**FIRST BANK OF NIGERIA PLC**

**V.**

**UCHE UGWU AND ANOTHER**

IN THE COURT OF APPEAL OF NIGERIA

THE 23RD DAY OF JUNE, 2017

CA/E/396/2008

**LEX (2017) - CA/E/396/2008**

OTHER CITATIONS

3PLR/2017/131 (CA)

(2017) LPELR-42581(CA)

**BEFORE THEIR LORDSHIPS**

IGNATIUS IGWE AGUBE, J.C.A

TOM SHAIBU YAKUBU, J.C.A

MISITURA OMODERE BOLAJI-YUSUFF, J.C.A

**BETWEEN**

FIRST BANK OF NIGERIA PLC - Appellant(s)

AND

1. UCHE UGWU

2. ROCKONOH PROPERTIES LTD Respondent(s)

**ORIGINATING COURT**

ENUGU STATE HIGH COURT, HOLDEN AT ENUGU

**REPRESENTATION/LAWYERS**

L. M. E. EZEOFOR - For Appellant

AND

OSMOND AFAM AKPUTA, Esq. for 1st Respondent For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

DEBTOR AND CREDITOR - ENFORCEMENT OF JUDGMENT DEBT - GARNISHEE PROCEEDINGS:- Garnishee order absolute – Nature of - Whether is a final decision of court – Legal implication

**PRACTICE AND PROCEDURE ISSUES**

JUDGMENT AND ORDER - FUNCTUS OFFICIO - Whether a court that has become functus officio has the power to rehear an appeal on the matter.

JUDGMENT AND ORDER - SETTING ASIDE JUDGMENT/ORDER - Whether a judge has the power to set aside the judgment or order of another judge of coordinate jurisdiction.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

This is an appeal against the ruling of the Enugu State High Court of Justice, holden at Enugu, delivered on 20th September, 2006. The appellant had filed a motion on notice on 29th October, 2004 wherein she prayed for an order of Court setting aside the Garnishee Order Nisi and Garnishee Order Absolute made by another judge of the same Enugu State High Court of Justice, holden at Enugu on 27th March, 2001 and 8th October, 2004, respectively.  
  
The learned trial judge, upon a preliminary objection taken by the 1st respondent, to the effect that he/the Court, had no jurisdiction to entertain the appellant/applicant’s motion on notice aforesaid, on the ground amongst others, that the court was functus offico, after his decision on 8th October, 2004; dismissed the applicant’s motion on notice of 29th October, 2004. The appellant, dissatisfied with the ruling against her, filed an amended notice of appeal, anchored on six grounds of appeal on 31st October, 2014.

**DECISION(S) APPEALED AGAINST**

The trial Court of made a Ruling refusing the Appellant’s application for an order of Court setting aside the Garnishee Order Nisi and Garnishee Order Absolute made by another judge of the same Enugu State High Court of Justice, holden at Enugu on 27th March, 2001 and 8th October, 2004, on the ground that it had become functus officio.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1) ISSUE NO. 1 (Distilled from ground 1) - Will the trial Court have jurisdiction to entertain the Garnishee proceedings when the Garnishee/appellant a limited liability company was served the Garnishee Order summons at its branch office at Enugu, rather than at its well known Head Office in Lagos?

2) Issue No. 2 (Distilled from ground 2) ??? Whether non issuance and service of hearing notice on the appellant for the hearing of the Garnishee proceedings on October 8, 2004 when the Garnishee Order absolute was made did not invalidate the proceeding and render it a nullity?

3) Issue No. 3 (Distilled from grounds (iii) and (v) - Whether under the Nigerian legal System an appeal is the only option open to a party aggrieved by a judgment (Garnishee Order absolute) entered against him or can he also exercise the option of having same set aside by the trial Court when the order is alleged to be a nullity.

4) Issue No. 4 (Distilled from ground iv) - Whether the false affidavit of Chief S. I. Obidinanwa of counsel that the appellant had sufficient fund to satisfy the judgment order when the account of the judgment/debtors, 2nd and 3rd respondents was in debit did not amount to fraud to entitle the Court to set aside the judgment/Garnishee Order absolute?

5) Issue No. 5 (Distilled from ground vi) - Having regard to totality of the affidavit evidence before the Lower Court was the court right in dismissing the appellant’s application to set aside the order nisi and order absolute?

*BY RESPONDENT:*

1. Are the Order Nisi and Order Absolute by Justice B. E. Agbata in this suit made without jurisdiction and/or can the same be nullified on any ground whatsoever.

2. Was honourable Justice I. S. Amanoh functus officio in regard to the application urging the setting aside of the Order Nisi and Order Absolute made by Justice B. E. Agbata

3. Was Honourable Justice I. S. Amanoh justified in dismissing the application for setting aside the Order Nisi and Order Absolute made by Justice B. E. Agbata in this case.

