POWER OF COURT TO SET ASIDE JUDGMENT OF ANOTHER COURT OF COORDINATE JURISDICTION- A CONTEMPORARY REALITY CHECK

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Abstract

It is trite law that no Court has the power to review or upturn the judgment or decision of another Court of coordinate jurisdiction. It is judicial rascality for a Court to negate this hallowed principle. Nevertheless, this principle has often presented a problem in the adjudication ecosystem as it would appear to admit of no exceptions. This paper deployed the doctrinal research method to critically examine statutory provisions and judicial decisions on the subject matter. The paper confirmed that it is a taboo in judicial circles for a Court to sit on appeal or review the judgment of another Court of coordinate jurisdiction. Nonetheless, the paper found out that, in the interest of justice, a narrow window allows a Court to review or upturn the judgment of another Court of coordinate jurisdiction such as where (a) the writ or application was not served on the other party (b) the Court lacks jurisdiction or (c) there is a default judgment. Given this legal reality, the paper recommended that in order to preserve the principles of hierarchy of Courts, a Court should seldom seek to review or upturn the judgment of another Court of coordinate jurisdiction. Except where there are cogent grounds warranting same, party dissatisfied with the judgment should proceed on appeal to a higher Court instead of approaching another Court of coordinate jurisdiction.

Keywords- coordinate, court, jurisdiction, nullity, set aside

1.0 Introduction

Under *section 6(1)* of the Constitution of the Federal Republic of Nigeria,[1] 1999 as amended, the judicial powers of the Federation are vested in the Courts established for the Federation while the judicial powers of a State are vested in the courts, subject as provided by the Constitution, for a State *under section 6(2)*. Specifically, *section 6(5)* of the CFRN, 1999 as amended established the following superior Courts namely- (a) the Supreme Court of Nigeria; (b) the Court of Appeal; (c) the Federal High Court; (cc) the National Industrial Court; (d) the High Court of the Federal Capital Territory, Abuja; (e) a High Court of a State; (f) the Sharia Court of Appeal of the Federal Capital Territory, Abuja; (g) a Sharia Court of Appeal of a State; (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja; (i) a Customary Court of Appeal of a State; (j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and (k) such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws. By reason of the foregoing, the Supreme Court, which is established under *section 230* of the CFRN, 1999 as amended, is the apex Court in Nigeria. Its decision is final and binds all Courts or persons and authorities in Nigeria. In *People for Democratic Change & Anor v INEC & Ors,*[2] the Court of Appeal advisedly and wisely held as follows

> This Court has not got the jurisdiction to reduce the apex Court's pronouncement and verdict of legal extinction into anything else. I shall not commit that judicial infamy or treachery. See OGBORU vs UDUAGHAN (2011) 17 NWLR (P. 1277) at 764 - 765 (CA) on the solemn general effect of a

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[1] Hereinafter abbreviated and referred to as "CFRN".

[2] (2022) LPELR-58465(CA) (Pp. 12-13 paras. D).

> judgment "in rem" as to the status of a person or thing as declared by a Court, being a judgment contra mun dum. See also DIKE VS NZEKA 11 (1986) 4 NWLR (PT 34) 144; (1986) LPELR 945 (SC) per JSC.
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> The judgment of the Supreme Court in *rem,* binding the whole world i.e. all persons, and not only the parties, must be enforced by striking out the appeal or dismissing every continued and purported action in defiance, thereto.

As the final Court, appeals do not lie from the Supreme Court to anywhere else. As clearly provided under *section 235* of the CFRN, 1999 as amended, without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme Court. In terms of hierarchy, the Supreme Court is at the apex followed by the Court of Appeal established under *section 237* of the CFRN, 1999 as amended. Appeals lie to the Supreme Court from the Court of Appeal. Under *section 240* of the CFRN, 1999 as amended, the Court of Appeal is vested with jurisdiction to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of a State and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly.

