

SUPREME COURT OF NIGERIA
FRIDAY 27TH FEBRUARY, 2015. SC. 164/2012
CORAM:- M. MOHAMMED CJN, W.S.N. ONNOGHEN,
J. A. FABIYI, S. GALADIMA, O. RHODES-VIVOUR,
K. B. AKA'AH, J. I. OKORO, JJSC

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| 1. BARRISTER ORKER JEV | APPELLANTS |
| 2. ACTION CONGRESS OF NIGERIA
(NOW ALL PROGRESSIVE
CONGRESS) | |
| AND | |
| 1. SEKAV DZUA IYORTOM | |
| 2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC) | RESPONDENTS |
| 3. ENGR. STEVE MOZER | |
-

SUPREME COURT - Judgment - Supremacy of - The court cannot sit on appeal over its judgment - And its power in appropriate cases to set aside its judgment - Does not amount to appellate jurisdiction (H1)

SUPREME COURT - Judgment - Amendment of - SC Rules O. 8 r. 16 - SC can in appropriate cases vary its judgment - To give effect to the judgment and in the interest of justice (H2)

ELECTIONS - Pre election - SC order - Amendment of - The order made by this court in the earlier appeal is set aside - As SC is not one of the courts regulated by Electoral Act s. 141 (H3)

FACTS

Before the Supreme Court, applicant/1st respondent brought a motion on notice asking inter alia, for an order of the Court to amend and/or set aside its consequential order made pursuant to the provisions of section 141 of the Electoral Act 2010 (as amended) to wit: that 1st respondent stand for a fresh election with other candidates for the Buruku Federal Constituency of Benue State.

The application is based on among other grounds, that the Court made the said consequential order under the mistaken belief

that the aforementioned section was still extant and valid. 1st respondent therefore contends that the Court possesses the power to set aside the consequential order and substitute thereof an order that meets the justice of the case. The application is supported by a 15 paragraph affidavit properly deposed to by a legal practitioner. Annexed to the affidavit are two exhibits. Respondents/appellants did not oppose the application.

ISSUE FOR DETERMINATION

“Whether in view of the facts and circumstances of this application and given the provisions of Section 22 of the Supreme Court Act and order 8 Rule 16 of the Supreme Court Rules 1999 (as amended) the reliefs in the application ought not be granted?”

HELD (Unanimously allowing the application per **OKORO JSC**)

SUPREME COURT - Judgment - Supremacy of

1. Let me state clearly from the outset that by virtue of Section 235 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Supreme Court cannot sit on appeal over its own judgment. The provision gives a stamp of finality to any decision of the Supreme Court. There is no constitutional provision for the review of the judgment of the Supreme Court by itself or any other body. And that is without prejudice to the powers of the President or of the Governor of a state with respect to prerogative of mercy.

Be that as it may, it has been held by this court in several decided cases that the Supreme Court possesses inherent power to set aside its judgment in appropriate or deserving cases but that such inherent jurisdiction cannot be converted into an appellate jurisdiction as though the matter before it is another appeal, intended to afford the losing litigants yet another opportunity to re-state or re-argue their appeal.
(p. 609 A)

SUPREME COURT - Judgment - Amendment of

2. Under order 8 Rule 16 of the Supreme Court Rules, this

court is also imbued with power, in appropriate cases to vary its judgment.

The above provision is very clear. Courts of law are set up to do substantial justice to parties who appear before them. Therefore, where a court makes an order in its judgment which does not fully represent its meaning and/or intention, the court is allowed to vary the said order in order to give effect to the judgment delivered. There could be a situation where the court has made clerical mistake or some error arising from any accidental slip or omission. In such circumstance, the court is in good position to correct such obvious mistake in order not to enthrone injustice and pain on the affected party. That is the intendment and purport of Order 8 Rule 16 of the rules of this Court. (p. 610 B)

ELECTIONS - Pre election - SC - Order - Amendment of

3. There is no doubt that this court made a decision in appeal No. SC. 164/2012 decided on 30th May, 2014. In that judgment, this court made three consequential orders, one of which was that the 2nd Respondent i.e. INEC should conduct fresh election into the vacant seat of Buruku Federal Constituency of Benue State in the House of Representatives within three months (90 days) with the first respondent/applicant as the candidate of All Progressive Congress.

The basis for that consequential order was Section 141 of the Electoral Act 2010 (as amended) which states:-

“An election tribunal or court shall not under any circumstances declare any person a Winner at an election in which such a person has not fully participated in all the stages of the said election.”

With due deference to the submission of the learned senior counsel for the applicant in this case, I wish to put on hold my opinion on the part of his argument relating to and touching the judgment of the Federal High Court (Exhibit 2) which I hope to speak at an opportune time. But having a closer look at Section 141 of the Electoral Act reproduced above, it is quite clear that the said section refers to some courts for which the Supreme Court is not part of.

