GUMMAH alias KOMNAH, Petitioner, *v.* REPUBLIC OF LIBERIA, Respondent.

PETITION FOR REARGUMENT.

Argued April 16, 1935. Decided April 26, 1935.

If in the opinion of the majority of the Justices, the opinion given has been reached after considering all the important points presented in the record, a re-argument will not be allowed.

Petition for reargument of appeal from conviction of assault and battery with intent to kill *denied.*

P. Gbe Wolo for petitioner. *R. F. D. Smallwood,* by appointment of the Attorney General, for respondent.

MR. JUSTICE DIXON delivered the opinion of the Court.

On the 15th day of the present month the following application for a re-argument of the case *Gummah alias Komnah* v. *Republic* was filed by Counsellor P. Gbe Wolo for appellant, to wit:

"1. Because your humble petitioner is impressed that the majority decision and judgment rendered against him in said cause did not consider well that provision of the criminal law which declares that an accused must be permitted to prove an alibi which as appellant's brief set out was denied him in the lower court and would be a palpable mistake if inadvertently overlooked by the Supreme Court as appears in the majority decision and judgment rendered against him. All which petitioner is ready to prove.

"2. And also because your humble petitioner is further impressed that the majority decision and judgment did not well consider the fact that his con-

nection by the prosecution with the *corpus delicti* was never established as the law of the land requires and as is fully done in all criminal cases based upon circumstantial evidence. Your petitioner submits that the only way any such connecting link could have been supplied was by the production of the Mohammadan man alluded to by the private prosecutrix and the Pennoh referred to by witness Karpeh, to clarify which doubtful situation your humble petitioner of his own motion undertook to do what the State should have done and attempted to produce the persons named before the court in order to establish more emphatically his innocence through the medium of a motion for a new trial denied by the lower court and which petitioner feels was not taken into consideration by the majority decision and judgment rendered against him. All which the petitioner is ready to prove.

"3. And also because your humble petitioner submits further that the majority decision and judgment rendered against him overlooked the issue raised in his brief directing the attention of the Supreme Court to the fact that the evidence was hearsay and contradictory and not such as upon which a conviction could be sustained. Petitioner submits that the dictum that it were better that ninety-nine criminals should go unpunished than that one just man should suffer innocently ought to control in this case when nothing on record shows perpetration of crime. All which petitioner is ready to prove.

"4. And also because your humble petitioner respectfully submits that the majority decision and judgment rendered against him overlooked the patent fact that the State made no case against him and that it would be a dangerous precedent set by this Honourable Court if hearsay evidence unconnected with defendant could nevertheless prevail against defend-

ant without a process of careful elimination and scrutiny on part of the State in any and all criminal causes. All which petitioner is ready to prove.

"5. And also because your humble petitioner is further impressed that the majority declaim and judgment rendered against him overlooked the material legal fact that the evidence adduced by the prosecution being hearsay presupposed the existence of better evidence which the State did not produce, contrary to the law of the land. All which petitioner is ready to prove."

The Rule of Court relied on in support of this, reads thus:

"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.

"2. . . . A petition for re-hearing shall be presented within three days after the filing of the opinion, unless a special leave granted by the court.

"3. . . . 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 desire it. The moving party shall serve a copy thereof upon the adverse party as provided in the rules relating to motions." Rule IX.

1. The majority of the Court is of opinion that every point worthy of consideration in its arriving at a judgment in the above cause was carefully noted and awarded its respective merit. In no instance was any such point inadvertently overlooked in our arriving at a judgment.

2. That none of the Justices concurring in the judgment handed down, after careful consideration, is desirous of rehearing the argument, and therefore said application not having been approved by one of such concurring Justices in these circumstances, the majority of the

Court is of opinion that a re-argument of the cause should be denied; and it is so ordered.*

Petition denied.

* Grigsby, J., concurs. Grimes, C. J., had previously dissented. See *supra*, p. 359. Dossen, J., ill, and Russell, J., absent, both had previously agreed with the original opinion.