**SIR EMEKA OFFOR**

**V.**

**LEADERS & COMPANY LIMITED AND ANOTHER**

IN THE COURT OF APPEAL OF NIGERIA

THE 8TH DAY OF DECEMBER, 2006

CA/A/100/M/2002

**LEX (2006) - CA/A/100/M/2002**

OTHER CITATIONS

(2007) 7 NWLR (Pt.1032) pg.1

**BEFORE THEIR LORDSHIPS**

IBRAHIM TANKO MUHAMMAD, JCA

BODE RHODES-VIVOUR, JCA

OYEBISI FOLAYEMI OMOLEYE, JCA

**BETWEEN**

SIR EMEKA OFFOR - Appellant(s)

AND

1. LEADERS & COMPANY LIMITED (Printers and Publishers of the Sunday Edition of THISDAY)

2. OLUSEGUN ADENIYI (Editor of the "Sunday Edition of THISDAY") Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF THE FEDERAL CAPITAL TERRITORY HOLDEN AT ABUJA

**REPRESENTATION**

UJU IKEAZOR with CHRISTIAN OKOLI - For Appellant

AND

A.C. OZIOLO with A.A. ADEREMI holding I.C. ANUMUDU'S brief - For Respondent

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

COMMERCIAL LAW – CONTRACT:- Out of court settlement agreement to pay a lesser sum in stead of a larger sum judicially awarded – Validity and enforceability of - Whether a creditor can still insist upon the payment of balance on the judicial award after the debtor has paid the lesser sum

DEBTOR AND CREDITOR:- When a creditor and a debtor enter into negotiation that leads the debtor to believe that on payment of a lesser sum the creditor will not enforce payment of the balance and the debtor proceeds to pay the lesser sum and the creditor accepts it as satisfaction - Whether the creditor can no longer enforce payment of the balance – Justification of

TORT AND PERSONAL INJURIES LAW – LIBEL – DAMAGES:- Claim for damages arising from a libellous publication – Award given by court – Agreement between parties to settle the award with alternative terms – Validity of – Whether a party can subsequently insist on the judicial award as to defeat the agreement

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ABUSE OF COURT PROCESS:- Where what is being rightly canvassed by the applicant is that the issue of abuse of court process is also an issue of jurisdiction – Duty of court once satisfied thereof – Whether empowered to dismiss such a proceeding

ACTION - PENDING PROCEEDINGS:- - Settled law that parties are entitled to settle or compromise dispute at any stage of pending proceedings – Extent of – Whether right extend to the compromising of judgments in civil actions save in specified cases or circumstances in which public interest or public policy element is involved – Justifcation of

ACTION - PENDING PROCEEDINGS:- Purport and effect of settled pending proceedings before judgment - Where parties settle or compromise pending proceedings – Legal effect of

COURT - DUTY OF COURT:- Where parties are not satisfied with a monetary judgment or any judgment for that matter and they decide to negotiate rather than appeal - Any agreement entered into by the parties – Whether would be respected by the courts

COURT - JURISDICTION:- Issue of jurisdiction – Nature of as extrinsic and peripheral – Whether can be raised at any stage of proceedings, even on appeal

EVIDENCE - ESTOPPEL PER REM JUDICATAM:- Purport and meaning of the doctrine of estoppel 'per rem judicatam' - Whether applicable to every point which properly belongs to the subject of litigation and which the parties in exercise of reasonable diligence might have brought forward at the time – Rule in Chief E. Brown & 5 Ors. V. Chief P. E Bassey & 4 Ors. (2000) 4 NWLR (Pt. 651) p. 1 at p. 11 - p. 12 – Justification of

EVIDENCE - PLEA OF ESTOPPEL:- Settled law that the effect of the successful plea of estoppel ousts the jurisdiction of the court before which it is raised – Legal effect of

JUDGMENT AND ORDER - JUDGMENT OF A COURT:- Settled law that the judgment of a court of competent jurisdiction takes effect on delivery – Implication for compromise or settlement agreed upon by parties subsequent thereto – Whether can be given effect by court

JUDGMENT AND ORDER:- Judgment of court that is yet to be executed – Where parties can validly make an agree to settle same with alternative reliefs

JUDGMENT AND ORDER:- Nature of a judgment in a civil case not involving public policy – Whether confers a private right for the benefit of the successful party – Rule that such a right can be transferred, surrendered, abandoned or executed partially – Legal effect of a compromise or settlement of such judgment