Thus, this court not being one of the courts mentioned in Section 133 (2) of the Electoral Act is not one of the courts to which section 141 regulates. This is much more so since the issue for consideration was not an election petition appeal but a pre-election matter. In appropriate cases, this court has
 B **exercised its power to order successful litigants to be sworn in immediately without the rigour of having to go through another election. The applicant herein should not be an exception.**

C **Clearly, the definition of “tribunal or court” does not include the Supreme Court or the Federal High Court hearing and determining pre-election matters.**

On the whole, it is my well considered opinion that this application is meritorious and is hereby granted as prayed. Accordingly, the consequential order No 2 made in the judgment of this court in appeal No SC. 164/2012 delivered on 30th May, 2014 which ordered the Independent National Electoral Commission (INEC) to conduct fresh election into the vacant seat of Buruku Federal Constituency of Benue State in the
 E **House of Representatives is hereby set aside.**

In its place, I hereby make the following orders:

1. The Independent National Electoral Commission is hereby ordered to issue certificate of return to the first Respondent/Applicant, Sekav Dzua Iyortom forthwith.
 F

2. It is further ordered that the applicant herein, Sekav Dzua Iyortom be immediately sworn in into the House of Representatives as the member representing Buruku Federal Constituency of Benue State. The Speaker of the House of Representatives and the Clerk of the National Assembly shall ensure that this order is carried out with immediate effect.
 G

(pp. 610 G/612 B)

H **NOTABLE POINT OF INTEREST** **OKORO JSC**

Statutory interpretation – Principle

It is trite law and an unassailable legal principle that the express and unambiguous mention of one thing in a statutory provision, auto-

matically excludes any other which otherwise would have applied by implication, with regard to the same subject matter. This is usually captured in the Latin maxim which states “*Expressio unis est exclusio alterus.*” (p. 611 H)

REPRESENTATION

Yusuf O. Ali (SAN) with K.K. Eleja, S.A. Oke, Wahab Ismail, Alex Akoja and Patricia Ikpegbu (Mrs.): For the 1st Respondent/Applicant.
 Danjuma G. Ayeye with A.I. Olawoye: For the 2nd Respondent.
 Haleema Suleiman (Miss): For the 3rd Respondent.
 Appellants/Respondents absent and not represented but have been duly served.

CASES REFERRED TO

Alao v. ACB Ltd (2000) 9 NWLR (pt. 672) 264
 Ede v. Mba (2011) 18 NWLR (pt. 1276) 236
 Ojiako v. Ogueze (1962) 1 All NLR 58
 Igwe v. Kalu (2002) 14 NWLR (pt. 787) 435
 Amaechi v. INEC (2008) All FWLR (pt. 407) I
 Odedo v. INEC (2009) All FWLR (pt. 449) 844
 Inakoju v. Adeleke (2007) All FWLR (pt. 353) 3
 Obioha v. Ibero (1994) 1 NWLR (pt. 322) 503
 Odofin v. Olabanjo (1996) 3 NWLR (pt. 435) 126
 Ogbuinyinya v. Okudo (1979) 6-9 SC 32
 PDP v. INEC (1999) 11 NWLR (pt. 626) 200
 Buhari v. Yusuf (2003) 14 NWLR (pt. 841) 446
 Ali v. Mba (2011) 18 NWLR (pt. 1276) 236
 Nneji v. Chukwu (1988) 6 SCNJ 132
 Bello v. A.G. Oyo State (1986) 12 SC 1

STATUTES & RULES REFERRED TO

Electoral Act 2010 (as amended), ss. 87(9), 141, 133(2)
 Supreme Court Act, ss. 22, 27(2)(3)(4)
 Constitution of the Federal Republic of Nigeria, 1999 (as amended), H ss. 6(6), 235
 Supreme Court Rules 1999 (as amended), O. 6 r. 16

LEAD RULING BY OKORO JSC

This ruling is on a motion on Notice brought by the 1st Respondent/Applicant praying this court for the following orders:

B “1. *AN ORDER of the Honourable court to amend, correct and/or set aside the consequential order made by this Honourable court in its judgment of 30th May, 2014 pursuant to the provisions of section 141 of the Electoral Act 2010 (as amended) to wit: that the 1st Respondent/Applicant stand for a fresh election with other candidates for the Buruku Federal Constituency of Benue State.*

C 2. *AN ORDER directing that the 1st Respondent/Applicant be immediately issued with the certificate of Return by the 2nd Respondent and sworn in as a member of the House of Representatives.*

D 3. *AN FOR SUCH FURTHER ORDER OR ORDERS as this Honourable court may deem fit to make in the circumstances.”*

The grounds upon which the application is predicated are set out in the motion paper numbered 1 -10 as follows:

E 1. This Honourable Court, on 30th May, 2014, delivered its judgment in this matter and dismissed in total, the appeal of the Appellants.

F 2. The two lower courts, in their judgment in favour of the 1st Respondent/Applicant herein, ordered that the Respondent/Applicant should be sworn in as a member of the House of Representatives.

G 3. In the judgment of this Honourable Court on 30th May, 2014, this order was substituted, pursuant to the Provisions of Section 141 of the Electoral Act 2010 (as amended), to the effect that fresh elections should be conducted in which the name of the 1st Respondent/Applicant will be substituted for that of the 1st Appellant on the ballot papers.

H 4. After the delivery of the judgment of this Honourable Court, learned Lead Counsel to the 1st Respondent/Applicant, Yusuf Ali SAN, became aware of the judgment of the Federal High Court sitting in Abuja, Coram: G. O. Kolawole J., in SUIT NO: FHC/ABJ/CS/399/2011, delivered on 21st July, 2011, in which the provisions of Section 141 of the Electoral Act 2010 (as amended) was struck down and nullified.

