

**SUPREME COURT OF NIGERIA**  
16TH DECEMBER, 2011. SC. 102/1990  
**CORAM: - M. MOHAMMED, I. T. MUHAMMAD, M. C.**  
**CHUKWUMA-ENEH, S. M. MUNTAKA-COOMASSIE, J. A.**  
**FABIYI, S. GALADIMA, N. S. NGWUTA, JJSC**

1. DOMINIC EDE  
2. EDE MBANI ..... APPELLANTS/APPLICANTS  
(for themselves and on behalf  
of the family of Umunwezete  
of Obeagu Ugbawka Nkanu  
Local Government Area)  
AND  
1. NWAGBARA NWODO MBA  
2. Ogonu ..... RESPONDENTS  
3. JOHN ANEJIM  
4. NWATU EJIM  
(for themselves and on behalf  
Of Umuigbudu family of Obeagu  
Ugbawka in Nkanu Local  
Government Area)
- 

SUPREME COURT - Jurisdiction - Statutory and inherent jurisdiction of the Court - Are geared towards doing substantial justice - Devoid of technicalities (H1)

SUPREME COURT - Judgments - Review - Conditions precedent - Supreme Court does not set aside its judgments - Save to correct clerical mistakes or accidental slip - Or to make its intention plain (H2)

PRACTICE & PROCEDURE - Actions - Filing - Where a party has done proper filing in court registry - He is not to be held responsible for any failure or omissions of the registry (H3)

APPEALS - Pending application - Dismissal order - Propriety - Such order becomes a nullity - When proper application is made - And court has inherent jurisdiction to set it aside (H4)

APPEALS - Application - Extension of time to appeal - Reasons for delay - Sufficiency of - Applicants presented cogent and convincing reasons - To warrant grant of the application (H5)

### **FACTS**

Supreme Court of Nigeria had on the 4<sup>th</sup> April, 1996 dismissed the appeal of appellants/applicants for failure to file their brief of argument within time. Consequently, by this Motion on Notice placed before the Court dated and filed on the 3rd of March 2010, applicants seek for an order setting aside the said ruling of the Court and an order directing this appeal to be re-entered for hearing on the merits. The application was brought pursuant to section 22 of the Supreme Court Act, Order 8 Rule 16 and Section 36 of the Constitution of the Federal Republic of Nigeria, 1999. The application is supported by two sets of affidavits.

Counsel for applicants submitted that as at the time when this Court delivered its ruling, dismissing the appeal, brief of arguments for applicants had in fact been filed and payment of fees for late filing had been made. Counsel further stated that it was an omission on the part of the Court Registry not to have the brief in the files of the Justices at the time the ruling was delivered in chambers. Counsel also stated that applicants have through documentary evidence, shown sufficient reasons for the delay. Counsel finally urged the Court to review its earlier ruling in the appeal. On the other hand, respondents have through their counsel, filed counter-affidavits opposing the grant of the application.

**HELD** (Unanimously dismissing the preliminary objection and granting the application per **MUHAMMAD JSC**)

### **SUPREME COURT - Jurisdiction**

1. On learned Senior Counsel for the respondents reference to the statutory role/duty of this Court as provided by the Constitution of the Federal Republic of Nigeria, 1999: Section 22 of the Supreme Court Act and the Supreme Court Rules (as amended), are working tools which furnish guidance to the Court. Such statutes in my view have not divested the Supreme Court of its inherent jurisdiction. A FORTIORI both the statutory and inherent jurisdiction of the Supreme Court must be geared towards attaining of justice to and de-

serving of any other court for that matter are party (sic) devoid of technicalities. It is almost common knowledge now that all Courts of law run away from technicalities. What is relevant in this application is to look at the propriety of the order granted by this Court on 4/6/96. In other words, was the order made in accordance with the prevailing law and practice as at that date? I believe it is only when the application is allowed to be moved before the Court that the merit or de-merit of the application will be assisted. Thus, it is my view, after having gone through the grounds upon which the Preliminary Objection is presumed and the submissions thereof by the respective learned Senior Counsel, that the Preliminary Objection is premature at this stage and will serve no meaningful purpose. I hereby overrule the Preliminary Objection. (p. 2628 E)

### ***SUPREME COURT - Judgments - Review - Conditions***

2. As a matter of fact, Order 8 Rule 16 of the Supreme Court Rules, 1985 and the three principles enshrined therein demonstrates unequivocally, a clear prohibition on the interference subsequently with the operative and substantive of a judgment of this Court or any part thereof except under the Slip Rule. It is therefore, now firmly settled that judgments of this Court, cannot be reviewed. The Court has no power to over-rule, reverse or nullify its previous decisions whether on questions of substantive or procedural law.

This will appear to mean that all avenues for redressing any apparent injustice that may be occasioned by the judgment or order are permanently blocked or sealed-up except as in the case of [i] a Clerical mistake in the judgment or Order [ii] an error arising from an accidental slip or omission; [iii] where there arises the necessity, carrying out its own meaning and to make its intention plain, then the Court might consider a review of its earlier judgment or order.

Thus, these exceptions, to my understanding, give this Court a lee-way to review its earlier decision. This, certainly, must be the necessary intendment of the exceptions given in that Rule. This, perhaps, is because the legislature must have taken into consideration that the Court is being run by human beings who are susceptible to errors and judgments/orders handed by them might be afflicted by some errors, slips, mistakes, accidents or omissions. It is my understanding further, that this Court, under section 22 of the Supreme

Court Act and Order 8 Rule 16, has power to set aside in certain circumstances, its decision like any other court where circumstances demand, such as [i] where any of the parties obtained judgment by fraud or deceit [ii] where such a decision is a nullity, or; [iii] where it is obvious that the court was misled into giving the decision under a wrong belief that the parties consented to it. In fact these grounds for setting aside its own decision have more elaborately been stated in the case of *Alao v. ACB Ltd.* (2000) 9 NWLR (Pt.672) 264 where the following (5) five conditions have been stated namely:

- a) When the judgment was obtained by fraud.
- b) When the judgment is a nullity such as when the Court itself was not competent.
- c) When the Court was misled into giving judgment under a mistaken belief that the parties have consented to it.
- d) When judgment was given without jurisdiction.
- e) Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication.

(pp. 2632 A/2633 D)

**E Actions - Filing**

3. Now, therefore, I am convinced beyond any doubt that there were errors/blunders committed by the Registry of this Court for their failure to bring to the notice of the Justices that sat on the 4th of April, 1996, to consider, at their chamber sitting that application filed by the applicants for extension of time within which to file their brief of argument. This failure, whatever might have caused it, was a serious omission from the Registry staff who by nature of their job, ought to always be meticulous, sober and dedicated. The failure occasioned a serious set back and untold hardship on the applicants. It is my belief that if the Justices had seen the application for extension of time within which to file appellants' brief of argument, it was most unlikely that they would refuse it except if there were other debilitating factors such as incompetence of the application or for lack of merit. Certainly, the error committed by the Registry was an administrative error which was irregular. But, the most relevant question one would pose here is: should this Court allow an unsuspecting litigant to suffer as a result of the mistakes/omissions occasioned by the Registry staff? Certainly, no!

