**KOLAWOLE F.O-LOY ESQ.**

**V.**

**REGISTERED TRUSTEES OF THE NEW COVENANT CHURCH**

IN THE COURT OF APPEAL OF NIGERIA

THE 10TH DAY OF MARCH, 2017

CA/I/231/2011

**LEX (2017) - CA/I/231/2011**

OTHER CITATIONS

2PLR/2017/188 (CA)

(2017) LPELR-42183(CA)

**BEFORE THEIR LORDSHIPS:**

MONICA BOLNA'AN DONGBAN-MENSEM, J.C.A

MODUPE FASANMI, J.C.A

CHINWE EUGENIA IYIZOBA, J.C.A

**BETWEEN**

KOLAWOLE F.O-LOY ESQ. - Appellant(s)

AND

REGISTERED TRUSTEES OF THE NEW COVENANT CHURCH - Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF OGUN STATE, IJEBU-ODE JUDICIAL DIVISION (Olugbemi J., Presiding)

**REPRESENTATION/LAWYERS**

KOLAWOLE F. O. LOY, ESQ. in person - For Appellant.

AND

KUNLE ISHOLA, ESQ. with him, DAMILOTUN OGUNLEKE, ESQ. - For Respondent.

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

COMPANY LAW - BUSINESS NAME:- Whether any person carrying on business within the jurisdiction in a name other than his own can be sued in such a name.

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ISSUANCE/SERVICE OF ORIGINATING PROCESS(ES) - Whether failure of service of process deprives the court of its jurisdiction.

ACTION - UNDEFENDED LIST PROCEDURE:- Whether a judgment obtained under the undefended list is a judgment on the merit.

JUDGMENT AND ORDER - FUNCTUS OFFICIO:- Circumstance under which a court becomes functus officio and its effect - 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:- Circumstances under which a Court would set aside its judgment/decision/order.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Respondent claims that sometime in 1999, it bought two plots of land, Plots 1 and 2 Block C Ladejobi Layout, off Ibadan Road, Ijebu-Ode from one Kehinde Ladejobi, one of the children of Chief F.A. Ladejobi the deceased original owner of the entire Layout. The Respondent claimed that the said son Kehinde Ladejobi had represented to its representative, Pastor Olatunde Owolabi that the two plots of land were his own portion of the Estate of their deceased father. N24, 000.00 was paid for the land and a receipt was issued to them backdated to 20/02/78 and tendered in evidence as Exhibit C1. They claimed the receipt was backdated in order to circumvent the Land Use Act. The Respondent claimed it was put into possession and that it commissioned one Surveyor Ogunbadewa to survey the land. The survey plan No KOGG/99/012 dated 10/02/99 was admitted in evidence as Exhibit C6.The Respondent claimed it also prepared building plan No PB/28/5/181/2002 which was approved by the Ijebu-Ode Zonal Planning Authority. The Plan was admitted in evidence as Exhibit C2.

Some years after, the Executors of the Estate of late Chief F.O. Ladejobi namely Otunba Bode Ladejobi and Mrs Yetunde Esubi alleging that several persons purchased land in the Estate illegally instituted an action Suit No. HCJ/50/03 against eleven of these alleged illegal purchasers of land in the Estate for trespass. The Respondent herein was purportedly sued as the 11th defendant in the suit in the name “The Pastor New Covenant Church”. The Claimants in the suit - The Executors of the Estate however made room for settlement out of Court by payment of additional fee for both repurchase and ratification of the earlier sale.

The Respondent claimed it took advantage of the opportunity and paid an additional fee of N100,000.00 to Otunba Bode Ladejobi, one of the Executors and thereby regularized the earlier sale and their interest in Plots 1 and 2 Block C of the Layout of which they claimed they were already in occupation. It was issued a receipt for the payment.  
  
The Respondent further claimed that during the pendency of suit no. HCJ/50/03 the Appellant herein, a legal practitioner and counsel to the Claimants began to claim ownership of the Respondent’s Plots 1 and 2 Block C of the land in dispute for which the 11th defendant was sued, on the ground that same has been transferred to him by the Claimants in lieu of his professional fees over the suit being handled by him. The Respondent claimed the Appellant went further to illegally enter into the land against the possessory right of the Respondent in spite of Respondent’s structure built thereon, destroyed the foundation and fence on the land and forcefully took over possession of same against the Respondent’s interest.

The Respondent further claimed that the Appellant with the determination to claim the Respondent’s land for himself and being dissatisfied with the negotiation and settlement between the Executor and the Respondent proceeded to obtain default judgment against the purported 11th defendant. The Pastor, New Covenant church in that suit and sought to enforce the judgment against the Respondent. The Respondent thereupon instituted this suit, HCJ/188/2006 against Otunba Bode Ladejobi (For Executors of Estate of F.A Ladejobi) & Kolawole F.O. Loy Esq praying for the following reliefs:

The trial Court entered judgment, granting most of the reliefs claimed by the Respondent and dismissed the Appellant’s counterclaim. Dissatisfied, the Appellant appealed to the Court of Appeal.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment, granting most of the reliefs claimed by the Respondent and dismissed the Appellant’s counterclaim.. Dissatisfied, the Appellant appealed to the Court of Appeal.

