GRASS ROOTS CINEMA LIMITED, by and thru its President, **EISENHOWER YORK, Movant,** ***v.*** **CITI BANK N. A.,** by and thru its Vice President, Respondent.

PETITION FOR REARGUMENT

Heard November 11, 1985. Decided December 18, 1985.

1. A petition for reargument will be granted or allowed only for good cause shown to the satisfaction of the Court and where it is revealed that some palpable mistake was made by the Court inadvertently overlooking some fact or point of law.
2. A petition for reargument must be presented within three days after the filing of the opinion, except in cases of special leave granted by the Court.
3. A petition for reargument must contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a Justice of the Supreme Court who concurred in the judgment orders it.
4. In a petition for reargument, the petitioner must serve a copy of the petition on the adverse party as provided by the rules relating to motions.
5. The cardinal rule for the granting of reargument by the Supreme Court is that the matter allegedly overlooked by the Court had been raised at the hearing out of which the petition for reargument grew. Under this rule, (a) there must have been a previous hearing, (b) an opinion must have been delivered by the Court in which the facts were analyzed and the laws reviewed, and (c)some fact or law was overlooked by the Court.
6. Where the issues which were raised previously and considered material to the determination of the case, were reviewed by the judgment of the Court, a petition for reargument will be denied.
7. Reargument by itself means arguing it all over again. Therefore, where a petitioner in a petition for reargument raises points that have not been previously raised and overlooked, those point cannot be reargued.
8. As a general rule, a rehearing will not be granted on grounds which were not argued or considered on the hearing, and this rule will be departed from only in cases where the refusal of the application would work manifest injustice.

In a petition for reargument, the petitioner contended that the Court, in its previous opinion and judgment, had confirmed the application of Rule 7 of the Circuit Court Rules by the trial court, which Rules, it said, were not applicable to debt cases since actions of debts were governed by a separate set of rules promulgated specifically for debt cases. An action of debt had been instituted against the petitioner in the Debt Court for Montserrado County. When the petitioner and its counsel failed to appear for the hearing of the case, although served with a notice of assignment, the plaintiff in the debt action then invoked Rule 7 of the Circuit Court Rules, prayed the court to enter a judgment by default against the petitioner, and asked for per-mission to proceed to prove its side of the case. The application was granted, judgment by default was entered against the petition, plaintiff was permitted to present its side of the case, and final judgment was entered at the close of the evidence. On the entry of the final judgment, the trial court failed to appoint an attorney to take the judgment and announce an appeal on behalf of the petitioner.

Petitioner then sought error to have the Supreme Court to have the Supreme Court review and reverse the action of the trial court. The error was denied and the trial court's judgment was ordered enforced. It was from this final judgment of the Supreme Court that petitioner file the current petition for reargument, contending that the Debt Court should have applied the rule of the debt court and not the rule of the circuit court, a point which petitioner said the Supreme Court had overlooked.

The Supreme Court denied the petition, holding that as the issue had not been raised in the petition for a writ of error, or before the Justice in Chambers, or the Court *en banc* during the hearing of the error proceedings, it could not be raised in the petition for reargument. The Court observed that a petition for reargument can only be granted where the Court had made some palpable mistake by inadvertently overlooking some fact or point of law raised in the previous proceedings. The petition cannot be granted, it said, where the issues were not previously raised, or where raised, had not been overlooked by the Court. In the instant case, the Court opined that as the issue had not been raised previously, and as the petitioner would suffer no manifest injustice, the petition should be denied. The petition was therefore *denied* and the judgment ordered *enforced.*

J. Emmanuel R. Berry appeared for movant. *H. Varney G. Sherman* of the Maxwell and Maxwell Law Firm appeared for respondent.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case began initially as an action of debt in the Debt Court of Montserrado County when Citibank sued the Grass Roots Cinema et. al. for recovery of a debt in the amount of $267,955.32. Pleadings progressed to the reply and rested.

Due to the absence of defendants' counsel from the trial after service of a notice to appear, the plaintiff's counsel invoked Rule 7 of the Revised Circuit Court Rules, which was granted. A trial was had in which the plaintiff presented its side of the case. Thereafter judgment was rendered by default against the defendants. In rendering the judgment, however, the court failed to appoint an attorney to take the judgment for the defendants in the absence of its counsel.

Defendants therefore moved to tho Justice in Chambers for a writ of error to enable them to have the case retried, and thus allow them to give their own side of the case, or rather to afford them their day in court, and, if they lose, that they would have the opportunity to announce an appeal. Plaintiffs-in-error contended that notice was not served on them in the court below to attend the trial. Nor, they say, was an attorney deputized to take the judgment and announce an appeal on their behalf.

