HAWAH KIAZOLU WAHAB, Appellant, *v.* HELOU BROTHERS, et al., Appellees.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 28, 1975. Decided June 27, 1975.

1. A party who has benefited by satisfaction of a judgment is estopped from thereafter seeking another judgment in the same case from the same defendant.
2. There can be but one satisfaction of a judgment.
3. After judgment has been rendered in an action, the course of action is extinguished and may no longer be pursued.
4. The Supreme Court may affirm, reverse or modify a judgment before it on appeal or render such judgment as should have been rendered by the trial court.
5. Judgments of the Supreme Court are final in their determination of issues raised in the subordinate courts.

In 1965, an action of ejectment was brought by appellant against appellee, Helou Brothers, in which she was awarded $150,000.00. The defendant initiated proceedings in error before the Justice in chambers, who denied issuance of a preemptory writ and ordered the trial court to enforce the judgment. In 1966, the Supreme Court affirmed the ruling of the Justice but modified the judgment by reducing it to $20,000.00. The judgment as modified, including placing plaintiff in possession, was completely satisfied.

In December, 1974, the appellant moved the trial court for the difference between the original judgment and the judgment as it had been modified by the Supreme Court. The court denied the motion and an appeal was taken to the Supreme Court.

The Supreme Court pointed out its power to modify judgments on appeal and that upon satisfaction of such judgments all litigation thereunder by the parties is to cease. The ruling of the lower court was *affirmed*.

M. M. Perry and *Patrick Soynneh* for appellant. *Moses K. Yangbe, S. Edward Carlor,* and *H. Reed Cooper* for appellees.

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

Error proceedings were initiated by Helou Brothers, to review a judgment against it in the sum of $150,000.00, resulting from an action in ejectment brought in 1965, by Hawah Kiasolu Wahab, of Monrovia. Mr. Justice Wardsworth presiding in chambers dismissed the petition, denied issuance of the peremptory writ and ordered the trial court to enforce the judgment. A mandate to give effect to this ruling was sent to the Sixth Judicial Circuit Court on April 14, 1966, after an appeal from his ruling to the bench *in banco* had been withdrawn by Counsellor Peter Amos George, petitioner's counsel at the time.

Although we have sought diligently, and have examined the record of this case in the files of the Supreme Court, we have not been able to find anything which might throw some light on what transpired to bring the case back to the Supreme Court in the middle of 1966. However, on the first day of July of that year the Court sitting *in banco* heard the case, and by opinion and judgment upheld the ruling of Mr. Justice Wardsworth, but modified the judgment of the trial court by reducing the amount to only $20,000.00.

Again there is a complete absence of anything in the record showing that following this judgment proceedings were commenced to have the Court hear reargument. This was a right to which the losing party was entitled, and is important in the light of subsequent developments. The judgment was, therefore, enforced by mandate sent to the trial court; the plaintiff was paid the amount of the modified judgment, in keeping with this Court's decision.

This is also important in the light of subsequent developments.

Not only was she paid the $20,000.00 of the modified judgment, but she was also put in possession of the property disputed in the action of ejectment, as is shown in the return of the sheriff.

About nine years later, which is to say, in December, 1974, Hawah Wahab, the plaintiff in the action of ejectment in 1965, and respondent in error proceedings before the Supreme Court in 1966, again found her way before the judge who was presiding over the December Term of the Sixth Judicial Circuit Court, the court whose judgment the Supreme Court had modified, and moved that court to resume jurisdiction over the case, and again enforce judgment, the original judgment for $150,000.00, awarded her by the jury in 1965, plus interest at 6% per annum. The motion to effectuate this strange and unusual request is peculiar in more ways than one, but we shall come to this later. Suffice it to say just here, that the motion completely ignored the fact that a superior court, the Supreme Court of Liberia, the Court of final determination, had already reviewed and modified the judgment she was asking this inferior court to re-open and enforce, even though she had already benefited from the modified version ordered executed by the Supreme Court nine years before. But we shall say more about this also, later in this opinion.

The appellees resisted the motion and one of the strong points in the resistance was the question of the bond of $20,000.00, which was required to support the error proceedings, filed by the International Trust Company. The respondent company contended that after the proceedings had been dismissed by the Justice in chambers, and his ruling had been upheld by the bench *in banco* in the opinion of July 1966, their said bond had been returned to them upon request of their counsel. This is borne out by the record, in which we find a letter of

August 16, 1966, written by Counsellor Henries, of counsel for the respondent company, and addressed to Mr. Justice Roberts, then presiding in chambers.

