

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF 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
BEFORE HER HONOR: CEANEH D. CLINTON-JOHNSON.....ASSOCIATE JUSTICE

Elizabeth Marsh by and through her Attorneys-In-Fact, Emily)
Marsh and Isaac Saye of Harbel & Benson Street, Monrovia)
Montserrado County, Republic of Liberia.....Movant)

Versus)

) MOTION TO DISMISS
)

The United Muslims in Fiamah Lelhi by and through its Mosque)
Committee of Safa & Marwa Mosque Chairman, Foday Ibrahim)
Toure and Vice Chairman Karamon Massalay of 21st Street,)
Russell Avenue, Sinkor, Monrovia, Montserrado County)
Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:)
)

The United Muslims in Fiamah Lelhi by and through its Mosque)
Committee of Safa & Marwa Mosque Chairman, Foday Ibrahim)
Toure and Vice Chairman Karamon Massalay of 21st Street,)
Russell Avenue, Sinkor, Monrovia, Montserrado County)
Republic of Liberia.....Appellant)

Versus)

) APPEAL
)

Elizabeth Marsh by and through her Attorneys-In-Fact, Emily)
Marsh and Isaac Saye of Harbel & Benson Street, Monrovia)
Montserrado County, Republic of Liberia.....Appellee)

GROWING OUT OF THE CASE:)
)

Elizabeth Marsh by and through her Attorneys-In-Fact, Emily)
Marsh and Isaac Saye of Harbel & Benson Street, Monrovia)
Montserrado County, Republic of Liberia.....Plaintiff)

Versus)

) ACTION OF
) EJECTMENT

The United Muslims in Fiamah Lelhi by and through its Mosque)
Committee of Safa & Marwa Mosque Chairman, Foday Ibrahim)
Toure and Vice Chairman Karamon Massalay of 21st Street,)
Russell Avenue, Sinkor, Monrovia, Montserrado County)
Republic of Liberia.....Defendant)

HEARD: OCTOBER 22, 2024

DECIDED: DECEMBER 19, 2024

MADAM JUSTICE CLINTON-JOHNSON DELIVERED THE OPINION OF THE COURT

Under our jurisprudence, the right to appeal is inviolable. However, it is not absolute. The appellant is under legal obligation to ensure that all mandatory steps for the perfection of its appeal must be fully complied with, in order to give this Court the legal authority to review the records and make final determination in the case.

Article 20(b) of the 1986 Constitution states that "The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal.

The review of cases on appeal expands our jurisprudence, and helps in the dispensation of justice in Liberia. Appeals help to identify errors in the application of the law or factual findings that affected the judgments emanating from courts below. During appeal this Court review the errors committed at the court below to ensure fairness and consistency in our legal system. Issues relevant to the merits of the lower court's decisions are generally disregarded. It is also important to note that procedural rules, such as timely filing and proper presentation of records, are also relevant. Failure to comply with these rules can undermine the appeal; even if substantive errors exist, because procedural integrity is crucial to the judicial system's functioning.

Civil Procedure Law, Rev. Code:51.4, indicates the requirements for completion of an appeal in courts of records which states that "The following acts shall be necessary for the completion of an appeal:

- (a) Announcement of the taking of the appeal;
- (b) Filing of the bill of exceptions;
- (c) Filing of an appeal bond;
- (d) Service and filing of notice of completion of the appeal.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."

It is from this backdrop that Elizabeth Marsh, by and through her Attorneys-In-Fact, Emily Marsh and Issac Saye of Harbel and Monrovia respectively, movant herein, filed this motion to dismiss the appeal taken to this Court by The United Muslims in Fiamah Lelhi by and through its Mosque Committee of Safa & Marwa Mosque Chairman, Foday Ibrahim Toure and Vice Chairman Karamon Mansalay of 21st Street, Monrovia, respondent herein, basically contending that the respondent had failed and neglected to fully comply by the mandatory steps enunciated by our laws for the taking of appeal to this Court.

