

**SUPREME COURT OF NIGERIA**  
2ND JUNE, 2000. SC. 14/1995  
**CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE,**  
**E. O. OGWUEGBU, S. U. ONU, A. I. IGUH, JJSC**

ALHAJI TAOFEEK ALAO ..... APPLICANT  
AND  
AFRICAN CONTINENTAL BANK LTD. .... RESPONDENT

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**JUDGMENTS** - *Setting aside - Inherent power - There is an inherent power to set aside a judgment - Given in the absence of jurisdiction - Or where the procedure adopted is such as to deprive the decision of the character of a legitimate adjudication*

**JUDGMENTS** - *Setting aside - Negligence of counsel - Complaint that counsel was unable to present case properly - Is not a sufficient ground to set aside decision*

**SUPREME COURT** - *Functus Officio - Rules of the Supreme Court 1985 as amended - Order 8 r. 16 thereof - When the Supreme Court becomes functus officio under that rule*

**SUPREME COURT** - *Jurisdiction - Judgment - Review of - When the Supreme Court has no power to review its judgment*

**SUPREME COURT** - *Judgment - Finality of - Judgment of the Supreme Court is final - And there is no right of appeal except as provided under s. 235 of the Constitution 1999*

**SUPREME COURT** - *Judgment - Setting aside - When the Supreme court can set aside its decision.*

**SUPREME COURT** - *Judgment - Review of - Principles under which the Supreme court can review its own judgment - As enshrined in the*

*provisions of order 8 r. 16 of the Rules of the Supreme Court 1985 as amended*

**WORDS & PHRASES** - *Ex debito justitiae* - *A remedy ex debito justitiae*  
- *What it means*

### **FACTS**

In the Supreme Court of Nigeria, the applicant filed a motion on notice praying for an order to set aside, *ex debito justitiae*, the judgment of the Supreme Court delivered on the 27th February, 1998 in appeal No. SC. 14/1995 and for the rehearing of the appeal on the basis of the new evidence exhibited to the affidavit in support of the motion. The application was filed pursuant to the inherent jurisdiction of the Court. The grounds of the application are that: the applicant has been penalised and has suffered injustice because his case was not fairly presented to or considered by the Supreme Court, the decision of the Supreme Court was based on fundamental and false assumption of law and fact which the court was not entitled to make; and the decision of the Supreme Court is clearly contrary to the intention of the justices themselves.

In the affidavit in support of the application, the applicant averred that on 27th February 1998 the Supreme Court dismissed his appeal against the decision of the Court of Appeal (Lagos Division). And that the Court further made a consequential order that the proceeds of the relevant 45 bank drafts subject of the litigation should be returned by the defendant/respondent to the Central Bank of Nigeria. He claimed that the Court decided the appeal against him because of the failure of his counsel to produce the relevant authorisation of the Minister of Finance for the payment of the drafts. And that his counsel was in a very poor health condition which adversely affected his memory and judgment when the appeal was argued.

### **ISSUE FOR DETERMINATION**

*whether these are reasons why judgment ought to be set aside ex debito justitiae*

**HELD** (Unanimously dismissing the application per lead ruling of **KARIBI-WHYTE JSC**)

***Words & Phrases - Ex debito justitiae***

1. Very concisely stated, a remedy ex debito justitiae is that which the applicant gets as of right in accordance with the requirements of justice. (p. 1818 A)

***Supreme Court - Judgment***

2. Pursuant to sections 216 of the 1979 Constitution, the Chief Justice of Nigeria has made rules regulating the powers, practice and procedure of the Supreme Court. Order 8 r. 16 of the Rules of the Supreme Court 1985 (as Amended) has provided for the limited circumstances in which the Court can review its own judgment. The following three principles appear to be enshrined in the provision of this Rule. First, the Court shall not review any judgment once delivered see Adefulu v. Okulaja (1998) 5 NWLR. 435. The exception to this prohibition is where it is intended to correct any clerical mistakes or some error arising from accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. This is known as the slip rule. Secondly there is a total prohibition from review of a judgment which correctly represents what the Court decided. Such a judgment shall not be varied. Thirdly, the operative and substantive part of a judgment shall not be varied and a different form substituted. (p. 1818 G)

***Setting aside - Inherent power***

3. I have already pointed out in this judgment that Applicant view is that there should be an inherent power to set aside a judgment given in the absence of jurisdiction or where the procedure adopted is such as to deprive the decision of the character of a legitimate adjudication.

Without doubt the proposition is unarguably correct and falls squarely within the principles enunciated in Madukolu & ors v. Nkemdilim & ors. (1962) 1 All NLR. 587. These principles are well settled and accepted. None of the issues stated above has been raised in the application

before us. (p. 1819 H)

***Setting aside - Negligence of counsel***

4. Applicant is not challenging the jurisdiction of the Court. If that was his position he would have relied on the general rule that any Court of record has an inherent power to set aside its judgment or order which is a nullity - See Skenconsult (Nig.) Ltd v. Sekondy-Ukey (1981) 1 SC.6. He has also not alleged any procedural irregularity sufficient to vitiate the judgment. His case is founded on supposed injustices to applicant because his counsel was unable to present his case properly to the Court on account of his ill-health. It is difficult to appreciate how this reason falls within the principle enunciated which aims at vitiating a decision on grounds of want of jurisdiction or of procedural irregularity. There is no judicial decision known to me where the complaint by applicant of the fact that counsel was unable to present his case properly was regarded as sufficient ground to set aside the decision. (p. 1820 D)

***Judgment - Setting aside***

5. It is important and pertinent to state that this Court has the inherent power and jurisdiction to set aside its decision in appropriate cases. This it can do when the judgment has been obtained by fraud practised on the Court by one of the parties - See S.O. Alaka v. Adekunle (1959) LLR. 76, Flower v. Lloyd (1877) 6 Ch. D. 297, Olufumise v. Falana (1990) 3 NWLR. 1. This court will set aside its decision which is a nullity - See Okoli Ojiako & ors v. Onwuma Ogueze & ors. (1962) 1 All NLR. 58, Salisu Idris Saliyun v. Alhaji Dan Mashi (1975) 1 NMLR. 55 at p. 58. Ogbu v. Urum (1984) 4 SC. 1; Nwosu v. Udeaja (1990) 1 NWLR. 180; Robert Okafor & ors v. A-G Anambra State & ors. (1991) 6 NWLR. 659, 680. This Court can set aside its judgment where it is obvious that the Court was misled into giving the judgment under a mistaken belief that the parties consented to it - See Ganiyu Agunbiade v. Okunoga & Co. (1961) All NLR. 110, Obimonure v. Erimosho & Anor. (1965) 1 All NLR. 250. The case of the Applicant before us does not fall into any of above cited decisions. (p. 1821 B)

***Supreme Court - Jurisdiction***

6. The exercise of the jurisdiction of the Supreme Court is statutory and its powers are circumscribed by the provisions of the Constitution and rules of practice made thereunder. See Adigun v. A-G of Oyo State (1987) 2 NWLR. 197. By section 215 of the Constitution, 1979, (now section 235 B of the Constitution 1999) the decision of the Court is final. However, rules of Court have been made under section 216 of the 1979 Constitution enabling the Supreme Court to review or vary its judgment in certain circumstances. The Supreme Court has no power to review its judgment once delivered - See Asiyanbi & ors. v. Adeniji (1967) 1 All NLR. 82, C Minister of Lagos Affairs, Mines & Power & Anor. v. Akin-Olugbade & ors. (1974) 1 All NLR. (pt. 2) 226, Iro Igbu & ors. v. Ogburu Urum & ors. (1981) 4 SC. After dismissing an appeal under Order 8 r. 8. it has no power to entertain an application to re-enter the appeal - See Chukwura & ors. v. Ezulike (1986) 5 NWLR. 892 - Although under 8 rule 16, the Court is entitled to correct a misnomer or misdescription under the slip- D Rule it cannot under that Rule whether in the exercise of its inherent jurisdiction or by the powers conferred by the Rule of Court vary a judgment E or order which correctly represents what the Court decided, nor will it vary the operative and substantive part of its judgment. - See Oyeyipo v. Oyinloye (1987) 1 NWLR. 356 Macarthy v. Agard (1933) 2 K.B. 417. The Court's inherent jurisdiction to amend an order already drawn up is F limited to cases where an order as drawn up does not correctly state what the court actually decided and intended by its judgment - Preston Banking Co. v. William Allsup & Sons (1895) 1 CH. D.143. (pp. 1821 F/1823 A)

***Supreme Court - Functus officio***

7. The provisions of Order 8 r. 16 was construed in Oyeyipo v. Oyinloye (1987) 1 NWLR. 356 and held to be in pari materia with Order 9 r. 7, Rules of the Supreme Court 1977, which was considered in Ogbu v. Urum (1981) 4 SC. 1. As in that rule, the expression "shall" in this rule was held H to be mandatory. Accordingly, the effect of the rule is that generally this Court having come to a decision and embodying such decision in a judgment or order, it becomes functus officio, and cannot reopen the matter and

substitute a different decision to the one already recorded. (p. 1822 F)

***Judgment - Finality of***

8. It is well settled that the judgment of this Court validly constituted as to  
 B the number of its justices jurisdiction of the subject matter is final. There  
 is no right of appeal to any person or authority except as provided under  
 section 215 (now section 235) of the Constitution 1979. The provisions  
 for the correction of accidental mistakes or varying the order to bring it in  
 C line with the intention of the judgment has not made any provision for  
 setting aside the judgment or for a rehearing of the appeal. (p. 1823 F)

**NOTABLE POINTS OF INTEREST**

**OGUNDARE JSC**

D *1. Application to amend judgment must be brought before the engrossment  
 of the formal order*

