SAMUEL WILLIAMS, Informant**,** v. **HIS HONOUR JESSE K. BANKS,** JR. Judge Presiding over the Sixth Judicial Circuit Court, Montserrado County, et al., Respondents

INFORMATION PROCEEDINGS AND MOTION FOR RE-ARGUMENT.

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

1.Re-argument of a case will not be granted, except when by petition for good cause shown that some palpable mistake is made inadvertently overlooking some facts or points in issue; that said petition be presented within three days after the filing of the opinion for which re-argument is sought; a justice concurring in the judgment must order it; and the moving party must serve a copy of the petition, containing a brief and distinct statement of the grounds upon which it is based, on the adverse party as provided by the rules relating to motion.

2. When the statute requires that any action to be taken or performed within a specified time after notice, such as petitioning or moving for re-argument of a case before the Supreme Court, in computing the time, the day of service of the notice is to be excluded.

3. Where the Supreme Court has decided a case and has sent a mandate to the lower court to resume jurisdiction over the case, the Court loses jurisdiction.

Joseph Jackson and Mary Jackson-Langley, respondents/ movants, instituted an action of ejectment against Josiah Ware to recover thirty (30) acres of land. When the case was called for hearing, counsel for Mr. Ware failed to appear and, therefore, judgment was rendered against the said Josiah Ware. It was from this adverse judgment that appellant appealed to the then People's Supreme Tribunal, where the decision of the lower court was reversed and a new trial of the case ordered.

While the case was pending in the lower court, Samuel T. William, informant, filed a bill of information before the then People's Supreme Tribunal. Joseph Jackson and Mary Jackson-Langley, appellants/respondents filed a motion before the People's Supreme Tribunal for reargument of the case. The People's Supreme Tribunal denied the motion for re-argument because the respondents failed to fully comply with the principles for the granting of re-argument. The petition for re-argument was *denied.*

S. Edward Carlor appeared for the Informant. *F. Nyepan Torpor* appeared for the Respondents.

MR. JUSTICE AZANGO delivered the opinion of the Court.

This case commenced with an action of ejectment instituted against Josiah Ware, appellant, of the City of Careysburg by Joseph Jackson and Mary Jackson Langley, appellees, on June 2, 1979 to recover thirty acres of land.

When the case was finally called for hearing, counsel for appellant failed to appear and judgment was rendered against appellant. From said adverse judgment, appellant took his flight on appeal to the then People's Supreme Tribunal sitting in its March Term, A. D. 1981, which reversed the decision of the court below with the mandate that the assigned judge presiding should resume jurisdiction over the case for re-trial.

While the case was still pending, Samuel T. Williams, informant, filed a seven-count bill of information in which he alleged as follows:

1.That even though he was not a party to the ejectment, he was arrested and imprisoned on the order His Honour Jesse Banks, Jr., judge presiding over the Sixth Judicial Circuit Court, Montserrado County; and that while he was in jail, on the instruction of the judge, his house was completely demolished.

2. That Defendant Josiah Ware in the ejectment suit was never served with the writ of summons since same was served in June, 1979 and while the defendant died in November, 1931.

3. That a suit cannot be maintained by the heirs and legal representatives of Jackson after a period of forty-eight (48) years of acquiescence.

4. That the mandate of the Honorable Supreme Court mandating the judge of the lower court to resume jurisdiction over the case for re-trial was never carried out.

5. That since no information or application was filed before His Honor Jesse Banks, he erred in ordering the sheriff of the trial court to break down his house.

6. That the doctrine of estoppel operates against Aaron Jackson for his failure to assert or establish his claim over the property, subject matter of the proceeding within the time required by law.

7. That the court below had no jurisdiction over the person of defendant Josiah Ware because he had died prior to the issuance and service of the writ of summons.

After the informant had filed his bill of information, respondents Mary Jackson Langley and Joseph Jackson, Jr. filed a motion before this Court for re-argument of the case contending among other things:

1. That the Supreme Court on December 29, 1988 inadvertently held that no one appeared for the movant, while in reality Counsellor S. Edward Carlor, apart from appearing for them had even filed returns on the 8thof December, A. D. 1988.

2. That even though their counsel was in court, he could not be heard because informant's counsel was arguing and had not submitted the case for ruling.

3. That the Supreme Court did not pass on their returns to the information, otherwise judgment in their favour would have been rendered.

4. That if the Supreme Court had passed on the returns of movant, it would have realized that information will not lie since there was no case pending in the lower court growing out of the ejectment suit since the Supreme Court's mandate was fully executed and judgment brought in their favor.

5. That the court also inadvertently overlooked the fact that Josiah Ware appeared voluntarily to clarify that he was not Josiah Ware but later joined issues in the ejectment suit.

6. That prior to his death, Josiah Ware appointed Samuel Williams as his attorney-in-fact and that the case was heard and disposed of before Josiah Ware died.

7. That information is to have the parties conform to the order of the Supreme Court but in the case at bar, no order was disobeyed. Therefore, it was an inadvertent move to reverse the judgment on information.

The only issue worth addressing ourselves to is whether or not the motion has sufficient legal reasons to warrant a reargument of the case.

According to Rule 1X of this Court, it has been made categorically clear that re-argument will not be heard until the following condition have been fully fulfilled:

PART 1: -*Permission for*- For good cause shown to the Court by petition, a re-argument of a cause may be allowed when some palpable mistake is made inadvertently overlooking some facts or points of law.

