IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2021

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
BEFORE HIS HONOR: YUSSIF D. KABA….....ASSOCIATE JUSTICE

The Intestate Estate of Abel L. Clarke, represented by its Administrators E. Fatu Wright Doe, Christian M. Wright and Abel B. Wright and all those acting under their authority, and the Management of CICO represented by its Managing Director Fu Lianguan, all of Montserrado County, Liberia…….……Petitioners

Versus — PETITION FOR RE-ARGUMENT

The Intestate Estate of Ethel Louise Holder Bethune represented by and thru its Administrator, S. Raymond Holder of Montserrado County, Liberia……Respondent

GROWING OUT OF THE CASE:

The Intestate Estate of Abel L. Clarke, represented by its Administrators E. Fatu Wright Doe, Christian M. Wright and Abel B. Wright and all those acting under their authority, and the Management of CICO represented by its Managing Director Fu Lianguan,all of Montserrado County, Liberia……Appellants

VERSUS — APPEAL

His Honor Scheaplor R. Dunbar, Assigned Circuit Judge, Civil Law Court B, Sixth Judicial Circuit, Montserrado County and the Intestate Estate of Ethel Louise Holder Bethune, represented by and thru its Administrator S. Raymond Holder of Montserrado County, Liberia
……Appellees

GROWING OUT OF THE CASE:

The Intestate Estate of Ethel Louise Holder Bethune represented by and thru its Administrator, S. Raymond Holder of Montserrado County, Liberia……..Plaintiff

VERSUS — ACTION OF EJECTMENT

The Intestate Estate of Abel L. Clarke, represented by and thru its Administrator E. Fatu Wright Doe, Christian M. Wright and Albert B.Wright and all those acting under their authority……1ST Defendant

AND

The Management of CICO represented by its Managing Director Fu Lianguan, all of Montserrado County, ...
…….. 2nd Defendant

Heard: October 27, 2020 Decided: August 26, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The Revised Rules of the Supreme Court, IX Part 1 grants unto a party the option of a second opportunity to have their appeal heard via the filing of a petition for re-argument, albeit, said hearing is only as to some palpable substantial mistake which the petitioner believes that the Court inadvertently overlooked as to some fact or point of law which if considered, the Supreme Court would have decided and ruled differently.

Pursuant to the provision of said Rules alluded to *supra*, the petitioners herein, the Intestate Estate of Abel L. Clarke, and the Management of CICO, presented a petition for re-argument to one of the Justices concurring in the Opinion and Judgment of this Court rendered on September 3, 2020, in the case *The Intestate Estate of Abel L. Clarke vs The Intestate Estate of Ethel Louise Holder Bethune*, Supreme Court Opinion, October Term 2020. Mr. Justice Joseph N. Nagbe, the concurring Justice, signed the petition on September 7, 2020, and the records show that on September 10, 2020, the petition for re-argument was filed with the Clerk of the Supreme Court.

The substantial allegation set forth in the petition was that the Court made a palpable mistake by overlooking the issue of fraud surrounding the respondent's deed in that it was impossible for the respondent to acquire the contested property from the late Abel Clark in 1966 since the said Abel Clark died in 1945, thus he could not have signed the respondent's deed in the year 1966. The five (5) count petition for re-argument is quoted herein below, to wit:

"…PETITIONER'S PETITION FOR RE-ARGUMENT

> Petitioner respectfully prays Your Honors and this Honorable Court to grant its request for Re-Argument in the above entitled Cause of Action for following reasons:
>
> 1. Petitioner submits and says that this Petition for Re-argument is in keeping with Rule 9, Part 1, of the Revised Rules of this Honorable Supreme Court. Hence, Petitioner submits that Rule 9, Part 1 of the Revised Rules of the Supreme Court provides "that for good cause shown to the Court by petition, a re-argument of a cause may be allowed only once when a palpable substantial mistake is made by inadvertently overlooking some facts, or point of law. Petition for re-argument shall be presented within

three days after the filing of the ***Opinion***....” The opinion that is a subject of this petition was filed by this Honorable Supreme Court and received by the Petitioner on September 3, 2020.

