

SUPREME COURT OF NIGERIA
5TH DECEMBER, 2008 SC. 159/2006
CORAM:- S. A. AKINTAN, F. F. TABAI, I. T. MUHAMMAD,
C. M. CHUKWUMA-ENEH, J. O. OGEBE, JJSC

NIGERIAN ARMY APPELLANT
V.
MAJOR JACOB IYELA DEFENDANT

JURISDICTION - Functus officio - Import - Once a court gives a final decision it cannot thereafter review or vary same - Even if it realises afterwards that the decision is wrong - It no longer has jurisdiction to do so (H1)

COURT MARTIAL - Finding & sentencing - Armed Forces Decree, s. 141 - What the trial General Court Martial did on 28th July complied with the provisions of the section - Therefore it lacked the jurisdiction to pronounce a subsequent sentence on 4th August (H2)

COURT MARTIAL - Sentences - Power to review - It would have such power if directed by the confirming authority - But even then it can not substitute a severer punishment than that already handed down (H3)

COURT MARTIAL - Sentences - Review that is ultra vires - Effect - Such a review constitutes a fundamental defect in the proceedings - Which rendered the proceedings null & void (H4)

FACTS

Respondent, a major in the Nigerian Army (appellant) was arraigned and tried before the General Court Martial for illegal possession of ammo and for conduct to the prejudice of service discipline under the Armed Forces Decree 1993 (as amended). It was not disputed that the alleged ammo was found in the residence of the respondent. After trial, the court found respondent guilty as charged and sentenced him to a reduction in rank to captain and to compulsory retirement respectively on the two counts subject to confirmation by the Appropriate Superior Authority (ASA)

However, a week afterwards, the court purported to recon-

vene and reviewed the said sentence, following which exercise it handed a sentence of dismissal to the respondent instead of the compulsory retirement.

The letter sentence was eventually confirmed by the ASA. Aggrieved, the respondent appealed to the Court of Appeal which allowed the appeal. The appellant has brought this appeal against the judgment of the Court of Appeal.

ISSUE FOR DETERMINATION

Whether the Court of Appeal was wrong in holding that the trial General Court Martial was functus *officio* after it delivered the judgment of the 28th of July 1998 and as such could not award the sentences it awarded on the 4th of August 1998.

HELD (Unanimously dismissing the appeal per **TABAI JSC**)

JURISDICTION - Functus officio - Import

1. Once a court has given a final decision and necessary consequential orders in a matter presented before it for adjudication, it becomes functus officio and has no jurisdiction thereafter to review or vary the decision even if it realizes afterwards that the decision is manifestly wrong, the only exception being its power to correct typographical errors or accidental slips under the “Slip Rule.” (p. 3892 F)

COURT MARTIAL - Finding & sentencing

2. Section 141 of the Act 30 provides for the finding and sentence where the trial court martial returns a verdict of guilt of the accused person at the end of the trial.

What the trial General Court Martial did on the 28th of July 1998 was in strict compliance with the above provision. The guilt of the Respondent as well as the sentences for the two counts were pronounced and same were announced to be subject to the confirmation by the Appropriate Superior Authority, (A.S.A). There is nothing in this or any other provision to the Act which enabled the trial court martial to reconvene to review the sentences pronounced on the 28th July 1998 and substitute therewith the heavier sentences on the 4th of August 1998. It is beyond any controversy that the trial court martial had no jurisdiction to do the acts complained of. (p. 3893 E/G)

Sentences - Power to review

3. It could only have derived the authority reassemble and review the sentence or sentences if it had been so directed to by the confirming authority by virtue of the provisions of Section 150 of the Armed Forces Act. There was no such direction. Furthermore, even if the trial court martial were given a direction to review its sentences (which was not) it had strict limitations in terms of the scope of punishments that could be awarded. It had no authority to award or substitute a punishment which is more severe than that contained in the original sentence. This is expressly prohibited by Section 150(5) of the Armed Forces Act. (p. 3894 B)

Sentences - Review that is ultra vires

4. The result is that the review of the sentences on the 4th of August 1998 is ultra vires the provisions of section 150(5) of the Act. In my view, the review constituted a fundamental defect in the entire proceedings and which proceedings were therefore rendered null and void. In view of the foregoing considerations therefore I fully endorse the decision of the Court of Appeal nullifying the trial, conviction and sentences. The second issue is therefore resolved in favour of the Respondent.(p. 3895 A)

REPRESENTATION

Dr. Bello Fadile with Nwaogu Eziane (Miss.) for the Appellant.
Tajudeen Oladoja, Adegboyega Aremo, Muritala Abdul-Rasheed, for the Respondent.

