AUGUSTUS F. CAINE, SEKU FREEMAN, et al, Appellants, *v.* **MOMOLU LAMIE FAHNBULLEH**, **A. KINI FREEMAN et al.**, Appellees.

PETITION FOR REARGUMENT

Heard: May 16-17, 1984. Decided: June 29, 1984.

1. The general rule is that a rehearing will not be granted unless it is shown, either that some question decisive of the case and duly submitted by counsel has been overlooked, or that the court has based the decision on a wrong principle of law.

2. In the appellate court, the onus is thrown upon the party appealing for review of a judgment to satisfactorily prove that some important point of law or fact stressed during the former hearing had been overlooked.

3. Where all of the facts presented have been duly considered by the court, and where the application presents no new fact, but simply reiterates the arguments made during the hearing, and is in effect an appeal to the court to review its decision on points and authority already determined, a rehearing will be refused.

Pursuant to an appeal from a decision of the Circuit Court for the Fifth Judicial Circuit, Grand Cape Mount County, the Supreme Court reversed the decision of the lower court on July 8,1983, and rendered judgment in favor of the appellants. The appellees then petitioned the Supreme Court for reargument of the case, contending that the said Court had inadvertently and mistakenly ruled on an issue which was only raised by the appellants in their brief but not in the bill of exceptions. This, the petitioners/appellees maintained, was a mistake for which re-argument should be granted. The appellants/respondents resisted the petition by asserting that, in order for re-argument to obtain, the petitioners must distinctly aver and show in the petition "the alleged palpable mistake" made by the Court which overlooked certain stated material facts or points of law in the opinion delivered on July 8, 1983. The Court did not find any basis for re-argument and therefore *denied the petition*.

M. Fahnbulleh Jones of the Wakolo Law Office and *Roland Barnes* for petitioners/appellees. *Nelson Broderick* of the Tubman Law Firm for respondents/appellants

JUSTICE KOROMA delivered the opinion of the Court.

Upon the rendition of the opinion and judgment in this case on July 3, 1983, the appellees/petitioners, taking advantage of Rule IX, Parts 1 & 3, of the Rules of this Court as

found on page 43, filed a five-count petition praying the Court to grant reargument of the action of ejectment. The cardinal point of contention of the appellees/petitioners is that in the opinion handed down on July 8,1983, this Court by inadvertence and mistake, passed upon the invalidity, illegality, and irregularity in probation of the appellees' deed when said issue was only raised in the appellants' brief and not in the bill of exceptions. That the consideration by this Court of an issue only raised in the brief and not in the bill of exceptions is a mistake for which re-argument of the case should be granted.

In a five-count resistance the appellants/respondents have denied the sufficiency of the petition, in both fact and law, to warrant the granting thereof. They maintained that in order for this Court to entertain the petition and allow re-argument, petitioners must distinctly aver and show in the petition the alleged palpable mistake which this Court made by inadvertently overlooking certain stated material facts or points of law in the opinion delivered by the Court in the case on July 8, 1983. The appellees, having failed in their petition to conform to and comply with this legal provision should not prevail and the petition should be denied and dismissed as a matter of law. Before proceeding to traverse and settle the issues of contentions raised in the petition and resistance, wherein we shall take recourse to the trial records as well as the opinion under review, we shall lay down some guidelines for ourselves by defining a re-argument or rehearing, showing the purpose and functions of a rehearing, and showing where the burden of proof rests to warrant a favorable judicial consideration. Following this exercise, we shal1 decide whether or not the petition before this Court deserves our judicial favor.

