STARE DECISIS IN NIGERIA – INAKOJU V ADELEKE REVISTED.

"The life of law has not been logic; it has been experience"

Oliver Wendell Holmes.

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ABSTRACT

The article explores the doctrine of *stare decisis* in Nigeria. The recognition of the doctrine has been affirmed in plethora of decided cases. The decisions of the Supreme Court as the last court in Nigeria are binding over all the courts in Nigeria on the principles decided. The doctrine ensures that the decisions in courts are stable, certain and easy to predict. It introduced an established procedure for attaining justice. Lawyers are thus better positioned to give suitable advice to their clients in the light of the position of the law. Economic activities blossom, Citizens are able to enter into contractual relations with a clear understanding of the obligations they are assuming and secure in the sense that when dispute arises, their resolutions is shorn of the mystification engendered by lack of legal certainty and predictability. However, there seems in recent time, a vanishing loyalty to binding force of precedents in Nigeria. The paper acknowledged these and makes analytical exposition of the doctrine of *stare decisis* in Nigeria, examining in particular the new dimension introduced by the Supreme Court decision in the case of *Inakoju v Adeleke*[2] . It contends that there is need for the law to be certain. A regime of uncertain legal environment cannot foster democratic and economic growth.

INTRODUCTION

The doctrine of *stare decisis* is a well rooted doctrine in the Nigeria jurisprudence. By this doctrine, when the court has once "laid down a principle of law as applicable to a certain state

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[2] (2007) 4 NWLR (pt.1025) 423.

of facts, it will adhere to the principle and apply it to all future cases, where facts are substantially the same, regardless of whether the parties and properties are the same.[3]

Ordinarily, attainment of justice in matters handled on behalf of clients is the primary duty of any legal practitioner. Therefore, when justice becomes unattainable, adjudication becomes irrelevant. For the attainment of justice, there is need for certainty in the law. Society strives better in an atmosphere of legal certainty. Legal practitioners are better able to advise clients. Economic activities blossom, Citizens are able to enter into contractual relations with a clear understanding of the obligations they are assuming and secure in the sense that when dispute arises, their resolutions is shorn of the mystification engendered by lack of legal certainty and predictability.

However, in recent time, there seems to be a growing concern on the certainty in Nigeria case law, perhaps, occasioned by the recurrent attitude of the Nigerian judges and all concerned in the application of the doctrine of *stare decisis* in Nigeria. One of these concerns, among others, is the novel development of the Supreme Court in the case of *Inakoju v Adeleke*.[4] No doubt; the Supreme Court attitude in that case has its own consequence. What the future holds for the well entrenched regime of *stare decisis* remains staggering.

This article highlights the importance and relevance of the doctrine of *stare decisis* – the certainty of the law – to the attainment of justice in the social, economic and body polity of Nigeria. This is done by critical analysis of case law that has grace the doorsteps of some hollowed chambers of justice in Nigeria. The article is divided into four parts. The first part examines the scope of the doctrine of *stare decisis* in *extenso*. The second part discusses the facts in *Inakoju v Adeleke* as relevant to the discourse in this article, and stated the motives for the Supreme Court decision therein. The third part looks at the departure of the apex court from the doctrine of *stare decisis* and the course ought to have followed in the case. Finally the fourth part discusses the implications of the Supreme Court decision in *Inakoju's* case. The concluding part then follows.

SCOPE OF THE DOCTRINE OF STARE DECISIS

[3] See Horne v Moody, Tex Civ. App. 146 S.W 2d 505, 509 – 510. See also Osakue v Federal college of Education (Technical) Asaba (2002) 10 NWLR (pt. 1201) 1.

[4] (2007) 4 NWLR (pt.1025) 423.

One of the conceptual tools for ensuring certainty in the law is the doctrine of *stare decisis.* As earlier stated the doctrine simply means that when a court of law has once laid down principles of law as applicable to a certain state of facts, it will adhere to the principle and apply it to all future cases, where facts are substantially the same, regardless of whether the parties and properties are the same.[5]

In *Osakue V Federal College of education (technical) Asaba* [6], the Nigeria Supreme Court, per Ogbuagu J.S.C define *stare decisis* thus:

> "*Stare decisis* means to abide by the former precedent where the same points came again in litigation. It presupposes that the law has been solemnly declared and determined in the former case. It does preclude the judges of the subordinate courts from changing what has been determined. Thus under the doctrine of *stare decisis,* lower courts, are bound by the theory of precedent."[7]

