IN THE SUPREME COURT OF NIGERIA

Suit No: SC376/2001

Petitioner: Race Auto Supply Company Limited
And
Respondent: Alhaja Faosat Akib

Date Delivered: 2006-06-09

Judge(s): Salihu Modibo Alfa Belgore , Umaru Atu Kalgo , Ignatius Chukwudi Pats Acholonu , Mahmud Mohammed , Ikechi F

Judgment Delivered

This is an appeal against the decision of the Court of Appeal, Lagos Division delivered on 22-6-2000.

Apart from the 1st appellant, the parties in this appeal are beneficiaries and executors of the estate of the late Alhaji Abdul Wahabi Akibu of Lagos who died and left behind property at 14 Okoya Street Lagos Island, Lagos. In accordance with the Will also left behind by the deceased, the property was shared accordingly with the respondent in this appeal having a room and a parlour on the. ground floor of the building.

However, the 2nd, 3rd and 4th appellants as executors of the estate of the deceased and on behalf of the beneficiaries of the estate including the respondent, procured the 1st appellant to redevelop the property in order to enhance its rating value. The redevelopment contract was executed between the appellants on 16-08-1995 and as the result the 1st appellant moved into the property to demolish it preparatory to erecting a modern structure as stipulated in the agreement. However, the respondent who was not satisfied with the terms of the redevelopment agreement refused to allow the commencement of the work and demanded variation of the agreement to provide better terms for her. On the 1st appellant refusing to agree with the respondent for better terms of the redevelopment agreement, the 1st Appellant with the support of the 2nd, 3rd and 4th Appellants who executed the redevelopment agreement, filed an action No. CD/2818/97 at the Lagos High Court to enforce the agreement against the respondent who was the only defendant in the action.

In the course of the proceedings in the suit, the parties comprising the appellants in this appeal as plaintiffs and the respondent as defendant, agreed to settle the dispute between them out of court. The terms of settlement signed by the parties in the presence of their learned counsel on 8-1-1998, was filed at the trial court which the learned trial judge, Obadina J. (as he then was), adopted as the judgment of the court on 4-5-1998. In compliance with the terms of the consent judgment, the respondent on receipt of the sum of N50, 000.00 from the 1st appellant for her relocation from the property during the period of the execution of the project vacated the premises to allow for the commencement of the reconstruction.

Upon the completion of the reconstruction of the property at No. 14 Okoya Street Lagos Island, the respondent demanded for the keys of the four shops and two stores being her share in the property from the 1st appellant who refused. There upon the respondent forcibly occupied the four shops and two stores resulting in the appellants proceeding to the trial Lagos State High Court for redress. In the Originating Summons filed by the appellants as applicants on 30-3-1998, the following questions were sought for determination and subsequent relief -

\"(a) Whether by the terms of settlement dated 8th January 1998 in suit No CD/2418/97 and entered as the judgment of the court on 4th May 1998, the Respondent is entitled to forcibly wrest from the appellants 6 shops in the building before the completion of the construction work.

(b) Whether under the said terms of settlement dated 8th January 1998, the respondent is entitled to 6 shops on the completion of the reconstruction of the redevelopment project as contained in the redevelopment contract dated 16th August 1995.

(c) Whether under the said terms of settlement the respondent is entitled to the 6 shops at the expiration of the redevelopment contract dated 16 August 1995.

If the answers to questions 1 and 2 are in the negative and the answer to question 3 in the affirmative, the applicants shall be praying the Honourable court far the following order(s):-

(1) An order of perpetual injunction restraining the Respondent, her servants, agents or any person claiming through her from disturbing the quiet possession of 1st Appellant during the currency of its term as stipulated under the contract agreement dated 16th August 1995\"

The Originating Summons supported by a 20 paragraph affidavit, a further 26 paragraph affidavit and opposed by a counter affidavit of 47 paragraphs and a further counter affidavit of 30 paragraphs, was heard by Shitta- Bey J. of the Lagos High Court who in his ruling delivered on 18th 11-1998, granted all the prayers of the appellants against the respondent who immediately appealed to the Court of Appeal, Lagos against the ruling.

In its judgment delivered on 22-6-2000, the Court of Appeal allowed the respondent\'s appeal, set aside the orders of the trial court and granted the respondent possession of the four shops and two stores in dispute between the parties. The appellants as applicants before the trial court who lost in the contest, have now appealed to this court by a Notice of Appeal which contains seven grounds of appeal. When the appeal came up for hearing on 14-3-2006, the respondent who was duly served with the appellants\' brief of argument and the hearing notice of the date for the hearing of the appeal, was not only absent but was also not represented by counsel and no respondent\'s brief was filed on her behalf. Consequently, the appeal was heard under order 6 rule 8(7) of the rules of this court on the appellants\' brief of argument alone which distilled the following three issues for the determination of the appeal from the seven grounds of appeal filed by the appellants.

