

SUPREME COURT OF NIGERIA

27TH JUNE 2008 S.C. 414/2001

**CORAM :-D. MUSDAPHER, S. A. AKINTAN, M.
MOHAMMED, W. S. N. ONNOGHEN, M. S. MUNTAKA-
COOMASSIE**

1. PRINCE EYINADE OJO
2. PRINCE RAIMI OLAYIWOLA OJO
3. PRINCE BUSARI OYENIKU APPELLANTS
4. PRINCE AMOS OLAOYE

(For themselves and on behalf
of Okunla Ruling House of the
Baale Ilora Chieftaincy)

AND

1. OLAYIWOLA OLAWORE
2. THE A.G. OF OYO STATE
3. AFIJIO LOCAL GOVT.
4. CHIEF J.O. LAWALE
5. S.O. OKELOLA RESPONDENTS
6. CHIEF DR. A. O. ODELEYE

(For themselves and on behalf of
Ilora Development Association)

COURTS - Abuse of process - Manifestations - Both proper and improper use of judicial process could amount to abuse of process - It is the inconvenience and inequities involved in the aims of an action - That constitute abuse of process (H1)

ESTOPPEL - Issue estoppel - Applicability - Conduct of Appellants amounts to re-litigating on issues already decided - Between the same parties in a court of competent jurisdiction - Neither party nor his agent or proxy would be allowed to do so (H2)

SUPREME COURT - Decisions - Effect - Finality of Supreme Court decisions in civil proceedings - Is absolute unless specifically set aside by later legislation - Which was not the case herein (H3)

FACTS

In 1982, before the Oyo State High Court, Plaintiffs/Appel-

lants had sued Defendants /Respondents claiming inter alia, a declaration that the 1956, Baale of Ilora Chieftaincy Declaration was the only valid declaration in respect of the Baale of Ilora chieftaincy, that the present Kingmakers were the only persons entitled to select a Baale of Ilora-elect; and for consequent declarations to the effect that the purported selection of the 3rd defendant/Respondent by warrant Kingmakers under the auspices of Oyo South Local Government was null and void. Their case was dismissed by both the trial court and the Court of Appeal. But Appellant's appeal to the Supreme Court in Appeal No. SC/218/1985 succeeded in part as the Court made an order that Oyo State Government should as a matter of extreme urgency set in motion the process for selection, appointment and installation of a new Baale of Ilora.

It is noteworthy that Appellants had unsuccessfully sought a declaration that 1st Appellant was the only candidate validly elected as Baale of Ilora in the said suit. In spite of the Supreme Court judgment and before Oyo State Government could carry out the directives of the Supreme Court, Appellants filed another action in 1994 that gave rise to this present appeal. They claimed sundry reliefs centred on a declaration that the 1st Appellant is already validly elected as Baale of Ilora to the exclusion of any other person.

ISSUE FOR DETERMINATION

Whether or not the appellants' action against the respondents brought at the trial court in 1994, was an abuse of the process of court as found by the court below in dismissing the appellants' appeal.

HELD (Unanimously dismissing the appeal per **MOHAMMED JSC**)
COURTS - Abuse of process - Manifestations

1. It is significant to observe that the abuse of court process or abuse of judicial process as the case may be, may be manifest in both a proper or improper use of the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. For example in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. It is also an abuse of process where there is no iota of law supporting a court process or where it is premised on frivolity or

recklessness. In other words it is the inconvenience and inequities involved in the aims and purposes of the action that constitutes abuse of process.

Instead of allowing the implementation of or the enforcement of that judgment in allowing the parties involved in the contest of the vacant stool to comply with the judgment of this court, the appellants, particularly the 1st appellant whose zeal in the contest for the exercise in the selection and appointment of the Baale of Ilora had virtually blinded him, decided to institute a fresh action which gave rise to the present appeal. This conduct of the appellants is the type of conduct on the institution of an action on the same subject matter and between the same parties that was strongly condemned by this court in Adigun v. Governor of Osun State (1995) 3 NWLR (Pt.385) 513 at 549, as being an abuse of process of court. (pp. 2655 F/2656 D)

Issue estoppel - Applicability

2. The conduct of the appellants in re-opening the issues already determined or in re-litigating on the issues already decided upon by this court in a final Judgment resolving the dispute between the parties, the law is also trite that once one or more issues have been raised in a cause of action and distinctly determined or resolved between the same parties in a court of competent jurisdiction, then neither party nor his privy or agent, can be allowed to relitigate that or those decided issues all over again in another action between the same parties or their privies or agents on the same issues.
(p. 2657 C)

Finality of Supreme Court decisions in civil proceedings

3. This case has clearly shown the futility of challenging the decision of this court, as the apex court in the hierarchy of our courts system. The finality of the decisions of the Supreme Court in civil proceedings is absolute unless specifically set aside by a later legislation. Therefore, any devices or ingenious moves by parties through their counsel to circumvent the decision of this court shall be met with stiff resistance as was courageously done by the courts below in this case. Applying the decision of this court in the case of Arubo v. Aiyelero (1993) 3 NWLR (Pt.280) 126 at 142, the appropriate order to make

where a party had abused the process of the court, is the dismissal of the abusive action as was done by the trial court and affirmed by the court below. (p. 2658 F)