CASES REFERRED TO

Oyenusi v Misc. Offences Tribu. (2002) 12 NWLR (Pt 781) 227
Tukur V Govt of Gongola State (1988) 1 NWLR (Part 68) 39
Okumagba v Egbe (1965) 1 ALL NLR 62 at 65
Awolowo v Shagari (1979) NSCC 87 at 134
A-G Abia State v A-G Federation (2002) 6 N.W.L.R. (pt. 763) 264
Stork v Frank Jones (tripon) (1978) 1 WLR 231
Sterling Civil Eng. Ltd. v Yahaya (2005) 11 NWLR (Part 935) 181
Adefulu v Okulaja (1998) 5 NWLR (Part 550) 435
Awolowo V Shagari (1979) NSCC 87 at 134
NEPA v Atukpor (2001) 1 NWLR (Part 693) 96 at 106

Intercontractors Nigeria Ltd. v. U.A.C. (1988) 1 N.S.C.C. 737

STATUTES & RULES REFERRED TO

Armed Forces Decree, No. 105 of 1993, ss. 103, 114, 141 & 150

Constitution of the Federal Republic of Nigeria, 1999, s. 36

B Firearms Act, Cap. 146, L.FN; 1990, s. 9

Rules of Procedure (Army) 1972, r. 80(5)

LEAD JUDGMENT BY TABAI JSC

C This is an appeal against the judgment of the Kaduna Division of the Court of Appeal on the 25th of April 2005. That judgment itself was sequel to an appeal against the earlier judgment of the General Court Martial on the 28th July 1998 and 4th August 1998.

D The substance of the undisputed facts of this case are as follows: The respondent, a major in the Nigerian Army (appellant), was sometime in January 1996, on military assignment in the Economic Community of West Africa's Monitoring Group (ECOMOG) in Liberia. While he was away his residence at No. 8 MOQ Chindit Barracks Zaria was reportedly burgled. Following a report of the alleged E burglary by the Respondent's wife, Captain A.I.D. Damagun (PW.1) and Army Warrant Officers Hamidu Sajo (PW.2) were detailed to visit the Respondent's resident to ascertain what happened.

In the course of their visit, the following controlled items of the Nigerian Army were, recovered in the residence:

F 40 live rounds of 7.62mm Ammo, 32 pieces of thunder flashes and 14 pieces of hand flare yellow pyrotechnics. He was informed of the discovery of these items and was directed to return to Nigeria. On his return, he was arraigned before the General Court Martial on a two G count charge as follows:

COUNT ONE

(a) Statement of Offence

H Illegal possession of Ammo punishable under section 9(1) of the Firearms Act by virtue of Section 114(1) of the Armed Forces Decree 1993 (as amended)

(b) Particulars of Offence

In that you at NMS Zaria between 1994 and February 1996 illegally kept 40 live rounds of 7.62mm Ammo in your residence at No. 8 A MOQ Chindit Barracks, property of the Nigerian Army.

2. COUNT TWO

a) Statement of Offence

Conduct to the prejudice of service discipline punishable under Section 103(1) of the AFD 105 of 1993 (as amended).

(b) Particulars of Offence

In that you at MMS Zaria 1994 and 1996 was found in improper possession of 32 pieces of thunder flashes and 14 pieces of hand flare yellow pyrotechnics in your residence No. 8A MOQ Chindit Barracks, property of Nigerian Army. B

At the trial, four witnesses testified for the prosecution. The respondent alone testified in self defence. In its judgment on the 28th of July 1998, the General Court Martial found the respondent guilty in each of the two counts. Defence counsel then made a rather powerful allocutus in mitigation of sentence. The court then pronounced the following sentences: C

“Charge One: Reduction in Rank to Captain.

Charge Two: Compulsory retirement from the Nigerian Army. All sentences are subject to confirmation by A.S.A.

The convict has the right to appeal against the judgment within 30 days thereof.” D

This brought the trial to the end and it was so recorded at page 127 of the record.

However, on the 4th of August 1998, one week after the end of the trial, the respondent was recalled. Thereat, the Judge Advocate pointed out what he considered to be errors in the sentences and urged the General Court Martial to revisit same. The Respondent, through his counsel E.G. Abadaki raised objection to the attempt to revisit the sentence. It was his submission that the General Court Martial, having concluded the trial with the sentences imposed on the 28th July, 1998 became functus officio and that the court had no authority to review the sentences as urged by the Judge Advocate. F

“In the case of Nigerian Army v Major J.D. Iyela, the convict has been awarded reduction in rank to the rank of Captain with 2 H years seniority on count one with effect from August 1998. For count two, the convict has been dismissed from the Nigerian Army with effect from 4th August 98”

This decision was confirmed by the confirming authority oth-

erwise called Appropriate Superior Authority (ASA).

The Respondent was aggrieved by the decision and went on appeal to the court below. By its judgment on the 25th of April 2005, the appeal was allowed. In its concluding paragraphs the Court below had this to say; -

B “On the whole, the appeal has merit and is allowed. The following orders are accordingly made.

