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Research Paper

The Power to Review it's own Decisions: How the Supreme Court of Nigeria has fared.

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Abstract
Cases decided by the Supreme Court of Nigeria substantially agree that the court's power to review its decisions is limited to matters coming under the "slip rule". That rule states that the court's power to review its judgment is confined to slip correction or amendment of clerical mistakes and errors arising from accidental slip or omission in a judgment or order. Some recent decisions of the court have demonstrated a clear departure from the long-settled principle. Those cases without overruling the earlier decisions on the point introduced new situations under which the power of review could be exercised. This has introduced a great deal of confusion and uncertainty on the subject. The refusal of the Supreme Court to review the judgment that sacked Rt. Hon. Emeka Ihedioha though clearly backed by law will continue to generate confusion in the light of the fact that there are recent decisions where the court has upon a post-judgment application reviewed its judgment. It is hoped that the court will sooner redeem its image by clarifying its position on the issue.
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I. Introduction

It is not in doubt that the Supreme Court has the power to review its judgment or order; the principal concern therefore, is the extent of the power rather than whether it exists. Recent events in political and legal circles in Nigeria have made it critically imperative to reflectively appraise the extent of the powers of the Supreme Court of Nigeria to review its judgment or order. One case still fresh in our memories is the recent decision of the Supreme Court dismissing the application brought by the former Governor of Imo State of Nigeria, Rt. Hon. Emeka Ihedioha ((Ihedioha) for the review of the court's earlier judgment.[1] It will be recalled that the election of Ihedioha as the Governor of Imo State under the Platform of the People's Democratic Party (PDP) was nullified by the Supreme Court on the 14th of January, 2020.[2]

In the judgment, the Supreme Court set aside the decision of the Court of Appeal which affirmed the judgment of the Governorship Election Petition Tribunal that returned Ihedioha as the winner of the election. Senator Hope Uzodinma, (Uzodinma) the candidate for All Progressive Alliance (APC) was declared the winner of the election having according to the court, "pulled a majority of lawful votes cast at the Governorship Election held in Imo State on 9th March, 2019 and satisfied the mandatory constitutional threshold and spread across the states".[3]

Ihedioha after several weeks, summoned the courage and approached the Supreme Court through a motion on notice he filed for the review of the judgment following the hearing of the application, six out of the seven justices of the court dismissed the application, and held that the decision that nullified and set aside Ihedioha's election was final and that the court lacked the jurisdiction to review it.[4] The focus of this article in to first, ascertain the meaning, nature and character of the term "review" as it relates to judicial decisions. The

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[1] Rt. Hon. Emeka Ihedioha & Ors vs, Senator Hope Uzodinma &Ors.http://www.thisdaylive.Retrieved June 1, 2021
[2]Senator Hope Uzodinma & Anor vs, Rt. Hon. Emeka Ihedioha & Ors (2020) SC. 1462 2019.
[3]*Ibid, P. 45.*
[4](n 1).

article will further examine the legal basis on which the Supreme Court exercises the power to review its decisions and whether the court's exercise of the power has remained within the established and settled legal principles. It appears that apart from the statutory basis on which the court exercises the power, some cases decided by the court have widened the frontiers of the power by introducing new situations under which the power of review could be exercised. The article will reflectively examine all of these before proceeding to conclusion.

II. Meaning and Nature of the Term "Review"

The term "review" as it relates to court or administrative decisions means judicial or administrative re-examination, reconsideration, second view, revision, consideration for purposes of correction, rehearing or retrial.[5] Similar to the term review is the word "revise" which means to review, re-examine for correction, to go over a thing for the purpose of amending correcting, rearranging or otherwise improving it.[6] From the above definitions, it logically follows that an application to the Supreme Court to judicially or order, whether the purpose is to correct a mistake or error or to substitute its earlier decision with a new one will come within the warm-embrace of the word "review".[7]

A careful appraisal of judicial decisions reveals different shades of applications to the Supreme Court viewed by that court as an invitation to review its earlier decisions. Some of such applications are enumerated hereunder; and include an application to the Supreme Court:

i) to relist an appeal and order that the trial court should rehear the case;[8]
ii) to review the earlier judgment for purposes of correcting facts mistakenly stated in the judgment;[9]
iii) to restore the appeal and clarify, determine and direct whether the applicants are entitled to the fruits of the judgment along with those in whose favour the judgment was given;[10]
iv) to review the earlier judgment on the ground that an order made in the judgment was wrong in law and ought not to have been made;[11]
v) to restore to the cause list an appeal dismissed for want of diligent prosecution (failure to file Appellant's Brief of Argument).[12]

III. Scope of the Court's Power to Review its Judgment

Generally, a court in the exercise of its inherent powers could review, revise or amend the terms of its earlier judgment or order.[13] That power is inert in the court and is essential and material for the smooth administration of justice.[14] As shall be shown later, the court's inherent powers are only exercised over matters within its jurisdiction.[15]

3.1 The Position in England Approved and Adopted by the Supreme Court of Nigeria.

A thoughtful examination of earlier English decisions which have been approved and followed by the Supreme Court of Nigeria reveal that the court's power to review its judgment is confined to correction or amendment of clerical mistakes and error arising from accidental slip or omission in a judgment or order.[16] That power also extends to cases where for instance, the language used in the phrasing of an order of court is ambiguous and does not truly express the order actually made, in which case the court can vary the order so as to give effect its meaning and intention.[17]