"Dear Justice Roberts:

"The writ of error in the case: Helou Brothers versus His Honor James W. Hunter and Hawah Kiazolu Wahab, having been decided by the Supreme Court of Liberia at its last sitting, in which opinion the plaintiff's bond was declared void by said court; we have come to understand from the Acting Clerk of the Sixth Judicial Circuit Court for Montserrado County that the mandate of the Supreme Court of Liberia has been fully complied with.

"In view of the above, we are respectfully requesting Your Honor to kindly be good enough to order the Clerk of the Supreme Court of Liberia to return to this law firm the two bonds which were posted by the International Trust Company of Liberia, one of our clients in the said case."

This positive and supported averment of the respondents' resistance has not been denied by the appellant; hence, we have to assume that the bond upon which the motion depended for enforcement of the judgment no longer exists, having been rendered void by the Supreme Court judgment of July, 1966. Moreover, other than being surety to the bond in the error proceedings, the International Trust Company had no further connection with the case; therefore, not being a party, no judgment in the ejectment suit which would be rendered could in any way conclude them. This is the position they have taken in their resistance herein, with which we are in full accord.

Helou Brothers filed a separate resistance to the motion, and they have contended that the above entitled case in which this motion has been filed, was heard by the Supreme Court in 1966, and decided by opinion and judgment rendered on July 1 of that year. They say that the

Supreme Court modified the judgment rendered in the trial court by expressly reducing it from $150,000.00, to only $20,000.00; and that by the movent's own admission contained in her amended motion, the judgment was completely satisfied when she was paid, and when she received the full sum of the modified judgment, and was put in possession of the property then in dispute in the ejectment suit. These are all borne out by the record, and by the opinion referred to, *Helou Brothers* v. *Kiazolu-Wahab,* 17 LLR 520 (1966).

In the words of that opinion at pages 139–140 the Court said:

> "In affirming the ruling of the Chambers Justice, since we have no legal authority to do otherwise, we must here remark that we cannot in good conscience and transparent justice confirm a verdict and judgment in such extremely excessive damages. It is not apparent, according to the record which we cannot escape taking judicial notice of, that by reasonable deductions such an enormous sum of money has justly accrued to respondents in error. We must nevertheless recognize the fact that there was a trespass by the intrusion on and occupation of a piece of real property of respondents by petitioners, which property was not a part of their lease holding. Hence, compensatory damages and eviction from said excess piece of property fairly and justly accrue to the appellees without prejudice to the lease agreement for the property. In the light of the foregoing, the undescriptive and unqualified amount of $150,000.00 assessed by the jury's verdict is hereby reduced to the sum of $20,000.00."

Judge Alfred Flomo ruled on the amended motion of the appellant and the resistance of the appellees.

> "While we are not competent to investigate or determine the wisdom of the Supreme Court in its opinion of 1966, we are moved to believe that the decision re-

ducing the amount of damages awarded to the plaintiff was based upon a consideration of equity and natural justice, as evidenced by the quotation of the portion of the opinion above.

"We are of considered opinion that . . . even if the judgment is to be enforced, it cannot legally be enforced against the surety to the indemnity bond, the International Trust Company of Liberia, without an allegation and proof of damages arising from the dismissal of the writ of error, that being the condition upon which the bond was executed in compliance with the judgment of this Court. . . .

"Secondly, this Court is incompetent to resume jurisdiction and enforce the balance of the judgment, since this balance has been dismissed by the Supreme Court, and that portion of the Supreme Court's decision remains undisturbed. Consequently, the motion must be and it is hereby denied awaiting further order of the Supreme Court."

We must here observe that from a jurisdictional standpoint there is no further order which the Supreme Court can give in this case. To this ruling of the trial judge, appellant took exception and announced an appeal from it. She filed a bill of exceptions and an appeal bond, and prepared and served a notice of completion of appeal. Thus, this celebrated case has found its way before us yet again.

These proceedings would seem to raise several very interesting issues, such as: (1) Under the Constitution and laws of Liberia, could a judge in the Circuit Court review and/or reverse a judgment of the Supreme Court, as the amended motion in this case sought to have Judge Flomo do? (2) Does the Supreme Court have authority to hear a case it had by opinion and judgment decided nine years ago? (3) Did this Court have legal authority to modify a judgment of the Sixth Judicial Circuit Court, as it did in this case in July, 1966? (4) Having bene-

fited from the modified judgment rendered nine years ago, can the appellant legally or morally now challenge or discredit that judgment as being faulty and inadequately executed? The more one thinks about these issues, the more does the question rivet itself upon the mind: What could be the real reason for commencing these proceedings in December, 1974? In addressing ourselves to these questions, we will begin with the last: Having already benefited from a judgment in the case, can the appellant again legally seek further benefit by another judgment in the same case?

