

SUPREME COURT OF NIGERIA
FRIDAY 22ND MAY, 2015. SC. 166/2003
CORAM:- M. S. MUNTAKA-COOMASSIE,
O. RHODES-VIVOUR, N. S. NGWUTA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC

ENTERPRISE BANK LIMITED APPELLANT
AND

1. DEACONESS FLORENCE

BOSE AROSO

2. CHIEF DEJI OLATUNJI

3. CHIEF OLA OLATUNJI RESPONDENTS

4. EVANG. (MRS.) ADUKE

OMODARA

5. MISS BUSAYO OLATUNJI

6. MR. FEMI OLATUNJI

(For themselves and as

Representatives of the children

of Chief M. O. Olatunji)

COURTS - Powers - Purpose of - Inherent powers of court are products of Constitution and court itself - In its quest for substantial justice - Thereby ensuring that streams of justice remain pure (H1)

SUPREME COURT - Judgment - Amendment of - SC becomes functus officio once it has decided a matter - But may amend its judgment where there is error - That materially affects the decision (H2)

SUPREME COURT - Judgment sum - Mistake in - Error made by SC in calculating the judgment sum is hereby deleted - And corrected to reflect the figures applicants are entitled to (H3)

FACTS

Plaintiff/appellant commenced this action against defendants/respondents at the High Court of Ekiti State, Ado-Ekiti, claiming declarations, special and general damages on various heads. The court entered judgment for the sum of N30,273,000.00. Respondents were dissatisfied. Hence, they appealed to the Court of Ap-

peal. The court entered judgment for N30,290,000.00. On appeal to the Supreme Court, the court in its judgment mistakenly referred to the sum pronounced by the Court of Appeal as N20,925,000.00.

In view of the obvious mistake by the Supreme Court in its judgment, appellant brought this application under section 6(6)(a) of the 1999 Constitution and Order 8 Rule 16 of the Supreme Court Rules, praying the court for an order to correct some error arising from accidental slip in the summation of the facts of the case in the judgment of the court in the matter. This argued by appellant will give full effect to the intention of the court, dismissing the appeal of respondents. The application was supported by affidavit, documents annexed in support and a written address. Respondents filed counter-affidavit in opposition.

ISSUE FOR DETERMINATION

“Whether this court acting under Order 8 Rule 16 of the Supreme Court Rules (the slip Rule) can correct accidental slips, errors, which occurred in the addition/summation of the several heads of monetary awards made by the two courts below and affirmed by this court.”

HELD (Unanimously allowing the application per **RHODES-VIVOUR JSC**)

COURTS - Powers - Purpose of

1. Inherent powers of a court are a product of the Constitution and the court itself in its quest for substantial justice thereby ensuring that the streams of justice remain pure: for example the courts have inherent powers to dismiss an action which is an abuse of the process of court. (p. 1787 G)

SUPREME COURT - Judgment - Amendment of

2. The Supreme Court becomes *functus officio* once it has decided a matter. Its decisions cannot be reviewed. They are final. The inherent powers conferred on this court by Order 8 Rule 16 of the Supreme Court Rules empowers this court, notwithstanding the finality of its judgments in justifiable cases to revisit a judgment already delivered for the purpose of cor-

rection in cases of clerical mistakes, or accidental slips or to amend the judgment in cases where the error is of a material nature that substantially affects the decision. The inherent power enables the court to vary the judgment when the need arises so as to give the effect to its meaning or intention. On no account should the judgment be varied to represent what the court never decided or grant reliefs that were not granted. Neither can the judgment be rewritten. (p. 1788 B)

SUPREME COURT - Judgment sum - Mistake in

3. To my mind the error that has arisen in the instant matter is obvious on the Record and it is governed by the principle of slip rule that can easily be corrected under the inherent jurisdiction of this court. Before I do that, I must observe that it is a fact that the trial High Court gave judgment in favour of the applicant in excess of N30m (Thirty Million Naira). The Court of Appeal affirmed the judgment of the High Court. The Supreme Court affirmed the judgment of the Court of Appeal but made an error in calculating the judgment sum. Whatever doubts about the correct judgment sum are put to rest by the order of this court dismissing the appeal. It in effect means that the judgment of the Court of Appeal is affirmed. An order of this court is now more than necessary so that the true and full meaning may be given to the judgment as to the correct figure the applicants are entitled to. Accordingly the observation of this court in the leading judgment that:

“The above in effect means that the judgment sum as pronounced by the Court of Appeal is made up of sums under items 8,9,10 above, i.e. N20,925,000.00 (twenty million nine hundred and twenty-five thousand naira) and the sum awarded in the cross-appeal” is hereby deleted.

