MESSRS C. M. B. TRANSPORT OF BELGIUM, represented by its registered agent, MESSRS DENCO SHIPPING LINES, INC. , represented by its President/Manager, Appellant, v. **MESSRS FAMILY TEXTILE CENTER**, represented by its Manager, Appellee.

PETITION FOR RE-ARGUMENT

Heard: May 8, 1995. Decided: July 28, 1995.

1. Re-argument of a decision of the Supreme Court will be granted only when the Court has overlooked a material issue raised prior to the decision in question; or when an issue which has been overlooked by the Supreme Court involves an important principle and a serious doubt exists as to the correctness of the Court's decision; or when some palpable mistake has been made by inadvertently overlooking some fact or point of law.

2.The Supreme Court needs not pass on every issue raised. The Court only passes on issues it deems to be meritorious, properly presented and pertinent to deciding a particular case.

During the October Term, A. D. 1994, the Supreme Court reversed the judgment of the lower court in an action of damages for breach of contract and remanded the case for a new trial. Not satisfied with the opinion, the appellee filed a petition for re-argument, claiming that the court inadvertently overlooked certain legal and factual issues which, if the Court had considered, would have changed the opinion of the Court.

The Supreme Court, in its ruling on the motion, held that even though it is an established rule that for good cause shown, a reargument of a cause may be allowed when some palpable mistake is made by the Court or the Court has inadvertently overlooked some other point of law, such was not the case in the instant matter, in that the issues raised in the petition had already been passed upon in the opinion. The Court therefore *denied* the petition.

Moses K Yangbe and *Jamesetta Howard* for appellant. *Flaawgaa R. McFarland*for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This case was decided by this Court during its October Term A. D. 1994, at which time it reversed the judgment of the lower court and remanded the case for a new trial. The appellee thereafter filed this petition for re-argument claiming that the Court inadvertently overlooked certain legal and factual issues which, if considered, would have changed the opinion of this Court. We shall quote for the benefit of this opinion, portions A, B, C, D and E of the petition.

"A. Because the Court inadvertently overlooked the fact that in the brief of appellant/petitioner, it was argued that delivery to the National Port Authority (NPA) of a container of goods by shipper, and storage fees paid therefor, did not make NPA agent of Denco. NPA was rather the custodian responsible to the shipper for the storage of the goods until they were delivered by NPA for shipment to the carrier, upon its arrival in Liberia. NPA never acted for Denco or appellant/petitioner, but for the shipper. This fact which was inadvertently left out was testified to by the appellant's third witness, . Mr. William Garway Sharpe, Jr., an employee of NPA (see minutes of Court, Thursday, January 13, 1994, sheets 68), and which statements were not rebutted by appellee.

Appellant/petitioner says that the stamp of conditional acceptance on the blank bill of lading was not made until after the appellee had delivered the goods to the port and had returned to Denco, as stated in paragraph 2, page 4 of the opinion, but rather, the blank bill of lading stamped: "Acceptance SS/MV CONCORDIA 084-5 due Monrovia June 27, 1990, dated June 26, 1990; subject to Master's confirmation storage charges, if any, for shipper's account," was done at the time plaintiff/appellee first arranged with Denco for shipment of his goods, and prior to the plaintiff/appellee' s receipt of containers from the Port, appellee's subsequent loading of the containers, and his delivery of the packed container to the port. After receipt of the stamped blank bill of lading, Denco never had an opportunity to see the goods and had no control over what was done once appellee had been given the go ahead to receive the containers from the NPA and put his goods therein. Delivery of the goods to carrier was not possible because the ship never berthed, based on the heavy shooting at the port due to the civil crisis.

B. That the Court inadvertently overlooked the plain meaning of the so-called contract of affreightment, i.e., DENCO' s blank bill of lading, marked plaintiff's exhibit '2'. This is clearly a conditional contract. Having recognized that the bill of lading is the contract of affreightment between the parties, the Court proceeded to simply ignore an essential term of said contract, i.e., that it was subject to confirmation by the master on delivery of the goods. To merely say that clearly condi-

tional acceptance was 'unavailing" is to set aside the contract of the parties and substitute, therefor, the Court's own contract.

