In The Supreme Court of Nigeria

On Friday, the 8th day of November 1974

Before their Lordships

Teslim Olawale Elias ..... Justice Supreme Court
George Baptist Ayodola Coker ..... Justice Supreme Court
Dan Ibekwe ..... Justice Supreme Court

SC.83/1970
SC.369/1970

Between

Minister of Lagos Affairs Mines And Power & Ors **…..** Appellant

And

Chief Akin-Olugbade & Ors **…..** Respondent

Judgement of the Court
Delivered by
Teslim Olawale Elias. C.J.N

In our judgment in *Akin-Olugbade and Ors. v. Onigbongbo Community and Ors. (1974) 6 S.C.1*, delivered on June 21, 1974, we made the following orders:-

(i) that the joinder of Claudius Adebowale Soderu (deceased) in Suit No HK/11/59 as one of the 3rd to 31st claimants represented in the consent judgment in Appeals Nos S.C. 83/1970 and S.C. 369/1970 was inadvertent;

(ii) that the consent judgment is amended so as to exclude C.O. Soderu (deceased) as one of the 3rd to 31st claimants represented in the said consent judgment;

(iii) that the estate of the said C.O. Soderu (deceased) is entitled to be paid compensation of ₦4,400.00 in respect of his 4,390 acres of land compulsorily acquired by the then Minister of Lagos Affairs, Mines and Power;

(iv) that Chief F.R.A. Williams and the Egba Refugees (1867) Descendants Community should pay over the said sum of ₦4,400.00 which had been collected by them to the Estate of Claudius Adebowale Soderu (deceased); and

(v) that the respondents do pay to the applicants costs assessed at ₦10 to each of the two groups of applicants.

On June 22, 1974, three motions were filed, of which one was for a stay of execution of that judgment, although counsel for the applicants offered to abandon it when the matter came before us on October 7, 1974, on the ground that it had been overtaken by events. The relevant prayers in the remaining two motions, one on behalf of the respondents in the *Onigbongbo Community Case* and the other on behalf of Chief F.R.A. Williams who was counsel for the Egba Refugees (1867) Descendants Community at all material stages in the case up to the compromise consent judgment in 1972, are for an order:-

(i) to review the decision of this Honourable Court delivered in the above matter on Friday, 21st June, 1974, pursuant to the provisions of Order VII rule 29 of the Supreme Court Rules 1961 in the manner and on the grounds set forth in Schedule 1 to this Motion on Notice;

(ii) to clarify, determine or direct whether the above- named Applicants are entitled as co-owners of land vested in the Respondents under the Terms of Settlement in Suit No S.C. 369/1970 (High Court No 5 HK/11/59) by virtue of the fact that they are descendants of Egba Refugees;

(iii) to clarify, determine or direct whether the said Applicants are entitled to the amount of ₦4,400.00 ordered to be paid to the Applicants if for their own benefit or for the use of the Egba Refugees; and

(iv) such further or other Orders as this Honourable Court may deem fit to make.

When learned counsel for the respondents rose to object on the ground that the Court had no jurisdiction to entertain the motions, we were of the opinion that, as this is not an appeal, we should allow the applicant to show that we have jurisdiction to hear the motions. With our permission, learned counsel submitted that there are the following two instances in which the court is entitled to review its own previous decision:-

(a) where the order of the Court has not been drawn up at the time of the application for a review, and

(b) where the decision sought to be reviewed was given without jurisdiction.

Learned counsel submitted that in (b) it is immaterial whether the order has been drawn up or not, and further that the two principles enunciated by him would apply to any final court of appeal. He referred us to *Ashinyanbi and Ors. v. Adeniji (1967) 1 ALL N.L.R. 82*, where this Court thoroughly examined the circumstances in which it will review its own previous judgment. We will do no more than observe that this case is one involving and decided upon the "slip rule" for the correction or modification of an order or orders embodied in a judgment on the ground that the order as drawn up did not represent what the court had intended to record. The case is clearly no authority for the proposition that issues relating to fact or law in the judgment itself could be the subject matter of a review by this Court. Thus in the *Ashinyanbi Case*, we pointed out, at page 88, as follows:-

> "By the provisions of the Federal Supreme Court Rules, Order 7 rule 29, this court may not review its own judgment once delivered, except insofar as the Court of Appeal in England may do so. In England the position by virtue of Order 58, rule 9 of the English Rules is that the Court of Appeal is vested with powers to make all such orders as the High Court could have made on the material before it and as to amendments, Order 58, rule 9(i) states as follows:-
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> > "In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court."

