Percy Williams of the City of Monrovia, Liberia, by & thru his Attorney-In-Fact, Ayo Williams Petitioner VERSUS **Mary F. Kpoto** of the City of Monrovia, Respondent

LRSC 4

PETITION FOR REARGUMENT

HEARD: OCTOBER 18, 2012 DECIDED: FEBRUARY 19, 2013

MR. JUSTICE BANKS DELIVERED THE OPINION OF THE COURT.

The Liberian legal system, like the legal systems of other serious democracies, seeks to ensure that justice is the hallmark, the anchor, for the preservation of the rights of the people. In order to ensure that that end result is achieved, the system provides not only for a second opportunity for the judicial redress of grievances but opts for and makes available the opportunity for a third chance. Thus, while the Liberian Constitution provides for the absolute right of appeal to the Supreme Court in all cases, no matter the value or the magnitude of the grievance, and thereby providing the second opportunity for the Judiciary to take a look at and review grievances of alleged wrongdoings, the Supreme Court, through its Rules, provides for a third tier, a third opportunity, for such review. That process is one that allows a party to file a petition for re-argument, where, in the mind of the party, the Supreme Court is believed to have overlooked some important issues or points of law and fact which had the Court not overlooked same, it would have decided the matter differently than it did.

The instant case presents one such situation where the petitioner seeks the enjoyment of that third opportunity, wherein he has filed a petition for re- argument of a matter in which the Supreme Court had ruled and entered judgment against him. Specifically, the instant petition for re-argument is the outgrowth of a judgment handed down by the Honorable Supreme Court of Liberia on June 27, 2008, at its March Term, A. D. 2008, wherein the Supreme Court reversed the verdict of the trial jury in favor of the defendant and the judgment of the lower court entered thereon confirming the said verdict. We herewith summarized the proceedings in the lower court that led, firstly to the appeal taken to the Supreme Court, and secondly, the decision of the Supreme Court on the said appeal.

The action in the lower court was one in ejectment in which the plaintiff, Mary F. Kpoto, sought to have the Civil Law for the Sixth Judicial Circuit, Montserrado County, eject the petitioner herein, Percy Williams, from a parcel of land which the plaintiff, respondent herein, claimed ownership to and which she and the heirs of her late husband, Keikura B. Kpoto, alleged the defendant had encroached upon and had refused to vacate same, in spite of demands made of him to do so.

In his response to the complaint filed against him by the plaintiff in the lower court, the defendant, petitioner herein, asserted that he was legally on the 1.8 lot parcel of land occupied by him; that he had purchased the said property on October 3, 1980 from lgal Ammons and Aleatha Ammons, who prior thereto, had asserted ownership to the property; that since the trial court's decree in the action involving the Ammons and the Barclays, and upon which the plaintiff relied for asserting claim to the property in dispute, did not precisely state the metes and bounds of the property, subject of the prior judgment of the lower court, the plaintiff in the ejectment suit could not claim that the property occupied by him, i.e. defendant Percy Williams, was a part of the parcel of land which the court had awarded to the ancestors of the plaintiff's grantor; that since the purchase of the property in 1980, the defendant had lived thereon openly, uninterruptedly and notoriously, in a fenced-in structure that had been constructed on the premises, a period in excess of twenty-one years, without any claim or objections from the plaintiff's grantor, Mai Barclay-Roberts; and that under the statute of limitations and the plea of adverse possession, which the defendant said were legal and equitable defenses, and which could be invoked in addition to the title deed defense, the plaintiff was barred and estopped from bringing any action in ejectment to recover the property from him.

The plaintiff, in her reply, raised one fundamental issue, which is, that the defendant could not have purchased any property from the heirs of lgal and Aleatha Ammons since they had been divested of any title to the property by the Honorable Supreme Court of Liberia, and that having been divested of title to the property in question, the Ammons were without any legal title which they could have transferred to the defendant.

It was predicated upon the pleadings summarized above that the trial court heard and disposed of the law issues, submitted the case to a jury trial, allowed oral and written evidence to be submitted, charged the jury and had them retired to their room of deliberations, from whence they returned with a verdict of not liable in favor of the defendant. A motion for a new trial having been filed, resisted, argued and denied, the trial court proceeded to confirm the jury's verdict and to enter judgment thereon. It was from this judgment that the plaintiff noted exceptions and announced an appeal to this Honorable Court, which appeal was granted by the trial court. Thereafter, this Court, having perused the briefs filed by the parties and entertained arguments by their counsels, in an Opinion read on June 27, 2008 and in a judgment entered the same day, reversed the verdict of the trial jury and the judgment of the trial court, and in the place of the reversed verdict and judgment, entered judgment in favor of the plaintiff, appellant in the proceedings on appeal.

