

NATIONAL HOUSING AUTHORITY (NHA), Petitioner, v. **THE INTESTATE ESTATE OF THE
LATE CHIEF BAH BAI AND PEOPLE OF MATADI GBOVE TOWN,** by and thru FODAY
KAMARA et al., Administrators, Respondents.

PETITION FOR RE-ARGUMENT

Heard: December 7, 1994. Decided: February 16, 1995.

1. For good cause shown to the court by petition, a re-argument of a case may be allowed when some palpable mistake is made by inadvertently overlooking some facts, or point of law.
2. A petition for re-argument shall not be heard unless a Justice concurring in the judgment orders it.
3. The re-hearing or re-argument of a cause before the court from which an opinion has been rendered, is not a right, but rather a privilege; and in this jurisdiction, it is granted by the Rules of the Supreme Court of Liberia.
4. A rehearing will be refused where all the issues presented have in fact been duly considered by the court and where the application presents no new facts, but simply reiterate the arguments made on the hearing; and where the petition is in effect an appeal to the court to review its decision on points and authorities already determined.
5. The court will not grant re-argument 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.
6. Re-argument will only be granted if it is shown that a prior decision overlooked a salient point of law or fact raised at the prior hearing.
7. Title to land may be decided in declaratory judgment proceedings .
8. Courts of records within their respective jurisdictions, have the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed, and the declarations shall have the force and effect of a final judgment.

9. In a trial on general denial, the defendants cannot introduce affirmative matter in confession and avoidance.

10. Where an answer has been dismissed and defendant placed on a bare denial of facts alleged by the plaintiff, the defendant is barred from introducing affirmative matter. Notwithstanding, he is not deprived of the right to cross-examine nor does such restriction to a bare denial exempt the plaintiff from the need to prove the essential allegations in the complaint.

The heirs of the late Chief Bah Bai filed a petition for declaratory judgment in the Civil Law Court for the court to declare the legitimate owner of the 209.55 acres of land expropriated by the Government, and the person or persons entitled to receive the compensation provided by government. The King family represented by C. T. O. King II and Sarah King-Howard and the National Housing Authority were named as Respondents. The Civil Law Court ruled that the heirs and descendants of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town were the legitimate owners of the 209.55 acres of land, subject of the petition; that they were entitled to just compensation for that portion of their land occupied by the Matadi Housing Estate of the co-respondent National Housing Authority; and accordingly ordered the said National Housing to compensate the heirs of Chief Bah Bai for the portion of petitioners' 209.55 acres of land National Housing Authority occupies as the Matadi Housing Estate. From this ruling, the National Housing Authority appealed to the Supreme Court. In an opinion delivered on September 22, 1994, the Supreme Court affirmed the judgment of the lower court. The co-respondent, National Housing Authority, not being satisfied with the opinion of the court, petitioned the Court for reargument, contending that the Supreme Court inadvertently overlooked several points of law and fact.

The Supreme Court upon review of the records found that the facts and points of law which the appellant claims were overlooked, were not in fact overlooked but were rather exhaustively treated. The Supreme Court holding that where all of the facts presented have in fact been duly considered by the court, and where the application for re-argument presents no new facts, but simply reiterate 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. Accordingly, the Court *denied* the petition.

Marcus R. Jones appeared for Petitioners. Frederick Cherue appeared for Respondents.

MR. JUSTICE SMALLWOOD delivered the opinion of the Court.

The heirs of the late Chief Bah Bai filed in the Civil Law Court a petition for declaratory judgment praying the court to declare the legitimate owner of the 209.55 acres of land expropriated by the Government, and who is entitled to receive the compensation provided by government. The petition prayed the Court to summon the King family represented by C. T. O. King II and Sarah King-Howard or their successors, as co-respondents to establish their ownership to the 209.55 acres of land expropriated by the Government for which they have received \$75,000.00 as compensation, and for co-respondent National Housing Authority to show cause, if any, why the intestate estate of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town should not be justly compensated for the portion of their land expropriated by government on which the estate is established.

From the records before us, the heirs of the late C. D. B. King did not appear and answer even though they were also summoned by publication. Co-respondent National Housing Authority on the other hand, in its amended returns, contended among other things as follows:

"Respondent submits and say that it has not raised any issue with respect to the petitioners' title to ownership of the property in question, but rather the King family and Zoe Barma. Therefore, it is incumbent upon the petitioners to prove their title right to the property."