By reason of the doctrine of judicial precedence or *stare decisis*, lower Courts are irrevocably bound by the judgment of higher Courts. This strand of the doctrine of *stare decisis* does not usually present a problem as inferior, lower or subordinate Courts are known from the hierarchy of Courts. The position of the law and decided authorities on the doctrine of stare decisis was eloquently adumbrated by a full panel of the Supreme Court in the case of in *Dalhatu v Turaki & Ors*[3] to the effect that the doctrine of judicial precedent otherwise known as stare decisis is not alien to Nigeria's jurisprudence. It is a well settled principle of judicial policy which must be strictly adhered to by all lower Courts. While such lower Courts may depart from their own decisions reached per incuriam, they cannot refuse to be bound by decisions of higher Courts even if those decisions were reached *per incuriam.* The implication is that a lower Court is bound by the decision of a higher Court even where that decision was given erroneously. On the authority of its earlier decision in the case of *N.A.B. Ltd v Barri Eng. (Nig) Ltd*,[4] it held further that:

> The doctrine of judicial precedent (otherwise known as stare decisis) requires all subordinate Courts to follow the decisions of superior Courts even where these decisions are obviously wrong having been based on false premise; this is the foundation on which the consistency of our judicial decision is based ... It is however the principle of law upon which a particular case is decided that is binding. Such a principle is called the *ratio decidendi*. A statement made in passing by a Judge, which is not necessary to the determination of the case in hand is not the *ratio decidendi* of the case, but an *obiter dictum* and it has no binding effect for the purpose of the doctrine of judicial precedent.

[3] (2003) LPELR-917(SC) @ 41-43 C- F.
[4] (1995) 8 NWLR (Pt. 413) 257 @ 289 – 290.

In *Atolagbe v Awuni,*[5] it was held by the Supreme Court that it is now well settled that under the common law doctrine of precedent or stare decisis, the decision of a higher Court may be criticised by the Judge of the lower Court but notwithstanding the criticism, the Judge of the lower Court is bound to follow and apply such decision in the case before him. He has no right to disregard the decision or side-track it. this case was cited and relied in in *Lagos State Govt & Ors v Abdulkareem & Ors*.

Nevertheless, there is usually a problem in judicial circles when it comes to Courts of coordinate jurisdiction. The problem stems from two established principles namely: (a) the fact that judgments of Courts of coordinate jurisdiction do not bind other Courts of coordinate jurisdiction and (b) the fact that a court of coordinate jurisdiction cannot sit on appeal or set aside or review the judgment or order of another Court of coordinate jurisdiction. While the former principle is foreclosed as a legal impossibility, the later principle admits of some notable exceptions.

Against the foregoing background, the aim of this paper therefore, is to identify the narrow window where a Court of coordinate jurisdiction can legally or lawfully review or set aside the judgment of another Court of coordinate jurisdiction without being seen to have sat on appeal over same. For ease of analysis and comprehension, the paper is further divided into the following segments namely: Meaning of "coordinate or concurrent" jurisdiction; Meaning and implication of *"functus officio";* General rule on power of Court to set aside, upturn or review judgment of a Court of Coordinate jurisdiction; Exceptions to the general rule; Conclusion and recommendations.

2.0 Meaning of "coordinate" or "concurrent" jurisdiction

Firstly, the law is trite that it has been pronounced by the Apex Court several times that jurisdiction is very fundamental. As held in the locus classicus of *Madukolu v Nkemdilim,*[6] jurisdiction is the live wire of a case which should be determined at the earliest opportunity. If a Court has no jurisdiction to determine a case, the proceedings remain a nullity *ab initio* no matter how well conducted and decided. This is so since a defect in competence is not only intrinsic but extrinsic to the entire process of adjudication. It should be noted that the jurisdiction of any Court is granted *aliunde* from without and not from within.[7] A Court's jurisdiction is prescribed, embedded or engraved in the statute which creates it. It is usually circumscribed and not open-ended and at large.[8] In *Nwobodo v Rivers State Primary Education Board*,[9] it was held that a Court possesses only such jurisdictional powers as are directly, or indirectly, expressly or by implication, vested upon it by the Constitution or legislation of the sovereignty on behalf of which it functions, thus, jurisdiction is never conferred in obscurity. The language of the law must be clear and positive so that jurisdiction as a power will be clearly visible to all beholders of the Constitution or the law that confers it. Coordinate jurisdiction is shared jurisdiction or competence. It is also known as concurrent jurisdiction. In reference to Courts, it means that two or more Courts have the authority to hear the same type of case such as the power of the Federal High Court, the High Court of the Federal Capital Territory and High Court of a State over enforcement of human rights violations under the Fundamental Rights (Enforcement Procedure) Rules, 2009. It may also mean Courts that are of the same rank in the same Branch or level of Court such as Judges of the Federal High Court or High Court of the Federal Capital Territory or High Court of a State serving in different Judicial Divisions. This is also true of Justices of the Court of Appeal serving in the different Judicial Divisions of the Court of Appeal.

