1. REV. (DR.) C.J.A. UWEMEDIMO

2. COMMANDCLEM NIGERIA LIMITED

V.

MOBIL PRODUCING NIGERIA UNLIMITED

SUPREME COURT OF NIGERIA

SC.69/2011

AMINA ADAMU AUGIE, J.S.C. (*Presided*)
UWANI MUSA ABBA AJI, J.S.C.
MOHAMMED LAWAL GARBA, J.S.C.
SAMUEL CHUKWUDUMEBI OSEJI, J.S.C. (*Read the Leading Ruling*)
EMMANUEL AKOMAYE AGIM, J.S.C.

FRIDAY, 21ST MAY 2021

ACTION - Abuse of court process - What constitutes.

APPEAL - Supreme Court- Decision of- Finality of - Whether will sit on appeal over its decision.

APPEAL - Withdrawal of appeal - Effect of.

APPEAL - Withdrawal of appeal - Respondent's consent or filing of briefs of argument – When not required - Order 8 rule 6(1), Supreme Court Rules 1985.

COURT - Service of court process - Failure to serve court process where required – Who

can complain about.

COURT - Service of court process - Importance of - Failure to serve court process required - Effect of.

COURT - Supreme Court - Decision of- Finality of - Whether will Sit on appeal over its decision.

COURT - Supreme Court - Previous decision of – When it will overrule.

ESTOPPEL - Issue estoppel - Principle of - Operation of.

PRACTICE AND PROCEDURE - Abuse of court process – What constitutes.

PRACTICE AND PROCEDURE - Appeal- Withdrawal of appeal - Effect of.

PRACTICE AND PROCEDURE - Appeal- Withdrawal of appeal - Respondent's consent or filing of briefs of argument - When not required - Order 8 rule 6(1), Supreme Court Rules 1985.

PRACTICE AND PROCEDURE - Service of court process – Failure to serve court process where required - Who can complain about.

PRACTICE AND PROCEDURE - Service of court process Importance of - Failure to serve court process where required - Effect of.

PRACTICE AND PROCEDURE - Supreme Court - Decision of - Finality of- Whether will sit on appeal over its decision.

PRACTICE AND PROCEDURE - Supreme Court - Previous decision of - When it will overrule.

WORDS AND PHRASES - Abuse of court process - What constitutes.

Issue:

Whether the applicants proffered sufficient materials to be entitled to the exercise of the discretion of the Supreme Court in their favour by varying its order of 5th May 2014 and restoring the appeal dismissed on that day to the general cause list for the purpose of hearing on the merits.

Facts:

The applicants filed a motion on notice at the Supreme Court seeking an order varying its order of 5/5/2014 dismissing appeal No. SC.69/2011 as a bar to further proceedings to one dismissing or striking out the appeal with liberty on the part of the applicants to apply for its restoration on the court's general cause list on showing good cause; an order varying its order of 3/5/2019 dismissing the applicants' application to relist the appeal for want of exceptional circumstance; an order re-listing the appeal for the purpose of hearing and Same on the merits; and an order for accelerated hearing.

From the grounds for the application proffered by the applicants as well as the facts deposed to in their supporting affidavit and further and better affidavit, the application was premised on three major points. They were that the notice of withdrawal was filed but it was not served on the respondent although the applicants undertook to do so; that the respondent did not consent to the filing of the notice of withdrawal and briefs of argument were not filed; and that the application should be granted on the basis of special circumstances.

The applicants had on 21/12/2009 filed a notice of appeal at the Supreme Court. On 10/2/2010, the record of appeal was transmitted to the court. On 24/3/2011, the applicants filed a notice of withdrawal of the appeal. On 5/5/2014, the court, pursuant to the notice of withdrawal, dismissed the appeal. On11/8/2014, applicants filed a motion on notice to set aside the order of dismissal and relist the appeal in the cause list. Four similar applications to relist the appeal in the cause list were struck out by the Supreme Court. On 3/5/2019, the court heard another application filed by the applicants and dismissed the application because no special circumstance was shown to restore the dismissed appeal on the cause list.

The respondent opposed the application and filed a counter- affidavit of five paragraphs with exhibits attached thereto.

Held (*Unanimously dismissing the application*):

1. *On Importance of service of court process -*

Service is a pre-condition to the exercise of jurisdiction by the court. Where there is no service or there is a procedural fault in service, the subsequent proceedings are a nullity ab initio. This is based on the principle that a party should know or be aware that there are pending proceed can prepare a defence or take steps to participate in one way or another. If after service, he elects not to take part in the proceedings by filing any process in response, the law will assume that he either has no defence or no interest in the proceedings. But where a defendant is not aware of the pending proceedings because he was not served, the proceedings held outside him will be null and void. Thus, non-service of process on a party properly so-called will render proceedings on such unserved process null and void. [*Tsokwa Motors (Nig.) Ltd. v. U.B.A. Plc* **(2008) 2 NWLR (Pt. 1071) 347**; *Eimskip Ltd. v. Exquisite Ind. (Nig.) Ltd.* **(2003) 4 NWLR (Pt. 809) 88 referred to.]** (P. 73, paras. B-E)

2. *On Effect of failure to serve court process where required -*

Failure to serve process where service of process is required goes to the root of conceptions on the proper procedure in litigation. Apart from ex parte proceedings, the idea that an order can validly be made against a man who has had no notification of any intention of the hearing of proceedings goes against the grain of justice and fair play, unless he submits to the court's jurisdiction. Where he takes part in the proceedings, he will be deemed to have submitted to the court's jurisdiction and waived his right to service. [*Zakirai v. Muhammad* **(2017) 17 NWLR (Pt. 1594) 181;**

Ariori v. Elemo **(1983) 1 SCNLR 1**; *Fayemi v. Oni* **(2010) 17 NWLR (Pt. 1222) 326 referred to.]** (*Pp. 73, paras. E-F & H; 74 paras. A-B)*

Per OSEJI, J.S.C. at pages 73-74, paras. G-D

> **"The question arising in the instant appeal whether the applicants, who failed to serve the notice of withdrawal on the respondent, despite undertaking to do so, had any business objecting in the first place? The respondent did not object or complain; but rather submitted to the jurisdiction of this court, and kept quiet. It is the appellants/ applicants, who failed to effect service of the notice of withdrawal on the respondent that took on the challenge. Are they right to do so? I will answer in the negative. It does not, therefore, lie in the mouth of the appellants to complain on the respondent's behalf. Having taken part in the proceedings leading to the dismissal of the appeal, the respondent court's is deemed to have submitted to this court's jurisdiction and waived its right to service. See** *Zakirai v. Muhammad & Ors* **(2017) 17 NWLR (Pt. 1594) 181, (2017) LPELR 42349 (SC);** *Ariori & Ors v. Elemo & Ors* **(1983) 1 SCNLR 1; (1983) LPELR 552 SC);** *Fayemi & Anor v. Oni & Ors* **(2010) 17 NWLR (Pt. 1222) 326, (2010) LPELR-4145(SC).**
>
> **Interestingly, this issue was raised in the penultimate application filed by the appellants and in a ruling delivered by this court on 3/5/2019, it was held per Rhodes-Vivour, JSC as follows-**
>
> > **'Learned counsel for the respondent was aware that the appellants did not serve him or his client with the notice of withdrawal of the appeal. By taking part in the proceedings or never complaining about non-service of the process on him amounts to an unequivocal act adopting or recognizing the omission to serve him. By learned counsel for respondent's words and conduct he waived service'."**