2. Petitioner also petitions and says that, Your Honors inadvertently overlooked the fact that the conclusion by the majority surveyors was wrongful on its face, in that the majority members of the board of arbitration concluded that the Petitioner herein did not have any land in the area even though the deed that was presented by the Respondent herein metes and bounds commenced from the Abel L. Clarke property. Secondly, the majority members of the board overlooked the fact that the deed presented by the Respondent was allegedly signed by Abel L. Clarke, yet they concluded that Abel L. Clarke did not have any land in the area. By parity of reasoning, if the grantor of the Respondent did not have any land in the area, then the grantee cannot claim to be an owner of a property where their grantor had no property. This fact was inadvertently overlooked by Your Honors, for which a Petition for re-argument will lie.

3. Petitioner also Petitions and says that, Your Honors inadvertently overlooked one of the arguments that was made by the Petitioner herein that Abel L. Clarke died in 1945, and was buried on his land in question, his grave and that of his wife are on the property subject of these proceedings, yet the Respondent presented a deed dated 1966 allegedly carrying the signature of Abel L. Clarke who died in 1945. Your Honors inadvertently overlooked this fact, for which a Petition for re-argument will lie.

4. Petitioner also Petitions and says that, Your Honors inadvertently overlooked the fact that fraud vitiate all, that is to say, the fact that the Respondent’s 1966 deed carried the alleged signature of someone who died in 1945 was sufficient to have set aside the arbitration report and dismiss the claim of the Respondent.

5. Petitioner further petitions and says that Your Honors made a palpable mistake when Your Honors inadvertently overlooked the fact that the Petitioner pointed out in the bill of exceptions, that the majority of the Board of Arbitration used only the Respondent’s deed and disregarded the Petitioner’s deed. This assertion was also contained in the objection that was filed by the surveyor that represented the Petitioner herein, for which this Petition for re-argument will lie.

   WHEREFORE AND IN VIEW OF THE FOREGOING, Petitioner most respectfully prays Your Honors and this Honorable Court to grant this motion for re-argument for the following legal and factual reasons enunciated supra, and grants unto the Petitioner all further relief this Court deem just, legal, and equitable in this premise.”

On October 14, 2020, the respondent filed its returns to the petition and first and foremost raised the issue regarding the alleged late filing of the petition for re-

argument, stating *inter alia*, that the petition for re-argument should have been filed on September 7, 2020, instead of September 10, 2020; that the petitioners failed to state in their petition for re-argument the palpable mistake of fact or error of law overlooked by the Supreme Court and that the Court should deny the petition for re-argument. We have determined to be relevant and quote counts 4, 5, 6, 7, 8 and 9 of the respondents 10 counts returns.

"…RESPONDENT'S RESISTANCE

AND NOW COME, Respondents in the above entitled cause of action most respectfully pray Your Honors and this Honorable Court to deny Petitioners' Petition for Re-Argument for the following factual and legal reasons as showeth to wit:

1. That as to count one (1) of Petitioners' Petition, Respondents submit and say that same should be denied and dismissed because it is filed in bad faith purposely intended to delay justice as rule 9 part 1 of the Revised Rules of this Honorable Supreme Court does not apply in this instant case, especially so, when Petitioners were ruled to a Bare Denial and further failed to file its objection within thirty (30) days as required by law. Attached and marked as **Respondents' Exhibit R/1** in bulk are the Rulings on the Motion to Rule to Bare Denial and Final Ruling affirming the Arbitration Award upon the failure of Petitioners to file its objection within statutory time as allowed by law.

