Appraising the Power of the Supreme Court to Review its Judgment and the Impact on Democracy

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Abstract
The article appraises the power of review of the Supreme Court on its own judgment in Nigeria despite the fact that the Court is one of finality once it delivers its judgment. The Supreme Court has the powers to review its judgment based on accidental slip or omission, clerical error or to vary a judgment or order to give effect to its purpose or intention that occasioned miscarriage of justice. It however cautions that this power of review should be rarely exercised unless there exists a clear case of gross miscarriage of justice based on strong compelling facts. In examining the said power of the Supreme Court, this article shall be restricted to electoral matters which is the fulcrum of the work. It is the position of this article that the Supreme Court cannot review its decisions or sit on appeal over same, however, this article posits that in exceptional circumstances, the Supreme Court can wield its inherent jurisdiction to reverse its judgment.

> My simple answer is that it is not part of the jurisdiction or duties of this Court to go on looking for imaginary conflicts. We are final not because we are infallible; rather we are infallible because we are final.[1]

1. Introduction

For every democratic federation the supremacy of the constitution and independence of judiciary are very fundamental. The Supreme Court being the biggest watchdog of the judicial and constitutional processes is the most important institution in safe-guarding Nigeria's democracy and ensuring the supremacy of the rule of law. Therefore undermining the

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[1] The above notable and profound pronouncement forms part of the ipsissimaverba of My Lord, the Hon. Justice Chukwudifu Akunne Oputa, Justice of the Supreme Court of Nigeria, of blessed and remarkable memory when he delivered the leading judgment (to which Obaseki, Nnamani, Karibi-Whyte and Agbaje, JJSC all agreed) on Friday 19 May 1989.

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finality of the Supreme Court is to jettison the sole purpose of rule of law and constitutionality. This article shall at this part examine whether the supreme court of Nigeria is allowed by her rules of practice, actual practice and the law to overrule or upturn her judgment in the light of decided cases.

2. Theoretical and Conceptual Framework

2.1 Realist Theory

The prophecies of what the courts will do, in fact and nothing more pretentious are what I mean by law. This is the view of American realists represented by Holmes. According to Holmes, ask the fundamental question, what constitute law? You will find some text writers telling you that it is something different from what is decided by the courts of England but he is of the mind that the prophecies of what the courts will do are what I mean by the law. However, Elegido[2] submitted that to assert that law is mostly what judges say it is to involve oneself in a position which cannot be defended against critical attack as judges are people who hold certain offices defined by the same law. This paper adopts the realist theory because it interrogates the power of the apex court which is a policy court to review its judgments.

2.2 Justice

Justice, in its broadcast context, includes both the attainment of that which is just and philosophical discussion of that which is just. The concept of justice is based on numerous fields and many differing viewpoints and perspectives including the concepts of moral correctness based on ethics, rationality, law, religion, equity and fairness. The word justice is derived from the Latin word *Justitia* the concept which includes lawfulness, rightfulness. The oxford dictionary of Current English[3] defines justice as 'Justness, fairness authority exercised in the maintenance of right, judicial proceedings, brought to justice, court of justice, magistrate, judge, do justice, to treat fairly, appreciate properly, do oneself justice, performs at one's own best with justice reasonably.'

The concept of justice embraces a lot of virtues and is seen as the foundation of human existence. Justice whatever its precise meaning may be itself a moral value that is, one of the means of purpose which man lets himself in order to attain the good life. Justice is therefore a moral virtue

[2] Elegido JM, ,*Jurisprudence* (Spectrum Law Publishers, 1994) 97

[3] Della T. Ed., *The Oxford Dictionary of Current English*, New Revised Edition, United Kingdom, Oxford University Press, 1998

and is a principle of natural law[4]. In the view of Hume[5] 'Human nature cannot by any means subsist within the association of individuals and that association never could have taken place where no regard was paid to the laws and equity and justice.'[6]

Justice Oputa described justice as that 'Which oils the wheels of the social machine removing the rust of excesses and arbitrariness and balancing rights with duties and powers with safeguards to that neither right nor powers shall be exceeded or abused.'[7] This is further supported by the description that justice is the ligament which hold civilized beings and civilized nations together. Saint Augustine of Hippo said of justice: remove justice and what are kingdoms but gangs of criminals on a large scale.[8]