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[5] H.C Black (ed), *Black's Law Dictionary* (10th edn, St Paul Minn West Publishing Co. 1979).
[6] *Ibid.*
[7] (n 5).
[8] Osoba vs, The Queen [1961] NSCC 128.
[9] Daniel Asiyanbi vs, Emmanuel Awe Adeniji [1967] NSCC 81.
[10] The Ministry of Lagos Affairs, Mines & Power & Anor. Vs, Chief Q.B. Akin-Olugbade& Ors [1974] NSCC 489.
[11] Prince Yahaya Adigun & Ors vs, The Attorney General of Oyo State & 10 Ors [1987] 1 NSCC 548.
[12] Chief IroOgbu& Ors vs, OgburuUrum& Anor [1981] NSCC 81; T. A. Yonwuren& Ors vs. Modern Signs (Nig) Limited [1985] 1 NSCC 243; Ndubuisi Dike vs, The State [2018] 13 NWLR (Pt 1635) 35; Securities and Exchange Commission & 2 Ors vs, Christopher Okeke [2018] 12 NWLR (Pt 1634) 462.
[13] Re Harrison's Share under a Settlement, Harrison vs, Harrison & Ors [1955] 1 ALL ER 185 Pp. 188 & 192; Daniel Asiyanbi vs, Emmanuel Awe Adeniji (n 9) P. 85.
[14] Prince yahaya Adigun & Ors vs, The Attorney General of Oyo State & 18 Ors (n 11), P 574..
[15] *Ibid, P. 569.*
[16] Barker vs Purvis [1886] 56 LTR 131; Asiyanbi vs, Emmanuel Awe Adneiji (n 9), P 87.
[17] (n 16).

The English Court of Appeal was vested with powers to make all such orders including orders as to amendment as the High Court of England could have made based on the materials before it. Thus, Order 58 Rule 9(1) of the Court of Appeal Rules stated: "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."[18] The powers of the High Court of England to correct or amend its own judgment, order or records were set out in Order 20 Rule 11.[19] It 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"[20]

A number of decided cases have shown that it is only in such situations as provided in the Rules that English courts could review their judgments or orders. In Re Blackwell Bridgmen vs Blackwell, North J. following the Rules of court effected an amendment of the substantive or operative part of an order already made.[21] In Staniar vs, Evans, however, the correction made on the judgment was based on what subsequently was found to be a misrepresentation of fact.[22] As itappeared, the judge did not base the amendment or correction on the relevant Rules of court. In the latter case of Preston Banking Company vs William Allsup& Sons, the Court of Appeal expressed serious doubt on the decision in Staniar's and held the decision would certainly require reconsideration.[23] In restating the settled principle on review of judgments or orders Halsbury L.C. took the view that 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 the jurisdiction to correct it.[24]

Romer L.J. expressed a similar view in ***Macarthy vs Agard*** to the effect that the court's inherent jurisdiction to amend an order already drawn up is limited to cases where the order as drawn up does not correctly express or state what the court actually decided or intended by its judgment.[25] English courts exercised their power of review only within the identified situations to the extent that even of fraud is shown to have influenced the obtaining of the judgment under attack, the court would still not have jurisdiction to entertain an application to set aside (review) the judgment.[26] This view was clearly expressed in Preston's case in the following words:

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 the 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. 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 jurisdiction existed it would be most mischievous.[27] The above decisions (Staniar's case exclude) have remained the bedrock on which the Supreme Court of Nigeria approached applications brought before it in the same matter for the review of its earlier judgment or order[28].

3.2 The supreme Court's Power of Review Exercisable only under the "Slip Rule"

The law is firmly settled in Nigeria that the power of the Supreme to review its judgment or order confirmed to cases envisaged under Order 8 Rule 16 of the Supreme Court Rules 1985. as amended (SCR) and that the court cannot sit on appeal in its judgment. It provides as follows:

> *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 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.*[29]

[18] Rules of Supreme court, England (as in 1966 & 1967 White Book).
[19] *Ibid.*
[20] *Ibid.*
[21] [1886] WN 97.
[22] [1886] 34 Ch. D 470
[23] [1895] 1 Ch 141; Re St. Nazaire Co [1879] 2 Ch.D 88; Re Suffield & Watts ex-parte Brown [1888] 20 OBD 693.
[24] Ibid.
[25] [1933] 2 KB 417.
[26] Preston Banking co. vs, William Allsup& Sons (n 23).
[27] *Ibid, P 143*
[28] (n 13).
[29] The Rule is similar in content with Order 20 Rule 11 of the Rules of the Supreme Court, England under which the Supreme Court of Nigeria by virtue of Order 7 Rule 29 of 1961 Rules exercised its power of review.

The case of ***Osoba vs. Oueen***, decided in 1961, though a criminal matter, was probably the first of its brought before the Supreme Court seeking an order of that Court (Federal Supreme Court) to review its earlier decision.[30] In dismissing the application, the Court held that it was not such a case and no circumstances was alleged to warrant the court either in treating its earlier decision as a nullity or in assuming power to set it aside.[31] The case of ***Ashiyanbi vs. Adeniji*** decided six years after, provided a more elaborate opportunity for the Supreme Court to consider or order.[32] After a careful consideration of English cases some of which have been referred to earlier, the court came to the conclusion that the judgment clearly expressed the intention of the court. In emphasizing the inappropriateness of reviewing the judgment on the ground that if mistakenly did not state that there was an appeal against a counter claim the court said:

> *In this case in hand, a perusal of the judgment of this Court along with the order does show that the order correctly carries out the intention of the judgment. The contention of counsel for the defendants put their case no higher than that the Court hand made a mistake of fact in stating that the counter-clam was not appealed. The remedy for this does not in our view where a Court has come to an erroneous decision either in regard to fact or law then an amendment of its order cannot be sought under the "Slip Rule" but recourse must be had to an appeal to the extent to which appeal is available.*[33]

The decision clearly restated the principle that *"where the court has come to an erroneous decision either in regard to fact or law then an amendment of its order cannot be sought under the slip rule"*[34]. Ashiyanbi was decided pursuant to Order 7 Rule 29 of the SCR of 1961 which is to the effect that the court shall not review any judgment once given and delivered by it save and except in accordance with the practice of the Court of Appeal in England. The practice of the Court of Appeal in England referred to earlier, was to exercise all the powers and duties of the High Court of England as it relates to amendment or review of its judgment or order. By Order 20 Rule 11, the High Court of England, upon a motion or summons without an appeal may correct any clerical mistakes in judgments or orders or errors arising therein from any accidental slip or omission. The 1961 SCR was repealed and replaced by the 1972 SCR which was repealed by the 1977 SCR of which Order 7 Rule 30 is of similar content with Order 8 Rule 16 of the SCR, 1985 (as amended). Thus, cases decided under the above English Rules relevant and of persuasive force when considering any application under Order 8 Rule 16 of the SCR. The decision of the Supreme Court in ***Asiyanbi vs Adeniji*** will be of considerable relevance when the case of ***OrikerJev& Ors vs. SekavDzuaIyortom& Ors***[35] decided by the Supreme Court on 27th February 2015 will be considered later in this article.

The common law "Slip rule" statutorily recognized in the SCR received further judicial endorsement ***in Minister of Lagos Mines & Power vs, Akin-Olugbade***, where Elias JSC, after referring to ***Osoba vs Oueen, Ashiyanbi vs Adeniji*** and a host of other English cases restated the limit of the Supreme Court' power of review. In his words:

> *We are firmly of the view that O.7, r.29 of our Supreme Court Rules, 1972 envisaged only an application for the invocation of the "Slip rule" as adumbrated in Asiyanbi's Case and that it does not enable 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 S.120 of the Constitution of the Federation, 1963.*[36]

The case emphasized that the Order 7 Rule 29 of the SCR (now Order 8 Rule 16) and section 120 of the Constitution of the Federal Republic of Nigeria (CFRN) 1963 (now section 235 of the CFRN 1999) determined the extent of the court's power of review. The latter cases of Chief Iro***Ogbu vs. OgburuUrum***,[37]***JohnChukwuka vs. Ndubueze Gregory Ezulike***,[38]***Prince Yahaya Adigun vs. The Attorney General of Oyo State***[39] and a host of

[30](n 8).
[31]*Ibid, P. 130.*
[32](n 9).
[33](n 9), P. 87
[34]*Ibid.*
[35](2015) NWLR (Pt. 1483) 484
[36] (n 10)
[37] (n 12)
[38] (n 11)
[39] (1986) 2 NSCC 1347

others have all maintained the firm view that a review of any Supreme Court's judgment or order is only as allowed under the "slip rule".

In stressing how the court has held tenaciously unto this principle even when the argument is that the judgment of the Supreme Court is a nullity, Oputa JSC in ***Chukwuka vs. Ezulike*** stated:

> *"Arguments that the order of 12th November 1985 (Exhibit D) was a nullity will be valid before a court exercising appellate jurisdiction to review that order. I wonder which court in Nigerian hierarchy of courts has appellate jurisdiction to review a judgment of the Supreme Court."*[40] *Thus, even where it is shown that the order of the Supreme Court is a nullity, that court upon any application not premised on the "slip rule" cannot review the order since it is final. It is only a higher court that can review such a null order and regrettably, there is no other court in Nigeria higher than the Supreme Court in hierarchy. The judgment once delivered, the "court is functus officio except for certain purposes not concerned with the substance of the judgment"*[41]**.**

It will be seen later that the dictum of ofOgwuegbu JSC in ***Chief Kalu Igwe vs. Chief Okuwa Kalu***[42] is a complete departure from the above settled principle. That dictum has been followed in some of the subsequent cases of the Supreme Court thereby creating some deal of uncertainty and confusion as to the scope of the powers of the Supreme Court to review its judgment or order.[43]

IV. Review of Decisions of the Supreme Court Under its Inherent Powers.

One fundamental issue that had always arisen in an application to the court to review its judgment is the issue of whether the inherent powers of the court permits it to review its judgment even when such power of review is not statutorily permissible. The ingenuous argument of Williams, counsel for the applicant in Adigun's case was that the Supreme Court's inherent powers comprehended and is cumulative of Order 8 Rule 16 of the SCR 1985, which rule delimits the court's power to review its decisions; that the rule did not derogate from the inherent powers exercisable by the court pursuant to the provision of the repealed CFRN 1979.[44]

It was his further submission that Order 8 Rule 16 of the SCR 1985 being a mere rule of court cannot override the constitutional provision empowering the court to exercise its inherent powers.[45] On the issue of finality of thecourt's decision, counsel's submission was that the inherent powers of the court is exercisable *"notwithstanding anything to the contrary in the Constitution."*[46] In dismissing the application, the court held that the decision was final and went ahead to restate the age-long judicial policy that it is in the interest of the public that there should be an end to litigation (interest replicae us sit finislitum).[47] The court maintained that though the principle has received a sustained attack in recent times, but it must be allowed to remain undisturbed.[48]