3. *On Who can complain about failure to serve court process –*

For a party to a suit to apply for the proceedings to be nullified by reason of failure of service, where such service is a requirement, it must sufficiently be established that he has not been served in respect of the proceedings and that the order made therein affects him. However, it is not open to every party in a proceeding to make such an officious complaint. If such complaint is sustainable, it will yield startling results. Thus, an aggrieved plaintiff, would be enabled to appeal against a judgment against him on the technical ground that a party to the proceedings has not served some process. The issue of fair hearing is personal to the party concerned and cannot be complained about another party. In the instant case, the proper party to raise the issue of non-service was the respondent and not the applicants. [*Chime v. Chime* **(2001) 3 NWLR (Pt. 701) 527;** *Amale v. Sokoto Local Govt.* **(2012) 5 NWLR (Pt. 1292) 181 referred to.]** (Pp. 75 - 76, paras. C-C)

Per OSEJI, J.S.C. at pages 75-76, paras, H-C:

"Thus, in the instant case the appellant's applicants cannot complain about the right of the respondent to be served when the respondent on its own has not in any way complained about non-service of the notice of withdrawal or any breach of right to fair hearing. In the circumstance the complaint that this court does not have the jurisdiction to entertain the notice of withdrawal and make the order of dismissal of the appeal on 5/5/2014 does not arise at all given that the party entitled to raise dust over the issue of non-service of the process did not do so before this court. By taking part in the proceedings without any complain about non service of the process on him, it amounts to an unequivocal act recognizing the omission to serve him but opts to waive the issue of service. It therefore does not behoove the appellants to complain about non-service."

4. *On Finality of decision of the Supreme Court*

The decision of the Supreme Court on an issue remains sacrosanct and subsisting. It is binding on the court and being the final court in the

judicial hierarchy of this country, it is not subject to a further appeal. The Supreme Court does not sit appeal over its own decision because it generally enjoys the finality of same. So, the decision of the Supreme Court is final. Final in the sense of real o finality in so far as the particular case before the court is concerned. It is final forever except there is a legislation to the contrary and it has to be legislation *ad hominem.* **In the instant case, the applicants counsel raised the same issue already resolved and decided upon by the Supreme Court in by a similar application. It undermined the integrity and sacredness of the Supreme Court as the final court of the land.** [*A.T. Ltd. v. A.D.H. Ltd.* **(2007) 15 NWLR (Pt. 1056) 118;** *Cardoso v. Daniel* **(1986) 2 NWLR (Pt. 20) 1;** *Adigun v. A-G., Oyo State* **(1984) 4 SC 272 referred to.]** (*P. 74, paras. D-H)*

5. *On When Supreme Court will overrule its previous decision -*

The Supreme Court respects its previous decisions as a court of last resort which is not bound by precedents. However, it will not hesitate to overrule any decision of its own which it is satisfied was reached *per incuriam* **or on wrong principles, if in invited to do so. It is essential for the certainty of 93 the law that the Supreme Court follows its previous decision. But as a court of ultimate resort, it need not do so when the interest of justice dictates otherwise. Therefore, it will not hold itself hamstrung by precedent. In other words, the Supreme Court can only change its position in a case decided earlier by it where it considers for good and substantial reasons to overrule itself on an application where the need arises. Nonetheless, the decision of the Supreme Court is final once it is pronounced and it is not to be taken for granted.** [*Bakare v. L.S.C.S.C.* **(1992) 8 NWLR (Pt. 262) 641**; *Bronik Motors Ltd. v. Wema Bank Ltd* **(1983) 1 SCNLR 296**; *Rossek v. A.C.B. Ltd.* **(1993) 8 NWLR (Pt. 312) 382;** *Adegoke Motors v. Adesanya* **(1989) 3 NWLR (Pt. 109) referred to.]** *(Pp. 80-81, paras. E-A)*

6. *On When respondent s Consent or filing of briefs of argument not required in withdrawal of appeal -*

Order 8 rule 6(1) of the Supreme Court Rules 1985 (as amended) does not require the consent of the respondent or the filing of briefs of argument. There is a distinction between a notice of withdrawal filed pursuant to Order 8 rule 6(1l) and Order 8 rule 62) of the Rules. While rule 6(1) envisages or applies to a situation where an appellant on his own seeks to withdraw his appeal before it is called up for et hearing, that is too say, before the filing and exchange end of briefs of argument by the parties, rule 6(2) comes into play where an appellant seeks to withdraw the e appeal after parties have filed and exchanged briefs of argument and the appeal is ripe for hearing, In that case, the consent of the respondent may be required for the withdrawal of the appeal without the order of court. On that premise, the appeal is deemed to have been withdrawn once the notice of withdrawal is filed in the registry of the court and shall be struck out of the list of appeals by the court. In the instant case, the notice of withdrawal filed by the applicants fell under rule 6(1) by its wording and intent. Therefore, the complaint that the respondent did not consent to it or that the parties were yet to file their briefs of argument lacked substance. (*Pp. 77-78, paras. H-D*)

7. *On Effect of withdrawal of appeal-*

Where there is a withdrawal of an appeal, the resultant position is as if there was never an appeal filed by the appellant. Under Order 8 rule 5 of the Supreme Court Rules 1985 (as amended), appeal which has been withdrawn shall be deem to have been dismissed. [*Akuneziri v. Okenwa* **(2000) 15 NWLR (Pt. 691) 526 referred to.]** *(P 85, paras. B-C)*

8. *On Operation of principle of issue estoppel -*

Once an issue has been raised in a case and it is determined between the parties, the same issue cannot be raised again by either of the parties in

the same or subsequent proceedings. In the instant case, the issue that the respondent did not consent to the applicants notice of withdrawal or that the parties had not filed briefs of argument was addressed by the Supreme Court in its ruling delivered on 3/5/2019. The applicants were caught by issue estoppel and were estopped from revisiting it again in the instant application. *[Fadiora v. Gbadebo* **(1978) 3 SC 219;** *Adone v. Ikebudu* **(2001) 14 NWLR (Pt. 733) 385;** *Ladegha v. Durosimi* **(1978) 3 SC 82;** *Bamisebi v. Faleye* **(1987) 2 NWLR (Pt. 54) 57 referred to.]** *(P 78, paras. D-F)*

Per OSEJI, J.S.C. at page 83, paras. D-E:

> **"Once again, from the above set out ruling of this court delivered on 3/5/2019, the issues sought by the appellants/applicants to be revisited have been adequately considered and ruled upon by this court as it affect the same parties in the same matter. Thus they are estopped from raising the same issues again on the same sets of fact for which it was held that no exceptional circumstances have been shown to warrant the grant of the application. The decision of this court as set out in the ruling delivered on 3/5/2019 remains final and sacrosanct. It cannot be re- opened a second time in the absence of any justifiable reason."**

9. *On What constitutes abuse of court process -*

Abuse of court process is incapable of precise definition for all purposes because it may involve and arise from an infinite variety of facts and circumstances. However, it always involves and arises in the improper use of the processes of a court by a party to the irritation and annoyance of the opponent for being not only vexatious, but oppressive. If always involves some deliberateness or desire to misuse or pervert the cause of justice by, for instance, filing a multiplicity of actions or applications against the same parties and over same issues or subject matter, either before the same court or different courts. The abuse is more serious when issues between the same parties in a matter or application have been completely,

effectively and finally decided and determined by the Supreme Court and parties seek to endlessly taunt the court to revisit or review such issues, in the absence of any new or fresh facts and circumstances which are material to warrant and justify such a step by the court. In the instant case, the applicants' application was liable to be dismissed for being in gross abuse of court process in view of the peculiar facts and in the circumstances disclosed in the affidavit evidence placed before the court by the parties. [*Onyeabuchi v. I.N.E.C* **(2002) 8 NWLR (Pt. 769) 417;** *Umeh v. Iwu* **(2008) 8 NWLR (Pt. 1089) 225;** *LN.M.B. Ltd. v. U.B.N. Plc* **(2004) 12 NWLR (Pt. 888) 599;** *Dingyadi v. I.N.E.C.* **(No. 2) (2010) 18 NWLR (Pt. 1224) 154;** *Ogboru v. Uduaghan* **(2013) 13 NWLR (Pt. 1370) 33;** *R-Benkay Nig. Ltd. v. Cadbury (Nig,) Plc* **(2012) 9 NWLR (Pt. 1306) 596 referred to.]** *(Pp. 85-86, paras. E-B)*

