

LIBERIA MINING COMPANY, Appellant, v.  
BOMI WORKERS UNION, Appellee.

MOTION TO DISMISS APPEAL.

Argued May 20, 1976. Decided June 18, 1976.

1. A bank manager's check or a bank cashier's check is the equivalent of a bank certificate and, therefore, valid security for an appeal.

A bank manager's check was posted as security for an appeal bond. Appellee moved to dismiss, contending that the appeal bond was defective since it did not have two sureties thereon who met all the requirements thereof.

The Court held that a bank manager's check, or a bank cashier's check was the equivalent of a bank certificate and, therefore, valid as security. The motion was *denied*.

The Chief Justice dissented, saying that cash cannot be used as an appeal bond.

*M. Fahnbulleh Jones* and *D. Caesar Harris* for appellant. *F. R. T. Gardiner, Jr.* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

When this case was called, appellee filed a motion to dismiss the appeal of the appellant, stating that a bank manager's check posted for the amount of the appeal bond was improper and that a bank certificate should have been posted. The appellant contends that a manager's check or a cashier's check is the equivalent of a bank certificate.

In support of appellee's counsel's contention, he has relied on *Wilson v. Wilson*, 24 LLR 534 (1976). It is, therefore, necessary to examine the factual situation in that

case in order to determine whether or not it is applicable in the instant case. In *Wilson v. Wilson*, the appellant tendered a personal check of a third party in the amount of \$2,000, drawn on the Bank of Liberia, and attached thereto a surety bond in which the check was designated as the security. We held in that case that while the mode of bond to be filed was elective under our statute, that is, the appellant has two ways to file an appeal bond, a cash bond and a surety bond, both of them failed in the *Wilson* case to meet the statutory requirement, in that the check was not accompanied by a bank certificate evidencing that the amount was being held to the credit of the appellee, if the appellee obtained judgment, and the surety bond did not show two qualified sureties thereon.

In the instant case, a manager's check or cashier's check was filed as a cash bond, supported by an undertaking signed by the appellant that he "will indemnify the appellee from all costs and all injury arising from the appeal taken by the above named appellant . . . and will comply with the judgment of the court to which said appeal is taken or any other court to which the said action may be removed." The check bears the signature of an authorized officer of the First National City Bank (Liberia).

Let us resort to the authorities for the definition of a certified check and a cashier's check. A certified check is a depositor's check recognized and accepted by a bank officer as valid appropriation of the amount specified and as drawn against funds held by the bank. The usual method of certification is for the cashier or teller to write across the face of a check, over his signature, a statement: "Is good when properly endorsed." BLACK'S LAW DICTIONARY (3d ed., 1933).

"A cashier's check is entirely different in nature from an ordinary check drawn by a depositor of the bank. It is a bill of exchange, drawn by the bank upon itself, and is accepted by the act of issuance. The bank, in such case, is the debtor, and its obligation to pay the

cashier's check is like that of the maker of any other negotiable instrument payable on demand. . . ."

"Cashier's checks, from their peculiar character and general use in the commercial world, are regarded substantially as the money which they represent, a rule that is not extended to the case of ordinary checks of the depositor drawn on his bank." 5 R.C.L., *Checks*, § 5 (1914).

BLACK'S LAW DICTIONARY (3d ed., 1933), defines a cashier's check as:

"One issued by an authorized officer of a bank directed to another person, evidencing that the payee is authorized to demand and receive upon presentation from the bank the amount of money represented by the check. A form of a check by which the bank lends its credit to the purchaser of the check, the purpose being to make it available for immediate use in banking circles. A bill of exchange drawn by a bank upon itself, and accepted by the act of issuance. *In its legal effect, it is the same as a certificate of deposit, certified check or draft.*" [Emphasis supplied.]

From these definitions, it is clear that a certified check and a cashier's check are not the same. A certified check evidences an acceptance by the bank to pay the value of the check. The charge is to the drawer's account, to be made prospectively, even though the check as certified evidences a promise by the bank to block off a portion of the drawer's account to the extent of the face of the check. Liability for nonpayment attaches to the bank because by virtue of certification it substitutes the drawer's promise to pay by its own. The maker of the check nevertheless remains the drawer and the bank the drawee appropriating the value of the check against the funds of the drawer held by it. In this case of a manager's check or a cashier's check, it is an instrument directly issued and signed by the bank; it is a check drawn by the bank upon itself and thus the bank is both the drawer and the drawee.

