

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

The Management of MONCO Liberia Limited, by)
and thru its Executive Officer, Mr. Julius S.)
Parker of the City of Monrovia, Montserrado)
County, Republic of Liberia.....Movant)

Versus)

The Management of Global Bank Liberia Limited,) MOTION TO DISMISS APPEAL
represented by its Managing Director, Philip)
Olujobi, of the City of Monrovia, Liberia,)
Montserrado County, Republic of Liberia)
.....Respondent)

GROWING OUT OF THE CASE:)

The Management of MONCO Liberia Limited,)
by and thru its Chief Executive Officer,)
Mr. Julius S. Parker, of the City of Monrovia,)
Montserrado County, Republic of Liberia)
.....Plaintiff)

Versus)

The Management of Global Bank Liberia Limited,)
represented by its Managing Director, Philip)
Olujobi, of the City of Monrovia, Montserrado)
County, Republic of Liberia.....Defendant)

ACTION FOR DAMAGES FOR WRONG

HEARD: MARCH 25, 2024

DECIDED: MAY 23, 2024

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

This motion to dismiss grows out of a final ruling rendered by the Sixth Judicial Circuit, Civil Law Court, Montserrado County on September 1, 2023, in which the respondent/appellant was adjudged liable to the movant in the amount of Two Million Five Hundred Thousand United States Dollars (US\$2,500,000.00) in an action of damages suit filed by the movant against the respondent.

The movant/appellee herein request this Court to dismiss the appeal on grounds that the respondent/appellant appeal bond is inconsistent with statute as it is insufficient to indemnify the movant/appellee thereby rendering this appeal dismissible as a matter of law.

The movant alleged in their motion that the respondent filed four different appeal bonds and that the trial judge approved the last bond over their objections and has now called this Court's attention to determine the legality and sufficiency of the bond approved by the lower court. The movant argued that the respondent appeal bond that was approved by the lower court was not an appeal bond within the contemplation of the appeal statute as the documents attached to the said bond to make the said bond sufficient falls outside the anticipation of the law on a valid appeal bond. The movant alleged that the respondent included amongst its documents, a board resolution of the Directors of Guaranty Trust Bank; a document captioned "appellant appeal bond" without the signature of the principal, Global Bank, or an amount fixed by the trial court stated within, nor a showing of the court's approval on said instrument; and a tax clearance and bank statement of Guaranty Trust Bank's customers deposit and its reserve at the Central Bank of Liberia.

The movant also alleged and contended that a corporation cannot act as a surety on an appeal bond or undertaking unless empowered by statute and that Guaranty Trust Bank being a corporation authorized by the Central Bank to function as a Bank Financial Institution to do commercial banking business is not a qualified surety to an appeal bond as contemplated by statute; the movants also alleged that under our law and practice, an appeal bond must be secured by two legally qualified sureties who are at least two natural persons who shall present unencumbered real properties or an insurance company authorized to execute surety bonds in Liberia; the movants argued further that the documents submitted to the trial Court is not a bond as it does not have a surety affidavit signed by the surety and the appellant as required under our law and practice and that this renders the purported appeal bond useless as one cannot be charged with liability on an appeal bond unless he signs the bond and the fact must appear on the face of the bond in order to authorize a judgment against the obligor; that if the purported document filed by the respondent/appellant constitutes a cash bond or certificate of deposit, then the purported bond is defective because it does not comply with the requirements of the statute on cash bond or certificate of deposit as up to the approval of the additional bond by the court, that up to the approval of the additional bond by the court, the respondent/appellant did not deliver cash or a bank certificate of deposit to the sheriff of the court and that even if the respondent/appellant had attached a bank certificate, the bond would still be defective as the Supreme Court has held that cash bond as security does not meet the requirement of an appeal bond as stipulated and provided for in Sections 51.8 and Section 63.2 of the Civil Procedure Law; that documents filed by the respondent/appellant are merely exhibits which do not state the undertakings by the purported surety to indemnify the appellee of the amount of the judgment sum of Two Million Five Hundred Thousand United

