

**SUPREME COURT OF NIGERIA**  
13TH DECEMBER, 1996. SC. 155/1991  
**CORAM:- S. M. A. BELGORE, I. L. KUTIGI,**  
**E. O. OGWUEGBU, S. U. ONU, Y. O. ADIO, JJSC.**

S. N. IBE ..... APPELLANT/RESPONDENT  
AND  
PETER ONUORA ..... RESPONDENT/APPLICANT

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***SUPREME COURT*** - *Finality of its decision - Pursuant to s. 215 of the 1979 Constitution - Whether a bar to moving the Court to correct errors in judgment.*

***SUPREME COURT*** - *Error in a judgment - That is clerical or out of accidental slip - Can be corrected upon a motion to that effect.*

***FACTS***

This is a motion asking the Supreme Court to amend its judgment of 8th January 1996 so as to reflect the exact intendment of the Court. In the said judgment in respect of suit No. SC. 155/1991, the appeal was struck out for being incompetent. But by a clerical slip, the words “appeal dismissed” were used. The Supreme Court has now been invited to correct the said error vide this motion.

***HELD*** (Unanimously granting the application per lead ruling of **BELGORE JSC**)

***Finality of Supreme Court’s decision - Not a bar to correction***

1. Section 215 of the Constitution of 1979 gives finality to the decision of the Court. Once the decision is given it is final as no further appeal lies from it, not even to this Court. But the Court can be moved to correct errors, cross the Ts and dot the Is. In doing this the meaning of the judgment will be clear. There was no appeal against the judgment of Anambra State High Court to the Court of Appeal, Enugu Division, because the purported appeal was incompetent. Therefore the appeal purportedly heard by the Court of Appeal when the appeal was in fact not before it was a nullity. You cannot place anything right on a nullity; as such the alleged appeal to this court was null and void as it was actually not based on a decision. (p. 2011 D)

***Supreme Court - Clerical error in judgment***

2. Thus where there was a clerical error or error arising out of accidental

slip or omission in the judgment, that error can be corrected to give proper meaning to the judgment. Similarly if the judgment as drawn up does not correctly represent what the Court decided, a motion, not an appeal, may be brought to pray the Court to make clear its intention. [See *Obioha v. Ibero & Another* (supra).] Certainly this Court could not have dismissed an appeal that did not exist, it can only strike it out as incompetent. As the matter of incompetence of the appeal arose *ex tempore* in Court and the parties saw the validity of the issue so raised, it said so and its clerical slip of saying the appeal was “*dismissed*” after clearly saying it was incompetent should not have been given any other meaning than that it was “*struck out*”. Therefore for the avoidance of doubt, the appeal which was incompetent was struck out and use of the words “appeal dismissed” should be construed as “appeal is struck out”. (p. 2011 G)

### **NOTABLE POINTS OF INTEREST**

#### **OGWUEGBU JSC**

##### *1. When error in judgment can be corrected*

On 8:1:96, this Court held that the appeal before us was based on a judgment which is a nullity. Instead of striking out the appeal, the Court allowed it. It is quite clear that there is a mistake in expressing the manifest intention of the Court. This can be corrected under Order 8 rule 16 of the Rules of this Court. Where an error such as this has been committed, it is within the competence of the Court, if nothing has intervened which would render it inequitable or inexpedient to do so, to correct the record in order to bring it into harmony with the order which the Court obviously meant to pronounce. (p. 2013 G)

##### *2. Power to correct mistake does not include review of the judgment*

Order 8, rule 16 does not empower the Court to review its judgment. It only 1 enables it to correct any clerical mistake or some error arising from any accidental slip, or omission in the judgment or order so as to give effect its meaning and intention. There is merit in the application and the correction ought to be made. This Court never meant to allow an appeal on a null decision. (p. 2014 B)