For Oputa,[9] it is justice that expresses the inward and other word flow of the personality of man, his twofold moral movement of rights and duties. The oxford English Dictionary defines the "Just" person as one who typically "does what is morally right" and is disposed to "giving everyone his or due."[10] For plato, Justice is a virtue establishing national order, with each part performing its appropriate role and not interfering with the proper functioning of other parts.[11] Aristotle says justice consists in what is lawful and fair with fairness involving equitable distributions and correction of what is inequitable.[12]

2.3 Democracy

Democracy is the rule by the people through free and fair elections and other forms of participation. It has to do with popular sovereignty which is the idea that the People are the ultimate authority and the source of the authority of government.[13] The political equality of all citizens is an essential principle of democracy. In a democracy, the just powers of government are based upon the consent of the governed. Free elections

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[4]Freeman, M. D. A., *Introduction to Jurisprudence.* 7th Ed. London, Sweet and Maxwell 2001
[5]Hume, D., *Treatise in Human Nature,* France, Penguin Classics, 1739, 40,
[6]Cloyd, D., *The Idea of Law,* England, Penguin Book, 1964
[7]Oputa, C. A., *Human Rights in the Political and Legal Culture of Nigeria.* Idigbe Memorial Lectures. Lagos, Nigeria Law Publications Ltd, 1989.
[8]*Ibid*
[9]*Ibid*
[10]Della T. Ed. *The Oxford Dictionary of Current English*, New Revised Edition, Oxford University Press 1998
[11]'Encyclopedia of Philosophy', available at www.lep-utm.ed, accessed on 9/1/2020
[12]*Ibid*
[13] 'The Concepts and Fundamental Principles of Democracy', https://www.civiced.org/pdfs/book accessed on 26/10/2023

and other forms of civic participation are essential to democracy. If the People are to rule, they must have practical means of determining who shall exercise political power on their behalf. If they are to rule, the People must also monitor and influence officials' behavior while in office. Elections are at the heart of the practical means for the people to assert their sovereignty.

3. Power of the Supreme Court to Review its Judgment

Section 235 of the 1999 constitution provides: "Without prejudice to the powers of the president or of a governor of a state with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination from Supreme Court." A literal interpretation of *Section* 235 of the Constitution of the Federal Republic of Nigeria clearly shows that the Supreme Court cannot sit on appeal over its decision neither can the Supreme Court review its decisions or judgments as they are final.

Furthermore, *Order* 8, *Rule* 16 of the Supreme Court Rules states: the Court shall review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it be varied and a different form substituted. By this provision of the Supreme Court Rules, the Supreme Court can only review its decisions or judgments just to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention.

Consequently, the Supreme Court dismissed the application for the review of the judgment of the same court in respect of the case of *Peoples Democratic Party (PDP) & 2 Others v. Degi-Eremienyo & 3 Ors,*[14] concerning Bayelsa state. The Application was filed by the All Progressives Congress (APC) and its candidates for the office of governor and deputy governor in the state and awarded a punitive costs against the applicant's lawyers. The court used the opportunity to sound a warning that it was not ready to tolerate abuse of court processes and desecration of its hallowed chambers. The Supreme Court is of the view that applications of this nature to the Supreme Court are aimed at desecrating the sanctity of this court; violating the well-known principle

[14] (2021) 9 NWLR (Pt. 1781) 274

that decisions of the court are final; and destroying the esteem, with which this court is held. According to Augie Adamu JSC who delivered the lead judgment:

> The decision of this court in appeal No.SC. 1/2020 is final for all ages; it is final in the real sense of the word, final; and no force on earth can get this court to shift its decision regarding the Bayelsa pre-election appeal No.SC.1/2020. To do otherwise is to open a floodgate of litigation on appeals that have already been settled by this court. There is no even guarantee that if these two applications are granted, the other side will not come with a fresh application to review the ruling on the ground that this court did not consider certain aspects of the arguments in its ruling. There would be no end in sight.[15]

In *Akin-Olugbade & Ors v. Onigbongbo Community &Ors*[16] the Supreme Court was of a firm view that no application can be entertained by the Supreme Court to review any fact or law in its previous Judgment. Therefore, any power given to the Court to entertain such application would have been tantamount to considering the application as an appeal. When such a procedure was allowed, it would have violated the provisions of Section 120 of the 1963 Constitution. It will therefore, be safe and correct to say that the principle of finality of the Supreme Court's Judgment has been a time-honored one. And Nigeria's Legal System considers it as sacrosanct. In Akinbade Vs. Onigbongbo[17] (Supra) the Supreme Court had this to say:

> … for, if were we are to accept the submission of counsel for the applicants about the law or the facts in the Judgment being attacked, there would be no finality about any Judgment of this Court and every dis-affected litigant could bring further appeals as it were ad infinitum. That is the situation that must not be permitted.