**MAIN JUDGMENT**

TOM SHAIBU YAKUBU, J.C.A.(DELIVERING THE LEADING JUDGMENT):

This is an appeal against the ruling of the Enugu State High Court of Justice, holden at Enugu, delivered on 20th September, 2006. The appellant had filed a motion on notice on 29th October, 2004 wherein she prayed for an order of Court setting aside the Garnishee Order Nisi and Garnishee Order Absolute made by another judge of the same Enugu State High Court of Justice, holden at Enugu on 27th March, 2001 and 8th October, 2004, respectively.

The learned trial judge, upon a preliminary objection taken by the 1st respondent, to the effect that he/the Court, had no jurisdiction to entertain the appellant/applicant’s motion on notice aforesaid, on the ground amongst others, that the court was functus offico, after his decision on 8th October, 2004; dismissed the applicant’s motion on notice of 29th October, 2004. The appellant, dissatisfied with the ruling against her, filed an amended notice of appeal, anchored on six grounds of appeal on 31st October, 2014. They are reproduced here below, for ease of reference and appreciation, to wit:

**GROUNDS OF APPEAL**

(i) Error in Law

The learned trial judge erred in law when the Court held that she was functus officio in respect of the garnishee proceedings.

**PARTICULARS OF ERROR**

(a) The application before the Court was setting aside the Garnishee Order Nisi and Absolute on ground of nullity.

(b) A trial Court is competent to set aside its order or judgment which is a nullity.

(c) The service of the Garnishee Orders Nisi and Absolute were bad and ineffective service in that the services were effected not on the Garnishee head office but rather on the Garnishee’s branch office in Enugu.

(d) The Garnishee, not having responded, albeit the fault of its counsel, to the garnishee proceedings by not filing any necessary papers to show that the plaintiff had no attachable fund, the proceedings leading to the garnishee order absolute amounts to default proceedings.

(ii) Error in Law

The learned trial judge erred in law when she held that the application to set aside the Garnishee’s attached moveable property and chattels made on 24 October 2004 pursuant to garnishee order absolute dated 8 October 2004 is incompetent.

**PARTICULARS OF ERROR**

(a) The application to set aside was predicated on the facts that inter alia the Garnishee, Applicant had no hearing notice of the date of October 8, 2004 when the order absolute was made thereby rendering the proceedings and the order a nullity.

(b) If there is an interruption in the hearing in a case as in the present case where the file was returned to the Chief Judge for reassignment to another judge and the Chief Judge instead directed the Court as in Exhibit 4 of the motion dated October 29, 2004 to complete the case and adjourned same to 7 October 2004, the case cannot be heard on October 7 or October 8 2004 without hearing notice being served on the garnishee.

(c) If a proceeding is a nullity in law the Court has the jurisdiction and competence to set same aside.

(iii) Error in Law

The learned trial judge erred in law and misdirected herself when she held that since the order has been enrolled and property attached she lacks jurisdiction to set aside the judgment/order Absolute.

**PARTICULARS OF ERROR/MISDIRECTION**

(A) The garnishee order absolute was obtained by a failure to follow rules of procedure and the parties were not heard on merit.

(iv) MISDIRECTION

The learned trial judge misdirected herself in law by shifting the onus of proof of the existence of the judgment amount of N41m on the Garnishee instead of the Garnishor.

**PARTICULARS OF MISDIRECTION**

(a) The judge was misled by the plaintiff to believe that the Garnishee had its account on behalf of the judgment debtors the sum of N41m to satisfy the judgment debt as shown in the affidavit of S. I. Obidinanwa of counsel Exhibit 5.

(v)Error in Law

The trial Court erred in law when she upheld the preliminary objection to the motion to set aside the Garnishee order absolute on the ground that once an order of Court has been drawn up and enrolled, the Court will lack the jurisdiction to entertain same.

**PARTICULARS OF ERROR**

(a) The trial judge failed to consider the exceptions to the rule and the authorities to that effect to wit ACB Plc v. Lasode Nig. Ltd (1995) 7 NWLR part 405 page 26 SC(13) and Ogolo v. Ogolo (2006) 5 NWLR part 972 page 163 SC page 181 F - H.

(vi) The ruling/judgment was against the weight of affidavit evidence.

The background facts of this matter are instructive. The subject matter of this appeal involves Garnishee Proceedings taken out by Arc. Isaac Ugwu against FBN Plc and on his death his son Uche Ugwu was substituted as the Judgment Creditor/Respondent. The said Uche Ugwu is hereinafter referred to as 1st Respondent. The 1st Respondent obtained judgment against Rockonoh Properties Ltd and Chief C. C. Onoh 1st and 2nd defendants’ hereinafter called 2nd and 3rd Respondents in the Court below on November 27, 2001 in Suit No. E/1/199 Arc Isaac Ugwu v. Rockonoh Properties Ltd and Chief C. C. Onoh for N28,200,000 with interest at the rate of 5% from August 1995 and N2m as damages for breach of contract and N10,000 inclusive of costs.