As I have given a glimpse of some of the facts relied upon by the applicants above, I am of the opinion that once a party, such as the applicants herein, has performed creditably his own portion of responsibility of what he is required by the law to fulfill, in instituting an action, he should not be made to suffer the failure, blunders, or omissions of the Court Registry. It will be inequitable to do so. By our law and practice, once a prospective party has properly made his claim as required by law and delivered same in the Registry, what is left to be done such as sorting out of the processes, giving them identification numbers for ease of reference; distributing such processes to the various Justices is the domestic responsibility of the Registry. The party has no more say on it except what the court/Registry requires of him to do. Thus, it will be unconscionable and against the interest of Justice to penalize such a party for such errors, lapses, mistakes or accidental slips or omissions by administrative or clerical functions of the Registry. (pp. 2637 F/2638 E)

***Pending application - Dismissal order - Propriety***

4. It is an established principle of law that if an appeal is pending or there is an application for extension of time within which to file such a brief of argument, if the Court makes an order of dismissal, that order is a nullity. The Court has inherent jurisdiction to set aside that judgment and declare that the appeal is still pending when a proper application is made before the court. (p. 2638 H)

***Extension of time to appeal - Reasons for delay***

5. Having gone through, painstakingly, all the averments of the two affidavits in support and further affidavits of the applicants and in contrast with the counter-affidavit of the respondents I am convinced that the delay in bringing this application has been effectively explained away. Sickness, especially, that which feeble a person to a point of several admissions to Hospital as per the depositions in paragraphs 17 - 20; 29 - 37 and 57 - 61 of the applicants' affidavit in support sworn to by Mr. Onovo are cogent and convincing reasons which this Court cannot just close its eyes against.

It is not the length of time that matters in explaining away a delay in an application for extension of time within which to comply with a requirement/condition stipulated by law, but whether there

are reasons which are cogent, valid and convincing which can explain away the delay.

After all grant or refusal of extension of time is a matter of discretion by the Court and it is expected to be guided by fairness and equity in the exercise of judicial discretion. It is always better, in my view, for a Court of law to determine rights of parties before it on merits. (p. 2639 G)

### **REPRESENTATION**

C Chief Mrs. A. J. Offiah, SAN, with Nnezi Offiah for the Appellants  
Chief Ogwu J. Onoja, D. A. Omachi, R. E. Innocent (Mrs.), M. A. Akpan (Mrs.) and O. E. Agada FOR AMICUS CURIAE  
Mrs. A. O. Mbamali, SAN (DCL, FMOJ), F. Bebu (DD, FMOJ), Mr. Agaba (CCS, FMOJ) for the Respondents

D

### **CASES REFERRED TO**

Duke v. Akpabuyo Local Govt. (2006) All FWLR (Pt. 294) 559

Olowu v. Abolore (1993) 5 NWLR (Pt.293) 255

Long Jack v. Dolcila (1998) 6 NWLR (Pt. 555) 524

E Okegbe & Ors. v. Chikere & Ors (2000) 2 NSCQR 238

Alao v. ACB (2000) 2 NSCQR (Pt.2) 1085

Nnubia v. A-G of Rivers State & Ors (2009) 40 SCNR 90

Associated Discount House v. Amalgamated Trustees (No. 2) (2007) 7 SC 168

F

Onwuke & 4 Ors. v. Maduka & Anor (2002) 9 - 10 S.C. 142

Okulate & 4 Ors v. Awosanya & 2 Ors (2000) 1 SCNJ 75

S. N. Ibe v. Peter Onuorah (1996) 10 SCNJ 128

Alao v. African Continental Bank Ltd (2000) 9 NWLR (Pt.672) 264

G Adefulu & 16 Ors v. Chief Okulaja & 6 Ors (1998) 4 SC 223

Sken Consult v. Ukey (1981) 1 SC 6

Ojiako v. Ogueze (1962) 1 All NCR 58

Igwe v. Kalu (2000) 14 NWLR (Pt.787) 435

### **H STATUTES & RULES REFERRED TO**

Supreme Court Act, s. 22

Supreme Court Rules, O. 8 r. 16

Constitution of Federal Republic of Nigeria 1999, s. 36

**LEAD JUDGMENT BY MUHAMMAD JSC**

By a Motion on Notice dated and filed on the 3rd day of March, 2010, the applicants herein, asked for the following reliefs:

1) AN ORDER setting aside the Ruling of this Court delivered on the 4th day of April, 1996.

2) AN ORDER of this Court directing this appeal to be re-<sup>B</sup> entered for hearing on the merits.

3) AND for such further Order or Orders as the Court may deem fit to make in the circumstances.

Chief (Mrs.) Offiah, SAN moved the Motion on Notice. She<sup>C</sup> stated that the application was brought pursuant to section 22 of the Supreme Court Act, Order 8 R. 16 and Section 36 of the Constitution of the Federal Republic of Nigeria, 1999. The application is supported by two sets of affidavits:

[i] sworn to by one Mr. Godwin Onovo who averred that he is<sup>D</sup> a member of Umunwezete family of Obeagu Ugbawka on whose behalf and authority this action was instituted in a representative capacity. It contains 73 paragraphs and some exhibits attached.

[ii] an affidavit in support of the Motion on Notice sworn to by<sup>E</sup> Mrs. A. J. Offiah, SAN, who is the leading counsel for the applicants. This affidavit is of 49 paragraphs with some exhibits attached.

In reaction to the counter affidavit and Notice of Preliminary Objection filed by the respondents, the learned SAN filed two further affidavits; a reply to the respondents' Notice of Preliminary Objection<sup>F</sup> and a brief of argument in support of the Motion on Notice. She placed reliance on the averments contained in all the affidavits. She adopted and relied on the brief of argument in support of the application.

In her brief of argument in support of the application and her<sup>G</sup> oral adumbration thereof, the learned SAN for the applicants submitted vigorously that as at the time when this Court delivered its ruling, dismissing the appeal, brief of arguments for the appellant had in fact been filed and payment of fees for late filing had been made. In their words, the applicants had done all that the law man-<sup>H</sup> dated them to do in the circumstances. It was an omission or error on the part of the Registry not to have the briefs in the files of the Justices at the time the ruling was delivered in chambers, dismissing the applicants' appeal for non-filing of the brief. Learned SAN made ref-

erence to Order 8 Rule 16 of the Supreme Court Rules as amended in 1999. She submitted further that this Court has been given a leeway to review its judgment or Order. She referred to the averments in paragraphs 23 -25, 40, 52, 52a - m, 54 - 55, 56, 57 and 58 of the affidavit in support by the applicants' Motion on Notice as well as exhibits 5, 6 and 7. Learned SAN cited in support the cases of Duke v. Akpabuyo Local Govt. (2006) All FWLR (Pt.294) 559 at 576; Olowu v. Abolore (1993) 5 NWLR (Pt.293) at 255.

On the apparent delay why the applicants did not bring this application since 1996 until now, the learned SAN submitted that the applicants have copiously stated facts in their affidavit especially in paragraphs 17 - 20, 29 - 37 and 57 - 61, stating the reason for the apparent delay supported by documentary evidence as required by law. She referred to the case of Long Jack v. Dolcila (1998) 6 NWLR (Pt.555) 524.

On whether the respondents will be prejudiced by granting the reliefs sought, the learned SAN argued that on a scale of convenience, the respondents will not suffer any prejudice or hardship looking at the antecedent of the suit which has been on since 1978. If the application is granted, the prosecution of the appeal will in no way lead to a depreciation of the land or alter the nature of the land and the respondents have nothing to lose. Learned SAN for the applicants submitted that they have arguable grounds of appeal and viable issues to be determined in the appeal if it is relisted and heard on its merit. Learned SAN urged this court to grant this application and re-list the appeal in order to allow for substantial justice.

Mr. Onoja, SAN, in opposing the Motion stated that he filed two sets of counter affidavits. He also filed a brief of argument in which he set out a preliminary objection that the application is incompetent in law and an abuse of Court process. He placed reliance on the averments contained in the counter-affidavits and adopts his brief of argument.

