

SUPREME COURT OF NIGERIA
28TH JANUARY, 1994. SC.101/1993.
CORAM:- M. L. UWAI, S. M. A. BELGORE, I. L. KUTIGI,
M. E. OGUNDARE, U. MOHAMMED,
Y. O. ADIO, A. I. IGUH, JJSC.

1. INNOCENT IBERO APPELLANTS/RESPONDENTS
2. LAZARUS OLEEKE
(of Unuawari Family)

AND

ELEAZOR OBIOHA RESPONDENT/APPLICANT

JUDGMENTS - *Of the Supreme Court - once entered - shall remain valid for ever*

LEGISLATION - *O.8 r.16 of the Supreme Court Rules - that provided for the "slip rule" - which empowers the court to correct accidental slip in its decisions - proper import thereof*

MOTIONS - *Supreme Courts inherent jurisdiction - whether to be extended beyond the provisions of the law*

MOTIONS - *Supreme Court - application for review of its judgment - on ground of accidental slip - where proper import of application is to secure a reversal of the judgment - whether the application will be granted*

SUPREME COURT - *Bound to determine a matter one way or the other - not permitted a double say in law - whether the Supreme Court can invoke s.6(6) of the constitution - towards reversing its previous judgment*

FACTS

The Supreme Court by its judgment on the 26th day of February, 1993 allowed the Appellants'/Respondents' appeal and set aside the decision of the Court of Appeal. The court held that there was no ground of appeal challenging the trial court's findings before the Court of Appeal, and said that

the present Applicant filed two grounds of appeal when in actual fact four grounds were filed before the lower court.

The Applicant who was then Respondent has now brought this application pursuant to Order 8 rule 16 of the Supreme Court Rules 1985 and section 6(6) (a) of the 1979 Constitution. Applicant urged the court inter alia, to review its said previous judgment, correcting some errors arising from accidental slip or omission in the judgment. Appellant also prayed the apex Court to Order the rehearing of the appeal or the retrial of the case.

HELD (unanimously dismissing the application)

1. There is nothing inherent in the powers of a court which is not covered by law and inherent jurisdiction of the court should not be extended beyond what the statutes, the constitution and the rules of court provide. (P. 76 L31)
2. Once the Supreme Court has entered judgment in a case, that decision is final and will remain so forever. The law may in future be amended to affect future issues on the same subject, but for the case decided that is the end of the matter. (P. 77 L17)
3. The purport of O.8 r.16 (of the Supreme Court Rules 1985) is to carry out what is termed “*slip rule*”, that is, to correct clerical errors, omissions or gaps to give meaning to the judgment of the court and not to vary it. (P. 77 L26)
4. The law does not permit the Supreme Court a double say in the same matter, it either allows or dismisses an appeal, not to do the two on the same issue. And the inherent powers under s.6(6) of the constitution cannot be invoked to reverse a decision given by the apex court. (P. 77 L34)

PER OGUNDARE JSC “*Be that as it may, error of law committed in a judgment - and I am not saying that that is the case here - is no ground for the exercise of the statutory or inherent power, of this court to correct any omission or slip in its judgment.*” (P. 89 L36)

PER IGUH JSC “*In this regard, the elementary principle of the law may be restated that where a court has decided an issue and the decision is correctly embodied in its judgment, such a court cannot reopen the matter and*

cannot substitute a different decision in place of the one which has been recorded. Those who seek to alter or amend it must invoke such appellate jurisdiction as may be available." (p. 94 L4)

NOTE: See (1993) 2 KLR p. 66 *Ibero v. Ume - Ohana* for the judgment in respect of which this motion is filed.

REPRESENTATION

P. O. Balonwu SAN, with Anthony Amene and Miss Helen Balonwu for the Applicant.

Chief F. R. A. Williams SAN, with Chief Ejike O. Ume SAN, T.E. Williams Esq. and J. U. Igwe Esq. for the Respondents.

CASES REFERRED TO

1. Adigun and 2 Ors v. The Attorney-General of Oyo State (1987) 2 NWLR (pt. 56) 197
2. Minister of Lagos Affairs, Mines and Power & Anor. v. Akin-Olugbade & Ors. (1974) 11 S.C. 11
3. Akin-Olugbade & Ors v. Onigbongbo Community & Ors. (1974) 6 S.C. 1
4. Ashiyanbi & Ors. v. Adeniji (1967) 1 All MLR 861
5. Chukwuka v. Ezulike (1986) 5 NWLR 892
6. Egbu & Ors. v. Urum & Anor. (1984) 4 S.C 11
7. Sodeinde Brothers (Nig) Ltd v. African Continental Bank Ltd (1982) 6 S.C. 137
8. Yonwuren v. Modern Signs (Nig) Ltd (1985) 2 S.C.
9. Enemoh & Anor v. Onolepita & Ors (1985) 2 S.C
10. Nwaora v. Nwakonobi (1985) 2 S.C (all consolidated at p. 86)
11. Cardoso v. Daniel (1986) 2 N.W.L.R. (part 20) at p.28
12. Obimomire v. Erinoshio & Anor (1966) 1 All NLR 245
13. Adeigbe v. Kusimo (1965) NMLR 284 (1965) 1 All NLR 248
14. Skenconsult (Nig) Ltd. & Anor. v. Ukey (1981) 1 SC 6
15. Craig v. Kanssen (1943) KB 256
16. Thynne v. Thynne (1955) p.272
17. Hatton v. Harris (1892) A.C. 547, 560
18. Obanor v. Chief Conservator of Forest (1959) WNLR 8
19. Umunna v. Okwuraiwe (1978) 6-7 SC 1
20. Preston Banking Co. v. William Allsup & Sons (1895) 1 Ch 141

21. Charles Bright and Co. Ltd. v. Cellar (1904) I.K.B
 22. Ainsworth v. Wilding (1896) 1 Ch. 673
 23. In Re Swire, Mellor v. Swire (1885) 30 Ch. D. 239 at 243, 246
 24. Orukumkpor v. Itebu & others (1955) 15 W.A.C.A. 39 at 40
 25. Orthopaedic Hospitals Management Board v. Apugo and Sons Ltd. (1990)1
5 N.W.L.R. (pt. 129) 652
 26. Ashiyanbi & others v. Emmanuel Adeniji (1967) 1 All N.L.R. 82
 27. Nikon v. Pie Co. Ltd. (1990) 1 N.W.L.R. (pt. 129) 697 at 708
 28. University of Lagos v. Aigoro (1991) 3 N.W.L.R (pt 79) 382
 29. Macarthy v. Agard (1933) 2 K.B. 417
- 10