1. The judgment of the General Court Martial delivered on the 4th August 1998 in convening Order No. IDN/LS/635/A of 15th October 1997 for the trial of Major J.O. Iyela (N/6794) -NMS at Officers’ Mess Kaduna and confirmed by the Army Council on the 4th December 2000 is hereby set aside and the accused now Appellant is discharged and acquitted.

D 2. The accused now Appellant’s rank as Major in the Nigerian Army is hereby restored to him with effect from the 4th August 1998.

3. The Respondent is hereby ordered to pay the Appellant his accumulated salaries and other entitlements from the time of this trial till date of judgment.

E 4. There shall be N5,000.00 (five thousand naira) costs in favour of the Appellant against the Respondent, “

The present appeal is against that judgment, The parties have, through their counsel, filed and exchanged their briefs of argument. The appellant’s brief of argument was settled by Dr. Bello Fadile Esq. That of the Respondent was prepared by Tajudeen O. Oladoja. From the four grounds notice of appeal, the appellant formulated the following issues for determination: -

G 1. *Whether upon a proper construction of Section 237 of Decree 105 of 1993 the Court of Appeal was right in holding that the Respondent is exempted from the provision of Section 9(1) of the Firearms Act Cap 146 Laws of the Federation of Nigeria 1990.*

H 2. *Whether the learned Justices of the Court of Appeal were not wrong in holding that the trial General Court Martial was functus officio after it delivered the judgment of 28th July 1998 and as such could not award the sentences it awarded on the 4th August, 1998.*

3. *Whether having regard to Section 114(3) and other relevant provisions of Decree 105, the Court of Appeal was right in holding that there was no provision of law enabling the trial General Court Martial to sentence the Respondent to a reduction in rank and*

dismissal

4. *Whether in view of the provision of Section 9(1) of the Firearms Act Cap 146 L.F.N. 1990 the prosecution needed to prove that the Respondent intended to use the ammunition in his possession for an illegal purpose in order to secure the Respondent's conviction.* B

The respondent on the other hand formulated three issues for determination which, in substance sever the four issues of the appellant but which, for completeness I should also reproduce. The issues are:

1. *Whether or not the Court of Appeal was right in holding that the General Court Martial lacked the necessary jurisdiction to try the Respondent for illegal possession of firearms punishable under Section 9 of the Firearms Act Cap 146 Laws of the Federation of Nigeria 1990.* C

2. *Whether or not the Court of Appeal was right in holding that the General Court Martial lacked the necessary jurisdiction to revise, review and substitute the judgment it delivered on the 28th July 1998 with the new one it delivered on the 4th day of August 1998.* D

3. *Whether or not the Court of Appeal was right in holding that the Respondent was not liable for offence which occurred independently of the exercise of his will."* E

The substance of the arguments of Dr. Bello Fadile for the Appellant is as follows. F

With respect to Appellant's issue one learned counsel referred to the interpretation given to the provision of section 237 of the Armed Forces Act Cap A Laws of the Federation of Nigeria and submitted that the Court of Appeal erred in that it ignored the emphasis embodied in the phrase "for the purpose of the Armed Forces" in the said provision. It was his contention that had the Court of Appeal also read the phrase "for the purpose of the Armed Forces" along with the rest of the provision (which it was bound to do) it would not have come to the wrong conclusion that the Respondent, being a member of the Armed Forces, was exempted from the provision thereof. It was the further submission of learned counsel for the Appellant that by the interpretation placed on the provision, the Court of Appeal in effect, tried, to amend the provision which duty is ex- H

clusively that of the law maker and not that of the Court.

According to counsel the provision of any Act must be construed to reflect the clear intention of the law maker.

For the various rules of statutory interpretation learned counsel for the Appellant referred to a number of authorities some of which are: *Oyenusi v Miscellaneous Offences Tribunal* (2002) 12 NWLR (Part 781) 227 at 250; *Tukur V Government Of Gongola State* (1988) 1 NWLR (Part 68) 39 at 51-52; *Okumagba v Egbe* (1965) 1 ALL NLR 62 at 65; *Awolowo v Shagari* (1979) NSCC 87 at 134; *A-G Abia State v A-G Federation* (2002) 6 N.W.L.R. (pt. 763) 264; *Sussex Peerage Claim* (1984) clofin 85 at p.143 and *Stork v Frank Jones (tripon)* (1978) 1 WLR 231. Learned counsel urged that this issue be resolved in favour of the Appellant and the judgment of trial General Court Martial affirmed.

On issue two learned counsel agreed with the settled principle that once a court delivered its judgment, it becomes *functus officio* and that the court cannot revisit its judgment with a view to reviewing it and even cited *Sterling Civil Engineering (Nig.) Ltd. v Ambassador Mahmood Yahaya* (2005) 11 NWLR (Part 935) 181 at 201 and *Adefulu v Okulaja* (1998) 5 NWLR (Part 550) 435.