[5] (2022) LPELR-58517(SC) (Pp. 60-62 paras. D).
[6] (1962) SCNLR 341, This principle was reiterated in *Oloba v Akereja* (1988) 3 NWLR (Pt. 84) 508.
[7] *Compagnie Generale de Geophysique (Nig.) Ltd v Asaagbara* (2001) 1 NWLR (Pt. 693) 155.
[8] *Ibori v FRN* (2009) 3 NWLR Part 1128, 283.
[9] (2008) 1 NWLR (Pt. 1069) 537.

According to the Black's Law Dictionary, coordinate or concurrent jurisdiction means "Jurisdiction that might be exercised simultaneously by more than one court over the same subject matter and within the same territory, a litigant having the right to choose the court in which to file the action".[10] Thus, none of the Courts from where appeals lie to the Court of Appeal can claim superiority over another as was maintained in *Chieshe v Customary Court of Appeal, Benue State*.[11] These Courts are the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of a State.

> For administrative convenience, these superior Courts (excluding the Supreme Court) may be divided into judicial divisions manned by Judicial Officers appointed in that cadre of Court. In *SPDC (Nig) Ltd v Edamkue & Ors*,[12] Ogbuagu, JSC held as follows regarding judicial divisions of the High Court
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> I am aware that there is only one High Court in a State with Judicial Divisions, created for administrative convenience or purposes. The Judges of the Federal High Court, sit in different States or separate courts as in the Federal Capital Territory. Both courts are bound by one Statutory Rule of Court. See the cases of *S. O. Ukpai v Okoro & Ors* (1983) 2 S.C NLR 380 @ 388. 390, 391; *Skenconsult Nig. Ltd. v Ukey* (1981) 1 SC 6 interpreting *section 234* of the 1979 Constitution, *Egbo v Laguma* (1988) 2 NWLR (Pt. 80) 109 and *Chief Egbo & 16 Ors v Chief Agbara & 4 Ors* (1997) 1 NWLR (Pt. 481) 292; (1997) 1 SCNJ 91....

Thus, all Judicial Officers serving in the different Divisions of the superior Courts have coordinate jurisdiction. None of the Judicial Divisions is superior to the other and no Judicial Officer in the same cadre or Branch of Court can sit on appeal on the judgment of the other. As far back as 1991 it was held in *Osho & Anor v Foreign Finance Corporation & Anor*[13] that since the Court of Appeal "sits in 7 divisions, now there exists the danger of decisions delivered in one division conflicting with decisions in another division." Suffice it to add that where such conflicting decision is occasioned, it will only take the Supreme Court to resolve it.

By virtue of *sections 251, 254, 257 and 272* of CFRN 1999 as amended, the Federal High Court, the National Industrial Court, High Court of FCT, Abuja and States' High Courts are Courts of coordinate jurisdiction.[14] Appeal can never lie from any of them to the other but in some instances, they may be clothed with concurrent jurisdiction over some matters. Under *section 272* of CFRN 1999 as amended, subject to *section 251* of CFRN 1999 and other provisions thereof, the High Court of a State has jurisdiction to adjudicate civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to decide any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence

[10] Garner, B. A., Jackson, T., and Newman, J., *Black's Law N Dictionary* (8th edn.) (New York: West Publishing Group, 1999) 868.
[11] (2000) 7 NCLR 171 at 187.
[12] (2009) LPELR-3048(SC) (Pp. 28-29 paras. G).
[13] (1991) LPELR-2801(SC) (Pp. 32-33 paras. G).
[14] *Sifax (Nig.) Ltd v Migfo (Nig.) Ltd* (2018) 9 NWLR (Pt. 1623) 138.

