# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC151/2002

**Petitioner:** Alhaji Lasisi Asalu
And
**Respondent:** Fatai Sule Dakan

Date Delivered: 2006-05-26

**Judge(s):** Idris Legbo Kutigi , Aloysius Iyorgyer kastina-Alu , Ignatius Chukwudi Pats Acholonu , George Adesola Oguntade ,

## Judgment Delivered

This is an appeal against the ruling of the Court of Appeal Ibadan Division delivered on 23-11-2000, refusing to set aside a ruling earlier delivered by that Court on 17-11-1994, dismissing an appeal for want of prosecution.

The Appellants were the Plaintiffs in an action filed by them at the High Court of Justice of Ogun State sitting at Abeokuta as suit No HCL/27/80 against the Respondents as defendants. At the end of the hearing of the action by the trial High Court, Judgment was delivered on 6-11-1985. The Appellants who were not happy with the judgment, appealed against it to the Court of Appeal Ibadan. Their learned Counsel perfected all the conditions of appeal given at the registry of the trial Court where the notice and grounds of appeal were filed. However, nearly 10 years after filing the appeal, by a motion dated 14-10-1994, filed at the Court of Appeal, the Respondents prayed the Court to dismiss the Appellants' appeal for want of prosecution. The motion No CA/1/108/90 was opposed by the Appellants. After hearing the parties on the Respondents' application on 17-11-1994, the Court of Appeal in its ruling delivered the same day, granted the relief sought by the Respondents and dismissed the Appellants' appeal for want of prosecution. No further action was taken by the Appellants to appeal against the decision of the Court of Appeal dismissing their appeal until February 1996, when by a motion on Notice dated 1-2-1996 and filed the following day 2-2-1996 at the Court of Appeal, the Appellants prayed for:

'(i) An order setting aside the ruling of this Honourable Court dated 17th November 1994 in these proceedings.

(ii) An order restoring and or validation the appeal in Suit No. HCL/27/80 between the parties here in, that is Alhaji Lasisi Asalu & 2 ors vs. Fatai Sule Dakan & 6 Ors.'

The Appellants' motion was supported by an 18 paragraph affidavit to which a number of documents were exhibited. In opposing the motion, the Respondents filed a 14 paragraph counter affidavit. Upon hearing the learned Counsel of the parties in support of and in opposing the motion, the Court of Appeal in its ruling delivered on 23-11-2000, came to the conclusion that the real issue for determination in the application was whether the Court of Appeal has power to set aside its own previous decision dismissing the Appellants' appeal for want of prosecution. This issue was resolved against the Appellants leading to the dismissal of their application. Part of this ruling at page 76 of the record states: -

'The position of the law therefore is that this Court lacks the power to review any of its judgment, ruling or order: See Chukwuka & Ors v. Ezulike (1986) 5 NWLR (Pt 45) 892; and Olowu v. Abolore (1993) 5 NWLR (Pt 293) 255. The only exception to this rule however, is in respect of appeals dismissed by this Court for non-compliance with the condition of appeal under Order 3 Rule 20 (4). In such cases, this Court is allowed under Order 3 rule 20 (4), upon a motion by the Appellant and for good cause, restore the dismissed case unto the cause list: see Olowu v. Abolore supra.

As the appeal in the instant case was not dismissed by this Court for non-compliance with the conditions of appeal under Order 3 Rule 20 (1) of the Court of Appeal Rules, but that it was dismissed for want of prosecution, the applicants are not entitled to the relief provided in Order 3 Rule 20 (4) of the Court of Appeal Rules. In the result, there is totally no merit in the application and I accordingly dismiss it with N3, 000 costs to the Respondents'.

It is against this decision of the Court of Appeal that the Appellants have now appealed to this Court upon seven grounds of appeal from which their learned Counsel formulated the following four issues in the Appellants' brief of argument.

'1. Whether the Appellants settled the Records of Appeal only at the High Court registry and thereafter did nothing.

2. Whether the Court of Appeal can dismiss an appeal twice or whether two unrelated appeals can be dismissed or disposed off at different times under a single appeal.

AND whether it was necessary for the Court to make a pronouncement on an issue raised before it.

3. Whether the service of a Record of Appeal on an Appellant is not a condition precedent to the exercise of the power of the Court of Appeal to dismiss an appeal filed by an applicant in pursuance of Order 6 Rule 10 of the Court of Appeal Rules, 1981 and whether any exercise of power to dismiss without the service of a Record of Appeal on an Appellant is not a nullity.

