NOEL V. RIZZO & GORDON RICHARDS, Petitioners,
v. HIS HONOUR WILLIAM B. METZGER et al.,
Respondents.

PETITION FOR REARGUMENT

Heard: October 30, 1997. Decided: January 22, 1998.

1. For good cause shown to the Court by petition, a reargument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some fact or point of law.
2. Reargument is permissive and not mandatory, and it may or may not be allowed.
3. Reargument is conditional and not absolute; it is ordered only if good cause therefor is shown;
4. Reargument is not allowed simply because the unsuccessful party seeks a review of the judgment, but there must be some palpable mistake whereby a certain point of fact or law was overlooked.
5. For reargument to be granted, the issue sought to be passed upon by the Court must have first been raised in the pleading, or where there is a second reargument, then the issue must have been raised in the first petition for reargument but was not addressed by the Court.
6. Reargument will not be allowed where the issues raised in the petition have already been passed upon in the earlier ruling.
7. Reargument is not permissible where the issue which the Court is requested to pass upon was not raised in the original arguments had before the Court.
8. The Supreme Court need not pass upon every issue raised and presented by the parties on appeal.

The case, before the Supreme Court for the fourth time, on a petition for reargument, grew out of the action of the trial court judge in entering judgment by default against the peti-tioners, removing them from office as directors and president of a Liberian corporation, and appointing an outsider from among persons recommended by the minority shareholder. The petitioners had claimed that they had not been allowed their day in court and had therefore filed a petition for a writ of error before the Supreme Court, which had been denied. In the instant proceedings, the petitioner claimed that the court had inadvertently overlooked certain issues raised in previous arguments.

The Supreme Court disagreed. The Court held that re-argument could only be granted where the issues, either of fact or point of law, had first been raised but not passed upon by the Court, and not merely because the losing party seeks to have the Court review its judgment or the position taken regarding the issues raised. The Court further noted that where an issue had already been passed upon, it will not entertain any further arguments on the issue. The Court opined that in any event, reargument was permissive and not mandatory and that the Court was not bound to pass upon every issue raised by the parties on appeal. It noted that while the issues highlighted in the petition for reargument were raised in the petition for a writ of error, the writ was refused and never issued by the Justice in Chambers and therefore the issues were not presented to the Court or made a subject of argument to be passed, for which reargument would lie. As such, the Court said, the issue could not properly be included in the petition for reargument. Moreover, it said, the issues contained in the information filed by the petitioner could not have been passed or made a subject of argument since the information was dismissed on a motion to dismiss. As such, there could

not be reargument with respect to the issues which were never argued in the first place.

The Court observed that as several reargu-ments had been sought in the case, it was establishing the rule that henceforth reargument in a case would be limited to only one, following the first opinion delivered by the Court. Accordingly, on the basis of the foregoing, the petition for reargument was *denied.*

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

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This is the fourth time this Court has had to hear this matter in some form or shape and to write an opinion on the same. Following an *ex parte* trial in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, the petitioners herein filed for a writ of error which was refused by the Chambers Justice. Out of that refusal to issue the writ, petitioners filed a bill of information to the Full Bench, which information was dismissed on February 7, 1997. A petition for re-argument was thereafter filed and, while it was pending, two motions to intervene were filed. Those two motions were denied by this Court in a ruling on July 22, 1997. The re-argument on the dismissal of the bill of information was denied in a ruling on August 15, 1997. Upon the re-argument being denied, peti-tioners filed a second petition for re-argument, which is now the subject of this current ruling, the fourth ruling between the parties in this case.

It is intended and hoped that this present opinion will be

the last and that this case will be put to rest once and for all. Further, it is the intention of the present membership of the Supreme Court to give some interpretation and meaning to the provision under our Rules allowing re-argument of causes. Under the Rules, as they are now, when an opinion has been delivered and filed, a party may, within three days thereafter, obtain the approval of one of the Justices who concurred in the judgment to have a rehearing where some palpable mistake has been made by the Court inadvertently overlooking some fact or legal issue. See Revised Supreme Court Rules, Rule IX, Parts 1, 2 and 3 (1972).

This Rule remains in effect, except that this Court, by this opinion, hereby amends the Rule to provide that henceforth re-argument shall a limited to only one time following the original opinion sought to be reviewed or revisited.

Reverting to the substance of this second petition for re-argument, we take recourse to the historical development of the case to put it into proper perspective. We must note here also that this case is not here on a regular appeal, where there is a full discussion of everything that has transpired prior to now. This is not only a re-argument, but a second re-argument. Therefore, our review is and can only be of the first re-argument and not the ruling that led to that re-argument.

