

SUPREME COURT OF NIGERIA
8TH JULY, 1994. SC. 328/1990
CORAM: M. L. UWAI, E. O. OGWUEGBU,
S. U. ONU, Y. O. ADIO, A. I. IGUH, JJSC

BENSON AKINTOLA SUNMONU DEFENDANTS/APPELLANTS
IGE & 3 OTHERS
MURITALA OLOSUNDE PARTY SOUGHT TO BE JOINED
AS 5TH DEFENDANT
AND

BABATUNDE AKINWUNMI FARINDE PLAINTIFF/RESPONDENT
AND
ALHAJI F.A.O. AKINYEMI & 5 OTHERS
(For and on behalf of themselves and as.. INTERVENERS/RESPONDENTS
accredited Representatives of
Igando Community/People)

PRACTICE & PROCEDURE - Joinder of parties application - What a trial court should consider - Whether to wade into full merit of the case.

PRACTICE & PROCEDURE - Joinder of parties application - Whether applicant's presence is necessary - Need to establish an interest in the subject matter of the action.

PRACTICE & PROCEDURE - Joinder of parties - Applicant to show that failure to join him will result in the claim not being effectually determined

PRACTICE & PROCEDURE- Intervener - Key test for joining an intervener - Is whether he will directly be affected by the judgment.

PRACTICE & PROCEDURE - Joinder of intervener - Where prima facie interest in land in dispute is established by interveners- Whether they were properly joined in the action.

FACTS

The Plaintiff/Respondent sued the Defendants/Appellants before the Ikeja High Court claiming declaration of title, perpetual injunction and damages for trespass in respect of the land in dispute. The plaintiff derived his title to the land in dispute from the interveners who are the lawful attorneys and accredited representatives of the Igando Community. The Defendants counter-claimed against the plaintiff in respect of the entire Igando Community land subject matter of a previous suit determined by the Supreme Court, and not just the portion sold to the plaintiff. The interveners then brought an application for joinder as co-plaintiffs for an order of court to defend the said counter-claim so as to defend their rights and interest in respect of the land in dispute. They also sought to join somebody else as 5th defendant. Plaintiff did not oppose the application but the Defendants stoutly resisted the prayer for joinder.

The learned trial Judge granted the application as prayed. Defendant's appeal to the Court of Appeal was dismissed, though that on joinder of 5th defendant was allowed. Being dissatisfied, the Defendants have further appealed to the Supreme Court to determine whether the joinder of the interveners as plaintiffs in this case is justifiable and permissible in law. Several other issues raised by the Appellant relating to issue estoppel and res judicata were found to be premature at this stage of considering the question of joinder.

HELD (Unanimously dismissing the appeal)***1. Joinder of Parties - What to consider***

A trial court hearing an application for joinder of parties, should only consider whether a prima facie case for joinder has been established by the applicant and should not wade into the merits of the case. (P413 L.9)

2. Necessity of a party's presence

Where, the presence of a party is not necessary for the effectual and complete adjudication of the matter before the court, there will be no jurisdiction under the provisions of Order 13 Rule 19 to order a joinder. But where an applicant seeking to be joined established that he has an interest in the subject matter of the action and/or in the eventual result of such an action, the application for joinder may be granted. (P415 L.14)

3. What a party seeking to be joined must show

For an application under Order 13 Rule 19 to be granted, the applicant must show not only that he is a necessary party to the action but also that

failure to join him will result in the claim before the court not being effectually and completely determined. (P415 L.29)

4. Key test for joinder of an intervener

It may therefore be stated that a key test for the joinder of an intervener whether as a plaintiff or a defendant is whether he will be directly affected by the judgment of the court in the suit by curtailing or interfering with the enjoyment of his legal rights. This is because the only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. (P416 L.22)

5. Avoidance of multiplicity of actions

The obvious and reasonable course of action for the interveners was to apply for joinder to defend the counter-claim and thereby avoid multiplicity of actions and any question of issue estoppel per rem judicatam in future. (P420 L.26)

6. Joinder of the interveners - Whether proper

The interveners having established a prima facie title to, and interest in respect of the vast area of land now put in issue by the defendants, are entitled to be regarded as “*necessary parties*” to the suit and were therefore properly joined in the action. (P420 L.30)

NOTABLE POINTS OF INTEREST

IGUH JSC

1. Joinder of parties - Court’s discretion

It must however be observed that the power of a trial Judge to join a person, whether as a plaintiff or defendant, to a suit is entirely discretionary and, except he proceeded to make such an order for joinder upon wrong principles, an appeal court will be reluctant to interfere with his order. But it is a discretion which, like other judicial discretion, must be exercised judiciously (P414 L.34)

2. A necessary party to a proceeding

A “*necessary party*” to a proceeding has been said to be a party whose

presence is essential for the effectual and complete determination of the claim before the court. It is the party in the absence of whom the claim cannot be effectually and completely determined. (P415 L. 10)

3. Whether a plaintiff can claim title to a land he sold

5 “The first point I desire to make is that there can be no doubt that a plaintiff who claims to have sold his land to a purchaser cannot obviously turn around to claim a declaration of title to the very land he has sold.” (P419 L.21)

10 **4. The doctrine of standing by**

The doctrine is well recognised in law that if one knowingly stands by and allows another to do an act in which his interest is involved in a particular way but which he could have prevented at the time, one must be held bound by such an act so done with his acquiescence. One cannot therefore
15 be heard to complain that he was not a party to such an act under such circumstances. (P421 L.20)

5. Need for no conflict of interest between co-plaintiffs

It is, no doubt, desirable that intending co-plaintiffs should make sure that
20 no conflict of interest nor any division of opinion between the original plaintiff and themselves is likely to arise, for co-plaintiffs will not be allowed to sever or take inconsistent steps and ought to be represented at the trial by the same solicitor or counsel. (P421 L.30)

25 **OGWUEGBU JSC**

6. Effect of limitation of action on the issue of joinder

If a cause of action is statute barred or has abated, a joinder cannot resuscitate it. Leave will also not be granted to add or substitute a plaintiff where
30 to do so would prevent the defendant from relying on a statute of limitation. (P424L.35)

7. When to refuse order of joinder

Where an order of joinder will have the effect of adding a new cause of
35 action, the court may refuse the order. (P425 L.10)

REPRESENTATION

P.O. Jimoh - Lasisi Esq., Messrs J.K. Odumbaku and E.O. Adewunmi for the Appellants.