Nigerian Cases Referred to in the Ruling:

A.T. Ltd. v. A.D.H. Ltd. (2007) 15 NWLR (Pt. 1056) 118
Adegoke Motors Ltd. v. Adesanya (1989)3 NWLR (Pt. 109) 250
Adigun v. A.-G., Oyo State (1984) 4 SC 272
Adone v. lkebudu (2001) 14 NWLR (Pt. 733) 385
Akpan v. State (1992) 6 NWLR (Pt. 248) 439
Akuneziri v. Okenwa (2000) 15 NWLR (Pt. 691) 526
Amale v. Sokoto Local Govt. (2012) 5 NWLR (Pt. 1292) 181
Ariori v. Elemo (1983) 1 SCNLR 1
Bakare v. L.S.C.S.C. (1992) 8 NWLR (Pt. 262) 641
Bamisebi v. Faleye (1987) 2 NWLR (Pt. 54) 57
Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR 296
Cardoso v. Daniel (1986) 2 NWLR (P 20) 1
Chikere v. Okegbe (2000) 12 NWLR (Pt. 681) 274
Chime v. Chime (2001) 3 NWLR (Pt. 701) 527
Dingyadi v. I.N.E.C. (No. 2) (2010) 18 NWLR (Pt. 1224) 154
Edozien v. Edozien (1993) 1 NWLR (PL 272) 678

Eimskip Ltd. v. Exquisite Ind. (Nig.) Ltd (2003) 4 NWLR (Pt. 809) 88
F.B.N. Plc. v. T.S.A Ind. Ltd (2010) 5 NWLR (Pt. 1216) 247
Fadiora v. Gbadebo (1978) 3 SC 219
Fayemi v. Oni (2010) 17 NWLR (Pt. 1222) 326
I.N.M.B. Ltd. v. U.B.N. Plc (2004) 12 NWLR (Pt. 888) 599
Ladegha v. Durosimi (1978) 3 SC 82
Madukolu v. Nkemdilim (1962) 2 SCNLR 341
Ogboru v. Uduaghan (2013) 13 NWLR (Pt. 1370) 73
Onyeabuchi v. INEC (2002) 8 NWLR (Pt. 769) 417
Oyeyemi v. Owoeye (2017) 12 NWLR (Pt. 1580) 364
R-Benkay (Nig.) Ltd v. Cadbury (Nig) Plc (2012) 9 NWLR (Pt. 1306) 596
Rossek v. A.C.B. Ltd (1993) 8 NWLR (Pt. 312) 382
Sha v. Kwan (2000) 8 NWLR (PL. 670) 685
Tsokwa Motors (Nig.) Ltd v. U.B.A. Plc (2008) 2 NWLR (Pt. 1071) 347
Umeh v. Iwu (2008) NWLR (Pt. 1089) 225
Vaswani v. Savalakh (1972) 12 sC 77
Williams v. Hope Rising Voluntary Funds Society (1982) NSCC 36
Y.S.G. Ltd. v. Okonkwo (2010) 15 NWLR (Pt. 1217) 524
Zakirai v. Muhammed (2011) 17 NWLR (Pt. 1594) 181

Nigerian Statute Referred to in the Ruling:

Evidence Act, S. 169

Nigerian Rules of Court Referred to in the Ruling:

Supreme Court Rules, O. 1 r. 2 and O. 8 rr. 5 & 6

Application:

This was an application for the variation of the earlier orders of the Supreme Court and for the relisting of the applicants' appeal. The Supreme Court, in a unanimous decision, dismissed the application.

History of the Case:

Supreme Court:

Names of Justices that sat on the application: Amina Adamu Augie, J.S.C. (*Presided*); Uwani Musa Aji, J.S.C.; Mohammed Lawal Garba, J.S.C.; Samuel Chukwudumebi Oseji, J.S.C. (*Read the Leading Ruling*);
Emmanuel Akomaye Agim, J.S.C.
Appeal No.: SC.69/2011
Date of Ruling: Friday, 21st May 2021

Counsel:

Yusuf Ali, SAN; Adebayo Obe Adelogun, SAN; Chief S. U. Akuma, SAN; K. K. Eleja, SAN and Prof. Wahab Egbewole, SAN (with them, Scholastic Offiah, Esq.) - *for the Appellants*

Dr. Eyimofe Atake, SAN (*with him*, Narier Ohwode, Esq. and O. O. Onogobi, Esq.) - *for the Respondent*

OSEJI, J.S.C. (Delivering the Leading Ruling): By a motion on notice filed in this court on the 7th day of August, 2020, the appellants/applicants herein prayed this court for the following orders:

1. An order of this honorable court varying its order made on the 5/5/2014 dismissing suit No. SC.69/201l: *Rev. (Dr) C.J.A. Uwemedimo & Anor v. Mobil Producing Nigeria Unlimited* as a bar to further proceedings to one dismissing or striking out suit No. SC.69/2011 with liberty on the part of the appellants/applicants to apply to this court for its restoration on its general cause list on showing good cause.
2. An order of this honourable court varying its order of 3rd May, 2019 dismissing the appellants' application to relist Appeal No. SC.69/2011: *Rev (Dr) C.J.A. Uwemedimo & Anor v. Mobil Producing Nigeria Unlimited* for want of exceptional circumstance for the relisting of the aforesaid Appeal No.

SC.69/2011 dismissed on 5th May, 2014 with liberty on the part of the appellants/applicants to apply to this court for its restoration on its general cause list on showing good cause.

3. An order of this court re-listing appeal No. SC.69/2011 dismissed on the 5/5/2014 in its general cause list for the purpose of hearing same on the merits.
4. An order of this honourable court for accelerated hearing in this case.
5. And for such further order or other orders as this honourable court may deem fit to make in the circumstance.

The grounds upon which the application was brought are as follows: -

(a) The appellants/applicants having lost their appeal at the Court of Appeal had on the 21/12/2009 appealed o against same to this court.

(b) The appellants/applicants approached Chief Olusegun Obasanjo to mediate in the subject matter of the appeal with a view to resolving the differences between the parties.

(c) Chief Olusegun Obasanjo accepted to mediate in the matter on condition that the instant appeal and any other pending matter in any court of law in relation to the subject matter of the appeal be withdrawn.

(d) In reliance of the assurance of Chief Olusegun Obasanjo to mediate in the matter, the appellant's applicants proceeded to file a notice of withdrawal of the appeal but on condition that it will proceed to prosecute same on the failure of the said mediation.

(e) When the notice of withdrawal was filed, it was never served on the respondent although the appellants/applicants undertook to do so.

(f) At the time the said notice of withdrawal was filed, the parties were yet to file and exchange their briefs of arguments with respect to both the substantive appeal and the cross-appeal.

(g) The respondent refused to participate in the said mediation initiated by Chief Olusegun Obasanjo.

(h) When this appeal came up on 5th May, 2014, the appellants counsel sought for adjournment. This court ruled that there is nothing to adjourn as this appeal has ceased to exist and dismissed same.

(i) When the appellants/applicants attempted to rec their appeal, the respondent on resisted same on the ground that it has been dice by this court on 5/5/2014.