WORDS AND PHRASES - "ABUSE OF COURT PROCESS":- Definition of

**MAIN JUDGMENT**

OYEBISI F. OMOLEYE, J.C.A. (DELIVERING THE LEAD RULING):

The applicant was the plaintiff at the High Court of the Federal Capital Territory, Abuja where he claimed against the respondents as defendants in an action founded on libel for the sum of One Billion Naira as damages. The action at the trial court was undefended though hearing notices were served on the appellants. Upon conclusion of the case, the learned trial Judge - Kuti J., entered judgment in favour of the applicant in the said sum of One Billion Naira claimed against the respondents as damages.

After judgment was delivered by the trial court, the respondents filed a motion in that court to set aside that judgment which motion was refused. Dissatisfied with the judgment, the appellants filed a notice of appeal to this court on 5/4/02.

The applicant filed a motion on Notice on 27/4/05 asking for the appeal to be dismissed.

The Motion on Notice was predicated on the following grounds:

"(a) That the subject matter of this appeal was the libelous publication by the appellants/respondents of the respondent/applicant in "This day" newspaper.

(b) That judgment in this case was delivered by the lower court on 7th day of March, 2002 in favour of the respondent /applicant.

(e) That consequent to this the appellants /respondents made a proposal for settlement of the said matter out of court.

(d) That the respondent /applicant counsel, accepted the said proposal wherein a terms of settlement to that effect was (sic) drawn up.

(e) That the understanding of the parties to this suit at the lower court was that the terms of settlement discharges (sic) the defendants from any liability with respect to the judgment of Justice Kuti of Abuja High Court.

(f) That rather than pay the judgment sum of One Billion Naira, the parties agreed that a paltry sum of Two Hundred Thousand Naira will be paid by the appellants/respondents to the respondent/applicant at the lower court as a full and final settlement of judgment debt.

(g) That by letters exchanged by both counsel to the parties, the understanding was that the terms of settlement disposes (sic) of the appeal now pending in this court.

(h) That the notice of appeal had already been filed before the move for settlement was made by the appellants.

(i) That the parties are bound by the terms of this settlement/agreement reached and filed before the court.

(j) That the appellants/respondents is (sic) estopped from prosecuting this appeal.

(k) That the appellants/respondents cannot unilaterally resile from this agreement.

(l) That this Honourable Court has no jurisdiction to entertain this appeal.

(m) That it is an abuse of process of this court for this appeal to still be pending given the facts already highlighted above.

(n) That the applicant would be overreached and or prejudiced if this appeal is allowed to be further prosecuted given the aforementioned understanding between the parties.

(o) That this appeal is brought mala fide and will adversely affect the interest of the respondent/applicant given the understanding of the parties that the terms of settlement disposes (sic) of this appeal."

An affidavit of 24 paragraphs, Exhibits A, B, C, D, E, F, G and H and a further affidavit of 11 paragraphs were filed with the motion.

The respondents in opposition to the applicant's motion filed a counter affidavit of 25 paragraphs, a further counter affidavit of 8 paragraphs and an exhibit A which is a certified true copy of the proceedings of this court on 21/2/05 when by its order the appellant's brief of argument was duly filed.

Written addresses were filed and exchanged by counsel for both parties.

At the hearing of the application on 11/9/06, learned counsel for the applicant Mrs. Uju Ikeazor adopted his written addresses in the main and reply and urged that the application be granted and the appeal be dismissed.

Learned counsel for the respondents, Mr. A. C. Ozioko adopted his written address and urged that the application be dismissed in its entirety.

The applicant's counsel urged upon the court for the determination of this application two issues as follows:

“1. Whether it is an abuse of process of this court for the appellants/respondents to still prosecute this appeal in view of the fact that this case has been amicably settled at the Lower Court wherein the terms of settlement has (sic) been reached and filed in court.

2. Whether the appellants/respondents' right to this appeal has not been extinguished in view of the settlement reached by the parties."

While learned counsel for the respondents distilled two issues from the two grounds for the determination of the application, they are:

"1. Whether, having regards to the provisions of Order 3 rules 18 (1) - (5) of the Court of Appeal Rules the respondent is competent to bring this application to dismiss the appellant's appeal.