He submitted however that that principle of a court becoming *functus officio* does not and cannot apply to a finding of guilt and sentence awarded by a General Court Martial unless that finding or sentence has been confirmed by the Appropriate Superior Authority (A.S.A.). Learned counsel strenuously laboured to explain the legal incidents of the phrase “subject to” in a provision and argued that once there is the phrase “subject to” in a provision, what follows becomes a condition precedent to the application of what it purports to be. Counsel relied on *Messrs. Sulaimon & II Bros v Hans Mehr of Hamburg* (1957) SCNLR 261 at p. 263. It was his submission that the decision of the 28th July 1998 not having been confirmed by the Appropriate confirming Authority was not yet a decision and that it was that of the 4th August, 1998 which was confirmed that was the decision. On this submission learned counsel relied further on Section 148(3) of the Armed Forces Act and *Komonibo v Nigerian Army* (2002) 6 N.W.L.R. (Part 762) 94 at 117-18 and *Ifezue v. Mbadugha* (1984) 1 SCNLR 427. It was counsel’s submission that the findings and sentences of the 28th July 1998 not being findings and sen-

tences in law could be tampered with or altered by the General Court Martial. For this submission, learned counsel relied on Rule 80(5) Rules of Procedure (Army) 1972.

For the third issue, learned counsel argued that the court below erred in holding that neither section 9(1) of the Firearms Act nor section 114 of the Armed Forces Act prescribes a sentence of dismissal which the General Court Martial could have passed on the respondent, contending that the two sentences were clearly provided for in Section 114(3)(b) of the Armed Forces Act Laws of the Federation of Nigeria. With respect to submission of the Appellant that propriety or otherwise of that punishment was not an issue before the Court of Appeal, contending that the court was bound to restrict itself to a determination of the issues before it. For this submission counsel referred to *Adeniji v. Adeniji* [1972] 1 ANLR (Vol. 1) 301 at p. 308; *Oshatoba v. Olujina* [2000] 5 NWLR (Part 665) 159 at 170. For the submission that the General Court Martial was competent to inflict the punishment of dismissal, learned counsel relied further on sections 103(1) and 118(7) of Decree No. 105 of 1993 and that Section 36(1) of the 1999 Constitution was wrongly applied.

With regard to the 4th issue of whether, in view of the provision of Section 9(1) of the Firearms Act the prosecution needed to prove that the Respondent's possession was for an illegal purpose in order to secure his conviction. It was the contention of the Appellant that the only two ingredients of the offence are (i) that the Respondent was found in possession of the firearms and (ii) that he had no extant licence or permit to be in such possession or control. It was argued that the two ingredients were not only proved but also admitted by the Respondent. Proof of intention to use ammunitions found in a person's possession for an illegal purpose is not an ingredient of the offence in Section 9(1) of the Firearms Act, counsel argued. Learned counsel referred to the reasoning of the Court of Appeal and argued that the Court read into Section 9(1) of the Firearms Act an ingredient or element not provided therein. For this submission reliance was placed on *Stork v Frank Jones Tripton* (supra); *Awolowo V Shagari* (1979) NSCC 87 at 134; *NEPA v Atukpor* (2001) 1 NWLR (Part 693) 96 at 106.

In conclusion, it was urged that the appeal be allowed, the judgment of the court below set aside and that of the trial General

Court Martial affirmed.

The substance of the arguments of Tajudeen O. Oladoja in the Respondent's brief is as follows: With respect to the 1st count of illegal possession under Section 9(1) of the Firearms act, it was the submission of learned counsel that the said provision has been obliterated by the provision of Section 237 of the Armed Forces Decree No. 105 of 1993. Counsel argued that neither Section 9(1) of the Firearms Act nor Section 144 of the A.F.D provides for the offence of illegal possession of arms. Learned counsel further contended that Section 9(1) of the Firearms Act where it survives Section 237 of the Armed Forces Decree No. 105 of 1993 does not apply to personnel of the Armed Forces,

With respect to the Respondent's second issue, counsel argued that once the General Court Martial delivered its judgment on the 28th July, 1998 it became *functus officio* and had no authority to revise, review and substitute the said judgment with another on the 4th of August 1998. It was his submission that only the Confirming Authority has the authority to review the judgment of the General Court Martial by virtue of the provisions of Section 150(1)(a) and (b) of the Armed Forces Act. Rule 80(5) of the Rules of Procedure (Army) 1972 is not applicable to this case, counsel argued.

On the Respondent's third issue of whether the court below was right in its conclusion that the Respondent was not legally liable for an offence which occurred independently of the exercise of his will, it was the submission of learned counsel that except in strict liability cases where proof of *mens rea* is dispensed with, the prosecution has the duty to prove both the *actus reus* and *mens rea* of the accused. He relied further on the provision of Section 48 of the Penal Code, Section 138 of the Evidence Act and the case of *R. v Ahmadu* (1944) 10 WACA 161. In conclusion counsel urged that the appeal be dismissed for lack of merit.