The sum of N30,793,070 (thirty million seven hundred and ninety-three thousand and seventy naira) awarded by the Court of Appeal in favour of the Applicants, judgment creditors, affirmed by this court is the correct judgment sum.

(p. 1790 B)

REPRESENTATION

Chief A.S. Awomolo, SAN, with W. Balogun, A. Ogunleye and Daniel Odi; for the Applicants

Prof. T. Osipitan, SAN, with Mrs.O. Badewole, A. M. Kayode, Miss B.A. Udo, M. D. Illegbusi, Miss O.F.Akinsanmi, S. Lari-Williams, Miss

^B E. A. Ogundina. Esq., U. Nnona, Esq. for the Respondents

CASES REFERRED TO

Ezeoke v. Nwagbo (1988) NWLR (pt. 72) 616

^C Adigun v. A-G Oyo State (1987) vol. 18 (pt. 1) NSCC 545

Udeze v. Chideke (1990) 1 NWLR (pt. 125) 141

Chukwuka v. Ezulike (1986) 5 NWLR (pt. 45) 892

Obioha v. Ibero (1994) 1 NWLR (pt. 322) 503

Umunna v. Okwuraiwe (1978) 6 SC 1

^D Obimonure v. Erinosho (1966) 1 All NLR 245

STATUTE & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, s. 6(6)(a)

Supreme Court Rules, O. 8 r. 16

^E

LEAD RULING BY RHODES-VIVOUR JSC

This is an application by the applicants judgment creditor brought under section 6(6)(a) of the Constitution and Order 8 Rule 16 of the Supreme Court Rules praying this court for an order to correct some error arising from accidental slip in the summation of the facts of the case in the judgment of this court delivered on Friday the 12th day of April 2013 so as to give full effect to the intention of the Supreme Court dismissing the appeal of the respondent judgment debtor.

^F The application is supported by a 22 paragraphs affidavit, deposed to by Chief Deji Olatunji, the 2nd applicant judgment creditor. Annexed to it are documents marked exhibits: A, B, C, D and E. A written address was filed in support of the application.

^H In opposing the application the respondent relied on a counter-affidavit and further affidavit filed on the 23rd of December 2013 and 16th of September 2014 respectively. A written address was filed opposing the application.

The applicants' judgment creditors' as plaintiff sued the respon-

dent judgment debtor for declarations, general and special damages on several heads. The learned trial judge entered judgment for the applicants in the sum of N30,273,000.00 (thirty million, two hundred and seventy three thousand) naira. The appeal by the respondent/judgment debtor was unsuccessful. The Court of Appeal dismissed the appeal and entered judgment for N30,290,000.00 in favour of the judgment creditor/applicant. On further appeal to this court, the judgment of the Court of Appeal was affirmed. A problem arose, though in the body of the judgment of this court, when it was said:

“The above in effect means that the judgment sum as pronounced by the Court of Appeal is made up of sums under items 8,9,10 above i.e. 20,925,000.00 (Twenty Million, Nine Hundred and Twenty Five Thousand Naira) and the sum awarded in the cross-Appeal”.

Chief A. Awomolo, SAN learned counsel for the applicant judgment creditor observed that deleting the above will give meaning to the judgment of this court, contending that if done the judgment would not be altered. He urged this court to grant the application as prayed.

Opposing the application, Professor T. Osipitan, SAN observed that if the application is granted it would amount to this court rewriting the judgment. He urged this court to dismiss the application.

Section 6(6)(a) of the Constitution states that:

“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.”