In order to permit re-argument before this Bench, the rules governing this Court provide that for good cause shown to the Court by petitioner, re-argument of a cause may be allowed when some palpable mistake is made by inadvertently over-looking some fact or point of law. *Revised Rules of the Supreme Court,* Rule IX, Part 1, at 43. Re-argument or rehearing is a request to the appellate court to revise its own action erroneously or mistakenly taken, and to modify or set aside its judgment. Its function is to present to the court errors of law or fact, or both, asserted to have been committed by it. 5 AM. JUR 2d, *Appeal and Error*, § 978, at 406. The purpose of re-argument is to demonstrate to the Court that there is some decision or principle of law which would have a controlling effect and which has been overlooked, or that there has been a misapprehension of facts. BLACK'S LAW DICTIONARY 1411 (4th ed. 1951). Further, the general rule is that a rehearing will not be granted unless it is shown either that some question decisive of the case and duly submitted by counsel has been overlooked, or that the court has based the decision on a wrong principle of law.

A cause for action must be shown, that is, it must appear that the judgment was erroneous.

The court must be satisfied that, owing to a mistake of 1aw or misunderstanding of facts, its decision has done an injustice in the particular case, or that the case is one where the principle involved is important and serious doubt exists as to the correctness of the decision. The failure of the appellate court to consider a matter alluded to in the oral argument and referred to in the petitioner's brief, though only lightly, may be ground for rehearing. 3 AM. JUR., *Appeal and Error,* § 708, at 346- 347. A rehearing of a cause in an appellate court differs from a new trial in a trial court. In the appellate court the onus is thrown upon the party appealing for review of a judgment to satisfactorily prove that some important point of law or fact stressed during the former hearing had been overlooked. *Dennis* v. *Republic*, 7 LLR 341 (1942).

Predicated upon the above legal reliance, it follows that where all of the facts presented have, in fact, been duly considered by the Court, and where the application presents no new facts, but simply reiterates the arguments made during the hearing, and is in effect an appeal to the court to review its decision on points and authority already determined, a rehearing will be refused. *Ibid.*, at 349.

Recourse to the records in this case, we observe that His Honour Galimah D. Baysah, in passing upon the law issues in the pleadings, ruled the complaint, answer and reply to trial by jury, declaring that all the counts in them were mixed issues of law and fact and should be decided by the jury. Both sides, plaintiffs and defendants, registered exceptions to this ruling. The registration of exceptions by both parties to a ruling of a court presupposes that some part, or parts, or the entire ruling is adverse to the legitimate interest or rights of both parties. The defendants, in the court below, gave effect to this exception taken from the ruling on the law issues, then they submitted in count one of the bill of exceptions that the court erred in its ruling on the law issues for the reasons given by the court in said ruling. The reason given by the court for ruling all the counts in the complaint, answer and reply to trial is that they all contain mixed issues of fact and law and should be tried by a jury.

In counts one and two of the answer, the defendants raised the question of the legal nullity of the plaintiff's exhibit "A" under which they were claiming title, and upon which they had predicted the ejectment suit. They contended that although the probation and registration of the deed on August 16, 1965 had been declared null and void by the Supreme Court, yet, it was the same document, in its same probation and registration form, that had been proferted with the complaint, and under which the plaintiffs were claiming title. For their part, the plaintiffs, in a two-count reply, contended that counts 1, 2, 3, and 4 of the defendant's answer were un-meritorious and misleading because Justice Barnes, while presiding in the Chambers of this Court, ordered the said deed admitted into probate *Nunc pro tunc,* and that His Honour James L. Brathwaite, while presiding over the February A. D. 1979 Term of the

Fifth Judicial Circuit Court, executed this order of Justice Barnes. The plaintiffs further contended that the defendants in the court below, not having appealed from Justice Barnes' ruling are barred from raising the point of the illegality and irregularity of the probation of the title. Notwithstanding, plaintiffs maintained, the Supreme Court over-looked the foregoing contention of plaintiffs and inadvertently based its decision upon the defendants' contention of the illegality and irregularity of plaintiffs' deed.

The argument advanced by plaintiffs, now petitioners, could easily be accepted in the legal hall of fame and could convince a reasonable mind if viewed in isolation of the facts. The truth is, whenever there are questions about the law and facts presented in a matter, the law must ride upon the fact or the law will suffer paralysis.