2. Whether having regards to the solicitors who filed and are prosecuting this appeal, the respondent could validly negotiate settlement that would compromise the appeal with solicitors that only acted for appellant at the High Court."

Also at the hearing of this motion, learned counsel for the applicant applied to have deleted Order 3 Rule 18 (1)-(5) of the Court of Appeal Rules, 2002 relied on amongst others in commencing the motion. Consequent upon the deletion, the provisions of the rule become a non-issue in the consideration and determination of this application. It is hereby struck out.

Having carefully considered the issues identified and submitted in the respective written addresses of learned counsel for both parties, I wish to adopt the two issues formulated by the applicant's counsel in the consideration and determination of this application as these in my view will sufficiently tackle the grouse of this application.

Before proceeding further in this Ruling, I consider it apposite to deal with the issues of the counsel who represented the respondents at various stages and or times especially after the delivery of the trial court's judgment through to the filling of the notice of appeal and indeed the prosecution of the appeal. This is pivotal and crucial to the resolution and or determination of the issues involved in this application.

It is the contention of learned counsel for the applicant that the motion to set aside the judgment of the trial court was filed by Multi-Sector Law Group of which Olisa Agbakoba SAN is the lead counsel. That Isaac Anumudu who is currently prosecuting this appeal, his firm having been briefed to appear in the matter on 21/03/02, made appearances before the trial court alongside the firm of Olisa Agbakoba SAN. He referred to pages 114-118, 142-144, 150-156, 164-166 and 169 of the record of proceedings. Counsel canvassed further that throughout the proceedings at the trial court, that is after judgment was delivered up until the time parties reached settlement, both of them appeared for the respondents.

Learned counsel for the respondents, Isaac Anumudu on the other hand asserted that Olisa Agbakoba SAN only led him, after the delivery of the judgment of the trial court and during the proceedings to set aside that judgment but ceased thereafter from playing any role in the case. That after that particular proceedings in the trial court, he became solely in charge of the respondents' matter to the exclusion of the firm of Olisa Agbakoba SAN. That Olisa Agbakoba SAN is not involved in the filing and the prosecution of the appeal.

Counsel canvassed that after judgment, a counsel's brief becomes automatically terminated. He referred to the cases of:

(1) Secretary Iwo L.G. V. Adigu (1992) 6 NWLR (pt. 250) 723 at 746 paras. C-E.

(2) Carribean Trading and Fidelity Corporation V. N.N.P.C (1992) 7 NWLR (Pt. 252) 161 at 181.

and submitted that a party reserved the right to instruct a counsel of his choice at all stages of his matter.

It is worthy of note to state that learned counsel for the applicant has not canvassed that it was the firm of Olisa Agbakoba SAN that issued the notice of appeal or and that is prosecuting the appeal. As a matter of fact, counsel for the applicant submitted that the notice of appeal was signed by Isaac Anumudu, the counsel who is also prosecuting the appeal.

In my view, the contention really is whether the firm of Olisa Agbakoba SAN ceased completely to perform any role in the matter between the parties after the disposal of the application to set aside the judgment of the trial court in that court.

Upon a thorough perusal of the record of proceedings and all the processes of this application, it would be seen that the firm of Olisa Agbakoba SAN right from the on-set in the trial court represented the respondents. I refer to lines 14 through to the last line at page 165 of the record of proceedings where Olisa Agbakoba SAN stated that one Emeka Akabogu, the counsel who appeared for the respondents before the trial court just before the commencement of trial was a counsel (Youth Corper) in his chambers. Olisa Agbakoba SAN subsequently led Isaac Anumudu and others for the respondents, that is, after the delivery of the judgment of the trial court. As a matter of fact, all the processes of the respondents were filed by the firm of Olisa Agbakoba SAN up until 21/3/02 when Isaac Anumudu filed a motion on notice signed by him as solicitors to the respondents. I refer to page 149 of the Record of Proceedings. Indeed, the 2nd Respondent introduced Isaac Anumudu as appearing alongside Multi-Sector Law Group of Olisa Agbakoba SAN for the Respondents - I refer to lines 4 - 6 at page 144 of the Record of Proceedings.