4. Whether the only options open to the Appellant at the Court of Appeal was to lodge an appeal to the Supreme Court against the ruling of the Court of Appeal dated 17th November 1994.'

The learned Counsel to the Respondents however perceived the case from a different angle and saw only one issue arising for determination in the appeal from the judgment of the Court of Appeal against which the Court refused to set aside its own decision dismissing the Appellants appeal. The issue in the Respondents' brief of argument is -

'Whether it was right for the Court of Appeal to refuse to set aside its own decision in this case made on 17th November 1994 dismissing an Appeal to it from the High Court of Ogun State for want of prosecution.'

From the four issues put forward for determination in this appeal by the Appellants, it appears the Appellants are more concerned with or worried about the decision of the Court of Appeal of 17th November 1994, dismissing their appeal for want of prosecution, rather than the refusal by the Court to set side that decision. In other words, questions relating to settlement of record of appeal raised in issue one, the dismissal of their appeal raised in issue two, the service of the record of appeal raised in issue three and the option open to the Appellants after the dismissal of their appeal, are matters principally traceable to the decision of the Court of Appeal of 17th November, 1994, dismissing the Appellants' appeal which is not on appeal. The present appeal however is only against the decision of the Court of Appeal of 23rd November 2000, in which it refused to set aside its own decision of 17 November 1994 to restore the appeal to the cause list.

It is now well settled that issues for determination formulated in any appeal must be related to or arise not only from the grounds of appeal filed by the Appellant but also 'must be' traced to the judgment or decision being appealed against. See Western Steel Works v. Iron & Steel Worker Union (1987) 1 NWLR (pt 49) 284 at 304; Onyesoh v. Nnebedum (1992) 3 NWLR (pt 229) 315 and Olowosago v. Adebanjo (1988) 4 NWLR (pt 88) 275.

The law is also trite that although an appeal Court should be wary of formulating or introducing new issues for determination in an appeal before it, where the issues presented by the parties are not appropriate or are inadequate having regards to the grounds of appeal, the appeal Court may in appropriate cases having regard to the circumstances identify relevant issues taking extreme caution not to go outside the grounds of appeal filed or issues not canvassed by the parties in their respective briefs of argument. See Oloriode v. Oyebi (1984) 1 SCNLR 390; (1984) SC 1 and Oloba v. Akereja (1988) 3 NWLR (pt 84) 508. Although generally, an appellate Court will rely on the issues for determination formulated by an Appellant in the determination of an appeal, failure of the Court of Appeal or this Court to be bound by the issues formulated by the parties where the Courts regard such issues as being inappropriate having regard to the grounds of appeal filed, has been held not amount to any injustice or denial of fair hearing. See Kotoye v. Saraki (1994) 7 NWLR (pt 357) 414 at 456.

In the present case, as none of the issues formulated by the Appellants addressed the real issue in this appeal, I shall

fall back to the issue identified in the Respondents' brief of argument which to me is the only real issue for determination. The issue is whether it was right for the Court of Appeal to have refused to set aside its own decision given on 17th November 1994, dismissing the Appellants' appeal for want of prosecution.

However, before proceeding to deal with the only issue for determination, the facts of the case as revealed by the parties in their affidavit in support of the application to set aside the decision of the Court below of 17-11-94 and the counter affidavit opposing the application may be briefly stated. The facts, which are hardly in dispute, are that the Appellants as Plaintiffs instituted an action in suit No HCL/27/80 at the High Court of Justice of Ogun State Abeokuta against the Respondents. The action, which involved a land dispute, was determined by the trial High Court in its judgment delivered on 6-11-1985, dismissing the Appellants' claims and the Respondents' counter claim for forfeiture. The Appellants promptly appealed against the decision of the trial Court to the Court of Appeal and according to them complied with the conditions of appeal issued by the registrar of the trial Court but that the Appellants up to the 17th day of November, 1994 were yet to be notified by the trial Court that the records were ready. The story on the compilation of the record from the side of the Respondents is quite different. According to them the record of appeal was ready for collection by the parties since 3-4-1986 but that the Appellants refused 1o take any step to collect the record and to enable them file the Appellants' brief of argument. On these facts, the Respondents' application under Order 6 Rule 10 of the Court of Appeal Rules to dismiss the Appellants' appeal for want of prosecution was heard and granted by the Court of Appeal on 17-11-94. The Appellants who regarded this ruling of the Court of Appeal as a nullity, refused to appeal against it. Instead, the Appellants applied to that Court to set aside the ruling and restore their appeal. The dismissal of the Appellants' motion to restore their appeal resulted in their final appeal to this Court.

