

**SUPREME COURT OF NIGERIA**

8TH APRIL, 2011. SC.32/2010

**CORAM:- C. M. CHUKWUMA-ENEH, J. A. FABIYI, O. O. ADEKEYE, S. GALADIMA, B. RHODES-VIVOUR, JJSC**

1. ALHAJI MUHAMMADU

MAIGARI DINGYADI

2. DEMOCRATIC PEOPLES PARTY ..... APPELLANTS  
AND

1. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

2. ALIYU MAGATARKADA WAMAKKO ..... RESPONDENTS

3. PEOPLES DEMOCRATIC PARTY

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JURISDICTION - Supreme Court - Abuse of process - Power to protect sanctity of justice - S. 6(6)(a) of the Constitution - It is empowered to protect itself from abuse of its processes - And to make consequential order - Where there is an element of public policy in a matter (H1)

PRACTICE & PROCEDURE - Actions - Commencement procedure - Propriety - Suits instituted in contravention of a procedure - Is incompetent and court lacks jurisdiction to entertain same (H2)

JURISDICTION - Fundamental principle - Meaning - Jurisdiction is the legal authority of a court to adjudicate in a matter (H3)

SUPREME COURT - Judgments - Finality of - Where it has properly decided on a matter - It becomes functus officio to review the decision - Except to correct clerical errors arising from accidental slip (H4)

SUPREME COURT - Judgments - Setting aside - Instances - It possesses inherent power to set aside its judgment in appropriate cases (H5)

APPEALS - Record of appeal - Appellate court - When an appeal has been entered - Is said to be seized of the proceedings - In the

sense that the res in the appeal has automatically passed to its custody (H6)

**ELECTIONS** - Pre election matters - Disqualification of candidate - Power - It exclusively belongs to the Federal High Court or a State High Court - To disqualify a candidate whose name has been submitted to the Electoral Commission (H7)

**ELECTIONS** - Political parties - Internal affairs - The control of internal affairs of a political party - Must comply with the Constitution and the Electoral Act (H8)

**ELECTIONS** - Qualification of candidate - Rules - The Electoral Act and the Constitution stipulate the rules governing preliminaries to an election - And that governing the conduct of an election (H9)

**ELECTIONS** - Qualification of candidate - Challenge of - S. 145(1)(a) Electoral Act 2006 - Qualification of a candidate to contest an election can be challenged before a Tribunal - Even where he is validly nominated (H10)

**JUDICIAL PRECEDENTS** - Stare decisis - Purport - It is to the effect that lower courts are bound to follow the precedents set by higher courts - Even when given per incuriam (H11)

**COURTS** - Jurisdiction - Supreme Court - Application for rehearing already concluded matter - Is incompetent and unconstitutional - Vide ss. 235 & 287 (1) of the Constitution - As there must be end to litigation (H12)

### ***FACTS***

On 11th April 2008, the Court of Appeal sitting at Kaduna delivered judgment in Election Petition appeal involving the election of 2nd respondent to the office of Governor of Sokoto State conducted on 14th April 2007. The Court nullified the said election and ordered a fresh election to be conducted between the same parties and same candidates. Prior to the conduct of the fresh election on 24th April 2008, appellants filed an originating summons on 25th

April 2008 before the Federal High Court Abuja, seeking for the interpretation of the judgment of the Court of Appeal Kaduna as well as a determination of the candidature of 2nd respondent in the fresh election. The court declined jurisdiction and subsequently dismissed the suit. Dissatisfied, appellants appealed to the Court of Appeal Abuja. However, while the substantive appeal was pending, appellants applied for leave to raise fresh issue which was that the Federal High Court has jurisdiction to execute the judgment of Court of Appeal Kaduna. The court also refused the application.

Aggrieved further, appellants filed an interlocutory appeal to Supreme Court praying for an order of the court to determine the substantive appeal on its merits. By way of preliminary objection, 1st respondent highlighted that the re-run election had taken place and that appellants had also filed a fresh petition before the Governorship Election Petition Tribunal Sokoto praying for a determination of the candidature of 2nd respondent in view of the decision of the Court of Appeal Kaduna in Appeal No. CA/K/Gov/EP/60/07. The Tribunal dismissed the petition on the ground that it lacks jurisdiction to interpret the judgment of the Court of Appeal Kaduna. 1st respondent further pointed out that appellants also appealed against the judgment of the Tribunal at the Court of Appeal Sokoto, while their (appellants') appeal on same issue of interpretation of judgment of Court of Appeal Kaduna was still pending before the Court of Appeal Abuja. Consequently, 1st respondent argued that the procedure taken by appellants is an abuse of court process and deserves to be struck out. 2nd and 3rd respondents also raised similar objections.

***HELD*** (Unanimously dismissing the application per **ADEKEYE JSC**)  
***JURISDICTION - Supreme Court - Abuse of process***

1. Issues of abuse of court process have been identified as an issue of jurisdiction. Hence the court reserves the prerogative and inherent jurisdiction to protect itself from abuse of its processes. The court has an inherent jurisdiction to undo what has been done by a party in abuse of court process, particularly in an attempt at forum shopping, so as to avoid a situation whereby the court will be presented with a fait accompli.

Any case which is an abuse must go under the hammer so as

to halt the drift created by the abuse; the Supreme Court has this power. There is no iota of doubt that the Supreme Court has the power to make consequential order where there is an element of public policy in a matter which requires urgently securing public confidence in the administration of justice. In the instant case, the peculiar facts of the subject matter warranted making a consequential order to arrest drifting into judicial anarchy and to avoid as earlier on observed conflicting interpretation of the judgment of the Kaduna Court of appeal in Appeal No. CA/K/EP/Gov/10/2007. The Supreme Court is conferred with unlimited inherent powers by virtue of Section 6 (6) (a) of the 1999 Constitution as a court of record to jealously guard the judicial process from being ridiculed or scandalized and for the purpose of achieving a just, equitable and expeditious dispensation of justice. (p. 935 A)

**Commencement procedure for an action**

2. Abuse of legal process identified here is of jurisdictional importance as where a condition for initiating a legal process is laid down, any suit instituted in contravention of the precondition provision is incompetent and a court of law lacks jurisdiction to entertain the same. (p. 935 G)

**JURISDICTION - Fundamental principle - Meaning**

3. Jurisdiction is the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. Such authority of the court is controlled or circumscribed by the Statute creating the court itself or it may even be circumscribed by a condition precedent created by legislation which must be fulfilled before the court can entertain the suit. All of the above touch on the legal authority of the court to adjudicate in the matter.

Jurisdiction is fundamental and it is the centre pin the entire litigation hinges on: (p. 935 H)

**SUPREME COURT - Judgments - Finality of**

4. I will consider the argument and submission to set aside the decision of this court made on 26/11/10. As a starting point, the parties and this court are on common ground that generally speaking and

following the numerous decisions of this court except in situations of the narrow rule of the “Slip Rule”, the Supreme Court has no jurisdiction to entertain an application for review of its judgment once it has been delivered. The Supreme Court is the final court of justice in Nigeria and its decision is final, In short, the supreme court shall not review any judgment once given and delivered by it, save to correct any clerical mistake or some error arising from any accidental slip or omission or to vary the judgment or order so as to give effect to its meaning or intention. “Accident slip” in a judgment or order of a court means a classical error in a judgment or order of a court, which must be an error in expressing the manifest intention of the court. The court will exercise its power to correct clerical errors or mistakes arising from accidental slip or omission if nothing has intervened to make it inequitable to do so. Any other error outside this saving clause would not be permitted by the slip Rule since the judgment would then have represented what the court decided and any alteration or variation would be a variation of the substantive part of the judgment. The inherent power of the court can only be invoked if there is a missing link in the main body of the judgment and steps must be taken to fill the gaps or clear the ambiguity in the interest of justice. The exercise of this power should not be used to review or rehear the case or alter the rights and obligations of the parties under the ruling or order made.

It is my conclusion that contrary to the submission of the applicants none of the foregoing cases is applicable to the judgment of this court now sought to be set aside. The judgment sought to be varied correctly represents what this court decided or a substantive part of it. In the circumstance, this court has become functus officio. (pp. 936 D/938 E)

### **SUPREME COURT - Judgments - Setting aside**

5. Regardless of the foregoing, this court has re-stated in many cases that it possesses inherent power to set aside its judgment in appropriate cases. The rationale behind the inherent power was amplified in the case of *Adegoke Motors Ltd. v. Adesanya & Anor* (1989) 5 SC pg. 113; (1989) 3 NWLR (pt.109) pg. 250 at pg. 274 that-

*“We are final not because we are infallible, rather we are infallible because we are final. Justices of this court are human beings*

*capable of erring. It will be short-sighted arrogance not to accept this obvious truth."*

Such cases where this court will set aside its judgment are:-

- a. When the judgment is obtained by fraud or deceit either in the court or of one or more of the parties:
- B      2. Where the judgment is a nullity and a person affected by the order of court which can be described as a nullity is entitled *ex debito justitiae* to have it set aside.
- 3. When it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it.
- C      5. Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication. (p. 937 E)

**D Appellate court has right to consider record of appeal**

- 6. When an appeal has been entered before an appellate court, the court has a right to glean through the Records and all processes transmitted to that court in respect of the appeal.
- Where an appeal has been entered the effect is that the appellate court which has received the Record of Appeal is said to be seised of the whole proceedings in the sense that the *res* in the appeal has automatically passed into the custody of the said appellate court. (p. 940 E)

**F Pre election matters - Disqualification of candidate**

- 7. The Independent National Electoral Commission lacks the power to disqualify any candidate on its own. The power of disqualification of any candidate from contesting an election after his name has been forwarded to the Commission belongs exclusively to the Federal High Court or State High Court.
- G      Prior to the Electoral Act 2006, the courts are without jurisdiction to determine the issue of validity of nomination of a candidate of any political party.
- H      The issue of non-justiciability of the exercise of nomination has been modified by the Electoral Act 2006 - which now makes Section 32 (4) in respect of sworn affidavit information of candidates and Section 34 (1) and (2) on substitution of nominated candidates now justiciable. Pre-election matters are filed before the State High Courts

or Federal High Courts. The last bus stop is that issues of nomination, sponsorship and substitution are pre-election matters which by their nature cannot be ventilated before an election petition tribunal as the tribunals are not set up for that purpose.

These yardsticks for the qualification and disqualification of a governor are as embodied in Sections 177 and 182 of the Constitution. In the case of the 2nd respondent, INEC found that he was a member of PDP and was sponsored by that party before he contested the election in 2007 and also the re-run in 2008 that is the end of the matter - that issue cannot be raised before a Tribunal. The Sokoto Tribunal was right to have declined jurisdiction.

I have decided to give this application a microscopic examination and expose - the real masquerade which is the Sokoto Election Petition appeal CA/S/Ep/Gov/10/09. In the hearing and determination of the Sokoto appeal, the Supreme Court did not suddenly assume the role of a knight errand looking for skirmishes to devour by usurping an election matter, where the 1999 Constitution does not invest it with jurisdiction. I repeat with emphasis based on the records that the genesis of the issue involved in the Sokoto election appeal ab initio is a pre-election matter which need not to have gone before the court of appeal Kaduna in Appeal No. CA/K/GOV/EP/60/07 at all and thereafter resulting in the 11/4/08 controversial judgment. The Sokoto Election Petition Tribunal which heard the matter after the 2007 election, rightly and correctly declined jurisdiction. In essence, invoking section 246 (3) and the issue of finality of the suit at Court of Appeal as canvassed by the applicant would not have been applicable. As a pre-election matter, the suit ought to have commenced at the Federal High Court or state High court Sokoto and terminate at the Supreme Court. (pp. 943 F/944 D/945 E/949 G)

***Political parties to control its internal affairs subject to the laws*** ELECTIONS - Political parties - Internal affairs

8. After the Electoral Act 2006, a political party is able to control the affairs of the party only to the extent that the exercise of such control does not run against the provisions of the Constitution and laws of Nigeria particularly Section 34 (1) and (2) of the 2006 Electoral Act. (p. 944 A)

***ELECTIONS - Qualification of candidate - Rules***

9. In determining who is to contest an election, two sets of rules apply-

Rules governing the preliminaries to an election - between the political parties, its members and the electoral commission.

B             The Electoral laws rest in the electoral commission the power to determine who is to contest an election.

b. The second rule is the conduct of an election. The Constitution of the Federal Republic of Nigeria stipulates conditions which a candidate wishing to contest an election must possess.

C             (pp. 944 B/945 C)

***ELECTIONS - Qualification of candidate - Challenge of***

10. It is trite law that the qualification of a candidate to contest an election can be challenged even if he is validly nominated, before a Tribunal.

This is the essence of Section 145 (1) (a) of the Electoral Act 2006 which read as follows -

An election may be questioned on any of the following grounds:-

E             a. That a person whose election is questioned was, at the time of the election not qualified to contest the election. (p. 944 C)

***JUDICIAL PRECEDENTS - Stare decisis - Purport***

F             11. This is the doctrine of ‘stare decisis et non quieta movere’ or judicial precedent. The meaning and import is to abide by former precedents where same points come again in litigation. It presupposes that the law has been solemnly declared and determined in a previous case. It does preclude the judges of subordinate courts from changing what has been determined.

G             Under the doctrine of stare decisis, lower courts are bound by the theory of precedent. It is in effect a doctrine which enjoins judges to stand by their decisions and the decisions of their predecessors however wrong they are and whatever injustice they inflict. All courts H established under the constitution derive their powers and authority from the constitution. The hierarchy of courts shows the limit and powers of each court. It is to ensure that hierarchy of the court is never in issue.