1. Whether having found the application of the applicants/Respondents/Appellants to the High Court, Lagos for the interpretation of the consent judgment proper, are the learned justices of the Court of Appeal, Lagos allowed to rewrite the Agreements between parties.

2. Whether by the consent judgment of the Lagos High Court, the Respondent/Appellant/Respondent is entitled to 4 shops and 2 stores on the completion of the reconstruction of the building OR at the expiration of the redevelopment project as contained in the redevelopment contract dated 16th August 1995.

3. What is the literal and grammatical meaning of the phrase \"upon the completion of the project for redevelopment of the property.\"

Taking into consideration that this appeal arose from the ruling of the trial Lagos State High Court on the application of the appellants by originating summons for the interpretation of the consent judgment between the parties, all the three issues arising from the grounds of appeal challenging the decision of the Court of Appeal setting aside the ruling of the trial court in favour of the appellants could be taken together. This is because all the three issues are merely complaining on the interpretation of the terms of settlement embodied in the consent judgment.

It is appropriate to observe at this stage that before formulating the issues from the grounds of appeal, learned counsel to the appellants wasted his precious time and space in the brief of argument by quoting all the 7 grounds of appeal filed by the appellant with their particulars running into two pages of the brief. This is quite unnecessary exercise since none of the grounds of appeal is being challenged as incompetent to warrant the production thereof to facilitate the determination of the validity of the ground by the court. A brief of argument must answer the name, namely, of being really brief and is therefore not a forum for quoting grounds of appeal from which issues are to be framed. Be that as it many, as I have already stated, the main issue for determination in this appeal is whether a party interested in a judgment can by way of an application by originating summons ask a court of co-ordinate jurisdiction to resolve any question of construction of words or phrases or interpretation of any part of the judgment.

Learned counsel to the appellant opened his argument by stating that where parties to a contract have reduced their intention in writing, the words used should be given their ordinary and plain meaning. He referred to the. consent judgment and the contract for the redevelopment of the property at No. 14 Okoya Street, and submitted that the terms are not ambiguous but that the court below failed to consider all the clauses of the consent judgment including the contract for the redevelopment in the interpretation of the consent judgment. Learned counsel argued that any construction of the terms and conditions of the consent judgment of 4-5-98 between the parties, will be incomplete without construing the terms and conditions of the redevelopment contract which is what the trial court did in compliance with the law particularly the case of Fakorede v. A.G. of Western State (1972) 1 ALL NLR (pt. 1) 178 and Aouad v. Kassrawani (1956) SC NLR 83. Turning to the ruling of Shitta-Bey J. of the trial court of 18-11-98, learned counsel observed that it did not deviate from the consent judgment of Obadina J. (as he then was) nor did it vary the terms of the consent judgment which infact did not order the ceding of the 4 shops and 2 stores to the respondent upon completion of the construction of redevelopment of the property at No. 14 Okoya Street, Lagos. Quoting clause 2 of the consent judgment, learned counsel pointed out that the court below was in error in its judgment when it substituted and upheld terms not intended nor agreed to between the parties which is a total departure from the known rules of construction of documents on the authority of Niger Dams v. Lajide (1973) 5 SC 207. On proper construction of the terms of the consent judgment learned counsel concluded that the part of the property to be ceded to the respondent is to be ceded only upon completion of the project for the redevelopment of the property.

On the status of the consent judgment between the parties, learned counsel stated that it is unambiguous and the parties were ad idem that the judgment contains all the terms agreed to in the course of settling the issue before the Lagos High Court in suit LD/2418/97. In particular learned counsel referred to clause 4 of the consent judgment and argued that on the interpretation of that clause along with the contract for the redevelopment dated 16-8-95, it is quite clear that the parties in the consent judgment contemplated the redevelopment of property No. 14 Okoya Street, Lagos by the resources of the 1st appellant who in return shall have the right to use the ground floor and 1st floor of the reconstructed property for a term of 20 years free of rent, as benefits to be enjoyed for the reconstruction of the property. With this, learned counsel urged this court to allow the appeal, set aside the decision of the court below and restore the decision of the trial Lagos State High Court of 18-11-1998.