In February 1996, George and Vincent Rizzo, co-respon-dents herein, filed an action for declaratory judgment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Liberia, against Noel V. Rizzo and Gordon Richards. Service of the summons was made on ITC for the respondents, and up to the time of the trial, there was no response from the said respondents. On July 25, 1996, Judge William B. Metzger handed down final judgment, following an *ex parte* trial.

On October 28, 1996, petitioners, who were respondents in the court below, filed an application for a writ of error before the Justice in Chambers, and on November 1, 1996 the Acting Clerk of the Supreme Court, without any orders from the Chambers Justice, *sua sponte* issued the writ of error, which was served and returned served, ordering the respondents to file their returns on or before November 14, 1996.

On November 4, 1996, when the Justice in Chambers was presented with the petition, he ordered the parties cited to a conference on November 6, 1996, for the purpose of deter-mining whether or not to grant petitioners' application and issue the writ. Because of some interruptions, the conference was not held.

On November 12, 1996, the Justice was informed that earlier, on November 1st 1996, a writ of error had already been issued by the Acting Clerk of the Supreme Court, without any orders being given therefor. Thus, on November 13, 1996, the Justice canceled the alternative writ of error, earlier issued by the Acting Clerk, on the ground that it had been unlawfully issued.

At the conference, held on November 20, 1996, the Justice orally informed the parties, in keeping with the practice in this jurisdiction, that he would not order the writ issued, and so, the writ of error was never issued. When the Chambers Justice refused to grant petitioners' application to have the writ of error ordered issued, the plaintiff-in-error, on December 12, 1996, filed a bill of information before the Full Bench, informing the Court *en banc* of what had transpired with the Chambers Justice and raising several legal issues. Finally, the petitioner prayed that the writ be issued along with a stay order.

Respondents filed their returns to the bill of information on December 27, 1996, followed, on January 10, 1997, by a

motion to dismiss the said bill of information. This Court rendered an opinion on February 7, 1997, granting respondents' motion to dismiss, and dismissing the petitioners' bill of information. The relevant portion of that ruling in the February 7, 1996 opinion is hereunder quoted verbatim:

> "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 respondent; 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 being taken from its final judgment, or where there were remedial or ordinary writs prayed for and issued."

Not satisfied with the Court's judgment, quoted above, petitioners/informants filed, on February 10, 1997, a petition for re-argument. While the re-argument was pending, the Ministry of Justice, on May 2, 1997, filed a motion to inter-vene. Then on May 7, 1997, Ramatrielle, S. A., a non-resident Liberian Corporation, filed its own motion to intervene, which was amended on May 9, 1997. The respondents resisted the Government of Liberia's motion to intervene on May 5, 1997, as well as Ramatrielle's motion to intervene on May 15, 1997. This Court heard the two motions and denied them in its opinion of July 22, 1997. The Court then proceeded to hear the petition for re-argument, and, in its opinion dated August 15, 1997, denied the petition and ordered the trial court to resume jurisdiction over the case and enforce its judgment.

From the denial of their petition for re-argument on August 15, 1997, petitioners filed another petition for re-argument on August 16, 1997, which was withdrawn and amended on August 18, 1997. To this new petition, the respondents filed returns on September 21, 1997. The nine-count amended petition for re-argument, filed on August 18, 1997, and the sixteen-count returns of September 21, 1997, form the basis of this ruling.

In order to proceed with this ruling, we deem it proper to take recourse to the relevant portion of the law providing for re-argument and apply same to the facts and circumstances in the instant case. The Supreme Court Rules state:

RULE " IX - REARGUMENT"

" *Part 1. Permission for* - For good cause shown to the Court by petition, a reargument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some fact or point of law." See: Revised Rules of the Supreme Court, Rule IX, Part 1.

There are some key words and phrases which are worth pointing out. First, reargument is permissive and not manda-tory; it may or may not be allowed. Secondly, it is conditional, not absolute; it is ordered *only if good cause therefor is shown.* Third, it is not allowed simply because an unsuccessful party seeks a review of a judgment but that there must have been some palpable mistake whereby a certain point of fact or of law was overlooked.

The word palpable is defined thus: " that can be touched or felt; or readily perceived by the senses or mind."THE CONCISE OXFORD DICTIONARY OF CURRENT ENGLISH 858 (8th ed. 1991), edited by R. E. Allen. Also, palpable is defined as "easily perceptible, plain, obvious, readi-ly visible, noticeable, patent, distinct, manifest".