In his argument in the Appellants' brief and oral submission, learned Counsel for the Appellants pointed out that the Respondents application to dismiss the Appellants' appeal, was brought at the Court below under order 6 Rule 10 of the Court of Appeal Rules. However, learned Counsel submitted that the application was not initiated by due process of law and upon the fulfilment of a condition precedent to the exercise of the jurisdiction of the Court, which consequently deprived the Court below of competence to hear the application. The case of Adeigbe & Anor v. Kashimo & ors (1956) 4 NSCC 188 at 191 was cited and relied upon to support the argument. As there was nothing to show that the record of appeal has been served on the Appellants before the Respondents brought their application for dismissal of the Appellants' appeal, the Court below lacked jurisdiction to hear the application resulting in making its decision a nullity, justifying the power of the Court below to set it aside on the application by the Appellants who were affected by the decision, contended the learned Counsel who urged this Court to allow the appeal.

For the Respondents, it was argued on their behalf that their application to dismiss the Appellants' appeal was filed in accordance with the due process of law duly and fully supported by affidavit evidence, which was considered before the application was granted. In further submission, learned Counsel observed that in the absence of any allegation that any process requiring to be served in the matter was not duly served, or allegation that any member of the Court below that heard and decided on the Respondents' application was disqualified in any way whatsoever, the decision of the Court below of 17th November 1994, being complained of by the Appellants, can not be described as a nullity to invest the same Court with power to set it aside. Counsel called in aid, the case of Madukolu & Ors v. Nkemdilim (1962) 1 (All NLR) 587 and stressed that the Court below was on a firm ground in refusing to set aside its own decision dismissing the Appellants' appeal. In emphasising the position of the law depriving the Court below of power to set aside its own decision, learned Counsel referred to order 5 Rule 3 of the Court of Appeal Rules and the cases of Chukwuka & Ors v. Ezulike & ors (1986) 2 NSCC 1347 at 1351 and Olowu v. Abolore (1993) 3 NWLR (pt 293) 255; Babayagi v Bida (1998) 1-2 S.C. 108 and Kraus Thompson Org. v. N.I.P.S.S. (2004) 5 S.C. (pt. 1) 16 and concluded that the Court below has no power to set aside its own decision dismissing an appeal for want of prosecution and accordingly urged this Court to dismiss the appeal.

The dispute between the parties in this appeal centred on the simple question of whether the Court of Appeal has power to set aside an order of dismissal of an appeal for failure of the Appellant to file brief of argument within the time prescribed for doing so or within the time extended by the Court under order 6 Rule 10 of the Court of Appeal Rule which states-

'10. Where an Appellant fails to-file his brief within the time provided for in rule 2 of this Order, or within the time

extended by the Court, the respondent may apply to the Court for the appeal to be dismissed for want of prosecution.'

The application of the provision of this rule and the effect of a decision of the Court of Appeal dismissing an appeal under it had been considered and determined by this Court in a number of its decisions. In Olowu v. Abolore (1993) 5 NWLR (pt 293) 255 at 277 Kabiri Whyte J.S.C. stated the law as follows: -

'An appeal dismissed on the ground of failure to file Appellant's brief of argument is final. The appeal so dismissed cannot be revived.'

The main issue canvassed in the Court in the case of Olowu & Ors v. Abolore & Ors (supra) was whether, after making an earlier order dismissing the appeal of the Respondents for want of prosecution, the Court of Appeal had jurisdiction to hear the application to set aside the order and restore the appeal and if there was jurisdiction whether it was judicially exercised when the order re-listing the appeal was made. In resolving the issue, this Court held that the Court of Appeal has no inherent jurisdiction to set aside an order of dismissal properly made in the valid exercise of its jurisdiction and to re-enter the appeal, emphasising that an appeal dismissed on the ground of the failure to file the Appellant's brief of argument, as happened in the present case, is final and that the appeal dismissed cannot be revived. In his concurring judgment in that case at pages 278-279 of the report, Belgore J.S.C. plainly put the position of the law in the following words-

'Once the Court of Appeal has dismissed the appeal for want of prosecution due to Appellant's failure to file brief of argument, that Court is functus officio on that matter.'