Defendant-in-error, on the other hand, argued that notice was not only served on-plaintiffs-in-error, but that attorney Catherine Watson-Khasu who signed the notice had also represented the Berry Law Office at preliminary stages of the trial. It further maintained that when it invoked Rule 7 against the defendants in the court below, the defendants thereby became guilty of abandonment and therefore lost all further rights in the matter to participate in the case, including the right to have an attorney deputized to take the judgment for purposes of announcing an appeal. In effect, defendant-in-error said that by the plaintiffs-in-error abandoning their cause under Rule 7, they had, as a punishment for said abandonment, lost every right of appeal. Therefore, they asserted, the trial court had no obligation to appoint counsel to take the judgment for the plaintiffs-in-error.

The Justice in Chambers granted the writ of error and ordered a retrial of the cause in the court below, reasoning that even though the evidence showed that defendants in the trial court were served notice to appear and that they were therefore *estopped* from alleging that they were denied their day in court, yet, upon a prudent consideration, the right of appeal was not lost thereby. Hence, the Justice held that an attorney should have been appointed to take the judgment on behalf of the defaulting party-defendants and to announce an appeal on their behalf since they had made an appearance.

The defendant-in-error, being dissatisfied with the ruling, took appeal to the full bench for a review of the matter.

In an opinion of this Court given by our colleague, His Honor Associate Justice Frank W. Smith, during the October Term, 1984, this Court held for defendants-in-error and reversed the ruling of Associate Justice Morris, who presided in Chambers over the matter. This Court held then that the writ of error should have been denied where adequate notice had been given to the defendants to appear, they had failed to appear without filing a motion for continuance. Rule 7 of the Revised Circuit Court Rules had been invoked, and the circuit judge below had rendered final judgment by default. In that case, the trial judge had not erred in not deputizing an attorney to act on behalf of the defaulting defendants in order to except to and announce an appeal from the judgment.

One of plaintiffs-in-error, petitioner herein, being further displeased by the judgment, filed this petition for re-argument, which was ordered by former Associate Justice M. Kron Yangbe who had earlier concurred in the judgment handed down by the Court *en banc* denying the writ of error.

Petitioner is contending basically that the matter before the court at that time was one from the Debt Court, and that as a debt matter, it should properly be governed by the "Rules and Regulations for the governance of Debt Courts in the Republic of Liberia", which was issued under the signature of His Honour A. Dash Wilson, Sr., the late Chief Justice of the Supreme Court of Liberia, and which was published by authority of the government printing office, Department of State, Monrovia, Liberia, on June 10, 1968. Petitioner argued that the decision hitherto rendered in the matter was erroneously based on the Rules of the Circuit Court which are not properly applicable in debt cases. The Rules of the Debt Court, he says, are silent on abandonment, and notices have to be served at every stage of the trial of a debt cause. Further, he contends that the right of appeal cannot be denied in such cases if the rules of the Debt Court are followed.

Respondent, on the other hand, prayed this Court to deny the petition for re-argument, and to affirm and confirm the judgment of this Court, rendered in its 1984 October Term. It has argued that fundamentally a reargument is resorted to only where a decisive issue was raised in the court below, argued before this Court at the prior hearing, and inadvertently overlooked in the judgment of the Court. It maintained that under no circumstances should we allow what it called the “absolute 1968 rules” for debt courts to supercede both of the Civil Procedure Law, Rev. Code 1: 42.1 and Rule 7 of the Revised Rules of the Circuit Court.

From the foregoing, the sole important issue presented at this re-argument is whether

there is proper reason in the petition to warrant the granting of reargument under our law.

The Revised Rules of the Supreme Court state thus:

"IX RE-ARGUMENT

> Part 1. Permission for: 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 fact or point of law.
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> Part 2. Time of: A petition for re-hearing shall be presented within three days after the filing of the opinion unless in cases of special leave granted by the court.
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> Part 3. Contents of petition: 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."

The above quotation is explicit and needs no further explanations. There is no doubt that the petition was filed within statutory time. A former Associate Justice of this Court, Mr. Justice M. Kron Yangbe, who concurred in the judgment to be reargued, had ordered the petition for re-argument.

The ground upon which this petition for re-argument is based is that while matters of debt are supposed to be properly decided by resort to the Debt Court Rules, this Court, the Justice in Chambers, and the debt court judge had relied on the Revised Rules of the Circuit Court. It is alleged that this fact was in-advertently overlooked by this Court. This, the petitioner asserts, is a palpable mistake and a good cause for granting a petition for re-argument. In support of the petition, the petitioner attached to the petition a copy of said Rules and Regulations of the Debt Court, marked exhibit "A". It remains for this Court, therefore, to decide whether or not this constituted "good cause shown", in the language of the Revised Rules of the Supreme Court, to warrant granting a re-hearing of this matter.

