aTHE LIBERIA COMPANY (LIBCO), through its General Manager, B. L. FULLER, Petitioner, v. **JOSEPH Z.** COLLINS, Respondent.

PETITION FOR RE-ARGUMENT

Heard: December 13, 1989. Decided: January 9, 1990.

1. The Supreme Court is not required to pass on every issue raised in the bill of exceptions or briefs; it is within the province of the Supreme Court to pass upon issues it deems meritorious or relevant and justiciable.

2. Where an application for re-argument fails to conform with statute or rule of court, same should be denied.

The Supreme Court rendered judgment affirming the judgment of the National Labour Court, holding the petitioner liable to the respondent in an action of wrongful dismissal. The petitioner filed a petition for re-argument, alleging that the Supreme Court did not pass on all the issues raised and argued before it.

In deciding the petition for re-argument, the Supreme Court held that it had in fact passed on all of the pertinent issues raised by the petitioner and that it had not overlooked any issue raised by the petitioner in its brief. The petition for re-argument was therefore *denied.*

E. Winfred Smallwood appeared for the petitioner. *Pei Edwin Gausi* appeared for the respondent.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

The Honourable Supreme Court had the occasion to deliver an opinion in the above case on July 14, 1989 at the close of its March Term affirming the judgment of the National Labour Court. Subsequently, a concurring Justice signed and instructed the Clerk of Court to re-docket the case, based upon a petition for re-argument filed by petitioner, The Liberia Company (LIBCO), by and thru its general manager, B. L. Fuller of Cocopa.

Petitioner/appellant' s petition has alleged that in this Honourable Court's opinion delivered, out of the seven issues raised and argued for consideration, only issues Nos. 1 and 2, which relate to the National Labour Court (or debt court) judge reviewing the case without a written direction or judge's orders and also the National Labour Court (or debt court) judge dismissing appellant's motion in respect of the

application relating to INA decree no. 21 of October 20, 1986, were treated. To this petition for reargument respondent/appellee filed a nine-count resistance.

The issues which petitioner claims were not considered and which it argued are contained in counts 3, 4, 5, 6 and 7, as follows:

In issue no. 3, appellant raised the question that the debt court judge committed reversible error when he *sua sponte* raised the issue that the appellant failed to investigate the appellee in the face of the fact that this issue was never raised by appellee in the petition for judicial review and that there was no evidence to support the judge's conclusion that an investigation was never held. Your Honours inadvertently overlooked this important issue even though it was raised in our bill of exceptions and in our brief and argued before this Honourable Court.

In issue no. 4 of appellant's brief, which relates to counts 4 and 5 of appellant's bill of exceptions, appellant contended that the appellant produced a preponderance of evidence by the testimonies of witnesses to the effect that appellee failed to carry out instructions of the general manager regarding the re-tasking of the rubber trees in Division No. 1, that the appellee, Mr. Collins, failed to carry out the instructions of the general manager, and that this evidence remained unrebutted upon this issue.. .

In issue no. 5 of appellant's brief, which relates to count 6 of appellant's bill of exceptions, appellant raised the issue that the ruling of the debt court judge to the effect that appellant should pay arrears of five (5) months salary at the rate of $770.00 totaling $3,850.00 and all the expenses incurred by petitioner/appellee since the filing of the complaint of wrongful dismissal was not supported by law or the facts in the case. Appellant/respondent argued that in the absence of contract mutually agreed upon by the parties there is no established rule where a court will adjudge the party liable for the litigation expenses of the plaintiff. It was therefore erroneous for the debt court judge to have awarded an undetermined amount as legal expenses in favour of the appellee.

In count 6 of the brief, which relates to issue no. 6 in said brief, and count 7 of the bill of exceptions, appellant raised the issue that the appellee was not wrongfully dismissed and that the dismissal of the appellee was in keeping with the Labor Laws of Liberia. Appellant further contended that appellee was dismissed for gross insubordination offered by the appellee to appellant's general manager and that appellee was dismissed on the ground of gross breach of duty for certain acts or omissions and that appellee is not entitled to any compensation. Those acts and

omission for which appellee's services were terminated were outlined in appellant's brief, as follows:

(1) appellee's failure to follow the instructions of the appellant's general manager regarding the re-tasking of the rubber trees in Division No. 1.

(2) appellee failed to carry out the instructions of appellant's general manager in that he did not equip the rubber trees with latex cups, spouts and wire hangers, and that there were mistakes in the enumeration of the re-tasking.

(3) appellee walked out of the investigation that was being conducted in the general manager's office and slammed the door behind him without obtaining excuse or the permission of the general manager to leave his office. All of these acts constitute a gross breach of duty for which the appellee was dismissed under section 1508 of the Labour Practices Law.