The petitioner herein, not being satisfied with the Judgment of this Court, handed down in the March Term, 2008, and alleging that the Court had overlooked critical points of law and fact, which, had they been considered by the Court, it would have decided differently, filed the instant petition for re- argument, asserting therein that sufficient basis was provided for the Supreme Court to reconsider the issues stated in the petition. We quote the petition

verbatim so that there is a full appreciation of the issues presented by the petitioner. The petition states, as follows:

"1. That the petitioner in his argument before this Honorable Court argued that he acquired title to the property in 1980 and his family have legally [and] lawfully occupied said property under the color of title and have notoriously lived peacefully and quietly and have enjoyed an un- interruptive stay on the property for 21 years, making improvements thereon. That during the 21 years occupation of the property, there has been no time that plaintiff and/or plaintiff's grantor approached him about said property despite plaintiff's grantor [being] present-within the bailiwick of the Republic of Liberia. Notwithstanding this material fact that at the time the action was Instituted by the respondent herein on July 27, 2004 and 36 years from the date of the Supreme Court's Ruling between petitioner's grantor and respondent's grantor in the case Ammons v. Barclay, 18 LLR 212 (1968), the petitioner have lived on the property notoriously, peacefully and un-interruptedly for 24 years prior to the institution of respondent's action of ejectment.

2. That this Court in its judgment inadvertently overlook this material fact and ruled that "assuming that the appellee had been in possession of the realty for 21years, against whom does the statute of limitations run? The grantor or the grantee."

"The possession of one holding in adverse possession is good as against strangers. The adverse claimant is not outlawed and has a right to remain peaceably in possession until expelled by the owner or someone who can show a superior right of possession. The court will protect adverse claimant against all the world except the true owner." 3 AM JUR 2D Adverse Possession, Section 294. "We hold that "the true owner" in this case is the plaintiff/appellant, Mary F. Kpoto, against whom the statute of limitations has not run".

3. The petitioner submits that the above cited provision of 3AM JUR 2D, Section 294, is inadvertent because it is applicable prior to the expiration of the statutory period. The applicable provision, given the facts in this case, is found in 3AM JUR 20, Section 297, which provides:

"On the expiration of the limitation period, the adverse claimant becomes possessed of a vested right or title which is good not only against strangers but also against the former owner thereof. A title acquired by adverse possession becomes the true title and extinguishes all other inconsistent titles, except the government. The bar of the statute of limitation results in extinguishing the title of the true owner as effectively as if there were a grant." (Emphasis ours)

4. Petitioner further submits that because of the palpable mistakes made by the inadvertent overlooking of these material facts and point of law, petitioner says, if considered, the outcome of the judgment would have been different."

As per the requirements of the Revised Rules of the Supreme Court, then petition was approved by His Honor Kabineh M. Ja'neh, Associate Justice of the Supreme Court, and a copy thereof served on the respondent, appellant in the appeal case from whence the petition grew. We observe here that the entire contention of the petition revolves on this Court's treatment of the petitioner's statute of limitations defense. The petitioner's claim is that this Court had overlooked the petition's claim that he had been on the subject property in dispute for more than twenty years and that the Court had relied on the wrong law in disposing of the issue.

The respondent, not believing that the petition presented the requisite legal premise to warrant this Court entertaining the same, and asserting as a basis for that claim that the petitioner had failed to comply with certain mandatory requirements of the Revised Rules of the Supreme Court, as would vest this Court with the authority to hear the petition, filed a three-count resistance stating ,as follows:

"1.That the petition is filed without the period of three days allowed and prescribed by Rules of the Supreme Court of Liberia. Respondent submits that the Opinion of the Supreme Court, having been delivered on June 27, 2008, and final judgment rendered on said June 27,2008, petitioner should have filed his petition for re-argument on or before June 30, 2008. Respondent further submits that contrary to law, petitioner filed his petition on the 4th day of July, 2008, same being seven days after the judgment. Attached hereto are photocopies of petitioner's petition and final judgment of this Court, marked exhibits "A" and "B".

2. That Justice Kabineh M. Ja'neh, who merely ordered re-docking of the case, did not sign the judgment in this case. Hence, Justice Ja'neh is not one of the concurring Justices who could have granted a re-argument. Respondent request Court to take judicial notice of the Court's Final Judgment, proferred supra.

3. That as to counts 1, 2 and 3 of the petition, respondent contends that the petition for re-argument is utterly devoid of legal efficacy and substance; in that the issue of statute of limitations was sufficiently dealt with and decided by this Honorable Court to the effect that the same did not run against respondent Mary F. Kpoto. Respondent further submits that it was clear on the minutes of the trial that respondent Percy Williams left the Republic of Liberia in 1990 and did not return until 2005 because of the civil war. Hence, this Court did not overlook the issue of statute oflimitations, same having been succinctly passed upon.