In resolving the issues for determination in this appeal it is important to bear in mind that although in the course of proceedings in suit No. LD/2418/97 filed by the appellants against the respondent at the Lagos High Court of Justice in furtherance of the resolution of their dispute out of court, terms of settlement were prepared and signed by the parties on 18-1-1998 in the presence of their learned counsel. It was these terms of settlement that were embodied in the consent judgment of Obadina J. (as he then was) of the Lagos High Court delivered on 4-5-1998. The terms of the consent judgment at pages 8-9 of the record of the appeal are:-

' Terms of settlement

The Plaintiffs and the Defendant here in agree as follows: -

1. That the defendant shall be entitled to the dimension of the Room and Parlour grant under the read will of late Alhaji A.W. Akibu, as a beneficiary to the estate.

2. That the 1st plaintiff as the Redeveloper of the property and 2nd, 3rd, 4th and 5th plaintiffs as the Executors and Executrixes of the estate of late Alhaji A.W. Akibu shall cede to the Defendant the following: 2 shops with a dimension of 3-3 meters by 2-3 metre in front, 2 shops of 900 millimetres by 2-4 metres at the back: upon the, completion of the project for redevelopment of the property situate at 14 Okoya Street, Lagos for her and her beneficiaries exclusive use thereafter.

3. That the 1st plaintiff shall give to the defendant the sum of N50,000.00 (Fifty Thousand Naira) for the relocation of the Defendant during the period of the redevelopment project (The receipt of which the Defendant\'s solicitor hereby acknowledges)

4. That the above terms and conditions shall be additional to the terms and conditions contained in the

redevelopment contract executed by the 1st plaintiff and 2nd, 3rd, 4th and 5th plaintiffs for and on behalf of the Estate of late Alhaji A. W. Akibu and the beneficiaries including the Defendant and dated 16th August 1995.

The terms of settlement dated 8th January 1998 signed and filed by the parties are hereby made the judgment of the court.

Dated at Lagos this 4th day of May 1998.'

When dispute again arose-between the parties over the interpretation of the terms of the consent judgment regarding the time the appellants shall cede to the defendant the 4 shops and 2 stores for her and her beneficiaries, the appellants headed to the Lagos High Court by Originating Summons asking Shitta-Bey J. to resolve the dispute by granting the appellants the orders and reliefs I have earlier quoted in this judgment. In his ruling delivered on 18-11-98 after hearing the parties on the Originating Summons, the learned trial judge after finding that what he was required to interpret were the terms of settlement between the parties embodied in the consent judgment came to the conclusion that his court has jurisdiction to entertain the application on the authority of the decision of the court of Appeal in University of Lagos v. Aigoro (1991) 3 NWLR (pt.179) 376 and accordingly granted the application. The relevant part of this ruling reads:-

\" Accordingly, this application succeeds, and it is hereby ordered and declared as follows that

1. By the terms of .settlement dated the 18 January, 1998, in suit No. LD/2418/97 and entered as the judgment of the Honourable court on the 4th of May, 1998, the Respondent is not entitled to forcibly wrest from the Applicants 6 shops in the building before the completion of the reconstruction work.

2. Under the said terms of settlement dated the 8th of January, 1998, the Respondent is not entitled to 6 shops on the completion of the reconstruction of the building BUT at the expiration of the re development contract dated the 6th August, 1998.

3. Under the said Terms of settlement, the Respondent is entitled to the 6 shops at the expiration of the redevelopment terms as contained in the redevelopment contract, dated the 16th of August, 1995. Consequently, order be and is hereby granted to the Applicants (sic) agents or any person claiming through her from disturbing the quite possession of the 1st Applicant during the currency of its term as stipulated under the contract Agreement dated 16th of August, 1995.\"

These declarations and orders of the trial Lagos State High Court were set aside on appeal by the respondent in the judgment of the court below which ordered the immediate restoration of possession of the 4 shops and 2 stores to the Respondent. In the leading judgment of Aderemi JCA at page 322 of the record of appeal, reasons for allowing the appeal were given as follows:-

\" I wish to say that the judgment of Obadina J. (as he then was) remains the solid bed rock of the right of the parties vis-a-vis the developed property. Nothing must be allowed to supplant it, not even any of the terms of the agreement dated 16th August 1995 earlier entered into by the parties prior to the consent judgment given by Obadina J. (as he then was). But to the extent to which the third order of Shitta-Bey J. says that the respondent/appellant is entitled to the 6 shops at the expiration of the redevelopment terms as contained in the redevelopment contract dated the 16th August 1995, that order is a subtle attempt at supplanting the judgment of Obadina J. That is not permissible in law. Nothing must derogate from orders 1, 2 and 3 embodied in the consent judgment by Obadina J. (as he then was), order 2 thereof makes it clear that the 6 shops must be ceded to the appellant upon the completion of the project for redevelopment of the property. It is for this reason that I answer issue 7 in the appellant\'s brief in the negative. Nothing must be seen to derogate from the judgment of Obadina J. (as he then was) which ordered that four shop and two stores be ceded to the appellant upon the completion of the construction of the redevelopment of the property situate at 14 Okoya Street, Lagos.