An examination of the rules and regulations of the debt courts, referred to herein, shows that it is indeed a strange document and only a very small percentage of lawyers in this country are aware of its existence.

However, we do not intend to pass upon its usefulness or the lack thereof in this opinion since we do not consider it important to a determination of whether or not the petition for re-argument should be granted under the circumstances presented in this case.

In addition to part 1 of the rules governing re-argument, quoted above, this Court has held in several opinions that a re-argument will be granted or allowed in cases only where, for good cause shown to the satisfaction of the court by petition, it is revealed that *some*

palpable mistake was made by the Court inadvertently overlooking some fact or point of law. (emphasis by the Court). The emphasized portion of the provision is to the effect that a matter was argued or raised by the pleadings bearing on some fact or point of law which the court failed to take into consideration in its judgment. By the petition for re-argument, same is brought to the attention of the Court, which, if it considers that the matter referred to was in fact overlooked by the fault of the Court itself, it then grants a re-argument. The cardinal rule for the granting of a re-argument by the Supreme Court of Liberia is that the matter allegedly overlooked had been raised at the hearing out of which the petition for re-argument grows.

This Court has specifically held, in line with the Revised Rules of the Supreme Court, quoted above, that a petition for re-argument must satisfactorily establish:

(a) A previous hearing of the case and argument;

(b) An opinion delivered by this Court which analyzed the facts and reviewed the law in the case; and

(c) A palpable mistake in the opinion overlooking some fact or point of law. *Dabbah v. Dabo,* 23 LLR 207 (1974).

Another case stipulates as conditions for granting a petition for re-argument that a previous appearance was had at the Bench by the petitioner, at which time he had fully presented his case to this Court, and that in spite of the fine presentation, believed to be material to a determination of the cause, the Court had inadvertently overlooked the same. *Snyder v. Republic*, 5 LLR 88, 89 (1936), *Hill v. Hill*, 13 LLR 392 (1959).

The cases cited above specifically say in which cases a re-argument may be granted or allowed by this Court. Thus, in the case *King v. Cole*, this Court held that "In the case before us, not only was each and every one of the issues raised in the petition argued and determined in Chambers, but Mr. Justice Mitchell, who spoke for the bench *en banc* . . . . reviewed each of these points separately and individually." 15 LLR 15 (1962). From the foregoing ruling, it is evident to us that in every case where the issues raised previously, considered material to a determination of the cause, were reviewed by the judgment, a petition for reargument will be denied.

In the petition for re-argument before us, the material contention is that the rules and regulations of the debt courts, approved April 10, 1967, are properly applicable in debt cases and that the application of the rules of the circuit courts was an inadvertence which caused petitioner to lose its case. The peti-tioner therefore states that it should be allowed re-argument to enable it to prove its case.

While we recognize, in passing, that the points raised in the petition are indeed interesting, they nonetheless fail to cohere with one major aspect of the provisions of the Revised Rules and opinions of this Court in several cases, some of which we have cited above, relating to the basis for allowing a petition for re-argument. That major aspect is that the points relied upon by petitioner were not raised previously, either in Chambers or on the appeal in the petition for the writ of error. Hence, they were not overlooked. "Re-argument", by itself, means arguing it all over again, and since petitioner's points raised in the petition had not been previously raised and overlooked, they cannot therefore be re-argued in fact.

In the case of *King v. Cole, supra*, this Court, citing the Encyclopedia of Pleadings and Practice, at page 39-40, dealing with re-hearing, stated that: "As a general rule a re-hearing will not be granted on grounds which were not argued or considered on the hearing, and this rule will be departed from only in cases where the refusal of the application would work manifest injustice."

We do not see the manifest injustice that will be occasioned by our refusal to allow this re-argument, considering all of the stages through which this case had gone before now. Rather, we see manifest injustice in granting said re-argument since it will serve hardly any material advantage, and the legal rights of respondent to the enforcement of the judgment of this Court rendered during the October 1984 Term, which is sought to be re-argued, will be jeopardized thereby.

Therefore, the re-argument prayed for is hereby denied. The clerk of this Court is hereby directed to send a mandate to the lower court to resume jurisdiction of this matter, and to enforce the judgment handed down in this case by this Court during the last October 1984 Term, with costs against petitioner. And it is so ordered.

Petition for reargument denied.