States Dollars (US\$2,500,000.00) and all other costs arising thereof and that a review of the documents show that the purported surety has made no undertaking to indemnify the movants/appellees from all costs and injury arising from the appeal and under our Civil Procedure Law, the indemnification clause must state that the surety will indemnify the plaintiffs/appellees from all costs and injury, in which the bond must be in an amount greater than the judgment sum and the determination of the amount of the bond by the amount of the judgment and an addition sufficient to cover costs; finally the movants/appellees argued that there is no showing that a deposit of Two Million Five Hundred Thousand United States Dollars (US\$2,500,000.00) was made by Global Bank into Guaranty Trust Bank and that this shows that the said bond is defective because the law requires that the cash used as bond or certificate evidencing the deposit must be placed in the hands of the sheriff of the court and the receipt thereof exhibited by the respondent but that same was not done by the respondent.

In resisting the motion to dismiss its appeal, the respondent/appellant argues that its bond is consistent with statute and is not defective as alleged by the movant/appellee; that after the movants challenged its initial insurance bond, it filed a motion to justify and during the said justification, the trial court accepted the insurance bond at the value of One Million One Hundred Forty Three Thousand Six Hundred and Seventy Seven Thousand United States Dollars (US\$1,143,677.00), but that in addition to this Insurance Bond, it also filed a Cash Bond in the amount of Two Million Five Hundred Thousand United States Dollars (US\$2,500.00USD) and that this amount is sufficient to indemnify the movant/appellee in the event that they are successful at the level of the Honorable Supreme Court; that its cash bond was deposited with the Guaranty Trust Bank and that the said deposit was testified to by a board member and corporate officer of Guaranty Trust Bank; that the statute regarding cash bond (surety for bond) requires the court to file with the court a written document indicating that the bank has the cash to indemnify appellee if appellee prevails in the Supreme Court and that Guaranty Trust Bank filed with the trial court a written document that the amount was deposited with the bank to indemnify the movants/appellees if they prevail before the Supreme Court; that there is no requirement in the law that the appellant signs the bank document but besides this, the bank through its corporate officer and board member testified before the court that the respondent/appellant deposited the said amount as surety with the bank for the sole purpose to indemnify movant; that Section 63.1 of our Civil Procedure Law authorizes bank to keep cash as surety in cases of this nature as an appeal bond and that it is based upon the said statutory provision that Guaranty Trust Bank is serving as the custodian of the cash bond; moreover, cash bond is not the same as Insurance Bond, and

property valuation bond that the law requires two or more sureties but surety for bond like that of a cash bond, the law requires that the bank present a document indicating that the bank has the cash and will indemnify the appellee if he/she prevails at the Supreme Court; that the movants assertion that the cash used as bond or the certificate evidencing the deposit must be placed in the hand of the sheriff of the court is false and misleading because the law provides that: the sheriff receiving cash, a bank certificate, stocks or other negotiable securities, or valuables shall deposit it in the government depository or a reliable bank and secure a receipt thereof showing the amount deposited and the purpose of the deposit and containing a statement that the deposit will be released only upon the written order of a judge of the court; that after the money was deposited with Guaranty Trust Bank, the bank certificate was approved by the trial judge and filed with the clerk of court; therefore, it is not the obligation of the respondent to give the sheriff a bank certificate, that assuming without admitting that the trial court wanted the cash to be moved to another bank, it is the obligation of the trial court clerk to present the bank certificate to the sheriff to have the cash moved to any other reputable bank; that the Supreme Court in its recent opinions have held that cash bond is legal, valid and qualifies as an appeal bond.

Based upon the above summary of the movants and respondent arguments, we turn to the law for guidance in order to bring this matter to a proper judicial determination. We must mention here that the contention of the movant is that the respondent appeal bond is defective and that is where our attention is drawn. There is no contention on the violation of the time allotted by the statute to perfect an appeal.