I have given a careful consideration to the facts of the case and the address of counsel for the parties.

In my consideration, this appeal turns on the Appellant's second issue of whether the Court of Appeal was wrong in holding that the trial General Court Martial was *functus officio* after it delivered the judgment of the 28th of July 1998 and as such could not award the sentences it awarded on the 4th of August 1998. The Respondent's

second issue is, in substance, the same as that of the Appellant the differences in their phraseology notwithstanding. It is settled law that once a court has given a final decision on a matter placed before it for adjudication, it becomes *functus officio* and is precluded from reviewing or varying the form of the judgment or order apart from the correction of clerical mistakes or accidental slips. This principle has been explained in several cases. B

Firstly, it is well settled that every judgment takes effect on pronouncement. This principle was articulated in *Intercontractors Nigeria Ltd. v. U.A.C. of Nigeria Ltd.* (1988) 1 N.S.C.C. 737 at 752; *Bank of West Africa v N.I.P.C. Ltd.* (1962) LLR 31; *Olayinka v. Elusanm* [1971] 1 NMLR 227. In the English case of *Thynne v. Thynne* [1955] 3 All E.R. 129 at 146 the Court of Appeal per Morris LJ. Stated the principle thus: C

“Where a court has decided an issue and the decision of the Court is truly embodied in some judgment or order that has been made effective, then the court cannot reopen the matter and cannot substitute a different decision in place of the one which has been recorded. Those who seek to alter must in those circumstances invoke such appellate jurisdiction as may apply. But if a case arises where on interest of accuracy it seems desirable to amend some part of a judgment other than its operative and substantive part it would seem to be regrettable if the inherent powers of the court were limited or confined.” (underlining mine) E

In the same case at page 142-143 Honson LJ. expressed the principle in the following terms: F

“Where the court has made the order it intended to make, the judgment must stand until set aside on appeal or by action brought for the purpose. The court cannot otherwise eat its own words simply because the evidence on which it acted is shown to be wrong whether the error is brought about deliberately or by accident. To amend the petition on which the decree was pronounced must make it appear as if the petitioner had presented a case different from that which was actually put forward at the hearing. Judgment having been given, I think it is too late for such an amendment.” G

In *Umaru Omolowo v. African Newspapers of Nigeria Ltd.* [1991] 8 N.W.L.R. (pt, 209) 371 at 380 the Court of Appeal per Okunola JCA (of blessed memory) emphasised the principle thus: H

“From the foregoing it can be seen that order 5 Rule 3 of the Court of Appeal Rules 1981 is simply an in-built mechanism designed to correct accidental slips and omissions in the court’s judgment and order properly brought to its notice and does not go beyond that to confer jurisdiction on the court to review its judgment or order outside this exigency often referred to as the Slip Rule.”

It is clear that what the learned counsel for the Appellant/Applicant herein is praying for is outside this exigency in that he is not asking to correct any accidental slip or omission, rather he is asking us to review our order of stay. This prayer he based on the ground that the situation leading to the grant of the order has changed in the light of a new decision of the Supreme Court which has taken out poverty from the class of criteria for the grant of stay and upon which among others the order was made in the first instance. Assuming the court was in error in granting the stay in this case (which is not the situation here) can the court review its own final order for this reason.....”

In conclusion the court refused to grant the review of the stay sought. In the case of ARCON v FASSASSI (No.4) (1987) 3 NWLR (Part 59) 42 at 43-44 the Supreme Court, Per Belgore JSC (as he then was) articulated the principle thus:

“The court gave judgment in this matter yesterday and made consequential orders. Thereafter this court is functus officio. To urge us to review our decision in respect of order made under the decision is to invite us to violate the constitution we are sworn to defend. Whether this panel or the full court cannot re-open the matter as we have no power to hear appeal against our own decision.”

So much for the principle that **once a court has given a final decision and necessary consequential orders in a matter presented before it for adjudication, it becomes functus officio and has no jurisdiction thereafter to review or vary the decision even if it realizes afterwards that the decision is manifestly wrong, the only exception being its power to correct typographical errors or accidental slips under the “Slip Rule.”**

Learned counsel for the appellant agreed with the principle and its effect. He however proffered sustained arguments, (which substance I have stated above) to contend that the principle does not apply to trials by General Court Martial. His argument which sub-

stance I am constrained to recapitulate was that the conviction and sentence of the respondent on the 28th of July were subject to the confirmation by the Appropriate Superior Authority and that unless and until such confirmation, the conviction and sentence cannot, in law, be held to constitute part of the judgment. Learned counsel argued therefore that it was the judgment of the 4th of August 1998, which alone was confirmed, that formed part of the judgment of the trial General Court Martial. It was counsel's further submission that until the decision of the trial General Court Martial of the 28th of July 1998 was transmitted to and confirmed by the Appropriate Superior Authority, the General Court Martial was at liberty to review the said decision and substitute therewith the fresh decision of the 4th of August 1998, contending that section 150 of the Armed Forces Decree No. 105 of 1993 enabled it so to do.

