IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2018

BEFORE HIS HONOR: FRANCIS S. KORKPOR, Sr.................................CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH ....ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA HOWARD-WOLOKOLIE......ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A. Z. BANKS, III............................ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH ....ASSOCIATE JUSTICE

Sea Life Navigation Co., Green Jasper Ltd. and Notable Corporation................................Movants)	
VERSUS)	MOTION TO DISMISS APPEAL
Flame S. A., a Swiss Corporation by and thru Its Attorney-in-fact George E. Henries of the Henries Law Firm, Benson Street, Monrovia Liberia...1st Respondent)	
AND)	
Family Dollar Universal Insurance Service By & thru Matthew K. Zayzay, Sr. its Authorized Official or any other authorized official..2nd Respondent)	
AND)	
Sky International Insurance Corporation By & thru Charles T. Lincoln, its authorized Official or any other authorized official ....3rd Respondent)	
AND)	
Continental General and Insurance Company, by & thru its authorized Officials, Carey Street, Monrovia Liberia..4th Respondent)	
GROWING OUT OF THE CASE)	
Flame S. A., a Swiss Corporation by and thru Its Attorney-in-fact George E. Henries of the Henries Law Firm, Benson Street, Monrovia Liberia..Movant)	
VERSUS)	MOTION TO RESCIND RULING ON MOTION FOR ENGLARGEMENT OF TIME
Sea Life Navigation Co., Green Jasper Ltd. and)	

Notable Corporation...........................Respondents)
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GROWING OUT OF THE CASE)
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Sea Life Navigation Co., Green Jasper Ltd. and)
Notable Corporation................................Movants)
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VERSUS) MOTION TEO QUASH
) VACATE PRELIMINARY
Flame S. A., a Swiss Corporation by and thru) INJUNCTION
its Attorney-in-fact George E. Henries of the)
Henries Law Firm, Benson Street, Monrovia)
Liberia..1st Respondent)
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AND)
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Family Dollar Universal Insurance Service)
By & thru Matthew K. Zayzay, Sr. its)
Authorized Official or any other authorized)
official..2nd Respondent)
)
AND)
)
Sky International Insurance Corporation, by &)
thru Charles T. Lincoln, its authorizedOfficial)
or any other authorized official....3rd Respondent)
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GROWING OUT OF THE CASE)
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Flame S. A., a Swiss Corporation by and thru) PETITION FOR PRELIMI-
its Attorney-in-fact George E. Henries of the) NARY INJUNCTION
Henries Law Firm, Benson Street, Monrovia)
Liberia..Respondent)
)
VERSUS)
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Sea Life Navigation Co., Green Jasper Ltd.)
And Notable Corporation.........................Movants)
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GROWING OUT OF THE CASE)
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Flame S. A., a Swiss Corporation by and thru)
its Attorney-in-fact George E. Henries of the)
Henries Law Firm, Benson Street, Monrovia)
Liberia...Petitioner)
) PETITION FOR ENFORC-
VERSUS) EMENT OF FOREIGN
) JUDGMENT
Sea Life Navigation Co., Green Jasper Ltd)
And Notable Corporation..................Respondents)

GROWING OUT OF THE CASE	)	
Flame S. A., a Swiss Corporation by and thru its Attorney-in-fact George E. Henries of the Henries Law Firm, Benson Street, Monrovia Liberia……………………………………………Plaintiff	)	
	)	**ACTION OF DEBT**
VERSUS	)	
Industrial Carrier Inc…………………………Defendant	)	

Heard: May 11, 2017. **Decided: July 18, 2018**

MR. JUSTICE BANKS DELIVERED THE OPINION OF THÉ COURT

Whenever this Court is confronted with a request to dismiss an appellant's appeal we have always proceeded to review said request with every tenet of curiosity as to why an appellee would endeavor to preclude us from examining the core contentions of the parties contained in the merits of the case sought to be dismissed. It is because of such curiosity that we have, in a bountiful of opinions, taken the position that mere technicalities along are insufficient to warrant the dismissal of an appeal. *Forestry Development Authority v. Forestry Development Authority Workers Union (FDAWU), 39 LLR 684 (1999); Husseni v. Brumskine, Supreme Court Opinion, March Term, A. D 2013.* And that a party wishing to prevent this Court from inquiring into the substance of another party's appeal through a motion to dismiss must rely strictly on those grounds established by the framers of our statutory laws together with the respective interpretations given them by this Court. *Firestone Plantations Company v. John Bravy, 36 LLR, 893, 902 (1990); Pelham v. Witherspoon & Green, Sr., 8 LLR 296, 303-309 (1944); Beatrice Malaweh Goffa et. al., v. Dr. John Scott Goffa, Supreme Court Opinion March Term A.D. 2011.*

Such reliance is vital in determining the alleged defects in the process of perfecting an appeal not only because the taking of an appeal is a journey to this Court, step by step, and the journey becomes incomplete when any of those steps is missing or defective, *Blamo et al., v. The Management of Catholic Relief Services, Supreme Court Opinion, 2006* [edit citation] but also because the timeframe in which an appeal shall be completed and the statutory requirements for the taking of an appeal are not mere technicalities and that

where they are violated or not adhered to, absent inexcusable circumstances; the appeal should and will be dismissed. *Foday Kamara Butchery v. Pupo et al., 36 LLR 181 (1989); Cavalla Rubber Corporation v. The Liberian Trading and Development Bank, 38 LLR 153 (1995); Afriland First Bank Liberia Limited v. F.M.T. Construction Company, Supreme Court Opinion March Term A.D. 2016.*

Thus it is incumbent upon lawyers appearing before this Court to always remain cognizant of the statutory limitations for the dismissal of an appeal which include: (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 notice of completion of the appeal, and a party having failed to comply with any of these requirements within the time allowed by statute, it shall be a ground for dismissal of his appeal. *Firestone Plantations Company v. John Bravy, 36 LLR 893, 902 (1990); Pelham v. Witherspoon & Green, Sr., 8 LLR 296, 303-309 (1944); Beatrice Malaweh Goffa et al., v. Dr. John Scott Goffa, Supreme Court Opinion, March Term, A.D. 2011.*

The appeal bond, being the third mandatory requirement in the journey for the perfection of an appeal to this Court must be secured in satisfaction of its statutory purpose, procedure of filing same as well as its content. Chapter 51, subsection 51.8 of the Civil Procedure Law provides, in generic terms, the purpose of an appeal and the means by which same can be secured and filed.

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."

A subsequent chapter, 63 goes a step further. First, it prescribe the content of an appeal bond by declaring that any bond given under this title shall be secured 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) Valuables to the amount of the bond which are easily converted into cash; or d) Sureties who meet the requirements of section 63.2.

Second, the statute prescribed and set certain safeguards for the execution of a surety on a bond by a natural person or an insurance company. It states: "a surety on a bond shall be either two natural persons who fulfill the requirements of this section or an insurance company authorized to execute surety bonds within the Republic." *Civil Procedure Law, Rev. Code 1:63.2(1).* It is further stated at subsection (3) that the bond shall be accompanied by an affidavit of the sureties containing the following: "a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security; b) A description of the property, sufficiently identified to establish the lien of the bond; c) A statement of the total amount of the liens, unpaid taxes and other encumbrances against each property offered; and d) A statement of the assessed value of each property offered."

In the case: *Robertson et al., v. The Quiah Bros et al., Supreme Court Opinion, October Term 2011,* the Court, in giving interpretation to the Civil Procedure Law Rev. Code 1:63.2, espoused that the phrase "authorized to execute surety bonds within the Republic of Liberia does not mean a mere exhibition of the articles of incorporation of the insurance company containing a clause that it can serve as surety, or an exhibition of a certificate showing that it is authorized to do business in Liberia, or a statement from the Ministry of Finance indicating that the company has paid its taxes, for none of those points to the liquidity of the insurance company as would satisfy the purpose of an appeal or other bonds, which are intended to hold the successful or opposing parties harmless from injury, to make payment of the cost of court, and to satisfy the judgment of the court; the purposes stated both in the statute and in a litany of cases decided by this Court presuppose and imply that the insurance company is in good standing and has the liquidity or other means to satisfy the judgment and other cost associated with the case in which it is serving as surety. According to this Court, the standards contemplated by the Statute are:

1. The exhibition or attachment to the bond of the articles of incorporation of the insurance company as evidence that the company does exist;
2. Registration certificate of the insurance company with the appropriate government ministry or agency indicating that it is authorized to do business in Liberia and that it is in good standing;
3. Clearance from the Ministry of Finance evincing that all taxes due as at the time of the execution of the bond have been fully paid; and
4. Evidence, such as certificate or other legal instrument from an appropriate legal authority such as the Central Bank or other insurance authority or similar government entity having regulatory responsibilities for insurance companies, that the insurance company possesses assets within the Republic of Liberia, sufficient to cover the obligation undertaken by the insurance company in the bond, exclusive of other bonds to which it is already serving as surety, commensurate with the amount stated in the bond."

The above interpretation of the appeal bond provision in the *Quiah Brothers Case* was reaffirmed in the case *Mentor Initiative et al. v Fardoun,* decided by this Court during its October Term A.D.2014 and we are even more persuaded today that the appeal statute is mandatory and must be strictly complied with; that an appeal may be dismissed due to insufficiency of an appeal bond; that any natural person or insurance company desiring to serve as surety for an appeal bond must, in addition to the requirement laid down in the statute, complied with the interpretation of those requirements given by this Court in the cases referenced and those other cases relating to similar subject.

The parties before us, however, have embarked on a rather eccentric argument; the basis upon which the movants have asked us to dismiss the respondent's appeal as well as the respondent's counter-argument thereto are so unconventional and legally amazing that it deserve our immediate attention, but in order that a full appreciation of their respective arguments is grasped, we shall first narrate the pertinent summary of the facts.

The movants, Sea Life Navigation Co., Green Jasper Ltd., and Notable Corporation are non-resident corporations of Liberia, 1st respondent Flame S.A. is a corporation organized under Swiss Law, 2nd respondent, Family Dollars Universal Insurance service is a resident domestic insurance corporation organized and existing under Liberian Law, 3rd respondent Sky International

Insurance Corporation is also a resident domestic insurance company and 4th respondent Continental General and Life Insurance Company is a resident domestic corporation and the surety to 1st respondent's appeal bond.

The records reveal that 1st respondent, Flame S.A instituted an action of debt in the United Kingdom and the United States of America against one Industrial Carrier, Inc. a corporation organized under the laws of Marshall Islands for certain alleged commercial debt and received judgment therefrom. On May 15, 2015, the 1st respondent filed a petition for the enforcement of foreign judgment against the movants on grounds that they were alter ego of Industrial Carrier, Inc. on the same date, March 15, 2015, the 1st respondent also filed a motion for preliminary injunction seeking to restrain and enjoin the movants' vessels from vacating the Republic of Liberia.

To this motion for preliminary injunction, the 1st respondent secured and in keeping with applicable law, did file an injunction bond in the amount of US$19,000,000 (Nineteen Million United States Dollars) injunction bond. US$9,500,000.00 was said to have been secured by 2nd respondent Family Dollars Universal Insurance Service Inc. while the other US$9,500,000.00 was said to have been secured by 3rd respondent Sky International Insurance Corporation.

The records show that service of the writ of summons, complaint, writ of preliminary injunction and the temporary restraining order were served on LISCR, the registered agent of the movants on May 18, 2015, since they had no physical presence in the country at the time. About 28 days thereafter, on June 12, 2015, the 1st respondent, petitioner in the action for enforcement of foreign judgment obtained a clerk's certificate indicating that the movants had failed to file returns. On June 20, 2015, the Sherman & Sherman, Inc., appeared for the movants and filed a motion for enlargement of time on grounds that the movants had just retained its services, the said motion was resisted, heard and granted by the trial court allowing the movants four (4) days to file returns to the petition and motion for preliminary injunction. 1st subsequently filed a motion to rescind the court's judgment on the movants' motion for enlargement of time, which motion was also resisted, heard and ruling thereon reserved.

The movants then filed motions to dismiss the petition for enforcement of foreign judgment, to quash/vacate the preliminary injunction and a resistance to a motion for sequestration of proceeds from a sale of two vessels filed by the 1st respondent, Flame S.A. on the following grounds: 1) as to the petition for enforcement of foreign judgment; that the it cannot be enforced against the movants because they were not party to the suit in which the said judgment was obtained; and that the said judgment was obtained by default and same cannot be enforced under Liberian Laws. 2) as to the motion to quash/vacate preliminary injunction; that the bond filed by the 1st respondent was defective for reasons that its reinsurer did not own asset in Liberia; did not proffer a valid tax clearance, and did not qualify as a surety under Liberian Laws. 3) as to the resistance to the motion for sequestration of proceeds, they argued that the movants were not party to the action out of which the 1st respondent obtained judgment.