By a motion Ex Parte, the 1st Respondent initiated Garnishee Proceedings against the Garnishee/Appellant wherein Arc. Isaac Ugwu the father of the 1st Respondent averred inter alia in para. 11 of the supporting affidavit thus “That Afam Akputa Esq., informs me and I verily believe him that the judgment debtors have adequate funds standing in their favour in the books of the Garnishee to satisfy the judgment award.” Afam Akputa is the Garnishor’s counsel.

On service of Garnishee Order Nisi on the Garnishee/Appellant at Enugu Branch Office, it promptly briefed counsel Chike Arinze & Co. by the letter dated July, 8 2002, instructing Chike Arinze to file returns stating that 2nd Respondent has no account relationship with it and that 3rd Respondent account is on debit balance of N387,879.10 Dr. However, and for reasons best known to Chief Chike Arinze of counsel, Chief Arinze did not file the returns as instructed by Garnishee/appellant.

In the affidavit in support of the Garnishee Order absolute sworn by Chief S. I. Obidinanwa of counsel on October 20, 2003, he stated in para. 3 thus That the judgment debtors have adequate funds, much more than the judgment sum, standing in their favour in the custody of the Garnishee First Bank Plc which can be used to satisfy the judgment award.

Following the contents of the above affidavit, the Court issued the Garnishee Order dated October 20, 2003 to be served on the appellant. The Order was not served on the appellant but on counsel to the appellant. On receipt of the affidavit of Chief S. I. Obidinanwa of counsel, Chief C. C. Onoh, the 3rd respondent herein, denied the contents of the affidavit raising other issues in his counter affidavit of December 11, 2003. Chief S. I. Obidinanwa of counsel filed a reply to Chief C. C. Onoh’s counter affidavit sworn in Court on January 22, 2004.

The Garnishee proceedings was scheduled for hearing and it had a checkered history. On September 30, 2004 when the case came up for hearing the 2nd and 3rd respondents as well as the appellant were not in Court. The judge, Hon. Justice B. E. Agbatah as a result of a petition written against him by counsel for the 1st respondent, refused to hear the application further, and sent the file back to the Hon. Chief Judge for reassignment to another judge.

The Chief Judge returned the case file to Hon. Justice Agbatah with a direction for him to hear and determine the garnishee proceedings on October 7, 2007. The matter did not however come up on October 7, 2007. Instead, it came up before Hon. Justice Agbatah on October 8, 2004 and the appellant was not in Court and was not represented. There was no hearing notice issued and served on the appellant.

On the said October 8, 2004 Garnishee Order absolute was issued by Hon. Justice B. E. Agbatah. On October 22, 2004 Execution was levied and property of the appellant attached pursuant to Garnishee Order Absolute.

Following the attachment of the property of the appellant pursuant to the Garnishee Order absolute, the appellant filed a Notice of Motion dated October 29, 2004 with affidavits and later amended it, seeking the setting aside of the garnishee Order Nisi and absolute as well as setting aside the attachment and an injunctive Order, restraining the sheriff from selling, by public auction or disposing in any manner, the Garnishee’s goods and chattels attached by the bailiffs.

Counsel to the 1st Respondent filed a preliminary objection on the grounds that the Court was functus officio and that the only avenue open to the appellant was to appeal and not by motion to set aside the orders.

In order to prosecute the appeal, the appellant’s brief of argument settled by Chief L. M. E. Ejiofor, Life Bencher and dated 21st Nov., 2008 was filed on 24th November, 2008. In it, he identified five (5) issues for the determination of the appeal, to wit:

1) ISSUE NO. 1 (Distilled from ground 1) - Will the trial Court have jurisdiction to entertain the Garnishee proceedings when the Garnishee/appellant a limited liability company was served the Garnishee Order summons at its branch office at Enugu, rather than at its well known Head Office in Lagos?

2) Issue No. 2 (Distilled from ground 2) ??? Whether non issuance and service of hearing notice on the appellant for the hearing of the Garnishee proceedings on October 8, 2004 when the Garnishee Order absolute was made did not invalidate the proceeding and render it a nullity?

3) Issue No. 3 (Distilled from grounds (iii) and (v) - Whether under the Nigerian legal System an appeal is the only option open to a party aggrieved by a judgment (Garnishee Order absolute) entered against him or can he also exercise the option of having same set aside by the trial Court when the order is alleged to be a nullity.

4) Issue No. 4 (Distilled from ground iv) - Whether the false affidavit of Chief S. I. Obidinanwa of counsel that the appellant had sufficient fund to satisfy the judgment order when the account of the judgment/debtors, 2nd and 3rd respondents was in debit did not amount to fraud to entitle the Court to set aside the judgment/Garnishee Order absolute?

5) Issue No. 5 (Distilled from ground vi) - Having regard to totality of the affidavit evidence before the Lower Court was the court right in dismissing the appellant’s application to set aside the order nisi and order absolute?

