WILLIAM ALFRED TUBMAN, Appellant, *v.* MOSES A. GREENFIELD, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY

Heard: April 29, 1981. Decided: July 29, 1981.

1. An appeal may be dismissed by the trial court, on motion, for failure of the appellant to file a bill of exceptions within the time allowed by statute; and by the appellate court, after filing of the bill of exceptions, for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute.
2. The provisions of the Civil Procedure Law controlling security for bonds, at section 63.1, are optional in nature and character, that is, the avenues demanded for security for an appeal bond are left with a party to an action to choose.
3. In the absence of an expressed statutory prohibition to the effect, that an appellant is legally precluded from being surety for himself, an appellant whose assets are over and above the bonded penalty and who by recognizance is required to be a freeholder possessing sufficient real property to cover the bonded penalty, may serve as surety on his own appeal bond.
4. A bond which is sufficiently descriptive in its construction to make its conditions clear and intelligible, and capable of enforcement, though lacking in other respects, is nevertheless legal.
5. The law governing security for bonds and that controlling appeal bonds are the same under the present statute.

Appellee instituted an action of damages for breach of contract against appellant. From a final judgment rendered in favor of appellee, appellant appealed to the Supreme Court. Upon perfection of the appeal, appellee filed a motion to dismiss on the grounds that the appeal was not supported by a valid appeal bond, in that there is no affidavit of sureties or a certificate from the Bureau of Internal Revenues attached to the bond as is re-quired by statute. Appellee also contended that appellant violated the statute governing appeals bond when he had himself as the sole surety on the bond.

Appellant in resisting the motion to dismiss, contended that he had complied fully with the statute in that he had tendered unencumbered real properties on which taxes had been paid and which were held in fee simple by him. He further argued that the value of the properties posted was over one and one-half

times the amount of the judgment.

The Supreme Court held that in the absence of an express statutory prohibition, an appellant may stand as surety to his own appeal bond where his assets are over and above the bonded penalty. The Court also held that it would be a miscarriage of justice to continue to insist that there are two sureties on the appeal bond no matter what amount is fixed in the bond. Accordingly, the Supreme Court *denied* the motion to dismiss and ordered the case re-docketed for hearing on its merits.

Wellington K. Neufville appeared for appellant. *S. Edward Carlor* appeared for appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

On the 9th day of June, 1979, Moses A. Greenfield of Jacksonville, East Harper, Cape Palmas, instituted an action of damages for breach of contract against William Alfred Tubman of Harper City, Cape Palmas, Maryland County, in the Fourth Judicial Circuit Court for Maryland County.

Trial was had and final judgment rendered by the trial court against appellant on the 30th day of September, 1980, adjudging appellant liable to the plaintiff in the amount of $110,000.00. The appellant took exception to the judgment and announced an appeal to the Supreme Court. It is against this appeal that the appellee filed a motion to dismiss on the grounds that the said appeal is not supported by a valid appeal bond in that the sureties named in the bond, John Hilary Tubman and Isabella Gibson, did not own any land in fee simple, nor were they free holders within this Republic; consequently, they had attached no affidavit of sureties or certificate from the Bureau of Internal Revenues. He further contended that appellant violated the statute governing appeal bonds when he named himself as the sole surety to the bond, instead of being appellant/principal to the said bond. In support of this position, he relied upon and cited several cases of this Court, including *Cavalla River Co. v. Fazzah,* 7 LLR 13 (1939); *Koffah v. Republic,* 13 LLR 232 (1958); and *West African Trading Corporation v. Alraine*

(Liberia) Ltd., 25 LLR 3 (1976).

The appellant, on the other hand, contended in his resistance that he did not violate the statute governing appeal bonds, for he had complied with one of the four enacted ways in which an appellee might be indemnified in matters on appeal. That is to say, he tendered unencumbered real property on which taxes had been paid and which is held in fee by the person furnishing the bond, meaning the appellant himself, accompanied by affidavit of sureties and a certificate from the Bureau of Internal Revenues. He stated in his brief and persistently argued before this Bench, that the names of John Hilary Tubman and Isabella Gibson mentioned in said bond as sureties, only served as surplusage because appellant's own properties so tendered covered the penal sum of the bond - $165,700.00 - and therefore his appeal is supported by a valid appeal bond, consistent with the provisions of the Civil Procedure Law, Rev. Code 1: 51.16.

The main issues presented by appellee's motion seem to be: (1) Whether the appeal bond in question meets the requirements of the statute controlling appeal bonds? (2) Whether an appellant is legally precluded from being the sole surety regardless of his assets being over and above the penal sum of the bond and his compliance with the statutory requirements? and (3) What is the object of an appeal bond?

The statute has prescribed the grounds upon which appeals from judgments of lower courts may be dismissed. The statute reads:

> "An appeal may be dismissed by the trial court on motion, for failure of the appellant to file a bill of exceptions within the time allowed by statute; and by the appellate court, after filing of the bill of exceptions, for failure of the appellant to appear on the hearing of the appeal to file an appeal bond, or to serve notice of the completion of the appeal as required by statute." Civil Procedure Law, Rev. Code 1: 51.16.