committed by any person. The reference to civil and criminal proceedings in the section includes a reference to proceedings which originate in the court and those which are brought before it to be dealt with in the exercise of its appellate or supervisory jurisdiction. In respect of civil disputes, the High Court of a State or of the Federal Capital Territory, Abuja has co-ordinate jurisdiction over all matters between persons, or between government or authority and any person in Nigeria, as well as to all actions and proceedings relating thereto for the determination of any questions as to the civil rights and obligations of that person.[15] By *section 2(1)* of the of Matrimonial Causes Act, the High Court of any State in Nigeria has jurisdiction to adjudicate matrimonial causes instituted under the Act. Under Order 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 "Court" is interpreted to mean the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja. Thus, these Courts enjoy concurrent jurisdiction over enforcement of human rights. State High Courts and Sharia Court of Appeal have concurrent jurisdiction in reviewing the decisions of area courts/sharia courts. The jurisdiction to review decisions of lower courts is provided for by *sections 272(1) and 277(1)* of the CFRN, 1999 as amended for the High Court and Sharia Court of Appeal respectively.

Some of the consequences of coordinate or concurrent jurisdiction of Courts are that where two or more courts have coordinate jurisdiction, a litigant is at liberty to take his matter to any one of them. Another implication relevant to this paper is that no court of coordinate jurisdiction can sit on appeal over the judgment of the other although when a decision of a court is a nullity, another court of coordinate jurisdiction can set it aside for that reason. This is neither an exercise of appellate jurisdiction at the disposal of a court of coordinate jurisdiction as held in *Nwafor v Bulama*[16] nor is it a power of judicial review *stricto sensu*. The only ground of interference by a court of coordinate jurisdiction is that a person affected by such a judgment has applied that it be set aside on the ground of nullity.[17] the merit of such a decision is out of the consideration of such a court of coordinate jurisdiction. In *Okoye v Nigeria Construction & Furniture Company*,[18] the Supreme Court held that a null judgment of court can be set aside by that court or another court of coordinate jurisdiction. The prerequisite of the exercise of the power by a court to set aside a void judgment is concurrency of jurisdiction with the court that delivered it. By the decisions it would not matter if the courts are not the same description, for instance, as between a High Court and a Customary Court of Appeal.

3.0 Meaning and implication of *"functus officio"*

The Supreme Court in *Mohammed v Husseini*[19] defined *functus officio* as follows:

> The Latin expression *functus officio* simply means 'task performed'. Therefore, applying it to the judiciary, it means that a judge cannot give a decision or make an order on a matter twice. In other words, he no longer has the competence or jurisdiction to give another decision or order on the same matter. A judge is *functus officio* if he gives judgment on the merits.

[15] In *Ogunsola v APP* (2003) 9 NWLR (Pt. 826) 462, the trial Court (High Court of FCT) respondent's place of business, as well as High Court of Kwara State, appellant's place of residence both had jurisdiction to entertain appellant's originating summons. This was because, *section 257* of CFRN 1999 as amended which vested jurisdiction on High Court of the FCT, Abuja is in identical terms with *section 272* of CFRN 1999 which vested jurisdiction on States' High Court, except that instead of the words '*of a State*' where they appear in *section 272* of CFRN 1999 as amended the words of the 'Federal Capital Territory, Abuja' are substituted.

[16] (1987) 1 QLRN 269 at 270.

[17] This principle was established in *Dr. Adewumi v Lagos State DPC* (2013) All F.W.L.R. (pt. 701) 1508,1509.

[18] (1991) 2 NSCC (Pt. 2) 422 at 441.

[19] (1998) 14 NWLR (Pt. 584) 108 @ 163.

Furthermore, in *Integrated Realty Ltd v Odofin & Ors*,[20] the Supreme Court reiterated that "*functus officio*" is Latin for "having performed his or her task", and "refers to one who has exercised his or her authority and brought it to an end in a particular case". The position of the law is that once the Court has delivered its decision on a matter, it becomes *functus officio* with regard thereto. This is so, because a Court cannot sit on appeal on its own decisions, having not been vested with power to do so. The constitutional and statutory jurisdiction of the Court of Appeal is to hear appeals from lower Courts. It cannot hear appeals from its own decisions. Thus, having finally decided a case before it, it becomes functus officio as to that case. Thus, once a Court has decided a matter, it ceases to be seized of it, and cannot re-open it, except in certain circumstances, of course. With the above, it means that once a Court delivers a judgment or ruling on the merits, it is no longer permissible for the Court or any other court of coordinate jurisdiction to revisit or go back to the case. Any party aggrieved or dissatisfied with the whole or part of the decision is entitled to appeal to the higher or appellate Court. This principle is instructive as in *Nnaemeka & Anor v INEC & Ors*,[21] the Supreme Court held that the only Court vested with the jurisdiction to set aside the decision of the Court of Appeal where an appeal has been entered is the Supreme Court of Nigeria as the only higher Court than the Court of Appeal in Nigeria.

