

LAMCO J. V. OPERATING COMPANY and THE  
MINISTRY OF LABOUR,  
Respondents/Appellees/Movants, v. DAVID  
GARMOYOU et. al.,  
Petitioners/Appellants/Respondents.

MOTION TO DISMISS APPEAL FROM THE NATIONAL LABOUR COURT.

Heard December 7, 1987. Decided February 25, 1988.

1. In computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by executive order, the day of the act, event or default after which the designated period of time begins to run is not to be included. Civil Procedure Law, Rev. Code 1: 1.7.
2. The last day of a computed period prescribed by statute, by order or rule of court, or by rule or regulation, or by executive order is to be included unless it is a Sunday or a legal holiday, in which event the period shall run until the end of the next day which is neither a Sunday nor a legal holiday. Civil Procedure Law, Rev. Code 1: 1.7.
3. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded from the computation. Rev. Code 1: 1.7.
4. Every court of the Republic of Liberia shall without request take judicial notice of the Constitution and of other public statutes and common law of the Republic. Civil Procedure Law, Rev. Code 1: 25.5.
5. A trial judge shall of his own motion take judicial notice of public historical facts that are so well known as not to be subject to reasonable dispute. Civil Procedure Law, Rev. Code 1: 25.1.
6. Findings and recommendations of a labour commissioner which do not decree any award with certainty and which are made subject to the approval of the President or Head of State, do not constitute a decision, ruling, or judgment, and as such are not binding or enforceable against any of the parties who appeared before the commissioner.
7. A money judgment which does not award a sum certain is void for indefiniteness and is therefore unenforceable.
8. A money judgment which does not specify payment of a sum certain does not authorize the clerk of court to prepare a bill of costs.
9. Whilst the statute provides that an appeal bond shall have two or more legally qualified sureties, the legislative intent is to have the appellee indemnified and to ensure compliance with the judgment of the Supreme Court or of any other court to which the case is taken, and where this is met, the requirement is satisfied.
10. An appeal bond is not fatally defective for having only one surety if the financial ability of the surety is not questioned and the appellee does not allege that he is

insufficiently indemnified.

11. Where the judgment appealed from does not state an amount, the purpose of the appeal bond becomes only one of indemnification of the appellee from costs of court.

The appellants, former employees of the Lamco J. V. Operating Company (LAMCO), appealed from a ruling of the National Labour Court of Liberia dismissing their petition for enforcement of the findings and recommendations of the labour commissioner for Grand Bassa County. The appellants, whose services with LAMCO had been terminated by the company, had filed a complaint with the labour commissioner, alleging wrongful dismissal by LAMCO. The labour commissioner, after investigating the matter, on August 16, 1982, made and submitted findings and recommendations to the Head of State of Liberia, to the effect that the dismissal of the appellants was wrongful and that LAMCO be required to reinstate the appellants, or that in lieu reinstatement, LAMCO should compensate the appellants for the wrongful dismissal.

On July 29, 1986, four years after submission by the labour commissioner of his findings and recommendations to the Head of State, the appellants filed a petition in the National Labour Court for enforcement of the Labour Commissioner's findings and recommendations. The National Labour Court ruled that the findings and recommendations to the Head of State had not been approved by the President of Liberia prior to the filing of the petition, and that as such the findings and recommendations were unenforceable. The court therefore dismissed the petition. From this dismissal, the petitioners appealed to the Supreme Court for a review and final determination.

Prior to the call of the case for disposition by the Supreme Court, the appellee filed a motion to dismiss the appeal, giving the following reasons therefor: (a) that the appellants had filed an appeal bond sixty-two days from the date of rendition of the final judgment and the announcement of an appeal therefrom, which was two days beyond the sixty day period prescribed by the statute; (b) that the \$20,100.00 posted by the appellants as security to the bond rendered the appeal bond incurably defective since the amount claimed by the appellants was in excess of

\$300,000.00; that the appeal bond was incurably defective since it carried only one surety; and (d) that the notice of completion of appeal which conferred jurisdiction upon the Court over the case was not filed until sixty-two days after the rendition by the lower court of judgment in the case, and that the said notice was not served until sixty-four days after the said judgment, contrary to the sixty day statutory prescription.