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

*BY APPELLANT:*

(1) Whether the judgment of the learned trial judge can be said to be valid, just, fair, reasonable, and un-perverted giving credence to the weight of evidence and their evaluation; (i, x, ix, xi,).

(2) Whether by virtue of Exhibits C1, C3, C5, D3A & B, D4, D9, A&B, or/and the circumstances of the inconclusive negotiations for regularization of illegally purchased plots 1 & 2 of Block C of the layout or both, the claimant can be said to have any interest in plots 1 and 2 of Block C of Late Chief F. A. Ladejobi layout along Ibadan Road, Ijebu-Ode. (Grounds v, vii, ix & x) i.e. (Whether or not the negotiation to pay money for regularization was conclusive and if not, what were the legal implications.

(3) Whether the Claimant and the pastor New Convenant Church are the same or have agency relationship so as to be a party in HCJ/50/2003 so as to constitute estoppel per rem judicatam whereby estoppel by conduct or/and the doctrine of standing by may apply in this suit; and where the answer is in the negative, whether it is consistent and just to hold in one breath that “New Covenant Church” as recorded in the receipt - complementary card Exhibit C3 is a Juristic person who could have paid N100, 000 for the purchase of 2 plots of land but refused to accept *The Pastor, New Covenant Church*as a Juristic person who the Court may take as a party, despite the provision of Order 11 Rule 26 of the then Ogun State High Court (Civil Procedure) Rules 1987.

(4) Whether or not the judgment in HCJ/50/03 is valid, subsisting and final such that the judge in the present suit was estopped from reviewing the judgment by delivering a judgment in direct conflict with the one in HCJ/50/03 and where he does, which of the two judgments must prevail.

(5) Whether or not the Defendants were trespassers on plots 1 & 2 of Block C of Late Chief F. A. Ladejobi Layout so as to justify the damages awarded against them.

*BY RESPONDENTS*

i.) Whether “the Pastor New Covenant Church” is a juristic person for the purpose of Suit HCJ/50/03 and/or whether there was a valid judgment against the present Respondent in Suit HCJ/50/03 such that could actuate the principle of estoppel per rem judicata against the respondent in suit HCJ/188/06.

ii.) Whether Exhibit C3 is not a re-confirmation/ratification of the equitable interest and possessory right of the Respondent to Plots 1 and 2, Block C of Ladejobi Layout along Ibadan Road Ijebu Ode where he had exercised acts of possession prior to the Appellant’s claim during the pendency of Suit HCJ/50/03.

iii.) Whether the reliefs accruing to the Respondent and granted by the lower Court are fair and just in the circumstance of this suit.

**MAIN JUDGMENT**

CHINWE EUGENIA IYIZOBA, J.C.A.(DELIVERING THE LEADING JUDGMENT):

This is an appeal against the Judgment of Olugbemi J. of the High Court of Ogun State Ijebu-Ode in Suit No. HCJ/188/2007 delivered on the 17th day of May, 2011 wherein the learned trial Judge granted most of the reliefs claimed by the Respondent and dismissed the Appellant’s counterclaim.

The facts leading to the institution of this suit is somewhat complex and need to be carefully set out for better understanding of the issues involved. The Respondent herein claims that sometime in 1999, it bought two plots of land, Plots 1 and 2 Block C Ladejobi Layout, off Ibadan Road, Ijebu-Ode from one Kehinde Ladejobi, one of the children of Chief F.A. Ladejobi the deceased original owner of the entire Layout. The Respondent claimed that the said son Kehinde Ladejobi had represented to its representative, Pastor Olatunde Owolabi that the two plots of land were his own portion of the Estate of their deceased father. N24, 000.00 was paid for the land and a receipt was issued to them backdated to 20/02/78 and tendered in evidence as Exhibit C1. They claimed the receipt was backdated in order to circumvent the Land Use Act. The Respondent claimed it was put into possession and that it commissioned one Surveyor Ogunbadewa to survey the land. The survey plan No KOGG/99/012 dated 10/02/99 was admitted in evidence as Exhibit C6.The Respondent claimed it also prepared building plan No PB/28/5/181/2002 which was approved by the Ijebu-Ode Zonal Planning Authority. The Plan was admitted in evidence as Exhibit C2.