From the foregoing, the following three issues are presented for this Court's consideration:

1. Whether the petition for re-argument was filed within the time allowed by law, particularly the Revised Rules of the Supreme Court, to render the petition cognizable before the Court or as would vest in this Court the authority to entertain the same?

2. Whether as required by the Revised Rules of the Supreme Court, the Justice who approved of the petition, was a concurring Justice to the judgment out of which the petition grows?

3. Whether in the disposition of the instant case, the Supreme Court overlooked any issue of law or fact relating to the treatment of the statute of limitations as would warrant granting the petition for re- argument?

We shall deal with the issues in the sequential order stated above. With reference to the first issue, the respondent contends that this Court cannot entertain the petition because the petitioner had failed to comply with the mandatory requirements of the Revised Rules of the Supreme Court relative to when a petition for re-argument must be filed, if it is to be considered by this Court. The respondent sets forth the allegation that although this Court handed down its Opinion and Judgment on the 27th day of June, A. D. 2008, the petition for re-argument was not filed until the 4th day of July, A. D. 2008, a period of seven days following the rendition of the Court's Opinion and judgment. As such, the respondent argues, the petition is not legally cognizable before this Court.

A resolution of the contention and the issue raised requires that we revert to the Revised Rules of the Supreme Court, upon which the contention is premised. The Revised Rules of the Supreme Court, amended in 1999, states at Article IX, Part 2, the following:

"A petition for re-hearing shall be presented within three (3) days after the filing of the opinion, unless in cases of special leave granted by the Court en bane upon application." [Emphasis ours] The wording of the provision is quite clear, divorced of any ambiguity as would warrant interpretation by this Court. We should state at the onset that there is nothing in the quoted provision that compels any party to file a petition for re-argument. The process is strictly optional, and is designed to provide a further opportunity to a party who believes that the Supreme Court may have committed an error in its disposition of a matter, either by overlooking a point of law or a point of fact, and which, had it not overlooked such point of law or fact, it would have decided the case differently. The process is therefore one that is strictly and exclusively optional, and leaves to the sole decision of a party whether it desires to exercise the option or not. However, once a party decides to exercise the option to seek a re-consideration by the Court of any issue of law or fact previously presented to the Court and which the party feels the Court had overlooked, the party must comply with certain mandatory requirements in order to confer jurisdiction on the Court to entertain the petition. The first of such requirements is that, as quoted above, the petitioner must file the petition within three days of the delivery of the Supreme Court's Opinion and entry of the Court's judgment. It is mandatory jurisdictional requirement that the respondent asserts the petitioner has failed to comply with and which

forms the first basis for which the prayer is made that this Court refrain from entertaining the petition for re- argument.

This Court has held consistently, from the very inception of the Rules, that unless the jurisdictional provisions are strictly complied with and adhered to, the petition for re-argument will not be entertained by the Court. In Kuyette and Kuyette v. Kandakai et al., 30 LLR 507 (1983),this Court, speaking through Mr. Justice Morris,not only stated that it fully subscribes to the provisions of the mandatory requirement of the Revised Rules that the petition for re- argument must be filed within three days of the filing of the opinion of the Court, but proceeded further to lay down the basis for determining the date of filing or publication of the opinion for purpose of determining whether there has been compliance with this vital and core requirement by the petitioner. Citing the case Barnes et el., v. Republic, 5 LLR 395 (1937), for reliance, the Court stated: "The moment the opinion is read from the Bench, it is considered published." Id., at 509. The Court then went on to elaborate as follows: "Hence, the day and date of the filing of the opinion is the day and date on which it is read from the Bench." Id. This means that the three-day period prescribed by the Revised Rules commences to run immediately the Opinion is delivered by the Court. And since the period for filing of the petition is less than ten days, it is inclusive of Sunday.

In the case In re Flaawgaa McFarland, 34 LLR 439 (1987), this Court, speaking through Mr. Justice Jangaba, reiterated that position, stating: "The procedure for a re-argument requires that it be requested by petition to the Court with the petition stating the basis for requesting it, and a copy served on the opposite party. It also requires that one of the Justices concurring in the judgment to be re-argued orders the same. The petition for re-argument is to be filed within three days after the rendition of judgment." ld., at 456. The position was again restated in the case Picasso Cafeteria and Spanish Gallery v. Mano Insurance Corporation, 38 LLR 297 {1996).

