KOFIE BRAZIE and AYE KOBINA, Appellants, *v.* KWEKU GYNNEH, KWESI AMISHA, and JOHN A. DENNIS, Resident Circuit Judge, Fourth Judicial Circuit, Maryland County, Appellees.

PETITION FOR REARGUMENT.

Argued April 10, 1972. Decided May 19, 1972.

1. An application for reargument of a prior decision will only be granted by the Supreme Court when a majority of the Justices considering it agree that an important point had not been considered in the opinion rendered.
2. In all cases, however, for an application for reargument to be considered, the appeal, which is the basis for the prior decision in which reargument is sought, must have been properly prosecuted.

Plaintiffs in error moved for reargument before a Justice in chambers of a case decided against them by the Supreme Court in the March 1971 Term, denying their application for a writ of error to the lower court. The Justice denied reargument and an appeal was taken to the full Court. The Supreme Court *affirmed* the ruling of the Justice.

O. Natty B. Davis for appellants. *J. Dossen Richards* for appellees.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

According to the record before us, plaintiffs in error, in the March 1968 Term filed a petition in the chambers of the Supreme Court, in which they alleged that in a matter of debt out of which these error proceedings have grown, determined in Maryland County by Judge Daniel Draper, a judgment in their favor was rendered, and execution was issued and served. The petition alleges that subsequently Judge John A. Dennis came into term

in the Fourth Judicial Circuit, took up the matter and set aside his colleague's judgment, and ordered the execution vacated, to petitioners' injury and hurt.

The issues raised were ruled upon by the Justice in chambers who denied a peremptory writ, on March 26, 1970, from which petitioners appealed. In the March 1971 Term the Supreme Court heard the appeal and on May 28, 1971, rendered judgment affirming the ruling of the Justice, the judgment which is the basis for the petition for reargument. We do not think it necessary to pass again on the issues raised in the original petition and in the return thereto, since the matter before us is reargument, and the petition therefor shows that there is only one point on which reargument is sought.

> "Because petitioners respectfully submit that the Court in passing upon and handing down the opinion and judgment in this case inadvertently overlooked a point.
>
> "A court has no authority to enter judgment or decree against anyone over whom it has no jurisdiction either by service of process or his voluntary appearance and submission to the court's jurisdiction."

We shall, therefore, confine ourselves to this one point which we have been asked to take into consideration, in deciding whether or not reargument of the case should be allowed.

In the light of this request contained in the petition, it became necessary for us to review the opinion which is alleged to have omitted passing upon the point raised.

A reading of the Court's opinion of May 28, 1971, shows that the Court not only referred at length to what to it appeared to be irregularity in respect to the manner in which the plaintiffs in error were brought under the trial court's jurisdiction, but it also condemned in the strongest possible terms the trial court's failure to have acquired proper jurisdiction. In our opinion there is nothing more that the Justice who spoke for the Court

could have said, in view of the circumstances appearing in the record before us, which we shall talk about later in this opinion.

Reargument is a legal right to which every party appearing before the Supreme Court is entitled, should it appear that an important issue, or issues, had been inadvertently omitted from an opinion deciding a case on appeal. *Bracewell* v. *Coleman,* 6 LLR 206 (1938); *Bryant* v. *Harmon,* 12 LLR 405 (1957); Rule IX, Revised Rules of the Supreme Court, and a long line of opinions of this Court which we cannot afford to ignore. It is not a right, however, that can be granted without proper cause, even though a concurring Justice sees fit to order that an inquiry into the request be made. It is not an absolute right, but will only be granted where the applicant has fulfilled all of the legal requirements incident to appellate review, and shows that the opinion omitted certain contentions raised by him, the omission of which has prejudiced his cause, and was detrimental to his interest.

In this case, the opinion charged with omitting the issue of jurisdiction over the persons of the petitioners dealt with the point. Nor did it leave unexplained the reason why it could not do for the plaintiffs in error what they expected. The first three counts of the return of the defendants in error allege that the plaintiffs in error had committed three omissions, all of which are vital: (1) They omitted to have a practicing lawyer of Maryland County, the County in which the case was heard and determined, certify to the errors committed by the trial judge. The statute provides that an application for a writ of error contain such certification.

> "(d) A certificate of a counsellor of the Supreme Court, or of any attorney of the Circuit Court if no counsellor resides in the jurisdiction where the trial was held, that in the opinion of such counsellor or at-

torney real errors are assigned." Civil Procedure Law, 1956 Code 6:1231.

(2) They omitted including in their petition for a writ of error the statement required by statute, showing why an appeal was not taken.

"(b) A statement why an appeal was not taken." *Id.*, § 1231.

(3) The plaintiffs in error neglected to apply for the writ within the six-month period required by statute.

"A person (hereinafter sometimes called the 'plaintiff in error') who has failed for good reason to take an appeal from the judgment, decree or decision of a trial court may within six months of the date thereof file an application for a writ of error with the clerk of the Supreme Court." *Id.*, § 1231.

The long duration of time allowed by law for the disadvantaged party to apply for proper redress by writ of error after having been ruled against in his absence, or for any other cause, rendering it impossible for him to have been present to announce appeal from an adverse judgment, was intended to emphasize the great latitude the law affords such unfortunate parties, to see that their rights are adequately protected. However, this latitude allowed by law was never intended to be abused by indolence and indifference. The courts cannot be expected to be more interested in the rights of a party than the party shows for the protection of his own rights.

As flagrantly irregular as the acts of the trial judge had been in his handling of the case of debt out of which these proceedings have grown, there was nothing the Supreme Court could do in error proceedings in the face of these omissions we have recounted above. The opinion complained against stated this in clear terms.

In *Gummah alias Komnah* v. *Republic*, 4 LLR 374 (1935), this Court stated that a petition for reargument will be denied if, in the opinion of the majority of the

Justices, the opinion given has been reached after considering all of the important points presented in the record. See also *Snyder* v. *Republic,* 5 LLR 88 (1936); *Hill* v. *Hill,* 13 LLR 392 (1959).

In the circumstances, as shown by the record in this case, we have no alternative but to deny the petition for reargument, with costs against petitioner. It is so ordered.

Affirmed.