STATUTES AND RULES REFERRED TO

1. Supreme Court Rules 1985 O.8 r.16, O.16 rr. 1-10, O.10
- 15 2. 1979 Constitution ss. 6(6) (a), 215,
3. Magistrates Courts' Law of Western Region No.5 of 1955 s. 109

LEAD JUDGMENT BY BELGORE JSC

20

On 26th day of February, 1993 in the appeal No. S.C.91/1988, this Court allowed the appeal and set aside the decision of the Court of Appeal. It was a unanimous decision. I had the opportunity of agreeing with the lead judgment when I held inter alia as follows:

- 25 *"The appeal in any case must be decided on the grounds of appeal filed and as enunciated in the Briefs of Argument in support. There is no ground of appeal challenging the cogent and important findings of trial Judge on the boundary between the contending parties which he unambiguously placed at the "elope" (moat) and the Court of Appeal ought not to*
- 30 *have dwelt so deeply into this definite and conclusive finding of fact in the absence of anything perverse or unlawful or inadmissible in evidence leading to that finding."*

The respondent in that appeal, Eleazar Obioha, has now come with a motion on notice praying for orders:

- 35 (i) *"directing a review of the judgment given in appeal S.C. 91/1988 aforementioned as delivered on 26th day of February, 1993, and*
- (ii) *correcting some errors arising from accidental slip or omission in the judgment, to wit:- that the respondent in his appeal from the decision of the High Court to Court of Appeal filed only two grounds;*

(iii) discharging the order restoring the judgment of the High Court arising from the error arising (sic) from the accidental slip or omission;

(iv) discharging the decisions of the Court in the Judgment of 23rd February 1993.

(a) that the District Officer in Exhibit K assessed the capacities in which the parties sued and were sued from personal capacities to represen- 5
tatives capacities;

and (b) that the District Officer in Exh. K had no authority to alter the capacities in which the parties sued and were sued from personal capacities to representative capacities;

(v) discharging the decision of the court in the judgment of 23/2/93 10
that there was no basis for the decision of District Officer in which Exh. K, the native court judgment upon the respondents plea of estoppel rested, to the effect that the native court action was fought or prosecuted in representative capacities;

(vi) ordering the rehearing of the appeal in this court or the re- 15
hearing of the appeal in the Court of Appeal or the retrial of the case itself.

The grounds upon which the application was made state as follows:

"1. The Court in its judgment of 23/2/93 made an accidental slip or 20
omission whilst considering the point whether the appellants were entitled to judgment in that it took the erroneous view that the respondent filed only the two grounds of appeal in the respondents' notice of appeal and inadvertently failed to take notice of the two additional grounds of appeal filed by the respondent in his appeal to the Court of Appeal from the High Court. 25

2. Because of the accidental slip or omission alleged in (1) above the court took the erroneous view that the findings of fact, the trial Judge made against the respondent were unchallenged when in point of fact the two additional grounds challenged them specifically and vehemently. 30

3. The Supreme Court lacks jurisdiction to pronounce on the correctness or otherwise of the decision of the Divisional Officers Court in Exh. K upon which the respondent's plea of res judicata was based.

4. The constitutional role of the Supreme Court in respect of Exh. K, the judgment of the Divisional Officer's Court lies only in the interpretation 35
of the Judgment.

5. The said decision of the Supreme Court on the correctness or otherwise of Exh. K are nullities by reason of lack of jurisdiction to make

them.

6. *The decision of the Court of 23/2/93 is vitiated by reasons of grounds 1 - 5 above."*

This application was filed, curiously enough, with a brief of argument attached. The rules of this Court require no brief in this matter. Except in substantive appeal no brief of argument is required for any application except that for leave to appeal or for enlargement of time to appeal. The situations requiring brief of argument are clearly set out in Order 6 rules 1-10 and Order 10 of the Supreme Court Rules 1985 and so the Court found no rule in support of the brief of argument filed along with this application and it was accordingly discountenanced.

Now, in respect of this application, the applicant is certainly not asking us to correct minor errors. He seeks to overturn the judgment already given. The Constitution of the Federal republic of Nigeria 1979 says of the judgment of Supreme Court.

Section 215: *"Without prejudice to the powers of the President or the Governor of a state with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme Court."*

The phrase "any other body or person" includes the Supreme Court itself. This application is purportedly brought under Order 8 rule 16 Supreme Court Rules 1985 and the inherent powers of this Court especially section 6 (6)(a) of the Constitution 1979. Section 6 of the Constitution (supra) relates to judicial powers of the Federation and subsection 6(a) is clear as to its intent when it states:

"(6) The judicial powers vested in accordance with the foregoing provisions of this section

(a) shall extend, notwithstanding anything to the contrary in this constitution to all inherent powers and sanctions of a Court of law".

The clear provisions of this subsection cannot be ignored. Inherent powers of the Court should not be extended beyond what the statutes, the Constitution and rules of Court provide. There is nothing inherent in the powers of a Court which is not covered by a law. To assume jurisdiction where none exists is not inherent power simply because a Court feels it would be just so to do. Much emphasis is placed by Balonwu, S.A.N. on the provisions of Order 8 rule 16 Supreme Court Rules which states:

Order 8 rule 16:

"The Court shall not review any judgment once given and deliv-

ered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or intention. A judgment or order so as to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it be varied and a different form substituted."

What this Court is being asked to do is to review its judgment, not to correct clerical errors or errors from accidental slip or omission but to overturn the judgment already given. This Court has consistently refused to be dragged into this pitfall. The purpose of this application is clear, it is an appeal cloaked in the guise of a motion. From the wordings of the motion and the grounds for bringing it, it is manifestly clear that the validity of the judgment of this Court as given on 26th February, 1993 is being challenged. Unlike the case of Prince Yahaya Adigun and 2 Ors v. The Attorney-General of Oyo State 2 NWLR (Pt.56) 197 where the validity of Order 8 rule 16 (supra) was being questioned by the applicant in that matter, the present applicant appears to seek strength in the Rule.

Once the Supreme Court has entered judgment in a case, that decision is final and will remain so forever. The law may in future be amended to affect future issues on the same subject, but for the case decided, that is the end of the matter. The irony of this application is that the protagonist of this application on four previous occasions, Chief Williams, S.A.N. is now on the receiving end. But this Court has on each occasion stood firmly that it lacked jurisdiction. [See Minister of Lagos Affairs, Mines and Power & Anor v. Chief Akin-Olugbade & Ors (1947) 11 S.C. 11; Akin-Olugbade & Ors v. Onigbongbo Community & Ors (1974) 6 S.C. 1.