It is pertinent to start with the Preliminary Objection. This Objection is set out on page 2 of the respondents' brief which supports their counter-affidavits. In a summarized manner, the grounds of objection are as follows;

a) Applicants' motion filed on 3/3/10 is incompetent in law and an abuse of Court process.

b) The ruling/order of this Court on 4/4/96 is a final judgment which cannot be set aside.

c) The jurisdiction of this Court is statutory. The 1999 Constitution of the Federal Republic of Nigeria and the Rules of this Court have no provisions for an application of this nature. Section 22 of the Supreme Court Act does not apply to a mere application to set aside or re-list an appeal. B

What follows thereafter in pages 3 - 6 are submissions on the Preliminary Objection. From pages 6 - 13 are submissions made in respect of issues the learned SAN formulated in the event his Preliminary Objection fails. C

In relation to the Preliminary Objection of the respondents and in response to the brief of argument filed by the respondents, the learned SAN for the applicants filed a reply to cover both the Preliminary Objection and points raised by the respondents in their brief. D On the Preliminary Objection, the learned SAN made submissions to the effect that:

a) Prayer one of the Motion on Notice in no way misrepresents the order of the Court and that the Ruling of this Court (Exh. SC 11) clearly and correctly reflects the true Order of this Court which is sought to be set aside. E

b) That Order 8 Rule 16 provides adequate shelter for the applicants in search for justice (the saving exception to the general prohibition in this Rule). Further, S .22 of the Supreme Court Act, deals with re-hearing of a valid subsisting appeal which the applicants have vide their averments in para.(sic) F

c) The respondents, apart from a flimsy bare denial, have not challenged or debunked the applicants averments relating to the fact of filing Motion for extension of time within which to file appellant's brief of argument. G

d) The objection that appellants' Motion for extension of time to file brief was not signed by a Legal Practitioner is at this stage, premature when the appeal has not yet been re-listed.

e) That the Preliminary Objection was not accompanied by an affidavit and that the arguments re-listing the facts, evidence and comparisons should be struck out as they were not predicated upon any affidavit. H

Now, the first point on the Preliminary Objection is the incom-

petence of the Motion on Notice filed by the applicants on 3/3/10 i.e. the Motion under consideration. The learned SAN for the respondents argued that it is incompetent and an abuse of Court process as prayer one misrepresents the Order of the Court made on 4th of April, 1996 by stating that it is a striking out order whereas it is an order for dismissal which makes it a final judgment which cannot be set aside. I already set out the reliefs (prayers) which the applicants seek. But at the risk of repetition and for the sake of clarity, I hereby set out the reliefs, with particular attention on prayer 1:

1) AN ORDER setting aside the Ruling of this court delivered on the 4th day of April, 1996.

2) AN ORDER of this Court directing this Appeal to be re-entered for hearing on the merits.

3) AND for such further order or orders as the Court may deem fit to make in the circumstances.

It is clear from the above that in none of the reliefs (prayers) sought by the applicants are the words/phrases “*striking out*” or “*dismissal*” used. I wonder from where the respondents got the phrase “striking out”. It may be a mere figment of imagination which has no place in law.

***On learned Senior Counsel for the respondents reference to the statutory role/duty of this Court as provided by the Constitution of the Federal Republic of Nigeria, 1999: Section 22 of the Supreme Court Act and the Supreme Court Rules (as amended), are working tools which furnish guidance to the Court. Such statutes in my view have not divested the Supreme Court of its inherent jurisdiction. A FORTIORI both the statutory and inherent jurisdiction of the Supreme Court must be geared towards attaining of justice to and deserving of any other court for that matter are party (sic) devoid of technicalities. It is almost common knowledge now that all Courts of law run away from technicalities. What is relevant in this application is to look at the propriety of the order granted by this Court on 4/6/96. In other words, was the order made in accordance with the prevailing law and practice as at that date? I believe it is only when the application is allowed to be moved before the Court that the merit or de-merit of the application will be assisted. Thus, it is my view, after having gone***

***through the grounds upon which the Preliminary Objection is presumed and the submissions thereof by the respective learned Senior Counsel, that the Preliminary Objection is premature at this stage and will serve no meaningful purpose. I hereby overrule the Preliminary Objection.***

I will now consider the application before us. But before I do that, permit me. My Lords, to place on record that Mrs. Mbamali SAN (DCL, FMOJ), leading other senior legal officers of the Federal Ministry of Justice, announced her appearance on behalf of the Hon. Attorney General of the Federation and Minister of Justice as AM-ICUS CURIAE. She filed a brief of argument on 4/10/2011. She adopted and relied on the said brief. She made oral adumbration on some of the issues under consideration in this application.

In their brief of argument in support of their Motion on Notice, the applicants set out five (5) issues for determination. They read as follows:

1. Whether there was a clerical/administrative error, mistake or omission pervading or affecting the order dismissing the appellants' appeal and whether the applicants can equitably invoke the principle of substantial justice in this case considering the peculiar facts and circumstances of the case.

2. Whether this Court is enrobed with the power to re-list an appeal earlier dismissed under the Supreme Court Rules, 1999 as amended and conditions guiding such re-listing.

3. Whether the respondents will be prejudiced by this application and its subsequent grant.

4. Whether the applicants have deposed to and placed all the facts at the disposal of the Court and whether such facts are sufficient to make the Court to exercise the discretion sought in their favour.

5. Whether there are substantial issues of law to be tried if this appeal is re-listed.

Learned Senior Counsel for the respondents formulated 2 issues. They are as follows:

1. Whether there was an appellant brief of argument as at 4th April, 1996.

2. Whether the applicants have satisfied the conditions for the grant of this application.

The office of the Attorney General of the Federation formu-

lated the following lone issue:

“Whether the Supreme Court can overrule its decision and re-list an appeal dismissed by it for failure of an Appellant to file an appellant’s brief of argument under Order 6 Rule 3(2) of the Supreme Court Rules, 1985.”

B It is my view that the five issues formulated by the learned SAN for the applicants can conveniently be accommodated by the respondents’ issues. I shall therefore adopt the respondents’ issues in my treatment of the application. I prefer to consider issue No. 2 firstly and it reads:

C “whether the applicants have satisfied the conditions for the grant of this application.”

Issues 2 and 4 of the applicants tally in my view, with respondents’ issue No.2. Same applies to the issue by the Amicus Curiae.

D Relief 1 of the applicants’ application is asking this Court to set aside its earlier Order/Ruling, which was delivered on the 4th of April, 1996. Learned Senior Counsel for the respondents stated the conditions to be satisfied by applicants who seek to set aside an earlier Order of this Court as follows:

- E a. Reasons for failure to appear at the trial.
- b. Whether there had been undue delay in making the application to set aside?
- c. Whether the respondent will be embarrassed or prejudiced upon an Order for rehearing?
- F d. Whether the applicants’ case is manifestly unsupportable?
- e. The applicants conduct throughout the proceedings.

Learned SAN for the respondents cited and relied on the case of Williams v. Hope Rising Voluntary Fund Society (1982) 1 - 2 SC 145 at 160 for the proposition of the above conditions. He submitted further that the above conditions for setting aside the Order/Judgment of this Court must be met conjunctively and not disjunctively.

The learned SAN for the applicants did not set out succinctly in her brief of argument, any such conditions upon which this court can H overrule itself.

Learned Senior Counsel from the Federal Ministry of Justice, Mrs. Mbamali, submitted that as a general rule, this Court has no power to review any judgment once given and delivered, save to correct any clerical mistakes, accidental slip or where judgment given

is null and void etc. she stated further that this Court has thus moved away from constrictive position of technicalities to review its earlier decision on the matter. Several authorities were cited in support. They include, inter alia: Okegbe & Ors v. Chikere & Ors (2000) 2 NSCQR at p.238; Alao v. ACB (2000) 2 NSCQR (Pt.2) 1085 at p.1107; Nnubia v. A-G of Rivers State & Ors (2009) 40 SNCOR 90, 155 - 156. B

Learned Senior Counsel submitted finally on this issue that the crucial question is not the effluxion of time, but whether there are cogent reasons for the delay in bringing the application and whether re-listing would ensure substantial justice between the parties. She C urged this Court to resolve the issue in the affirmative.