5. The order of this Honourable Court, directing that fresh

elections be held was based on the annulled Section 141 of the Electoral Act.

6. The consequential order of this Honourable Court of 30th May, 2013, was made under the mistaken belief that Section 141 of the Electoral Act 2010 (as amended) was still extant and valid.

7. The judgment of the Federal High Court in SUIT NO: FHC/ABJ/CS/399/2011, is still extant and has not been set aside by any higher court.

8. This Honourable Court possesses the power *ex debito justitiae*, to set aside the consequential order made in this matter and substitute thereof an order that meets the justice of the case.

9. None of the parties herein will be prejudiced by the grant of this application.

10. It is in the interest of justice, fairness and the development of the law that this application be granted.

In support of this application is a 15 paragraph affidavit deposed to by Alex Akoja; a legal practitioner in Yusuf Ali & Co., the Law Firm representing the 1st Respondent/Applicant in this case. Annexed to the affidavit are two exhibits. Exhibits 1 is the judgment of this court containing the consequential order sought to be amended or set aside while Exhibit 2 is the judgment of the Federal High Court which nullified Section 141 of the Electoral Act 2010 (as amended). When this matter first came up for hearing on 9th February, 2015, this court directed parties to file written addresses. The 1st Respondent/Applicant filed his written address on the 12th February, 2015 which was adopted and relied upon at the hearing of this motion on 23/2/15. The respondents have not opposed this application.

The background facts leading to the filing of the motion giving birth to this ruling are as encapsulated both in the grounds of this application and the affidavit in support. Having set out the grounds upon which the application is predicated, and in view of the fact that the facts deposed to in the affidavit are in tandem with the grounds, it may not be necessary to reproduce the affidavit again except as may be appropriate to make reference to in the course of this ruling, much more so, as there is no dispute as to the facts.

On page four of the written address of the Applicant, the learned senior counsel, Yusuf Ali, SAN, who represents the applicant, has formulated one issue for consideration. It states:-

“Whether in view of the facts and circumstances of this application and given the provisions of Section 22 of the Supreme Court Act and order 8 Rule 16 of the Supreme Court Rules 1999 (as amended) the reliefs in the application ought not be granted?”

In his argument, learned senior counsel submitted that a combined reading of Section 22 of the Supreme Court Act and Order 8 Rule 16 of the Supreme Court Rules 1999 (as amended) empowers this court in certain circumstances to review its judgments, notwithstanding the finality of its judgments. Also, that by virtue of Section 6 (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), there is an inherent power in the Supreme Court to grant the prayers of the applicant.

On the grounds upon which the Supreme Court may review its judgment, the learned senior counsel cited the following cases: *Alao V ACB Ltd* (2000) 9 NWLR (Pt 672) 264, *Ede V Mba* (2011) 18 NWLR (Pt 1276) 236, *Ojiako V Ogueze* (1962) 1 All NLR 58, and *Igwe V Kalu* (2002) 14 NWLR (Pt 787) 435 at 453.

Learned Silk submitted further that the basis of the refusal of the Supreme Court in declaring the applicant as the winner of the said election was exclusively on the provision of Section 141 of the Electoral Act 2010 (as amended) whereas the Federal High Court in Suit No: FHC/ABJ/CSI/2011 between the Labour Party Vs Hon. Attorney General of the Federation (Exhibit 2) delivered on 21st July, 2011 had annulled the said provision. According to him, Section 141 of the Electoral Act (*supra*) has been completely wiped out of the Electoral Act by the said judgment of the Federal High Court. He opined that the Supreme Court in its judgment in Exhibit 1 was obviously oblivious of the fact of the nullification and obliteration of the provision of Section 141 of the Electoral Act upon which the consequential relief ordering a fresh election was hinged.

It is his further submission that given this factual situation, and in view of the fact that courts exist for justice, this court is urged upon to correct the error varying the consequential order for fresh election with an order swearing in the applicant herein as the member representing Buruku Federal Constituency of Benue State. He cited the cases of *Amaechi V INEC* (2008) All FWLR (Pt 407) I, *Odedo V INEC* (2009) All FWLR (Pt 449) 844 and *Inakoju V Adeleke* (2007) All FWLR (Pt 353) 3 at 203.

Relying on Amaechi V INEC (supra) and other cases decided by this Court on the issue, he urged this court not to deviate from its previous decision on the matter. He urged the court to grant this application.

Let me state clearly from the outset that by virtue of Section 235 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Supreme Court cannot sit on appeal over its own judgment. The provision gives a stamp of finality to any decision of the Supreme Court. There is no constitutional provision for the review of the judgment of the Supreme Court by itself or any other body. And that is without prejudice to the powers of the President or of the Governor of a state with respect to prerogative of mercy. See Eleazor Obioha V Innocent Ibero & anor (1994) 1 NWLR (Pt 322) 503.

Be that as it may, it has been held by this court in several decided cases that the Supreme Court possesses inherent power to set aside its judgment in appropriate or deserving cases but that such inherent jurisdiction cannot be converted into an appellate jurisdiction as though the matter before it is another appeal, intended to afford the losing litigants yet another opportunity to re-state or re-argue their appeal.