2. That further to count one (1) of this Resistance hereinabove, Respondents also say that this Supreme Court has held in many of its opinions, including the case: *S.G. Saleeby V. Eli G. Haikai, 14LLR page 537, syl. 3*; that where an answer has been dismissed and the Defendant placed on bare denial of facts alleged by the plaintiff, the defendant is barred from introducing affirmative matter.

3. That as to counts two (2) thru five (5) of Petitioners' Petition, Respondents say that these issues were not raised in the Court below and therefore cannot be entertained by this Honorable Supreme Court of Liberia. That under our law, practice and procedure, what was never raised in the trial court cannot be raised in the appellate court. The Supreme Court has held on this issue that it cannot take nor hear evidence a new and can review only the records of the trial court as transcribed and forwarded to it. See Samuel B. Griffiths V. Jones J. Wariebi, 35LLR page 110 (1988), syl. 6.

4. That further to count three (3) of Respondents' Resistance hereinabove and in traversal of Petitioners' count one (1) thru five (5), Respondents submit and aver that Petitioners' Petition is a fit subject for dismissal in that said Petition was allegedly signed by Justice Nagbe on the 7th of September, A.D. 2020, after having being received by Petitioners on September 4, A.D. 2020 for which same should have been filed on the 7th day of September A.D. 2020 instead of on the 10th day of September, A.D. 2020.

5. That the issue of fraud as contended by the Petitioners was never raised at the trial court and that this court in deciding this same case held that only such matters and rulings that were interposed in the lower court and are contained in the bill of exceptions can be taken cognizance of in the appellate tribunal. See National Port Authority V. Kimah, 31LLR page 545, 548, 549 (1983); *Nyumah V. Kemokai*, 34LLR, page 226 (1986).

6. That 1st Defendant/Respondent admitted that he is member of the Louisiana Club for which the Three Hundred (300) Acres of land were divided among five (5) members and therefore, none of the members had 100 Acres within the Three Hundred (300) Acres in the jointly owned and later divided property of the Louisiana Club.

7. That judgment of this Honorable Supreme Court is final because Petitioners having been ruled to a bare denial also failed to file its objection to the arbitration award within thirty (30) days. Final judgment defined: ***"One that puts an end to a suit or action, one which puts an end as an action at law by declaring that the plaintiff either is or is not entitled to recover the remedy he had sued for. A judgment which determines a particular cause. A judgment which disposes of the subject matter of the controversy or determine the litigation as to all party on its merit."***

8. Respondents submit and say that the mandate of the Honorable Supreme Court was transcribed and sent to the Civil Law Court "B" on the 8th day of September, A.D. 2020 and was read on the 10th day of September, A.D. 2020. Immediately after the ruling, the parties in these proceedings were ordered to task the Bill of Cost…"

Having summarized the facts in the petition and the returns thereto, there are two issues dispositive of this petition for re-argument, which are as follow, to wit:.

1) Whether or not the Supreme Court has jurisdiction over this petition for re-argument? In other words, was the petition for re-argument presented within the time period of three (3) days as contemplated by the applicable provision of the Revised Rules of the Supreme Court;

2) Whether or not the Supreme Court inadvertently overlooked the issue of fraud as contended by the petitioners, thus constituting a palpable substantial mistake when it affirmed the final ruling of the trial court awarding the contested property to the present respondent as per the findings and award of the Board of Arbitration.

Our holding on the first issue will determine whether or not this Court proceeds with the second issue as courts by law, are compelled to first determine their

jurisdiction before proceeding to delve into the merits of any matter venue before them.