NOTABLE POINTS OF INTEREST

B MUNTAKA-COOMASSIE JSC

1. All acts contrary to court order is contempt

It is my considered view that when this court ordered that a fresh election and appointment of a new Baale of Ilora be set in motion, no action or suit is maintainable in respect of that Chieftaincy unless and until the orders of this court are carried out and implemented. I completely agree with the submissions of the respondents that by virtue of Section 251(1) of 1979, Constitution of Nigeria which is in pari materia with the provisions of Section 287(1) of the 1999 Constitution, all authorities and persons, including the appellants are bound to give effect to the judgment of this court, and any act done to the contrary would amount to contempt of the order of this court. (p. 2665 B)

E 2. Counsel should give genuine legal advice

Most often this type of action of disrespect to court order and its processes were encouraged by counsel who only considered what they would gain as professional fees, rather than their primary obligation as officers of the court, with the onerous duty of first and foremost protecting the court and its processes. As officers in the temple of justice, counsel should be able to give their clients genuine legal advice as to the justiciability or not of their complaints whenever briefed. With due respect, this case is one of the worst abuse of court process I have ever seen. It has not only wasted the precious judicial time of both the trial court, the lower and indeed that of this court, but also slowed down the development of Ilora Community for not less than twenty (20) years now. (p. 2665 G)

H REPRESENTATION

Akeem Agbaje, (with him; Obiageli Nwofia), for the Appellants.
M.F. Lana, Attorney-General of Oyo State, (with him; H.M. Awosemusi), for the 2nd and 3rd Respondents.

H. O. Afolabi, (with him; A. O. Poopola), for the 4th and 5th Respondents.

CASES REFERRED TO

Ayanduba v. N.R.T.C. (1992) 5 NWLR (Pt.243) 535 at 561
 Shitta-Bay v. Federal Public Service Commission (1981) 1 S.C. 40 B
 Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156 at 188
 Owonikoko v. Arowosaye (1997) 10 NWLR (Pt.523) 61 at 76
 Arubo v. Aiyeleru & Ors. (1993) 12 LRCN 600
 C.B.N. v. Ahmed (2001) 5 S.C. (Pt.II) 146 C
 Oyegbola v. Esso West African Inc. (1966) 1 All NLR 170
 Okorodudu v. Okoromadu (1977) 3 S.C. 21
 Ogbogu v. Ndiribo (1992) 6 NWLR (Pt.245) 40 at 61

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979, s. 251(1)
 Constitution of the Federal Republic of Nigeria, 1999, s. 287 (1) D

LEAD JUDGMENT BY MOHAMMED JSC

At the hearing of this appeal on 29th April, 2008, a notification of the death of Olayiwola Olawore and Chief Dr. A.O. Odeleye who were the 1st and 6th respondents respectively in this appeal, was received from their counsel, Mr. H. O. Afolabi. Thereon, learned counsel to the appellants, Mr. Akeem Agbaje withdrew the appeal against them and consequently their names were struck out from the list of respondents accordingly. This left the 2nd, 3rd, 4th and 5th respondents as the respondents to the appeal. F

This appeal has a chequered history. It originated from Suit No.HOY/3/82, filed by the 1st appellant along with three others as plaintiffs in 1982 at the Oyo State High Court against the Governor of Oyo State and three other defendants including the 2nd respondent and claimed as follows-

“1. Declaration that the 1956, Baale of Ilora Chieftaincy Declaration is the only valid declaration in respect of the Baale of Ilora Chieftaincy and the present Kingmakers are the only persons entitled to select a Baale of Ilora elect;

2. Declaration that the Secretary of Oyo South Local

Government's circular letter reference No.OYL GSG535/ Vol. 11/394 of 11th January, 1982, appointing warrant kingmakers and inviting such appointees to consider a list of candidates for the purpose of filling the vacancy in the Baale of Ilora Chieftaincy is improper, invalid and of no effect;

B *3. Declaration that the purported meeting of the warrant kingmakers held at Jobele on Wednesday, 13th January, 1982 and the selection of a candidate for filling of the Baale of Ilora Chieftaincy is against the customs and traditions of Ilora, unconstitutional, invalid, improper and of no effect;*

C *4. Declaration that the 1st plaintiff is the only candidate validly elected as Baale of Ilora elect;*

D *5. Injunction restraining the 3rd defendant from further participation in the processes (as Baale elect) appointment and installation of the Baale of Ilora and from parading himself as Baale elect of Ilora.*

E *6. Injunction restraining the 1st defendant from approving the 3rd defendant or any candidate that the 4th defendant may submit to him as Baale elect of Ilora and subsequently, installing any such candidate as Baale of Ilora.*

7. Injunction restraining the 4th defendant from further participation in any exercise connected with the processes of the approval and installation of the defendant as Baale elect of Ilora. ”

F At the end of the hearing of these claims, the trial court dismissed the appellants' action and their appeal to the Court of Appeal against the judgment of the trial court was also dismissed. However, the appellant's further appeal to this court was successful as their appeal in SC.218/1985, was allowed on 13th January, 1989
G and the following reliefs were granted to them by this court, namely-

“1. A declaration that the 1956, Baale of Ilora Chieftaincy Declaration is the only valid declaration in respect of the Baale of Ilora Chieftaincy and that the present Kingmakers are the only persons entitled to select a Baale of Ilora elect.