The court's inherent powers are those powers that are inert in any court, material and essential for the efficient administration of justice.[49] As soon as a court is created or established, that power inheres in it and becomes attached to the court. The power is not conferred by the Constitution or statute and is exercisable independent of constitutional or statutory provisions. What the CFRN 1999 did is to recognize the obvious inherent powers of the courts.[50] Thus, it is clear from the wording of section 6(6)(a) that *"the exercise of judicial powers isintended to include all the powers and sanctions which a court of law ought to exercise in order to do justice and uphold its dignity."*[51]It logically follows that since the CFRN 1999 cannot also direct how those powers are to be used, since it is he who gives that can direct how what is given should be used *(Cujusest dare estdispenere)*[52]

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[40] Ibid, P. 1359
[41] (a 11), P. 569
[42] (2002) 14 NWLR (Pt. 787) 435, pp 453 & 454.
[43]OrikerJev& Ors vs. SekavDzuaIyortom& Ors. (n 35); Ndubuisi Dike vs. The State (n 12).
[44] (n 11) The pronouncement was made while considering the section 6(6)(a) of the CFRN
[45]*Ibid*
[46]*Ibid*
[47]*Ibid.*
[48]*Ibid.*
[49]*Ibid.*
[50]Section 6(6)(a).
[51](n 11), P.568.
[52]Garba & Ors vs, University of Maiduguri (1986) 1 NSCC 245, P. 272.

The CFRN 1999 provides that *"the judicial powers vested in accordance with the foregoing provisions of this section-shall extend, notwithstanding anything to the contrary in this Constitution to all inherent powers and sanctions of a court of law."*[53]The provision implies that the judicial powers vested in the courts by the CFRN 1999 shall extend to inherent powers and sanctions not vested in the courts by the supreme law. Inherent powers though part of judicial powers are general and unspecified powers while judicial powers are those specifically conferred by the Constitution or statute. Oputa JSC in distinguishing inherent powers from statutory powers said: *"The inherent powers of Courts differ considerably from the appellate powers. Inherent powers of Courts are general powers; the power vested in any Court to hear and determine an appeal is rather a specific and special power."*[54]

The misconception of inherent powers as provided in the CFRN 1999 as inherent jurisdiction appears to have given rise to the argument as to whether the inherent jurisdiction of the court could be exercised outside the "slip rule." The judicial powers of the court are exercised in matters over which a court has jurisdiction.[55] Thus, the court's inherent powers which are part of its judicial powers can only be exercised over matters within its jurisdiction. Since under Order 8 Rule 16 of SCR the court cannot review its judgment once given and delivered except as allowed under the "slip rule", it follows that is lacks the inherent powers to do that which it is forbidden by its Rules to do.[56] In chief IroOgbu's case, it was held that the Supreme Court has no jurisdiction to entertain a case not *li*sextant.[57]

Consequently, once the Supreme Court has finally decided a matter, it become *functus officio* and ceases to have jurisdiction over the matter[58].

Any application therefore to the court for the review of the case should be viewed as calling on the court ti entertain a matter over which it no longer has jurisdiction. In Adigun's case, it was reaffirmed that the Supreme Court has no jurisdiction statutory or inherent to re-enter an appeal already heard and determined for further hearing other than as prescribed by Order 8 Rule 16 of the SCR.[59] It must be noted that inherent powers are not the same as inherent jurisdiction. Karibi Whyte JSC, made the point so clear in Adigun's case when he said:

> *The misconception lies in the inappropriate description of the inherent powers as akin to the exercise of jurisdiction. It is the common error of confusing the meanings of "power" and "jurisdiction" in relation to a proceeding in Court. The jurisdiction vested in the Court to hear and determine a matter before it is different from the exercise of power with respect to a matter within its jurisdiction. The Court has inherent power in respect of matters within its jurisdiction. It has no inherent power to assume jurisdiction in respect of a matter not within its jurisdiction. This in my view is the line of demarcation between the exercise of powers with respect to matters within jurisdiction and assumption of jurisdiction.*[60]

The interchangeable use of the words "power" and "jurisdiction" both by members of the Bar and Bench appears well entrenched. In Adigun's case Oputa JSC was obviously referring to appellate jurisdiction when he said: *"Any appellate power is traceable to a specific Statute."*[61] Sure, he was saying that appellate jurisdiction is traceable to a specific Statute. Statutes confer appellate jurisdiction on courts on the basis of which the courts exercise their powers (inherent or otherwise). In other words, a court exercises inherent powers in respect of matters within its jurisdiction. It logically follows that once the Supreme Court has finally determined a matter, it ceases to have jurisdiction over that matter except to the extent allowed by law.[62] Anyargument that the court can invoke its inherent powers to reopen a matter already heard and determined will be misleading and unsustainable.

V. General Powers of Court to Set Aside Judgment or Order

[53]Section 6 (6)(a).
[54](n 11).
[55](n 11), P. 569.
[56]*Ibid.*
[57] (n 12), p. 87
[58] First Bank of Nigeria PLC vs, TSA Industries Limited (2010) 15 NWLR (Pt 1216) 247
[59](n 11) P. 576
[60]Ibid P. 568 & 569
[61]Ibid P. 574
[62]Prof. Steve TorkumaUgba& Anor vs. Gabriel TorwuaSuswam (2014) 14 NWLR (Pt. 1427) 264; First Bank of Nigeria Plc vs. TSA Industries Limited (n 58).