On August 19, 2015, the Commercial Court entered a consolidated ruling denying the 1st respondent's motion to rescind its ruling on the motion for enlargement of time; granting movants' motion to quash/vacate the preliminary and granting movants' motion to dismiss the petition for the enforcement of foreign judgment, all predicated on similar grounds argued by the movants' in their respective motions to the effect that the movants were not party to the suit out of which the petition for enforcement of foreign judgment grew; and that the bond proffered by the 1st respondent was defective for reasons of invalid tax clearance and in ability of the reinsurer to show that they own assets in Liberia.

Because we believe that the ruling of the Commercial Court is essential to the contentions raised by the parties herein and the decision of this Court in resolving those contentions, we quote the relevant portion of same as follows:

COURT'S RULING ON: (1) MOTION TO RESCIND RULING ON MOTION FOR ENLARGEMENT OF TIME, (2) MOTION TO QUASH/VACATE PRELIMINARY INJUNCTION AND (3) MOTION TO DISMISS PETITION FOR ENFORCEMENT OF FOREIGN JUDGMENT

1. Flame S.A., a Swiss corporation, by and through the Henries Law Firm, filed with this Court on 1 May 2015 a Petition for the Enforcement of Foreign Judgment against Sea Life Navigation Co., Green Jasper Ltd. and Notable Corporation (three nonresident

domestic corporations of Liberia) hereinafter the "Enforcement Petition". In addition to the Enforcement Petition, Flame S.A., as Movant, filed a Motion for Preliminary Injunction (the "Injunction Motion"); and in the Injunction Motion, it was alleged at Count 3 thereof that *"Plaintiff has commenced this Action to apply and extend the decision of the US Courts to other alter egos of ICI and in particular, the three Liberian defendants (Sea Lire Navigation Co., Green Jasper Ltd. and Notable Corporation) to this Action, all of whom are owned, dominated and controlled by Viktor Baranskiy ".* Flame S.A. then prayed this Court to enter an order, among other things, *"Preventing the sale of the Liberian flagged and owned vessels, GRAFF, (IMO No. 9105645), ELOUNDA BAY (IMO No. 9040508) and PRIDE/PACIFIC (IMO No. 9018464) without permission or further order of the Court ".* Flame S.A. also requested for a temporary restraining order against Sea Life Navigation Co., Green Jasper Ltd. and Notable Corporation, because unless they are restrained, immediate and irreparable injury, loss and damage will result to the detriment of Flame S.A.

2. For ease of referencing Flame S.A. it shall hereafter be referred to as "Petitioner" and for ease of referencing Sea Life Navigation Co., Green Jasper Ltd. and Notable Corporation (three nonresident domestic corporations of Liberia), they shall hereafter be referred to as "Respondents".

3. Now, Liberian law provides that on application for the preliminary injunction or its adjunct, the applicant shall give a bond in an amount to be fixed by the court to the effect that if it is determined the applicant was not entitled to an injunction the applicant would pay damages and costs which may be incurred by any party who is found to have been wrongfully enjoined. Civil Procedure Law, Section 7.63(3). On the basis of this law and on order of the Court, Petitioner posted a surety bond, using two insurance companies, Sky International Insurance Company and Family Dollar Universal Insurance Services. This was done pursuant to the Civil Procedure Law, Section, 63.1(d) and Section 63.2(1). And each insurance company provided surety in the amount of US$9,500,000.00, which brought the total injunction bond to US$19,000,000.00.

4. Petitioner also filed a Motion for Sequestration of Sale Proceeds against Notable Corporation, one of the Respondents herein, and joined a certain Posen Chartering Ltd, another non-resident domestic N.4,00 corporation of Liberia. In this latter proceeding, Petitioner alleged Notable Corporation has sold or was about to sell a certain vessel owned by it to Posen Chartering Ltd in violation of the writ of injunction or temporary restraining order and so Petitioner requested the Court, among other things, to order the sequestration of the proceeds from the sale of the vessel. Lastly, on 17 June 2015, Petitioner filed a Motion for Judgment and Appointment of Receiver against the Respondents in which Petitioner prayed for default judgment to be entered against Respondents pursuant to Charter 42 of the Civil Procedure Law

insofar as default judgment is concerned and pursuant to Chapter 44, specifically Section 44.38, of the Civil Procedure Law insofar as appointment of receivers of the judgment debtor is concerned.

5. All the writs and orders issued by this Court were served upon the Liberia International Ship and Corporate Registry LLC (commonly known as LISCR), which is the registered agent in Liberia for all non-resident domestic corporations of Liberia. Individual returns were made to each of the writs and an affidavit of service was also made by the Sheriff of this Court, all of which confirmed that the writs were served on LISCR at its offices in Liberia.

6. On June 20, 2015, Sherman & Sherman, as counsel for the Respondents filed a Motion for Enlargement of Time; this Motion prayed this Court to enlarge the time for Respondents to make their formal appearance; it also provided that Respondents had not appeared in keeping with the time provided by statute due to excusable neglect. In response to this Motion for Enlargement of Time, Petitioner filed a Resistance; but after oral arguments this Court ruled granting the enlargement of time by four days as of the date on which that Ruling was made. Respondents then filed the following papers: (1) Returns to the Petition for Enforcement of Foreign Judgment; (2) Motion to Dismiss the Petition for Enforcement of Foreign Judgment; (3) Motion to Quash/Vacate the Motion for Preliminary Injunction; and (4) Returns to the Motion for Sequestration of Sale Proceeds. Incidentally, no responsive papers were filed for the Motion for Judgment and Appointment of Receiver.

7. On the request of Sherman & Sherman, Respondents' counsel, the Motion to Quash/Vacate Preliminary Injunction and the Motion to Dismiss Petition for Enforcement of Foreign Judgment were assigned for oral argument on the same day. Upon receipt of the notice of assignment, Henries Law Firm, as counsel for Petitioner, filed a Motion to Rescind this Court's Ruling on the Motion for Enlargement of Time; and to this Motion to Rescind, Respondents' counsel filed its Resistance. On order of this Court, Petitioner also filed its Resistance to the Motion to Quash/Vacate Preliminary Injunction and its Resistance to the Motion to Dismiss Petition for Enforcement of Foreign Judgment. For these three motions, several notices of assignment were sent out by this Court for hearing (oral arguments) and the reasons why a hearing was not then conducted are immaterial for purposes of this Ruling. What is important is that on Wednesday, August 11, 2015 oral arguments were entertained on all three motions and this Court has decided to render one Ruling which covers all three motions.

8. This Ruling is therefore separated into the three motions, as follows: (1) the Motion to Rescind this Court's Ruling on the Motion for Enlargement of Time; (2) the Motion to Quash/Vacate Preliminary Injunction; and (3) the Motion to Dismiss Petition for Enforcement of Foreign Judgment.

9. Motion to Rescind this Court's Ruling on the Motion for Enlargement of Time

10. Petitioner's Motion to Rescind is premised on the grounds that the Sheriff of this Court served on LISCR, as the registered agent for the Respondents, the writs and orders of this Court and that LISCR in turn served the writs and orders on Respondents. In substantiation of this submission, Petitioner's counsel submitted a letter from LISCR, which was in response to an earlier letter from Counsellor George E. Henries of the Henries Law Firm, which requested LISCR to provide information on what happened to the writs and orders from this Court served on them as the registered agent for Respondents. LISCR's letter claimed that the writs and orders were received by them and they transmitted them to the address of record, which they had for Respondents, only to be informed that Respondents no longer kept that address as their address of record. LISCR also claimed that it attempted to contact Respondent through other means to no avail. On the basis of this, Petitioner claimed that the Motion for Enlargement of Time was based on misrepresentations and had this Court known about such misrepresentations this Court would not have granted the Motion for Enlargement of Time.

11. What is important is that Petitioner never denied the law as stated by the Supreme Court in the case, <u>BUCHANAN-HORTON V. BELLEH AND RAYMOND CONCRETE PILE, 39 LLR 169.</u> In that case, the Supreme Court held that every corporation shall have a qualified resident business agent, who is primarily designated for the service of process, which is the means used by the court to acquire or exercise its jurisdiction over a person or specified property. The Supreme Court also said that it is also the means whereby a court compels the appearance of a defendant before it or compliance with its demands. The Supreme Court further held that the duty of the resident agent is limited to the forwarding of service of process or notice of demands to a corporation at its last known address; but the Supreme Court also added that generally the statutory duties and responsibilities are satisfied when a resident business agent receives process from the court and ensures that the process is sent to the last known address of the principal corporation, and evidence of the mailing thereof is filed in the court issuing the process, because the object of the registered business agent's role is to ensure that the principal corporation, whether domestic, foreign and nonresident, is brought under the jurisdiction of the court.

12. Nowhere in the Motion to Rescind did Petitioner allege that LISCR complied with its obligation to send the writs and orders of this Court to the Respondents by mail or otherwise; nowhere did Petitioner allege that LISCR served on this court the evidence of the manner in which LISCR served the writs and orders of this Court on Respondents. In addition to the opinion of the Supreme Court in the <u>BUCHANAN-HORTON V. BELLEH AND RAYMOND CONCRETE PILE</u> case, the statutes provide that in addition to delivery of the summons to a statutory agent of a corporation, such as LISCR, it is the obligation of the proponent of the summons to mail a copy

thereof to the defendant. Civil Procedure Law, Section 3.38(6). Again, nowhere in the Motion to Rescind did Petitioner allege that it ever mailed copies of the writs and orders in this case to the Respondents at their address(es). Throughout the argument Petitioner's counsel never argued that LISCR complied with the requirement of the Supreme Court's opinion or that Petitioner itself complied with the requirements of the statute.

13. In the third paragraph of the letter of July 16, 2015 from LISCR to Counsellor George E. Henries, LISCR admitted that on June 19, 2015 Sherman & Sherman, as counsel for Respondents, presented its retainer agreement and requested that LISCR allow them to sign for and receive the precepts in this case and LISCR agreed. This Court is of the opinion that had LISCR sent the precepts to the last known address of record for the Respondents, then LISCR would have only presented to Sherman & Sherman copies of the precepts that it retained for its records or would have told Sherman & Sherman that the latter should obtain the precepts from this Court. But according to LISCR it delivered the precepts to Sherman & Sherman, which from all indications were the original documents that the Sheriff of this Court had served on LISCR. So, how can LISCR claim that it tried to serve the precepts on the Respondents but found out that the address of record it had for the Respondents was not valid?

14. The most important paper in this case for purpose of this Court acquiring jurisdiction over Respondents is the writ of summons. The Supreme Court has held that since a corporation is an artificial entity, it cannot be personally served with process, and can only be served through an officer or agent of the corporation, or someone designated by law to receive service of process in its behalf. The Supreme Court also held that no court has authority to render judgment against a party who has not been served with process to bring him under its jurisdiction, or who has not voluntarily appeared, and any judgment rendered contrary to this rule is void as to the party against whom it was rendered. LIBERIA-AMERICAN INSURANCE CORPORATION V. WRIGHT AND A. HEJAZI CORPORATION, 37 LLR 404. In another case the Supreme Court ruled that a defendant who has not been summoned properly in keeping with the statute cannot be said to have had his day in court, and the court cannot assume jurisdiction over any person who has been improperly summoned. TRI FISHERIES INC. V. WRIGHT AND COOPER, 38 LLR 222. Then the Supreme Court also held that precepts not served on a corporation according to law will not be considered to have been duly served, and the corporation upon whom such service is alleged to have been made will be deemed not to have had its day in court, or to have been denied due process of law. FORESTRY DEVELOPMENT AUTHORITY V. FORESTRY DEVELOPMENT AUTHORITY WORKERS UNION AND THE MINISTRY OF LABOUR, 40 LLR 503. Obviously, without proper service of the writ of summons in this case to bring Respondents under the jurisdiction of this Court, all other writs and orders were

without any effect. And in our Ruling on the Motion for Enlargement of Time, all these laws were cited and relied upon to grant that Motion.

15. On failure to serve the writ of summons, the law provides that application should be made for a writ of resummons; and where there is a failure to serve the writ of resummons, then application should be made for the service of the writ of resummons by publication. Civil Procedure Law Section 3.39, 3.40, 3.42(2). To the mind of this Court, when LISCR discovered that Respondents' address on its record was not the same address maintained by Respondents this Court should have been advised to that effect as soon as the time for Respondents to make their formal appearance expired. With that Petitioner would have been able to apply for a writ of resummons and eventually for service of the writ of resummons by I publication. For LISCR to hold the writ of summons and other precepts, being fully aware, as claimed by LISCR, that Respondents had changed their address of record, and to have failed to inform this Court of that fact and allowed Petitioner the opportunity to avail itself of the option of a writ of resummons and eventually service of the writ of resummons by publication, is certainly contrary to the intent and purpose of the requirement of personal service of the writ of summons to bring Respondents under the jurisdiction of this Court. And under such circumstances, this Court cannot accept Petitioner's submission that it was misled into granting an enlargement of time for Respondents to make their formal appearance. It was and still is important for this Court to satisfy itself that Respondents have been properly summoned and if the evidence leads to the fact that a delay in making a timely appearance is through no fault of theirs (through excusable neglect), then this Court is duty bound to extend the time for the making of such formal appearance; and this is what this Court did when it granted the Motion for Enlargement of Time. To do otherwise would have been to undermine Liberia's law, which allows for corporations to be organized under Liberian law but restricted to conduct business exclusively out of Liberia; when any such nonresident domestic corporation is sued in Liberia, ample opportunity should be given to it, without prejudice to the plaintiff, for them to formally appear.