H *2. A declaration that the Secretary of Oyo South Local Government's circular letter reference No. OYL SG535/ Vol. 11/394 of 11th January, 1982, appointing warrant Kingmakers and inviting such appointees to consider list of candidates for the purpose of fill-*

ing the vacancy in the Baale of Ilora Chieftaincy is improper, invalid and of no effect.

3. *The purported selection of the 3rd defendant/respondent by the warrant kingmakers on 13 January, 1982, as the Baale elect of Ilora is null and void and of no effect.*

4. *The purported appointment of the 3rd defendant/respon-* B
dent as the Baale of Ilora by the Oyo State Government as per the letter reference No.C.B141/38/18/ Vol.II/644 of 11th February, 1982, is null and void and of no effect.

5. *Injunction restraining the 3rd defendant/ respondent from* C
further participation in any processes for installation as the Baale of Ilora, and if already installed from further parading himself as the Baale of Ilora.

6. *The Oyo State Government as a matter of extreme urgency is to set in motion the processes for the selection, appointment and* D
installation of a new Baale of Ilora.”

Thus, the appellants who were the plaintiffs at the trial court were the successful parties in this court in their appeal. However, before the Oyo State Government could take appropriate steps to comply with the directive of this court regarding the appointment and installation of a new Baale of Ilora, the 1st appellant in the present E
appeal, who was also the 1st appellant in the appeal No. SC/ 218/ 1985, along with others went back to the trial Oyo State High Court and instituted a fresh action on the same Baale of Ilora Chieftaincy F
dispute seeking the following reliefs -

“1. *Declaration that the 1st plaintiff has been validly elected as the Baale of Ilora.*

2. *Declaration that the 1st defendant does not qualify as a candidate for election as Baale of Ilora on the platform of Okunla* G
Ruling House.

3. *Order restraining the defendants or anyone lawfully taking*
orders from them from setting in motion any other processes for the
selection and election of any other candidate than the 1st plaintiff as
Baale of Ilora. H

4. *An injunction restraining the 1st defendant from presenting himself to the kingmakers or anyone else for appointment or installa-*
tion as candidate for the vacant stool of Baale of Ilora.

5. An injunction restraining the 4th, 5th and 6th defendants from intermeddling in the process of appointment and installation of Baale of Ilora."

At the hearing of their new case, the appellants as plaintiffs at the trial court called two witnesses in support of their claims while the respondents who were the defendants in the action also called two witnesses in their defence. In the course of the hearing, the Record of Proceedings in the first action instituted in 1982, Suit No. HOY/3/82 by the appellants which went through to the Court of Appeal and ultimately to the Supreme Court in appeal No. SC/218/1985, in which judgment was delivered on 13th January, 1989, in favour of the appellants, were admitted in evidence as Exhibits 'A' and 'C' respectively. At the conclusion of the hearing, the learned trial Judge came to the conclusion that the appellants' action was an attempt to frustrate the judgment of this court in SC/218/1985 between the same parties which that court has a duty under the Constitution to enforce and therefore dismissed the action in its entirety. The appellants' appeal to the Court of Appeal against the dismissal of their action by trial court was also dismissed by the Court of Appeal in its judgment delivered on 2nd December, 1999, describing the appellants' action as an abuse of the process of court. The present appeal by the appellants is against that decision of the court below which affirmed the decision of the trial court.

From the 7 grounds of appeal filed by the appellants to challenge the decision of the Court of Appeal, two issues were formulated in the appellants' Brief of Argument as follows:-

"1. Whether or not the appeal of the appellants received the treatment it deserved from the Court of Appeal? The issue covers grounds 1, 2, 4 and 5 of the amended grounds of appeal.

2. What is the correct interpretation of the Supreme Court judgment in SC.218/1985 and its legal effect on the appellants' claims? This issue covers grounds 3, 6 and 7 of the amended grounds of appeal."

In the respondents' Brief of Argument filed on behalf of the 2nd and 3rd respondents by their learned counsel, the Attorney-General of Oyo State, three issues were identified for determination of the appeal. They are -

“(i) Whether the trial and lower courts have the judicial power to violate the express orders or directives of the Supreme Court and if not whether any suit praying them to do so is not an abuse of the process of the court?”

“(ii) Whether the Court of Appeal raised the issue of abuse of court suo motu?” B

“(iii) Whether in view of the reliefs granted by the Supreme Court judgment in SC.218/1985, the appellants’ claims could be sustained?”

