

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

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Abstract : The study set out to examine the grounds upon which the Supreme Court of Nigeria is being asked to review a judgment it gave on January 14, 2020 in respect to case *Ihedioha Vs. Uzodinma*. In a watershed judgment the Supreme Court nullified the electoral victory of Governor Emeka Ihedioha of Imo mandating that the Independent National Electoral Commission issue a certificate of return to Senator Hope Uzodinma who came fourth in the polls at the rightful winner of the electoral bout on some technical incoherencies that characterized the conduct of the election. Rightly, so Ihedioha approached the apex court praying it reverse its decision. Upon review of relevant cases and sections of the Constitution of Federal Republic of Nigeria 1999 as amended, it was observed that while the apex court has sometimes in the past reviewed its own ruling, there were no specific provision which gives the Supreme Court power to set aside its obviously bad judgement in *Uzodinma & Anor. v. Ihedioha & 2 Ors* that the Court cannot set it aside is necessarily flawed. The Court retains such power under its inherent powers. It is not given by the 1999 Constitution. It is inherent in it. It is, however, recognized under section 6(6) of the said Constitution which affirms that it cannot be taken away.

Keywords: Supreme Court, Ihedioha, Uzodinma, Imo State Gubernatorial Elections and Independent National Electoral Commission.

I. INTRODUCTION

My simple answer is that it is not part of the jurisdiction or duties of this Court to go on looking for imaginary conflicts. We are final not because we are infallible; rather we are infallible because we are final". Hon. Justice Chukwudifu Akunne Oputa, J.S.C. The above notable and profound pronouncement forms part of the *ipsissimaverba* of My Lord, the Hon. Justice Chukwudifu Akunne Oputa, Justice of the Supreme Court of Nigeria, of blessed and remarkable memory when he delivered the leading judgment (to which Obaseki, Nnamani, Karibi-Whyte and Agbaje, JJSC all agreed) on Friday 19th day of May, 1989 (Omodion, 1989). The above state reinstates the supremacy and finality of the apex court not on the basis of infallibilities of its distinguished judges but on the basis of constitutional pronouncements.

Created by Section 230 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the court has the status of the "apex court of the land." The Constitution of the Federal Republic of Nigeria is the 'ground norm' and is *fons et origo* the democratic Nigerian federation. For every democratic federation the supremacy of the constitution and independence of judiciary are very fundamental. The Supreme Court being the biggest watchdog of the judicial and constitutional processes is the most important institution in safe-guarding Nigeria's democracy and ensuring the supremacy of the rule of law. Therefore undermining its finality is to jettison the sole purpose of rule of law and constitutionality. Before making an attempt to discuss the issues embedded in the question whether or not the Supreme Court can or should review or reverse itself, it is important to explain in a nutshell, the scope and intentment of the subject matter and strength of the argument advanced by both positions.

Resultantly, this paper seeks to discuss the legality of Supreme Court's powers to entertain application for review of its own decisions of January 14, 2020 which set aside the judgment of the Court of Appeal which had affirmed that of the Governorship Election Tribunal that sat in Owerri, Imo State. In its judgment, the Supreme Court set aside the victory of Rt. Honorable Emeka Ihedioha as the winner of the 9th March 2019 governorship election in Imo State, ordered the Independent National Electoral Commission to issue Senator Hope Uzodinma a certificate of return and that he be sworn in as substantive Governor of Imo State accordingly. Although, Emeka Ihedioha has since filed an application before the apex court, praying it reviews and possibly set aside its judgment of 14th January 2020 on five grounds contained in the application. It is now public knowledge that the Supreme Court has set February 18, 2020 for hearing of the application; it is worthy to note that Supreme Court has been known for its finality as earlier highlighted.