It must be borne in mind that there is a marked difference between the powers of the High Court or other courts of first instance to set aside their earlier judgments or order and that of the Supreme Court to set aside its decisions. It has been shown earlier that the Supreme Court is constitutionally and statutorily forbidden to review its decisions by way of relisting or restoring the appeal to the cause list for the purpose of setting aside, rehearing or otherwise, except its clearly allowed under the "slip rule." The judicial policy of appellate courts in Nigeria limiting their powers to review judgment or order only within the "slip rule" is now common place. For instance, Order 20 Rule 4 of the Court of Appeal Rules 2016 is of the same wording with Order 8 Rule 16 of the SCR and limits the power of the Court of Appeal to review its decisions to situations mentioned in the rule.

Under the Rules of various courts of first instance established under the CFRN 1999, there are provisions permitting those courts to set aside a judgment or order made in default of pleadings and power to restore to the cause list a matter struck out for want of diligent prosecution.[63] By so doing, those courts exercise their power of review over their decisions. It may be argued that any other judgment or order of those courts other than the ones arising from the situations mentioned above cannot be set aside upon an application. This position can be hinged on the legal maxim that the express mention of one thing is the exclusion of the other. However, unlike under the SCR, the Court of Appeal Rules and the English Rule set out earlier, there is no express provision placing any limitation or restriction on the powers of those courts to review any other judgment or order made. It is on this premise that trial courts review judgments or orders made without jurisdiction though there is no provision in the rules permitting such review.

The general rule as it relates to judgments and orders of court is that once a court has entered a judgment or made an order, the court becomes *functus officio* and lacks the jurisdiction to review the decision.[64] This is without prejudice to the exercise of the inherent powers of the Court to vacate, modify or amend an order before it is drawn up.[65] In RE G. M. Holdings Ltd.Molton J. in refusing an application to set aside an order for stay of execution granted by Bernet J. said:

> *The order upon the application has been made by him and passed and entered. He has exercised his jurisdiction as to the amount of the security which should be given and I am disposed to think that he is functus officio … In my view, neither Bernet J. if he were sitting today, nor myself has jurisdiction to make the order asked for.*[66]

Thus, the Judge that made the order upon doing so could not review it and in the same token a judge other than the judge that made the order also lacked the jurisdiction to review it. The decisions of the Supreme Court in ***Grace Amanabu vs. Alexander Okafor***,[67]***Chief Uku vs. Okumagba***,[68] support the above view. In these cases, the trial courts had the requisite jurisdiction and competence to make the orders sought to be set aside. The only option open to any party not satisfied with the order made was to appeal against it.[69] In Chief Uku's case, the court that made the first order was competent and made it after examining conflicting affidavits and taking arguments. In the case of Amanambu, an application to the court to review an order of amendment competently made was viewed as an invitation of the court sit on appeal over the order.

Conversely, where an order is made by a trial court without jurisdiction, it is a nullity *ab initio*and both the court that made it and another Judge of the same court has the competence to set it aside. in ***Sken Consult (Nig) Ltd vs. Godwin SecondyUkey***, Nnamani JSC said: *"From the deduction I have made from the authorities Wanington J. ought to have set aside the orders made by Romer J which he found had been made without jurisdiction and which were treated as nullities."*[70] A distinction must therefore be made between proceedings or orders which are nullities having been made without jurisdiction and those in respect of which there has been nothing other than an allegation that the order of court was made in error of fact or law.[71] In the case of the

[63]National Industrial Court of Nigeria (Civil Procedure) Rules 2016, o. 35 r. 7 "Any Judgment by default whether under this Order or under any Order of these Rules shall be final and remain valid and may only be set aside upon application to the Court on grounds of fraud, non-service or of lack of jurisdiction and upon such terms as the Court may deem fit." This provision is in identic al terms with with Federal High Court (Civil Procedure) Rules, 2019, o. 14 r. 10, o. 19 r. 1 & 3 and High Court of Rivers State (Civil Procedure) Rules, 2010, o. 20 r. 12, o. 30 r. 1 & 4.

[64]Dasuki vs. Director-General SSS (2020) 10 NWLR (Pt. 1731) 136 at 156.

[65](n 9)

[66](1941) 3 ALL ER 317 at page 418.

[67](1966) 1 ALL NLR 205 P. 207

[68](1974) 1 ALL NLR Part 1 475

[69]Skenconsult (Nig.) Ltd Consult vs. Godwin SecondyUkey (1981) NSCC 1.

[70]Ibid P. 16

[71]Craig vs. Kanssen (1943) KB 256; Marion Obimonure vs. OjumoolaErinosho& Anor (1966) 1 ALL NLR 250.

former, the settled principle is that the person affected by such an order is entitled *ex debito justitiae* to apply to the same court to set it aside or appeal against the order.[72]

An erroneous judgment on the other hand, is one delivered within the court's jurisdiction and competence and cannot therefore, be branded as a nullity. The only option open to a party dissatisfied with the judgment or order is to appeal against it. In ***Professor Steve TorkumaUgba& Anor. vs. Gabriel TorwuaSuswam***, Onnoghen JSC in his concurring ruling captured the point: *"It is settled law that a decision that is a nullity is not the same as a decision that is erroneous in law but given by the court within its jurisdiction".*[73] As it relates to the judgment or order of the Supreme Court, these general principles must be considered and applied in the light of section 235 of the CFRN 1999 and Order 8 Rule 16 of the SCR.