Based upon the foregoing narrative, there are two issues that are determinative of this appeal, they are:

1. Whether or not the judge erred in approving the additional bond?
2. Whether or not cash bond is acceptable as an appeal bond in this jurisdiction?

We answer the first issue in the negative. The appellee's single contention in this proceeding is that though the respondent filed its bill of exceptions within statutory time, it failed to file an appeal bond consistent with the statute. The movant averred further that the respondent filed at diverse times four different appeal bonds, none of which, according to the appellee were sufficient, or in compliance with the statutory requirement. He contends further that in spite of these, the judge approved the additional bond over the movant's objection for which he flew to this Court to review and reverse the judge. The facts of the record certified to this Court is

that following an objection or exceptions to the appeal bond which were supported by series of reinsurance bonds from Sierra Leone and Cote D'Ivoire, the judge set aside all these bonds and consider only Sky Insurance Bond. In the judge opinion, he took into consideration the audited financial statements of Sky Insurance Company in an amount of One Million One Hundred Forty-Three Thousand Six Hundred and Seventy-Seven Thousand United States Dollars (US\$1,143,677.00) and it is this amount that the judge approved. It is the statutory duty of a judge to approve an appeal bond submitted to him once he is satisfied that the bond meets the legal requirements. In the instant case, the judge approved the additional bond in the amount of One Million One Hundred Forty-Three Thousand Six Hundred and Seventy-Seven Thousand United States Dollars (US\$1,143,677.00) in keeping with the audited financial report of the bank.

This Court does not see anything legally wrong with the judge's approval. Subsequently, an amount of Two Million Five Hundred Thousand Dollars (US\$2,500,000.00) check was deposited in addition to the One Million One Hundred Forty-Three Thousand Six Hundred and Seventy-Seven Thousand United States Dollars (US\$1,143,677.00) thus bringing the total amount which the judge approved to Three Million, Six Hundred Forty-Three Thousand, Four Hundred and Seventy-Seven Thousand United States Dollars (US\$3,643,477.00), which sufficiently indemnified the appellee.

In the mind of the Court the sole objective of an appeal bond is to ensure that the appellee is adequately indemnified in the event the judgment appealed is confirmed by the appellate court, hence the judge did not err in approving the appeal bond he believed to be in consonance with the statute.

In the first instrument referred to as Appellant Appeal Bond, the relevant part reads as follows: **“Know all men by these presents..., that the condition of the appeal bond is that we will pay and satisfy the final judgment of the court and indemnify the appellee/plaintiff from the ruling/judgment of the sixth judicial circuit court.**

Further, we bind ourselves and will pay or satisfy the appellee from the judgment amount and all costs and injuries sustained from the appeal, if appellant is unsuccessful with the judgment of the Supreme Court.”

In the subsequent instrument proffered by appellant, captioned: Resolution of the Board of Directors of Guaranty Trust Bank, it read in part: ***“Whereas upon discussion and motion duly made, resolved and carried out, the directors resolved that the company accept the request for the issuing of two million five hundred thousand dollars appeal bond from the Global Bank; following discussions and consideration the fact that the bond***

shall be one hundred percent (100%) cash collateral, the directors unanimously agree and herewith authorized the acceptance and issuance of Two Million Five Hundred Thousand United States Dollars (US\$2,500,000.00) appeal bond on behalf of the Global Bank in the case: Monco v. Global Bank.”

The holistic minutes and interpretation of both the Board of Directors' Resolution and the appeal bond leave no doubt in the mind of this Court that both documents were intended to indemnify and indeed indemnified the appellee in these proceedings.

Admittedly, the caption of both instruments did not say (bank certificate). Nevertheless, this Court has said in countless opinions that it is the content of a written instrument that defines what the instrument is and not the caption. *Blamo v. Zulu*, 30 LLR, 586, 587, in this case, the Supreme Court agreed with the chamber's justice ruling and upheld the said ruling opining that it is not the title or caption of the action, which is controlling, but rather the averments in the complaint which determine the form of the action. This principle of law has also been upheld in a long line of Supreme Court opinions including: *Mathies & Fiana Corp. Ltd. v. Alpha International Investments, Ltd*; *Harouni v. George*, Supreme Court Opinion, March Term, 2011.

