IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR....................CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.........ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH....................ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE............................ASSOCIATE JUSTICE
BEOFRE HIS HONOR: YUSSIF D. KABA..............................ASSOCIATE JUSTICE

Afriland Bank, by and thru its President, Chief Executive Officer, Mr. Hamadou O. Bayo and all other authorized officers of the City of Monrovia, Liberia..........Movant	
Versus	MOTION TO DISMISS APPEAL
The Intestate Estate of Kamah Blanton represented by its Administratrix, Belle Dunbar-Roberts and Kwamenhe Enterprise, represented by its General Manager, Benne Dunbar-Roberts of the City of Monrovia, Liberia ....Respondents	
GROWING OUT OF THE CASE:	
The Intestate Estate of Kamah Blanton represented by its Administratrix, Belle Dunbar-Roberts and Kwamenhe Enterprise, represented by its General Manager, Benne Dunbar-Roberts of the City of Monrovia, Liberia ....Appellants	
Versus	APPEAL
Afriland Bank, by and thru its President, Chief Executive Officer, Mr. Hamadou O. Bayo and all other authorized officers of the City of Monrovia, Liberia..........Appellee	
GROWING OUT OF THE CASE:	
Afriland Bank, by and thru its President, Chief Executive Officer, Mr. Hamadou O. Bayo and all other authorized officers of the City of Monrovia, Liberia.........Petitioner	
Versus	PITITION FOR JUDICIAL REVIEW
The Intestate Estate of Kamah Blanton represented by its Administratrix, Belle Dunbar-Roberts and Kwamenhe Enterprise, represented by its General Manager, Benne Dunbar-Roberts of the City of Monrovia, Liberia ....Respondents	
GROWING OUT OF THE CASE:	
Afriland Bank, by and thru its President, Chief Executive Officer, Mr. Hamadou O. Bayo and all other authorized officers of the City of Monrovia, Liberia...........Movant	
Versus	MOTION TO

	) DISMISS
The Intestate Estate of Kamah Blanton represented by its Administratrix, Belle Dunbar-Roberts and Kwamenhe Enterprise, represented by its General Manager, Benne Dunbar-Roberts of the City of Monrovia, Liberia ....Respondents	)
GROWING OUT OF THE CASE:	)
The Intestate Estate of Kamah Blanton represented by its Administratrix, Belle Dunbar-Roberts and Kwamenhe Enterprise, represented by its General Manager, Benne Dunbar-Roberts of the City of Monrovia, Liberia ....Plaintiffs	)
Versus	) ACTION: DAMAGES FOR WRONG
Afriland Bank, by and thru its President, Chief Executive Officer, Mr. Hamadou O. Bayo and all other authorized officers of the City of Monrovia, Liberia.......Defendant	)

Heard: October 29, 2019 Decided: February 7, 2020

When this case was called for hearing, Counsellor Sylvester D. Rennie of the Legal Watch, Inc. appeared for the movant. Counsellor P. Jagba Nah of the Stubblefield, Nigba & Associates Law Firm appeared for the respondents.

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

This case is on review before the Honorable Supreme Court of Liberia on a motion to dismiss appeal filed by the intestate estate of Kamah Blanton and Kwamenhe Enterprise, respondents/appellants herein, against the final ruling of the panel of judges of the Commercial Court of Liberia, overturning the ruling of His Honor Judge Richard S. Klah dated June 28, 2019, in favor of the Afriland Bank, movant/appellee herein. The movant is seeking the dismissal of the respondents' appeal on ground that the appeal bond filed by the respondents is defective because it did not meet the requirements set by law.

The records in this case reveal that on December 30, 2016, respondents filed before the Commercial Court of Liberia an action of damages for wrong against the movant alleging that the movant had filed a lawsuit in the Commercial Court of Liberia prematurely against the respondents in violation of the terms of a credit facility letter. The movant filed along with its answer a motion to dismiss the respondents' complaint contending that it filed a complaint in the Commercial Court to recover money that the respondents owed the movant, Afriland Bank; that it obtained judgment against the respondents and said judgment was duly satisfied by the respondents without objection; that by not objecting, the respondents waived their rights to raise any issues; hence, the complaint should be dismissed. The respondents filed resistance to the motion setting forth that the motion should be denied for its failure to state any of the statutory grounds provided in Section 11.2 of the Civil Procedure Law of Liberia on motion to dismiss. The motion was assigned for hearing, and having listened to arguments from the counsels for the parties, Judge Richard S. Klah ruled and denied the motion asserting that the argument raised by the counsel for the movant that the respondents remained silent and accordingly satisfied the previous judgment without objection in an action of debt by attachment is not supported by law. The movant noted exceptions to the ruling and filed a petition for judicial review before the panel of three judges of the Commercial Court.