I do not, with respect, agree that section 150 of the Armed Forces Decree No.105 of 1993, now Armed Forces Act, Cap A20 Laws of the Federation of Nigeria 2004 is any authority for the review and heavier punishment awarded by the trial Court Martial and confirmed by the confirming authority. In the first place section 150 of the Armed Forces Act fails within Part XV thereof and for post-trial procedures. The provisions relevant to trials by Court-Martial are sections 137-146 of the Act. And specifically, **Section 141 of the Act 30 provides for the finding and sentence where the trial court martial returns a verdict of guilt of the accused person at the end of the trial.** The said Section 141 of the Act says:

(1) Without prejudice to the provisions of Section 139 of this Act, the finding of a court-martial on each charge shall be announced in open court and, if the finding is guilty shall be announced as being subject to confirmation.

(2) The sentence of a court martial, together with any recommendation to mercy, shall be announced as being subject to confirmation.

What the trial General Court Martial did on the 28th of July 1998 was in strict compliance with the above provision. The guilt of the Respondent as well as the sentences for the two counts were pronounced and same were announced to be subject to the confirmation by the appropriate Superior Authority, (A.S.A). There is nothing in this or any other provi-

sion to the Act which enabled the trial court martial to reconvene to review the sentences pronounced on the 28th July 1998 and substitute therewith the heavier sentences on the 4th of August 1998. It is beyond any controversy that the trial court martial had no jurisdiction to do the acts complained of. It could only have derived the authority reassemble and review the sentence or sentences if it had been so directed to by the confirming authority by virtue of the provisions of Section 150 of the Armed Forces Act. There was no such direction. Furthermore, even if the trial court martial were given a direction to review its sentences (which was not) it had strict limitations in terms of the scope of punishments that could be awarded. It had no authority to award or substitute a punishment which is more severe than that contained in the original sentence. This is expressly prohibited by Section 150(5) of the Armed Forces Act. Section 150 (5) says;

“The court-martial shall not have power to substitute a sentence of punishment greater than the punishment or the greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court martial is more severe than the original sentence,”

The above provision is not only clear and unequivocal; it is also mandatory and both the trial court martial and the confirming authority were bound to give effect to it. They failed to do so. Apart from the specific provision of Section 150(5) of the Armed Forces Act, the spirit and general intendment of sections 147-151 of the Act is that the confirming authority cannot, in the exercise of its powers of review, award a punishment greater than that awarded by the court martial. It is clear, from the record, that the trial court martial reconvened and recalled the Respondent on the 4th of August 1998 for the sole purpose of awarding a punishment more severe than that of the 28th of July 1998. It had no power to do so. Having pronounced its sentences on the 28th of July 1998, it became functus officio and had no authority whatsoever to review the sentences and award those of the 4th August, 1998, its perception about the impropriety of the previous sentences notwithstanding, it is my view therefore that learned counsel for the Appellant cited Section 150 of the Armed Forces Act for a proposition it cannot support. As I have

shown above the provision clearly prohibits the act of the court-martial. ***The result is that the review of the sentences on the 4th of August 1998 is ultra vires the provisions of section 150(5) of the Act.***

In my view, the review constituted a fundamental defect in the entire proceedings which proceedings were therefore rendered null and void. In view of the foregoing considerations therefore I fully endorse the decision of the Court of Appeal nullifying the trial, conviction and sentences. The second issue is therefore resolved in favour of the Respondent.

As I indicated earlier above that this appeal turns, wholly on this issue. Even if all the remaining issues are resolved in favour of the Appellant, the appeal still fails, the entire proceedings having been rendered null and void by the fundamental defect in the proceedings. On the whole I do not fancy any reason to interfere with the decision of the Court of Appeal which is therefore affirmed. And for the foregoing reasons, the appeal be and is hereby dismissed.

AKINTAN JSC

The respondent, a major in the Nigerian Army, was sometime in January, 1996 on military assignment to Liberia as a member of Nigerian contingent in the Economic Community of West Africa's Monitoring Group (ECOMOG). While away his residential quarters at No 8A MOG Chindit Barrack, Zaria was burgled. His wife lodged a report of the burglary incident with the Commandants of the Nigerian Military School, Zaria who had control over the barrack. The Commandant sent two of his men, Captain Damagun who later testified as PW1, and Warrant Officer Sajo (PW2) to follow the respondent's wife to the quarters with a view to ascertaining what happened. The visitors found, while in the quarters in the course of the visit, some controlled military items to wit:

- (i) 40 live rounds of 7.62 mm Ammo; and
- (ii) 32 pieces of thunder flashes and 14 pieces of hand fare yellow pyrotechnics.