The application under consideration in its second relief prays this court for an Order directing that the appeal dismissed on the 4th day of April, 1996, be re-entered (re-listed) for hearing on the merits. From our Court Rules Prohibition of re-listing of a matter determined with (sic) finally seems to be the general rule. I refer to Order D 8 Rule 16 of the Supreme Court Rules (1999 as amended):

*“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 not be varied when it correctly represents what the court decided nor shall the operative and substantive part of it be varied and a different from substituted (sic).”* E

This rule has been interpreted by this Court in a number of F authorities, the most recent of which is the case of Associated Discount House v. Amalgamated Trustees (No. 2) (2007) 7 SC 168 at 214 - 217, where my noble learned brother, Ogbuagu, JSC has this to say: G

*“In a number of decided authorities of this Court, the general principles in setting aside the judgment of this Court, have been stated and re-stated. In other words, yes, this Court, can set aside its judgment, in appropriate cases, when certain things are shown, otherwise, the decision of this Court, is final.”* H

See the cases of Onwuke & 4 Ors. V. Maduka & Anor (2002) 9 - 10 S.C. 142; (2002) 9 SCNJ 113 at 121; and Okulate & 4 Ors v. Awosanya & 2 Ors (2000) 1 SCNJ 75; (2000) 1 S. C. 107 at 112 - 113. In the case of S. N. Ibe v. Peter Onuorah (1996) 10 SCNJ 128,

the finality of the decisions of this Court pursuant to Section 215 of the Constitution of the Federal Republic of Nigeria, 1979, was re-stated. See also the case of Alhaji Alao v. African Continental Bank Ltd (2000) 9 NWLR (Pt.672) 264 at 283; (2000) 6 SCNJ 63 at 77; (2000) 6 S.C. (Pt.1) 97 at 36. **As a matter of fact, Order 8 Rule 16 of the Supreme Court Rules, 1985 and the three principles enshrined therein demonstrates unequivocally, a clear prohibition on the interference subsequently with the operative and substantive of a judgment of this Court or any part thereof except under the Slip Rule. It is therefore, now firmly settled that judgments of this Court, cannot be reviewed. The Court has no power to over-rule, reverse or nullify its previous decisions whether on questions of substantive or procedural law.** See the cases of Adefulu & 16 Ors v. Chief Okulaja & 6 Ors (1998) 4 SC 223; (1998) 5 NWLR (Pt.550) 435 at 462; (1998) 4 SCNJ 139 at 147 and Onwunari Long-John & Chief Iboroma & 2 Ors v. Chief Blakk & 2 Ors (1998) 6 NWLR (Pt.555) 524 at 546; (1998) 5 SCNJ 68 at 86.

An earlier decision of this Court (20 years back exactly) in the case of Oyeyipo v. Oyinloye (1987) this Court was more emphatic. It was stated by Karibi-Whyte, JSC as follows:

*“The application before us does not raise any new principle of law or practice for our determination. As the issues for determination clearly demonstrate, the application seeks an exercise of the general power of this Court to set aside its judgment, dismissing an appeal for want of prosecution and to re-enter the appeal for hearing.”*

*The powers of this Court contained in Order 8, Rule 16 Rules of the Supreme Court, 1977, considered in Ogbu v. Urum (1981) 4 S C. 1 as follows: The Court shall not review any judgment once given and delivered by it save to correct any clerical mistake or same (sic) error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it substituted. The word ‘shall’ in this rule is mandatory. It follows therefore from this rule that generally, this Court having decided an issue, and its decision embodied in its judgment or order that has been made effective, is functus officio and cannot re-open the matter*

*and substitute a different decision to the one already recorded. This Court however, has an inherent power to correct or modify its own order on the ground that the order or judgment did not represent what it had intended to record. Thus, it may correct clerical errors to make meaning if obscure, clear. It seems however that this Court which is a final Court, has no law in a judgment, even though apparent on the face of the judgment or order. Maccarthy v. Agard (1933) 2 K. B. 417. It is pertinent to point out that exercise of the power to review a judgment is the exercise of appellate jurisdiction which can only be conferred by statute. This Court cannot ordinarily review its own judgments - In John Chukwuka & Ors v. Ezulike (1986) 5 NWLR 893 this Court on 5th December, 1986, emphasized its position that having dismissed an appeal for want of prosecution had no jurisdiction to re-enter such an appeal for hearing. Thus, having properly made an order for dismissal it is functus officio. The reasons relied upon in this case are those based on errors of law."*

**This will appear to mean that all avenues for redressing any apparent injustice that may be occasioned by the judgment or order are permanently blocked or sealed-up except as in the case of [i] a Clerical mistake in the judgment or Order [ii] an error arising from an accidental slip or omission; [iii] where there arises the necessity, carrying out its own meaning and to make its intention plain, then the Court might consider a review of its earlier judgment or order.**

**Thus, these exceptions, to my understanding, give this Court a lee-way to review its earlier decision. This, certainly, must be the necessary intendment of the exceptions given in that Rule. This, perhaps, is because the legislature must have taken into consideration that the Court is being run by human beings who are susceptible to errors and judgments/orders handed by them might be afflicted by some errors, slips, mistakes, accidents or omissions. It is my understanding further, that this Court, under section 22 of the Supreme Court Act and Order 8 Rule 16, has power to set aside in certain circumstances, its decision like any other court where circumstances demand, such as [i] where any of the parties obtained judgment by fraud or deceit [ii] where such a decision is a nullity, or; [iii] where it is obvious that the court was misled**

**into giving the decision under a wrong belief that the parties consented to it. In fact these grounds for setting aside its own decision have more elaborately been stated in the case of *Alao v. ACB Ltd. (2000) 9 NWLR (Pt.672) 264* where the following (5) five conditions have been stated namely:**

- B a) When the judgment was obtained by fraud.**
- b) When the judgment is a nullity such as when the Court itself was not competent.**
- c) When the Court was misled into giving judgment under a mistaken belief that the parties have consented to it.**
- C d) When judgment was given without jurisdiction.**
- e) Where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication.**

**D** See further: *Sken Consult v. Ukey (1981) 1 SC 6*; *Ojiako v. Ogueze (1962) 1 All NCR 58*; *Igwe v. Kalu (2000) 14 NWLR (Pt.787) 435 at 453 - 454.*

Learned SAN for the applicants submitted that this Court on the 4th of April, 1996, dismissed the applicants' appeal on the erroneous ground that the appellants' brief of argument had not been filed. She argued further that the applicants' brief of arguments was in fact filed on 6th May, 1993. That there was a failure by this Court's Registry to bring to the notice of the Court that applicants' brief of argument already filed to the notice of the justices when they made the order in chambers. The failure was that of the Registry of the Court and not the appellants and Justice demands that the error or mistake of the Court (Registry) should not be visited on the applicants. This Court, she argued, has the power to re-list an appeal which it erroneously dismissed for want of prosecution.

Permit me, my lords, to examine some of the depositions made in the affidavit in support of this motion which were sworn to by Mr. Godwin Onovo:

**H** “18. That when after the appellants' brief of argument and the motion for extension of time were ready, around April, 1993, we still did not see Mr. Onovo, Chief A. O. Mogboh, SAN directed me to write and invite him to deposit some money for the production, binding and filing of the said brief and motion.

