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***Functus Officio* Principle versus Power of a Court to Set Aside Its Own Judgment, Decision or Order**

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Abstract

In the adjudicatory process, certain perennial reservations exist about the power of a trial Court over its judgment or order. These include the queries whether the rule that once a Court delivers a judgment it becomes *functus officio* is unchangeable and whether it is not an injudicious act for a Court to sit on appeal over its judgment? There is also the related question about permissible circumstances a Court can set aside its judgment without amounting to approbating and reprobating. Given these concerns, this paper deployed the doctrinal research method to critically analyse decisions of superior Courts on the principle of *functus officio* and bindingness of Court judgment. The paper established that *functus officio* principle is ageless and crucial in the adjudicatory ecosystem in promoting finality of Court judgments. The paper further unearthed that notwithstanding its usefulness, there are many recognised exceptions to the *functus officio* rule which authorise a Court to set aside its earlier judgment such as when the judgment or order is a nullity. While the exceptions were viewed as commendable, it was however recommended that the power of a Court to set aside its own judgment should be sparingly exercised except in the interest of justice.

Keywords- appeal, decision, *functus officio*, judgment, set aside.

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1. Introduction

The aim of this paper is to examine the extent and limits of the applicability of the ancient doctrine of *functus officio* and bindingness of judgment of a Court. This is because it is often thought, albeit erroneously, that the rule that once a Court gives a decision or makes an order on a matter, he loses the competence or jurisdiction to give another decision or order on the same matter is encrusted in stone. Analysis in this paper will discuss the general rule that once a Court delivers a judgment, it becomes *functus officio*. It will as well identify and analyse the recognised exceptions which may authorise a Court to re-open the matter a second time. To this end, the paper will be further divided into the following parts namely: Meaning of *functus officio* and restatement of the binding effect of judgment of Court; Exceptions to the principle of *functus officio*- circumstances when a Court

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can set aside its own judgment/decision/order; Summary of principles; Conclusion and recommendations.

2. *Functus officio* principle and restatement of the binding effect of judgment of Court

In the adjudicatory ecosystem, once a Court hands down or delivers a judgment, it has no further business reopening the case. In that sense, the Court is said to be *functus officio* the matter. The term, phrase or principle “*functus officio*” means that, subject to exceptions, a case cannot be reopened because it has ended and the Court has exhausted its purpose.¹ A Court can only rarely reconsider its own decision, for example as authorized by statute.² It is an injudicious act for a Court to sit on appeal over its judgment or decision. In other words, once a Court gives a decision or makes an order on a matter, he loses the competence or jurisdiction to give another decision or order on the same matter.³ Strictly, speaking therefore, he cannot re-open the matter a second time. He cannot approbate and reprobate. The Supreme Court in *Mohammed v Hussein*⁴ defined *functus officio* as follows:

The Latin expression *functus officio* simply means ‘task performed’. Therefore, applying it to the judiciary, it means that a judge cannot give a decision or make an order on a matter twice. In other words, he no longer has the competence or jurisdiction to give another decision or order on the same matter. A judge is *functus officio* if he gives judgment on the merits.

Furthermore, in *Integrated Realty Ltd v Odofin & Ors*,⁵ the Supreme Court reiterated that “*functus officio*” is Latin for “having performed his or her task”, and “refers to one who has exercised his or her authority and brought it to an end in a particular case”. The position of the law is that once the Court has delivered its decision on a matter, it becomes *functus officio* with regard thereto. This is so, because a Court cannot sit on appeal on its own decisions, having not been vested with power to do so. Thus, having finally decided a case before it, it becomes *functus officio* as to that case. Thus, once a Court has decided a matter, it ceases to be seized of it, and cannot re-open it, except in certain circumstances, of course. With the above, it means that once a Court delivers a judgment or ruling on the merits, it is no longer permissible for the Court or any other court of coordinate jurisdiction to revisit or go back to the case. Any party aggrieved or dissatisfied with the whole or part of the decision is entitled to appeal to the higher or appellate Court.