It will be seen from this case that the inherent power of the Court is to be  
 exercised with the purpose of justice required of it but an application must  
 E be brought before the engrossment of the formal order. There is no doubt  
 that the order of the Court made on 27th February 1998 dismissing the  
 appeal has been drawn up and engrossed. It is too late, therefore, to call in  
 aid the inherent jurisdiction of this Court as discussed in the cases above.  
 F (p. 1830 D)

*2. How to set aside judgment obtained by fraud*

The Court will also set aside its judgment obtained by fraud or deceit -  
S.O Alaka v. Adekunle (1959) LLR 76; Olufunmise v. Falana (1990) 3  
 G NWLR 1, but this is by means of an action - Flower v. Lloyd (1877) 6 Ch.  
 297. (p. 1833 C)

**IGUH JSC**

H *3. When a court becomes functus officio*

It may thus be said that where a court has decided an issue and the decision  
 is correctly embodied in its judgment, such a court becomes functus officio  
 and cannot re-open the matter or substitute a different decision in place of

the one which has been recorded. See Unakalamba and Another; In Re Unakalamba v. Commissioner of Police 3 F.S.C. 7. Those who seek to alter or amend the judgment thus delivered must involve such appellate jurisdiction as may be available. See Akin-Olugbade and others v. Onigbongbo Community and others (1974) 6 S.C 1. (p. 1845 C) B

#### 4. *Distinction between misdirection and accidental slip*

A misdirection or error in law which is apparent on the face of a judgment must be distinguished from an accidental slip or clerical mistake in a judgment. Whereas the former is appealable and cannot be remedied under the "slip rule", the latter may, in appropriate cases, be corrected under this rule. (p. 1845 D) C

#### 5. *Why the Supreme Court will not sit on appeal over its Judgments* D

As I have observed this court, as a final court of appeal, has no jurisdiction to sit on appeal over its judgments. This is clearly understandable as otherwise there would never be an end to any litigation, a situation which, without doubt, will spell doom to law and order and the administration of justice generally. So, in Minister of Lagos State Affairs, Mines and Power v. Chief Akin-Olugbade (1974) 11 S.C 11 at 20, this court, refusing to exercise its inherent power to review its decision observed per Elias, C. J. N. as follows E

*"For, were we to accept the submission of counsel for the applicants that we can exercise jurisdiction to entertain these motions to look into complaints about the law or the fact in the judgment being attacked, there would be no finality about any judgment of this court and every affected litigant could bring further appeals as it were, ad infinitum. That is a situation that must not be permitted".* (p. 1846 A) F G

#### 6. *Where the applicant's case has been fairly presented to the court*

The second ground alleges that the applicant has suffered injustice because his case was not fairly presented to or considered by this court. I should, perhaps, observe that I was a member of the panel of this court that heard the appeal in question with the Honourable the Chief Justice of Nigeria, H

Uwais, C. J. N., presiding. I must confess that I feel distressed to note that the brilliance and industry exhibited by the applicant's learned counsel in that appeal, a one time Solicitor - General of the Federation and Senior Advocate of Nigeria, in the manner he settled the appellant's brief of argument and argued the appeal were dismissed summarily and ungratefully for reasons which I find difficult to comprehend. It was even alleged that the learned Senior Advocate's "memory and judgment were adversely affected" by his poor health on the date he argued the appeal. These allegations were made by the applicant in the affidavit in support of this application. It is significant that he was neither present in court when his appeal was argued nor did he depose to his source of information, very damaging to his own counsel. Speaking for myself, the applicant's appeal was thoroughly and meticulously argued before us by his learned Senior Advocate. The appellant's brief of argument settled and filed by learned counsel was painstakingly and admirably prepared. The appeal itself was argued by him with definite force and expertise. I cannot, for my part, subscribe to the submission now urged upon us that the applicant's case was not fairly presented considered by this court at the hearing. This ground is entirely frivolous and unsubstantiated and I do not hesitate to dismiss it. (p. 1846 E)

7. *Where judgment correctly represents the actual decision of the court*  
 There is finally the last ground upon which this application is based. This complains that the judgment of the court in issue is "contrary to the intention of the Justices themselves". Again, with profound respect, I find myself in great difficulty to comprehend the real purport of this ground. As I have already indicated, I happen to be on the panel that heard the appeal in question and delivered the unanimous judgment of this court now sought to be set aside. It is in this capacity that I must, with the greatest restraint and humility, assert most emphatically and for the avoidance of doubt that the said judgment of this court most correctly represents the clear intention and the actual decision of this court in the appeal. I therefore hasten to dismiss this ground as unmeritorious and without foundation whatsoever. (p. 1847 B)



**REPRESENTATION**

C. A. Candide - Johnson, (with him, Ahmed T. Uwais) for Applicant  
Abdullahi Ibrahim, SAN, (with him, A. Oyeyipo and R. Oguneso) for the  
Central Bank of Nigeria  
Chief B. I. D. Ezeogu, (with Peter Onyegahialam) for the Respondent. B

**CASES REFERRED TO**

Adigun v. A-G Oyo State (1987) 1 NSCC. 545  
Ashiyanbi v. Adeniji (1967) 1 All NRL. 250 C  
Re Gray Dressler v. Gray (1887) 36 Ch. D. 205  
Oyeyipo v. Oyinloye (1987) 1 NWLR (Pt. 50) 356  
Adigun v. A-G Oyo State (1978) 1 NSCC. 545  
Shell P.D.C. v. Uzoaru (1994) 9 NWLR (Pt. 366) 51  
Adefulu v. Okulaja (1998) 5 NWLR. 435 D  
Skenconsult (Nig.) Ltd v. Sekondy-Ukey (1981) 1 SC.6  
Ojiako v. Ogueze (1962) 1 All NLR. 58

**STATUTES & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1979; SS. 6 (6), 215 and 216  
Constitution of the Federal Republic of Nigeria, 1999 SS. 235  
Rules of the Supreme Court, 1985 as amended O. 8 r. 16 E  
F

**LEAD RULING BY KARIBI-WHYTE JSC**

This is a ruling on the application seeking an order to set aside ex debito justitiae the judgment of this court, delivered on the 27th Feb., 1998 dismissing his appeal against the judgment of the Court of Appeal dated 16th May, 1994. The order seeks a rehearing of the appeal on the basis of the material exhibited to the affidavit in support of the motion. The application was brought by way of notice of motion under the inherent jurisdiction of the Court. G  
H

**GROUND FOR THE APPLICATION.**

The grounds for the application are as follows: -

*"a. That the Applicant has been penalised and has suffered*

*injustice because his case was not fairly presented to or considered by the Supreme Court of Nigeria.*

*b. The decision of the Supreme Court was based of (sic) on fundamental and false assumptions of law and fact which the Court was not entitled to make.*

*c. The decision of the Supreme Court is clearly contrary to the intention of the Justices themselves."*

The history of the litigation which has led to this application and the worries of the applicant is copiously recited in the affidavit in support.

Paragraphs 2, 3, 4, 5, 6, 7, 8 give the background to the present application, and the clear absence of intention of the Applicant/Appellant to contravene the laws of the country, or to commit any acts of illegality. Paragraphs 14, 16 are expressions of opinion about why this court decided the appeal against applicant, namely the failure of counsel to produce the relevant authorisation of the Minister of Finance for the payment of the drafts subject matter of this litigation. Paragraphs 17, 18, 19 place the blame on the failure of Counsel due to poor health to present the case of the Appellant/Applicant, adequately, clearly and properly before the Court. Paragraphs 20, 21, 22, 23, 24, 26 are substantive arguments of the legal validity of the transactions which it was averred were not brought to the attention of the Court during the hearing.

#### THE FACTS

Being an application to set aside the judgment of this Court, it is only relevant to state so much of the facts of the case as is necessary for the determination of this application.

On the 7th February, 1998, this Court heard the appeal of the Appellant against the judgment of the Court of Appeal. In a unanimous judgment the Court dismissed the appeal with N10.000 costs to the Respondents. The application before this Court is to set aside this judgment and rehear the appeal on the grounds stated in the motion. Applicant is relying on the inherent jurisdiction of this Court for the Order sought.

#### ARGUMENTS OF COUNSEL.

Both learned Counsel for the Applicant and Respondent filed briefs of argument in this application. Learned Counsel to the Central Bank who

appeared for the Central Bank did not file any brief of argument and offered no argument. Counsel adopted and relied on their briefs of argument in presenting their respective arguments before us.

In presenting his argument learned Counsel for the Applicant Mr. Candide-Johnson posed what he described as two difficult questions to the Court. The first question was "On what principle and in what circumstances will the Supreme Court of Nigeria set aside its own final judgment. Second, whether fundamental defects in the adjudication and manifest injustice resulting in this case are sufficient ground for the Supreme Court to exercise the power."

The submission is that the decision by this Court of the 27th February, 1998 ought to be set aside ex debito justitiae and the appeal reheard on the basis of critical evidence exhibited to the affidavit in support of this Notice of Motion.

Learned Counsel to the Applicant has in his brief of argument criticised extensively the judgment of this court in various respects. In fact, learned counsel concluded that the order made by this court was inconclusive and of benefit to neither of the parties. Counsel conceded the finality of the judgments of this Court, but argued that notwithstanding this court has an inherent power to set aside its decision ex debito justitiae. It was submitted that the facts of this case come within the principles which can be enunciated from the various decisions

Counsel referred to several decisions of this Court and R v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte, Pinochet Ugarte No. 2 (1999 1 NWLR. 272 and formulated the general principle that "Where it is established that in the course of a legitimate adjudication circumstances existed which falsify fundamentally the jurisdiction assumed, or the procedure adopted or the factual or legal conclusion or decision reached the adjudication will be deprived of the character of a legitimate adjudication and will be liable to be set aside ex debito justitiae."

Counsel concluded that "The Court should do so where injustice would ensue and through no fault of his own, the party has suffered the injustice through fundamentally unfair procedure."