(4) In count 7 of appellant's brief, appellant argued and contended that there was no legal basis for the $23,870.00 awarded by the debt court but this Court inadvertently did not pass upon this vital issue since the hearing officer awarded $2,210.00 and the debt court judge awarded $23,870.00 and that there is no indication as to what was the basis upon which the $23,870.00 was awarded.

From careful analysis of opinions of this Honourable Court as well as the practice and law hoary with age in this jurisdiction, this Court is not required to pass on every issue raised in the bill of exceptions or briefs. It is within the province of the Supreme Court to pass upon issues it deems meritorious or relevant and justiciable. *See Lamco J V. Operating Company v. Verdier,* 26 LLR 445 (1978). Petitioner contended that this Court only passed upon two of the seven issues and as such has asked us to grant re-argument based on the reasons summarized above. We shall now examine the opinion and see if the said issues were not treated, and if they were not, whether they need to be addressed.

The opinion revealed that issues 4 - 7 were treated under the following subjects: judicial review of decision of the Board of General Appeals; conduct of proceeding on review; jurisdiction and procedure; procedure on review; and sections 7, 8, 23.2 and 23.4 of the Labor Practices Law of Liberia.

The Revised Rules of the Supreme Court, in consonance with common law, states that "an application for rehearing must be indicative of the statute or Rules of Court, but if it fails to conform with the Rules, same should be denied."

We are not obliged to decide a case based upon party litigant's feeling or what he or she thinks, but based on facts supported by the law controlling. We did not make any palpable mistake by inadvertently overlooking some fact or point of law.

As a Court of last resort, this Court is bound to circumscribe its opinion in accordance with the law as well as opinions of this Court and cannot go outside of this for any review.

This Court holds that it did not overlook any issue in petitioner's brief. The petition for re-argument is hereby denied. And it is hereby so ordered.

Petition denied

MR. JUSTICE AZANGO *dissents:*

1. If judges would make their decisions just, they would behold neither plaintiff or defendant, nor pleader, but only the cause itself. (Livingstone).

2. Justice discards party, friendship and kindred and is therefore represented as lined. (Addison).

3. Justice without wisdom is impossible. (Frounde).

4. Were he my brother, may my kingdom's heirs, such neighbor measures to our sacred blood should nothing privilege him, nor paralyze the unstopping firmness of my upright soul. (Shakespeare).

5. Justice is the first virtue of these, who command and stop, the complaints of those who obey. (Dibrot)

It is regrettable and unfortunate that courts of justice sometimes refuse to abide by long established principles of law tried and tested, and aid in derailing justice to caprices and arbitrary conclusion void of legal reasoning.

Three days after rendition of the judgment in the above entitled cause of action, petitioner petitioned this Honourable Court to grant re-argument on the grounds that:

1. Was it legally correct for the judge of the debt court to have assumed jurisdiction over the application for judicial review without a judge's orders or without written directives authorizing the clerk of court to issue the writ of summons to bring the respondent, appellant in this case, under the jurisdiction of the court?

2. Did the trial judge, that is to say, the debt court judge, commit a reversible error when he denied appellant's motion to dismiss the application on grounds that a procedure under review the Act Amending Decree No. 21 of the INA of October 20, 1986, does not require a written petition for judicial review, judge's orders or written motion and answer?

3. Did the debt court judge commit reversible error when he *sua sponte* raised the issue and ruled that the appellant failed to investigate the appellee when this issue was never raised by the appellee in the petition for judicial review and when there was no evidence to support the judge's conclusion that an investigation was not held?

4. Did the appellant produce substantiating evidence to establish that the appellee was dismissed for failure to carry out instructions given by appellant's general manager on March 12, 1988, with respect to the re-tasking of the rubber trees in Division No. 1 as well as his insubordination offered the general manager?

5. Whether the ruling of the debt court judge to the effect that the appellant should pay arrears of five (5) months salary at the rate of $770.00 totaling $3,850.00 and all petitioner/ appellee's expenses he underwent since the filing of the complaint of wrongful dismissal is supported by law of the facts in the case?

6. Was the appellee wrongfully dismissed and, if not, is he entitled to the award of $23,870.00?

7. That this Honourable Court passed upon issues nos. 1 and 2 which relate to the debt court judge's review of the case without a written direction or judge's orders and also the debt court judge dismissing appellant's motion to the application relating to INA Decree no. 21 of October 1986 but as to issues nos. 3, 4, 5, 6, and 7, regrettably there is indication that this Honourable Court never passed upon the same.

When the case was called for hearing, appellant's counsel vehemently argued and maintained his position as raised in the seven points of his motion for reargument.