Chief A.O. Adefala for the Interveners/Respondents.
Chief A. Akiyode & Mrs. Okoricha for the Respondents

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CASES REFERRED TO

- Amon v. Raphael Tuck and Sons Ltd (1956) 1 All E.R. 273
 Peenok Investments Ltd. v. Hotel Presidential Ltd. (1982) 12 S.C. 1 at 35
 - 55
 Adegbenro v. Attorney- General of the Federation and others (1960) 1 All N.L.R. 138 10
 Okafor v. Nnaife (1973) 3 S.C. 85
 Awani v. Erejuwa 11 (1976) 11 S.C. 307 Re Lord Cable (deceased) (1976) 3 Ch.
 C.417 15
 Uku v. Okumagba (1974) 3 S.C. 35
 Ntiashagwo v. Amodu (1959) W.R.N.L.R. 273
 Egonu v. Egonu (1973) 3 E.C.S.L.R. (Part 2) 664
 Montgomery v. Foy Morgan and Company (1895) 2 W.B.D. 321, 324
 Maibell v. Akwel (1952) 12 W. A.C.A. 143 20
 Miguel Sanchez and Company as S.L. v. Result (Owners) Nello Simoni Ltd.
 Third part (1958) probate 174
 Aromire v. Awoyemi (1972) 1 All N.L.R. (Part 1) 101 at 108
 Dollfus Miegete Compagnie S A. v. Bank of England (1950) 2 All E.R. 25
 605 at 608
 Norris v. Beazley (1877) 2 C.P.D. 80 65
 Lajumoke v. Doherty (1969) 1 N.M.L.R. 281
 Sanyaolu v. Coker (1983) 3 SC. 124 at 163 - 164
 Re Lart, Wilkinson v. Blades (1896) 2 Ch. 788 30
 Farquharson v. Seton 5 Russ. 45
 Raleigh v. Goschen (1898) 1 Ch. 81
 Moser v. Marsden (1892) 1 Ch. 487
 Kuusu v. Udom (1990) 1 NWLR (Part 127) 421 at 431
 Chinwendu v. Mbamali (1980) 3 - 4 SC. 31 at pages 56 - 57 35
 Yoye v. Olubode & Ors (1974) 10 SC. 209 at 221 - 222
 Chief A.O. Ukut v. D.E. Okumagba (1974) 3 S.C. 35

RULES REFERRED TO

Lagos State High Court (Civil Procedure) Rules, 1972 O. 13 rr.14, 15, & 20, O. 13 r. 19

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LEAD JUDGMENT BY IGUH JSC

10 The issue that calls for decision in this appeal is whether the joinder of the interveners as the 2nd-7th plaintiffs in this case is justifiable or permissible in law.

By a writ of summons filed on the 3rd day of October, 1984 in the Ikeja Judicial Division of the High Court of Justice, Lagos State, the plaintiff sued the defendants, who are now appellants herein claiming as follows:-

15 “1. Declaration that the plaintiff is entitled to use and occupation to the exclusion of the defendants and their agents of all that area of land described in plan No. OGEK894B/77 measuring 7779.883 square metres situate, lying and being at IGANDO VILLAGE which is more described on Plan No. OGE/894B/77 (a copy of which is attached herewith and marked Annexure A).

2. Perpetual injunction restraining the defendants their servants and agents from further acts of trespass on the aforesaid land described in Annexure A.

3. Damages suffered by the Plaintiff as a result of the Defendants’ trespass to part of the aforesaid land described in Annexure A.”

25 The damages for the aforesaid trespass claimed was in paragraph 17 of the plaintiff’s statement of claim fixed at N10,000.00 described

“as special damages being cost of development destroyed and N1,000.00 general damages”

30 It is not in dispute that the plaintiff derived his title to the land in dispute by purchase from the interveners who are the lawful attorneys and the accredited representatives of the Igando people or community. In his statement of claim, the plaintiff pleaded as follows:-

35 “3. The plaintiff came into possession of the said land by virtue of a sale to him of the said land by the Attorneys of Osumba/Oyere/Beju/Oro-Otan Animaha families of Igando village. (The plaintiff will rely on the power of Attorney and the Donors of the power of attorney registered at page 88 No. 88 in volume 1623 at Lagos State Registry. The plaintiff will also rely on his

purchase receipt).

4. *The plaintiffs vendors derived their title as members of the Osumbal/Oyero/Beku, Oro-Otan-Onimaba families of Igando village in Lagos State, which family has been the owners of the said area of land from time 5 immemorial.*

5. *In the Supreme Court Judgment dated the 6th of June, 1903 in a suit between Olosunde and Chief Onimaba as the plaintiffs and Ilo, Odu and Arishe and Olorunfunmi as the defendants, the plaintiffs ancestors in the said suit were declared the owners of all the land known as Igando Forest (which 10 forms part of the land now in dispute). The said judgment followed the withdrawal of the defendants from their claim to the land on the 8th of May, 1903. The plaintiff will rely on the judgment and the proceedings of this suit at the trial of this case).*

7. *The Donors of the power of Attorney mentioned in paragraph 3 will testify 15 as to the genealogical tree of the earlier settlers.*

9. *The Attorney to the original owners of the land in dispute Igando people) and with approval of the Onigando of Igondo have sold the land in dispute to the plaintiff who later invited a surveyor to survey the land.*

10. *The Donors of the power of Attorney constitute a cross-section of what 20 is now known as Igando community.*

13. *The Attorneys of the Original owners of the land in dispute executed a Deed of Conveyance in favour of the plaintiff on the. 23rd day of March, 1978 and the Deed of Conveyance was registered as No. 36 at page 36 in 25 volume 1691 of the Lagos Land Registry in the office at Lagos. (The plaintiff will rely at the trial on the Deed of Conveyance).*

The 1st to 3rd defendants who are the representatives of the Beku Onimaba family of Igando with the 4th defendant who claimed to be their tenant on part of the land in dispute filed a joint statement of defence in which they pleaded as follows:-

“4. *The 1st to 3rd defendants aver that they are the accredited representa- 30 tives of the Beku Onimaba Family Igando and that the 4th defendant is a tenant of the said family in respect of a parcel of land being portion of Beku Onimaba Family Land Igando.*

5. *The defendants aver that the land subject matter of this case is portion 35 of the land in dispute in suit No. IK/76/68 Amuda Dada and ors. v. Bakare Sodeke and ors. in the High Court of Lagos State.*

6. In the said suit, the plaintiffs therein claimed a declaration of forfeiture to the whole of Igando lands and for an injunction to restrain the defendants from disturbing the plaintiffs on the said land.

7. The plaintiffs sued for and on behalf of the Igando Community (or people) and the 1st to 4th defendants therein defended on behalf of the Beku Onimoba Family and each party pleaded its traditional history in its pleading.

22. In as much as the plaintiff relies on the sale on him of the land in suit as pleaded in the Statement of Claim the defendants contend that the sale is void and that the plaintiff has no right, title and/or interest in the land allegedly bought by him from the attorneys of the "Osumba/Oyero/Beku/Oro-Otan Onimaba Families.

WHEREFORE the defendant prays this Honourable Court to dismiss the claim."

The 1st - 3rd defendants then counter-claimed against the plaintiff, his servants and/or agents. This is in respect of the entire Igando community land, the subject matter of suits Nos. IK/76/68 and SC. 171/75 of which the land claimed by the plaintiff in his own action is only a part. The said counterclaim is in the following terms –

"24. The defendants aver that the plaintiff and the said attorneys who sold the land in dispute to him have trespassed on the said land and threaten to continue to do so.

25. The 1st to 3rd defendants as accredited representatives of the Beku Onimaba Family, by way of counter-claim, claim against the plaintiff, his servants and/or agents an Order of Injunction restraining them from interfering in any manner whatsoever with their possession and right to possession of any portion of the land subject matter of Suit Nos. IK/76/68 and SC. 171/75."

Following this development, the interveners brought an application for joinder as co-plaintiffs before the trial court and for an order of court to prosecute and/or defend the said counter-claim for themselves and as the accredited representatives of the Igando community. They also prayed for all order that one Muritala Olosunde be joined as co-defendant in the suit. It is perhaps desirable for a better appreciation of the application to reproduce the prayers which were for-

"(1) An Order that the Applicants be added as PLAINTIFFS and to

prosecute and/or defend the counter-claim in this case for and on behalf of themselves and as Accredited Representatives of IGANDO COMMUNITY/PEOPLE.