This motion to dismiss grows from an appeal announced by the respondent subsequent to an ejectment proceeding had in the Sixth Judicial Circuit, Civil Law Court, Montserrado County, wherein the trial jury handed down a verdict of liable on October 13, 2022 against the respondent and in favor of the movant, and awarded the movant general damages in the amount of Fifty Thousand United States Dollars (US\$50,000.00) for wrongful withholding of its property by the respondent; and for the loss and injury sustained by the movant as a direct consequence of the respondent illegal use and occupancy of the property. The trial judge, on November 2, 2022 confirmed and affirmed the verdict of the trial jury, after the denial of the respondent's motion for new trial. The respondent noted exceptions to the final judgment and announced its appeal to this Court *en banc*.

The movant alleged that the respondent did not fully comply with all the mandatory steps require for the taking of the appeal as enshrined in the statute. The movant contended that even though the respondent filed its bill of exception within the time provided by statute, filed its appeal bond and was signed by the Judge and served on the movant within the time provided by statute, and subsequently filed and served its notice of completion of appeal within statutory time, however, the respondent failed to comply with requirement of transcription of the records far beyond statutory time. Civil Procedure Law, Rev. Code:51.11 states that "The clerk of the court from which the appeal is taken shall make up a record containing certified copies of all the writs, returns, notices, pledges, motions, applications, certificates, minutes, verdicts, decisions, rulings, orders, opinions, judgments, bills of exceptions, and all other proceedings in the case. He shall transmit this record with a copy of the appeal bond to the appellate court within ninety days after rendition of judgment. The clerk of the appellate court shall docket the record forthwith and forward a receipt to the clerk who transmitted it." The movant also alleged that the appeal bond filed by the respondent is invalid and inadequate, for it did not meet the minimum legal requirement for the filing of a valid appeal bond, given that the ruling which the respondent sought to appeal, amongst other things, awarded the movant the amount of Fifty Thousand United States Dollars (US\$50,000.00) for damages. Notwithstanding, as mentioned by the movant, the appeal bond filed by the respondent and approved by the trial judge is valued at Five Thousand United States Dollars (US\$5,000.00). In further contending that the respondent's appeal should be dismissed, the movant stated that the financial statement of the Insurance company who issued the bond revealed or indicates assets, and is dated 2019/2020, whereby the appeal was announced in 2022. The movant concern is that a financial statement of 2019/2020 cannot legally suffice in 2022. The movant also argued that the respondent failed, neglected and refused to transcribe and/or transmit the records from the trial court beyond the period

prescribed by law. That is, for over two years since the respondent filed its notice of completion of appeal, the respondent had refused to superintend the transcription of the certified records from the trial court to this Court

The respondent for its part argued that the basis for an appeal bond is to ensure that in an event final judgment from this Court is rendered against the respondent, there is a surety to be called upon by the Court to satisfy the judgment. The inadequacy of the amount on the face of the bond is not a legal ground for the dismissal of the respondent's appeal to this Court. As it relates to the referenced date of the financial statement of the respondent's insurance company that offered the bond, the respondent averred that the purpose of the insurance company's financial statement attached to the bond was to show or demonstrate the financial position and financial capability of the insurance company, demonstrating that it is financially liquid to indemnify the movant in an event wherein the respondent is incapable to satisfy the judgment amount. The respondent also countered the movant's allegation that it abandoned its appeal taken from the Civil Law Court to this Court for over two years. The respondent's defense was that it paid the amount of Three Hundred and Fifty United States Dollars (US\$350.00) to the Clerk of the Civil Law Court, Mr. Nah Wollor, who was charged with the responsibility to photocopy the records of the case and prepare it for transcription to this Court. However, the respondent asserts, Mr. Wollor failed to do so until he was transferred from the Civil Law Court to the Omega Magisterial Court; also, the assistant clerk, who should have taken over the responsibilities of the clerk, was also transferred to the Supreme Court as Research Officer in the office of Associate Justice Yamie Quiqui Gbeisay. All of these, the Respondent asserts, delayed the transcription of the records from the court below. The respondent's counsel further stated that in addition to the sincere efforts he made, he also paid an additional amount of Three Hundred United States Dollars (US\$300.00) to the filing clerk of the court below, who also delay the transcription of the records up to and including the date of the hearing of this motion. The respondent further argued that the movant's motion to dismiss was filed in bad faith and it is intended to deny the respondent of being heard by this Court, and forthwith deny or frustrate the ends of justice. The respondent further argued that it fully complied with all the mandatory steps for the taking of appeal to this court as stipulated by law: It announced an appeal after the rendition of final judgment in the court below; it filed its bill of exceptions within the ten days provided by statute; it filed its appeal bond with statutory time; and filed its notice of completion of appeal and serve same on the movant's counsel within the statutory time. respondent maintained that it made good-faith efforts in the transcription of the records by paying all monies requested by the clerk of the court below, and even more that requested; but the process was staled due to intervening