The doctrine is regarded with an aura of sanctity that almost borders on veneration. In its operation in Nigeria, the decision of the Supreme Court being the Apex court in the country binds all the lower courts even when reached *per incuriam.* Similarly, the decision of the court of appeal binds the lower court than the court of appeal while decisions of the high court binds court lower to them. No lower court therefore has a right under any guise to refuse to follow the decision of a higher court.[8] in Ossom v. Osom [9],the court of appeal stated thus:

> "I agree with the learned counsel that the doctrine of *stare decisis* is a well settled principle of judicial policy which is strictly to be adhered to by all lower courts. While a lower court may depart from its own decision reached *per incuriam,* a lower court cannot refuse to be bound by the decision of a higher court even if those decisions

[5] Horne v Moody. Op. Cit at 509 – 510.
[6] Osakue v Federal College of Education (Technical) Asaba. Op.cit a 423.
[7] Ibid at pg 34.
[8] 'What this means is that the doctrine only operate where there is a hierarchy of court.' See Dugdale and others; A level law Butterworths, 1988, pg. 170.
[9] (1993) 8 NWLR (pt. 314) 678.

> were reached *per incuriam*. The implication therefore is that a lower court is bound by the decision of a higher court even when that decision was given erroneously. If therefore a decision is wrongly reached by the court of appeal, the court of appeal or the supreme court is the proper forum where such an error can be corrected and certainly not a high court."[10]

A judge of the lower court who veers away from the obligations of *stare decisis* invites the condemnation of the higher court. The legendary jurist, Eso, JSC (as he then was) in *Okoniji v Mudiaga Odge*[11], had this to say:

> "In the hierarchy of court in this country, as in all other common law countries, one thing is clear, however learned a lower court considers itself to be and however contemptuous of the higher court, that lower court is still bound by the decision of the higher court... I hope it will never happen again whereby the lower court of appeal in this country or any lower court for that matter would deliberately go against the decision of this court and in this case, even to the extent of not considering the decision when those decision were brought to the notice of that court. **This is the discipline of law. This is what makes the law certain and prevents it from being an ass.**"[12]

(Emphasis supplied).

The supreme court in *Dalhatu v Turaki*[13], while defending the doctrine of *stare decisis*, when a judge of the high court had refuse to follow the supreme court decision in earlier cases on the ground that the supreme court has given the judgement *per incuriam*, handed down an undisguised vituperation as follows:

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[10] Ibid at pg. 692, paras. G – H.
[11] (1985) 10. S.C 267
[12] Ibid at pg. 268, 289.
[13] (2003) 15 NWLR (pt. 843) 310. See also Enugu v. Okefi (2000) 3 NWLR (pt. 650) 620 at pg. 639. See global Transport Oceanico S.A V. Free Ent. (Nig.) Ltd (1995) 8 NWLR (pt. 413) 257 at pg. 280. See Diaro V. U.B.N Plc (2007) 16 NWLR (pt. 1059) 99 at pg. 159, where the Supreme Court describe a lower court defy of decided authority as border or amounts to judicial impertinence.

> "The conduct of the learned trial judge is to say the least most unfortunate. This court is the highest and final court of appeal in Nigeria. Its decisions bind every court, authority or person in Nigeria. By the doctrine of stare decisis, the courts below are bound to follow the decisions of the Supreme Court. **The doctrine is a *sine qua non* for certainty to the practice and application of law**. A refusal therefore, by a judge of the court below to be bound by this court's decision, is a gross insubordination **(and I dare say such judicial officer is a misfit in the judiciary)".**

(Emphasis supplied).

The above succinctly represent the venom at which the doctrines of *stare decisis* were guided by the higher court. Safe to submit, therefore that the first alphabet of any judicial officers ought to be the doctrine of *stare decisis.* But how far the lower and the higher courts are bound by this sacred doctrine? We shall soon know.

Although as seen in cases already discussed, a lower court is bound to follow the decision of the higher court in the judicial hierarchy of court in Nigeria. However, where there are two conflicting decision of the Supreme Court, the question faced by the lower court, as to which of the two conflicting decision to follow had been painted by court of appeal in the case of *G.T.B Plc v. Fadco Ind. Ltd*[14]. The court held as follows:

> "I am being faced with two conflicting decision of the Supreme Court, one supporting the respondent, the other supporting the appellant. I am fully aware of the fact that I am bound by the decision of the Supreme Court but it is also the law that in this kind of situation I am allowed to choose which to follow between the two decisions."