16. Based on the law and the facts, this Court determines that as to the Motion to Rescind no information or fact was misrepresented to this Court. This Court therefore affirms and confirms its Ruling which enlarged the time for Respondents to make their formal appearance.

17. Motion to Quash/Vacate Preliminary Injunction

18. As to the Motion to Quash/Vacate Preliminary Injunction, Respondents submitted that as a mandatory condition for the issuance of the writ Petitioner should have filed a bond in an amount to be fixed by the court, to the effect that petitioner, if it is finally determined that it was not entitled to an injunction, will pay all damages and costs which may be incurred by any of the

Respondents who is found to have been wrongfully enjoined. Civil Procedure Law, Section 7.63(3). The bond could have been secured by cash to the value of the bond or cash deposited in a bank to the value of the bond as evidenced by a bank certificate; unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond; valuables to the amount of the bond which are easily convertible to cash; or sureties (insurance company or two natural persons). Civil Procedure Law, Section 63.1, 63.2. Petitioner selected to use two insurance companies, Sky International Insurance Company and Family Dollar Universal Insurance Services, and each provided surety bond to the value of US$9,500,000.00. This obviously means that this Court required a bond in the amount of US$19,000,000.00.

19. The only reason for the Motion to Quash/Vacate Preliminary Injunction is that the surety bonds are defective and therefore preliminary injunction would not lie. Respondents cited the Supreme Court case, MENTOR INITIATIVE, MOVANT/APPELLEE v. AHMEI) FARDOUN, RESPONDENT/APPELLANT, MOTION TO DISMISS APPEAL, WHICH GREW OUT OF THE CASE: AHMED FARDOUN, PLAINTIFF v. MENTOR INITIATIVE, DEFENDANT, ACTION OF DEBT, decided by the Supreme Court on January 24, 2014. In that case, the Supreme Court ruled that that when an insurance company is surety to a bond it should comply with the following: (1) there should be exhibited or attached to the bond the articles of incorporation of the insurance company as evidence that the insurance company does exist; (2) registration certificate of the insurance company with the appropriate government ministry or agency indicating that it is authorized to do business in Liberia and that it is in good standing; (3) clearance from the Ministry of Finance evincing that all taxes due as at the time of the execution of the bond have been fully paid; and (4) evidence, such as certificate or other legal instrument from an appropriate legal authority such as the Central Bank or other insurance authority or similar government entity having regulatory responsibilities for insurance companies, that the insurance company possess assets within the Republic of Liberia sufficient to cover the obligation undertaken by the insurance company in the bond, exclusive of other bonds to which it is already serving as surety, commensurate with the amount stated in the bond.

20. Respondents contended that Petitioner had not complied with the requirements of the Supreme Court's opinion in the MENTOR INITIATIVE v. FARDOUN case, especially the requirement to obtain a certificate from the Central Bank of Liberia, regulator of insurance companies, which certifies that each of these two insurance companies possesses assets within the Republic of Liberia sufficient to cover the obligation undertaken in the bond for each is a surety, exclusive of other bonds to which it is already serving as surety, commensurate with the amount stated in the bond. And the surety bond issued by Sky International Insurance Company and Family Dollar Universal Insurance Services did not carry any such

companies possesses assets within the Republic of Liberia sufficient to cover the obligation undertaken in the bond for each is a surety, exclusive of other bonds to which it is already serving as surety, commensurate with the amount stated in the bond. And the surety bond issued by Sky International Insurance Company and Family Dollar Universal Insurance Services did not carry any such certificate from the Central Bank of Liberia. And for this reason, Respondents requested that the Writ of Preliminary injunction and the entire Petition for Preliminary Injunction should be quashed and vacated.

21. In addition to the above, Respondents contended that these insurance companies did not have enough assets separate from other assets which are otherwise encumbered, to stand as sureties to US$9,500,000.00 surety bond each. Respondents averred that pursuant to the MENTOR INITIATIVE v. FARDOUN case the reinsurance policies held by these two insurance companies do not qualify as assets to provide injunction bonds in Liberia as those assets are not located in Liberia and even if those reinsurance policies had qualified as assets, said reinsurance policies are not for indemnity bond, while the injunction bond is an indemnity bond.

22. In its Resistance, Petitioner never denied the averments of the Motion to Quash/Vacate Preliminary Injunction neither did Petitioner attempt to traverse the allegations or statements of law contained in said Motion. Instead, Petitioner submitted that whatever problems or issues Respondents had with the Petition for Preliminary Injunction, Respondents should have raised such issue as exception to the lei sureties to Petitioner's bond pursuant to the Civil Procedure Law, Section 63.5. Petitioner also submitted that had Respondents excepted to the sureties to Petitioner's bond, Petitioner would have then exercised its rights to justify its sureties pursuant to the Civil Procedure Law, Section 63.6.

23 The law is that a defendant enjoined by a preliminary injunction may move at any time on notice to the plaintiff to vacate or modify it. Civil Procedure Law, Section 7.65(1). The law also provides that in the case of a temporary restraining order on motion, without notice, made by the defendant enjoined by a temporary restraining order, the order may be vacated or modified. Civil Procedure Law, Section 7.65(2). So, as a matter of law, Respondents were not in error when they moved to quash/vacate the Writ of Preliminary Injunction or the Temporary Restraining Order issued by this Court; but this Court also recognizes that Respondents could have elected to move for justification of sureties consistent with Civil Procedure Law, Section 63.5, 63.6. As a matter of fact, in the case, SAAB v. BHARWANOY, 23 LLR 425, the Chambers Justice held that a party may except to the sufficiency of a surety but he may also move to modify or vacate an attachment. This decision of the Chambers Justice is consistent with the statutes cited above and confirms that the option to move to quash/vacate the preliminary injunction is reserved by the statute to Respondents.

substantive issues of said Motion to Quash/Vacate the Preliminary Injunction but Petitioner failed to do so. Petitioner's failure constitutes admission to those substantive averments of the Motion to Quash/Vacate the Preliminary Injunction; and considering that those substantive averments of the Motion to Quash/Vacate the Preliminary Injunction are consistent with law, this Court has no alternative but to affirm and confirm them. That is, Respondents did not err when they elected to move to quash/vacate the writ of preliminary injunction and the temporary restraining order for the reasons stated in their Motion to Quash/Vacate the Preliminary Injunction.

25. Consistent with the law, this Court hereby dismisses the Petition for Preliminary Injunction and the Writ of Preliminary Injunction and Temporary Restraining Order and whatever other order may have been issued by this Court on the basis of the Petition for Preliminary Injunction.

26. Motion to Dismiss Petition for Enforcement of Foreign Judgment

27. Respondents filed an 11-count Motion to Dismiss Petition for Enforcement of Foreign Judgment and Petitioner filed an 8-count Resistance thereto. In the Motion, Respondents requested that the Petition for Enforcement of Foreign Judgment should be dismissed for the following summarized reasons: (1) that Respondents are nonresident domestic corporations of Liberia but not allowed to do business in Liberia or own any assets in Liberia; (2) that Respondents are not parties to either the matter handled in the High Court of the United Kingdom or the Federal District Court for the Eastern District of Virginia and as such are not bound by the judgment of either of these two courts; (3) that enforcement of the judgment of either the High Court of the United Kingdom or the Federal District Court for the Eastern District of Virginia against them would constitute denial of due process and their day in court; and (4) that the judgment of the High Court of the United Kingdom is unknown to them since it was not proffered with the Petition for Enforcement of Foreign Judgment and that the judgment of the Federal District Court for the Eastern District of Virginia is on appeal at the United States Court of Appeal for the Fourth Circuit and has not therefore matured for enforcement of that judgment.

28. Petitioner's Resistance is summarized as follows: (1) that a motion to dismiss is permissible only for one or more of the reasons stated in the Civil Procedure Law, Section 11.2; (2) that the issue raised by Respondents that they were not properly brought under the jurisdiction of this Court can only be addressed by a motion for relief from judgment, not a motion to dismiss; (3) that the judgment of the Federal District Court for the Eastern District of Virginia invoked the doctrine of alter ego and traced Respondents and ICI (the principal defendant in that case) to be one and the same; (4) that the doctrine AP of alter ego which formed the basis for the enforcement proceeding against Respondents is based on issues of fact that require the taking of evidence and therefore the

motion would not lie; (5) that the appeal against the judgment of the Federal District Court for the Eastern District of Virginia was dismissed, as supported by the Declaration issued by William R. Bennett, III, one of counsel for Petitioner in that case before the Federal District Court for the Eastern District of Virginia; (6) that Respondents being nonresident domestic corporations of Liberia and the vessels against which the judgment is sought to be enforced are registered in Liberia, the judgment of the Federal District Court for the Eastern District of Virginia can be enforced against Respondent; and (7) that by being nonresident domestic corporations of Liberia and their vessels having been registered under Liberian law, Respondents voluntarily submitted themselves to the jurisdiction of Liberian law.

29. This Court cannot ignore Section 11.2 of the Civil Procedure Law, as the primary grounds for dismissal of a proceeding; but even Petitioner acknowledges that lack of jurisdiction over the person of the defendant is a ground for dismissal, as provided in this provision of the Civil Procedure Law. In this case, Respondents have submitted that they were not parties to the proceeding at the United Kingdom High Court and they were not parties to the proceedings in the United States Federal District Court for the Eastern District of Virginia. They even referred this Court to pages 26 and 27 of the Memorandum Opinion issued by the Judge in that case on September 19, 2014. The Judge acknowledged then that the defendants in personam before him were Freight Bulk PTE LTD and Industrial Carriers Inc, while Vista Shipping Ltd and Viktor Baranskiy were defendant in rem but not in personam. This meant that these latter two defendants came under the jurisdiction of the United States District Court only because of their direct connection to the vessel under attachment and sought to be sold to satisfy the judgment of the United Kingdom High Court against Industrial Carriers Inc. At no time did the Judge of the United States District Court name any of the Respondents in this case; and even in its Motion for Preliminary Injunction, Petitioner itself conceded that Respondents were not under the jurisdiction of either the United Kingdom High Court or the United States District Court. They were never parties to the cases before these courts. Once the Respondents were not parties to those two cases, they should not be bound by the judgment or decisions of those courts. Liberian law is clear on that point. GRAY ET AL. v. KABA AND THE INTESTATE ESTATE OF THE LATE DAVID SAMPSON, 40 LLR 38; SAWAN v. COOPER ET AL., 39 LLR 598; THE INTESTATE ESTATE OF THE LATE JOHN N. LEWIS v. METZGER ET AL., 38 LLR 404; GOODING AND A-Z SUPERMARKET v. WRIGHT ET AL., 37 LLR 14.

30. For this Court, where the purpose of a proceeding to enforce a judgment, whether local or foreign, is to pierce the corporate veil and hold third persons as alter egos of the main defendant(s), as claimed by Petitioner, both the main defendants and those alleged to be alter egos should be joined in the same proceeding. That is all of them should be defendants or respondents and the writ of

summons should be served on each of them; all of them should be given the opportunity to interpose their defenses either jointly or singularly; and the judgment should be able to show how each of the alleged joint defendants became an alter ego and should therefore be liable for the obligations of the main defendants. Otherwise, those persons alleged to be alter egos would have been denied due process of the law; they would have been denied their "day in court". And denial of due process and denial of "day in court" are very seriously constitutional issues for which the Supreme Court normally reverses cases which have already been concluded or issue remedial process to prohibit or restrain the continuation of such cases. MERIDIEN BIAO BANK LIBERIA LIMITED v. TOPOR, 38 LLR 174; WILSON v. FIRESTONE PLANTATIONS COMPANY AND THE BOARD OF GENERAL APPEALS, 34 LLR 134; THE MIDDLE EAST TRADING COMPANY AND HYKAL v. CHASE MANHATTAN BANK, N.A., 34 LLR 419; HARMON v. BILITY, 29 LLR 389; EXPRESS PRINTING HOUSE, INC. AND SHABANI v. REEVES AND BANK OF CREDIT AND COMMERCE INTERNATIONAL, 35 LLR 455; LIBERIA-AMERICAN INSURANCE CORPORATION v. WRIGHT AND A. HEJAZI CORPORATION, 37 LLR 404.