In the instant case, the ruling of Justice Barnes to have the deed entered into probate and registration *nunc pro tunc,* and from which no appeal was taken, became law and binding upon the parties if his orders were legally and judicially executed. It was <u>that deed</u> (emphasis added), duly probated and registered *nunc pro tunc*, that was proferted with the complaint. On the contrary, the facts upon which the law must ride, reveal that the deed proferted with the complaint carries on its cover: (1) Lewis K. Free, as the Commissioner of the Monthly and Probate Court who admitted the deed into probate; (2) the date of probation which was the 16th day of August 1965; and (3) the date of registration, volume and page numbers, also recorded in 1965. These bare facts, unaided by any act of the defendants in the court below, were culled from the cover of the deed and constitute what the defendants have termed in count two of their answer the nullity of the plaintiffs' title, and in the prayer of the answer the defendants prayed for the dismissal of the complaint. However, the judge ruled the said complaint to trial on the ground that it contained mixed issues of facts and law. Instead of dismissing the complaint on the strength of counts one and two of the answer, the court ruled it to trial on the single reason that it contained mixed issues of facts and law. This being the only reason for which the answer and reply were also ruled to trial, the defendants in the court below noted it as count one of their approved bill of exceptions, and argued same in their brief. Hence, this Court had a judicial duty to pass upon this issue in the opinion under review, because the requirement for giving the said issue a judicial consideration had been met. For one of the grounds for rehearing is the failure of the appellate court to consider a matter alluded to in the oral argument, and referred to in the petitioner's brief, though only lightly. 3 AM JUR, *Appeal and Error,* § 708, at 346 - 347. In the instant case, the issue of the nullity of the plaintiffs' title had been squarely raised in the answer, properly excepted to when the trial court did not squarely pass upon and settle the issue, noted in the bill of exceptions, and argued in this bar. If this Court had failed to consider said matter, the appellants in this case would have had a proper ground to have applied for a rehearing. Hence, there was no inadvertence, no misapprehension of facts, no

mistake of law, or misunderstanding of facts when the opinion under review passed upon the invalidity of the plaintiffs' title, the foundation of their action.

One principal issue of fact that stands out in this case, and upon which any law controlling the said case must ride, is the title deed of the plaintiffs in its original form, as was entered into probate by His Honour Lewis K. Free on August 16, 1965. Despite the argument of the appellees/petitioners that the opinion under review should not have given consideration to the contention of the invalidity and nullity of the appellees/petitioners' deed, this fact stands out so stubbornly that no court of justice could have judicially overlooked same and simultaneously render an impartial judgment. "Facts", says Mr. Justice David, "are stubborn things. Whatever may be our wishes, our inclinations, or the dictates or our passions, they cannot alter the state of facts and the evidence." *Jones et al.* v. *Dennis*, 8 LLR 342, 347 (1944). Hence, while it may be true that Justice Barnes ordered the admission of plaintiffs' title into probate *nunc pro tunc* and that this mandate was executed by both Judge Reeves and Judge Brathwaite, the fact that stands undefeated and unchallenged is that the said deed proferted with the complaint remains in its original form as it was when admitted into probate on August 16, 1965. What more spells out a void title than the fact that the said document justifies the contention of the defendants in the court below.

Wherefore, and in view of the facts, laws and circumstances hereinabove recited, it is our holding that the opinion delivered by this Court on July 8, 1983, did in fact pass upon all the questions of law and fact decisive of the case, and said decision is not based upon any wrong principle of law as the plaintiffs have contended. We are therefore of the opinion that the said judgment should not be disturbed. The petition for re-argument is denied with costs against the petitioners. The Clerk of this Court is ordered to send a mandate to the court below commanding it to resume jurisdiction and give effect to this opinion, and to the opinion and judgment of this Court delivered on July 8, 1983. And it is hereby so ordered.
Petition denied.