After hearing of the petition for declaratory judgment the court in its final judgment concluded in these words:

"WHEREFORE, and considering all the law, facts and circumstances surrounding this case, it is the ruling and final judgment of this court that the petition as filed and established by petitioners be and the same is hereby granted; and having granted the said petition it is the decree and declaration of this court that the petitioners, the heirs and descendants of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of the 209.55 acres of land, subject of petition.

The said petitioners now having been declared lawful owners of the subject 209.55 acres of land, they are hereby declared entitled to just compensation for that portion of their land occupied by the Matadi Housing Estate of the co-respondent National Housing Authority and the said National Housing is hereby ordered to deal with, consider, treat petitioners as legitimate owners of the 209.55 acres of land and as such therefore must compensate

petitioners for the portion of petitioners s' 209.55 acres of land National Housing Authority occupies as the Matadi Housing Estate, pursuant to the constitutional provision relating to expropriation of private property for public purposes. See CONSTITUTION OF LIBERIA (1986), Art. 24(a). The exact amount of compensation to be paid by corespondent NHA will necessarily depend on the exact amount of petitioners' land the government expropriated and payment will be made accordingly. Costs of these proceedings ruled against respondents. AND IT HEREBY SO ORDERED."

Based on this judgment of the court, an appeal was announced and perfected by co-respondent National Housing Authority.

This court in its opinion delivered September 22, 1994, affirmed the judgment of the lower court. The co-respondent, National Housing Authority, not being satisfied with the opinion of the court, took advantage of Rule 9 of the rules of the Supreme Court of Liberia which provides:

Part 1: For good cause shown to the court by petition, a re-argument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some facts, or point of law. SUPREME COURT RULES, Rule 9, Part 1

Part 3 of Rule 9 of the supreme Court provides: "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." This hearing was ordered by one of the concurring Justices in the previous opinion delivered September 22, 1994. The petitioner in his petition for re-argument has alleged the following as grounds for granting re-argument:

1. That a declaratory judgment cannot decide title to land as specified in the judge's ruling couched in the opinion of this court found on sheet nine in which he states amongst others.... "petitioners, the heirs and descendants of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of 209.55 acres of land subject to this petition. The said petitioners now having been declared lawful owners of the subject 209.55 acres of land...." certainly has vested title in and to said land in the respondents".
2. That the court inadvertently overlooked the salient point of fact that the subject property is in dispute between the heirs of the late C. D. B. King and E. G. W. King, sons of the late C. T.

O. King, I., and as such, such palpable mistake was inadvertent in that the declaratory judgment has not and cannot resolve the disputes as to ownership of the subject property between the claiming parties, and that petitioner will not be able to pay any of the parties except upon a judgement from a court of competent jurisdiction indicating which of the claimants are the legitimate owners".

3. Also because Your Honours inadvertently overlooked a salient point of law which is unequivocal to the point that a declaratory judgment which does not terminate the uncertainty or controversy as in this case, who owns the land, must be refused to be rendered and entertained." Civil Procedure Law, Rev. Code 1:43.5; *Isaac Cooper v. K & H Construction Company et al.*, 27 LLR 187, 196 (1978). Petitioner submits that the uncertainty as to the ownership has not been resolved, especially so, when the court overlooked another point of fact that the King heirs and the Bah Bai heirs are claiming title from the same source, the Republic of Liberia and as such, cancellation proceedings is the proper remedy under such circumstances in keeping with the case *Davies v. Republic*, 14 LLR 249 (1960)."

4. That Your Honours further mistakenly overlooked a point of law that a judgment in land matters which does not specify the metes and bounds, is uncertain and unenforceable because the sheriff will not be able to serve a valid writ of possession. The portion of land allegedly occupied by petitioner is not specified. Hence the court inadvertently overlooked this salient point of law."

5. Also because the court mistakenly and inadvertently overlooked the fact that the judge below, after having allowed petitioner to take the stand and introduce six witnesses who deposed that when he revoked his previous ruling granting default judgment against petitioner, refused to give any consideration to petitioner's evidence. This, petitioner submits, was prejudicial to petitioner's interest and as such inadvertence should be corrected by Your Honours".

6. Also because the court committed palpable mistake when it used petitioner's returns which the lower court Judge refused to take into consideration in his final judgment, without the court addressing itself to evidence of petitioner. This is a serious inadvertence to the prejudice of petitioner especially so when, petitioner's returns clearly states that the petition for declaratory judgment should be dismissed because the King's family and Zoe Bah Bai are raising title/ownerships to the property in question and specifically call on petitioner/ respondents herein to prove their title rights to said property". See page 12 of the opinion of September 22, 1994.