It is a check drawn against its own funds and consequently constitutes a forthright, direct obligation of the bank. Its liability for payment is, therefore, primary, ultimate, and absolute. Considering the distinguishing features of a certified check and a cashier's check as herein pointed out, we hold that for purposes of a cash bond, a cashier's check, in contradistinction to a certified check, is equivalent to a bank certificate and thus meets the purpose and intent of the requirement of the statute for a bank certificate with respect to a bond.

Comparing the situation in the *Wilson* case and the present one, the check in the *Wilson* case, which was a certified check and not a cashier's check, was issued by a third party who was not a party to the case. In the present case, we can say for practical purposes that the check was issued by the appellant by virtue of being the purchaser of the cashier's check as shown on the stub of the check in the records. The decision in the *Wilson* case is therefore not applicable to the present one.

The appellee argues, however, that the check was issued to the order of the Republic of Liberia, which is not a party to the case, and, therefore, the appellee is not indemnified by the bond filed by the appellant. In this connection we observe that the custom in such cases has been to issue the check to the order of the sheriff. Reviewing the undertaking signed by the appellant and which accompanies the check, it is found to contain the words "We, Liberia Mining Co., appellant, principal, by virtue of Manager Check No. 000426, are firmly bound unto the sheriff for County of Montserrado, Republic of Liberia, in the sum of thirty-nine thousand, five hundred eighty-nine dollars and thirty-one cents." Reading the check and the undertaking together, it cannot but be concluded that the check is intended for the sheriff for Montserrado County. The sheriff is an official, a ministerial officer, of the Republic of Liberia, and so the fact that the check is made to the order of the Republic of Liberia does not

make it fail in its indemnification of the appellee; especially when the check carries the words "Liberia Mining Company, Ltd., only as an appeal bond in the case to Supreme Court." This argument of the appellee, therefore, has not merit.

Appellant in count 4 of its resistance, raises the point that the appellee has not attacked the insufficiency of the bond and that one of the grounds for the dismissal of an appeal is the failure of the appellant to file a sufficient bond. Our Civil Procedure Law addresses itself to the point.

"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. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Notice of the filing shall be served on opposing counsel. *A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal* [emphasis supplied]; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action." Rev. Code 1:51.08.

The motion of the appellee to dismiss the appeal contains two counts and in neither one of the counts is it contended that: (a) the bond is insufficient; (b) the sureties are not legally qualified to the effect that they will not indemnify appellee from all costs or injury arising from the appeal, if unsuccessful, and that they will not comply with the judgment of the appellate court or of any other court to which the case is removed; (c) that appellant has failed to secure the approval of the bond by the trial judge

and has not filed it with the clerk of the court within sixty days after rendition of judgment; (d) that they have failed to file a sufficient appeal bond within the specified time; (e) that they have failed to file a notice of the filing of said bond on the opposite counsel.

Party litigants ought not to expect the courts to do for them that which is their legal duty to perform; neither is it expected that the courts will raise issues in their behalf.

Generally, the grounds for dismissal of appeals consist of facts which go to show that for some reason the merits of the appeal should not be heard. These grounds fall into four broad, general classes: (1) want of jurisdiction on the part of the court, using that term in the sense of a lack of power either inherent in the court or conferred upon it by the Constitution or statute, as distinguished from any limitations arising out of the nature of the action or proceeding or of the judgment or order, or arising out of any error, omissions, or defects in the procedure; (2) the non-appealable character of the judgment or order; (3) the ineffectiveness of any judgment that might be rendered by the appellate court; and (4) defects in procedure. And also, an appeal or error proceeding may be dismissed for failure to prosecute diligently. 3 AM. JUR., *Appeal and Error*, § 726 (1936).

Finding from a sober consideration of these principles that there has been no substantial violation of them, it is our firm holding that the appeal bond in the instant case has been executed in conformity with the statute governing appeal bonds. Mere technical defects do not render an appeal bond defective. *Id.*, § 491.