31. Liberian law allows for a Liberian court to acquire jurisdiction over a person who is not a resident of Liberia but the claim against such nonresident person must have risen from one or more of the following acts: (a) transaction of a business within Liberia or making of a contract with a person in Liberia which is to be performed in Liberia; (b) commission of a tortious act within Liberia; or (c) owning, using, or possessing real property situated within Liberia Civil Procedure Law, Section 3.2. None of the Respondents qualify under any of these three conditions for a Liberian court to acquire personal jurisdiction over any of them and Petitioner did not allege that any of the Respondents qualify under any of these three conditions. So under no parity of reasoning should this Court be able to acquire jurisdiction over Respondents for purpose of the Petition for Enforcement of Foreign Judgment.

32. For these reasons stated above, the Motion to Dismiss the Petition for Enforcement of Foreign Judgment filed by the Respondents was properly in place; and Petitioner's submission to the effect that the issues raised should have been brought as a motion for relief from judgment is untenable. Nowhere in the Memorandum Opinion issued by the United States District Court was the Respondents mentioned by names or otherwise referenced and Petitioner contradicted itself when it conceded that the purpose of the suit in Liberia is to pierce the corporate veil of Industrial Carriers Inc. and have Respondents declared as alter egos of said Industrial Carriers Inc. Not being parties to the suits before either the United Kingdom High Court or the United States District Court, Respondents have no standing to bring a motion for relief from judgment before this Court only because Petitioner has filed the Petition for Enforcement of Foreign Judgment and the ancillary motions. Assuming that a motion for relief from judgment was

tenable, the only forum which could have entertained such motion would have been the United States District Court, not this Court, as it is the United States District Court which exercised jurisdiction over the matter and rendered a judgment. So, this Court reiterates that the Motion to Dismiss the Petition for Enforcement of Foreign Judgment filed by the Respondents was properly in place.

33. Another issue raised by Petitioner is whether the doctrine of alter ego which formed the basis for the enforcement proceeding against Respondents is based on issues of fact that require the taking of evidence and therefore the Motion to Dismiss the Petition for Enforcement of Foreign Judgment would not lie? This is the question which Petitioner has submitted to this Court and this Court answers that question in the negative insofar as the law and agreed facts of this matter are concerned.

34. First, Liberian law provides that a foreign judgment in a case in which the defendant did not appear although a party thereto shall not be admissible against him Civil Procedure Law, Section 25.12. In the matter before the United Kingdom High Court and the United States District Court, Industrial Carriers Inc, the defendant, did not appear and so there was a judgment by default. Under Liberian law such foreign default judgment is not admissible in a Liberian court. More than that, in the instant matter, Respondents were not parties to either the matter before the United Kingdom High Court or the matter before the United States District Court and no judgment was entered against them; no reference was made to them in the Memorandum Opinion of the United States District Court. As a matter of Liberian law, those judgments at the United Kingdom High Court and the United States District Court cannot be admitted against Respondents. Therefore, under no parity of reasoning under Liberian law can those judgments be enforced against Respondents.

35. The suggestion that evidence should be taken by this Court for the purpose of piercing the corporate veil of Industrial Carrier Inc, in order to have Respondents declared as alter egos of Industrial Carriers Inc. or Viktor Baranskiy, has no basis under Liberian law. The only way to otherwise hold Respondents liable in Liberia is where a new suit is commenced in Liberia against Industrial Carriers Inc. and Viktor Baranskiy with Respondents named therein as co-defendants; but even such procedure might be faced with a technical legal problem as both Industrial Carriers Inc. and Viktor Baranskiy are foreigners and it would not be to the convenience of any person to maintain such suit in Liberia. The power is reserved to the Liberian court to dismiss such case and instruct the parties to seek their remedy at another forum in another country that is more convenient. Associations Law, Sections 12.9(3), 13.8(3).

36. Another issue is Respondents' submission that the judgment of the United States District Court is on appeal at the United States Court of Appeal for the Fourth Circuit and evidence of that are the appeal papers which Respondents attached to their Motion to Dismiss Petition for Enforcement of Foreign Judgment. In response

to the Motion to Dismiss Petition for Enforcement of Foreign Judgment Petitioner filed a Declaration from Mr. William R. Bennett, III, one of counsel for Petitioner in the case before the United States District Court, in which he avers that the judgment of the United States District Court has been executed. Certainly, Petitioner did not expect that this Court would accept Mr. Bennett's Declaration as superior to the appeal papers which Respondents filed with their Motion to Dismiss the Petition for Enforcement of a Foreign Judgment. Had Petitioner seriously wanted to overcome those appeal papers it should have brought an official document from the clerk or other person with similar authority at the United States District Court which contradicts the probative effect of those appeal papers; but to submit the Declaration of Mr. Bennett is to present a self-serving paper.

37. Currently, Liberian law provides that an appeal serves as a stay of all proceedings; no execution shall issue on the judgment nor shall any proceeding be taken for its execution until final judgment of the Supreme Court is rendered. Civil Procedure Law, Section 51.20; AMINATA SHIPPING LINES, INC. v. HELLENIC CRUISING HOLIDAYS, 37 LLR 87. With the pendency of the appeal before the United States Court of Appeal for the Fourth Circuit, this Petition for Enforcement of Foreign Judgment is premature.

38. Therefore Respondents' application to dismiss the Petition for Enforcement of Foreign Judgment is in order.

39. WHEREFORE and in view of the foregoing, this Court renders the following judgment: (1) that the Motion to Rescind is hereby denied; (2) that the Motion to Quash/Dismiss Preliminary Injunction is hereby granted; and (3) that the Motion to Dismiss Petition for Enforcement of Foreign Judgment is hereby granted. Costs of these proceedings are ruled against the Petitioner.

The 1st respondent excepted to the above ruling, announced an appeal, filed a bill of exceptions, an appeal bond and a notice of completion of appeal all within the time allowed by statute. The appeal bond of the 1st respondent Flame S.A was secured by 4th respondent Continental General and Life Insurance Company valued at the mount of US$500,000.00 (Five Hundred Thousand United States Dollars). In support of the bond as well as in satisfaction of the statute relating to the posting of an appeal bond and the many Supreme Court's opinions the Continental General and Life Insurance Company attached a business registration certificate, license from the Central Bank of Liberia authorizing it to do insurance business in Liberia, a tax clearance obtained in May of 2015 and valid for 90 days, articles of incorporation and a reinsurer certificate from a Ghanaian company named Ghana Reinsurance Company Limited.

It is sufficiency and legality of this bond that the movants have challenged through a motion to dismiss filed before this Court on December 7, 2015. In their seventeen (17) counts motion they basically recited the basis for which the Commercial Court vacated the injunction bond and dismissed the 1st respondent's petition for enforcement of foreign judgment and specifically challenged the appeal bond filed by the 1st respondent in satisfaction of the appeal process from the dismissal of the petition for enforcement of foreign judgment as follows: 1) that the US$500,000.00 bond secured by the 1st respondent was insufficient to indemnify the movants in the event their three vessels were arrested and sold to pay the debts owed by Industrial Carriers; that the 1st respondent having secured an injunction bond of US$19,000,000.00 to enjoin the movants' vessels from leaving the bailiwick of Liberia, it should have secured a similar US$19,000,000.00 as an appeal bond in order to perfect its appeal from the dismissal of the petition for enforcement of foreign judgment and the vacation of the injunction bond; that the purpose of an injunction bond and an appeal bond is one and the same, all being for the sole purpose of indemnifying the respondent/appellee should there be a determination that the basis for the injunction or appeal was without merits; 2) that the tax clearance proffered by the Continental General and Life Insurance Company was invalid since same was secured in May of 2015 and valid for 90 days only; that the judgment from which the 1st respondent has appealed having been rendered in August, it should have proffered a tax clearance valid beyond August; 3) that the Supreme Court does not have jurisdiction over the reinsurer of the 1st respondent's surety, hence same does not qualify as part of a surety to an appeal bond.

As earlier stated because of the unconventional and legally amazing nature of the contentions contained in the movants' motion, we quote same verbatim as follows:

<u>MOVANT'S MOTION</u>

Sea Life Navigation Co., Green Jasper Ltd. and Notable Corporation, corporations organized under Liberian law with no authority to do business in Liberia or to own assets in Liberia (a.k.a. non-resident domestic corporations), Movants in the above-entitled Motion to Dismiss Appeal, move this Honorable Court to dismiss the Appeal, and for reasons showeth the following, to wit:

1. That Movants are non-resident corporations of Liberia and 1st Respondent Flame S.A. is a corporation organized under Swiss law. 2nd Respondent, Family Dollar Universal Insurance Service, is a resident domestic insurance company organized and existing under Liberian law; 3rd Respondent Sky International Insurance Corporation, is also a resident domestic insurance Company organized and existing under Liberian law. 4th Respondent Continental General and Life Insurance Company is a resident domestic corporation and the surety to 1st Respondent's Appeal Bond. Industrial Carriers Inc., Defendant in the original Action of Debt, is a corporation organized under the laws of The Marshall Islands; the original Action of Debt grows out of a claim by 1st Respondent against Industrial Carriers Inc. for certain alleged commercial debt, for which it is alleged that 1st Respondent obtained judgment against Industrial Carriers Inc. 1st Respondent then sought to enforce the judgment against Movants in Liberia for reasons that Movants are *alter egos* of Industrial Carriers Inc. and should therefore be equally liable for the satisfaction of the judgment debt. 1st Respondent then proceeded to institute a Petition for Enforcement of Foreign Judgment ("Enforcement Petition"), together with the ancillary Petition for Preliminary Injunction, against Movants.

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2. On 19 August 2015, the Honorable Commercial Court entered a Ruling in which it denied Ist Respondent's Motion to Rescind Ruling on Motion for Enlargement of Time, granted Movant's Motion to Quash/Vacate the Preliminary Injunction; and also granted Movant's Motion to Dismiss the Petition for Enforcement of Foreign Judgment. Counsel for 1 Sc Respondent appealed from this Ruling and perfected its Appeal with the filing and service of a Notice of Completion of Appeal on 14 October 2015. The Appeal Bond was never served on Counsel for Movants before the filing and service of the Notice of Completion of Appeal. As Counsel for Movants observed certain fatal defects in the Appeal Bond, especially the total disregard of the Judges of the Honorable Commercial Court of the reasons for granting the Motion to Quash/Vacate the Preliminary Injunction, Counsel for Movants has no alternative but to move this Honorable Court, consistent with law and practice hoary with age, to dismiss the Appeal. Hence this Motion to Dismiss Appeal!

3. Liberian law provides that as part of the procedure for securing a preliminary injunction the plaintiff shall give a bond in an amount to be fixed by the court, to the effect that the plaintiff, if it is finally

determined that he was not entitled to an injunction, will pay all damages and costs which may be incurred by any party who is found to have been wrongfully enjoined. *Civil Procedure Law, section 7.63(3).*

4. Pursuant to this provision of the *Civil Procedure Law,* when applying for a .Writ of Injunction in the Enforcement Petition proceeding 1st Respondent posted an Injunction Bond in the aggregate amount of US$19,000,000.00 (United States Dollars Nineteen Million). US$9, 500, 00.00 (United States Dollars Nine Million Five Hundred Thousand) is purported to be secured through the surety of 2nd Respondent Family Dollars Universal Insurance Service Incorporated and the other US$9,500,00.00 (United States Dollars Nine Million Five Hundred Thousand) is purported to be secured through the surety of 3 Respondent Sky International Insurance Corporation. Movants pray Your Honors to take judicial notice of the records of this matter in substantiation of these averments.

5. Liberian law is that when an insurance company is surety to a bond the following should be complied with:

1. There should be exhibited or attached to the bond the articles of incorporation of the insurance company as evidence that the insurance company does exist;

2. Registration certificate of the insurance company with the appropriate government ministry or agency indicating that it is authorized to do business in Liberia and that it is in good standing;

3. Clearance from the Ministry of Finance evincing that all taxes due as at the time of the execution of the bond have been fully paid; and

4. Evidence, such as certificate or other legal instrument from an appropriate legal authority such as the Central Bank or other insurance authority or similar government entity having regulatory responsibilities for insurance companies, that the insurance company possess assets within the Republic of Liberia sufficient to cover the obligation undertaken by the insurance company in the bond, exclusive of other bonds to which it is already serving as surety, commensurate with the amount stated in the bond. Mentor Initiative, Movant/Appellee v. Ahmed Fardoun, Respondent/Appellant, Motion to Dismiss Appeal, which grew out of the case: Ahmed Fardoun, Plaintiff v. Mentor Initiative, Defendant, Action of Debt, decided by the Supreme Court on January 24, 2014.

