ARMAH KAMARA and **HENRY KOLLIE**, Appellants, v**. BINDU KINDI et al.** Appellees.

MOTION FOR RELIEF FROM JUDGMENT OF THE SUPREME COURT, PETITION FOR RE-ARGUMENT, BILLS OF INFORMATION.

Heard: March 30, 1998. Decided: August 6, 1998.

1. The failure of a party to deny those averments of an adverse party which are known or believed by him to be untrue amounts to an admission of the same.

2. Where the respondent to a bill of information does not deny the averments in the bill of information, the information will be granted, and if the acts alleged therein constitute contempt of court, the party failing to deny the acts will be held in contempt of court.

3. It is contemptuous for a party to engage in any conduct which is contrary to the specific orders of a trial court or which has the tendency or potential to undermine the effectiveness of the final judgment of the Supreme Court.

4. It is common knowledge that appeals serve as a stay on the proceedings, and the judgment cannot be enforced; in fact everything remains in status quo until the appeal is determined.

5. A motion for relief from judgment is a subject matter for the trial court and not the Supreme Court.

6. While the section of the statute providing for motions for relief from judgment does not say in clear and concise terms that the "court" referred to therein is the trial court, same is inferred from the provisions.

7. It is common knowledge in our jurisdiction that the general jurisdiction of the Supreme Court is appellate in nature; its original jurisdiction is therefore limited. Hence, where the statute gives the Court the power to entertain an independent action that statute refers to only a trial court and not an appellate court.

8. Where a party does not attempt to have the Supreme Court sent down to the trial court a mandate growing out of the Supreme Court judgment, and the other party take advantage of the inaction by filing a motion for relief from judgment, the Court

will deem that the case remains on the docket, and the motion will be passed upon regardless of whether or not the motion is cognizable before the Court.

9. A party's negligence and failure to act in seeing that the Supreme Court's mandate is forwarded to the trial is considered to be laches, and a motion for relief for judgment filed in consequence thereof will be passed upon by the Court.

10. The three-day time limitation is applicable to petitions for re-argument and not to motions for relief from judgment.

11. The filing of a motion for relief from judgment in the Supreme Court, twenty-one days after the rendition of the Supreme Court's judgment is not deemed to be untimely; rather, it is an attack on a motion for relief from judgment that is considered to be untimely where the response is filed eight months after the filing of the motion.

12. The Supreme Court loses jurisdiction over a case only when the Court issues and sends down a mandate to the trial court with instructions to resume jurisdiction and to do or refrain from doing certain acts.

13. Once a case is on the Supreme Court's docket, the Court has jurisdiction over it and must therefore dispose of it, even where a judgment has been rendered, once the judgment has not been effectuated by a mandate being issues and sent down to the trial court.

14. The failure of the Supreme Court to send down a mandate to the trial court after the Supreme Court has rendered judgment in a case will be interpreted as a decision of the Bench to entertain a motion filed after the rendition of the judgment.

15. Although a motion for relief from judgment is a proper subject for the trial court and is not cognizable before the Supreme Court, once a predecessor Supreme Court Bench which had rendered judgment in a case for which the relief is sought had decided not to enforce the judgment by virtue of the fact that a mandate was not sent down to the trial court, the motion will be entertained by the Court.

16. Where a predecessor Supreme Court Bench fails to enforce a judgment rendered by it and from which a motion for relief from judgment is filed, the judgment is deemed to remain in abeyance, and as such, technically, no final judgment will be deemed to have been made in the case.

17. The Supreme Court will be deemed to have jurisdiction over and will entertain a motion for relief from judgment, even though the Court concedes that the motion is a proper subject for the trial court.
18. Only a trial court can issue summons and render final judgment, after commencing actions on its own level.

19. Where a judgment is set aside, the court may direct and enforce restitution, in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal.

20. The three-day time limitation is applicable to petitions for re-arguments and not motions for relief from judgment.

21. The Supreme Court only loses jurisdiction of a cause when the Court issues and sends down a mandate.

22. Only those issues raised in the first hearing and not passed upon are proper subjects for review in re-argument.

23. Not every point raised needs to be passed upon by the Court; rather, only those issues which are material and decisive of the controversy will or need to be passed upon.

24. A judge is not disqualified by having been counsel of any person who is interested or whose estate is involved, where such judge was never consulted relative to the particular matters which are the subject of the cause or proceeding before him.

25. In order to disqualify a judge who had previously been of counsel to a party, it must be shown that he had previously consulted on the identical point in controversy or very closely connected therewith.

26. A judge is not disqualified from sitting on a cause by the fact that he had been an attorney for one of the parties in another action involving one of the issues in the case on trial.

This is a case in which the Honourable Supreme Court is for the third time rendering an opinion. It involves a petition for declaratory judgment filed by Bindu Kindi et al. A trial was first had and judgment rendered in favor of petitioners. Respondent excepted to the ruling and appealed therefrom. That appeal was heard and granted,

and the trial court's final judgment was ordered reversed. Then the appellees filed a petition for re-argument, which was heard and granted, and the opinion of the Supreme Court was itself reversed in favor of the appellees, thereby reinstating the trial court's final judgment. Subsequently, the appellants in whose favor the first opinion was rendered, and against whom the second opinion was given, filed a motion for relief from judgment, which motion was not determined at the time the matter was called for hearing by the Supreme Court.