(j) Before the attempts to resuscitate the appeal by way of motion to re-list same, the parties have filed d exchanged briefs of briefs of arguments with respect to the substantive appeal and the cross appeal.

(k) The respondent did not consent to the filing of the notice of withdrawal.

(l) This court is endowed with the requisite jurisdiction to vary its order of dismissal of appeal on the establishment of special circumstances and restore the appeal to the cause list to be determined on merit.

(m) Where parties are yet to file and exchange briefs of argument at the time an appeal is withdrawn is an exceptional circumstance to restore an appeal on the court's general cause list to be heard on the merits.

(n) On the 3/5/2019 when this court ruled that it has jurisdiction to hear the application for restoration of the appeal on its general cause list, it also held that the appellants did not show exceptional circumstance to restore the appeal dismissed on 5/5/2014.

(o) This application is brought in view of the decisions of this honourable court in plethora of authorities on this point.

The said application is supported by an 18 paragraph affidavit along with exhibits attached. Also filed in support of the application is a further and better affidavit, a further affidavit and a written address filed on the 18/8/2020, 22/2/2021 and 31/8/2020 respectively,

Reacting to the application, the respondent filed a court affidavit of 5 paragraphs with exhibits attached on the 17/2/2021, also filed is a written address on the 17/2/2021.

In the appellant/applicants written address filed on the 7/8/2020, the following sole issue was formulated for determination:

> "Whether the applicants have proffered before this court sufficient materials to be entitled to the exercise of the discretion of this court in their favour by varying its order of the 5th May 2014 and restoring the appeal dismissed on that day to the general cause list for the purpose of hearing same on the merits?

In the respondent's written address filed on 17/2/2021, three issues were formulated for determination as follows:

(i) Having regard to the dismissal of the applicants application dated the 17th October 2017 by this honourable court on the 3rd May 2019 based on similar contradictions, questions, facts and issues can the applicants maintain the instant application praying for the 7th time of asking that "exceptional circumstances exist within the context and meaning of Order 8 rule 8(4) of the Rules of this honourable court to restore an already dismissed appeal? Is it not a dreadfully gross, horridly repugnant, nauseating, detestable, abhorrent, imprudent and hideously revolting abuse of the process of this honourable court to rely on the same set of contradictions, questions, facts and issues for the 7th time of praying for the restoration of the already dismissed appeal? And/or putting it this way, is there no end and/or finality to litigation based on the dismissal of the applicant's application dated the 17th October 2017 by the Supreme Court of Nigeria, the highest court in the land?

(ii) The applicants having admitted in their affidavit in support of this application that the counsel acting for them filed the notice of withdrawal of their appeal and that they intentionally declined to serve the notice on the respondents, is it true that the order of dismissal of the appeal was inappropriately made?

(iii) Can the absence of the respondent's consent to the withdrawal of the applicant's appeal invalidate the notice of withdrawal filed by the applicants (as appellants)?"

Arguing on the aforestated sole issue, learned senior counsel for the appellants/applicants submitted that, given the reliefs that are adumbrated on the application the applicants have a duty to establish the entitlement by demonstrating that the application is worthy of sympathetic consideration from this court which will be by establishing exceptional circumstances that will warrant a restoration of the dismissed appeal to the cause list hearing on the merit. He added that what amounts to exceptional circumstances have not been denied by this court, but this has always proceeded to determine each case on the basis of facts placed before it and at the end resolve whether those facts are sufficient to persuade it to hold that they amounted to exceptional circumstances. On this he relied on the case of *Vaswani v. Savalakh* (1972) 12 SC 77; *Williams & Ors v. Hope Rising Voluntary Funds Society* (1982) NSCC 36 @39-40.

It was further submitted that the fact that the notice of withdrawal was neither signed/executed by the respondent and was not served on him shows that the notice of withdrawal upon which this court premised its decision to dismiss the appeal No. SC.69/2011 was an incompetent process and was without jurisdiction to dismiss the appeal. He relied on *Madukolu & Ors. v. Nkemdilim* (1962) 2 SCNLR 341. He added that on the face of the notice of withdrawal the conditions stipulated by the rules for the termination of an appeal under Order 8 rule 6 were not satisfied as these are conditions precedent which this court ought to be satisfied with before it can validly assume jurisdiction. Also relying on the case of *First Bank of (Nig) Plc v. T.S.A. Ind. Ltd*. (2010) 5 NWLR (Pt. 1216) 247 at 302, it was contended that where any court including the Supreme Court makes a null order, the party affected by the same order can approach the said court for the purpose of persuading that court to set aside its order especially where the court lacks jurisdiction to make an order as it has been shown in this case, and as such this court will not put a clog in the way of a party to challenge the order made without jurisdiction by having same set aside.

In reference to the proceedings of 5th May, 2014, it was argued that Prof. Anthony Ukam who executed the said notice of withdrawal was not the counsel for the appellants/applicants, but that the appellants/applicants were represented by one J.B.C. Onuigbo, who as the record established did not proceed to adopt the notice of withdrawal as the act of the appellants/applicant but instead prayed for an adjournment. He added that the fact the appellants/applicants' counsel did not want to go on with proceedings of 5th May, 2014 having been confronted with a notice of withdrawal, this court ought to have exercised its discretion in favour of granting the adjournment. He relied *Young Shall Grow Motors Ltd. v. Okonkwo* (2010) 15 NWLR (Pt. 1217) 524 at 550.

It was therefore urged on this court to reconsider its order of the 5th May 2014 in the light of facts and circumstances placed before it in other to validly exercise its equitable jurisdiction.

Respondent's Submission:

On issue 1, learned counsel for the respondent submitted that the substance of the applicants' instant application is substantially the same as that dated and filed on 17th October 2017 and the prayers in the instant application like in the application dated and filed on 17th October 2017 (respondents exhibit "S12"), are all aimed at one goal: the restoration of the

applicants' appeal dismissed by this court on 5th May 2014 and re-listing it in the general cause list to be heard on its merits. He added that the facts deposed to in paragraphs 2-20 of the further affidavit of Prof. Tony Ukam dated 11th January 2019 in support of the applicants' application dated and filed on 17th October 2017 (respondent's exhibit “S14”) contain similar contradictions, facts and issues to the similar contradictions, facts and issues deposed to by the deponent, Gerald Umunna Nwaneri in paragraphs 2, 6(a), 6(c), 6(d), 6(e), 6(f), 6(g), 6(h). 6(i), 6(j). 6(k). 6(l), 6(m), 6(n), 6(q) 7, 11, 13, 14 and 17 of the affidavit in support of the instant application of the applicants dated 5th August and filed on 7th August 2020.

It was further submitted that in the instant case, the notice of appeal was filed on 22nd December, 2009 while the notice of withdrawal of the appeal was filed by the applicants on 24th March, 2011, also the appeal was called up for hearing by this court on
May 2014, in other words, the notice of withdrawal was filed before the date the appeal was called up for hearing, meaning the notice of withdrawal is well within the period prescribed in Order 8 rule 6(1) of the Supreme Court Rules and as such the dismissal of the appeal on the basis of the notice of withdrawal of the appeal cannot be impugned by the applicants on the ground that: Briefs of argument were yet to be filed. Also, the issue of non-service of the notice of withdrawal before it was dismissed was addressed by this , per Olabode Rhodes-Vivour, JSC in this ruling particularly at page 22 lines 1-14 and page 23 lines 1-2.