In numerous opinions, the Supreme Court has opined as follow:

> "…whenever the issue of a court's jurisdiction is raised, every other thing in the case becomes subordinated until the court has determined its jurisdiction to hear and disposed of the particular matter. This is true because if a court lacks jurisdiction to entertain a matter, whatever decision or judgment is rendered by it is a legal nullity. Therefore, it is necessary that the court should determine its jurisdiction over the question which its judgment assumes to answer or give relief." *MIM Liberia Corporation v. Toweh*, 30LLR 611(1983); *Kamara v. Chea & Satto,* 31LLR 511(1983); *Scanship (LIB) Inc., v. Flomo*, 41LLR 181, 186(2002); *The Intestate Estate of Chief Murphey-Vey John et al v. the Intestate Estate of BenduKaidii et al*. 41LLR 277, 282 (2002); *The Management of PaynesvilleCity Corporation v. The Aggrieved Workers of Paynesville City Corporation,* Supreme Court Opinion, March Term A.D. 2013; *Loiuse Clarke-Tarr v. Daniel K. Wright,* Supreme Court Opinion, March Term A.D. 2015.

In view of the above principle of law, we must give careful scrutiny to Article IX Part 1 of the Revised Rules of the Supreme Court, which not only provides the grounds and conditions for a re-argument, but the time for the filing thereof. The Article IX Part 1 reads thus:

> *"For good cause shown to the Court by petition, a re-argument of a cause may be allowed only once when some palpable substantial mistake is made by inadvertently overlooking some fact or point of law.* ***A petition of re-rehearing shall be presented within three (3) days after the filing of the Opinion, unless in cases of special leave granted by the Court en banc upon application.*** *" [our Emphasis] 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. Where a concurring Justice has ordered the re-hearing the cause shall be re-docketed for examination and determination of the facts or points of law allegedly overlooked in the original judgment by the Court en banc."

The respondent argued that the petition for re-argument filed on September 10, 2020, is without the time as contemplated by the Rules, thus not properly venue before the Supreme Court for want of jurisdiction over same since the petition was filed with the Clerk of the Supreme Court seven (7) days after the date of rendition of the Court's Judgment instead of the mandatory three (3) days requirement for said filing.

As to the petitioners, there is nowhere in the records by way of an answering affidavit or traversal in their brief, of the respondent's allegation of the late filing of their petition for re-argument.

Nevertheless, this Court being the court of last resort, we shall proceed to pass upon the issue of the late filing relying on applicable case laws as to the interpretation of the Article IX Part 1 of the Revised Rules of the Supreme Court which clearly states that: "a ***petition for re-rehearing shall be presented within three (3) days after the filing of the Opinion…"*** We firstly note the use of the word "shall" in said article, denotes that the three (3) days period stated therein is mandatory and not discretionary and that a party's decision to utilize the opportunity afforded therein to be re-heard must strictly abide by this mandatory requirement of the time period of three (3) days. The Supreme Court has already passed upon and given interpretation to the quoted provision and held that failure of compliance with and adherence thereto, the petition for re-argument will be denied.

In the case, *Kuyette v. Kandakai et al.*, 30 LLR 507, 510 (1983), the Supreme Court aptly set forth the basis for a determination of the date of filing or publication of its Opinion in order to ascertain whether or not the petitioner complied with this mandatory requirement, by stating as follows:

"that the date on which the order for re-argument is signed or issued will be regarded by this Court as the date of presentation, meaning that in

deciding whether the petitioner has complied with the mandatory requirement of the time frame within which the petition must be filed, it will look at the date of rendition of the Court's opinion or judgment and the date on which the petition is signed or approved by the justice. If the latter date falls within three days of the former date, then the petition will be regarded as being within the time period specified by the Revised Rules of Court. If, on the other hand, the latter date (i.e. the date of approval of the petition) falls beyond three days from the former date (i.e. the date of rendition of the Opinion or judgment of the Court), the petition will be deemed to be without the three days period specified by the Revised Rules. In case of the latter, this Court will be without the jurisdiction to entertain the petition."