> "The satisfaction of a judgment refers to compliance with or fulfillment of the mandate thereof; ordinarily it means the payment of the money due thereunder. . . . Sometimes it is declared that the jurisdiction of a court continues until satisfaction of the judgment. It is a general rule that there can be but one satisfaction of a judgment." 31 AM. JUR., *Judgments,* § 862 (1940).

No matter what the amount of damages was in the judgment rendered by the Supreme Court in July, 1966, it is a fact that the judgment was satisfied by enforcement by the Sixth Judicial Circuit Court; there has been no denial of this, the appellant's contention being that the original judgment was not completely satisfied. It is our opinion, in keeping with the authority just cited, that so long as a judgment of the Supreme Court in a case was satisfied, there cannot be another judgment to be satisfied in the same case.

We also hold that the money judgment which was modified and which the Supreme Court by mandate ordered enforced, was paid to the proper party entitled to receive such payment, Hawah Kiazolu Wahab, who was the plaintiff in the ejectment action.

> "Persons entitled to receive payment. The payment of a judgment, in order to be effective must be paid to a proper party. In this connection, the judgment

debtor is held to be entitled to protection by payment of the judgment to the owner thereof of record. If payment is made to one not having the legal title, the burden is on the party paying to show that the person to whom the payment was made had, at the time, the right to receive payment." *Id.*, § 867.

Hawah Kiazolu Wahab has not denied that she, as the plaintiff in ejectment, did receive full payment of the amount of the judgment as modified and rendered in her favor by the Supreme Court; nor has she denied that she was the proper party to receive the proceeds of that modified judgment rendered in her favor. We hold that this being so, she is completely estopped from again seeking another judgment in her favor in the same case, and from the same defendant who lost to her in ejectment.

"Estoppel by judgment is a bar which precludes the parties to an action to relitigate, after final judgment, the same cause of action or ground of defense, or any fact determined by the judgment." 16 CYC 680 (1905).

"Identity or privity of parties. A plea of former adjudication must aver that the parties are the same in the two suits, or allege facts that show that the relation of the pleader to the former action was such as to make the judgment conclusive in his favor, or that the party against whom the estoppel is alleged, if not directly a party to the former suit, was so connected with it in interest as to be bound by the result." 23 CYC 1527 (1906).

The A.L.I.,'s RESTATEMENT OF THE LAW, *Judgments*, § 45 (1942), in discussing judgments in actions for the recovery of money, states that, "where a valid and final personal judgment is rendered in an action to recover money, the judgment is conclusive between the parties." In the comments under this heading we find the following:

"d. Direct estoppel. Where an issue is actually liti-

gated and determined in an action, the determination is conclusive in any subsequent action between the parties based upon the same cause of action. Ordinarily, after a judgment is rendered in an action, the cause of action is extinguished by the judgment, and it is immaterial what issues were actually litigated."

Other authority has discussed the issue.

"Operation and effect of satisfaction. The payment and satisfaction of a judgment operates to extinguish it and put an end to its vitality for all purposes whatsoever, and also to extinguish the original . . . claim except where the satisfaction was obtained wrongfully or fraudulently, in which case, on its being revoked or vacated, the judgment will again be in force." 23 CYC 1495 (1906).

Under the principle of *res judicata,* and in conformity with the practice of protecting the rights of parties in litigation, courts everywhere seek always to discourage and/or prevent unnecessary litigation, by bringing to a final determination the causes brought before them. The RESTATEMENT OF THE LAW, *Judgments* § 1 (1942), states that "where a reasonable opportunity has been afforded to the parties to litigate a claim before a court which has jurisdiction over the parties and the cause of action, and the court has finally decided the controversy, the interests of the State and of the parties required that the validity of the claim and any issue actually litigated in the action shall not be litigated again by them." Comment (d) on page 11 thereunder emphasizes that "the principle stated in this section is applicable only if a final judgment was rendered in the original action." The record shows that the Supreme Court did render final judgment in July, 1966.

As to the party being allowed to discredit a judgment from which she had previously benefited, latest legal authority holds that

"the circumstances of a particular case may be such as to estop a person from setting up the invalidity of a judgment. In this connection it has been held that a party cannot impeach a judgment which he has obtained in his favor; and one who accepts and retains the fruits of a judgment is estopped from denying its validity. Under this rule, it has been held that one who accepts the benefits of a judgment should be precluded from questioning the validity of the burden imposed by an express condition on which the judgment was granted." 46 AM. JUR., 2d, *Judgments,* § 51 (1969).