The purport of Order 8 rule 16 is to carry out what is termed "slip rule" i.e. to correct clerical errors or omissions or gaps to give meaning to the judgment or decision of the Court and not to vary it. [See Ashiyanbi & Ors v. Adeniji (1967) 1 All NLR 861. Once an order has been given, be it judgment or ruling, the Supreme Court cannot thereafter change that decision. [Chukwuka v. Ezulike (1986) 5 NWLR (Pt.45) 892.

It is to be emphatically restated that this motion with a double edged sword of alleged powers under the Constitution [S.6 (6)(a) and under the Rules (Order 8 rule 16) should once and for all be nailed in its coffin. The law does not permit this Court a double say in the same manner. It either allows or dismisses an appeal, not the two on the same issue. The inherent powers under S.6(6) of the Constitution cannot be invoked to reverse a decision already given by this Court Iro Egbu & Ors v. Chief Ogburu Urum & Anor (1981) 4 S.C. 1; Sodeinde Brothers (Nig) Ltd v. African Continental Bank Ltd

(1982) 6 S.C. 137; Yonwuren v. Modern Signs (Nig) Ltd (1985) 2 S.C.; John Enemoh & Anor v. Chief Daniel Onolepita & Ors (1985) 2 S.C. and Nwaora v. Nwakonobi (1985) 2 S.C. (all consolidated at P. 86)

In conclusion, this application is completely misconceived and appears to me no more than a voyage of discovery on a matter that has been
5 several times tried and tested in this Court without success. This Court is indirectly being called upon to set aside its decision. There is no jurisdiction to do so. The application is dismissed with N1,000.00 costs to the respondent.

10

UWAIS JSC

I have had the opportunity of reading in draft the ruling read by my learned brother Belgore, J.S.C. I agree with the ruling.

15 Although, the application is purported to have been brought under Order 8 rule 16 of the Supreme Court Rules, 1985 and section 6 subsection (6)(a) of the Constitution of the Federal Republic, 1979 ostensibly to review the judgment of this court by inter alia correcting errors said to be accidental slip or omission, it is in substance a complaint against the said judgment in
20 camouflage. It is clear by the provisions of section 215 of the 1979 Constitution that the decision of this court is final and there is no appeal from its decision.

The section provides:-

25 *"215. Without prejudice to the powers of the President or the Governor of a State with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme Court."*

In Cardoso v. Daniel, (1986) 2 NWLR (Pt.20) 1 at P. 28F-G, I made the following remarks -

30 *"..... this court cannot sit on appeal over its own judgment. Its appellate jurisdiction is limited, as per section 213 subsection (2) of the Constitution of the Federal Republic of Nigeria, 1979, to hearing appeals from the Court of Appeal only and no more."*

See also Adigun v. Attorney-General of Oyo State & Ors., (1987) 2 NWLR (Pt.56) 197. Consequently, this court lacks the jurisdiction to grant the
35 prayers in the application. Accordingly, I too refuse to grant the application and it is hereby dismissed in its entirety with N1,000.00 costs to the appellants/respondents.

KUTIGI JSC

I have had the advantage of reading in draft the ruling just delivered by my learned brother Belgore, J.S.C. I agree with him that the application lacks merit and ought to be dismissed. It is settled law that this Court has no power to change its own judgment or sit as an appeal court over its own judgment (See for example Adigun & ors. v. A.G. of Oyo State & Ors. (1987) 1 NWLR (Pt.53) 197; Akin-Olugbade & Ors v. Onigbongbo Community & Ors. (1974) 6 S.C. 1.

Accordingly the application is dismissed with N1,000 costs to the respondents. 10

OGUNDARE JSC

I have had the advantage of reading in draft the ruling of my learned brother Belgore, J.S.C. just delivered. I agree with him that this application is completely devoid of any merit and should be dismissed. In view, however, of the nature of the application, I need to say a few words of my own. 15

In appeal No. SC.91/1988 the present respondents to this application being dissatisfied with the judgment of the Court of Appeal given in Appeal No. CAI/E/82/85 appealed to this Court; the applicant to the present proceedings was the respondent in SC.91 /1988. This Court (Karibi-Whyte, Kawu, Belgore, Nnaemeka-Agu and Omo, JJ.S.C.) in judgments delivered on the 26th of February, 1993 unanimously allowed the appeal, set aside the judgment of the Court of Appeal and restored the judgment of the trial High Court which has earlier given judgment in favour of the respondents now before us, declaring on them entitlement to the right of occupancy to the land in dispute, N1,000.00 damages for trespass and an order of perpetual injunction against the present applicant who was defendant in the suit in the High Court. On 18/5/93 the applicant applied to this Court praying for the following orders: 20 25 30

"(i) directing a review of the judgment of the Court delivered on the 26th February, 1993 in this appeal;

(ii) correcting some error arising from accidental slip or omission in the judgment, to wit:- that the respondent in his appeal from the decision of the High Court to Court of Appeal filed only two grounds of appeal; 35

(iii) discharging the order restoring the judgment of the High Court arising from the error arising from the accidental slip or omission;

(iv) discharging the decisions of the court in the judgment of 23/2/93.

(a) that the District Officer in Exhibit K assessed the capacities in which the parties sued and were sued from personal capacities to representative capacities;

and (b) that the District Officer in Exh. K had no authority to alter the capacities in which the parties sued and were sued from personal capacities to representative capacities.

(v) discharging the decision of the court in the judgment of 23/2/93 that there was no basis for the decision of District Officer in Exh. K, the native court judgment upon which the respondent's plea of estoppel rested, to the effect that the native court action was fought or prosecuted in representative capacities;

(vi) ordering the rehearing of the appeal in this court or the rehearing of the appeal in the Court of Appeal or the retrial of the case itself." upon the grounds

"1. The Court in its judgment of 23/2/93 made an accidental slip or omission whilst considering the point whether the appellants were entitled to judgment in that it took the erroneous view that the respondent filed only the two grounds of appeal in the respondents' notice of appeal and inadvertently failed to take notice of the two additional grounds of appeal filed by the respondent in his appeal to the Court of Appeal from the High Court.

2. Because of the accidental slip or omission alleged in (1) above the court took erroneous view that the findings of fact the trial Judge made against the respondent were unchallenged when in point of fact the two additional grounds challenged them specifically and vehemently.

3. The Supreme Court lacks jurisdiction to pronounce on the correctness or otherwise of the decision of the Divisional Officers Court in Exh. K upon which the respondent's plea of res judicata was based.

4. The constitutional role of the Supreme Court in respect of Exh. K, the judgment of the Divisional Officer's Court lies only in the interpretation of the judgment.

5. The said decision of the Supreme Court on the correctness or otherwise of Exh. K are nullities by reason of lack of jurisdiction to make them.