6. In addition to these standards set by the Honorable Supreme Court more than one (1).year ago the Honorable Supreme Court also ruled that a reinsurance issued by an insurance company or reinsurance company outside of Liberia will not be accepted as assets owned by the Liberian insurance company for purposes of serving as a surety on a bond. Mentor Initiative, Movant/Appellee v. Ahmed Fardoun, Respondent/Appellant, Motion to Dismiss Appeal, which grew out of the case: Ahmed Fardoun, Plaintiff v.

Mentor Initiative, Defendant, Action of Debt, decided by the Supreme Court on January 24, 2014.

7. In the case of 2nd Respondent Family Dollar Universal Insurance Service Incorporated, the only asset it exhibited with the surety bond is a 2015 reinsurance issued by The United African Insurance Brokers Limited of UAIB House, 318 Murtala Mohammed Way, Ebuta Metta, Yaba, Lagos, Federal Republic of Nigeria and the total amount of the reinsurance is US$525,000.00 (United States Dollars Five Hundred Twenty-Five Thousand). This reinsurance did not qualify as assets under the decision of the Supreme Court in the Mentor Initiative v. Fardoun case cited above. No other unencumbered assets, as required by the Honorable Supreme Court, were posted by 2nd Respondent Family Dollar Universal Insurance Services Incorporated. More importantly, 2nd Respondent Family Dollar Universal Insurance Services Incorporated did not exhibit any certificate or other authentication from the Central Bank of Liberia (regulator of insurance companies in Liberia) as evidence that it had the unencumbered assets to cover the US$9,500,00.00 (United States Dollars Nine Million Five Hundred Thousand) bond for which it served as surety. Movants pray Your Honors to take judicial notice of the surety bond filed by 2nd Respondent Family Dollar Insurance Services Incorporated in substantiation of these averments.

8. In the case of the 3rd Respondent Sky International Insurance Corporation, the only asset it exhibited with the surety bond is a 2015 reinsurance issued by the same The United African Insurance Brokers Limited of UAIB House, 318 Murtala Mohammed Way, Ebuta Metta, Yaba, Lagos, Federal Republic of Nigeria and the total amount of the reinsurance is US$150,000.00 (United States Dollars One Hundred Fifty Thousand). This reinsurance also did not qualify as assets under the decision of the Supreme Court in the Mentor Initiative v. Fardoun case cited above. No other unencumbered assets, as required by the Supreme Court, were posted by 3rd Respondent Sky International Insurance Corporation. More importantly, 3rd Respondent Sky International Insurance Corporation did not exhibit any certificate or other authentication from the Central Bank of Liberia (regulator of insurance companies in Liberia) as evidence that it had the unencumbered assets to cover the US$9,500,00.00 (United States Dollars Nine Million Five Hundred Thousand) bond for which it served as surety. Movants pray Your Honors to take judicial notice of the surety bond filed by Sky International Insurance Corporation in substantiation of these averments.

9. Movant says that obviously both 2nd Respondent Family Dollar Insurance Services Incorporated and 3" Respondent Sky International Insurance Corporation did not qualify under the standards set by this Honorable Court in the Mentor Initiative v. Fardoun case to be surety to the Injunction Bond to the amount of US$9,500,000.00 (United States Dollars Nine Million Five Hundred Thousand) each and they together never proffered to the

Honorable Commercial Court any other assets which could be used as collateral to the sureties. For those and other reasons, the Honorable Commercial Court granted the Motion to Quash/Vacate the Preliminary Injunction.

10. Movants submit that the Appeal Bond is insufficient for the indemnification contemplated and provided for by law. Instead of posting an appeal bond of US$19,000,000.00 (United States Dollars Nineteen Million), the same amount of the Injunction Bond, Respondents posted an appeal bond in the amount of US$500,000.00 (United States Dollars Five Hundred Thousand) with 4th Respondent Continental General and Life Insurance Company, with offices at Carey Street, Monrovia, Liberia, as surety. Movants first say that the Injunction Bond was intended to indemnify Movants if their three (3) vessels were arrested and sold to pay the debts owed by Industrial Carrier Inc. to 1st Respondent as prayed for in the Petition for Preliminary Injunction, which was filed with the Honorable Commercial Court by 1st Respondent. Since Respondent rightly determined on its own that for the Preliminary Injunction it had to post an Injunction Bond to the value of US$19,000,000.00 (United States Dollars Nineteen Million), then the minimum amount of the Appeal Bond should be the same US$19,000,000.00 (United States Dollars Nineteen Million). The reason for this is that the purpose of the Injunction Bond is the same as the purpose of the Appeal Bond — to cover costs and to indemnify the appellee against all losses, damages and injuries if it were determined that the appeal was without any basis or merit. Forestry Development Authority v. Forestry Development Authority Workers Union and Scott, 39 LLR 684; Ghartoe et al. v. Doe, 40 LLR 150. For this insufficiency of the Appeal Bond, the appeal is a fit subject for dismissal. *Civil Procedure Law, section 51.8.*

11. In support of the Appeal Bond, 4th Respondent Continental General and Life Insurance Company proffered a Tax Clearance Certificate (TCC No. 03819), dated the 1st day of May 2015 for a 90-day clearance period. Therefore, this Tax Clearance Certificate was valid only up to 28 August 2015. And so when this Tax Clearance Certificate was proffered by 4th Respondent Continental General and Life Insurance Company it had no validity or legal efficacy in clear violation of the standards Your Honors set in the Mentor Initiative v. Fardoun case; it is also in clear violation of the law governing surety as security for bonds. *Civil Procedure Law, section 63.2(4).* Movants therefore pray Your Honors to take judicial notice of the records of this Honorable Court in substantiation of these averments and to thereupon dismiss the Appeal for this reason.

12. Also in support of the Appeal Bond, 4th Respondent Continental General and Life Insurance Company proffered three reinsurance cover notes (Ref: TD.026/PRTTY I1 I A, dated January 2, 2015) issued by Ghana Reinsurance Company Limited of Accra, Ghana, over whom this Honorable Supreme Court has no jurisdiction; which is in clear violation of the standards set by this Honorable Court in the

Mentor Initiative v. Fardoun case. That is, Your Honors stated very emphatically and clearly that a reinsurance certificate issued by a reinsurance company of a foreign jurisdiction, over whom this Honorable Supreme Court has no jurisdiction, will not be accepted as part of a surety for an appeal bond, and for that reason the appeal shall be dismissed. Mentor Initiative v. Fardoun.

13. One of such reinsurance certificate in the Appeal Bond covers the following class of risks —*"All business underwritten by the reinsured either Directly or by way of facultative reinsurance in Their fire department including Allied perils"*. For the period of the reinsurance certificate, it provides, among other things, the following -" *Subject to three Months' notice of cancellation*" and *"To expire December 31, 2015"*. And for the Treaty Details, the reinsurance certificate provides, among other things, *"Maximum cession 10 lines US$400, 000"*. The appeal bond is not insurance for fire and its allied perils; and so this reinsurance certificate is not relevant to the appeal bond and cannot be used as part of the surety documents. In addition, the reinsurance certificate has a limit on its effective period (either a three-month notice of cancellation or December 31, 2015) and it is therefore invalid and inapplicable either for reason of the right reserved to the reinsurer to cancel it upon a three-month notice or after December 31, 2015. This Honorable Court has held that in order for the collateral or security to the appeal bond to be valid and effective it must be written in such a way as will allow it to remain effective until final determination is made of the appeal for which it is offered. Liberia Agricultural Company v. Twehwav and Dennis, 36 LLR 575. Since the reinsurance certificate proffered by Respondents & does not cover appeal bonds and its effectiveness is limited by time, the Appeal Bond and the entire Appeal should be dismissed; and Movant so prays.

14. The second of such reinsurance certificates covers the following class of risks - *"Performance Bond on behalf of Liberian and Foreign contractors operating in Liberia"*. For the period of the reinsurance certificate, it provides, like in the first reinsurance certificate, among other things, the following — "Subject *to three Months notice of cancellation"* and *"To expire December 31, 2015"*. And for the Treaty Details, the reinsurance certificate provides, among other things, "... *maximum cession of US$400, 000 any one contractor"*. The appeal bond is not a contractor's performance bond; it is an indemnity bond. So this reinsurance certificate is not relevant to the appeal bond and cannot be used as part of the surety documents. In addition, the reinsurance certificate has a limit on its effective period (either a three-month notice of cancellation or December 31, 2015) and it is therefore invalid and inapplicable either for reason of the right reserved to the reinsurer to cancel it upon a three-month notice or after December 31, 2015. This Honorable Court has held that in order for the collateral or security to the appeal bond to be valid and effective it must be written in such a way as will allow it to remain effective until final

determination is made of the appeal for which it is offered. Liberia Agricultural Company v. Tweh«ʷay and Dennis, 36 LLR 575. Since the reinsurance certificate proffered by Respondents does not cover appeal bonds and its effectiveness is limited by time, the Appeal Bond and the entire Appeal should be dismissed; and Movant so prays.

15. The third of such reinsurance certificates covers the following class of risks - *"To protect the Insured's Motor, Motor Third Party, Workmen's Compensation Act, Employer's Liability and General Third Party Liability Retained Account"*. For the period of the reinsurance certificate, it provides, like the two previous reinsurance certificate, among other things, the following — *"Subject to three Months' notice of cancellation"* and *"To expire December 31, 2015"*. And for the Geographical Scope, the reinsurance certificate provides: *"Liberia and Ecowas countries covered by the Brown Card scheme in respect of Liberian registered vehicles "*. This reinsurance certificate is for vehicle insurance; the appeal bond is not vehicle insurance. So, this reinsurance certificate is not relevant to the appeal bond and cannot be used as part of the surety documents. In addition, the reinsurance certificate has a limit on its effective period (either a three-month notice of cancellation or December 31, 2015) and it is therefore invalid and inapplicable either for reason of the right reserved to the reinsurer to cancel it upon a three-month notice or after December 31, 2015. This Honorable Court has held that in order for the collateral or security to the appeal bond to be valid and effective it must be written in such a way as will allow it to remain effective until final determination is made of the appeal for which it is offered. Liberia Agricultural Company v. Twehway and Dennis, 36 LLR 575. Since the reinsurance certificate proffered by Respondents does not cover appeal bonds and its effectiveness is limited by time, the Appeal Bond and the entire Appeal should be dismissed; and Movant so prays.

16. Movants say that 1st Respondent Flame S. A. and 4th Respondent Continental General and Life Insurance Company did not comply with the mandate of this Honorable Court in the Mentor Initiative v. Fardoun case to have attached to the Appeal Bond a certificate or some other authentication from the Central Bank of Liberia (regulator of insurance companies in Liberia), which evinces that 4th Respondent Continental General and Life Insurance Company had unencumbered assets, other than the reinsurance certificates proffered as part of the surety documents. In the absence of such certification from the Central Bank of Liberia, the aforesaid 4th Respondent Continental General and Life Insurance Company has merely confirmed that it does not have unencumbered assets, other than the reinsurance certificates, to be used as collateral or security to the Appeal Bond. For this failure, Movants say that the Appeal Bond and the entire Appeal are fit subject for dismissal; and Movants so pray.

17. Movants say that in the absence of a valid Appeal Bond, the Appeal Bond and the entire Appeal are a fit subject to be quashed and dismissed. And Movants *so* pray.

Wherefore, Movants pray Your Honors to dismiss the Appeal, order the Honorable Commercial Court to resume jurisdiction and enforce its judgment, and grant unto Movants any other and further relief as in such matters is made and provided by law.

On May 16, 2016, the 1st respondent filed its resistance to the above motion essentially contending that the grounds provided for a dismissal of an appeal are statutorily outlined in chapter 51.4 of the Civil Procedure Law; 1) that the grounds stated by the movants do not fall within any of the grounds provided in said chapter of the law; 2) that a motion challenging the sufficiency of an appeal bond must be filed within three (3) days as the date of the filing and service of the bond and that the movants having received the appeal bond on October 14, 2015, six days earlier then the time allowed by statute, their failure to challenge the bond amounts to waiver and laches; 3) that the contention of the movants as found in counts 2 through 9 are centered around the injunction bond and not the appeal bond; that same goes to the merits of the case on appeal and not the subject of a motion to dismiss; 4) that the amount proffered by Continental General and Life Insurance Company is sufficient to indemnify the movants for cost if they prevail on appeal; and 5) that all the supplementary documents required by this Court in support of an appeal bond were exhibited by the 1st respondent.

We similarly recite the 1st respondent's resistance as follows:

"RESPONDENT'S RESISTANCE

AND NOW COME RESPONDENTS and most respectfully pray Your Honour and this Honourable Court to deny and dismiss the Movant's Motion to Dismiss Appeal for reasons as showeth to wit:

1. Because as to the entire Movant's Motion, Respondent says that the grounds provided for the dismissal of an appeal are statutorily provided under chapter 51 of 1LCL Revised at section 51.4 which are as follows:

a) Announcement of the taking of an 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

The Movant did not state any of the grounds in the Motion to dismiss as provided for by the statute. Hence, the Motion should be dismissed.

