In The Supreme Court of Nigeria

On Friday, the 10th day of March 1967

Before Their Lordships

Adetokunbo Ademola	…..	Chief Justice of Nigeria
George Baptist Ayodola Coker	…..	Justice, Supreme Court
Ian Lewis	…..	Justice, Supreme Court

SC. 92/1964

Between

Daniel Asiyanbi & Ors	…..	Appellants

And

Emmanuel Awe Adeniji	…..	Respondent

Judgment of the Court

Delivered by

George Baptist Ayodola Coker. JSC

This application is a sequel to the judgement delivered by this Court in the substantive appeal in this case on the 4th March, 1966. In the substantive appeal the appellants were the defendants and the respondent the plaintiff in an action which originated from the High Court, Ibadan. The claims were for a declaration of title to a parcel of land known as Oke Awo in the Ife district of Western Nigeria and an injunction to restrain the defendants from acts of trespass on the land.

In the course of the proceedings in the High Court and after the delivery of the plaintiff's Statement of Claim, the defendants purported to file a counter-claim against the plaintiff asking for a declaration of title to the same land which the case of the plaintiff involved. The defendants eventually filed their Statement of Defence but made no specific reference therein to their counter-claim although in their evidence at the trial they stated that they claimed as per their counter-claim. At the end of the hearing the learned trial judge gave judgement in favour of the plaintiff allowing his claims. He also stated, as regards the counter-claim filed by the defendants, that it was dismissed. The defendants appealed to this Court and after hearing the arguments of counsel on both sides this Court gave judgement as stated on the 4th day of March, 1966. The concluding portions of the judgement so far as they are relevant to the present application are as follows:

> "There was a counter-claim by appellants for a declaration of title to the land in dispute. We think it proper to observe in passing that as a counter-claim, the claim was hardly properly before the court; it was filed out of time and without leave of the court; (See Order 20, Rule 4 High Court Rules Western Nigeria). In any event, it should have been brought by way of a cross-action. The counter claim was, however, dismissed and there has been no appeal against the order.
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> Accordingly, it is ordered that the judgement and order for costs made by the High Court Western Nigeria in Suit I/195/59 in so far as it relates to the principal claim are hereby set aside and in their place we order that an order of dismissal be entered in respect of the plaintiff's claim. There has been no appeal from the order dismissing the appellants' counter-claim which must therefore stand."

Later, in accordance with the practice of this Court, the judgement was entered and a formal order drawn up thereon in the following terms:

> "Upon reading the Record of Appeal herein and after hearing Chief F. R. A. Williams (Mr. Biodun Sanni with him) of counsel for the Appellant and Mr. Olu Ayoola of counsel for the Respondent:
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> It Is Ordered:
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> 1. That the judgement and order for costs made by the High Court Western Nigeria in Suit I/195/1959 in so far as it relates to the principal claim be hereby set aside;
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> 2. That an order of dismissal be entered in respect of the plaintiff's claim;

3. That the order dismissing the appellant's counter claim do stand;

4. That the costs of this appeal be fixed at 60 (sixty) Guineas to the appellant."

The defendants obtained a copy of the drawn-up order, obviously had some qualms about such parts of it as concerned their counter-claim and so brought the present application in which they sought for an order:

"(i) that the judgement and order of this honourable court dated 4th March, 1966 be read as if all references to the appellant's counter-claim were deleted and that there should be substituted therefore either

(a) an order directing that arguments be heard on the question of the appropriate order to make regarding the appeal from the order dismissing the counter-claim or

(b) an order that the said counter- claim be struck out; and

(ii) for such further or other orders as this honourable court may deem fit to make."

No argument was addressed to us on part (ii) of the prayer on the motion and we say no more on that part of the application. For the rest, the argument canvassed was in effect that this Court had the jurisdiction to amend or correct its own judgement and/or order and that it should amend the judgement and order in this case insofar as their counter-claim is concerned to accord with the wishes of the defendants. It was contended on their behalf that the Court had the inherent jurisdiction so to correct or amend its own records in the interests of justice; that this inherent jurisdiction is supplemented by the provisions of the English Rules of Court, Order 20, Rule 11 (which is applicable by virtue of the Federal Supreme Court Rules, Order 7, rule 29); that in its judgement in the substantive appeal this Court was in error in stating that there was no appeal from the counter-claim inasmuch as both in their notice of appeal and in the course of the argument of their counsel before this Court their counter-claim was clearly envisaged and that the limitations postulated by the English Rules of Court, Order 20, rule 11, should not preclude the Court from exercising its inherent jurisdiction since in Nigeria, unlike in England, the legal representatives of parties are not called upon to take part in the drawing up of formal orders. On the other hand, for the plaintiff the application was resisted principally on the ground that Order 20, rule 11, English Rules, does not permit such an amendment as requested after the Order had been formally drawn up, nor is it the practice of the courts in England to effect such an amendment after the order has been filed, by virtue of its inherent jurisdiction.