BLACK'S LAW DICTIONARY 1110 (6th ed. 1990).

Moreover, for re-argument to be granted, the issue sought to be passed upon by the Court must have first been raised in the pleading or, as in the instant case, where this is the second re-argument, then the first petition for re-argument, not addressed by the Court. The main word is re-argument. The question, is how can there be a re-argument if there had not been an argument to begin with. Alternatively, why should there be a re-argument when there has already been an argument and all the issues have already been passed upon in the earlier ruling?

Having put the term "re-argument" in its proper legal per-spective, we shall now take recourse to the amended petition for the second re-argument, filed August 18, 1997.

Count one merely recites that petitioners were respondents in a motion to dismiss a bill of information on February 7, 1997, and that they are petitioners in a petition for reargument in which this Court denied the petition on August 15, 1997.

Count two says that the Court inadvertently overlooked a fact that only the motion to dismiss was argued and not the bill of information, but that when the Court consolidated the mo-tion and bill of information it was prejudicial to them because the issues raised in the information were not the same as those raised in the resistance to the motion to dismiss.

Count three says that consolidation of the motion and the bill of information in the ruling of February 7, 1997, was pre-judicial because only the motion to dismiss and the resistance thereto were argued and not the bill of information and returns thereto.

Count four says that during argument of the motion and resistance, the Court reminded respondents' counsel that they should confine their argument thereto and not include

the bill of information and the returns because the latter two were not being argued. This, they say, the Court inadvertently over-looked.

Count five says even the caption of the February 7, 1997 ruling implies that the bill of information was subject of said ruling even though it had not been argued, but was being con-solidated in the ruling and this was prejudicial to informants/ petitioners because they were not given the opportunity to argue the information. This, they assert, the Court overlooked.

Count six says that the writ of error was issued, served and returned served on orders of the Chambers Justice, and yet, it was canceled after 13 days and a conference held instead, from which no ruling was made. Notwithstanding, the cancellation of the writ was upheld. This, they further state, the Court overlooked.

Count seven contends that the Court also inadvertently overlooked the fact that the same Justice in Chambers who handled the case in Chambers, also sat on the hearing of the case by the Full Bench, and that the very same Justice wrote the opinion for the Full Bench, even though he had been requested to recuse himself and had refused to do so.

Count eight says that the bill of information raised many salient factual and legal issues but that the Court, in the August 15, 1997 ruling, inadvertently overlooked those points.

Count nine asks the question whether a single Justice can refuse to forward a petition for a writ of error to the Full Bench, and thereby deny the petition on its merits when the petition had in fact satisfied all the statutory requirements. This question, they say, the Court inadvertently overlooked.

Let us again take recourse to the legal perspective sur-rounding reargument. First, the issue must have earlier been

raised, and, second, it must have been ignored by the Court. Therefore, if an issue was never raised before, there can be no reargument of same. Also, if the issue was raised and disposed of, or passed upon, a rehearing thereof is not permissible.

Given the two conditions stated above, the question to answer is, were any of the issues in the nine counts of this amended petition for a second reargument previously raised in the petition for the first reargument, filed on February 10, 1997? If yes, how were they disposed of in the ruling of August 15, 1997? If no, then of course they cannot be cognizable in the second petition for reargument, being raised for the first time.

With respect to the February 10, 1997 petition for the first reargument, in conjunction with the present amended petition for a second reargument, the Court observes that counts one to six (1 - 6) of this amended petition for a second reargument were indeed earlier raised in the original petition for the first reargument, and are in fact identical. With this finding, the question is whether the issues raised therein were disposed of, and how?

As to counts seven, eight and nine (7, 8, 9) of the amended petition for a second reargument, which were earlier summa-rized, the Court observes that they were not raised in the original petition for the first reargument and hence were not considered in the Court's determination of August 15, 1997. With this finding, the Court says that these issues not having first been "argued", there can be no "reargument." *West African Trading Corporation v. Alraine (Liberia) Ltd.*, 25 LLR 3 (1976), text at page 10. As was noted at the beginning of this opinion, this case is not before us on a full regular appeal in which the entire spectrum of the case is opened up and subject to review; rather, it is on a re-argument, and for the second time at

that. Therefore, the reviewing by the present member-ship of the Bench is limited to the petition for a second re-argument, filed on of August 18, 1997, vis-a-vis the ruling of August 15, 1997, of the preceding membership of the Bench. Our present review cannot go back to the ruling of February 7, 1997, out of which the first reargument of February 10, 1997 grew, because our predecessors on this Court had already passed on the first petition. We are limited to determining whether the August 15, 1997 ruling overlooked any legal or factual issues raised in the petition for the first reargument.