In the result, from all I said above the appeal is adjudged to be meritorious, it is allowed. The appellant is entitled to the four shops and two stores immediately and the 1st Respondent is ordered to surrender same to the appellant .....\"

In this appeal, it is necessary to examine the status of the Lagos High Court consent judgment of Obadina J. (as he then was) of 4-5-98 which was placed before Shitta-Bey J. of the same Lagos High Court for interpretation by the appellants under order 46 Rule 1 of the Lagos State High Court (Civil Procedure) Rules 1994 which provides:-

\"Any person claiming to be interested under a Deed will or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for declaration of the rights of the parties interested.\"

The question is whether the consent judgment of 4-5-98 between the parties which was before the trial court for interpretation on the application of the appellants comes within the definition of \"written instrument\" capable of being accommodated under the rule. The word 'instrument' is defined in Strouds Judicial Dictionary, as \'anything reduced to writing, a document of formal or solemn character.\' However, whether anything reduced to writing is an instrument largely depends on the context in which it is used. For example the same Strouds Judicial Dictionary volume 3 at page 1386 stated plainly that \"orders of court were not instrument within Apportionment Act 1834.\" One may find support in this observation by Stroud to say that a judgment of a Court of law can hardly be accommodated under the words \"other written instrument\" under Rule 1 of Order 46 of the Lagos High Court (Civil Procedure) Rules 1994, under which the appellants filed their application for the interpretation of the consent judgment of 4-5-98. In other words a judgment of a Court of Law cannot be subjected to interpretation by a court of co-ordinate jurisdiction like a deed, a will or an instrument containing right and obligation of parties under order 46 Rule 1 of the Lagos High Court Civil Procedure Rules. In any case, even if the consent judgment in the present case were to be regarded as instrument under Rule 1 of Order 46, the provision would not give a High Court Jurisdiction to determine any question of construction or interpretation arising from the judgment of a court of co'ordinate jurisdiction like the Lagos High Court presided by Obadina J. (as he then was) and the same court as presided by Shirta-Bey J. or that of a higher court like the Court of Appeal or this court. If a judgment of a Court of Law were to be regarded as an instrument like a deed or will, then even the judgment of the Court of Appeal or this court could be subjected to interpretation by the High Court under Order 46 Rule 1 which is rather absurd. In the present case therefore, the court below was quite right in its decision that the trial Lagos High Court presided over by Shitta-Bey J. lacked competence to subject the consent judgment of the same court delivered by Obadina J. (as he then was) to interpretation of the contents or terms thereof.

It is not out of place at this stage to look into the nature of the consent judgment in the instant case with the view of finding the circumstances under which it could be corrected, reviewed or interpreted. It is now well settled beyond any doubt that where a judgment is in need of clarification or correction in respect of clerical slips or omissions there is power under the law for the same court that delivered the judgment to correct the clerical slips or accidental omissions. See the cases of Asiyanbi & Ors v. Adeniyi (1967) 1 All NLR 82; Anyasinti Umunna & 5 Ors v. Animuda Okwuraiwe & 3 Ors (1978) 6-7 SC 1 and Berliet v. Kachalla (1995) 9 NWLR (pt. 420) 478 at 493-494, where this court held that even where the judge of .the High Court who delivered the judgment for any reason is not available, any other judge in exercise of the general powers under section 6 (6)(a) and 236 (1) of the 1979 constitution, should be in as good a position as the judge who delivered the judgement to correct any palpable slips or errors in the judgment. In Umunna & 5 Ors v. Okwuraiwe & 3 Ors (supra), this court affirmed the power of the trial High Court to amend or correct its judgment when its attention was drawn to the error while the judgment was being delivered. In that case, the trial judge thinking that the plaintiff claimed declaration of the title to a parcel of land and not declaration for exclusive possession, entered a non-suit against the plaintiff in respect of the claim. The attention of the learned trial judge was drawn at the time of reading the judgment to the error and on being made aware that the claim was for exclusive possession and not for declaration of title, exercised the court\'s inherent power under the slip rule of Order 20 Rule 11 Rules of the Supreme Court of England 1965 and pronounced on the proper claim in favour of the plaintiffs without inviting counsel to further address the court. The learned trial judge also found in favour of the plaintiff in respect of the claim for damages and injunction. The defendant then appealed to the Supreme Court complaining that the learned trial judge erred by failing to invite counsel to address it before correcting the omission or error. On hearing the appeal, Obaseki JSC in dismissing the appeal held that the court had in addition to the powers under the Rules of court original or inherent power to correct any slip or omission in its judgment when its attention is drawn to the error or slip at the time of delivery of the judgment.