The 1st respondent’s brief of argument, settled by Osmond Afam Akputa, pursuant to the order of this Court, made on 23rd October, 2014, was dated and filed on 13th November, 2014. In it, he nominated three issues for resolution of this appeal, namely:

1. Are the Order Nisi and Order Absolute by Justice B. E. Agbata in this suit made without jurisdiction and/or can the same be nullified on any ground whatsoever.

2. Was honourable Justice I. S. Amanoh functus officio in regard to the application urging the setting aside of the Order Nisi and Order Absolute made by Justice B. E. Agbata

3. Was Honourable Justice I. S. Amanoh justified in dismissing the application for setting aside the Order Nisi and Order Absolute made by Justice B. E. Agbata in this case.

The 1st Respondent, at pages 4 and 5 of his brief of argument, raised and indicated thereon, a Notice of Preliminary Objection, thus:-

NOTICE OF PRELIMINARY OBJECTION PURSUANT TO ORDER 6 RULES 6 OF COURT OF APPEAL RULES OR UNDER THE INHERENT JURISDICTION OF THE COURT

TAKE NOTICE that the 1st respondent (Uche Ugwu) shall at the or before hearing of this appeal object to the hearing of the same appeal and shall urge this Honourable Court to strike out and/or dismiss the Notice of Appeal dated and filed on the 21st day of September, 2006 (as amended by order of the Court of Appeal on 23/10/2014)

AND FURTHER TAKE NOTICE that the grounds upon which this preliminary objection is brought are:

1. This appeal is a challenge to the property (sic) (propriety) of an Order Absolute made in a garnishee proceedings, yet no Notice of Appeal was filed against the Order Absolute and/or that the Notice of Appeal filed herein is filed outside the time prescribed for its filing.

2. At page 216 of the record of appeal the Lower Court found and indicted the appellant of holding the lawful orders of the Lower Court in contempt and the appellant did not file any appeal against such finding of contempt against it.

3. The appellant has not purged itself of the aforesaid contempt.

4. There is default by the appellant in compliance with an order of Court made in this suit.

Arguments on the preliminary objection were canvassed by the 1st respondent at pages 5 to 7 of the 1st respondent’s brief of argument.  
The Appellant’s Reply brief dated 27th November, 2014 and filed on 25th November, 2014 was deemed filed on 28th November, 2014. I shall first consider and determine the 1st respondent’s preliminary objection.

It is the contention of 1st respondent’s counsel to the effect that the only way that the appellant could ventilate his grouse against the garnishee Order absolute made by B. E. Agbata, J., on 8th October, 2004, was by way of appealing against it, relying on UBN v. Boney Marcus (2006) 133 LRCN 300 AT 314 AND 315; Re Diamond Bank (2002) 17 NWLR (pt. 795) 120 at 134 - 135; Sokoto Govt. V. Kamdex Ltd (2004) 9 NWLR (pt. 878) 345 at 375 - 376. He submitted that the appellant’s notice of appeal filed on 21/7/2006 challenging the garnishee order Absolute made on 8th October, 2004, is incompetent because the said notice of appeal was filed after 2 years and not within three months as required by law, hence he urged that the notice of appeal should be stuck out.

Furthermore, it is the 1st respondent’s contention that since the finding by Amanoh, J., at page 216 of the record of appeal, to the effect that the appellant was in contempt of the lawful orders of the Court below regarding some withdrawals from the judgment debtor’s account as in Exhibit 7, was not appealed against by the appellant, this Court should invoke its inherent jurisdiction and strike out this appeal. He placed reliance on Shugaba v. UBN Plc (1999) 71 LRCN 2720 at 2740; Echaka v. NACB (1998) 56/57 LRCN 3333 AT 3350.

In his response to the 1st respondent’s contentions on the preliminary objection, learned appellant???s counsel submitted that it was when the appellant learnt on 22nd October, 2004 of the garnishee order absolute which was made on 8th October, 2004 that she promptly filed a Notice of Motion to set aside the garnishee orders nisi and absolute.

**Resolution of Preliminary** **Objection:**

I have perused the appellant’s original notice of appeal which was dated and filed on 21st September, 2006 as contained on pages 218 and 219 of the record of appeal. The said notice of appeal pursuant to the order of this Court made on 23rd October, 2014 was amended and reflected in the amended notice of appeal, dated and filed on 31st October, 2014. It is clear as crystals to me that the appellant’s appeal is targeted at the ruling delivered by I. S. Amanoh, J., on 20th September, 2006. Therefore, unarguably the appellant’s notice of appeal filed on 21st September, 2006 against the ruling delivered on 20th September, 2006 was certainly qua timet and within the period stipulated/mandated in Section 24 of the Court of Appeal Act, 2004. Hence, the said notice of appeal is competent.