The re-hearing or re-argument of a cause before the court from which an opinion has been rendered is not a right under the common law, but rather a privilege; and in this jurisdiction, is granted by the Rules of the Supreme Court of Liberia. *Rules of the Supreme Court of Liberia, Rule 9, Parts 1 - 3 ; 4 C.J.S., Appeals and Error, § 1409.*

This rule has been interpreted in a long line of opinions by this Court. In *King v. Cole et al.*, the Court said: "Where all of the facts presented have in fact been duly considered by the court, and where the application presents no new facts, but simply reiterate 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 re-hearing will be refused". *King v. Cole et al.*, 15 LLR 15 (1962).

In the same case, the Court also held further that: "The court will not grant re-argument 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." *Id.*

Also, this Court has said that: "Re-argument will be allowed only when the court had made some palpable mistake by overlooking some facts or points of law". *Webster et al., v. Freeman et al.*, 16 LLR 209 (1965).

Additionally we have said: "Re-argument will only be granted if it is shown that a prior decision overlooked a salient point of law or fact raised at the prior hearing". *West Africa Trading Corp., v. Alraine (Liberia) Ltd.*, 25 LLR 3 (1976).

Let us now look at the points raised in the petition for reargument which the petitioner contends the court overlooked and which the petitioner considers to be palpable error.

In the first count of the petition, the petitioner contends that a declaratory judgment cannot decide title to land as specified in the Judge's ruling when he said:

"Petitioner, the heirs and descendants of the late Chief Bah Bai and the inhabitants of Matadi Gbove Town, are the legitimate owners of 209.55 acres of land subject of this petition. The said petitioner now having been declared lawful owners of the subject 209.55 acres of land "

The petitioner contends that this portion of the judge's final judgment vested title in and to

said land in the respondents. The petitioner is contending both in his brief and argument that declaratory judgment cannot decide title. We have read through the statute on declaratory judgment and were unable to read into any of the sections that title to land shall not be decided in proceeding of declaratory judgment. The petitioner cited no law which states that declaratory judgment cannot decide title. The statute cited by petitioner, the Civil Procedure Law, Rev. Code 1:62.1, refers to actions of ejectment against a person who wrongfully withholds possession of real property from another; so are all of the case laws cited such as *Karnga v. Williams*, 10 LLR 10 (1948); *Pratt v. Philips*, 10 LLR 147(1949); and *Gbassage v. Holt*, 24 LLR 294, 296(1975).

The Supreme Court in its opinion delivered on September 22, 1994, at page 10 thereof, did pass on the issue of title as raised by the petitioner in the bill of exceptions and argued in his brief before this court during the hearing of the appeal. The Justice who wrote and read the opinion said:

"We disagree with the contention of the appellant in count one of the bill of exceptions for the judge is only declaring as in keeping with the statute".

The relevant statute is quoted in the opinion which we shall also quote herein:

"Courts of records within this respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceedings shall be opened to objection on the ground that a declaratory judgment is prayed for, the declarations shall have the force and effect of a final judgment. The power granted to quote under this section is discretionary". Civil Procedure Law, Rev, Code 1:43.1.

An action of ejectment would have been a proper action to be instituted in this case had the petitioners in declaratory judgment not being in actual possession of the subject property and it was being withheld from them by an opposing party. From the records in the case, the heirs of the late Chief Bah Bai are in possession of the property, portion of which had been expropriated by government and a portion of the compensation for the expropriated parcel of land had been received by the heirs of the late C. D. B. King who are not in actual possession of the land. Therefore the action of declaratory judgment was the proper action to be instituted in order to remove cloud and quiet title to the subject property.

In count 2 of the petition for re-argument, the petitioner National Housing Authority,

contends that the Court committed palpable mistake in the opinion by overlooking the salient point that the subject property is in dispute between the heirs of the late C. D. B. King and E. G. W. King, sons of the late C. T. O. King I; and as such, declaratory judgment cannot and has not resolved the dispute as to ownership of the property. It is further contended that petitioner will not be able to pay any of the parties except upon a judgment from a court of competent jurisdiction indicating which of the claimants are the legitimate owners.

