NOEL V. RIZZO and **GORDON RICHARDS**, Petitioners, v**. HIS HONOUR WILLIAM B. METZGER**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado, **GEORGE J. RIZZO** and **VINCENT RIZZO**, Respondents.

PETITION FOR REARGUMENT

Heard: July 31, 1997 Decided: August 15, 1997.

1. Reargument of a case will be denied by the Supreme Court where it is not shown that the Court overlooked any salient fact or point of law raised in a prior hearing.

2. Reargument of a case may be allowed when some palpable mistake has been made in the Court inadvertently overlooking some fact or point of law.

3. The Court cannot entertain issues in a document growing out of a case that has already been dismissed.

4. The fact that the Court did not pass on all of the issues in a bill of information and proceeded instead to consolidate the information with a motion to dismiss cannot constitute a ground for reargument.

5. It is the duty of the court to pass only upon those issues it considers to be meritorious and germane.

6. The Supreme Court cannot legally obtain jurisdiction over a bill of information when there is no proceeding pending before it from which such information grew.

7. A dismissal is an order or judgment finally disposing of an action, suit, motion, etc. without trial of the issues involved. Such dismissal may be voluntary or involuntary.

8. The dismissal of a bill of information throws out the issues therein, leaving nothing further for the court to pass upon.

9. The effect of a dismissal of a paper before the court is that the issues raised in such paper, whether a pleading, information, or brief, are deemed disposed of, concluded and terminated, especially where the dismissal leaves nothing further to be decided by the court.

Petitioner petitioned the Supreme Court for reargument, asserting that (a) the Court had consolidated the motion to dismiss and the bill of information without giving petitioner the opportunity to argue the bill of information; (b) the issues raised in the bill of information were not the same as those raised in the motion to dismiss and therefore their consolidation was prejudicial to petitioner; (c) the Court has failed to pass upon the question of personal service on the corporation and its standing to sue; and (d) the Court had inadvertently overlooked the fact that the writ of error was served and returned served, yet, the Justice in Chambers had cancelled the said writ without forwarding same to the Full Bench as required by law.

The Court rejected all of the contentions of the petitioner, holding that as to issues which the petitioner asserted the Court had not passed upon, the Court had indeed disposed of such issues. The Court noted that reargument could be granted only where the Court had inadvertently overlooked a salient point of law or fact, which was not evident in the instant case. The Court noted, however, that even if it had not passed on such issues, the Court had the authority to determine and pass only on those issues or points it considered meritorious or germane. The Court recounted that in its previous decision, it had dealt with the issue of the action of the Justice in Chambers in dismissing the writ of error which was sua sponte and illegally issued by the Clerk of Court without the approval or order of the Justice, and its sanctioning of the action of the Justice.

With regards to the consolidation of the bill of information and the motion to dismiss, the Court noted that the issues raised in those instruments were similar and that it had the authority to consolidate the two under the circumstances. Moreover, the Court added, the bill of information had been attacked and dismissed on procedural grounds as it had failed to meet the statutory requirements. In such a case, the bill was disposed of and the Court could not therefore go into other issues raised therein. Accordingly, the Court denied the petition for reargument and ordered the judgment enforced.

Wynston Henries and George E Henries of the Henries Law Firm appeared for the petitioners. Frederick Cherue of the Dugbor Law Firm appeared for the respondents.

MR. JUSTICE GAUSI delivered the opinion of the Court.

This case is before the Court for the third time. It was first here on a bill of information and a motion to dismiss. Secondly, on a petition for reargument, and pending that, two motions to intervene were filed. We disposed of the motions to intervene on July 22 1997. Now we have this petition for reargument.

This petition for reargument grew out of the opinion of this Court delivered on February 7, 1997, which dismissed the informants' bill of information filed before this Court. The petitioners, Noel V. Rizzo and Gordon Richards, alleged in their petition for reargument that the Court consolidated the motion to dismiss and the bill of information without any opportunity given to them to argue said bill of information. This is considered an inadvertence on the part of the Court for which the reargument is requested.

Also, the petitioners contended that the issues raised in the bill of information and motion to dismiss were not the same, therefore the consolidation of them as was done, was prejudicial to their interests. Further, the petitioners contended that several issues raised in the bill of information, which concerned personal service on the corporation, RAMATRIELLE S. A., and its standing to sue were not passed upon by the court.

Another reason given for the petition for reargument is that the Court inadvertently overlooked the fact that the writ of error was served and returned served, yet, the Justice in Chambers cancelled said writ without forwarding same to the Full Bench.