With respect to the 1st respondent’s contention of the finding of the learned trial judge at page 216 of the record of appeal, to wit:

*Equally in the case before me, I find the action of the applicant garnishee Bank in allowing the withdrawal from that judgment debtor’s account as in Exhibit 7 to be a glaring abuse of* *Courts process and contempt of its lawful orders. It is both irresponsible and reprehensible.*

The 1st respondent’s learned counsel submitted that the appellant being a contemnor, this Court should not entertain his appeal. The question that immediately propped up in my mind, was since it was his Lordship, Amanoh, J., who found that the appellant was in contempt of the Court’s lawful orders and also in glaring abuse of the processes of the Court below, what did he - Amanoh, J., do? And why did his Lordship consider the appellant’s application at all? To my mind, it will be tantamount for this Court to be weeping longer than the bereaved, to exercise our inherent disciplinary jurisdiction against the appellant, who has not flouted any order nor abused any process of this Court. It was Amanoh, J., who found that the appellant was in contempt of the lawful orders of the Court below, who ought to have reprimanded the latter and not this Court. In sum, I find no merit in the preliminary objection against the hearing of this appeal. Hence, the 1st respondent’s preliminary objection is dismissed.

Now, to the real kernel in this appeal, I have perused the record of appeal containing all the processes connected with the appellant’s motion on notice filed on 29th October, 2004; the ruling at the Court below dated 20th September, 2006; the appellant’s amended notice and grounds of appeal; the appellant’s issues vis-a-vis the 1st respondent’s issues for the determination of this appeal. I am satisfied that the real issue calling for the determination of this appeal, is 1st respondent’s issue 3. That is, whether the Court below Coram: I. S. Amanoh, J., was justified in dismissing the application to set aside the Order Nisi and Absolute, made by B. E. Agbata, J., in this case? I should say that I have deeply perused the trenchant submissions contained in the appellant’s and 1st respondent’s briefs of argument which I do not intend to review or rehash here, but will have recourse to them in the course of this judgment.

It is not only incontestable but indisputable that the garnishee order absolute made by B. E. Agbata, J., in this matter on 8th October, 2004 was a final decision, because there was nothing left to be ascertained or determined again between the parties who were involved in the matter. The only thing left to be done thereafter was no more than the execution of the order so made by the Court below on 8th October, 2004. And by virtue of Section 318(1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, the word “decision” means “any determination of the Court and includes judgment, decree, order, conviction, sentence or recommendation.” An interim order and even an exparte order is a decision. Kubor v. Dickson (2013) 4 NWLR 9pt. 1345) 534 at 582 and 592 (SC).

Indeed, the character that identified a decision as being final is the lack of power of the Court which gave that decision to reopen, reconsider or redecide the matter that was decided and settled by its earlier decision. In Fadiora & Anor. V. Gbadebo & Anor (1978) LPELR-1224 (SC), the Supreme Court emphatically held that:

*“a judicial decision is deemed to be final, when it leaves nothing to be judicially determined or ascertained thereafter, in order to render it effective and capable of execution, and is absolute, complete and certain and* *when it is not lawfully subject to subsequent decision, review or modification by the tribunal which pronounced it.*

Further seeWestern Steel Works Ltd v. Iron & Steel Workers Union & Anor (1986) 3 NWLR (pt. 30) 617; Emezi v. Osuagwu (2005) 21 NSCQR 388 at 404 - 405.Therefore, the garnishee order absolute made by the Court below on 8th October, 2004 was no longer subject to another decision, review or a reconsideration by the same trial Court irrespective of how it was subsequently and differently constituted as in the instant matter.

In Union Bank of Nigeria Plc v. Boney Marcus Ltd & Ors (2005) 7 SCNJ 406; (2005) LPELR-3394 (SC), the respondent had sued Nichimen Co. Nig Ltd in an action at the Abia State High Court, holden at Osisioma Judicial Division and at the end of the trial, judgment was entered for the respondent. In order to execute the judgment in her favour, the respondent filed garnishee proceedings at the same Court and prayed that she be paid the judgment debt which are in the hands of Metcome Nig. Ltd and the Union Bank of Nigeria Plc, as garnishees. The High Court, granted the application and ruled that the money belonging to the judgment debtor in the hands of the 1st garnishee and which said money is in the 1st garnishee’s account with the 2nd garnishee (appellant) be attached in order to satisfy the judgment debt, together with the costs of the garnishee proceedings.

The 2nd garnishee promptly complied with the order made by the trial Court and sent a cheque for the amount representing the balance in the 1st garnishee’s account with her. That notwithstanding, the 2nd garnishee filed a notice of appeal against the ruling made by the trial High Court, which she had complied with promptly. The judgment creditor-Respondent, challenged the competence of the 2nd garnishee/appellant’s notice of appeal by raising a preliminary objection against it. The 2nd garnishee, though not a party to the original action, was a party to the garnishee proceedings. The grounds upon which the notice of preliminary objection was anchored were that:

(i) The ruling made by the trial High Court on 17th February, 1998 was interlocutory,

(ii) An appeal against that ruling ought to have been filed within 14 days,

(iii) That the 2nd garnishee’s notice of appeal which was filed on 27th March, 1998 was filed out of time without leave of Court and

(iv) The ruling of the trial High Court made on 25th May, 1998 to the effect that the 2nd garnishee’s notice of appeal is void and incompetent is extant, the same having not been appealed against, the said notice of appeal remains void, hence the Court of Appeal lacks the jurisdiction to entertain any proceedings based on it.