6. The decision of the Court of 23/2/93 is vitiated by reasons of grounds 1 - 5 above."

At the hearing of the application on 1st November, 1993 Mr. Balonwu, SAN moved the Court under Order 8 rule 16 of the Supreme Court Rules and the inherent jurisdiction of the Court in terms of his motion. He relied on the affidavits in support of the application. After pointing out some salient passages in the lead judgment of Nnaemeka-Agu, J.S.C. and the concurring judg-

ment of Belgore, J.S.C. in SC.91/1988, learned Senior Advocate submitted that there was an accidental omission in those passages which this Court ought to correct. He emphasised that the omission complained of was the finding in the two judgments referred to, to the effect that no finding at the trial court was challenged in the Court of Appeal. He pointed out that contrary to the assertion in the lead judgment of Nnaemeka-Agu, J.S.C. that there were two grounds of appeal before the Court of Appeal, infact, learned Senior Advocate submits, there were four grounds of appeal, two of which according to learned counsel challenged the findings of the trial court. Mr. Balonwu earlier in his address had referred to a Brief of Argument filed by him in support of the application. As there is no provision in the rules of this Court for the filing of Briefs in an application of this nature, he was not allowed to make use of it nor refer to it.

Chief Williams, SAN submitted that the applicant had no locus standi to challenge the correctness of the judgment of this court adding that that was the purport of the application now before the Court. Learned Senior Advocate further submitted that the essence of Rule 16 of Order 8 was that this Court could not review its own judgment once given, whether rightly or wrongly. He asked the Court to dismiss the application.

The general law is that the Court has no power under any application in the action to alter or vary a judgment or order after delivery except (a) so far as is necessary to correct errors in expressing the intention of the Court or (b) to correct clerical mistake or some error arising from any accidental slip or omission - the "slip rule" or (c) an order which is a nullity owing to failure to comply with an essential provision, such as service of process can be set aside by the court which made the order (Obimomire v. Erinosho & Anor (1966) 1 All NLR 245; Adeigbe v. Kusimo (1965) NMLR 284; (1965) 1 All NLR 248; Skenconsult (Nig) Ltd & Anor v. Ukey (1981) I Sc. 6; Craig Kanssen (1943) KB 256 or (d) a judgment or order made against a party in default may be set aside and the matter reopened. There are other exceptions which are not relevant to the matter at hand. It is exceptions (a) and (b) above that are relevant to the application now before us.

Order 8 rule 16 of the rules of this Court provides as follows:

"16. The Court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it be varied and a different form substituted."

This rule apart, this Court has an inherent jurisdiction to vary its own

orders so as to carry out its own meaning and make its meaning plain. See Thynne v. Thynne (1955) P. 272. Hatton v. Harris (1892) A.C. 547, 560 where on a perusal of the decree of the trial court the House of Lords was satisfied that the trial Judge never dealt with any question of extending interest or of varying the rights of creditors. The decree was amended to bring it into conformity with the legal rights of the creditors. Lord Watson stated the law thus:

"When an error of that kind has been committed, it is always within the competency of the Court, if nothing has intervened which would render it inexpedient or inequitable to do so, to correct the record in order to bring it into harmony with the order which the judge obviously meant to pronounce. The correction ought to be made upon motion to that effect, and is not matter either for appeal or for re-hearing. The law upon this point was fully and satisfactorily discussed by the late Lord Justice Cotton in Mellor v. Swire, an authority which appears to me fully to bear out the proposition I have just stated."

In Mellor v. Swire (1885) 30 Ch. D. 239 referred to by Lord Watson in the above passage, Cotton LJ at page 244 of the report observed:

"..... it is only in special circumstances that the Court will interfere with an order which has been passed and entered, except in cases of a mere slip or verbal inaccuracy, yet in my opinion the Court has jurisdiction over its own records, and if it finds that the order as passed and entered contains an adjudication upon that which the Court in fact has never adjudicated upon, then in my opinion, it has jurisdiction, which it will in a proper case exercise, to correct its record, that it may be in accordance with the order really pronounced."

Lindley LJ. in his own judgment at page 246 held:

"It appears to me, therefore, that if it is once made out that the order, whether passed and entered or not, does not express the order actually made, the Court has ample jurisdiction to set that right, whether it arises from a clerical slip or not."

Bowen LJ. in his own judgment observed at pages 247-248:

"I think the true view is, as stated by the Lord Justice Cotton, that every Court has inherent power over its own records as long as those records are within its power and that it can set right any mistake in them. It seems to me that it would be perfectly shocking if the Court could not rectify an error which is really the error of its own minister. An order, as it seems to me, even when passed and, entered, may be amended by the Court so as to carry out the intention and express the meaning of the Court at the time when the

order was made, provided the amendment be made without injustice or on terms which preclude injustice. The Lord Justice Lindley has pointed out that this power which we are now asserting is a power which was always possessed by the Courts of Chancery under the old system. On that point I say nothing. But I venture to add this, that is a power which has been exercised for hundreds of years by the Common Law Courts, and it would indeed be strange if the power were found to have disappeared when the Court of Appeal was created by the Judicature Act. Lord Penzance, speaking as a common law lawyer, was well justified, as one would expect from a Judge of his great distinction, in saying that at common law it was always understood that the Court had the power to make these corrections. When there was any mistake which could be ascribed to the officers of the Court, judgments at common law would always be amended in the terms, and in some cases after the term in which they were pronounced.

It seems to me that there is inherent power in this Court to do what is asked. I do not think it is necessary to fall back upon the rules, though I think rules might be discovered which would be found to assert the existence of this power in the Court."

In *Obanor v. Chief Conservator of Forests* (1959) WNLR 8, a charge against the appellant was dismissed by the Magistrate and an appeal by the Chief Conservator of Forests was dismissed by the High Court. After the Order of dismissal had been made the appellate Judge heard further arguments and thereafter remitted the case to the Magistrate Court for a retrial. On appeal to the Federal Supreme Court, it was held that the appellate Court had no power after making an Order of dismissal to review this order and remit this case for a retrial. Ademola FCJ (as he then was), delivering the judgment of the Court after referring to Section 109 of the Magistrate Courts' Law of Western Region No.5 of 1955 which provides:

"The court shall not review any judgment or order once made and delivered by it save where and in such cases similar review might be made by Her Majesty's Court in England"

went on to observe:

"In the present case, the learned trial Judge became functus officio once he had delivered his judgment dismissing the appeal. There is no power of review given to him by section 109 except in cases of correction of mistakes and the like which power of review Her Majesty's Judges in England do exercise."