However, L.O. Fagbemi, learned senior counsel for the 1st, 4th, 5th and 6th respondents but now for only 4th and 5th respondents following the demise of the 1st and 6th respondents, in the 4th and 5th respondents’ Brief of Argument, saw only two issues arising from the grounds of appeal filed by the appellants for the determination of the appeal namely - C

“1. Whether the court below was wrong in dismissing the plaintiffs’ suit for being an abuse of process of court, in the face of its constitutional duty of giving effect to the judgment of the Supreme Court?” D

“2. Having regard to the resolution of the court below that plaintiffs’ suit was an abuse of court process, whether the issue of interpretation of Exhibit C is still extant?” E

Taking into consideration of the circumstances giving rise to the appellants’/plaintiffs’ present second action instituted after the judgment of this court in the appellants’ appeal No. SC/218/1985, delivered on 13th January, 1989, I am of the view that the real and main issue for determination in this appeal is *whether or not the appellants’ action against the respondents brought at the trial court in 1994, was an abuse of the process of court as found by the court below in dismissing the appellants’ appeal.* This is because the complaints of the appellants that their appeal at the court below was not accorded the treatment it deserved and the correct interpretation of the judgment of this court in their appeal No. SC.218/1985 articulated in the two issues identified in the appellants’ Brief of Argument, are only complaints arising from this single issue connected with the abuse of the process of court. F G H

It was argued for the appellants that the issue of abuse of the process of court was taken suo motu by the court below in determin-

ing the appellants' appeal against them without giving them an opportunity of being heard. Some of the cases relied upon in support of this argument include Ayanduba v. N.R.T.C. (1992) 5 NWLR (Pt.243) 535 at 561, Alli v. Alesinloye (2000) 4 S.C. (Pt. I) 111; (2000) 15 FWLR 2610 S.C. at pages 2642 - 2643, Management Enterprises & Anor. v. Otusanya (1987) 2 NWLR (Pt.55) 179 and Shitta-Bay v. Federal Public Service Commission (1981) 1 S.C. 40; (1981) 1 S.C. (Reprint) 26, that the court below having acted in breach of the appellants' Right of Fair Hearing, this appeal should be allowed. On the correct interpretation of the judgment of this court in appeal No. SC/218/1985, learned counsel to the appellants argued that there was no basis for considering their present case against the respondents as an abuse of the process of court because of that judgment, as their action cannot be regarded as groundless or a sham. Learned counsel concluded that the court below having found that the pivot of the appellants' case and *a fortiori* all the submissions is or can be narrowed down to the interpretation or the legal effect of the decision of the Supreme Court in SC.218/1985, had a duty to consider and determine that issue because if on a proper interpretation of the judgment, the appellants are right, the learned trial Judge's ground for dismissing their claims in their entirety, would have been faulty, justifying allowing this appeal.

Learned Attorney-General of Oyo State for the 2nd and 3rd respondents, has pointed out that the fact that the appellants' suit constituted an abuse of the process of court was not raised for the first time at the court below as alleged by the appellants; that it had been an issue between the parties right from the trial court which was quite right having found that the action constituted an abuse of the process of court, the only order that court could have made was one of dismissal of the action having regard to the cases of Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156 at 188, Owonikoko v. Arowosaye (1997) 10 NWLR (Pt.523) 61 at 76 and Arubo v. Aiyeleru & Ors. (1993); 12 LRCN 600, that this issue was also included as part of the issues before the court below over which arguments were canvassed by the parties resulting in the decision of that court that the reliefs sought by the appellants at the trial court, constituted *estoppel* turning their present case a re-litigation of the decision of the Supreme

Court and therefore an abuse of the court process.

Learned senior counsel for the 4th and 5th respondents in his submission on this issue, started by quoting in full, all the reliefs granted by this court in allowing the appellants' appeal in its judgment in appeal No. SC./218/1985, given on 13th January, 1989. He observed that the pronouncements in that judgment were that the appointment of the 3rd defendant in that case was declared null and void, the office of the Baale of Ilora remained vacant and the Oyo State Government was to set a machinery in motion for the selection and appointment of a new Baale of Ilora. Learned senior counsel pointed out that taking into consideration the reliefs granted to the appellants by this court in its judgment and the reliefs they again asked for in their new action at the trial High Court that, court below was right in finding the appellants' new action as an abuse of court process, if the cases of *Saraki v. Kotoye* (supra) and *C.B.N. v. Ahmed* (2001) 5 S.C. (Pt.II) 146; (2001) 11 NWLR (Pt.724) 369 at 409 - 410, are taken into consideration. To the complaint of the appellants that the issue of abuse of court process was raised suo motu by the court below, learned senior counsel to the 4th and 5th respondents had observed that, that issue and the facts to substantiate same have always formed part and parcel of the case of the parties just like the duty of the parties and the court to give effect to the decision of the Supreme Court. Learned senior counsel therefore concluded that the court below was right in its decision that the appellants' present action is an abuse of the process of court which was rightly dismissed and therefore urged this court to dismiss the appeal.

In resolving the only issue on abuse of process of court arising for determination in this appeal, ***it is significant to observe that the abuse of court process or abuse of judicial process as the case may be, may be manifest in both a proper or improper use of the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. For example in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues.*** See *Oyegbola v. Esso West African Inc.* (1966) 1 All NLR 170 and *Okorodudu v. Okoromadu* (1977) 3 S.C. 21; (1977) 3 S.C. (Reprint) 13. ***It is also an abuse of process where there***

is no iota of law supporting a court process or where it is premised on frivolity or recklessness. In other words it is the inconvenience and inequities involved in the aims and purposes of the action that constitutes abuse of process. See *Alade v. Alemuloke* (1988) 1 NWLR (Pt.69) 207, *Saraki v. Kotoye* (1992) 9 NWLR (Pt.264) 156 and *Central Bank of Nigeria v. Ahmed* (2001) 5 S.C. (Pt.II) 146; (2001) 11 NWLR (Pt.724) 369 at 409 - 410.

