

ELIAS T. HAGE and ST. MICHAEL
AGRICULTURE COMPANY, Petitioners, v.
LIBERIA AGRICULTURAL COMPANY (LAC),
represented by its Comptroller, GEORGE Q.
MENSAH, Respondent/Movant.

PETITION FOR REARGUMENT

Heard: October 22, 1997. Decided: January 23, 1998.

1. An appeal taken from the final judgment of the debt court executing the mandate of the Supreme Court has the tendency to undermine and frustrate the execution of the Supreme Court's mandate.
2. Prohibition cannot lie where execution of the Supreme Court's mandate is involved, no matter how the execution is disguised.
3. It is the prerogative of the Supreme Court or other courts against which an offense has been committed to adjudge a party litigant in contempt, as contempt proceedings are not between party litigants but involves the court and the party. Hence, the refusal of the Court to hold a party in contempt is not so decisive as to warrant a reargument.
4. The Supreme Court cannot take evidence and hence cannot take cognizance of tape recording attached to a bill of information.
5. Reargument or rehearing will be granted only when some decisive issue raised in the court of origin and argued at the prior hearing, has been overlooked.
6. Reargument will not be granted merely because the decision upon any particular issue did not satisfy the petitioning party; and it will also not be granted because an issue which the Court refused to pass upon has not been referred to in the deciding opinion.
7. A party-litigant cannot apply for a rehearing of a case because he is not satisfied with the manner in which the Supreme Court passed upon a particular issue, or because of a refusal of the Court to pass upon some issues which it did not consider to be germane.
8. It is the prerogative of the Supreme Court to pass only upon decisive issues raised and argued before it, but not all of the issues so raised and argued that are not germane.
9. The Supreme Court is the final arbiter of all disputes and, as such, its judgments are final. There can be no subsequent judgment rendered by a subordinate court in executing the Supreme Court's mandate.
10. The Supreme Court's mandate must be strictly executed by subordinate courts, in giving effect to the appellate court's judgment.

Petitioner petitioned the Supreme Court for reargument,

contending that the Court had inadvertently overlooked that an appeal and writ of prohibition were not the proper remedies to correct the enforcement of the mandate of the Supreme Court. The trial court, in executing the mandate of the Supreme Court in the prior hearing, had entered what it termed "final judgment". From this "final judgment", Respondent LAC announced an appeal and filed a writ of prohibition to restrain the lower court from proceeding with the enforcement of the "final judgment" enforcing the Supreme Court's mandate. The Supreme Court consolidated the various actions and ruled thereon. It was from this judgment of the Supreme Court that a petition had been filed for reargument.

The respondent challenged the right of the Supreme Court to entertain the petition, contending that since the decision was rendered and the petition filed, almost the entire Bench of the Court had been replaced; that the change in the membership of the Court serves to prevent it from conducted a hearing; that a concurring Justice does not have the power, in approving a petition for reargument, to stop the enforcement of the mandate of the Supreme Court; and that to entertain the petition for reargument would be tantamount to upsetting the rights vested in the predecessor Court and discrediting the previous Bench.

The Court rejected the contentions of the respondent, holding that the Court had in the past entertained petitions for reargument of decisions made by the previous Bench, and that the changing of the Bench of the Supreme Court does not have the effect of preventing the Court from entertaining a petition for reargument approved and filed before the Bench was replaced. The Court agreed, however, that the issues raised by the petitioner had been dealt with in the previous decision and therefore they could not again form a basis for reargument. The Court therefore *denied* the petition and *ordered* the enforcement of its previous judgment.

Farmere G. Stubblefield of Simpson & Associates appeared for petitioner/appellant. *H. Varney G. Sherman* of Sherman and Sherman appeared for respondent.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This Court delivered its opinion and rendered judgment in this case on August 1, 1997, awarding the respondent therein the principal sum of US\$240,000 plus 6% statutory interest and costs, in an action of debt, thereby quashing and vacating the judgment of the debt court for US\$1.6 million, rendered in favor of Appellant Elias T. Hage. Our distinguished colleague, Associate Justice John Nathaniel Morris, a concurring Justice, approved the petition for reargument pursuant to Rule 9, Part 1, of the Revised Rules of this Honourable Supreme Court. Following the approval of the petition for reargument, four of the five Justices of this Court, who had heard and decided this case, with the exception of Associate Justice John Nathaniel Morris, were replaced by the present government. The respondent, in the petition for reargument, filed a nineteen-count motion to quash and dismiss the petition for reargument. The motion to dismiss the petition for reargument and the petition for reargument were consolidated during the hearing of this case. Appellee/Movant LAC strongly argued that this Court lacked jurisdiction to entertain the petition for reargument for reasons that the majority membership of this Court which had heard this matter had been replaced by succeeding Justices. Appellee/movant also contended that the entertainment of reargument in this case by the present Bench would result into hearing the case *de novo* and not a reargument or a re-hearing as the majority of the members of this Court who had participated in the decision will not pass upon the matter for rehearing or reargument.