(2) An order granting the added Plaintiffs to claim against the Defendants in the following terms:

(a) Declaration that the entire Igando Land belongs under native customary law to Igando people and consequently any court judgment order or decision obtained in respect of any portion of Igando land is not binding on Igando People unless such legal action was instituted and/or defended for and on behalf of and as Accredited Representatives of Igando People/Community.

(b) Setting aside as null and void and of no legal effect the power of Attorney dated 5/4/75 and registered as No. 35/35/1486 purportedly executed in favour of the Defendants in respect of Igando Community land

(c) That the 1st, 2nd and 3rd Defendants are not members of one and the same family but of 3 separate and distinct families, namely Beku, Sodeke and Olosunde respectively.

(d) A declaration that the entire land covered by Survey Plan No. AL/70/68 is owned by the entire Igando Community People of which the four principal families are Osunba Oro-Otan, Onimaba, Oyero and Beku families.

(e) Declaring null and void and of no effect any alienation of Igando Community land purportedly made by any of the Defendants.

(3) An Order that Muritala Olosunde be added as a co-defendant in this case as he was one of the donees of the purported Power of Attorney dated 5/4/75 and registered as 35/35/1486"

This application was brought pursuant to the provisions of Order 13 Rules 14, 15 and 20 of the High Court of Lagos State (Civil Procedure) Rules, 1972. The basis on which the interveners sought to be joined as co-plaintiffs in the suit was mainly to enable them defend their interest in the defendants' counterclaim for injunction against "*the plaintiff, his servants and/or agents.*" This is clearly contained in the affidavit in support of their application. They further stressed the facts that they were the accredited representatives of the entire Igando Community, that the Igando people were the owners of the entire land comprised in the defendants' counter-claim and

that the said counter-claim, as has already been observed, is in respect of not only the portion of their Igando community land claimed by the plaintiff but covered the entire Igando community land which was the subject matter of the action in suit No. IK/76/69 and No. SC. 171/75. They asserted that by a judgment of the Supreme Court of Nigeria delivered on the 18th May, 1903, ownership of the Igando community land now put in issue in the defendants' counter claim was confirmed in favour of one Olosunde, the plaintiff therein representing the entire Igando people. They finally argued that in as much as they would be bound by the eventual judgment in the counter-claim if they folded their hands and merely testified as the plaintiff's witnesses, it was prudent and in the overall interest of justice that they be joined in the suit as co-plaintiffs to defend their rights and interest in respect of the land in issue.

The plaintiff did not oppose the application but the defendants stoutly resisted the prayer for joinder. In their counter-affidavit in opposition, the defendants deposed *inter alia* as follows:

- “3. That in Suit No. IK/76/68 the representatives of Igando Community sued me and three other members of Beku-Onimaba family over a large parcel of land including the land in dispute in this case.
4. That the present applicants herein are the representatives in interest and/or privies in blood of the plaintiff in Suit No. IK/76/68 between Amusa Dada, Yekini Oyero, Ashimi Orootan and Bakare Sodeke, Shiitu Sodeke, Yakubu Sodeke, John Bankole Sodeke, Muda Anwoyi Pelu and Asani Pelu.
5. That the defendants in suit No. IK/76/68 are members of Beku-Onimaba family who represented the said family in that suit.
6. That our family Beku-Onimaba family are the owners of all Igando land which includes the land- now in dispute in the case.
7. That the claims of the Plaintiffs in suit No. IK/76/68 who are predecessors in title of the applicants were dismissed on 30th April, 1974 by Adeoba J.
8. That certified true copy of the said judgment is exhibited hereto and marked Exhibit JB1.
9. That the Plaintiffs in IK/76/68 appealed against the said judgment and their appeal was dismissed by the Supreme Court on 4th June, 1976.
10. That the certified true copy of the judgment of the Supreme Court is exhibited hereto and marked Exhibit JB2.
11. That the said judgment of the Supreme Court is reported and cited as

(1976) 6 S.C. 1 Amusa Dada & ors and Bakare Sodeke and others.

12. That the present applicants' claims formulated on their motion paper are estopped by the judgment in exhibit JBI and JB2."

It is abundantly clear that the defendants' contentions in opposition to the application for joinder by the interveners are *inter alia* as follows:-

(i) That in suit No. IK/76/68, the representatives of the Igando community as plaintiffs sued the 2nd defendant herein with three other members of the Beku Onimaba family over a large parcel of land of which the land claimed by the plaintiff in the present action is only a part.

(ii) That the interveners are the privies or descendants of the plaintiffs in the said suit No. IK/76/68 whilst the present defendants are the privies or descendants of the Beku Onimaba family who were the defendants in the said suit No. IK. 76/68.

(iii) That the plaintiffs' claims for title, forfeiture and injunction on behalf of the Igando community were in the said suit No. IK/76/68 on the 30th April, 1974 dismissed by the court per Exhibit JBI.

(iv) That the appeal by the Igando people against the said judgment was on the 4th June, 1976 further dismissed by the Supreme Court per Exhibit JB.2 in Appeal No. SC.171/75.

(v) That the Beku Onimaba family are the owners of the entire Igando land which includes the land claimed by the plaintiff.

(vi) That the interveners are not a necessary party in the existing suit.

(vii) That the interveners have no interest in respect of the land in dispute in view of Exhibit JB.1 and JB.2.

(viii) That the interveners having divested themselves of their legal interest in the land they sold to the plaintiff cannot now claim any interest thereto.

These are deposed to in their counter-affidavits in opposition to the application. The defendants, relying on the doctrines of issue estoppel and *res judicata* forcefully argued that for as long as the judgments in suits IK/76/68 and SC.171/75 stood, there was no basis for the interveners to be joined in the present suit as this would allow them to contest the issue of title to the land all over again.

It is perhaps necessary to state that the interveners in their reply to the defendants' counter-affidavits stressed, and this is fully supported by Exhibit JB.1 and JB.2, that although the plaintiffs in suit No. IK/76/68 and Appeal No. SC.171/75 appeared to have sued on behalf of the Igando community

both the trial court and the Supreme Court found as a fact that they in fact sued on behalf of the descendants of Kudaki and Otegbola family only and not on behalf of the Igando community. The defendants in that suit were admittedly members of the family of Beku Onimaba who are also the defendants in the present suit. These are admitted in paragraph 8 of the defendants' further affidavit of the 3rd December, 1986 filed in the proceedings. The interveners therefore argued that it was the plaintiffs, that is to say, the family of Kudaki and Otegbola that lost the action in suit No. 1K/76/86 and Appeal No. SC.171/75 and not the Igando community. They also drew attention to the fact that the plaintiffs lost in that action on the ground that they did not adduce sufficient acts of possession over the land in dispute to the exclusion of the rest of the families of Igando, including the present defendants. They concluded by asserting that the said defendants in suit No. 1K/76/68 did not counter-claim for any relief against the Plaintiffs therein and therefore had no decree made in their favour. In particular, there was no finding that the said defendants were the owners of the Igando community-land. They also asserted that no conflict could ever arise in the evidence of all the plaintiffs in their defence to the counter-claims and that the joinder of the interveners as co-plaintiffs to defend the counter-claim was vital to enable the court to adjudicate effectually and completely on the issues that arose therefrom.