Learned counsel for the applicant posited that there was an amicable settlement reached by parties after the delivery of the judgment by the trial court. That it was the respondents that proposed the settlement through their counsel, the firm of Olisa Agbakoba SAN while leading Isaac Anumudu. He referred to Exhibit A dated 18/7/03. That there were series of exchanged correspondence between counsel for both parties which eventually led to their signing of the terms of settlement exhibit H on 31/03/05, in which the payment to and acceptance by the applicant of the sum of N200,000= (Two Hundred Thousand Naira) was meant to fully discharge the respondents of all and any liability in respect of the judgment of the trial court.

The contention however of the respondents' counsel is that at the time of the proposition and reaching of the settlement, the firm of Olisa Agbakoba SAN had ceased to be counsel for the respondents. He therefore dissociated the respondents from the negotiations that transpired between the firm of Olisa Agbakoba SAN and the applicant's counsel Chief Dr. Chimezie Ikeazor SAN, on the ground that after the delivery of the ruling dated 11/4/02 in which the trial court refused to set aside its earlier judgment, the firm of Olisa Agbakoba SAN had ceased to represent the respondents especially in the filing of the notice of appeal. That despite the purported settlement, the respondents are still desirous of prosecuting their appeal against the judgment of the trial court.

I will now proceed to Issue No. 1. Learned counsel for the applicant contended that there was an amicable settlement between parties which was reached on 31/03/04. That the settlement was to the effect that the sum of N200,000 (Two Hundred Thousand Naira) was paid to the applicant by the respondents in full satisfaction of the judgment of the trial court. He referred to exhibit A. He further submitted that it was the intention of the respondents and the applicant to be bound by the terms of settlement, exhibit H, which was meant to dispose of the appeal earlier on lodged on 05/04/02. In essence, the respondents have nothing to appeal upon.

On the other hand, learned counsel for the appellants posited that the fact that the firm of Olisa Agbakoba SAN appeared for the respondents at the trial court did not in any way empower that firm to take any action that would bind the respondents on the termination of all proceedings In the trial court. He referred to the cases of:

(1) Secretary, Iwo L.G. Vs. Adigun Supra and

(2) carribean Trading and Fidelity Corporation Vs. N.N.P.C Supra.

He submitted on the strength of those cases that a party reserves the right to brief any counsel of his choice at any stage of his matter. He contended that he became solely in charge of the appellants' matter on the conclusion of the proceedings to set aside the judgment of the trial court.

I have gone through the record of proceedings and all the processes filed by both counsel in this application and I am unable to see any documentation and or instruction from the respondents to the effect that Isaac Anumudu is solely in charge of the respondents' matter to the exclusion of the firm of Olisa Agbakoba SAN at any stage especially after the ruling of the trial court refusing to set aside the earlier judgment of that court was delivered as contended by learned counsel for the respondents. Indeed, in the written address of learned counsel for the respondents, he not only conceded that he appeared with Olisa Agbakoba SAN for the respondents albeit in the post judgment proceedings, but that Multi-Sector Law Group headed by Olisa Agbakoba SAN was appellants' solicitor before judgment was delivered by the trial court. It could be observed that the coming of Isaac Anumudu into the respondents' matter was complementary and in addition to the existing firm of Olisa Agbakoba SAN as solicitors for the respondents. I refer to lines 4 - 6 on page 144 of the record of proceedings where the 2nd respondent introduced for the first time Isaac Anumudu as appearing alongside the firm of Olisa Agbakoba SAN for the respondents.

I therefore find it hard to believe and or conclude that the services of the firm of Olisa Agbakoba SAN has become extinguished on the conclusion of proceedings in the trial court in the absence of any express instructions to that effect from the respondents themselves. The sound opinion expressed in the two cases referred to by learned counsel for the respondents in my view is misapplied to the case in hand in that the respondents have not de-briefed the firm of Olisa Agbakoba SAN at any point in time either expressly or by implication. This leads to a poser, that is, was the firm of Olisa Agbakoba SAN competent to enter into negotiations with the applicant on behalf of the respondents? I will answer this poser in the affirmative based on my above reasoning.  
The case of:

Vulcan cases Vs. G.F Ind A.G. (2001) 9 NWLR (Pt.719) 610 at 646 Para G. referred to by learned counsel for the respondents does not help his argument. This is because the respondents have neither limited nor communicated any limitation of the authority of the firm of Olisa Agbakoba SAN to anyone especially the applicant and or his counsel at any point either in the past or even presently. It is therefore misconceived when learned counsel for the respondents submitted that the firm of Olisa Agbakoba SAN acted in excess of its authority when it entered into negotiations with the applicant and his counsel in respect of the judgment delivered by the trial court.