II. OBJECTIVES OF THE STUDY

On the strength of the foregoing, let it be registered here that this paper will consequently analyze the rationale and

philosophy behind the ruling of the Supreme Court and the rules that informed her decision thereto. The paper will begin with a background review of the grounds for appeal, closely followed by the foundation of legal practice in Nigeria. The issues as it were and it is to be examined clinically in this paper are; whether the supreme court of Nigeria is allowed by her rules of practice, actual practice and the law to overrule or upturn her judgment in the light of the present case or otherwise, and whether it will allow itself to be persuaded by the raging public opinion and the need to be at per with the thinking of the generality or majority of the masses. This is done to in amongst others highlight the public frenzy towards the case and to most significantly highlight the law and philosophy that guides the court in entertaining applications of this nature.

Grounds for Appeal

While the application of *Ihedioha* may be dismissed on face-value, it is not particularly out of place, taking into consideration the supreme court of Nigeria has reversed its judgment in an electoral matter, in barrister *Oriker Jev & Ors. v. Iyortom & Ors.* [2015] NWLR (Pt. 1483) 484, interestingly an electoral matter, the Supreme Court had in an earlier judgment ordered that INEC conduct run-off election in the case. Subsequently, the Court discovered that it made the said order based on a wrong interpretation of Section 133(2) in conjunction with Section 141 of the Electoral Act 2010 (as amended). On a post-judgment application by one of the parties, the Court set aside the earlier order. It instead ordered INEC to issue the Applicant a certificate of return.

Although, The Court further held: that there is no constitutional provision for the Supreme Court to review its judgment as section 235 of the Constitution gives a stamp of finality to any decision of the Supreme Court (Constitution of the Federal Republic of Nigeria, 1999). That there is, however, as the Supreme Court has decided in other instances, an inherent power to set aside its judgment in appropriate or deserving cases but that such inherent jurisdiction cannot be converted into an appellate jurisdiction as though the matter before it is another appeal intended to afford the losing litigants yet another opportunity to restate or re-argue their appeal.

Similarly the case of *Olorunfemiv Asho* (Suit No. SC. 13/1999), which has been trending since the recent Supreme Court judgment in *Uzodinma v. Ihedioha* presents some particularly interesting aspects similar to the *Uzodinma* case. In that unreported case, a ruling, the Supreme Court is said to have in its unreported ruling dated 18-3-99 set aside its judgment delivered on 8-1-99 (reported in *Olorunfemi v. Asho* [2000] 2 NWLR (Pt. 643) 143) on the ground that it failed to consider the respondent's cross-appeal before allowing the appellant's appeal. It ordered that the appeal be heard *de novo* by another panel of justices of the Court.

It is therefore evidently clear that where the ground exists, Supreme Courts of basically all jurisdictions will not shy

away from setting aside their judgments or orders and substituting them with others. The ultimate end is justice, not the prestige of the court. Suffice to add that the substantive judgment of the supreme court of Nigeria delivered earlier in January, 2020 remain a watershed in the legal history of this country in the sense that it generated a lot of debate among the citizenry, both within the legal profession and otherwise. For this study, widespread outcry could be in part attributed to is borne out of the fact that a larger section of the citizenry felt greatly disenchanted on the account of the return of a candidate who came a distant fourth in an election and felt that the judgment was procured by means of some outrageous technical rules.

Background to Legal Practice in Nigeria

Legal practice in Nigeria made up of the bar and the bench in the administration of justice, developed from and has since followed English legal practice. The principle of *stare decisis*, that is, the legal principle of determining points in litigation according to precedent, has impacted much of the law everywhere in the world, but nowhere has it had as much impact as in English law and practice which Nigeria inherited (Ibrahim, 2016).

III. REVIEW OF PRIOR JUDGMENTS

The task before the supreme court is huge and challenging, her rules demands a preservation of her sanctity and integrity while public opinion demands the reversal of the judgment, it is the exercise of the powers of the court, the manifestation of depth, courage and strength by the court that is called to question herein. Incidentally, this paper is coming at a time after the decision of the supreme court but expectedly, my position and thinking accords absolutely with the ruling of the supreme court on the application that same did not fall under the permitted exceptions where her decision can be reversed and that the application lacked merit in its entirety.

