THE MANAGEMENT OF BROADWAY CINEMA, by and thru its representative, Appellant, v. **SAMUEL MAH** and **THE BOARD OF GENERAL APPEALS**, Ministry of Labour, by and thru its Chairman, Appellees.

PETITION FOR RE-ARGTUMENT.

Heard April 20, 1989. Decided July 14, 1989.

1. For good cause shown to the Court by petition, a re-argument of a case may be allowed when some palpable mistake is made by inadvertently overlooking some facts or points of law.

2. A petition for re-hearing shall be presented within three (3) days after the filing of the opinion unless in cases of special leave granted by the Supreme Court.

During its March 1987 Term, the Supreme Court heard an appeal from a ruling on death compensation and remanded the case to the National Labour Court for a new trial on the ground that it had discovered from the records that the trial of the cause was not conducted according to law. On May 12, 1987, four (4) days after the delivery of the Supreme Court's opinion, the appellee filed a motion praying the Court to grant it a re-argument.

In denying the motion for re-argument, the Supreme Court held that it was filed in contravention of standing rules of the Supreme Court, and that the motion failed to specifically and distinctly point out the palpable mistake that was made by the Court inadvertently overlooking points of fact or law to warrant granting a reargument. The motion was denied and the judgment ordered enforced.

S. Edward Carlor appeared for the petitioner/movant. *Julia C. Gibson* appeared for the respondent.

MR. JUSTICE AZANGO delivered the opinion of the Court.

On May 8, 1987, during the March, A. D. 1987 Term of this Court, the Court, having passed and carefully considered the issues heard in the records that were brought before it from the pleadings, the briefs and the argument, held *inter alia* that:

"When a cause comes to an appellate court for review, and it is discovered upon the face of the records that such cause was not conducted according to law, the appellate court will grant a new trial".

Section 7 of the Labor Laws of Liberia provides that:

"A party aggrieved by a decision made by the Board of General Appeals may appeal from such decision or any part thereof to the circuit court or debt court in the county in which the Board held its proceeding by filing a petition to the circuit court or debt court within ten (10) days after receipt by the aggrieved party of a copy of the administrative decision. Copies of

the petition shall be served promptly upon the Board of General Appeals which rendered the decision, and upon all parties of record. Within ten (10) days after service of the petition, the Ministry of Labour and Youth shall file with the clerk of the circuit court or debt court a certified copy of the entire record of the proceeding under review, together with a copy of the administrative decision. It shall not be necessary to file exceptions to the rulings of the Board of General Appeals".

The above provision of the statute is in the alternative and not dual, in that the appeal lies from the Board of General Appeals (now the National Labour Court) and not as heretofore to either the debt court or the Sixth Judicial Circuit Court; but specifically to the National Labour Court.

A further recourse to section 8 of the Labor Laws under the caption of proceedings on review, we have the following:

A proceeding under this chapter shall be conducted by the court without a jury and shall be confined to the records. All such proceedings shall be heard and determined within seven (7) days by the circuit court or debt court, and if an appeal is taken to the Supreme Court as expeditiously as possible, the judgment or order of the circuit court or debt court shall be final subject only to review by the Supreme Court.

The appeal having been taken on the 9th day of November, 1984, should have been concluded within seven (7) days which would have obviated a hearing thereof in the Sixth Judicial Circuit Court, Civil Law Court on the 24thday thereof. This depicts the irregularity in the proceeding, which but the more merits a remand of the case for a new trial". On the 12'h day of May, A. D. 1987, according to records, appellee/movant requested this Court to grant him re-argument on the following ground:

"That because movants say that inadvertently Your Honours did not pass on the issues with reference to the respondent not bringing the movants and the Board under the jurisdiction of the Court. That is to say, the very Civil Law Court where respondent was alleged to have filed its petition never served the movants, the Board as well as Co-Movant Samuel Mah, so as to bring them under the jurisdiction of the court within statutory time. The failure to so do, the appellate court has no jurisdiction".

Against this motion, appellant/respondent filed a resistance and requested us to deny the motion on the following grounds:

1. That a motion for re-argument must be filed within three (3) days after the filing of the opinion. Movant having failed to file his motion within the statutory time of three (3) days renders his motion void, hence, it cannot be heard by this Honourable Court. The opinion was delivered on May 8, 1987 and the motion was filed on May 12, 1987, at the hour of 4:15 P.M. according to the motion before court which date thereon made it four (4) days and not

three days as required by law. For reliance, see *Revised Rules of the Honourable Supreme Court,* page 43, *Rule IX, Part 2.*

2. That also because no good cause has been shown as the opinion of the Court is mainly on the jurisdictional issues; hence, there was no inadvertence on the part of the court to warrant a re-argument. For reliance, see *Daniel et al. v. Compania Transmediterranea,* 4 LLR 97 (1934); *Brace-well and Caranda v. Coleman et al.,* 6 LLR 206 (1938); *King v. Cole et al.,* 15 LLR 15 (1962). The very crux of the matter was that the appeal was filed in the Sixth Judicial Circuit Court and the judge in the debt court refused to take judicial notice of that fact and she raised the issue that the clerk should have sent her a certificate, despite the fact that the records showed that the case was appealed to that court, and said issue was not even raised by the petitioner in the case below, all of which showed the judge's bias in the matter.

Rule IX of this Honourable Court provides, as follows: For good cause shown to the court by petition, a re-argument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some facts or points of law.

A petition for re-hearing shall be presented within three (3) days after the filing of the opinion, unless in cases of special leave granted by the Court.

The petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a Justice concurring in the judgment shall order it. The moving party shall serve a copy thereof upon the adverse party as provided by the rules relating to motions.

In the light of this rule of our Court, we proceeded to ascertain from the petitioner to point out to us specifically and distinctly the palpable mistake that was made by the Court and the point of law or fact which may have been inadvertently overlooked. We also inquired whether the petition for re-hearing was presented within three (3) days after the filing of the opinion, and whether a copy of the petitioner's petition was indeed served on the adverse party as provided by the rules relating to motions.

It is sad to express that the answers from the learned counsellor were prevaricating. We therefore deem it additionally necessary and expedient to re-echo and re-emphasize the following observations for those praying for re-argument and seeking considerations thereto to remember:

1. That whilst strictly speaking, a re-hearing or a re-argument is simply a new hearing and a new consideration of the case by the court in which the suit was originally heard and upon the pleadings and dispositions already in the case, and that hearing before an active court for the purpose of determining whether the Court will revise its own action by correcting errors and modifying or setting aside its own judgment, it is mandatory to take into account:

1. The parties, as a matter of right, are usually entitled to a personal hearing for the argument of the case when proper request is made therefor, but the exercise of this privilege is subject to reasonable regulations by the appellate court, and like any other privilege, may be waived. While argument of the case in the first instance on appeal is a matter of right, re-arguments are directed for the satisfaction of the court alone, and are all together subject to its discretionary control and direction. Where the statute requires that the case be noticed for argument within three (3) days, in computing the time, the day of service of the notice is to be excluded.

2. That a petition for a re-hearing is a request to the court to revise its own action by correcting errors and modifying or setting aside its own judgment. One to whom the decision is not adverse cannot petition for a re-hearing. The appellate court may adopt reasonable rules regulating the right to a re-hearing; such as:

i. That the petition must be approved by a concurrent Justice of the Court;

ii. That a brief must be filed in support of the petition;

iii. The records on which the original hearing was had should be filed and considered the true record on the re-hearing, though there may have been some irregularity in incorporating matters therein;

iv. An order will be treated as a part of the records and as legitimately before the court for examination on the rehearing of an appeal, if the case was submitted by both parties at the first hearing, on the theory that the order was properly in the record;

v. The filing of a motion for leave to present a petition for a re-hearing;

vi. The granting of such leave should not suspend enforcement of, vacate or annul the judgment;

vii. A re-hearing should not be granted unless there is a reasonable showing that the judgment rendered was erroneous. But when a re-argument is ordered, such rehearing may be granted even when the result must be the same as that announced in the original opinion. This is true when: (1) the concurrence of one or two Justices comprising the court delivering the judgment on appeal is limited to the result, and thereby law of the case is not made; and (2) the original opinion fails to consider a point raised on the appeal, which, if tenable, might be fatal to the cause of action set forth in the complaint; and (3) the former opinion announces certain rules of law which, in the judgment of the court as constituted when the motion for re-hearing is considered require modification to prevent misapplication of the same on a new trial of the cause. The fact that the decision will have no important bearing on a large class of other cases and that on account of a pressure of business the opinion on the original hearing was not as full as desirable is a material consideration in determining whether a re- hearing will be granted. It should be recognized that questions not advanced

on the original hearing will not be considered on the petition for a re-hearing. This must necessarily be so because if new questions should be raised on a re-hearing, there would be no end to a case on appeal. This rule is especially recognized and applicable in the case of a question as to the constitutionality of a statute.

viii. New evidence cannot be considered on a petition for a rehearing. Where a non-suit is granted on a particular ground which is held insufficient by the appellate court, a re-hearing will not be allowed to consider and determine any other ground on which it is claimed the nonsuit should have been granted but which was not considered by the trial court. The failure of the appellate court to consider and determine any other ground on which it is claimed the nonsuit should have been granted but which was considered by the trial court and the failure of the appellate court to consider a matter alluded to in the oral argument recorded and referred to in the petitioners brief, though but lightly, may be ground for a re-hearing.

ix. A point was overlooked by the court in its opinion, a re-hearing should be granted where a fatal variance is shown, and the point was raised but overlooked by the Court.

x. The petition for a re-hearing must be filed within the time prescribed by the statutes or rules of court, and such petition filed within the prescribed time will be considered. A motion to modify a mandate of the Supreme Court is in the nature of a petition for a re-hearing, and may be filed during the time allowed for a rehearing, on behalf of a party who has not waived it, although the opinion has been certified by the clerk to the court below. When a petition for a rehearing or re-argument is duly filed, it is the usual practice to permit amendments after the time for filing the petition has expired, assigning additional grounds for rehearing.

xi. Where, after the decision of a case and the rendition of an opinion by the appellate court, its mandate is regularly transmitted to the trial court, and spread on its records, it is well settled that the appellate court in the absence of fraud, accident, inadvertence, or mistake has no jurisdiction to recall the mandate and entertain a petition for a rehearing or reargument and a motion for leave to file the same will be denied, as it is manifest that there must be a finality somewhere in all litigations and the logical point for appellate jurisdiction over an action to terminate is that time when there is again vested in the trial court the jurisdiction to proceed, carry out and enforce any judgment delivered.

Having considered the petition and resistance in these proceedings and the argument before us, and discovered that the petition was filed in contravention of the standing rules and numerous holdings of this Court, it is our view that the resistance to the petition must and the same is hereby sustained; the motion for reargument is denied. And it is hereby so ordered. Costs of these proceedings are ruled against the appellees/ movants.