Inherent powers of a court are a product of the Constitution and the court itself in its quest for substantial justice thereby ensuring that the streams of justice remain pure: for example the courts have inherent powers to dismiss an action which is an abuse of the process of court.

Order 8 Rule 16 of the Supreme Court Rules confers on this court inherent jurisdiction to correct errors and slips that occur in its judgment and orders. It reads:

“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 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 Supreme Court becomes functus officio once it has decided a matter. Its decisions cannot be reviewed. They are final. The inherent powers conferred on this court by Order 8 Rule 16 of the Supreme Court Rules empowers this court, notwithstanding the finality of its judgments in justifiable cases to revisit a judgment already delivered for the purpose of correction in cases of clerical mistakes, or accidental slips or to amend the judgment in cases where the error is of a material nature that substantially affects the decision. The inherent power enables the court to vary the judgment when the need arises so as to give the effect to its meaning or intention. On no account should the judgment be varied to represent what the court never decided or grant reliefs that were not granted. Neither can the judgment be rewritten. See *Ezeoke v. Nwagbo* (1988) NWLR (pt. 72) p.616, *Adigun & Ors v. AG Oyo State* (1987) vol. 18 (Pt. 1) NSCC p.545, *Udeze v. Chideke* (1990) 1 NWLR (pt. 125) p.141, *Chukwuka v. Ezulike* (1986) 5 NWLR (pt.45) p.892.

The issue for determination is:

“Whether this court acting under Order 8 Rule 16 of the Supreme Court Rules (the slip Rule) can correct accidental slips, errors, which occurred in the addition/summation of the several heads of monetary awards made by the two courts below and affirmed by this court.”

It would be most important that relevant extracts from the judgment of this court is reproduced and I shall start from page 51 of the judgment, it reads:

The trial High Court made the following monetary awards:

- | | |
|--|---------------|
| 1. Leyland generator 75KVA | N4,375,000.00 |
| 2. CD6 Sawmill Machine with Saw doctor and rails | N3,950,000.00 |
| 3. 20 inches Planning Machine | N 380,000.00 |
| 4. Small circular with 7½ H.P Electric Motor | N 220,000.00 |

5. One complete mechanical tools	N	22,000.00	
6. Cost of rebuilding the Generator house	N	75,000.00	
7. Cost of transporting C.D from Ibadan in Oyo State to Ido-Ekiti in Ekiti State	N	50,000.00	
8. Loss of cash in hand	N	175,000.00	
9. Cost of retaining the equipments by the 1st and 2 nd respondents		N18,250,000.00	B
10. For humiliating dehumanizing and torturing the plaintiff on 13/8/97	N	2,500,000.00	
11. For unlawful entry into the Plaintiff's sawmill on the 13/8/97	N	100,000.00	C

A total of N30,273,000.00 (thirty million, two hundred and seventy-three thousand naira). After the Court of Appeal dismissed the appeal it proceeded to reduce the monetary awards.

This is what the Court of Appeal had to say: D

"I hereby hold that on the authority of Artra Ind (Nig) Ltd v. NBCI (1998) 4 NWLR pt. 546 p.358 the award of N100,000 for trespass made by the learned trial judge in addition to the awards under items 1 to 7 as to cost of sawmill machines removed from the 1st respondents sawmill is hereby set aside on the ground that the said N100,000.00 was awarded in error of law." E

The above in effect means that the judgment sum as pronounced by the Court of Appeal is made up of sums under items 8,9,10 above i.e. 20,925,000.00 (Twenty Million Nine Hundred and Twenty-Five Thousand Naira) and the sum awarded in the cross-appeal. F

Chief A. Awomolo, SAN says that the judgment sum is N30,793,070.00 (Thirty Million, Seven Hundred and Ninety-Three Thousand, Seventy Naira). The error to be corrected is the addition/summation of the several heads of damages. It becomes clear after examining the extracts from the judgment of this court, that the High Court entered judgment for the applicant in excess of N30m (thirty million naira). G

The Court of Appeal dismissed the appeal with reduction of N100,000.00 and allowed the cross appeal. The judgment sum was increased by N117,000,000. The judgment sum awarded by the Court of Appeal is also in excess of N30m (Thirty Million Naira). H

The observation by this court that the judgment sum awarded

by the Court of Appeal is N20,925,000.00 (Twenty Million Nine Hundred and Twenty-Five Thousand Naira) is clearly an error, as N100,000 subtracted from N30,273,000.00 (Thirty Million, two hundred and seventy-three thousand naira) is not N20,925,000.00 (Twenty Million Nine Hundred and Twenty-Five Thousand Naira).