It should be remembered that according to the records, it was the petitioner for re-argument, National Housing Authority, who instructed the heirs of the late Chief Bah Bai to seek a court judgment authorizing National Housing Authority to pay them compensation for the expropriated portion of the land. From the records before us, the heirs then filed declaratory judgment citing National Housing Authority as a party as well as the heirs of the Kings. The heirs of the Kings never appeared to contest the action. Petitioner, National Housing Authority, appeared and filed an amended returns in which he claimed:

"Respondent submits and says that he has not raised any issue with respect to the petitioners' title/ ownership to the property in question "

It is therefore clear that the petitioner for re-argument has no interest in the property except to compensate those who the court would declare to be the legitimate owners of the subject property. In this case, the petitioners in declaratory judgment, heirs of the late Chief Bah Bai, have been declared by a court of competent jurisdiction, the Civil Law Court, Sixth Judicial Circuit, Montserrado County, as the legitimate owners of the 209.55 acres of land. The petitioner, National Housing Authority, are therefore bound to honour the judgment from the court of competent jurisdiction.

In count 3 of the petition for re-argument, petitioner contends that this court inadvertently overlooked a salient point of law, that a declaratory judgment, which does not terminate the uncertainty or controversy in the case, must be refused to be rendered. The judgment rendered by the lower court in the declaratory judgment certainly terminated the issue in this matter, for it is provided under section 43.1 of the statute on declaratory judgment:

"that the declaration may be affirmative or negative in form and effect and such declaration shall have the force and effect of a final judgment".

The trial court rendered a final judgment in the matter declaring the heirs of the late Chief Bah Bai to be the legitimate owners of the 209.55 acres of land and that this court having

confirmed and affirmed the judgment of the lower court, certainly puts an end to the controversy or uncertainty presented in the matter.

In count 4 of the petition for re-argument, the petitioner alleges that this court overlooked a point of law that a judgment in land matters which does not specify the metes and bounds is uncertain and unenforceable because the Sheriff will not be able to serve a valid writ of possession.

The matter before the court is not one of ejectment where it would be necessary to issue a writ of possession, but rather one to declare the rights of the party interest. The petitioners in declaratory judgment, being in actual possession of the land, are claiming compensation from the National Housing Authority for the land already expropriated by the Government and on which the National Housing Authority is operating a housing estate. The action did not seek to evict National Housing Authority but to pay compensation after the rights of the heirs of the late Chief Bah Bai have been established and declared. The court therefore did not overlook the alleged point of law because the action is not one of ejectment.

In counts 5 and 6 of the petition for re-argument, the petitioner contends that this court mistakenly overlooked the fact that the judge below, after having allowed the petitioner to take the stand and introduce six witnesses who disposed, refused to give consideration to petitioner's evidence.

In commenting on that count of the petitioner, it is our position that this court did not "mistakenly and inadvertently overlook" the fact that the judge did not give consideration to the evidence of petitioner in re-argument for the fact that the amended returns of the petitioner had been dismissed and she was placed on bare denial.

Our law provides that when an answer of the defendant has been dismissed and the defendant placed on bare denial, he is estopped from introducing affirmative matters. Most of the issues of contention raised by the petitioner in the petition for re-argument are of affirmative matters and the court was correct in not giving credence to such matters.

"In a trial on general denial in an action of debt, the defendants cannot introduce affirmative matter in confession and avoidance. *The Butchers' Association of Monrovia v. Turay*, 13 LLR 365,377 (1959).

Where an answer has been dismissed and defendant placed on a bare denial of facts

alleged by the plaintiff, the defendant is barred from introducing affirmative matter".
Saleeby Brothers Corporation v. Haikal, 14 LLR 537, 541(1961).

Also with regards to the contention of the petitioner in reargument that the Judge allowed the petitioner to take the stand and introduced witnesses who disposed, it is provided under our law that:

"A defendant's restriction to a bare denial upon dismissal of the answer does not deprive defendant of the right to cross-examine nor does such restriction to a bare denial exempt the plaintiff from the need to prove the essential allegations in the complaint. *La Fondiara Insurance Companies Ltd. v. Heudakor*, 22 LLR 10, 16 (1973).

It is therefore, crystal clear that the facts and points of law which the appellant claims were overlooked, were not over-looked but rather were exhaustively treated which was the cause of confirming and affirming the lower court's judgment.

Under the circumstances, the court denies the petition for reargument with cost against appellant. The judgment of the lower court is hereby ordered enforced. And it is hereby so ordered.

Petition denied.