In Chief Kalu Igwe & 2 ors V Chief Onwuka Kalu and 3 ors (2002) 14 NWLR (Pt 787) 435 at 453 paragraphs F – H and page 454 paragraphs A - C, this court, per Ogwuegbu, JSC held as follows:-

“I shall state that this Court possess inherent power to set aside its judgment in appropriate cases. Such cases are as follows:-

(i) When the judgment is obtained by fraud or deceit either in the court or of one or more of the parties such a judgment can be impeached or set aside by means of an action which may be brought without leave. See Alaka V Adekunle (1959) 6 Ch. D 297, Olufunmise V Falana (1990) 3 NWLR (Pt 136) 1.

(ii) When the judgment is a nullity. A person affected by an order of court which can properly be described as a nullity is entitled ex debito justitiae to have it set aside. See Skenconsult Ltd. V Uke (1981) 1 SC 6, Craig V Kansen (1943) KB 256 and 263, Ojiako & ors V Ogueze & ors (1962) 1 NCNLR 112, (1962) 1 All NLR 58, Okafor & ors V Anambra State & ors (1991) 6 NWLR (Pt 200) 659

at 680

(iii) *When it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it. See Agunbiade V Okunoga & Co (1961) All NLR 110 and Obimonure V Erinosho (2000) 2 NWLR (Pt 643) 14.*"

B Under order 8 Rule 16 of the Supreme Court Rules, this court is also imbued with power, in appropriate cases to vary its judgment. It states:

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

The above provision is very clear. Courts of law are set up to do substantial justice to parties who appear before them. Therefore, where a court makes an order in its judgment which does not fully represent its meaning and/or intention, the court is allowed to vary the said order in order to give effect to the judgment delivered. There could be a situation where the court has made clerical mistake or some error arising from any accidental slip or omission. In such circumstance, the court is in good position to correct such obvious mistake in order not to enthrone injustice and pain on the affected party. That is the intendment and purport of Order 8 Rule 16 of the rules of this Court. See *Obioha V Ibero* (1994) 1 NWLR (Pt 392) 503 and *Odojin Vs Olabanjo* (1996) 3 NWLR (Pt 435) 126.

There is no doubt that this court made a decision in appeal No. SC. 164/2012 decided on 30th May, 2014. In that judgment, this court made three consequential orders, one of which was that the 2nd Respondent i.e. INEC should conduct fresh election into the vacant seat of Buruku Federal Constituency of Benue State in the House of Representatives within three months (90 days) with the first respondent/applicant as the candidate of All Progressive Congress.

The basis for that consequential order was Section 141

of the Electoral Act 2010 (as amended) which states:-

“An election tribunal or court shall not under any circumstances declare any person a Winner at an election in which such a person has not fully participated in all the stages of the said election.”

With due deference to the submission of the learned senior counsel for the applicant in this case, I wish to put on hold my opinion on the part of his argument relating to and touching the judgment of the Federal High Court (Exhibit 2) which I hope to speak at an opportune time. But having a closer look at Section 141 of the Electoral Act reproduced above, it is quite clear that the said section refers to some courts for which the Supreme Court is not part of. Section 133(2) of the Electoral Act 2010 (as amended) which define “tribunal or court” in section 141 thereof states:

“(2) In this part, “tribunal or court” means:

(a) in the case of Presidential election, the Court of Appeal and

(b) in the case of any other elections under this Act the election tribunal established under the constitution or by this Act.”

Thus, this court not being one of the courts mentioned in Section 133 (2) of the Electoral Act is not one of the courts to which section 141 regulates. This is much more so since the issue for consideration was not an election petition appeal but a pre-election matter. In appropriate cases, this court has exercised its power to order successful litigants to be sworn in immediately without the rigour of having to go through another election. The applicant herein should not be an exception. See *Amaechi V INEC* (2008) All FWLR (Pt 407) 1 *Orhena Adugu Gbileve & anor V. Mrs. Ngunan Addingi & anor* Appeal No. SC. 193/2012 delivered on 31st January, 2014, *Jenkins Giane Divine Gwende V INEC & 3 ors*, Appeal No. SC. 255/2013 delivered on 24th October, 2014.

Clearly, the definition of “tribunal or court” does not include the Supreme Court or the Federal High Court hearing and determining pre-election matters. It is trite law and an unsailable legal principle that the express and unambiguous mention of one thing in a statutory provision, automatically excludes any other

which otherwise would have applied by implication, with regard to the same subject matter. This is usually captured in the Latin maxim which states “*Expressio unis est exclusio alterus*.” See Ogbuinyinya V Okudo (1979) 6 - 9 SC 32, PDP V INEC (1999) 11 NWLR (Pt 626) 200, Buhari V Yusuf (2003) 14 NWLR (Pt 841) 446.

B On the whole, it is my well considered opinion that this application is meritorious and is hereby granted as prayed. Accordingly, the consequential order No 2 made in the judgment of this court in appeal No SC. 164/2012 delivered on 30th May, 2014 which ordered the Independent National Electoral Commission (INEC) to conduct fresh election into the vacant seat of Buruku Federal Constituency of Benue State in the House of Representatives is hereby set aside.