The respondent was immediately contacted in writing and was eventually arraigned before the General Court Martial (GCM) on a two count charge. The charge reads, *inter alia*, as follows without their particulars:

"Count 1

Statement of Offence: Illegal possession of Ammo punishable under section 9(1) of the Firearms Act, by virtue of section 114(1) of Decree 105.

Count 2

B *Statement of Offence: Conduct to the prejudice of service discipline punishable under section 101(1) of Decree 105."*

At the trial, four witnesses testified for the prosecution. The defendant, on the other hand, gave evidence in his defence but called no other witness. The General Court Martial, after taking closing submissions from both the prosecuting counsel and that of the defendant, delivered its judgment on 28th July, 1998. The respondent was found guilty on both counts. The sentences passed on him are 1st count - reduction in rank from major to captain; and 2nd count - D compulsory retirement from the Nigerian Army.

But on 4th August, 1998 the GCM reconvened and the respondent was again brought before it. The sentences earlier passed on the respondent were on that day changed. They were replaced with the following: 1st count - reduction in rank to the rank of Captain with 2 years seniority and 2nd Count - Dismissed from the Nigerian Army with effect from 4th August, 1998. The new sentences passed on the respondent were those that were sent to the confirming authority who also confirmed them. The respondent was dissatisfied with the verdict and sentences passed on him. He appealed to the Court of Appeal and his appeal was allowed. The present appeal by the Nigerian Army is from the judgment of the Court of Appeal, Kaduna Division delivered on 25th April, 2005.

F The parties filed their respective briefs of argument in this court. G The appellant formulated the following four issues as arising for determination in the appeal.

"ISSUES FOR DETERMINATION

1. *Whether upon a proper construction of Section 237 of Decree 105, the Court of Appeal was right in holding that the Respondent is exempted from the provision of Section 9(1) of the Firearms Act Cap 146 Laws of the Federation of Nigeria 1990.*

2. *Whether the learned justices of the Court of Appeal were not wrong in holding that the trial General Court-Martial was functus officio after it delivered the judgment of 28th July, 1998 and as such*

could not award the sentences it awarded on 4th August, 1998.

3. *Whether having regard to Section 114(3) and other relevant provisions of Decree 105, the Court of Appeal was right in holding that there was no provision of law enabling the Trial GCM to sentence the respondent to a reduction in rank.*

4. *Whether in view of the provision of Section 9(1) of the Firearms Act Cap 146 LFN 1990, the prosecution needed to prove that the Respondent intended to use the ammunition in his possession for an illegal purpose in order to secure the Respondent's conviction."*

Three issues are formulated in the respondent's brief. But as I believe that the above four issues formulated by the appellant also cover the three formulated by the respondent, I therefore do not consider it necessary to reproduce the issues formulated by the respondent.

I also believe that the entire appeal hinges on the resolution of the following two questions -

(a) whether the General Court Martial became functus officio after it delivered its judgment on 28th July, 1998 and as such it no longer had jurisdiction over the matter when it reopened the same case for the purpose of passing new sentences; and (b) whether the sentences it passed were in fact prescribed for the offences for which the respondent was charged, tried and convicted.

As I already stated above, the General Court Martial reconvened on 4th August, 1998 and the respondent was brought before it. The earlier sentences passed on the respondent were set aside and new ones were imposed. It is the newly imposed sentences that were later ratified by the confirming authority.

There is no doubt that the procedure adopted by the General Court Martial amounted to nothing but sitting on an appeal over its previous decision. It was wrong to have done that. The position of the law is that once a court or tribunal delivered its final judgment in a case before it, it became functus officio with respect to that case. It has no power to reopen the case for the purpose of making corrections or changing any opinion expressed in its earlier judgment in the case. The only exception to this rule is where there is need to make minor permissible correction under the slip rule. What can be altered under the *slip rule* is not as to the substance of the judgment earlier

delivered but limited to minor errors, such as spelling errors, typographical or mathematical errors wherein correct figures can be entered. See *Berliet Nig Ltd. v. Kachalla* (1995) 9 NWLR (Pt. 420) 478; *Emodi v. Kwentoh*. (1996) 2 NWLR (Pt. 433) 656; *Minister of Lagos Affairs, Mines & Power v. Akin Olugbade* (1974) 1 All NLR (Pt. 2) 226; *Commissioner of Lands Midwest State v. Edo-Osagie* (1973) 6 SC 155, and *Umunna v. Okwurajiwe* (1978) 6 & 7 SC 1 at 9.