This Court has said further that in order to determine accurately whether the petition is filed within the time allowed by the Revised Rules of the Supreme Court, "the date on which the order for re-argument is signed or issued will be regarded by this Court as the date of presentation." Kuyette and Kuyette v. Kandakai et at., 30 LLR 507 {1983), text at 510. This means that the Court, in seeking to make decide whether the petitioner has complied with the mandatory requirement of the time-frame within which a petition for re- argument must be filed, it will look at the date of the rendition of the Court's opinion or judgment and the date on which the petition is signed or approved by the Justice.If the latter date falls within three days of the former date, then the petition will be regarded as being within the time period specified by the Revised of Court. If, on the other hand, the latter date (i.e. the date of approval of the petition) falls beyond three days from the former date (i.e. the date of rendition of the Opinion or judgment of the Court),the petition will be deemed to be without the three day period specified by the

Revised Rules. In case of the latter, this Court will be without the jurisdiction to entertain the petition.

In seeking to make the determination as to whether the Revised Rules were complained with by the petitioner, we have examined the Opinion and judgment of this Court as well as the petition, the former examination for the purpose of ascertaining the date on which the Opinion was delivered and the judgment entered, and the latter examination to determine the date of presentation of the petition. We have found that with respect to both document, the allegations made by the respondent are correct. The Opinion of the Court was delivered on the 27th day of June, A. D. 2008,and the Judgment, signed by the Justice concurring therein similarly bears the date June 27, 2008. The petition shows that it was approved by the concurring Justice in the Judgment on July 4,2008.

There is no doubt in our minds, therefore, and as substantiate by the records referenced herein, that the petition was filed beyond the three day period prescribed by Article IX of the Rules of this Court. Indeed, by our calculation, the petition was approved and filed seven days after this Court's Opinion and Judgment.

The petitioner did not deny, when confronted with these facts, that there was a period of seven days between the rendition of this Court's Opinion and Judgment and the approval and filing of the petition for re-argument. To the contrary, he admitted that the opinion of the Court was delivered on June 27, 2008, that the Judgment was entered on the same date, and that the petition for re-argument should therefore have been filed not later than June 30, 2008. He also did not dispute that ordinarily, the petition cannot be entertained by this Court under those circumstances. The petitioner contends, however, in the brief filed before this Court and in oral argument by counsel before this Court, that he is excused from the definitiveness of the three-day time frame specified in the Revised Rules of the Court because the Opinion of the Court was not made available to him until July 2, 2008, in spite of his counsel's several attempts to secure the Opinion at a much earlier date. He states that under the circumstances, where the fault is upon the Court, the time period did not begin to run until the Opinion was distributed and made available. At page 3 of the brief filed with the Clerk of this Court, the petitioner states such excuse in the following words:

"Petitioner says on Friday, June 27, 2008, the date of the closing of the Honorable Supreme Court of the Republic of Liberia for its March Term 2008, one of counsels for petitioner, Counsellor Snonsio E. Nigba could not be in attendance of the closing ceremonies of the March Term A.D. 2008 of this Honorable Court because he was attending the funeral services of his younger sister who died on the 20th day of June for which he was fined and he accordingly paid.

Notwithstanding the absence of petitioner counsel on the closing day of the March Term, A.D. 2008, same being the day on which the opinion was rendered, Counsel for Petitioner visited the office of the Clerk of the Honorable Supreme Court on Monday morning, June

30, 2008 and requested a copy of the opinion. According to the Clerk, and in the presence of Counselor James E. Pierre, there were certain corrections to be made in the opinion by the Justice who rendered the opinion for the court and that she was advised by the Justice not to distribute the opinion until the necessary corrections were made. She however, informed counsel for Petitioner, also in the presence of Counselor James E. Pierre, that she could only give a copy of the judgment and not the opinion unless otherwise instructed to do so. Despite the efforts on the part of the counsel for 'petitioner the following day, July 1,2008,to obtain copy of the opinion, the opinion was only delivered to counsel for petitioner on Wednesday July 2, 2008.

Part 1 (Filing and compiling) of Rule X:OPINIONS of Revised Rules of the Supreme Court provides: "Opinions delivered by the Courtshall immediately upon delivery be handed to the Clerk for circulation and distribution, to be filed and deposited in his office. He shall cause the same to be complied and bound in sets or collections consisting of all the opinions deliver at the particular term of Court." (Emphasis ours)

Petitioner contends that the spirit and intent of Rules IX and X of the Revised Rules of the Supreme Court of Liberia is to provide a party litigant for good cause shown to allow in the interest of substantial justice an opportunity for this Court to correct any palpable substantial mistake it has made in its original judgment by overlooking some fact, or point of law. Like legislative enactment, Opinions of the Supreme Court of Liberia have effect as a laws as of the date of publication and distribution and/or circulation.