The powers of the High Court to correct its own records are set out in Order 20, rule 11. The rule provides as follows:-

> "Clerical mistakes in judgments or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court on motion or summons without an appeal."

The rule envisages the correction or amendment of (a) clerical mistakes and (b) errors arising from any accidental slip or omission.

It is important to note our further observation a little later as follows:-

> "Moreover Lord Halsbury with respect to the general principle in the application of the "Slip Rule" observed as follows:-
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> > "If by mistake or otherwise an order has been drawn up which does not express the intention of the court, the court must always have jurisdiction to correct it. But this is an application to the Vice-Chancellor in effect to re-hear an order which he intended to make but which it is said he ought not to have made.
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> > Even when an order has been obtained by fraud it has been held that the court has no jurisdiction to re-hear it. If such a jurisdiction existed it would be most mischievous."

(See per Halsbury L.C. in *Preston Banking Co. v. William Allsup & Sons (1895) 1 Ch. D. at page 143*).

The cases later decided by the Court of Appeal established that the Court while able to correct a misnomer or mis-description under the "slip Rule" will not under that Rule, whether in the exercise of its inherent jurisdiction or by the powers conferred by the Rule of Court vary a judgment or order which correctly represents what the court decided nor will it vary the operative and substantive part of its judgment so as to substitute a different form. (See *Macarthy v. Agard (1933) 2 K.B. 417*).

Learned counsel for the applicants also argued that in *Varty v. British South Africa Coy. (1965)* 1 *Ch. 508* and In *Re Barber (1886) 17 QBD 259* the Court of Appeal in England reversed its previous decision in each case after a review following further arguments by counsel on certain points. We would only say here that in such cases involving a review of matters of fact or law the Court of Appeal in England has always acted *suo motu*, and that we are unable to agree with learned trial counsel that such reviews had been undertaken at the instance of a party to the case.

No authority was cited to us on this point, although learned counsel erroneously attempted to equate the amendment of the compromise judgment in the instant *Onigbongbo Community Case* with the situation under discussion. Nor do we see any merit or relevance in the contention of learned counsel that the respondents' application should not have been granted in the judgment

appealed from because they had come to court by way of a motion and not by way of a substantive action in the High Court, as suggested to be the proper procedure in *Babajide v. Aisa & Anor. (1966) 1 ALL N.L.R. 254 at page 257* since the issue in this case was the setting aside of a judgment alleged to be given in default and not that of reviewing a judgment already regularly delivered. It is sufficient to say that we are unable to appreciate that a High Court has the authority to review the earlier judgment of the Supreme Court given in 1972 which was the subject-matter of the 1974 judgment now being sought to be reviewed by us.

Learned counsel next argued that the order made against him along with others for the payment of money to the respondents in the judgment under attack should not have been made and that the applicants in the *Onigbongbo Community Case* should have been left to any remedy they might have to bring an action in contract or quasi-contract against him and others in the High Court. He complained that he was not made a party to the case, nor was he served with notice of it and that he appeared on that occasion only as counsel for his clients. He referred us to *Craig v. Kanssen (1945) K.B. 256 at page 262*. We note however that, during the hearing of that application on June 21 1974 Chief Akin-Olugbade told the court that if an order could be made against Chief Williams by the Court in its judgment, he would withdraw the action he had already instituted in the Ikeja High Court against Chief Williams and the others. Moreover we are of the view that Chief Williams was rightly ordered along with the others to repay that part of the land compensation money which he had through Mr. Ajose-Adeogun his junior counsel undertaken in writing to pay. All the arguments on non-service of notice upon him as a party in the case in which he also appeared as counsel, would not be seen to be supported by the cases to which he has referred us; *Obimonure v. Erinosho (1966) 1 All N.L.R. 250, at page 253; Odita v. Okudinma (1969) 1 All N.L.R. 228, at page 281*.

On the other hand, learned counsel for the respondents to the present application, submitted that the order made against Chief Williams was properly made against him as solicitor, and cited (English) Supreme Court Practice, 1973, Vol. 2, paragraph 3226, in support. He also complained of procedural irregularity in the motions before the Court, pointing out that O.59, r. 3 (5) (a) of the (English) Supreme Court Practice 1973, Vol. 1, page 826, under which the motions were purported to have been brought, clearly deals with "Notice of Appeal" and that these papers before us are really appeal papers, even though the applicants did not disclose this fact. He, therefore, submitted that an appeal could only be properly brought from the High Courts to the Supreme Court under O.7, r. 2 of our Supreme Court Rules, 1972, and also that no appeal lies from the Supreme Court of Nigeria to any other body or authority apart from the question of the exercise of the Prerogative of Mercy: See *Section 120 of the Constitution of the Federation, 1963*. Learned counsel's further submission is that a review of its previous decision may be undertaken by the Supreme Court only in the two cases envisaged under O.7, r. 23 (1) and O.7, r. 24, that is, in the case of an application to set aside a judgment obtained *ex parte* and in the event of admission of new evidence on appeal, respectively. Finally, he submitted that, even if a case of fraud be established in the obtaining of the judgment being attacked, the Court would still have no jurisdiction to entertain the present motion.