It is patent that before parties began to negotiate, the judgment of the trial court had not been executed. To that effect the proceedings leading to the delivery of the judgment were still pending and would remain pending until the judgment is executed. Learned counsel for the respondents is therefore wrong in concluding that the delivery of the ruling refusing to set the judgment aside terminated the proceedings in the trial court. It is settled law that parties are entitled to settle or compromise dispute at any stage of pending proceedings.

This right has been held to extend even to that of compromising judgments in civil actions save in specified cases or circumstances in which public interest or public policy element is involved; this is because proceedings remain pending until satisfaction of judgment. I refer to the case of: A. Abey & 5 Ors. V. Chief Alhaji I. F Alex & 2 Ors. (1999) 14 NWLR (Pt. 637) p. 148 at 160.

In exhibit A attached to applicant's motion paper, the firm of Olisa Agbakoba SAN which represented the Respondents proposed amicable settlement which was accepted in Exhibit B on behalf of the applicant by his counsel Chief Chimezie Ikeazor SAN & Co. Further by exhibit C, the firm of Olisa Agbakoba SAN forwarded for the approval of applicant's counsel exhibit D, a copy of the proposed terms of settlement; exhibit E, a draft of a proposed apology aimed at retracting the libelous publication against the applicant and Exhibit F, a copy of a Bank Draft worth N200, 000 (Two Hundred Thousand Naira). After the above stated exchange of correspondence, Exhibit H, the terms of settlement was duly signed by both counsel on 31/3/04 and this was also filed in the trial court.

For a good understanding and appreciation of the issues involved in this matter, I consider it trite to reproduce the details of exhibit H as follows:

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION, HOLDEN AT ABUJA

BETWEEN

Suit no; FCT/HC/CV/751/2001

SIR EMEKA OKAFOR – PLAINTIFF

AND

LEADERS AND COMPANY LIMITED (Printers and Publishers of the Sunday Edition of THISDAY)

OLUSEGUN ADENIYI (Editor of the Sunday Edition of THISDAY)

DON UCHE CHUKWU) - DEFENDANTS

TERMS OF SETTLEMENT

The parties hereby agree to the following terms of settlement

BY CONSENT

1. That the parties agree to these terms of settlement to resolve this matter in satisfaction of the judgment in favour of the plaintiff in this case.

2. The defendants shall tender an apology to the plaintiff publishing a retraction of the publication that led to this case in THISDAY NEWSPAPER.

3. In consideration of the sum of N200,000 (Two Hundred Thousand Naira) being paid to the plaintiff or his counsel, the plaintiff agrees that the defendants shall be fully discharged of all and any liability in respect of the judgment of Justice Kuti of Abuja High Court delivered in this case on March 7, 2002 and that the said judgment shall not be executed against the defendants. The said defendants are hereby fully discharged.

The parties hereby consent that the above terms be entered in court as proof of the defendants' satisfaction of the judgment of the court obtained in this case (suit No: FCT/HC/CV/751/2001).

Dated this ... 31st ..... day of ... March ... 2004.

SIGNED

Signed:...

Counsel for the plaintiff

For: Chief Chiemezie Ikeazor (SAN) & Co  
Plot 248, Monsterrado Street   
Wuse Zone 4,  
Abuja, FCT.

SIGNED  
Signed: ...  
Counsel to the Defendants  
For: Olisa Agbakoba & Ass.   
34, Creek Road  
Apapa, Lagos."

It is apposite to state here that prior to the proposal of amicable settlement, Exhibit A, there had been telephone discussions between counsel for parties and or their chambers' agents/representatives. I refer to para. 1. of exhibit A. It is equally worthy of note to observe that in the acceptance letter exhibit B, the applicant indicated his readiness to accept the offer of the sum of N200,000 from the respondents as an out-of -court amicable settlement and resolution of the matter. Suffice it to conclude that the respondents made an offer of an amicable resolution of the matter between them and the applicant. The applicant accepted that offer on terms duly executed by both parties after the major condition precedent had been fulfilled; that is, the payment to the applicant of the sum of N200,000 by the respondents. A receipt to this effect is exhibit G. Learned counsel for the respondents' contention that exhibit G ought not to have emanated from the respondents who were the party paying out the money, is a matter of semantics which does not invalidate the transaction leading to its issuance. It is my humble view on the whole and I hold that there was a valid out-of-court amicable settlement reached by the appellants and the applicant.