To hear a case is beyond the exercise of the power of review."

In *Asiyanbi v. Adeniji* (1967) 1 All NLR 88 (new edition) this Court, per Coker, J.S.C. observed at page 92 of the report:

"The application raised the very important problem of the meaning of what is generally referred to as the 'slip rule' and the circumstances of its applicability. Manifestly apart from the provisions in the Rules of Court the court must and does possess the power, subject to appropriate safeguards
 5 where the justice of the case so requires, to correct or amend the terms of its own orders or judgment to effect such variations therein in such a way as to carry out the meaning which the court intended where for instance the language used in the phrasing of the order is ambiguous or does not express the order actually made by the judgment or is otherwise open to misapprehen-
 10 sion it may be corrected to make it clear. (See per Lindley LJ. in *Re Swire, Mellor v. Swire* (1885) 30 CH.D. 239 at P.246.

The inherent power of a court to correct any accidental slip or error in its judgment, order or ruling is also recognised by this Court per Obaseki,
 15 J.S.C. in *Umunna v. Okwuraiwe* (1978) 6-7 SC. 1. A recent case on the point is *Adigun & Ors v. Attorney-General of Oyo State & Ors* (1987) 2 NWLR 197 where the law was exhaustively reviewed. In that case, Obaseki, J.S.C. observed at p. 212 thus:-

"The powers or inherent powers of the Court of law are powers
 20 which enable it effectively effectually to exercise the jurisdiction conferred upon it. The jurisdiction given to the Supreme Court by the Constitution is to hear and determine the matters set out and specified in Section 212(1) and (2) and Section 213(1) and (2)(a, b, c, d, e, and f) of the Constitution. In the course of the discharge of its main duty of adjudication, the court takes and
 25 expresses its decision which it intends to give in the matter in writing and delivers it. See Section 258(1) of the Constitution. If the decision is what the court intends to give in the matter, that is the end of the adjudication process. If the expression used does not accurately convey the Court's intention both Order 8 rule 16 of the Supreme Court Rules 1985 and Section 6(6)(a)
 30 of the Constitution enable the court to make the necessary correction but if the terms of the judgment correctly conveys the intention of the court, neither the inherent powers of the court nor Order 8 rule 16 Supreme Court Rules 1985 allows an alteration in the judgment to convey a different intention. I cannot therefore see any conflict between the two provisions. Learned counsel
 35 sel for the applicants also contended that Section 6(6)(a) cannot be limited by the provision of Section 215 of the Constitution which reads:

'Without prejudice to the powers of the President or of the Governor of a State with respect to the prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme Court'

This provision gives a stamp of finality to the determination by the Supreme Court. There is no constitutional provision for the review of the judgments of the Supreme Court by itself. Indeed, if there were, it would constitute an appeal into which the present application falls. But as the Constitution and the law now stand, there cannot be an appeal questioning the decision of the Supreme Court to itself or to anybody. This is good for the integrity of the Court as there must be finality to litigation when a matter has undergone two, three or four appeals."

From the authorities referred to above by me and there are many more on the point, it is fully established that the rule of court apart, this Court possesses an inherent jurisdiction to correct any accidental slip or error in its judgment or order and this is generally referred to as the "*Slip Rule*".

What I now have to consider is the extent of this power of the Court either under the rule of Court that is, Order 8 rule 16 or under the inherent power of the Court. Again the authorities lay it down that the error or omission must be an error in expressing the manifest intention of the Court. The Court cannot correct the mistake of its own in law or otherwise, even though apparent on the face of the order. If the order correctly expresses its intention, it cannot be corrected under this rule or the inherent jurisdiction of the Court. The first case I would refer to in this respect is *Asiyanbi v. Adeniji* (supra) where at pages 95-96, G.B.A. Coker, J.S.C. delivering the judgment of this Court observed:

"The cases later decided by the Court of Appeal established that the Court while able to correct a misnomer or misdescription under the 'Slip Rule' will not under that rule, whether in the exercise of its inherent jurisdiction or by the powers conferred by the Rule of Court, vary a judgment or order which correctly represents what the court decided nor will it vary the operative and substantive part of its judgment so as to substitute a different form. (See Mac Carthy v. Agard (1933) 2 K.B. 417 - though it should be noted that in that case Scrutton L.J. in a dissenting judgment was of the view that the Court by its inherent jurisdiction could correct an error in an order caused by the active misrepresentation of a party)."

See also *Umunna v. Okwururaiwe* (supra). In *Preston Banking Co. v. William Allsup & Sons* (1895) 1 CH. 141 where an application was made in an action that certain costs which the applicant had in a previous order in the action been directed to pay might be made costs in the action and for a stay of proceedings under the order on the ground that the order had been obtained by misrepresentation, the Court of Appeal in England affirmed the decision of

the lower court dismissing the application on the ground that the court had no jurisdiction to entertain it. Lord Halsbury in his judgment at page 143, observed:

5 *"If by mistake or otherwise an order has been drawn up which does not express the intention of the Court, the Court must always have jurisdiction to correct it. But this is an application to the Vice-Chancellor in effect to rehear an order which he intended to make but which, it is said, he ought not to have made. Even when an order has been obtained by fraud, it has been*
10 *held that the Court has no jurisdiction to rehear it. If such a jurisdiction existed it would be most mischievous."*

Lindley LJ. in his own judgment at pages 143-144 observed:

15 *This is a matter of some importance as to the practice and procedure of the Court. This is not an application to alter an order on the ground of some slip or oversight. Nor is it a case in which the order has not been drawn up. Here the order has been drawn up, and it expresses the real decision of the Court; and that being so, the Court has no jurisdiction to alter it. If this summons had proceeded on the theory that the order of the*
20 *11th of July was right, and that circumstances had since occurred which had rendered a supplemental order necessary, the Court might have entertained the application; but this summons proceeds on the theory that the order of the 11th of July, is wrong. In my opinion, it is of the utmost importance, in order that there may be some finality in litigation, that when once the order*
25 *has been completed it should not be liable to review by the Judge who made it."*

A.L. Smith LJ in his own judgment at page 144 also observed:

30 *"I am of opinion that the Vice-Chancellor was right in arriving at the conclusion that he had no jurisdiction. This is not an application to rehear a matter before the order has been drawn up and perfected. Nor is it an application to vary an order which has been drawn up in accordance with the order pronounced by the Judge. Nor is it an application that the*
35 *judgment should make an order supplemental to the order drawn up; but it is an application that he should rehear the order made and perfected, and make another in its place. In my opinion, the Judge had no jurisdiction to do this, though in the three former cases he might have done so."*

In *Charles Bright and Co. Ltd v. Cellar* (1904) 1 K.B., it was held by the

Court of Appeal in England that the High Court has no jurisdiction to review its own order on the ground of error in law apparent on the fact of it. See also: MacCarthy v. Agard (supra).