In a reserved ruling after the hearing of the application, the learned trial Judge, Olugbani J., granted the same as prayed. The defendants being dissatisfied with this order lodged an appeal to the Court of Appeal which in a unanimous decision allowed the appeal in respect of the joinder of Muritala Olosunde as a co-defendant, The Court of Appeal however dismissed the appeal in respect of the joinder of the interveners as co-plaintiffs. This further appeal is against the said decision of the Court of Appeal.

Learned counsel for the parties filed and exchanged their written briefs of arguments as provided by the Rules of this Court. At the hearing of the appeal before us on the 11th day of April, 1994 both learned counsel adopted their respective briefs but made no oral submissions in amplification thereof.

The defendants, who are the appellants herein, in their brief formulated the following issues for the determination of this court, namely:-
"(i) Whether the interveners whose predecessors in title had their claims dismissed in Suit No. 1K/76/68 and affirmed by the Supreme Court in Appeal No. SC. 171/75 can re-open those claims by way of joinder as they did in

this suit.

(ii) Whether the learned Justices of Appeal Court were right when they held that the doctrine of issue estoppel and res judicata cannot be raised to resist an application for joinder.

(iii) Whether the Court of Appeal has the jurisdiction to make a finding that the question of issue estoppel and res judicata cannot be disposed of at the stage of hearing the application for joinder when there was no cross-appeal by the interveners challenging the decision of the High Court deciding the point of issue estoppel and res judicata in favour of the interveners at that stage by dismissing same. 5

(iv) Whether the present application for joinder by the interveners was not an abuse of process of the court having regard to earlier refusals of application for joinder made by the interveners and their privies and the present defendants/appellants and their privies. 10

(v) Whether the Interveners are necessary parties who ought to be joined as parties in this suit, when the Interveners have already divested their title in favour of the plaintiff in the land subject matter of the plaintiffs claims. " 15

The interveners, for their part, who are the respondents in this appeal identified two issues for determination. In their view, the five issues for determination as formulated by the appellants boil down to two, namely:- 20

"(1) Whether in considering the Respondents' Motion For Joinder, the Court should resolve the question of Estoppel per Rem Judicatam at the expense of whether or not the Applicants were Parties necessary to be joined in the determination of issues involved in the counter-claim. This covers 25

Issues (ii), (iii) and (v).

(2) Whether or not without pleadings having been filed, the Issue of Estoppel Per Rem Judicatam could be determined in limine when no decree of title of ownership had been made in favour of either party in this case. This covers Issues (i) and (iv)." 30

It is necessary to emphasize that the only point in issue before us in this appeal is whether or not the respondents are entitled to be joined as co-plaintiffs in this action between the plaintiff and the defendants/appellants. But the appellants in the formulation of their five issues for the determination of this court elaborately delved into various issues which the trial court is 35

bound to adjudicate upon in the interest of a just and final determination of

the main suit. They made material submissions in their brief and argued at length on issues that clearly went into the merits of the substantive suit even though the only issue before the court is merely that of joinder of the respondents. Matters like issue estoppel and res judicata and whether or not they applied or were established in this case, having regard to the decisions in suits Nos. 1K/76/68 and SC. 171/75, were identified as issues for determination and argued upon in extenso in the brief even though they constituted the main issues for determination in the substantive suit. Copious other judgments and rulings were also made the subject matter of these issues for the interpretation of this court together with the real capacity in which the parties to those suits sued or were sued irrespective of whatever were expressed on the claims and whether the parties and the land in dispute in the various cases relied upon were the same as those of the present suit.

A close study of the first four issues raised by the appellants relate substantially to matters above mentioned which more properly constitute issues for determination in the substantive suit by the trial court. Accordingly it will be undesirable at this stage for this court to make any pronouncements or comments regarding those pleas. I therefore propose to confine myself to the only issue before this court in this appeal which is whether or not the trial court and the court below were right to have held that the respondents were properly joined as co-plaintiffs in the suit.

I must however not be understood as saying that issues of estoppel per rem judicatam or such allied matters above-mentioned may never in appropriate cases be issues for consideration in an application for joinder. I make no such proposition. Clearly in appropriate cases, they may be properly raised and considered. The point I desire to make is that it is sufficient, on the question of the evidential burden of proof, that the trial court hearing such an application for joinder of parties should only confine itself to whether there is a prima facie case for joinder but should not be involved at that stage of the proceedings with the merits of the substantive case. And so, in the case of Jia Enterprises Electrical Ltd. v. British Commonwealth Insurance Co. Ltd., In Re: British and French Bank Ltd reported in Volume 9, Digest of the Supreme Court Cases. 1956 - 84 at Page 596. Unworth F.J., delivering the judgment of this Court on the 12th March, 1962 in Appeal No. FSC.328/1960 unmistakably laid down this proposition of law as follows:-

"It is apparent that the present appellants made an application in

the course of this suit to be joined as plaintiffs in the action. On the hearing of the application the Judge would have to consider whether the case was an appropriate one for joinder, in accordance with well established principles, but one would not have expected him on such an application to have gone into the issue of insurable interest beyond deciding whether there was a prima facie case trial.....” 5

I can only say that I am respectfully in full agreement with the learned Unsworth, F.J., in this proposition of the law. I am therefore of the view that a trial court hearing an application for joinder of parties, should only consider whether a prima facie case for joinder has been established by the applicant and should not wade into the full merits of the case. 10

I am far from satisfied that the present case is an appropriate one in which it is desirable at this stage to make any authoritative comments in respect of the pleas in issue in the face of other uncontroversial facts on record upon which the issue of joinder under consideration may be determined. Accordingly I shall confine myself to the appellants' issue number five which adequately covers issue number one as formulated by the respondents. This issue, in effect, questions whether the respondents are necessary parties who ought to be joined as co-plaintiffs in the suit. It is my view that this issue is more than sufficient to determine this appeal. 15 20

Although the respondents made their application to the High Court under the provisions of Order 13 Rules 14, 15 and 20, the correct Rule is Order 13 Rule 19 of the High Court of Lagos State (Civil Procedure) Rules, 1972 which provides as follows:-

“(1) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. 25

(2) The court or a Judge in chambers may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or Judge in chambers to be just, 30

order that the names of any parties whether plaintiff or defendant, who ought to have been joined, or whose presence before the court is necessary to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.” 35

The above rule was construed by this court in Chief A.G.Uju and others v. D.E Okumagba and others (1974) 3 S.C. 35 where Udoma J.S.C. had this to say -

“The beginning and end of the matter is that the court has jurisdiction to
5 join a person whose presence is necessary for the prescribed purpose and has no jurisdiction under the rule to join a person whose presence is not necessary for the purpose.”

It seems to me clear that the prescribed purpose referred to by the learned Udoma, J.S.C. is that of enabling “the court effectually and
10 completely to adjudicate upon and settle all questions” as aforementioned. See too Oyediji (Mogaji) and Another v. Okunlola Ishola Fabunmi & Another, In Re Yesufu Faleke (Mogaji) (1986) 2 S.C. 431 at 449 where Nnamani, J.S.C., in explaining the rationale behind the issue under consideration observed as follows – “the aim is to put an end to litigation and
15 not to have, as Lord Denning said in Re Vanderville Trusts (1969) 3 All E.R. 496 at 499, ‘two parallel proceedings in which the self-same issue was raised, leading to different and inconsistent results’

One other objective in ruling that a person is a necessary party is for him were bound by the result of the litigation. As Devlin, J., put it in Amon v. Raphael
20 Tuck and Sons Ltd. (1956) 1 All E.R. 273-

“The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party.”