The decisions of this Court referred to and relied upon were Obioha

v. Ibero (1994) 1 NWLR. 503, on the interpretation of Order 8 r. 16 R. SC 1985; Odofin v. Olabanji (1996) 3 NWLR. 126 where the Court held it had inherent power to set aside its own decision where there was a fundamental defect in the proceedings, Chim v. Ude (1996) 7 NWLR. 379, where this Court held it had power to set aside its own judgment shown to be invalid, null and void, in breach of the Constitution or given in error. But in this case the Court dismissed the application and held there was no invalidity. In Olorunfemi & ors. v. Asho & ors. SC. 13/1993, the complaint was that this Court had overlooked a vital element of the case. The Court recognised its power to set aside its judgment ex debito justitiae, and on the 18th March, 1999 set aside its decision delivered on the 8th January, 1999.

Counsel referred to Ex parte Pinochet Ugarte, where the judgment of the House of Lords was set aside on the ground of the appearance of bias on the part of one of their Lordships.

It was also submitted that because of illness of counsel, the Supreme Court did not have the opportunity to fairly consider the case. The reason suggested was that existing matters which the Court expressly desired to consider, but which were as result overlooked would have had a decisive effect on Applicant's case.

Counsel referred to Section 6 (6) (a) & (b) on the general judicial powers and sections 213 (1) & (6) & 216 of the Constitution of Nigeria 1979 and submitted that these provisions do not derogate from the judicial powers. Counsel also cited section 215 of the Constitution 1979 and submitted that none of these provisions is being contravened.

Learned Counsel referred to Order 8 rule 16 RSC. 1985 and Adigun & ors. v. A-G Oyo State (1987) 1 NSCC. 545 Ashiyambi v. Adeniji (1967) 1 All NRL. 250 where this court has declined the invitation to set aside its decision. It was submitted that in those cases there have been no injustice and there was no reason to exercise the power. Learned Counsel argued that the Supreme Court is a superior Court of record with inherent powers outside the jurisdiction conferred to review its own judgment. He relied on Lawrence v. Norreys (1890) 15 AC. 210, Re Gray Dressler v. Gray (1887) 36 Ch. D. 205.

Learned Counsel distinguished the decisions of Oyeyipo & anor. v. Oyinloye (1987) 1 NWLR (Pt. 50) 356, and Adigun v. A-G Oyo State (1978) 1 NSCC. 545 as cases decided on the ground that no injustice had been done to the Applicants.

Specifically referring to the instant case, learned Counsel attacked the judgment of this court and submitted that the court intended to decide the case before it according to the effect of the Exchange Control Act. Counsel pointed out that the Court failed to identify the Exchange Control (Delegation of Powers) Notice 1962 ( L.N. No. 82 of 1962 Cap.113 Laws of the Federation of Nigeria 1990) by which the Minister of Finance delegated certain powers under the Exchange Control Act 1962 to the Central Bank of Nigeria. The Order approving the remittances is attached and marked Exhibit TA 3. The fact that the Central Bank remitted the funds is not in dispute. It was also not in dispute that Respondent to this application was named as an authorised dealer by LN. No. 31 of 1968, the Exchange Control (Appointment of Authorised Dealers) Notice. Learned Counsel then submitted that because the attention of the court was not drawn to these provisions of the law, both Applicant's counsel and the court assumed that the transactions were illegal in violation of the Exchange Control Act 1962. It was submitted that without the relevant laws the Justices could not fairly decide the question of illegality, and could not consider whether the Applicant had not committed any wrong and that he should have the money paid to him.

It was further submitted that the presumed illegality should not have rendered the action of the Applicant unenforceable. Learned Counsel then went on to consider the decisions of our Courts that they will not enforce a contract based on illegality. - Citing Sodipo v. Lemninkainen Oy (1986) 1 NWLR. 220, Thirwell v. Oyewunmi (1990) 4 NWLR. 384.

Learned Counsel argued that the effect of illegality is that one or both parties will be precluded from suing on the transaction. Noting the complexity of the principle of illegality, it was submitted that it is not in every case that illegality renders the transaction or the action invalid. In the instant case learned Counsel submitted that the question is whether the Exchange Control Act. 1962 or the Exchange Control Anti Sabotage Decree

1985, renders unenforceable, the obligation of the owners of the drafts to repay the Applicant after he had settled their own liability in good faith.

Answering in the affirmative, it was submitted the obligation could be performed without infringing the law. The loan contract which may  
B have been contrary to Nigerian law could be performed legally if authority was obtained. It was submitted relying on Bank fur Geminwirtschaft Aktiengesellschaft v. City of London Garages (1971) 1WLR. 149 and Archbold (Freightage) Ltd v. Spanglett Ltd. (1961) 1 QB. 374 that since  
C Applicant was ignorant of Nigerian law and did not intend any illegality, to deprive him of his rights would merely injure the innocent, benefit the guilty and put a premium on deceit.

Learned Counsel submitted that if Applicant had produced the permission which should have been sought and obtained under section 3  
D (1) of the Exchange Control Act, the decision of the Court would have been different, since Counsel was allowed to do so even at the stage before the court. The inability to do so was attributed to the failing health of Counsel for the Appellant/Applicant. The Applicant should not be made to  
E suffer for the lapses of Counsel. The case of Shell P.D.C. v. Uzoaru (1994) 9 NWLR (Pt. 366) 51 was cited and relied upon.

Learned Counsel submitted that the endorsement on the cheques does not deny its value as a cheque. No person is contesting the cheque.

F Finally it was submitted that -

(a) The order made is inconclusive and of benefit to no one.

(b) No order was made with respect to interest that has accrued on the fund.

(c) The order to the Central Bank to receive and retain a fund  
G determined to be owned by a private individual, is now being locked up in perpetuity.

(d) It is contrary to public policy to lock up money in this manner.

It is quite obvious from the grounds of the application and the arguments  
H in support that applicant is seeking a rehearing of the appeal already decided and judgment given on the grounds of substantive errors in the determination of the appeal arising from fundamental and false assumptions of law and facts on the part of the Court, and the injustice suffered by the applicant

because of the inability of his counsel to present his case properly and fairly before the Court. Applicant also contended that the decision sought to be set aside was contrary to the intention of the justices themselves. The question is whether these are reasons why judgment ought to be set aside ex debito justitiae

Learned Counsel to the Respondent Chief B. I. D. Ezeogu, in his brief of argument adopted the same line of argument and went on to point out how correct the Supreme Court was in its decision sought to be set aside. Referring to the pleading of the parties, he submitted that the transaction was illegal and that Applicant was not denying this and admitted the facts both in the pleadings and in the evidence of the Applicant and his witnesses. Learned Counsel submitted that the grounds on which the application was brought clearly stated that the Supreme Court was being asked to sit on appeal over its own decision. Citing and relying on the dictum in Tynne v. Tynne (1955) 3 All ER. 129 Minister of Lagos State Affairs, Mines & Power v. Chief O. B. Akin-Olugbade (1974) 11 SC. 11, Osoba v. The Queen FSC. 141/ 1961, and Adigun v. A-G Oyo State, (1987) NSCC, 545 in addition to sections 6 (6) (9) sic of 1979 and now 6 (1) (4) sic of the 1999 Constitution, it was submitted that the Court cannot reopen the matter, and cannot substitute a different decision from the one recorded. Learned Counsel submitted that this court cannot in this case set aside its own decision.

The contention of the Applicant may be summed up from his formulation that the decision of this Court delivered on the 27th February, 1998 should be set aside ex debito justitiae on the grounds relied upon in the motion. In accordance with this formulation, this court should have the inherent power to set aside its judgment "where it is established that in the cause of a legitimate adjudication circumstances existed which falsify fundamentally the jurisdiction assumed or the procedure adopted or the factual or legal conclusion or decision reached, the adjudication will be deprived of the character of a legitimate adjudication and will be liable to be set aside ex debito justitiae." In other words this court should have an inherent power to set aside its decisions reached in those circumstances where adjudication was exercised in the absence of jurisdiction or where

the procedure adopted is such as to deprive the decision of the character of a legitimate adjudication.

**Very concisely stated, a remedy ex debito justitiae is that which the applicant gets as of right in accordance with the requirements of justice.**

I have already referred to the relief sought by the applicant to this motion. There is no doubt that the aim of the relief sought is for this Court to set aside its judgment delivered on the 27th February 1998. Applicant has argued that despite the constitutional prohibitions and the applicable rules of Court, this court can exercise its inherent power to set aside its judgment in this appeal. The onus is on the applicant to show that grounds exist in the interest of justice which make it imperative the setting aside of the judgment complained of. It is important to what shall be stated hereafter to refer to the applicable constitutional provisions and rules of the Supreme Court.

