-day period for perfection of appeal had not expired, the appellees definitely could not have properly filed their objection to the bond in the trial court as the matter had been removed to the Supreme Court, and as stated above, no trial court can have or exercise concurrent jurisdiction with the Supreme Court in any case. It was however not brought up in the hearing before this Bench whether the appellees withdrew their exceptions to the bond filed before the trial court before filing their motion to dismiss the appeal before us. If they did not they should have.

We hope that lawyers can put to rest this issue long settled by the Supreme Court that the filing and service of the notice of completion of the appeal removes the matter completely from the lower court to the Supreme
Court and therefore no challenge of the bond can thereafter be made in the lower court. Counsellors appearing before this Court are expected to take notice of settled principles enunciated by this Court in the interpretation of our appeal statute and govern themselves accordingly .

As to the second issue raised, we take note of counts 1, 5, and 6 of the appellees/movants' exception to the appellants/respondents' bond which read as follows:

1. "That as to the entire appeal of respondents/appellants, movants/appellees submit and say that the said appeal is a fit subject for dismissal under our la w s and practices in that respondents/appellants' appeal bond in this case being a bank certificate and bank statement offered by the Insurance Company are incurably defective on grounds that respondents/appellants' surety placed a time limit on the said instrument's validity while the said appeal is still pending before the Supreme Court of the Republic of Liberia for a final determination for which the said appeal bond was offered. Movants/Appellees contend strongly that prior to a final determination of the said appeal of respondents/appellants, the time for which the said bank certificate and bank statement (which served as securities to the appeal bond) were issued, has expired. Hence, this motion to dismiss appeal."

5. "That movants/appellees contend further that as to the entire appeal bond, respondents/appellants appeal bond, it is incurably defective on grounds that the surety violated the statute controlling by issuing a purported appeal bond with a limited I. B. Bank certificate which is valid up to the 3rd day of April A.D. 2013 and beyond this date, the said appeal bond has certainly expired while the said appeal is still pending undetermined. Movants/Appellees contend strongly that the said I.B. Bank Certificate issued for the purpose of the said appeal bond on behalf of the said respondents/appellants had three (3) days remaining when it to expired, meaning it was valid up until April 3, 2013, after which time the said appeal bond shall be considered null and void. Hence, movants/appellees further contend that said appeal bond having expired on April 3, 2013, there is, in fact, no bank certificate of de posit to support respondents/appellants' appeal bond in order to adequately indemnify movants/ appellees in the event the said appeal do not sustained. Movants/Appellees most respectfully request this Honorable Court to take judicial notice of the case file before you."

6. "Further to the counts above, movants/appellees contend further that the Supreme Court of the Republic of Liberia has held that for a Bank Certificate to be valid, the said Bank Certificate of deposit securing an appeal bond should not be limited to any particular time in the future, but it must be written in such a way as will allow it to remain effective and valid until a final determination of the matter is had. Thereafter, if the said determination is in favor of the appellant, the bank certificate of deposit is returned to the bank as its property. But if the appellant loses the appeal, then the bank certificate will be utilized by both the sheriff and the court to indemnify the appellees, as the

issuing bank had promised. See Liberia Agricultural Company (LAC) v. Samuel Twehway and James B. Dennis, 36 LLR 575, (1989) text at 580."

In answer to the second issue, whether the appellants' appeal bond filed in this case has expired and therefore warrants the dismissal of the appeal, a review of the appeal bond reveals a bond (Policy No. MIC0-026-03-013- 046) put up by the Medicare Insurance Corporation of Randall Street, Monrovia, Liberia for US$100,000.00 (One Hundred Thousand United States Dollars) on behalf of the appellants on March 26, 2013; a bank guarantee of US$50,000.00 issued on April 3, 2012, to the Transport Ministry to insure performance of the Medicare Insurance's duties as required by the Insurance Laws of the Republic of Liberia and carries an expiry date of April 3, 2013. Also attached is a Statement of Account with closing balance of US$22,784.87 covering period February 1, 2013 through March 18, 2013, and a tax clearance certificate issued to Medicare Insurance Corporation by the Department of Revenue of the Ministry of Finance dated 15th day of February 2013, which was valid for a period of one hundred and eighty (180) days or six months, that is up to August 16, 2013.

This Court has held that the main purpose of the 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; American Life Insurance Co. v Sandy, 32 LLR 242, 243 (1984); Ahmar v. Gboe, 42 LLR 117, 126 (2004); William and Seekey v. NPA, 42 LLR 520, 525 Ah, (2005).

Having reviewed the bond documents, the question that comes to the mind of this Court is whether the counsel for the appellant reviewed the bond before it was filed with the judge of the trial court, and whether the trial judge himself took due care in reviewing the bond before appending his signature approving the bond?

The amount of Fifty Thousand United States Dollars (US$50.000.00) was awarded the appellees as damages. This Court has held that there is no law requiring that the bond or amount put up as an appeal bond be twice or 11/2 times the award of the judgment below but that the appeal bond be sufficient to cover the judgment awarded plus court costs Chase Manhattan Bank, N.A v. Chricri Bros. Inc., 36 LLR 391, 400 (1989); The National Bank of Liberia v. Karfoweah et at, 42 LLR 389, 397 (2005), the appellants put up and the trial judge approved the bond for $100.000.00 on March 29, 2013. As previously stated, the bank guarantee put up by the Medicare Insurance Corporation in favor of the Ministry of Transport as security for the performance of insurance duties was Fifty Thousand Dollars. This guarantee given on April 3, 2012, expired on April 3, 2013. The concluding paragraph of the guarantee reads : "This Guarantee will remain in force up to and including April 3, 2013, or as it may be extended by Medicare Insurance Corporation, with notice of extension(s) to the Bank. Any demand in respect of this Guarantee should reach the Bank not later than the aforementioned date." We see no evidence in the file that this bank guarantee was extended after April 3, 2013. Besides, the bank's statement of the surety's

account attached to the bond covered the period February 1, 2013 through March 18, 2013, and reflects a closing balance of US$22,784.87, an amount far less than the judgment awarded by the trial court.