The Supreme Court rejected the appellee's contention and denied the motion to dismiss the appeal. The Court, citing the appeal statute which excludes Sundays and holidays from computation of the time for an appeal if they fell on the sixtieth day allowed for an appeal, held that as the sixtieth day from the date of rendition of the judgment by the lower court fell on a holiday and that as the day thereafter was a Sunday, the final day for approval and filing of the appeal bond and the filing and service of the notice of completion of appeal was properly the sixty-second day.

On the appellee's contention that the security to the bond was insufficient since the amount posted was \$21,100.00 whereas the claim of the appellants amounted to \$300,000.00, the Court observed that as there was no specific amount stated in the judgment, the amount stated in the bond was only to indemnify the appellee against the costs of court. That amount, the Court said, was sufficient.

Addressing the contention that the appeal bond was rendered defective by reason of the fact that it carried only one surety, the Court opined that this fact did not render the appeal dismissible as long as the amount posted as security was sufficient to adequately indemnify the appellee against the costs of court. The Court therefore held that the appeal was not defective and that accordingly the motion to dismiss be *denied*.

However, notwithstanding the Court's denial of the motion to dismiss, it expressed agreement with the ruling of the trial judge in dismissing the petition for enforcement, stating that the findings and recommendations of the labour commissioner, being subject to the approval of the President of Liberia and not stating a definite amount, were unenforceable.

*Boima K. Morris, Sr.* appeared for appellees/movants. *Henrietta M. Koenig* of the Koenig, Cassell and Garlawolo Law Offices appeared for appellants/respondents.

MR. JUSTICE BELLEH delivered the opinion of the Court.

This is an appeal taken from the judgment of the National Labour Court, Montserrado County, denying appellants' petition for the enforcement of the findings and recommendations of the labour commissioner of Grand Bassa County to the President of Liberia, through the Deputy Minister of Labour, Youth & Sports, to the effect that the management of Lamco J. V. Operating Company, appellee, be required to re-instate the appellants or in lieu thereof, that they be compensated for being wrongfully dismissed. The National Labour Court having heard the petition, denied the same on the ground that since the findings and recommendations of the labour commissioner had not been approved by the President of Liberia prior to the filing of the petition, said findings and recommendations were unenforceable.

The records certified to us reveal that the appellants herein as filed a complaint before the labour commissioner for Grand Bassa County, alleging that they had been wrongfully dismissed by the management of Lamco J. V. Operating Company, of Buchanan, Grand Bassa County. The labour commissioner heard the complaint on August 16, 1982, and thereafter submitted his findings and recommendations to the then Head of State, now President of Liberia. The recommendations are quoted herein below as follows:

"RECOMMENDATIONS

1. That the management of Lamco J. V. Operating Company be made to immediately reinstate the employees as done in the case of the thirty-eight workers already re-instated by the management;
2. That the management of Lamco J. V. Operating Company be made to pay all benefits and entitlements to the workers, including payments of one month for each year served, certifying wrongful dismissal, pension all

those that reached the service age of pension; and provide severance pay for the employees of severance service age according to management's policy;

3. That government takes some punitive action against those senior employees who submitted names of other workers falsely, just to accomplish their selfish aims or to get even with said workers thereby breaching the guideline set by government which provided penalty for its breach;

4. That these recommendations be forwarded to the Head of State for approval."

On the 29th day of July, A. D. 1986, appellants, as petitioners filed a five count petition before the National Labour Court of Liberia, praying said court for the enforcement of the recommendations of the labour commissioner of Grand Bassa County.

The petition was heard by His Honour Arthur K. Williams, Judge of the National Labour Court, who denied the same on the ground that the recommendations of the labour commissioner had not been approved by the President of Liberia prior to the filing of the petition. Therefore, he said, the findings and recommendations were unenforceable. We shall comment on the judgment of the National Labour Court later on in this opinion.

The appellants, being dissatisfied with the final judgment of the National Labour Court, Montserrado County, excepted thereto and appealed to this Court for a review of the case.