4.0 General rule on power of Court to set aside, upturn or review judgment of a Court of Coordinate jurisdiction

According to the decision of the Court of Appeal in *Emenike v Orji*,[22] the phrase "set aside" in relation to a judgment decision or order of a Court means, "to annul or vacate judgment or order". This definition was also adopted in *Asikpo & Anor v George & Anor*[23] where it was held that the phrase "set aside" in relation to a judgment, decision or order of a Court means to annul or vacate judgment or order. Thus, when an order, decision or a judgment by a Court of law is set aside, it means that such an order, decision or judgment is not legally valid. Going by the doctrine of judicial precedence (discussed in the introductory segment of this paper), it is hornbook law that no Judge or Court has the power to set aside, reverse, vary or alter the order or decision of another Judge of coordinate jurisdiction except on issue of jurisdiction. In other words, a Court cannot either sit on appeal over its own judgment or set aside or review the judgment of a Court of coordinate jurisdiction. It is also settled principle that a judgment of a Court of law cannot be subjected to interpretation or review by a Court of coordinate jurisdiction. To do so will amount to illegally sitting on appeal over a Court of coordinate jurisdiction.[24] It will tantamount to judicial rascality, if a Court interferes with the findings of fact made by another Court of co-ordinate jurisdiction or to upturn the judgment. It is apposite at this juncture to cite and discuss a number of judicial decisions that confirm these principles as trite in the subsequent paragraphs of this segment.

(a) In *Race Auto Supply Company Ltd & Ors v Alhaja Faosat Akib*,[25] the Supreme Court held that a judgment of a Court of law cannot be subjected to interpretation by a Court of coordinate jurisdiction like a deed, a will or an instrument containing right and obligation of parties under Order 46 Rule 1 of the Lagos High Court (Civil Procedure) Rules. In any case, even if the consent judgment in the present case were to be regarded as instrument under Rule 1 of Order 46, the provision would not give a High Court jurisdiction to determine any question of construction or interpretation arising from the judgment of a Court of co-ordinate jurisdiction like the Lagos High Court presided by Obadina, J. (as he then was) and the same Court as presided by Shitta-Bey, J., or that of a higher Court like the Court of Appeal or this Court. If a

[20] (2017) LPELR-48358(SC) (Pp. 9-10 paras. D).
[21] (2024) LPELR-63034(SC).
[22] (2008) LPELR, 4103 (CA).
[23] (2013) LPELR-22031(CA) (Pp. 25-26 paras. G) per Garba, JCA, relying on the case of Emenike v Orji (2008) LPELR-4103CA).
[24] This was the kernel of decision in *Wimpey (Nig) Ltd v Alhaji Balogun* (1986) 3 NWLR (Pt. 28) 324 and *Adebayo v Olajogun* (2016) LPELR-41390(CA) (Pp. 12-15 paras. F).
[25] (2006) 13 NWLR (Pt 997) 333 at 351 - 352.

judgment of a Court of law were to be regarded as an instrument like a deed or will, then even the judgment of the Court of Appeal or the Supreme Court could be subjected to interpretation by the High Court under Order 46 Rule 1 which is rather absurd. In the present case therefore, the Court of Appeal was quite right in its decision that the trial Lagos High Court presided over by Shitta-Bey, J., lacked competence to subject the consent judgment of the same Court delivered by Obadina, J, (as he then was) to interpretation of the contents or terms thereof.