A judge is *functus officio* if he gives judgment on the merits. A judgment in default is not a judgment on the merits. This was the decision of the Supreme Court in *Abinde & Ors v Salako*.⁶ Regarding bindingness of the judgment of a Court, the general rule is that a Court is bound by its own judgment, order or decision. In the case of *Kubor & Anor v Dickson & Ors*,⁷ the Supreme Court held that an order of a competent Court of law, no matter its nature is absolute and binding on all and sundry without question until it is legally and legitimately set aside by a competent Court of appellate jurisdiction. The fact of its being final or interim did not therefore affect its application and effectiveness. Yet again, in *CBN v Aribu*,⁸ it was held that judgment/order of court remains

¹ *R v Riddle*, 1977 ALTASCAD 119.

² *Paper Machinery Ltd v JO Ross Engineering Corp.*, [1934] SCR 186 at 188, 1934 Can LII 1.

³ This was the principle established in *Olowu v Abolore* (1993) 6 SCNJ (Pt. 1) 1 and *Inakoju v Adeleke* (2007) 4 NWLR (Pt. 1025) 427.

⁴ (1998) 14 NWLR (Pt. 584) 108 @ 163.

⁵ (2017) LPELR-48358(SC) (Pp. 9-10 paras. D).

⁶ (2024) LPELR-62842(SC) (Pp. 8-13 paras. F) per Ogunwumiju, JSC.

⁷ (2012) LPELR-9817 (SC).

⁸ (2017) LPELR-47932(SC) (Pp. 17-29 paras. A-A).

valid until set aside. A Court is entitled to place reliance on an unappealed judgment or use a previous judgment of Court in deciding a subsequent matter. Thus, where a party does not appeal against a judgment, they remain binding on the parties until set aside by an appellate Court. This was also the decision in *Okonkwo v INEC*.⁹ In *Osho & Anor v Foreign Finance Corporation & Anor*,¹⁰ it was held by Obaseki, JSC (as he then was), that “the Court of Appeal is bound by its previous judgments. It is also bound by the judgments of the Supreme Court. The Court of Appeal has not contended the contrary. Since the Court of Appeal sits in 7 divisions, now there exists the danger of decisions delivered in one division conflicting with decisions in another division”.

3. Exceptions to the principle of *functus officio*- circumstances when a Court can set aside its own judgment/decision/order

Against the rule of *functus officio* and bindingness of judgment of a Court elaborately discussed in the earlier part of this paper, this segment will be devoted to an analysis of the judicially recognised exceptions to this rule. It must firstly be accentuated that notable circumstances exist where a Court is competent to set aside its judgment or order. From the body of decided cases, this is permissible (a) where it is obtained by fraud, or deceit; (b) where it is a nullity or absence of jurisdiction or a fundamental irregularity; (c) default judgment; (d) where a Court is misled into giving judgment under the mistaken belief that parties had consented and (e) rejection of improperly admitted evidence. These circumstances may not be exhaustive but the outlined circumstances are the decimal occurrence in Courts and they will be discussed in better details below.

(a) Where judgment or order of Court is a nullity

Regardless of the doctrine or principle of *functus officio*, the law is trite that a Court can set aside its earlier decision where judgment or order is a nullity. This was the candid view of Senchi, JCA, in *PDP v INEC & Ors*.¹¹ In the case of *H.R.H Eze Dr Frank Adele Eke v Godfrey Chizieze Ogbonda*,¹² the Supreme Court held as follows:

The law in this respect is quite plain and well settled. If a judgment or order of a Court is a nullity, it can be set aside without much ado. Dealing with this question in *Craig v Kanseen* (1943) KB 256. Lord Green at page 62. ‘Those cases appear to me to establish that a person who is affected by an order which can properly be described as a nullity is entitled *ex-debito justitiae* to have it set aside. So far as procedure is concerned, it seems to me that the Court in its inherent jurisdiction can set aside its own order and that it is not necessary to appeal from it.’ This principle of law has been cited with approval in many decisions of this Court particularly, *Obimonure v Erinosh* (1966) 1 ALLNLR 250 at 252; *Skenconsult (Nig.) Ltd. & Anor v Ukey* (1981) 1 SC 6 at 26; *Adegoke Motors Ltd. v Adesanya & Anor* (1989) 3 NWLR (Pt. 109) 250 at 273 and *Okoye v Nigerian Construction and Furniture Co. Ltd* (1991) 6 NWLR (pt. 199) 601 AT 547-548. In other words, such judgments are ordered null and void by fundamental defect and can be set aside. On these authorities therefore, the Court of Appeal, indeed like any other superior Court, has inherent jurisdiction to set aside its own judgment or order which is a nullity’

⁹ (2004) NWLR (Pt. 854) 242.