### **REPRESENTATION**

C.O. Akpangbo, SAN with Chief E. Edet for the appellant

K. O. Anyaegbunam with Miss N. C. Esomeju for the respondent

**CASES REFERRED TO**

Cardoso v. Daniel (1986) 2 NWLR (Part 20) 1, at 28  
Obioha v. Ibero (1994) 1 NWLR (Pt. 322)  
Adigun v. A-G Oyo State (1987) 2 NWLR (Part 56) 197  
Halton v. Harris (1892) A.C. 560  
Mellorv. Swire 1 Ch. 329

**STATUTE AND RULES REFERRED TO**

Supreme Court Rules 0.2 r. 28(1), 0.8 r. 16  
Constitution of the Federal Republic of Nigeria ss. 6 (b) (a), 221(1), 215

**LEAD JUDGMENT BY BELGORE JSC**

This motion, asking this court to amend its judgment of 8th day of January, 1996 so as to reflect exactly what the intendment of this court really is. It is brought under Order 2 rule 28(1) and Order 8 rule 16 Supreme Court Rules, and under the inherent jurisdiction of this Court under section 6(6) (a) of the Constitution of the Federal Republic of Nigeria 1979. The motion is supported by affidavit and this affidavit has a counter-affidavit against it. .

The appeal in question No. SC.155/1991, came up on 8th January, 1996 for hearing. The grounds of appeal, six in number, contained at page 204 through to page 209 of the record of proceedings sent from the lower court consisted of nothing but facts even though most were tagged as grounds of law or misdirection. All the grounds needed leave before they could be filed much less argued. Later by an application to Supreme Court leave was granted to argue the grounds. However, when the appeal came up for hearing on 8th day of January, 1996 (Coram: Belgore, Kutigi, Ogundare, Mohammed and Onu J.J.S.C.) it was discovered that there was a gross incompetence not noticed by the Court of Appeal and perhaps by both parties. Court of Appeal went ahead, heard the appeal and handed down its judgment.

The reasons for the flaw in the appeal leading to its incompetence in the Court of Appeal but unnoticed there are as follows:

1. High Court of Anambra State, as court of first instance gave judgment on 7th day of April, 1982.
2. The aggrieved party never appealed within the statutory period of three months after the judgment, but six months after went before the same trial Court to seek leave for extension of time to seek leave to appeal and also for extension of time to appeal and the prayers were granted on 28th day of October, 1982. The trial court has no statutory power to ex-

tend time for the Court of Appeal, it is the exclusive right of the Court of Appeal to grant such prayers (see section 221(1) of the Constitution of 1979). When this serious error was discovered, it meant that an appeal had been entered against a judgment passed on a decision of the Court of Appeal which erroneously never adverted to the flaws aforementioned and B heard the appeal as if it was competently before it. The two parties to the “appeal”, shall I say “matter”, before us discovered that indeed the appeal was incompetently before the Court of Appeal, a fortiori the one before us. The lead ruling of this Court then read as follows:

*“JUDGMENT”*

C (Delivered by BELGORE, J.S.C.)

*“The High Court of Anambra State gave judgment on 7/4/82. Instead of appealing to Court of Appeal the appellant (now respondent in this Court) waited a whole six months before seeking leave to appeal not in Court of Appeal but at trial Court. The trial court gave its order to appeal D on 28/10/82, an order that was incompetent. Neither the parties nor Court of Appeal took notice of this discrepancy nor alluded to it. The appeal heard in Court of Appeal was based on incompetent appeal and that court’s decision is a nullity. The appeal to this court is therefore based on a nullity. It is therefore incompetent. The appeal is allowed on the above reasons. E No order as to costs is made.*

*Sgd.*

*S.M.A BELGORE,*

*JUSTICE, SUPREME COURT.”*

This being a matter raised suo motu by the court to which the parties had F no reply but to accede, we all wrote our rulings. Ogundare, J.S.C. wrote *“JUDGMENT”*