The doctrine of judicial precedent does not involve an exercise of

judicial discretion at all - it is mandatory.

Any request by a court for a departure or overruling or revisiting or reviewing or setting aside its previous decision will jeopardize the stable rules of judicial precedent - stare decisis. This is a basic reason why the courts particularly the Supreme Court may not find it easy to readily yield to such invitation. (p. 946 G) B

***Supreme Court - Application for rehearing concluded matter***

12. I hold that the application lacks merit and it must be dismissed in its entirety. There must be an end to litigation. This court is the final court in this country under the Constitution. The court of Appeal and all the lower courts are bound by the decisions of the Supreme Court. It is the mirror for viewing the sacred temple of justice. The judicial powers of the Federation shall be vested in the courts enumerated in Section 6 (5) of the 1999 Constitution being courts established for the Federation and by virtue of Section 6 (5) (j) or any such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws. In the hierarchy of courts enumerated under section 6 (5) of the constitution - the Supreme Court tops the list. C D E

In short, there can be no re-hearing of any matter the Supreme Court has dealt with to conclusion. This application to that effect is incompetent and equally unconstitutional with the community reading of Sections 235 and 287 (1) of the 1999 Constitution. The judgment of the Supreme Court is the final on any issue determined by it. As I mentioned before, the courts and legal practitioners owe the society a duty to interpret the laws particularly in election suits and in view of the pending election, as custodians of the rule of law in the development of Nigeria's nascent democracy. Finally, there must be an end to litigation. The maxim *Interest Republicae ut sit finis litum* is a cardinal principle of the administration of justice. The law is crystal clear that once the Supreme Court in its decision has effectively decided on a matter before it and there is no ambiguity or slip to be corrected, it becomes *functus officio* of the powers of the court to re-open it. (pp. 947 E/949 C) F G H

***NOTABLE POINTS OF INTEREST***  
***ADEKEYE JSC***

1. *Latin phrase “functus officio” – Meaning*

The Latin phrase “functus officio” means a task performed, fulfilling the function, discharging the office or accomplishing the purpose and thereby becoming of no further force or authority.

A court is said to be functus officio in respect of a matter if the court has fulfilled or accomplished its function in respect of that matter and therefore lack the potency to review, re-open or revisit the matter. Thus once a court delivers its judgment on a matter, it cannot revisit or review or set aside the said judgment except under certain conditions. More importantly, a court lacks jurisdiction to determine an issue when it is functus officio in respect of the issue or where the proceedings relating to the issue is an abuse of court process.  
(p. 938 F)

2. *Nomination – Definition*

According to Advanced Law Lexicon 3rd Edition Report 2003 Book 3, Nomination is defined as appointment, a resolution submitted to the electors that the party named is a candidate for their suffrage for an office named.

The issue of nomination of candidate is governed by the rules governing preliminaries as to an election. Preliminary rules are those rules which determine intra-party resolutions and nominations to elective offices. The relationship of nomination is between the political party, its members and the electoral body. The intention of the law is to vest nomination of candidates in the membership of a political party and further make nomination a preliminary issue for any person wishing to contest. Nomination of a candidate is exclusively the responsibility of his political party under the Electoral Act 2006.  
(p. 943 C)

3. *Jurisdiction – Meaning*

In effect the inherent jurisdiction as defined by the applicant as vested in the courts derived from the constitution. Jurisdiction is a term of comprehensive import embracing every kind of judicial action. It may have different meanings in different contexts. Jurisdiction defines the power of the court to inquire into facts, apply the law, make decisions and declare judgment. The constitution and statutes which set up the Courts cloak them with powers and jurisdiction of adjudication which

are basically substantive and procedural. (p. 948 A)

#### *4. Court to protect the sanctity of the Electoral processes*

The courts are the custodian of the constitution. In the light of the foregoing provisions of the Constitution, it is the duty of this court as the final court to interpret the provisions of the Constitution and other enacted Statutes for proper conduct of affairs, so that democratic governance will be predicated and sustained on the rule of law. Political matters are highly sensitive and equally sui generis. This court has observed a new and unique species of abuse of Court/legal process in the form of forum Shopping. In the light of section 14 (1) and 14 (2) (a) (c), this court cannot close its eyes and allow desperate individuals to wrongly use the courts to secure a mandate otherwise denied them after going through the process of free and fair election at the polls. In Nigeria participation by the people in their government is a constitutional provision under the Electoral Act 2006. The courts cannot also be dragged into how political parties make their internal arrangements in their domestic affairs to attain political power through elections into public offices. For the courts to take part in any manner to decide which member of a party is properly nominated for election or not is to put themselves in the thick of an undesirable imbroglio. This is likely to destabilize the judiciary.

This court shall never become an instrument of injustice, on the other hand, it shall continue to perform the duty granted to it by the Constitution of Nigeria to ensure that citizens of Nigeria high and low get the justice which their case demands. This court cannot remain passive in the face of an imminent effort to subvert the electoral process through abuse of court process and will not hesitate to use all powers at its disposal to do substantial justice and deter selfish ambitions in the interest of peace and progress of the nation. The law cannot be localized to achieve injustice. Substantial justice has no limit or boundary. The order of this court made on 26/11/10 dismissing Appeal No. CA/S/EP/Gov/10/2009 pending at the Court of Appeal Sokoto as abuse of court process is immutable, as this court cannot overrule itself on that issue. (pp. 948 E/950 D)

#### **REPRESENTATION**

Chief Akin Olujinmi, SAN with him, Mr. Rickey Tarfa, SAN with him,

O. Jolaawo, Ifeanyi Egwasi (Esq.), Sulaiman Usman, Akinsola Olujinmi, M. Ibrahim, Akinyemi Olujinmi, Y. Pitan, E. Nduku (Mrs.), Femi Atetedaye, Toyin Fameso (Miss), Ayodele Akisaya, Omolara Adeogun (Miss), Adetutu Aina (Miss), Esther Enoch (Miss), A. Okubote (Esq.), A. Fakoya (Esq.), R.T. Sai-Sulaiman (Mrs.), B.A. Oyin, I.O. Okebukola  
 B (Miss), G.A. Ashaolu (Esq.), Kemi Odegbami (Miss), Ifeoma Ugboaja (Esq.) For the Appellants

Mr. Yahaya Mahmood with him, Vivian Bosah  
 C Dr. Oladapo Olanipekun with him, J.U. Ajii, K.N. Azie, A. Adesina and Aisha Ali (Miss)  
 Dr. Alex Izinyon, SAN with him, B.K. Abu, Hanatu Abdul-Rahaman (Miss) For the Respondents

**D CASES REFERRED TO**

Madukolu v. Nkemdilim (1972) 2 SCNLR pg.341  
 Arubo v. Aiyeleru (1993) 3 NWLR (pt.280) pg.125  
 Ukachukwu v. Uba (2005) 18 NWLR (pt.956) pg.1  
 Rossek v. ACB Ltd (1993) 8 NWLR (pt.312) pg.382  
 E Amaechi v. INEC (2008) 5 NWLR (pt.1080) pg.227  
 Onuaguluchi v. Ndu (2001) 7 NWLR (pt.712) pg. 309  
 Ezugwu v. Nwamulu (2010) 4 NWLR (pt.1183) pg.159  
 Awuse v. Odili (2003) 18 NWLR (pt.851) pg.116 at pg.174  
 F Mohammed v. Olawunmi (1993) 4 NWLR (pt.287) pg. 254  
 Dingyadi v. INEC (No.2) (2011) 18 NWLR (pt.1224) pg.154  
 Adigun v. A-G Oyo State (No.2) (1987) 2 NWLR pt. 56 pg, 197  
 Amaechi v. INEC (2008) 5 NWLR (pt.1080) pg.227 at pgs, 333-334  
 Oduko v. Government of Ebonyi State (2009) 9 NWLR (pt.1147)  
 G pg.439 at page 452  
 Ivory Merchant Bank v. Partnership Investment Ltd. (1956) 5 NWLR (pt.448) pg.362  
 7 up Bottling Co. Ltd. v. Abiola & Sons (Nig) Ltd. (1995) 3 NWLR (pt. 883) pg. 257

**H STATUTES REFERRED TO**

Constitution of Federal Republic of Nigeria 1999, ss. 6(5)(j)(6)(a), 14(1)(2)(a)(c), 236, 246(3), 287 (1)  
 Electoral Act 2006, ss. 32, 34(1)(2), 145(1)(a)

**BOOK REFERRED TO**

Advanced Law Lexicon 3rd edition Report 2003, book 3

**LEAD JUDGMENT BY ADEKEYE JSC**

On the 1st of March 2011, the applicants, Alhaji Muhammadu Maigari Dingyadi and Democratic Peoples Party, through their counsel, learned Senior Advocate, Chief Olujinmi moved the application filed on 17th of December 2010 praying for an order of this court as follows: -

*“Setting aside the portion or part of the judgment of the court delivered on 26th day of November, 2010 dismissing Appeal No. CA/S/EP/Gov/10/09 pending before the Court of Appeal Sokoto on the ground of abuse of court process.”*

The grounds of the application are: -

1. The only way the Supreme Court can entertain a matter is by way of an appeal to it from the decision of the Court of Appeal in specified circumstances under the Constitution of the Federal Republic of Nigeria 1999.

2. There was no such appeal.

3. Appeal No. CA/S/EP/Gov/10/09 was not before this court and this court could not have exercised any jurisdiction on same.

4. Appeal No. CA/S/EP/Gov/10/09 concerned an election petition challenging the Governorship election held in Sokoto in 2008.

5. The Supreme Court has no jurisdiction to deal with any gubernatorial election appeal as by Section 246 (3) of the Constitution of the Federal Republic of Nigeria, 1999, the court of Appeal is the final court in such appeals.

6. The order under reference was made in breach and violation of Section 233 (1) and 246 (3) of the constitution of the Federal Republic of Nigeria 1999.

7. It is the Constitution of the Federal Republic of Nigeria, 1999 and not the Supreme Court Act that governs the jurisdiction of the Supreme Court in Gubernatorial Election Matters.

8. This Honourable Court has consistently held both before and after the decision in this case that the Supreme Court has no jurisdiction to adjudicate on or entertain an election Petition Appeal in respect of Governorship Election even if there is an issue of juris-

diction as held in Appeal No. SC/143/2010 between Hon. Sunday Ugwa & Anor v. Hon. Oji Lekwauwa & ors (unreported) delivered on 3rd day of December 2010.

9. A court that has made an order without jurisdiction, the same is a nullity and the same court has jurisdiction to set aside that order.

10. Supreme Court authorities exist to the effect that both pre and post election matters can be pursued concurrently and

11. The application raises a fundamental issue of jurisdiction.

C The application is supported by an affidavit of forty-five paragraphs and three exhibits marked as A, B and C. The applicants filed a joint brief of arguments in support of the application on 30/12/10 and a Reply to the Briefs of arguments of the respondents on the applicants' application filed on 21/21/11.

D The learned senior counsel, Chief Olujinmi adopted the foregoing documents and relied on them to urge this court to grant this application. He outlined a summary of the facts relied upon by the applicants as may be gathered from the 45 paragraphs affidavit in support. He proceeded to identify the central issue raised by this application as whether by the combined effect of Sections 233 and E 246 (3) of the 1999 Constitution and Section 22 of the Supreme Court Act this court had jurisdiction to dismiss Appeal No. CA/S/EP/Gov/10/09 which was pending before the Court of Appeal, Sokoto. F He emphasized that when this court dismissed the appellants' appeal after withdrawal in the judgment, Exh. A delivered on the 26th of November 2010, there was no appeal before it to make a consequential order.

G The next step after such dismissal was to proceed to make order as to costs and no order could be made as there was no decision on the merits in the matter. He cited the case of Akinbobola v. Plisson Fisco (Nig.) Ltd. 1991 1 NWLR pt.167 pg.270 at pg.284 C-G to buttress the foregoing submission. He submitted that this court has no power to dismiss Sokoto appeal as constituting an abuse of court H process - as such pronouncement can only be made in respect of matters strictly before it. Sokoto Appeal was not an appeal before this court on which Section 22 of the Supreme Court Act can be predicated. Sokoto appeal was referred to in the judgment of this court delivered on 4/6/10 Exh. C as an election petition, whereupon

the Court of Appeal is the final court by virtue of Section 246 (3) of the 1999 Constitution - the 3rd respondent was wrong to have categorized the Sokoto Appeal as a pre-election matter. The court can grant this application as it is within the ambit of which this court can exercise its discretion to set aside particularly that portion of the judgment of this court delivered on the 26th of November 2010 dismissing Appeal No. CA/S/EP/Gov/10/09 pending before the Court of Appeal, Sokoto on the ground that the order of dismissal was made precisely -

a. Without jurisdiction which makes it a nullity.

b. The procedure adopted leading to the dismissal of the appeal deprived the decision of the character of a legitimate adjudication.

The learned Senior Counsel fully considered the issues and the legal points raised in this application in the Applicants' brief of Arguments filed on 30/12/10, like (a) jurisdiction and when a court is presumed competent, (b) appropriated cases when this court possesses inherent power to set aside its judgment. He supported his contention with plethora of the decisions of this court as follows -

Oduko v. Government of Ebonyi State (2009) 9 NWLR (pt.1147) pg.439 at page 452.

Madukolu v. Nkemdilim & ors (1962)2 SCNLR 341 at pgs. 589-590.

Umenweluaka v. Ezeana (1972) 5SC 343.

Our Line Ltd. V. SCC (Nig.) Ltd (2009) 17 NWLR (pt.1170) pg.382 at pg. 404.