Again, the Supreme Court's finality rule was further enshrined in the 1979 Constitution vide Section 215 thereof. It provided that the Supreme Court had no power to allow any appeal to anybody or authority against the decision of the Supreme Court. This general rule has added a significant point when it was held that appellate jurisdiction is entirely statutory. Thus, in the absence of any provision of statute allowing a party

[15] Onyekwere, J., 'Applications for Review of Supreme Court Judgments: Pushing Mother Luck Too Far?', *Guardian Newspaper*, 1 March, 2020
[16] (1974) 6 S.C. 1
[17] *Supra*

to a suit or case to seek as a matter of course for review of the Supreme Court's decision, it could be rightly concluded that such a review is illegal and has no basis in law except in deserving circumstances. Furthermore, in *Adigun & Ors. Vs. A.G. Oyo State &Ors*[18] the Supreme Court held as follows: it is well settled that appellate jurisdiction is entirely statutory… and there is no constitutional provision enabling appeal from our decisions, accordingly ANY (emphasis mine) question of reopening the decision of this Court for further consideration does not arise.[19] It further states thus: the Judgment having been delivered in this Court, it is functus officio except for certain purposes not concerned with the substance of the Judgment."[20]

There is no gainsaying that the law has long been settled that generally the decisions of the Supreme Court in Civil matters or suit are absolutely final except set aside by a subsequent legislation. In *Adigun & Ors v. Governor of Osun State & Ors*[21] alluded to this settled law in the following words. The Justices that man the Court are of course fallible but their Judgments are, as the constitution intends, infallible. Therefore any ingenious attempt by counsel to set aside or circumvent the decision of the Supreme Court will be met with stiff resistance.

It is important to point out here that the rule prohibiting reversal of the decision of the Supreme Court is applicable only to the extent that the application for the reversal or varying seeks to alter the law or facts as they affect the rights of a party or parties in the same Judgment. In other words, where the application is sought to vary the substantive part of the Judgment, the law prohibits granting any prayer vide such application. There are however, certain exceptions to the foregoing rules and principles. The exceptions to the general rule of Supreme Courts finality are not in the nature of substantive aspects of the Judgment *strict senso*, but only that there are instances in which the Court is entitled to review its own previous Judgment. Where there are clerical mistakes in Judgments or Orders or errors arising from any accidental slip or omission the Court may correct the mistake at any time. This is what Courts have for long described as "Slip Rule". Lord Halbury in *Preston Banking Co. Vs. Williams Allsup & Sons*[22] held as follows: If by mistake

[18] No.2) (1987) LPELR-40648 (SC)
[19]Onoja, R., *Supreme Court and the Legality of Judgment Review in Nigeria*. Lagos : Sunshine Publishing House, 2000, 69
[20] *Ibid*.
[21] (1995) LPELR-178 (SC) Per Uwais JSC (as he then was)
[22] (1895 1 Ch.D)

or otherwise an order has been drawn up which does not express the intention of the Court, the Court must always have jurisdiction to correct it. But this is an application to the Vice Chancellor in effect to re-hear an Order which he intended to make but which it is said he ought not to have made. Even when an order has been obtained by fraud it has been held that the Court has no jurisdiction to hear it. If such jurisdiction existed, it would be most mischievous.[23]

Another instance is where, though the review of the Judgment affects operative and substantive parts thereof, the Supreme Court is entitled to review its judgment but only *suomotu*. In the case of *Varty v. British South Africa Coy*[24] and in *RE: Baber*,[25] the Court of Appeal in England reversed its own Judgment in each of the above mentioned cases after review. In these cases the court of England acted *Suo Motu* not at the instance of any party. The rationale here is that if parties are allowed to bring applications to the court for review of its Judgment or orders bothering on substance, then there would open a flood gate of applications upon applications. Thus there would be no end to litigation.[26]

It is however expedient to note that the Supreme Court can reverse itself with respect to operative and substantive parts of its decision relating to facts and law at the instance of a party only in a situation where it is called upon to reverse or change its position on any point of law held in an earlier Judgment but not in a suit being considered. In other words, when during hearing of appeal at the Supreme Court a party argues that the court was wrong in any earlier decision on a point and invites it to depart from its earlier position, then the Supreme Court could change the law and apply a new principle in the instant case. It therefore, follows that the effect of change in the position of the law from earlier case to future ones does not affect the parties in the earlier case. Rather, it is only the subsequent litigants that would be affected by the departure.