The mission of the Appellants in the instant case in their application at the Court below to set aside the decision of that Court of 17th November 1994 was no doubt to revive their appeal dismissed under Order 6 Rule 10 of the Court of Appeal Rules.

Unfortunately for the Appellants, they are precluded from doing so by the law. See also Chukwuka & Ors v. Ezulike & Ors (1986) 5 NWLR (pt 45) 892 and Kraus Thompson Organization v. N.I.P.S.S. (2004) 17 NWLR (pt. 901) 44 at 59 where Tobi J.S.C. put it bluntly thus-

'An appeal which is dismissed under order 6 Rule 10 of the Court of Appeal Rules cannot be re-listed when an appeal is dismissed under Order 6 Rule 10 of the Court of Appeal Rules, its life terminates and it is therefore removed from the cause list. No Court has jurisdiction to revive or resuscitate it.'

In the earlier decision of this Court in Babayagi v. Alhaji Bida (1998) 7 NWLR (pt.538) 367, where the Appellant failed to file Appellant\'s brief only one year after it became due for filing, the Court of Appeal\'s decision in dismissing the appeal under order 6 Rule 10 of the Court of Appeal Rules on the application of the respondent, was upheld by this Court in dismissing the Appellants further appeal. Specifically dealing with the question of whether where circumstances demand an Appellant could have sympathy of the Court. Iguh JSC in his concurring judgment in that case at page 379 had this to say:-

\"Learned Counsel for the Appellant tried in his brief of argument to enlist the sympathy of this Court by arguing that the Court below was wrong in dismissing the appeal instead of striking it out as the Appellant might not have been aware that his Counsel would not be attending Court to oppose the application. I need only restate that sympathy cannot override the clear provisions of the rules of Court and that it would be in the interest of the parties and their Counsel to endeavour always to comply with the prescribed times set out in the rules for the doing of any act or taking any step\".

Perhaps the act of enlisting sympathy of Court by Counsel dealt with by Iguh JSC in Babayagi v. Alhaji Bida (supra) is being re-enacted in the present case. Learned Counsel to the Appellants in spite of his being fully aware that the Appellants' appeal was dismissed on the application of the Respondents under order 6 Rule 10 of the Court of Appeal Rules, continued to rely heavily in his arguments before this Court on matters alleging that at the time the Court below delivered its ruling dismissing the Appellant\'s appeal on 17th November 1994, the record of appeal had neither been transmitted to that Court nor served on the Appellants; that the Appellants had perfected the condition of appeal within

the time imposed by the trial High Court and that the Appellants were never notified by the trial High Court that the record of appeal had been compiled and ready for collection, before the Respondents' application to dismiss the Appellants' appeal was heard and granted. Be that as it may, even if some of these complaints of the Appellants now being raised might have good foundation, the fact that the Respondents' application was heard on the basis of the evidence supplied by them in their affidavit and the evidence contained in the Appellants counter affidavit opposing the application which the Court below considered hi arriving at its decision to grant the application and dismiss the Appellants' appeal for want of prosecution, as the law on the subject stands as at today, neither the Court below nor this Court has power to restore the appeal dismissed under order 6 Rule 10 of the Court of Appeal Rules. Taking into consideration that the judgment of the trial Ogun State High Court against which the Appellants appealed to the Court of Appeal was delivered on 6th November 1985 and up to the 17th day of November 1994, the Appellants whose responsibility it is to ensure the production of the record upon which the appeal could be heard, were comfortable in putting forward argument that the record of appeal was yet to be served on them by the trial Court after nearly ten years of the delivery of the judgment, one can hardly blame the Court below for dismissing the Appellants appeal in the circumstances and in refusing to set aside that decision. See Akunjinwa v. Nwaonuma (1998) 13 NWLR (pt. 583) 632 and Ekpeto v. Wanogho (2004) 18 NWLR (pt. 905) 395 at 412-413 where Kalgo JSG again restated the law-

\"In the final analysis, I find that there is no issue of fair hearing arising in this appeal and that the motion and brief filed by the Appellants' Counsel on 10/2/2000 which did not come within the notice of the Court of Appeal, even though filed in the registry, did not constitute the record of the Court at the material time. I also fully agree with the Court of Appeal that the Court lacked jurisdiction to restore or relist the Appellant appeal which it dismissed under Order 6 rule 10 of the Court of Appeal Rules, 1981, as amended\".