(b) Furthermore, in *Riok (Nig) Ltd v Incorporated Trustees of Nigeria Governors' Forum & Ors,*[26] the Supreme Court, per Agim, JSC, held that a High Court has no jurisdiction to entertain and hear a suit for the determination of the meaning or implication of a judgment of the same or another High Court or Court of coordinate status or concurrent jurisdiction to secure the enforcement of the judgment one way or the other. If it admits such a case, it would inexorably review the said judgment, an exercise it has no jurisdiction to engage in. it emphasised that except actions seeking to nullify a judgment for lack of jurisdiction or fraud, a Court has no jurisdiction to review its judgment or that of a Court of coordinate status citing in support the earlier decision of the Supreme Court in *SPDC (Nig) v Edamkue & Ors*.[27]

© The principle that once a Court makes an order, it becomes *functus officio* so that a Court of coordinate jurisdiction lacks the requisite power to set aside the order of another Court of similar jurisdiction was upheld in *Idrisu & Ors v COP.*[28] In that case, the Court of Appeal per Aboki, JCA, (as he then was) held that it is the law that a Court has no power to entertain or sit on any matter that has been decided by a Court of coordinate jurisdiction because to do so, would amount to sitting on appeal on such decision, a procedure which the law does not permit.

(d) Finally, in *Lawanson & Ors v Akunna & Ors,*[29] the Respondents as Claimants instituted an action against the Appellants vide writ of summons. The matter was assigned to Shitta-Bey, J. for trial. After the Appellants failed to appear for the pre-trial sessions, and upon an application by the Respondents' counsel based on the provisions of the relevant Rules of the Court, Shitta-Bey, J., entered default judgment in favour of the Respondents as per the writ of summons and statement of claim on the 3rd February, 2009. The Appellants filed an application praying for an order to set aside the default judgment of the Court which was dismissed by the Court. Subsequently, the matter was assigned to Alogba, J., for hearing of the application for writ of possession filed by the Respondents. Again, the Appellants filed yet another application for an order setting aside the default judgment entered against the Appellants. Alogba, J., dismissed the application vide the Ruling of the Court. Aggrieved with the decision of the trial court, the Appellants appealed to the Court of Appeal. The Appellants formulated two issues for the determination of the appeal as follows: (a) Whether by virtue of the Court of Appeal in Appeal No: CA/L/81/2008 delivered on 15th May 2012 which reversed the earlier decision of Adefope-Okojie, J., the Respondents' action in Suit NO: LD/1391/07 filed during the pendency of the said appeal, no longer constitutes an abuse of Court process as the appeal has been determined. (b) Whether the default Judgment which granted declaratory reliefs against the Appellants is valid at law in the absence of any evidence being taken. On the whole, the Appellants' appeal lacked merit and same was dismissed. On whether a judge has the power to set aside the judgment or order of another judge of coordinate jurisdiction, it was held that it is now trite that once a Court makes an order, it becomes functus officio so that a Court of coordinate jurisdiction lacks the requisite power to set aside the order of another Court of similar jurisdiction. The Court of Appeal agreed with the learned trial judge that the (a) Appellants' application on similar grounds already heard and determined by Shitta-Bey, J., was grossly incompetent and thus an abuse of Court process.

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[26] (2022) LPELR-58087(SC).
[27] (2009) LPELR - 3048 (SC).
[28] (2008) LPELR - 3725 (CA).
[29] (2016) LPELR-41303(CA) (Pp. 14-15 paras. D).

5.0 Exceptions to the general rule

The general rule that a judgment of a Court of law cannot be subjected to interpretation or review by a Court of coordinate jurisdiction is not cast in steel or stone. This means that it is not an absolute principle that does not admit of recognised exceptions. This segment of the paper will identify those exceptions. From the body of decided cases, a Court of concurrent or coordinate jurisdiction can set aside the judgment or order of another Court in circumstances where - (a) the writ or application was not served on the other party; (b) the action was tainted with fraud or the Court lacks jurisdiction; or (c) where there is a default judgment. Support can be found for these exceptions in various decided cases as shown below.