What therefore is the effect of the amicable settlement on the main appeal?

Learned counsel for the applicant submitted that exhibit H having been duly executed is binding on parties, their counsel and privies. And that consequent upon exhibit H, the respondents have nothing to appeal upon.

Contrarily, learned counsel for the respondents submitted that the applicant's Exhibits A - H are worthless, do not and cannot bind the respondents. That the negotiations of the firm of Olisa Agbakoba SAN were in excess of that firm's authority and they were also acts of a debriefed counsel which could not bind a former client. That the instructions of that firm were limited only to the proceedings in the trial court. He referred to the case of: Vulcan Cases Vs. G.F Ind. A.G. Supra.

He submitted that the alleged amicable settlement cannot terminate the respondents' appeal.

Where parties settle or compromise pending proceedings, the settlement or compromise constitutes a new and an independent agreement between them made for good consideration and may not even necessarily be for sufficient consideration. Save in cases involving public policy, a judgment in a civil case has been held to confer a private right for the benefit of the successful party. Such a right can be transferred, surrendered, abandoned or executed partially. In essence, the effect of such, compromise or settlement are: Firstly, it puts an end to the proceedings, for they become spent and exhausted. Secondly, it precludes the parties from taking further steps in the action, except where the parties have provided for the right to apply to enforce the agreed terms. Thirdly, it supercedes the original cause of action altogether. Put in other words, the terms of settlement or compromise must henceforth regulate the relationship and the entitlement of the parties with regard to the subject-matter of the action. I refer to the case of: A. Abey & 5 Ors Vs. Chief Alhaji I. F Alex & 2 Ors supra.

It is my opinion and I hold that the respondents and the applicant in this matter are bound by the terms of exhibit H. The focal point of exhibit H is that the payment of N200,000 by the respondents to the applicant is in full satisfaction of the judgment of the trial court. In view of this settlement, the rights of both parties one way or another in enforcing the right of appeal at whatever stage have been extinguished, not unlawfully or illegally but by the free choice of both parties.

It would appear that somebody is crying more than the bereaved in this matter. The applicant in my humble opinion is actually the bereaved, he was the judgment creditor to the tune of One Billion Naira but he agreed to forfeit this huge sum and accepted a pittance of N200,000 thereby so to speak abandoning rather than executing the judgment. It is a near complete surrendering of his right to the party who lost in the judgment, that is the respondents. The amicable settlement indeed is not so much to the benefit of the applicant after all.

It is for the above reasons that I hold that the application succeeds on Issue one.

On Issue No.2, learned counsel for the applicant contended that the respondents' appeal is an abuse of court process. On the definition of abuse of court process he referred to the cases of: (1) Arubo V. Aiyeferu (1993) 3 NWLR (Pt.280) 126 at 142 para. A and at 143 paras. F- H. (2) African Re. Corp. V. JDP Construction Nig. Ltd. (2003) 13 NWLR (Pt.838) 609 at 635 paras. F - H. (3) Beecroft V. Cudjoe (2006) 8 NWLR (Pt. 983) 557 at 560 - 561. (4) Wema Bank Plc V. Abiodun (2006) 9 NWLR (Pt. 984) 1 at 12.

He submitted that abuse of court process is when a party improperly uses the issue of judicial processes 'mala fide', litigating again over an identifiable question which has already been decided even if the matter is not strictly 'res judicata' and to the irritation and annoyance of the opponent. Counsel further submitted that the intention of parties in view of their amicable settlement was to put an end to the pending appeal earlier on lodged by the respondents. That the respondents are thereby estopped from further pursuing or prosecuting the appeal. He referred to the provisions of section 151 of the Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990 quoted as follows:

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person's representative in interest, to deny the truth of that thing."

He also referred to the cases of:

(1) Ashibuogwu V. A.-G. Bendel (1998) 1 NWLR (Pt. 69) 138 at 170 paras. F-H.

(2) Ondo State University V. Folayan (1994) 7 NWLR (Pt. 354) 1 at 25 paras. C-F.

(3) Oyerogba V. Olaopa (1998) 13 NWLR (Pt. 583) 509 at 519 paras. B-H.