Section 215 of the Constitution of the Federation 1979 (now section 235 of 1999 Constitution) provides -

*"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."*

It is relevant to refer also to the provisions of Section 213 (6) of the 1979 Constitution (now section 233 (6) of the 1999 Constitution) which states,

*"Any right of appeal to the Supreme Court from the decisions of the (Federal) Court of Appeal conferred by this section shall, subject to section 216 of this Constitution, be exercised in accordance with any act of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Supreme Court."*

**Pursuant to sections 216 of the 1979 Constitution, the Chief Justice of Nigeria has made rules regulating the powers, practice and procedure of the Supreme Court. Order 8 r. 16 of the Rules of the Supreme Court 1985 (as Amended) has provided for the limited circumstances in which the Court can review its own judgment. It 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 accidental slip or omission 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."* B

**The following three principles appear to be enshrined in the provision of this Rule. First, the Court shall not review any judgment once delivered see Adefulu v. Okulaja (1998) 5 NWLR. 435. The exception to this prohibition is where it is intended to correct any clerical mistakes or some error arising from accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. This is known as the slip rule. Secondly there is a total prohibition from review of a judgment which correctly represents what the Court decided. Such a judgment shall not be varied. Thirdly, the operative and substantive part of a judgment shall not be varied and a different form substituted.** C D E

A construction of this rule demonstrates unequivocally a clear prohibition on the interference subsequently with the operative and substantive part of a judgment. See Pearlman (veneers) S.A. (pt.) Ltd. v. Bartels (1954) 3 All ER. 659. Similarly, a judgment which correctly represents the decision of the Court, cannot be varied. The only aspect of a judgment which can be interfered with subsequent to delivery is that which enables correction of clerical mistakes or some errors arising from accidental slips or omissions, or to vary the judgment or order to give effect to its intention - See Ayansin Umunna & ors. v. Okwuraiwe (1978) 1 LRN. 253. F G

I consider it appropriate to answer the criticisms of the applicant that the decision of this court should be set aside ex debito justitiae. It is interesting to observe that the reasons relied upon by the applicant do not fall within any of the grounds stated in application or the principles of ex debito justitiae enunciated by learned Counsel. **I have already pointed out in this judgment that Applicant view is that there should be an** H

**inherent power to set aside a judgment given in the absence of jurisdiction or where the procedure adopted is such as to deprive the decision of the character of a legitimate adjudication.**

**Without doubt the proposition is unarguably correct and falls squarely within the principles enunciated in Madukolu & ors v. Nkemdilim & ors. (1962) 1 All NLR. 587. A Court is competent when**

(1) It is properly constituted as regards numbers and qualifications of members of the bench, and no member is disqualified for one reason or another, and

(2) The subject matter of the case is within its jurisdiction, and there is no failure in the case which prevents the court from exercising its jurisdiction, and

(3) The case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.

**These principles are well settled and accepted. None of the issues stated above has been raised in the application before us. Applicant is not challenging the jurisdiction of the Court. If that was his position he would have relied on the general rule that any Court of record has an inherent power to set aside its judgment or order which is a nullity - See Skenconsult (Nig.) Ltd v. Sekondy-Ukey (1981) 1 SC.6. He has also not alleged any procedural irregularity sufficient to vitiate the judgment. His case is founded on supposed injustices to applicant because his counsel was unable to present his case properly to the Court on account of his ill-health. It is difficult to appreciate how this reason falls within the principle enunciated which aims at vitiating a decision on grounds of want of jurisdiction or of procedural irregularity. There is no judicial decision known to me where the complaint by applicant of the fact that counsel was unable to present his case properly was regarded as sufficient ground to set aside the decision.**

The judgment of this Court sought to be set aside, held that

(a) the Applicant acted illegally and contravened the Exchange Control Act because permission of the Minister of Finance was not obtained

for the transfer of funds

(b) The contract by which the advances were made was illegal or for an illegal purpose

(c) The transfer of the Cheque was impossible because of their restrictive endorsement

(d) If the Applicant could produce the permission of the Minister, the decision might be different.

**It is important and pertinent to state that this Court has the inherent power and jurisdiction to set aside its decision in appropriate cases. This it can do when the judgment has been obtained by fraud practised on the Court by one of the parties - See S.O. Alaka v. Adekunle (1959) LLR. 76, Flower v. Lloyd (1877) 6 Ch. D. 297, Olufumise v. Falana (1990) 3 NWLR. 1. This court will set aside its decision which is a nullity - See Okoli Ojiako & ors v. Onwuma Ogueze & ors. (1962) 1 All NLR. 58, Salisu Idris Saliyun v. Alhaji Dan Mashi (1975) 1 NMLR. 55 at p. 58. Ogbu v. Urum (1984) 4 SC. 1; Nwosu v. Udejaja (1990) 1 NWLR. 180; Robert Okafor & ors v. A-G Anambra State & ors. (1991) 6 NWLR. 659, 680. This Court can set aside its judgment where it is obvious that the Court was misled into giving the judgment under a mistaken belief that the parties consented to it - See Ganiyu Agunbiade v. Okunoga & Co. (1961) All NLR. 110, Obimonure v. Erimosho & Anor. (1965) 1 All NLR. 250. The case of the Applicant before us does not fall into any of above cited decisions.**

**The exercise of the jurisdiction of the Supreme Court is statutory and its powers are circumscribed by the provisions of the Constitution and rules of practice made thereunder. See Adigun v. A-G of Oyo State (1987) 2 NWLR. 197. By section 215 of the Constitution, 1979, (now section 235 of the Constitution 1999) the decision of the Court is final. However, rules of Court have been made under section 216 of the 1979 Constitution enabling the Supreme Court to review or vary its judgment in certain circumstances. The Supreme Court has no power to review its judgment once delivered - See Asiyanbi & ors. v. Adeniji (1967) 1 All NLR. 82, Minister of Lagos Affairs, Mines & Power & Anor. v. Akin-Olugbade & ors. (1974)**

**1 All NLR. (pt. 2) 226, Iro Igbu & ors. v. Ogburu Urum & ors. (1981) 4 SC. After dismissing an appeal under Order 8 r. 8. it has no power to entertain an application to re-enter the appeal - See Chukwura & ors. v. Ezulike (1986) 5 NWLR. 892 -**

B I have already reproduced in this judgment the provisions of Order 8 r. 16 Rules of the Supreme Court, 1985 (as amended) which enable this Court to review its decisions in certain circumstances. This rule is in pari Materia with the provisions of Order 7 rule 29 Federal Supreme Court Rules. In Asiyanbi v. Adeniji (1967) 1 All NLR. 82, where Order 7 rule 29 Rules of the Supreme Court 1960 was considered, this Court clearly stated that it possesses the power subject to appropriate safeguards where the justice of the case so requires, to correct or amend the terms of its own orders of judgments to effect such variations therein to carry out the meaning  
C  
D intended by the judgment.

In Minister of Lagos Affairs, Mines and Power & Anor. v. Akin-Olugbade & ors. (1974) 1 All NLR. 226, this Court construed the provisions of Order 7 r. 29 to mean that the rule only envisages an application for the  
E invocation of the slip rule as stated in Asiyanbi v. Adeniji (supra), and that it does not enable an application to be brought for the review of any fact or law in a previous judgment of the court. This Court pointed out that to allow the review of any fact or law in a previous judgment would tantamount to treating the application as an appeal and inconsistent with the provisions  
F of section 120 of the Constitution 1963.

**The provisions of Order 8 r. 16 was construed in Oyeyipo v. Oyinloye (1987) 1 NWLR. 356 and held to be in pari materia with Order 9 r. 7, Rules of the Supreme Court 1977, which was considered  
G in Ogbu v. Urum (1981) 4 SC. 1. As in that rule, the expression "shall" in this rule was held to be mandatory. Accordingly, the effect of the rule is that generally this Court having come to a decision and embodying such decision in a judgment or order, it becomes functus officio, and cannot reopen the matter and substitute a different  
H decision to the one already recorded.**

In the recent decision of this Court in Chime v. Ude (1996) 7 NWLR. 379 a full court, after a split decision of 6;1 revisited and followed

the earlier judgment of Oyeyipo v. Oyinloye (1987) 1 NWLR. 356. It was held that the Supreme Court had no jurisdiction to review its judgment or orders except as provided in Order 8 rule 16 of the Supreme Court Rules 1985 (as amended).

**Although under 8 rule 16, the Court is entitled to correct a misnomer or misdescription under the slip-Rule it cannot 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. - See Oyeyipo v. Oyinloye (1987) 1 NWLR. 356 Macarthy v. Agard (1933) 2 K.B. 417. The Court's inherent jurisdiction to amend an order already drawn up is limited to cases where an order as drawn up does not correctly state what the court actually decided and intended by its judgment - Preston Banking Co. v. William Allsup & Sons (1895) 1 CH.D.143.**

Learned Counsel had stated that the decision of the Court was clearly contrary to the intention of the justices. There is however, nothing in the judgment to show that the judgment as drawn up was different from what was decided. Learned Counsel to the Applicant based his conclusion on what he regarded as the bias of the Court and the prejudice of assumed illegality. These are by no means the requirements under Order 8 rule 16, or grounds enabling setting aside the judgment ex debito justitiae. Learned counsel to the Applicant would appear to have misunderstood and misconceived the scope and amplitude of the exercise of the inherent jurisdiction of the Court to set aside its own decision ex debito justitiae. **It is well settled that the judgment of this Court validly constituted as to the number of its justices jurisdiction of the subject matter is final. There is no right of appeal to any person or authority except as provided under section 215 (now section 235) of the Constitution 1979. The provisions for the correction of accidental mistakes or varying the order to bring it in line with the intention of the judgment has not made any provision for setting aside the judgment or for a rehearing of the appeal.**

This Court cannot exercise the jurisdiction sought by the Applicant

in this Motion. The application is accordingly dismissed.

Applicant shall pay N1,000 as costs to the Respondent.