Another case in which the court affirmed the use of the power by trial High Court to correct slips or errors in its judgment is the case of Federal Public Trustee v. Mrs C.A. Sobamowo (1967) NMLR 350 where Taylor CJ., exercised the power quite rightly in the view of this court, to correct accidental slips or omissions in the judgment and orders of his court. Therefore in the instant case, as far as the exercise of powers of clarification or correction of judgment in respect of clerical errors accidental slips or omissions is concerned, Shitta-Bey J. is in as good a position as Obadina J. (as he then was) who delivered the consent judgment to correct such errors, accidental slips or omissions.

However, where there had been an error or omission by a court on matters of law, the court would not have jurisdiction to correct such errors or omissions even though apparent on the face of the judgment or order. See Bright v. Seller (1904) I.K.B. 6 and Re: Gist (1904) 1 Ch. 408 cited with approval in Umunna & 5 Ors v. Okwuraiwe & 3 Ors (supra). In other words the extent and scope of the exercise of power of court to correct clerical error, accidental slips or omissions should not be used as an excuse to review, reverse or rehear the case afresh as was done by the trial high Court in the present case as found by the court below. This is because the nature of the correction sought by the appellants before Shitta-Bey J. which was to determine the time the 1st appellant was to cede the 4. shops and 2 stores in the reconstructed property at No. 14 Okoya Street Lagos, was far beyond what can be described as a clerical error omission or slip. Therefore the same Lagos High Court has no power whether inherent or statutory to subject the judgment to interpretation as was done by Shitta-Bey J. See Alao v. A.C.B. Ltd (2000) 8 NWLR (pt 672) 264 at 299-300; Sodipo v. Lamni (1985) 2 NWLR (pt 8) 547; Speaker Bendel State House of Assembly v. Okoye (1983) 7 SC 85; Umunna & Ors v. Okwuraiwe & Ors (1978) 6 & 7 SC 1 and Ministry of Lagos Affairs, Mines and Powers v. Akin-Olugbade (1974) 9 NSCC 489.

There is no doubt at all that the parties in this appeal have all agreed to be bound by the terms of the consent judgment of Obadina J. (as he then was) of 4-5-98 which is the root of the dispute between the parties and which even the learned counsel to the appellants\' in the appellants\' brief described as unambiguous. The implication of this in law is obvious having regard to the role of the parties in giving birth to the consent judgment. The term \"consent judgment\" in law is a technical term. It comes into being as the case of Woluchen v. Wokoma (1974) 3 SC. 153 tells us at pages 166 and 168 as follows:-

P. 166-\"In order to have a consent judgment the parties must be ad idem as far as the agreement is concerned; and the terms of settlement must be filed in court. Where the court makes an order based upon such terms of settlement, there emerges a consent judgment from which the parties could appeal only by leave of the court.\"

P. 168 -\"The rule is that actions may be settled by consent during the trial. Usually such settlement is compromise and, in order to have a binding effect on the parties, it is imperative that it should have the blessing of the court. Settlement between the parties may be described as contract whereby new rights are created between them in substitution for and in consideration of, the abandonment of the claim or claims pending before the court. When the court moves and takes action as agreed upon by the parties, it becomes a consent judgment.\"

In line with this definition, where the parties before a court have agreed on how their dispute should be determined and ask the court to enter judgment by consent and in accordance with their terms of settlement and the court orders with their consent that judgment be entered, the product is a consent judgment. In this regard it is necessary to point out that a consent judgment or order is as effective in law in respect of all the matters which are therein settled as any other judgment or order arrived at after the matters are fully fought out to the end in a full trial. As Lord Herschel, L.C. explained in the case of In Re South American and Mexican Company, Ex-parte Bank of England (1895) 1 Ch. 37 at 50:-

\"The truth is a judgment by consent is intended to put to a stop to litigation between the parties just as much as is a judgment which results from the decision of the court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action.\"