In the interim, both appellants and appellees, respectively, filed separate bills of information accusing each other of violating the status quo of the property which was in dispute. Neither of the parties resisted the bill of information of the other, and the Supreme Court had not passed on either of the bills of information. In short, there was a regular appeal still not finally determined because of the pendency of a motion for relief from judgment, filed after re-argument was granted reversing an opinion of the Supreme Court, a motion for relief from judgment which had not yet been determined, and two bills of information respectively filed by the parties, both not resisted nor disposed of. The Supreme Court consolidated the three actions and made a final determination thereof.

On the two bills of information filed by the parties and not resisted, the Supreme Court noted that under the laws of this jurisdiction, the failure to deny averments in a pleading to which a denial is required will be deemed as an admission of the truthfulness of the averments. Since, in the instance case, the respondents in the two bills of information had failed to deny the allegations in the bills of information, which allegations accused the respective parties of acts contravening the judgment of the Supreme Court and the orders of the trial court, which acts constituted contempt of court, the parties were deemed in contempt of court and were each fined L$5,000.00 to be paid into the government revenues or be detained until the fines are paid.

With regards to the motion for relief judgment rnd the respondents arguments that the said motion was only cognizable before a trial court and not the Supreme Court, the Court conceded the legality of the argument but maintained that the fact that the respondents had failed to see that the Supreme Court's mandate, handed down in the previous petition for re-argument caused them to suffer lashes. The Court stated further that the fact that the motion was permitted to be on the docket, and the mandate in the previous petition for re-argument was not forwarded to the trial court meant that the Court still retained jurisdiction over the previous case and give it jurisdiction over the motion for relief from judgment. The Court interpreted the

failure to send the mandate down to the lower court as a decision by the previous Court not to enforce the judgment, and to therefore vest in it the right to entertain the motion for relief from judgment. Accordingly, the Court dismissed the resistance to the motion for relief from judgment and proceeded to pass upon the said motion.

The Court held, with respect to the motion for relief from judgment that the previous Bench had acted beyond the petition for re-argument filed before it and held that the interpretation given by such previous Bench was wrong. The Court therefore reversed the judgment of the previous Bench, entered an new judgment reinstating the judgment out of which the re-argument grew, and ordered the trial court's judgment reversed. In entering this new judgment, the Court determined that the deed executed by the Republic in favour of Chief Fahn Kendeh and Families referred not only to the Chief and his immediate family, but to all families living in the Kendeh Town at the time of the execution of the deed.

The Court therefore sent down a mandate to the Civil Law Court for the Sixth Judicial Circuit Court for Montserrado County ordering the judge presiding therein to resume jurisdiction and give effect to the opinion that the subject property as communal property for the benefit and use of all of the residents, inhabitants and families of Kendeh Town, evidenced by the public land grant issued on March 17, 1916 since this was the intention of the grantor, the Republic of Liberia.

Molly M Gray appeared for appellants. J. D. Baryogar Junius and James W Zotaa, Jr., appeared for appellees.

MR. JUSTICE WRIGHT delivered the opinion of the Court

This is another one of those cases that have had a "topsyturvy" or roller-coaster ride in the Supreme Court. This is the third time this Court is having to render an opinion in this case. There was first a petition filed for declaratory judgment by Bindu Kindi et al. After pleadings rested, a trial was had and judgment rendered in favor of petitioners. Respondents being dissatisfied, excepted to said ruling and appealed therefrom. That regular appeal was heard and granted and the trial court's final judgment ordered reversed.

Then the appellees filed a petition for re-argument, which was heard and granted, and the opinion of the Supreme Court was itself reversed in favor of the appellees, thereby reinstating the trial court's final judgment. Subsequently, the appellants, in

whose favor the first opinion was rendered and against whom the second opinion was given, filed a motion for relief from judgment.

This motion has not been determined, but in the interim, both appellants and appellees filed separate bills of information, accusing each other of violating the status quo of the property which was (and still is) in dispute. Neither of the parties resisted the bill of information of the other and this Court had not passed on either of the said bills of information prior to this opinion. In short, there is a regular appeal still not determined due to the pendency of a motion for relief from judgment filed after re-argument was granted reversing an opinion of this Court. Second, there is the said motion for relief from judgment still not heard and decided. Third, there are the two bills of information filed by the parties, both not resisted and not disposed of. Therefore, this Court, by this opinion today, lays to rest this case in its totality. The Court herein decides the appeal from the final judgment of the trial court, the motion for relief from judgment, and the two bills of information, all in one consolidated ruling, thus putting finality to the litigation.

This opinion being a consolidated ruling covering all the several pleadings that were filed and rulings made, the Court shall refer to the original petitioners in the parent case, i.e. Messrs. Bindu Kindi, Trini Kindi, Gbessie Kindi, Kula Kindi, Lami Kindi and Gboto Kindi, lineal heirs of the late Palm Kindi, as appellees; and shall refer to the original respondents, Messrs. Armah Kamara and Henry Kollie, as appellants.

Further, it is to be noted that this case has already enjoyed the benefit of one reargument following the first opinion and now is subject of a motion for relief from judgment following the second opinion and therefore shall not come back to this Court on re-argument or for any other reason except perhaps in case of improper enforcement of this Court's mandate or its obstruction. This Bench shall now lay this case to rest once and for all. See the case Rizzo and Richards v. Metzger and Rizzo, 38 LLR 544 (1998).