B

**OGUNDARE JSC**

This appeal was disposed of by this Court on 27th February, 1998 and in the judgment delivered by this Court that day, the appeal was dismissed with costs of N10,000.00 in favour of the Respondent. The Appellant has now brought this application praying this Court for:

C

*"An Order setting aside the judgment of this Honourable Court dated 27th February 1998 ex debito justitiae and re hearing the appeal on the basis of the material exhibited to the affidavit in support of the Notice of Motion."*

D

upon the Grounds -

*"(a) That the Applicant has been penalised and has suffered injustice because his case was not fairly presented to or considered by the Supreme Court of Nigeria.*

E

*(b) The decision of the Supreme Court was based on fundamental and false assumptions of law and fact which the court was not entitled to make.*

*(c) The decision of the Supreme Court is clearly contrary to the intention of the Justices themselves."*

F

In the affidavit in support of the application the Appellant deposed inter alia as follows:

G

*"2. That on 27th February 1998 the Supreme Court of Nigeria gave judgment in this case and dismissed my appeal against the decision of the Court of Appeal sitting at Lagos on 16th May 1994, in which case the said Court of Appeal reversed judgment given in my favour by the High Court of Lagos per Segun J. (as he then was) on 13th May 1988.*

H

*3. That in the said decision this Honourable Court ordered that the proceeds of 45 bank drafts endorsed to me in 1979 and separated in an interest bearing account since 1980 by the Respondent be transferred to the custody of the Central Bank of Nigeria.*

*14. That the foundation of the decision of the Supreme Court of*

*Nigeria is the implication of illegality arising from failure to produce relevant permission of the Minister of Finance for the payment of the said drafts when same became critical at the Court of Appeal and thereafter despite the express invitation of the Supreme Court to my counsel to do so.*

B

*16. That the deep suspicion of the Supreme Court was aroused by the failure of my counsel to produce the relevant authorisation and this signal failure is the basis of an unjust decision.*

*17. That the failure of my counsel to take the opportunity granted in the interest of justice in a twenty-year-old case has caused me very great injustice and has resulted in the expropriation of a very large fund belonging to me.*

C

*18. That my counsel (F. Nwadialo S.A.N) was in very poor health on the 16th of December 1997 when the appeal was argued and this is borne out by the records of argument before the Supreme Court, wherein exceptional physical indulgence including offers of adjournment were given to him by their lordships.*

D

*19. That I believe that Mr. Nwadialo's memory and judgment were adversely affected by his poor health on that occasion.*

*20. That in proceedings in the High Court a witness from the Central Bank of Nigeria (Baruwa Olakunle Eti) gave uncontroverted evidence that the drafts were paid through the appropriate procedures of the Central Bank of Nigeria.*

F

*21. That these procedures (well known to every parent who educated a child overseas in the 1970s) constitute due authorisation of the payment on behalf of the relevant authorities.*

*22. That by the Exchange Control (Delegation of Powers Notice 1962 the Minister of Finance delegated certain powers under the Exchange Control Act 1962 to the Central Bank of Nigeria. The order is attached marked TA 3.*

G

*23. That among the powers delegated was the power to approve the remittance of foreign exchange.*

H

*24. That in its letters marked TA 4 the Nigeria Police confirmed that the Applicant was not guilty of any criminal conduct.*

25. *That in addition, efforts at extracting unqualified admission of these facts was made difficult by the attention of the security agencies of the federation of Nigeria who asserted a right to seize the said private fund.*

B 26. *That marked TA 5 is a relevant letter from the National Security Adviser on 20th January 1998 and marked TA 6 is the self explanatory reply of the Minister of Finance made on 29th January 1998.*

27. *That these materials were not brought to the attention of this Honourable Court for the reasons aforesaid.*

C 28. *That the Supreme Court also made several remarks obiter, which as to the transferability of the drafts in respect of which no argument was advanced on my behalf.*

D 29. *That I believe Mr. Candide-Johnson who informs me that drafts marked 'non-negotiable' and 'A/C Payee' only are not negotiable as a matter of law but that they are transferable as they were in this case.*

E 30. *That the Supreme Court very clearly did not intend to seize the fund if due authorisation could be established and by the existence of the said authorisation the judgment of 27th February 1998 does not represent the intention of the Supreme Court.*

F 31 *That on 4th January 1998 one of my attorneys Dr. L. E. Williams wrote a frantic letter to the Chief Justice of Nigeria drawing attention to the failure of Mr. Nwadiaro and the reasons therefore and asserting the existence of the missing evidence. The letter is marked Exhibit TA 7.*

G 32. *That regrettably by letter dated 27th February 1998 one Mr. D. E. Ukah, Assistant Chief Registrar responded to advise that the letter arrived only a few hours after final judgment was delivered. The letter is marked TA 8.*

H 33. *That I have made several efforts since to unlock my money including appeals to the Attorney-General of the Federation (letter and reply are attached marked TA 9 and TA 10) and by application to the Federal High Court sitting at Abuja (Ruling attached marked TA 11) but all parties recognise that only the Supreme Court of Nigeria can right the grievous wrong which I have sustained."*



In effect the Appellant/Applicant is by this application seeking to abort the previous hearing of his appeal so that at the re-hearing of the appeal he may be able to put forward materials which he considers are crucial to his case but which, due to inadvertence, were not put before this Court at the previous hearing.

Mr. Candide-Johnson learned leading counsel for the Applicant submitted that the power of this court to set aside its own judgment ex debito justitiae was undoubted. He observed that the issue in the current application was whether that power should be exercised in this case. He argued strenuously that injustice would be done to the Applicant if the application was refused. He admitted, both in the written brief he filed along with the application and in his oral submissions, that the evidence which the Appellant would seek to produce at the re-hearing of his appeal existed at all relevant time but it was his former counsel who did not bring the evidence before the Court.

At the conclusion of oral argument by learned leading counsel for the Applicant we did not consider it necessary to call on counsel for the Respondent to reply; we considered his written brief sufficient.

Section 235 of the Constitution of the Federal Republic of Nigeria 1999 provides:

*" 235. 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."*

This section provides for finality of the judgment of this Court and as this Court cannot sit on appeal against its own decision, it will have no power to set aside its own judgment except as have been decided by this Court in a number of cases. I shall now examine in brief these special cases. By Order 8 Rule 16 of the Supreme Court Rules, that is, the rules of this Court, the Court has power to correct any clerical mistake or some error arising from any accidental slip or omission or to vary its judgment or order so as to give effect to its meaning on intention. This is what is known as the "slip rule"

The rule provides:

"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."

In Asiyanbi & Ors v. Adeniji (1967) ANLR 88, part of the relief sought in the defendants' notice of appeal was judgment in their favour on their counter-claim for a declaration of title to the land in dispute. The Supreme Court judgment, which set aside the High Court judgment in so far as it granted the plaintiff a declaration of title, etc, observed in passing that the counter-claim was not properly before the High Court having been filed out of time without leave and should in any event have been brought as a cross-action, and saying that there was however no appeal against the order dismissing the counter-claim, it upheld that order. The formal order drawn up on the Supreme Court judgment stated that the order dismissing the counter-claim should stand; and the defendants applied to the Supreme Court to delete from its judgment and order all references to the counter-claim and substitute therefore an order either (a) directing argument as to the appropriate order to make or (b) striking out the counter-claim. Dismissing the application, this Court held that after the formal order is drawn up the court may not, whether in its inherent jurisdiction or under the rule of court, apply the slip rule to vary a judgment or order which, as in the case now on hand, correctly represents the Court's decisions, nor may it vary the operative or substantive part of its judgment so as to substitute a different form. The Court also held that the Court's inherent jurisdiction to amend an order already drawn up is limited to cases where the order as drawn up does not correctly state the actual decision and intention of the judgment. In construing a rule similar to our present Order 8 rule 16, this Court, per G. B. A. Coker JSC., observed at page 92 of the report:-

*"The application raises 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 provisions in the Rules of Court the court must and does possess the powers, subject to appropriate safeguards where the justice of the case so requires, to correct or amend the terms of its own orders or judgments 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 misapprehension it may be corrected to make it clear. (See per Lindley L.J. in Re Swire, Mellor v. Swire (1885) 30 Ch. D. 239 at p. 246)."

Incidentally, this case also dealt with the extent of the inherent power of this Court to correct or to amend its own judgment. Coker JSC at page 93 of the report further observed:

"It seems to us, after listening to both sides, that there is a measure of agreement on the extent of the inherent jurisdiction of the court to correct or amend the terms of its own judgments so long as these judgments have not been formally drawn up (see the observations of lord Denning M. R. in Varty (Inspector of Taxes) v. Prithish South Africa Co. [1965] Ch. 508 at 515). It has not been contended before us, however, that the inherent jurisdiction of the Court in this respect would entitle the court to effect an amendment which would be tantamount to re-hearing an order which it intended to make (and did make) but which it is said it ought not to have made. The jurisdiction of the court to correct its records before the drawing up of the formal order is one that calls for the exercise of strict judicial discretion."

The learned Justice of the Supreme Court cited, with approval, a passage in the judgment of Jenkins L.J. in Re: Harrison's Shares Under a Settlement, Harrison v. Harrison & Ors. (1955) 1 All E.R. 185 at pp. 188, 192 where the learned lord Justice said:

"We think that an order pronounced by the judge can always be withdrawn or altered or modified by him until it is drawn up, passed and entered. In the meantime it is provisionally effective and can be treated as a subsisting order in cases where the justice of the case requires it and the right of withdrawal thereby prevented or prejudiced ..... When a judge

*has pronounced judgment he retains control over a case until the order giving effect to his judgment is formally completed. This control must be used in accordance with his discretion exercised judicially and not capriciously. Coker JSC then added:*

- B *The power of amendment or correction of its records inherent in the jurisdiction of the court is manifestly wide and subject to the limitation that it must be exercised when the purposes of justice require it. The courts have always refused to define its extent or categorise its limits. (See per Evershed L.J. in Meier v. Meier [1948] 117 L.J. Re. 436 at page 439. It is therefore beyond question that if the present application had been brought before the engrossment of the formal order and an appeal were made to the inherent jurisdiction of the court for the prayers herein sought, the argument of counsel for the defendants would have attracted*
- D *more force ....."*

It will be seen from this case that the inherent power of the Court is to be exercised with the purpose of justice required of it but an application must be brought before the engrossment of the formal order.

- E The rules of Court envisages the correction or amendment of (a) clerical mistakes and (b) errors arising from any accidental slip or omission. In the application now before us no question arises of any clerical mistake either in the judgment of the Court or in the formal order as drawn up in consequence thereof. It is not also contended that there are errors arising
- F from any accidental slip or omission. There is no doubt that the order of the Court made on 27th February 1998 dismissing the appeal has been drawn up and engrossed. It is too late, therefore, to call in aid the inherent jurisdiction of this Court as discussed in the cases above.