As regards compliance, the Court stated the following:

"…The moment the opinion is read from the Bench, it is considered published…hence, the day and date of the filing of the Opinion is the day and date on which it is read from the Bench… The Supreme Court stated that this means that the "three-day period prescribed by the Revised Rules commences to run immediately the Opinion is delivered by the Court." *Barnes et al. v Republic of Liberia*, 5 LLR 395 (1937); *Percy Williams v Mary F. Kpoto*, Supreme Court Opinion, October Term, 2012.

We take judicial notice that the Opinion of the first appeal in the case *The Intestate Estate of Abel L. Clarke v The Intestate Estate of Ethel Louise Holder Bethune*, was delivered on September 3, 2020, and that the Judgment was also signed on the same date of September 3, 2020. A perusal of the petition for re-argument shows that same was approved by the concurring Justice Joseph N. Nagbe on Monday, September 7, 2020. As per the interpretation of Rule IX, part 1 outlined herein we have calculated the various dates and arrived at the following conclusions: that noting the fact that the Opinion was rendered on Thursday, September 3, 2020, the last day of presentment/filing or approval by a concurring justice fell on Sunday, September 6, 2020. However, the last day falling on a Sunday, the law provides thus:

> "…In computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by the executive order, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded from the computation." The Civil Procedure Law Rev. Code 1.7(1)

In consonance with the above quoted provision of the statute, the petitioners rightly presented the petition to the concurring justice on the next legal day that is, Monday, September 7, 2020. However, said date being the last day to comply with the three (3) days' time frame, the petition should have been filed on said date. Instead, the petitioners waited till three days thereafter to file their petition which is, September 10, 2020, making it a total of five (5) days since the date of rendition of this Court's Judgment. Hence, the date of presentment or the date of approval by the concurring justice and the filing of the petition for re-argument, should have fallen within the 4th, 5th, or 7th day of September, 2020. The said date of September 7, 2020, when the petition was signed by the concurring justice did not commence the period for the filing of the petition for re-argument, but said period commenced on Friday, September 4, 2020. Moreover, noting the failure of the petitioners to address or put forward a legal defense to the respondent's critical allegation that their petition was filed without the mandatory time frame, is fatal and their silence by law is deemed as an admission or assent of the said allegation. Notwithstanding the petitioners'' silence on this issue, in consonance with the laws and Supreme Court's Opinions cited hereinabove, we hold that the present petition for re-argument was not filed within the three (3) days' time frame as contemplated by the Revised Rules of the Supreme Court, thus, this Court is without jurisdiction to take cognizance and entertain the petition for re-argument.

Now, while there are overwhelming justifications both in law and fact for this Court to conclude this case on the procedural basis that the petitioners neglected to file their petition for re-argument within the three days' time frame as contemplated by the Revised Rules; and that this negligence on the part of the

petitioners by operation of law prevents the Supreme Court from exercising jurisdiction over the petition for re-argument; nevertheless we have decided to take judicial notice of our previous Opinion, *The Intestate Estate of Abel L. Clarke vs The Intestate Estate of Ethel Louise Holder Bethune,* to provide more clarity and in so doing make a determination as to whether or not Supreme Court inadvertently overlooked the issue of fraud as contended by the petitioners.

The Opinion and Judgment of the first appeal in the case, *The Intestate Estate of Abel L. Clarke vs The Intestate Estate of Ethel Louise Holder Bethune* show that on April 14, 2016, at the behest of the petitioners, a written Arbitration Agreement was entered into with the respondent wherein they agreed to submit their land dispute to a Board of Arbitrators, mainly surveyors who were charged with the responsibility to conduct an investigative survey, and having the requisite professional abilities to make a determination as to who owns the property.

Section 64.1 of the Civil Procedure Law and Opinions of this Court have all stated that:

> "a written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract." *Chicri Bros. v Isuzu motors,* 40 LLR 128 (2000); *KML v Metzger, Sr*. et al 42 LLR 216 (2004); *Gardiner v James,* Supreme Court Opinion, March Term, A.D. 2015.