The Court of Appeal, in her decision on the preliminary objection by a majority decision upheld the preliminary objection to the effect that the 2nd garnishee’s notice of appeal filed on 27th March, 1998 against the ruling/order made by the trial High Court on 17th February, 1998 was incompetent for having been filed out of time of 14 days within which it should have been filed. The 2nd garnishee/appellant was not satisfied with the decision of this Court and consequently appealed against it to the Supreme Court, on the ground that the garnishee order Absolute made by the trial High Court on 17th February 1998 was not an interlocutory but a final decision. The Apex Court unanimously in her judgment, per my Lord Katsina-Alu, JSC (as he then was) at pages 9 - 13, held thus:

*This area of law in the Nigerian context need not raise any confusion, ingenuity of counsel notwithstanding. There are cases galore decided by this Court on this point to the effect that a decision of a Court is final when it determines the rights of the parties. It seems to me therefore that the real test for determining this question ought therefore to be this: Does the judgment or order as made, finally dispose of the rights of the parties? If the judgment or order has determined the rights of the parties, then it is unquestionably a final order: but if it does not, it is then an interlocutory order. See Bozson v. Altrincham Urban District Council (1903) 1 K. B. 547.*

*Unarguably the question of what is an interlocutory or final decision before now had engaged the attention of the Courts in this country. However, this Court has, in Omonuwa v. Oshodin given an authoritative decision on the matter. In that case, this Court held that: “........................... a decision between the parties can only be regarded as final when the determination* *of the Court disposes of the rights of the parties, (and not merely an issue), in the case.”  
In Akinsanya v. United Bank for Africa Ltd. (1986) 4 NWLR (pt. 35) 273, (1986) 7 SC (pt. 1) 233, this Court decided that:*

*... What renders an order of a Court interlocutory or final with respect to a matter before it is its effect on the rights of the parties to the litigation. In all the cases, the test and dominant consideration has been whether the rights of the parties have been finally determined or not. See also Western Steel Works Ltd v. Iron and Steel Workers Union (1986) 3 NWLR (pt.30) 617.*

*This Court has recently in Odutola v. Oderinde (2004) 12 NWLR (pt. 888)**574 re-stated the position of the law. The Court, per Kutigi, JSC held: “An order or decision is final when it finally disposes of the rights of the parties, that is to say the decision or order given by the Court is such that the matter would not be further brought back to the Court itself, as in this case.” Perhaps, I should refer to a few English cases which have been adopted in this country. In Salaman v. Warner (1891) 1 QBD 734 at 736 LOPES L.* *J. in giving a more precise characterisation of final judgment or order said: “I think a judgment or order would be final within the meaning of the rules, when whichever way it went, it would finally determine the matter in dispute.” In**Blakey v. Latham (1889) 43 Ch. D. At p. 25 the Court said: “I cannot help thinking that no order in an action will be final unless a decision upon the application out of which it arises, but given in favour of the other party to the action would have determined the matter in dispute.” In**Bozson v. Altrincham District Council (1903) 1 K. B. 547, Lord Alverstone CJ. in concurrence with Earl of Halsbury. L. C. on the point said at pp. 549 -550: “It seems to me that the real test for determining this question ought to be this: Does the judgment or order as made finally dispose of the rights of the parties? If it does then, I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order.” In the instant case, the plaintiff Boney Marcus Ind. Ltd. obtained judgment against the defendant Nichimen Co. (Nigeria) Ltd. This was on 19th May, 1997.*

*Thereafter the plaintiff filed garnishee proceedings against Metcome (Nig) Ltd. and Union Bank of Nigeria Plc. to realise the judgment debt and costs. On 17th February, 1998, the trial judge granted the application and accordingly made an order absolute, the terms of which I have earlier on in this judgment reproduced.*

*The 2nd garnishee - Union Bank of Nigeria Plc filed a notice of appeal on 27th March, 1998 against that ruling. The plaintiff raised a preliminary objection to the competence of that notice on the ground that the appeal was filed out of time. It was the plaintiff’s contention that the garnishee order absolute was an interlocutory decision and that being so, an appeal against it should and must be filed within 14 days. The Court below ruled that the garnishee order absolute was an interlocutory decision.*

*The question to be resolved in this appeal is really whether the decision of the trial Court was interlocutory or final. I think the resolution of this question would depend on whether the garnishee order as made disposed of the rights of the parties before the Court. The order of the trial Court was:*

*“... that the money belonging to the judgment debtor in possession of the 1st garnishee which money is in the 1st garnishee’s account with the second garnishee be attached to satisfy the judgment debt, together with the costs of the garnishee proceedings.”*