Such is the binding force in the consent judgment of Obadina J. (as he then was) between the parties in the instant case by which new rights were created between them in substitution and in consideration of the abandonment of the claims of

the appellants against the respondent. However, quite contrary to and inspite of the fact that this judgment remained binding between the parties in this appeal, Shitta-Bey J. of the same Lagos High Court allowed the appellants to virtually reopen settled questions on the terms of settlement already embodied in the consent judgment. To this end, the court below was justified in my view, in allowing the respondent\'s appeal and in restoring the parties to the position of their respective rights and obligations under the consent judgement whose terms as agreed by the parties in bringing the dispute between them to an end, is far from being ambiguous. This is because the application of the appellants before Shitta-Bey J. for the interpretation of the consent judgment of Obadina J. (as he then was) was clearly not to correct any clerical error or accidental slip or omission in the judgment complained of. What the appellants sought from that court in their Originating Summons, were orders to review the consent judgment and read into it new terms, namely, that the appellants shall cede to the respondent the 4 shops and 2 stores she is entitled to under the Will of her father, 20 years after the completion of the project for redevelopment of the property at No. 14 Okoya Street, Lagos. Taking into consideration that by the terms of the consent judgment, the appellants shall cede to the respondent 4 shops and 2 stores with the stated dimensions upon the completion of the project for the redevelopment of the property and the same terms also provided for the 1st appellant to give the respondent the sum of N50,000.00 to support her relocation to another premises during the period of the redevelopment of the property. If it were the intention of the parties that the respondent would have to wait for 10 years before coming back to take possession of her share in the redeveloped property at No. 14 Okoya Street, Lagos, such clear provision of the waiting period ought to have been provided in the terms of settlement embodied in the consent judgment. I must emphasise that such omission in the terms of settlement is not cured by merely incorporating the agreement for the redevelopment of the property of 16-8-1995 executed between the 1st appellant and the 2nd, 3rd and 4th appellants which the respondent did not take part in the execution thereof and which infact the respondent objected to resulting in the appellants filing the case against her at the trial court. It is that same case that was ultimately resolved between the parties by the consent judgment of 4-5-98. To this end, the consent judgment between the parties in this appeal containing the terms of settlement agreed to by the parties in resolving the dispute between them, cannot be corrected, varied or amended in the manner sought by the appellants or at all otherwise than by an appeal as held by the court below in its decision now on appeal which I hereby affirm.

On the whole this appeal fails and the same is hereby dismissed.

I am not making any order on costs.

Judgement delivered by
Salihu Modibo Alfa Belgore, J.S.C

For the reasons fully set out in the judgment of my learned brother, Mohammed JSC, which reasons I adopt as mine, I also dismiss this appeal with N10,000.00 costs to respondent.

Judgement delivered by
Umaru Atu kalgo, J.S.C

I have had the opportunity of reading before now the judgment just delivered by my learned brother Mohammed JSC in this appeal. I agree with him entirely that the appeal lacks merit and ought to be dismissed. I accordingly dismiss it and abide by the order of costs made in the said judgment.

Ignatius Chukwudi Pats-Acholonu. J.S.C.
participated in the appeal but died before judgement was delivered

Judgement delivered by

Ikechi Francis Ogbuagu, J.S.C

This is an appeal against the decision of the Court of Appeal, Lagos Division (hereinafter called \"the court below') delivered on 22nd June, 2000 in favour of the Respondent. The facts of the case have been ably dealt with in the lead judgment of my learned brother, Mohammed, JSC, that I need not repeat them here. I wish however, to make my own contribution.
The issue in this appeal, in my respectful view, is the interpretation of the words,

'(a) Upon the completion of the construction of the redevelopment of the property'.

and

(b) Upon the completion of the project for redevelopment of the property'.

The contention of the Appellant as can be discerned in its Brief of Argument, is that the words in (b) above, comprises several steps, namely,

(a) the payment of a premium sum to the family of the Respondent as consideration for the licence to redevelop the property.

(b) the reconstruction of the property by the Appellant in accordance with the specification contained in paragraph (2) (A) of the redevelopment contract of 16/8/95. and

(c) the enjoyment of the benefit stated in paragraph 2(D) of the said contract.

It is therefore, submitted that it is not proper for the Respondent to share in the premium sum paid to the family and also collect additional premium to relocate her interest in the ground floor during the project as indicated in Clause 3 of the consent Judgment and then turn round to deny the benefit that should follow the consideration.

It is further submitted that upon consideration of the entire provisions of the consent judgment along with the contract in Clause 4, that the trial court gave meaning to the true intention of all the parties including the Respondent.