The facts of this case as outlined earlier in this judgment are hardly in dispute. The parties were at the trial Oyo State High Court in 1982, principally in connection with declaratory and injunctive reliefs sought by the appellants against the respondents on the subject of the selection and appointment of a suitable candidate to fill the vacant stool of the Baale of Ilora in the then Oyo State South Local Government Area of Oyo State. That case ended in this court on 13th January, 1989, when this court allowed the appellants' appeal and granted most of the reliefs sought by the appellants. **Instead of allowing the implementation of or the enforcement of that judgment in allowing the parties involved in the contest of the vacant stool to comply with the judgment of this court, the appellants, particularly the 1st appellant whose zeal in the contest for the exercise in the selection and appointment of the Baale of Ilora had virtually blinded him, decided to institute a fresh action which gave rise to the present appeal. This conduct of the appellants is the type of conduct on the institution of an action on the same subject matter and between the same parties that was strongly condemned by this court in *Adigun v. Governor of Osun State* (1995) 3 NWLR (Pt.385) 513 at 549, as being an abuse of process of court.** In particular, this is what Iguh, JSC., said at page 549

"I need hardly add that the appellants claims having been predicated on the very issue which this court had dismissed in very clear terms on the ground that Ogunmakinde Ande Ruling House had not been proved to be the only Ruling House of Oluwo of Iwo from which a candidate is to be appointed, the present action appears to me totally misconceived and an abuse of the process of the court and was properly dismissed by the two courts below."

The appellants in the instant case in whose favour the decision

of this court declaring the selection and appointment of the 3rd defendant as the Baale elect of Ilora, restraining the same 3rd defendant from further participating in any process for installation as the Baale of Ilora and if already installed from further parading himself as the Baale of Ilora and directing the Oyo State Government as a matter of extreme urgency to set in motion the processes for selection, appointment and installation of a new Baale of Ilora in which exercise the appellants through the 1st appellant were free to participate, it was clearly a reckless act on the part of the appellants to embark on a fresh action. That action was indeed an abuse of the process of court as rightly found by the two courts below. B C

The conduct of the appellants in re-opening the issues already determined or in re-litigating on the issues already decided upon by this court in a final Judgment resolving the dispute between the parties, the law is also trite that once one or more issues have been raised in a cause of action and distinctly determined or resolved between the same parties in a court of competent jurisdiction, then neither party nor his privy or agent, can be allowed to relitigate that or those decided issues all over again in another action between the same parties or their privies or agents on the same issues. See *Fadiora & Anor. v. Gbadebo & Anor.* (1978) 3 S.C. 219 at 228-929; (1978) 3 S.C. (Reprint 149, *Ogbogu v. Ndiribo* (1992) 6 NWLR (Pt.245) 40 at 61 and *Adebayo v. Babalola* (1995) 7 NWLR (Pt.408) 383 at 403. D E F

In the present case, the learned Judge after considering the cases of the parties on pleadings and evidence, in a well considered judgment came to the conclusion that what the action of the appellants sought to achieve was to prevent the inforcement of the judgment of this court of 13th January, 1989, in appeal No. SC.218/1985 which the learned trial Judge vouched to resist in order to give effect to that judgment. In affirming the decision of the trial court after dismissing the appellants' appeal on the issue of estoppel and abuse of court process, the court below had this to say at pages 168-169 of the records - G H

"In view of all what I observed above on the merit of this appeal, I do not wish to say more. It suffices to state that the issues under review as canvassed by the appellants (in their Brief) have no

merit. The other remaining issues (i.e. issues 3 and 5) of the appellants Brief are also covered by my resolution of the 1st set of three issues (argued together) as above. The whole appeal of the appellants based on an action which has been held to be an abuse of judicial process and therefore frivolous should be treated as a continuation of such an abuse or frivolity. xxxxxx The appeal being devoid of merit, is hereby accordingly dismissed.”

I entirely agree. There is no ambiguity whatsoever in the judgment of this court in SC.218/1985 calling for any interpretation or clarification by this court again. The appellants’ action in my view is not only a glaring abuse of the process of the court but also a flagrant disobedience of the orders of this court in the judgment of the final court of the land that must not only be respected but also must be obeyed by the parties and all courts.

The law is trite that where, there are concurrent findings of facts by two lower courts as happened in the present case, this court will not readily interfere with the findings made unless there is some miscarriage of justice or the violation of some principles of law or procedure. Since the appellants have not attacked any of the concurrent findings of the trial court as well as that of the Court of Appeal, I see no reason whatsoever to disturb those findings. See Ometa v. Numa (1935) 11 NLR 18 and Stool of Abinabina v. Enyimadu (1958) 18 WACA 171.