Appellee/movant also vehemently maintained that a change in the membership of this Court prevents it from conducting a re-hearing or reargument of this case that was decided by the preceding Bench. It contended further that one concurring Justice does not have the power or authority to stop the enforcement of the mandate of this Court or to cause the recall of a mandate, and that any review by the successor Bench of a decision, judgment or opinion of the predecessor Bench, for the

purpose of upsetting rights vested by the said predecessor Bench has the effect of discrediting said predecessor Bench. Appellee/Movant LAC therefore prayed this Honourable Court to quash and dismiss the petition for reargument, to refrain from hearing same on its merits, and to order the Clerk of this Honourable Court to send to the debt court the mandate of August 15, 1997 for enforcement.

The respondents in the motion to quash and dismiss the petition for reargument are petitioners in the petition for reargument, as earlier stated in this opinion. In response to the motion to dismiss petitioners' petition for reargument, petitioners filed a twenty-two count resistance. Petitioners/respondents contended that the change in the membership of this Court does not in any way affect reconsideration of an opinion or judgment of the previous Bench by the new Bench, for reasons that the reargument was regularly ordered redocketed by a concurring Justice of this Honourable Court, as required by the Revised Rules of Court. Petitioners also maintained that the hearing of reargument by this Bench is only limited to the issues raised by the petitioners and inadvertently overlooked by the previous Bench in its opinion and judgment. Petitioners further contended that there is no general principle of law which states that the granting of reargument requires the concurrence of the whole membership of the Court that joined in the original judgment. Moreover, petitioner strongly argued that the entertainment of reargument by this Bench is not in any way tantamount to the review of the opinion and judgment of the previous Bench, and that as such, it does not reopen and rehear the case *de novo*. Counsel for petitioners also averred that this Bench does not lack the competence to hear the petition for reargument, which was approved by a concurring Justice, and that the new membership can and may on its own motion order the reargument of the case that was decided by the predecessor Bench. Petitioners therefore prayed this Court to deny and dismiss movant's motion to quash and dismiss petitioners' petition for reargument and to hold movant and its counsel in contempt.

As to the petition for reargument, petitioners contended that

this Court inadvertently overlooked the point that an appeal and writ of prohibition are not the proper remedies to correct the enforcement of this Court's mandate. Petitioners also contended that this Court inadvertently overlooked the law and fact that this Court could not in any form or manner amend the previous mandate of its predecessor Bench, granting petitioners' amended bill of information but at the same time reducing petitioner's award of US \$1.6 million to a mere US\$240,000 plus 6% interest per annum, without holding LAC and its counsel in contempt. It was also contended by petitioners that this Court confirmed the Mediation Committee's Report of US\$1.6 million in favour of Hage, upon which the mandate was sent to the court below for the enforcement. Petitioners strongly averred that the bill of information was the proper remedy wherein a mandate of the Supreme Court was improperly executed, and not a remedial process like a writ of prohibition or a regular appeal, which tends to restrain the execution of the mandate of this Court. As such, they said, it is a gross contempt of court on the party availing itself of such remedies. In addition, petitioners further argued that this Court, in its opinion and judgment of August 15, 1997, inadvertently overlooked the tape recording presently on record before this Court, in the bill of information as exhibit " 1-1 " in bulk. Petitioners therefore requested this Honourable Court to grant their petition for reargument and to order the enforcement of the US\$1.6 million judgment in accordance with the previous Supreme Court 's mandate.

In counter argument, Appellee/Movant LAC filed a thirty-one count resistance to the petition for reargument. In its resistance, the appellee contended that this Court, in its opinion of August 15, 1997, passed upon appellee/movant's submission that a bill of information was the proper remedy wherein the judge improperly executed a mandate of this Court and not an appeal or a writ of prohibition.