19. That I wrote the letter and when more than one week

later, Mr. Onovo did not show up in our office I was convinced that something was wrong. So I decided to search for him.

20. That after some enquiries at one of the addresses I fished out from one of his affidavits in the Records of Appeal, I was directed to Parklane Hospital, Enugu (now ESUT Teaching Hospital) where he was working as a Records Clerk and I was informed that Mr. Onovo had been sick for a very long time and was even then on admission in the said hospital. B

21. That on seeing his very poor condition, I was deeply moved and I decided to expend funds from the office in order to run out and bind copies of the appellants' brief as well as the motion for extension of time within which to file the same. I also asked Mr. Onovo to endeavour to make some arrangement for someone else other than counsel to travel to the Supreme Court then sitting in Lagos to file the briefs and motion in order to minimize costs for the appellants, and he agreed. C D

22. That I got the processes ready and took them back to Parklane General Hospital; 15 bound copies of the motion for extension of time and 20 bound copies of the appellants' brief of argument and requested him to get them filed as soon as he could because they were already out of time. E

23. That not long after this Mr. Godwin Onovo in his frail condition returned to our office with a copy each of the filed Motion on Notice and filed appellants' brief of argument. He informed me and I verily believe him that: F

a) Even though he had not quite recovered from his sickness as soon as he was discharged, he decided to risk a journey to Lagos to file the motion and the brief, since it was cheaper for him and because our office had already incurred costs in producing the processes. G

b) That he went around to some friends and borrowed money and personally traveled to Lagos on 5th May, 1993, with the twenty copies of the appellants' brief of argument as well as the fifteen copies of the Motion on Notice, praying this Court for extension of time within which to file the brief and for an order to deem the brief as properly filed and served. H

c) That he personally filed the appellants' brief as well as the Motion at the Supreme Court Registry, Lagos on 6th May, 1993.

24. That on 18th May, 1993, I received a letter from the Chief Registrar of this Court then sitting in Lagos, dated 7th May, 1993, requiring the appellants to pay a penalty for late filing of their appellants' brief of argument before their motion for extension of time can be heard. A copy of the letter is already attached to the affidavit  
 B deposited to by Godwin Onovo as Exhibit S.C 5. I immediately on that same 18/5/93, called the attention of Godwin Onovo to the said letter.

25. That Godwin Onovo informed me and I verily believe him  
 C that again, he had to borrow more money, traveled back to Lagos and paid the penalty for late filing of their brief. A copy of the paper where the Registrar worked out the penalty for him and the receipt issued to him on payment of the penalty, which he brought back to our office are already attached and marked Exhibit S.C 6 and S.C 7  
 D respectively in the affidavit deposed to by Godwin Onovo.

26. That at this point, I then personally closed our Court of Appeal file on the case with all the processes and correspondent in respect of the case in that Court. I also at the same time i.e. about the end of May, 1993, opened a new file for the appeal in this Court with  
 E one filed copy of the Notice of Appeal, one filed copy of the appellants' brief of argument, one filed copy of the motion on Notice for extension of time etc. and I had this file shelved on our CURRENT MATTERS

41. That I then advised our client, Mr. Onovo, that the first  
 F step would be to trace the appeal at the Supreme Court, now sitting in Abuja, to find out exactly what happened to the case, and why the appeal was dismissed for want of prosecution even though appellants had filed their brief of argument as far back as 6/5/93.

44. That Counsel reported to me, and I verily believe him,  
 G that in June, 2008, during one of such searching trips, from Enugu to Abuja, he and a staff of the Court Registry, found inside it, one stray file with nothing other than a copy of our Motion for extension of time to file the appellants' Brief of Argument. On his application, a  
 H certified true copy of the said Motion was issued to him on 20/6/08. A copy thereof is already attached to the affidavit of Godwin Onovo and marked Exhibit SC 12.

45. That Counsel informs me, and I verily believe him, that after these series of searches he found no trace of the Records of

*Appeal, the case files, the appellants' brief of argument or other documents relating to the appeal in this Registry... not even the original case file transmitted from the Court of Appeal. That the Court officials suspect that the same may have been lost during the movement of this Court from Lagos to Abuja as subsequent searches could not yield any dividends.* B

*48. That we have equally filed a motion on behalf of the appellants/applicants praying for a re-listing of this appeal for the same to be heard and determined on the merit."*

From the above averments and the reaction of the respondents in their counter-affidavit, it is my findings that: C

a) There was indeed a motion filed in this Court, asking for extension of time within which the applicants might file their brief of argument. (Exh. S.C 12)

b) There was payment in respect of penalty imposed on the applicants for late filing (Exh. S.C 6 and S.C 7). D

c) There was attached to the motion "Exh. A" a copy of the applicants' brief of argument.

d) It is a fact that the application for extension of time to file applicants' brief of argument and the certified true copy of the brief were not brought to the attention of the Justices that sat in chambers on the 4th of April, 1996, when they dismissed the appeal. E

e) The respondents have not effectively countered the above depositions made by the applicants in their affidavit in support. They rather opted to rely on mere technicalities such as non-signing of the two processes by a Legal Practitioner, in a bid to invalidate the said processes. F

***Now, therefore, I am convinced beyond any doubt that there were errors/blunders committed by the Registry of this Court for their failure to bring to the notice of the Justices that sat on the 4th of April, 1996, to consider, at their chamber sitting that application filed by the applicants for extension of time within which to file their brief of argument. This failure, whatever might have caused it, was a serious omission from the Registry staff who by nature of their job, ought to always be meticulous, sober and dedicated. The failure occasioned a serious set back and untold hardship on the applicants. It is my belief that if the Justices had seen the applica*** G H

**tion for extension of time within which to file appellants' brief of argument, it was most unlikely that they would refuse it except if there were other debilitating factors such as incompetence of the application or for lack of merit. Certainly, the error committed by the Registry was an administrative error**  
 B **which was irregular. But, the most relevant question one would pose here is: should this Court allow an unsuspecting litigant to suffer as a result of the mistakes/omissions occasioned by the Registry staff? Certainly, no!** I repeat and adopt what  
 C Olatawura, JSC (of blessed memory) said in the case of Cooperative and Commercial Bank Plc. v. Attorney-General Anambra State & Anor (1992) 8 NWLR (Pt.261) 528 at p 561 ; that:

*"It will be contrary to all principles to allow litigants to suffer the mistake of the court Registry. In other words, the Court will not visit*  
 D *the "sin" of the Court's Registry, on a litigant or his counsel, unless, it was shown that the litigant and/or his counsel was a party thereto or had full knowledge of the "sin" or mistake and encouraged or condoned the said act. Therefore, on the authorities, justice, equity, fairness and good conscience, must persuade me, to hold further, that*  
 E *this appeal deserves to succeed and it in fact does."*

**As I have given a glimpse of some of the facts relied upon by the applicants above, I am of the opinion that once a party, such as the applicants herein, has performed creditably**  
 F **his own portion of responsibility of what he is required by the law to fulfill, in instituting an action, he should not be made to suffer the failure, blunders, or omissions of the Court Registry. It will be inequitable to do so. By our law and practice, once a prospective party has properly made his claim as required by**  
 G **law and delivered same in the Registry, what is left to be done such as sorting out of the processes, giving them identification numbers for ease of reference; distributing such processes to the various Justices is the domestic responsibility of the Registry. The party has no more say on it except what the court/**  
 H **Registry requires of him to do. Thus, it will be unconscionable and against the interest of Justice to penalize such a party for such errors, lapses, mistakes or accidental slips or omissions by administrative or clerical functions of the Registry.**

***It is an established principle of law that if an appeal is***

***pending or there is an application for extension of time within which to file such a brief of argument, if the Court makes an order of dismissal, that order is a nullity. The Court has inherent jurisdiction to set aside that judgment and declare that the appeal is still pending when a proper application is made before the court.*** See: *Olowu v. Abolore* (1993) 5 NWLR (Pt.293); *Nnaji & Ors v. Chukwu & Ors* (1988) 3 NWLR (Pt.81) 184; *Odogwu v. Odogwu* (1992) 7 NWLR (Pt.253) 344. It is pertinent to observe that there might be earlier decisions by this Court in which the appeals were dismissed solely on basis of non-existence of appellants' brief of argument and there is no pending application for an order extending the time within which to file an appellant's brief. This is quite valid and is in accordance with our laws and practice. This is what happened in cases such as *Orobarator v. Amata* (1981) 5 SC 276; *Nwaora v. Nwakonobi* (1985) 2 SC 86 - 167; *Olowu v. Abolore* (supra); *Yonwuren v. Modern Signs Nig. Ltd* (1985) 2 SC 86 or (1985) 1 NWLR (Pt.2) 244.