*The above was the final garnishee order. In other words, it was an order absolute. It was a final decision of the Court. A judicial decision is said to be final when it leaves nothing to be judicially determined thereafter in order to render it effective and capable of execution. That is to say that the matter would not be brought back to the Court itself for further adjudication. Clearly, by the order of the Court above, the trial Court had determined the rights of the parties before it. It must be stated again that the appellant promptly complied with the order of the Court.*

*This Court, in Odutola v. Oderinde (2004) 12 NWLR (pt. 888)**574 re-stated the position of the law in this respect. The Court, per Kutigi, JSC held: “An order or decision is final when it finally disposes of the rights of the parties, that is to say, the decision or order given by the Court is such* *that the matter would not be further brought back to the Court itself, as in this case.” See Akinsanya v. United Bank for Africa Ltd. (supra); see also Western Steel Works Ltd v. Iron and Steel Workers Union (supra); Omonuwa v. Oshodin & Anor. (supra).*

*In my judgment, based on the authorities I have cited, the order of 17th February, 1998 was a final order. In effect, the notice of appeal filed on behalf of the 2nd garnishee/appellant on 28 February, 1998 was filed within time. In the result I find no merit in the preliminary objection, which is accordingly overruled.*

*The appeal therefore succeeds and I allow it. The decision of the Court below is set aside. The plaintiff/judgment creditor/objector shall pay costs of N10,000.00 in this Court and N5,000.00 in the Court below to the 2nd garnishee/appellant.*

I think, with that, it is now settled beyond reproach and peradventure, that the garnishee order Absolute made by the Court below by B. E. Agbata, J., on 8th October, 2004 was a final decision.

The next question to be asked and answered is whether the Court below, albeit subsequently and differently constituted: Coram Amanoh, J., could set aside the final order made by Agbata, J., on 8th October, 2004. The Supreme Court in Aminu Tanko v. The State (2009) 4 NWLR (pt. 1131) 430; (2009) 14 WRN 1; (2009) LPELR- 3136 (SC), had set out three conditions which must guide Courts faced with the sort of situation posed in this appeal, that is setting aside of previous decisions by the Court which had made an earlier decision on the same subject matter. His Lordship, Aderemi, JSC at pages 23 - 24 of the LPELR had this to say, to wit:

*However, having regard to the commonly agreed statement that infallibility is never the virtue of any human being - errors can be made at any time by any human being. Where such errors come within the bracket of “SLIP RULE”- minor or clerical mistakes, this Court like other Court below it, must be willing to effect correction upon being invited to do so by an application. Again, when over a period of time a judgment or judgments of this Court already delivered are patently seen not to be meeting the course of desired justice, this Court, again, upon an invitation to it through an appeal or appeals, similar in* *terms of facts, to the previous judgment or judgments, will readily revisit such decision with a view to varying same, or overruling same and setting same aside - all in the interest of justice which is the pre- occupation of all Courts.*

*However, to guard against instability crippling into the corpus of our laws; the following conditions must be seen to be present in the previous judgment sought to be set aside, and they are:*

*(a) that the previous judgment is erroneous in law, or*

*(b) that the previous judgment was given per incuriam; or*

*(c) that the previous judgment is contrary to public policy or is occasioning miscarriage of justice or perpetuating injustice.*

See A-G. Federation v. Guardian Newspaper Ltd (1999) 9 NWLR (pt. 618) 187 at 203.

In the circumstances of the instant case, why did it not occur to the appellant’s counsel to have appealed to this Court against the garnishee order Absolute made by Agbata, J., on 8th October, 2004? Why did he resort to making the application vide the motion on notice filed on 29th October, 2004, to the same High Court which made the earlier order of 8th October 2004, to set aside its own earlier order? It were better, if the appellant had appealed against the order of 8th October, 2004, to this Court and ventilate all her grievances against that order, for it to be reviewed and/or corrected. The authorities of the Supreme Court are to the effect that in circumstances such as it presented itself herein, an appeal to a higher Court then rather than application to the trial Court to set aside its own earlier decision, could be more advantageous to the party affected by the order of the trial Court.

For example, in Akporue & Anor v. Okei (1973) 12 SC 137, the Supreme Court held that:

no judge is competent to sit on appeal over the decision or order made by a brother judge. In the context of our legal system, judicial review is primarily the function of the appellate Court.

So also in Emordi & Ors v. Kwentoh & Ors (1996) LPELR-1135 (SC), the Supreme Court maintained her position to the effect that:

*It is not competent of a judge to overrule the decision or ruling made by another judge or sit in judgment over the decision of a brother judge. The reason for this is not* *far to seek, stems from the fact that the Judges are of co-ordinate jurisdiction and no Judge can therefore sit on appeal over the decision or ruling of his brother Judge.*

Therefore, a Judge cannot reverse, vary or alter the order or decision, he did not make or issue. Hence, the proper course of action to be taken by the party who is affected by the order or decision against him is to appeal against it to a higher Court. NICON v. Power Industrial Engineering Co. Ltd (1990) 1 NWLR (pt. 29) 697 at 707 (CA); Shell Petroleum Development Co. (SPDC) v. Chief Tigbara Edamkue (2009) 7 SCNJ 124 at 142 - 143.

