

BEFORE THE HONORABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS MARCH 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

Ministry of Health by & thru its Minister, Deputy
Minister, Comptroller, Directors and all other
persons acting under the scope of authority of the
said Ministry of the City of Monrovia, Republic
of Liberia.....Movant
versus

MOTION TO DISMISS

Itter Pharmacy by & thru its General Manager,
Nabel Itter of the City of Monrovia, Republic of
Liberia.....Respondent

GROWING OUT OF THE CASE:

Itter Pharmacy by & thru its General Manager,
Nabel Itter of the City of Monrovia, Republic of
Liberia.....Appellant
versus

APPEAL

Ministry of Health by & thru its Minister, Deputy
Minister, Comptroller, Directors and all other
persons acting under the scope of authority of the
said Ministry of the City of Monrovia, Republic
of Liberia.....Appellee

GROWING OUT OF THE CASE:

Itter Pharmacy by & thru its General Manager,
Nabel Itter of the City of Monrovia, Republic of
Liberia.....Plaintiff
versus

DEBT BY ATTACHMENT

Ministry of Health by & thru its Minister, Deputy
Minister, Comptroller, Directors and all other
persons acting under the scope of authority of the
said Ministry of the City of Monrovia, Republic
of Liberia.....Defendant

Heard: April 10, 2018

Decided: August 9, 2019

MR. CHIEF JUSTICE KORKPOR delivered the opinion of the Court.

This motion to dismiss appeal emanates from the final ruling of the Debt Court Judge, His Honor, James E. Jones entered on August 11, 2017, in favor of the Ministry of Health & Social Welfare (movant/appellee) against Itter Pharmacy (respondent/appellant) dismissing the action of debt by attachment filed by the respondent/appellant. The certified records of the case reveal the following:

On February 9, 2017, the respondent/appellant filed an action of debt by attachment at the Debt Court for Montserrado County to recover the amount of three hundred eighty one thousand United States Dollars (US\$381,000.00) against the movant/appellee for

pharmaceutical drugs the respondent/appellant said it supplied to the movant/appellee. The respondent/appellant alleged in its complaint that the movant/appellee requested the supply of the pharmaceutical drugs worth one hundred thousand United States Dollars (US\$100,000.00) with a promise to pay at a later date but the movant/appellee failed to settle its obligation after several demands made by the respondent/appellant. The respondent/appellant then instituted this action of debt for the principle amount of one hundred thousand United States Dollars (US\$100,000.00), plus two hundred fifty thousand United States Dollars (US\$250,000.00) representing accrued interest on the principle amount; twenty one thousand United States Dollars (US\$21,000.00) representing 6% legal interest; and ten thousand United States Dollars (US\$10,000.00) representing legal fees for the recovery of the amount owed. This totaled the amount of three hundred eighty one thousand United States Dollars (US\$381,000.00).

On February 24, 2017, the movant/appellee filed an answer along with a motion to dismiss and a bill of information. In its motion to dismiss the appellee/movant contended, *inter alias* that the action was time barred. The movant/appellee also contended that one of the respondent/appellant's exhibits, the delivery note which it relied on to establish its claim of debt was characterized by alterations on its face which, according to the movant/appellee, raised suspicion of fraud; that in the wake of the allegation of fraud raised, the Debt Court which does not sit with a jury lacks jurisdiction to hear and determine the aspect of the matter regarding fraud therefore, the Debt Court, as a matter of law, should refer the issue of fraud to the 6th Judicial Circuit Court, Montserrado County for trial by jury.

On August 11, 2017, the Debt Court Judge entered a ruling granting the motion to dismiss the debt action on the ground that the action was time barred. The Judge determined that the transaction involving the supply of pharmaceutical drugs occurred in 1996, more than twenty (20) years before the filing of the debt action; that the statute of limitation for actions based on written documents is seven (7) years; and that the failure of the appellant/respondent to file its action in seven years rendered the respondent/appellant's action dismissible.

The respondent/appellant noted exception to the ruling of the Debt Court Judge and announced an appeal to the Supreme Court. The respondent/appellant filed its bill of exceptions and an appeal bond in the amount of fifty thousand United States Dollars (US\$50,000.00) which was approved by the trial judge. Subsequently, the respondent/appellant served and filed its notice of completion of appeal.

The movant/appellee has filed this motion to dismiss the appeal contending that the respondent/appellant's appeal bond in the amount of fifty thousand United States Dollars (US\$50,000.00) is insufficient to indemnify the movant/appellee in the event the appellant/respondent is unsuccessful with its appeal. The appellee/movant relies on *Section 51.8 of 1LCL Revised*, Civil Procedure Law, which provides as follows:

"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 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 the 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 the dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action" [Emphasis supplied].