B.M. Ltd. V. Woermann Line (2009) 13 NWLR (pt.1157) pg.149 at pg.179,

A-G Anambra State v. A-G Federation (2007) 12 NWLR (pt.1047) pg.4 at pg.80.

Skenconsult (Nig.) Ltd. V. Secondy Ukey (1981) SC 6.

Ojiako & ors. v. Ogueze & ors (1962) 1 SCNLR pg.112.

Saliyun v. Mastu (1975) 1 NMLR pg.55 at pg.58.

Nwosu v. Udeaja & ors, (1990) 1 NWLR (pt.125) pg.188.

Okafor & ors. v. A-G. Anambra State & ors. (1991) 6 NWLR (pt.200) pg.659 at pg.680.

Igwe v. Kalu (2002) 14 NWLR (pt.787) pg.435 at 453-454.

On Section 246 (3) of the 1999 Constitution: -

Onuaguluchi v. Ndu (2001)7 NWLR (pt.712) pg, 309.

Awuse v. Odili (2003) 18 NWLR (pt.851) pg.116 at pg.174.

Umanah v. Attah (2006) 17 NWLR (pt.1009)503 at 527-52A.

Okonkwo v. Ngige (2007) 12 NWLR (pt.1047) pg.191 pg.208-209 H-A.

B Amaechi v. INEC (2008) 5 NWLR (pt.1080) pg.227 at pgs, 333-334.

Ugwa & anor v. Lekwauwa & ors (unreported).

Mr. Yahaya Mahmood, learned counsel for the 1st respondent, by way of reaction to this application, filed a Notice of Preliminary Objection on 19/1/11, counter affidavit on 14/2/11 and also 1st respondent's brief filed on 14/2/11. He adopted and relied on these documents to ask the court to dismiss this application. The 1st respondent gave a brief background of the Sokoto appeal. The 1st respondent laid emphasis on the judgment of the Court of Appeal Kaduna delivered on the 11th of April 2008, whereupon the Election Petition Tribunal Appeal court nullified the 14th April 2007 election to the Office of the Governor of Sokoto State and ordered a fresh election between the same parties and the same candidates. Before the fresh election was conducted on the 24th of May 2008, the appellants filed an originating Summons on the 25th of April 2008 before the Federal High Court Abuja in suit No. FHC/ABJ/CS/260/08 for the interpretation of the judgment of the Court of Appeal Kaduna and to determine the candidature of the 2nd respondent in this application in the fresh election. The Federal High Court dismissed the suit as it has no jurisdiction to interpret the judgment of the Court of Appeal Kaduna. The applicants - appealed to the Court of Appeal Abuja. While the substantive appeal was pending - the applicants applied for leave to raise fresh issue which was that the Federal High Court has jurisdiction to execute the judgment of the Court of Appeal Kaduna which application was opposed, refused by the court of Appeal Abuja and dismissed.

This prompted an interlocutory appeal to this court - the Supreme Court. In the appeal - the applicants prayed for three reliefs from this court - one of which urged this court to invoke its powers under Section 22 of the Supreme Court Act to determine the substantive appeal on its merits. The 1st respondent highlighted further that the election re-run took place. This was followed by a fresh peti-

tion before the Governorship Election Tribunal Sokoto. In the petition - the major complaint of the applicants was -

a. That the Tribunal was to determine the qualification or otherwise of the 2nd respondent in view of the Court of Appeal Kaduna's decision in Appeal No. CA/K/Gov/EP/60/07 delivered on the 11th of April 2008. B

b. The applicants did not lay emphasis on any complaint against the conduct of the election.

The Governorship Election Tribunal Sokoto dismissed the petition on the grounds that -

a. It has no jurisdiction to interpret the judgment of the Court of Appeal Kaduna. C

The same issue of the interpretation of the same Court of Appeal Kaduna judgment was still pending before the Court of Appeal Abuja. D

The applicants appealed to the Court of Appeal Sokoto against the judgment. This was the appeal CA/S/EP/Gov/10/09 pending before the Sokoto Court of Appeal before it was dismissed by this court on 26/11/10. The learned senior counsel submitted that this court had earlier adjudged the Sokoto appeal as an abuse of court process as the applicants pursued two appeals simultaneously before the Court of Appeal Abuja as CA/A/276/08 and before Sokoto Court of Appeal as CA/K/Gov/EP/10/08. He identified gravamen of this application as - E

"Whether by the combined effect of sections 233 and 246 (3) of the 1999 constitution and section 22 of the Supreme Court Act, this court had jurisdiction to dismiss appeal No. CA/S/EP/Gov/10/09 which was pending before the Court of Appeal Sokoto. F

The learned counsel argued that in the appeal before this G honourable court from the Abuja Court of Appeal, the complete records of all the facts and the issues before the Tribunals in Sokoto and the Tribunal Appeal Court, Kaduna and Sokoto came before this court through the various processes filed. The Supreme Court identified an abuse of court process in the way and manner the cases were pursued between the same parties on the same subject matter between different courts. The learned counsel expressed the principle of law that where a party duplicates a court process, the more current one which results in the duplication is regarded as an abuse. H

The Supreme Court has an inherent jurisdiction to prevent abuse of its legal process by frivolous or vexatious proceedings either in this court or in any other court brought to its attention. This court derived its powers to make a pronouncement on the Sokoto appeal from the 1999 Constitution, the Supreme Court Act, Supreme Court Rules and its inherent powers pursuant to Section 6 (6) (a) of the 1999 Constitution. The learned counsel cited cases to buttress its submission on abuse of court process like: -

- Ali v. Albishir (2008) 3 NWLR (pt.1073) pg.94.
- Ogojefor v. Ogojefor (2006) 3 NWLR (pt.966) pg.12.
- Adesanoye v. Adewole (2000) 9 NWLR (pt.671) pg.127.
- CBN v. Ahmed (2001) 11 NWLR (pt.724) pg.369.

The learned counsel emphasized the finality of a Supreme Court decision as once the Supreme Court has effectively decided a matter before it and there is no ambiguity or slip to be corrected, it cannot re-open it. This finality is provided by the Constitution. *Adigun v. Secretary Iwo Local Government* (1999) 8 NWLR (pt. 613) pg. 30 at pg. 37. The learned senior counsel branded this application as an abuse of the process of this court as it is incompetent and the court has no reason to revisit the ruling delivered on the 26th of November 2010 and the order made therein. This court is urged to dismiss the application.

Dr. Dapo Olanipekun, learned counsel for the 2nd respondent referred to the processes filed by same as a Notice of preliminary objection of 19/1/11, a counter-affidavit filed same day and the 2nd respondent's brief filed on 16/2/11. He adopted and relied on the arguments and submission in the brief. The learned counsel identified the two issues for determination as -

1. Whether the honourable court has the jurisdiction and/or the vires to grant the main prayer sought for in the applicants' application.
2. Whether the entire application is not a gross abuse of the process of the court.

He made reference to the two earlier Rulings of this court delivered on 4/6/10 and 26/11/10 respectively. That the ruling of the 26/11/10 does not fall under the Constitution but was based on the findings of this court in another ruling delivered on 4/6/10. The abuse of court process identified in the Ruling was not challenged. This court

gave five reasons why consequential order has to be made. The learned counsel referred to the inherent powers of this court under Section 22 of the Supreme Court Act.

The 2nd respondent urged this court to dismiss or strike out this motion in limine as an abuse of court process, the court has no power to entertain it. All the grounds relied upon by the applicants were canvassed before this court on 14/10/2010. There is no further pending appeal before Abuja or Sokoto divisions of the Court of Appeal on which any pending appeal to this court can be predicated and this makes the entire application incompetent. The 2nd respondent's brief gave the background facts of the case leading to the Ruling of this Court delivered on the 4th of June 2010 where four of the Justices of this court held that the latter appeal in CA/S/EP/Gov/10/09 at the Sokoto Division of the Court of Appeal was an abuse of the former one in CA/A/276/2008 pending at Abuja and that it has to give way. The Ruling of this court is not appeal able and cannot be appealed against. With the subsistence of the two Rulings which condemned Sokoto appeal as constituting an abuse of the Abuja appeal, this court is without jurisdiction to entertain this application. The case of Sunday Ugwa & anor v. Hon. Oji Lekwauwa & ors delivered on 3rd December 2010 that a court that made an order without jurisdiction has jurisdiction to set it aside not applicable and also has no bearing with this case. This application constitutes an abuse of court as it is premised on the same grounds and arguments earlier canvassed by these same applicants before this court gave its ruling on 4/6/10. There must be an end to litigation. This court is urged to dismiss this motion with exemplary costs. The 2nd respondent filed a list of authorities with thirty-one cases in support of the application.

Learned senior counsel for the 3rd respondent Dr. Alex Izinyon filed a notice of preliminary objection on 1/2/11, a counter-affidavit on 1/2/11 and a 3rd respondent's brief on 17/2/11 in reaction to this application. The grounds canvassed in the preliminary objection are that -

1. The application is an abuse of court process, frivolous, vexatious and a waste of the time of this court.

2. All the grounds on which the application is predicated had been canvassed and expatiated upon by the appellants/applicants

after which the respondents' counsel respectively addressed the court on them on the 14th of October 2010 and this honourable court delivered its judgment on the 26th of November 2010.

3. There is no pending appeal in any Division of the Court of Appeal on which the present appeal can be hinged.

B 4. The motion is incompetent and the Supreme Court lacks the jurisdiction to entertain it.

In the brief of the 3rd respondent, the learned senior counsel gave a brief summary of the facts, which confirmed those raised by the 1st and 2nd respondents. The 3rd respondent formulated two issues for determination as follows -

C 1. Whether the Supreme Court was right to have assumed jurisdiction and indeed had jurisdiction to dismiss appeal No. CA/S/EP/Gov/10/09 which was pending before the Court of Appeal Sokoto D having regard to the interpretation of Section 246 (3) of the Constitution, Section 6 (6) a of the 1999 Constitution and Section 22 of the Supreme Court Act.

E 2. Whether the present application of the applicants falls within the category of exceptional situations where the Supreme Court can set aside its judgments.

The learned senior counsel, Dr. Izinyon considered the Ruling of this court delivered on the 26th of November 2010 on which was based the application of the appellants/applicants dated the 14th of December 2010 praying this court for an order to set aside that portion of the judgment dismissing Appeal No. CA/S/EP/Gov/10/09 pending before the Court of Appeal Sokoto on the ground of abuse of court processes.

G Like the other respondents in the application, the 3rd respondent gave a summary of the facts leading to this court assuming the jurisdiction to make a consequential order to dismiss the appeal CA/S/EP/Gov/10/09 pending in the Court of Appeal Sokoto. The learned senior counsel submitted that the said appeal was not purely an election petition appeal - as the applicants want to mislead this court to believe, as the Sokoto Governorship and Legislatives House Election Petition Tribunal dismissed the petition on the ground that it lacked jurisdiction. He referred to an earlier action filed by the applicants before the Sokoto Election Petition Tribunal and the Federal High Court Abuja to determine that the 2nd respondent in the application

was not qualified to contest the 24th May 2008 re-run election based on the interpretation of the judgment of the Kaduna Division of the Court of Appeal in suit No. CA/K/EP/Gov/60/07 and also that it be determined that the 2nd respondent was not validly nominated to contest election to an elective post of a Governor of that State.

The applicants had filed an earlier action at the Federal High Court Abuja on the same subject-matter. The appeal on the judgment of the Federal High Court went to the Court of Appeal Abuja as Appeal No. CA/A/276/08 and this eventually culminated in the appeal No. SC/32/10 which the present application of the applicants is purportedly hinged. The 3rd respondent like the other respondents in agreement with the Ruling of this court on 4/6/10 identified a multiplicity of actions on the subject-matter, which was same between Kaduna Court of Appeal, the Sokoto Court of Appeal and Abuja Court of Appeal and between the same parties - the present applicants and respondent; as a clear manifestation of abuse of court process - and consequently an issue of jurisdiction, This court on 26/11/04 dismissed the Appeal No. CA/S/EP/Gov/10/09 pending before the Court of Appeal Sokoto as latter in time to the Kaduna and Abuja appeals. He cited the case of Senator Julius Ali Uchia v. Dr. Emmanuel Onwe & 4 ors. to hold that this court assume jurisdiction to hear a matter, where the issue of jurisdiction raised is extrinsic to an election matter.

The 3rd respondent emphasized that Appeal No. CA/S/EP/Gov/10/09 was not purely an election petition appeal but was more of a pre-election matter - there cannot be a breach or violation of Section 233 (1) and 246 (3) of the Constitution of the Federal Republic of Nigeria. The judgment of this court delivered on 26/11/10 does not fall within category of factors warranting the Supreme Court to set aside its judgment as enunciated in some of the authorities cited by the applicants particularly the cases of Alao v. ACB (2000) 9 NWLR (pt.672) pg.264 at pg.283. A.T. Ltd. V. A.D.H. Ltd. (2007) 15 NWLR (pt-1056) pg.118 at pg.183.

The 3rd respondent urged this court to dismiss this application for being an abuse of the processes of this court and because it is incompetent in its entirety - as there is no pending appeal upon which it is hinged - it is only a ploy to re-litigate what had been decided by this court, while the present application has not raised any new issue

to warrant setting aside the judgment of 26/11/10. The learned senior counsel for the 3rd respondent filed a list of authorities of 24 cases in support of the foregoing legal points. He urged this court to dismiss the application of the applicants.