¹⁰ (1991) LPELR-2801(SC) (Pp. 32-33 paras. G).

¹¹ (2023) LPELR-59699(CA) (Pp. 64-66 paras. D).

¹² (2006) LPELR 1075(SC) (Pp. 18-19, paras C-B), per Mohammed, JSC.

In *Yonwuren v Modern Signs (Nig.) Ltd*,¹³ the Supreme Court restated that it is settled law that the Supreme Court has jurisdiction to depart from its previous decisions. The Supreme Court, as a Court at the apex of the judicial hierarchy in this country, has the jurisdiction and power, sitting as a full court of seven justices, to depart from and overrule previous erroneous decisions on points of law given by a full court on constitutional questions or otherwise.

(b) *Default judgment*

As a prelude to further discussion, the striking differences between "default judgment" and "judgment on the merits" must be firstly be accentuated and acknowledged. These cardinal distinctions were commendably articulated in the case of *Mohammed v Husseini*¹⁴ as follows:

A judgment on the merits is one based on legal rights as distinguished from mere matters of procedure or jurisdiction. A judgment on the merits is thus a decision that was rendered on the basis of the evidence led by the parties in proof or disproof of the issues in controversy between them. Normally, a judgment based solely on some procedural error is not, as a general rule, considered as a judgment on the merits. A judgment on the merits is therefore one arrived at, after considering the merits of the case - the essential issues, the substantive rights presented by the action, as contradistinguished from mere questions of practice and procedure.

A decision on merit is one rendered after argument and investigation and a determination as to which of the parties is in the right, as distinguished from a judgment or decision rendered upon some preliminary or formal part or by default and without trial.¹⁵ Thus, as held in *Bello v INEC & Ors*,¹⁶ a default judgment is one given in default of appearance or pleadings against a Defendant or a Plaintiff in a cross-action whose names appear as such Defendant or Plaintiff in the record of the trial Court. A default judgment is different from judgment on merit. Where, as in the instant case, the Appellant and the 1st Respondent who were the only parties as Plaintiff and Defendant in the action were present or duly represented by their learned Counsel before the trial Court throughout the proceedings up to the point of judgment in question, it was held that that judgment cannot be described as a default judgment. It is clearly a judgment on the merit which in law, can only be set aside on appeal. In *Adebayo v Olajogun*¹⁷ it was held that it is settled law that a default judgment is one that can be set aside either by the Court that made it or another Court or Judge of coordinate jurisdiction, upon good reasons being shown. In *Bello v INEC & Ors*,¹⁸ the Supreme Court, per Mohammed, JSC, held that "the Court certainly has power to set aside a default judgment." The principle is that unless and until the Court pronounced a judgment on merit or by consent it retains the power to set aside its own default judgment. The power to do so is discretionary which has to be exercised judiciously, guided by the following principles pronounced by this court in *Williams & Ors v Hope Rising Voluntary Funds Society*¹⁹ namely:

- (1) the reasons for the applicant's failure to appear at the hearing or trial of the case in which judgment was given in his absence;

¹³ (1985) LPELR-3529(SC) (Pp. 87 paras. B).

¹⁴ (1998) LPELR-1896(SC) (Pp. 55 paras. A).

¹⁵ Per Onnoghen, JSC in *Tomtec Nigeria Ltd v FHA* (2009) LPELR-3256(SC) (Pp. 16 paras. B) citing and relying on *UTC v Pamotei & Ors* (1989) 1 NSCC 523 and *Ukachukwu v UBA* (2005) 18 NWLR (Pt. 956) 60.

¹⁶ (2010) LPELR-767(SC) (Pp. 36 paras. A). See also *Alapa v. Sanni* (1967) NMLR 397.

¹⁷ (2016) LPELR-41390(CA) (Pp. 15-16 paras. F).