In the instant case, petitioner submits that contrary to the intent and spirit of Rules IX and X of the Revised Rules of the Supreme Court and the laws extant in this jurisdiction, the opinion was published on the 27th June 2008 but was not immediately circulated and/or distributed as required by Part 1 of Rule X of the Revised Rules of the Supreme Court within the contemplation of the Rule. Petitioner further contends that the effective date of the opinion, the subject of these proceedings, was July 2, 2008 the date of immediate circulation and/or distribution within the contemplation of Rule X of the Revised Rules of the Supreme Court and,therefore, the petition was filed within the time prescribed under Rule IX and X of the Revised Rules of the Supreme Court.

The basis upon which counsel for petitioner could have filed a petition for re-argument was the delivery of the Opinion to the counsel of the parties which was made impossible by the inability by the Clerk to immediately circulate and/or distribute the said Opinion upon delivery and/or publication as contemplated by Rules IX and X of the Revised Rules of Court of the Supreme Court."

As culled from the contents of the brief, quoted immediately above, the petitioner seeks to place the blame for not filing the petition for re-argument within three days of the date of the Opinion and Judgment of this Court upon the Court. He asserts that in spite of several efforts made by his counsel to secure copy of the Opinion, which would have formed

the basis for identifying the points upon which the petition would have been filed, the said counsel was consistently informed by the Clerk of the Supreme Court that the Opinion was still being edited and that hence, it was not available for distribution. He alleges further that it was not until July 2, 2008, that a copy of the Opinion was made available to his counsel; that the period stipulated in the Revised Rules of the Supreme Court therefore did not commence to run until July 2, 2008, the date on which the Opinion was made available to his counsel; that the date on which his counsel received the Opinion as "the date of immediate circulation and/or distribution within the contemplation of Rule X of the Revised of the Supreme Court"; and that the petition was therefore "filed within the time prescribed under Rule IX and X of the Revised Rules of the Supreme Court."

We reject the contentions of the petitioner or the excuses provided in his brief filed with this Court for a number of reasons. Firstly, nothing in the petition reflects or recites the events narrated by the petitioner in his brief. In the introductory paragraph to the petition, the petitioner sets out the following only: "Now Comes Petitioner in the above entitled cause of action, for good cause, petitions this Honorable Court for re-argument of the entitled cause of action based on palpable substantiate mistakes made by inadvertently overlooking certain basic facts and point of law in this Court's Judgment handed down on June 27, 2008, showeth the following legal and factual reasons to wit." Nothing in the paragraph indicates or alleges that the opinion was not available on the date of the delivery of the Supreme Court's Opinion or the date of the rendition of the Judgment in the case, or that the Opinion was not received, circulated or distributed until July 2, 2008, rather than on June 27, 2008, the date on which the Opinion was handed down or read by the Court.

Moreover, nowhere in the entire petition is any averment made that the date the Opinion was handed down was different from the date on which the opinion was circulated or distributed to the parties. Clearly the petition knew that the opinion was delivered on June 27, 2008, even if his counsel was not available to take the ruling because he allegedly had to attend the funeral of a member of family; he stated as much in the petition. Clearly, his counsel knew or should have known that the petitioner had a period of three days from the date of the reading of the Opinion to file a petition for re-argument duly approved by a concurring Justice.

Yet, and although the petition carries the date of July 2, 2008, seven days after the reading of the Opinion of the Court, no explanation is provided therein as to why the petition was not filed within three days of the handing down of the Supreme Court's Opinion. Such averment was necessary, not only to alert the Supreme Court as to the reasons for the delay in the filing of the petition and thereby have the Court duly notified so that it is positioned to deal with the issue from an informed vintage point, but also to provide the respondent with the required legal notice and opportunity to challenge the allegations. The failure to include the information in the petition was fatal and cannot be remedied by its inclusion in the petitioner's brief, which is designed only to have the parties elaborate upon issues properly raised in the pleadings before the Court. We hold that in the absence of

such information to the Court, which should have been contained in the petition, and notice to the respondent as to the events that had led to the delay in the filing, there is no way that the allegations contained in the brief, stated for the first time, can be verified.

While this Court has held that a petition for re-argument is the proper remedy where in the Court's judgment it appears that palpable mistake as to point of law or fact was made inadvertently by the Court, the Supreme Court has also held that the petition must comply with the mandatory requirement of the law that it is filed within three days of the date of the Judgment, falling which there must be a proper and legally supported and acceptable excuse given in a timely manner setting forth the reason(s) for filing beyond the prescribed period. Harris et al v. Layweah et al., 39 LLR 571 (1999).