circumstances beyond the control of respondent's counsel. The respondent therefore requested this Court to deny the movant's motion and proceed with the hearing of the case on its merits and in keeping with the laws controlling.

Having reviewed the entirety of the movant's motion and corresponding exhibits, the respondent's resistance, their respective arguments and the laws relied upon by the parties, this Court has determined that there are two issues determinative of this case. They are:

1. Whether or not the appeal bond filed by the respondent is valid, sufficient and meets the standard required by law to indemnify the movant after the rendition of final judgment against the respondent?
2. Whether or not the respondent failed to fully comply with the mandatory steps of the appeal process for which the appeal should be dismissed?

We shall address these issues in the order by which they are presented; beginning with, whether or not the appeal bond filed by the respondent is valid, sufficient and meets the standard required by law to indemnify the movant after the rendition of final judgment against the respondent? Recourse to the movant's motion to dismiss the respondent's appeal, the movant alleged that the respondent's appeal bond filed in the court below and which was approved by the trial judge is invalid and inadequate, for it does not meet the minimum legal requirement for the filing of a valid appeal bond, given that the ruling which the respondent sought to appeal to this Court, amongst other things, awarded the movant the amount of Fifty Thousand United States Dollars (**US\$50,000.00**) for damages. Movant mentioned that the respondent's appeal bond is valued at Five Thousand United States Dollars (US\$5,000.00), far below the judgment amount Fifty Thousand United States Dollars (**US\$50,000.00**) awarded to the movant. Also, in further contending and/or challenging the respondent's appeal, the movant requests that the appeal should be dismissed because the financial statement of the Insurance Company which issued the bond revealed or indicates assets, and is dated 2019/2020, wherein the appeal was announced in 2022. The Movant concern is that a financial statement of 2019/2020 cannot legally suffice in 2022.

Our legal jurisprudence provides the legal framework on appeal bonds that should be filed in our courts of records. The purpose of an appeal bond is to ensure that the appellant, in this case the respondent, indemnify the appellee, in this case, the movant against costs and damages arising from the appeal if it is unsuccessful; and/or to comply with the judgment of the appellate court if the appeal is dismissed or the judgment is affirmed. Therefore, the appeal bond should be sufficient to indemnify the appellee in all cases. The bond serves as a financial guarantee to cover costs, damages, or obligations that may arise from the appeal.

This ensures that the appellee is secured against potential losses, costs, or delays caused by the appeal. For non-monetary judgments or in cases where the judgment is not monetary (e.g., injunctions, declaratory judgments), the amount of the bond should be sufficient to cover all court costs and potential damages that may result from the appeal. This amount is often determined based on the circumstances of the case. The bond must include justifiable sureties who can demonstrate their financial ability to cover the bond amount if needed. The justification is reviewed by the court to ensure compliance. Civil Procedure Law, Rev. Code:51.8 outlines the requirements for appeal bonds, including the necessity of covering twice the amount of the judgment for monetary cases. It states:

"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; 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"
[emphasis supplied]