¹⁸ (2010) LPELR-767(SC) (Pp. 22 paras. C-C).

¹⁹ (1982) 1-2 SC 145.

- (2) whether there has been undue delay in making the application to set aside the judgment so as to prejudice the party in whose favour the judgment subsists;
- (3) whether the party in whose favour the judgment subsists would be prejudiced or embarrassed upon an order for rehearing of the suit being made, so as to render such a course inequitable;
- (4) whether the applicant's case is manifestly unsupportable; and
- (5) whether the applicant's conduct throughout the proceedings, that is, from the service of the writ upon him to the date of judgment, has been such as to make his application worthy of a sympathetic consideration.²⁰

An application brought to set aside a default judgment must satisfy the above irreducible conditions before the Court can exercise its discretion positively. The above somewhat encrusted guiding principles where there is an application for a Court to set aside its own judgment given in the absence of one of the parties before it in order to give him opportunity of being heard were applied in *Teno Engineering Ltd v Adisa*.²¹

(c) *Where there are conflicting decisions*

In *ACN & Anor v Amaewhule & Ors*,²² one of the issues was whether the Court of Appeal was bound by its previous conflicting decisions as well as those of coordinate jurisdiction and exceptions thereof. It was held that the law however allows the Court of Appeal to depart from its previous conflicting decisions and/or choose the one to follow in certain circumstances. The Court of Appeal relied on the decision in the English case of *Young v Bristol Aeroplane Ltd*²³ where the Court of Appeal in England held that generally the Court of Appeal is bound by its previous decisions as well as those of coordinate jurisdiction except where (a) there are two conflicting decision on the same issue in which case it is at liberty to choose either of its two conflicting decisions (b) where though not expressly overruled the Court of Appeal decision is inconsistent with a decision of the House of Lords (iii) where the Court's decision was given per incuriam. The same principle now forms part of our jurisprudence. In a proper case, the Court of Appeal can decide to overrule itself. Thus, where the Court's decision was given in ignorance or forgetfulness of some statutory provision or where the decision though not expressly overruled cannot stand with a decision of the Supreme Court, the Court of Appeal would be entitled to overrule itself by refraining from applying such of its decisions arrived at *per incuriam*.²⁴

It may not be out of place to state here for the guidance of lower Courts that it is now settled that where there are two conflicting judgments of the Court of Appeal, the lower Court or Courts, is or are bound by the latter decision and must follow and apply it.²⁵ This principle is also applicable to the Court of Appeal where there are conflicting judgments of the apex Court. As for hierarchy of

²⁰ See also *Idam Ugwu & ors v Nwaji Aba & Ors* (1961) 1 All NLR 438; *Adebayo Doherty v Ade Doherty* (1964) NMLR 144 at 145; *Momah v Gulf Insurance Corporation* (1975) 1 NNLR 184 at 186; *Khawani v Elias* (1960) SCNLR 516; and *Evans v Bartlam* (1937) 2 All ER 646 at 650 all cited with approval in *Mohammed v Hussein* (1998) LPELR-1896(SC) (Pp. 24-25 paras. F).

²¹ (2005) LPELR-3142(SC) (Pp. 6-7 paras. F).

²² (2011) LPELR-14264(CA) (Pp. 19-22 paras. B).

²³ (1944) ALLERL (Vol. 2) 293 at 294.

²⁴ This principle has been religiously applied in *Osho v Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157; *Utih v Onoyivwe* (1991) 1 NWLR (Pt. 166) 166; *Dr. Olu Onagoruwa v The State* (1992) 5 NWLR (Pt. 244) 773; *Campitel Intl. SPA v Dexson Ltd* (1996) 7 NWLR (Pt. 459) 170 at 184.

²⁵ See the case of *Cyril O. Osakue v Federal College of Education (Technical) Asaba & Ors* (2010) 5 SCM 185 and *Chief Okpozo v Bendel Newspaper Corporation & Anor* (1990) 5 NWLR (Pt. 153) 652 @ 661, 663 CA.

the Courts, it is now settled that the ratio decidendi of a case is the reason for the decision, the principle of the decision Court lower in the judicial hierarchy is, bound by the ratio decidendi of a higher Court not necessarily the *obiter dictum*.