I have carefully considered the articulate argument and copious submission of counsel on each side of the divide in this application. The learned senior counsel for the respondents in their submission had unanimously urged this court to dismiss this application filed on 17/12/2010 for being an abuse of the process for the glaring reason that the applicants had vigorously canvassed and amplified on all the grounds now raised and relied upon in this application and both parties had addressed the court on them on 14/10/10 before the judgment of the 26/11/10 was delivered dismissing Appeal No.CA/S/EP/Gov/10/09 before the Court of Appeal Sokoto. This legal point was raised in the Notice of preliminary objection filed individually by all the respondents. I have considered the preliminary objections filed by the three respondents. I find it more convenient to consider them together with the substantive application for avoidance of repetition. I agree with this very crucial observation of the learned senior counsel for the respondents and the records of this court in Appeal No. SC/32/2010 is there for verification. The decisions of this court under searchlight in this application are - Alhaji Muhammadu Maigari Dingyadi and 1 or v. Independent National Electoral Commission & 2 ors delivered on 4/6/10 and Alhaji Muhammadu Maigari Dingyadi & or v. Independent National Electoral Commission & 2 ors delivered on 26/11/10.

Prior to the ruling of 4/6/10, the parties respectively addressed this court on multiple prayers sought by both parties including propriety of the applicants pursuing two suits on the same subject-matter in respect of the judgment of the Court of Appeal Kaduna delivered on the 11th of April 2008 in CA/K/EP/Gov/60/07 to determine if going by this order of the court the 2nd respondent was qualified to contest the fresh election ordered, which in effect was conducted on the 24th of May 2008. The appeals were pending in CA/A/276/2008 before Abuja Court of Appeal and in CA/S/EP/Gov/10/2009 before Sokoto Division of the Court of Appeal. The two appeals were direct off-shoots of the judgment of the Court of Appeal, Kaduna in Suit No. CA/K/EP/Gov/60/07 delivered on the 11th of April 2008. This

court in the Ruling delivered on the 4th of June 2010 pronounced that the applicants were in breach of abuse of court process and Sokoto appeal was stayed. The Ruling of this court is now reported in the Law Reports as Dingyadi v. INEC (No.1) (2010) 18 NWLR (pt.1224) pg.1.

I have referred to the Ruling of this court in the case Dingyadi v. INEC (No.1) 2010 18 NWLR (pt.1224) pg.1 so as to have a convenient platform to base the judgment of this court as regards the consequential order made by this court in another of its recent judgment on this matter and the germane issue affected by the instant application. It is the judgment of this court delivered on the 26th of November 2010 that the applicant is praying that it be set aside particularly that portion dismissing the Appeal No. CA/S/EP/Gov/10/09 pending before the Court of Appeal, Sokoto on the ground of abuse of court process. This judgment is reported as Dingyadi v. INEC (No.2) [2011] 18 NWLR (pt.1224) pg.154.

The subject-matter of the application considered by this court was the withdrawal of the applicant's interlocutory appeal to this court by virtue of Order 8 Rule 6 (1), (2), (4) (5) and (6) of the Supreme Court Rules, 1999 as amended. In response to this application to discontinue the appeal SC/32/2010 before this court, the respondent urged this court to make a consequential order pursuant to its earlier ruling which has found the Sokoto appeal to be an abuse of court process. The applicant vigorously condemned this order as baseless, as there was no decision on merits in the matter and that the next step after dismissing the appeal was to make an order as to costs. He further argued that in order to make a consequential order following an abuse of court process, the matter must be before the court making the order and not in another court. At the time this court decided that Sokoto appeal was an abuse of court process, it was later in time to the Abuja appeal on the same subject matter and was therefore liable to be vacated. This was followed by an order staying Sokoto appeal - while the Abuja appeal was allowed to remain. There was no appeal against the order made in the appeal SC/32/2010 before this court. SC/32/2010 was an interlocutory appeal an offshoot of the substantive appeal brought by the applicants from the Federal High Court to the Court of Appeal Abuja requesting for an order of court directing that the judgment of the Court of Appeal

Kaduna in the appeal No. CA/K/EP/Gov/60/07, be enforced by the Federal High Court as to whether the 2nd respondent was qualified to be a candidate in the governorship re-run ordered by the court. As a matter of fact - gleaning through the Notice of Appeal filed on 14/12/09 against the Ruling of the Court of Appeal, Abuja delivered on 30/11/09 the appellants/applicants raised four grounds of appeal - and under the Reliefs sought stipulated as follows : -

1. Allow the appeal
2. Grant the reliefs and prayers sought by the appellants at the lower court.
3. Invoke the inherent powers of this honourable court under Section 22 of the Supreme Court Act and determine the substantive appeal on the merits.

From the foregoing, the applicant had at one stage brought the Sokoto appeal to this court. It was the contention then that the determination of this appeal by invoking Section 22 would resolve the real issue in the matter. In short that the construction of the judgment of the Court of Appeal, Kaduna Division in Appeal No. CA/K/EP/Gov/60/07 will dispose of all the pending appeals at the Court of Appeal at both Abuja and Sokoto Judicial Divisions and save the lower court from giving conflicting judgments in three Judicial Divisions to wit - Kaduna, Abuja and Sokoto. If the abuse of court process was not curbed as per the steps taken by this court, the issue of giving conflicting judgments was then imminent. In the judgment of this court delivered on 26/11/10 - *Dingyadi v. INEC (No.2) [2011] 18 NWLR (pt.1224) pg. 154 at pgs. 195-196 paragraphs E-G and A-E*. The reasons for granting the consequential order to dismiss Sokoto appeal were elaborated upon. See also cases like *Obayagbona v. Obazee (1972) 2 NSCC 383*. *Liman v. Mohammed (1999) 9 NWLR (pt.617) pg. 116*.

This court in *Dingyadi v. INEC (No.2) (supra)* stated categorically that abuse of court is not merely an irregularity that can be pardoned but constitutes a fundamental defect, the effect of which will lead to dismissal of the process which is abusive. In the case of *Arubo v. Aiyeleru (1993) 3 NWLR (pt.280) pg.125*, the Supreme Court took the stand that: -

“Once a court is satisfied that the proceeding before it amounts to an abuse of process, it has the right, in fact the duty to invoke its

coercive powers to punish the party which is in abuse of its process. Quite often, that power is exercised by a dismissal of the action which constitutes the abuse” Adesanoye v. Adewole (2000) 9 NWLR (pt.127) pg. 671

***Issues of abuse of court process have been identified as an issue of jurisdiction. Hence the court reserves the prerogative and inherent jurisdiction to protect itself from abuse of its processes. The court has an inherent jurisdiction to undo what has been done by a party in abuse of court process, particularly in an attempt at forum shopping, so as to avoid a situation whereby the court will be presented with a fait accompli.*** B C  
 Vaswani Trading Co. v. Savalakh & Co. (1972) All NLR (pt.2) pg. 483. Ivory Merchant Bank v. Partnership Investment Ltd. (1956) 5 NWLR (pt.448) pg.362.

***Any case which is an abuse must go under the hammer so as to halt the drift created by the abuse; the Supreme Court has this power. There is no iota of doubt that the Supreme Court has the power to make consequential order where there is an element of public policy in a matter which requires urgently securing public confidence in the administration of justice. In the instant case, the peculiar facts of the subject matter warranted making a consequential order to arrest drifting into judicial anarchy and to avoid as earlier on observed conflicting interpretation of the judgment of the Kaduna Court of appeal in Appeal No. CA/K/EP/Gov/10/2007. The Supreme Court is conferred with unlimited inherent powers by virtue of Section 6 (6) (a) of the 1999 Constitution as a court of record to jealously guard the judicial process from being ridiculed or scandalized and for the purpose of achieving a just, equitable and expeditious dispensation of justice.*** D E F G

Dingyadi v. INEC (No.2) (2011) 18 NWLR (pt.1224) pg.154.

***Abuse of legal process identified here is of jurisdictional importance as where a condition for initiating a legal process is laid down, any suit instituted in contravention of the precondition provision is incompetent and a court of law lacks jurisdiction to entertain the same.*** H  
 UBA Plc v. Ekpo (2003) 12 NWLR (pt.834) pg.322

***Jurisdiction is the authority which a court has to decide mat-***

***ters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. Such authority of the court is controlled or circumscribed by the Statute creating the court itself or it may even be circumscribed by a condition precedent created by legislation which must be fulfilled before the court can entertain the suit. All of the above touch on the legal authority of the court to adjudicate in the matter.***

***Jurisdiction is fundamental and it is the centre pin the entire litigation hinges on:***

Madukolu v. Nkemdilim (1972) 2 SCNLR pg.341

Rossek v. ACB Ltd (1993) 8 NWLR (pt.312) pg.382.

However since cases are decided on their peculiar facts in the light of the enabling statute there is no gainsaying that every case is an authority for the facts which it decides:

Okafor v. Nnaife (1987) 4 NWLR (pt.64) pg. 129 (1987) 9-11 SC pg. 105 at pg. 107

***I will consider the argument and submission to set aside the decision of this court made on 26/11/10. As a starting point, the parties and this court are on common ground that generally speaking and following the numerous decisions of this court except in situations of the narrow rule of the “Slip Rule”, the Supreme Court has no jurisdiction to entertain an application for review of its judgment once it has been delivered. The Supreme Court is the final court of justice in Nigeria and its decision is final, In short, the supreme court shall not review any judgment once given and delivered by it, save to correct any clerical mistake or some error arising from any accidental slip or omission or to vary the judgment or order so as to give effect to its meaning or intention. “Accident slip” in a judgment or order of a court means a classical error in a judgment or order of a court, which must be an error in expressing the manifest intention of the court. The court will exercise its power to correct clerical errors or mistakes arising from accidental slip or omission if nothing has intervened to make it inequitable to do so. Any other error outside this saving clause would not be permitted by the slip Rule since the judgment would then have represented what the court decided and any***

***alteration or variation would be a variation of the substantive part of the judgment. The inherent power of the court can only be invoked if there is a missing link in the main body of the judgment and steps must be taken to fill the gaps or clear the ambiguity in the interest of justice. The exercise of this power should not be used to review or rehear the case or alter the rights and obligations of the parties under the ruling or order made.*** B

Berliet (Nig) Ltd. v. Kachalla (1995) 9 NWLR (pt.420) pg. 478

Olurotimi v. Ige (1993) 8 NWLR (pt.311) pg.257 C

Umuana v. Okwurame (1979) 11 NSCC 319

Ogunsola v. NICON (1996) 1 NWLR (pt.423) pg.126

Asiyanbi v. Adeniji (1967) All NLR pg.88

Adigun v. A-G Oyo State (No.2) (1987) 2 NWLR pt, 56 pg, 197 D

Oyeyipo v. Oyinloye (1982) 1 NWLR (pt. 50) pg. 356

Adigun v. The Secretary Iwo Local Government (1999) 8 NWLR (pt.613) pg.30

Stirling Civil Eng. (Nig) Ltd v. Yahaya (2005) 11 NWLR (pt. 935) pg, 181 E

***Regardless of the foregoing, this court has re-stated in many cases that it possesses inherent power to set aside its judgment in appropriate cases. The rationale behind the inherent power was amplified in the case of Adegoke Motors Ltd. v. Adesanya & Anor (1989) 5 SC pg. 113; (1989) 3 NWLR (pt.109) pg. 250 at pg. 274 that-*** F

***“We are final not because we are infallible, rather we are infallible because we are final. Justices of this court are human beings capable of erring. It will be short-sighted arrogance not to accept this obvious truth.”*** G

***Such cases where this court will set aside its judgment are:-***

***a. When the judgment is obtained by fraud or deceit either in the court or of one or more of the parties:***

Alaka v. Adekunle (19S9) LLR 76 H

Flower v. Lloyd (1977) 6 Ch.D pg. 297

Olufunmise v. Fatana (1990) 3 NWLR (pt.136) pg.1

***2. Where the judgment is a nullity and a person affected by the order of court which can be described as a nullity is***

***entitled ex debito justitiae to have it set aside***

Sken Consult Ltd v. Ukey (1981) 1 SC 6  
 Craig v. Kamsen (1943) 1KB 256, 262 and 263  
 Ojiako 7 Ors v. Ogueze (1962) 1 SCNLR 112  
 Okafor & ors v. Anambra state & ors (1991) 6 NWLR (pt.2000)

B pg. 659 at pg.680

***3. When it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it.***

C Agunbiade v. Okunoga & Co (1961) All NLR pg.110  
 Obimomire v. Erinoshosho (1966) 1 All NLR pg. 250  
 4. Where the judgment was given in the absence of jurisdiction  
 Madukolu v. Nkemdilim & ors (1962)2 SCNLR 341  
 Sken consult v. Ukey (1981) SC 6.

***5. Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication .***

Igwe v. Kalu (2002) 14 NWLR (pt.787) pg.435  
 Alao v. ACB Ltd (2000) 9 NWLR (pt.672) pg.264

E ***It is my conclusion that contrary to the submission of the applicants none of the foregoing cases is applicable to the judgment of this court now sought to be set aside. The judgment sought to be varied correctly represents what this court decided or a substantive part of it. In the circumstance, this court has become functus officio.*** The Latin phrase “functus officio” means a task performed, fulfilling the function, discharging the office or accomplishing the purpose and thereby becoming of no further force or authority.

G A court is said to be functus officio in respect of a matter if the court has fulfilled or accomplished its function in respect of that matter and therefore lack the potency to review, re-open or revisit the matter. Thus once a court delivers its judgment on a matter, it cannot revisit or review or set aside the said judgment except under certain conditions. More importantly, a court lacks jurisdiction to determine an issue when it is functus officio in respect of the issue or where the proceedings relating to the issue is an abuse of court process.