In addition where legislation is passed to change a principle of law, right of persons or duties given to them by a previous Judgment, the Supreme Court or any other Court follows the law as it is newly provided by the legislation. It therefore means that the finality of the Supreme Court decision is subject to any legislation that may be passed by the

[23] Daniel, O., 'The Powers that Be',*Daily Post Nigeria*, 21 January, 2021, 1.
[24] (1965) 1 ch.508
[25] (1886) 17 QBD 259
[26] (Okolo, 2014).

parliament. In *Prince Yahaya Adigun & Ors Vs. The Attorney General of Oyo &Ors (No. 2)*,[27] the Supreme Court held as follows:

> The decision of the Supreme Court is final in the sense of real finality in so far as the particular case before that court is concerned. It is final forever except there is legislation to the contrary, and it has to be legislation ad hominem. The Supreme Court and it is only the Supreme Court, may depart from the principles laid down in their decision in the case in future but that does not alter the rights, privileges or detriments to the parties concerned arising from the original case.[28]

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

However, decided cases reveal that in exceptional circumstances, the Supreme Court has wielded its inherent jurisdiction to reverse its judgment. For instance, in the case of *Oriker Jev &Ors. v. Iyortom & Ors.*[29], which interestingly is an electoral matter, the Supreme Court had in an earlier judgment ordered that the Independent National Electoral Commission (INEC) should conduct a run-off election in the case. Subsequently, the Court discovered that it made the said order based on a wrong interpretation of *Section* 133(2) in conjunction with *Section* 141 of the Electoral Act[30]

On a post-judgment application by one of the parties, the Court set aside the earlier order. It instead ordered Independent National Electoral Commission (INEC) to issue the Applicant a certificate of return.

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

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[27] (1987) LPELR-40648 (SC)

[28] Solomon. U., 'Developments in Nigerian Constitutional Law', [2016], *International Journal of Constitutional Law*, (Vol. 12. No.1), 9

[29] [2015] NWLR (Pt. 1483) 484

[30] 2010 (As Amended).

Similarly, in the case of *Olorunfemi v. Asho*[31] which is an unreported case and a ruling, the Supreme Court is said to have in its unreported ruling delivered on the 18th day of March, 1999 set aside its judgment delivered on the 8th day of January, 1999 on the ground that it failed to consider the respondent's cross-appeal before allowing the appellant's appeal. It ordered that the appeal be heard de novo by another panel of justices of the Court. It is therefore evidently clear that where the ground exists, Supreme Courts of basically all jurisdictions will not shyaway from setting aside their judgments or orders and substituting them with others. The ultimate end is justice, not the prestige of the court.[32]

Sequel to the above, it is the considered view of this work that upon review of relevant sections of the Constitution of Federal Republic of Nigeria 1999 as amended, rules of supreme court, that no specific provision exists which gives the Supreme Court power to set aside its judgment or decision. The Court retains such power under its inherent powers. It is not given by the 1999 Constitution. It is inherent in it. It is however, recognized under section 6(6) of the said Constitution which affirms that it cannot be taken away.

4. Impact of Supreme Court's Review of its Judgments on Democracy

It is necessary and pertinent to emphasize in this article that the Supreme Court of Nigeria is the highest court in Nigeria and its decisions are binding on every person and authorities breathing the air in Nigeria. Under our principle of *stare decisis*, or judicial precedence, the decisions of the Supreme Court of Nigeria are followed and obeyed by all subordinate courts in Nigeria. Therefore, the pronouncements of the Supreme Court are not only meant for the benefit of the litigants who approach that court, but are also meant for the benefit of all Nigerians including the unborn generations whose rights may be likely affected by the reasoning and logic of the Apex Court. The peculiar position of the Supreme Court as the highest court of the land with nationwide territorial jurisdiction places its decisions in a position to influence the policy of the entire nation as well as the democratic process in Nigeria.