From the chronicles of the Supreme Court of Nigeria, it is on record that decisions of the Supreme Court have always been held to be final and irreversible. In 1967 the Supreme Court in the case of *Ashinyanbi Vs. Adeniji* (1967) 1 All N.L.R. 82 while relying on the provisions of Order 6 Rule 29 of the Federal Supreme Court Rules stated the law that generally, the Supreme Court cannot review its own Judgment once delivered. *Solomon U, March, 2020, pg 4.* In *Macarthy Vs. Agard* (1883) 2 K.B. 417 the position of the law was that the Supreme Court cannot, whether in the exercise of its inherent jurisdiction or by the powers conferred on it by the rules of Court vary a Judgment or Order which correctly represents what the Court decided, nor will it vary the operative and substantive part of its Judgment so as to substitute a different form. It is to be noted that the law forbidding the Supreme Court from entertaining application for review of its Judgment, for long received constitutional endorsement. By Section 120 of the Constitution of the Federal Republic of Nigeria, 1963, it was the law that no appeal could lie from the Supreme Court of Nigeria to any other body or authority

except where the power of prerogative of mercy was exercised in Criminal matters. This position of the law remained applicable through the 1970s.

In *Akin-Olugbade & Ors Vs On igbongbo Community & Ors* (1974) 6 S.C. 1 the Supreme Court was of a firm view that no application can be entertained by the Supreme Court to review any fact or law in its previous Judgment. Therefore, any power given to the Court to entertain such application would have been tantamount to considering the application as an appeal. When such a procedure was allowed, it would have violated the provisions of Section 120 of the 1963 Constitution. It will therefore, be safe and correct to say that the principle of finality of the Supreme Court's Judgment has been a time-honored one. And Nigeria's Legal System considers it as sacrosanct. In *Akinbade Vs. Onigbongbo* (Supra) the Supreme Court had this to say: "...for, were we are to accept the submission of counsel for the applicants about the law or the facts in the Judgment being attacked, there would be no finality about any Judgment of this Court and every dis-affected litigant could bring further appeals as it were ad infinitum. That is the situation that must not be permitted".

Again, the Supreme Court's finality rule was further enshrined in the 1979 Constitution vide Section 215 thereof. It provided that the Supreme Court had no power to allow any appeal to anybody or authority against the decision of the Supreme Court. This general rule has added a significant point when it was held that appellate jurisdiction is entirely statutory. Thus, in the absence of any provision of statute allowing a party to a suit or case to seek as a matter of course for review of the Supreme Court's decision, it could be rightly concluded that such a review is illegal and has no basis in law except in deserving circumstances. Furthermore, in *Adigun & Ors. Vs. A.G. Oyo State & Ors (No.2)* (1987) LPELR-40648 (SC) the Supreme Court held as follows:

it is well settled that appellate jurisdiction is entirely statutory... and there is no constitutional provision enabling appeal from our decisions, accordingly ANY (emphasis mine) question of reopening the decision of this Court for further consideration does not arise (Onoja, 2000, p. 69)

It further states thus: the Judgment having been delivered in this Court, it is *functus officio* except for certain purposes not concerned with the substance of the Judgment" (Onoja, 2000).

There is no gainsaying that the law has long been settled that generally the decisions of the Supreme Court in Civil matters or suit are absolutely final except set aside by a subsequent legislation. In *Adigun & Ors Vs. Governor of Osun State & Ors* (1995) LPELR-178 (SC) Per Uwais JSC (as he then was) alluded to this settled law in the following words. The Justices that man the Court are of course fallible but their Judgments are, as the constitution intends, infallible. Therefore any ingenious attempt by counsel to set aside or circumvent the

decision of the Supreme Court will be met with stiff resistance¹.