(a) Where the writ or application was not served on the other party

In *Adebayo v Olajogun*,[30] this was an appeal against the Ruling of the Ogun State High Court, Ota Judicial Division, delivered by Catherine Ogunsanya, J on the 21st day of June, 2012. By the said Ruling, the Learned trial Judge set aside the judgment of the same Court delivered on the 27/10/2009 by T. A. Okunsokan, J. Before the Ogun State High Court, one Mr. Jeremiah Oludamilare Oke took out a Writ of Summons and Statement of Claim seeking for sundry reliefs as contained at Paragraph 14 of the Statement of Claim. After a series of adjournments, the Plaintiffs/Appellants applied that the case be set down for hearing pursuant to Orders 10 Rule 5 and 20 Rule 6 of the Ogun State High Court (Civil Procedure) Rules, 2008. The application was duly granted on the 31/3/2009. The matter was accordingly set down for hearing in default of pleadings and appearance by the Defendant/Respondent. The Plaintiff/Appellant thereafter called two witnesses who adopted their written depositions on oath, and also tendered some documents. Learned Counsel for the Plaintiff/Appellant then addressed the Court, and in a judgment delivered on the 27th day of October, 2009, the learned trial Judge gave judgment in favour of the Plaintiff/Appellant and granted the reliefs as prayed in the Statement of Claim. On the 9th day of September, 2011, the Defendant/Respondent filed a Motion on Notice seeking an order of the Honourable Court setting aside the judgment. In a Ruling delivered on the 21st day of June, 2012, the Learned trial Judge acceded to the application of the Judgment Debtor, now Respondent on record and set aside the judgment delivered on the 27/10/2009 on the ground that the said Respondent was never served with the Court processes and therefore the Court had no jurisdiction to hear and determine the suit against him. Being aggrieved by that decision, the Appellant appealed to the Court of Appeal. The Court of Appeal formulated a sole issue to resolve the appeal, viz: whether the Learned trial Judge was right when he set aside the judgment delivered by Okunsokan, J on the 27th day of October, 2009? In the final analysis, the Court of Appeal held that the appeal failed and it was dismissed. The relevant question therefore was whether a judge has the power to set aside the judgment or order of another judge of coordinate jurisdiction. The Court of Appeal, per Daniel-Kalio, JCA, held tersely as follows:

> By way of a modest contribution, I wish to say that there should be no knee jerk thinking that a Court of coordinate jurisdiction cannot set aside the judgment or order of a similar Court. Ordinarily, a Court of coordinate jurisdiction will not set aside the judgment of a Court of similar jurisdiction as that should normally be the function of an appellate Court.
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> However, where the judgment of a Court of coordinate jurisdiction is a nullity ab-initio, such a judgment can be set aside. See *Onagoruwa v I-GP & Ors* (1991) 5 NWLR (Pt. 593) 638. See also *Sken Consult (Nig) Ltd & Anor v Ukey* (1981) 1 SC 6. … A nullity in law is a void act, an Act which has no legal consequence; an act that is not only bad but as Lord Denning LJ stated in *UAC Ltd v Macfoy* (1961) 3 All ER

[30] (2016) LPELR-41390(CA) (Pp. 31-32 paras. E).

> 1169, is incurably bad. That was what the lower Court found in this case. The judgment made by Okunsokan J. on 27/10/2009 was fundamentally defective in that the originating processes were not served on the Defendant in the case. In the circumstances, the judgment was a nullity *ab initio* and consequently Ogunsanya J. could set it aside.