On review, the panel of judges reversed Judge Richard S. Klah's ruling. The respondents noted exceptions to the ruling of the panel of judges, announced an appeal to the Supreme Court of Liberia and perfected the appeal.

On August 23, 2019, the movant filed with the Supreme Court of Liberia a motion to dismiss respondents' appeal. The movant alleged in its motion that the appeal bond is defective in so far that it did not show any evidence that the insurance company possesses assets in the Republic of Liberia commensurate with the amount being offered to indemnify the movant in the event of final judgment; that the insurance company bound itself to the amount of Ten Thousand United States (US$10,000.00) Dollars whereas the bank statement annexed to the appeal bond as at July 3, 2019, has a net balance of Three Hundred Eighty-Nine Thousand, Four Hundred Thirty-Eight Liberian Dollars (L$389,438.54) and Fifty-Four Cents which when converted by the Central Bank rate of L$250.00 to US$1.00 will amount to One Thousand, Nine Hundred United States (US$1,900.00) Dollars; that said amount is insufficient to indemnify movant should the Court render judgment in favor of the movant. The movant further contended that perusal of the appeal bond shows that in spite of claims by the insurance company that there are no liens, unpaid taxes or incumbency against any of its property, real or personal, there is no showing to prove that the insurance company has assets within the Republic of Liberia neither did any regulatory agencies of government vouch as to the whereabouts of the assets. To strengthen its contention, the movant cited the case: *Margaret E. Robertson et al, v. The Quiah Brothers*, Supreme Court Opinion, October Term 2011, in which the Supreme Court of Liberia set the following requirements/standards listed herein that must be met for an insurance appeal bond to be valid. They are:

a. "The exhibition or attachment to the bond of the Articles of incorporation of the insurance company as evidence that the company exists";
b. "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";
c. "Clearance from the Ministry of Finance evidencing that all the taxes due as at the time of the execution of the bond have been fully paid"; and
d. "Evidence, such as a certificate or other legal instruments from an appropriate legal authority such as the Central Bank of Liberia 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 respondents resisted the motion to dismiss the appeal as follows:

1. "That as to the entire motion, respondents/appellants say that same is a fit subject for dismissal".

2. "That as to the allegation of movant/appellee bank as contained in its motion to dismiss respondents/appellants' appeal that there is no showing of evidence of the assets of respondents/appellants' surety in the Republic of Liberia to commensurate with the amount being offered to indemnify the movant/appellee bank in the event of final judgment, respondents/appellants say that they are suitably situated to indemnify movant/appellee in the event of any final judgment against respondents/appellants because the surety's reinsurance policy is sufficient proof to demonstrate surety's liquidity in indemnifying movant/appellee bank. Please see pages 223-226 of the case records for surety's reinsurance cover note; hence, respondents/appellants' appeal bond is not defective in terms of insufficient funds. Therefore, movant/appellee bank's motion should and must be denied and dismissed".

3. "Further to count two (2) hereinabove, respondents/appellants say that the judgment appealed from is not one of money judgment. The Supreme Court has held in some of its Opinions that where the judgment appealed from does not state an amount, the purpose of the appeal bond becomes only one of indemnification of the appellee from the cost of court. That the judgment appealed from not being a money judgment, though the bank statement reflects a balance less than the amount quoted in the indemnity bond, movant/appellee can be indemnified from surety's bank balance".