In its place, I hereby make the following orders:

D 1. The Independent National Electoral Commission is hereby ordered to issue certificate of return to the first Respondent/Applicant, Sekav Dzua Iyortom forthwith.

E 2. It is further ordered that the applicant herein, Sekav Dzua Iyortom be immediately sworn in into the House of Representatives as the member representing Buruku Federal Constituency of Benue State. The Speaker of the House of Representatives and the Clerk of the National Assembly shall ensure that this order is carried out with immediate effect. I shall make no order as to costs.

F

MOHAMMED CJN

G The 1st Respondent/Applicant was the 1st Respondent in the Judgment of this Court delivered on 30/5/2014 in which the Appellants/ Respondents’ appeal was dismissed. Following the dismissal of the appeal, this Court made consequential orders directing the 1st Appellant/Respondent to vacate the seat of Buruku Federal constituency of Benue State in the House of Representatives and the Independent National Electoral Commission (INEC) the 2nd Respondent in the Judgment and in this application, to conduct election into the vacant seat vacated by the 1st appellant/respondent within three months with 1st Respondent as the candidate of the 2nd Appellant/Respondent. The 1st Respondent/Applicant has now come back to

this Court by a motion on notice asking for the following two 2 reliefs:-

“1. An order of the Honourable Court to amend, correct and/or set aside the consequential order made by this Court in its Judgment of 30^h May 2014, pursuant to the provision of Section 141 of the Electoral Act 2010 (as amended) to wit: that the 1st Respondent/Applicant stand for a fresh election with other candidates for the Buruku Federal Constituency Benue State.

2. An order directing that the 1st Respondent/Applicant be immediately issued with the certificate of Return by the 2nd Respondent and sworn in as a member of the House of Representatives.”

The grounds in support of the application and the affidavit in support of the same are virtually similar on the facts and circumstances surrounding the filing of the application which are not at all in dispute. The learned Senior Counsel to the applicant is of the strong view that this court possesses the power *ex-debitio justitiae*, to set aside the relevant consequential order made in this matter regarding the holding of another election and substitute therefore an order that meets the justice of this case.

By virtue of Section 235 of the Constitution of the Federal Republic of Nigeria 1999 as amended, the Supreme Court cannot sit on appeal over its own Judgment because the provision of the Section gives a stamp of finality to any decision of this Court. This Section states -

“235. Without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy no appeal shall lie to any other body or person from any determination of the Supreme Court.”

I may also observe that there is no constitutional provision for the Supreme Court to review its own judgment by itself. Indeed there can be no appeal questioning the decision of the Supreme Court to itself or to any body or person as there must be finality to litigation. Any application therefore challenging the correctness of the Judgment of the Supreme Court, this Court has no jurisdiction to grant the application. See *CARDOSO VS DANIEL* (1986) 2 N.W.L.R. (Pt.20) 1, *ADIGUN VS ATTORNEY GENERAL OF OYO STATE* (1987) 2 N.W.L.R. (Pt. 56) 197 and *OBIOHA VS IBERO & 1 OR* (1994) 1 NWLR. (Pt. 322) 503 at 535.

However, Order 8 Rule 16 of the Supreme Court Rules (1985) as amended, read along with Section 6(6)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), appeared to have given this Court restricted power to review its Judgment and make necessary corrections where there is a pressing need to do so in the interest of justice and to ensure that the enthronement of justice is the basis of the Judgment. This Rule states - *“Rule 16. The Court shall not review any Judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment on order so as to give effect to its meaning or intention. A Judgment or order shall not be varied when it correctly represents what the Court decided nor shall the Operative and substantive part of it be varied and a different form substituted.”*

The Judicial powers of the Federation vested in the superior Courts including this Court are contained in Section 6 of the 1999 Constitution which specifically stated in Sub-Section (6)(a) as follows – *“(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;...”

It is quite clear that the power to review the Judgment of this Court under this Rule shall not be used to vary the operative and substantive parts of the Judgment such as setting aside Judgment, dismissing an appeal for want of diligent prosecution and to re-list the appeal for hearing as was the case in the application in the case of OYEYIPO VS OYINLOYE (1987) 1 N.W.L.R. (Pt.60) 356. In the present case however, the application is not to review or set aside the operative or substantive part of the Judgment of this Court of 30/5/2014, dismissing the Appellant’s appeal and ordering the Appellant to vacate his seat in the House of Representatives. The application is simply to review the consequential order of directing Independent National Electoral Commission to conduct another election by substituting that order with an order to issue the 1st Respondent/Applicant with a Certificate of Return to be sworn in as a member of the House of Representatives representing Buruku Federal Constituency of Benue State in that House. The present application therefore in

my view, can be granted in the exercise of the power of this Court under Rule 16 of Order 8 of the Rules of this Court as earlier quoted in this Ruling in conjunction with the provisions of Section 6(6)(a) of the 1999 Constitution (as amended).

Furthermore, this Court In the case of ALAO VS AFRICAN CONTINENTAL BANK LTD (2000) 9 N.W.L.R. (Pt.672) 264 had given 5 Conditions for setting aside or reviewing its Judgment as follows –

- “(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) where the Judgment was given without jurisdiction;
- (e) where the procedure adopted was such as to deprive the decision or judgment of the character of legitimate adjudication.”