This case has clearly shown the futility of challenging the decision of this court, as the apex court in the hierarchy of our courts system. The finality of the decisions of the Supreme Court in civil proceedings is absolute unless specifically set aside by a later legislation. Therefore, any devices or ingenious moves by parties through their counsel to circumvent the decision of this court shall be met with stiff resistance as was courageously done by the courts below in this case. Applying the decision of this court in the case of Arubo v. Aiyelero (1993) 3 NWLR (Pt.280) 126 at 142, the appropriate order to make where a party had abused the process of the court, is the dismissal of the abusive action as was done by the trial court and affirmed by the court below.

In the result, this appeal is totally without merit and the same is

accordingly hereby dismissed with N50,000.00 costs to the respondents against the appellants.

MUSDAPHER JSC

I have read before now the judgment just delivered by my Lord, Mohammed, JSC., with which I entirely agree. His Lordship in the aforesaid judgment had adequately dealt with all the issues submitted for the determination of the appeal. For the same reasons contained therein, which I with respect adopt as mine, I too, dismiss the appeal as it is bereft of any merits.

I abide by the order for costs contained in the aforesaid judgment

AKINTAN JSC

The dispute in this case was over the selection of candidate to fill the chieftaincy title of Baale of Ilora in Oyo State. The action was first instituted at Oyo High Court in 1982 as Suit No. HOY/3/82. The plaintiffs' claim before the court then was for various declaratory and injunctive reliefs by the present appellants and some other as plaintiffs against the present respondents and others who are now dead. The gist of their claim was that they wanted the court's declaration as to who were the king makers in respect of the Baale of Ilora chieftaincy title; that the appointment by the Government of warrant king makers for the purpose of filling the Baale of Ilora be nullified; and injunction to restrain the main contestant from being appointed, among others.

The trial court dismissed the plaintiffs' claim at the conclusion of the trial. An appeal against the judgment to the Court of Appeal was dismissed. They also lost their appeal in this court.

After the decision of this court on their appeal, the same group commenced a fresh action in respect of the same subject-matter. It is their new claim that the trial High Court dismissed on the ground that it amounted to an abuse of court process. Their appeal to the court below was also dismissed and the present appeal is against that decision.

The main point raised in the appeal is whether the steps taken by the appellant in fact amounted to an abuse of court process which

could lead to the dismissal of the appellants' case.

The law is settled that it is an abuse of the process of court for a plaintiff to litigate again over an identical question which had already been decided against him. Also an abuse of process of the court may occur when a party improperly uses the judicial process to the harassment, irritation and annoyance of his opponent and/or to interfere with the administration of justice such as where two similar processes are issued against the same party in respect of the exercise of the same right and subject-matter. Abuse of court process therefore generally means that a party in a litigation takes a most irregular and unusual action in the judicial process for the sake of action *qua* litigation merely either to waste the court's valuable time; or it is an action which could be avoided by the party without causing any harm to the dispute or the court's process is used *mala fide* to overreach the adversary to the annoyance of the court: See *Onyeabuchi v. INEC* (2002) 4 S.C. (Pt.II) 27; (2002) 8 NWLR (Pt.769) 417, *Okafor v. Attorney-General of Anambra State* (1991) 7 S.C. (Pt.II) 138; (1991) 6 NWLR (Pt.200) 659 at 681, *Saraki v. Kotoye* (1992) 9 NWLR (Pt.264) 156, *Paves Int. Co. Ltd. v. IBWA* (1994) 5 NWLR (Pt.347) 685 and *Sodipo v. Lemminkainen Oy* (1992) 8 NWLR (Pt.258) 229.

It is also trite law that a court is empowered and competent to prevent the improper use of its machinery to harass, oppress, vex or irritate an adverse party in a litigation. Where such a situation arises, the court will rightly dismiss such a claim or may order a stay: See *Josiah Cornelius Ltd v. Ezenwa* (1996) 4 NWLR (Pt.443) 391, *Onyeabuchi v. INEC* supra and *Sodipo v. Lemminkainen Oy*, supra.

In the instant case, the subject-matter between the parties had been finally determined by this court in the earlier case. It was therefore totally wrong for the appellants to embark on commencing a fresh action over the same subject-matter. For the reasons I have given above and the fuller reasons given in the leading judgment written by my learned brother, Mahmud Mohammed, JSC., the draft of which I have read, I also hold that there is totally no merit in the appeal. I accordingly dismiss it with costs as assessed in the leading judgment.

I have had the privilege of reading in draft, the leading judgment of my learned brother, Mohammed, JSC., just delivered.

My learned brother has exhaustively dealt with all the relevant issues raised in the appeal and I agree with his reasoning and conclusion that the appeal is without merit and ought to be dismissed.

I therefore dismiss the appeal for lack of merit and abide by the consequential orders made in the said leading judgment including the order as to costs.

MUNTAKA-COOMASSIE JSC

I read before now the leading judgment of my learned brother, Mohammed, JSC., just delivered. I sincerely agree that the appeal lacks merit and should be dismissed.

However, I wish to add the following bit on my own in support of the leading judgment.

The appellants were the plaintiffs in the trial court and claimed against the defendants, who are the respondents before this court. In their joint Statement of Claim the following reliefs were sought in the trial court:-

"1. Declaration that the first plaintiff has been validly elected as the Baale of Ilora.