It is important to point out here that the rule prohibiting reversal of the decision of the Supreme Court is applicable only to the extent that the application for the reversal or varying seeks to alter the law or facts as they affect the rights of a party or parties in the same Judgment. In other words, where the application is sought to vary the substantive part of the Judgment, the law prohibits granting any prayer vide such application. There are however, certain exceptions to the foregoing rules and principles. The exceptions to the general rule of Supreme Courts finality are not in the nature of substantive aspects of the Judgment *strictosensu*, but only that there are instances in which the Court is entitled to review its own previous Judgment. Where there are clerical mistakes in Judgments or Orders or errors arising from any accidental slip or omission the Court may correct the mistake at any time. This is what Courts have for long described as "Slip Rule". Lord Halbury in *Preston Banking Co. Vs. Williams ALLSUP & Sons* (1895 1 Ch.D) held as follows:

If by mistake or otherwise an order has been drawn up which does not express the intention of the Court, the Court must always have jurisdiction to correct it. But this is an application to the Vice Chancellor in effect to re-hear an Order which he intended to make but which it is said he ought not to have made. Even when an order has been obtained by fraud it has been held that the Court has no jurisdiction to hear it. If such jurisdiction existed, it would be most mischievous (Daniel, 2020).

Another instance is where, though the review of the Judgment affects operative and substantive parts thereof, the Supreme Court is entitled to review its judgment but only *suomotu*. In the case of *Varty Vs. British South Africa Coy.* (1965) 1 ch. 508 and in *RE: Baber* (1886) 17 QBD 259 the Court of Appeal in England reversed its own Judgment in each of the above mentioned cases after review. In these cases the court of England acted *SuoMotu* not at the instance of any party. The rationale here is that if parties are allowed to bring applications to the court for review of its Judgment or orders bothering on substance, then there would open a flood gate of applications upon applications. Thus there would be no end to litigation (Okolo, 2014).

It is however expedient to note that the Supreme Court can reverse itself with respect to operative and substantive parts of its decision relating to facts and law at the instance of a party only in a situation where it is called upon to reverse or change its position on any point of law held in an earlier Judgment but not in a suit being considered. In other words, when during hearing of appeal at the Supreme Court a party argues that the court was wrong in any earlier decision on a point and invites it to depart from its earlier position, then the Supreme Court Could change the law and apply a new principle in the

¹See Law pavilion electronic report on <http://www.lawpavilion.com>

instant case. It therefore, follows that the effect of change in the position of the law from earlier case to future ones does not affect the parties in the earlier case. Rather, it is only the subsequent litigants that would be affected by the departure'.

In addition where legislation is passed to change a principle of law, right of persons or duties given to them by a previous Judgment, the Supreme Court or any other Court follows the law as it is newly provided by the legislation. It therefore means that the finality of the Supreme Court decision is subject to any legislation that may be passed by the parliament. In *Prince Yahaya Adigun & Ors Vs. The Attorney General of Oyo & Ors (No. 2) (1987) LPELR-40648 (SC)* (Supra) the Supreme Court held as follows:

the decision of the Supreme Court is final in the sense of real finality in so far as the particular case before that court is concerned. It is final forever except there is legislation to the contrary, and it has to be legislation ad hominem. The Supreme Court and it is only the Supreme Court, may depart from the principles laid down in their decision in the case in future but that does not alter the rights, privileges or detriments to the parties concerned arising from the original case (Solomon, 2016, p. 9).

Evidently therefore, in the case of legislation being an exception to the finality of the Supreme Court's decision, it is worthy of noting that such legislation would not be capable of changing the position of the Supreme Court if it is made for a clear purpose of targeting an individual.

IV. DISCUSSION OF FINDINGS

Based on the foregoing discussions on the general principles of law and their exceptions which highlighted the issues involved in the topic of discussion, it is desirable that the paper dwells on how the authorities cited could be applied to the application for review of Judgment filed by Mr. Ihedioha at the Supreme Court. It is glaring from the facts of the Imo State case that the Supreme Court Judgment invalidated the declaration and return of Mr. Ihedioha. The judgment was predicated on the following points of law:

- 1) That the lower courts rejected documentary evidence of duly certified election results from 388 polling units.
- 2) That in the circumstances of the case, the Tribunal ought to have applied the principle of rebuttable presumption of regularity as provided by the Evidenced Act since the Form EC8 As from the 388 polling units rejected by the Ward Returning Officers had been duly endorsed by the respective various presiding officers.
- 3) That it became mandatory on the Tribunal to apply the presumption of regularity because the Respondent, Gov. Ihedioha had not adduced any evidence to rebut the presumption. In this situation, the Supreme Court had no choice but to agree with the Appellant, Uzodinma on his submission that

presumption of regularity ought to have availed him to emerge the winner with the highest number of votes.