Appellee/movant also contended that this Court did not overlook the said submission, but specifically and adequately addressed the issue on page 1 of its opinion. It argued that the issue of amending the mandate of this Court by the predecessor

Beach was not before the Supreme Court and therefore the Court did not overlook the laws. Further, that the August 15, 1997 Supreme Court's opinion was not an amendment to the previous mandate, but rather it was merely an explanation of the mandate, designed to eliminate any ambiguity or confusion which had led to the debt court entertaining pleadings and entering final judgment after the reading of said mandate.

Appellee also argued that the tape recording was never part of the petition for reargument during the October 1996 Term of this Court, and that as such, said tape recording could not properly form a part of the bill of information proceeding which arose out of the Supreme Court's opinion and judgment of December 1996.

Appellee/movant further contended that this Court cannot take evidence, that only a trial court can hear and determine the authenticity of the tape recording, and that the refusal of the Supreme Court to make reference to such recording, which transcript was never argued by the parties, is not a ground for reargument. Appellee also contended that it is the Full Bench of the Supreme Court which has the authority to clarify and elucidate upon the term "reasonable and legitimate expenses" and not the debt court. Moreover, appellee/movant maintained that it is impossible for a judgment debt of US\$240,803.40 to rise up to US\$1.6 Million, as indicated by the "final judgment" of the debt court, because of delay in payment or legal proceedings employed by the judgment debtor over the period between November 1994 and December 1996.

Appellee additionally submitted that the debt court did not have the power or authority to award special damages, punitive damages, exemplary damages or even general damages arising out of a transaction of any case before it, that power being within the prerogative of the civil courts of general jurisdiction, which alone have such power and authority.

As to the issue of contempt, appellee maintained that this Court has exclusive prerogative to punish for contempt and that it is discretionary for the Court to exercise its contempt power. As such, the refusal of this Court to exercise its prerogative or power of contempt is no ground for reargument as

contempt is not a matter between opposing litigants.

Appellee/movant therefore prayed this Court to deny the motion for reargument and order the Clerk to send to the debt court the mandate of August 15, 1997 for enforcement.

The issues which we consider germane for the determination of this case are:

1. Whether or not a change in the majority membership of this Court precludes the Court from entertaining a reargument in a case decided by its previous membership.
2. Whether or not the Court inadvertently overlooked some decisive issue of fact or law raised at the prior hearing.
3. Whether or not the Court, in any form or manner, amended the previous judgment of its predecessor Bench.

We shall decide these issues in the order in which they were raised. Mr. Justice Morris, one of the concurring Justices of the previous Bench and a present member of this Bench, approved the petition for reargument, filed by Mr. Hage and the St. Michael Agricultural Company, for our reconsideration. This petition was approved at the time the present membership of the Court was nominated to the Liberian Senate for confirmation and awaiting subsequent appointment and commission by the President of Liberia.

There have been several changes in the membership of this Court, but this is the first time in our jurisdiction that this issue has been so squarely raised and emphasized before this Court, and in which we have been called upon to decide it. In 1934, there was a situation in which an application for a re-hearing was pending before this Court, when its membership was changed with the sole exception of Mr. Justice Grigsby. In *Daniel v. Compagnie Transmediterrances*, 4 LLR 97 (1934), text at pages 98 and 100, this Court said that:

"In spite of this, the present Bench has to consider the application in the same manner as its predecessors would have done had they not been retired."

In that case, this Court entertained a petition for reargument which was heard on April 1, 1934, but denied same on April 20, 1934, on ground that none of the concurring Justices had expressed a desire to have the reargument, and that the appli-

cation did not contain any point of law or fact raised at any stage of the proceedings. In the case at bar, one of the concurring Justices had expressed a desire to have a re-hearing, notwithstanding that a change in the membership of this Court was in progress.

In the case *United States Trading Company v. United States Trading Company Redundant Workers*, 34 LLR 533 (1988), decided January 25, 1988, this Court entertained and granted an application for re-hearing which was approved during its March Term, A. D. 1986, in spite of a change in the entire membership of this Court. Further, the entire 1987-1990 membership of the Court was changed, and this Court was reconstituted in 1992, during the transitional period of our nation. Following that reconstitution, this Court, in 1993, heard applications for rehearings in the cases *Everest Textiles Company v. Denco Shipping Lines*, 37 LLR 203 (1993), and *Chase Manhattan Bank, N.A. v. Baker Homegrown Poultry Farm, Inc.*, 37 LLR 209 (1993). A reargument was denied in the *Everest Textiles Company* case, but was granted in the *Chase Manhattan Bank* case. These two cases were previously decided during the March Term, A. D. 1989, of this Court.