We shall now revert to the essence of this opinion, commencing with the two bills of information, same being the last pleadings filed; then, the court shall go on to the motion for relief from judgment.

Following the trial court's final judgment in favor of appellees (who then were petitioners), the appellees perfected their appeal from that judgment and the Supreme Court heard and granted their appeal in an opinion dated August 1, 1986. The appellees then filed a petition for re-argument on August 1, 1986 which was, in turn,

heard and granted on February 25, 1988, thus reversing the first opinion and also thereby reinstating the trial court's final judgment. Thereafter, the appellants filed a motion for relief from judgment dated March 17, 1988, which was resisted on November 5, 1988, and is still not yet determined by this Court.

Given the above development in the case, the appellants, Armah Kamara and Henry Kollie, filed a bill of information to this Court, dated January 13, 1989, alleging that the Justice in Chambers, then Justice Frank W. Smith, now of sainted memory, sent down a mandate to the Civil Law Court on December 20, 1985, ordering the Sheriff of Montserrado County to collect all monies which were being collected by one of the parties to the cause of action for the use of the road built on the land and to hold said amounts in escrow pending the final determination of the petition for declaratory judgment by the Supreme Court.

Further, even though both parties were duly notified of the orders of this Court, the appellees, Bindu Kindi et al., harassed the Civil Law Court's bailiff such that she had to flee the area, thus leaving appellees still collecting monies to the detriment of appellants and without reporting said monies to the sheriff of the trial court. Additionally, because the monies collected by appellees were not being accounted for or deposited with the sheriff to be kept in escrow pending the final determination of the case, the acts of appellees were detrimental, disadvantageous and prejudicial to appellants' interest.

Appellees in turn filed their own bill of information, dated February 18, 1989, alleging that despite the pendency of the petition for declaratory judgment, by virtue of the motion for relief from judgment, Co-appellant Armah Kamara was continuing the sale of the property subject of the litigation; that he had sold said property to Messrs. Mike Dickson, Junior Ranyeh and Boakai Kalbah, that if he were not stopped by this Court from selling the land, he would be finished selling all by the time the matter was finally determined by this Court, and that he would have no money to refund to the purchasers should he not be successful at the end of the litigation.

During oral arguments before this Court, both counsels conceded that neither party resisted the bill of information of the other, thus leaving both unchallenged and as such taken to be true and correct. Our law provides that a party shall deny those averments of an adverse party which are known or believed by him to be untrue and that failure to deny such averments amounts to an admission of same. Civil Procedure Law, Rev. Code 1: 9.8.2. Both bills of information, being unrebutted as far

as the records show, and as such deemed admitted, are hereby granted; and, because of that, the Court adjudges both parties guilty of contempt of this Court.

It must be remembered that the controversy of the parent case is for this Court to declare who, as between the contending parties, are the true owners of the disputed land and this contro-versy is still unresolved by virtue of the appeal announced from the trial court's final judgment, which appeal is still undecided by virtue of the motion for relief from judgment filed by appellant. It is common knowledge that an appeal serve as a stay on the proceedings and the judgment cannot therefore be enforced. In fact, everything remains in status quo until the appeal is determined. LIB CONST. (1986) Art. 20(b); Civil Procedure Law, Rev. Code 1:51.2, 51.20.

Therefore, it was contemptuous for either or both parties to have engaged in any conduct which was contrary to specific orders of the trial court, or which had the tendency or potential to under-mine the effectiveness of a final judgment of the Supreme Court as to the status and value of the property in relation to the relative positions of the parties. Accordingly, both bills of information are respectively hereby granted and both parties are adjudged guilty of contempt and fined the sum of $5,000.00 (Five Thousand Liberian Dollars) each, which fines should be paid within five working days of this opinion and the flag receipts therefor presented to the Clerk of this Court. Upon the failure of either or both parties to pay these fines, the Clerk of this Court is hereby ordered to issue a commitment for the party or parties in default to be detained until the fine(s) shall have been paid.

Next, we proceed to the motion for relief from judgment filed by appellants after the first opinion was reversed on re-argument in favor of appellees.

The appellants' motion contained seven (7) counts, six of which we shall herein quote verbatim as follows:

2. That the declaratory judgment as prayed for by the petitioners, being against your humble movants, an appeal to this Honourable Court of last review was announced, granted, perfected and the court below was reviewed by the Nagbe Bench in 1986, and it reversed the said judgment of the court below and declared that the 204 acres of land was belonging to all of the families of Kendeh Town, including the petitioners/appellees, in keeping with the intent of the grantor—the Republic of Liberia—as expressed in the Aborigine Deed itself.

3. That even though this Court in 1986, with Mr. Justice Jangaba speaking for the Court, addressed all of the issues presented and clearly showed all to whom the 204 acres was made according to the intent of the grantor— the Republic of Liberia—as is expressed in the deed itself, yet the respondents herein, then petitioners/ appellees, filed for re-argument, which placed the case back on the docket.

4. That during the October 1997 Term of this Honourable Court, the succeeding Bench, prior to the qualification and seating of the Chief Justice, Emmanuel N. Gbalazeh, of the Supreme Court, heard the re-argument with Justice Azango, Senior Associate Justice presiding, and contrary to the rule governing re-argument, reviewed the opinion and judgment, and on February 25, 1988, reversed the judgment of the Bench with which it had concurrent jurisdiction, instead of reviewing the points for the re-argument presented so as to either deny or grant the application for re-argument.