The principle of *stare decisis*, that is, the legal principle of determining points in litigation according to precedent, has impacted much of the law everywhere in the world, but nowhere has it had as much

[31] (2000) 2 NWLR (Pt . 643) 143

[32] Nike, P., 'GTBank-Innoson Dispute: Supreme Court Reverses Prior Ruling, Readmits Bank's Appeal', Punch Newspaper, 16 January, 2022.

impact as in English law and practice which Nigeria inherited. *Stare decisis* is an age long feature of most common law countries including Nigeria. The practice of judicial precedent shows that it serves the case of justice and makes predictability of the outcome of the system positive. Judicial precedent is a basic principle of the administration n of justice in Nigeria. It is based on the fact that the principle of law on which the Court bases its decision on issues before it must be followed by Courts in order of hierarchy. Judicial precedent is a process whereby judges follow previously decided cases where the facts are of sufficient similarity. Judicial precedent means that like cases should be decided alike.[33] Judicial precedent entails that a Court must follow earlier judicial decision when the same points arose again in Litigation.[34] The doctrine of judicial precedent is well rooted in Nigeria Jurisprudence. It is a well settled principle of judicial policy to be strictly adhered to by all lower courts. In the case of *Dalhatu v. Tumaka*,[35] The Supreme Court stated as follows:

> This Court is the highest and final Court of Appeal in Nigeria. Its decisions bind every court, authority or persons in Nigeria. By the doctrine of *stare decisis*, the courts below are bound to follow the decision of Supreme Court. The doctrine is a sine qua non for certainly to the practice/application of law. A refusal, therefore by a judge of the Court below to be bound and I dare say such a judicial officer is a misfit in the judiciary.

It is not in doubt that the decisions of the Supreme Court in *Ihedioha v. Uzodinma's* case not to review its decision accords with the letter and spirit of the wordings of the Constitution of the Federal Republic of Nigeria, 1999 as amended. It also deepened the operation of the rule of law and upheld the sanctity of the judiciary and particularly the Supreme Court. This trend has been re-established in the very recent cases from the Bayelsa and Zamfara gubernatorial electoral matters. For if the Supreme had reversed itself in the case of Imo, the flood gate would be unimaginable. More decided case both criminal, civil and election cases would have surfaced, rendering the Supreme Court functions lack any form of finality. Also it will be tantamount to institutional breach of *Section* 235 of the constitution by the main body meant to protect it, thereby allowing people in government to use the breach to achieve their

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[33] Akande, J. A., *Miscellaneous of Law and Gender Relations*, Lagos, MIJ publications Ltd, 1999, 1
[34] Enwere, O. E., 'Doctrine of Stare Decisis And Its Relevancy in the Administration of Justice in Nigeria', [2019], *Journal of Jurisprudence, International and Public Law*, (Vol. 2, No. 1) 187
[35] (2003) 15 NWLR (Pt. 843) 310 at 323

parochial interests. This can be seen in the attempts made on the reversals of Zamfara, Bayelsa and other states lost by the party in power at the federal level. Maintaining the sanctity of Constitution is very important in preserving democracy, rule of law, judicial precedent and societal justice. This is expressed by the former American president Thomas Jefferson, where he presented the objective of a constitution in a society as thus; "the two enemies of the people, are the criminals and the government. So let us chain the second with the constitution so it does not become the institutionalized version of the first." To this effect, asking the Supreme Court to reverse its decision is opening the avenue freeing people in government from the chain of the constitution.

However, looking at the fact that the doctrine of *stare decisis* is one of the inevitable principles of the Nigerian Legal system as well as the harshness and injustice associated with the Imo State case, the argument that where no specific provision exists which gives the Supreme Court power to set aside its obviously bad judgment in *Uzodinma & Anor. v. Ihedioha & 2 Ors* is necessarily flawed. This is because on the authority of *Jev v. Oyortom*, the Supreme Court can actually review its decision. One of the successful reviews was in the case of *Bar Oriker Jev & Ors. v. Iyortom & Ors*.[36] Interestingly it was an electoral matter too. The Supreme Court had in an earlier judgment in the matter ordered that INEC conduct run-off election. During the review, the court discovered that it made the said order based on a wrong interpretation of *Section* 133(2) in conjunction with *Section* 141 of the Electoral Act 2010 (as amended). On a post-judgment application by one of the parties, the Court set aside the earlier order. It instead ordered the Independent National Electoral Commission (INEC) to issue the applicant a certificate of return.