2. Further to count one above, Respondent also says that the Motion should be denied because, the grounds stated in the Motion are basically challenges to the sufficiency to the Bond which should have

been filed within three (3) days as of the date of the filing and service of the appeal bond on the Movant. Instead, the Movant's Motion to dismiss the appeal was filed on December 7, 2015, even though the appeal bond was served on the 14th day of October, 2015 on the Movant, six days earlier than the time allowed by law. (See Civil Procedure Law chapter 51, Section 51.8). The failure to have challenged the bond within the statutory period means that the Movant suffers waiver and lathes and therefore estopped from filing the Motion to Dismiss, sixty one days after the receipt of the appeal bond. Hence, the entire Motion should be denied and dismissed.

3. That as to count two (2) thru count nine (9) of the Movant's Motion, Respondent says that the Movant's argument in these counts centered around the injunctive bond that was filed before the Court below. The injunction bond was filed based upon the Petition for Preliminary Injunction to enjoin and restrain the Movant herein from transferring interest in the three vessels that were owned by the three (3) non-resident domestic Liberian corporations, the Movant failed to file any corresponding bond but elected to file Motion to Quash the Motion for Preliminary Injunction without the filing of any corresponding bond. The Court quashed the injunction bond in a Ruling which is subject of an Appeal before this Court. The argument presented by these counts, that is to say, count two thru count nine, is an argument for the Appeal and not for the Motion to Dismiss an Appeal, because the bond that was filed for the Appeal is in the amount of US$500,000.00 (Five Hundred Thousand United States Dollars) which was accepted by the Court, because the judgment from which the Appeal was taken did not make any award to the Movant in these proceedings and that the filing of the Appeal bond was a mere fulfillment of the statutory requirements and to guarantee payment of cost to the Movant in these proceedings.

4. Further to counts one and two above, Respondent says that the 1St. Respondent herein is the Plaintiff in the original suit whose action was dismissed by the court below. Assuming without admitting that the Supreme Court grants the appeal, the matter is likely to be remanded which is the prayer of the Respondent. On the other hand, if the appeal is denied, the Movant herein will be entitled to only cost since the appeal is not based upon any award. In other words, the appeal bond filed by the Respondents herein is a mere statutory requirement since indeed there was no award out of which the appeal, subject of the Motion to Dismiss was based.

5. That as to count one of the Movant's Motion, Respondent says that the said count does not present any traversable issue, hence same need not to be traversed.

6. That as to count two (2) of the Movant's Motion, Respondent says that granted the fact that the appeal bond and the notice of completion of appeal were served simultaneously on the Movant, the Movant was still required to have filed its challenges to the bond or exceptions within three (3) days as prescribed by the statute. The filing of the exceptions or challenges sixty one days after the receipt or service of the appeal bond on the Movant makes the Motion to dismiss a fit subject for dismissal and Respondents so pray and submit.

7. That as to count three (3) of the Movant's Motion, Respondent says that while it is true that a bond filed in a Petition for Preliminary Injunction by the Plaintiff is intended to protect the Defendant to the extent that the party or Petitioner for Preliminary Injunction will pay all damages and costs which may be incurred by any party who is found to have been wrongfully enjoined, the Respondents say that at all stages of the trial, the Movant flagrantly failed and disregarded the Preliminary Injunction that was prayed for and granted the Respondents herein. The Injunction was intended to restrain and prohibit the Movants from selling and disposing of the three (3) Liberian non-domestic corporations from disposing of the three vessels owned by these corporations: the GRAFF, OLANDO BAY AND PACIFIC. Although the injunctive orders were issued by the court below, yet the Movant herein proceeded to and disposed of all of the vessels while the matter is still pending. Evidence of the disposal of these vessels were contained in two separate instruments filed before the court below, all of which were served on the Movant herein. The court below deliberately refused to comment on these allegations and the Movant herein failed to deny the allegation that the vessels, subject of these proceedings, have been disposed of by the Movant while the matter is pending undetermined. In other words, the Movant herein has suffered no damages as far as this matter is concerned, because besides the fact that the Movant disposed of or sold the vessels, the subject of these proceedings, the Movant failed to file any bond before the court below, in contravention of chapter 7 of 1LCL Revised, section 7.65, sub paragraph 3 which provides, "As a condition of granting an order vacating or modifying a preliminary injunction or a temporary order, a court may require a defendant to give a bond in an amount to be fixed by the court, that the defendant will pay to the plaintiff any loss as a reason of vacating or modifying order." The court below vacated the preliminary injunction which was not respected by the Movant without requiring the Movant/Defendant to file any bond; meaning that the Movant herein has incurred no cost to justify its challenges to the Respondent's appeal bond. Hence, count three of the Movant's Motion should be denied and dismissed.

8. That as to count four (4) of the Movant's Motion, Respondent says that the said count does not present any traversable issue and therefore need not to be traversed.

9. That as to count five (5) of the Movant's Motion, Respondent says that the Appeal Bond that was secured by the Respondent in these proceedings was secured from a licensed insurance company who is authorized by the articles of incorporation to issue indemnity bond. Consistent with the law, the articles of incorporation of the insurance company is attached to the documentations for the appeal bond before this Court. A registration certificate from the Central Bank of Liberia certifying that the insurance company is in good standing is also part of the documentation of the appeal bond. Thirdly, there is attached to the documents of the appeal bond, tax clearance evidencing that the insurance company is in good standing. Your Honours are most respectfully requested to take judicial notice of the case file. There is no mandatory requirement that further evidence were required from the

Central Bank to form a part of the appeal bond as in keeping with the statute. All that is required under our law relative to the role of the Central Bank, is that, the insurance company is licensed to issue out bond; must be listed or recognized by the Central Bank. In addition to the certificate from the Central Bank, the surety also submitted Re-Insurance certificates. The Insurance Company also submitted the value of its assets valued at US$2,000,000.00 (Two Million United States Dollars), all in support of the Appeal Bond.

10. That as to counts six, seven, eight and nine of the Movant's Motion, Respondent says that besides the reinsurance certificates that were proffered by the two Insurance Companies in the bond for Preliminary Injunction, the Insurance Companies also showed assets in Liberia. More besides, the entire argument as to whether or not the reinsurance were qualified or not under the bond, is subject of an appeal from the Ruling that dismissed the entire Petition for Enforcement of Judgment. The Movant's concentration should have been restricted to the US$500,000.00 (Five Hundred Thousand United States Dollars) Appeal bond and not on the US$19,000,000.00 (Nineteen Million United States Dollars) that was posted for the Petition for Preliminary Injunction which Ruling is subject of an Appeal.

11.Further to count 11 above, Respondent says that the Appeal bond cannot be US$19,000,000.00 (Nineteen Million United States Dollars) as is being argued by the Movant in Count ten (10) of its Motion, for reason that the Petition for Enforcement which was the basis for the Preliminary Injunction was dismissed. Once there was no money judgment in the case, the Movant will be only entitled to cost on Appeal which will have nothing to do with the amount sued for. More besides, and very strangely, the Movant did not file any counter bond against the US$19,000,000.00 (Nineteen Million United States Dollars) bond that was filed ty the Respondent, even though the statute provides that the Movant should file a counter bond as a basis to vacating a Preliminary Injunction. (Civil Procedure Law chapter 7, Section 7.65, sub paragraph B) Count ten (10) of the Movant's Motion should therefore be disregarded and dismissed.

12. That as to count eleven (11) of the Movant's Motion, Respondent says that the statutory requirements for the filing of an Appeal Bond by the Continental and General Life Insurance Company were met, in that the Respondent submitted along with the bond the Articles of Incorporation which authorized the said Insurance Company to file bond or serve as Surety as in keeping with our law. The exhibition of the tax clearance was simply to establish that the Insurance Company had indeed acquired tax clearance during the course of the calendar year. Respondent also says that the Affidavit of Surety that was signed by the Insurance Company and filed with the Court constitutes a binding contract to indemnify the Movant. More importantly, the Affidavit of Surety that was provided by the Insurance Company provides as follows:

"REPUBLIC OF LIBERIA) IN THE COMMERCIAL COURT OF LIBERIA
MONTSERRADO COUNTY) SITTING IN ITS AUGUST TERM, A. D. 2015
BEFORE HER HONOUR: EVA MAPPY MORGAN--------------------------CHIEF JUDGE
BEFORE HIS HONOUR: CHAN-CHAN A. PAEGAR-----------------ASSOCIATE JUDGE
BEFORE HIS HONOUR: RICHARD S. KLAH-------------------------ASSOCIATE JUDGE

Flame S. A., a Swiss Corporation, by and thru
Its Attorneys, the Henries Law Firm, Monrovia,
Liberia...PETITIONER/APPELLANT
VERSUS   BILL OF EXCEPTIONS
Sea Life Navigation Co., Green Jasper Ltd.
And Notable Corporation......................RESPONDENTS/APPELLEES

GROWING OUT OF THE CASE:

Flame S. A., a Swiss Corporation, by and thru
Its Attorneys, the Henries Law Firm, Monrovia,
Liberia...PETITIONER
VERSUS   PETITION FOR THE
Sea Life Navigation Co., Green Jasper Ltd. And
ENFORCEMENT OF
Notable Corporation ....RESPONDENTS FOREIGN
JUDGMENT

GROWING OUT OF THE CASE:

Flame S. A., a Swiss Corporation, by and thru
Its Attorneys, the Henries Law Firm, Monrovia,
Liberia..PLAINTIFF
VERSUS   ACTION OF DEBT
Industrial Carriers, Inc ....DEFENDANT

AFFIDVIT OF SURETY

PERSONALLY APPEARED BEFORE ME, a duly qualified and commissioned Justice of the Peace for and in Montserrado County, at my Office in the City of Monrovia, CONTINENTAL GENERAL AND LIFE INSURANCE COMPANY, SURETY represented by and thru its GENERAL MANAGER, and made OATH according to law, deposes and says:

1. THAT the CONTINENTAL GENERAL AND LIFE INSURANCE COMPANY within office of Carey Street, City of Monrovia, is a legally qualified SURETY within the Republic of Liberia in keeping with 1LCL Revised page 266, section 63.2 of the C.P.L.; and is authorized under Chapter 4 of the Insurance Law of Liberia and certificated by its Articles of Incorporation, section 8 duly filed with the Ministry of Foreign Affairs serve as SURETY within the Republic of Liberia.

2. THAT in view of its authorized as per a attached photostate of the Certificate of Authorization, it will INDEMNIFY the within named PETITIONER/APPELLANT in the penal sum of US$500,000.00 (Five Hundred Thousand United States Dollars) only out of the money RESERVED, set aside and available as stated herein-above, for and in respect of all costs and injury which the above named RESPONDENT/APPELLEE may suffer by reason of the action taken by the aforesaid PETITIONER/APPELLANT.

3. THAT IN THE EVENT is finally decided that the Principal/Appellant is not entitled to the AVAILABLE is US$500,000.00 (Five Hundred Thousand United States Dollars) being current money of the Republic free and below its income liabilities. All of this says to be true and correct in substance as well as in fact to the best of his knowledge and belief.

SWORN AND SUBSCRIBED to before me at my
Office in the City of Monrovia, this 13th day of
October, A. D. 2015.

JUSTICE OF THE PEACE, MONTSERRADO COUNTY, R.L.

By and thru its Management
CONTINENTAL GENERAL &
LIFE INSURANCE COMPANY"

As stated above in the Affidavit of Surety, the Insurance Company indemnified the Movant in these proceedings in the total amount of US$500,000.00 (Five Hundred Thousand United States Dollars) in respect of all costs and injury which the Movant may suffer by reason of this action. The Affidavit of Surety is a statutory requirement which obligates the Insurance Company in clear and unambiguous term. The Insurance Company will not be permitted to set aside these declarations as contained in the Affidavit of Surety to disavow the terms and conditions of the Affidavit of Surety under our law. Additionally, Respondent says that tax clearance is not a statutory requirement, the absence of which may be a ground for the dismissal of an Appeal. As far as the Respondent is concerned, the Trial Court was satisfied with the bond and all of its attachments before the approval. Count eleven (11) of the Movant's Motion should therefore be disregarded and dismissed.