To my mind the error that has arisen in the instant matter is obvious on the Record and it is governed by the principle of slip rule that can easily be corrected under the inherent jurisdiction of this court. Before I do that, I must observe that it is a fact that the trial High Court gave judgment in favour of the applicant in excess of N30m (Thirty Million Naira). The Court of Appeal affirmed the judgment of the High Court. The Supreme Court affirmed the judgment of the Court of Appeal but made an error in calculating the judgment sum. Whatever doubts about the correct judgment sum are put to rest by the order of this court dismissing the appeal. It in effect means that the judgment of the Court of Appeal is affirmed. An order of this court is now more than necessary so that the true and full meaning may be given to the judgment as to the correct figure the applicants are entitled to. Accordingly the observation of this court in the leading judgment that:

“The above in effect means that the judgment sum as pronounced by the Court of Appeal is made up of sums under items 8,9,10 above, i.e. N20,925,000.00 (twenty million nine hundred and twenty-five thousand naira) and the sum awarded in the cross-appeal” is hereby deleted.

The sum of N30,793,070 (thirty million seven hundred and ninety-three thousand and seventy naira) awarded by the Court of Appeal in favour of the Applicants, judgment creditors, affirmed by this court is the correct judgment sum.

Application granted. No order on costs.

H MUNTAKA-COOMASSIE JSC

This is an application by the judgment/creditors praying this honourable and final court for an order to correct what appeared to be some error arising from accidental slip in the summary of the facts of the case in the judgment of this court rendered by my learned

brother Rhodes-Vivour delivered on the 12/4/2013 so as to give proper meaning or full effect to the intention of this court in dismissing the appeal of the respondent judgment debtor. Written address was also filed in support of the application.

The respondent opposed the application and filed the counter-affidavit and a written address. B

The facts of the case were stated by my learned brother Rhodes-Vivour JSC. After the conclusion of the hearing the learned trial judge entered judgment in favour of the appellants in the sum of N30,273,000.00 i.e. Thirty Million, Two hundred and Seventy-Three thousand naira. The respondent, judgment debtor unsuccessfully appealed to the Court of Appeal herein referred to as court below. The Court of Appeal dismissed the appeal and entered judgment for N30,290,000.00 in favour of the judgment creditors applicant herein. On an appeal to this court the judgment of the Court of Appeal was unanimously affirmed. This court inter alia held that; C D

“The above in effect means that the judgment sum as pronounced by the Court of Appeal is made up of sum under items 8, 9, 10 above i.e. N20,925,000.00 (Twenty Million, Nine hundred and Twenty-Five thousand naira) and the sum awarded in the cross-appeal”. E

It was observed by the applicants herein that deleting the above will give meaning to this court, arguing that if done the judgment of the Supreme Court would not be altered.

Opposing this application counsel for the “respondent-judgment debtor Professor Osipitan, SAN contended that if the application is granted it would amount to this court re-writing its judgment. He urged this court to turn down the application. F

Reference to Order 8 Rule 16 of the Supreme Court Rules G decision of this court cannot be reviewed, it is final. There are some exceptions where the Supreme Court can revisit a judgment already delivered its finality notwithstanding. This revisit was for the purpose of correction in cases of clerical mistakes or accidental-slips or to amend the judgment in cases where the error is of a material nature that substantially affects the decision. H

After careful consideration of the judgment of the trial court and that of the court below I discovered that the decision of this court was made in error. There is a slip which ought to be corrected right

away to make the judgment meaningful and real. The sum of N30,793,070 (Thirty Million Seven hundred and Ninety Three thousand and Seventy naira) which was awarded by the court below in favour of the applicant, judgment creditors, which were affirmed by this court is really the correct judgment sum and I so hold. Application is therefore granted with no order as to costs.