C. That the Court inadvertently overlooked the fact that this particular case is factually different from *CFAO v. Kamara,* and *Nigeria National Shipping Line, Ltd., v. Tip Top Tools, Inc.* In *CFAO v. Kamara,* the issue involved was the delivery of Kola Nuts Kinja to a shipping agent who issued a receipt. The *case The Nigerian National Shipping Line, Ltd., v. Tip Top Tools, Inc.* involved the question whether certain goods imported from Germany to Liberia were short landed in Monrovia, or whether the goods got missing on the carrier? In the present case, the mode of transportation involved containers which is a new worldwide transportation requiring a method whereby the shipper can arrange the time of shipment, usually use the carrier's container, the packing of the container by the shipper, and his delivery of same to the port for onward delivery to the vessel. The local practice used in containerization is based on experience worldwide. Therefore, a ruling by the Liberia Supreme Court that delivery of a container begins when the container is placed near the wharf and not when connected with the tackle alongside the vessel or within the control and custody of the officer of the vessel, will not only place Liberian law at odds with that of other countries, but will cause Liberia to lose the service of vessels plying the waterways of Liberia, and thereby cause embarrassment to the economy of the state.

D. That the Court inadvertently overlooked appellant/ petitioner's other contention that the civil war reached its height in June 1990, and as a result, the ship, in fear of danger, could not berth at the Freeport of Liberia. This fact was raised in count 8 (b) of the petitioner's bill of exception (page 2), and alluded to in count 3 of appellant/petitioner's answer: "and plaintiff/appellee himself submitted that the goods were sent to the Freeport of Monrovia during the civil crisis in Liberia which prevented the ship from coming into harbor and doing normal business at the Freeport of Monrovia." Throughout the testimony given by both plaintiff/ appellee and defendant/appellant, this issue of the civil crisis was testified to. In its memorandum, filed January 14, 1994, the second issue of legal argument, at the time of legal argument below, defendant/appellant argued the point that "it would be illogical and unreasonable to say that because plaintiff/appellee' s goods were packed and given the OK to load on the vessel, the ship was bound under the circumstances to berth so as to take delivery of appellee's goods. Our maritime law provides that neither the carrier nor the ship shall be responsible for loss or damage resulting from act of war. Section 133 2(e)." Petitioner says that on page 19 of the Court's opinion, the Court itself took judicial notice of the times. It stated that the times were not normal. There was a breakdown of law and order in the country which we must take

judicial notice of ..." With such overwhelming evidence and knowledge of the situation at the time, the court below should have taken judicial notice of the law as it is related to the time of delivery of the goods to the NPA.

E. Appellant says that the Court in its ruling on the issue of the statute of limitations in this case, inadvertently overlooked the fact that the Sixth Judicial Circuit, Montserrado County, was opened for its June Term 1991 and that defendant/appellee had an opportunity of filing its complaint with that court of first instance which he did not do. Moreover, a review of our statute of limitations, Civil Procedure Law, Rev. Code 1:2.71, which could be the guide in determining the applicability of the statute, reveals none of the circumstances of the war under which the tolling of the statute is excused or waived. This legal point is crucial to the determination of this matter because the Court's interpretation of this statute of limitations, if allowed to stand, will have an adverse effect not only in Liberia but worldwide where judicial matters involving Liberia are concerned. Is the Court saying that a matter involving Liberian law which could be brought in New York or London should go on after the statute of limitations because the Supreme Court was not sitting at the time?"

The Court holds that the aforementioned points raised in the petition for re-argument were passed upon in the opinion. However, it would appear that the appellant/petitioner is not in agreement with the Court on these points. Hence, he has filed this petition for re-argument. The Rules of the Supreme Court, as confirmed by several opinions of this Court, state that:

"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." *Revised Rules of the Supreme Court IX, Re-argument, Part 1, Petition For.*

This Court has also opined that: "Re-argument of a decision of the Supreme Court will be granted only when the Court has overlooked a material issue raised prior to the decision in question." *Bryant et al. v. Harmon et al., 12* LLR 405 (1957). Also, "re-argument will be granted when an issue which has been overlooked by the Supreme Court involves an important principle and a serious doubt exists as to the correctness of the Court's decision." *Union National Bank, v. M.C.C.,* 22 LLR 32 (1973). "Re-argument 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 (1978). Besides, it has been the practice hoary with age in this jurisdiction that the Court only passes on issues that she deems

meritorious and properly presented that are pertinent to decide a particular case. In the instant case, the issues in the petition have already been passed upon in the opinion, as we said earlier.

In view of all we have said herein above, and especially so when the points raised have been passed upon, the petition for re-argument is hereby denied. The Clerk of this Court is hereby ordered to send a mandate to the court below for the re-hearing of this case as remanded by the opinion under review. Costs are to abide final determination. And it is hereby so ordered.

Petition denied.