Some years after, the Executors of the Estate of late Chief F.O. Ladejobi namely Otunba Bode Ladejobi and Mrs Yetunde Esubi alleging that several persons purchased land in the Estate illegally instituted an action Suit No. HCJ/50/03 against eleven of these alleged illegal purchasers of land in the Estate for trespass. The Respondent herein was purportedly sued as the 11th defendant in the suit in the name “The Pastor New Covenant Church”. The Claimants in the suit - The Executors of the Estate however made room for settlement out of Court by payment of additional fee for both repurchase and ratification of the earlier sale. The Respondent claimed it took advantage of the opportunity and paid an additional fee of N100, 000.00 to Otunba Bode Ladejobi, one of the Executors and thereby regularized the earlier sale and their interest in Plots 1 and 2 Block C of the Layout of which they claimed they were already in occupation. It was issued a receipt for the payment.

The Respondent further claimed that during the pendency of suit no. HCJ/50/03 the Appellant herein, a legal practitioner and counsel to the Claimants began to claim ownership of the Respondent’s Plots 1 and 2 Block C of the land in dispute for which the 11th defendant was sued, on the ground that same has been transferred to him by the Claimants in lieu of his professional fees over the suit being handled by him. The Respondent claimed the Appellant went further to illegally enter into the land against the possessory right of the Respondent in spite of Respondent’s structure built thereon, destroyed the foundation and fence on the land and forcefully took over possession of same against the Respondent’s interest. The Respondent further claimed that the Appellant with the determination to claim the Respondent’s land for himself and being dissatisfied with the negotiation and settlement between the Executor and the Respondent proceeded to obtain default judgment against the purported 11th defendant. The Pastor, New Covenant church in that suit and sought to enforce the judgment against the Respondent. The Respondent thereupon instituted this suit, HCJ/188/2006 against OTUNBA BODE LADEJOBI (For Executors of Estate of F.A Ladejobi) & KOLAWOLE F.O. LOY ESQ praying for the following reliefs:

1. An Order setting aside the judgment delivered by Hon. Justice O.A. Adesida in Suit No HCJ/50/2003 on 13/4/2006 betweenMRS YETUNDE ESUBI & ANOR V. MR. S.I.K LAWAL & ORS in so far as same relates to the Plaintiff (i.e. Claimant) (then sued as 11th Defendant) over Plots 1 and 2 Block C Ladejobi Layout Ijebu-Ode as same was obtained by material misrepresentation and concealment of facts.

2. An Order nullifying as of no legal effect whatsoever the actions and activities of the Defendants in relation to plots 1 and 2 Block C Ladejobi Layout off Ibadan/Ijebu-Ode Road Ijebu-Ode same being predicated upon material designed to overreach the Plaintiff’s (i.e. Claimant’s) title to the said plots thus occasioning miscarriage of justice.

3. Perpetual injunction restraining the Defendants, their agents, servants, workmen and privies from entering upon, remaining on, further entering and remaining on, further constructing in any form or manner any structure on plots 1 and 2 Block C Ladejobi Layout, Ijebu-Ode/Ibadan Road, Ijebu-Ode belonging to the Plaintiff(i.e. Claimant).

4. The sum of N20 million being general damages for the trespass committed by the Defendants over plots 1 and 2 Block C Ladejobi Layout, Ijebu-Ode/Ibadan Road, Ijebu-Ode by going into the said plots and demolishing Plaintiff’s (i.e. Claimant’s) structures thereon without its knowledge, consent and permission. The trespass is continuing.

5. An Order of mandatory injunction compelling the Defendants to demolish, remove and cart away all structures erected, placed and constructed on plots 1 and 2 Block C Ladejobi Layout, Ijebu-Ode/Ibadan Road, Ijebu-Ode without the Plaintiff’s (i.e. Claimant’s) consent and restore the plots to the condition they were prior to the Defendants’ act of trespass thereon.

I shall simply reproduce the Appellant’s side of the story as set out in paragraph 2 page 1 of his Amended Appellant’s brief:

(2). STATEMENT OF FACTS

i. The Respondent as Claimant instituted this suit at the High Court of Ogun State, against Otunba Bode Ladejobi as the 1st Defendant, and the Appellant as the 2nd Defendant,

ii. Prior to this action, the 1st Defendant, along with one Mrs. Yetunde Esubi; both executors of late Chief F. A. Ladejobi sued the Pastor, New Covenant Church (the name inscribed on a corner piece in the said land) (hereinafter referred to as “The Pastor”) in Suit No; HCJ/50/03 for trespass on the disputed land as the 11th Defendant. The said Pastor was served Exhibit D7 and other Court’s processes personally; he entered appearance and came to Court on a number of times and abandoned the defence. Those who purchased land illegally from the layout and other individuals taken to Court with the Pastor sought amicable settlement and an agreement was reached generally with them. And the Pastor also sought to settle with mischief.

iii. He was specifically informed of non - availability of land in dispute and that he was sued to remove encumbrances there from but, that he may be given another area if he settles like others. He was to fill a settlement form given to him and return it like others; he misrepresented facts to the 1st Defendant (extremely very ill during trial but now deceased) and paid N100, 000 to him instead of N300, 000 for two plots to the Appellant, (the regularizing counsel for the executors), who would prepare Deed of Agreement and get them executed, noted in the record of regularized plots in the layout and deliver same.