NGWUTA JSC

C I have read in draft the lead ruling just delivered by my learned brother, Rhodes-Vivour, JSC.

For the reasons given in the lead ruling, I agree that the error complained of by the applicant is within the intendment of Order 8 Rule 16 of the Supreme Court Rules.

D Pursuant to the said Order and Rule and the reasoning in the lead ruling, I also correct the error in the lead judgment of this Court delivered on 12th April, 2013 to reflect the judgment of the Court of Appeal as affirmed by this Court in the lead judgment.

E

ARIWOOLA JSC

I had the opportunity of reading in draft the lead Ruling of my learned brother, Rhodes-Vivour, JSC just delivered.

F It is an application by the judgment creditor for an order of court meant to correct an error they described as having arisen from accidental slip in the way the court summed up the facts of the case in the judgment of this court delivered on 12/04/2013 so as to give effect to the intention of the court in dismissing the respondent's appeal.

G The application was brought pursuant to Section 6(6) of the 1999 Constitution and Order 8 rule 16 of the Supreme Court Rules.

H In support of the application is an affidavit of 22 paragraphs deposed to by Chief Deji Olatunji, as the 2nd applicant in this application. Attached to the affidavit are five documents marked as Exhibits A, B, C, D, and E respectively with a written address in support.

The application was vigorously opposed by the respondent who filed a counter affidavit and further counter affidavit so to do with a written address.

The applicants had obtained judgment from the Supreme Court on the 12th day of April, 2013 wherein the respondent's appeal was dismissed in its entirety. The applicants therefore contended that there is an accidental error or slip in the summation or review of the judgment of the Court of Appeal by this court.

It is noteworthy that the court below had entered judgment in favour of the applicants to the tune of N30,290,000 from the judgment sum already deposited with the Chief Registrar of this court.

The applicants raised the following sole issue for determination of the application.

"Whether the Supreme Court has the power and/or jurisdiction to correct clerical errors or accidental slips in its decision after judgment has been delivered in a matter placed before it and whether in the circumstances of this case the application of the applicants ought to be granted by this Honourable Court."

There was an appeal before this court by the instant respondent against the judgment of the Ilorin Division of the Court of Appeal which was delivered on 25/3/2002. The court below had affirmed the decision of an Ado Ekiti High Court which entered judgment in favour of the applicants against the respondent.

In the said appeal to this court and in the resolution of the issues listed for determination this court came to the final conclusion that the appeal was devoid of merit and same was dismissed. In other words, this court affirmed the decision of the court below which earlier affirmed the judgment of the trial court in favour of the applicants.

However, in the judgment of this court in the calculation of how the court below came up with the award of the claim, this court stated as follows:

"The above in effect means that the judgment sum as pronounced by the Court of Appeal is made up of sums under items 8, 9, 10 above i.e., 20,925,000.00 (twenty million, nine hundred and twenty five thousand Naira) and the sum awarded in the cross appeal."

The above was considered to be an error or slip in the said judgment of this court. Chief Awomolo, SAN of counsel for the applicants had contended that the error in the judgment when removed will not alter the meaning and substance of the decision of the court.

He urged the court to delete the above paragraph in the judgment by granting the application.

On the other hand, in opposing the application, Professor Osipitan SAN contended that if the application is granted, it would amount to the court rewriting its judgment that had been delivered.

B He accordingly urged the court to dismiss the application.

Ordinarily, this court is not expected to review any judgment, once given and delivered by it, but the only exception is when it is to correct any clerical mistake or some error arising from any accidental slip or omission or in order to vary the judgment or order so as to give effect to its meaning or intention.

C Yet, 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. See D Order 8 rule 16 of the Supreme Court Rules.

