

ARMAH KAMARA AND HENRY KOLLIE, Informant, *v.* **BINDU KINDI et al.**,
Linear Heirs of the Late FAHN KINDI, Respondents.

PETITION FOR RE-ARGUMENT.

Heard: November 6, 1995. Decided: January 25, 1996.

1. Whenever two judgments are given in favor of the same party to an action of ejectment, the matter is conclusive.
2. A declaratory judgment as to titular rights to real property is analogous to an action of ejectment.
A motion for re-argument cannot be entertained after two judgments are given in favor of the same party.
3. A motion for relief from judgment growing out of an action over which the Supreme Court exercises only appellate jurisdiction, cannot be properly venued in the Supreme Court.

At the close of its October Term A.D. 1987, the Supreme Court handed an opinion affirming and confirming the judgment of the Civil Law Court in an action of declaratory judgment. Subsequent to the opinion, appellants filed a motion for relief from judgment before the Supreme Court.

The Supreme Court denied the motion, holding among other things, that a motion for relief from judgment is not cognizable before the Supreme Court and that the petition for declaratory judgment having been decided twice by the court, a motion for relief from judgment is without the pale of the court's jurisdiction.

Molley Gray appeared for the movants. *James N. Jones* of the Toye C. Bernard Law Firm appeared for the respondents.

MR. JUSTICE YANCY delivered the opinion of the Court.

This matter has been before the Supreme Court several times from as far back as the October Term, A.D. 1983 when a ruling in favour of the petitioner was delivered, and re-argument granted in which Mr. Justice Jangaba, speaking for the Court, reversed the lower court's judgment.

Then in the March Term, 1988, a motion was filed in the Honourable Supreme Court for

relief from its own judgment which had been rendered on 25th February, 1988. Mr. Justice Azango, speaking for the court, affirmed the original judgment of the circuit court.

In the interim, each party had its counsel to file bills of information: one on the 13th day of January by Counsellor M. Fahnbulleh Jones in favour of the respondents, Amara and Kollie, and one on the 18th day of February, 1989, by Counsellor Toye C. Bernard in favour of the petitioners Kindi et. al. No record is found as to either one of these bills of information being resisted or controverted. For the record, we quote verbatim the two bills of information.

CLLR. F. B. JONES INFORMATION OF FEB. 18, 1985

1. "That informants are appellants/petitioners in the motion for relief from judgment, out of which this bill of information grows.

2. That while the petition for declaratory judgment was pending before this Honourable Court on appeal, on December 20, 1989 by directive of His Honour Frank W. Smith, then Justice presiding in Chambers, the Acting Clerk of this Court, Mrs. Veronica L. Corvah wrote His Honour Hall W. Badio, Assigned Circuit Judge presiding over the December Term, A. D. 1985 of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, commanding him to instruct the Sheriff for Montserrado County to collect all monies which were being collected by one of the parties to the action for the use of the road built on the land and hold said amounts in escrow pending the final determination of the petition for declaratory judgment by the Supreme Court of Liberia. Copies of said letters were sent to the counsels for both informants and respondents herein. Copy of the said letter is hereto attached and marked exhibit "INF/1".

3. Your informants say that there is pending before this Honourable Court a motion for relief from judgment, growing from the final judgment of this Honourable Court on the petition for declaratory judgment and it is out of which, this bill of information grows. But despite the fact that Judge Badio summoned the both parties and read the letter/mandate "INF/1" of this bill of information and instructed the sheriff to collect the monies as stated in said letter/mandate, the respondents herein harassed the lady bailiff assigned by the sheriff to the area so that she was compelled to quit the scene or action to the great disadvantage of your informants and have been collecting the monies for the use of the road and taking of sand from the area since the year 1986, without reporting the same to the sheriff.

4. Your informants say that these acts of the respondents herein are detrimental and

disadvantageous to their interest in the matter and it is also prejudicial to their interest because the monies collected by the respondents are not being accounted for nor deposited with the sheriff to be kept in escrow since the subject matter has not been finally determined and is still pending before this Honourable Court.”