These conditions are of course not exclusive. However, see also SKEN CONSULT VS. UKEY (1981) 1 SC 6, OJIAKO VS. OGUEZE (1962) 1 All N.W.L.R. 58 and IGWE VS KALU (2002) 14 N.W.L.R. (Pt.787) 435 at 453 - 454.

The reason or rationale behind this power to this Court to review its Judgment in deserving cases in the interest of justice under Order 8 Rule 16 of the Rules of this Court, was graphically put in place by Oputa, JSC (of blessed memory) in the case of ADEGOKE MOTORS LTD. VS. DR. ADESANYA & ANOR (1989) 3 N.W.L.R. (pt. 109) 250 at 274 where the erudite jurist said:-

“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 certainly be short-sighted arrogance not to accept this obvious truth. It is also true that this Court can do inestimable good through its wise decisions. Similarly, the Court can do incalculable harm through its mistakes. When therefore it appears to learned Counsel that any decision of this Court has been given per incuriam, such Counsel should have the boldness and courage to ask that such decision shall be over-ruled. This Court has the power to over-rule itself (and has done so in the past) for it gladly accepts that it is far better to admit an error than to persevere in error.”

This observation is very relevant to the present application

where it is not the learned Senior Counsel to the applicant himself who raised the question that our consequential order of 30/5/2014 in the present case was given per in curiam but it was the Justices themselves that saw the problem and rose earnestly to tackle it head long. This is because the consequential order to conduct another
B election rather than ordering the 1st Respondent/Applicant to be issued with a Certificate of Return and be sworn in immediately to occupy his seat in the House of Representatives representing Buruku Federal Constituency of Benue State, was made without recourse to
C the propositions of Section 133(2) of the Electoral Act (2010) which clearly defined the words “tribunal” and “court” as used in Section 141 of the same Electoral Act, upon which the Court order was predicated. Therefore in order to avoid doing incalculable harm to the 1st Respondent/Applicant, this application deserves to succeed. This is
D particularly so in order to avert injustice in this case when the sister case from the same Buruku Federal Constituency also containing the Buruku Constituency of the House of Assembly of Benue State where the same political party, C.P.C. now A.P.C refused to forward the names of successful candidates in primaries conducted by it to INEC
E to contest election resulting in pre-election proceedings that ended in this Court with victory to the Respondent who had since occupied her seat in the Benue State House of Assembly from Buruku Constituency on the orders of this Court in our Judgment given on 31/1/2014 in the case No. SC.193/2012, ORHENA & 1 OR VS MRS.
F NGUNAN ADDINGI & 1 OR.

Let me reiterate that this application is strictly not directed at the Review of the Judgment of this Court of 30/5/2014 which in the main merely dismissed the Appellant’s appeal and directed him to
G vacate his seat in the House of Representatives. That was the judgment of this Court on the outcome of the Appellant’s appeal against the apparent concurrent judgments of the trial Federal High Court and the Court of Appeal.

This application is in fact directed at the consequential order
H made by this Court after dismissing the Appellant’s appeal in directing INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC.) to conduct fresh election into the Buruku Federal Constituency of Benue State into the House of Representatives in compliance with section 141 of the Electoral Act (2010) as amended which states -

“141. An Election Tribunal or Court Shall not under any circumstance Declare any person a winner of an Election in which such person has not fully participated in all stages of the said election.”

This Section of the Act was clearly directed at an election tribunal or Court engaged in the hearing and determination of election petitions arising from elections conducted by INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC.) under the Electoral Act (2010) as amended. It is for this reason that in Part VIII of the Electoral Act, in Section 133 dealing with special Proceedings to question an Election, the words ‘tribunal’ or ‘court’ as used in section 141 of the Electoral Act, were defined in Sub-section (2) of that section as follows -

“133(2) In this Part “tribunal” or “Court” means -

(a) in the case of Presidential Election, the Court of Appeal and

(b) in the case of any other elections under this Act, the election tribunal established under the Constitution or by this Act.”

This definition is confined to the provisions of Part VIII of the Electoral Act as stated in the opening words of subsection (2) of Section 133 of the Act. Therefore since Section 141 of the Act containing the words “tribunal” or “Court” is in Part VIII of the Act, the definition of the words “tribunal” or “court” in Section 133 (2) of the Act, undoubtedly applies to Section 141 of the Act. In other words the Legislature in enacting section 141 of the Electoral Act was speaking specifically to the Court of Appeal and election tribunal established under the Constitution of the Federal Republic of Nigeria 1999 as amended or the Electoral Act (2010) as amended to hear and determine election petitions arising from Presidential election and other elections conducted by the Independent National Electoral Commission under the Electoral Act. For this reason, the section does not apply to any other Court in Nigeria not directly engaged in the hearing and determination of election petitions and as such the other Courts are not bound to apply the provision of the section in the hearing and determination of other disputes not arising directly from elections which can be questioned or challenged under section 133(1) of the Electoral Act which said-

“133(1) No election and return at an Election under this Act

shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an “election petition”) presented to the competent tribunal or Court in accordance with the provisions of the Constitution or of this Act and in which the person elected or returned is as a party.”