Now, at page 89 of vol. 3 of the Records, the learned trial Judge, defined \"Project\" to mean - \"a systematic planned undertaking\"

He thereafter, held inter alia, as follows:

\"In its ordinary and grammatical definition (sic) this is what the redevelopment contract dated 16/8/95 is. Therefore, the redevelopment project is due to expire in accordance with the terms of the contract. I agree with the submissions of Learned Counsel for the Applicant on the issue of this definition, and its application. However, Learned Counsel for the Respondent did not address the court on his counter-affidavit. He is therefore deemed to have abandoned it. He only made his submissions on the issue of jurisdiction of this Honourable Court to entertain the application ..... I also hold that the operative word \"project\" in the application should be given its ordinary and grammatical meaning\".

At page 90, he finally granted the prayers/reliefs in the Originating Summons.

Comment: I suppose a counter-affidavit, is a document in a court\'s file and therefore before the court. It does not, in my respectful view, need or require, an address by counsel in respect thereof, before a court can look at it and/or make use of it.

For the avoidance of doubt, I will also reproduce the Terms of settlement dated 16th August, 1995 appearing at page 22 of vol. 3 of the Records also reproduced at page 2 of the Appellant\'s Brief (not at pages 11 and 12 as referred to by Mr.

Adegbite on 14th March, 2006 during the oral hearing of the appeal).

\"The plaintiffs and the Defendant herein agree as follows:

1. That the Defendant shall be entitled to the dimension of the Room and Parlour grant (sic) under the read Will of Late Alhaji A. W. Akibu, as a beneficiary to the Estate,

2. That the Plaintiff as the Redeveloper of the property and 2nd 3rd, 4th and 5th Plaintiffs as the Executrixes of the Estate of Late Alhaji A. W. Akibu shall cede to the Defendant the following: 2 shops with a dimension of 3.3 metres by 2.3 metres in front, 2 shops of 900 millimetres by 2.4 metres at the left side of the premises and 2 stores of 900 millimetres by 2.4 metres at the back upon the completion of the project for redevelopment of the property situate at 14, Okoya Street Lagos, for her and her beneficiaries\' exclusive use thereafter.

3. That the 1st plaintiff shall give to the Defendant the sum of N50.000.00 (Fifty Thousand Naira) for the relocation of the Defendant during the period of the redevelopment project (The receipt of which the Defendant\'s Solicitor hereby acknowledged).

4. That the above terms and conditions shall be additional to the terms and conditions contained in the redevelopment contract executed by the 1st Plaintiff and 2nd, 3rd, 4th and 5th Plaintiffs for and on behalf of the estate of Late Alhaji A. W. Akibu and the beneficiaries including the Defendant and dated 16th August, 1995\".

The above is/was dated 8th January, 1998 and was duly signed by the parties thereto. It is not in dispute that these Terms of Agreement, were made the judgment of the High Court - per Obadina, J. (as he then was). In other words, apart from the parties being bound by the said terms of agreement, this document, evidencing the said agreement, thereafter, became the Judgment of a court of competent jurisdiction. See page. 11 of the Records, it is dated 4th May, 1998.

Let me pause here and pose the question - What is a consent Judgment' See Odulaja v. Williams (1940) 6 WACA 198 (a) 199. It\'is a judgment entered pursuant to an agreement between the parties. See Woluchem v. Wokoma (1974) 3 S.C. 153 (5) 166, 168. A consent thus by its nature, is first and foremost, a contractual agreement between the parties. Thus, a consent judgment constitutes a final judgment of the court and it is only appealable with the leave of the court. See Otunba Ojora v. Aqip Nig. Plc & anor. (2005) 4 NWLR (Pt. 916) 515 (@) 537 C.A. and Afegbai v. Attorney-General, Edo State (2001) 33 WRN 29. See also Section 241 (2) of the Constitution of the Federal Republic of Nigeria, 1999 and \"introduction to Civil Procedure\" by Ernest Ojukwu & Chudi N. Ojukwu (1st and 2nd Editions pages 257 and 336 respectively). Therefore, a consent order, should be construed in the light of admissible evidence of surrounding circumstances but without direct evidence of the parties\' intention. See the case of General Accident Fire & Life Assurance Corporation Ltd v. Inland Revenue Commissioners (1963) 1 All E.R. 618 @). 627, (1963) 1 WLR 1207. See also the case of. Re Lays Will Trusts Somerset & anor. v. Ley & anor. (1964) 2 AER 326 (a) 328.