Part 2: *Time of* -A petition for re-hearing shall be presented within three (3) days after the filing of the opinions, unless in cases of special leave granted by Court

PART 3: -*Contents of Petitioner:* The petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a Justice concurring in the judgment shall order it. The moving party shall serve a copy upon the adverse party as provided by the rules relating to motion.

This court held in the *case The Management of Broadway Cinema v. Mah and the Board of General Appeals,* 36 LLR 439 (1989), that those praying for the re-argument of a case before this Court should remember the following:

1. That whilst strictly speaking, a re-argument is simply a new hearing and a new consideration of the case by the court in which the suit was originally heard and upon the pleadings and dispositions already in the case, and that hearing before an active court for the purpose of determining whether the Court will revise its own action by correcting errors and modifying or setting aside its own judgment, it is mandatory to take into account:

a) The parties, as a matter of right, are usually entitled to a personal hearing for the argument of the case when proper request is made therefor, but the exercise of this privilege is subject to reasonable regulations by the appellate court, and like any other privilege, may be waived. while argument of the case in the first instance on appeal is a matter of right, re-arguments are directed for the satisfaction of the Court alone, and are all together subject to its discretionary control and direction. Where the statute requires that the case be noticed for reargument for three (3) days in computing the time the day of service of the notice is to be excluded.

b) That a petition for a rehearing is a request to the Court to revise its own action by correcting errors and modifying or setting aside its own judgment. One to whom the decision is not adverse cannot petition for a rehearing. The appellate court may adopt reasonable rules regulating the right to rehearing; such as:
i) That the petition must be approved by a concurrent justice of the Court;
ii) That a brief must be filed in support of the petition;

iii) That the record on which the original hearing was had should be filed and considered the true record on the re-hearing though there may have been some irregularities in incorporating matters therein;
iv) An order will be treated as a part of the record and as legitimately before the court for examination on the re-hearing of an appeal, if the case was submitted by both parties at the first hearing, on the theory that the order was properly in the records;
v) The filing of a motion for leave to present a petition for re-hearing;
vi) The granting of such leave should not suspend the enforcement of, vacate or annul the judgment;

c) A re-hearing should not be granted unless there is a reasonable showing that the judgment rendered was erroneous. But when a re-hearing is ordered, such rehearing may be granted even when the result must be the same as that announced in the original opinion. This is true when (1) the concurrence of one or two justices consisting the court delivering the judgment on appeal is limited to the result, and thereby the law of the case is not made; (2) the original opinion fails to consider a point raised in the appeal, which, if tenable, might be fatal to the cause of action set forth in the complaint; and (3) the former opinion announces certain rules of law which, in the judgment of the court as constituted when the motion for rehearing is considered require modification to prevent misapplication of the same on a new trial of the cause. The fact that the decision will have no important bearing on a large class of other cases and that on account of a pressure of business the opinion on the original hearing was not as full as desirable, is a material consideration in determining whether a re-hearing will be granted. It should be recognized that questions not advanced on the original hearing will not be considered on the petition for re-hearing. This must necessarily be so because if new questions should be raised on a rehearing, there would be no end to a case on appeal. This rule is especially recognized and applicable in the case of a question as to the constitutionality of a statute.

d) New evidence cannot be considered on a petition for a rehearing. Where a non-suit is granted on a particular ground, which is held insufficient by the appellate court, a re-hearing will not be allowed to consider and determine any other ground on which it is claimed the non-suit should have been granted but which was not considered by the trial court. The failure of the appellate court to consider a matter alluded to in the oral argument, recorded and referred to in the petitioner's brief, though not lightly, may be ground for a re-hearing.

e) As aforesaid, when a point was overlooked by the court in its opinion, a re-hearing should be granted where a fatal variance is shown, and the point was raised but overlooked by the court.

f) The petition for the re-hearing must be filed within the time prescribed by the statutes or rules of court; and such petition filed within the prescribed time will be considered. A motion to modify a mandate of the Supreme Court is in the nature of a petition for a re-hearing, and may be filed during the time allowed for a re-hearing, on behalf of a party who has not waived it, although the opinion has been certified by the clerk of the court below. When a petition for a re-hearing is duly filed, it is the usual practice to permit amendments after the time for filing the petition has expired, assigning additional grounds for re-hearing.

g) Where after the decision of a case and the rendition of an opinion by the appellate court, its mandate is regularly transmitted to the trial court and spread on its records, it is well settled that the appellate court, in the absence of fraud, accident, inadvertence or mistake, has no jurisdiction to recall the mandate and entertain a petition for a re-hearing and a motion for leave to file the same will be denied, as it is manifest that there must be finality somewhere in all litigations. The logical point for appellate jurisdiction to terminate is that time when there is again vested in the trial court jurisdiction to proceed, carry out and enforce any judgment delivered by the appellate court.

We are of the unanimous opinion that the petition does not fully comply with the principles in the opinion quoted *supra.* Therefore the motion should be and the same is hereby denied. The Clerk of this Court is hereby ordered to send a mandate to the court below with instructions that it will resume jurisdiction over the matter and enforce its judgment. And it is hereby so ordered. Costs are ruled against informants.
Motion/petition denied