Coming back to the instant appeal which is also against the refusal of the Court below to set aside its own decision to give life to the Appellants' appeal dismissed on 17th November 1994, I entirely agree with that Court that it lacked jurisdiction to grant the reliefs sought in the application of the Appellants to restore their appeal to the cause list of the Court, because the order of dismissal of the appeal under Order 6 Rule 10 of the Court of Appeal Rules; cannot be revisited under any guise to revive the appeal.

In the result this appeal being devoid of any merit fails and the same is hereby dismissed by me with Nl0, 000.00 costs against the Appellants.

Judgment delivered by
Idris Legbo Kutigi, J.S.C.

I have had the privilege of reading in advance the judgment just delivered by my learned brother Mohammed, JSC. I agree with him that the appeal has no merit. The Court of Appeal clearly has no statutory or inherent power to relist the appeal which had been dismissed for want of prosecution (see for example Yonwuren v Modern Signs Ltd (1985) 2 S.C. 86, Chukwuka v Ezulike (1986) 5 N.W.L.R. (PT. 45) 892). The appeal is dismissed with costs as assessed.

Pronouncement by
Idris Legbo Kutigi, J.S.C.
(Presiding)

Pursuant to Section 294(2) of the Constitution of the Federal Republic of Nigeria

Hon. Justice Ignatius Chukwudi Pats-Acholonu who participated with us in this appeal agreed at our conference to dismiss the appeal.

Judgment delivered by
Aloysius Iyorgyer kastina-Alu, JSC.

I have had the advantage of reading in draft the judgment delivered by my learned brother Mahmud Mohammed JSC in this appeal. I agree with it.

This appeal is on the simple question of whether the Court of Appeal has power to set aside an order of dismissal of an appeal for failure of the Appellant to file the Appellant\'s brief of argument within the time prescribed for doing so or within the time extended by the Court under Order 6 Rule 10 of the Court of Appeal Rules. Order 6 Rule 10 provides thus:

\"Where an Appellant fails to file his brief within the time provided for in rule 2 of this Order, or within the time extended by the Court, the respondent may apply to the Court for the appeal to be dismissed for want of prosecution .....\"

This issue is not new. This Court has in a number of cases held that an appeal dismissed by the Court of Appeal for failure to file Appellant\'s brief of argument is final and that such appeal cannot be revived by the Court of Appeal: See Olowu v. Abolore )1993)5 NWLR (Pt.293)255; Babayagi v. Alhaji Bida (1008)7 NWLR (Pt.538)367.

This appeal is plainly devoid of any merit. It fails and I too dismiss it with N10, 000.00 costs in favour of the Respondents.

Judgment delivered by
George Adesola Oguntade. J.S.C.

The Appellants were the Plaintiffs in suit No. HCT/27/80 at the Otta High Court of Ogun State. They had brought the suit against the Respondents as the defendants over the ownership of a parcel of land. On 6-11-85, the trial Court dismissed the Plaintiffs\' suit. Dissatisfied, the Plaintiffs brought an appeal before the Court of Appeal, Ibadan Division (i.e. the Court below). Whilst the appeal was pending before the Court below, the defendants by an application dated 14/10/94, prayed that the appeal by the Plaintiffs be dismissed for want of diligent prosecution. The application was brought pursuant to Order 6 rule 10 of the Court of Appeal Rules.

On 17/11/94, the Court below dismissed the Plaintiffs\' appeal. On 2-2-96, the Plaintiffs brought an application before the Court below praying for the following reliefs:

\"(i) An order setting aside the ruling of this Honourable Court dated 17th November, 1994 in these proceedings.

(ii) An order restoring and/or validating the appeal in Suit No. HCL/27/80 between the parties herein, that is, Alhaji Lasisi Asalu & v. Fatai Sule Dakan & 6 Ors.'