In their returns, respondents contended that the petition should be denied for reasons that (a) the petitioners have failed to establish that there were salient points presented and argued before the Court but which were overlooked by the court in its opinion; (b) the main issue in the motion to dismiss was whether any proceeding was pending before the court to warrant the bill of information, and that since there was no such proceeding, the Court was right to dismiss the bill of information; and (c) a consolidation may be done by the Court sua sponte or upon motion of a party. In this case, the Court having reviewed the issues, it was right to consolidate same.

From a perusal of the opinion of February 7, 1997, it is revealed that the Court, on page 2 of said opinion, referred to the issues contained in the bill of information in passing. These issues included the non-service of the writ in the petition for declaratory judgment on the corporation, RAMATRIELLE, S.A.; that is, lack of jurisdiction over RAMATRIELLE S. A., and the rights of the holder of the transfer of subscription as distinguished from a shareholder. These issues, the Court said, were raised in the writ of error which the Chambers Justice had denied. The Court therefore confined itself to two issues, namely: whether the Chambers Justice erred when he denied the petition for the writ of error after the writ was issued, served, and returned served by the Marshal; and secondly, whether the bill of information will lie. See pages 3, 4, and 5 of the Supreme Court opinion of February 7, 1997.

In disposing of the issue of whether the Chambers Justice erred when he denied the writ of error, the Court answered in the negative. Firstly, the Court said, the records revealed that on November 1, 1996, the writ of error was issued by the Clerk of the Supreme. Court without order from the Justice in Chambers. Secondly, the records disclosed that an order dated November 4, 1996, under the signature of Justice Badio, was issued which read.

"November 4 , 1996

Mr. Clerk

Have this petition for writ of error docketed for hearing by the Full Bench. In other words, before the issuance of that writ upon the lawyers cited to a conference on November 6, 1996 at 10:00 a.m. before the issuance of this writ."

Immediately after the first paragraph of the order, the Justice signed, and after the second paragraph, the Justice again signed.

The records also revealed that a writ was issued on November 1, 1996, requiring the respondents to file their returns to the petition on November 14, 1996. It is this action of the Clerk that the Justice declared illegal, and then cancelled same.

Further to the above, this Court said in its opinion of February 7, 1997, the following: "The issuance of the writ of error without an order from the Justice in Chambers rendered the writ void ab initio; and it is precisely because the Chambers Justice preferred not to accommodate that process which was strictly contrary to the provision of law that he ordered the writ cancelled."

Concerning this same issue, the Court again said: "On November 1, 1996, the Acting Clerk of Court sua sponte issued a writ before the application was placed before the Chambers Justice. On November 4, 1996, four days later, the Chambers Justice was informed about the petition and he ordered the Clerk to issue a citation for a conference hearing on November 6, 1996. Because of some interruptions, the conference was not held. On November 12, 1996, the Justice was informed about the issuance of a writ on November 1, 1996 without his orders. This illegal writ was therefore ordered canceled and after the conference, the application was denied or in fact, not granted and therefore no writ was serve"

From the foregoing, we are compelled to overrule the petitioners' averment in count 6 of their petition which states: "The court inadvertently overlooked the fact that the writ of error was served and returned served based on the order of the Justice in Chambers..." While it is true that the writ of error was served and returned, it is fundamental to note that the issuance of the writ on November 1, 1996 was illegal because, as the records revealed, the Clerk was without authority when he issued the writ. Consequently, we hold that the court did not overlook this issue or inadvertently cancel the writ of error. A reargument of a case will be denied by the Supreme Court where it has not overlooked any fact or point of law. Perry and Azango v. Ammons, 17 LLR 58 (1965).

As regards the issue of whether the bill of information will lie, this court answered in the negative. The Court relied on the case Nimely, Seke et al v. Yancy et al., and held as follows:

"To entertain an information the case must have either been pending before or decided by this Court and there appears to be a usurpation of the province of this Court by the respondents, or there exist some irregularities, or obstructions in the execution of the Court's mandate or the judge's refusal to carry out the orders of this Court. In the absence of the above, we find ourselves paralyzed to entertain an information, especially in a case still pending before the lower court or already decided by that court below without any appeal taken from its final judgment or there were remedial or extraordinary writs prayed for and issued." See Supreme Court's Opinion, February 7, 1997.

In the succeeding paragraphs of the opinion, page 5 thereof, the Court said: "The records in this case reveal that neither Judge Metzger nor George and Vincent Rizzo obstructed the execution of a mandate from this Court, nor did Judge Metzger do anything irregular in executing this Court's mandate in a case involving the informants.