The controversy as to which of the Supreme Court decision to follow did not end with the holding of the court of appeal in *G.T.B's* case *(supra).* In *Mohammed v Martins Electronics Company Ltd*[15], the court further highlighted as follows:

[14] (2007) 7 NWLR (pt. 1033) 307.
[15] (2010) 2 NWLR (pt. 1179) 473

> *"In Yusuf v Egbe (1987) 2 N.W.L.R (pt. 56) 341,* Kolawole JCA (of blessed memory) reiterated that this court is bound by its previous decisions which has not been overruled by the Supreme Court. Furthermore, that this court of appeal must accept and apply loyally, the decision of the Supreme Court and where the decisions manifestly conflict, it was his opinion that the later decision is binding on the court of appeal. It was also held by Ademola JCA (of blessed memory) that where there are two conflicting decision of the higher court, the lower court is free to choose which of the decisions to be followed. See *Adegoke Motors v Adesanya (1988) 2 NWLR (pt. 74) 108.* Both are decision of this court- Lagos division delivered on the 10th February, 1987 and 9th November, 1987 respectively".[16]

However, the marauding ghost of the controversy faced by the lower court in respect of two conflicting decisions of the higher court seems to have been laid to rest by the Supreme Court in the case of *Osakue v Federal College of Education (Technical) Asaba (supra).* Per Ogbuagu JSC, with emphasis in four different passages in the judgment stated thus:

> "For umpteen time, where there appear to be conflicting judgement of this court, the later or latest will or should apply and must be followed if the circumstance are the same".[17]

As noted in *Mohammed v Martins Electronics Company Ltd (supra),* every division of the court of appeal is bound by its own previous decisions or decisions of another division. However, for every general rule there must be an exception. Thus, the Supreme Court in *Usman v Umaru* **[18]**, has stated the exceptions where the court of appeal may depart, when it held thus:

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[16] Ibid at pg. 506.
[17] Osakue V Federal College of Education (Technical) Asaba . op. Cit at pg. 37. Need to add that this case is not with its own internal inconsistency, at pg. 36, the same Hon. Justice of the Supreme Court said: "where there is no discernable *ratio decidendi* common to the decisions of the superior court and this court had handed down conflicting decisions, the lower court or a court of coordinate jurisdiction is free to choose between the decision which appears to it to be correct".
[18] (1992) 7 NWLR (pt. 94) 377.

> "It is now well settled that under the doctrine of *stare decisis,* the court below as an intermediate court of appeal between the court below it and this court as the final appellate court, is bound by its own decision except in the circumstances specified in *Young v Bristol Aeroplane Co. Ltd (1944)2 All E.R 293, 300* that is;
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> a. The court of appeal is entitled to decide which of two conflicting decision of its own it will follow,
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> b. It will refuse to follow its own decision which, though not expressly overruled, cannot in its opinion stand with a decision of this court; and
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> *c.* It is not bound to follow a decision of its own if it is satisfied that the decision was given *per incuriam".*[19]

In much the same vein, the Supreme Court is also bound by its own previous decision. But however, the door to departure from its earlier decision is widely open upon a proper invitation to the court to do so. For the Supreme Court to depart from its previous decision whenever been invited to do so, at least, one of the considerations stated in the holding in the case of *Orubu v N.E.C* **[20]**, must be justified for consideration:

> "It is well settled that the court does not ordinarily depart from its decision unless it is shown that the decision has over a period of time perpetuated injustice through the doctrine of *stare decisis* or it has impeded the development of law or it is in fact against public policy or the decision was given *per incuriam".*[21]

Need to mention that one panel of the Supreme Court cannot overrule another panel of equal member. It will require the full court to overrule a previous decision of the court[22].

By the doctrine of *stare decisis,* it is the *ratio decidendi* that constitute binding authority unlike other pronouncement in the judgment which are *obiter dictum* and not binding[23]. In

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[19] Ibid at pg. 398.
[20] (1988) 5 NWLR (pt. 94) 323.
[21] Ibid at pg. 353, para. D.
[22] See Sodeinde Brothers (Nig) Ltd V A.C.B Ltd. (1982) 6. S.C. 137 at pg. 139.