Which of these grounds stated above has appellant violated in order for appellee's motion to hold? Lest we forget, the principles which control security for bonds, do also apply in the procurement of an appeal bond because the legal requirements are entirely the same. The relevant laws controlling security for bonds can be found in the Civil Procedure Law, Rev. Code 1:

63.1, and it states:

"Except as otherwise provided by statute, any bond given under the title, shall be secured by one or more of the following: (a) cash to the value of the bond or cash deposited in the bank to the value of the bond as evidenced by a bank certificate; (b) unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond; (c) valuable to the amount of the bond which are easily converted into cash; or (d) sureties who meet the requirements of section 63.2. The sheriff receiving cash, a bank certificate, stocks, or other negotiable securities, or valuables, shall deposit it or them in the government depository or a reliable bank, and secure a receipt therefor showing the amount deposited and the purpose of the deposit and containing a statement that the deposit will be released only upon written order of a judge of the court."

This same law is expounded upon in the case *Stubblefield et al. v. Nasseh,* 25 LLR 443 (1977).

The appellee, relying on *Cavalla River Co., v. Fazzah*, 7 LLR 13 (1939), argued that the appellant, being the sole legally qualified security on the bond, renders said appeal bond defective since the appeal statute, as found in Civil Procedure Law, Rev. Code 1:51.8, requires two or more legally qualified sureties.

In this connection, the appellant argued that the *Cavalla River Co.* case, relied upon by appellee, was based on the previous statute in which there was no provision which would qualify an appellant to be surety for himself. The present statute makes such provision.

In giving effect to the statutory provisions applicable to bonds, we must say that the provisions are optional in nature and character, that is, the methods prescribed for security for an appeal bond are left with a party to an action to choose. In the instant case, the appellant elected to tender unencumbered real property on which the taxes were paid, and which is held in fee by the person furnishing the bond, appellant himself. This comes under sub paragraph (b) which refers to sureties who meet the requirements of section 63.2.

Finding, from a sober consideration of these statutes, that there

has been no substantial violation, it is our holding that the appeal bond in the instant case was executed in conformity with the statute governing appeal bonds.

In the absence of an expressed statutory prohibition to the effect that an appellant is legally precluded from being surety for himself, as provided by sub-paragraph (b) of the Civil Procedure Law, Rev. Code, 1: 63.1, whose assets are over and above the bonded penalty, and who, by recognizance, is required to be a freeholder possessing sufficient real property to cover the bonded penalty, it would be erroneous to deny the appellant the right to be surety to his own appeal bond.

In all appeal bonds in civil cases, financial sufficiency is the prevailing feature because the sole objects of an appeal bond in such cases are the indemnification of the successful party and payment of costs. Therefore, it is our opinion that the attack on appellant's appeal bond is not sufficient to justify dismissal of the appeal. The appeal bond, in our opinion, is not defective. The Court, in *Smith v. Page,* 10 LLR 361 (1950), held that a bond which is sufficiently descriptive in its construction to make its conditions clear and intelligible and capable of enforcement, though lacking in other respects, is nevertheless legal.

According to our bail statute, whenever the appellee in any case on appeal to the Supreme Court is sought to be indemnified by recognizance, the sureties, as in the instant case, must be possessed of sufficient unencumbered real property to cover the penalty of the bond. In *Liberia Mining company v. Bomi Workers Union,* 25 LLR 198 (1976) and *Stubblefield v. Nasseh,* 25 LLR 443 (1977), this Court held that a bank manager's check or bank cashier's check was the equivalent of a bank certificate and is therefore valid as security for an appeal.

In the case cited and relied on by appellee as found in *Koffah v. Republic,* 13 LLR 232 (1958), the sureties were two aliens, American citizens, who were not freeholders or householders. In *Baky v. Nah,* 20 LLR38 (1970), there was no affidavit of sureties or certificate from the Bureau of Internal Revenue; in *Gabbidon v. Toe,* 23 LLR 43 (1974), there was no description and or location of the property offered as security; whilst in the *Jarboe v. Jarboe,* 24 LLR 352 (1975), the sureties named in the bond were not owners of the property they pledged; and finally in the

West African Trading Corporation v. Alraine (Liberia) Ltd., 25 LLR 3 (1976), the description of the property was on a separate document instead of being in the affidavit. Accordingly, the holdings in those cases are not applicable in this instant case.

Recourse to the cases, with the exception of the *Cavalla River Co., v. Fazzah* on this point, this Court has been unique in its holdings, that since the sole purpose of an appeal bond is to indemnify the appellee if the appellant is unsuccessful and reasoning being the source of the law, it would be a miscarriage of justice to continue to insist that the number of sureties be two or more on an appeal bond no matter what amount is fixed in the bond. The law governing security for bonds and that controlling appeal bond are the same under the present statute. Civil Procedure Law, Rev. Code 1: 63.1.

In view of the circumstances mentioned above and the law cited herein, the motion to dismiss the appeal is hereby denied and the Clerk of this Court is ordered to have this case re-docketed for hearing on its merits. Costs to abide final determination. And it is so ordered.

Motion denied.