The application raises the very important problem of the meaning of what is generally referred to as the "Slip Rule" and the circumstances of its applicability. Manifestly apart from provisions in the Rules of Court the court must and does possess the power, subject to appropriate safeguards where the justice of the case so requires, to correct or amend the terms of its own orders or judgements to effect such variations therein in such a way as to carry out the meaning which the court intended where, for instance, the language used in the phrasing of the order is ambiguous or does not express the order actually made by the judgement or is otherwise open to misapprehension it may be corrected to make it clear. (See per Lindley L.J. in *Re Swire, Mellor v. Swire (1885) 30 Ch. D. 239 at p. 246*). The arguments before us presuppose that the court's power in this respect might be different according as to whether or not the judgement had been formally embodied in an order or not and we propose to deal with them as such.

It seems to us, after listening to both sides, that there is a measure of agreement on the extent of the inherent jurisdiction of the court to correct or amend the terms of its own judgements so long as these judgements have not been formally drawn up (see the observations of Lord Denning M.R. in *Varty (Inspector of Taxes) v. British South Africa Co. [1965] Ch. 508 at p. 515*). It has not been contended before us, however, that the inherent jurisdiction of the court in this respect would entitle the court to effect an amendment which would be tantamount to re-hearing an order which it intended to make (and did make) but which it is said it ought not to have made. The jurisdiction of the court to correct its records before the drawing up of the formal order is one that calls for the exercise of strict judicial discretion. In this respect the Court of appeal once observed:-

> "We think that an order pronounced by the judge can always be withdrawn or altered or modified by him until it is drawn up, passed and entered. In the meantime it is provisionally effective and can be treated as a subsisting order in cases where the justice of the case requires it and the right of withdrawal thereby prevented or prejudiced ….. When a judge has pronounced judgement he retains control over a case until the order giving effect to his judgement is formally completed. This control must be used in accordance with his discretion exercised judicially and not capriciously. The learned judge in these two cases exercised his discretion judicially in recalling his original orders and there is in our opinion no ground for disturbing the orders finally made."

Per Jenkins L.J. in *Re Harrison's Share under a Settlement, Harrison v Harrison and Others [1955]1 All E.R. 185 at pages 188, 192*.

The power of amendment or correction of its records inherent in the jurisdiction of the court is manifestly wide and subject to the limitation that it must be exercised when the purposes of justice require it. The courts have always refused to define its extent or categorise its limits. (See per Evershed L.J. in *Meier v Meier [1948] 117 LJ. Rep. 436 at page 439*). It is therefore beyond question that if the present application had been brought before the engrossment of the formal order and an appeal were made to the inherent jurisdiction of the court for the prayers herein sought, the argument of counsel for the defendants would have attracted more force though we are not prepared to express any view as to what would have been the eventual result of the application.

In the present case the judgement of the court had been formally drawn up and the argument ranges around the powers of the court to correct its own record after the formal order had been drawn up. Chief Williams for the defendants argued that there was indeed an appeal on the counter-claim by the defendants. He referred to the notice of appeal filed by them in which part of the relief sought was for judgement in their favour on their counter-claim. He also argued that an appeal against the entire judgement is *pro tanto* an appeal against that part of it dealing with the counter-claim. He submitted, therefore, that the court was wrong to state in its judgement on the substantive appeal that there was no appeal on the counter-claim. For the plaintiff Mr Ayoola did not resist the argument on the merits of the matter but he contended that once the order had been formally drawn up the court has no inherent jurisdiction to amend it and the provisions of Order 20, rule 11 (English Rules) do not empower the court to correct anything other than clerical mistakes and omissions and errors arising from an accidental slip or omission.

By the provisions of the Federal Supreme Court Rules, Order 7 rule 29, this court may not review its own judgement once delivered, except insofar as the Court of Appeal in England may do so. In England the position by virtue of Order 58, rule 9 of the English Rules is that the Court of Appeal is vested with powers to make all such orders as the High Court could have made on the material before it and as to amendments, Order 58, rule 9 (i) states as follows:-

> "In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court."

The powers of the High Court to correct its own records are set out in Order 20, rule 11. The rule provides as follows:-

> "Clerical mistakes in judgements or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court on motion or summons without an appeal."

The rule envisages the correction or amendment of

(a) clerical mistakes and

(b) errors arising from any accidental slip or omission.

No question arises here of any clerical mistake either in the judgement of the court or in the formal order as drawn up in consequence thereof. It was however contended that:-

(i) to say that the defendants did not appeal on their counter-claim was an accidental slip and

(ii) it was an omission not to deal with the argument on the counter-claim.