The judgment under review is Two Million Five Hundred Thousand (US\$2,500,000.00) and the certified records before us show that the appellant made substantial efforts to file an appeal bond to enable the case to be heard on its merits. The said appeal bond was finally approved by the trial judge. The determination of this case on its merits will not in any manner or form prejudice the interest of any party.

As to the second issue, we answer in the affirmative. This question is not a novelty in this jurisdiction. The appeal statute says that one of the four ways of posting a bond is cash deposited in a bank with the value of the bond as evidenced by a bank certificate. The Supreme Court in the case *Intrusco Corporation v. Fantastic Store* cited in 32 LLR, page 215 delivered June 28, 1984, opined **“it is admitted by both parties that one of the four ways of posting a bond is cash deposited in a bank to the value of the bond, as evidenced by the bank certificate. There is absolutely nothing in the sentence referred to above which suggests that the person or appellant's name must be expressly stated in the certificate as the depositor of the amount. What the sentence does require is that the sum of money equivalent to the value of the bond, must be deposited in a bank and there must be proof to that effect, such as a bank certificate, which has been fully met by appellant in this proceeding.”**

We reiterate that the prime objective of an appeal bond is to adequately indemnify the appellee. And that even in the event the bond is filed with other valuables materials, the law requires that such materials should be materials that are easily converted to liquid cash. This presupposes that a cash bond to indemnify an appellee is in fact more suitable and easily accessible than any other form of appeal bond and therefore should be preferable.

In the instant case, there is no doubt that the physical cash which constitutes the amount of the bond was in the possession of Guaranty Trust Bank. And as evidence of that, the Guaranty Trust Bank on October 6, 2023, issued out what it captioned (**APPELLANT APPEAL BOND**) in the case: Monco v. Global Bank. For clarity of this opinion, we deem it necessary to quote the content of said instrument in its entirety:

“KNOW ALL MEN BY THESE PRESENTS THAT we, the Management of Global Bank in the above titled case and Guaranty Trust Bank (Liberia) Limited, by and through its authorized Corporate Office, SURETY in the attached APPEAL BOND, do hereby bind ourselves and our representatives, administrators and assigns severally and jointly unto the APPELLEE in the amount of US\$2,500,000.00 (Two Million Five Hundred Thousand United States Dollars) as principal amount offer.

That the condition of this APPEAL BOND is that we will pay and satisfy the FINAL JUDGMENT of the court and indemnify the APPELLEE/PLAINTIFF from the RULING/JUDGMENT of the Sixth Judicial Circuit Court of Montserrado County, sitting in its June Term, A.D. 2023, should the Honorable Supreme Court of the Republic of Liberia sitting in its October Term, A.D. 2023 confirm and affirm the RULING/JUDGMENT of the Sixth Judicial Circuit Court of Montserrado County, Republic of Liberia delivered on September 1, 2023.

Further, we bind ourselves and will pay or satisfy the APPELLEE from the judgment amount and all costs and injury sustained from the appeal if the APPELLANT is unsuccessful with the judgment of the SUPREME COURT of Liberia.

The COMMON SEAL OF GUARANTY TRUST BANK (LIBERIA) LIMITED is herein affixed in the presence of Elvis Crusoe, group Head Corporate Banking. Prince saye, Executive Director.”