- G In Adigun v. Attorney-General of Oyo State, (1987) 2 NWLR 197, this Court sitting as a Full Court held that the sub-section (6) of Section 6 of the 1979 Constitution which provided that the judicial powers vested in the courts extended to all inherent powers and sanctions of a
- H court of law, did not empower the Court to review its own decision. It further held that there is no constitutional provision for the review of a judgment of the Supreme Court by itself and that where the 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 had been recorded. Obaseki JSC at page 212 of the report observed:

*"The powers of inherent powers of the Court of law are powers 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 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) 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 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 category 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.*

*I would, in conclusion, observe that this Court has in several cases refused to exercise its inherent powers to review its decisions and this is not the first occasion that such application as this is coming before*

B *it. Mention may be made of*

1. *Ashiyambi v. Adeniji (1967) 1 All NLR. 82*

2. *Minister of Lagos Affairs, Mines and Power & Anor. v. Akin-Olugbade & Ors. (1974) 11 SC. 11.*

C 3. *Chief Iro Ogbu & Ors. v. Chief Ogburu Urum (1981) 4 S. C. 1*

4. *John Chukwuka & 9 Ors. v. N. G. Ezulike (1986) 5 NWLR 892 (Part 45).*

5. *Oba Jacob Oyeyipo v. Chief J. O. Oyinloye (1987) 1 NWLR (PART 50) 356."*

D There are other judgments of their lordships to the same effect. I need not set them out in this Ruling. In Omokewu & Ors v. Olubanji & Anor. (1996) 3 NWLR 126; the question that arose was whether the judgment of this Court delivered on July 17, 1992 and of the Court of Appeal delivered E on February 1st 1989 were not null and void in view of the death of the 1st Respondent before those judgments were delivered and, therefore, ought not to be set aside. Dismissing the application to set aside, this Court held that it had no jurisdiction to review its own judgments. It further held that F any Court, including the Supreme Court has an inherent jurisdiction to set aside its judgment or decision that is a nullity. I observed at page 133 of the report thus:

*"True enough, this Court has no jurisdiction to review its own judgment. To this extent I agree with Mrs. Williams. But this application G does not seek review of the judgment of the court but seeks to have the judgment set aside on the ground that it is a nullity. It is settled law that a court (and that includes this court) has an inherent jurisdiction to set aside its judgment or decision that is a nullity - See Skenconsult (Nig) Ltd. v. Ukey (1981) 1 SC 6; Craig v. Kansen (1943) KB 256, 262-263; (1943) 1 All ER 108, 113, Obimonure v. Erinoshio & Anor. (1966) 1 All NLR 250; (1966) All NLR 245 (Reprint). I, therefore, reject plaintiffs H contention that this Court has no jurisdiction to entertain the application*

*now before us."*

Again in Chime v. Ude (1996) 7 NWLR 379 the question whether this Court has jurisdiction to set aside its own decision came before the Full Court sitting as a Constitutional Court and once again, held that as a general rule, any court of record has an inherent power to set aside its judgment or order which is a nullity. See also Obioha v. Ibero (1994) 1 NWLR 503 at 523-524 and Skenconsult (Nig.) Ltd. v. Ukey (1981) 1 SC. 6; Obimonure v. Erinosho & Anor. (1966) 1 All NLR 245; R v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte No.2 (1999) 1 NWLR 272. The Court will also set aside its judgment obtained by fraud or deceit - S.O Alaka v. Adekunle (1959) LLR 76; Olufunmise v. Falana (1990) 3 NWLR 1, but this is by means of an action - Flower v. Lloyd (1877) 6 Ch. 297.

Coming now to the case on hand, it is not the case of the application that the judgment delivered by this Court on 27th of February 1998 is a nullity. His case is that his counsel was negligent in putting before this Court all materials that would have enabled the Court to decide in his favour and that, therefore, *ex debito justitiae* this Court should exercise its inherent power to set aside that judgment of the 27th February, 1998 and to rehear the appeal in order to enable him put forward those materials that would tilt the scale in his favour. I do not think, on the authorities, this court has jurisdiction to grant the order that is being sought. Although this Court is the Court of last resort, it is nevertheless a court of appellate jurisdiction. Its jurisdiction is clearly laid down in the Constitution. And except for the original jurisdiction given it in section 232 of the 1999 Constitution (see section 212 of the 1979 Constitution), its jurisdiction is appellate only, with incidental original jurisdiction conferred by subsection (6) (a) of section 6 of the constitution, for the purpose of exercising that appellate, jurisdiction. The Court is statutory and cannot, therefore, for the sake of doing justice, confer on itself a jurisdiction that is not given it by the Constitution or by any statute. Moreover, it is in the public interest that there should be an end to litigation.

It is for the above reasons and the other reasons contained in the judgment of my learned brother Karibi-Whyte JSC that I too dismiss this

application with costs as assessed by my learned brother.

**OGWUEGBU JSC**

The applicant herein was the appellant in appeal No. SC. 14/1995 which this court dismissed on 27-4-98 in a reserved judgment. He has brought a motion on notice under the inherent jurisdiction of the court for the following:

*"(1) An Order setting aside the judgment of this Honourable Court dated 27th February, 1998 Ex Debito Justitiae and Re-Hearing the appeal on the basis of the material exhibited to the affidavit in support of this Notice of Motion.*

*AND TAKE NOTICE that the grounds for this application are:*

*(a) That the Applicant has been penalized and has suffered injustice because his case was not fairly presented to or considered by the Supreme Court of Nigeria.*

*(b) the decision of the Supreme Court was based of (sic) on fundamental and false assumptions of law and fact which the court was not entitled to make*

*(c) The decision of the Supreme Court is clearly contrary to the intention of the Justices themselves."*

The facts relied upon by the applicant are set out in an affidavit of 36 paragraphs deposed to by the applicant himself. A counter-affidavit of 41 paragraphs deposed to by Eunice Nwaeje, Secretary in the Chambers of the respondent's solicitor was filed in opposition to the motion. Briefs of argument were also filed by the learned counsel for the applicant and the respondent.

Mr. C. A. Candide-Johnson for the applicant in the brief in support of the application submitted as follows:

*"It is important to acknowledge that the Applicant does not argue against the finality of a Supreme Court final decision. The Applicant agrees that no court can review, vary or modify a final decision of the Supreme Court of Nigeria. What the applicant says, is that leaving untouched the line of authority, which asserts this finality, there is a different equally strong and sacrosanct line, which upholds the inherent*



*power of a court of record to set aside its decision Ex Debito Justitiae.*

*This Honourable Court has exercised the Power in several cases and in different circumstances. The Respondent will submit respectfully that the principle to be distilled from the various cases is of general application and that it covers the facts and circumstances herein."* B

Learned counsel cited and relied on the following cases:

Obioha v. Ibero (1994) 1 NWLR (Pt. 332) 503, Odofin v. Olabanji (1996) 3 NWLR (Pt. 435) 126, Chime v. Ude (1996) 7 NWLR (Pt. 461) 379, R v. Bow Street Metropolitan Stipendiary Magistrate, Ex-parte Pinochet Ugarte, delivered by the House of lords on 15-1-99. Counsel also referred to sections 6 (6) (a) and (b), 213 (1) and (6), 215 and 216 of the Constitution of the Federal Republic, 1979 which were in force when the application was filed. It was further submitted that the power of the court to review its judgment arose in several cases before this court and that the court declined the invitation and that those cases are distinguishable from the present. Reference was made to the case of Adigun and Ors. v. Attorney-General, Oyo State (1987) 1 NSCC 545 and Ashiyambi v. Adeniji (1967) 1 All N.L.R. 250. D E

Counsel further contended that this court being a superior court of record has inherent powers to review its judgment and that these powers are necessary to enable it to function effectively with the character of a court of justice and that this power has always existed even outside the jurisdiction conferred upon it by the Constitution, for example, the inherent power of a court to dismiss an action which is an abuse of its process. The cases of Lawrence v. Norrays (1890) 15 A. C. 210 and Re Gray, Dresser v. Gray (1887) 36 Ch. D. 205 were cited in support of the proposition that at common law the court has inherent jurisdiction before entry of judgment in a case or the drawing up of an order after judgment has been entered, to reconsider the matter. F G

Chief B. I. D. Ezeogu, counsel for the respondent submitted in the respondent's brief that the constitutional provisions on proceedings before the Supreme Court were not taken into account by the applicant. He referred the court to the case of Adigun & Ors. v. Attorney-General, Oyo State (1987) 1 NSCC 546. He also referred to section 6 (6) of the 1979 H

Constitution which is replaced by section 6 (6) of the 1999 Constitution.

The applicant has in very clear terms asked this court to set aside its judgment delivered on 27-2-98 and set it down for a re-hearing to enable him put forward vital materials in his possession which were not before this court at its earlier hearing owing to the negligence of his counsel.

The finality of any determination of the Supreme Court is recognised in section 235 of the Constitution of the Federal Republic of Nigeria, 1999. It provides that no appeal shall lie to any other body or person from any determination of this court. Where else can this court derive the power to set aside its own judgment? The attention of the court was drawn to section 6 (6) (a) of the 1979 Constitution which provides as follows:

"6 (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 contention of the learned counsel for the applicant is that the inherent jurisdiction would entitle the court to set aside its judgment ex debito justitiae and to order a re-hearing to enable the applicant present the materials which were not fairly presented to or considered by this court.