- 4) That it is the well-established principle of law as held in *David Mark Vs. Abubakar (2009) LPELR-20865 (SC)* (that Returning officer or any other person has no power to alter the results of an election as duly compiled by a presiding officer. At the tribunal, the results of the election from 388 polling units were rejected on the ground that the Retuning officer had cancelled them.

Therefore, the critical point to be considered in supporting the view in favor of the Supreme Court's decision refusing the application for review filed by Mr. Ihedioha is the proposition of the law to the effect that the Supreme Court cannot reverse its decision on operative or substantive point. It is my humble view that the issues highlighted in Ihedioha's case of Imo State are substantive issues bothering on facts and law rather than mere clerical errors and in the case of the former, the Supreme Court cannot reverse its decision which declared Gov. Hope Uzodinma as the duly elected Governor of Imo State. Similarly, in *Akin-Olugbade Vs. Onigbogbo Community and others (Supra)* the Supreme Court held that it lacked powers to entertain motions to look into complaints about law or facts in the Judgment being attacked.

Another ground upon which one can agree with the Supreme Court refusing Ihedioha's application for review of Judgment is that the case does not fall within the category of cases that form exceptions to the general rule for review of Supreme Court Judgment, which provides that the review can only be done on an earlier position of the court in previous decision. And that the departure or change in the position sought by Ihedioha was for the Supreme Court to change its stance in the instant case not previous case and the rights, privilege and detriment adjudged in the same decision should be altered in his favor. That could have amounted to reversing its own Judgment in violation of Section 235 of the constitution of the Federal Republic of Nigeria 1999 (as amended) and the provisions of Order 8 of the Supreme Court Rules.

V. CONCLUSION

The conclusion of the case must necessarily be that the argument that where no specific provision exists which gives the Supreme Court power to set aside its obviously bad judgment in *Uzodinma & Anor. v. Ihedioha & 2 Ors* that the Court cannot set it aside is necessarily flawed. The Court retains such power under its inherent powers. It is not given by the 1999 Constitution. It is inherent in it. It is, however, recognized under section 6(6) of the said Constitution which affirms that it cannot be taken away. Findings reveal that the courts, both in Nigeria and elsewhere, take the integrity of the judiciary very seriously. Where there is some controversy necessitating a Supreme Court to look again at its earlier decision, it is somehow imperative that a different panel should be set up.

It is my humble submission that the ruling of the Supreme Court delivered by his Lordship Olukayode Ariwoola, JSC (as then was) accords with the letter and spirit of the wordings of the constitution of the Federal Republic of Nigeria, 1999 as amended. This I submit has deepened the operation of the rule of law and upheld the sanctity of the judiciary and particularly the Supreme Court. This trend has been re-established in the very recent cases from the Bayelsa, Kano and Zamfara gubernatorial electoral matters. For if the Supreme had reversed itself in the case of Imo, the flood gate would be unimaginable. More decided case both criminal, civil and election cases would have surfaced, rendering the Supreme Court functions lack any form of finality. Also it will be tantamount to institutional breach of Section 235 of the constitution by the main body meant to protect it, thereby allowing people in government to use the breach to achieve their parochial interests. This can be seen in the attempts made on the reversals of Zamfara, Bayelsa and other states lost by the party in power at the federal level. Maintaining the sanctity of Constitution is very important in preserving democracy, rule of law and societal justice. This is expressed by the former American president Thomas Jefferson, where he presented the objective of a constitution in a society as thus; “the two enemies of the people, are the criminals and the government. So let us chain the second with the constitution so it does not become the institutionalized version of the

first.” To this effect, asking the Supreme Court to reverse its decision is opening the avenue freeing people in government from the chain of the constitution.

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