B In this respect, having regard to the very clear wording of Section 141 of the Electoral Act, I am of the very strong view that the Federal High Court, the High Court of a State and FCT High Court engaged in the hearing and determination of pre-election disputes between Parties aspiring to contest elections in exercise of their special jurisdiction under section 87(9) of the Electoral Act, are not bound by the provision of section 141 of the Act which only comes into play after a successful conduct of elections. In the same vein, the Court of Appeal and this Court in the normal course of exercising their jurisdictions under the Constitution in sections 241, 242 and 233 in the hearing and determination of appeals arising from pre-election disputes under the Electoral Act (2010) as amended, are certainly not bound by the provisions of section 141 of the Act in their decisions in the determination of pre-election disputes.

E It is for the above reasons and other reasons given in the lead Ruling of my learned brother Okoro, JSC, that I also find the application by the 1st Respondent for the amendment or correction of the consequential order of this Court made after dismissing the Appellant’s appeal, meritorious and I hereby grant the application in terms of the orders contained in the lead Ruling with no order on costs.

G **ONNOGHEN JSC**

I have had the benefit of reading in draft, the lead ruling of my learned brother OKORO JSC just delivered.

I agree with his reasoning and conclusion that the application filed on 18/6/2014 is meritorious and should be granted.

H The facts grounding the application have been stated in detail in the lead ruling making it unnecessary for me to repeat them herein except as may be needed to emphasise the point being made.

The application which was brought under section 233(4) and (6) of the Constitution of the Federal Republic of Nigeria 1999 (As

amended); Section 27(2)(3) and (4) of the Supreme Court Act, Order 2 (28) (29) and (31) of the Supreme Court Rules 1985 (as amended) and under the inherent jurisdiction of the court, prayed the court for the following orders:

“1. AN ORDER of the Honourable Court to amend, correct and/or set aside the consequential order made by this Honourable court in its Judgment of 30th May, 2014 pursuant to the provisions of section 141 of the Electoral Act 2010 (as amended) to wit: that the 1st Respondent/Applicant stand for a fresh election with other candidate, for the Buruku Federal Constituency of Benue State.

2. AN ORDER directing that the 1st respondent/applicant be immediately issued with a Certificate of Return by the 2nd Respondent and sworn in as a member of the House of Representatives”.

It is not in doubt that the application concerns itself with the consequential order made in the Judgment not with the substance of the Judgment which held that the appeal has no merit and consequently dismissed same. In other words, the application does not seek the setting aside of the substantive Judgment or the amendment of same. Order 8 Rules 16 of the Supreme Court Rules, 1985 as amended in 1999 provides as follows:-

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

The above provision clearly shows the circumstances in which this court may review its Judgment after delivery. The principles guiding the court in the exercise of its powers under Rule 16 supra have been stated by this court in a number of cases including *Alao Vs ACB Ltd* (2000) 9 NWLR (Pt 672) 264, *Ali Vs Mba* (2011) 18 NWLR (Pt. 1276) 236; *Ojiako Vs Ogueze* (1962) 1 All NER 58 etc.

However, it is important to note that the power to review its Judgment as provided in Rule 16 of order 8 supra cannot be converted into an appellate jurisdiction as if the matter before the court is an appeal intended to give the party who lost, another opportunity to re-argue their appeal.

In the instant case, I had stated earlier that the application does not affect the substantive decision of this court which is that the appeal was dismissed. The application therefore does not seek a reversal of that decision.

It is obviously intended to give effect to the meaning and/or intention of the court by the appropriate consequential order. After dismissing the appeal, the court ordered the 1st appellant to vacate the seat in the Federal House of Representatives immediately.

It follows therefore that the proper consequential order which meets the justice of the case in the circumstances is one which directs INEC to issue a certificate of Return to the 1st respondent/applicant forthwith and that the applicant be sworn in as a member of the Federal House of Representatives forthwith.

I therefore grant the application as prayed and abide by the consequential orders made in the lead ruling including the order as to costs.

Application granted.

FABIYI JSC

I have had a preview of the Ruling just handed out by my learned brother - JOHN INYANG OKORO, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the application filed on 18th June, 2014 should be granted.

I wish to say a word or two and I shall be done. Exhibit 2, the judgment of the Federal High Court, delivered on 21st July, 2011 is the 'joker' relied upon by the applicant to initiate his application. I dare say that this court was 'unaware' of same. I do not agree with senior counsel to the applicant that the court was 'ignorant' of same.

A judge is not a robot. Once an exhibit is placed before him, he must read and carefully consider it. I took time to read Exhibit 2 very well. The learned trial judge touched on the non-joinder of the National Assembly as well as the locus standi of Labour Party - the plaintiff therein. Since the judgment is not on appeal before this court, I maintain a stoic silence and hereby keep my peace.

I agree that the application, in essence, relates to consequential order made in the judgment and not the substantive dismissal order of the appeal. Thereafter it was ordered that the 1st appellant

should vacate Buruku Federal Constituency seat in the House of Representatives.