We have held that counts seven to nine of the second petition for reargument were not raised in the first petition and hence will not be addressed herein. As to counts one to six of the second petition, we have found that not only were those issues raised but that they are identical to counts one to six of the first petition. We shall now see how they were addressed in this Court's ruling of August 15, 1997.

Having had recourse to that ruling, we are of the considered opinion that all the counts, and the issues therein contained, were properly passed upon and adequately addressed by this Court in its August 15th ruling. Hence, nothing is left to be decided by this present Bench except perhaps to reaffirm it in its totality. For the sake of the record and because that ruling is so thorough in traversing the issues, we go further to say that the said August 15th ruling is hereby incorporated into and adopted by reference in toto as part of this opinion.

Perusing said opinion, in respect of the issues raised in counts one to six of the petition of February 10, 1997, the Court held that these issues were raised in the writ of error, and that since the issuance of the writ was denied by the Chambers Justice, the issues were never presented to this Court to have been passed upon in the ruling of February 7,

1997. As such, the issues could not have been included in the petition for re-argument, especially as the bill of information, which grew out of the denial or refusal to issue the writ of error, was also dismissed when the respondent's motion to dismiss was granted. See Supreme Court Opinions, March Term, 1997.

In short, the writ of error was never issued and so the issues raised therein were never a subject of argument and ruling for which reargument would lie. Further, because the bill of information was dismissed without a hearing on the merit, upon the granting of the motion to dismiss, all the issues in the information equally went out with the said information, and were never the subject of argument and ruling, for which re-argument would lie.

In an attempt, to get these issues passed upon anyhow, petitioners have included them as part of the argument in their brief. But this Court has held that issues not raised in the pleadings will not be passed upon, and even where they are properly raised, the Court need not pass upon every issue presented. Our distinguished colleague and predecessor, Mr. Justice Gausi, speaking for this Court on August 15, 1997, relied on the case *Lamco J. V. Operating Company v. Verdier*, 26 LLR 445 (1978), text at 448, in which this Court, speaking through Mr. Justice Henries, held as follows:

> "As to the contention that several issues were raised but not passed upon, it has always been the practice of this Court to pass upon those 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 practice and precedence when it decided to ignore other issues raised and address itself only to the jurisdictional question. There is no need to cite the plethora of cases

in which this practice has been followed."

This opinion could go on *ad infinitum* and will arrive at the same conclusion. We therefore deem it sufficient to conclude this opinion in the words of Messrs. Justices Azango and Henries in the *Alraine* and *Lamco* cases, *supra.*

> "The issue ...cannot for the first time be considered in this opinion since it was not raised earlier ...A rehearing may be granted for the purpose of considering new matters, set forth in the original proceeding which may materially affect the merits of the main controversy. It must be shown that it was raised before and not considered in the original opinion."
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> "According to Rule IX, part 1, of the Revised Rules of the Supreme Court, reargument of a case may be allowed when some palpable mistake is made by inadvertently overlooking some fact, or point of law".

Having thoroughly scrutinized the points raised in the petition (i.e. the amended petition for the second reargument) in relation to the original petition for the first re-argument, petitioners' brief as well as the opinion of August 15, 1997, out of which this second request grew, this Court has not been able to discover any issues contained therein which were inadver-tently overlook in its ruling of August 15, 1997. Consequently, the amended petition for a second re-argument has to be and same is hereby denied.

With the denial of this second petition for re-argument, the present membership of the Supreme Court says that this is the last appearance of this case before the Supreme Court, and this Court, at this time, hereby re-affirms the new rule that re-argument of causes will be limited to only one, after the first opinion sought to be reviewed on account of mistake. For to do otherwise would only subject

this Court to mockery and public ridicule, and will be an attempt to have the Supreme Court en-tertain appeals from its own rulings or judgments, which is not permissible and will not be countenanced. *Dennis v. Republic*, 7 LLR 341 (1942), text at 349; *American International Under-writers Incorporated v. Fares Import-Export*, 30 LLR 524 (1982).

Wherefore, and in view of the foregoing, the amended peti-tion for the second reargument is hereby denied. Accordingly, these proceedings are dismissed for being unmeritorious and the judgment of the court below is ordered enforced.

The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Mont-serrado County, commanding the judge presiding therein to resume jurisdiction over the case and enforce its judgment. Costs are assessed against the petitioners. And it is hereby so ordered.

Petition denied.