But let us go a further step in stating why we cannot accept the contention raised or the excuses provided by the petitioner in not filing the petition within three days from the date of reading of the Opinion of the Court. The petitioner states that his counsel had made enquiries of the Clerk of the Supreme Court as to the availability of the Opinion so as to enable him to prepare his petition for re-argument within the three day period stipulated by the Revised Rules of Court. He states that the enquiries were made in the presence of Counsellor James E. Pierre. Yet, he made no effort to have Counsellor Pierre execute an affidavit to the effect to verify the claim and to give the Court adequate basis for believing that the incident, as narrated by the petitioner in his brief, not in the petition for re-argument, did occur and that it wasn't just being made up by the petitioner in order to provide an excuse, unsupported by any evidence, for not filing the petition for re-argument within three days of the handing down of the Opinion of the Court. How is this Court to verify that Counsellor Pierre was in fact present when the alleged enquiries were being made by the petitioner's counsel? Or did the counsel expect that this Court would or should, on its own initiative, seek from Counsellor Pierre information as to whether he was present when the alleged enquiries were being made by petitioner's counsel to the Clerk of the Supreme Court? Or did the petitioner expect that the Court would or should summons Counsellor Pierre during the course of the arguments and proceed to take evidence to the effect? We think not. We believe that petitioner's counsel should have been so fully alert that he should have included the information in the petition for re- argument and attach thereto an affidavit from Counsellor James E. Pierre in support of the information. In the absence of such, this Court would be threading within the realm of speculation in accepting the arguments made in the petitioner's brief as to what may or may not have transpired, an adventure which this Court is forbidden from indulging in.

We hold further that the petitioner and his counsel were under the further obligation to secure from the Clerk of the Supreme Court a certificate to the effect that the Opinion, although read on June 27, 2008, was not ready and was therefore only available on the date contemplated by the Revised Rules of the Supreme Court; and that it only became available and was therefore only distributed on July 2, 2008. Such certificate should then have been attached to the petition in verification of allegations made or information provided to the

effect in the petition. This would dearly have place the onus on the Supreme Court and would have provided the petitioner with the acceptable legal excuse for filing the petition beyond the three day period from the date of the handing down of the Opinion of the Supreme Court. The Clerk's Certificate would have authenticated the time the Opinion was available to and received by the petitioner and therefore provide the appropriate legal excuse, as is within the contemplation of Article IX of the Revised Rules.

The Revised Rules of the Supreme Court do state that where there is a failure by a petitioner to file a petition for re-argument within the time allowed by the Rules, the petitioner must seek and be granted special leave by the Court *en bane* before the petition can be heard. Revised Rules of Supreme Court, Art. IX, Part 2. This provision was within or should have been within the knowledge of counsel for the petition, and he should have been aware that unless he complied the petition, filed as it was in the instance case, would not be entertained by this Court. Why did the petitioner, through his counsel, not seek leave of the Court, either by inclusion within the petition a request for such leave of the Court, or in a separate instrument that accompanied the petition, explaining what had transpired, supported by an affidavit from Counsellor James E. Pierre and a Clerk's Certificate from the Clerk of the Supreme Court, and asking the Court for permission to file the petition on the date on which it was approved and file. Grass Roots Cinema v. Citibank, *N. A.,* 33 LLR 489 {1985).

This Court has opined in many cases that a person who makes an allegation has the burden of proof to substantiate the truthfulness of the allegation. Liberia Logging and Wood Processing Corporation v. Allison et al., 40 LLR 379 {2001); Knuckles v. The Liberian Trading and Development Bank, Ltd., 40 LLR 511 {2001); In re Petition of Massaquoi and Gibson, 40 LLR 698 {2001); Firestone Plantations Company v. Fortune and Board of General Appeals, 30 LLR 547 {1983); Frankyu et al. v. Action Contre La Faim, 39 LLR 289 {1999); Teah v. Andrews et al., 39 LLR 493 (1999). We do not pursue the principle any further, however, given the fact that no allegations were even made by the petitioner in the petition for re-argument as would have required that the allegations are buttressed by supporting evidence.

How, we ask, could the petition be completely silent and make absolutely no reference, to what had transpired that as had caused the petition to be approved and filed seven days after the rendition of the Court's Opinion and Judgment? How could the petition make the pretense that it was being filed within three days of the date of rendition of the Opinion and judgment of this Court? How could such critical jurisdictional prerequisite be overlooked and the petitioner expect that we would hear and entertain the petition? Yet, we are being impressed upon to violate the very Rules we rely upon to preserve the sanctity and integrity of this Court and our judicial system. We are not prepared to embark upon such a course.

We view the act of counsel for the petitioner in not pursuing the course we have stated above as gross negligence. This Court has said in a great number of cases that the Court

will not do for a party that which the party is legally obligated to do for itself. In the case Bility v. Lewis, 30 LLR 512 (1982}, the Supreme Court, quoting from an earlier Opinion in the case Blacklidge V. Blacklidge *et al.,* 1 LLR 371 (1901}, and speaking through Mr. Justice Yangbe, alluded to the issue in these words: "It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way for securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves." Id.,at 515-16. The view was similarly held in the case Ammons et al. v. Barclay, 18 LLR 212 (1968},wherein the Supreme Court said: "If a party fails in any cause to do that which the law requires him to do for himself, the Supreme Court will not assume to grant him those rights which, by his negligence, he has failed to secure for himself."