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The principles governing the intervention of third parties in a suit whether as plaintiffs or defendants have been settled by numerous authorities both in England and in this country. See Amcin v. Raphael Tuck and Sons Ltd. (1956) 1 All E.R. 273, Peenok Investments Ltd. v. Hotel
30 Presidential Ltd. (1982) 12 S.C. at 35 - 55 per Idigbe, J.S.C. and at 92 - 105 per Eso, J.S.C., Adegbenro v. Attorney-General of the Federation and others (1960) 1 All N.L.R. 431, Okiare v. Government of Western Nigeria (1971) 1 All N.L.R. 138, Okafor v. Nnaife (1973) 3 S.C. 85, Awani v. Erejuwa 11 (1976) 11 S.C. 307, Re Lord cable
35 (deceased) (1976) 3 Ch. d. 417 etc. etc. It must however be observed that the power of a trial Judge to join a person, whether as a plaintiff or defendant, to a suit is entirely discretionary and, except he proceeded to make such an order for joinder upon wrong principles, an appeal court will be reluctant to interfere with his order. See Oyediji Akanbi Mogaji and

Another v. Okunlola Ishola Fabunmi and Another, supra, at 462. But it is a discretion which like other judicial discretions, must be exercised judiciously. It is however clear that for the court to exercise this discretion favourably under this Rule of court, the applicant must satisfy the court that he is a person who ought to have been joined in the suit in the first instance or that his presence before the court is necessary to enable such a court effectually and completely to adjudicate upon and settle all the issues involved in the cause. 5

A “*necessary party*” to a proceeding has been said to be a party whose presence is essential for the effectual and complete determination of the claim before the court. It is the party in the absence of whom the claim cannot be effectually and completely determined. See Oyedeji Akanbi (Mogaji) v. Fabunmi, supra 3t 475 per Karibi - Whyte, J.S.C. Where, however, the presence of a party is not necessary for the effectual and complete adjudication of the matter before the court, there will be no jurisdiction under the provisions of Order 13 Rule 19 to order a joinder. See Uku and others v. Okumagba and others (1974) 3 S.C. 35. But where an applicant seeking to be joined establishes that he has an interest in the subject matter of the action and/or in the eventual result of such an action, the application for joinder may be granted. See Ntiashagwo v. Amodu and Another (1959) W.R.N.L.R.M273 and Oyedeji Akanbi Mogaji v. Fabunmi, supra at 479. So, in Gurtner v. Circuit and others (1968) 2 O.B. 587, the Court of Appeal in England held, quite rightly in my view, that where the determination of an action between the parties would directly affect a third person’s legal right or his pecuniary interest, the courts had a discretion to order the third person to be added to the action on such terms as the court considered desirable so that all matters in dispute could be effectually and completely determined and adjudicated upon. It seems to me therefore, well settled that for an application under Order 13 Rule 19 to be granted, the applicant must show not only that he is a necessary party to the action but also that failure to join him will result in the claim before the court not being effectually and completely determined. See Peenok Investments Ltd. v. Hotel Presidential Ltd. supra. Where however all the facts before the court are sufficient for the effectual or complete determination of the claim between the parties before the court, the applicant cannot be a necessary party and his application for 10 15 20 25 30 35

joinder, not being necessary for the effectual and complete determination of the claim will be refused. See Egonu v. Egonu (1973) 3 E.C.S.L.R. (Part 2) 664., Montgomery v. Foy Morgan and Company (1895) 2 W.B.D. 321, 324 CA. and Isaac Marbell v. Richard Akwel (1952) 12 WACA 143.

The provisions of Order 15 Rule 6 of the Rules of the Supreme Court in England, Supreme Court Practice 1979, Vol. 1 at p.179 which to some extent are in *pari materia* with Order 13 Rule 19 of the High Court of Lagos (Civil Procedure) Rules 1972 were considered by Wilmer, J. in *“The Result” Miguel Sanchez and Company as S.L.v. Result (Owners), Nello Simoni Ltd, Third Party* (1958) Probate 174. In that case the learned Judge had this to say, namely-

“Having regard to the terms of the rule, it appears to me that the questions to be determined on this summons are these. First, is the cause or matter liable to be defeated by the non-joinder of the third parties as defendants?

This, I think, means in effect, is it possible for the court to adjudicate upon the cause of action set up by the plaintiffs, unless the third parties be added as defendants? Secondly, are the third parties persons who ought to have been joined as defendants in the first instance? Thirdly and alternatively, are the third parties persons, whose presence before the court as defendants will be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter.”

It may therefore be stated that a key test for the joinder of an intervener whether as a plaintiff or a defendant is whether he will be directly affected by the judgment of the court in the suit by curtailing or interfering with the enjoyment of his legal rights. This is because the only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. See Amon v. Raphael Tuck & Sons Ltd. *supra* at 287.

It must however be pointed out that the law appears also settled that the court will not generally compel a plaintiff to proceed against a party he has no desire to prosecute. See Aromire v. Awoyemi (1972) 1 All N.L.R. (part 1) 101 at 108 and Dolifus Miegete Compagune SA v. Bank of England (1950) 2 All E.R. 605 at 608. Denman, J. in upholding these principles of the law in Norris v. Beazley (1877) 2 S.CO.D. 80; 46 L.1.O.B. 169 has this to say-

“I am quite clear, however, that the court ought not to bring in any

person as defendant against whom the plaintiff does not desire to proceed unless a very strong case is made out, showing that in the particular case justice cannot be done without his being brought in"

So, too, in Lajumoke v. Doherty (1969) IN.M.L.R. 281, the Western State Court of Appeal per Eso, J.A., as he then was, made it clear that it was not laying down a rule that an intervener can never be joined against the wishes 5 of the plaintiff. He explained, and I am in full agreement with the learned Justice, that this could happen-

"(1) When the justice of the matter demands that the party has to be joined before the case can be properly determined or

(2) When the plaintiff's case or the defendant's case in the existing 10 action cannot be effectually and completely determined without the joinder."

Having examined the settled principles of law as they relate to joinder of parties, I will now endeavour to apply them to the appeal on hand. It will be necessary to consider whether or not the interveners are necessary parties 15 in the sense that their presence is essential for the effectual and complete determination of the claim before the Court and whether or not they established an interest in the subject matter of the action and/or in the eventual result of the action.