In contradistinction, this Court has inherent jurisdiction to declare that an appeal is pending when there exists proper application before it for extension of time within which to file such a brief. See: *Nnaji & Ors v. Chukwu & Ors* (supra).

It is my view therefore, that the applicants have satisfied the requirements/conditions for re-listing of their appeal which was erroneously dismissed by this Court in chambers on the 4th day of April, 1996. Issue No.2 of the respondents' issues, is resolved in favour of the applicants.

On the first issue, I think I have adequately answered this issue in my discourse as above. There is no need beating a dead horse. And, no amount of repetition will change or improve the principles of the law.

***Having gone through, painstakingly, all the averments of the two affidavits in support and further affidavits of the applicants and in contrast with the counter-affidavit of the respondents I am convinced that the delay in bringing this application has been effectively explained away. Sickness, especially, that which feeblees a person to a point of several admissions to Hospital as per the depositions in paragraphs 17 - 20; 29 - 37 and 57 - 61 of the applicants' affidavit in support***

**sworn to by Mr. Onovo are cogent and convincing reasons which this Court cannot just close its eyes against. See: Long John v. Blakk (1998) 6 NWLR (Pt.555) at 524.**

**It is not the length of time that matters in explaining away a delay in an application for extension of time within which to**  
 B **comply with a requirement/condition stipulated by law, but whether there are reasons which are cogent, valid and convincing which can explain away the delay. See: Unipress Ltd. v. Akinluyi (1992) 8 NWLR (Pt.262) 737; Ojukwu v. Onyeador (1991) 7 NWLR (Pt.203) 286; Williams v. Hope Rising Voluntary Funds Society (1982) 2 SC 145. After all grant or refusal of extension of time is a matter of discretion by the Court and it is expected to be guided by fairness and equity in the exercise of judicial discretion. It is always better, in my view, for a**  
 C **Court of law to determine rights of parties before it on merits.**  
 D See: Dantata & Sawoe Construction Ltd v. Egbe (1993) 4 NWLR (Pt.287) at 335.

For the above reasons, I will and do hereby grant this application as prayed; that is to say:

- E i. The Ruling of this Court delivered on the 4th day of April, 1996, is hereby set aside,  
 AND  
 ii. That it is ordered hereby that Appeal No. SC. 102/1990 be  
 F re-entered (re-listed) for hearing on the merit.  
 I make no order as to costs.

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### MOHAMMED JSC

G I have had the opportunity before today of reading in draft, the Ruling of my learned brother, Muhammad, JSC, which has just been delivered. I agree with his reasoning and the ultimate conclusion he arrived at, in deciding to grant the Applicants' application, which arose from the decision of this Court given on 4th April, 1996,  
 H dismissing the Applicants' appeal for their failure to file the Appellants' brief of argument pursuant to the provisions of Order 6 Rule 3(2) of the Rules of this Court which states -

*"(2) Where the Appellant has failed to file a brief within the period prescribed by this order and there is no application for exten-*

*sion of time within which to file the brief, the Court may subject to the proviso of Rule 9 of this order, proceed to dismiss the appeal in Chambers without hearing arguments.”*

It is quite clear from the plain provisions of this Rule that it has laid down a strong precondition or condition precedent to the exercise of the jurisdiction of this Court to dismiss an appeal, where there is no application for extension of time within which to file the brief by the Appellant duly filed awaiting hearing and determination by the Court. In other words, where there is a pending application in the Court by the Appellant for enlargement of time within which to file the Appellant's brief of argument, the jurisdiction of this Court to dismiss the appeal for failure to file the Appellant's brief under the rule is clearly ousted. This is because the Applicants having shown by affidavits in support of their application that they had complied with the rules of this Court as in *Nneji v. Chukwu* (1988) 3 N.W.L.R. (Pt. 81) 184 at 199 where Wali, JSC said -

*“The attitude of this Court has always been that whenever it is possible to determine a case on its merit, the Court should not cling to mere legal technicalities to refuse a Complainant, (be he the Appellant or the Respondent) the opportunity of being heard for fear that such attitude might cause a temporary delay in disposal of the case.”*

The order made in the instant case will be justifiably set aside as having been made without jurisdiction. That is to say, if an appeal is pending or properly pending before the Supreme Court, if there exists an order of dismissal which is a nullity erroneously made by the Supreme Court, it is my opinion that the Supreme Court has inherent jurisdiction to declare that the appeal is still pending, when a proper application is made before it, as was the position in this case.

In the instant case therefore, where this Court acted in the absence of jurisdiction under Order 6 Rule 3(2) of the Rules of this Court to dismiss the applicants' appeal on 4th April, 1996, while their application for extension of time to file their Appellants' brief filed in this Court since 6th May, 1993, was still pending and waiting to be heard, made that order of dismissal a nullity to justify this Court granting the Applicants' application since their appeal is regarded in law, as still pending in this Court. This of course, also falls in line with the decision of this Court in *Aloa v. African Continental Bank Limited*

(2000) 9 N.W.L.R. (Pt. 6721 264, where the conditions for this Court to exercise its inherent jurisdiction to set aside its own decision include the two conditions which are apparent in this case, namely, the fact that this Court acted in the absence of jurisdiction resulting in making the order of dismissal of the applicants' appeal, a nullity.

B For the foregoing reasons and fuller reasons contained in the lead Ruling, I also grant the application as prayed in restoring the appeal to the list of this Court for hearing on the merit with no order on costs.

C \_\_\_\_\_

### **CHUKWUMA-ENEH JSC**

Having read in advance the judgment of my learned brother, Muhammad JSC in this matter, I agree with him that in the circumstances of this case vis-a-vis Order 5 Rule 3(2) and Order 16 Rule 8 of the Rules of Supreme Court (as amended 1999) that this Court has the power to revisit the dismissal in Chambers of the appeal in this matter on 414/1996; and that the same be and is hereby set aside. And that the appeal is hereby re-entered for the hearing of the applicants' application of 3/3/2010 on the merits. I abide by all the orders in the lead Ruling.

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### **MUNTAKA-COOMASSIE JSC**

F I have had the privilege of reading in draft, the lead ruling rendered by my learned Lord, Tanko Muhammad, JSC, and I am in entire agreement with his view on all the issues raised and presented to us in this appeal. Considering the facts and circumstances that led to the decision of this Court delivered on 4/4/1996, like his Lordship, G I will also hold that the application should succeed. I shall say no more on these issues other than to re-state the obvious, namely, that this Court has inherent jurisdiction to consider the said application on its merit. That being the case, the appeal which was dismissed in error, is regarded, as still pending before us and must and is hereby re-listed. H

For this little contribution and the view elaborately stated in the lead ruling the application succeeds and it is hereby granted. Application is hereby granted as prayed. Appeal No. SC. 102/1990 is

hereby re-listed to be heard on its own merit. I too make no order as to costs.