For this Court to accept as true what is stated in the petitioner's brief, not contained in the petition for re-argument, and without any supporting evidence, particularly records of the Court which we are duly bound to take judicial notice of, is to delve into the realm of speculation, an act which the law forbids this Court to indulge in. This Court is therefore without any basis upon which it could verify the truthfulness of the allegations made in the brief, and which the records of the Court do not substantiate. In the absence of such proof, either by a certificate from the Clerk of Court or an affidavit from Counsellor Pierre, duly sworn to, and which should have been attached to the petition for re-argument, this Court is unable to accept as true the allegation made by the petitioner in his brief, as opposed to his petition, that the Opinion was not distributed or circulated until July 2, 2008. It is therefore the considered opinion of this Court that the petitioner has failed to establish that the opinion in question was not available to him on the date on which it was delivered or handed down. Count one of the respondents' returns is therefore sustained.

Accordingly, and consistent with the several Opinions of this Court where a petition for re-argument is not filed within a period of three days from the date of the handing down of an Opinion of the Court the same will be dismissed and denied unless good cause is shown and by special leave of Court for a failure to file the petition within the stipulated three day period, we hold that as not sufficient and verified cause is presented to have this Court go into or entertain the petition for re-argument, the petition is denied and dismissed. We are not prepared to create such unwarranted exceptions as the petitioner seems to impress upon us,as to do so would be setting a new and dangerous precedent which will open a flood gate that has no basis in law or in the Revised Rules of Court, and that will only aid further negligence by lawyers in the performance of their legal duties to their clients.

Clients must now begin to hold their counsels to greater standard and accountability,and to hold them liable for damages sustained growing out of negligence in handling their matters.

This Court has also said that the date on which the order for re-argument is signed is the date of presentation.

With regard to the second issue, that is,whether the Supreme Court Justice who approved the petition for re-argument was a concurring Justice to the Judgment from whence the petition grew, we should state that our inspection of the records of this Court has rendered the said issue a non-issue. While the Revised Rules of the Supreme Court does state that "the petition shall not be heard unless a Justice concurring in the judgment orders it" Revised Rules of Supreme Court, Art. IX, Part 3, a position that has been reiterated by the Supreme Court in several of its Opinions on the issue, (Grass Roots Cinema v. Citibank, N. A.,33 LLR 489 (1985)),our review of the records reveals that in fact Mr. Justice Ja'neh, who approved of the petition for re-argument,did sign the Judgment of this Court in the case. Hence,the allegation of the respondent in that regard, being with any truth and lacking any factual basis, the same is rejected and the contention in that regard is not sustained.

While we believe that what we have said herein above about the petition not meeting the requirement of the Revised Rules of the Supreme Court in that it was not filed within three days of the handing down of the Opinion of the Supreme Court and that no leave of the Court was sought or granted for the filing of the petition beyond the period prescribed by the Revised Rules of the Supreme Court disposes of the petition,it is critical that we provide clarity with regard to the question or plea of the statute of limitations as a defense where the action upon which the plea of the statute is predicated is done in defiance of the judgment or ruling of this Court or of any other court of the Republic.

With respect to this case,the petitioner contends that it had raised the issue of the statute of limitations in the ejectment suit, out of which this petition grew; that the petition had occupied the property, subject of the ejectment litigation,for more than 24 years ,beyond the period of twenty years stipulated by the statute of limitations and that he had done so uninterruptedly and notoriously, without any claims or objections from the plaintiffs/ respondent's grantor or the ancestors of plaintiffs/respondent's grantor; and that this Court, in disposing of the issue of the statute of limitations had relied upon the wrong law and overlooked the law governing such issue. What the plaintiff did not allude to in the petition are the underlining facts that upon which his claim of the statute was premised.

As we noted earlier in this Opinion, in the initial dispute between the Barclays and the Ammons, wherein Anthony Barclay had filed, in January 1962, a bill in equity against the Ammons to remove cloud from title,the trial court had entered a decree in favor of Anthony Barclay, adjudging that he was the rightful owner of the property, in fee simple; that Anthony Barclay was therefore entitled to possession thereof; and that all clouds upon the petitioner's title to the property were thereby removed. Upon the failure of the appellant to pursue and perfect the appeal taken from the judgment decree of the lower

court, the Supreme Court, on motion of counsel for the appellee, at its October Term, A. D.1966,dismissed the appeal and confirmed the judgment of the trial court awarding the property in question to Anthony Barclay. See the case Ammons et al. v. Barclay, 18 LLR 212 (1968), where the Supreme Court gave a full narration to the background and history leading to the current dispute. See also Supreme Court Opinion, March Term, 2008, delivered June 27, 2008, which recapped that background.