*(Delivered by M.E. OGUNDARE, J.S.C.)*

*The judgment of the Court of Appeal being incompetent it is hereby declared null and void. It follows that the only valid judgment subsisting is G that of the High Court, Enugu given on 7th April, 1982. The appeal to this court is allowed for the above reason.*

*No order as to costs.*

*Sgd.*

*M.E. OGUNDARE,*

H *Justice, Supreme Court.”*

Also Kutigi, J.S.C. wrote:

*“RULING*

*(Delivered by KUTIGI, J.S.C.)*

*The High Court judgment was delivered in this case on 7/4/82 and*

*the Notice of Appeal to the Court of Appeal was filed on 12/11/82. clearly outside the statutory period of 3 months. The appeal before this court is based on a judgment of Court of Appeal which is a nullity. The appeal before this court therefore succeeds and it is hereby allowed. The judgment of the Court of Appeal is set aside as null and void. No order as to costs.*

*Sgd.*

*I.L. KUTIGI,*

*Justice, Supreme Court."*

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My learned brothers Mohammed and Onu, JJ.S.C. agreed with the lead ruling by me. The question now, as raised succinctly in the Brief of Argument attached to the motion by Akpamgbo, S.A.N. is whether this court can now amend its judgment. To my mind, but for avoidance of doubt, the motion would be unnecessary; it is however also not impossible for the other side to the case to misconstrue the use of the phrase "appeal is allowed" and raise in future pursuit of the case the issue *res judicata*. It is for that purpose that in adding to the judgment the court will only do substantial justice to avoid confusion.

**Section 215 of the Constitution of 1979 gives finality to the decision of the court. Once the decision is given it is final as no further appeal lies from it, not even to this court. But the court can be moved to correct errors, cross the 'T's and dot the 'I's. In doing this the meaning of the judgment will be clear. There was no appeal against the judgment of Anambra High Court to the Court of Appeal Enugu Division, because the purported appeal was incompetent. Therefore the appeal purportedly heard by the Court of Appeal when the appeal was in fact not before it was a nullity. You cannot place anything right on a nullity; as such the alleged appeal to this court was null and void as it was actually not based on a decision.** Does our ruling of 8th of January written instantly on the Bench represent all that was necessary to convey the actual purport of our decision? I believe we must still cross some 'T's and dot some 'I's. (See *Cardoso v. Daniel* (1986) 2 NWLR (Pt. 20) 1, at 28 for the purport of s.215 of the Constitution (supra), and also *Obioha v. Ibero & Another* (1994) 1 NWLR (pt. 322) 503, 520 and *Adigun v. A.-G Oyo State & Ors.* (1987) 2 NWLR (Pt. 56) 197). **Thus where there was a clerical error or error arising out of accidental slip or omission in the judgment, that error can be corrected to give proper meaning to the judgment. Similarly if the judgment as drawn up does not correctly represent what the court decided, a motion, not an appeal, may be brought to pray the court to make clear its intention.** (See *Obioha v. Ibero & Another* (supra). **Certainly this**

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**court could not have dismissed an appeal that did not exist, it can only strike it out as incompetent. As the matter of incompetence of the appeal arose ex tempore in court had the parties saw the validity of the issue so raised, it said so and its clerical slip of saying the appeal was “dismissed” after clearly saying it was incompetent should not have been given any other meaning than that it was “struck out”. Therefore for the avoidance of doubt, the appeal which was incompetent was struck out and use of the words “appeal dismissed” should be construed as “appeal is struck out”.**

We thank Mr. Akpamgbo, S.A.N for his thoughtfulness in writing a Brief of Argument for this motion even though not required by the Rules of this court as it greatly reduced the argument to basics and shortened what would have been a prolonged argument.

There is no order as to costs.

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**KUTIGI JSC**

This court on 8th January, 1996 held that the judgment of the Court of Appeal which was appealed was a nullity because the Notice of Appeal was filed out of time. The proper order which the Court of Appeal ought to have made and which we made was the one striking out the appeal.

