KOFA SAYON THOMPSON, Informant, v. **TOM GIGGER,** Respondent.

SUBMISSION TO THE SUPREME COURT GROWING OUT OF INFORMATION PROCEEDINGS.

Heard: May 18, 1983. Decided: July 7, 1983.

1. A petition for re-argument is the proper remedy available to a party who believes that the Supreme Court made an inadvertent error in passing upon a motion to dismiss.

2. A case once decided by the Supreme Court cannot be heard again except on a petition for re-argument.

On a submission to the Supreme Court by informant, praying the Court to remand the case for hearing on its merits in the lower court, the Supreme Court ruled that there were no legal basis for the submission, and that the remedial suits to which the submission made reference had already been decided by the Justice in Chambers, from which an appeal was taken but subsequently withdrawn. Hence, it had rendered a judgment without opinion and had ordered that the trial court resume jurisdiction over the case and enforce its judgment. The Court noted further that the main case to which the informant had made reference had already been decided by it during a previous term. As such, the Court said, there was no further matter pending before it regarding which it could instruct the lower to conduct a new hearing. Furthermore, the Court said, if the informant felt that the Court had overlooked any point of law or fact, as alleged in the submission, the informant should have petitioned the Court for reargument, as provided by the Rules of the Court. The Court therefore ordered that the said case be stricken from the records and that the first judgment rendered by the Court be enforced.

James Doe Gibson appeared for informant. I R. Malobe and Nelson W. Broderick appeared for respondent.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The informant has filed this submission praying the Court to send a mandate to the trial court ordering it to resume jurisdiction over and proceed to hear the ejectment case, Tom Gigger of New Kru town, Monrovia, Liberia plaintiff v. Kofa Sayon Thompson also of New Kru town, Monrovia, Liberia - defendant and King Peters Heirs - intervenors. We quote counts 2, 3 and 4 of the submission filed:

2. Pursuant to the announcement of the appeal, the trial court ordered the appeal noted and granted on record; yet, although the plaintiff had not perfected his imperfect judgment, the trial judge mentioned that the judgment in the ejectment case held ex-parte was to be enforced. In fact, this was denying informant of the right to appeal when he ordered the main judgment in the ejectment case enforced; and so it was at this junction that informant's counsel, Counsellor 0. Natty B. Davis of sainted memory, applied to the Supreme Court Chambers for two writs - one for prohibition to prohibit the enforcement of the judgment in the ejectment case, and the second mandamus to compel the trial judge to approve of interveners' appeal bond and bill of exceptions. These were heard before the Chambers of the then Chief Justice Pierre, who dropped the prohibition writ, stating that mandamus would serve the same purpose. The ruling of the Chambers Justice at the time is available in the case file at the Supreme Court and can verify what I am saying as being true and correct. The Court therefore granted the mandamus and ordered the judge to approve the appeal as granted and the possibility to perfect same was made impossible by the refusal of the judge to approve of the required documents referred to supra, and ordered that the interveners should be allowed to intervene in that ruling.

3. From the ruling of the Chambers Justice, Weeks, for plaintiff, Tom Gigger, announced an appeal, and subsequently withdrew his appeal, and a judgment without opinion was rendered on same. Subsequently, a motion to dismiss was filed and denied by the Full Bench, and costs were paid by Tom Gigger. The motion having been denied by this judgment without opinion, the case was ordered re-docketed, without stating in the judgment where the case should be re-docketed and no order was in that judgment given to the Supreme Court Clerk

to send a mandate down to the lower court to enforce any judgment - it simply stated that the case should be re-docketed.

4. Accordingly, the case was re-docketed on the Supreme Court docket during the October A. D. 1979 Term of the Supreme Court. When the case was reached during the October Term, as mentioned supra, the Court in its Opinion observed that this case had been disposed of by a ruling on a motion to dismiss filed by Counsellor Weeks for Tom Gigger, and ordered that the case be stricken from the docket of this Court, and the judgment given on the motion to dismiss in favour of the Weeks should be enforced after the case had been resumed. This was a serious mistake made by the Supreme Court because the motion was denied, and therefore the only judgment that could have been enforced was the judgment dismissing the motion and ordering the case re-docketed for hearing de novo by the trial court."

We wonder what gave rise to the filing of this submission in the face of the counts just quoted, since indeed the interveners' motion to intervene had been decided by this Court.

With reference to count 3, referable to the Court not stating in its opinion in what court the case is to be re-docketed, we hold that where a motion, filed to dismiss an appeal before this Court, is denied and the case ordered re-docketed, the re-docketing refers to this Court where the appeal is taken and therefore it will serve no useful purpose to mention in the judgment the name of the court where the case on appeal is to be re-docketed. Further, when this Court denies a motion to dismiss an appeal pending before it, it does not send any mandate down to the lower court but hears the appeal on the merits.

With reference to count 4, if the learned counsel felt that the Court had inadvertently made an error when ruling on the motion to dismiss the appeal filed by Counsellor Weeks for Tom Gigger, by ordering that the case be stricken from the docket of this Court, and that the judgment rendered on the motion to dismiss in favour of Counsellor Weeks should be enforced after the case had resumed, he should have filed a petition for reargument as provided by Rule IX of the Revised Supreme Court Rules.

The appeal taken from the Chambers Justice before whom both petitions for prohibition and mandamus were filed was later withdrawn thereby leaving this Court with no other alternative but to send a mandate to the lower court ordering it to execute the ruling of the Chambers Justice.

As we said earlier in this opinion, this case has already been decided, as reported in King Peter 's Heirs v. Tom Gigger, 27 LLR 287 (1978). Therefore when the case was again brought to the attention of the Court during the 1979 October Term, the Court observed that it had already decided this case; therefore it ordered the matter stricken from the docket.

In view of what we have said, the submission being baseless is hereby dismissed with costs against informant. And it is hereby so ordered.

Submission denied.