It has to be emphasized that the plaintiff's action against the defendants 20 is in respect of only a small piece or parcel of land described as two plots and measuring 7779.883 square metres. The said land was sold by the interveners for themselves and as the accredited representatives of the entire people of Igando with the approval of the Onigando of Igando who is the Oba and paramount traditional ruler of Igando people. The 25 interveners executed this sale by virtue of and as donees of a power of attorney executed on the 29th of July, 1977 and duly registered as No. 88 at page 88 in Volume 1623 of the Lands Registry in the office at Lagos. The donors of the said power of attorney are said to be the representatives of the principal families of Igando. It is the case of the interveners that 30 the Igando community whom they represent are the owners from time immemorial of the entire Igando community land. They claimed that by the judgment of the Supreme Court of Nigeria delivered on the 18th May, 1903, ownership of the said land was confirmed in favour of one Olosunde, the plaintiff therein, as representing the Igando people. This 35 is Exhibit B. The court in the said judgment declared as follows:-

I declare that the land in dispute is the property of the plaintiffs as representing the Igando people and I order that the defendants give up possession thereof to the plaintiffs"

It should be noted that the defendants in Exhibit B are the representatives of the Beku Onimaba family of Igando who incidentally are the defendants/ appellants in the present suit. The interveners referred to the judgments of courts in civil suits 19/61/917 and 19/1928, Exhibits C and D respectively. Judgment in Exhibit is as follows, namely –

10 *"The order of the court is that the plaintiff representing the Igando village to recover possession of the land to the East of the boundary as aforesaid"*

By Exhibit D, the court declared as follows -

15 *"It is difficult to arrive at the truth of the matter, but weighing all the evidence, I have come to the conclusion that the plaintiff does properly represent the Igando people and that Saka Dosumu is not a native of Igando"*

The interveners concluded by asserting that they are interested in the land in dispute which belongs to the Igando community whom they represent in the suit.

20 It has to be pointed out that the defendants did rely heavily on the Ikeja High Court Suit No. 1K/76/68. In that suit, according to the defendants, the representatives of Igando community sued their said family of Beku Onimaba for forfeiture and injunction over a large parcel of land including the land now in dispute and lost. The appeal against this judgment was dismissed by this court on the 4th June, 1976. Both judgments are Exhibits 25 JB. 1 and JB. 2 in these proceedings. The defendants then claimed that these judgments must operate as estoppel per rem judicatam against the interveners who are the representatives of the Igando community.

30 The interveners of Igando community on the other hand deposed that the plaintiffs in the said suit No. 1K/76/68 were in fact not the representatives of Igando. They asserted that the said plaintiffs prosecuted the action on behalf of the Kudaki and Otegbola families of Igando against the defendant's Beku Onimaba family. It is sufficient to observe that it appears ex facie there is considerable weight in this contention of the interveners in view of 35 the finding of the trial court as affirmed by this court as follows :-

"Although the plaintiffs took this action on behalf of those they claim to be Igando community, it is clear that they sue on behalf of the

descendants of Kudaki and Otegbola. There is no evidence that all other people of Igando except the 1st to 4th defendants descended from these two people. The plaintiff's evidence exclude the 1st to 4th defendants, who are also part of Igando community. This case seems to me to be one of a dispute between two families, the descendants of Kudaki and Otegbola on the one hand claiming an area of land against another family, the Beku Onimaba family on the other hand".

I will say no more about these judgments. This is to avoid the undesirable situation of making pronouncements at this stage of the proceedings that touch upon the merits of the substantive case or which may tend to determine the pleas of *issue estoppel* and *res judicata* which, wrongly in my view, have been vigorously raised and exhaustively canvassed by the parties in their briefs of argument before this court. It suffices to say that the interveners did in no mistakable terms assert their alleged title to, and interest in respect of all Igando lands.

The appellants have in their brief contended that in view of the fact that the interveners by Exhibit JB purported to have conveyed the two plots of land claimed by the original plaintiff, they cannot now be joined as co-plaintiffs or as parties at all when they have divested themselves of their interest in the said parcel of land.

"The first point I desire to make is that there can be no doubt that a plaintiff who claims to have sold his land to a purchaser cannot obviously turn around to claim a declaration of title to the very land he has sold". See Sanyaolu v. Coker (1983) 3 SC 124 at 163 - 164. Secondly, it must be appreciated that although the interveners applied to join as co-plaintiffs in the suit, they made it clear that the main reason for this action is to enable them to defend the defendants' counter-claim. Admittedly the original plaintiff sued the defendants in respect of his small piece or parcel of land. The defendants, however counter-claimed against the plaintiff, his servants and/or agents and sought a perpetual injunction restraining them from "interfering in any manner whatsoever with their possession and right to possession of any portion of the land, subject matter of suit No. IK/76/68 and SC. 171/75". In this regard, the Court of Appeal per Awogu, J.C.A. had this to say:-

"This (meaning the counter-claim) clearly put in issue more land than the plaintiffs sued for. If, as the interveners/respondents contend, they are the owner of the said land now put in issue, then they become necessary parties

for the purpose of defending their title to the area now in issue according to the defendants/appellants. The decision in Sanyaoluv, Coker (1983) 3 SC 124, cannot therefore apply as what is now in issue is not the very land sold to the plaintiff” (Words in brackets supplied)

5 I entirely agree with the above observations of the Court of Appeal which in my view cannot be faulted. A counter/claim is substantially a sort of cross-action; not merely a defence to the plaintiff’s claim. Although, therefore, the interveners applied to join in the suit, as co-plaintiffs, they were in effect and to all intents and
10 purposes joining in the suit as “*defendants*” in the counterclaim to defend the same. This was naturally without prejudice to whatever appropriate relief or reliefs they were entitled under our rules of court to claim against the defendants who would be “defendants” in such a counter-claim.

The position, therefore, would appear to be that the plaintiff filed an
15 action in respect of only two plots of land sold to him by the interveners representing the entire Igando community. The defendants of Beku and Onimaba family, as they were entitled to do, counter-claimed against the plaintiff, his servants and/or agents. In this counter-claim, they sought a perpetual injunction against them in respect of the vast area of land which
20 was the subject matter of suits Nos. 1K/76/68 and SC.171/75. The said vast areas of land included the two plots of land sold to the original plaintiff and in respect of which he filed his action.

The interveners claim that the said land which was the subject matter of suits Nos. 1K/76/68 and SC.171/75 is their land and prayed to be joined
25 as co-plaintiffs in the suit to defend the defendants’ counter-claim in respect of the vast area of land put in issue by the said counter-claim. It is my view that the obvious and reasonable course of action for the interveners was to apply for joinder to defend the counter-claim and thereby avoid multiplicity of actions and any question of issue estoppel per rem judicatam in future.
30 It also seems to me that the interveners having in my view established a prima facie title to, and interest in respect of the vast area of land now put in issue by the defendants, are entitled to be regarded as “*necessary parties*” to the suit and were therefore properly joined in the action. It is my further view that to deny them joinder will in effect amount to relegating them to the
35 background and allowing them to stand by and watch their battle fought by the plaintiff who is a stranger in the contest, a situation which cannot be in

the best interest of justice. This is because the said interveners at all events shall be bound by the result of the action.

My above observations would appear to find some support in the decision of the West African Court of Appeal in the case of Isaac Matbell v. Richard Akwei (1952) 14 W.A.C.A. 143 at 145 where it was observed thus – *“It is obvious that the appellant was vitally interested in the result of the case before Smith, J. It was the validity of the title he had conveyed to Faris which was in issue in that case, and although the joinder under Order 3 Rule 5 is discretionary, we have no doubt, if an application to be joined as a defendant had been made by him, that it would have been granted by Smith, J.”*

It has been repeatedly held by this court and the courts in England that if a person was content to stand-by and see his battle fought by some body else in the same interest, he is bound by the result, and should not be allowed to reopen the case. As Lord Peazance said in Wytcherley v. Andrews L.R. Courts of Probate and Divorce, vol. 2 at Page 329-

“That principle is founded on justice and common sense” The court looks at substantial justice and that which right reason requires.”