COUNSELLOR BERNARD’S INFORMATION OF FEB. 18/89

“1. That informants are appellees in a petition for declaratory judgment which was appealed before this Honourable Court by respondents, Armah Kamara and Henry Kollie.

2. That on February 25, 1988, this Honourable Court during the close of the October Term, 1987, handed down its opinion and rendered final judgment affirming and confirming the decision of the lower court.

3. That on the 17th day of March A. D. 1988, appellants, Armah Kamara and Henry Kollie filed a motion for relief from judgment before this Honourable Court which has been resisted by appellees, now informants, and is still pending before this Honourable Court.

4. That despite the pendency of the petition for declaratory judgment, by virtue of the motion for relief from judgment, co-appellant/movant now respondent Armah Kamara, is continuing the sale of the property subject of the litigation pending before this Honourable Court. He has sold among others to Messrs. Mike Dickson, Junior Ranyeh and Boakai Kalbah.

5. That your informants are of the strong feeling and fear that if respondent, Armah Kamara, is not stopped by this Honourable Court from selling any portion of the land, subject of the litigation before this Honourable Court, he would have sold all by the time the matter is finally determined by this Honourable Court and he would have no money to refund to the purchasers should he not be successful in the litigation.”

It is now clear from these two bills of information that something must have been going on, that the circuit court was not informed about, since indeed the matter had been remanded to it for execution.

No further papers have been filed since the last two mentioned above. When this case was called for hearing on the 6th day of December, A. D. 1995, Counsellor Molley Gray of the Jones & Jones Law Firm appeared for the movants and Counsellor James E. Jones appeared for the respondents.

The contents of the two bills of information were not considered; instead, the court

entertained arguments on the motion for relief from judgment.

Counsel for movant argued strenuously without citation of any supporting references, that the Honourable Supreme Court should grant relief from its final judgment in the land dispute the case originating in the Circuit Court, Sixth Judicial Circuit, Montserrado County, Liberia.

Counsel for respondent in resisting said motion, advanced the proposition that a motion for relief from judgment is cognizable before a trial court in matters of original jurisdiction; and that since the Honourable Supreme Court of Liberia exercises only appellate jurisdiction over real property matters, after judgment, only a motion for re-argument is available to the losing party. See *Revised Rules of the Supreme Court, JULY 1972, Section IX, Parts 1 - 3*, page 43.

From the records, as stated above, this matter has had two (2) Supreme Court opinions. One by Mr. Justice Jangaba during the 1986 March Term, and one by Mr. Justice Azango in 1989, during the October Term. In the former, the lower court judgment was reversed; in the latter, the Supreme Court reversed itself and confirmed the judgment of the lower court. In *Karnga v. Williams et al.*, 10 LLR 114, 122 (1949), and *Karnga and Karnga v. Williams et al.*, 11 LLR 299, 308 (1952), the Supreme Court held that whenever two (2) judgments are given in favour of the same party to an action of ejectment, the matter is conclusive. In the opinion of the court, a declaratory judgment as to titular rights to real property is analogous to an action for ejectment. Hence, under the doctrine of *res judicata* and under the principle of *stare decisis*, a motion for re-argument itself ought not be entertained.

The novelty of the application to the Supreme Court for relief from judgment in a case not of original jurisdiction makes it necessary to point out that the Honourable Supreme Court is created by the Constitution of the Republic of Liberia. LIB. CONST., *Art. 65*. Its jurisdiction is also conferred by the Constitution, *Id.*, *Art.66*, which provides *inter alia*, that the Supreme Court shall have “... appellate jurisdiction in all cases...except in cases involving ambassadors, ministers or cases in which a county is a party; in all such cases the Supreme Court shall exercise original jurisdiction...”

In view of the above, the petition for declaratory judgment for titular rights to real property, emanating from the Circuit Court, Sixth Judicial Circuit, Montserrado County, being twice decided by the Honourable Supreme Court, is without the pale of the Court’s jurisdiction to grant any relief from judgment. The motion for relief from judgment should therefore be and the same is hereby denied and dismissed. The Clerk of this Court is ordered to send to the court below a mandate to resume jurisdiction and conclude the enforcement of its

judgment. Costs are ruled against the movants. And it is hereby so ordered.

Motion denied.