It was also stated that the applicants appeal dismissed on 5th May 2014 and the application dated and filed on 17th October 2017 seeking to correct a clerical mistake or accidental slips decided in the ruling cannot be granted because this court had already decided on the subject matter of the applicants application dated and filed on 17th October, 2017 and as such this court lacks the jurisdiction to restore and/or relist the applicants appeal let alone granting and accelerated hearing of the dismissed appeal. He added that there is no reason whatsoever, to invite this court to review and/or reverse and/or set aside and/or nullify the dismissal or the applicants appeal well 2017. On this as the application dated and filed on 17th October 2017. On this, he relied on the case of *Chikere v. Okegbe* (2000) 12 NWLR (Pt. 681) page 274 at 295 para. B.

On issue 2, it was submitted that the applicants having withdrawn their appeal by a notice dated 17th March 2011 and filed on 24th March, 2011, the appeal so withdrawn is deemed to have been dismissed from the date of filing of the notice of withdrawal and of no

consequence that the respondents were not served with the notice of withdrawal. In support of this stance he cited the case of *Edozien v. Edozien* (1993) 1 NWLR (Pt.272) 678.

It was further submitted the relevant factor for determining whether an appeal has been withdrawn is whether a notice of withdrawal of the appeal has been filed by the person who has authority to so do which is, either the appellant himself or a counsel representing him in the appeal, who by virtue of Order 1 rule 2 of this court's rules is the appellant. He added that Prof. Tony Ukam was the appellant's counsel on record at the time and he filed the notice of withdrawal of the appeal in his capacity as applicants' counsel.

On principles of law, it was posited that under Order 8 rule 6(5) of the Supreme Court Rules, 1985 (as amended), the only Order that this court can make when an appeal is withdrawn, is that of dismissal especially where there are no provisions for an Order striking out the appeal under the said Order 8 rule 6(5) of the ruled of this court. He added that it is the Supreme Court Rules that apply and not the Court of Appeal Rules in so far as all the cases cited by the applicants on pages 4-19 of their written submissions related to the Court of Appeal Rules, they are irrelevant.

It was contended that the instant proceedings initiated by the applicant for this court to vary its order dated 5th May 2014 dismissing the appeal of the applicants and replacing the said order with that of striking out in order to afford the applicants the liberty to apply for its restoration to the general cause list of this court, is incompetent because having admitted that they filed the notice of withdrawal, their appeal is deemed dismissed forever.

On issue 3, learned counsel submitted that the applicants argument that because the respondents failed to consent to the withdrawal of the appeal, the notice of withdrawal did not comply with Order 8 rule 6(2) of the Rules of this court is baseless because the applicants unilaterally withdrew their appeal in accordance with Order 8 rule 6(1) of the Rules of this court. More so, that the notice of withdrawal was filed before the appeal was called on for hearing, the respondents consent was not required to make the notice effective. He added that all the arguments of the applicants in paragraphs 4.41-4.46 of the applicants' written address, go to no issue.

It was therefore urged on this court to bar the applicants from bringing any further application to restore the already dismissed appeal.

I have carefully read through the processes filed by the parties in this application.

What can be gleaned therefrom is that the following facts are not in dispute but rather represents the true state of events. To wit: -

(1) That the appellants/applicants had on 21/12/2009 filed a notice of appeal in this court.

(2) That the record of appeal was transmitted to this court on 10/2/2010.

(3) That on 24/3/2011, the appellants filed a notice of withdrawal of the appeal.

(4) That on 5/5/2014, this court, pursuant to the said notice of appeal filed on 24/3/2011 dismissed the appeal.

(5) That on 11/8/2014 the appellants/applicants filed a motion on notice to set aside the order of dismissal and relist the appeal in the cause list.

(6) That four similar applications to relist the said appeal in the cause list were struck out by this court.

(7) The on 3/5/2014 this court heard and dismissed another application filed by the appellants/ applicants on 17/11/2017 because no special circumstance was shown to restore the dismissed appeal on the cause list.

With above stated irrefutable facts duly noted, I shall proceed to consider the application on the basis of the sole issue couched for determination by the appellants/applicants in their written address.

That is to say: -

> "Whether the applicants have proffered before this court sufficient materials to be entitled to the exercise of the discretion of this court in their favour varying its order of the 5th May, 2014 and restoring the appeal dismissed on that day to the general cause list for the purpose of hearing same on the merits?

From the grounds for the application as proffered by the appellants/applicants as well as the facts deposed to in their supporting affidavit and further and better affidavit. It can safely be deduced that the application is premised on three major points, To wit -

(a) That the notice of withdrawal was filed, but it was not served on the respondent although the appellants/applicants undertook to do so.

(b) That the respondent did not consent to the filing of the notice of withdrawal and briefs of argument were not filed.

(c) That the application should be granted on the basis of special circumstances.

On the first point, learned senior counsel for the appellants' applicants submitted in Paragraphs 4.11 and 4.12 of the written address that -

> "In view of the fact that the notice of withdrawal was neither signed/executed by the respondent and was not served on it, it therefore follows that the notice of withdrawal upon which this court premised its decision to dismiss appeal No. SC.69/2011 was incompetent process, it is further submitted that on 5th May, 2014 when this Court proceeded to dismiss said appeal, It was without Jurisdiction to do so on authority of *Madukolu & Ors v. Nkemdilim* (1962) 2 SCNLR 341."

Simply put, the Kernel of the learned senior counsel's argument, is that the respondent was not served with the notice of withdrawal of the appeal, therefore this court lacked the jut to proceed with acting on the notice of withdrawal to dismiss the appeal because the conditions stipulated by Order 8 rule 6 of the Rules of this court were not satisfied.

Since the fact that there was no formal service of the notice on the respondent is not in dispute, the question which must be decided is whether the admitted failure to serve the respondent the notice of withdrawal gives the appellant the right to have decision of this court made on the 5th of May, 2014, dismissing the applicant's appeal; set aside.

Service is a pre-Condition to the exercise of jurisdiction by the Court. Where there is no service or there is a procedural fault in service, the subsequent proceedings are a nullity ab initio. This is based on the principle that a party should know or be aware that there are pending proceedings against him so that he can prepare a defence or take steps to participate in one way or another. If after service, he elects not to take part in the proceedings by filing any processes in response, the law will assume and rightly, too, that he either has no defence or no interest in the proceedings. But where a defendant is not aware of the pending proceedings because he was not served, the proceedings held outside him will be null and void. Thus, non-service of process on a party properly so-called will render proceedings on such unserved process, null and void. See *Tsokwa Motors (Nig.) Ltd v. U.B.A. Plc* (2008) LPELR-3266(SC); (2008) 2 NWLR (Pt. 1071) 347; *Eimskip Ltd. v. Exquisite Ind (Nig) Ltd.* (2003) LPELR-1058(SC); (2003) 4 NWLR (PL. 809) 88.

In my opinion, which I believe is based on the settled position of the law, it is beyond question that failure to serve process where Service of process is required goes to the root of

our conceptions on ne proper procedure in litigation. Apart from *ex parte* proceedings, the idea that an order can validly be made against a man who has had no notification of any intention of the hearing of proceedings goes against the grain of justice and fair play, unless he submits to the court's jurisdiction.

The question arising in the instant appeal is whether the applicants, who failed to serve the notice of withdrawal on the respondent, despite undertaking to do so, had any business objecting in first place? The respondent did not object or complain; but rather
Submitted to the jurisdiction of this court, and kept quiet. It is the appellants/applicants, who failed to effect service of the of withdrawal on the respondent that took on the challenge. Are they right to do so? I will answer in the negative. It does not, therefore, lie in the mouth of the appellants to complain on the respondent behalf. Having taken part in the proceedings leading to the dismissal of the appeal, the respondent is deemed to have submitted to this court's jurisdiction and waived its right to service. See *Zakirai v. Muhammad & Ors* (2017) LPELR 42349 (SC); (2017) 17 NWLR (Pt. 1594) 181; *Ariori & Ors v. Elemo* (1983) LPELR 552 SC; (1983) 1 SCNLR 1; *Fayemi & Anor v. Oni & Ors* (2010) LPELR-4145(SC); (2010) 17 NWLR (Pt. 1222) 326.