(4) Ude Vs. Nwara (1993) 2 NWLR (Pt. 278) 638 at 662 paras. F-C

(5) Temco Eng. & Co. Ltd. V. S.B.N Ltd. (1995) 5 NWLR (Pt. 397) 607 at 623- 624 paras. E-A.

He submitted that there was a solemn agreement reached and documented by both parties, that is, Exhibit H which neither party can resile from. He referred to the case of: Ode V. Balogun (1999) 10 NWLR (Pt. 622) 214 at 225 paras. D - G and 226 paras. B - E.

Counsel contended that in view of exhibit H, there is no counsel whatsoever who can represent the respondents to prosecute the appeal any longer.

On the other side, learned counsel for the respondents insisted that exhibit H not being binding on the respondents cannot extinguish the appellants' right to pursue the appeal. That the respondents having filed their appellants' brief without opposition from the applicant are free to pursue the appeal to a logical conclusion. That it is in fact the applicant's motion on notice rather than the appeal that constitutes an abuse of court process.

The doctrine of estoppel 'per rem judicatam' is a rule of evidence whereby a party is precluded from disputing in any subsequent proceedings matters which had been adjudicated upon previously by a competent court between him and his opponent. This has been held also to be applicable to every point which properly belongs to the subject of litigation and which the parties in exercise of reasonable diligence might have brought forward at the time. I refer to the case of: Chief E. Brown & 5 Ors. V. Chief P. E Bassey & 4 Ors. (2000) 4 NWLR (Pt. 651) p. 1 at p. 11 - p. 12.

The principle underlining the plea of estoppels is for the common good that there should be an end to litigation and that none shall be twice vexed for one and the same cause.

The contention of learned counsel for the respondents that the applicant's exhibits A - H are worthless and the denial by him that all the processes leading to the negotiations between parties as evidenced by the said exhibits is mischievous. It is my considered opinion and I hold that at the time of the settlement by parties, the firms of Olisa Agbakoba SAN and Isaac Anumudu, the counsel now personally prosecuting the appeal, were in charge of the respondents' matter. The only reason that could ever make the terms of settlement exhibit H to be rejected or set aside is if there is an evidence of fraud in the course of reaching the settlement. I hold that there is none such found by me from the processes filed by both the respondents and the applicant in this matter. I refer to the case of: Vulcan Cases V. G. F Ind. A.-G. Supra.

Having concluded that by exhibit H parties intended to put an end to all issues relating to the judgment of the trial court, the appeal if left to be prosecuted will be 'mala fide', thereby over reaching and jeopardising the interest of the applicant. The Respondents are therefore estopped from the further prosecution of the appeal. Settlement was reached after the appeal was commenced, automatically, after the settlement, the appeal should and must be discontinued. It is settled law that the effect of the successful plea of estoppel ousts the jurisdiction of the court before which it is raised. See the case of: Chief E. Brown & 5 Ors. V. Chief F. E. Bassey & 4 Ors. Supra.

This is the reason it does not matter that the respondents' brief had been filed before the commencement of this application. The issue of jurisdiction being extrinsic and peripheral can be raised at any stage of proceedings, even on appeal. See the cases of:

(1) A.P.C Ltd V. NDIC (NUB Ltd.) (2006) 15 NWLR (Pt. 1002) pg. 404 at pg. 457, paras. C-D.

(2) Madukolu V. Nkemdilim (1962) All NLR (pt. 4) pg. 587

(3) Chief U. Ofia & 3 Ors. V. Chief I. M. Ejem (2006) 11 NWLR (Pt. 992) p. 652 at p. 663 para. D.

(4) Malam T. D. Usman V. S. Baba (2005) 2 NWLR (Pt. 917) pg.113 paras. E- G.

The definition of abuse of process of the court is quite trite and age hallowed. It simply means a proceeding lacking in 'bona fides', frivolous, vexatious or oppressive. It is also said to mean misuse of legal process. An example of such is re-litigation of issues previously settled, compromised or decided in a matter. I refer to the case of: Mallam T. D. Usman V. S. Baba Supra pg.113 at pg.131. paras. E - G.

As in the case under consideration where what is being rightly canvassed by the applicant is that the issue of abuse of court process is also an issue of jurisdiction, it is settled that once a court is satisfied that any proceeding before it is an abuse of court process, it is empowered and it behoves it to dismiss such a proceeding.