Ajibola v Ajadi[24], *ratio decidendi* was defined as the enumeration of the reason or principle on which a question before a court has been decided. In other words, it is the general reason given for the decision or the general grounds on which it is based, detached or abstracted from the specific peculiarities of a particular case which give rise to the decision. *Obiter dictum*, on the other hand is an opinion of a court on some point which is not necessary for the decision of the case[25]. Anything said in a concurring judgement by any justices of the Supreme Court which is not in the leading judgment is regarded as an *obiter dictum* [26]. However, obiter dictum of the Supreme Court may with time and repeated number of times assumes the status of a *ratio decidendi* [27].

INAKOJU V. ADELEKE

This case bothered on impeachment. The facts as relevant to this discourse are that the former Governor of Oyo state Senator Rasheed Ladoja was impeached in January 2006 by the Oyo state House of Assembly in way and manner that befoul constitutional provisions on impeachment. By an originating summons, he challenged his impeachment in court. The defendants filled no counter affidavit in response to the originating summons filed by the plaintiff; instead they filed an objection challenging the jurisdiction of the court to entertain the case. The learned trial judge upheld the preliminary objection and dismissed the originating summon therein. The plaintiff being dissatisfied, appeal against the ruling of the trial court on the issue of jurisdiction, the court of appeal not only allow the appeal on the issue of jurisdiction, it also gave a final judgement on the main case notwithstanding the argument of the respondent against the procedure. The court of appeal did not see along the argument of the respondent that the failure of their objection should not preclude them from contesting the case on the merits.

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[23] Bamgboye v University of Ilorin (1991) NWLR (pt. 207) 1. See Oshodi V Eyifunmi (2000) 7. S.C (pt. 11) 145. See Rossek V A.C.B Ltd (1993) NWLR (312) 382 at pg. 458. Para. C. See also Agbai V Okogue (1991) 9/10 SCNJ 49.
[24] (2004) 14 NWLR (pt. 892) 14 at pg. 34, paras. D- G.
[25] Ibid at pg. 34, paras. D- G.
[26] See Idise V Williams International Ltd (1995) 1 NWLR (pt. 370) 142 at pg. 150, para. G.
[27] See Otun v Otun (2004) 14 NWLR (pt. 893) at pp. 397- 398, paras. D- B.

Equally dissatisfied, the respondent filed an appeal to the Supreme Court against the judgement of the court of appeal; the Supreme Court by a majority decision confirmed the decision and judgement of the court of appeal.

Examining critically with a legal magnifying lens, the lead judgement of the noble lord Nikki Tobi JSC (as he then was), pointed in two ways the reason d'être behind the approach of the court of appeal which was confirmed by the supreme court thus:

1. The need to urgently dispose of the matter because the end- time for the tenure of the governor was 29th April 2007 which was only six months away at the time the Supreme Court dismissed the appeal of the respondents on the 7th December, 2006.

2. The need to stabilized democratic governance by stopping what had become an abuse of impeachment power by the legislature around the country.

Giving the good motives enunciated above, the question is whether those alone justify circumventing established procedure for justice? Although Justice Delay is justice denied, yet justice rush is justice crushed.

DEPARTURE FROM THE DOCTRINE OF STARE DECISIS BY THE APEX COURT

It is on record, both at the court of appeal and the Supreme Court that the respondents in the instant case consistently argued that the failure of their preliminary objection should not in any way preclude them from contesting the case on the merits. Thus, the Supreme Court refusal to be persuaded by the argument that the procedure adopted by the court of appeal denied the respondents the right and opportunity to contest the case on the merits is contrary to the law as settled by the decision of the supreme court in *Mohammed v Olawumi* [28] and *Attorney General of Anambra State v Okeke* [29]. In a nut shell, both cases laid it down that a defendant who raised a preliminary objection to an action was still entitled to defend the case on merit if his objection failed.

[28] (1990) 2 NWLR (pt. 133) 458.
[29] (2002) 12 NWLR (pt. 782) 572.