iv. The pastor returned to the Appellant with complimentary card receipt which was refused because he appeared to be playing some games as the settlement form was not returned, and therein he paid N100, 000 for 2 plots instead of the N300, 000 against instruction of the two executors to the appellant.

vi. Along the line, it was discovered that the Pastor purchased 4 plots illegally instead of the 2 plots he disclosed, the transaction then took a new turn entirely. He had sold the other 2 at a great profit and the executors insisted he must regularize for the four plots not two. He then caused his lawyers to write the Defendants and while all these negotiations and exchanges of letters were going on, the suit that resulted in judgment tendered as exhibit C5 remained untried for two and a half years. He abandoned defence and eventually the judgment was delivered. Upon this Judgment, the Respondent filed this suit which judgment is being appealed against.

The Respondent herein filed a statement of Claim with 13 main paragraphs and some sub paragraphs. The Appellant herein filed a statement of defence and counterclaim of 55 paragraphs. The Respondent filed a Reply to the statement of Defence. The Respondent and the Appellant called one witness each. At the end of hearing, the learned trial Judge on 17/05/11 entered judgment in favor of the Respondent granting its Reliefs 1, 2, 3 and N250, 000.00 damages for trespass. The Court dismissed relief 5 for mandatory injunction and also dismissed the counterclaim of the Appellant.

The 2nd Defendant in the Court below being dissatisfied with the judgment appealed to this Court by Notice of Appeal dated 16/06/11 and filed on 20/06/11. The Notice of Appeal was subsequently amended by an Order of this Court.

The Amended Notice of Appeal is dated and filed on the 5th day of March 2015. The parties filed and exchanged briefs of argument. The Appellant’s Amended brief is dated and filed on the 30th day of November 2016. The Respondent’s brief is dated 20th day of December 2016 and filed on 21/12/16. The Appellant’s Reply brief is dated 30/12/16 and filed 03/01/17.

Out of the 9 grounds of appeal in the Amended Notice of Appeal, the Appellant distilled five issues for determination as follows:

(1) Whether the judgment of the learned trial judge can be said to be valid, just, fair, reasonable, and un-perverted giving credence to the weight of evidence and their evaluation; (i, x, ix, xi,).

(2) Whether by virtue of Exhibits C1, C3, C5, D3A & B, D4, D9, A&B, or/and the circumstances of the inconclusive negotiations for regularization of illegally purchased plots 1 & 2 of Block C of the layout or both, the claimant can be said to have any interest in plots 1 and 2 of Block C of Late Chief F. A. Ladejobi layout along Ibadan Road, Ijebu-Ode. (Grounds v, vii, ix & x) i.e. (Whether or not the negotiation to pay money for regularization was conclusive and if not, what were the legal implications.

(3) Whether the Claimant and the pastor New Convenant Church are the same or have agency relationship so as to be a party in HCJ/50/2003 so as to constitute estoppel per rem judicatam whereby estoppel by conduct or/and the doctrine of standing by may apply in this suit; and where the answer is in the negative, whether it is consistent and just to hold in one breath that “New Covenant Church” as recorded in the receipt - complementary card Exhibit C3 is a Juristic person who could have paid N100, 000 for the purchase of 2 plots of land but refused to accept *The Pastor, New Covenant Church*as a Juristic person who the Court may take as a party, despite the provision of Order 11 Rule 26 of the then Ogun State High Court (Civil Procedure) Rules 1987. (Grounds 2, 4 and 8.

(4) Whether or not the judgment in HCJ/50/03 is valid, subsisting and final such that the judge in the present suit was estopped from reviewing the judgment by delivering a judgment in direct conflict with the one in HCJ/50/03 and where he does, which of the two judgments must prevail.(Ground 3)

(5) Whether or not the Defendants were trespassers on plots 1 & 2 of Block C of Late Chief F. A. Ladejobi Layout so as to justify the damages awarded against them. (Ground 7).

The Respondent in his brief formulated three issues for determination as follows:

i.) Whether “the Pastor New Covenant Church” is a juristic person for the purpose of Suit HCJ/50/03 and/or whether there was a valid judgment against the present Respondent in Suit HCJ/50/03 such that could actuate the principle of estoppel per rem judicata against the respondent in suit HCJ/188/06.

ii.) Whether Exhibit C3 is not a re-confirmation/ratification of the equitable interest and possessory right of the Respondent to Plots 1 and 2, Block C of Ladejobi Layout along Ibadan Road Ijebu Ode where he had exercised acts of possession prior to the Appellant’s claim during the pendency of Suit HCJ/50/03.

iii.) Whether the reliefs accruing to the Respondent and granted by the lower Court are fair and just in the circumstance of this suit.