5. Your humble movants submit that the petition for re-argument points out the law and fact which the petitioners allegedly claim were inadvertently overlooked by the Court through palpable mistakes on its part. The duty of the Court, as presided over by Mr. Justice Azango, was to see whether those points of law and facts were material and decisive of the petition for declaratory judgment and as to whether they were not passed upon in the previous opinion of the Nagbe Bench, and if they were so found, to grant the motion for re-argument and order the case redocketed for re-submission or to correct any such minor mistakes, if any, without disturbing the judgment in its entirety or otherwise to deny the motion for re-argument if the previous opinion did in fact address such points of contention.

6. Your humble movants further submit that this Bench was not called upon in the motion to review the judgment of Judge Hilton of the court below, but rather to grant a re-argument so that the points of law and fact raised, which the Court by palpable mistake inadvertently overlooked and did not pass upon, could be reviewed and addressed upon re-submission, but not to review the judgment of the court below for confirmation as was done by this Honourable Bench.

7. Your humble movants say that this present Bench made a serious and incurable mistake when it reviewed the appeal in this case and on February 25, 1998, rendered judgment in the appeal already heard and decided by the preceding Nagbe Bench in 1986 and reversed the judgment of a court of concurrent jurisdiction and confirmed the judgment of the lower court contrary to law and the purpose of the petition for

re-argument, hence your said judgment of February 25, 1988, is void and should be vacated."

The appellees, in whose favor the re-argument had been granted, filed their resistance to the motion, also containing seven (7) counts.

In Count one of the resistance, respondents/appellees contended that movants/appellants should have filed their own petition for re-argument if they felt that some material issue of law or fact had been overlooked but not a motion for relief from judgment. It was respondents/appellees' basic contention that a motion for relief from judgment is cognizable only in the trial court and has no standing in the Supreme Court.

In count two of the resistance, the respondents/appellees contended that the issues raised in counts one, two and three of the motion had already been disposed of in the opinion of February 25, 1988 and so a finality had been reached on the merits of the case, and therefore under the principle of stare decisis and the doctrine of res judicata the case cannot be unearthed by a motion for relief from judgment.

Count three of the resistance raised the issue of timeliness; that the re-argument was granted on February 25, 1988 and if the movants wanted to file for re-argument, such a petition should have been filed within three days, that is, not later than February 29, 1988. And that the movants not having filed a petition for re-argument, a motion for relief from judgment cannot be substituted therefor.

Count four of the resistance merely restate the provision allowing re-argument.

In count five of the resistance, the respondents/appellees argued that the successor Bench did not make any serious or incurable mistake in that it was one of the concurring Justices of the Nagbe Bench who signed the previous judgment who approved the petition for re-argument. So it was proper for the Court to have heard and determined the case, having been convinced there were some facts or points of law inadvertently overlooked in the previous opinion.

Respondents contended in count six of their resistance that it was contemptuous for movants to claim that the Court's judgment was void without showing how it was void. Further, that movants' prayer to have the Supreme Court vacate its own judgment is not proper in the Supreme Court but properly suited for subordinate courts, and that the judgment of the Supreme Court is not and cannot be subject to

review. Finally, that movants should have filed a petition for re-argument and not a motion for relief from judgment since the latter has no place before the Supreme Court.

Before reaching the merits of the motion for relief from judgment, the jurisdictional hurdle must first be surmounted. The respondents/appellees have strongly contended that following the opinion of February 25, 1988, which granted re-argument in favor of appellees, if appellants felt aggrieved thereby, they should have filed a petition for another re-argument and not a motion for relief from judgment, and that as such a motion is cognizable only in the trial court. Further, that such petition for re-argument should have been filed within three days of the date of the opinion of February 25, 1988, which would have been not later than February 29, 1988.

As to the jurisdictional question, this Court fully agrees with respondents' contention that a motion for relief from judgment is a subject matter for the trial court and not the Supreme Court. While the section providing for motions for relief from judgment does not say in clear and concise terms that the "court" referred to therein is the trial court, same is inferred from the provisions. Civil Procedure Law, Rev. Code 1:41.7 (2-5). For example, subsection 4 in its latter part states: "this section does not limit the power of a court to entertain an independent action to relieve a party from a judgment or to grant relief to a defendant under section 3.44." It is common knowledge in our jurisdiction that the general jurisdiction of the Supreme Court is appellate in nature and that its original jurisdiction is very limited. Therefore, where the statute gives the court the power to entertain an independent action that certainly refers to and can only refer to a "trial" court and not an appellate court.

Further, a review of section 3.44, referred to in subsection 4 above, reveals that the said section relates to and deals with defendants who are served with summons other than by personal delivery, and are therefore allowed to appear and defend an action at any time before final judgment or within five years thereafter. Civil Procedure Law, Rev. Code 1:3.44. Note that only a trial court issues summons and renders final judgment. Also, this provision falls under Chapter 3, Sub-Chapter B Form, Issuance And Service of Process." In fact, the whole of Chapter 3 is captioned "Commencement of Action." Civil Procedure Law, Rev. Code 1:46.48. We know that all actions are commenced in the trial courts and not at the appellate level.