I am afraid we have no jurisdiction to do that which is being urged on us in this case under the inherent jurisdiction. This court possess inherent powers to set aside its judgment or order which is shown to be a nullity. See Obioha v. Ibero (1994) 1 N. W. L. R. (Pt. 322) 503, Chime v. Ude (1996) 7 N. W. L. R. (Pt. 461) 397, R. v. Bow Street Stipendiary Magistrate, Exparte, Pinochet Ugarte No. 2 (supra) and Skenconsult (Nig.) Ltd v. Ukey (1981) 1 S. C. 6. In Flower v. Lloyd (1877) 6 Ch. D. 297, judgment was obtained by the fraud of the defendants. It was held that the court had no jurisdiction to rehear the appeal although the judgment was obtained by fraud and that the remedy of the plaintiffs in such a case was by original action to set aside the judgment or order. However, this court in the unreported case of Osoba v. The Queen, FSC. 14/ 1961 decided on 19-5-61 observed as follows:

*"We will decide what powers the Courts possess in relation to a judgment obtained by fraud, such as was said to have occurred in Flower v. Lloyd, when the case arises. This is not such a case, and no circumstances are alleged which would justify the Court either in treating its previous decision as a nullity or in assuming the power to set it aside."* B

Order 8 Rule 16 of the Supreme Court Rules, 1985 as amended does not confer the jurisdiction. Order 8 Rule 16 provides as follows:

*Rule 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."* C D

Order 8 Rule 16 reproduced above contemplates a situation for the application of the "slip rule" as expounded by this court in Ashiyanbi & Ors. v. Adeniji (1967) 1 All N.L.R. 82. There is no doubt that the court has power at anytime to correct an error in a judgment or order arising from a slip or accidental omission, whether there is or is not a general order to that effect. See Hatlon v. Harris (1892) A.C. 547 and Umunna & Ors v. Okwurawe & Ors. (1978) 1 LRN 53. But where a court has decided an issue and the decision of the court is truly embodied in its judgment or order that has been made effective, then the court cannot re-open the matter and cannot substitute a different decision in place of the one which had been recorded. See Thynne v. Thynne (1955) 3 All E. R. 129 at 146. This court is not entrusted by the Constitution with supervisory functions and in the exercise of its appellate jurisdiction, it is bound by the ordinary restrictions on the setting aside of a judgment once pronounced and perfected. If there existed the jurisdiction to set aside the judgment, it would be most mischievous and there would be no end to litigations. E F G

For the above reasons and for the fuller reasons in the lead ruling of my learned brother Karibi-Whyte, J.S.C. which I now adopt as mine, I, too, dismiss the application which is impertinent in its language. I also abide by the order for costs as contained in the lead ruling. H

### ONU JSC

The order sought in this matter reserved for Ruling today is that of re-hearing of the appeal premised on the following grounds:-

B *"(a) That the Applicant has been penalised and has suffered injustice because his case was not fairly presented to or considered by the Supreme Court of Nigeria.*

*(b) The decision of the Supreme Court was based of (sic) on fundamental and false assumption of law and fact which the Court was not entitled to make.*

*(c) The decision of the Supreme Court is clearly contrary to the intention of the Justices themselves."*

D C. A. Candide-Johnson Esq. leading Ahmed T. Uwais Esq. of Counsel to the Applicant, moved his motion to amend their Brief of Argument of 10th December, 1999 to argue the Amended Brief in support thereof.

After learned Counsel for Applicant's application was granted as prayed, he submitted in argument as follows:-

E That the appeal to this Court, judgment in which was delivered on 27/2/98, be re-heard ex debito justitiae on the basis of the material exhibited to the Affidavit in support of the Notice of Motion of 28th December, 1999 and to which a 36 paragraph affidavit was exhibited along with the documents attached thereto. These included the Respondent's Brief in  
F opposition filed by Chief B.I.D. Ezeogu, of Counsel to the Respondent.

We were next referred to page 10 of the said Appellant's Brief of Argument of 28th December, 1999 and we were urged not only to set aside the said judgment but to afford the Applicant a second bite of the  
G apple.

When the question was put to learned Counsel by Court if we could do so in the fact of the authorities he himself had cited in this Court of last resort and further that as his argument would appear to be proposing  
H that if the evidence presently unavailable before the Court were made available, the decision now challenged would be no different unless he was coming under the authority of nullity. Learned Counsel replied in the negative. After this Court thereupon had observed that were this to be

so, there would be no end to litigation, learned Counsel for the Applicant still argued persistently that he would still urge us to grant his application.

As we felt no obligation to call upon learned Counsel for the Respondent Chief B.I.D. Ezeogu to reply, we adjourned the matter to today for Ruling.

Now, what the Applicant in his Brief of argument supported by a 36 paragraph affidavit thereof complains about as his main grouse for asking that the judgment of this Court earlier obtained against him on 27th February, 1998 be set aside are:-

Firstly, that there is want of jurisdiction on the part of the Court below and injustice to the Applicant whose Counsel's ill-health prevented him from presenting his case.

Secondly, on finality of judgments of this Court, which points them out as final and hinder them from being re-opened by it or any other court of the land or by any other authority by way of appeals, resort was had to several sections of the 1979 Constitution in contrast with the 1999 Constitution to wit:-

Section 215 of the Constitution of the Federation, 1979 (now Section 235 of 1999 Constitution) which provides:-

*"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."*

Having set out the above all important provision, it is relevant to refer next to the provision of section 213 (6) of the 1999 Constitution (now Section 233 (6) of the 1979 Constitution) which states:

*Any right of appeal to the Supreme Court from the decisions of the (Federal) Court of Appeal conferred by this section shall, subject to Section 216 of this Constitution, be exercised in accordance with any act of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Supreme Court."*

Further on the finality of the judgments of this Court, several cases decided by it have highlighted the principle. For instance, in the recent case of R v. Bow Street Metropolitan Stipendiary Magistrate, Exparte Pinochet Ugarte

No 2 (1999) 1 NWLR 272 wherein the general principle formulated was that

*"Where it is established that in the course of a legitimate adjudication circumstances existed which falsify fundamentally the jurisdiction assumed, or the procedure adopted or the factual or legal conclusion or decision reached, the adjudication will be deprived of the character of a legitimate adjudication and will be liable to be set aside ex debito justitiae"*

### INJUSTICE

The Court should perforce set aside the proceedings where injustice would ensue and through no fault of his own, the party complaining has suffered injustice through fundamentally unfair procedure. See Obioha v. Ibero (1994) 1 NWLR 503 on the interpretation of Order 8 Rule 16, Rules of the Supreme Court (RSC), 1985 and Odofin v. Olabanji (1996) 3 NWLR 126 where this Court held, inter alia, that it had inherent power to set aside its own judgment shown to be invalid, null and void and in breach of the Constitution or given in error. See Hakido Kpema v. The State (1986) 1 NWLR 396 and Scot-Emuakpor v. Ukavbe (1975) 12 S.C. 41. In Olorunfemi & Ors v. Asho & Ors. unreported Supreme Court Suit No. SC. 13/1993, the complaint was that this Court overlooked a vital element of the case. The Court recognised its power to set aside its judgment ex debito justitiae and so proceeded without much ado to do so. Contrast Chime v. Ude (1996) 7 NWLR 379.

The provisions of Section 6 (6) (a) and (b) of the 1979 Constitution, it was further submitted, do not derogate from the general judicial powers of this Court to set aside its own decision should injustice or miscarriage of justice be perpetuated. See Effiom v. The State (1995) 1 SCNJ 1 at 27.

### REVIEW OF JUDGMENT:

Nor do the provisions of Order 8 Rule 16 RSC on the power of review by this Court be detracted from except as provided therein, to wit:-  
*"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 is what is called the "Slip Rule".*

See the cases of Adigun & Ors. v. A.G. Oyo State (1987) 1 NSCC. 45, and Ashiyanni v. Adeniji (1967) 1 All NLR 250 where this Court declined the invitation to set aside its own decision whereas it would otherwise have had jurisdiction or inherent powers to set same aside or made an order to declare it a nullity. See Skenconsult (Nigeria) Ltd. v. Ukey (1981) 1 SC. 6. The cases of Oyeyipo & Anor v. Oyinloye (1987) 1 NWLR (Part 50) 356 and Adigun v. A.G. Oyo State (supra) are distinguishable from the case in hand in as much as those cases were decided on the ground that no injustice was therein done to the Applicants.

#### INHERENT JURISDICTION:

It is trite that this Court has the inherent power and jurisdiction to set aside its decision in appropriate cases; this it would do if enough material were placed before it, to wit: had it been demonstrated that the judgment under attack was obtained by fraud practiced on the Court by one of the parties? See S. O. Alaka v. Adekunle (1959) LLR. 76; Flower. Lloyd (1877) 6 Ch. D. 297; Olufumishe v. Falana (1990) 3 NWLR 1. This Court will, however, unhesitatingly set aside its decision which is a nullity. See Okoli v. Ojiako & Ors. v. Onwuma Ogueze & Ors. (1962) 1 All NLR. 58; Salisu Idris Saliyun v. Alhaji Dan-Mashi (1975) 1 NMLR 55 at 58; Ogbu v. Urum (1984) 4 SC. 1; Nwosu v. Udeaja (1990) 1 NMLR 180; Robert Okafor & Ors. v. A.G. Anambra & Ors. (1991) 1 NWLR 659 at 680.

This Court can appropriately set aside its judgment where it is obvious that it was misled into giving the judgment under a mistaken belief that the parties consented to it. See Ganiyu Agunbiade v. Okunoga & Co. (1961) ALL NLR. 250.

The Applicant falls into neither of the above cited instances and so his complaint herein is baseless.

The exercise of its jurisdiction by the Supreme Court is statutory in the sense that its powers are circumscribed by the provisions of the Constitution as well as rules of practice made there-under. By the provisions of Section 215 of the Constitution, 1979, (now Section 235 of the

Constitution of 1999) the decision of the Court is final. However, rules of Court have been made under Section 216 of the 1979 Constitution enabling the Supreme Court to review or vary its judgment in certain circumstances. Short of that, it has no power to review its judgment once delivered. See Ashiyambi & Ors. v. Adeniji (supra), Minister of Lagos Affairs. Mines and Power v. Chief Akin Olugbade & Others (1974) 1 All NLR (Part 2) 226; Iro Ogbu & Ors. v. Ogburu Urum & Ors. (supra). It also should be pointed out that after dismissing an appeal under Order 8 Rule 8, it has no power to entertain an application to re-enter the appeal. See Chukura & Ors. v. Ezulike (1986) 5 NWLR 892. See also Chime v. Ude (supra). Where Court cannot re-open a case, it becomes functus officio. See also Chime v. Ude (supra) & Oyeyipo v. Oyinloye (supra).