At the call of the case, counsel for appellees, Counsellor B. K. Morris, Sr., informed the Court that he had filed a motion to dismiss appellants' appeal. Appellees' motion to dismiss reads as follows:

"Respondents/appellees in the above cause of action most respectfully pray this Honourable Court to dismiss the purported appeal taken by the petitioners/appellants from the ruling and final judgment of the National Labour Court of Liberia for the following legal and factual reasons to wit:

1. Respondents/appellees say that final judgment was rendered on the 30th of September, A. D. 1986 from which judgment the petitioners/appellants excepted and

appealed to the Honourable Supreme Court of Liberia, as will more fully appear from photocopy of the final judgment marked exhibit "A" and attached hereto to form a cogent part of this motion.

2. That despite the final judgment being rendered on the 30th day of September, A. D. 1986, petitioners/appellants did not file their appeal bond until December 1, 1986, quite sixty-two days after the judgment, contrary to the mandatory requirements of the statute controlling appeal, as will more fully appear from photocopy of the appeal bond with the filing date thereon marked exhibit 'B', and hereto attached to form a cogent part of this motion to dismiss. This Honourable Court should therefore refuse jurisdiction and send a mandate to the lower court to resume jurisdiction and enforce its judgment.
3. Respondents/appellees strongly maintain that the appeal bond is further incurably defective and bad in that the amount of the bond as posted is \$20,100.00 whereas the total amount claimed by the petitioners is far and above \$300,000.00. Therefore, the amount of the bond is grossly inadequate to indemnify the respondents/ appellees as is mandatorily required by the statute on appeal and the consistent holding of this Honourable Court. Appellees/movants respectfully request this Honourable Court to take judicial notice of the appeal bond and the partial list of those who are claiming compensation from co-appellee, Lamco, marked as exhibit "C", to form a cogent part of this motion to dismiss the appeal.
4. Respondents/appellees contend further that the appeal bond is incurably defective and bad, in that the statute mandatorily provides that an appeal bond shall have two or more legally qualified sureties. Contrary to the provision of this statute, the appeal bond filed by the petitioners/appellants in this case is signed by one and only one surety in person of George N. Potty, which renders said appeal bond incurably defective and bad, thereby rendering the appeal dismissible, and respondents/

appellees so pray.

5. Respondents/appellees strongly argue and maintain that the notice of the completion of the appeal which confers jurisdiction of this Honourable Court over them was not filed until sixty-two days after final judgment, and said notice of completion of the appeal was also served on respondents/appellees' counsel, Counsellor Boimah K. Morris, Sr., sixty-four days after final judgment thereby depriving this Honourable Court of jurisdiction to hear and determine said appeal. Hence, this Honourable Court should refuse jurisdiction and send a mandate to the lower court to resume jurisdiction and enforce its judgment. Respondents/appellees attached hereto photocopy of the notice of the completion of the appeal, with the sheriff's returns thereon and the date on which Counsellor Boimah K. Morris, Sr. received it, as exhibit "D", to form a cogent part of this motion to dismiss.
6. Respondents/appellees say that in order to buttress their motion to dismiss the appeal, they have obtained a certificate from the National Labour Court of Liberia confirming and affirming that the appeal bond was approved and filed in the clerk's office on the same date which was December 1, 1986; and further that the notice of the completion of the appeal was issued on December 1, 1986 and served on counsel for respondents/appellees, Counsellor Boimah K. Morris, Sr., on December 3, 1986 as per the records in this case. Said certificate is marked exhibit "E" and attached hereto, to form a cogent part of this motion.

WHEREFORE AND IN VIEW OF THE FOREGOING, appellees/movants respectfully pray this Honourable Court to dismiss the entire appeal with costs against the appellants, and to further grant unto your appellees/movants any and further reliefs as this Honourable Court and Your Honours may seem just, legal and equitable."