Learned counsel for the Respondent had in his brief raised some preliminary issues regarding the competence of some of the issues formulated by the Appellant on the grounds of undue proliferation and multiplicity of questions/issues. I do not intend to go into these preliminary issues. I have read carefully the Record of appeal, the judgment of the learned trial judge, the briefs filed by the parties. I am of the view that the Appellant’s issue 4 and to some extent the Respondent’s issue 1 which I think are both distilled from Ground 3 of the Notice of Appeal will be adequate to dispose of this appeal. The relevant ground of appeal and its particulars read:

GROUND THREE:

The learned trial Court, not being a Court of Appeal, erred in law and acted ultra vires its jurisdiction when it reviewed the judgment of a Court of co-ordinate jurisdiction in Exhibit C5, which judgment is valid, final and subsisting, not appealed against, and employing the result of that unlawful review as the basis of his lordship’s judgment thereby occasioning miscarriage of justice.

PARTICULARS:

i. Exhibit C5 is the judgment of a presiding judge of Ijebu-Ode Judicial Division; whereas this judgment appealed against is delivered soon after the appointment of the trial judge.

ii. The trial judge ruled that his lordship in HCJ/50/03 was wrong to have allowed the 11th Defendant whose name he ought to have struck out and that in his view he was not a party to the suit [even though provision of Order 11 Rule 26 of Ogun State High Court (Civil Procedure) Rules 1987 allowed his lordship to see him as a party, which his lordship did, after satisfying himself that the said 11th Defendant had been personally served twice and the photocopy of service taken]. (See page 61 lines 10 & 11 of record).

iii. The trial judge in Exhibit C5 made a declaration against the pastor, New Convent Church that the land purchased by him is null, void and of no consequence, awarded N200, 000.00 damages against him and made order of perpetual injunction to restrain him from further trespass of plots 1 & 2 of Block C in the Chief F.A. Ladejobi Layout.

iv. The trial judge in this case held that there was no 11th Defendant in that case and ruled therefore that the doctrine of estoppel per rem judicatam did not operate and granted judgment to the Claimant in opposing direction to what the trial judge did in Exhibit C5 constituting fluster judgments.

I shall adopt the Appellant’s issue 4 in the determination of this appeal but slightly reframed to exclude the last two lines:

Whether or not the judgment in HCJ/50/03 is valid, subsisting and final such that the judge in the present suit was estopped from reviewing the judgment by delivering a judgment in direct conflict with it.

APPELLANT’S ARGUMENTS:

Learned counsel for the Appellant on the issue submitted that judgment in HCJ/50/03 was delivered by the presiding judge (the most senior judge) in Ijebu-Ode Judicial Division. Counsel submitted that the judgment was delivered after his lordship had given more than sufficient opportunity; about two and a half years for the defendants, especially the Claimant to defend their cases. He submitted that the suit was filed and served in May, 2003, and that trial did not commence until after 25/10/05. Counsel submitted that when the Defendants failed to show up in Court, the judge ordered that the Defendants be reserved and pictures of the service taken. Counsel submitted that the Claimant’s agent was served and that he attended Court on a number of occasions and thereafter abandoned the case. He submitted that attempt at out of Court settlement was made but failed as they refused to abide by the conditions agreed to. He opined that the judgment was not a default judgment as the Defendants actually abandoned their defence. (See lines 5 & 6 of page 58 of the record). Counsel submitted that many of the illegal purchasers made an out of Court settlement sincerely and they were settled and their names were struck out of the list of defendants whereas the claimant’s agent; the Pastor of the church was insincere. Counsel submitted that the 11th defendant did not appeal against the decision of the Court and that the judgment in HCJ/50/03 is valid, subsisting and final. Counsel submitted that this suit was brought to set the judgment aside, but that instead the Court sat as an Appeal Court over the judgment of a Court of coordinate jurisdiction. He submitted that the Court went on to hold that the name of the 11th Defendant ought to have been struck out as he was not a juristic person. Counsel further submitted that in the Judgment HCJ/50/03, Adesida J. declared that the sale of land by any other person(s) to the Pastor; New Covenant Church i.e. 11th Defendant was null, void and of no consequence; that the 11th Defendant should pay N200, 000.00 general damages and must not commit any further acts of trespass on the land. Counsel submitted that even if the 11th defendant was not a party, that the declaration affects any one on the particular plots of land who did not purchase the land from the testator or his appointed executors. He opined that the 11th Defendant or any other entity on the land was affected by the judgment. Counsel submitted that notwithstanding the above valid, subsisting and final judgment, his lordship Olugbemi J. decided to create a fluster judgment by delivering a conflicting judgment declaring the transfer of the land to the 2nd Defendant as null and void, and granting N250, 000.00 damages and N20, 000.00 cost in favor of the claimant and injunction against the Defendants. Counsel cited the case ofIbrahim Kpansanagi & Ors V Madam Shabako (1993) 5 NWLR (Part 291) 67 @ 79-80;where the Court of Appeal held:

The decision of a Court however perverse subsists and remains valid until it is set aside by an appellate Court. In the instant case, none of the parties is allowed to re-litigate on the issue or the division of the property.