### **FABIYI JSC**

I have had a preview of the Ruling just delivered by my learned brother, Muhammad, JSC. I agree with the reasons therein ably advanced to arrive at the conclusion that the application should be granted. B

On 4th April, 1996, this Court dismissed the appeal based on the ostensible reason that the appellants' brief of argument was not before the Court. The Court acted vides the provision of Order 6 Rule 3(2) of the Supreme Court Rules, 1977, which provides as follows:- C

*"Where the appellant has failed to file a brief within the period prescribed by this order and there is no application for extension of time within which to file the brief, the Court may, subject to the proviso of Rule 9 of this order, proceed to dismiss the appeal in chambers without hearing arguments."* D

The appellants filed their application praying for an order to re-list the appeal. The affidavit in support which was deposed to by Godwin Onovo, the representative of the appellants, had attached to same appellants' motion and brief of argument marked Exhibits S.C. 11 and S.C. 12 respectively. This Court cannot ignore these exhibits, unless they are properly explained away. The exhibits were before the Court on 4th April, 1996, but officials of the Court's Registry failed to put them in the Justices files for their attention. To put it mildly, the fault is that of Registry and not that of the appellants/applicants. E

It is now clear beyond per-adventure that the decision to dismiss the appeal on 4th April, 1996 was reached inadvertently or in error. In my considered view, this is one of the exceptional and rare occasions when this Court should bend backwards to correct an error created by the inaction in its own Registry. We are in the age when the principle of substantial justice is the vogue and technicality is getting to be a thing of the past. See: Chime v. Chime (2001) 3 NWLR (Pt. 701) 527 at 553; Nneji v. Chukwu (1988) 3 NWLR 184 at 210. F

G

H

Lastly, I seriously feel that the appellants/applicants should be given an opportunity of being heard. This will tally with the principle of substantial justice; in the main. See: *Leaders & Co. Ltd. v. Bamaiyi* (2010) 18 NWLR (Pt. 1225) 329 at 345.

My above opinion is just like the tip of the iceberg. My learned brother has said it all. I too, feel that the application deserves to be granted. And it is accordingly granted as prayed. The Ruling of 4th April, 1996 is hereby, set aside and Appeal No. SC. 102/1990 is re-listed for hearing on the merit. I too, make no order as to costs.

C \_\_\_\_\_

### ***GALADIMA JSC***

I was privileged to have read in draft, the ruling of my learned brother MUHAMMAD, JSC which has just been delivered. I entirely agree with the reasoning and the conclusion he arrived at in granting this application.

The reason for dismissing the Applicants' appeal on 4/4/96 was because they had failed to file their brief of argument within the time prescribed by order 6 Rule 3(2) of the Supreme Court Rules of 1977.

Aggrieved with the dismissal of their appeal, the appellants filed application for an order to re-list the appeal. The application is supported by two sets of affidavits; the first was sworn to by Godwin Onovo. It contains 73 paragraphs and some exhibits attached; the second was sworn to by Mrs. A. J. Offiah SAN the leading counsel for the Applicants. This contains 47 paragraphs with some exhibits attached. Opposing the application the Respondents filed counter affidavit. In reaction to the counter-affidavit and Notice of Preliminary objection filed by the Respondents, the applicants filed two further affidavits; a reply to the Respondents' Notice of Preliminary objection and a brief of argument in support of the application.

It is clear to me from the averments and the reaction to the Respondents in their counter affidavit that the applicants filed in this Court a motion asking for extension of time within which they might file their brief of argument, Exhibit S.C. 2 Exhibits S.C. 6 and S.C. 7 are evidence that the applicants paid penalty imposed on them for late filing. Exhibit 'A' is the copy of the Applicants' Brief of argument.

The Application for extension of time to file applicants' brief of

argument and the certified true copy of the brief of argument were not brought to the attention of my learned brothers in chambers on 4/4/96, when they dismissed the applicants' appeal. The Respondents have not effectively countered the foregoing facts set out in the applicants' affidavit. This Court cannot ignore these facts supported by affidavit of the applicants. They are not effectively challenged. The Registry of this court no doubt failed to bring to the Notice of the Learned Justices of this Court when they sat on 4/4/96 to consider at their chamber sitting, the application filed by the applicants for extension of time within which to file their brief of argument, This serious omission from the Registry Staff is squarely theirs not that of the applicants; they can not be made to bear this untold hardship. This Court should do substantial justice. It cannot visit the blunders of the Registry Staff on the Applicants. See the case of COOPERATIVE AND COMMERCE BANK (NIG.) PLC v. ATTORNEY GENERAL ANAMBRA STATE & ANOR (1992) 8 NWLR (Pt.261) 528 at p.561.

There have been quite a number of decisions of this Court in which appeals were dismissed solely on the basis of non-existence of Appellants' brief of argument and there is no pending application for an order extending the time within which to file the said brief. See OROBARATOR V. AMATA (1931) 5 SC 272, NWAORA V. NWAKONOB (1985) 2 SC 86 at 167; OLOWU V. ABOLORE (1993) 5 NWLR (Pt.293) at 255 and YONWUREN v MODERN SIGNS (NIG.) LTD (1985) 1 NWLR (Pt. 2) 244.

Where however, there is an application pending for extension of time to file appellant's brief this Court has inherent jurisdiction to consider and grant the said application on its merit. However, if an appeal is pending in this Court and there is an order of dismissal made in error, this Court no doubt has inherent jurisdiction to declare that the appeal is still pending and ought to be re-listed for hearing. See the lucid dicta of OBASEKI JSC to this effect in OLOWU v ABOLORE of (supra).

In the light of the above reasons and those given in details in the leading Ruling of my Learned Brother, Muhammad, JSC, the Applicants should be afforded an opportunity of being heard. I accordingly grant the application as prayed, The Ruling of this Court of 4/4/96 is hereby set aside. Appeal No, SC. 102/1990 is hereby re-listed.

**NGWUTA JSC**

In the motion on notice dated, and filed on, the 3rd day of March, 2010 the Applicants prayed for the following:

“(1) An order setting aside the ruling of this Court delivered on the 4th day of April, 1996.

B (2) An order of this Court directing this appeal to be re-entered for hearing on the merits.

(3) And for such further order or orders as the Court may deem fit to make in the circumstances.”

C In moving the application, the learned Senior Counsel leading for the Applicants, Chief A. J. Offiah, SAN relied on S.22 of the Supreme Court Act, Order 8 R.16 of the Supreme Court Rules as well as S.36 of the Constitution of the Federal Republic of Nigeria 1999. In support of the application are a 73 paragraph affidavit of Mr. Godwin D Onovo, a member of the applicants’ family and a 49 paragraph affidavit deposed to by the learned Senior Counsel for the Applicants. Documents were exhibited to each affidavit.

E Learned Senior Counsel for the Respondents, Mr. Onoja, SAN filed a counter-affidavit and a notice of preliminary objection to the application as well as a brief of argument.

Learned Senior Counsel for the Applicants, in response to the preliminary objection filed two further affidavits and a reply to the preliminary objection.

F Mrs. A. O. Mbamali, SAN, Director of Civil Litigation, Federal Ministry of Justice, appeared, leading a team of lawyers from the Ministry on behalf of the Attorney-General of the Federation as amicus curiae. She filed a brief of argument.

G Learned Senior Counsel for the parties and the amicus curiae adopted and relied on their respective briefs at the hearing of the application.

H In the manner traditional of His Lordship, my learned brother, I. T. Muhammad, JSC meticulously dealt with the issues and arguments in this application. There is no useful purpose in setting out the issues and arguments herein.