VI. The Court's Power to Review an Order Yet to Be Drawn up Signed and Signed

An order of court drawn up or enrolled signed, sealed and perfected is an official summary of the court's ruling or judgment prepared and issued to parties to the case. Order 8 Rule 15 of the Supreme Court Rules states that every judgment must be embodied in an order. Sometimes a drawn up or an enrolled order could be prepared and issued to the parties pending when the full judgment is ready. The court has the jurisdiction to correct its records including its order before it is drawn up. In ***Varty (Inspector of Taxes) vs British South Africa Co***., it was held that an order pronounced by the judge can always be withdrawn, amended or altered by him until it is drawn up passed and entered.[74] Similarly, in the *Matter of L & B (Children)*, it was held that a judge has the powers to amend or reverse his decision before it is drawn up and perfected.[75]

The inherent power of a court to amend or correct its orders before it is drawn up is manifestly wide but subject to the limitation that it should be exercised only when the purpose of justice requires it. In ***Asiyanbi vs. Adeniji***, it was held that if the application for the review of the order was brought before the engrossment of a formal order, the appeal of counsel that the court should review the order in the exercise of its inherent jurisdiction would have attracted more force.[76] In the court's view: *"The defendants could have drawn attention to the error of fact in the judgment of the court when it was delivered and asked for it to be corrected, but not having availed themselves of that opportunity before the order was drawn up we consider it now too late for them to ask the court to do so"*[77]

It appears from the above pronouncement that an error that could be corrected or amended in such situation is an error of fact and not law. Implicit in the above decision is that the power of the Supreme Court to review an order before it is drawn up is not limited to applications brought within the "slip rule". However, an appeal dismissed for failure to file appellant's brief cannot be reviewed even where such application is brought before the order is drawn up, signed and sealed.[78] Where an order of the Supreme Court has been drawn up, signed and sealed any application to review the order must only be entertained under the "slip rule"[79]

VII. Supreme Court's Departure from the Long-Settled Principle

From the cases already discussed, it is pretty clear that the Supreme Court has no jurisdiction, statutory or inherent to re-enter, relist or restore an appeal already heard and determined for further hearing and determination except as prescribed under Order 8 Rule 16 of the SCR. In addition, the CFRN 1999 states that: *"Without prejudice to the powers of the President or 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"*[80]The stage is now set to examine more recent decisions of the court and see if those decisions are consistent with the settled principles.

In ***Chief Kalu Igwe vs. Chief Okuwa Kalu***, one of the issues before the Supreme Court was whether the failure of the lead judgment to consider issue five (5) in the applicant's brief of argument while writing the judgment, is such an error to warrant the review of the judgment by setting it aside and directing that the appeal be heard *de novo* before a new panel of the court. Though the application was refused based on the settled principle already examined, the *dictum* of Ogwuegbu JSC in the lead ruling seemed to suggest that the power of the court to

[72](n 69)
[73](2014) 14 NWLR (Pt. 1427) 264, P. 317; General & Aviation Services Ltd vs. Thahal (2004) 10 NWLR (Pt. 880) 50 P. 80.
[74](1965) Ch 508, P. 515
[75](2013) UKSC 18.
[76](n 9)
[77]Ibid P.
[78]Ogbu vs. Urum (o 12) P. 85.
[79](n 9)
[80]Section 235.

review its judgment has been widened. The pronouncement is reproduced in *pleno*(full) because of its importance to the entire discourse. There his Lordship said:

> *I shall state that this court possesses inherent powers 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 vs. Adekunle (1959) LLR 76; Flower vs. Lloyd (1877) 6 Ch D. 297; Olufunmise vs. 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 debitojusticiae to have it set aside. See Skenconsult Ltd. Vs. Ukey (1981) 1 SC 6; Craig vs. Kanssen (1943) KB 256, 262 and 263; Ojiako& Ors. Vs. Ogueze& Ors. (1962) 1 SCNLR 112 (1962) ALL NLR 58; Okafor & Ors. Vs. Anambra State & Ors. (1991) NWLR (Pt. 200) 659, 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 vs. Okunoga& Co. (1961) 1 ALL NLR 250.*[81]

With due respect to the learned justice of the court, it is submitted that Order 8 Rule 16 of the SCR never envisaged the situations stated in the above dictum. Again, as has been stated earlier, the inherent powers of the Supreme Court cannot be exercised contrary to clear constitutional and statutory provisions. The court does not have the inherent powers to do that which it is forbidden by the law or rules of court to do. Fraud, deceit, misrepresentation and others mentioned in the dictum are not contemplated under Order 8 Rule 16 of the SCR. Where they are established, they may be grounds for setting aside an order of a High Court but not that of the Supreme Court.

The cases referred to in the *dictum* of Ogwuegbu JSC, in support of the position that the Supreme Court possesses the inherent jurisdiction to set aside its decisions in appropriate cases dealt with the general powers of the courts to set aside their decisions. Most of those cases relate to an appeal from the Court of Appeal to the Supreme Court seeking an order of the court to set aside the judgment of the Court of Appeal and that of the High Court. This is not the same thing with an application to the Supreme to review an order it had earlier made in the same matter. In ***Olufumise vs. Falana***,[82] relied upon in ***Igwe vs. Kalu***, one of the issues before the Supreme Court was whether the judgment of the High Court was not tainted by fraud and if it was, whether the Court of Appeal was not wrong in allowing such judgment to stand. In resolving the issue, the Supreme Court held that for the appellant to succeed he must establish fraud and that the trial court was influenced by the fraud in arriving at its decision.[83]

It is clear from the decision that had the appellant established fraud, the Supreme Court would have proceeded to allow the appeal and set aside the judgment of the two lower courts. The power of the Supreme Court to set aside such judgment obtained by fraud cannot be extended to a situation where that court has given a final judgment and there is an application to it to review the judgment on the ground of fraud. The latter application cannot be entertained by the court as it does not come under the "slip rule." In the case of ***OrikerJev. vs. SekavDzuaIyortom***,[84] an application was brought to the Supreme Court to review its earlier consequential order made on 30thMay, 2013. The order amongst others, was 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 three months (90 days).