Appellants, on the other hand, filed a resistance which read as follows:

"Appellants praying this Honourable Court to dismiss

appellees/movants' motion submit the following, to wit:

1. That as to count one of the motion, respondents submit that the judgment was rendered on September 30, 1986 to which an exception was properly made and an appeal timely announced and duly granted.
2. That from September 30, 1986 to November 29, 1986 is precisely sixty days. Appellants submit that November 29, being a national holiday, same being the birthday of the late President William V. S. Tubman, of the Republic of Liberia, appellants/respondents could not have transacted any legal business on the same day; hence, the time for filing their appeal bond legally extended to December 1, 1986, for reason that the day following the 29 of November was Sunday. Appellants/respondents pray this Honourable Court to take judicial notice of November 29 as being a national holiday. Hence, the statute had not elapsed when the appeal bond was duly filed and approved by the trial judge. Hence, counts one and two should be dismissed for wanting of legal merit.
3. That as to count three of the motion, the same is indeed nugatory and lacks foundation in law, in that the judgment to which the exception was made and an appeal announced therefrom did not award any money judgment with particularity to require appellants to tender a bond in one and one half times an amount being awarded. There being no sum certain awarded either by the labour commissioner or the Labour Court, it is not legally incumbent upon appellants/respondents to file a bond in the amount named by appellees/movants. Hence, count three should be dismissed.

Further to count three, the respondents say that the appellants/respondents were not seeking a money judgment as the amount is uncertain but only requested the National Labour Court to enforce the ruling of the labour commissioner which states that the appellants/respondents be reinstated. Additionally, while the subject case is still pending final determination, appellees/ movants (LAMCO) has, and is still paying out accrued benefits to

its former employees allegedly involved in the same strike action which resulted into the findings of the labour commissioner that the respondents/appellees be reinstated, as can be seen from the attached copy of a release, herein made profert and marked exhibit "A", forming a cogent part of appellants/respondents' resistance. Therefore, in consideration of these uncontroversial and undisputed facts and circumstances, appellees/movants' motion to dismiss the appeal must fall for lack of merit.

4. That as to count four of the motion, appellants' contention raised therein to the point that the appeal bond is defective because it bears one surety is indeed baseless in law, in that the surety who signed appellants/respondents' bond is legally qualified as evidenced by the surety affidavit and a certificate from the Ministry of Finance, clearly describing the property offered as security, and the assessed value thereof. This is what the Supreme Court had to say in support of this point:

‘An appeal bond is not fatally defective where the property of one of the sureties is sufficient to indemnify the appellee, even though no recourse is possible to the property of other surety.’ (*Baz Brothers Corporation v. Gray*, 26 LLR 27(1977)).

An appeal bond is not fatally defective for having only one surety if the financial ability of the surety is not questioned and the appellee does not allege that he is insufficiently indemnified." *Oost Afrikaasche Compagnie v. Gabbidon (see Van Ee)*, 11 LLR 65 (1951)." See also *Stubblefield v. Nasseh*, 25 LLR 443, 446 (1976).

Appellants/respondents further say that the fixing of the penalty of a bond is the sole responsibility of the judges and so long as he fixes it, his manner of doing so cannot be questioned by the parties, nor can it adversely affect the interest of either side in the case. (See also *Saleeby v. Haikal*, 14 LLR 356, 357, 358 (1961)).

5. That as to count five, wherein appellee contends that the

notice of completion of appeal was not filed within statutory time, that is to say, sixty days, the same is unmeritorious, in that the 29 of November being the time on which the sixty days expire fell on a national holiday following which was Sunday. Hence, appellants were within statutory time when they filed their notice of completion of appeal on December 1, 1986. This is what this Court held in *Gibson and Gibson v. Tubman*, 13 LLR 217 (1958):

'In computing the statutorily prescribed period of time for perfecting of an appeal, the last day of the period is not included when the last day falls upon a Sunday or a legal holiday.'