The central point in the determination of this application is whether or not the Court can set aside its order dismissing the Appellants’ appeal on 4/4/96 on the ground that the applicants neither filed their brief of argument nor filed a motion for extension of time

to do so.

From the copious averments in the affidavits of the parties, the following emerge as undisputed facts:

- (1) Applicants' appeal was dismissed in Chambers on 4/6/96.
- (2) The dismissal was based on the belief that the applicants did not file their brief as and when due and did not file a motion for an enlargement of time to do so.
- (3) Prior to the date of the order dismissing their appeal, the Applicants had, on 6/6/93 filed a motion for enlargement of time to file their brief and an order to regularize the filing of the brief out of time. See paragraph 23(c) of the affidavit of Mrs. A. J. Offiah, SAN learned Counsel for the Applicants.

Both parties referred to Order 6 r. 3 (2) and Order 8 r. 16 of the Supreme Court Rules 1985 as amended. The appeal was dismissed under the former while the relief is sought pursuant to the latter. The rules are hereunder reproduced:

"Ord. 6 r.3(2): Where the appellant has failed to file a brief within the period prescribed by this Order and there is no application for extension of time within which to file the brief, the Court may, subject to the proviso to rule 9 of this Order, proceed to dismiss the appeal in Chambers without hearing argument.

"Ord. 8 r.16: The Court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the Court decided nor shall the operative and substantial part of it be varied and a different form substituted."

I will first of all deal with Ord, 6 r.3(2) pursuant to which the appeal was dismissed in Chambers.

The Order invests the Court with the power to dismiss an appeal in Chambers only.

(1) If the appellants did not file their brief within the time prescribed in the rules (as in this case) and;

(2) If the appellants in default of filing their brief did not file a motion for extension of time to file brief and an order to regularize the filing of the brief if it has been filed out of time.

The Court cannot invoke its power under r.3(2) of Order 6

unless in addition to the default in filing their brief the appellant also failed to file a motion for enlargement of time to do so.

Appellants were in default but not only did they file a motion for extension of time to file their brief they also filed the brief out of time and sought an order to regularize same. The dismissal of the appeal under Ord. 6 r.3(2) was predicated on erroneous belief that the appellant failed to file their brief within time and did not file a motion for enlargement of time to do so. The Order was made in utter ignorance of existing facts upon which the Court could not have dismissed the appeal. In other words, the appeal was dismissed in error and neither the Court nor the party in pursuit could be held responsible for the error. By the provision of Ord. 8 r.16, the Court can review its judgment but only for the specific and limited purpose of correcting any clerical mistake or some error arising from accidental slip or omission or to vary the judgment or order to give effect to its meaning or intention.

Now, the question is: can the Court remedy the obvious injustice done to the applicants albeit inadvertently, by a resort to its limited powers under Ord. 8 r.16? The Honourable Justices who dismissed the appeal in Chambers were not aware of the processes filed by the applicants because the processes which should have been put in the files were not so put. On the face of the ruling dismissing the appeal, there is no clerical mistake; there is no error arising from accidental slip or omission nor is there any doubt as to the meaning and intention of the Court.

A review envisaged by Ord. 8 r.16 leaves the judgment extant, albeit with the errors or slips corrected. The judgment still exists though in its corrected form. The relief sought here is to put the judgment out of existence which is in conflict with the correction of errors therein. I am constrained to hold and I do hold that the relief herein sought is not within the warm embrace of Ord. 8 r.16, The Court lacks power to review its judgment except as provided in rule 16 of order 8 of its rules. (See Chukwuka v. Ezulike (1986) 5 NWLR (Pt 45) 892 SC; Alao v. African Continental Bank Ltd. (2000) 9 NWLR (Pt 672) 264 SC See also Oyeyipo v. Oyinloye (1987) 1 NWLR (Pt. 50) 356 SC where the Court per Karibi-Whyte, JSC held:

*“It seems however, that this Court which is a final Court, has no power to correct its own mistake of law in a judgment even though*

*apparent on the face of the judgment or order Maccatty v. Agard (1933) 2 K.B 417.”*

On the facts before us, there is no mistake on the face of, or apparent, in the order dismissing the appeal. The mistake sought to be corrected is extraneous to the order of the Court and therefore not within the intendment of Ord. 8 r.16.” B

Learned Counsel for the Respondent, Chief O. J. Onoja, SAN in his notice of preliminary objection, said that the application is incompetent in that the power of the Court is statutory. In other words, the Court cannot set aside any of its judgment, no matter the circumstances because there is no provision in any law or rule to confer power on the Court to set aside its judgment in any event. This cannot be the case. In addition to its statutory jurisdiction, a Court of record has its inherent jurisdiction which attaches to, and inheres in it, as an adjudicator and judex. C D

Inherent jurisdiction of a superior Court is essential for its existence and necessary for the proper and complete administration of justice See *Ajayi v. Onoroghe* (1993) 6 NWLR (Pt. 301) 512 at 534 SC. The power is innate in a Court of record, it is not granted by the Constitution or by legislation, nor can it be abridged. E

The 1999 Constitution of the Federal Republic of Nigeria as amended recognized and endorsed and preserved it. See S.6 (6)(a) which provides:

“6(6) The Judicial powers vested in accordance with the foregoing provisions of this section (a) shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a Court of law.” F

In appropriate and deserving cases, the Court can invoke its inherent powers to set aside its own judgment. See *Ogbu v. Orum* 4 G SC 1; *Tim v. Ameh* (1992) 1 NWLR (Pt.217) 306; *Olorunfemi v. Asho* (2000) NWLR (Pt. 20) 654.

This Court in *Alao v. ACB Ltd .* (supra), stated five (5) conditions under which the Court can set aside its judgment or order. They are: (1) When the judgment was obtained by fraud. H

(2) When the judgment is a nullity such as when the Court itself was not competent.

(3) When the Court was misled into giving judgment under a mistaken belief that the parties have consented to it.

(4) When the judgment was given without jurisdiction.

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

See also *Sken consult v. Ukey* (1981) SC 6; *Ojiako v. Ogueze* (1962) 1 All NLR 58; *Igwe v Kalu* (2002) 14 NWLR (Pt 787) 435 at 453-454 SC.

Now, do the facts of this application fall within any of the five stated conditions for the Court to set aside its judgment or order? I have already stated that the Court acted in error, when it dismissed the appeal in Chambers under Ord. 6 r.3(a) when the conditions stipulated in the said order were not present. Moreover, the Court was misled into believing and acting on the belief, that the applicant as of 4/4/96, neither filed a brief, nor filed a motion for extension of time to do so. What happened on 4/4/96 is neither the fault of the Court nor that of the applicants. Be that as it may, an injury has been inflicted on the applicants and there is no statutory provision by which the Court can redress the injury.

My Lords, this is an appropriate situation for the Court to invoke its inherent powers to right the wrong done to the applicants. Learned Senior Counsel for the respondent made an issue of the conduct of the applicant, obviously with regards to the delay in bringing this application. On the other hand, learned Senior Counsel for the applicants, took pains to explain the reasons for the delay. Though a party, on becoming aware of a void order affecting him should, in prudence, promptly approach the Court that issued the order to declare it a nullity lapse of time cannot validate an order void ab initio. It is void for all times and purposes.

I have had the privilege of reading in advance, the lead Ruling delivered by my learned brother, Muhammad, JSC and I entirely agree that the motion ought to be granted. Consequently, I also grant the motion and make the following orders.

(1) The order of this Court dismissing the applicants' appeal in Chambers on 4th April, 1996 is hereby, set aside.

(2) Consequently, it is ordered that the appeal be, and is hereby, re-entered for hearing on the merit.

Parties are to bear their respective costs.