(d) *Rejection of improperly admitted evidence*

This ageless principle of law accommodates a litany/legion of exceptions. One of the cognizable exemptions is deeply, planted in rejection of admitted inadmissible evidence. In the course of proceedings in a Court, trial or appellate a piece of evidence (oral or documentary) may by oversight or inadvertence, be admitted, either in a bench or considered ruling, by a Court and that Court, whether of first instance or appellate, and if it later discovers at the time of judgment, that that particular evidence is at all event/costs inadmissible in law, then it is entitled to reverse its earlier decision admitting that evidence and rejecting it in toto. This principle was validated in cases like *National & Properties Co. Ltd v Thompson Organisation Ltd*,²⁶ *Abubakar v Chuks*,²⁷ *Shanu v Afribank (Nig.) Plc*²⁸ and *Stanbic IBTC Bank v Longterm Global Capital Ltd & Ors*.²⁹

(e) *Consent judgment actuated by fraud, misrepresentation, mistake etcetera*

It is the general rule that once entered, a consent judgment cannot be set aside, save on appeal with leave, even if it was entered under a mistake vide *U.T.C. Nigeria Ltd. v. Chief Pamotei & Ors*.³⁰ However, in *Race Auto Supply Co. Ltd & Ors V. Akib*,³¹ the Supreme Court, per Ogbuagu, JSC, held that "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." In *Tomtec Nigeria Limited v Federal Housing Authority*,³² Onnoghen, JSC, (as he then was) wherein it was held that:

It is settled law that Courts of record have the inherent jurisdiction to set aside their judgments/decision/order, in appropriate cases or under certain circumstances which include: When:

- (i) the judgment is obtained by fraud or deceit either in the Court or of one or more of the parties;
- (ii) the judgment is a nullity;
- (iii) it is obvious that the Court was misled into giving judgment under a mistaken belief that the parties consented to it;
- (iv) the judgment was given in the absence of jurisdiction; (v) the proceedings adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication;
- (vi) where there is fundamental irregularity. See *Igwe v Kalu* (2002) 14 NWLR (Pt. 787) 436 at 453-454, *Ebe v Ebe* (2004) 3 NWLR (Pt. 860) 215 at 243, *Odojin v Olabanji* (1996) 3 NWLR (Pt. 435) 126 at 133.

²⁶ (1969) 1 All NCR 138.

²⁷ (2007) 18 NWLR (Pt. 1066) 386.

²⁸ (2002) 17 NWLR (Pt. 795) 185.

²⁹ (2021) LPELR-55610(CA) (Pp. 70-72 paras. E).

³⁰ (1989) 3 SC (Pt. 1) 79.

³¹ (2006) LPELR-2937(SC) (Pp. 33 paras. E).

³² (2009) LPELR-3256(SC).

Conclusively, a Court that gave the consent judgment may, upon application, set it aside on grounds of fraud, mistake, misconception or for any other reason which would afford a good ground for setting aside the agreement on which the judgment or order is based. A consent judgment can be set aside on any ground which may invalidate an agreement on which it is founded, would be rescinded. When therefore, a consent judgment is sought to be set aside on the ground of fraudulent misrepresentation, the same principles apply as would apply were the action one for rescission of a contract.³³ It can thus be said that outside the appellate procedure, a judgment or order can be set aside if it is a nullity or where a Court was misled into giving the judgment by some mistake, believing that the parties consented to its being given, whereas, in fact, they did not. This position is supported by *Okoli Ojiako and Ors v Onwuma Ogueze and Ors*.³⁴ As Orji-Abadua, JCA, adroitly stated in *Idemudia v Igbinoia*³⁵

The Supreme Court had clearly established that consent judgment can be set aside, the mode of initiating the proceeding for setting the same aside and the grounds upon which that can be achieved. This has obviously dislodged the argument of learned Counsel for the Respondent and then accentuated the contentions of the Appellants that the lower Court has the jurisdiction to set aside a consent judgment. See *Uchechukwu Ishmael v Emmanuel Ukaegbu* (2018) LPELR-46626(CA).

