LANSANA KUYETTE and **MALIKE KUYETTE,** Petitioners, *v.* **MOIGBE SIRLEAF** and **HIS HONOUR JAMES KANDAKAI,** Circuit Judge presiding over the People's Tenth Judicial Circuit, et al., Respondents

A PETITION FOR RE-ARGUMENT

Heard: October 14, 1982. Decided: February 3, 1983.

1. An opinion of the Supreme Court is considered published from the moment it is read from the Bench.

2. For the purpose of computing the time for the filing of a petition for rehearing, the day and date of the filing of the opinion is the day and date on which it is read from the Bench, while the date on which the order for reargument is signed is regarded as the date of presentation.

3. Petitions for re-argument not presented within three days as required under the Revised Rules of the Supreme Court, will not be entertained, unless upon special leave granted by the Court.

4. No rehearing can be entertained unless a material fact or principle of law has been overlooked.

In a motion for reargument of a bill of information growing out of an error proceedings, petitioners contended that the Supreme Court inadvertently overlooked certain salient issues raised in the information, and did not pass upon them in its opinion. Respondents urged the Court to dismiss the petition on grounds that it was not filed within three days after the rendition of the Supreme Court's judgment as prescribed by law. The Supreme Court sustained respondents' contention and denied the petition.

John A. Dennis appeared for petitioners. *Robert G. W. Azango* appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

During the March 1982 Term, this Court decided a case between the above named parties on a bill of information filed by the petitioners against the enforcement of this Court's mandate in an error proceeding decided in 1979 and sent to the People's Tenth Judicial Circuit Court for Lofa County in favour of the respondents. The informants opined that the

Court had inadvertently overlooked some salient points of both law and fact in its decision. Hence, this three-count petition for re-argument as quoted thus:

"1. That they filed a seven (7) count bill of information before this Honorable Court, submitting many irregularities in the trial and disposition of a disputed land issue, which culminated in the trial of an ejectment suit.

2. Further, that among the many issues submitted in the said information as found in counts five and six (5 & 6) respectively, copy of which is hereto attached and marked exhibit "A", forming an integral part of this petition for reargument, is that the Executive Branch of Government intervened in the said matter and ordered the release of the informants from further imprisonment, and the abolition of the illegal and irregular damages of ($50,000,00) awarded though not alleged nor proven at the trial.

3. During the March term of this Honourable Court, an opinion was handed down which inadvertently omitted these salient issues, not having been passed upon in the said opinion being a ground palpable for the allowing of this petition for reargument. Copy of said letter from the late and former President W. R. Tolbert hereto attached and marked exhibit "B", and also forms an integral part of this petition for reargument."

The respondents filed a twenty-count returns, but only count one is pertinent to the determination of this petition. Count one of the returns states:

"Because respondents submit that the entire petition should be dismissed with costs against petitioners for failure to file their petition within three days after the handing down of this Honourable Court's opinion and judgment on the 8th day of July, A. D. 1982, when indeed and in fact, said petition or motion should have been filed on or before July 12th, 1982 in keeping with Part 9 of the Revised Rules of the Supreme Court of Liberia. On the contrary, petitioners without special leave, granted by this Court, elected to file their said petition on the 13th day of July A. D. 1982 much in violation of the rule, referred to *supra*. Respondents request this Honourable Court to take judicial notice of its opinion and judgment rendered in this case on the 8th day of July, A.D. 1982, and the filing date appearing on the petition of petitioners as well as the affidavit attached thereto. For this incurable legal blunder, respondents pray the dismissal of petitioners' entire petition."

The rule relied upon by counsel for respondents provides:

"Time of a petition for rehearing shall be presented within three days after the filing of the opinion unless in cases of special leave granted by the Court." Rule IX, Part 2 of the

Revised Rules of the Supreme Court, page 43, under Re-argument.

Counsel for petitioners in arguing this point reminded the Court that the period was less than ten days. Therefore inter-mediate Sunday and holidays should be excluded. He also contended that he presented his petition to the Chief Justice on the 12th of July 1982 and was therefore within the time allowed by the Rules of Court. Counsel for petitioners further contended that the filing of the opinion of this Court just quoted refers to the time the mandate is sent to the lower court.