2. Declaration that the 1st defendant does not qualify as a candidate for election as Baale of Ilora on the platform of Okunla Ruling House.

3. Order restraining the defendants or anyone lawfully taking orders from them from setting in motion any other processes for the selection and election of any other candidate than the 1st plaintiff as Baale of Ilora.

4. An injunction restraining the 1st defendant from presenting himself to the kingmakers or anyone else for appointment or installation for me the vacant stool of Baale of Ilora.

5. An injunction restraining the 4th, 5th and 6th defendants from intermeddling in the process of appointment and installation of Baale of Ilora."

Pleadings were ordered, filed and exchanged. The defendants denied the claims of the plaintiffs. In their joint Statement of Defence, the 1st, 4th, 5th and 6th defendants, referred to the earlier judgment

of this court in SC. 218/1985, delivered on 13th May, 1989 and reported in (1989) 1 NWLR (Pt.95) 1. It is the subject matter of this appeal, and was pleaded. At the hearing, the learned trial Judge referred to the said decision of this court and dismissed the plaintiffs' case. In respect of the judgment of this court referred above, the trial

B High Court held as follows:-

"In effect the court has directed that the whole processes shall start de novo after setting the second exercise which led to the 1st defendant appointment. In my opinion, what the prayers in paragraph 19 (3) and (4) of the Statement of Claim seek to achieve is to prevent the enforcement of the Supreme Court orders quoted above. The order has been made and the duty of the court 'is to give teeth' to the judgment and ensure its compliance in accordance with the mandatory provisions of Section 251 (1) of the Constitution of the Federal Republic of Nigeria, 1979....."

The appellants were dissatisfied with the decision of the trial court and appealed to the Court of Appeal, herein-after called "*the court below*". In its judgment the court below dismissed the appeal. That court held on pages 168-169 thus:-

E *".....Notwithstanding the term 'whole decision' as appears in the Notice of Appeal to the Supreme Court which is heavily but ostensibly relied upon by the appellants in their argument this subsequent suit by the appellants is frivolous and an attempt to defeat or render ineffective the specific orders made by the Supreme Court.*

F *The judgment and orders of the apex court which are in very clear and un-ambiguous terms must be enforced and complied with by all the subordinate courts in terms with the constitutional provisions and the case law cited above."*

G The appellants being aggrieved with the judgment of the court below further appealed to this court.

To my mind, the crux of this appeal is to determine the effect of the judgment of this court in SC. 218/1985. The orders made by this court in the said suit have been reproduced above.

H The appellants submitted that the lower court had interpreted the judgment of the Supreme Court vis-a-vis the claim of the appellants, that conclusion cannot be reached. The learned counsel then submitted that to amount to an abuse of court process the action

must be groundless, it must be a sham i.e. not brought bona fide, the case of Messrs. NV Scheep v. The M.V. "S. Araz" (2000) 12 S.C. (Pt.I) 164; (2001) 34 FWLR 543, is cited. It was submitted that the suit was brought for a genuine interpretation of the judgment of the Supreme Court with the view to ascertaining the true meanings of the reliefs granted. He conceded that prayers 1 and 3 in their claim turned-out to be wrong or misconceived, but this will not make it an abuse of court process. B

On the other hand, if the action is found to amount to an abuse of court process, the proper order to make is that of striking out and not an order of dismissal. It was contended that not all the claims of the appellants are a re-litigation of the 1982 action that only reliefs 1 and 3 of the claims are liable to be dismissed for being in conflict with leg 6 of the reliefs granted by the Supreme Court, and that leg 2 and 4 are justiciable. C D

"The 1st, 4th, 5th and 6th respondents in their joint Brief of Argument submitted that by virtue of Section 25(1) of 1979 Constitution which is in pari materia with Section 287(1) of the 1999 Constitution the judgment of the Supreme Court is binding on all authorities and persons." E

It was posited that the plaintiffs' claims are meant to prevent the Government of Oyo State from setting in motion the machinery for the appointment of a new Baale of Ilora, as directed by the Supreme Court. The claims are subversive of the order of the Supreme Court and an affront to this court. The abuse of court process in this context is predicated on the improper use of the processes of this court. Respondents counsel cited the cases of: Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156, CBN v. Ahmed (2001) 5 S.C. (Pt.II) 146; (2001) 11 NWLR (Pt.724) 369. Respondents referred to paragraph 25 of their Statement of Defence and submitted that the issue of the abuse of court process was pleaded and therefore it was not an issue raised suo motu by the lower court. He referred to the findings of the trial court on this point and pointed out that the plaintiffs did not appeal against the findings. It was further submitted by the respondents that the sum total of the reasoning of the lower court on the principle of abuse of court process is that any step taken by any party in this case by the plaintiffs which has direct effect of preventing the F G H

implementation of the directive of this court as required under Section 287(1) of the 1999 Constitution amounts to an abuse of court process. Hence, Claim 3 of the plaintiffs/appellants is an invitation of the lower court to disregard the judgment of the Supreme Court. This is a matter of public policy which transcends the rights of parties; the case of *Adigun v. A.G. Osun State* (1995) 3 NWLR (Pt.335) 51 at 54, was cited.