Now, at page 322 of the Records, the court below - per Aderemi, JCA, stated inter alia, as follows:-

\"For the umpteenth time, I wish to say\"that the judgment of Obadina J. - (as he then was) remains the solid bedrock of the rights of the parties viz-a-viz the developed property. Nothing must be allowed to supplant it, not even any of the terms of the agreement dated 16th August, 1995 earlier entered into by the parties. prior to the consent judgment given by Obadina J, (as he then was). But to the extent to which the third order of Shitta-Bay J. says that the respondent/appellant is entitled to the 6 shops at the expiration of the redevelopment terms as contained in the redevelopment contract dated the 16th August, 1995, that order is a subtle attempt at supplanting the Judgment of Obadina J. That is not permissible in law. Nothing must derogate from orders 1, 2 and 3 embodied in the consent judgment by Obadina J. (as he then was): ord&r 2 thereof makes it clear that the 6 shops must be ceded to the appellant -upon the completion of the project for redevelopment of the property.....\".

I whole-heartedly and entirely, agree with the above. I affirm it completely. This, finding and holding, are in accord, with

the clear intention of the parties. As I stated earlier hereinabove, in this Judgment, the parties are bound by the said Terms of Settlement, more so, when the same, have been made and it becomes, the judgment of the court. In No. 1 of the said Terms of Settlement, it is stated clearly, that the entitlements of the Respondent, were grants made to her and her beneficiaries, under The WILL of Late Alhaji A. W. Akibu. They were for her and her beneficiaries\', exclusive use. Afterwards, it is said that a Will rules those alive, \"from the Grave\". So, apart from the said Terms of Settlement, the property of six (6) shops, were in fact bequeathed to her under the Will by the late father - The Testator - Alhaji A.W. Akibu.

In my respectful view, the learned trial Judge - Shitta-Bay, was sitting, so to speak, on appeal or review, of the said consent judgment of Obadina, J. (as he then was). Surely, he was not entitled to do that or so. The said consent judgment, clearly and unambiguously, contained what the parties, agreed upon. But the learned trial Judge, set it aside. The trial court, with respect, was not entitled to make the second order. The (3rd) third order, states that the Respondent, is/was entitled to the shops \"on the expiration of the redevelopment terms as contained in the contract clearly and obviously, this order, is not borne out from No. 2 of the said Terms of Settlement which talks or stipulates about \"completion of the project for redevelopment\" and certainly not on the expiration of the redevelopment terms\".

1 have, stated hereinabove, that a consent judgment by its nature, is a contractual agreement between the parties. That being so, no court, is allowed to re-write the contract entered into by parties thereto. When or if parties, enter into an agreement or written terms of settlement, since they are bound by its terms, one cannot legally or properly read into the said agreement or settlement (as in the instant case); terms on which the parties have not agreed. It is unfair to do so. See S.C.O.A. (Nig.) Ltd, v. Bourdek Ltd. (1990) 3 NWLR (Pt. 138) 380 @ 389; Alhaji Baba v. Nigerian Civil Aviation Training Centre Zaria (1991) 5 NWLR (Pt. 192) 388 @ 392, 393 (1991) 7 SCNJ. 1 and Evbuomwan & 3 ors. v. Elema & 2 ors. (1994) 7-8 SCNJ. (Pt.II) 243 just to mention but a few.

It must be stressed, that a consent judgment, may be set aside either by the court that gave/made it or a court of competent jurisdiction on the ground for which a contractual agreement, could be voided or rescinded. But such circumstances, do not exist in the instant case leading to this appeal.

However, in concluding this Judgment it is my respectful view, that the two sentences (a) and (b) hereinabove reproduced by me, mean substantially the same thing to me. The operative word, as far as I am concerned are \"upon the completion\" whether it is of the construction of the redevelopment of the property or of the project for redevelopment of the property, they mean the same thing to me. This is why the court below, made the said order reproduced hereinabove by me - i.e. \"the 6 shops must be ceded to the Appellant (meaning the Respondent) upon the completion of the project for redevelopment of the property\". The simple English and understanding of the project - that project, obviously, is the redevelopment of the property. Period ! GREED, - to me, is a very BAD THING . It is ungentlemanly to say the least.

It is from the foregoing and the reasoning and conclusion in the fuller Judgment of my learned brother, Mohammed, JSC, that 1 too, dismiss the appeal that is rather, \"too ambitious\", but is really, devoid of any substance or merit. I abide by the consequential order in respect of costs which if the Rules had permitted me, I should have awarded more to reflect my dislike or disdain in the posture taken by the Appellant.