The appeal or purported appeal before this court could therefore only have been struck out and not dismissed nor allowed as there was in fact no appeal before the court. In short each of the appeals in each court was struck out. And our judgment ought to be understood as such.

It is for the above reasons and those contained in the lead Ruling of my learned brother Belgore, J.S.C. which I read before now, that I also grant the application. I make no order as to costs.

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**OGWUEGBU JSC**

I read before now in draft the ruling just delivered by my learned brother Belgore, J.S.C. and I agree with it.

On 8th January, 1996 this court heard the appeal in Suit No. SC. 155/1991 between the parties to the present application. In the lead judgment the court concluded as follows:

*“The appeal heard in the Court of Appeal was based on incompetent appeal and that the court’s decision is a nullity. The appeal to this court is therefore based on a nullity. It is therefore incompetent. The appeal is allowed on the above reasons. No order as to costs.”*

The applicant who is the respondent in the said appeal has brought this application praying for the following orders:

*“(i) to amend or vary its judgment delivered in the above appeal on the 8th day of January, 1996, exhibited as Exhibits “A” “B” and C.”*

*“(ii) correcting some error arising from accidental slip or omission in the judgment to wit ..... ”* B

*“(iii) Directing that the judgment as drawn up does not correctly represent what the Court actually decided or intended to decide.*

*“(iv) Discharging the said order and substituting therewith that the appeal to the Supreme Court based on an incompetent appeal from the Court of appeal be struck out.”* C

The application is brought under Orders 2 Rule 28(1) and 8 Rule 16 of the Supreme Court Rules and section 6(6) (a) of the 1979 Constitution.

Order 8 rule 16 reads:

*“The court shall not review any judgment once given and delivered D 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.”* E

The High Court of Anambra State gave judgment in the matter leading to these proceedings on 7:4:82.

About six months after the decision of the High Court, the defendant (now applicant) sought and obtained leave of the High Court instead F of the Court of Appeal to appeal to that court against the decision of the High Court. Pursuant to the leave granted by the High Court, he filed his Notice of Appeal on 12:11:82. The High Court having no statutory power to grant the leave, the appeal to the court below was clearly incompetent. Its decision on the purported appeal is therefore a nullity. The incompetence of the appeal to the court below was discovered at the hearing of a further appeal to this court. G

On 8:1:96, this court held that the appeal before us was based on a judgment which is a nullity. Instead of striking out the appeal, the court allowed it. It is quite clear that there is a mistake in expressing the manifest H intention of the court. This can be corrected under Order 8 rule 16 of the Rules of this court. Where an error such as this has been committed, it is within the competence of the court, if nothing has intervened which would render it inequitable or inexpedient to do so, to correct the record in order to

bring it into harmony with the order which the court obviously meant to pronounce. See *Obioha v. Ibero & Ors* (1994) 1 NWLR (Pt. 322) 503 at 520. *Cardoso v. Daniel* (1986) 2 NWLR (pt. 20) 1 at 28, *Adigun v. Attorney-General Oyo State & Ors.* (1987) 2 NWLR (Pt. 56) 197, *Hatton v. Harris* (1892) A.C. 547 and *Mellor v. Swire* 1 Ch. D. 329.

B Order 8, rule 16 does not empower the court to review its judgment. It only enables it to correct any clerical mistake or some error arising from any accidental slip, or omission in the judgment or order so as to give effect to its meaning and intention.

There is merit in the application and the correction ought to be made. This court never meant to allow an appeal on a null decision.

I agree with my learned brother Belgore, J.S.C. that this application be granted and I hereby grant it. I make no order as to costs.

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D **ONU JSC**  
I agree.

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E **ADIO JSC**  
I have had a preview of the ruling just delivered by my learned brother, Belgore, J.S.C., and I agree entirely with it. The clear intention of the court was that the appeal which was held to be incompetent should be struck out. The order made should be construed accordingly. No order as to costs.

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