Interestingly, this issue was raised in the penultimate application filed by the appellants and in a ruling delivered by this court on 3/5/2019, it was held per Rhodes-Vivour JSC as follows -

> "Learned counsel for the respondent was aware that the appellants did not serve him or his client with the notice of withdrawal of the appeal. By takıng part in the proceedings or never complaining about non-service of the process on him amounts to an unequivocal act adopting or recognizing the omission to serve him. By learned counsel for respondent's words and conduct he waived service".

The above set out decision of this court on the issue of non-service of the notice of withdrawal on the respondent remains sacrosanct and subsisting. It is binding on this court and being the final court in the judicial hierarchy of this country, it is not subject to a further appeal.

The Supreme Court does not sit on appeal over its own decision because it generally enjoys the finality of same. See *Amalgamated Trustees Ltd. v. Associated Discount Houses Ltd.* (2007) 7 SCNJ 419; (2007) 15 NWLR (Pt. 1056) 118; *Cardoso v. Daniel & Ors* (1986) 1

NSCC 387; (1986) 2 NWLR (Pt. 20) 1; Also in *Prince Yahaya Adigun & Ors v. Attorney General of Oyo State & Ors* (1984) 4 SC 272, it was held that the decision of the Supreme Court is final. Final in the sense of real finality in so far as the particular case before the court is concerned. It is final forever except there is a legislation to the contrary, and it has to be a legislation *ad hominem.*

To my mind therefore, for the learned senior counsel for the appellants/applicants to raise the same issue already resolved and decided upon by this court in a similar application amounts to a slap on the face of this court and undermines it's integrity and sacredness as the final court of the land.

Howbeit, and for purposes of posterity. I shall address the issue for whatever it is worth. The learned senior counsel for the appellants/applicants had argued that, having regard to the fact that they did not serve the notice of withdrawal on the respondent, or that there is no proof of service of same, this court therefore lacks the jurisdiction to consider the said notice of withdrawal based on which it dismissed the appeal on 5/5/2014.

The simple and Straight forward answer to this contention is that the proper party to raise the issue of non service is the respondent and definitely not the appellants/applicants and having not so done, they cannot be given the luxury of crying more than the bereaved. In this regard, I find support in the decision of this this court in *Chime & Ors v. Chime & Ors* (2001) 3 NWLR (Pt.701) 527 or (2001) 1 SC (Pt. I) Pg. 1, wherein it was held thus -

> "The Court of Appeal was perfectly right when it stated this in the lead judgment - The application for nullification of such proceeding would beat the instance of the defendant against whom an order is made without prior notification of proceedings in which the order was made. For the simple reason that a condition precedent for the exercise of the court's jurisdiction in making the order has not been fulfilled. I am therefore clearly of the opinion that for a party to a suit to apply for the proceedings to be nullified by reason of failure of service, where such service is a requirement, it must sufficiently be established that he or she has not been served in respect of the proceedings and that the order made therein affects him.
>
> *It is not in my view open to every party in a proceedings to make such an officious complaint. If such complaint is sustainable, it will yield startling*

> *results. Thus an aggrieved plaintiff, as in the instant appeal, would be enabled to appeal against a judgment against him on the technical ground that a party to the proceedings has not Serve some process*.
>
> (Italics for emphasis)

See also *Amale v. Sokoto Local Government* (2012) 5 NWLR (Pt. 1292) 181 at 202, where it was held that, the issue of fair hearing is personal to the party concerned and cannot be complained about by another party.

Thus, in the instant case the appellants/applicants cannot complain about the right of the respondent to be served when the respondent on it's own has not in any way complained about non-service of the notice of withdrawal or any breach of right to fair hearing. In the circumstance the complaint that this court does not have the jurisdiction to entertain the notice of withdrawal and make the order of dismissal of the appeal on 5/5/2014 does not arise at all given that the party entitled to raise dust over the issue of non-service of the process did not do so before this court. By taking part in the proceedings without any complaint about non-service of the process on him, it amounts to an unequivocal act recognizing the omission to serve him but opts to waive the issue of service. It therefore does not behave the appellants to complain about non- service.

On the complaint that the respondent did not consent to the notice of withdrawal and parties were yet to file their briefs of argument by virtue of Order 8 rule 6 (2) of the Rules of this court.

Interestingly, a perusal of the similar application filed by the appellants/applicants on 17/10/2017 reveal that similar issue was canvassed in their written address. In a ruling of this court delivered on 3/5/2019, it was found that the complaint lacks substance and was accordingly discountenanced as shown at pages 15 to 19 thereof and it is here below set out:

> Now, Order 8 rule 6(1) of the Supreme Court Rules states that:
>
> (i) An appellant may at any time before the appeal is called on for hearing serve on the parties to the appeal and file with the Registrar a notice to the effect that he does not intend further to prosecute the appeal."
>
> The following conditions must co-exist before Order 8 rule 6(1) is applicable.
>
> (a) There must be an appeal by the appellant.

(b) There must be a withdrawal of the appeal in the words of Form 19, 20 or such words indicating that there is no intention further to prosecute the appeal.

(c) The withdrawal may be made at any time before the appeal is called on for hearing.

(d) The notice of withdrawal must be served on the parties to the appeal.

(e) The notice of withdrawal must be filed.

On (a) there 1s an appeal by the appellant. It is SC.69/2011.

On (b) there was a withdrawal of the appeal in the words of Form 19, 20 indicating that there is no intention further to prosecute the appeal. The notice of withdrawal on which this appeal was dismissed on 5th May, 2014 was filed in this court on 24th March 2011 and brought under Order 8 rule 6 of the Supreme Court Rules

It reads:

Notice of Withdrawal

Take Notice that pursuant to Order 8 rules 6 of the Supreme Court Rules; the appellants' do not intend to prosecute this appeal any further.

Dated this 17th day of March, 2011

Signed.

Dr Tony Ukam

Learned counsel for the appellants

On (c) at any time before the appeal is called for hearing in Order 8 rule 6(1) of the Supreme Court Rules Covers the period when the appeal is entered but before it is called for hearing".

An appellant who desires to withdraw his appeal may at any time before his appeal is called for hearing unilaterally give a notice of withdrawal, that he does not intend to further prosecute the appeal, and that is what the appellants learned counsel did by filing on 24th March, 2011.

On (d) The respondent was not served with the notice of withdrawal.

> On (e) The notice of withdrawal was paid for and filed in the Supreme Court Registry on 24th March, 2011 at 10.05 a.m. See exhibit "S12". It is clear that there was strict compliance with (a), (b), (c) and (e)."

The above set out portion of the ruling of this court says it all as per the implication of filing a notice of withdrawal pursuant to Order 8 rule 6 (1)) of the Supreme Court Rules 1985, under which the appellants/applicants filed their notice of withdrawal. The said Rule 6 1) does not require the consent of the respondent nor the filing of briefs of argument as canvassed by the learned senior counsel for the appellants/applicants, as rightly stated in the ruling. A distinction must therefore be drawn between a notice of withdrawal filed pursuant to Order 8 rule 6(1) and rule 6 (2). While Rule 6(1) envisage or applies to a situation where an appellant seeks to withdraw his appeal before it is called up for hearing, that is to say, before the filing and exchange of briefs of argument by the parties. Rule 6(2) comes into play where an appellant seeks to withdraw the appeal after parties have filed and exchanged brief of argument and the appeal ripe for hearing.