With regard to (ii) we point out that the argument involves a misconception. The judgement of this Court in the substantive appeal clearly dealt with the counter-claim and for the reasons therein stated held that it was not sustainable in the High Court and *a fortiori* it was not sustainable in this Court. With regard to (i) reliance was placed by learned counsel for the defendants on the decisions of North J. in *Re Blackwell, Bridgman v Blackwell (1886) W.N. 97* and in *Staniar v. Evans (1886) 34 Ch. D. 470*. We observe that in the first of these two cases, North J. employed the powers contained in the Rules of Court dealing with an accidental slip to effect an amendment to the substantive or operative part of the order. In the latter of these two cases the correction appears to have been made on the basis that the order was made on what subsequently was found to be a misrepresentation of fact and it does not appear from the judgement that the judge based his decision to effect the correction on the relevant Rule of Court. What is clear, however, is that in the latter case of *Preston Banking Co. v. William Allsup & Sons [1895] 1 Ch. 141*, the Court of Appeal doubted the authority of *Staniar's* case and expressed the view that on the authority of the decisions of the Court of Appeal in *In Re St. Nazaire Co. (1879) 12 Ch. D. 88* and *In Re Sheffield & Watts ex parte Brown (1888) 20 Q.B.D. 693*, the decision in *Staniar's* case would certainly require reconsideration. Moreover Lord Halsbury with respect to the general principle in the application of the "Slip Rule" observed as follows:-

> "If by mistake 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 re-hear it. If such a jurisdiction existed it would be most mischievous. "

(See per Halsbury L.C., in *Preston Banking Co. v William Allsup & Sons [1895J I Ch. D. at p. 143*).

The cases later decided by the Court of Appeal established that the Court while able to correct a misnomer or misdescription under the "Slip Rule" will not under that Rule, whether in the exercise of its inherent jurisdiction or by the powers conferred by the Rule of Court, vary a judgement or order which correctly represents what the court decided nor will it vary the operative and substantive part of its judgement so as to substitute a different form. (See *Macarthy v Agard [1933] 2. K.B. 417*-though it should be noted that in that case Scrutton L.J. in a dissenting judgement was of the view that the Court by its inherent jurisdiction could correct an error in an order caused by the active misrepresentation of a party).

In the case in hand, a perusal of the judgement of this Court along with the order does show that the order correctly carries out the intention of the judgement. The contention of counsel for the defendants put their case no higher than that the Court had made a mistake of fact in stating that the counter-claim was not appealed. The remedy for this does not in our view come within the purview of the "Slip Rule" and it has been held that where the court has come to an erroneous decision either in regard to fact or law then an amendment of its order cannot be sought under the "Slip Rule" but recourse must be had to an appeal to the extent to which an appeal is available (per Morris L.J. in *Thynne v. Thynne [1955] 3 All E.R. 129 at p. 146*). When however the intention of the court is clear but due to an accidental slip in the judgement that intention was not carried out, it had been held by the Court of Appeal that the court can correct the slip which nullified the intention: (*Barker v. Purvis (1886) 56 L.T.R. 131*). Such, however, was not the position in the application now before us as it is not contended that the order as drawn up does not carry out the intention of the judgement.

Finally, learned counsel for the defendants invoked the inherent jurisdiction of the court to amend the judgement and order in this case after the filing of the formal order. That such jurisdiction exists is not open to debate but the circumstances governing its exercise are subject to judicial discretion. In *Macarthy v Agard* (supra), Romer L.J. expressed the view that the court's inherent jurisdiction to amend an order already drawn up is limited to cases where the order as drawn up does not correctly state what the court actually decided and intended by its judgement. That was also the view taken by the Court of Appeal in *Preston Banking Co. v. William Allsup & Sons [1895] 1 Ch.D. 143*. As we have earlier pointed out, the formal order in this case accords with the judgement of the court and it cannot be argued that the order did not represent the meaning and intendment of the judgement.

We have been asked by counsel for the defendants to exercise the powers exercisable in their inherent jurisdiction by the English courts before an order was drawn up, since formal orders are not in this country settled by counsel as in England. We observe that in England it is only in the Queen's Bench Division that counsel in effect settle the formal order and that in the Chancery Division the procedure differs and counsel is not necessarily a party to the engrossment of such orders. The submission went no further and no other argument of substance has been advanced to support the submission. We are not impressed by the argument and see no reasons why this Court should depart from the clear pro visions of the Federal Supreme Court Rules, Order 7, rule 29 to which we had previously referred. The defendants could have drawn attention to the error of fact in the judgement of the Court when it was delivered and asked for it to be corrected, but not having availed themselves of that opportunity before the order was drawn up we consider it now too late for them to ask the Court to do so.

In the event all the arguments urged in support of this application fail and the application must be refused. We wish to observe that in any case we are satisfied that no miscarriage of justice has occurred by the refusal of this application. The judgement of this Court in the substantive appeal clearly dealt with the counter-claim and showed that if this court had appreciated that there was an appeal against the decision of the High Court in respect of it, then it would have dismissed it. In both the judgement of this Court and the order drawn up following the judgement it was clearly stated that the order of the High Court dismissing the defendants' counter-claim should stand.

As stated before, this application fails and it is dismissed. The defendants/appellants will pay to the plaintiff/respondent the costs of this application fixed at 30 guineas.

Counsel

Chief F. R. A. Williams *with him* B. Sanni	…..	For the Appellants
O. Ayoola *with him* D. A. Adeniji	…..	For the Respondent