We are firmly of the view that O.7, r. 29 of our Supreme Court Rules, 1972 envisages only an application for the invocation of the "slip rule" as adumbrated in *Ashinyanbi's Case* and that it does not enable an application to be brought for the review of any fact or law in a previous judgment of this Court. To allow that to be done would amount to treating the application as an appeal and this could not be in view of the provisions of *Section 120 of the Constitution of the Federation, 1963.*

There is the fundamental question as to whether it is any longer appropriate to retain in our Supreme Court Rules O.7. r. 29 for the purposes of a court that, because of the constitutional changes which have abolished the West African Court of Appeal and the Privy Council as further courts of appeal, has ceased to function as an intermediate court of appeal. Since the 1963 Constitution abolished (See *Section 120*) any further appeal from the Supreme Court which is now the final court of appeal, there is no reason why we should continue to regard it as the equivalent of the English Court of Appeal. Its relative equivalent is either the House of Lords as the final court of appeal for British courts or Her Majesty's Committee of the Privy Council as the final court of appeal for colonial courts. It is therefore necessary to construe our O. 7. r. 29 in the light of this changed constitutional situation so as to achieve a result which is in consonance with the law and with commonsense. For, were we to accept the submission of counsel for the applicants that we can exercise jurisdiction to entertain these motions to look into complaints about the law or the fact in the judgment being attacked, there would be no finality about any judgment of this court and every dis-affected litigant could bring further appeals as it were *ad infinitum*. That is a situation that must not be permitted.

In this connection, we would draw attention to the unreported case of *Patrick J. Osoba v. The Queen F.S.C. 141/1961* decided by this Court on May 19, 1961 which, though a criminal case, was probably the first of its kind to be brought asking the Federal Supreme Court to review an earlier decision. In refusing to entertain the motion, the Federal Supreme Court said inter alia:

> "Mr. Khambatta has suggested that as a result of Section 110 of the Constitution of the Federation the Court has an inherent power to prevent a miscarriage of justice by making whatever order justice may require even at this stage, but the Court is not entrusted by the Constitution with any general supervisory functions, and in the exercise of its appellate jurisdiction it is bound by the ordinary restrictions on the setting aside of a judgment once pronounced and perfected. We will decide what powers the Court possesses in relation to a judgment obtained by fraud, such as was said to have occurred in *Flower v. Lloyd*, when the case arises. This is not such a case and no circumstances are alleged which would justify the Court either in treating its previous decision as a nullity or in assuming power to set it aside."

We have come to the same conclusion in this case. We have stated that O. 7. r. 29 does not go further than the "slip rule" and that in the present application the allegations are not directed towards any clerical mistake either in the judgment of this Court under attack or in the formal order as drawn up in consequence of it. Issues of fact and law are raised for determination by the review sought in both motions. The remedy, if any, does not come within the purview of the "slip rule", since, as has been said by Morris, L.J., in *Thynne v. Thynne (1955) 3 All E.R. 129, at page 146*:

> "Where a court has decided an issue and the decision of the court is truly embodied in some judgment or order that has been made effective, then the court cannot re-open the matter and cannot substitute a different decision in place of the one which has been recorded. Those who seek to alter must in those circumstances invoke such appellate jurisdiction as may apply."

Accordingly, the present applications fail and are hereby dismissed. We are satisfied that, considering the peculiar circumstances of the case as a whole, no miscarriage of justice is involved by cur refusal of this application. The applicants will pay to each set of the respondents the costs of this application assessed at ₦20, that is, a total of ₦40.

Coker and Ibekwe JJSC concurred.

Counsel

Chief F.R.A. Williams	.....	For the Appellants
with him	.....	
Mr. O. Ajose-Adeogun	.....	
Chief F.R.A. Williams	.....	In person as Applicant
Mr. F.A.S. Ogunmuyiwa	.....	For the Respondents
with him	.....	
Mr. R.A.O. Oriade	.....	