The statutory basis on which the consequential order was made is 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 winner has not fully participated in all the stages of the election."* In the application for review, the Applicant stated that the foundation of the consequential order has collapsed since section 141 of the Electoral Act (as amended) on the premise of which the above order was made has been struck down and nullified by the judgment of a Federal High Court entered in 2011. In sustaining the application for review, the court set aside its earlier order after considering and following the case of Igwe vs. Kalu and a host of others. It was ordered that INEC should issue a Certificate of Return to the Applicant and that the Applicant should be immediately sworn in. With the greatest respect to the court, a review of its judgment by substituting an earlier consequential order and replacing same with a new one more suitable is obviously not a review to correct clerical mistakes, errors, accidental slips or omission in the judgment. It is certainly not a

[81](n 42), P. 453 & 454; In Professor Steve TorkumaUgba& Anor. vs. Gabriel TorwuaSuswam (n 73), though the application for the review of the Supreme Court's Judgment was dismissed, the *dictum* of Ogwuegbu JSC in Igwe vs. Kalu was repeated.
[82](1990) 3 NWLR (Pt. 136) 1
[83]Ibid
[84](n 35)

review to give effect to the intention of the judgment as the words of the judgment are clear and unambiguous in their meaning and intention.

It is contended that the cases referred to by the court in sustaining the application do not support the court's position. As already pointed out, the *obiter dictum* of the Supreme Court in ***Igwe vs. Kalu*** heavily relied on in Oriker'scase is clearly at variance with the settled position of the court on the powers to review its judgments or orders. The law remains that "where the court has come to an erroneous decision either in regard to fact or law then an amendment of its order cannot be sought under the slip rule".[85] The alleged error of law (lack of knowledge by the Supreme Court that section 141 of the Electoral Act 2010 (as amended) has been nullified) is not one that can be remedied under the "slip rule". In ***Oba Jacob Oyeyipo vs. Chief J. O. Oyinloye*** the court said:

"I am of the opinion that since the ground relied upon for seeking to set aside the decision of this court is an alleged mistake of law and not on a clerical error, this court has no jurisdiction to exercise any such power."[86]

Similarly, in ***Ndubuisi Dike vs. The State***, an appeal was dismissed on the mistaken belief that an appellant brief was not filed when it was actually filed.[87] In sustaining the application to review the judgment, the court following ***Igwe vs. Kalu*** held that there was an exceptional reason to justify the court's exercise of its power to set aside the judgment it delivered. By o doing, the court reviewed the substantive or operative part of its judgment which is the dismissal of the Appeal and restored the Appeal to its list. It is submitted that the mistaken belief that an Appeal has not been filed is an error of fact which does not come within the purview of the "slip rule" to warrant the review of the order dismissing the Appeal.[88]

A careful appraisal of the *dicta* and *ratio decidendi* of the Supreme Court in ***Igwe vs. Kalu***, ***OrikerJev vs. Iyortom, Ndubuisi Dike vs. The State*** and few others reveals a clear departure of the court from its earlier settled position on review of its judgment. Those decisions are in clear conflict with the court's long-settled position that its decision is final and can only be reviewed where there is a clerical error or mistake or where the judgment does not represent what the court actually decided. More so, the decisions are manifestly at variance with section 235 of the CFRN 1999 and Order 8 Rule 16 of the SCR which provide for the finality of the Supreme Court Judgments and the extent of the powers of the court to review its judgment.

Once an appeal has been dismissed whether wrongly or rightly for failure to file appellant's brief of argument, the *lis*is no more extant and so the court ceases to have jurisdiction to entertain any application in the matter.[89] Any order of dismissal of appeal for failure to file appellant's brief is a final order and therefore caught up by the finality rule contained in section 235 of CFRN 1999 and Order 8 Rule 16 of the SCR[90] The inherent power of court recognized under section 6(6)(a) of CFRN cannot be invoked to save the situation.[91]

The brilliant judgment of Agim JCA, in ***Dasuki vs. Director-General State Security Services*** though a dissenting view of the Court of Appeal represents the Supreme Court's settled position on the extent of the powers of appellate courts to review their judgments or orders. The pronouncement was made while considering Order 20 Rule 4 of the Court of Appeal Rules 2016. There the learned Justice said:

> *A review of the judgment of this court to vary the conditions of bail imposed in the judgment and replace same with the conditions considered more favourable is obviously not a review to correct clerical mistakes, errors, accidental slips or omission in the judgment. It is obviously not a review to give effect to the intention of the judgment as the words of the judgment are clear and unambiguous in their meaning and intention.*[92]

VIII. The Supreme Court's Refusal to Grant the Application for Review Brought by Ihedioha

[85](n 9), p. 87
[86](1987) 1 NSCC 183 P. 193
[87](2018) 13 NWLR (Pt. 1635) 35.
[88](n 9), P. 87.
[89]Ogwu vs. Urum P. 87; Yonwuren vs. Modern Signs (Nig) Ltd P. 247
[90]Ibid
[91]Ibid. In Securities and Exchange Commission & 2 Ors. Vs. Christopher Okeke (n 12) the Supreme emphasized at pages 481 and 481 that the rules of court (in this instance Order 8 Rule 16 of the SCR) are statutory instruments deriving their legitimacy and efficacy directly from the Constitution; they are to be obeyed.
[92](2020) 16 NWLR (Pt. 1731) 136, p. 155.

