BOIMA LARTEY, *et al.*, surviving heirs of decedents and people of the late CHIEF MURPHEY, and VEY JOHN, residents of Vey Town, Appellants, *v.* ALHAJI VERMUYAH CORNEH, Attorney-in-fact for the people of Vai Town, *et al.*, Appellees.

Argued April 18, 1967. Decided June 16, 1967.

1. An application to the Supreme Court for reargument may be made by motion, as well as by petition.
2. A trial court may not constitute itself the sole judge of factual issues properly calling for determination by a jury.

Appellants moved for reargument, not by petition, of a cause which had been decided against them on appeal, and in which they claimed the trial court refused to submit to the jury a question of fact concerning grantees under whom they claim. *Motion granted.*

Morgan, Grimes and Harmon for petitioners. *O. Natty B. Davis* and *Sie-Brownell* for respondents.

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

We address this opinion only to the motion for reargument.

The only point to consider in this motion is that the circuit court dismissed appellants' action of ejectment without taking evidence.

In the opinion of this Court it was held that the appellants are the direct heirs of Murphey and Vey John, late of Vey Town, Bushrod Island, Montserrado County, who owned in fee 25 acres of land, which descended to them by inheritance. This was contested by the appellees and raised an issue of fact that appellants contend should only be determined by a jury, but seemed to have

been overlooked in the ruling of the circuit judge who dismissed the case.

Though this Court's opinion in its March 1966 Term said otherwise, the appellants also contend that the names Murphey and Murvie refer to two persons, not one, and that the trial court erred in disagreeing without taking evidence.

There are two deeds that we find in the record executed by two Presidents of Liberia at different times. One vested title in Chief Murvie Sonii, *et al.*, and aborigine grant by the late President Edwin J. Barclay, on April 2, 1931, and the other, from the Republic of Liberia to Murphey and the residents of Vey Town (Vey John's people), executed by President Arthur Barclay on June 21, 1906, each granting 25 acres of land, but differing in their metes and bounds.

Before passing on the merits of the judge's ruling, we must take under consideration the opposing affidavit filed in the motion for reargument by appellees' counsel, praying for the dismissal of said motion on the grounds that there can be no motion for reargument before an appellate court to reconsider its opinion and judgment in a case heard by it, and that an application for reargument must be brought on by petition and not by motion.

To determine the merit of this contention, we will consider the relevant law.

Rule VIII of the Revised Rules of the Court reads:

> "Permission.—For good cause shown to the Court by petition, a reargument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some fact or point of law.
>
> "Time.—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.
>
> "Contents of Petition.—The petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a

Justice concurring in the judgment shall order it. The moving party shall serve a copy thereof upon the adverse party as provided by the rules relating to motions."

Our Civil Procedure Law, 1956 Code 6:310, provides:

"An application to the court for an order shall be made by motion, which, unless made during a hearing or trial, (a) shall be made in writing, (b) shall state with particularity the grounds therefor, and (c) shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. The sections applicable to captions, signing and all matters of form of pleadings shall apply to all motions and other papers allowed by this Title."

When arguing before this Court, appellees' counsel was required to say whether or not a petition, as a motion, provides for a prayer for relief. It was conceded by him that both ended in a prayer for relief. Each is therefore intended to move the Court to do some act and give the relief sought. This being the case, it does not seem that the contention that the two procedures are separate and distinct in law, and do not serve the same purpose, has any merit, especially in view of the analogous nature of the law above recited.

Moreover, such practice has long been permitted by this Court. Count one, therefore, of appellees' opposing affidavit is not sustained.

The issue of whether the deeds represent one or two grants appears to present a substantial question of fact to be determined by a jury, and the trial court exceeded its authority by being the sole judge of the issue.

The motion, therefore, is granted, costs awaiting final determination. And it is so ordered.

Motion granted.