Going further in our examination of section 41.7, we observe at subsection 5 that where a judgment is set aside the court may direct and enforce restitution "in like

manner and subject to the same conditions as where a judgment is reversed or modified on appeal." (Emphasis ours). This shows clearly that this provision relates to the trial court, in view of the distinction between the trial court level and the appellate level, shown in the language of the emphasized portion of the quoted section.

This Court therefore is in full concurrence with the contention of appellees/respondents that a motion for relief from judgment is a trial court proceeding not cognizable before the Supreme Court. However, this Court cannot grant appellees/respondents' request to have said motion dismissed because even though the opinion was rendered on February 25, 1988, there is no showing that any attempt was made or action taken to have the Supreme Court send down a mandate ordering enforcement of the judgment. That inaction allowed the appellants to file the said motion for relief from judgment twenty one (21) days after judgment, thereby keeping the case on this Court's docket. Whether or not the motion was cognizable before this Court, the fact remains that the case is still on this Court's docket with no mandate to the lower court by virtue of the said motion, which motion must therefore be passed upon. Why did appellees not pursue the issuance of a mandate to the trial court within the time (21 days) between the rendition of the opinion and the filing of the motion? It was because of appellees' own negligence and failure to act that they must bear the consequences of laches by having the motion passed upon by this Court.

Also, respondents/appellees have attack the motion for being untimely filed. They contended that a petition for re-argument should have been filed within three days of the opinion and that a motion for relief from judgment cannot substitute a petition for re-argument. The Court observes that the three-day time limitation is applicable to petitions for re-argument and not motions for relief from judgment. Rule IX Part 2 of the Revised Rules of the Supreme Court at Page 43. In the case of the latter, it is provided that such motion can be filed within a reasonable time after judgment. Civil Procedure Law, Rev. Code 1: 41.7.3. In the instant case, we are not dealing with a petition for reargument and therefore the three day time limit is not applicable. What we have is a motion for relief from judgment; hence, the question is, was the motion filed within a reasonable time after the judgment was entered? The opinion was rendered on February 25, 1988 and the motion was filed March 17, 1988 while, the resistance attacking the motion was filed November 5, 1988.

In the mind of the Court, it is the attack on the motion that was untimely filed, in that the opinion was rendered on February 25, 1988 and the motion was filed March

17, 1988, which is approximately twenty-one (21) days after the opinion. Yet, the resistance attacking the motion was not filed until November 5, 1988, which is about eight (8) months less twelve (12) days.

In appellees' brief and arguments before this Court, they have contended that an appellate court cannot assume jurisdiction over real estate matter after judgment has been rendered based on a motion for relief from judgment. Also, they contended that an appellate court, having heard a motion for re-argument, cannot entertain a motion for relief from judgment. To these contentions, the Court says firstly that this Court is not "assuming" jurisdiction in this case. The fact of the matter is that this Court never lost jurisdiction over the case from the time the appellant perfected their appeal from the final judgment of the trial court. So the word "assume" is wrongly applied this Court has simply "retained" jurisdiction.

The question is, when does the appellate court (this Court) lose jurisdiction over a case properly brought before it? The Supreme Court only loses jurisdiction of a cause when the Court issues and sends down a mandate to the trial court with instructions to resume jurisdiction and do or refrain from doing certain acts. Rule XI Part 1 and Rule XII Part 1 of the Revised Rules of the Supreme Court at Page 45.

In the instant case, the Supreme Court rendered an opinion on February 25,1988 and never sent a mandate to the trial court up to the appellants filed their motion for relief from judgment on March 17,1988, some twenty one (21) days later. The failure to issue and send down a mandate kept the case on the Supreme Court's docket, where it remains even until today's date. A reasonable mind therefore is led to believe that the Supreme Court indeed elected and intended to keep this case on its docket and entertain this motion for relief from judgment by the Court's refusal or failure to issue a mandate to enforce this Court's judgment, read from the Bench by Justice Azango.

Against that background, this present Bench cannot now substitute its own wisdom for that of our predecessors when they decided not to issue the mandate. This Court can only keep the case on the docket and hear the motion for relief from judgment. We now declare that once the case is on our docket, we have jurisdiction over it and we must dispose of it, because even though a judgment was rendered, it was not effectuated by virtue of a mandate being issued and sent down; thus it remains ineffective. What kept appellees from pursuing and obtaining a mandate? The only explanation can be that the Bench decided to hear the motion for relief from judgment.

And so, even though a motion for relief from judgment is a proper subject for a trial court, yet, once our predecessors who rendered the judgment from which relief is sought decided not to enforce that judgment but kept the case docketed, then that judgment remains in abeyance and as such, technically no final judgment has been made in said case. Justice Jangaba's opinion of 1986, which became the subject of re-argument was hence unenforceable and not enforced. Similarly, Justice Azango's opinion granting re-argument and reversing Justice Jangaba's judgment became itself subject of review by virtue of the motion for relief from judgment, and such as also unenforceable and not enforced.

Therefore, this Court holds that it has jurisdiction over and will entertain the motion for relief from judgment, even though we concede same to be subject for the trial court and ordinarily would not be permissible and cognizable at this forum, because our predecessors who made the judgment deliberately refused to enforce their own judgment, and instead allowed the motion to be docketed, thereby leaving the case in this Court.