Our statute are silent on this subject, but this issue can be decided based upon the precedents in the above cited cases. The present Bench therefore has the authority and power to consider an application for re-hearing, in the same manner as its predecessors would have done had they not been retired. This Court indeed has the competence to hear rearguments, which are regularly ordered by concurring Justices. It also has the prerogative to grant or deny same. The motion to quash and dismiss the application or a rehearing is hereby denied and accordingly dismissed.

We shall now decide the petition for reargument out of which the motion to quash and dismiss originated. But let us first give a brief retrospective analysis of what gave rise to the multiplicity of suits, before deciding the issues involved in the case at bar.

This Court, on December 7, 1995, during its October Term, A. D. 1995, denied a petition for a writ of prohibition filed by

LAC, emanating from an action of debt in the Debt Court for Montserrado County, for the sum of US \$ 218,000, plus 6% interest, as well as costs, all of which totaled US\$240,803.40. The property of LAC, was seized by the execution sale by the debt court and, accordingly, placed in possession of Co-petitioner Hage.

On December 11, 1996, during the October 1996 Term, this Court, in its opinion and judgment, upon a motion for re-argument filed by LAC, set aside the execution sale and placed LAC in possession of the land and rubber plantation which had been seized. LAC was required to pay the judgment debt, including "relevant and legitimate expenses" incurred by Mr. Hage.

The debt court was ordered to resume jurisdiction over the case and obtain from Mr. Hage a comprehensive listing of funds expended during the process of litigation, to be added to the money judgment, and the total amount ordered paid by LAC without delay. Neither party filed a petition for re-argument and a mandate was sent to the trial court for its execution, which was read, and Co-petitioner Hage given ten (10) days to file his comprehensive listing of funds expended during the litigation of the case.

On the 30th day of December A. D. 1996, Co-petitioner Hage filed his listing of expenses, with affidavit to the tune of US\$7,776,328.88, but requested the debt court to grant him compensation in the amount of US\$1.6 million as a compromise in good faith. The same was served on LAC on December 30, 1996. Thereupon notice of assignment for the court's final judgment on Thursday, January 2, 1997, was issued, served and returned served. We hereunder quote said judgment verbatim for the benefit of this opinion, as follows:

"It is the final judgment of this court that the original judgment entered against the defendant in this case is hereby incorporated in this present judgment, in keeping with the mandate of the Supreme Court. It is the final judgment of this Court that the defendant is liable to the plaintiff in the just and certain sum of US\$1.6 million in keeping with the Supreme Court's mandate and the

Mediation Committee's Report." See sheet four, Thursday, January 2, 1997 of the debt court final judgment.

It is from this judgment that LAC appealed and met all its jurisdictional steps in perfecting an appeal to this Court. However, the trial court proceeded to enforce its final judgment by a writ of execution issued on the 8th day of January A. D. 1997, to seize and expose for sale the personal property of LAC.

On the 24th day of January, 1997, this Court delivered its opinion and rendered judgment in this case, quashing and vacating the final judgment of the debt court emanating from the execution of its mandate, denying the prohibition, and granting the movant's amended bill of information with the modification that the original judgment in the debt case in the amount of US\$240,803.40, plus the statutory 6% interest, from the date of entry of the judgment up to the satisfaction of this mandate, and costs, be paid by Respondent LAC in the interest of justice and fair play. Hence this reargument filed by Petitioner Hage.

We now come to decide issue number two in this case, which is, whether or not this Court inadvertently overlooked some decisive issue of fact or law raised at the prior hearing.

Petitioner contended that this Court inadvertently overlooked the issue that appeal and prohibition are not proper remedies to correct the enforcement of its mandate. A recourse to the opinion shows that this Court admirably passed upon these issues on page 2 thereof, *inter alia*, holding that:

"The appeal taken from the final judgment of the debt court judge has a tendency to undermine and frustrate the execution of this court's mandate. Hence, we cannot give the said appeal any consideration as would generally obtain in an ordinary appeal case".

The Court concluded that:

"Prohibition also cannot lie where execution of this court's mandate is involved, as in the instant case, no matter how the execution proceeding is disguised".

As to the issue of contempt, this Court says that it is the prerogative of this Court to adjudge any party litigants in

contempt, as contempt proceedings are not between party litigants but involve the Court and the offending parties. Hence, the refusal of this Court to hold respondent in contempt is not so decisive to warrant re-argument.