6. Appellants/respondents say that the motion should be dismissed as it is defective in that the parties are not properly identified as appellees/movants but classified themselves as respondents/appellees both in the caption and the heading of the case. Appellants/respondents, David Garmoyou, et al., say that they did not file a motion to dismiss this appeal and therefore the motion is defective. Further, appellants/respondents, David Garmoyou et. al., say that the proper procedure for filing of motion to dismiss an appeal, the movants should inform the Court and the parties which case the motion grew out of, as a motion is an ancillary pleading to a mother case.
7. Appellants/respondents say that appellees/movants (LAMCO) has no standing to file this motion requesting this Court to dismiss the appeal, as the respondents' prayer of their petition requested the National Labour Court to compel the Labour Ministry to implement the ruling of the labour commissioner from which Lamco did not appeal, thereby making the Ministry of Labour the main party to the petition, who did not appear or authorized Counsellor B. K. Morris, Sr. to represent her interest. (*See* ruling of labour commissioner. *See also* prayer of appellants/petitioners' petition.)

Wherefore and in view of the foregoing, appellants/respondents pray that the motion be dismissed and the trial

of this case be proceeded with.”

In counts one, two and five of the motion, appellees/ movants contend that although the final judgment in this case was rendered on the 30th day of September, A. D. 1986, appellants did not file their appeal bond until December 1, 1986, quite sixty-two days after final judgment, contrary to the mandatory requirement of the statute controlling appeals. They contend further that the notice of completion of the appeal which confer jurisdiction of this Honourable Court over appellees was not filed until sixty-two days after judgment, thereby depriving this Honourable Court of jurisdiction to hear and determine said appeal. They therefore prayed that this Honourable Court should refuse jurisdiction and send a mandate to the lower court to resume jurisdiction and enforce its judgment.

The appellants, on the other hand, in counts one and two of their resistance, contend that whilst it is true that the final judgment was rendered on the 30th day of September, A. D. 1986, to which an exception was properly made and an appeal timely announced and duly granted, it is also true that from September 30, 1986 to November 29, 1986 is precisely sixty days; that November 29 being a national holiday, same being a birthday of the late President William V.S. Tubman of the Republic of Liberia, appellants could not have transacted any legal business on the same day; and that hence, the time for filing the appeal bond legally extended to December 1, 1986, for reason that the day following the 29th of November, A. D. 1986 was Sunday. They therefore maintained that the statute has not elapsed when the appeal bond was duly filed and approved by the trial judge.

The issue presented therefore is whether or not the appellants' appeal bond and the notice of completion of the appeal were filed and served within the statutory period of 60 (sixty) days.

Even though during the arguments before this Court the movants conceded the facts alleged in counts one and two of the resistance, the Court in passing would like to refer to our statute relative to the computation of time. The statute reads as follows:

"In computing any period of time prescribed or allowed by statute, by order or rule of Court, by rule or regulation, or

by executive order, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded from the computation." Civil Procedure Law, Rev. Code 1:1.7.

A further legal authority authorizing the Court to give judicial cognizance with respect to such known facts as national holidays read:

"Every court of the Republic of Liberia shall without request take judicial notice of the Constitution and of the public statutes and common law of the Republic" Civil Procedure Law, Rev. Code I: 25.1, under judicial notice of law.

Also "the judge shall of his own motion, take judicial notice of public historical facts that are so well known as not to be the subject of reasonable dispute." *Ibid.* under judicial notice of historical facts.

Recourse to the calendar for the year 1986 as well as to our holiday statute reveal that the 29th day of November, A. D. 1986 was a national holiday, the birthday of the late President William V. S. Tubman. Secondly, November 30, 1986, also fell on a Sunday, thereby extending the legal business transaction to December 1, 1986. Under these circumstances, the Court is of the opinion that the filing as well as the service of both appellants' bond and the notice of completion of appeal, were done within statutorily prescribed time. Therefore, counts one and two of the resistance are sustained.

In count three of the motion, the appellees/movants contend that the bond is further incurably defective and bad in that the amount of the bond as posted is \$20,100.00, whereas the total amount of petitioners' claim is far and above \$300,000.00. In count three of the resistance, the appellants also contend that the judgment to which the exceptions were made and for which an appeal was announced did not award any money judgment with

particularity to require appellants to tender a bond in one and one half times the amount being awarded; and that there being no sum certain awarded either by the labour commissioner or the National Labour Court, it is not legally incumbent upon appellants to file a bond in the amount named by the appellees.