We now proceed to the substance of the motion. Essentially, movants contended that the final judgment of the trial court was reviewed on appeal and this Court in 1986, speaking through Justice Jangaba, reversed said final judgment and held that the 204 acres of land was communal property belonging to all the families of Kende Town and not to only Chief Fahn Kende and his immediate families. Movants contended also that all of the issues presented were addressed by that 1986 opinion, and that it was error for the succeeding Bench under Mr. Justice Azango, who had concurrent jurisdiction with the Nagbe Bench, to have reviewed and reversed said 1986 opinion.

In our view, the heart of the movants' contention is in count six (6) of the motion which states that the Bench under Justice Azango was called to review only those points of law which were alleged to have been inadvertently overlooked by palpable mistake, but that instead of limiting its review to that, the "Azango" Bench went as far as to call into question the final judgment of the trial court rendered by Judge Eugene L. Hilton, now of sainted memory.

By this contention, movants/appellants have called upon this Bench to determine whether or not the Azango opinion was legal or valid and should be given effect. Movants have attacked the Azango opinion as having exceeded the office of re-argument, which is limited only to determining if by palpable mistake the previous opinion overlooked some material point of law or fact which might have produced a

different result, instead of delving into the trial court's final judgment. In effect, movants have contended that the judgment from which they seek relief is void, and hence is a ground for reversal or setting aside the same. They have relied on Civil Procedure Law, Rev. Code 1:41.7.2.

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". Rule IX Part 1 Rules of the Revised Supreme Court.

Further, for re-argument the law also is that the issue or point sought to be re-examined must have first been raised before the Court and ignored in the previous opinion. West African Trading Corporation v. Alraine (Liberia) Ltd., 25 LLR 3 (1976); Lamco J. V. Operating Company v. Verdier, 26 LLR 445 (1978).

In their resistance to the motion, the respondents have not addressed the issue of voidness of the judgment whereby the opinion did not limit itself to only points alleged to have been overlooked by the first opinion, but went further to review the final judgment of the trial court. The only reference in the resistance to count 6 of the motion which raises that issue is found in count 4 of the resistance, which is merely a recital of the rule and procedure allowing for re-argument

The strength of respondents' resistance was in their jurisdictional contention that a motion for relief from judgment was not cognizable before the Supreme Court but only in the trial court, but this Court has already held that while that contention is true, this Court will hear the motion because, by that motion, the very Bench that rendered the judgment did not enforce it but permitted the motion to be docketed, thus keeping the case before the Supreme Court. That was the only substantive issue raised by the respondents in their resistance.

Before going on to the re-argument itself, the Court wishes to discuss one point raised in the motion, and that relates to a succeeding Bench's grant of a re-argument of a matter in which a previous Bench had given judgment. Movants contended that because the Bench presided over by Justice Azango as Senior Associate Justice, had concurrent jurisdiction with the Nagbe Bench which rendered the opinion, the Azango Bench could not grant re-argument.

On this issue the Court observes, as respondents pointed out in their resistance, that the Nagbe Bench, speaking through Mr. Justice Jangaba, had rendered the opinion on August 1, 1986. It was Justice John A. Dennis, now of sainted memory, one of the concurring Justices, who ordered he re-argument on August 5, 1986. Note, it was not the Azango Bench that ordered the re-argument. The fact is that after Mr. Justice Dennis had ordered the re-argument, that Bench took no action to hear and dispose of the re-argument until the said Bench was forced by the President to resign. And so when the Bench was reconstituted with Mr. Justice Cheapoo as Chief Justice, they also did not bear the case until Mr. Justice Cheapoo was also removed as Chief Justice, leaving the four Associate Justices, of whom Mr. Justice Azango was the Senior. This means the Bench inherited the case already docketed for re-argument and only did what was proper and expected of them by hearing the re-argument.

As we see it therefore, the issue is not whether the Azango Bench assumed jurisdiction over and heard the re-argument because the Azango Bench did have jurisdiction over the re-argument by virtue of Mr. Justice Dennis' approval of the application for re-argument in his capacity as one of the concurring Justices. Instead, the issue is that movants contended that the opinion in the re-argument proceedings exceeded the bounds of reviewing only the Jangaba opinion to see if it had overlooked some fact or law, and not to conduct a full regular appellate review of the trial court's final judgment, which is not the province of re-argument. In other words, only those issues raised in the first hearing and not passed upon should have been subject of the review in re-argument. In fact, this Court has held that not every point raised needs to be passed upon by the Court but rather only those issues which are material and decisive of the controversy will or need to be passed upon. Lamco J. V. Operating Company v. Verdier cited above. So this Court needs to take recourse to the petition for re-argument, in conjunction with the original opinion, so as to determine whether any material or pertinent fact or issue was earlier raised but not touched, which if ruled on, would have produced a different result in the August 1' 1986 opinion.

In count one of the petition for re-argument, filed August 5, 1986, petitioners/appellees contended that Mr. Justice Jangaba should have recused himself from hearing the original case because prior to his ascendency to the Bench and while he served as Assistant Minister of Justice he had something to do with the prosecution of Madam Bindu Kindi, one of the appellees/ petitioners, for the crime of malicious mischief for having uprooted a cotton tree from a portion of the 204 acres of land, subject of the dispute.