Although the fact that the judgments passed by the General Court Martial are subject to confirmation by an appropriate confirming authority, that provision does not confer on the GCM the right to recall any judgment it had delivered for the purpose of reviewing same as it did in the instant case. The position therefore is that the sentences passed on the respondent at the sitting of the General Court Martial when it reconvened on 4th August, 1998 is null and void as they do not come under the amendments which could be made under the slip rule as enunciated above. The ratification or confirmation by the confirming authority of the null and void judgment is also without any effect. In other words, no valid judgment was passed on the respondent in the case.

The next question to be resolved, which is whether the sentences of reduction in rank and dismissal from service passed on the respondent are the punishments prescribed for the offences for which the respondent was tried and convicted, now becomes academic. However, in the statement of offence in Count one, the respondent was accused of “*illegal possession of Ammo punishable under section 9(1) of the Firearms Act by virtue of section 114(1) of Decree 105.*” Section 9(1) of Firearms Act 20 does not prescribe any punishment. The section reads thus:

“9 - (1). No person shall by way of trade or business buy or sell or transfer or expose for sale or transfer or have in his possession for sale or transfer any firearms unless he registered as a firearms dealer.” Section 114(1) and (3) of the Armed Forces Act (which is referred to as Decree 105 on the charge sheet) provides thus:

“114 - (1) .A person subject to service law under this Act who commits any other civil offence, whether or not listed under this Act or committed in Nigeria or elsewhere is guilty of an offence under this section.

(3) A person convicted by a court martial for an offence under

this section is liable -(a) if the corresponding civil offence is treason or murder; to suffer death, and

(b) in any other case, to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in Nigeria being a punishment or punishments, less than the maximum punishment, which a civil court could award, as is so provided, so however that where a civil court may not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less the cashiering in the case of an officer or discharge with ignominy in the case of a soldier; rating or aircraftman as is provided.”

It is clear that no where in the section of the Act quoted above that the punishments imposed were specifically mentioned.

However, the determining factor in the instant appeal is that the judgment sent to the confirming authority for confirmation under section 150 of the Armed Forces Act is null and void and as such the confirmation had no effect.

It may, however, be mentioned that under section 382 (1) of the *Criminal Procedure Code* where a court has authority to impose a fine for that offence, the court may, in its discretion, impose lesser punishment such as a fine in lieu of imprisonment: See *Thomas v. The State* (1994) 4 NWLR (Pt. 337) 129; and *Etim v. The Queen* (1964) 1 All NLR 38.

In the final result and for the reasons I have given above, and the fuller reasons given by my learned brother, Tabai, J.S.C., the draft of which I have read, I also hold that there is no merit in the appeal. I accordingly dismiss it and affirm the judgment and consequential orders made by the court below in the case.

MUHAMMAD JSC

I have had the opportunity of reading in advance the judgment just delivered by my learned brother, Tabai, J.S.C. I am in complete agreement with his reasoning and the conclusion reached. I too dismiss the appeal and affirm the judgment of the court below.

CHUKWUMA-ENEH JSC

I have read in advance the judgment of my learned brother Tabai, JSC with which I couldn't agree more that there is no merit in

the appeal.

I must however observe that no Court worth its salt will lose sight of the trite law that in the process of adjudication it must do so in accordance with settled principles of law. One striking feature of our law highlighted in this case is the settled principle that a Court after giving a final decision in a matter before it for adjudication is precluded from reviewing or reversing itself in the same proceedings in terms of the contents of its holding or decision excepting as provided under the slip rule of taking care of minor slips like clerical mistakes, this is, otherwise known as the principle of “*functus officio*”. The General Court Martial has considered and passed sentence on the accused, it is *functus officio* of the matter. This principle has been applied in many decided cases of this court. See *Intercontrators (Nig.) Limited v. U.A.C. of Nigeria Limited* [1988] 1 NSCC 737 and *Francis D Shanu and another v. Afribank (Nig.) Plc.* [2002] 6 (pt.511); (SC.69/1997 delivered on 21/4/2002 particularly.

It is therefore a grave error for the General Court Martial to reconvene at the direction of the Judge Advocate on 4th August, 1998, after having given its final verdict in this case on 28th July, 1998 to review and reverse indeed, sit on appeal as it were, over its decision and has proceeded to alter the sentences it passed on the respondent. This is not only most unacceptable, it is reprehensible. The court below rightly therefore intervened to set aside the entire proceedings as a nullity. This appeal therefore lacks merit and I agree it should be dismissed and I also dismiss it.

OGEBE JSC

I had a preview of the lead judgment of my learned brother, Tabai, J.S.C. just delivered and I agree with his reasoning and conclusion.

The trial court martial committed a very serious blunder when it reconvened after the conclusion of the respondent’s trial to review its previous sentences and impose heavier ones. This blunder rendered the proceedings of the review a nullity.

Accordingly, I also dismiss the appeal and affirm the judgment of the Court of Appeal.