Consent judgment may also be set aside based on the principle that where there are conflicting judgments the later in time prevails vide the judgment in *Osakue v F.C.E. Asaba and Ors*.³⁶

4. Summary of principles

The principles distilled from the analysis in this paper include but are not limited to the following namely:

- (a) A Court is bound to follow previous decisions of its own as well as those of Courts of co-ordinate jurisdiction. Once a judgment is delivered, the Court becomes *functus officio*. This represents the general rule.
- (b) However, the notable exceptions to the above general rule are-
 - (i) The Court is entitled and bound to decide which of two conflicting decisions of its own it will follow.
 - (ii) The Court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the apex Court.
 - (iii) The Court is not bound to follow a decision of its own if it is satisfied that the decision was given per incuriam. For example, where the Court is satisfied that an earlier decision was given in ignorance of the terms of a Statute or a Rule having the force of a Statute, "it cannot be right to say that in such a case the Court is entitled to disregard the statutory provisions and is bound to follow a decision of its own given when that provision was not present to its mind."³⁷

³³ In *Huddersfield Banking Co. Ltd v Henry Lister & Son Ltd* (1895-9) All ER 868.

³⁴ (1962) 1 All NLR 58.

³⁵ (2022) LPELR-58204(CA) (Pp. 27-31 paras. C).

³⁶ (2002) LPELR-7095(CA).

³⁷ Per Kolawole, JCA in *Egbo & Ors v Laguma & Ors* (1988) LPELR-20511(CA) (Pp. 21-23 paras. C).

- (c) The power to set aside a default judgment is discretionary which has to be exercised judiciously, guided by the principles pronounced enunciated in *Williams & Ors v Hope Rising Voluntary Funds Society* (supra).
- (d) An application for setting aside a consent judgment must satisfy the minimum conditions set down by the Supreme Court in *Tomtec Nigeria Limited v Federal Housing Authority* (supra). Grant or refusal of same is at the discretion of the Court although judicial discretion must be exercised judiciously.
- (e) A Court has no discretion to exercise if the judgment is a nullity obtained by fraud or other vitiating elements. It is in the interest of justice that such a judgment, decision or order be set aside. The timeless admonition by Eso, JSC, in the case of *Willoughby v International Merchant Bank (Nig.) Ltd*³⁸ about the amorphous nature of “interest of justice” must however be borne in mind. In that case, he warned as follows:

...the phrase interest of justice is not a *carte blanche* or licence for an unimpeded exercise of power, even against the Rules, in the guise of interest of justice. Justice, as a concept is not easy to define despite postulates by great Jurists from time immemorial even to Roscoe Pound who dwelt extensively on this concept. It is perhaps for the reason of the difficulty in an objective definition of justice that it has been considered safest to regard justice to be done once it is according to law; and law must necessarily include the procedure laid down for its attainment. To leave the attainment of justice at large, and ignore the rules is to establish a subjective course of action which could lead to judicial tyranny and the omnipotence of individual judges. Surely, such course will end in chaos and certainly not an attainment of interest of justice according to the law of the land.

5. Conclusion and recommendations

As instructively stated by Muhammad, JCA, in *ACN & Anor v Amaewhule & Ors*,³⁹ “it is no gainsay that where the law becomes uncertain the Courts and the legal profession suffer most for the lapse. Confidence in them erodes fast. But most importantly justice in accordance with the law is compromised. Together with counsel and the like of them shall remain alert and more dedicated in sustenance of the noble contribution dispassionately and honourably made.” This paper has illuminated the rule of *functus officio* and bindingness of Court judgment by clearly identifying the legitimate circumstances when a Court will be entitled to set aside its own judgment. By exposing the litany of recognised exceptions, it has been put beyond doubt that the hallowed principle of *functus officio* is neither cast in steel nor encrusted in stone. Nevertheless, respect for this ageless principle and the recognised judicial exceptions to it will no doubt enhance the course of justice and fairness. Thus, it is recommended that, except in the interest of justice, a Court should seldom set aside its own judgment. Where however there is compelling justification and merit in the application, a Court should not hesitate to do the needful.

³⁸ (1987) LPELR-3495(SC) (Pp. 22 paras. A).

³⁹ (2011) LPELR-14264(CA) (Pp. 19-22 paras. B).