It was finally submitted that where an action found to amount to an abuse of court process, the proper order to make is that of dismissal of the action. The case of *Arube v. Aiyelero* (1993) 3 NWLR (Pt 280) 126 at 142, was cited.

On the submission of the appellant that certain claims in this suit were not included in the case decided by the Supreme Court, the respondents submitted that the appellants cannot be allowed to litigate his case piece-meal, and having failed to submit all his complaints for adjudication in the case earlier decided by this court he could not embark on a fresh suit as done in this case, the case of *Fadiora v. Gbadebo* (1978) 3 S.C. 228-229; (1978) 3 S.C. (Reprint) 149, was cited.

The 2nd and 3rd respondents in their Brief of Argument cited the provisions of Section 251(1) of the 1979 Constitution and submitted that it is imperative that decisions of Supreme Court should be enforced in any part of the Federation by all authorities and persons in any part of the Federation. Hence, any suit that was brought to violate the judicial policy of stare decisis and the clear provisions of the Constitution is an abuse of the process of the court.

Above are the submissions of the parties on this issue. From the judgment of the Supreme Court in SC. 218/1985, it is clear that the whole selection and appointment processes of the Baale of Ilora was set aside by this court, and in conclusion, this court ordered as follows:-

- "For avoidance of doubt, I hereby grant the following reliefs:-*
1.5
 6. *The Oyo State Government as a matter of urgency is to set in motion the processes for the selection, appointment and installation of a new Baale of Ilora. "*

It is not disputed that the Oyo State Government was yet to set

the processes of appointing a new Baale of Ilora in motion before the plaintiffs commenced this action. If the processes have not been set in motion how come did the 1st appellant become the Baale of Ilora elect, as claimed in relief No. 1 of the plaintiffs' Statement of Claim. The appellants in their Brief admitted that reliefs 1 and 2 are direct affront to the judgment and orders of this court in SC. 218/1985. B

It is my considered view that when this court ordered that a fresh election and appointment of a new Baale of Ilora be set in motion, no action or suit is maintainable in respect of that Chieftaincy unless and until the orders of this court are carried out and implemented. I completely agree with the submissions of the respondents that by virtue of Section 951(1) of 1979, Constitution of Nigeria which is in pari materia with the provisions of Section 987(1) of the 1999 Constitution, all authorities and persons, including the appellants are bound to give effect to the judgment of this court, and any act done to the contrary would amount to contempt of the order of this court. It is as a result of the above that I agree with the reasoning of the lower court when it held thus:- C D

"The whole appeal of the appellants based on an action which has been held to be an abuse of judicial process and therefore frivolous should be treated as a constitution of such an abuse or frivolity. This court will not be a party to such procedure." E

If I may ask, what can constitute an abuse of court process than an action instituted by a litigant or litigants challenging or in subversion of the final orders of this court? The action of the appellants is not only an affront to the authority of this court as the highest court of the land, but also an act of recklessness. A total act of disrespect to the authority of this court as enshrined in Section 251(1) of the 1979 Constitution, now Section 287 (1) of the 1999 Constitution. The question is, what rights were the appellants seeking to enforce or protect when, the express and unambiguous orders of this court to the effect that a fresh process of selection be set in motion have not been carried out. Most often this type of action of disrespect to court order and its processes were encouraged by counsel who only considered what they would gain as professional fees, rather than their primary obligation as officers of the court, with the onerous duty of first and foremost protecting the court and its processes. F G H

As officers in the temple of justice, counsel should be able to give their clients genuine legal advice as to the justiciability or not of their complaints whenever briefed. With due respect, this case is one of the worst abuse of court process I have ever seen. It has not only wasted the precious judicial time of both the trial court, the lower and
B indeed that of this court, but also slowed down the development of Ilora Community for not less than twenty (20) years now. It is clear that some litigants, through the advice of their counsel have failed to be guided by the warning of this court in Adigun v. A.G. Osun State
C (supra) at p. 549, where this court held as follows:-

*"The appellants seem to me impervious to all judicial reasoning and have by all manner of devices persisted and have continued to challenge the clear decision of this court in Adigun & 9 Ors. v. The Attorney-General of Oyo State & 18 Ors. (No.2) (1987) 3 NWLR
D (Pt.56) 197. These devices which are clearly despicable and certainly not in the best interest of justice ought now to be put an end to, otherwise, the appellants would deliberately be questioning the final judgment of the highest court of the land and may unwittingly be hovering around the precinct of contempt of this court."*

E This court would definitely not take the issue of disrespect to its orders lightly and neither would it treat any further act of abuse of its process as in the instant case with kid gloves in future. Having held that this action constitutes an abuse of the process of this court and indeed that of the two lower courts, the proper order to make is that
F of dismissal, see Arubo v. Aiyelero (1993) 3 NWLR (Pt.280) 126 at 142, and could therefore not be necessary to consider any other issues raised as same would amount to determining an academic and hypothetical issues.

G My Lord, Mohammed, JSC., has competently thrashed out all the live issues presented to us for our consideration. It is for the foregoing, and the conclusion, in the leading judgment of my learned brother, Mohammed, JSC., that I too dismiss the appeal for want of merit. The judgment of the lower court is hereby restored and af-
H firmed.