The opinion of this Court was delivered on July 8, 1982 which was on Thursday. Computation of the three days commenced on Friday, the 9th of July, 1982. The order for reargument to the Clerk of Court from the Chief Justice was issued on the 13th day of July and was filed by the Clerk of Court on the 14th of July, 1982. The order was issued on the 5th day and filed on the 6th day, but because the period is less than ten days, we hold that the order was issued on the 4th day and filed on the 5th day by the Clerk of Court, excluding the one intermediate Sunday which was the 11th of July, 1982.

The moment the opinion is read from the Bench, it is considered published *Barnes et al. v. Republic,* 5 LLR 395 (1937). Hence, the day and date of the filing of the opinion is the day and date on which it is read from the Bench. In the instant case, the time of filing was Thursday, July 8, 1982 and the petition for reargument should have been filed on or before Monday, July 12, 1982. By inspection of the record, we observed that the petition is not dated but the affidavit is dated on the 13th of July, 1982 and is on sheet two of the petition. We wonder if petitioners' counsel presented the petition to the Chief Justice without an affidavit on July 12, 1982 as argued by him or was the affidavit thereafter attached and predated. However, we hold that the date on which the order for reargument is signed or issued will be regarded by this Court as the date of presentation. The petition was presented on the 4th legal day and therefore without the time allowed by the Rules of this Court. Count one of the returns is sustained as against the entire petition. There is a legal maxim which says "that which is not legally done is not done at all." There is no showing that special leave was granted the petitioners by this Court. The petition is not therefore properly before us because it was not presented or filed within the three day period provided by the Rules of Court which ended on Monday, July 12, 1982.

However, we wish to observe that the executive intervention referred to in counts two and three of the petition was passed upon on page six of the opinion under review, and we quote:

"....except there was cause for reargument and an application therefor made to the Bench *en*

banc in accordance with procedure, the opinion of the Court, as handed down on the 20th day of December, 1979, with Justice Barnes speaking for the Court, a definite end and finality was put to the error proceeding, and, therefore, could never be reviewed by this Bench or any other Branch of our Government without contravening the law of the land. In keeping with our law extant, the judgment of the Supreme Court is final and is not appealable or reviewable. Judiciary Law, Rev. Code 8: 2.2; and Decree # 3, §1.3."

We interpret this portion of the opinion to mean that neither this Bench nor any other branch of government including the executive could and can interfere with the opinion of this Court handed down on the 20th day of December 1979 without contravening the law of the land, except if a petition for re-argument had been filed. This implies also that the late President Tolbert, as the head of the Executive Branch of Government, could not legally give directives that would interfere with the opinion of this Court in a civil case without contravening the law of the land under the separation of powers as was provided by the then Constitution of Liberia (1847), Art. 1, sec. 14. We mentioned this only in passing since the petition is not properly before us.

The object for a rehearing or reargument is to point out mistakes of law or fact, or both, which it is claimed the Court has made in reaching its conclusion, or to present to the Court some point which it overlooked or failed to consider, by reason whereof its judgment is alleged to be erroneous. To entitle a party to a rehearing, there must be a manifest error in the opinion on the question of fact or law that may have an adverse effect on the previous opinion. But no rehearing will be entertained unless a material fact or principle of law has been overlooked. 4 C. J. S.*, Appeal and Error,* § 2479 (3) and 2480 (4).

With reference to petitioners' application requesting this Court not to allow Counsellor Robert G. W. Azango to represent the respondents on the grounds that he was the trial judge in the lower court who decided the land dispute in these proceedings, we affirm our opinion in the information proceeding handed down during the March 1982 Term. In that opinion, we decided that if Counsellor Robert G. W. Azango heard and decided any phase of the case as a circuit judge and thereafter appeared as counsel for one of the parties in the court below, objection should have been raised before the trial court, and if the court had ruled otherwise, the proper remedy would have been certiorari proceedings against the trial judge.

In view of the foregoing facts and the laws cited, the petition must crumble and the same is hereby denied. And it is hereby so ordered.
Petition denied