4. "That the movant contends in its motion to dismiss that respondents' surety failed to state the location within the Republic where respondents' surety has its properties, both real and personal, worth US$10,000.00 and set aside by the surety as security for the appeal bond. Movant further contends that the insurance company has issued other bonds to other institutions which cases are either before this Honorable Supreme Court or other courts within the Republic contrary to the claim that there are no liens, unpaid taxes or any other encumbrances on or against any of the property and movant fears that respondents will not be able to indemnify movant as a result of a defective bond. Respondents say that this is an assumption on the part of movant which cannot be entertained when it comes to filing for the defectiveness of an appeal bond. While it is true that the filing of a defective bond is a ground for the dismissal of an appeal, the defectiveness must be shown and not assumed. *Moddermann v. Roberts*, 1 LLR 218".
5. "Respondents deny all and singular the allegations contained in movant's motion that are traversed herein".

From what we have read, the facts in this case are not disputed. However, from the argument advanced before this Court and the averments contained in the motion to dismiss the appeal, the primary contention of the movant is that the appeal bond did not meet the requirements laid down by law which are necessary for an insurance appeal bond to be valid; especially, where the insurance company bound itself to a Ten Thousand United States (US$10,000.00) Dollars bond but the bank statement attached to the appeal bond as at July 3, 2019, showed a net balance of Three Hundred Eighty-Nine Thousand, Four Hundred Thirty-Eight Liberian Dollars (L$389,438.54) and Fifty-Four Cents which is far less in amount, meaning that if the Supreme Court rules in favor of the movant, the respondents would not be able to indemnify the movant. The respondents, resisting the motion to dismiss the appeal, contended that though it bound itself to a bond worth Ten Thousand United States (US$10,000.00) Dollars, the appeal grows out of a non-money judgment when they lost their case in the court below; hence, the amount contained in its bank statement is sufficient to satisfy the court costs.

Following a careful review of the records in this case, the facts analyzed and the argument heard on the contentions presented by the parties, the two issues to be determined by this Court are:

1. Whether or not the respondents' surety, the Sky International Insurance Corporation, complied with the standard set by this Court for insurance company serving as surety; and

2. Whether or not under the facts and circumstances of the case at bar, the dismissal of the respondents' appeal based on technical formalities will serve the ends of justice?

To answer these questions, we take recourse to the case: *Margaret E. Robertson et al, v. The Quiah Brothers*, Supreme Court Opinion, October Term 2011, in which the Supreme Court set the standards that insurance companies serving as sureties must meet which were restated in a preceding paragraph at page four (4) of this Opinion.

Review of the files in the instant case shows that the respondents' surety, Sky International Insurance Corporation, annexed the following documents to its bond:

1) Certificate of Business Registration
2) Tax Clearance Certificate
3) Insurance License from the Central Bank of Liberia
4) Amendment to the Re-stated Articles of Incorporation
5) Bank Statement

We observe that the respondents' surety, Sky International Insurance Corporation, did not adduce any evidence, either in the form of a certificate or other legal instrument from an appropriate legal authority such as the Central Bank of Liberia or other insurance authority or similar government entity having regulatory responsibilities for insurance companies, that Sky International Insurance Corporation, possesses assets within the Republic of Liberia sufficient to cover the obligation undertaken by it in the bond, exclusive of other bonds to which it is already serving as surety commensurate with the amount stated in the bond as required in the Quiah Brothers' case. Notwithstanding, the respondents' surety attached to its bond a bank statement showing a bank balance of Three Hundred Eighty-Nine Thousand, Four Hundred Thirty-Eight Liberian Dollars (L$389,438.54) and Fifty-Four Cents which the counsel for the respondents argued is sufficient to underwrite its financial responsibility and that the judgment from which the appeal is taken is not a money judgment. This argument by respondents' counsel may not be countenanced by this Court for it contradicts and undermines the obligation the surety undertakes to bind itself to, that is to say, a Ten Thousand United States (US$10,000.00) Dollars bond which is far above the amount stated in the surety's bank statement. In cases where the Supreme Court had to decide the liquidity of sureties to appeal bonds, it held that "the object of appeal bond with sureties is to secure cost to the appellee and to assure the court of compliance with its judgment". *Musa Kamara v. Gmah Wolloh*, 29 LLR 177, 180 (1981); *The Intestate Estate of William J.M. Bowier v. Hester Williams et al,* 40 LLR 84, 89 (2000). Hence, the bank statement attached to the appeal bond contains insufficient funds to commensurate the obligation to which the respondents' surety binds itself and is not within the ambit of the law.