H Ukachukwu v. Uba (2005) 18 NWLR (pt.956) pg.1  
 Anyaegbunam v. A-G Anambra State (2001) 6 NWLR (pt.710)

pg.532

Mohammed v. Hussein (1998) 14NWLR (pt.584) k pg.108

The applicants further contended that the Appeal No. CA/S/EP/Gov/10/09 was an election petition appeal in respect of which the Court of Appeal is the final court by virtue of Sections 246 (3) of the 1999 Constitution and by the combined effect of Section 233 and 246 (3) and Section 22 of the Supreme Court Act, this court had no jurisdiction to dismiss an appeal pending before the Court of Appeal Sokoto. There was no appeal before the Supreme Court from Sokoto Court of Appeal in CA/S/EP/Gov/10/09 - the jurisdiction of this court to make any order in respect of the Sokoto appeal was an abuse of court process. The jurisdiction of the Supreme Court must have been invoked by an appeal before the court can exercise its power under Section 22 of the Supreme Court Act to make consequential orders therefrom. This court acted without jurisdiction in dismissing appeal No. CA/S/PET/Gov/10/09. The applicants defined jurisdiction and when a court is competent. This was supported with cases to mention a few:

Umenweluaku v. Ezeana (1972) 5 SC pg. 343

Our Line Ltd. v. S.C.C. (Nig) Ltd. (2009) 17 NWLR (pt.1170) E pg.382 at 404

B.M. Ltd. v. Woermann Line (2009) 13 NWLR (pt.1157) pg. 149 at 179

A-G Anambra state v. A-G Federation (2007) 12 NWLR (pt.1041) pg. 4 at pg. 80 F

Sken consult (Nig) Ltd v. Secondy Ukey (1981) 1 SC pg. 6

The respondents - particularly the 3rd respondent replied that the appeal No. CA/S/EP/Gov/10/09 was not purely an election petition appeal, as it was against the decision of Sokoto governorship and legislative Houses Election Petition Tribunal dismissing the petition on the ground that it lacked jurisdiction. The issue for determination before the Sokoto Election Petition Tribunal in the petition was that the 2nd respondent was not qualified to contest the 24th May 2008 re-run election based on the interpretation of the judgment of the Kaduna Division of the Court of Appeal in Appeal No. CA/K/EP/Gov/60/07 and also that it be determined that he was not validly nominated. That was also the issue for determination in the Sokoto appeal and the basis of the action filed at the Federal High H

Court Abuja leading to the appeal before the Court of Appeal Abuja in appeal No. CA/A/276/08 - and subsequently of which the interlocutory appeal SC/32/10 was an off-shoot. Without any gainsaying, the parties from their foregoing submission have joined issue on the status of Sokoto appeal. This court is therefore duty bound to look into the facts leading to Sokoto appeal without deciding it.

This springs forth the crucial question about the Nature of Sokoto appeal - is it a post election matter or pre-election matter simpliciter. The vital processes to determine this crucial question are those filed by the applicants. In the interlocutory appeal filed as No. SC.32/2010 by the appellants/applicants before this court on 14/12/09 were the complete Records of all the processes in respect of the issues raised before the Election Petition Lower Tribunal in Sokoto in the Petitions filed against the 14th of April 2007 governorship election and the 2008 Sokoto Governorship Election Re-run, the Court of Appeal Kaduna hearing and determination of the gubernatorial appeal against the 2007 election, the Record of the suit filed by way of originating summons to the Federal High Court Abuja to the Court of Appeal Abuja - which came to this court in the Interlocutory Appeal SC/32/2010. ***When an appeal has been entered before an appellate court, the court has a right to glean through the Records and all processes transmitted to that court in respect of the appeal.***

Daggash v. Bulaoma (2004) 14 NWLR (pt.892) pg.144 at pg. 233.

S.B.N. v. Okon (2004) 9 NWLR (pt.879) pg.529.

***Where an appeal has been entered the effect is that the appellate court which has received the Record of Appeal is said to be seised of the whole proceedings in the sense that the res in the appeal has automatically passed into the custody of the said appellate court.***

Ogunremi v. Dada (1962) 2 SCNLR 417

Ezeokafor v. Ezeilo (1999) 1 NWLR (pt.619) pg.513.

The applicants claimed that the issue before the Sokoto Appeal Court was an election matter. The learned senior counsel cushioned this contention with extracts from the leading judgment and a concurring judgment in the case Dingyadi v. INEC (No.1)2010 18 NWLR (pt.1224) pg.1. The simple and straightforward reply is that

there is no other name to call any matter filed before an Election Petition Tribunal. A litigant or the counsel is at liberty to call the claim by any name and file it before any court; the court shall place it where it belongs, going by the averments and the facts in support of the claim. Whatever camouflage there may be by a counsel - a hood B does not make a monk. In the instant case - although the applicants based their petition before the court on alleged non-qualification of the 2nd respondent so as to make it appear like one of the grounds for questioning an election petition under Section 145 (1) (a) Electoral Act 2006 whereas the facts and particulars actually revolved C around the judgment of the Court of Appeal, Kaduna in Appeal No. CA/K/EP/Gov/60/07 delivered on 11th of April 2008 now reported as Dingyadi & Anor v. Wamako & 42 ors (2008) 17 NWLR (pt.1116) at pg. 395. In the petition filed before the Sokoto lower Tribunal after the re-run in June 2008. D

Paragraph 10 reads: -

*“Your petitioners state that the 1st respondent was not validly Returned as the person duly elected on the following grounds*

*i. The 1st respondent was at the time of the election not qualified to contest the election.* E

*ii. The 1st respondent was not duly elected by majority of lawful votes cast at the election.*

*iii. ...*

*Paragraph 12 of the same petition filed before the Sokoto lower Tribunal reads: -* F

*12 (i) “The election was the fresh election ordered by the court of Appeal In its judgment delivered on the 11th of April 2009 in Appeal No. CA/K/EP/Gov/60/2007.*

*(ii) Appeal No. CA/K/EP/Gov/60/2007 was an appeal challenging the judgment of the National Assembly/Governorship and Legislative Houses Election petition Tribunal sitting in Sokoto in petition No. SS/EPT/Gov/1/2007 filed by the petitioners herein in respect of the gubernatorial election of 14th April 2007.*

*(iv) The Court of appeal in its judgment delivered on 11th of April 2008 allowed the appeal holding in its judgment as follows -* H

*1. The judgment of the Governorship and Legislative Houses Election Tribunal sitting in Sokoto delivered on the 29th, of October 2007 is hereby set aside.*

2. *The Sokoto State election held on 14th day of April 2007 is hereby annulled for substantial irregularities in the conduct of the election and on the ground that the 1st respondent was not qualified to contest the election as at 14th day of April 2007.*

3. *The Independent National Electoral Commission shall conduct fresh Governorship Election for Sokoto State within 90 days of the date hereof.*

4. *The fresh election herein ordered shall be between the parties and candidates as appeared in Exhibit R8."*

The grievance of the applicants before the lower Tribunal in Sokoto immediately after the April 14th 2007 election between the applicant and the 2nd respondent reads:-

Paragraph 9 of the Petition

Your petitioner states that the 1st respondent, Aliyu Magatakarda Wamako was not validly returned as the person duly elected on the following grounds -

1. The 1st respondent was not qualified to contest the election is (sic) nomination to contest the election was void, having been sponsored for the election by All Nigeria Peoples Party to which he belonged as against the Peoples Democratic Party on whose platform he was placed on the ballot at the election."

The Sokoto lower Tribunal considered the issue of double nomination under Section 38 of the Electoral Act 2006 to hold that it was not within the jurisdiction of the Tribunal - but a pre-election matter affecting the nomination of a candidate.

The jurisdiction of an election petition Tribunal as stipulated in Section 285 (2) of the 1999 Constitution reads -

*"There shall be established in each state of the Federation one or more election tribunals to be known as the Governorship and Legislative Houses Election Tribunals which shall to the exclusion of any court or tribunal have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of governor or deputy governor or as a member of any legislative house."*

The grievance of the applicant before the Sokoto Tribunal initially was that the 2nd respondent was not qualified to contest the election on the ground that he was nominated as a candidate by ANPP and thereafter by PDP without compliance with due proce-

ture. It is noteworthy that the applicant as at that time did not belong to either of these two parties. I cannot but take judicial notice of Section 38 of the Electoral Act 2006 which reads -

*“Where a candidate knowingly allows himself to be nominated by more than one constituency his nomination shall be void.”*

Such validation must be carried out by the Electoral commission when screening party’s candidates for any elective post before a list is published and not by an election petition tribunal, under the 2006 Electoral Act. B

Ojo v. Abogunrin (1989) 5 NWLR (pt.120) pg. 162

Ella v. Agbo (1999) 8 NWLR (pt.613) pg.139 C

Abdullahi v. Elayo (1993) 1 NWLR (pt.1 pg. 268.

According to Advanced Law Lexicon 3rd Edition Report 2003 Book 3, Nomination is defined as appointment, a resolution submitted to the electors that the party named is a candidate for their suffrage for an office named. D

The issue of nomination of candidate is governed by the rules governing preliminaries as to an election. Preliminary rules are those rules which determine intra-party resolutions and nominations to elective offices. The relationship of nomination is between the political party, its members and the electoral body. The intention of the law is to vest nomination of candidates in the membership of a political party and further make nomination a preliminary issue for any person wishing to contest. Nomination of a candidate is exclusively the responsibility of his political party under the Electoral Act 2006. E F

***The Independent National Electoral Commission lacks the power to disqualify any candidate on its own. The power of disqualification of any candidate from contesting an election after his name has been forwarded to the Commission belongs exclusively to the Federal High Court or State High Court.*** G

Amaechi v. INEC (2008) 5 NWLR (pt.1008) pg. 227.

***Prior to the Electoral Act 2006, the courts are without jurisdiction to determine the issue of validity of nomination of a candidate of any political party*** Ezugwu v. Nwamulu (2010) 4 H NWLR (pt.1183) pg.159, Amaechi v. INEC (2008) 5 NWLR (pt.1080) pg.227

Isoho v. Yahaya (1992) 2 NWLR (pt.600) pg. 671

Kurfiv. Mohammed (1993) 2 NWLR 22 pg.602

Owum v. INEC (1999) 10 NWLR (pt.622) pg.192

Onuoha v. Okafor (1983) SCNLR 244

Action Congress v. INEC (2007) 12 NWLR (pt.1048) pg. 222

Ugwu v. Ararume (2007) 12 NWLR (pt.1048) pg.367.

**After the Electoral Act 2006, a political party is able to control the affairs of the party only to the extent that the exercise of such control does not run against the provisions of the Constitution and laws of Nigeria particularly Section 34 (1) and (2) of the 2006 Electoral Act.**

**In determining who is to contest an election, two sets of rules apply-**

**Rules governing the preliminaries to an election - between the political parties, its members and the electoral commission.**

**The Electoral laws rest in the electoral commission the power to determine who is to contest an election. The issue of non-justiciability of the exercise of nomination has been modified by the Electoral Act 2006 - which now makes Section 32 (4) in respect of sworn affidavit information of candidates and Section 34 (1) and (2) on substitution of nominated candidates now justiciable. Pre-election matters are filed before the State High Courts or Federal High Courts. The last bus stop is that issues of nomination, sponsorship and substitution are pre-election matters which by their nature cannot be ventilated before an election petition tribunal as the tribunals are not set up for that purpose.**

ANPP v. INEC (2004) 7 NWLR (pt.871) pg.16

Amaechi v. INEC (2008) 5 NWLR (pt.1080) pg.227

Anazodo v. INEC (1999)4 NWLR (pt. 600 pg. 530

If appeal No. CA/S/EP/Gov/10/09 was not purely an election petition appeal but was more of pre-election matter, there cannot be a breach or violation of Sections 233 and 246 (3) of the 1999 Constitution of the Federal Republic of Nigeria. This affirms the pronouncement of this court in the judgment delivered on 26/11/10 Dingyadi v.

INEC (No.2) (pt. 1224) 154 that -

*“Secondly because it has been found that two appeals that is CA/A/276/2008 and CA/S/EP/Gov/10/09 are predicated on same subject-matter implying without deciding the same that appeal No. CA/S/EP/Gov/10/09 cannot come with (sic) the ambit of the sub-*

*stantive jurisdiction of the Court of Appeal as an election petition as envisaged under Section 246 (1) (b) (i) & (ii) of the 1999 Constitution for lack of locus standi by the appellants so that Section 246 (3) of the Constitution is inapplicable.”*

Section 246 (1) reads ... An appeal to the Court of Appeal shall lie as of right from:- ..... B

3. *“The decisions of the court of Appeal in respect of appeals arising from election petitions shall be final.”*

It is essential for jurisdiction that the point to be decided by the court must be within the power of the court. C

**b. The second rule is the conduct of an election. The Constitution of the Federal Republic of Nigeria stipulates conditions which a candidate wishing to contest an election must possess. It is trite law that the qualification of a candidate to contest an election can be challenged even if he is validly nominated, before a Tribunal.** D

Ango v. Achida (1999) 3 NWLR (pt.s9a) pg.246

Peters v. David (1999) 5 NWLR (pt.603) pg.486

**This is the essence of Section 145 (1) (a) of the Electoral Act 2006 which read as follows -** E

**An election may be questioned on any of the following grounds:-**

**a. That a person whose election is questioned was, at the time of the election not qualified to contest the election. These yardsticks for the qualification and disqualification of a governor are as embodied in Sections 177 and 182 of the Constitution. In the case of the 2nd respondent, INEC found that he was a member of PDP and was sponsored by that party before he contested the election in 2007 and also the re-run in 2008 that is the end of the matter - that issue cannot be raised before a Tribunal. The Sokoto Tribunal was right to have declined jurisdiction.** F G

Before the Federal High Court Abuja, the applicant prayed for reliefs as follows: -

1. A declaration that neither the 1st defendant nor any of its officers can lawfully issue nomination forms to the 2nd defendant or allow the 3rd defendant to nominate and or sponsor any candidate (s) for the fresh elections ordered by the court of Appeal in its decision of 11/4/08 in CA/K/EP/Gov/60/2007. H

2. A declaration that the 2nd defendant having been declared not qualified to contest the Sokoto State Gubernatorial elections of 14/04/07 by virtue of invalid nomination and double nomination cannot lawfully contest in the fresh election ordered by the Court of Appeal in its decision in CA/K/EP/Gov/08 by virtue of his said disqualification.