Quite apart from the provisions of the rules of court empowering the court to correct or vary its delivered judgment, the court also possess inherent power or jurisdiction to amend or vary its own judgment or order so as to carry out its own meaning and to make it plain or clear where the language used has created some doubt. This inherent power of the court also extends to the power to correct any accidental slip or error in its judgment, order, or ruling. See Eleazor Obioha Vs Innocent Ibero & Anor (1994) 1 NWLR (Pt.322) 503 at 511. Daniel Asiyambi Vs Emmanuel Awe Adeniyi (1967) NWLR 2381, F (1967) 1 All NLR 88. Ayasinti Umunna & Ors Vs Okwurawe (1978) 6 SC 1; (1978) NSCC 319; Adigun Vs A.G. Oyo State (1987) 2 NWLR (Pt.56) 197.

In Asiyambi Vs. Adeniyi (supra) this court per Coker, JSC G observed as follows:-

“The application raises the very important problem of the meaning of what is generally referred to as the “slip rule” and the circumstances of its applicability. Manifestly, apart from the provisions in the Rules of Court, the court must and does possess the power, subject to appropriate safeguards where the justice of the case so requires, to correct or amend the terms of its own orders or judgment to effect such variations therein in such a way as to carry out the meaning which the court intended where for instance, the language used in the phrasing of the order is ambiguous or does not

express the order actually made by the judgment or is otherwise open to misapprehension, it may be corrected to make it clear. See; per Lindley, L. J. in Re Swire, Mellor Vs. Swire (1885) 30 Ch. D. 239 at 246."

In this instant, it is clear that this court affirmed the decision of the court below which had affirmed the award of the trial court. This is clear in the dismissal of the respondent's appeal. It is however, clear from the rules of court, inherent jurisdiction of the court and our case laws, that if the expression used in the judgment does not accurately convey the court's intention, the court is entitled to make the necessary corrections.

Generally, the law is that after a judgment has been given and delivered, even if it is a consent judgment entered under a mistake, the court no longer has the power to set it aside except in the following situations, which though not exhaustive.

(a) Where there has been a clerical mistake or an error arising from an accidental slip or omission in the judgment under the slip rules;

(b) Where the judgment as drawn up does not correctly represent what the court actually decided or intended to decide;

(c) Where the order is a nullity owing to failure to comply with an essential provision such as service of process which can be set aside by the court which made the order and;

(d) Where a judgment or order is made against a party in default. See; Obimonure Vs Erinoshio (1966) 1 All NLR 245; Adeigbe Vs Kusimo (1965) LR 284; Obioha Vs Ibero (supra).

There is no doubt that there is an error in the summation of the award of the amount given to the applicants in the conclusion reached in the final judgment. In other words, since the respondent's appeal to this court against the judgment of the court below was adjudged unmeritorious and dismissed, what this court intended to award and indeed awarded was exactly the amount which the court below had awarded which is the sum of thirty million, seven hundred and ninety three thousand and seventy Naira (N30,793,070.00) nothing less.

Whatever was reflected in the judgment which is less than or different from that amount was done in error and this court is entitled to, pursuant to the slip rule, correct the error. And the proper

way to carry out the correction of the error is to delete the paragraph which reduced the amount entitled to by the applicants.

In the final analysis, for the above reason and the fuller reasoning of my learned brother, Rhodes-Vivour, JSC in the lead Ruling which I entirely agree with, I too will grant this application as prayed.

B Accordingly, application is granted. I abide by the order that there should be no costs.

MUHAMMAD JSC

C I have read in draft the comprehensive lead ruling of my learned brother Rhodes-Vivour, JSC just delivered. I entirely agree with his lordship that applicants herein deserve to be indulged.

Order 8 rule 16 of the Supreme Court rules provide thus:-

D *“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*
E *decided nor shall the operative and substantive part of it be varied and a different form substituted.”*

From the facts on which the application predicates it is clear that the judgment of this Court the applicants seek review of can only be meaningfully enforced if the variation being urged is facilitated.
F The grant of this application does not in any way vary the operative and substantive parts of the court’s decision. Rather, it gives effect to the real intention of the court by correcting the mistake which has arisen from an accidental slip. So be it.

G I adopt the detailed reasons marshalled out in the lead ruling in granting the application. I abide by the consequential orders made in the leading ruling as well including those on costs.

H