The refusal of the Supreme Court to review the judgment that removed Ihedioha as the Governor of Imo State though premised on settled law, has continued to generate a lot of fundamental legal and judicial issues. No doubt, the Ruling refusing to set aside the judgment of 14th January, 2020 which declared Uzodinma as the winner of the Imo State Governorship election held on 9th March 2019 has the legal backing of section. 235 of the CFRN 1999, Order 8 Rule 16 of the SCR and a plethora of decided cases already reviewed in this Article. In effect, the majority decision of the Supreme Court dismissing the application has sufficient statutory and judicial support.

The dissenting Ruling of Nweze JSC which described the majority Ruling as a *"wonder that shall never end"* also drew its inspiration from earlier judgments of the Supreme Court.[93] It maintained that the Supreme Court has the inherent powers to revisit its judgment where the interest of justice so demands. In justifying why the court ought to review the Judgment, the learned Justice said that the candidate of the APC, Uzodinma in his petition presented his case without the record of accredited voters. The court was of the view that in presenting his table of exhibits, the Appellant mischievously excluded the votes of others. Consequently, by the computation of the Supreme Court, the total number of votes cast during the poll exceeded the total number of accredited voters by over one hundred thousand (100,000) votes. The dissenting Ruling was applauded by some as bold, courageous, factual and truthful.[94]

One important question must be addressed: if in the application for review filed by Ihedioha, it was clearly shown that the total number of votes cast during the election exceeded the total number of accredited voters and that the votes ascribed to Uzodinma was in excess of the total number of accreditation, would that be a valid ground to set aside the judgment of the Supreme Court delivered on 14th January, 2020? The decisions of the Supreme Court in ***Asiyanbi vs. Adeniji***, ***The Minister of Lagos Affairs, Mines & Power vs. Chief Q. B. Akin-Olugbade, Adigun vs. The Attorney General of Oyo State, Ogbu vs. OgburuUrum, Yonwuren vs. Modern Signs (Nig)*** and recently, Securities and Exchange Commission vs. Christopher Okeke will answer this question in the negative. On the other hand, the decisions of this court in ***Igwe vs. Kalu***, ***OrikerJev vs. Iyortom***, ***Ndubuisi Dike vs. The State*** will answer the question in the affirmative. Clearly, both the majority and minority Ruling in the application have the firm support of the decisions of the Supreme Court.[95]

IX. Conclusion

The power of the Supreme Court of Nigeria to review its judgment or order is confined to correction or amendment of clerical mistakes and errors arising from accidental slip or omission in a judgment or order. That power also extends to cases where for instance, the language used in the phrasing of an order of court is ambiguous and does not truly express the order actually made, in which case the court can vary the order so as to give effect to its meaning and intention. Order 8 Rule 16 of the SCR therefore bars the court from reviewing any judgment or order save in the situations stated in the Rule. Consequently, a judgment or order of the Supreme Court 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 judgment of the Supreme Court cannot be reviewed simply because the court was misinformed that an appellant's brief of argument had not been filed when in reality the brief had been filed. Such review will be offensive to Order 8 Rule 16 of the SCR. Furthermore, to vary a consequential order imposed in a judgment and replace same with another considered more favourable is obviously not a review to correct clerical mistakes, errors, accidental slips or omission in the judgment. It is obviously not a review to give effect to the intention of the judgment since the words of the judgment are clear and unambiguous in their meaning and intention.

Once the Supreme Court has finally determined a matter, it ceases to have jurisdiction over that matter except to the extent allowed by law. This is consistent with section 235 of the CFRN 1999. Any argument that the court can invoke its inherent powers to reopen a matter already heard and determined will be misleading and unsustainable. The inherent power of court to amend or correct its orders before it is drawn up is manifestly wide but subject to the limitation that it should be exercised only when the purpose of justice requires it so long as the exercise of the power is not offensive to the settled position of law. However, an appeal dismissed for failure to file appellant's brief cannot be reviewed even where such application is brought before the order the order is drawn up, signed and sealed.

[93]Jonathan Ipaa, Begging Issues on Nweze's Dissenting Tone, <http://www.aljazira's news.com> Retrieved February 10, 2021.

[94]John Baiyeshea, Nweze's Dissenting Judgment Will Haunt us as Nation for a Long Time, <http://www.thisdaylive.com.> Retrieved June 1, 2021.

[95]Mustapha Salihu, Should the Supreme Court Review its Judgments? An examination of the Grounds for Appeal of Nigeria's Apex Court ruling on the 2019 Imo State Gubernatorial Elections (iv)(vi)*International Journal of Research and Innovation in Social Science.* http://www.thenigerialawyer.com (2020) <https://www.thenigerialawyer.com> Retrieved February 10, 2021.

The general powers of courts to set aside judgment or orders that are nullities must be applied with great caution when dealing with the judgment or order of the Supreme Court in view of the fact that the court is forbidden from reviewing its judgment or order on the ground that there was an error of fact or law. The apex Court now has a herculean task of redeeming its image as the Nigeria Court of last resort by clearly restating its position on extent of its powers to review earlier decisions. This will inevitably require overruling some of its earlier decisions.