The next point for consideration is, did this Court have authority to modify the Circuit Court's judgment rendered in the case, in its decision of July, 1966? It is our opinion that the Court did have such power and authority. Section 3.5 of the current Judiciary Law provides that "appeals from decisions and other determinations of the Circuit Court shall be to the Supreme Court." In hearing and determining such appeals, it has been the position of this Court for a long time that we may affirm, reverse, modify or render such judgment as should have been rendered by the trial court, in the proper administration of justice. *Townsend* v. *Cooper,* 11 LLR 52 (1951); *Johns* v. *Republic,* 13 LLR 143 (1958); *Williams* v. *Tubman,* 14 LLR 109 (1960).

We have been asked to hear again this case decided in 1966; but does the Supreme Court have authority to hear the case, or to allow any subordinate court to interfere with this Court's judgment, rendered nine years ago? Judgments of the Supreme Court shall be final in their determination of issues raised in the subordinate courts of this Country. That has been our procedure in the courts ever since independence was declared and the Supreme Court was established, in 1847. As far as is known, this is the first time anyone has asked a subordinate court to review, or in any manner interfere with a

Supreme Court's judgment. Again, we must pause and wonder what could have been the real reason for beginning these proceedings in the Sixth Judicial Circuit Court in December, 1974.

Under Rule IX of the Revised Rules of the Supreme Court, a judgment of this Court may be set aside, and the case reopened for another hearing.

> "Part 1. 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.
>
> "Part 2. 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."

This is the only law or rule which authorizes the Supreme Court to reopen a judgment it has rendered; and as can be seen, it can only be done within the very limited period of three days after filing of the opinion. In argument before us, appellant's counsel asserted that he had complied with this rule in July, 1966, when this case was decided; but unfortunately he omitted to make profert, and we have not been able to find in the record, any evidence of this alleged fact.

Moreover, even had he actually prepared such a petition for reargument, it was discretionary with one of the concurring Justices to order the rehearing. Granting that reargument is not a matter of right, but is purely discretionary, depending upon whether or not the grounds for reargument are found satisfactory to the individual Justices. And where reargument is refused by a concurring Justice, the judgment is no less absolute and final because of the preparation and presentation of a petition for reargument.

We come now to the first of the questions which in our opinion these proceedings provoke: Could a judge in the Circuit Court review or reverse a judgment of the Supreme Court, as the amended motion sought to have

Judge Flomo do in this case? Naturally the answer is no, and the whole idea is absurd. The judgment which was rendered in the ejectment proceedings ordered repossession by the plaintiff of the tract of land in dispute, and payment of damages by the defendant in the sum of $150,000. That judgment the Supreme Court reviewed and upheld, but modified by reducing the amount to $20,000.00. In other words, the original amount of the judgment was no longer valid, in face of the Supreme Court having modified the judgment. This brings us to the question: What is appellate jurisdiction and how does it affect judgments of inferior courts?

The Constitution gives to the Supreme Court original jurisdiction in only two classes of cases; and in all others appellate jurisdiction. In these "all other cases," litigation must have commenced in a subordinate court and an appeal been taken to the Supreme Court, before we can constitutionally hear the issues, pursuant to appellate jurisdiction thus acquired; Chief Justice Marshall of the United States Supreme Court said in *Marbury* v. *Madison,* that "it is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause." 1 Cranch 137, 2 L.Ed. 60 (1803). In *Phelps* v. *Williams,* 3 LLR 54, 57 (1928), the Supreme Court said:

> "Where a matter has been decided by this Court it becomes *res judicata,* if there is a concurrence of the following conditions, viz: identity in the thing sued for; identity of the cause of action; and identity of persons and of parties to the action. Such judgments are conclusive upon the parties, and no party can recover in a subsequent suit. It does not matter whether or not the judgment is pleaded. . . .
>
> "The decisions of this Court are binding upon all other courts within this Republic."

In the face of this, how could Judge Flomo have ruled otherwise than as he did on the amended motion?

Appeals to the Supreme Court lie not only from decisions of the subordinate courts of record, but also from the rulings of the Justice in chambers. Review in matters from chambers fall under the same appellate jurisdiction of the Supreme Court as do the judgments of the subordinate courts of record. Consequently, the Court's review of Justice Wardsworth's ruling, and judgment rendered thereon in July, 1966, are *res judicata* as to the issues which the said final judgment determined, among which were: to have the plaintiff in ejectment repossessed of the real property in dispute, and for the defendant in ejectment to pay plaintiff the sum of $20,000.00. These were all satisfied, thereby finally determining and laying to rest for all time the action of ejectment between the parties and all other issues arising therefrom.

In view of the record certified to us in this case, of arguments we have heard and of the law we have cited, we have no hesitancy in affirming the ruling of Judge Flomo denying the amended motion, with costs against appellant. And it is so ordered.

Affirmed.