13. Further to count thirteen (13) above, Respondent says that the standard that was set in the Mentor Initiative Vs. Fardoun case is not applicable in this case, because the real basis for the dismissal of the appeal in the Mentor Vs. Ahmed Fardoun case, was that the Appellant did not show its worth. In the case at bar, the Insurance Company clearly indicated that its assets in Liberia was worth US$2,000,000.00. No specific objection was raised against the information that was provided by the surety for the Appellant. Additionally, the case at bar is different from the Mentor Initiative Vs. Fardoun, because in the Mentor Vs. Fardoun the Insurance company for the Appellant did not exhibit its articles of incorporation in support of the bond. In the case at bar, the Insurance Company exhibited its articles of incorporation, (see pages 541-545 of the transcribed records). The certificate of business registration for the insurance company for the case at bar is also found on page 551 of the transcribed records. The Central Bank certificate is found on page 552 of the transcribed records. These documents which were all exhibited by the insurance company in the case at bar, clearly distinguished the Mentor V. Fardoun case. More besides, the holding of the court in the Mentor Vs. Fardoun case, that non compliance with the mandatory requirements of an appeal cannot be deemed as mere technicality referred. Those mandatory requirements as found in chapter 51 of the Civil Procedure Law, at chapter 51, section 51.4, where the statute made it clear 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 completion of notice of Appeal.

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

Respondent says that the mandatory statutory requirement contemplated by the above provision of the statute will be for example, a failure to file an appeal bond or the failure to fill bill of exceptions within the statutory period, not the omission of one paper from an appeal bond which has already been approved by the court. Respondent submits that the court must have been satisfied with the bond before approving it. Moreover, a certificate issued by the Central Bank of Liberia containing the requirements of the Supreme Court mentioned in the Mentor Initiative Vs. Ahmed Fardoun case are neither mandatory by statute nor by administrative regulations of the Central Bank.

In the case at bar, the Respondent's case was dismissed. While the case was in fact pending, the charter for which the injunctive bond was filed was disposed of by the Movant in flagrant disregard of*our law, even though an injunctive order was issued ordering the Movant not to transfer interest pending the final determination of this matter, the injunctive order provided as follows:

"REPUBLIC OF LIBERIA) IN THE COMMERCIAL COURT OF LIBERIA
MONTSERRADO COUNTY) TEMPLE OF JUSTICE, SITTING IN ITS MAY TERM, A. D. 2015
BEFORE HER HONOUR: -------EVA MAPPY MORGAN--------RESIDENT CHIEF JUDGE
BEFORE HIS HONOUR: --------CHAN-CAN A. PAEGAR-----RESIDENT ASSOCIATE JUDGE
BEFORE HIS HONOUR: ------RICHARD S. KLAH, SR. ---------RESIDENT ASSOCIATE JUDGE

FLAME S. A., a Swiss Corporation by and thru its Attorneys, the Henries Law Firm, Monrovia, Liberia..MOVANT
VERSUS **PETITION FOR PRELIMINARY INJUNCTION**
Sea Navigation Co., Green Jasper Ltd. And Notable Corporation, Monrovia, Liberia ....RESPONDENTS
GROWING OUT OF THE CASE:
FLAME S. A., a Swiss Corporation by and thru its Attorneys the Henries Law Firm, Monrovia, Liberia...PLAINTIFF **PETITION FOR THE ENFORCEMENT OF FOREIGN JUDGMENT**
VERSUS
Sea Navigation Co., Green Jasper Ltd. And Notable Corporation, Monrovia, Liberia ....DEFENDANTS
GROWING OUT OF THE CASE:
FLAMES S. A. Switzerland ....PLAINTIFF
VERSUS **ACTION OF DEBT**
Industrial Carriers Inc. (ICI) ....DEFENDANT

WRIT OF PRELIMINARY INJUNCTION

REPUBLIC OF LIBERIA, TO: NATHANIEL GILDERSLEEVES, ESQ., ACTING SHERIFF, COMMERCIAL COURT OF LIBERIA, MONTSERRADO COUNTY OR HIS DEPUTY: GREETINGS:
SEA NAVIGATION CO., GREEN JASPER LTD. AND NOTABLE CORPORATION, MONROVIA, LIBERIA ....RESPONDENT, GREETINGS:
YOU AND ALL AUTHORIZED SEA NAVIGATION CO., GREEN JASPER, LTD. AND NOTABLE CORPORATION, RESPONDENTS ARE JOINTLY, SEVERALLY, INDIVIDUALLY AND COLLECTIVELY, THEREBY JOINTLY RESTRAINED AND PROHIBITED FROM EXPOSING TO SALE, TRANSFER OF INTEREST, OR OTHERWISE FROM DISPOSING OF THE VESSELS: GRAFF (IMO NO: 9105645), ELOUNDA BAY (IMO NO: 9040508) AND PRIDE/PACIFIC (IMO NO: 9105645), PENDING FURTHER ORDERS OR INSTRUCTIONS FROM THIS COURT.
THE RESPONDENTS ARE FURTHER ORDERED TO REPORT TO THE COURT WITHIN 30 DAYS OF COMPLETION OF EVERY VOYAGE UNDERTAKEN BY THE VESSELS GRAFF (IMO NO: 9105645), ELOUNDA BAY (IMO NO: 9040508) AND PRIDE/PACIFIC (IMO NO: 90184664) SETTING OUT IN FULL THE PROFITS AND LOSSES MADE ON THOSE VESSELS; AND PROVIDING THE PLAINTIFF/MOVANT WITH ALL SUPPORTING DOCUMENTS NECESSARY IN ORDER TOP ALL A REASONABLE AND PROPER EXAMINATION TO BE MADE OF SUCH PROFIT/OR LOSSES.
YOU ARE FURTHER ORDER TO PAY INTO COURT OR INTO AN ESCROW ACCOUNT SET UP BY THE PARTIES, ALL PROFIT MADE FROM THE TRADING OF THE VESSELS GRAFF (IMO NO: 9105645), ELOUNDA BAY (IMO NO: 9040508) AND PRIDE/PACIFIC (IMO NO: 90184654) FROM THE DATE OF THIS ORDER.

YOU ARE FURTHER HEREBY COMMANDED TO APPEAR ON THE 2ND DAY OF JUNE, A. D. 2015
BEFORE THE COMMERCIAL COURT OF LIBERIA, TEMPLE OF JUSTICE, SITTING IN ITS JUNE TERM, A. D. 2015 AT THE HOUR OF TEN O'CLOCK IN THE MORNING, TO SHOW CAUSE, IF YOU SO DESIRE, WHY THE PRELIMINARY WRIT OF INJUNCTION OR TEMPORARY RESTRAINING ORDER SHOULD NOT BE PERPETUATED AND THE PETITION FOR PRELIMINARY INJUNCTION GRANTED.
REPUBLIC OF LIBERIA, TO: THE SHERIFF FOR THE COMMERCIAL COURT OF LIBERIA, OR TO HIS DEPUTY, GREETINGS:
YOU ARE HEREBY COMMANDED TO SERVE THE WITHIN Writ for Temporary Restraining Order or Preliminary Injunction on the within named Respondents and all of its authorized officers, leaving a copy of the Writ and the Petition for Injunction with each of the Respondents and to notify the Respondents to appear on the 2nd day of June, A. D. 2015 at the hour of ten O'Clock in the morning at the Commercial Court, Temple of Justice,' Monrovia, Liberia, to file its Resistance or Returns to the Petition for Preliminary Injunction and Temporary Restraining Order on or before the 9th day of March A. D. 2015.

<u>AND HAVE YOU THERE THIS WRIT OF PRELIMINARY INJUNCTION</u>

GIVEN UNDER MY HAND AND SEAL OF COURT
THIS 15TH DAY OF MAY, A. D. 2015
J. Amos F. Gbowah
ASSISTANT CLERK, COMMERCIAL COURT OF LIBERIA"

In fact, while the Appeal is still pending undetermined, the only remaining vessel that was available was also sold, in total disregard to our law, practice and procedure in this jurisdiction which provides that an Appeal from a Ruling serves as a Stay requirement. <u>See the Civil Procedure Law, Chapter 51, Section 51.20.</u>

14. That as to counts twelve, thirteen (13), fourteen (14) and fifteen (15) of the Movant's Motion, Respondent says that besides the reinsurance certificate that was proffered by Continental General and Life Insurance Company, Continental General and Life Insurance Company showed asset of US$2,000,000.00 (Two Million United States Dollars) in Liberia, which covered the US$500,000.00 (Five Hundred Thousand United States Dollars) bond that was approved by the Court in this matter. In keeping with our law extant, it is the omission of any of the statutory grounds as are provided under chapter 51, section 51.4 which may constitute a ground for the dismissal of an Appeal. Assuming without admitting that there were defects in the reinsurance certificate that was submitted by Continental General and Life Insurance Company, this does not constitute a ground under our statute to dismiss an Appeal. Counts twelve (12), thirteen (13), fourteen (14) and fifteen (15) of the Movant's Motion should therefore be disregarded and dismissed.

15. That as to counts sixteen (16) and seventeen (17) of the Movant's Motion, Respondent says that contrary to the assertion made by the Movant that the Insurance Company which provided the Insurance bond did not show any other certificate to qualify the Insurance Company, Respondent says that the Insurance Company exhibited copy of its Articles of Incorporation which is found on page632 of the transcribed records. The Insurance Company also exhibited Insurance License from the Central Bank of Liberia which is found on page 631 of the transcribed records, and also Central Bank of Liberia confirmed that Continental General and Life Insurance Company is one of the licensed Insurance Companies in Liberia. This information is being distorted so that this

Court cannot open the file to review the many reversible errors that were made by the Court below, especially so where the Court deliberately refused to pass on its injunctive order that were flagrantly disregarded by the Appellee in these proceedings, and also the failure by the Movant to observe our law on Appeal which serves as a Stay on the enforcement of a judgment, because the Movant sold two (2) of the vessels in the face of the injunctive order and the last vessel, subject of these proceeding was also sold by the Movant while the Appeal is still pending. Counts sixteen (16) and seventeen (17) of the Movant's Motion should be disregarded and dismissed.

16. Respondent denies all and singular the allegations contained in the Movant's Motion which were not specifically traversed in this Resistance.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondent most respectfully prays Your Honours and this Honourable Court to deny and dismiss the Movant's Motion to Dismiss the Appeal, consolidate the Motion to Dismiss Appeal and the Appeal, since the issues raised in both the Appeal and Motion are basically sue, to enable Your Honours to review the many reversible errors that were by the Court below and to grant unto Respondent any and all further relief that Honours may deem just, legal and equitable."

When the case was called by argument before the full bench of this Court, counsel for the movants advanced contentions similar to those recited in their motion: that the US$500,000.00 bond secured by the 1st respondent was insufficient to indemnify the movants in the event their three vessels were arrested and sold to pay the debts owed by Industrial Carriers; that the 1st respondent having secured an injunction bond of US$19,000,000.00 to enjoin the movants' vessels from leaving the bailiwick of Liberia, it should have secured a similar US$19,000,000.00 as an appeal bond in order to perfect its appeal from the dismissal of the petition for enforcement of foreign judgment and the vacation of the injunction bond; that the purpose of an injunction bond and an appeal bond is one and the same, all being for the sole purpose of indemnifying the respondent/appellee should there be a determination that the basis for the injunction or appeal was without merits; that the tax clearance proffered by the Continental General and Life Insurance Company was invalid since same was secured in May of 2015 and valid for 90 days only; that the judgment from which the 1st respondent has appealed having been rendered in August, it should have proffered a tax clearance valid beyond August; that the Supreme Court does not have jurisdiction over the reinsurer of the 1st respondent's surety, hence same does not qualify as part of a surety to an appeal bond.

Counsel for the respondent on the other hand maintained that the motion should have been filed in the court below since the filing and service of the bond was done six days prior to the expiration of the time allowed by statute; that the contention of the movants as found in counts 2 through 9 are centered around the injunction bond and not the appeal bond; that same goes to the merits of the case on appeal and not the subject of a motion to dismiss; that the amount proffered by Continental General and Life Insurance Company is sufficient to indemnify the movants for cost if they prevail on appeal; and that all the supplementary documents required by this Court in support of an appeal bond were exhibited by the 1st respondent. Counsel for the respondent also contend that in addition to the reinsurer certificate proffered by the respondent's surety, the said surety exhibited assets in Liberia to the value of US$2,000,000.00 and that assuming without admitting that there were defects in the reinsurer certificate, same cannot be a ground for the dismissal of respondent's appeal since it is not one of the statutory grounds provided in our laws.

A review of the facts as certified to us, the contentions of the parties contained in the respective pleadings and the argument before this Court has informed our minds to dispose of this matter on two issues. They are:

1) Whether the movants, having been served with the appeal bond six days prior to the expiration of the time allowed by law for the completion of any appeal, a failure to file their motion challenging the sufficiency of the bond in the court below is tantamount to a waiver and laches for which the motion should be ignored?
2) Whether under the circumstances of the case, the appeal bond is insufficient and thereby dismissible?

We shall address the issues in order of their appearance, as to the first issue whether the movants, having been served with the appeal bond six days prior to the expiration of the time allowed by law for the completion of any appeal, a failure to file their motion challenging the sufficiency of the bond in the court below is tantamount to a waiver and laches for which the motion should be ignored, an examination of the applicable law and the circumstances of the present case is required as a basis for finding a resolution thereof.