Nothing in the judgment indicates that the decision is clearly contrary to the intention of the justices. The Court was properly constituted. See Gabriel madukolu & Ors. v. Johnson Nkemdilim (1962) 1 ALL NLR 587. See Thynne v. Thynne (1955) 3 All E.R. 129; Minister of Lagos Affairs Mines & Power v. Chief Akin Olugbade (supra), Osoba v. The Queen FSC 141/1961 and Adigun v. A. G. Oyo State (supra).

The Applicant's grouse, all told is that the judgment obtained on 27th February, 1998 should be set aside not for want of jurisdiction but being contrary to the intention of the justices of the Court themselves; also the ill-health of his Counsel which prevented him from presenting his case. This the Court cannot do as the judgment has not been shown not to represent the intention of the justices that decided it.

It is for the above reasons and the more detailed ones contained in the leading judgment of my learned brother Karibi-Whyte, JSC with which I had expressed my entire agreement that I too dismiss this application. I award N1,000.00 costs against the Applicant in favour of the Respondent.

H IGUH JSC

I have had the privilege of reading in draft the ruling just delivered by my learned brother, Karibi-Whyte, J.S.C. and I am in complete agreement with him that this application lacks substance and ought to be



dismissed.

I wish, however, to make some brief comment by way of emphasis only.

In appeal No. SC. 14/1995, this court, in a unanimous decision on the 27th February, 1998 dismissed the appeal of the plaintiff/appellant with costs. It further made a consequential order that the proceeds of the relevant 45 bank drafts in issue amounting to #212,310.00 should be returned by the defendant to the Central Bank of Nigeria.

On the 18th day of June, 1999, the appellant in that appeal, now the applicant, filed this motion on notice praying for an order to set aside, ex debito justitiae, the said judgment of this court delivered on 27th February, 1999 and for the rehearing of the appeal on the basis of alleged new evidence exhibited to the affidavit in support of the motion. The application was filed pursuant to the inherent jurisdiction of this court.

The grounds for this application are stated to be as follows:-

*"(a) That the applicant has been penalised and has suffered injustice because his case was not fairly presented to or considered by the Supreme Court of Nigeria.*

*(b) The decision of the Supreme Court was based on fundamental and false assumption of law and fact which the court was not entitled to make.*

*(c) The decision of the Supreme Court is clearly contrary to the intention of the Justices themselves."*

There can be no doubt that as a general rule, every court of record, the Supreme Court of Nigeria not excepting, has inherent jurisdiction on application and in appropriate cases and circumstances to set aside its judgment or decision. This jurisdiction may be exercised where, for instance, the judgment or decision sought to be set aside is null and void ab initio or there was a fundamental defect in the proceedings which vitiates and renders the same incompetent and invalid. See Salami Omokewu and others v. Abraham Olabanji and Another (1996) 3 N.W.L.R. (Part 435)126, H Skenconsult (Nig) Ltd v. Ukey (1981) 1 S. C. 6 . In such cases, this court may ex debito justitiae set aside its decision or judgment and may make necessary consequential orders that the justice of each individual case

demands.

The point that needs be emphasized is that this court being a final court of justice under the Constitution has no jurisdiction and cannot under any circumstances sit on appeal over its own decisions. Once judgment is delivered, the Supreme Court is without power to sit on appeal or to review it, even by a full panel of that court. Its decision or judgment is final and, therefore, not that Court. Its decision or judgment is final and, therefore, not subject to an appeal or review by itself or by any other court. The best the Supreme Court may be invited to do is to exercise its jurisdiction under the "Slip Rule" as stipulated under the provisions of Order 8 Rule 16 of the Supreme Court Rules, 1985 to amend or correct some error arising from an accidental slip or omission in its decision or judgment.

Order 8 rule 16 of the Supreme Court Rules, 1985 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 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."*

There is, therefore, jurisdiction in the Supreme Court to amend or vary its own decision, judgment or order so as to carry out its own meaning, and, where the language used has been doubtful, to make it plain. See Chief Okoro Orukumkpor v. Itebu and others (1955) 15 W.A.C.A. 39 at 40, Umunna v. Okwuraiwe (1978) 6 - 7 S. C. 1, Adigun and others v. Attorney-General of Oyo State and others (1987) 2 N.W.L.R. (Part 56) 197 and Orthopaedic Hospitals Management Board v. Apugo and sons Ltd (1990) 1 N.W.L.R. (Part 129) 162. It must be stressed, however, that this jurisdiction is Limited only to situations where -

(a) There is a clerical mistake or some error arising from any accidental slip or omission in the decision or judgment; or

(b) It is necessary to vary the judgment so as to give effect to the court's own meaning or intention and make the same plain.

Such an error or omission must be an error in expressing the manifest intention of the court. See Olurotimi v. Ige (1993) 8 N.W.L.R. (part 311) 257 at 274. Where there is no ambiguity in the decision which calls for interpretation, construction or clarification, any attempt to import some contrary interpretation would amount to varying the judgment which B correctly represents what the court decided and is erroneous on point of law. See Daniel Ashiyanbi and others v. Emmanuel Adeniji (1967) 1 All N.L.R. 82, Nicon v. Pie Co. Ltd (1990) 1 N.W.L.R. (Part 129) 697 and University of Lagos v. Aigoro (1991) 3 N. W. L. R. (part 79) 382.

It may thus be said that where a court has decided an issue and the decision is correctly embodied in its judgment, such a court becomes functus officio and cannot re-open the matter or substitute a different decision in place of the one which has been recorded. See Unakalamba and Another; In Re Unakalamba v. Commissioner of Police 3 F.S.C. 7. D Those who seek to alter or amend the judgment thus delivered must involve such appellate jurisdiction as may be available. See Akin-Olugbade and others v. Onigbongbo Community and others (1974) 6 S.C 1. A misdirection or error in law which is apparent on the face of a judgment E must be distinguished from an accidental slip or clerical mistake in a judgment. Whereas the former is appealable and cannot be remedied under the "slip rule", the latter may, in appropriate cases, be corrected under this rule.

In the present application, this court is not being urged to correct F any clerical or accidental slip or omission in the judgment complained of. What the applicant seeks from the court is for an order to review and set aside its decision and for the rehearing of the appeal with a view to arriving G at an entirely different decision based on the three grounds already stated above. I think this application is totally misconceived as this court has no jurisdiction to sit on appeal over its decision, judgment or order.

One of the grounds upon which his application is made is that the H decision of the court was based on "fundamental false assumption of law and fact" which the court was not entitled to make. I need only reiterate that a misdirection or error in law in a judgment, so long as such a judgment represents what the court decided or the actual decision of the court, cannot

be corrected, varied or amended under the "slip rule" or at all otherwise than by an appeal. As I have observed this court, as a final court of appeal, has no jurisdiction to sit on appeal over its judgments. This is clearly understandable as otherwise there would never be an end to any litigation, B a situation which, without doubt, will spell doom to law and order and the administration of justice generally. So, in Minister of Lagos State Affairs, Mines and Power v. Chief Akin-Olugbade (1974) 11 S.C 11 at 20, this court, refusing to exercise its inherent power to review its decision observed C per Elias, C. J. N. as follows

*"For, were we to accept the submission of counsel for the applicants that we can exercise jurisdiction to entertain these motions to look into complaints about the law or the fact in the judgment being attacked, there would be no finality about any judgment of this court and D every affected litigant could bring further appeals as it were, ad infinitum. That is a situation that must not be permitted".*

I agree entirely with the above observation of the learned Chief Justice and fully endorse the same. I will now dispose briefly of the other E two grounds upon which this application is based

The second ground alleges that the applicant has suffered injustice because his case was not fairly presented to or considered by this court. I should, perhaps, observe that I was a member of the panel of this court that F heard the appeal in question with the Honourable the Chief Justice of Nigeria, Uwais, C. J. N., presiding. I must confess that I feel distressed to note that the brilliance and industry exhibited by the applicant's learned counsel in that appeal, a one time Solicitor - General of the Federation and Senior Advocate of Nigeria, in the manner he settled the appellant's brief G of argument and argued the appeal were dismissed summarily and ungratefully for reasons which I find difficult to comprehend. It was even alleged that the learned Senior Advocate's "memory and judgment were adversely affected" by his poor health on the date he argued the appeal. H These allegations were made by the applicant in the affidavit in support of this application. It is significant that he was neither present in court when his appeal was argued nor did he depose to his source of information, very damaging to his own counsel. Speaking for myself, the applicant's appeal

was thoroughly and meticulously argued before us by his learned Senior Advocate. The appellant's brief of argument settled and filed by learned counsel was painstakingly and admirably prepared. The appeal itself was argued by him with definite force and expertise. I cannot, for my part, subscribe to the submission now urged upon us that the applicant's case B was not fairly presented considered by this court at the hearing. This ground is entirely frivolous and unsubstantiated and I do not hesitate to dismiss it.

There is finally the last ground upon which this application is C based. This complains that the judgment of the court in issue is "contrary to the intention of the Justices themselves". Again, with profound respect, I find myself in great difficulty to comprehend the real purport of this ground. As I have already indicated, I happen to be on the panel that heard the appeal in question and delivered the unanimous judgment of this court D now sought to be set aside. It is in this capacity that I must, with the greatest restraint and humility, assert most emphatically and for the avoidance of doubt that the said judgment of this court most correctly represents the clear intention and the actual decision of this court in the E appeal. I therefore hasten to dismiss this ground as unmeritorious and without foundation whatsoever.

In the final result, it appears to me that what this application is intended to achieve is to give the applicant the opportunity of a second bite F at the cherry. Alternatively, it is an indirect way of appealing against the decision of this court handed down on the 27th February, 1998, a course of action which is legally untenable and unconstitutional.

It is for the above and the more detailed reasons contained in the G leading ruling that I, too, dismiss this application. I endorse the order as to costs therein made.