In the returns filed by respondents/appellant to the petition for re-argument, the appellees contended that there was nothing to disqualify Justice Jangaba from sitting on the case in the Supreme Court because the issue in the criminal case was the destruction to property by Madam Bindu Kindi uprooting a tree planted by President Tolbert, and that the complainant was Honourable Bai T. Moore, Assistant Minister for Culture, by and through the Republic of Liberia, while the issue in the declaratory judgment case was for the court to determine who were the real owners of the 204 acres of land. Further, respondents/appellants contended that since the criminal case did not include the existing controversy as to who the real legal owners of the land were, there was no basis for the recusal of Justice Jangaba. Respondents argued that "a judge is not disqualified by having been counsel of a person who is interested, or whose estate is involved, where he was never consulted relative to the particular matters which are the subject of the cause or proceeding before him." 23 CYC 588 (1906).

This Court fully agrees with the argument of the appellants/ respondents as there is support in our own law exactly on the point. The Supreme Court of Liberia, speaking through Mr. Chief Justice Grimes, held that in order to disqualify a judge who had previously been of counsel to a party it must be shown that he had previously been consulted on the identical point in controversy or very closely connected therewith. Dennis v. Republic, 7 LLR 341 (1942). In Cleghom v. Cleghorn, 66 Cal., 309, the conclusion reached was that "a judge is not disqualified from sitting on a cause by the fact that he had been an attorney for one of the parties in another action involving one of the issues in the case on trial. "Id., at 345 .

This Court observes that this is not one of the issues raised even in the petitioners/appellees' brief to have been passed upon by the Court in the first opinion of August 1, 1986, and therefore re-argument could not have been had and hence did not lie. More importantly, the Supreme Court has held that said issue was not one of the grounds for disqualification of a judge. And so that issue is laid to rest.

Counts two, three and five of the petition for re-argument lists issues which appellees/petitioners contended were not raised by appellants in their answer in the court below or in their brief in this Court but were raised by the Court in its opinion.

Recourse to respondents' amended answer in the trial court reveals that the issue of the Aborigines Land Grant made to Chief Fahn Kendeh and all the families living at Kendeh Town was squarely raised by the respondents (See Count two of the amended answer) and was not sua sponte raised for the first time by this Court in the

opinion. Therefore, count two of the petition is overruled. Similarly, recourse to the trial court's ruling of October 21, 1983 reveals, at page 3, last paragraph, that the trial judge held that the property was conveyed to Chief Kendeh thereafter at would descend to his heirs and their families. Here again, it was not the Supreme Court in its opinion that sua sponte raised the issue for the first time. Count three of the petition for re-argument is therefore overruled.

As to counts five and nine of the petition for re-argument the Court concede that the issue of 25 acres being the limit of land granted to an individual family under the Aborigine Land Policy of the government, was not raised by the respondents in their answer or bill of exceptions at the trial court, but it is to be noted that in the amended answer, the respondents did claim community ownership and to prove same, relied on two warranty deeds for properties jointly sold by petitioners and respondents to other people. What the Supreme Court referred to were points advanced by respondents in this Court, as admitted by petitioners to the effect that indeed the issue was raise by the respondents but only during arguments, and not in the pleadings. Granted that the issue was raised only during oral arguments, the fact of the matter is that it was raised by the respondents and the Court was merely restating in the opinion the various points raised by the parties. It is immaterial that the Court did say it was raised in the answer because that issue is not part of the holding of the Court and therefore does not warrant any re-argument. Moreover, the Court made it quite clear in the opinion that it took judicial notice of historical circumstances of the said land grant. See also Civil Procedure Law, Rev. Code 1: 25.1 and 25. 2. Accordingly, counts five and nine of the petitions are also overruled.

As to counts four and six of the petitioner's petition for reargument, petitioners conceded that the salient issue in the case was whether the grantee mentioned in the Aborigines Land Grant Deed was intended to be only Chief Fahn Kendeh and members of his own family, consisting of his lineal and collateral heirs, or whether the grantee intended to include persons outside the family of Fahn Kendeh. Petitioners contended that the Court inadvertently overlooked this salient issue.

Recourse to the opinion at page three, reveals that the Court did not overlook the issue. Rather, on the contrary, the Court said: "From what we gather from this matter, there is only one issue for our determination here: whether or not the Aborigines Land Grant Deed issued by President Daniel E. Howard in 1916 to Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, was in fact a communal grant in fee or a mere individual family grant to said chief and his family?"

It is interesting to note that this was the identical issue confronting the trial judge in the lower court and he ruled that in fact the deed in question was "an individual family plot to Chief Kendeh and his heirs ...." Thus, in view of this passage quoted above, counts four and six of the petition for reargument are accordingly overruled.

In counts seven and eight of the petition of re-argument, petitioners stated that the Court overlooked the issue of evidence advanced as to the relationship between appellants and Chief Fahn Kendeh, which was raised in the petition for declaratory judgment, and in the appellees' briefs, and argued before this Court. But the Court observes that the opinion, at page 5, second full paragraph, settled that question when it held that the Aborigine Land Grant Deed conferred a communal land grant on all the families that had settled in Kendeh Town at that time, including the family of Chief Fahn Kendeh, who only occupied a position of father and representative or agent of all the other families settled in Kendeh Town at that time. Therefore, in our view, it is irrelevant whether or not the Court specifically stated that appellees were or were not directly related to Chief Fahn Kendeh, because even if there were no relationship established or existing between appellants and Chief Fahn Kendeh, the Court, by said holding, had ruled that the land was communally owned by all families settled in Kendeh Town, including Chief Kendeh's family and also those not related to him. Hence, a family did not have to show its relationship to Chief Kendeh to inherit the property, but rather, all that was required of anyone who claimed to co-own the 204 acres of land was that he or his family was one of those who settled in Kendeh Town at the time the Grant was conferred by the Liberian Government. Therefore, counts seven and eight of the petition are also overruled.