Therefore, the course the court of appeal and the supreme court should have taken in the *Inakoju's* case was to have observed and guided, perhaps with primitive oblations, rights and ceremonies, the principles as encapsulated by the same court in *Mohammed's* and *Okeke's* cases *(supra)* in accordance with the doctrine of *Stare decisis.* Indeed Oguntade JSC, (as he then was) was deeply troubled by the approach of his learned brother to the matter which clearly negated the principles already laid down in the two cases. In a powerful dissent, His lordship stated thus:

> "It is my belief that no case is truly settled until it is fairly and justly adjudicated upon. This gives the winner joy and the loser a satisfaction that he has had his day in court. But when a loser suffers a judgment without being given an opportunity to offer one world in defence of the case against him, the court is indirectly encouraging the loser to harbour bitterness in the notion that he has been out-manoeuvred by his adversary". [30]

On the implication of the majority decision, his lordship stated further:

> "The Supreme Court is the last court in Nigeria. Our decisions in appeals are binding over all the courts in Nigeria on the principles decided. The duty on us is onerous. The principle in a case wrongly decided quickly, spreads across the system and is repeated from court to court and difficult to recall. This flows from the doctrine of precedent and what lawyers call *stare decisis.* The doctrine ensures that the decisions in courts are stable and easy to predict. Lawyers are thus better positioned to give suitable advice to their clients in the light of the position of the law. When we give judgments that bear no semblance of affinity with previous case law and for no good reason, this court is exposed to ridicule and contempt. The international community thinks little of us as a court." [31]

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[30] Per Oguntade, J.S.C. (Dissenting) in Inakoju v Adeleke.op. cit at pages 748.

[31] Ibid at pg. 748 - 749, paras. F-H:

IMPLICATION OF THE DEPARTURE

The new dimension introduced by the apex court, no doubt, has its own obvious implication. In *Bakare v Apena*[32], Aniagolu JSC, (as he then was) clamour for the need for judges to have a duty at all times to pursue justice in accordance with procedures laid down by the law and the constitution. Failure to abide by procedure falls short from the attainment of justice. The image of the judiciary as the last hope of common man becomes deflated, as the end the courts portend to serve becomes the means itself. The result is that the general public ends up with a low image of the judiciary.

The majority decision in *Inakoju v Adeleke* (*supra)* has introduced uncertainty into our law in view of the earlier decision of the Supreme Court in *Mohammed v Olawumi* [33] and *A.G Anambra v Okeke*[34] which has not been overruled. The uncertainty becomes more pronounced when the recent supreme court decision in *Osakue v Federal College of Education (technical) Asaba (supra)* is considered, it was held in that case that the lower court where faced with two conflicting decision of the supreme court, the latter or latest will or should apply and must be followed if the circumstances are the same[35]. Therefore the decision in *Inkoju v Adeleke* which was decided in the year *2007* will likely be considered by the lower court as the law, when faced with similar circumstances, rather than the decision in *Mohammed v Olawumi* and *A.G Anambra v Okeke* decided in the year *1990* and *2002* respectively. The uncertainty will remain with us at least until the Supreme Court has another opportunity to revisit the issue.[36]

CONCLUSION

One disturbing concern, having regards to Nigeria Nascent democracy is the frightening situation in her *corpus juris*, largely occasioned by the varnishing loyalty to the binding force of precedents. The value of law cannot be overplayed in any democratic governance; law is

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[32] (1986) NWLR (pt.33) 1 at pg 30 paras A - B.
[33] (1990) 2 NWLR (pt. 133) 458.
[34] (2002) 12 NWLR (pt. 782) 572.
[35] Osakue V. Federal College of Education.op.cit at pg. 37.
[36] With due respect to our erudite jurist, that decision is a 'rotten tooth' within the dentition, which if not carefully treated or better still extracted, may have a tendency of subjecting the mouth to a state of perpetual and consistent 'chew' with caution.

the cornerstone and safety pin for any democracy. Therefore there is need for the law to be certain. A regime of uncertain legal environment cannot foster democratic and economic growth. Foreign direct investment, as clamoured for by successive government can only and rapidly be achievable in an atmosphere of legal certainty. Investors need advice on the law certainly before investing. The vagaries of an uncertain legal environment will not drawn investors to our economy. There is therefore a definite need, for re- orientation of attitude of judges in regard to their obligation to the doctrine of *stare decisis.* The wheels of justice may grind slowly but they surely grind.

Finally, Benjamin Cardozo stated thus:

> "It will not do to decide the same question one way between one set of litigants and the opposite way between another. 'If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look for the same judgment today if I am the plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights.' Adherence to precedent must be the rule rather than the exception if litigants are to have faith in the even- handed administration of justice in the courts."[37]

[37] See Benjamin N. Cardozo, The Nature of the judicial process (New Haven and London: Yale University press, 1921) at pg. 33- 34.