I am in respectful agreement with the above proposition of law which I fully endorse as sound. The doctrine is well recognised in law that if one knowingly stands by and allows another to do an act in which his interest is involved in a particular way but which he could have prevented at the time, one must be held bound by such an act so done with his acquiescence. One cannot therefore be heard to complain that he was not a party to such an act under such circumstances. See too Re Lart, Wilkinson v. Blades (1896) 2 Ch. 788. and Farguharson v. Seton 5 Russ. 45.

It was submitted on behalf of the appellants that the substantive case cannot be conveniently disposed of with the interveners joined in the suit particularly as the original plaintiff and the said interveners seem to be represented by separate counsel. It is, no doubt, desirable that intending co-plaintiffs should make sure that no conflict of interest nor any division of opinion between the original plaintiff and themselves is likely to arise, for co-plaintiffs will not be allowed to sever or take inconsistent steps and ought to be represented at the trial by the same solicitor or counsel. See Re Matthews (1905) 2 Ch. 460 and Re Wright (1895) 2 Ch. 747. In the present case, however, it is note worthy that the original plaintiff on record

did not oppose the interveners' application for joinder as co-plaintiffs. In the second place, it was not established that any conflict of interest or a division of opinion is likely to arise between the original plaintiff and the interveners at the hearing of the suit. It was also not suggested that any inconsistent steps as between the original plaintiff and the interveners in the prosecution of their claims over the Igando land in dispute were imminent or that they possibly could not be represented at the hearing by the same solicitor or counsel. On the contrary it seems to me fully established that the original plaintiff and the interveners appear to be entirely ad idem and to be relying on the same facts in the matter of the main issue in controversy between themselves of the one part and the respondents of the other part. This main issue is the question of ownership of the Igando land in dispute as between the said respondents and the interveners and consequently whether the plaintiff obtained good title in respect of the two plots of land he purchased from the Igando community which now form part and parcel of the land in dispute.

I will conclude by re-emphasizing that the cardinal principle of law governing the issue of joinder of parties is whether the interveners are necessary parties to the action and whether they will be directly affected or bound by the decision of court in the suit by interfering with their legal rights over the matter in dispute. The trial court hearing such an application for joinder of parties should only be concerned with whether a prima facie case for joinder has been established and should not wade into the merits of the case. This is because the true test for joinder does not so much lie in the analysis of the constituents of the appellants' rights but rather in what would be the result on the subject matter of the suit if those rights were to be established. As Devlin, J. put it briefly but certainly more succinctly in Amon v. Raphael Tuck and Sons Ltd., supra at 290:

"As Wynn-Pany, J. said in Do Mieg et Companie S.A. v. Bank of England (1950) 2 All E.R. 605 at 611

"It seems to me that the time test lies not so much in the analysis of what are the constituents of the applicants rights, but rather in what would be the result on the subject matter of the action if those rights could be established."

I respectfully agree with that. I think that the test is: May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights."

I, too, respectfully agree with the above proposition of law and endorse the same as well founded.

Upon a careful consideration of the above principles of law applicable to the joinder of parties and having regard to the particular facts of this case, it seems to me that the learned trial Judge, was not in error in granting the intervener's application for joinder to enable them in particular to defend the appellants' counter-claim in respect of the entire land in dispute. I also entertain no doubt that the court below was right in affirming the said decision of the trial court.

On the whole, I find no merit in this appeal and it is hereby dismissed with N1,000.00 costs against the appellants in favour of each set of the respondents.

UWAIS JSC

I have had the opportunity of reading in advance the judgment read by my learned brother Iguh, J.S.C. I am in complete agreement with the judgment. Accordingly, I too will dismiss the appeal and it is hereby dismissed. The decision of the Court of Appeal is affirmed with N1,000.00 costs to each set of Respondents.

20

OGWUEGBU JSC

I have read in advance the judgment of my learned brother Iguh, J.S.C. I entirely agree with his reasoning and conclusion.

The plaintiff brought an action in the High Court of Lagos State, Ikeja Judicial Division against the defendants claiming the following reliefs:

1. A declaration of title to a piece of land measuring 7779.883 square metres situate at Igando village, Ikeja;
2. Perpetual injunction against the said defendants;
3. Damages for trespass committed by the defendants on part of the said land.

In paragraphs 3 and 4 of the statement of claim, the plaintiff averred as follows:

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“3. The plaintiff came into possession of the said land by virtue of a sale to him of the said land by the Attorneys of Osumba/Oyero/Beku/OroOtan Onimaba families of Igando village. (The plaintiff will rely on the power of attorney registered as 88 No. 88 in volume 1623 at Lagos State Registry).
5 The plaintiff will also rely on his purchase receipt.

4. The plaintiffs vendors derived their title as members of the Osumba/Oyero/Beku/Oro-Otan- Onimaba families of Igando village in Lagos State, which family has been the owners of the said area of land from time immemorial.”
10 The plaintiff also pleaded that his predecessors in title could testify on his behalf at the trial.

The defendants filed a joint statement of claim and a counter-claim. They averred that the plaintiff and his said attorneys trespassed on the said land. They claimed an order of injunction restraining the plaintiff, his
15 servants or agents from interfering with their possession of any portion of the land the subject matter of Suit No. IK/76/68 and SC.171/75.

The interveners brought an application for joinder as co-plaintiffs as well as one Muritala Olosunde as a co-defendant. After hearing the application which was strenuously opposed, the learned trial judge granted
20 the application. The defendants were dissatisfied with the order for joinder and appealed to the Court of Appeal. The defendants’ appeal was dismissed and they further appealed to this court.

From the grounds of appeal, the appellants identified five issues for determination. Only the fifth issue calls for determination in this appeal
25 namely:

“Whether the Interveners are necessary parties who ought to be joined as parties in this suit, when the interveners have already divested their title in favour of the plaintiff in the land subject matter of the plaintiffs claims.”

In an application for joinder as co-plaintiffs or co-defendants, the
30 main question for determination is whether or not the applicants are necessary parties. The court will order the joinder of a person whose presence is necessary to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. See *Jia Enterprises Ltd. v. British Commonwealth Insurance Co. Ltd.* (1962) 1 All
35 N.L.R. (Pt. 2) 363 and *Uku & Ors. v. Q151 Imagba & ors.* (1974) 3 S.C.35.

If a cause of action is statute barred or has abated, a joinder cannot resuscitate it. See *Wo & ors. v. Gabriel Awe & ors.* (1962) W.N.L.R. 254.

Leave will also not be granted to add or substitute a plaintiff where to do so would prevent the defendant from relying on statute of limitation: Mabro v. Eagle, Stur and British Dominions Insurance Co. (1932) 1 K.B. 485. In that case the Court of Appeal (England) refused to allow a party to be added because to do so would have defeated the defence of the Statute of Limitation which was open to the defendant. 5

If the facts Show either that the particular plaintiff or a new cause of action sought to be added are barred; it would be unjust to deprive a defendant of a legal defence and it will not be possible for the court to disregard the statute. 10

Where an order of joinder will have the effect of adding a new cause of action, the court may refuse the order. Raleigh v. Goschen (1898) 1 Ch. 81 and a person not directly interested will not be added. Moser v. Marsden (1892) 1 Ch. 487.