One of the movant contentions is that the Guaranty Trust Bank illegally designated itself as a surety contrary to the appeal statute. This Court says in the case: Intrusco Corporation v. Fantastic Store quoted earlier, the Supreme Court said... ***“it is important to mention also that there is no specific wording provided in the current appeal statute as to how a certificate showing bank deposit should be framed, except that the statute requires***

evidence of deposit to the value of the bond, the purpose of the deposit and, of course, the indication of the title of the relevant case.” Civil Procedure Law Code 1:63:1 (a) and 8.1:3. To further address this question, the Court said further “no particular form is necessary to constitute a certificate of deposit.” For instance, a letter of advice written by the cashier of a bank to another stating that a person therein had deposited with the former bank a sum of money therein stated, to the credit of the latter bank for the use of another, has being held to be a certificate of deposit. The words “promised or pay are not essential, the law implies such promise when the fact of the deposit is established.”

The above quoted instrument unequivocally indicates that the Two Million Five Hundred Thousand Dollars (US\$2,500,000.00) irrespective of how it was received, is in the possession of Guaranty Trust Bank for the sole purpose of indemnifying the appellee if its appeal is successful in the case: Monco v. Global Bank. To further concretize the appellant’s position that there was sufficient physical cash in the Guaranty Trust Bank to indemnify the appellee, the Guaranty Trust Bank issued a Board Resolution dated September 12, 2023, and filed it with the trial court on the 20th of October 2023. Again, for the benefit of this opinion, we hereby quote verbatim the content of said board resolution:

RESOLUTION OF THE BOARD OF DIRECTORS OF GUARANTY TRUST BANK (LIBERIA) LIMITED.

“On September 12, 2023, at a special meeting of Guaranty Trust Bank (Liberia) Limited, duly called and held at the offices of the corporation in the city of Monrovia, Liberia, the following matters were considered, discussed, and decided, for the purpose of adopting the following resolutions, all in accordance with the corporation’s Article of Incorporation and applicable laws of the Liberian Business Corporation Act of 1976.

WHEREAS, upon discussions and motions duly made, resolved and carried, the directors resolved that the company accepts the request for the issuance of US\$2,500,000.00 (Two Million Five Hundred Thousand United States Dollars) appeal bond from Global Bank; following discussions and considering the fact that the bond shall be 100% cash collateral, the directors unanimously agreed and herewith authorized the acceptance and issuance of US\$2,500,000.00 (Two Million Five Hundred Thousand United States Dollars) appeal bond on behalf of Global Bank in the case MONCO v. Global Bank. That the Managing Director, Mr. Ikenna Anekwe, be and is hereby named as the authorized officer.

NOW THEREFORE, IT IS HEREBY RESOLVED, that the Managing Director of Guaranty Trust Bank (Liberia) Limited and all senior officers of this corporation are authorized

and empowered to take or cause to be taken, all such further action (s) in the name and on behalf of the corporation that they may deem necessary, desirable, or in order or carry out the intent of and to accomplish the purpose of the foregoing resolution.

IT IS FURTHER RESOLVED, that any and all other actions hereafter taken by the officers of the corporation within the meaning and context of any of the foregoing resolution be and are hereby ratified and confirmed as the acts and deeds of the corporation.”

For the sake of justice and equity the circumstance of this case squarely falls under the (plain statement rule) sometimes referred to as the rule of conformity. This rule states that courts should consider the substance of pleadings rather than just the mere caption or name of the pleading. The plain statement rule helps to avoid cases being dismissed on technicalities, and instead allow the court to focus on the merits of the case. The rule helps to promote fairness and justice in the legal system and while the appeal statute is regimented, the intent of the Legislature must supersede trivial procedural technicalities.

From the above facts and circumstances, this Court is of the opinion that the prime objective of the statute on appeal bond was met by the appellant in these proceedings, we therefore hold that the motion to dismiss the appellant’s appeal bond lacks adequate legal substance and is based on microscopic legal technicalities that defeat the intent of the Legislature; therefore, the appeal ought to crumble.

WHEREFORE AND IN VIEW OF THE FOREGOING, the movant motion to dismiss respondent appeal is denied and the appeal ordered proceeded with on its merits. Costs are to abide final determination of the case. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR BENEDICT SANNOH APPEARED FOR THE MOVANT. COUNSELLOR JIMMY SAAH BOMBO APPEARED FOR THE RESPONDENT.