The contentions of appellee would have received our favor had the records shown: (1) that an appeal was not asked for; (2) that appellant had failed to perfect its appeal within the time prescribed by our statutes; (3) that appellant had failed to give an approved appeal bond within the time prescribed by statute as aforesaid; (4) that appellant had further failed to comply with an order of

the court below to supply any defect or omissions in the appeal bond before it lost jurisdiction or to give a new bond. *Id.*, § 739.

Our distinguished colleague, the Chief Justice, has not agreed with our findings in the instant case because of the position maintained by him in the concurring opinion of the *Wilson* case. But we feel that the facts and circumstances appearing in that case are not the same as in the present one. Hence, in view of the foregoing, counts 1 to 4 of appellant's resistance are sustained as against counts 1 and 2 of the motion to dismiss. And, in view of what we have expressed, it is our opinion that the motion being unmeritorious should be and the same is hereby denied. Costs to abide pending final determination of the case on appeal. And it is hereby so ordered.

*Motion denied.*

MR. CHIEF JUSTICE PIERRE dissented.

I have found difficulty in signing the judgment in this case relating to the motion to dismiss the appeal, because of the position which I took with respect to a similar motion and under like circumstances in *Wilson v. Wilson*, 24 LLR 534 (1976). In that case, as in this, cash represented by a check had been used as the appeal bond; and although a paper had been attached to represent the sureties' bond, and bore the approval of the trial judge, the Court on motion of the appellees dismissed the appeal on the ground of a defective appeal bond. The only difference between the two checks is that the check in the *Wilson* case was the personal check of a stranger to the proceedings; in this case the check is a manager's check obtained by one of the parties to the suit. In each case, however, a paper bond had been attached to the check, and this bore the trial judge's approval.

In neither of the two cases is there attached to the paper sureties' bond accompanying the check: (a) a certificate from the Ministry of Finance naming sureties who are

freeholders or householders within the Republic, according to statutory requirements for all bonds, Rev. Code 1:63.2(4); (b) a property valuation from the Bureau of Revenues showing an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances, Rev. Code 1:63.2(2); (c) an affidavit of the sureties containing a statement as to the ownership of the property offered as security; a description of the property sufficiently identified to establish the lien of the bond; a statement of the total amount of the liens, and a statement of the assessed value of each property offered, Rev. Code 1:63.2(a), (b), (c), and (d). These are all statutory requirements appertaining to bonds, including appeal bonds, under Title 1 of the Civil Procedure Law under the foregoing sections of the Civil Procedure Law. Neither of the paper bonds accompanying the checks in the two cases met any of these requirements.

It is my view in the circumstances that if we dismissed one of the cases for want of these requirements, in order to be consistent we would have to dismiss the other case, also on the same ground. Moreover, a check by itself cannot meet the requirements of an appeal bond, for how would it obtain the approval of the trial judge, which is necessary to validate the bond? Nor can any paper bond devoid of these listed legal requisites be the kind of bond which satisfies the law on bonds, as I have quoted hereinabove from the law. But the two together, the check and the defective paper bond, cannot meet the requirements for an appeal bond, because the Civil Procedure Law requires that:

*“Every [emphasis mine] 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.*

The appellant shall secure the approval of the bond by the trial judge and shall file with the clerk of the court within sixty days after rendition of judgment." Rev. Code 1:51.8.

This was also the section on appeal bonds involved in *Cavalla River Company v. Fazzah*, 7 LLR 13 (1939). The Court held in that case that an appeal bond which fails to name and be signed by two or more sureties who are householders or freeholders within the Republic of Liberia is fatally defective, and the appeal should be dismissed.

The paper bond attached to the check in this case carries two names, although the record shows that they are not legible; but even had we known whose names they are, there is nothing to show from the record that they are householders or freeholders within the Republic of Liberia. Hence, the appeal bond in this case cannot be said to have conformed to the requirements of the statute on bonds; nor is this bond in accord with the yardsticks laid down in the opinion of the *Cavalla River Company* case, quoted *supra*, which opinion still stands. It is my opinion that cash cannot be used as an appeal bond, nor can anything other than a sureties' bond take the place of this step in completing an appeal.

In view of these circumstances, and the law as I understand it, I have taken the same position I took in the *Wilson* case dismissed in the last term of Court; and for the same reason. I have, therefore, withheld my signature from the judgment.