JACOB DABBAH, et al., Petitioners, *v.* SOLO DABO, et al., Respondents.

MOTION FOR REARGUMENT OF APPLICATION FOR A WRIT OF ERROR TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 16, 1974. Decided November 15, 1974.

1. Granting of a motion for reargument rests upon a threefold base which contemplates the previous appearance before the Court of the moving party, having fully presented his case to the Supreme Court on such occasion and some point, material to a decision in his favor, which had been inadvertently overlooked by the Court at that time.

Respondents had involved Rule IV, Part 6, of the Supreme Court Rules when neither counsel nor applicants for a writ of error appeared on the date set for hearing. Thereupon, an application for reargument was made by petitioners, who were the applicants for a writ of error.

The Supreme Court, in brief, disposed of their contentions by observing that reargument cannot be granted when there has been no prior argument in the matter, as in this case, where applicants defaulted in appearance and judgment was rendered against them without an opinion. The petition was *denied*.

The *C. Cecil Dennis, Jr., law firm* for petitioners. *M. Fahnbulleh Jones* for respondents.

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

Upon request of the plaintiffs in error we ordered an assignment for hearing the application for reargument of this case. In count three of the application, the ground for the request has been stated. "Petitioners further say that Counsellor Jones, counsel for Solo Dabo, invoked

Rule IV, Part 5(c): "If one party appears, and the non-appearing party has not filed a brief, the non-appearing counsel shall be given forty-eight hours to file a brief and appear for hearing of the case; and the party shall be simultaneously informed of the non-appearance of this counsel and the postponement of the hearing for forty-eight hours. If, when the case is again called for hearing, the party or counsel again fails to appear or file a brief, the Court shall proceed to hear the argument of the appearing party and rule thereon." Revised Rules of the Supreme Court (1972). Consequently, in accordance with the language of the above quoted portion of Rule IV, counsel for petitioners did file a brief within forty-eight hours.

The Supreme Court Rule for reargument makes the showing of good cause the basis for favorably considering the application. *Id.,* Rule IX, Part 1. In this respect there are certain criteria which must be met in order to establish such good cause; there must have been a previous hearing of the case and argument; there must have been an opinion delivered, which analyzed the facts and reviewed the law in the case; and there must have been some palpable mistake in the opinion by inadvertently overlooking some fact or point of law. Unless these criteria can be satisfactorily established in the petition and at the hearing, reargument cannot be granted.

In *Snyder* v. *Republic,* 5 LLR 88, 89 (1936), this Court held that "the granting of a motion for reargument postulates the previous appearance at this bar of the moving party, and his having fully presented his case to this Court; but that in spite of this, some point so presented, material to a decision in his favor, had been by inadvertence overlooked in the opinion." See also *Hill* v. *Hill,* 13 LLR 392 (1959), and *King* v. *Cole,* 15 LLR 15 (1962).

In this case the record shows that when the case was reached for hearing in the Supreme Court, the plaintiffs

in error did not appear, whereupon counsel for defendant in error invoked Rule IV, Part 5. It must be observed that this Rule applies to cases in which briefs are of necessity required to be filed; that is to say, cases coming on appeal from the trial courts. According to this Rule: "If the parties fail to appear but have filed their briefs, the Court will open the records and at its election render a judgment with or without opinion." Rule IV, Part 5(b). In this case the Court elected to reserve its decision without argument in keeping with the Rule just stated and rendered judgment without an opinion.

Normally in such cases no briefs are required to be filed, either before the Justice in chambers, or on appeal from his ruling before the bench en banc. Filed in the Clerk's office for the attention of the Justice in chambers is the petition and the return, and such other papers as may be required to lend support to these two documents. The matter is then heard on these alone. The same procedure obtains where appeals are taken from rulings in chambers. Therefore, counsel for defendants in error did not file any brief, nor did he need to file any to have the case heard on appeal from the Justice in chambers. Hence, the filing of a brief by the plaintiffs in error must be regarded as surplusage which could not adversely affect the proceedings in any way. And the fact that the application of Rule IV was requested by defendants in error's counsel could not have hurt either of the parties, since it was within the discretion of the Court to have rendered a judgment without opinion as it did in the absence of plaintiff in error's counsel, who did not seek permission and was not excused for being absent.

In considering the first criterion for reargument, it is clear from the record that there had been no hearing of the issues, or argument, because in the absence of counsel for plaintiff in error, counsel on the other side had invoked Rule IV, Part 5, quoted above, in respect to the Court's rendering judgment without opinion in such case.

Reargument only means that after argument, another hearing is sought because of omission of some fact or point of law in the former. Where there has been no previous argument, there can be no reargument.

Notice of assignment of the case had been given to the parties on both sides and the assignment had been served and returned by the Marshal; yet plaintiffs in error's counsel not only failed to appear but also neglected to be excused from attendance upon the hearing as the Rule of this Court requires. The Court cannot encourage the willful violation of its own Rules by one party and enforce them as to other parties.

The second necessary criterion for granting reargument is that there must have been an opinion reviewing the issues raised and argued at the hearing. There was no opinion in this case, since judgment was rendered without opinion. It is to be remembered that this was in accord with Rule IV, Part 5(b), as stated before. This fact would seem to dispose of the third criterion for granting reargument; the inadvertent omission from the opinion of some fact or point of law, which might be regarded as a palpable mistake. If there was no opinion, then there could be no omission from the opinion. Thus, all three of the necessary criteria for granting reargument are shown to be absent. In the circumstances we lack authority to grant reargument in this case. To grant the petition under the circumstances would violate every precedent set by this Court on the point in the past. The petition is, therefore, denied. And it is so ordered.

Petition denied.