On the other hand, appellee has strenuously argued that the entire petition be dismissed by this Honourable Court in that, under the law, an appellate court is not required to pass on every issue raised in a bill of exceptions or brief. It is within the province of the Supreme Court to pass upon issues it deems meritorious or relevant and justifiable. Further that of all the issues presented in the briefs, those which this Honourable Court considered relevant to specifically passed upon in its opinion of the March, 1989 Term were, whether or not a petition for judicial review must be accompanied by a judge's orders for the Court to acquire jurisdiction over the parties, and whether the trial judge erred in denying the motion to dismiss the petition for judicial review. Therefore the contention in count one (1) of its petition that this Honourable Court only passed upon two of the seven issues it presented is untenable to support re-argument of a case when the law provides that re-argument may be allowed only when some palpable mistake has been made by inadvertently overlooking some facts or points of law. Appellee contended and argued that to entitle a party to re-argument, there must be a manifest error in the opinion of the Court on the question of law or facts. He therefore contended that this Honourable Court did not overlook any point of law or fact nor is there any manifest error shown. The petition for re-argument should be denied.

Appellee further contended that the entire petition for reargument should be dismissed by this Honourable Court because the judgment of the trial court which was affirmed by this Honourable Court is sound and conclusive, and hence, there is no basis for re-argument; that when the judgment of a lower court is affirmed by an appellate court in all its parts as was done in this case, the rights of the parties involved in the litigation are conclusively adjudicated; and that the opinion of this Honourable Court dated July 14, 1989, declared that the final judgment rendered by the said Debt Court for Nimba County is hereby affirmed. The effect of that affirmance, he says, is that all issues raised in the briefs are settled, adjudicated, and hence, conclusive. Consequently, according to appellee, there was no point of law or fact overlooked or any mistake to be corrected. (See Minutes of this Court, dated December 11, 1989, 20thday's session).

Appellee's arguments constitute a strange anomaly because this Court has held that when even one count of a five-count petition for re-argument presents an issue which this Court may have overlooked and which might, on further review of the record, warrant modification of the judgment, the Supreme Court may grant

re-argument and open the record of the proceedings for just that single issue. *Togba v Republic, 15* LLR 648 (1964). Clearly, therefore, the rights of the party litigant are not conclusively adjudicated only because the Supreme Court has affirmed a judgment of the court below in its entirety; the rights of the party litigants are conclusively settled when the judgment of the Supreme Court has covered and disposed of every material issue in the case, no point of law or fact overlooked and no palpable mistake was made.

Also, as recent as during the March Term of this Honourable Court, we held in the case *"Management of Broadway Cinema v. Mah and The Board of General Appeals,* 36 LLR 439 (1989), that "when a re-argument is ordered, such re-hearing may be granted even when the result must be the same as that announced in the original opinion, if the original opinion fails to consider a point raised on the appeal, which if tenable, might be fatal to the cause of action set forth in the complaint or petition."

Recourse to the petition for re-argument, we find that petitioner's counsel raised seven issues, which he claims were inadvertently overlooked in the opinion and judgment of this Court, and that in the interest of impartial justice, re-argument should be granted in order to bring about fair consideration and determination of the issues.

From my point of view, the failure of the majority opinion to grant re-argument indicates the Court's inconsistency with the rule and law governing re-argument of cases before this Court. We have held in many opinions that a rehearing may be had for a clear mistake of law in the decision, or where it appears that the appellate court misapprehended the records, and was mistaken as to facts occurring at the trial of the cause in the lower court.

Respondent's counsel has not set up the argument and proven that our opinion in this case was reached after considering all the important points presented in the records. He has not shown that there were no material point of law or fact inadvertently overlooked in the original opinion by specifically pointing from the opinion in this case, and that not one of the concurring Justices desire re-argument; he has not contended that the petition was not presented within three days after the filing of the opinion, unless by special leave granted by the Court; he has not argued that the petition did not contain a brief and distinct statement of the ground upon which it is based or that a Justice who concurred in the judgment did not desire a re-argument. No where in his returns or in his arguments before us did respondent's counsel contend that a copy of the petition has not been served on respondent or

that the petition has failed to state any decisive issue raised in the court of origin and argued at the hearing before this Honourable Court. Moreover, respondent's counsel has not contended that the petitioner's counsel has not satisfactorily proven that some important points of law or facts stressed during the formal hearing has been overlooked. And lastly, respondent's counsel has not contended that there cannot be a hearing in order to correct errors made by the Court.

It is therefore both strange and amazing that my distinguished colleagues have denied the petition for re-argument.

As a matter of legal principle, even though the present case is not one of a criminal nature, the fact cannot be ignored that this Court held in the case *Togba v. Republic,* 15 LLR 648 (1964), that "when after affirmance of the judgment.... one count of a five-count (in the instant case, seven) petition for reargument raises an issue which was not considered during the hearing on appeal and which might on further review of the records warrant modification of the judgment...the Supreme Court may grant re-argument and re-open the records of the proceedings below solely as to that issue.

Based on this fundamental principle of law governing reargument, I find it very difficult to append my signature to the judgment growing out of the petition for re-argument.. Hence, I dissent.