Because issues raised in the returns to the bill of information and the motion to dismiss are practically the same, we have decided to consolidate both application and rule accordingly. (Emphasis added)

We cannot entertain information nor assume jurisdiction over parties who are not or have not appeared before this Court nor exercised any act which tends to usurp the province of the Supreme Court or who are not here on appeal out of which the information springs. We would violate the statutes if we attempted to do that.

In view of these facts and the laws cited above, especially that no petition for writ of error is before this Court which might have probably and legally necessitated this information said bill of information is therefore hereby denied and dismissed and the motion to dismiss granted."

Given the above, it is clear that the Court consolidated the returns to the bill of information and motion to dismiss, but not the bill of information, as is contended in count 2 of the petition for reargument.

Upon perusing both the returns to the bill of information and the motion to dismiss, we find the following:

1. Counts 1, 2, and 3 of the motion repeatedly raised the issue that the Court is without jurisdiction because, there was no case pending before the Supreme Court out of which the bill of information grew. Further, it is contended that in order for a bill of information to be entertained there must be a case pending before a court, or where there is a usurpation of the province of the court by the respondents named therein.

2. Counts 1, 2, and 3 of the returns to the bill of information again repeatedly raised the same issue that this Court entertains a bill of information only when a case out of which it grows is pending; but in this case, there being no case pending, the information is baseless.

Certainly, there is a common issue raised in the motion and returns to the bill of information which necessitated a consolidation by the Court. Hence, the allegation of petitioners that the Court consolidated the bill of information and motion to dismiss which contained separate issues has no support in the records. That being the case, count 2 of the petition for reargument cannot be sustained, and we so hold.

The only issue now is whether the dismissal of the bill of information by the Court, without passing on the issues raised in said bill of information, was an inadvertence on the part of the Court which warrants a reargument.

In our opinion delivered on July 22, 1997 in this same case, then before us on a motion to intervene, we upheld the principle in West African Trading Corporation v. Alraine (Liberia) Ltd., 25 LLR 3 (1976), which states: "Reargument will only be granted when it is shown that a prior decision overlooked a salient point of law or fact raised at the prior hearing." Also, we said then that "[r]eargument of a cause may be allowed when some palpable mistake has been made by inadvertently overlooking some fact or point of law. "Lamco J. V. Operating Company v. Verdier, 26 LLR 445 (1977).

The contention of petitioner that the Court did not pass upon the issues raised in their bill of information puzzles us because said bill of information was dismissed by the Court.

May the Court entertain issues in a paper that has already been dismissed? We think not. Assuming arguendo that the Court did not pass on all the issues in the bill of information and consolidated the information with the motion to dismiss, we do not think legally that that is a ground for reargument. It is the duty of the Court to pass upon the issues it deems meritorious and germane.

In the Lamco I. V. Operating Company case, cited supra, this Court, speaking through Mr. Justice Henries, had this to say:

"As to the contention that several issues were raised but not passed upon, it had always been the practice and precedent of this Court to pass on the issues it deems meritorious or properly presented. It need not pass on every issue raised in a bill of exceptions or in the brief; and the Court acted in keeping with precedent when it decided to ignore other issues raised and addressed itself only to the jurisdictional question. There is no need to cite the plethora of cases in which this practice has been followed."

Indeed, this Court acted in keeping with practice and precedence when it ignored the other issues raised in the bill of information, and addressed itself to the jurisdictional question raised in the motion to dismiss and the returns to the bill of information. The main question was whether the Supreme Court could legally obtain jurisdiction over a bill of information when there is no proceeding pending before it, from which such information grew? The Court held that it could not, and hence dismissed the bill of information.

"A dismissal is an order or judgment finally disposing of an action, suit, motion, etc. without trial of issues involved. Such may be either voluntary or involuntary." BLACK'S LAW DICTIONARY 468 (6th ed). To dismiss is to send away or dispose of an action or suit without hearing. Consequently, the dismissal of the bill of information threw out the issues therein, leaving nothing before the court to pass upon. The effect of a dismissal of a paper

before a court legally means that the issues raised in such paper, whether a pleading, information, or brief, are deemed disposed of, concluded, and terminated especially when the dismissal leaves nothing to be further decided by the court. We cannot, therefore, entertain those issues during a petition for reargument since the object is to bring to the Court's attention some palpable mistake or inadvertency of points of law or fact in a previous hearing.

In view of the foregoing, the petition for reargument is hereby denied. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction accordingly. Costs are assessed against petitioners. And it is hereby so ordered.

Petition denied.