It is further contended by petitioners that this Court's opinion of August 15, 1997 inadvertently overlooked the tape recording presently on record before this Court in the amended bill of information. This Court says that the tape recording was not germane to the amended bill of information proceeding; in that, the tape recording could not substantiate the disputed amount awarded movants subsequent to the comprehensive listing of expended funds. In other words, this Court did not award Petitioner Hage a sum certain in its opinion and judgment of December 11, 1996. What the Court awarded were relevant and legitimate expenses; the tape recording did not form part of the petition for reargument during the October Term, A. D. 1996 of this Court, so as to attach same to the bill of information decided by our predecessors. Therefore, the issue of the tape recording is not properly before us for reconsideration. Moreover, this Court cannot take evidence.

It has been held by this Court in a long line of cases that:

"Reargument or re-hearing will be granted only when some decisive issue raised in the court of origin, and argued at the prior hearing, has been overlooked" *King v. Cole et al.*, 15 LLR 15 (1962), text at pages 15-17; *Hill v. Hill*, 13 LLR 392 (1959); *Liberian Trading Company v. Cole*, 20 LLR 413 (1971).

Mr. Justice Pierre, speaking for this Court in the case *King v. Cole*, 15 LLR 15 (1967), at page 15, said:

"It will not be granted merely because the decision upon any particular issue did not satisfy the petitioning party; nor will it be granted because an issue which the Court refused to pass upon has not been referred to in the deciding opinion."

We still hold the view of our learned jurist of sainted memory that this Court has the prerogative to only pass upon decisive issues raised and argued before it, but not all of the issues raised and argued that are not germane. A party litigant

cannot apply for a re-hearing of a case because he is not satisfied with the manner in which this Court passed upon a particular issue, or because of a refusal of this appellate tribunal to pass upon some issues which it does not consider germane.

The final and third issue in this case is whether or not this Court in any form or manner amended the previous judgment of its predecessor Bench?

As stated earlier in this opinion, the judgment of this Court of December 11, 1996 never awarded Co-petitioner Hage a sum certain in the action of debt. It awarded the co-petitioner "legitimate and relevant expenses" incurred during the litigation of the debt matter, as of August 30, 1994, up to entry and satisfaction of said judgment, stating that the funds expended, relating thereto, should be submitted by Co-petitioner Hage to the trial court, to be added to the judgment debt of US\$240,803.40, to be paid by LAC. The debt court judge, in acting thereon, erroneously entered a final judgment in the execution of this Court's mandate and awarded Co-petitioner Hage a debt judgment of US\$1.6 million, in reference to the Mediation Committee's Report, which was never part of this litigation.

The Supreme Court is the final arbiter of disputes, and as such, its judgments are final, and there shall be no subsequent final judgments rendered by our subordinate courts in executing this Court's mandate, as was done in the instant case. We therefore uphold the vacation of the aforesaid judgment by our predecessors. However, our predecessors could not have given an interpretation and construction of the expenses, as the issue of ambiguity of this Court's previous judgment of December 11, 1996 was not properly before this Court for consideration. They should have ordered the debt court to execute the mandate of this Court to determine the relevant and legitimate expenses incurred by Co-petitioner Hage, relating to the litigation. When this Court denied the petition for prohibition and dismissed the appeal of Appellee LAC, there was nothing left to be done by this Court's order than enforcement of the mandate of December 11, 1996, ordering the trial court to

determine reasonable and legitimate expenses. This Court has always maintained that its mandate be strictly executed by our subordinate courts in giving effect to its judgments. Reargument will therefore lie.

The trial court should confine its determination of reasonable and legitimate expenses incurred by Mr. Hage, relating to this litigation, and should have nothing to do with the Mediation Committee's Report, as same was never part of any judicial proceedings in the trial court.

This Court has observed that this case has been lingering on its docket because of repeated rearguments, and will not therefore entertain any further reargument in the matter as there must be finality to every litigation.

Wherefore and in view of the foregoing, it is the opinion of this Court that the petition for reargument should be, and the same is hereby denied, and that this Court's opinion and judgment of December 11, 1996 should be strictly executed by the debt court, with the modification that reference to the Mediation Committee's recommendations, not having been part of this litigation, be excluded, and that only the comprehensive listing of funds expended by Mr. Hage be considered in the determination of what is legitimate and relevant expenses. Costs are disallowed. And it is hereby so ordered.

Petition denied.