Notwithstanding the decision of the Supreme Court, and in complete defiance of the Court and its decision, the Ammons, who were parties to the litigation that was disposed of by the Court, still proceeded to sell the property to the petitioner herein, Percy Williams. It is this sale and the occupation which resulted therefrom that the petitioner asserts the respondents are barred from challenging by virtue of the statute of limitations, and under the principle of adverse possession, since he has been upon the property for more than twenty-one years. The petitioner does not question that aspect of this Supreme Court's Opinion which states that title to the property was not vested in petitioner's grantors and that therefore they were without the legal right to transfer the property to the petitioner. What they challenge is that holding of the Court that adverse possession was applicable against strangers and that the court will "protect the adverse claimant against all the world except the true owner," who, the Court said was respondent Mary F. Kpoto. The petitioner says that the Court relied on the wrong law, and that the proper law applicable to the case is stated at section 297, under "Adverse Possession", found in 3 AM. JUR 2D.

The petitioner further asserts that the Civil Procedure Law, at section 2.12, which clearly sets out that: "An action to recover real property or its possession shall be barred if the defendant or his privy has held the property for a period of not less than twenty years." Civil Procedure Law, Rev. Code 1:2.12. We do not dispute that in the ordinary situation, one can make the case that a person who has allowed another to occupy his or her property for a period of more than twenty years is barred from asserting claim of ownership or title thereto. There is a long line of cases in which the Supreme Court has sanctioned and subscribed to the position stated in the Civil Procedure Law. See Dasusea and Kargou v. Coleman, 36 LLR 102 (1989).

The question, however, is whether the statute of limitations and the principle of adverse possession is applicable where the assertion thereof has its premise in a disobedience to and a complete disregard for the decision, judgment and mandate of this Court or any other court of the Republic. We hold that adverse possession cannot be claimed or asserted where the basis for the claim lies in a derogation of, disobedience to, and a flagrant disregard of and for the judgment and mandate of this Court. No party appearing before this Court or any court of the Republic can claim the benefit of his disobedience to and disregard for the judgment and mandate of this Court.

When this Court has given or entered judgment in a proceeding, it expects strict obedience and adherence to the judgment, and no party can thereafter appear before the Court and

assert that because he is a beneficiary of such disregard and disobedience to the judgment of this Court, he or she should thereby stand to benefit under a provision of a statute which was not intended to and did not contemplate that a party should benefits from such disobedience. The statute of limitation, we hold, therefore, is not applicable to any instance where the benefit sought accrues from a party's disregard of and disobedience to the judgment of this Court. We hold further that the same applies to any and all persons to whom rights have been conveyed or transferred by such persons acting in disobedience to and showing disregard for the judgment of this Court.

Indeed, rather than entertaining an assertion or claim of adverse possession, this Court should be entertaining proceedings for contempt against the Ammons for defiance and disobedience to, and disregards and disrespect for, the Judgment and mandate of this Court. We must emphasize also that whenever this Court enters judgment and sends a mandate to the lower court for execution, until the mandate has been fully executed and carried out, this Court remains seized of jurisdiction over the case and may review any proceedings coming before it in full recognition of being seized to act in respect of the mandate that is still awaiting full execution.

Therefore, it is our Opinion that the petitioner is not entitled to enjoyment of the statute of limitations or any claim of adverse possession. The Ammons, being in full knowledge of the judgment of the Supreme Court, and having chosen, in complete and utter disregard of that judgment, to sell the property which this Court had declared belonged to the Barclays, their every act in that regard was illegal and null and void ab initio, and the petitioner cannot benefit therefrom. The petitioner, being an innocent purchaser in respect of the conduct of the Ammons, has the right to seek remedies against the sellers of the property, including such damages as he may have suffered or may hereafter suffer as a result of their misconduct and seeming deliberate violation of the Judgment of this Court.

Accordingly, and in view of the legal and factual narrations which we have provided herein, and the laws supportive thereof, and the petition for re- argument not having met the legal requirements for positive consideration by this Court and being without any legal basis or merit, the same is hereby denied. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over the case and to proceed according to law and in accordance with the Opinion. Costs of these proceedings are ruled against the petitioner. AND IT IS HEREBY SO ORDERED.

COUNSELLOR SNONSIO E. NIGBA OF LEGAL SERVICES, INC. APPEARED FOR THE PETITIONER. COUNSELLOR J. JOHNNY MOMOH OF SHERMAN AND SHERMAN, INC. APPEARED FOR THE RESPONDENT.