On April 3, 2017, the arbitrators concluded their investigation and prepared a report containing their findings in favour of the respondent. On January 30, 2018, the trial court read the Arbitration Report and the petitioners noted exceptions to the report but took no steps to file formal objections thereto. It was based upon the negligence of the petitioners in filing their objections to vacate the Board of Arbitration Award that necessitated the trial court and subsequently, the Supreme Court to affirm the Board of Arbitration Award pursuant to Section 64.11 of the Civil Procedure Law. The said law which speaks to grounds and time for the filing of objection and vacating an arbitration award provides thus:

"Vacating an award.

1. Grounds for vacating. Upon written motion of a party the court shall vacate an award where:

(a) The award was procured by corruption, fraud, or other undue means; or

(b) There was partiality in an arbitrator appointed as a neutral, except where the award was by confession; or there was corruption or misconduct in any of the arbitrators; or

(c) An arbitrator or the agency or person making the award exceeded his powers or rendered an award contrary to public policy; or

(d) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of sections 64.5 or 64.6.

The fact that the relief granted in the award was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm an award.

2. Time for application. An application under this section **shall** (Our Emphasis) be made within thirty days after delivery of a copy of the award to the applicant except that if the application is predicated upon fraud, or corruption, or other undue means, it shall be made within thirty days after such grounds are known or should have been known..."

The Supreme Court noting the dismal performance of the petitioners to take advantage of the above quoted statute held that the petitioners were very negligent regarding the filing of their objections and that their negligence deprived this Court from reviewing the issue of fraud as to the title deed of the respondent and the arbitration report. The following is how the Court addressed this issue:

"…the failure of the appellants [petitioners] to file their objections within 30 days pursuant to Section 64.11 of the Civil Procedure Law deprived the trial court to address the allegation of fraud and the Supreme Court, when same was raised for the first time in the bill of exceptions. By electing to raise the issue of fraud, for the first time in the bill of exceptions, rather than timely presenting same before the trial

> court we are unable to take cognizant of these allegations because they were not raised in the trial court…Had the appellants complied with the law, filed their objections before the trial court, squarely raising these issues and presenting evidence in support thereof, this Court would have had the opportunity to review same and make a determination thereon. But for their failure to timely file objection to the arbitration award, we are confined to apply the law and uphold the arbitration award as it is, rather than to sacrifice the law to accommodate the negligence of the appellants... *Manakeh v. Toweh, 32LLR 207 (1984); Ezzedine v. Saif 33LLR 21 (1985); Blamo et al., v. The Management of Catholic Relief Services,* Supreme Court Opinion, March Term 2006; *Hussenni v. Brumskine,* Supreme Court Opinion, March Term, A.D. 2013; *National Elections Commission (NEC) v. Siebo, Jr.,* Supreme Court Opinion, March Term A.D. 2017."

Accordingly, and contrary to the petitioners' assertion that this Court did not pass on their allegation of fraud and using this as the basis for their petition for re-argument, is false and misleading and we hold that there is no error attributed to the Supreme Court when it held that "in an ejectment case, an arbitration award will be enforced where there is an arbitration agreement signed by the parties; and that absent an objection to the arbitration award, same will be affirmed." *The Intestate Estate of Abel L. Clarke v. The Intestate Estate of Ethel Louise Holder Bethune,* Supreme Court Opinion, October Term, A.D. 2020. Hence, the Supreme Court did not commit any palpable substantial mistake when it affirmed the final ruling of the trial court.

WHEREFORE AND IN VIEW OF THE FOREGOING, the petition for re-argument is denied and dismissed. The Clerk of this Court is ordered to send a Mandate to the court below, commanding the judge presiding therein to resume jurisdiction over this case and enforce the Judgment of September 3, 2020, out of which this petition grows. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Cooper W. Kruah, Sr., Albert Sims and G. Moses Paegar appeared for the Petitioners. Counsellor Festus K. Nowon, Sr. appeared for the Respondent.