Turning now to the facts of the case before us, the applicant would want this court to set aside its judgment delivered on the 26th February, 1993 in appeal No. SC. 91/1988 and to rehear the appeal. The grounds for the application have been fully set down in this judgment, I need not repeat them here again. Suffice it to say that the bases are two-fold: (a) that this Court took the erroneous view that the applicant filed only two grounds of appeal before the Court of Appeal and did not before that Court challenge the findings of fact made by the trial Judge; this error amounts to an accidental slip; and (b) that this Court lacked jurisdiction to pronounce on the correctness or otherwise of the decision of the Divisional Officer's Court upon which the applicant's plea of *res judicata* was based and the decision of this Court thereon was, therefore, a nullity. As regards (a) Nnaemeka-Agu, J.S.C. in his lead judgment observed:

"These findings are as devastating as they are conclusive against the defendant/respondent and in favour of the plaintiffs/appellants. They have marked the 'Ekpe' boundary with a stamp of finality. The findings clearly support the learned trial Judge's judgment in favour of the plaintiffs who are the appellants in this court. Surprisingly in the respondent's (then appellant's) notice of appeal before the Court of Appeal (at pages 361-363) they filed only two grounds, one on the issue of res judicata and the other the omnibus ground. No ground specifically attacked those terrible findings of fact against him. The result is that those facts stand."

It was contended by learned Senior Advocate for the applicant that in fact, the applicant filed four grounds of appeal, two original and two additional and that the two additional grounds question the findings of fact made by the learned trial Judge. It was further contended that the error amounted to a serious slip on the part of the learned justice of the Supreme Court which this Court ought to correct. With profound respect to the learned Senior Advocate, I cannot see what type of omission in the passage referred to that would warrant the exercise by the Court of its power under Order 8 rule 16 or under its inherent jurisdiction. It is not disputed that there were only two grounds of appeal contained in the Notice of Appeal on pages 361-363 of the record of appeal nor is it disputed that the purport of these two grounds are as given in the passage above. The two additional grounds filed with the leave of the Court of Appeal did not attack in any manner any finding of fact made by the learned trial Judge. The additional grounds read:

1. "GROUND (3)

ERROR IN LAW

The learned trial Judge erred in law when he did not critically consider and compare Plan No. SE/EC/3/75 (sic) - Exhibit "A" Plan Nos. Or/2/48 Exhibit "F" and Plan No. MEC1226/75 with Plan No. MEC/525/75 (Super-imposition of Plans) - Exhibit "H" anywhere in his judgment.

5 PARTICULARS:

The said Plan No. OR/2/48 and Plan No. MEC/266/75 and No. MEC/252/75 were tendered by the defendant and were evidence before the Court. The plaintiffs did not object their being tendered.

Even though the learned trial Judge had held that the defence of res
10 *judicata* had failed because of the requirement, he should have not stopped there. He should have viewed the plans and the evidence led on them and make findings.

Had the learned trial Judge considered and compared Exhibits "A", "F", "H" and "G" he would have come to the inescapable conclusion that, it
15 was the same piece of land that the plaintiffs were suing for as per their Exhibit "A".

Exhibit "F", "H" and "G" are very important documents and the learned trial Judge was bound to review them and make findings on them, either in the negative or positive. Had he hoped that he would have upheld
20 the defence of long possession set up by the defendant.

2. GROUND (4)

ERROR IN LAW:

The learned trial Judge erred in law when he held that the long possession evidence adduced by defendant and D.W. 4 was in respect of the
25 land situate on the south and south-eastern boundaries of the land in dispute.

PARTICULARS

1. D.W. 4 clearly said that he has been living on the land in dispute since 1928. That his people have been farming on the land since then.

30 2. Defendant gave evidence that he was born on the land in dispute 54 years ago, and has been living and farming there.

3. The learned trial Judge had on his own demarcated the defendant's land into two by saying that the land now in dispute has a boundary with another land which he said belonged to the defendant.

35 4. There is no evidence by the plaintiffs to warrant such demarcation boundary.

5. The land in dispute is part and parcel of the piece of land shown in Plan NO.CE/2/48, Plan No. MEC/266/75 and Plan No. MEC/525/75. It is a continuous piece of land and is not demarcated.

6. *The learned trial Judge fell into the great error because he went on to demarcate the land without any evidence.*

7. *The learned trial Judge by holding that, in his judgment was given evidence for the plaintiff. The defendant never said that there was (sic) two pieces of land. All he said was that that portion of land was part of the land shown on Plan OR/2/48 litigated upon in 1948 by the parties.*" 5

It would therefore, be a correct statement of fact that "no ground specifically attacked those terrible findings of facts against him." In my respectful view, what the learned Senior Advocate is asking this Court to do is to rewrite that part of the judgment of Nnaemeka-Agu, J.S.C. and the authorities which I have reviewed earlier in this judgment do not support this course. 10 This Court would have no such jurisdiction. This is made clear by this Court, per Coker, J.S.C. in *Asiyanbi v. Adeniji* (supra) in the passage I have earlier quoted that this Court will not under its rule or in the exercise of its inherent jurisdiction vary the operative or substantive part of its judgment so as to substitute a different form. The only slip one can admit was made is a failure to 15 refer to the two additional grounds, but this slip will not and does not affect the substance of the judgment and that is that "*no ground specifically attacked those terrible findings of fact*" made against the applicant by the learned trial Judge.

As regards (b) the arguments of learned Senior Advocate for the 20 applicant, with profound respect to him, involves a misconception of the lead judgment of Nnaemeka-Agu, J.S.C. The learned Justice of the Supreme Court observed that the full proceedings of the Native Court relied upon by the applicant in support of his plea of res judicata were not in evidence and on the 25 basis of what was in evidence before the Court the learned justice pronounced on the capacities in which the parties litigated in the Native Court. In the absence of the full proceedings it could not be decided positively that the parties in the Native Court sued in a representative capacity and the onus of showing this was on the applicant which burden he failed to discharge. If this Court was led into any error therefore, it would be as a result of the default of 30 the applicant. Be that as it may, error of law committed in a judgment and I am not saying that that is the case here, is no ground for the exercise of the statutory or inherent power of this Court to correct any omission or slip in its judgment. See *Umanna v. Okwuraiwe* (supra) whereat page 11 of the report 35

Obaseki, J.S.C. delivering the judgment of this Court observed:

"If it had been an error of the court in law, the court would have had no jurisdiction to correct such errors event though apparent on the face of the order (Bright v. Sellar (1904) 1 KB 6, Re Gist (1904) 1 Ch.408)"

Reading the application before us as a whole one cannot escape the conclusion that the purpose of the application is to challenge the correctness of the judgment of this Court given on 26th February, 1993 in SC.91/88 and to seek a rehearing of the appeal. The latter indeed, is one of the prayers sought. Whether that judgment was rightly or wrongly given, it could not be corrected by this Court under Order 8 rule 16 or in the exercise of its inherent jurisdiction. Section 215 of the 1979 Constitution which provides:

"215. Without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme Court."

engrosses the judgment of this Court with a stamp of finality. As Eso, J.S.C. put in Adigun v. Attorney-General of Oyo State & Ors. (supra)

"..... the decision of the Supreme Court is final. Final in the sense of real finality in so far as the particular case before that court is concerned. It is final for ever, except there is legislation to the contrary, and it has to be a legislation ad hominem. The Supreme Court, and it is only the Supreme Court, may depart from the principles laid down in their decision in the case in future cases, but does not alter the rights, privileges or detriment to the parties concerned, arising from the original case."

And order 8 rule 16 precludes this Court from reviewing any judgment once given. What we are being called upon to do is precisely what we are precluded from doing, that is to sit on appeal against the judgment given by this Court in SC.91/1988 on 26th February, 1993. The aim of the present application goes beyond the purview of the "slip rule" in that the complaints relied on are not directed towards any clerical mistake in the judgment under attack or some error arising from any accidental slip or omission but issues of fact and law are raised for determination at the rehearing sought in this application. The remedy, if any, in such a situation is to invoke such appellate jurisdiction as may apply. As Morris LJ. put it in Thynne v. Thynne (supra) at p. 146:

"Where a court has decided an issue and the decision of the court is truly embodied in some judgment or order that has been made effective, then the court cannot reopen the matter and cannot substitute a different decision in place of the one which has been recorded. Those who seek to alter it must in those circumstances invoke such appellate jurisdiction as may apply."

Unfortunately, for the applicant there is no other court or body with appellate jurisdiction over the Supreme Court.

I agree entirely with Chief Williams, SAN learned counsel for the respondents that this Court would have no jurisdiction to do what the applicant

is urging on us.

Consequently, I agree with my learned brother Belgore, J.S.C. that this application be refused. It is hereby dismissed by me with costs as assessed in the lead ruling.

5

MOHAMMED JSC

I have had a preview of the ruling just delivered by my learned brother, Belgore, J.S.C. in draft, and I agree with him that this application has been brought with the sole intention of challenging the validity of this Court's judgment which was delivered on 26th February, 1993.

10

It is plain, without citation of authorities, that we have no jurisdiction to do so. Under Order 8 rule 16 of Supreme Court Rules, this Court's power to review its judgment or order has been limited to correcting only clerical mistake or some error arising from accidental slip or omission or vary the judgment or order so as to give effect to its meaning or intention.

15

Several pronouncements have been made before, that the Supreme Court or any other court has no power to vary its judgment once it has been entered and perfected. The moment a judgment is delivered by the judge, it becomes functus officio and only an appellate court, where applicable, can be invoked to vary the decision. See *Bakare v. Apena* (1986) 2 NSCC 935 in which this Court followed its decision in *Minister of Lagos Affairs Mines and Power and Anor v. Akin Olugbade & Ors.* (1974) 1 All NLR (Pt. 2) 226 at 233 where approval was given to the statement of Morris LJ in *Thynne v. Thynne* (1955) 3 All ER 129. 145.

20

The only exception is where, under the rules, the court is permitted to correct clerical errors or accidental slip. If it is correct, as is alleged by the applicant's counsel, that this Court erroneously failed to take notice of the two additional grounds of appeal filed by the respondent in the appeal to the Court of Appeal from the High Court and that it acted beyond its powers to pronounce on the correctness or otherwise of the decision of the Divisional Officer's Court in Exhibit K, those are patently errors in law. When a judgment is entered and order enrolled, the Court cannot correct a mistake of its own in law or otherwise, even though apparent on the face of the order - See *Bright v. Cellar* (1904) 1 K.B. 6.

25

30

I therefore entirely agree with Belgore, J.S.C. in the lead ruling, that the application is misconceived. For these reasons and fuller reasons given in the lead ruling, I would dismiss the application. I abide by the order made on costs.

35

ADIO JSC

I have read, in advance, a copy of the ruling just delivered by my learned brother, Belgore, J.S.C., and I entirely agree with it. I too dismiss the application and abide by the order for costs.

5

IGUHJSC

I have had the privilege of reading, in draft, the lead ruling just delivered by my learned brother, Belgore, J.S.C. I am in complete agreement with him that this application is devoid of substance and should be dismissed.

I wish, however, to make some brief comment by way of emphasis only. In appeal No. SC91/1988, this court in a unanimous decision on the 26th February, 1993 set aside the judgment and orders of the Court of Appeal. On the 18th day of May, 1993, the respondent in that appeal, now the applicant, filed the motion on notice praying for the following orders, namely:-

"(i) directing a review of the judgment of the Court delivered on the 26th February, 1993 in this appeal;

(ii) correcting some errors arising from accidental slip or omission in the judgment, to wit:- that the respondent in his appeal from the decision of the High Court to Court of Appeal filed only two grounds;

(iii) discharging the order restoring the judgment of the High Court arising from the error arising from the accidental slip or omission;

(iv) discharging the decisions of the Court in the Judgment of 23/2/93.

(a) that the District Officer in Exhibit K assessed the capacities in which the parties sued and were sued from personal capacities to representative capacities;

and (b) that the District Officer in Exh. K had no authority to alter the capacities in which the parties sued and were sued from personal capacities to representative capacities;

(v) discharging the decision of the court in the judgment of 23/2/93 that there was no basis for the decision of District Officer in which Exh. K, the native court judgment upon the respondent's plea of estoppel rested, to the effect that the native court action was fought or prosecuted in representative capacities;

(vi) ordering the rehearing of the appeal in this court or the rehearing of the appeal in the Court of Appeal or the retrial of the case itself."

The application was made pursuant to the inherent jurisdiction of this Court and the provisions of Order 8 rule 16 of the Supreme Court Rules, 1985.