I am of the considered and firm opinion that the motion on notice of 29th October, 2004 filed by the appellant which was placed before Amanoh, J., for his consideration and determination was very tempting and it is gratifying that he did not fall for the bait, to redetermine what his learned brother - Agbata, J., had already determined on 8th October, 2004. That is how it should be, for it is said that dogs do not bite dogs, albeit that they bark at each other.

I am in total agreement with his Lordship, Amanoh, J., when he concluded thus:

*I further reiterate that having made the order nisi absolute, this Court has determined all the rights of the parties and is now functus officio.*

It is instructive that the explanation, I did give, with respect to the doctrine of functus officio, be recapitulated and re-echoed here. In Chukwuma Nwagbo v. Ali Mba (2016) LPELR-41045 (CA); (2016) 8 C. A. R. 225 at 235 - 236, thus:

*Now, the principle of functus officio, is not just a principle of procedure only. It is more of a question of jurisdiction and competence of a Court of law, such as the trial customary Court, to give a judgment and thereafter re-visit it or conduct further post judgment proceedings. The question therefore is whether a Court can competently assume jurisdiction over a case it had concluded?*

*In Sanusi v. Ayoola (1992) 11/12 SCNJ 142; (1992) LPELR-3009 (SC), the apex Court per Karibi-Whyte, JSC stated at page 19 thereof that:*

*There is the well settled elementary and fundamental principle of law that a Court on disposing of a cause before it renders itself functus officio. It ceases to have* *jurisdiction in respect of such case, - see Ekerele v. Eke (1925) 6 NLR, 118, Akinyede v. The Appraiser (1971) 1 All NLR 162. It cannot assume the status of an appellate Court over its own decision, except there is statutory power to do so - see Fritz v. Hobson (1880) 14 Ch. D 542.*

*Furthermore, in Mohammed v. Husseini (1998) 14 NWLR (pt. 584) 108; (1998) LPELR-1896 (SC), the Supreme Court per Mohammed, JSC p. 42 - 43 defined the principle thus:*

*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, once a judge gives a decision or makes an order on a matter, he no longer has the competence or jurisdiction to give another decision or order on the same matter - See Emeka Onyemobi v. The Hon. President of Onitsha Customary Court and Ors (1995) 3 NWLR (pt. 1) at 558 - 559.*

*Further seeUnakalamba v. Comm. of Police (1958) 3 F. S. C. 7; Bakare v. Apena (1986) 4 NWLR (pt. 33) 1 (SC).*

*In the circumstances of the instant case, it is clear to* *me that upon the delivery of the judgment of 28th October, 2010, the trial Customary Court, had performed her task and had no jurisdiction to conduct the post judgment proceedings as it did on 27th July, 2011, 2nd December, 2011 and 9th December, 2011. It is worse and curious that the proceedings of 25th July, 2011 at the trial Court on page 31 of the record of appeal, was presided over by a lawyer - Barr. Ozioko Maxims. And worse still, the said proceedings was conducted in the absence of the defendant - (appellant) herein). I am of the considered and firm opinion that, just as the order made on 28th October, 2010 for the sharing of the land in dispute by a Surveyor whose report thereon was to be approved on 3rd January, 2011 was made in error, so also the post judgment proceedings conducted after the judgment of 28th October, 2010, were not within the jurisdictional competence of the trial Court.*

*I am in agreement with the contention of the appellant’s counsel to the effect that the Court below was in error when it held that the trial customary Court was not obliged to observe the principle of functus officio, in the circumstances of* *this matter. In effect, I resolve issue 3 in favour of the appellant.*

For all the foregoings, I resolve the sole issue discussed in this appeal against the appellant and in favour of the respondent. Hence, the appeal is dismissed for lacking in merits.

In effect the ruling of Amanoh, J., in re Suit No. E/1/99, delivered on 20th September, 2006 is hereby affirmed.

Cost of N100,000 only is awarded to the respondent against the appellant.

**IGNATIUS IGWE AGUBE, J.C.A.:**

I have been opportuned to have had a preview of the lead Judgment of my learned brother, TOM SHAIBU YAKUBU JCA. I agree in its entirety with His Lordship’s reasoning and conclusion reached therein that the Appeal lacks merit and it ought to be dismissed. I have nothing to add to the said reasoning and conclusion, other than to say that I too dismiss the Appeal and affirm the Ruling of Amanoh J. in re Suit No.E/1/99, delivered on the 20th day of September, 2006.

Cost of N100,000 is awarded to the Respondent against the Appellant.

**MISITURA OMODERE BOLAJI-YUSUFF, J.C.A.:**

I agree