The respondent/appellant filed returns to the motion to dismiss the appeal in which it contended that it fully complied with all the requirements of the appeal statute, because, it noted exception and announced an appeal from the final ruling of the trial court judge at the time of rendition of the said final ruling; filed its bill of exception in ten days; filed its appeal bond in sixty days; and subsequently served and filed its notice of completion of appeal also in sixty days after the rendition of the final judgment by the trial court in accordance with the provision of the appeal statute. Recounting the time intervals, the respondent/appellant maintained that a) it noted exception and announced an appeal to the final ruling of the trial court judge on August 11, 2017; b) it filed its bill of exceptions on August 21, 2017; c) its appeal bond in the amount of fifty thousand United States Dollars (US\$50,000.00) was filed on October 3, 2017, and d) that its notice of completion of appeal was served and filed on October 3, 2017, all acts done within the time prescribed by the appeal statute.

Regarding the contention of the movant/appellee that the amount of US\$50,000.00 was insufficient to indemnify the movant/appellee, the respondent/appellant argued that the appeal bond has nothing to do with the amount sued for since the movant/appellee was not awarded a money judgment by the lower court; that this been a debt action filed against the movant/appellee who won the case at the trial court, the amount of US\$50,000.00 is intended to indemnify the movant/appellee for costs incurred in filing this action.

After having carefully perused the records in this case and listened to the arguments presented by the counsels representing the parties, we have determined that the lone issue for our consideration is whether or not the amount of US\$50,000.00 given as an appeal

bond in this case is sufficient to indemnify the movant/appellee under the facts circumstances?

In addressing this issue, it is essential that we take recourse to the parties to this case. This is an action of debt filed by Itter Pharmacy, a corporation operating under the laws of the Republic of Liberia (respondent/appellant) against the Ministry of Health and Social Welfare, an agency of the Government of the Republic of Liberia by & thru its Minister, Deputy Minister, Comptroller, Directors and all other persons acting under the scope of authority of the said Ministry. As a clear indication that this is indeed a case against an agency of the Government of the Republic of Liberia, and by extension, against the Government of the Republic of Liberia, the precepts were served on the Ministry of Justice who, by law, is designated to receive precepts for and on behalf of the Republic of Liberia as provided for under *Section 3.38(7), 1LCL Revised, Civil Procedure Law*. The Ministry filed papers on behalf of the movant/appellee in this case.

When the case was decided in favor of the Ministry of Health & Social Welfare, the movant/appellee (defendant in the lower court), against Itter Pharmacy, the respondent/appellant (plaintiff in the lower court), noted exception and announced an appeal to the Supreme Court. As part of the requirements for perfecting its appeal to ensure that the appeal is heard and decided by the Supreme Court, the respondent/appellant filed an appeal bond in the amount of US\$50,000.00. It is the alleged insufficiency of the appeal bond which is the issue of contention in this case.

As provided by *Section 51.8 of 1LCL Revised, Civil Procedure Law*, the purpose of an appeal bond is for the appellant to indemnify the appellee from all costs or injury arising from the appeal, if the appeal is unsuccessful, and to comply with the judgment of the appellate court or any other court to which the case is removed. This means that the amount given as an appeal bond should be sufficient to comply with the judgment awarded by the trial court, and also cover the costs or injury associated with and arising from the appeal, in the event the appeal is not successful. In the case before us it is the respondent/appellant who sued in the lower court seeking a money judgment. And the respondent/appellant lost the case. So, there was no money judgment awarded to the respondent/appellant, nor to the movant/appellee. Therefore, as a result of this appeal, there will be no money judgment awarded in favor of the movant/appellee. Rather, it is the respondent/appellant who could benefit from a money judgment in the event this Court sustains its action of debt. In such a case, we have repeatedly held in numerous cases that the amount provided as an appeal should only be sufficient to cover costs associated with

the filing of papers by the appellee. The most recent of such cases is the case: *The Management of Lone Star Cell/MTN v. Nathaniel Kelvin, Supreme Court Opinion, March Term, 2019*. Speaking for the Court in that case, Mr. Justice Joseph N. Nagbe said as follows:

... "In essence, the movant/appellee herein is not entitled to money judgment from the ruling...the movant/appellee stands to suffer no particular injury as a consequence of the taking of the appeal...the purpose of the appeal bond is only one of indemnification of the appellee from the costs of court."

However, and as indicated herein above, this action of debt was filed against the Ministry of Health and Social Welfare, an agency of the Government of the Republic. Under the law extant, costs cannot be imposed against or in favor of the Government of the Republic of Liberia. *Section 45.4, 1 LCL Revised, Civil Procedure Law* provides:

"Costs shall not be imposed against or in favor of the Republic of Liberia, its officers sued or suing in their official capacities, its agencies, or any authorities wholly owned by the Government."

Based on the above quoted provision of our statute, it is clear that the movant/appellee in this case, been an agency of the Government, is not entitled to costs.

WHEREFORE, and in view of the foregoing, we hold that the respondent/appellant complied with the appeal statute under the circumstances of this case. The motion to dismiss the appeal is therefore denied; the respondent/appellant's appeal will be heard and determined on its merits in keeping with law.

Counsellor Gartor Tate Legal Counsel, Ministry of Justice, Republic of Liberia, appeared for the movant/appellee.

Counsellor Denise S. Soka, of the Jones & Jones Law Firm, appeared for the respondent/appellant.

Motion to dismiss appeal denied.