While it is the law that the failure to file a valid or sufficient appeal bond within the time specified by statute is sufficient ground for the dismissal of an appeal, *MIM Liberia Corporation v. Toweh,* 30 LLR 611 (1983), *text at 619; Dahn v. Waeyen at al.,* 29 LLR 119 (1981), *text at 123; Freeman v. Lewis et al.,* 40 LLR 103 (2001) text at 107*; The Intestate Estate of the Late Ella Gibson v. The Intestate Estate of the Late Florence A. Gibson, March Term 2008; Percy Williams v. Mary F. Kpoto,* Supreme Court Opinion, October Term, A. D. 2012, the law also obligates the party wishing to dismiss an appeal on grounds of the insufficiency of an appeal bond to mount such challenge within a specified period of time otherwise it would be construed that the party waived his/her right to assert such challenge.

The law provides:

"§ 63.5. Exception to surety; allowance where no exception taken.

> 1. *Exceptions.* A party may except to the sufficiency of a surety by written notice of exceptions served upon the adverse party within three days after receipt of the notice of filing of the bond. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs.
> 2. *Allowance where no exception taken.* Where no exception to sureties is taken within three days or where exceptions taken are set aside, the bond is allowed." *Civil Procedure Law, Rev. Code 1:63.5(1)(2).*

Therefore if a party believes that the appeal bond is insufficient or if he/she has justifiable reasons to so believe and wishes to challenge the bond, the general construction of the law is that such challenge must be filed with the lower court within three days following the filing and service of the bond on him. The rationale therefor is that the filing of an insufficient bond does not *ifso facto* render the appeal dismissible rather a challenge thereto would give the appealing party the requisite time to make the bond sufficient in accordance with the provision of the statute which states: *"Motion to justify. Within three days after service of notice of exception, the surety excepted to or the person on whose behalf the bond was given shall move to justify, upon notice to the adverse party. The surety shall be present upon the hearing of such motion to be* *examined under oath. If the court finds the surety sufficient, it shall make an appropriate endorsement on the bond."* Id. 63.6

But this exercise is only cognizable before the trial court when the appeal is announced, exceptions are taken and filed and the appeal bond is filed with the court for approval and served on the opposing party without the filing of the notice for completion of the appeal. This is because, upon the filing of the notice of completion of appeal the trial court completely lost jurisdiction and cannot entertain any aspect, even in the slightest manner, of the case which at the time shall be properly venue before the Supreme Court for hearing and determination. *Abdullah M. Housseini and Zeinah M. Housseini v. Abraham Kaydea, Supreme Court Opinion, March Term, 2012.*

We have reviewed the law relating to appeal bond and notice of completion of appeal herein to appreciate the positions taken by the movants and the respondent in support of their respective argument. The movants content that both the appeal bond and the notice of completion of appeal was served on the same day, same being October 14, 2015, therefore the proper venue for the filing of the motion to dismiss for insufficient appeal bond is the Supreme Court *en banc*. Counsel for the 1st respondent did not dispute the contention of the movants but advanced the argument that since the appeal bond was served on the movants on October 14, 2015, a date which they claimed preceded the expiration date for the completion of the appeal by six days, the movants should have challenged the appeal in the court below within three days as of the date of service. In other words it is the argument of the counsels for 1st respondent that irrespective of the filing and service of the notice of completion of appeal, once the time allowed for the completion of an appeal has not exhausted, the movants should have filed its challenge to the appeal bond in the lower court.

Not only that such an argument failed to gain our persuasion, we are indeed and equally taken aback by its legal untenability, especially so since same is being advanced by members of this Honorable Court's bar. It is an elementary principle of law, articulated by this Court in copious of opinions that upon the service and return of the Notice of Completion of Appeal, the trial court completely lost jurisdiction over the case. In every such instance, the case is legally before the Supreme Court for hearing and determination. It does not matter whether the notice of completion of appeal is filed in the first 10 days within the 60 days period allowed for the completion of appeal or whether out of the 60 days period the appellant files and serves the appeal bond together with the notice of completion of appeal on the 30th day with 30 days preceding the expiration of the 60 days period. Once the notice of completion of appeal has been filed and served the trial court completely lost jurisdiction and the matter is assumed by the Supreme Court. To allow the trial court to exercise any authority over the case would be equivalent to subjecting the Supreme Court exercise concurrent jurisdiction with a trial court, a power which no court in this Republic or elsewhere has.

We hold therefore that the movants having been served with the appeal bond and the notice of completion of appeal on the same day, October 14, 2015 the movants' motion to dismiss the appeal bond is properly before the Supreme Court.

The second issue is whether under the circumstances of the case, the appeal bond is insufficient and thereby dismissible. Our law provides that the preparation and submission of an appeal bond rests on statutory requirements and must be complied with and dismissal of an appeal on the ground of non-compliance with the statutes is not a matter of mere technicality. It is a matter of compulsory and mandatory dictates and direction by the statute. *Chris Toe v. FrontPage, Supreme Court Opinion, March Term 2013.* The movants content that the appeal bond filed by the 1st respondent is defective and warrants the appeal dismissible; that the 1st respondent having filed an injunction bond of US$19,000,000.00 during its motion for preliminary which was subsequently quashed and which is now subject of this appeal sought to be dismissed, the 1st respondent should have similarly filed an appeal bond in the same amount of US$19,000,000.00 instead of 500,000.00; that the purpose of the injunction bond and the appeal bond is one and the same, hence the filing of a US$500,000.00 bond instead of US$19,000,000.00 makes the bond insufficient and defective.

We are similarly concerned with the contention of counsels for the appellees that the 1st respondent was required to secure a bond equal to the US$19,000,000.00 bond filed to obtain a preliminary injunction. Our curiosity in the logic or legality of the counsels' argument is gleaned from the undisputed facts of the matter before us which showed that the US$19,000,000.00 bond was secured by the 1st respondent in order to obtain the preliminary injunction; that subsequent thereto the movants filed a motion to quash the preliminary on grounds that the bond was defective and the motion was granted on said grounds. It is ruling granting the motion to quash the preliminary injunction that forms part of the appeal before us. In other words, were we to dispose of this motion to dismiss and proceed to determine the merits of the appeal, the sufficiency or defectiveness of the injunction bond would eventually be an issue dispositive of the mean appeal and thus has nothing to do with the bond filed to perfect such appeal.

Moreover, the purpose of an injunction bond and an appeal bond is not the same as the counsel seem to impress upon us. First preliminary injunction is preventive; it restrains the commission or omission of an act before final judgment. It is granted where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. *Civil Procedure Law Rev. Code 1:7.61.* This means that a preliminary injunction seeks to protect the rights of a plaintiff during the pendency of an action.

Unlike a preliminary injunction which seems pre-judgmental and terms to protect the plaintiff against immediate and irreparable injury, loss, or damages which may result unless the defendant is restrained before a hearing can be had, an appeal does not protect any particular party but rather it stays all proceedings, save in those exceptional cases, subject to a final determination of the matter in dispute. Hence, an appeal protects the rights of all parties by maintaining the matter at *status quo* until it is finally determined on its merits or otherwise.

That is why prior to the granting of a motion for a temporary restraining order, the plaintiff is required to give a bond in an amount to be fixed by the court, to the effect that the plaintiff, if it is finally determined that he was not entitled to a restraining order, will pay all damages and costs which may be incurred by any party who is found to have been wrongfully restrained, Id. 7.64 while the appeal bond is secured by the appellant 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. Id. 51.8.

Additionally, if the judgment from which the appellant appealed does not award a money judgment, the purpose of the appeal bond is simply to cover costs of court incurred during the hearing and disposition of the matter whereas the injunction bond sole purpose remains the same.

The records in the case before use show that, the judgment from which the 1st respondent has appealed did not award money judgment, thus the sole purpose of the appeal bond filed herein is to cover cost of the proceedings. We hold therefore that the US$500,000.00 bond filed by the 1st respondent is sufficient to cover the cost of the proceeding.

A second challenge mounted against the appeal bond and the appeal is that the tax clearance proffered by Continental General and Life Insurance Company is invalid. A review of the records show a tax clearance dated May 1, 2015 wherein there appears the statement that it is valid for 90 days. The movants/appellees assert that by its calculation, the clearance is valid only for the period up to August 28, 2014, and that as such it could not be used in fulfilment of one of the requisites required by the decisions of the Honourable Supreme Court for a valid appeal bond, since the judgment from which the 1st respondent was handed down on August 19, 2015 and the bond in support of the appeal was filed on October 13, 2014, long after the expiry date on the tax clearance.

The respondents/appellants, on the other hand, assert that the surety insurance company had already made payment of it tax for the taxable year and that it had secured and attached tax clearance at the time simply in verification that from the tax authority that the surety had in fact paid its tax for the taxable period, which it believed met the requirement of the law as espoused in the Opinions of the Honourable Supreme Court. In order to resolve the issue, we take recourse to the exact wording of the requirement as articulated by the Supreme Court, as this will enable us to explore the intent of the requirement.

We note that the requirement is stated in the several Opinions of the Supreme Court wherein an insurance company's service as surety to an appeal bond is challenged as the third basic requirement. Here is how the Supreme Court worded the requirement: "(3) Clearance from the Ministry of Finance evincing that all taxes due at the time of the execution of the bond have been fully paid". We take note that in respect of the payment of corporate taxes, the law sets a fix period within which a tax due the Government must be paid.

The purpose of the tax clearance is to satisfy the mandatory requirement of the statute that any surety, be it natural person or an issuance company, who wishes to tender an appeal bond must comply with the section 63.2 of the Civil Procedure Law, which amongst others things, requires that the total value of the property offered as bond must be exclusive of all liens and encumbrances and that there must be a statement showing all unpaid taxes due government at the time of the execution of the bond. An insurance company, being synonymous to a natural person for the purpose of serving as surety to an appeal bond, also has the obligation to show, by the requisite evidence, that at the time of proffering an appeal bond, it had paid all taxes due government and that it is free from any lien which may otherwise render the bond defective.

The law does not stipulate that the tax shall be paid in piece meal but that it is paid in a lump sum at the time it is due, except where there is an expressed arrangement between the Government and the tax payer for a different schedule. The argument being made by the movants/appellees seems to be that even if a taxpayer, such as an insurance company authorized to serve as surety to a bond, makes a payment of its tax for the taxable year, it must secure from the Government a tax clearance each time it desires to serve in that capacity or play that role.

We do not believe that by the requirement this Court intended that insurance companies serving as surety to a bond should be subjected to such inconvenience. The intent of the requirement was to ensure that there was no lien as such on the insurance company as would impair the obligation undertaken as surety to a bond. We believe that the insurance company, in securing a tax clearance for the taxable year, and the Government, in issuing a tax clearance to the insurance for the taxable year, attest that with no reference to the date in the tax clearance, the tax for that taxable year had been paid. We do not believe that the Government would issue a tax clearance within a taxable year if the tax payer had not met the tax requirement of the Government. Hence, although the tax clearance states that it is for a period of ninety days, unless one challenging the clearance can show that in fact following the ninety day period the tax had not been paid, this Court will conclude that the tax for the taxable year within which the clearance is issued has in fact been paid, unless specifically refuted. There are no indications in the records that the movants/appellee refuted this allegation or that they proffered any contrary evidence to show that the surety insurance was non-compliant, that is, that it had not met its tax requirement for the taxable year when it executed the appeal bond.

We therefore do not see how the bond should be disqualified because of a period stated in the tax clearance when the clearance could or should not have been issued unless for the taxable year. It is only at the expiration of the taxable year, if the tax clearance is presented for the previous taxable year that a successful challenge can be mounted against the clearance as not fulfilling the requirement laid out in the Opinions of the Supreme Court. This clearly meets the intent, the spirit and wording of the requirement, and as we have seen no evidence in the records refuting the claim of the respondents/appellants and how the tax system works in Liberia, we are not inclined to sustain the contention of the movants/appellees in that respect.

A third contention of the movants' counsel is that the reinsurer of the 1st respondent's surety is not a resident domestic corporation; that the Supreme Court do not have jurisdiction over it and thus it should not be accepted. As we have observed that the judgment from which the 1st respondent has appealed does not award money, the purpose of the appeal bond is simply to cover cost of the proceedings and having determined that the US$500,000.00 is sufficient to cover the cost of the proceedings, the appeal shall not be dismissed on technical grounds. The intent of the Legislature in passing the Act setting the grounds for dismissing an appeal was primarily to discourage the dismissal of appeals on technical grounds and to give the appellants an opportunity to have their cases heard by the Supreme Court on their merits. *Forestry Development Authority v. Forestry Development Authority Workers Union (FDAWU),* 39 LLR