Counsel submitted that this judgment being appealed against is in direct opposition to the earlier judgment which is valid and subsisting. He opined that the trial Court acted ultra vires its jurisdiction by reviewing the judgment of a Court of coordinate jurisdiction. He opined that the suit ought to have been struck out and the Claimant advised to appeal against the judgment. Counsel relied on the following authorities: MOBLIE V. COKER (1975) 3 S.C; OBA AMOS BABATUNDE & OR V MR. SIMON OLATUNJI & ANOR (2000) 1 SCNQR 210; CHUK V CREMER (1846) I COUP TEMP. COH 342. 47 E. R. 884; OBA ALADEGBEMI V OBA FASANMADE (1988) 3 NWLR (PT 81) 129. He urged us to hold that the present judgment appealed against is an abuse of Court’s process in as much as it is in conflict with a subsisting, valid and final judgment and to declare it null and void.

RESPONDENT’S ARGUMENTS:

Learned counsel relying on the cases ofCHRISTABEN GROUP LTD V. ONI (2008) 11 NWLR (PT.1097) 91; AJIBOLA V. P.S.T.S.C EKITI STATE (2007) ALL FWLR (PT 350) 1341 AND AKINDELE V. ABIODUN (2010) ALL FWLR (PT 518) 894 submitted that for an action to be properly constituted as to vest jurisdiction in the Court, there must be a competent plaintiff and a competent defendant. Counsel submitted that a cursory look at the defendants in Suit No. HCJ/50/03 will reveal that although the other defendants in the suit may be proper parties, that the 11th Defendant purportedly sued as “The Pastor, New Covenant Church” is neither a natural person nor an artificial person clothed with the ability to sue and be sued in law. Counsel relying onABUBAKAR V. YARADUA (2008) 18 NWLR (PT.1120)1; and FAWEHINMI V. NBA (NO 2) NWLR (PT 105) 558 submitted that the judgment of the Court in suit HCJ/50/2003 did not take into consideration the fundamental and foundational ingredient of jurisdiction upon which actions must survive or otherwise crumble. He argued that this is fatal to the proceedings and the judgment of the Court against the purported 11th Defendant; consequently, all steps taken in respect of the 11th Defendant in the proceedings no matter how well conducted, resulted in a judgment manifestly wrong and unsupportable; it amounts to “a nullity” and an exercise in futility. Counsel submitted that the Respondent, Registered Trustees of New Covenant Church or the representative of the church, Mr. Owolabi are not bound by the judgment of the Court in HCJ/50/2003; that even though the Claimant in that suit intended to sue the present Respondent, the fact remains that it did not sue the present Respondent; as such the Respondent cannot be bound by the judgment. He submitted that the judgment in HCJ/50/2003 cannot constitute estoppel against suit HCJ/188/2006 as it lacks the required ingredients.

Learned counsel while treating his issue 3, responded to the argument of the Appellant that the trial Judge in this suit sat on appeal over the judgment of a Court of co-ordinate jurisdiction. Learned counsel for the Respondent submitted that the decision of the trial Court did not constitute an appeal. He argued that the position of the law is that a Court can set aside or make pronouncement over its order/judgment or that of a Court of concurrent jurisdiction where the judgment is a nullity; given in the absence of jurisdiction or where it is obtained by fraud or deceit. Counsel cited and relied on the cases of IKPONG V. UDOBONG (2007) 2 NWLR (PT 1017) 184 @ 192, RATIO 7; MAKINDE V. ADEOGUN (2009) 1 NWLR (PT 1123) 575 @ 580, RATIO 7.Counsel further submitted that the judgment in HCJ/50/03 is a judgment of the High Court of Ijebu Ode which was reached against the 11th Defendant without jurisdiction, while the judgment in HCJ/188/06 is also the judgment of the High Court of Ijebu Ode which simply reversed the judgment in HCJ/50/03 against the 11th defendant, a non juristic person. Counsel argued that since both Courts are of coordinate jurisdiction, and the decision of the first was reached without jurisdiction, the latter has the power to reverse same. Counsel submitted that the judgment which pronounced that the 11th defendant is not juristic is valid and that as such every incident; steps or action taken by the Appellant and the Executors in respect of the Respondent supposedly sued as the 11th defendant in that suit is of no consequence. He opined that the judgment of the Court did not in any way constitute a fluster judgment. He urged the Court to dismiss the Appellant’s Appeal on this issue.