In that case, the consent of the respondent may be require for the withdrawal of the appeal without the order of court. On that premise, the appeal is deemed to have been withdrawn once the notice of withdrawal is filed in the Registry of this court and shall be struck out of the list of appeals by the court.

The notice of withdrawal as filed by the appellants/applicants falls under rule 6(1)) by its wording and intent. Therefore, the complaint that the respondent did not consent to it or that the parties were yet to file their briefs of argument lacks substance.

I must further emphasize, that the issue having been addressed by this court in it's ruling delivered on 3/5/2019, the appellants applicants are caught by issue estoppel in which case they are estopped from revisiting it again in this application. See *Fadiora v. Gbadebo* (1978) 3 SC 219; *Okafor Adone v. Ozo Gabriel Ikebudu & Ors* (2001) 14 NWLR (Pt. 733) 385.

Once an issue has been raised in a case and it is determined between the parties, the same issue cannot be raised again by either of the parties in the same or subsequent proceedings. See also *Ladegha v. Durosimi* (1978) 3 SC 82; *Bamisebi v. Faleye* (1987) 2 NWLR (Pt. 54) 57.

On the ground that the application should be granted based on special circumstances.

This court in its ruling delivered on 3/5/2019, based a similar application with the same facts and circumstances, filed on 17/10/2017 dealt decisively on the issue whether the said application established exceptional circumstances to warrant the grant of the application to relist the appeal wherein it Was held at pages 27 to 31 thereof as follows:-

> "Exceptional circumstances simply means that the applicant shows sufficient and good cause why the appeal should be restored. It is only then that the court, if satisfied would exercise its discretion to restore the appeal that was withdrawn and dismissed on terms as to costs. According to Mr. P. Erokoro SAN this application to restore the appeal to the cause list became necessary as a result, of the hardship being suffered by the appellants' who had acted in good faith when they filed the notice of withdrawal of the appeal in the hope of reaching an amicable settlement, having been persuaded by the former President and by the respondent's letter that had implied a willingness to settle if the appeal is withdrawn. No exceptional circumstances has been shown in this case and so no indulgence can be given. This court has jurisdiction to revive and restore to the cause list appeal No: 69/2001 dismissed by this court on 5th May, 2014. If exceptional Circumstances are shown. Reasons given by counsel for filing a counsel for filing a notice of withdrawal does not make any notice positive impression on the court. When counsel files a notice of withdrawal which clearly states:
>
> > "Take Notice that pursuant to Order 8 rule 6 of the Supreme Court Rule, the appellants do not intend to prosecute this appeal any further"
>
> It can only mean what it says and that is that the appellants do not intend to prosecute the appeal. It is not the business of this court to find out why the appellants filed a notice of withdrawal. The reason for withdrawing the appeal is clear on the face of the process. No exceptional circumstance has been presented before this court to justify a reversal of the order of dismissal rendered on 5th May, 2014.
>
> In *Oyeyemi v. Owoeye* (2017) 12 NWLR (Pt. 1580) p.364.
>
> The 1st respondent did not waive service. He contested the validity of the notice of withdrawal of the appeal, because it was not served on him. Non-service was

an issue. In this appeal, service was waived by the respondent, so it was no longer by mandatory as in the *Oyeyemi v. Owoeye* case. Withdrawing an appeal in the belief that would show sincerity in settlement is not a good explanation or a good cause to justify the act. It shows lack of experience. An appeal is withdrawn after parties have been able to settle, not before. Withdrawing the appeal in the way in which it was withdrawn is a clear indication that the appellants' did not want to continue with the appeal. It remains dead for all time."

The facts deposed to in the affidavit and further affidavit in support of the application filed on 17/10/2017 and the arguments canvassed in the written address filed there with are not dissimilar with those filed in the present application. The grounds for the two applications are also not strange to one another. This court in its ruling delivered on 3/5/209 held that the appellants/applicant did not disclose any special circumstance to warrant the grant of the application to relist the appeal. I have searched for and did not see any new facts or set of facts to upstage or sideline the well-considered ruling of this court to the effect that no special or exceptional circumstances has been shown in the application to justify the exercise of the courts discretion in favour of the appellants/applicants. As earlier stated in this ruling, this court does not and cannot sit on appeal over its earlier decision as a matter of course. See *Cardoso v. Daniel* (supra).

This court respects its previous decisions as a court of last resort which is not bound by precedents, though it will however not hesitate to over rule any decision of its own which it is satisfied was reached *per incuriam* or on wrong principles if invited to do so. As was held in *Bakare v. Lagos State Civil Service Commission* (1992) 10 SCNJ 173; (1992) 8 NWLR (Pt. 262) 641. It is essential for the certainty of the law that this court follows it's previous decision. But as a court of ultimate resort, it need not do so when the interest of justice dictates otherwise. It will therefore not hold itself hamstrung by precedent. In other words, this court can only change it's position in a case decided earlier by it where it considers for good and substantial reasons to overrule itself on an application where the need arises. See *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) NSCC 226; (1983) 1 SCNLR 296; *Rossek v. AfricanContinental Bank Ltd*. (1993) 10 SCNJ 36; (1993) 8 NWLR (Pt. 312) 382; *Adegoke Motors v. Adesanya* (1989) 5 SC 113; (1989) 3 NWLR (Pt. 109) 250.

Nonetheless, I must re-emphasise the finality of the decision of this court once it is pronounced and not to be taken for granted.

What is more, in an attempt to appeal to the sentiment, or sway the mind of this court, learned senior counsel for the appellants/applicants submitted in paragraph 4.20 and 4.22 of their written & address as follows-

> It was deposed that the notice of withdrawal was filed on the condition stipulated by Chief Olusegun Obasanjo that he can only agree to preside over the proposed out of court settlement if and when all pending suits and appeals relating to the scope of his remit as a mediator were withdrawn from all courts of law whether within this country or outside. The applicants complied with that instructions by filing the said notice of withdrawal also on the condition that if the proposed out of court settlement fails they will come back to this court to continue with the prosecution of their appeal. Although it can be argued here that it is quite improper for a counsel to proceed to file a notice of withdrawal of an appeal when the parties are yet to proceed on an out of court settlement or where they are yet to agree on terms of settlement as it is the role of counsel to file that notice only after the agreed terms are drawn up in a memorandum of settlement, but it is submitted that this court possess the requisite inherent powers to correct the mistakes of counsel that occurred as a result of inexperience and proceed to do substantial justice to the parties. See the case of *Musa Sha (Jnr.) & Anor v. Da Rap Kwan & ors*. (2000) 8 NWLR (Pt. 670) 685 at 708, where it was held per Ogwuegbu, JSC that:
>
> > "It is a fundamental function of court to do justice pursuit of due and proper administration of justice. It cannot close its eyes obvious errors committed by counsel as a result inexperience or ignorance where such error can lead to Injustice if left uncorrected. So long as it will not lead to injustice to the opposite side."
>
> See also: *Akpan v. The State* (1992) 7 SCMR 67 at 90- 91:(1992) 6 NWLR (Pt. 248)439 when the out of court settlement failed and they attempted to continue with the prosecution of the appeal, they were confronted with the notice of withdrawal for which their new counsel sought for an adjournment and the

> foregoing and the facts were not before this court at the time it proceeded to dismiss the said appeal. It is submitted that if these facts were before this court on the 5th May, 2014, it could have persuaded it to find whether the notice of withdrawal was the unequivocal decision of the Applicants to terminate the appeal or only a condition for it to genuinely explore an out of court settlement of their differences with the respondent."