The Supreme Court has held, to be valid, a bank certificate of deposit ·securing an appeal bond, should not be limited to any particular time in the future, but it must be written in such a way as will allow it to remain effective until final determination is made of the appeal for which it is offered. Liberia Agricultural Co. v. Twehway and Dennis, 36 LLR 575 (1989); The Court also held in the case Liberian Produce Marketing Corp. v. Korh et al., 35 LLR 341, 347 (1988), that the limitation placed on a letter of guarantee for its expiration on a specified date renders the letter of guarantee invalid after the expiration of the date and creates a defect in the bond as of the date of expiration; and that in order for a bond to be valid, the security for the bond must be valid at the time of the filing of the bond, or at least the security should become valid within sixty days after rendition of a final judgment as provided by law. ITC v Jarjay et al., 33 LLR 63, 73 (1985).

We are puzzled why counsel for appellants would put up a bond to be approved by the Judge on March 29, 2013; filed the bond on April 1, 20 13, when the bond expired on April 3, 2013, when the case was not expected to be docketing before the Supreme Court until October Term, 2013, which was the second Monday in October, that is, October 14, 2013. To have presented a bond which certificate expired on April 3, 2013, was a serious derelict of duty by the counsel for the appellants.

The Supreme Court has required that lawyers be not only professionally qualified but desist from being derelict in the handling of their clients' matters. Counsellors are required to exercise due diligence in handling and superintending clients appeals, seeing to it that all legal requirements are complied with; Johnson et al. v. Roberts, 1 LLR 8 (1861); Cole, et al. v. Larmi, 25 LLR 450 (1977); Taylor v. Pasi, 25 LLR 453 (1977); Mensah v. Liberia Battery Manufacturing Corp., 36 LLR 879, 885 (1990).

Just recently, during the March Term, A.D. 2013, in the case Abdullah Hussenni v. Charles W. and Estelle V. Brumskine, this Court dismissed the appellants' appeal because of the challenge posed by the appellees as to the validity of the surety of the bond. Mr. Justice Philip A.Z. Banks delivering the opinion on behalf of the Supreme Court said:

"We must re-emphasize that it is the responsibility of counsel for an appellant, in such a case to not only superintend the appeal process for the client, similarly as the client should himself or herself manifest interest in the process and to rigidly monitor the appeal process being pursued by his/ her counsel so that he/she has the assurance that the appeal requirements are fulfilled, including insuring that all of the instruments filed in connection with the appeal are in good order and clear of any deficiencies as would place the appeal bond in jeopardy or render the appeal deficient and therefore dismissible. It was incumbent upon counsel for the appellant to examine

all of the documents associated with the appeal, from the articles of incorporation of the Medicare Insurance Company to the document at the Registry to the account and financial standing and capacity of the surety. Had such inspection been thoroughly and meticulously carried out, as counsel for appellant had the responsibility and the duty to do, the defect would have been discovered."

This Opinion, delivered by Justice Banks, placed the onus of superintending the appeal bond squarely on the appellant and his counsel, stating that the court did not have an obligation to and responsibility of seeking to enquire from the Ministry of Foreign Affairs or Ministry of Transport whether the bond's surety was genuine or not.

We should however like to admonish our judges to take greater care in their review and approval of appeal bonds since an ineffective bond has the effect of disregarding the intent of the appeal statute. Section 63.3 of our Civil Procedure (1972) states: "A bond shall become effective when approved by the court. Approval may be granted when the party furnishing the bond presents prima facie evidence to show that the sureties are qualified or that the surety offered on the bond is adequate, genuine and as represented by such party...."

We are of the opm1on that a judge should exercise due diligence in approving a bond so that where the appeal is not sustained his judgment would be enforced, as a failure to exercise such due diligence reflects poorly on the court, as in the instant case of the obvious defect in the appellants' bond.

We emphasize this Court's position in the case Adutum v. Wollor, Supreme Court Opinion, October Term 2009, Motion for Re-argument, decided January 21, 2010, where it stated that dismissal of a case at the appellate level constitutes a harsh sanction and this Court prefers to address the merit of an appeal whenever possible. However, where we on review of the certified records determine that the appellant and his counsel showed callousness in the handling of the appeal process, we cannot disregard the law as we know it to be.

The bond placed by the appellants in this appeal having been of no validity after April 4, 2013, this Court is left with no alternative but to grant the motion to dismiss the appeal.

Wherefore and in view of the foregoing, it is the opinion of this Court that the motion to dismiss the appeal be granted and the appeal be dismissed. The Clerk of this Court is hereby ordered to send a mandate to the Court below upon handling down of this opinion to give effect to this judgment. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELOR C. ALEXANDER B. ZOE OF THE ZOE AND PARTNERS LAW OFFICES APPEARED FOR THE APPELLEES/MOVANTS. COUNSELOR MOLLEY N. GRAY, SR. OF THE JONES AND JONES LAW FIRM APPEARED FOR THE APPELLANTS/RESPONDENTS.