As already alluded to earlier on in this ruling, I hold that to allow the respondents to continue to prosecute the appeal will certainly amount to an abuse of court process. Based on this conclusion, this application also succeeds on issue two.

Having carefully considered the terms of settlement, exhibit H, I find that parties are bound by them. Parties cannot resile from them, indeed, the position of parties vis-a-vis the terms of settlement is akin to a consent judgment which cannot be appealed against by any of the parties who have subscribed to it without the leave of either the trial court or this court pursuant to the provisions of Section 241 (2) (C) of the Constitution of the Federal Republic of Nigeria, 1999.

It is patent from my above reasoning and conclusions that the applicant is entitled to the exercise in his favour of this court's discretion in the matter of this application. The application succeeds and it is hereby granted. Consequentially, appeal No.CA/A/100/M/2002 is hereby dismissed accordingly.

I make no order as to costs.

**IBRAHIM TANKO MUHAMMAD, J.C.A.:**

I have had the opportunity of reading in advance the Ruling of my brother O. F. Omoleye, JCA just delivered. I agree with my brother in his reasoning and conclusion. I abide by all consequential orders in the leading ruling.

**BODE RHODES-VIVOUR, J.C.A.:**

I agree with the Ruling of my learned brother Omoleye JCA that there is merit in this application. The applicant obtained judgment against the respondents in the sum of One Billion Naira. It was for libel and judgment was delivered on 7/3/02.

The respondents were unable to pay and so they entered into negotiations with the applicant. On 31/3/04 the parties executed a document titled terms of settlement. Clause 3 of the terms of settlement reads as follows:

"In consideration of the sum of N200,000 (Two hundred thousand Naira) being paid to the plaintiff or his counsel, the plaintiff agrees that the defendants shall be fully discharged of all and any liability in respect of the judgment of Justice Kuti of Abuja High Court delivered in this case on 7/3/02 and that the said judgment shall not be executed against the defendants. The said defendants are hereby fully discharged."

In compliance with the above the respondents paid the sum of N200,000. The applicant accepted the sum. That was the end of the matter, or so it seemed until a new counsel, one MR. I. Anumudu filed a notice of appeal.

The applicant considered the filing of an appeal after the matter had been settled rather strange as the respondents are estopped from prosecuting the appeal. I agree with the applicant.

The judgment of a court of competent jurisdiction takes effect on delivery. See Guardians of the Poor of West Ham Union v. Church Wardens Overseers and Guardian of the Poor of St. Matthew (1895) Q.B. 662.   Where parties are not satisfied with a monetary judgment or any judgment for that matter and they decide to negotiate rather than appeal, any agreement entered into by the parties would be respected by the courts. Courts respect the sanctity of agreements. The courts will insist that the parties respect their agreement and would ensure effect is given to the terms of the agreements once satisfied that there is no fraud or misrepresentation. See: Union Bank Nig. Plc. v. Prof. Ozigi (1994) 3 NWLR (Pt. 333) p. 385;  
Bookshop House v. Stanley Consultants (1986) 3 NWLR (Pt. 26) p-87.

When a creditor (the applicant) and a debtor (the respondents) enter into negotiation that leads the debtor to believe (and quite rightly too, see clause 3 earlier alluded to) that on payment or a lesser sum the creditor will not enforce payment of the balance and the debtor proceeds to pay the lesser sum and the creditor accepts it as satisfaction, the creditor can no longer enforce payment of the balance as it would be inequitable to do so.

This is the reasoning in the famous case of Central London Property Trust Ltd. v. High Trees House Ltd. (1947) I K.B. p. 130.  
The matter abates for all times once the parties sign their agreement.

If the respondents are allowed to go on with their appeal it would amount to this court engaging or indulging in an academic exercise, courts are to determine live issues. See: Oyeneye v. Odugbesan (1972) 4 SC p. 244; Bakare v. A.C.B. Ltd. (1986) 3 NWLR (Pt. 26) p. 47; Bamigboye v. Unilorin (1999) 10 NWLR (Pt. 622) p. 290.

In my respectful view once parties have settled their dispute, paid the sums agreed it would amount to a waste of precious judicial time for a court to consider an appeal by any of the parties on the matter that had long since been settled.

For this and the much fuller reasons in the leading ruling delivered by Omoleye J.C.A. this application succeeds.