I remarked earlier on that the foregoing was canvassed before the Sokoto lower Tribunal which rightly declined jurisdiction as the Constitution did not vest it with powers to grant such relief, based on invalid nomination and double nomination of the 2nd respondent a pre-election matter. The Federal High court can adjudicate on the foregoing if it were a pre-election matter in the ordinary course of events - but it was urged by the applicant to interpret the judgment of the Court of Appeal Kaduna in Appeal No. CA/K/EP/Gov/60/08- which is a constitutional abomination.

Section 287 (1) of the Constitution of the Federal Republic of Nigeria 1999 stipulates that:-

1. The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons and by courts with subordinate jurisdiction to that of the Supreme Court.

2. The decision of the Court of appeal shall be enforced in any part of the Federation by all authorities and persons and by courts with subordinate jurisdiction to that of the Court of Appeal.

3. The decisions of the Federal High court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons and by other courts of law with subordinate jurisdiction to that of the Federal High court, a High court and those other courts respectively.

***This is the doctrine of 'stare decisis et non quita movere' or judicial precedent. The meaning and import is to abide by former precedents where same points come again in litigation. It presupposes that the law has been solemnly declared and determined in a previous case. It does preclude the judges of subordinate courts from changing what has been determined.***

***Under the doctrine of stare decisis, lower courts are bound by the theory of precedent. It is in effect a doctrine***

***which enjoins judges to stand by their decisions and the decisions of their predecessors however wrong they are and whatever injustice they inflict. All courts established under the constitution derive their powers and authority from the constitution. The hierarchy of courts shows the limit and powers of each court. It is to ensure that hierarchy of the court is never in issue.*** B

Mohammed v. Olawunmi (1993) 4 NWLR (pt.287) pg. 254

7 up Botling Co. Ltd. v. Abiola & Sons (Nig) Ltd. (1995) 3 NWLR (pt. 883) pg. 257

Osho v. Foreign Finance corporation (1991) 4 NWLR (pt.184) C  
pg. 157

Dalhatu v. Turaki (2003) 15 NWLR (pt.843) pg. 310

University of Lagos v. Olaniyan (1985) 1 NWLR (pt.1) pg. 156

***The doctrine of judicial precedent does not involve an exercise of judicial discretion at all - it is mandatory.*** D

***Amaechi v. INEC (2008) 5 NWLR (pt.1080) pg. 227.***

***Any request by a court for a departure or overruling or re-visiting or reviewing or setting aside its previous decision will jeopardize the stable rules of judicial precedent - stare decisis. This is a basic reason why the courts particularly the Supreme Court may not find it easy to readily yield to such invitation.*** E

***I hold that the application lacks merit and it must be dismissed in its entirety. There must be an end to litigation. This court is the final court in this country under the Constitution. The court of Appeal and all the lower courts are bound by the decisions of the Supreme Court. It is the mirror for viewing the sacred temple of justice. The judicial powers of the Federation shall be vested in the courts enumerated in Section 6 (5) of the 1999 Constitution being courts established for the Federation and by virtue of Section 6 (5) (j) or any such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws. In the hierarchy of courts enumerated under section 6 (5) of the constitution - the Supreme Court tops the list.*** F G H

By virtue of section 6 (6) - the judicial powers vested in accordance with the foregoing provisions of this section -

a. Shall extend notwithstanding anything to the contrary in this Constitution to all the inherent powers and sanctions of a court of law.

In effect the inherent jurisdiction as defined by the applicant as vested in the courts derived from the constitution. Jurisdiction is a term of comprehensive import embracing every kind of judicial action. It may have different meanings in different contexts. Jurisdiction defines the power of the court to inquire into facts, apply the law, make decisions and declare judgment. The constitution and statutes which set up the Courts cloak them with powers and jurisdiction of adjudication which are basically substantive and procedural.

Chapter 11 of the Constitution is all about the fundamental objectives and Directive Principle of State Policy, of which Sections 14 (1) and (2) are relevant to this case.

D Section 14 (1) reads -

The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice.”

14 (2) - It is hereby accordingly declared that -

a. sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority.

c. The participation by the people in their government shall be ensured in accordance with the provision of this Constitution.

The courts are the custodian of the constitution. In the light of the foregoing provisions of the Constitution, it is the duty of this court as the final court to interpret the provisions of the Constitution and other enacted Statutes for proper conduct of affairs, so that democratic governance will be predicated and sustained on the rule of law. Political matters are highly sensitive and equally sui generis. This court has observed a new and unique species of abuse of Court/legal process in the form of forum Shopping. In the light of section 14 (1) and 14 (2) (a) (c), this court cannot close its eyes and allow desperate individuals to wrongly use the courts to secure a mandate otherwise denied them after going through the process of free and fair election at the polls. In Nigeria participation by the people in their government is a constitutional provision under the Electoral Act 2006. The courts cannot also be dragged into how political parties make their internal arrangements in their domestic affairs to attain political power through

elections into public offices. For the courts to take part in any manner to decide which member of a party is properly nominated for election or not is to put themselves in the thick of an undesirable imbroglio. This is likely to destabilize the judiciary - Onuoha v. Okafor (1983) SCNLR 244 is still good law under the 2006 Electoral law to the extent of the amendment to its section 34 (1) and (2).

Section 235 of the Constitution stipulates that - without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy, no appeal shall lie to any other body or person from the determination of the Supreme Court.

***In short, there can be no re-hearing of any matter the Supreme Court has dealt with to conclusion. This application to that effect is incompetent and equally unconstitutional with the community reading of Sections 235 and 287 (1) of the 1999 Constitution. The judgment of the Supreme Court is the final on any issue determined by it. As I mentioned before, the courts and legal practitioners owe the society a duty to interpret the laws particularly in election suits and in view of the pending election, as custodians of the rule of law in the development of Nigeria's nascent democracy. Finally, there must be an end to litigation. The maxim Interest Republicae ut sit finis litum is a cardinal principle of the administration of justice. The law is crystal clear that once the Supreme Court in its decision has effectively decided on a matter before it and there is no ambiguity or slip to be corrected, it becomes functus officio of the powers of the court to re-open it.***

Adigun v. the secretary Iwo Local government 8 NWLR (pt.613) pg.30

Ahovo v. African Continental Bank Ltd. (2000) 6 SC (pt.1) G pg.27

Okagbue v. Chikere (2000) 7 SC (pt.11) pg. 106; 12 NWLR (pt.689) pg.274.

***I have decided to give this application a microscopic examination and expose - the real masquerade which is the Sokoto Election Petition appeal CA/S/Ep/Gov/10/09. In the hearing and determination of the Sokoto appeal, the Supreme Court did not suddenly assume the role of a knight errand looking for skirmishes to devour by usurping an election matter, where***

***the 1999 Constitution does not invest it with jurisdiction. I repeat with emphasis based on the records that the genesis of the issue involved in the Sokoto election appeal ab initio is a pre-election matter which need not to have gone before the court of appeal Kaduna in Appeal No. CA/K/GOV/EP/60/07 at all and thereafter resulting in the 11/4/08 controversial judgment. The Sokoto Election Petition Tribunal which heard the matter after the 2007 election, rightly and correctly declined jurisdiction. In essence, invoking section 246 (3) and the issue of finality of the suit at Court of Appeal as canvassed by the applicant would not have been applicable. As a pre-election matter, the suit ought to have commenced at the Federal High Court or state High court Sokoto and terminate at the Supreme Court.***

D This court shall never become an instrument of injustice, on the other hand, it shall continue to perform the duty granted to it by the Constitution of Nigeria to ensure that citizens of Nigeria high and low get the justice which their case demands. This court cannot remain passive in the face of an imminent effort to subvert the electoral process through abuse of court process and will not hesitate to use all powers at its disposal to do substantial justice and deter selfish ambitions in the interest of peace and progress of the nation. The law cannot be localized to achieve injustice. Substantial justice has no limit or boundary. The order of this court made on 26/11/10 dismissing Appeal No. CA/S/EP/Gov/10/2009 pending at the Court of Appeal Sokoto as abuse of court process is immutable, as this court cannot overrule itself on that issue.

In the final analysis - Sokoto Appeal No. CA/S/EP/Gov/10/2009 has by the pronouncement of this court on 27/11/10 become a dead issue. It is only right that it be allowed to rest in perfect peace. This application is accordingly dismissed for lacking in merit. No order as to costs.

H

### **CHUKWUMA-ENEHJSC**

The background, the facts as well as the submissions/arguments of the parties in this matter have been so comprehensively captured and set out in the lead judgment that I need do no more than adopt

the same for this short contribution. Before now I have had the advantage of a preview of the lead judgment prepared and delivered by my learned brother Adekeye JSC.

However, the sum-up of the instant application filed by the applicants/appellants in the substantive appeal is for an order -

*“setting aside the portion or part of the judgment of the court delivered on 26th day of November, 2010 dismissing Appeal No. CA/S/EP/GOV/10/09 pending before the Court of Appeal Sokoto on the ground of abuse of court process”.*

The foregoing abstract represents part of the consequential order as declared by this court in its Ruling of 26/11/2010. The applicants have as it were, enlisted 11 (eleven) grounds in attacking the said order in the instant application. In their concluding submissions on the application the applicants have specifically contended that the said order of 26/11/2010 having been made without jurisdiction is a nullity and also that the procedure adopted leading to the dismissal of the appeal has deprived the decision of the character of a legitimate adjudication and for so submitting they have referred to and relied on *Oduko v. Government of Ebonyi State* (2009) 9 NWLR (Pt.1147) 439 at 452, *Madukolu v. Nkemdilim & Ors.* (1962) 2 SCNLR 341, *Attorney-General of Anambra State v. Attorney General of the Federation* (2007) 2 NWLR (P1.1047) 4 at p.80, *Stanconsult (Nig) Ltd. v. Secondy Ukey* (1981) SC.6 and *Okafor & Ors. V. Attorney-General of Anambra State & Ors.* (1991) 6 NWLR (Pt.200) at 59 at 680. The respondents in the substantive appeal are still the respondents in the instant application.

For purposes of maintaining a proper focus in dealing with this matter I think, I should set out also the issues as identified by the parties in their respective briefs of argument in this application. The appellants have raised the following poser:

*“whether by the combined effect of Sections 233 and 248(3) of the 1999 Constitution and Section 22 of the Supreme Court Act, the court had jurisdiction to dismiss appeal No. CA/S/EP/Gov/10/2009 which was pending before the Court of Appeal Sokoto.”*

The 2nd respondent on his part has set out two issues for determination as follows:

*“(1) Whether the honourable court has the jurisdiction and/on*

*(sic) the vires to grant the main prayer sought in the applicants' application.*

*(2) Whether the entire application is not a gross abuse of the process of the court."*

The 3rd respondent in its initial reaction to the application has canvassed the following grounds in its preliminary objection in opposition to the application, that:

(1) The application is an abuse of court process, frivolous, vexatious and a waste of time of this court.

(2) All the grounds on which the application is predicated had been canvassed and expatiated upon by the appellants/applicants after which the respondents' counsel respectively addressed the court on them on the 14th of October 2010, and this honourable court delivered its judgment on the 26th of November, 2010.

(3) There is no pending appeal in any division of the Court of Appeal on which the present appeal can be hinged.

(a) The motion is incompetent and the Supreme Court lacks the jurisdiction to entertain it.