The provision of Order 8 Rule 16 of the Supreme Court Rules, 1985 as amended provides a lee-way or guiding principles for this court to review its judgment after delivery. Such a review, however, is not an avenue for the party who lost to have a second bite at the cherry; as it were. The decision of this court in *Alao v. ACB Ltd.* (2000) 9 NWLR (Pt. 672) 264 is clearly in point. B

For the above remarks and the reasons adumbrated in the lead Ruling, I subscribe to the fresh consequential orders therein contained; that relating to costs inclusive. C

EDITORS NOTE:

GALADIMA JSC

Also agreed with the lead judgment.

D

RHODES-VIVOUR JSC

I have had the privilege of reading in draft the leading Ruling of my learned brother, OKORO, JSC. So completely do I agree with it that I have hesitated for quite sometime before finally deciding to add a few words of mine. E

The two lower courts in their judgment in favour of the 1st respondent/applicant, ordered that he should be sworn in as a member of the House of Representatives to represent Buruku Federal Constituency of Benue State. F

On appeal to this court this court on the 30th day of May, 2014 decided inter alia that the Independent National Electoral Commission (INEC) should conduct fresh election into the vacant seat of Buruku Federal Constituency of Benue State in the House of Representatives within 90 days with the 1st respondent/applicant as the candidate of the All Progressive Congress Party (APC). G

After a careful scrutiny of sections 133 (2) and 141 of the Electoral Act, I am satisfied that this court is not affected by the provisions of section 141 (supra) and therefore there is the urgent need to revisit our consequential order No.2 made on 30/5/14, particularly after listening to Mr. Yusuf Ali, SAN and all other counsel not opposing H

the application filed on 1 8/6/14 which seeks an order to correct, set aside consequential order No.2 reproduced earlier in this Ruling.

Under Order 8 Rule 6 of the Supreme Court Rules, this court has jurisdiction to amend or vary its own decision, judgment or order. This jurisdiction covers situations where it is necessary to vary the judgment so as to give effect to the courts intention and make same clear. See *Alao v. ACB Ltd* (200) 9 NWLR (pt.672) p.264. Courts are set up to do substantial justice and this can only be done by thoroughly examining the substance of the case. Reliance on technicalities would lead to injustice and this would be out of sync with the age old adage that the streams of justice must be kept pure always. See *Nneji v. Chukwu* (1988) 6 SCNJ p.132 *Bello v. A.G. Oyo State* (1986) 12 SC p.1.

It would amount to substantial justice if this court orders INEC to swear in Mr. Sekav Dzua Iyortom as a member of the House of Representatives to represent Buruku Federal Constituency of Benue State, instead of ordering fresh elections. For this, and the more detailed reasoning in the leading Ruling this application is hereby granted.

E

AKA'HS JSC

Judgment in appeal No. SC.164/2012 was delivered on 30th May, 2014 and in his lead judgment my learned brother, Okoro JSC resolved all the issues against the appellants and dismissed the appeal. He ordered the 1st appellant to vacate the seat of Buruku Federal Constituency of Benue State in the House of Representatives. He however reasoned that in view of section 141 of the Electoral Act, he could not declare the 1st respondent (now applicant) the winner of the election and proceeded to make the following consequential order:-

“The 2nd Respondent, Independent National Electoral Commission (INEC) is hereby ordered to conduct election into the vacant seat of Buruku Federal Constituency of Benue State in the House of Representatives within three months (90 days) with the 1st Respondent, Sekav Dzua Iyortom as candidate of the Action Congress of Nigeria (now All Progressive Congress)”.

It is in respect of this order that Mr. Yusuf Ali, learned Senior Counsel applied to this Court to amend, correct and/or set aside by

directing that the 1st Respondent be immediately issued with the Certificate of Return by the 2nd Respondent and sworn as a member of the House of Representatives. The application is premised on the grounds that the two lower courts had ordered that the respondent/applicant be sworn in as a member of the House of Representatives but it was substituted by this Court that INEC should conduct election into the vacant seat of Buruku Federal Constituency of Benue State within three months. He argued that this Honourable Court possesses the power *ex dibito justitiae* to set aside the consequential order made in this matter and substitute thereof an order that meets the justice of the case. B
C

It is to be noted that none of the respondents filed any counter - affidavit to oppose the application or make any oral submissions. The 1st appellant who lost the appeal had filed an application after the judgment of this Court praying for an interlocutory injunction restraining the Independent National Electoral Commission (INEC) from conducting any election into the House of Representatives for the Buruku Federal Constituency of Benue State because the 3 months within which this Court ordered a fresh election has already lapsed. D

The applicant has been left in limbo since the judgment of this Court delivered on 30th May, 2014. The consequential order made in the said judgment was not one of the issues agitated in the appeal and since it has left the respondent without a remedy, the principle of *ubi jus, ibi remedium* should be invoked in favour of the respondent/applicant by virtue of Order 8 Rule 16 Supreme Court Rules. Moreover section 141 of the Electoral Act which states that an election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all stages of the said election is restricted to the tribunal or court as defined in section 133 (2) of the Electoral Act. It does not affect the decision of the Federal High Court or the court of Appeal hearing an appeal from the Federal High Court or for that matter this court. Consequently, this court *ex dibito justitiae* is entitled to make an order directing INEC to issue the Respondent/Applicant with the Certificate of Return and proceed to swear him as the member for the Buruku Federal Constituency Seat of Benue State in the Federal House of Representative. E
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