Moreover, the case of *Uzodinma & Anor. v. Ihedioha & 2 Ors*[37] constitutes a bad precedent for the democratic and electoral jurisprudence in Nigeria and ought to reviewed, changed or revisited. This is because the Supreme Court's acceptance of results from 388 polling stations without certification by the required public organizations was in violation of the Evidence Act 2011's provisions of *sections* 89 (e) and (f) and 90 (c). Thirdly, neither INEC, the document's creator, nor the police department from whom the records came were able to certify the results from the contested 388 voting units. Thirdly, accepting the evidence of a police officer who did not create or have any knowledge of the document

[36] [2015] NWLR (Pt. 1483) 484
[37] *Supra*

contradicts Evidence Act 2011 particularly sections 37, 38, and 126 thereof. Fourthly, the Supreme Court's acceptance of the results from the 388 polling units without any proof from polling agents or INEC officials defies past legal practice. The court had to miraculously manufacture votes more than the number of the people who had originally voted in the election and allocated all the votes to your opponent. All of us in Nigeria should be very careful and be warned here because the honest truth is that whether we are APC, PDP, APGA, AA, Accord, etc., or apolitical, we all are involved in this dangerous rat race.

Perhaps many of us have not thought deeply about the futuristic implications of this disappointing and embarrassing judgment on Imo State's 2019 governorship election. One could be the beneficiary of this very supreme injustice today, but conceivably it could turn to hurt the same celebrator tomorrow since Supreme Court decisions are references as ultimate yardsticks of every judgment. Consequently, if we all do not in unison come out of our political affiliations to condemn this evil and seek paradigm of change, and if this brouhaha is supported and affirmed under any guise to stand, it would eventually metamorphose into a monster that would consume all of us that included the judges that took this decision. And it will be the beginning of the total destruction of whatever justice still left in Nigeria. The erroneous mantra of "Supreme Court decision is final," and that "there must be a stop to litigation" holds no water here until supreme judges begin to take supreme decisions. It is our considered view still that the Supreme Court judges are humans, and considering the enormous volume of cases they had to treat and the voluminous paper works they do, they can make mistakes. All Things being equal, that decision on Imo State was an oversight that will be justly addressed by this review.

The Supreme Court retains power to review its decision under its inherent powers as held in *Jev v. Iyortom.*[38] It is not given by the 1999 Constitution. It is inherent in it. It is, however recognized under section 6(6) of the said Constitution which affirms that it cannot be taken away. It is pertinent to emphasize that the courts, both in Nigeria and other jurisdictions, take the integrity of the judiciary very seriously. Where there is some controversy surrounding the integrity of the Supreme Court necessitating a Supreme Court to look again at its earlier decision, it is somehow imperative that a different panel should be set up to review such earlier decision. According to Chief Robert Clarke (SAN), there are few

[38] *Supra*

occasions where the Supreme Court has been asked to review its decision in Nigeria and in those few occasions, only a couple of them were successful. There have been about four instances, and he participated unsuccessfully in two of them.

"All over the world, where the common law is being practiced, the apex court allows people to review their judgment. In Nigeria also, the Nigerian Supreme Court allows people to come and review judgment. But not to challenge a judgment as if you are appealing against it, because if they make the mistake to allow anybody to always come to the court to challenge their decisions, they would open a floodgate, where everybody will want to take advantage. And that is why in Nigeria today, I don't think there are more than three cases that have gone to the Supreme Court for review. I am lucky I have done two of those cases in the history of the three that has returned to them. I am doing one presently. The apex court says we can come when it makes a mistake, acknowledging that they are not saints. They are mortals like us, but they gave conditions.[39]

With respect to the decision of the Supreme Court in the Bayelsa case, because of anomalies in his running mate's names on his certificates, the Supreme Court stopped Lyon from being inaugurated in as Governor of Bayelsa State for 24 hours on February 13, 2020, and ordered PDP's Douye Diri to be sworn in. With due respect to the learned justices of the Supreme Court, it is our submission that the decision of the Supreme Court is unjust and harsh. It is our considered view that it is unfair, unjust and unreasonable for the Supreme Court to disqualify both the Governor-elect and his running mate from being sworn due to the sin of the running mate not even the Governor-elect. The Supreme Court would have taken a cue from what happened in 1979 in Imo State where Samuel Onunaka Mbakwe emerged winner in the gubernatorial primary election under the platform of NPP. This was the position taken by the courts in *Nwakanma Okoro v. Sam Mbakwe* in 1979. Unfortunately, Mbakwes running mate or deputy known as Bernard Amalaha was found disqualified after the election. Mbakwe was allowed to choose another Deputy. He chose Prince Isaac Uzoigwe, in place of Dr Bernard Amalaha. His election was not voided.[40] The Supreme Court should not have voided Lyon's election but should have allow him pick another running mate.