These grounds have been argued in the brief along with the response to the main argument on the application. However, in the event of the objection being overruled, the 3rd respondent has also raised two issues for determination, to wit:

*"(1) Whether the Supreme Court was right to have assumed jurisdiction indeed has jurisdiction to dismiss appeal No. CA/S/EP/Gov/10/2009 which was pending before the Court of Appeal Sokoto having regard to the interpretation of Section 246(3) of the Constitution, Section 6(6) of the 1999 Constitution and Section 22 of the Supreme Court Act.*

*(2) Whether the present application of the applicants falls within the category of exceptional situations where the Supreme Court can set aside its judgment."*

Having gone through the copious processes, documents, affidavits and respective exhibits filed in this matter and the submissions of the parties as per their briefs of argument thereof, I am of the considered view and in this regard, I agree with the respondents that the grounds upon which the instant application is predicated are no different from the grounds as expatiated upon in the earlier proceed-

ings as covered by the Ruling of 26/11/2010 and that as there is no pending appeal in any Division of the Court of Appeal on which the present application can be predicated, the instant application appears baseless and incompetent. It is clear that the true purport of the instant application is for this court to sit on appeal over its order when it has become functus officio. And surely there must be an end to litigation. B

It is in this regard that I must observe that the entire record of the proceedings in the appeal No. CA/S/EP/Gov/10/2009 from the Election Petition Tribunal and CA/A/276/2008 before the Court of Appeal Abuja have been placed before this court, that is to say in the application preceding the Ruling of this court of 26/11/2010. And so this court has been seized of enough materials that have enabled it to proceed to make the instant order, inter alia in the interest of justice of the matter. Hence, having cited the case of Registered Trustees, Apostolic Church v. Olewolemi (1990) 6 NWLR (pt.158) 514 at 531 in the said Ruling of 26/11/2010, I have taken pains to emphasise that it is trite that a court as this court cannot award more than has been claimed and that it is misconceived to posit that an order cannot be made in favour of a defendant merely because he has not filed a Counter- Claim in a matter. And that an order in favour of a defendant where he has not so counter-claimed must flow from the evidence before the court as in the instant matter. The instant consequential order has followed from the evidence before the court. C D E F

Against the backdrop of all the issues raised in this matter, it is settled that the circumstances under which a court can interfere with its decision by reviewing or correcting any apparent error(s) in a court's decision is by way of appeal. However, this is subject to the inherent power of the court exercisable under the principle of 'Slip Rule' to correct of accidental slips or mistakes/omissions. Thus, it has defined the narrow compass of a court's operational limit within the principle of Slip Rule vis-a-vis albeit in regard to reviewing or correcting of its decisions. It must be pointed out that the inherent power of a court under the Slip Rule has to be construed strictly. In short it entails correcting of any clerical errors, mistakes or some errors arising from any accidental slips or omissions or to vary the judgment or order so as to give effect to the intention of the court. The issue here is whether the nature of the review as contemplated in the instant application G H

can come within the ambit of the principle of Slip Rule as defined herein. My answer to this poser is in the negative in view of the violence it will do to the considered findings of this court in the Rulings of 4/6/2010 and 26/11/2010. It should be noted that the scope of the principle of slip rule does not allow a count (sic) as this court to  
 B reconsider its decision all over again. Nor is it used as a cause for staging a second thought on the matter; otherwise it is settled by the provisions of Order 8 Rule 16 of the Supreme Court Rules that the decisions of this court in all matters, to all intent and purposes, is final  
 C and Order 8 Rule 16 (supra) provides that:

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

The provisions of the above Rule are plain and far from being ambiguous and viewed from the decisions of this court in Chukwuka  
 E v. Ezulike (1986) 5 NWLR (pt.45) 897; (1986) 2 NSCC (pt.17) 1347, Adigun v. Attorney-General of Oyo State No.2 (1987) 2 NWLR (Pt.56) 197 and Adigun v. The Government of Osun State (1995) 3 NWLR (pt.385) 513 that have construed these provisions and similar provisions in pari materia, it is clear that apart from the Limited scope  
 F under the Slip Rule and as specifically provided in the said Rule this court as a general principle cannot review its decisions. Its decision once reached and pronounced is final. This is also particularly and literally so as provided pursuant to the provisions of Section 235 of  
 G the 1999 Constitution which in clear terms read, that:

*“... no appeal shall lie to any other body or person from any determination of the Supreme Court.”*

Meaning in effect that the decision of this court is final.

In Chukwuka & Ors. V. Ezulike & Ors. (Supra) this court at  
 H page 1353 per Uwais JSC (as he then was) has stated the law on the finality of this court's decisions thus:

*“There is no appeal in the court against the decision of 12th November 1985 and it is obvious that there cannot be such an appeal since no jurisdiction has been conferred upon this court to sit on*

*appeal over its own decision, no matter how manifestly wrong the decision may be. See Paul Cardoso v. John Bankole Daniel & Ors. (1986) 2 NWLR 1 at p.28 (it proceeded to quote from it as follows)... ‘Consequently, it is clear that we cannot by submissions made by Chief Williams hold that the decision of this court of 12th November, 1985 is a nullity by virtue of the appeal itself being competent and this court lacking in jurisdiction. However, this is not to say that the court’ cannot in a subsequent and different case depart from its decision in a previous case, if the principle laid down for such departure apply. See Akinsanya v. U.B.A. Ltd. (1986) 4 NWLR 273 at 325. But that is not the same as setting aside or declare a nullity the decision in the previous case’.*”  
(Underlining for emphasis).

The foregoing pertinent pronouncement has directly been impinged upon by the singular prayer in this application, that is, to set aside the consequential order made in the Ruling of this court on 26/11/2010 as a nullity for having been made as contended by the applicants, without jurisdiction and that the decision has been deprived of a legitimate adjudication amongst other grounds contained in the applications. As the power of review is not at large the courts must watch it, unless the review comes within the limited scope of slip rule and the exceptions I will come to anon. The upshot of the matter is that the said order in the storm’s eye in these proceedings, no matter how manifestly wrong the order may be it is ultimately, final as the court becomes functus officio vis-a-vis the said Ruling. Besides, this court cannot alter the instant decision of 26/11/2010 under the guise of reviewing its decision as that would tantamount to undermining the Ruling of 26/11/2010 vis-a-vis the clear intention of this court arrived at on the materials placed before it. Even then to do so as sought in the applicants’ application will render the decision in the Ruling of 26/11/2010 on the issue of abuse of process completely nugatory. In that scenario this court I must point out cannot sit on appeal over its decision/order. Meaning that there is no way this court can come to terms with the nature of the review contemplated in the instant application in the face of the brazen acts of abuse of court process in the matter.

The foregoing conclusion in this matter, does not ipso facto preclude a party in concurrence with the principle as laid down in the

case of *Akinsanya v. U.B.A. Ltd.* (supra) asking the court in a subsequent and different case to depart from its decision or order in a previous case and as rightly held in the immediate cited case; it is not the same as per the instant application to set aside the decision/order of this court on grounds of nullity. It is against the foregoing background of my findings herein that I hold the view that the instant application is totally misconceived and should be dismissed.

All the same there are recognized exceptions where this court exercise of its inherent jurisdiction can set aside its decisions albeit appropriate cases and the exceptions include.

(i) where the decision/order is obtained by fraud or deceit either of the court or a party. See *Olufunmise v. Falana* (1990) 3 NWLR (pt.136) 1, *Alaka v. Adekunle* (1959) LL.R.76 and *Flower v. Lloyd* (1877) 6 Ch.D 297.

(ii) where the decision/order is a nullity and a person affected by the decision/order is entitled *ex debito justitiae* to have the decision/order set aside. See *Skenconsult Ltd. v. Ukey* (1991) 1 SC.6 and *Okafor & ors. v. Anambra state & ors.* (1991) 6 NWLR (P1.2000) 659 at 680, *Craig v. Kamsen* (1943) KB 256 At 262-263, *Ojiako & Ors. v. Ogueze* (1962) 1 SCNLR 112.

(iii) Where the court is misled into making decision/order under a mistaken belief that the parties consented to it - *Agunbaiade v. Okunogu & Co.* (1961) ANLR 110 and *Obimonure v. Erinsho* (1966) 1 ANLR 250, and

(iv) where the decision/order is given without jurisdiction; and

(v) Where the procedure adopted is such as to deprive the decision/order the character of a legitimate decision. See: *Igwe v. Kalu* (2002) 14 NWLR (pt.787) 435 and *Aloa v. ACB Ltd.* (2000) 9 NWLR (pt.672) 264.

I must respectfully hold that having examined the instant application vis-a-vis the above mentioned exceptions it is clear that the case of the applicants as encapsulated in their application is not cognizable under any of the foregoing exceptions. And I so hold.

For all these reasons and so much more ably set out in the lead judgment of my learned brother Adekeye JSC, just delivered this application is without any merit. It is accordingly refused and is hereby dismissed. I abide by the orders contained in the lead judgment.

**FABIYI JSC**

I have had a preview of the Ruling just handed out by my learned brother - Adekeye, JSC. I agree with the reasons therein adumbrated and the conclusion arrived at that the application should be dismissed. B

The application filed on 17th December, 2010 by the applicants prayed for an order of this court as follows:-

*“Setting aside the portion or part of the judgment of the court delivered on 26th day of November, 2010 dismissing Appeal No. CA/S/EP/Gov/10/2009 pending before the Court of Appeal Sokoto on the ground of abuse of court process.” C*

It is now plain to all the parties that the portion of the judgment sought to be set aside was premised on abuse of court process as found by another panel of this court on 4th June, 2010. The applicants have not challenged the finding that there was abuse of court process perpetuated by them. They appear to concede same. In a rather subtle manner, they contend that this court should fold its hands and do nothing. That stance cannot be supported both in law and even logic. This court has inherent jurisdiction to act under the combined provisions of section 22 of the Supreme Court Act and section 6 (6) (a) of the Constitution of the Federal Republic of Nigeria 1999. The inherent jurisdiction imbued in this court is intrinsic to its very existence. See *Adigun v. Attorney- General Oyo State (No.2)* (1957) 2NWLR (pt. 56) 197 at 235. D E F

It is not in doubt that this court has a binding duty to halt and terminate, on application by a party, any proceeding that is found to amount to abuse of process as herein. This court has inherent jurisdiction to prevent abuse of process by frivolous and/or vexatious proceedings before it or in any other court whenever it is brought before it as done herein. See the case of *Agwasin v. Ojichie* (2004) 10 NWLR (Pt. 882) 613 at 625. G

Having made the order dismissing the appeal in Sokoto Court of Appeal based on abuse of Court process which the applicants concede, should it now be set aside? I think not as same will open the lee-way for the continued perpetuation of the same abuse of process. That will not be in tandem with reason. It can open a gate for further drift in the polity. H

This court will not vary its order which put an end to the abuse of process that the applicants are not challenging; in the main.

For the above reasons and the fuller ones carefully set out by my brother, I feel that the application which constitutes a further abuse has no modicum of chance to warrant the order sought by the applicants. I join in dismissing the application for lack of merit. The applicants should appreciate that there should be an end to strife and ensuing litigation. No order on costs.

C

### **GALADIMA JSC**

The Applicants herein in their application filed on 21st February, 2011 are praying for an order.

*"Setting aside the portion or part of the judgment of this court delivered on 26th day of November, 2010 dismissing Appeal No. CA/S/EP/Gov/10/2009 pending before the Court of Appeal Sokoto on the ground of abuse of court process".*

As set out on the body of the motion, the grounds of the application are:

*"(i) The only way the Supreme Court can entertain a matter is by way of an appeal to it from the decision of the Court of Appeal in specified circumstances under the Constitution of the Federal Republic of Nigeria, 1999.*

*(ii) There was no such appeal.*

*(iii) Appeal No. CA/S/EP/GOV/10/19 was not before this court and this court could not have exercised any jurisdiction on same.*

*(iv) Appeal No. CA/S/EP/GOV/10/09 concerned an election petition challenging the Governorship election held in Sokoto state in 2008.*

*(v) The Supreme Court has no jurisdiction to deal with any gubernatorial election appeal as by Section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999, the Court of Appeal is the final court in such appeals;*

*(vi) The order under reference was made in breach and violation of Section 233(1) and 245(3) of the Constitution of the Federal Republic of Nigeria, 1999.*

*(vii) It is the Constitution of the Federal Republic of Nigeria, 1999 and not the Supreme Court Act that governs the jurisdiction of*

*the Supreme Court in Gubernatorial Election Matters.*

(viii) *This Honourable Court has consistently held, both before and after the decision in this case, that the Supreme Court has no jurisdiction to adjudicate on or entertain an Election Petition Appeal in respect of Governorship Election, even if there is an issue of jurisdiction as held in Appeal No.SC./143/2010 between Hon. Sunday Ugwa & Anor v. Hon. Oji Lekwauwa & ors (unreported), delivered on 3rd day of December, 2010.*

(ix) *A court that has made an order without jurisdiction to set aside that order.*

(x) *Supreme Court authorities exist to the effect that both pre and post election matters can be pursued concurrently; and*

(xi) *The application raises a very fundamental issue of jurisdiction”.*

In supporting the application an affidavit of 45-paragraphs and Exhibits A, B, and C were filed. A joint brief of argument and a Reply brief were also filed by the applicants and the Respondents respectively.

Having identified the foregoing processes, learned Senior Counsel for the Applicants adopted same. He outlined the background facts leading to this application. He submitted that the central issue in the application is whether by the combined effect of Sections 233 and 246 (3) of the 1999 constitution and section 22 of the Supreme Court Act, this Court can be said to have jurisdiction to dismiss Appeal No. CA/S/EP/GOV/10/09 which was pending before Court of Appeal, Sokoto. He argued with emphasis, that when this court dismissed the appellants’ appeal after withdrawal, there was no longer an appeal before it to make consequential order. Relying on the case of AKINBOBOLA v. PLISSON FISCO (NIG.) LTD (1999) 1NWLGR PT 167, Learned Senior Counsel has submitted that after the order of dismissal was made, the next step was to proceed to make order as to costs and no further order could be made as there was no decision on the merits in the matter. It is submitted that this court has no power to dismiss the appeal pending and before the Court of Appeal Sokoto (as constituting an abuse of Court Process) as such pronouncement can only be made in respect of matters strictly before it. That the Sokoto Appeal was not an appeal before this court in respect of which section 22 of the Supreme Court Act can be predicated. That

the Sokoto Appeal was referred to in the judgment of this court delivered on 4/5/2010 (Exh. C) as an “election petition”, whereupon the Court of Appeal is the final court by virtue of Section 246(3) of the 1999 Constitution. It is urged that this court is in a Position to grant this application as it is within its ambit to exercise that discretion so much so that the portion of order making the judgment being sought to be set aside was made without jurisdiction which makes it a nullity. This contention was supported by a number of decisions of this court, some of which are *Madukolu v. Nkemdilim & Ors.* (1962) 2 SCNLR 341 *ODUKO v. GOVERNMENT of EBONYI STATE* (2009) 9 NWLR (pt.1147) p.439 at p.452, *OUR LINE LTD v. S.CC. (NIG.) LTD* (2009) 17NWLR (pt.1170) p.382 at p. 404; *SKEN CONSULT (NIG.) LTD v. SECONDY UKEY* (1981) SC.6. *NWOSU v. UDEAJA & ORS* (1991) 1 NWLR. (pt. 125) p.188; *OKAFOR 7 ORS v. A - G. ANAMBRA STATE & ORS* (1991) 6 NWLR (pt.200) p.559 and *IGWE v. KALU* (2002) 14 NWLR. (pt.787 (p.435 at 453 -454. On section 246(3) some of the cases relied on by the applicants are: *ONUAGULUCHI v. NDU* (2001) TNWLR (pt.712) 309; *AWUSE v. ODILI* (2003) L8 NWLR (pt.851) 116 at 174, *UMANAH v. ATTAH* (2006) 17NWLR (pt.1009) 503 at 527- 528; *OKONKWO v. NGIGE* (2007) 12NWLR (pt.1047) 191, 208 - 209; *AMAECHI v. INEC* (2008) 5NWLR (pt.1080) p.227 at pp.333 - 334; and *UGWA and Anor v. LEKWAUWA & ORS* (unreported judgment of this court delivered on 3/12/2010).