Order 8 rule 16 of the Supreme Court Rules provides as follows:

"The Court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or intention. A judgment or order so as to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it be varied and a different form substituted." 5

It is the case of learned counsel for the applicant, Mr. P.O. Balonwu, SAN that this court in its judgment of the 26th February, 1993 made an accidental slip or omission. He claimed that the alleged slip or omission consisted in the inadvertence of this court to take notice of two additional grounds of appeal filed by the respondent in the appeal. He submitted that the alleged oversight on the part of this court occasioned a miscarriage of justice as the court erroneously took the view that certain damaging findings of fact made against the applicant by the trial court were unchallenged in the court below and must therefore stand. He therefore urged the court to correct what he described as this mistake of its own. 15

Learned counsel for the respondents, Chief F.R.A. Williams, SAN in his reply stressed that a misdirection or error in law in a judgment, so long as such a judgment correctly represents what the court decided or the actual decision of the court, cannot be corrected or varied. He submitted that the judgment sought to be varied or amended correctly represents what the court decided in the appeal and cannot therefore be interfered with. 20

The general principle of the law is that after a judgment has been passed and entered, even if it is a consent judgment entered under a mistake, that court cannot set it aside otherwise than in a fresh action brought for the purpose unless- 25

(i) there has been a clerical mistake or an error arising from an accidental slip or omission in the judgment, or

(ii) the judgment, as drawn up, does not correctly represent what the court actually decided or intended to decide and in either of which cases the application may be made by motion in the action. See *Ainsworth v. Wilding* (1896) 1 Ch. 673 and in *Re Swire, Mellor v. Swire* (1885) 30 CH.D. 239 at 243, p. 246. and 247. Accordingly the court has clear inherent jurisdiction to amend or vary its own order or judgment so as to carry out its own meaning, and where the language used has been doubtful, to make it plain. See *Lawrie v. Lees* 7 AC 19; *Chief Okoro Orukumkpor v. Itebu & Ors* (1955) 15 WACA 390 at 40; *Umunna v. Okwuraiwe* (1978) 6-7 S.C. 1; *Adigun & Ors v. Attorney-General of Oyo State & Ors* (1987) 2NWLR (Pt.56) 197 and *Orthodaedic Hospitals Management* 30 35

Board v. Apugo & Sons Ltd. (1990) 1 NWLR (Pt.129) 652. It has to be emphasized however, that this jurisdiction is limited only to situations where:-

(i) There is a clerical mistake in the judgment or order; or

(ii) It is necessary to do so to carry out the courts own meaning and to make the same plain.

5 I think it necessary to stress that such an error or omission as afore-said must be an error in expressing the manifest intention of the court and the correction can only be made on motion. See *Thynne v. Thynne* (1955) P. 272 and *Olurotimi v. Ige* (1993) 8 NWLR (Pt.311) 257 at 274. But where there is no ambiguity in the judgment or order of a court which calls for interpretation,
10 construction or clarification, any attempt to import some contrary interpretation would amount to varying the judgment or order which correctly represents what the court decided and is erroneous on point of law. See *Daniel Ashinyanbi & Ors v. Emmanuel Adeniji* (1967) 1 All NLR 82; *Chief Okro Orukumkpor v. Itebu*, (supra); *NICON v. Pie Co. Ltd* (1990) 1 NWLR (Pt.129)
15 697 at 708 and *University of Lagos v. Aigoro* (1991) 3 NWLR (Pt.79) 382.

 Quite apart from the specific provisions of the rules of court, the inherent jurisdiction of the courts to vary their own judgments or orders by way of correcting clerical mistakes or errors arising from any accidental slip or omission is derived from what in law, is commonly known as the "slip rule".
20 The courts however may not under this rule vary a judgment or order which correctly represents the court's decision, nor may it vary the operative and substantive part of its judgment so as to substitute a different form. See too
 MacCarthy v. Agard (1933) 2 KB 417. To hold otherwise would in effect give jurisdiction to a court to sit on appeal or review over its own judgment or
25 order, a situation which is clearly contrary to the state of the law. See *MacCarthy v. Agard* (1933) 2 KB 417. In this regard, the elementary principle of the law may be restated that where a court has decided an issue and the decision is correctly embodied in its judgment, such a court cannot reopen the matter and cannot substitute a different decision in place of the one which has been
30 recorded. Those who seek to alter or amend it must invoke such appellate jurisdiction as may be available. See *Akin-Olugbade & Ors v. Onigbongbo Community & Ors.* (1947) 6 S.C. 1.

 It must be emphasized that a clerical mistake or error arising from any accidental slip or omission which distorts the plain meaning of the actual
35 judgment or what the court actually decided or intended to decide ought, *ex facie*, to appear on the face of the record for the "slip rule" to be invoked. A misdirection or error in law which is apparent on the fact of a judgment or order must be distinguished from an accidental slip or clerical mistake in a judgment or order of court. Whereas the former is appealable and cannot be remedied

under the "slip rule", the latter may in appropriate cases be corrected under this rule.

A careful study of the present application and the grounds upon which it is made leaves one in no doubt that this court is not being urged to correct any minor error, accidental slip or omission or any clerical mistake in the judgment complained of. What the applicant seeks is to challenge the validity of and for a removal of the decision of this court delivered on the 26th February, 1993. This court is being urged to review and/or to set aside its said decision and to substitute a different judgment in its place on the ground that the court allegedly failed to advert its mind to certain grounds of appeal before it. The applicant is inviting this court to review the judgment complained of on the ground of the alleged inadvertence or error with a view to setting aside the decision and substituting a new judgment in its place.

I think it is right to state that where a ground of appeal has not been considered by an appellate court, this, in my view, will amount to an error or misdirection in law and no more. There is no constitutional provision for the review of the judgment of the Supreme Court by itself and once it delivers a final judgment, the Supreme Court, subject to the "slip rule" principle becomes functus officio in respect thereof. See *Adigun v. Attorney-General of Oyo State (No.2)* supra.

The prayers asked for in the instant application in so far as they are intended to review the judgment of this court with a view to setting it aside and substituting a new decision in its place appears to me totally misconceived as this court has no jurisdiction to sit on appeal over its judgment. I agree entirely with Chief F.R.A. Williams, SAN that a misdirection or error in law in a judgment so long as such a judgment represents the actual decision of the court cannot be corrected, varied or amended under the "slip rule". In other words, so long as a decision represents the judgment of this Court and there is no clerical mistake or error arising from any accidental slip or omission, such a judgment cannot be corrected, amended or varied by the court.

I conclude by emphasizing that what the learned Senior Advocate for the applicant is asking us to do in this application clearly goes far beyond what the provisions of Order 8 rule 16 of the Supreme Court Rules envisage. This application is an indirect way of appealing against the decision of this court which course of action is legally untenable and unconstitutional. On the authorities as they now stand, I find no merit in this application and it is accordingly dismissed.

I endorse the order as to costs made in the lead ruling.
Application dismissed.