Going further, the respondents argued that the surety's reinsurance policy is sufficient to indemnify the movant/appellee should in case it is unsuccessful at the appellate level. We decline to agree with the respondents for this Court has also espoused in the case: *Mentor Initiative v. Ahmed Fardoun,* Supreme Court Opinion, October Term 2013, that: "it will not accept a reinsurance policy from a foreign company as an insurance company having assets within the Republic of Liberia to cover its obligation to be within the contemplation of the law." In addition, the Supreme Court of Liberia has also emphasized that "a defective appeal bond is a mandatory statutory ground for the dismissal of an appeal." *Cavalla Rubber Corporation v. Liberia Trading and Development Bank,* 38 LLR 153 (1995). The reliance of the respondents on the reinsurance policy as evidence of their liquidity position is unacceptable; hence, this Court reaffirms the assertion as quoted in the *Mentor Initiative's* case that it is not within the contemplation of the law for a foreign company as an insurance company not having assets within this Republic to offer as surety. We hold therefore that said reinsurance policy is inapplicable to the standards set by this Court in the *Quiah Brothers'* case. We however take note that the Central Bank of Liberia issued an insurance license to the surety of the respondents, the Sky International Insurance Company, as annexed to their motion but the content of the insurance license does not indicate the assets of the insurance company in this Republic, but this Court presumes that the license issued by the Central Bank of Liberia to the respondents' surety is evidence that the surety has met all requirements to exist as insurance company in Liberia.

This brings us to the second issue and final issue, whether or not, under the facts and circumstances of the case at bar, the dismissal of the respondents' appeal based on technical formalities will serve the ends of justice?

Notwithstanding the cases cited above and considering the argument of the movant that the amount of Three Hundred Eighty-Nine Thousand, Four Hundred Thirty-Eight Liberian Dollars (L$389,438.54) and Fifty-Four Cents being insufficient to commensurate the amount stated in the appeal bond, we do not feel justified to dismiss the appeal before us on this footing because a dismissal without delving into the merits of the appeal, especially so, where the judgment appealed from is not a money judgment. The Supreme Court has held that: "when the judgment appealed from does not state an amount, the purpose of the appeal bond becomes only one of indemnification of the appellee from the costs of court." *LAMCO J.V. Operating Company v. David Garmoyou et al,* 34 LLR 712 (1988).

A review of the records shows that the motion to dismiss appeal grows out of an action of damages for wrong filed by the respondents/appellants, The Intestate Estate of Kamah Blanton, against the movant/appellee, Afriland Bank in the Commercial Court which was a result of an action of debt by attachment filed by the movant/appellee. As stated earlier, the movant/appellee filed along with its answer a motion to dismiss the action of damages for wrong. The motion was heard and denied by Judge Richard Klah, Associate Judge of the Commercial Court of Liberia. Subsequently, movant/appellee filed a petition for judicial review. On review, a panel of judges reversed Judge Klah's ruling, hence, by operation of law, the movant/appellee herein is not entitled to money judgment and stands to suffer no specific injury as a result of the taking of appeal from the decision of the panel of judges at the Commercial Court. As recited in this Opinion, the Supreme Court has held under these circumstances that the purpose of the appeal bond is only one of indemnification of the appellee from the costs of court where there is no money judgment involved. Therefore, by parity of reasoning, the case before us not being one of money judgment, this Court is not inclined to dismiss this appeal.

We also note that the motion to dismiss the action of damages for wrong which was upheld by the panel of judges in the Commercial Court out of which this controversy grew, did not contain any money award and therefore, the movant/appellee stands to suffer no injury. As we stated in the Lone Star Cell/MTN v. Nathaniel Kelvin case, we restate that "the Supreme Court has a strong preference for hearing cases on the merits and deciding them according to law and evidence rather that deciding them on motions to dismiss". *Citibank, N.A. v. Jos Hansen and Soehne (Liberia) Ltd.* 35 LLR 69 (1988).

WHEREFORE, given the facts and circumstances of this case and the laws we have cited herein, it is the holding of this Court that the motion to dismiss the appeal is hereby denied and the case be heard on its merits. Costs to abide final determination. IT IS HEREBY SO ORDERED.