According to Chapter 51 of the Civil Procedure Law of Liberia as quoted *supra*, an appellant must file an appeal bond as part of the appeal process. The bond must be sufficient in amount and properly secured to be valid. This Court had emphasized strict adherence to procedural requirements for bonds, including the sufficiency of the amount, justification of sureties, and timeliness of filing. There are consequences that apply if an appeal bond fails to meet this minimum standard enshrines in our law. If the bond amount is insufficient or the bond is not properly filed, the appellee may file a motion to dismiss the appeal. The Supreme Court has consistently upheld such dismissals when appellants fail to comply with bond requirements. In the instant case, the respondent was found liable by the trial jury in an action of ejectment and the movant was awarded general damages in the amount of Fifty Thousand United States Dollars (US\$50,000.00). The respondent filed an appeal bond of Five Thousand United States Dollars in gross disregard of the amount awarded by the trial jury. The Court believes that the amount on the face of the respondent bond is grossly insufficient. As of now, there is no opportunity available for the respondent to cure this legal defect. A failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; 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. As it stands, the trial court is without jurisdiction for the movant to resist the bond because the respondent filed both the appeal bond along

with the notice of completion of appeal. This Court has consistently held that failure to file a valid and adequate appeal bond is a legal defect. This means, the appellate court cannot properly entertain the appeal without compliance. We hold that the appeal bond filed by the respondent is invalid, insufficient and does not meet the standard required by law to indemnify the movant after the rendition of final judgment against the respondent.

We shall now proceed to address the next issue, which is, whether or not the respondent failed to fully comply with the mandatory steps of the appeal process for which the appeal should be dismissed? We answer this question in the affirmative.

The movant in this case alleged that the respondent failed, neglected and refused to transcribe and/or transmit the records from the trial court beyond the period prescribed by law. That is, for over two years since the respondent filed its notice of completion of appeal, the respondent had refused to superintend the transcription of the certified records from the trial court to this Court. The respondent for its part argued that movant's allegation that it abandoned its appeal taken from the Civil Law Court to this Court for over two years is false and misleading. The Respondent's defense to this allegation is that it paid the amount of Three Hundred and Fifty United States Dollars (US\$350.00) to the clerk of the Civil Law Court, Mr. Nah Wollor, who was charged with the responsibility to photocopy the records of the case and prepare it for transcription to this Court. This court notes that the respondent does not deny that the transcription of the records was delayed. He however justified the delay and attributed it to the transfer to the clerk from the Civil Law Court to another court. He also did not produce any evidence, to include an affidavit from the said Mr. Nah Wollor or the assistant clerk he referred, to fully establish this assertion. Lawyers are duty bound to properly, sufficiently and efficiently superintend all processes related to the interest of their clients. Giving monies to court officers is not sufficient in insuring that the right things are done. The respondent sat supinely for over two years without taking any serious action to transcribe the appeal records to this Court. This is ridiculous and unacceptable. This Court cannot and will not condone the lazy, reckless and indolent attitude of the respondent's counsel. *This Court has opined in the case Nat'l Housing & Savings Bank v Gordon [1988] LRSC 61; 35 LLR 323 (1988) (29 July 1988), "Where [the] excepts to an adverse judgment, prays for an appeal, and files an approved bill of exceptions and a legal appeal bond, thus depriving the lower court of jurisdiction, but [the] defendant does not have the records sent to the appellate court, the appellate court will grant a petition by the successful party below to have the judgment of the lower court enforced."* *Baker v. Morris*, [1949] LRSC 16; 10 LLR 187 (1949).

We note that the respondent also filed an insufficient bond which the court had classified as invalid and cannot properly entertain the appeal because of non-compliance with the appeal process; this position, couple with willful neglect of the responsibility to transcribe the records from the lower court for over two years, we hold that the appeal is, should be and is hereby dismissed with immediate effect.

WHEREFORE AND IN VIEW OF THE FOREGOING, the respondent's appeal is hereby dismissed. The Clerk of this Court is hereby ordered to send a Mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and enforce its final judgment. Costs are ruled against the respondent. AND IT IS SO ORDERED.

APPEAL DISMISSED.

When this case was called for hearing, Counsellors Mark M.M. Marvey of Beyond Law Chambers appeared for the movant/appellee. Counsellor Alhaji Swaliho A. Sesay of the Sesay, Johnson and Associates Law Chambers appeared for the respondent/appellee.