This same point was argued in the earlier application filed on 17/10/2017 and decided upon by this court in a ruling delivered on 3/5/2019. Further at pages 3 to 6 of the concurring ruling by Ejembi Eko, JSC, It was held as follows:

> "The posturing of the appellants/applicants that Prof. Tony Ukam, who settled both the notice of appeal and the notice of withdrawal, withdrew the appeal in error and or without authority or instruction is rather hard to believe, even if it is not preposterous. It is trite that the general authority counsel, retained in a matter before the court, has, in relation to or as regards the matter includes the authority to compromise. In any case the contention of the appellants/applicants that Prof. Tony Ukam had no instruction to withdraw the appeal was rendered nugatory by the further averment that the notice to withdraw was to pave way for an out of court settlement. In other words, the appeal tactically withdrawn. The appellants/applicants who are seeking an equitable remedy by this application cannot get the court to exercise its discretion in their favour by this unwholesome and manifest contradiction that smacks of an attempt to mislead the court. Mr. Paul Erokoro, SAN, submitted that the appellants acted in good la when they filed the notice of withdrawal. What that means is that they intended that this court, through its registry, and the respondent should not take the notice of withdrawal as a frivolous or flippant act or action.
>
> In other words, they intended that all concerned should take them to be serious in that move. Fair enough. That brings estoppel by conduct under Section 169 of the Evidence Act that provides –
>
>> "When one person has, either by virtue of an existing court judgment, deed or agreement, or by his declaration, act or omission, intentionally

caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceeding between himself and such person or such person's representative in interest, to deny the truth of that things."

Another angle to this contention of the senior counsel on behalf of the appellants is the rule that enjoins a party to be consistent. He is not allowed to be inconsistent, or to approbate and reprobate on anyone issue."

Once again, from the above set out ruling of this court delivered on 3/5/2019, the issues sought by the appellants/applicants to be revisited have been adequately considered and ruled upon by this court as it affect the same parties in the same matter. Thus, they are estopped from raising the same issues again on the same sets of fact for which it was held that no exceptional circumstances have been shown to warrant the grant of the application. The decision of this court as set out in the ruling delivered on 3/5/2019 remains final and sacrosanct. It cannot be re-opened a second time in the absence of any justifiable reason.

Albeit, and as a final death knell on this application, having stated earlier in this ruling that the issue of lack of jurisdiction does not arise based on the fact that the respondent waived its right or did not complain about non service of the notice of withdrawal on t and that consent to a withdrawal by the respondent or filing of briefs of argument are not prerequisites to a notice or withdrawal under Order 8 rule 6(1) of the Rules of this Court. I therefore hold again and again that no exceptional circumstances have been shown by the appellants/ applicants to warrant or justify the grant of the prayers sought in the application.

Consequently, this application is refused and it is hereby dismissed on a note of finality.

A cost of N500,000.00 is awarded in favour of the respondent and it is to be paid personally by counsel for the appellants/ applicants.

AUGIE, J.S.C.: I had a preview of the lead ruling delivered learned brother, Oseji, JSC, and I agree with him that applicants have not shown exceptional circumstances to Justify granting this application, which they have filed for the umpteenth time.

As my learned brother pointed out, the decision of this in its ruling of 3/5/2019, is final; it cannot be re-opened without justifiable reasons to so do.

Thus, I also refuse this application. The application is dismissed. I abide by the consequential orders in the lead ruling, including the order as to costs.

ABBA AJI, J.S.C.: By a motion on notice filed before this court on 7/8/2020 with the grounds stated therein, the appellants/applicants prayed this court for:

1. An order of this honourable court varying its order made D on the 5/5/2014 dismissing suit No. SC.69/2011: *Rev (Dr) C.J.A. Uwemedimo & Anor v. Mobil Producing Nigeria Unlimited* as a bar to further proceedings to one dismissing or striking out Suit No. SC.69/2011 with liberty on the part of the appellants/applicants to apply to this court for its restoration on its general cause list on showing good cause.

2. An order of this honourable court varying its order of 3rd May, 2019 dismissing the appellants application to relist Appeal No. SC 69/2011: *Rev (Dr) C.JA. Uwemedimo & Anor v. Mobil Producing Nigeria Unlimited* for want of exceptional circumstance tor the relisting of the aforesaid appeal No. SC 69/2011 dismissed on 5th May, 2014 with liberty on the part of the appellants/applicants to apply to this court for its restoration on its general cause list on showing good cause.

3. An order of this court re-listing appeal No. SC.69/2011 dismissed on the 5/5/2014 in its general cause list for the purpose of hearing same on the merits.

This court on 5/5/2014 considered the application for the withdrawal of this appeal and dismissed same on the merit based on the facts therein. However, the appellant/applicant has now approached this same court to relist same.

Although cases must be considered on their peculiar circumstances and merit, the grounds for the withdrawal and what constituted proper withdrawal have been well considered by my learned brother. By the facts and circumstances in this appeal, there was a proper withdrawal with consent of the parties that led this court that hitherto entertained the application for withdrawal to consider the said withdrawal as on the merit to dismiss the appeal. In this instance, it cannot be relisted by this court.

Where there is a withdrawal of the appeal, it can safely be said that the resultant position is as if there was never an appeal filed by the appellant. Under Order 8 rule 5 of the Supreme Court Rules 1985 (as amended), an appeal which has been withdrawn shall be deemed to have been dismissed. See Per Mohammed, J.S.C, in *Akuneziri v. Okenwa & Ors* (2000) LPELR- 393(SC) (P. 10, paras. E-F); (2000) 15 NWLR (Pt. 691) 526.

I, in the same manner refuse this application and it is hereby dismissed. I also endorse the order as to costs.

GARBA, J.S.C.: After reading a draft of the leading ruling by my learned brother, S.C. Oseji, JSC, in this application, I am in complete agreement with him that the application deserves to be dismissed for being in gross abuse of the court process in view of the peculiar facts and in the circumstances disclosed in the affidavit evidence placed before the court by the parties. Although admittedly incapable of precise definition for all purposes, because it may involve and arise from an infinite variety of facts and circumstances, abuse of Court process always involves and arises in the improper use of the processes of a court by a party to the irritation and annoyance of the opponent for being not only vexatious, but oppressive. It always involves some deliberateness or desire to misuse or perverts the cause of justice by, for instance, filing a multiplicity of actions or applications (as in this case) against the same parties and over the same issues or subject matter, either before a same court or different courts. The abuse is more serious when issues between the same parties in a matter or applications have been completely, effectively and finally decided and determined by the final court in the land and parties seek to endlessly taunt the court to revisit or review such issues in the absence of any new or fresh facts and circumstances which are material to warrant and justify such a step by the court. See *Onyeabuchi v. INEC* (2002) 8 NWLR (Pt. 769) 417 at 443; *Umeh v. Iwu* (2008) 8 NWLR (Pt. 1089) 225; (2006
MJSC 175; *I.N. M.B. Ltd. v. U.B.N. Plc* (2004) 12 NWLR (Pt. 888) 599; *Dingyadi v. INEC* (No. 2) (2010) 18 NWLR (Pt. 1224) 154; *Ogboru v. Uduaghan* (2011) 12 MJSC (Pt. I) 30; (2013) 13 NWLR (Pt. 1370) 33; *R-Benkay (Nig) Ltd. v. Cadbury (Nig) Plc* (2012) 33 MJSC (Pt. I) 185; (2012) 9 NWLR (Pt. 1306) 596.

I join in dismissing the application in the terms set out in the leading ruling.

AGIM, J.S.C.: I had a preview of the draft judgment of my learned brother, Lord Justice Samuel Chukwudumebi Oseji, JSC. I completely agree with the reasoning, conclusion, decisions, and orders therein.

Application dismissed.