The Court has now traversed the petition for re-argument filed by appellees and hereby determines that it was unmeritorious and did not warrant a re-argument of the appeal. This Court is of the view that the opinion of August 1, 1986 was all embracing and comprehensive enough and that said opinion exhaustively dealt with all the relevant issues. This Court has over and again held that the Court is not compelled to rule or pass upon every single issue raised before it but only those it feels are decisive of the case or are substantive enough. See the case Lamco J V. Operating Company v. Verdier, 25 LLR 445 (1978).

We therefore hold that the opinion of August 1, 1986, having comprehensively dealt with all relevant and material issues, and having held that the 204 acre Aborigines Land Grant from the Liberian Government was intended to be and was in fact communal property and not for only one family, be and the same is hereby reinstated

and reaffirmed by this Bench as being sound in law and supported by reason, and that the same will enhance peace and harmony in the society.

Like the Nagbe Bench in 1986, this present Bench, the Scott Bench, interprets the Aborigine Land Grant as being communally held. To support this, we take recourse to the actual text in relevant portion of the Aborigine Land Grant Deed executed by the Government of Liberia, by and thru President Daniel E. Howard, on March 17, 1916:

"TO ALL WHOM THESE PRESENTS SHALL COME. WHEREAS It is the policy of this Government to induce the Aborigines of this country to adopt civilization and be loyal citizens of the Republic; and whereas one of the best things thereto is to grant land in fee simple to all those who prove themselves to be entrusted with the rights and duties of full citizenship as voters and Chief Fahn Kendeh and families of Kendeh Town, Settlement of Paynesville, Montserrado County, Republic of Liberia, have shown themselves fit to be entrusted with said rights and duties.

Now therefore know ye that I, Daniel E. Howard, for and in consideration of the various duties of President, do grant, give and confirm unto said Chief Fahn Kende and Families as aforesaid, his heirs, executors, administrators and assigns forever that piece or parcel of land situated, lying, and being in the rear Settlement of Paynesville,

"To have and to hold the above granted premises and farm land together with all and singular the buildings, improvements and appurtenances thereto and thereof belonging to the said Chief Fahn Kendeh and families of Kendeh Town, his heirs, executors, administrators and assigns as aforesaid forever. And I, the said Daniel E. Howard, President as aforesaid, for myself and my successors in office, do covenant to and with the said Chief Fahn Kendeh, his heirs, executors, administrators, and assigns, and that at the ensealing hereof I, said Daniel E. Howard, President as aforesaid and my successors in office, will forever warrant and defend the said Chief Fahn Kendeh and families, legal heirs, executors, administrators and assigns against the unlawful claims and demands of all persons to the above granted premises."

From the above quoted language, what other interpretation could be given to the conveyance or explanation as to the intent of the grantor, the Government of Liberia, than that the property is to be held by all inhabitants of Kendeh Town as tenants in common and not in fee simple by only one family, that of Chief Fahn Kendeh. We hold that Chief Fahn Kendeh was merely a representative or agent for all the people

of Kendeh Town. We agree that had the Government intended to convey only to Chief Fahn Kendeh and his lineal (and even collateral) heirs, first of all, there would have been no need to even insert the words "and families", because under the law of intestacy it is automatic that upon the demise of the Chief his intestate estate would have devolved upon his lineal (and the collateral) heirs. Further, the use of the word "families" (in the plural) as well as the pronoun "themselves", leads one to conclude that it was more than the nuclear or immediate family of Chief Fahn Kendeh, but extended to and included everyone in all families living at Kendeh Town. Further, that no one had to show that he was related to Chief Fahn Kendeh, but rather, that he was a resident or an inhabitant of Kendeh Town on the issuance date of March 17, 1916.

For this reason, this Court holds and hereby rules that the August 1, 1986 opinion adequately and properly determined the status and rights of the parties as joint communal co-owners of the entire 204 acres of land. Accordingly, the motion for relief from judgment filed by appellant is hereby granted, the petition for re-argument filed by appellees denied and overruled, and the opinion of Justice Azango, which reversed the previous opinion of Justice Jangaba, is itself herein and hereby reversed, and the opinion of August 1, 1986, reinstated and reaffirmed, and the trial court's final judgment reversed.

The two bills of information are granted and both parties adjudged guilty of contempt and ordered to pay the amounts of L$5,000.00 each, within five (5) days of the rendition of this opinion or be detained pending compliance.

In view of the above, the Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit ordering the judge presiding therein to resume jurisdiction over the case and give effect to this opinion to the effect that the subject property is communal property for the benefit and use of all of the residents, inhabitants, and families of Kendeh Town at the time the Aborigine Land Grant was issued on March 17, 1916. Costs are ruled against the appellees. And it is hereby so ordered.

Motion granted, petition for re-argument denied, bills of information granted, and parties adjudged guilty of contempt.