RESOLUTION:

The law is settled that once a Court has delivered its judgment in a case, it becomes functus officio. A Court is said to be functus officio in respect of a matter if the Court has accomplished its function in respect of that matter and it lacks the jurisdiction to review, re-open or revisit the matter. It cannot re-open the case for fresh hearing. A party dissatisfied with the judgment can only appeal against it. A Court cannot sit on appeal over its own judgment or decision. Court here includes a Court of co-ordinate jurisdiction. In other words, High Court No. 1 cannot sit on appeal to review a decision of High Court No. 2 because they are Courts of co-ordinate jurisdiction. An appeal can only lie from a decision of the High Court to the Court of Appeal. See Section 240 of the Constitution of the Federal Republic of Nigeria 1999. See also the following cases:

SANUSI V. AYOOLA (1992) NWLR (PT. 265) 275; ONWUCHEKWA V. C.C.B (NIG) LTD & ANOR (1995) 5 NWLR (PT. 603) 409; OGBORU V. IBORI (2005) 13 NWLR (PT. 942) 319; UKACHUKWU V UBA (2005) 18 NWLR (PT. 956) 1; ALOR V NGENE (2007) 17 NWLR (PT. 1062) 163; ONYEKWELI V INEC (2009) 6 NWLR (PT 1136) 13;

Courts of Record however have inherent jurisdiction to set aside their judgments or decisions in certain well defined instances. These instances are:

1. When the judgment is obtained by fraud or deceit either in the Court or of one or more of the parties;

2. When the judgment is a nullity;

3. When it is obvious that the Court was misled into giving judgment under a mistaken belief that the parties consented to it;

4. When the judgment was given in the absence of jurisdiction;

5. When the proceedings adopted was such as to deprive the decision or judgment of the character of a legitimate judgment; or

6. Where there was fundamental irregularity.

In respect of 2 & 3 above, nullity and lack of jurisdiction, this concern situations where for example, there is failure to comply with essential provisions of the law such as service of process or where the Court actually lacked jurisdiction to entertain the suit. Where there is proof that a defendant was not served the originating processes in the suit and judgment or order is made against him, the judgment or order may be set aside by the trial Court. Lack of service on the Defendant renders the proceedings a nullity or deprived the Court of jurisdiction to entertain the suit. See MARK V. EKE (2004) 5 NWLR (PT. 865) 54. Same is applicable in the absence of jurisdiction. It is important to emphasize that all the Court can do is to set aside the judgment.

In the instant appeal, is there any circumstance justifying the Court re-visiting or reviewing the judgment of a Court of co-ordinate jurisdiction or as it were its judgment. The Respondent in the lower Court did not complain that the judgment was obtained by fraud. The Respondent did not complain that there was no service of the processes on it. The Court was not misled into giving judgment under a mistaken belief that the parties consented to the judgment. The judgment was not a nullity and the trial judge did not lack jurisdiction to hear the matter. The complaint of the Respondent in filing HCJ/188/07 is that the 11th Defendant in HCJ/50/03 was a non juristic person and that the judgment against it is a nullity and cannot bind the Respondent. In paragraph 1.0.52 page 15 of the Respondent’s brief it was argued:

the learned trial judge in that suit examined the preliminary point raised by the claimant that “the pastor, New Covenant Church”, sued as the 11th Defendant is not a juristic person capable of suing and being sued, the Court further emphasized the effect of instituting an action against a non juristic person that; in such action where a non juristic person is a party, the Court lacks jurisdiction to proceed against such person/party and the appropriate order to make in the circumstance is a striking out of the name of the non juristic person, where the Court fails to order a striking out, any order or judgment made in relation to the person is one made without jurisdiction and it is nullity ab initio.

In coming to the above conclusion the learned trial judge clearly sat on appeal over the judgment of a Court of co-ordinate jurisdiction. It also failed to take into consideration Order 13 Rule 27 Ogun State High Court (Civil Procedure) Rules 2008 identical to Order 11 Rule 26 of the 1987 Rules which provides:

Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name, and so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply.

In addition to the above rule, there was uncontroverted evidence that the Respondent?’s agent was duly served with the originating processes and he attended Court for a while and stopped coming. The learned trial judge in HCJ/50/03 being satisfied that hearing notice was duly issued proceeded with the case. There is consequently no question of the judgment of the Court being a nullity on that ground as to entitle the same Court to set aside its judgment. The point is if a Court gave judgment in a suit where the defendant is dead and the cause of action did not survive him or where the defendant is truly a non juristic entity in the true sense of it, then the judgment is a nullity; and the Court itself can suo motu set aside the judgment. I must emphasize that all the Court can do is to set aside the judgment; not to review and re-write the judgment as happened here. The 11th defendant in HCJ/50/03 is in a different class. The originating processes were served on someone, who attended Court for some time and stopped. Someone was actually in occupation of the land in dispute, the subject of the suit. The question of that occupant being a non juristic person cannot arise in the circumstances especially given the Ogun State Rules of Court cited above. But even if the Respondent herein was aggrieved and was strongly of the view that the Court in HCJ/50/03 erred in failing to strike out the name of the alleged non juristic person, the complaint is a matter for the Appeal Court. Learned counsel for the Respondent is very wrong in his contention that the lower Court had the jurisdiction to review the judgment of a Court of co-ordinate jurisdiction in the circumstances. Besides even in the above mentioned exceptions when a Court can review its previous judgment, the Court simply sets aside the judgment or order or decision in deserving cases. It cannot undertake full blown review, analysis and criticism of its own judgment, order or decision and at the end come up with alternative judgment, order or decision. When that happens as in the present case, the Court simply sat on appeal over its own judgment. This is irregular and cannot be allowed to stand. The authorities cited by learned counsel for the Respondent do not support his arguments. In IKPONG V. UDOBONG (SUPRA) a case that was heard on the undefended list and the Appellant tried to get the Court that delivered the judgment to set it aside, Omokri JCA (of blessed memory) held:

*“A judgment entered on the undefended list is a judgment entered on its merit and not a judgment in default. Such judgment can therefore only be set aside on appeal.*

InMAKINDE V ADEOGUN (SUPRA), it was held:

As a general rule, no Court or judge has the power of rehearing, reviewing or varying any judgment or order either in an application made in the original action or in a fresh action brought for that purpose. That task ordinarily belongs to the Appellate body by law empowered. The rule which is informed by the policy that litigations must be brought to an end, has many exceptions. These exceptions are either as provided for by the applicable rules of Court or under the inherent jurisdiction of the Court. If not so empowered, the Court that had determined a cause or matter ceases to possess further power in dealing with the case except with respect to such ancillary matters as stay of execution, instalmental payments etc. The Court is said to have become functus officio, its powers to review or vary the decision having been assigned to an appellate body. See Edem v. Akankpa L.G (2000) 4 NWLR (Pt. 551) 70 at 81; Ukachukwu v. Una (2004) 10 NWLR (Pt.881) 294 at 305; Okoye v Nigerian Construction and Furniture Co. Ltd (191) 5 NWLR (Pt. 199) 501.

In the above case they set out the instances when such review may be allowed as I have already set out above. None applies in the circumstances of the present appeal. The arguments and language of learned counsel for the Respondent leave no doubt that the lower Court sat on appeal over the judgment of a Court of co-ordinate jurisdiction. For example counsel had argued all steps taken in respect of the 11th Defendant in the proceedings no matter how well conducted, resulted in a judgment manifestly wrong and unsupportable. Elsewhere, counsel observed the judgment in HCJ/50/03 is a judgment of the High Court of Ijebu Ode which was reached against the 11th Defendant without jurisdiction, while the judgment in HCJ/188/06 is also the judgment of the High Court of Ijebu Ode which simply reversed the judgment in HCJ/50/03 against the 11th defendant, a non juristic person. A Court has no power to reverse the judgment of a Court of co-ordinate jurisdiction. It is not done. The Respondent ought to have appealed against the judgment.

I need to point out that all I am concerned with here is the competence of the Court below to review and nullify the judgment of the Court in HCJ/50/03. I am not delving into all the other issues raised in the appeal as I am of the firm view that the lower Court erred in law and acted ultra vires its jurisdiction when it sat over and reviewed the judgment of a Court of co-ordinate jurisdiction and delivered its own judgment in place of the former judgment. Olugbemi J clearly sat on appeal over the judgment of Adesida J. That is wrong and showed lack of knowledge and understanding of the basic rules. The Judgment in HCJ/188/07 is bound to be set aside. On that basis alone, I hold that the appeal has merit. It is hereby allowed. The judgment of Olugbemi J of the High Court of Ogun State Ijebu-Ode in Suit No.HCJ/188/2007 delivered on the 17th day of May, 2011 is hereby set aside. Costs assessed at N50, 000.00 in favour of the Appellants.

**MONICA BOLNA'AN DONGBAN-MENSEM, J.C.A.:**

I agree with and entirely adopt as mine, the lead Judgment prepared by my learned brother CHINWE EUGENIA IYIZOBA, JCA. The provisions of Order 13 Rule 27 of the Ogun State High Court (Civil Procedure) Rules 2008, replicating Order 11 Rule 26 of the 1987 Rules is one of the most judicious and proactive rules made for the advancement of adjudication in terms of the provisions of Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

The said rule provides as follows:

"Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case will permit all files relating to proceedings against firms shall apply."

A decision premised on the application of this rule can't by any means be null and even if held to be null, all trial Court or .... Of concurrent jurisdiction as in the instant appeal can do is set aside the decision and do no more.

This appeal is allowed in consequence of which the decision of the High Court of Ogun State Holden at Ijebu-ode, delivered on the 1ih day of May 2011 Coram Olugbemi, J is hereby set aside. I adopt the order as to cost made in the lead Judgment.

**MODUPE FASANMI, J.C.A.:**

I have had a preview of the draft of the lead judgment of my learned brother, CHINWE EUGENIA IYIZOBA, JCA just delivered.

I agree with his reasoning and conclusion and abide with the consequential orders contained therein.