As we have quoted the relevant portions of the findings and recommendations of the labour commissioner of Grand Bassa County, we will also hereunder quote verbatim the relevant portions of the final judgment of the National Labour Court which reads:

"Therefore and in view of this, this court is of the strong conviction that there is no approved findings and recommendations nor a decision that can be enforced by this court, neither will this court have the right to compel the Ministry of Labour to implement the findings and recommendations that is still before the President for his approval. Petitioners' petition is therefore denied and the costs of these proceedings ruled against petitioners. And it is hereby ordered. Matters suspended.

To which ruling, petitioners except and pray for an appeal to the Supreme Court of Liberia sitting in its October, A. D. 1986 Term of Court.

THE COURT: Announcement just made by the petitioners' counsel is hereby granted.

Given under my hand and seal of this Honourable Court this 30th day of September, A. D. 1986.

Arthur K. Williams

JUDGE, NATIONAL LABOUR COURT, R. L."

From a careful perusal of the findings and recommendations of the labour commissioner of Grand Bassa County, it can be clearly seen that the labour commissioner did not decree any award with certainty in favour of appellants. The findings and recommendations of the labour commissioner of Grand Bassa County were made subject to the approval of the Head of State. In our opinion, it did not constitute a decision, a ruling and/or a judgment. Therefore, it is neither binding on, nor enforceable against, any of the parties who appeared before the said labour

commissioner.

As indicated also in the final judgment of the National Labour Court, there was no judgment before the said court to be enforced, because the findings and recommendations could not have been enforced by the said National Labour Court without the approval of the President of the Republic of Liberia. Hence, in our opinion, the findings and recommendations of the labour commissioner were a mere *obiter dictum*.

Further, the appellees' counsel seems to be in agreement with the view of the appellants that the judgment is not certain in that according to appellees/movants, "the amount appellants are claiming is more than \$300,000.00" without pointing out specifically what the amount is, so as to place the Court in a position to decide whether or not the amount posted on the appeal bond is sufficient to indemnify the appellees/movants.

In the case *National Ore Company v. Gibson*, this Court held that:

- "Syl. 1. A money judgment which does not award a sum certain is void for indefiniteness and unenforceable."
- Syl. 2. A money judgment which does not specify payment of a sum certain does not authorize the clerk to prepare a bill of costs."
- Syl. 3. A writ of prohibition will be granted to prevent the enforcement of a void judgment." *National Iron Ore Company v. Gibson*, 26 LLR 365 (1978).

In view of the law cited, count three of the motion is hereby overruled and count three of the resistance is sustained.

In count four of the motion, the movants contend further that the appeal bond is incurably defective and bad in that the appeal bond in this case is signed by only one surety, which renders the appeal dismissible.

In count four of the resistance, the appellants argue that the surety is legally qualified as evidenced by the surety affidavit and that an appeal bond is not fatally defective for having only one surety, if the financial ability of the surety is not questioned and the appellee does not challenge that he is insufficiently

indemnified.

Whilst it is true that the statute provides that an appeal bond shall have two or more legally qualified sureties, the legislative intent of the statute is to have the appellee indemnified and to ensure compliance with the judgment of the court.

"An appeal bond is not fatally defective for having only one surety if the financial ability of the surety is not questioned and the appellee does not allege that he is insufficiently indemnified." *Oost Afrikaasche Compagnie (Van Ee) v. Gabbidon*, 11 LLR 65 (1951)

Firstly, appellees/movants do not state specifically as to the amount awarded by the court below, wherefrom the appellants have appealed. Secondly, the records certified to this Court show that there was no judgment rendered by the labour commissioner and therefore there was no sum certain awarded in favor of appellants. Therefore, since the purpose of posting the \$20,100.00 was merely to indemnify the appellees from costs, we are of the opinion that the demands being made by the appellees that the amount posted by appellants on the appeal bond is inadequate is baseless. Count four of the motion is therefore overruled and count four of the resistance is hereby sustained.

Wherefore, and in the light of what we have narrated, it is our considered opinion that the motion to dismiss be, and the same is hereby denied. Costs to abide final determination. And it is hereby so ordered.

*Motion to dismiss denied.*