

J. DIO WILSON, Assistant Minister of Education,
Petitioner, v. HIS HONOUR JUDGE BENJAMIN
WARDSWORTH, Resident Circuit Judge of the
Sixth Judicial Circuit, assigned over the June Term of
said Circuit, A. D. 1978, and JIMMIE TEMBO and
PHILIP TOOMEY, Respondents.

PETITION FOR REARGUMENT

Heard: May 7, 1981. Decided: July 30, 1981

1. Except as otherwise provided in the Civil Procedure Law, jury cases shall have preference over all other cases and matters and criminal cases shall be first in order. Notwithstanding, the expiration of the session at which it was commenced, a trial shall continue until it is completed.
2. No jury shall be empanelled after the forty second day of any quarterly trial session, as provided in paragraph 2 of section 3.8, but a jury, once empanelled in any case in accordance therewith shall continue until the case is determined.
3. *Res judicata* cannot be obtained where the merits of the case had never been litigated before.
4. Unless the moving party can show that there was some material point of law or fact inadvertently overlooked in the original opinion, and one of the concurring Justices desires a re-argument, an application for reargument will be denied.
5. Where all of the facts have in fact been duly considered by the Court, and where the application for reargument presents no new facts, but simply reiterates the arguments made on the hearing, and is in effect an appeal to the Court to review its decision on points and authorities already determined, a rehearing will be refused.

During the October 1979 Term, the Supreme Court decided a petition for the issuance of the peremptory writ of prohibition, emanating from the Chambers Justice, and it affirmed the ruling of the Justice in Chambers denying the petition. From this opinion of the full Bench, petitioner filed a petition for re-hearing, claiming that the Supreme Court had inadvertently overlooked issues raised and argued by him in the proceedings.

The Supreme Court held that the application presents no new facts, but simply reiterated the arguments made on the hearing, and is in effect an appeal to the Court to review its decision on points and authorities already determined. Accordingly, the

Supreme Court *denied* the petition.

Lewis K. Free appeared for petitioner. *M. Fahnbulleh Jones* appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

During the October 1979 Term, this court decided a petition for the issuance of the peremptory writ of prohibition, emanating from the Chambers Justice, affirming the ruling of the Justice in Chambers denying the petition. It is from this opinion that the petitioner has now filed a seven-count petition claiming that the Supreme Court has inadvertently overlooked issues of both law and fact raised and argued by him in deciding his petition for prohibition. The issues referred to are as follows:

1. That the Judge in the trial court rendered final judgment six days after term time in the damage case of Jimmie Tembo and Philip Toomey against J. Dio Wilson, and therefore said judgment was a void judgment, because the judge was without jurisdiction to render same, since the Chief Justice had not extended his term.

2. That this Court had decided this same case three years ago and had ordered that petitioner be placed in possession of the property. Therefore, petitioner invoked the doctrine of *res judicata*.

We are limited to the issues originally raised and argued before this Court which were allegedly inadvertently overlooked and not passed upon. After careful perusal of the records, we are of the considered opinion that these issues were disposed of in the former opinion during the October Term, 1979; and we shall therefore quote the relevant portion of the opinion deciding these issues:

“We come now to the important question in this case; did the trial judge have jurisdiction over the action of damages when the term time had ended? We have said earlier on in this opinion that the point was not raised in the petition nor in the returns in these prohibition proceedings, and so it was not passed upon by the Justice who presided over the proceedings in Chambers; but it was argued before us when

the ruling in Chambers was reviewed on appeal.

The case of damages out of which these proceedings grow was tried in the June Term 1978, which began on Monday, the 19th day of June 1978. According to the New Judiciary Law, Rev. Code, 17: 8.1 and 8.2, chapter 3, the legal term time within which the jury session of the term of court was by statute authorized to sit, extended from the said 19th of June, forty two days excluding Sundays and holidays up to and including the 7th day of August 1978.

Therefore, according to computation of time, the judgment rendered in the case on the 28th day of August was rendered seventeen days beyond the legal term time. Such judgment, under normal circumstances, should be considered void since there is no extension of term time requested, and ordered by the Chief Justice; but the following statute allows for cases commenced within term to continue beyond the expiration of the term until they are completed. This statute also provides that although no jury might be empanelled beyond the forty second day of the term, once empanelled within term, they shall continue until the case in which they were empanelled is determined. Here are the two sections of that statute:

'Order of business at Quarterly session; duration of trial beyond session.

'Except as otherwise provided in the Civil Procedure Law, jury cases shall have preference over all other cases and matters; and criminal cases shall be first in order. Notwithstanding, the expiration of the session at which it was commenced, a trial shall continue until it is completed.

'Jury sessions, time limitation on empanellment. No jury shall be empanelled after the forty-second day of any quarterly trial session, as provided in paragraph 2 of section 3.8, but a jury once empanelled in any case in accordance therewith, shall continue until the case is determined.' Judiciary Law, Rev. Code 17: 3.11 and 3.12.

In the circumstances, it was unnecessary for the Chief Justice to have extended term time in a case commenced

within term time.

It is our opinion that the trial of this case was regular; and that the judge had jurisdiction over the subject matter and the parties. The motion to vacate judgment filed by the defendant in the midst of the trial was baseless and unmeritorious and therefore properly denied because *res judicata* upon which the motion was based could not be maintained since the merits of the case of damages had never been litigated before. The case which came before the courts prior to the damages suit was a summary ejection action, in the course of which, the defendants applied for prohibition, and appealed from the ruling in Chambers they withdrew in the March Term 1975, as can be seen from the Supreme Court Judgment rendered on the 27th day of June 1975.

As we have said earlier on in this opinion, the alternative writ of prohibition was served twenty-nine days after judgment had been rendered in the case of damages; therefore, there was nothing for prohibition to prevent since the respondent judge had violated no trial rules. We therefore affirm the ruling of the Justice in Chambers and refuse issuance of the peremptory writ, with costs against the petitioner." *Wilson v. Wardsworth et. al.*, 28 LLR 248 (1979).

In *Snyder v. Republic*, 5 LLR 88 (1936) the court held:

‘Unless the moving party can show that there was some material point of law or fact inadvertently overlooked in the original opinion, and one of the concurring Justices desires a re-argument, the application will be denied.’

This court also held in the case *Dennis v. Republic*, 7 LLR 349 (1942) that:

‘Where all of the facts have in fact been duly considered by the court, and where the application presents no new facts, but simply reiterates the arguments made on the hearing; and it is in effect an appeal to the court to review its decision on points and authorities already determined, a rehearing will be refused.’

In view of the foregoing, it is the opinion of this Court that

the petition for reargument be and the same is hereby denied. The Clerk of this Court is hereby instructed to send a mandate to the court below ordering it to resume jurisdiction and enforce its judgment. And it is so ordered.

Re-argument denied.