According to Alozie, by voiding Lyon's election, the Apex Court has taken away the right of the people of Bayelsa State to choose their leader.

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[39] Onyekwere, J., *Op.cit*.,

[40] '1979 Imo State Gubernatorial Election', www.en.m.wikipedia.org, accessed on 16/1/2022.

He posits that the decision of the Supreme Court in voiding Lyon's election violates the sanctity of ballot box. It is the inviolable right of the people to choose their leaders. The Supreme Court seems to have taken away that right.[41] A deputy Governor or vice president has always been known to be a spare tyre. The election in question is Governorship election and not Deputy Governorship election. Consequently, after the election, where it is found that the Deputy Governor is not qualified, the Governor ought to be allowed to choose another deputy."

5. Recommendations

5.1 Stiffer Penalties for Culpable Judicial Officers

Nigeria's political process is characteristically marred with corruption and corruptive tendencies. This is because the syndromes of money politics', Big man politics', and the politicisation of the judiciary 'appear to be the major determining factor of the system of electoral justice in Nigeria and elsewhere on the Africa continent. The predictable election adjudicatory processes outcomes in Nigeria often respond to very narrow but powerful interests. Within the context of prevailing dominant money politics in Nigeria, the judiciary has become targeted markets' for political investors while electoral justice becomes auctionable and sellable to the highest bidder. Therefore, there is convergence between political corruption and judicial corruption. The manifest effect of this syndrome is to always see a wide gap between the evidence of electoral frauds and the attendant court verdicts. Instances of proven cases of corruption and financial inducement against judges sitting on election petition cases have continued to pervade the polity, thus questioning the role of the judiciary as an important institution of democratic sustenance.

5.2 Appropriate Sanctions for Court-Removed Public Office Holders

Any meaningful reform in Nigeria's electoral system must cut across three important stakeholders; namely, the election management body, the judiciary and the political class. Injecting reforms that are capable of reducing stress in Nigeria's electoral process and the judicial process of resolving ensuing disputes without proper measures that will curtail the antics of the politicians may not likely produce the desired outcomes. It is in this regard that this study recommends sanctions for political office holders who are removed by the courts for electoral fraud and

[41] Onanuga, A., 'Supreme Court decision on Bayelsa violates sanctity of ballot box', *Nations Newspaper*, 17 February, 2020, 18

manipulations. Political office holders found guilty of manipulating the electoral process to secure political power occupy such political offices as interlopers and usurpers, hence must be severely sanctioned to first caution politicians to abide by guidelines and seek political power within the ambit of the law and second to reduce the thirst 'and hunger' for political offices which are incredibly attractive in Nigeria.

Towards future general elections in Nigeria, both the electoral laws and the constitution should be reformed to include two clauses relating to political office holders found guilty of electoral fraud. The first clause should make court-removed political office holders to compulsorily refund all monies and financial benefits in the form of salaries and allowances received while illegally occupying such offices and the second clause should categorically ban court-removed political office holders from being recognised as having occupied such offices before.[42]

5.3 Departing from Bad Precedents in Future Cases

The apex court can overrule itself on a principle of law or to refuse to follow its earlier decision if it comes to the opinion that it is bad law. That cannot happen in the same case but a subsequent matter on the same subject matter. Thus, it is the recommendation of this paper that the Supreme Court should be courageous enough to depart from or refuse to follow the bad precedents it has set in such cases like the *Uzodinma v. Ihedioha's* in subsequent or future cases. Consequently, as a result of the far-reaching effect of the decisions of the Supreme Court, the Justices of the Apex Court should always ensure that they give effect to the enthronement of substantial justice at all times by departing from such cases decided by them which by their nature constitutes bad precedents and does not enthrone substantial justice. This is because the Supreme Court being the Apex Court in the land is clothed with jurisdiction to determine cases which are of general public interest and capable of shaping the policy of the country and the democratic process.

[42] Oluwole, E. O., 'The Politicization of Election Litigation in Nigeria's Fourth Republic', www. ukzn.ac.za.com, accessed on 16/1/2022.