Learned Counsel for the 1st Respondent, *YAHAYA MAHMOOD Esq.* in opposition to this application filed a Notice of preliminary objection on 19/1/2011 followed by a counter affidavit of 14/2/2011 and 1st Respondent’s Brief of the same date. These processes were adopted and relied upon in asking this court to dismiss the application. He gave in great details the background facts leading to this instant application. This is ably set out in the lead ruling. The learned counsel on his part gave a good prelude and background necessary for the understanding of the instant application brought by the Appellants. The summary and pith of the argument of the learned counsel is that this court has an inherent jurisdiction to prevent abuse of its legal process by frivolous or vexatious proceedings either in its court or any other court brought to its attention. It was not shown by the Applicants that this Court does not derive its

inherent powers to make a pronouncement on the Sokoto appeal, in the overall circumstances of the case. On the finality of a Supreme Court decision, the learned counsel submitted that, once this court has decided a matter before and there is no ambiguity or slip to be corrected, the court cannot re-open it. Reliance was placed on the case of *ADIGUN v. SECRETARY IWO LOCAL GOVERNMENT*.<sup>B</sup> (1999) 6 NWLR (pt.613) 30 at 37. Contending that this application as an abuse of the process of this court, Learned Counsel has urged this court to dismiss the said application.

On his part, the Learned Counsel for the 2nd Respondents, Dr, Dapo Olanipekun Esq., referred to the Notice of preliminary objection, a Counter affidavit and their brief. Having stated briefly the facts giving rise to this application, learned counsel submitted that this court has no jurisdiction and vires to grant the prayer now being sought to set aside by the applicants. That the entire application is a gross abuse of the process of this court, as it is premised on the same grounds and arguments earlier canvassed by the applicants before this court delivered its ruling on 4/6/2010. That this application ought to be dismissed.<sup>D</sup>

Learned Senior Counsel for the 3rd Respondent, Dr. Alex Izinyon also filed a Notice of preliminary objection on 1/2/2011, a counter affidavit and 3rd Respondent's brief on 1712/2011 in reaction and opposition to this application. Four grounds canvassed in the 3rd Respondent's preliminary objection are as follows:-<sup>E</sup>

(i). That the application is an abuse of court process, frivolous vexatious and a waste of the time of this court.<sup>F</sup>

(ii). That all the grounds on which the application is predicated had been canvassed and expatiated upon by the appellants/applicants after which the respondents' counsel respectively addressed the court on them on the 14/10/2010; and this court delivered its judgment on 26/11/2010.<sup>G</sup>

(iii). There is no pending appeal in any Division of the Court of Appeal on which the present appeal can be hinged.

(iv). The motion is incompetent and this court lacks jurisdiction to entertain it.<sup>H</sup>

In the 3rd Respondents' brief the learned senior counsel gave a brief summary of the facts. The learned senior counsel considered the Ruling of this court delivered on 26/11/2010 on which the appli-

cation of the applicants of 14/12/2010 was based. He submitted that the present application praying this court for an order to set aside that portion of the judgment dismissing Appeal No.CA/S/EP/GOV/10/09 is an abuse of court process. Like the other learned counsel for the 1st and 2nd Respondents, learned senior counsel has urged this  
B court to dismiss the application.

Each counsel for the respondents respectively filed a Notice of preliminary objection. Their common ground for the dismissal of this application is because the application in (sic) abuse of the process of  
C this court and also for the reason that the applicants had vehemently canvassed on all these grounds now raised and relied on in this application and parties had addressed the court on 14/10/2010 before the judgment of 26/11/2010 was delivered dismissing Appeal No. CA/S/EP/GOV/10/2009 pending before, the Court of Appeal Sokoto.  
D This point has been raised in the Notice of preliminary objection filed by the respective respondents. This crucial observation of the learned counsel for the respondents can be verified from the records of this court in Appeal No.SC/32 /2010.

The decisions of this court under searchlight in this application  
E are ALHAJI MUHAMMADU MAIGARI DINGYADI & 1OR. V. INEC & 2ORS, delivered on 4/6/2010 and ALHAJI MUHAMMADU MAIGARI DINGYADI & OR. V. INEC & 2ORS delivered on 26/11/2010. These are now reported in the Law Reports. These cases, with-  
F out going into the details, no doubt, provide a convenient platform and basis for the consequential order made by this court on 26/11/2010. It is that judgment that the applicant is now praying that it be set aside, particularly the “portion or part of the judgment” dismissing the Appeal No. CA/S/EP/GOV/10/2009 pending before the Court  
G of Appeal Sokoto, on the ground of abuse of court process. This case is now reported as DINGYADI v. INEC (No.2) (2011) 18 NWLR (pt.1224) p.154.

I have carefully and dispassionately considered this application. I have considered various submissions and various authorities  
H relied upon by the parties and the relevant law and rules guiding the subject matter. The power of this court to review its judgment is contained in order 8 rule 1-6 of Rules of this court. It provides:

*“The court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising*

*from any accidental slip or omission or to vary the judgment or order so as to give effect to its meaning or intention.”*

This court in a number of cases has decided that it becomes functus officio on matter already decided by it. Such matter cannot be reopened for review under any guise except to correct or modify its own order on the ground that the order, judgment did not represent what it had intended to record. Thus it may correct clerical errors to make the meaning clear, if it is obscure. This is a final court. See OYEYIPO v. OYINLOYE (1987) 1NWLR (pt.50) B56, CHUKWUKA & ORS v. EZULIKE (1985) 17 NSCC (pt.11) 347 at 1352 - 1353. OVENSERI v. OSAGIEDE (1998) 11 NWLR (pt.572) p.1 and A.D.H. LTD v. AMALGAMATED TRUSTEES LTD (2007) ALL F.W.L.R. (pt.392) 1781 at 1828.

However even though this court cannot sit over its judgment or review it once delivered, it does not preclude the court from departing from its former decision in a previous case if the principles laid down for such departure apply. This departure from the previous decision is not setting aside or declaring a nullity the decision in the previous case. See AKINSANYA v. UBA LTD (1986) 4NWLR (pt.35) 273 at 323; CHUKWUKA v. EZULIKE (1985) (Supra).

The foregoing are the general principles. Regardless of these general guiding principles, this court, as already noticed, possesses inherent power to set aside its judgment, in appropriate cases or situations namely:

(1). Where the judgment is obtained by fraud or deceit either in the court or by one or more of the parties. See OLUFUNMISE v. FALANA (1990) 3NWLR (Pt.135) P1.

(2). Where the judgment is a nullity, then the person affected by the order of court which can be described as a nullity is entitled ex debito justitiae to have it set aside: SKEN CONSULT LTD v. UKEY (1981) 1SC.6. CRAIG v. KAMSEN (1943) L KB. 256, 262 - 263. OKAFOR & ORS. v. ANAMBRA STATE & ORS. (1991) 6 NWLR (pt. 2000) p.659 at p.580.

(3) To mislead the court into giving judgment under a mistaken belief that the parties consented to it: OBIMOMIRE v. ERINOSHO (1965) 1 All NLR p.250.

(4). Where the judgment was given in the clear absence of jurisdiction to adjudicate the matter.

(5). Where the procedure adopted by the court was such as to deprive the decision or judgment of the character of a legitimate adjudication: IGWE v. KALU (2000) 14 NWLR (pt.787) 435 and KALU v. ACB (2000)9 NWLR (pt.672) p.264.

I have carefully considered the foregoing requirements. None  
 B of these is applicable to the judgment of this court delivered on 26/11/2010.

For the foregoing and fuller reasons ably expounded by my learned brother ADEKEYE, JSC in the lead judgment; I agree that  
 C the application is unmeritorious and it is dismissed. I too, shall award no costs to the Respondents.

### ***RHODES-VIVOUR JSC***

D I have had the advantage of reading in draft the leading Ruling delivered by my learned brother Adekeye, JSC. I agree with the reasoning and conclusions. I propose, though to add only a few observations. By an application filed on the 17th of December 2010 and argued before us on the 1st of March 2011 learned counsel for the  
 E applicant, Chief A. Olujinmi, SAN seeks an order:

Setting aside the portion or part of the Judgment of this court delivered on the 26th day of November, 2010 dismissing Appeal No.CA/S/EP/GOV/10/09 pending before the Court of Appeal Sokoto  
 F on the ground of Abuse of court process.

The summary of the facts have been so well set out in the leading Ruling, and so there would be no need for me to restate the obvious. Order 8 Rule 16 of the Rules of this court enables this court to review its judgment, or Ruling. This rare jurisdiction is limited to  
 G situations where:

- (a) There are clerical mistakes, errors that arose from accidental slips or omission in the judgment.
- (b) It becomes necessary to vary the judgment in order to give effect to the courts real meaning, thereby making the judgment clearer.
- H (c) Where the judgment is obtained by fraud,
- (d) Where it becomes clear that this court was misled into delivering the judgment under a mistaken belief that the parties consented to it, or
- (e) Where the decision is a nullity.

Consequently once this court has decided an issue and that decision is embodied in its judgment, and that judgment has been made effective the court no longer has power to alter its decision which can no longer be questioned since its final. It would amount to chaos for this court to re-open the matter and substitute a different decision to the one already rendered. See *Alao v. African continental Bank Ltd.* 2000 9 NWLR pt.672 p.264 *Chukwuka v. Ezulike* 1986 5 NWLR pt. 45 p. 892 The portion of the Ruling sought to be set aside was premised on abuse of court process as found by another Panel of this court on the 4th of June 2010. The case is *Dingyadi v. INEC* (No.1) 2010 18 NWLR pt.1224 P. 1

In the Leading Ruling, I.T. Muhammad, JSC said:

“Looking at the antecedents of the matter on hand, this is what exactly the appellants/respondents had attempted to do. They went to the 1st Election Tribunal at Sokoto, they lost; they went to the Court of Appeal Kaduna, they partially succeeded; they went to the Federal High Court for interpretation of Kaduna Court of Appeal Judgment, they lost; they went to Sokoto 2nd Election Tribunal, they lost; they now appealed simultaneously to the Abuja Division, Court of Appeal and Sokoto Division, Court of Appeal. These appeals are both pending in the respective Divisions of the court of Appeal. Both appeals, from the records, are between the same parties and on the same subject matter. Haba! Can there be anything more irritating and more frustrating than this forum prostitution ...?”

It is from this decision and the decision in *Dingyadi v. INEC* (No.2) 2010 18 NWLR pt.1224 p.154, Delivered by this court on the 26th of November 2010 that the consequential order dismissing Appeal No. CA/S/EP/GOV/10/09 arose. It was premised on abuse of process. That there was abuse of process was not challenged by the applicants. Indeed in *Dingyadi v. INEC* (No.2) supra in my concurring Ruling I said that:

*“Inherent powers are powers which are not necessarily derivable from the constitution or Legislation. All superior courts of Record have inherent powers. They are powers innate in a court to ensure that the streams of justice remain pure all the time. For example, to ensure that the judicial process is not scandalized or ridiculed by unnecessary applications filed with some ulterior motive. There seems to be no answer as to why appeal No. CA/S/EP/GOV/10/09 should*

*be pending While Appeal NO: CA/A/276/2008 filed before it on the same issue is also pending...”*

Heavy weather has been made on the point that it is the court where the abuse is pending that can make the consequential order to dismiss suit No: CA/S/EP/GOV/10/09 and not this court. Having regard to the fact that the Tribunal in Sokoto had no jurisdiction to pronounce on whether the 2nd respondent was qualified to contest the Election and the fact that when Chief W. Olanipekun SAN, Dr. Izinyon SAN made application to have the suit struck out, it was easy to accede to their prayer to terminate the case since the Tribunal had no jurisdiction; and the said Tribunal no longer sits (it being ad hoc). Where a court has no jurisdiction there is no point allowing the parties to be wasting their time in court. The Ruling of this court delivered on the 26th of November 2010 reported as Dingyadi v. INEC (No.2) 2010 18 NWLR pt.1224 p. 154 reflects the correct position of this court. There is thus no need to alter it.

For this and the much fuller reasoning in the Leading Ruling prepared by Adekeye, JSC, this application is dismissed. No order on costs.