On 23/11/2000, the Court below in its ruling at pages 75-77 of the record, in dismissing the application said:

\"The question which needs to be resolved in the present case therefore is whether this Court has the power to review its previous judgment. Order 5 Rule 3 of the Court of Appeal Rules makes provision relating to review of judgment of this Court. The Rule provides as follows:

'The Court shall not review any judgment once given and deli'vered 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 be operative and substantive part of it be varied and a different form substituted.\'

There is however, an exception to the above Provisions of Order 5 Rule 3 barring this Court from reviewing any of its judgment. The exception is provided in Order 3 Rule 20(4) of the Court of Appeal Rules. It is in relation to appeals dismissed under Order 3 Rule 20(1) of the said Rules for non-compliance with condition of appeal. The said Order 3 Rules 20(1) and (4) provide as follows:

'20. (1) If the Appellant has not complied with any of the require'ments of rules 10 and 11 of this Order, the Registrar of the Court below shall certify such fact to the Court which shall there-upon order that the appeal be dismissed -either with or without costs, and shall cause the Appellant and the respondent to be notified of the terms of its order .....

(4) An Appellant whose appeal has been dismissed under this rule may apply by notice of motion that his appeal be restored and any such application may be made to the Court which may in its discretion for good and sufficient cause order that such appeal be restored upon such terms as it may think fit.\'

The position of the law therefore is that this Court lacks the power to review any of its judgment, ruling or order: See Chukwuka & Ors. v. Ezulike (1986) 5 NWLR (Pt.45) 892; and Olowu v. Abolore (1993) 5 NWLR (Pt. 293) 255. The only exception to this rule, however, is in respect of appeals dis'missed by this Court for non-compliance with the condition of appeal under Order 3 rule 20(1). In such cases, this Court is allowed under Order 3 rule 20(4), upon a motion by the Appellant and for good cause, restores the dismissed case unto the cause list: See Olovbu v. Abolore supra.

As the appeal in the instant case was not dismissed by this Court for non-compliance with the conditions of appeal under Order 3 Rule 20(1) of the Court of Appeal Rules, but that it was dismissed for want of prosecution, the applicants are not entitled to the relief provided in Order 3 Rule 20(4) of the Court of Appeal Rules. In the result there is totally no merit in the application and I accordingly dismiss it with N3, 000.00 costs to the Respondents.\"

It is to be said here that the Plaintiffs have not appealed before this Court against the order made on 17/11/94 dismissing their appeal.

Rather, they have appealed against the order made on 23/11/2000 refusing to set aside the order made on 17/11/94. In their Appellants' brief, the Plaintiffs have formulated four issues for determination. The issues are:

'1. Whether the Appellants settled the Records of Appeal only at the High Court Registry and thereafter did nothing.

2. Whether the Court of Appeal can dismiss an appeal twice or whether two unrelated appeals can be dismissed or disposed off at different times under a single appeal. AND whether it was necessary for the Court to make a pro'nouncement on an issue raised before it.

3. Whether the service of a Record of Appeal on an Appellant is not a condition precedent to the exercise of the [power of the Court of Appeal to dismiss an appeal filed by an applicant in pursuance of Order 6 Rule 10 of the Court of Appeal, 1981 and whether any exercise of power to dismiss without the service of a Record of Appeal on an Appellant is not a nullity.

4. Whether the only option open to the Appellant at the Court of Appeal was to lodge an appeal to the Supreme Court against the ruling of the Court of Appeal dated 17th November, 1994.\"

My learned brother Mohammed JSC has in the lead judgment shown why this appeal must fail. I entirely agree with him in his reasoning and conclusion. In the application before the Court below, the Court below was being called to exercise the power it does not possess having regard to binding judicial authorities. In Olowu v. Abolore [1993] 5 NWLR (Pt,293) 255 at 277, this Court stated the law thus:

'An appeal dismissed on the ground of failure to file Appellant\'s brief of argument is final. The appeal so dismissed cannot be revived.'

In that case, Olowu v. Abolore (supra), this Court was considering the effect of Order 6 rule 10 of the Court of Appeal Rules, which is the same one under which Plaintiffs\' case was dismissed. The Rule provides:

\"10. Where an Appellant fails to file his brief within time provided for in rule 2 of this Order, or within the time extended by the Court, the respondent may apply to the Court for the-appeal to be dismissed for want of prosecution.\"

The Plaintiffs not having appealed against the order made on 17/11/94 dismissing their case, I am precluded from considering the sufficiency of the explanation offered before the Court below for not filing their Appellant\'s brief within time. And as for the present appeal against the order made on 23/11/2000 refusing to set aside the Order made on 17/11/94, my reaction is that the Court below had to contend with a binding decision of this Court and that it correctly refused to set aside its order of 17/11/94.

This appeal accordingly fails. It is dismissed with N10, 000.00 costs in defendants\' favour against the Plaintiffs/Appellants.