(b) Where judgment or order is a nullity

As stated earlier, the principle of law is that once a Court makes an order it becomes *functus officio*. While the general rule is that a Court of coordinate jurisdiction has no jurisdiction to set aside the judgment of another court of similar jurisdiction, however, where an order is a nullity, such an order would be set aside by another court of similar jurisdiction. This was the ratio decidendi in *Uwaifo & Ors v Governor of Lagos State & Ors*[31] relying on the decision of the Supreme Court in *Witt and Busch Ltd v Dale Power Systems PLC.*[32] In the case of *Witt and Busch Ltd v Dale Power Systems PLC* (supra), Ogbuagu JSC expressly held that "In the absence of statutory authority or except where the judgment or order is a nullity one Judge has no power, to set aside or vary the order of another judge of concurrent and coordinate jurisdiction". A number of other judicial authorities also support this position of the law. For example, in the case of *PDP v INEC & Ors,*[33] it was submitted for appellant that that because the trial Court is of coordinate jurisdiction it cannot set aside its decision as doing so will tantamount to the trial Court sitting on appeal over its decision and the Learned trial Judge was accused in Suit No. FHC/JAL/CS/102021 delivered on 10th March, 2021 of judicial rascality. In its judgment, the Court of Appeal held that in the first place, the Learned trial Judge did what he did by setting aside the earlier judgment for want of jurisdiction because the law empowers him to do so. Relying on the decision of the Supreme Court in *Lawal v Dawodu,*[34] the Court of Appeal held that a Court of concurrent or coordinate jurisdiction can set aside the judgment or order of another Court in circumstances where (a) the writ or application was not served on the other party or (b) the action was tainted with fraud or the Court lacks jurisdiction. A close look at the reliefs sought by the 3rd Respondent in Suit No. FHC/JAL/CS/10/2021 at the Federal High Court Jalingo is an Order setting aside the judgment in Suit No. FHC/JAL/CS/l/2019, Exhibit A for being a nullity in view of *section 285(9)* of the Constitution of the Federal Republic of Nigeria 1999 as amended, being a pre-election matter and it was filed after 14 days from the accrual of cause of action. Thus, the trial Court was right to have set aside its own judgment on 10th March, 2021 given without jurisdiction and thus a nullity. It was held therefore uncourteous of the senior counsel to accuse the learned trial Judge of judicial rascality.

Conclusively, the law is settled that a Court can set aside its own judgment which is a nullity. In *Ugba & anor v Suswam & Ors*[35] it was reiterated that a judgment can be set aside where it was made without statutory jurisdiction or a condition precedent for the Court to assume jurisdiction has not been fulfilled. Therefore, a Court is not *functus officio* if it is persuaded to set aside a null judgment.

(c) Where there is a default judgment

Another recognised exception is with respect to judgment by default. A judge is *functus officio* if he gives judgment on the merits. A judgment in default is not a judgment on the merits. This was the decision of the Supreme Court in *Abinde & Ors v Salako*.[36] In *Adebayo v Olajogun*[37] it was held that it

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[31] (2007) LPELR-9017(CA) (Pp. 9-10 paras. E).
[32] (2007) LPELR 34 99 (SC).
[33] (2023) LPELR-59699(CA) (Pp. 66-67 paras. A).
[34] (1972) 8-9 SC page 83.
[35] (2014) LPELR-2282 (SC).
[36] (2024) LPELR-62842(SC) (Pp. 8-13 paras. F) per Ogunwumiju, JSC.
[37] (2016) LPELR-41390(CA) (Pp. 15-16 paras. F).

is settled law that a default judgment is one that can be set aside either by the Court that made it or another Court or Judge of coordinate jurisdiction, upon good reasons being shown. As held in *Bello v INEC & Ors*,[38] a default judgment is one given in default of appearance or pleadings against a Defendant or a Plaintiff in a cross-action whose names appear as such Defendant or Plaintiff in the record of the trial Court. In the instant case the Appellant and the 1st Respondent who were the only parties as Plaintiff and Defendant in the action were present or duly represented by their learned Counsel before the trial Court throughout the proceedings up to the point of judgment in question. It was held that that judgment cannot be described as a default judgment. It is clearly a judgment on the merit which in law, can only be set aside on appeal.

6.0 Conclusion and recommendations

This paper established that the doctrine of judicial precedence or *stare decisis* would require that a Court of coordinate or concurrent jurisdiction should never sit on appeal over or seek to review the judgment or decision of another Court of equal jurisdiction. That will be scandalous and a manifestly indefensible rascality. Although this hallowed principle is made to preserve sanity in the adjudicatory ecosystem and hierarchy of Courts, it is however not encrusted in stone. Hence, in the interest of justice and in permissible circumstances brimming with merit, a Court may review or upturn the judgment, order or decision of another Court of coordinate or equal jurisdiction, This does not amount to sitting on appeal. It is therefore recommended that a Court should not be quick to seek to review or upturn the judgment of another Court of coordinate jurisdiction. It is further recommended that, except where there are cogent grounds warranting the review, any party dissatisfied with the judgment of a Court should proceed on appeal to a higher Court instead of running round in circles in the Court that is *functus officio* or taking the desperate step of approaching another Court of coordinate jurisdiction.

[38] (2010) LPELR-767(SC) (Pp. 36 paras. A). See also *Alapa v. Sanni* (1967) NMLR 397.