Applying the above principles of law to the facts of this appeal, the applicants in their affidavit in support of their application deposed: 15

1. That Igando Community are the owners under native customary law of a portion of the land in dispute in this case from time immemorial and exercised maximum acts of ownership there without hinderance from any one. 20
2. That they are interested in the subject matter of the litigation and would like to be added as plaintiffs to prosecute the case for themselves and on behalf of the entire members of Igando Community (excluding the defendants).
3. That by a judgment of the Supreme Court of Nigeria delivered on 18:5:03, the traditional ownership of Igando land was confirmed in favour of Olusonde (as representing the Igando people). 25
4. That the 1st, 2nd, 3rd and 4th applicants are attorneys and representatives of the entire Igando Community by virtue of an irrevocable power of attorney executed in their favour in respect of the entire Igando Community land and registered as No.88 at page 88 in Volume 1623 of the Land Registry in Lagos. 30
5. By virtue of the said power of attorney the applicants dealt with the Igando land in various ways with the consent of the 6th applicant - Onigando of Igando. 35
6. That Muritala Olosunde is a necessary party in that he was one of the

donors named in the power of attorney dated 5:4:75 and registered as No. 35/35/1486 which is sought to be set aside.

The applicants by virtue of the power of attorney executed in their favour
5 conveyed a portion of Igando land to the plaintiff on 23:3:78 - Exhibit
“JB5.”

The defendants in their counter-claim sought injunction restraining the plaintiff and his servants or agents from interfering in any manner with their possession and right to possession of any portion of the land the subject 10 matter of Suit No. IK/76/68 and SC.171/75. The counter-claim has put in issue more land than the plaintiff sued for. If as the interveners contend, they are the “owners” of the said land, one can not dispute the fact that they are necessary parties for purpose of defending their title to the area now in dispute in the counter-claim.

15 The decision of this court in Sanyaolu v. Coker (1983) 3 S.C. 124 does not apply because the area of land involved in the counter-claim is more than the land sold to the plaintiff for which he sued the defendants, The plaintiff/respondent does not object to the interveners being added as co-plaintiffs.

20 The ownership of the entire parcel of Igando land of which the plaintiff's portion forms part is a question or issue connected with the original subject matter of the suit and the presence of the applicants is in my view very necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the matter.

25 This will prevent multiplicity of actions, enable the court to determine disputes between all the parties in one action and prevent the same or substantially the same questions or issues being tried twice with possibly different results.

For the above reasons and the reasons contained in the judgment
30 of my learned brother Iguh, J.S.C., I hereby dismiss the appeal. The decision
of the Court of Appeal is affirmed. I abide by the order for costs as contained
in the lead judgment.

35 **ONU JSC**

I have been privileged to read in draft the judgment of my learned

brother Iguh, J.S.C. I agree with him that the appeal lacks merit and ought to be dismissed.

I wish to add some comments in elaboration in this matter where the main thrust is whether the joinder of interveners as 2nd - 7th plaintiffs is justifiable or permissible.

This is an appeal against the ruling of Olugbani, J. sitting at the High Court of Lagos State, Ikeja Judicial Division delivered on April 14, 1987 granting leave to the Interveners/Respondents to be joined in the suit as well as joining one Muritala Olosunde as co-defendant. The plaintiff's claim against the defendants/appellants was for-

"1. Declaration that the plaintiffs entitled to use and occupation to the exclusion of the defendants and their agents of all that area of land described in Plan No. OGEK894B/77 measuring 7779.883 square metres situate lying and being at Igando Village (a copy of which is attached herewith and marked Annexure A).

2. Perpetual injunction restraining the defendants their servants and Agents from further acts of trespass on the aforesaid land described in Annexure A.

3. Damages suffered by the plaintiff as a result of the defendants' trespass to part of the aforesaid land described in Annexure A."

The plaintiff derived his title from the Interveners/Respondents according to his statement of claim while the appellants who otherwise represented separate and distinct families and would have filed separate defence, filed a joint statement of defence and contended that:-

"In as much as the plaintiff relies on the sale to him of the land in Suit as pleaded in the Statement of Claim, the Defendants contend that the sale is void and that the Plaintiff has no right, title and/or interest in the land allegedly bought by him from the Attorneys of the "Osutnba/Oyero/Beku/Oro-Otan Onimoba families."

Thereafter, the appellants counter-claimed thus:

"25. The 1st to 3rd Defendants counterclaimed (sic) as accredited representatives of the Beku Onimoba Family, by way of counter-claim against the Plaintiff, his servants and/or agents an Order for Injunction restraining him from interfering in any manner whatsoever with their possession and right to possession of any portion of the land subject matter of Suit No.IK/76/68 and SC.171/75."

Following the above state of affairs, by a motion dated 27th June, 1986 the Interveners, five in number, later joined by the Onigando of Igando, prayed the trial High Court to be added as co-plaintiffs and to prosecute and/or defend the counter-claim as accredited representatives of Igando Community/people. The appellants resisted the application for joinder, filing a counter-affidavit in respect of the entire Igando Community land wherein were exhibited, the judgments in Suit Nos. *IK/76/68* and *SC.171/75* (both marked Exhibits JB.1 and JB.2) and two interlocutory rulings of the High Court (Exhibits JB3 and JB4) - all pleading the doctrine of issue estoppel and res judicata. After several affidavit evidence had been exchanged by the party whose counsel addressed the trial court, the application of the Interveners/respondents for joinder as co-plaintiffs as well as for Muritala.Olosunde to be joined as a co-defendant, were granted as prayed.

Aggrieved by the order of joinder, the appellants appealed to the Court of Appeal sitting in Lagos which in a considered judgment allowed the appeal in respect of the appeal with regard to the joinder of Muritala Olosunde as a co-defendant but made a dismissal order in respect of the joinder of the Interveners/Respondents as co-plaintiffs.

This further interlocutory appeal by the appellants is against the decision of the court below wherein the appellants submitted five issues as arising for our determination. While the respondents for their part, formulated two issues, the latter which learned counsel for them rationalised, quite rightly in my view, as overlapping appellants' issues (ii), (iii) and (v), then (i) and finally (iv) respectively.

The two issues formulated at the respondents' instance, paired off with those of the appellants above and which I consider relevant for the consideration of the appeal herein, read thus:

1. Whether in considering the Respondents' Motion for Joinder the court should resolve the question of Estoppel Per Rem Judicatam at the expense of whether or not the applicants were parties necessary to be joined in the determination of Issues involved in the counter-claim (Appellants' Issues (i), (iii) and (v).
2. Whether or not without pleadings having been filed, the Issue of Estoppel Per Rem Judicatam could be determined in limine when no decree of title or ownership had been made in favour of either party in this case. (Appellants' Issues (i) and (iv)

In dealing with these issues together, I wish to stress that in as much as a trial court hearing an application of this nature should concern itself at that stage with whether there is a prima facie case for the joinder rather than with the merits of the substantive case, a consideration of Estoppel Per Rem Judicatum such as canvassed in the briefs of argument of the parties will have the effect of removing the substratum; of the pending case. Thus, the question

- (i) Whether the parties in Exhibit JB 1 were held to have sued on behalf of KUDAKI and OTEGBOLA families and not as representatives of Igando Community/people or as to whether the parties seeking to join as Attorneys were different from the respondents or were themselves representatives of Igando people, or
- (ii) Whether the plaintiffs in Exhibit J.B. 1 lost the action because the court found that they could not establish acts of possession in respect of the land involved to the exclusion of 1st - 4th defendants therein but now appellants, or
- (iii) Whether the defendants (appellants herein) did not counterclaim for ownership of any portion of Igando land and further, that the trial court failed to make specific findings thereto in their (defendants/appellants') favour should not under any guise provide a trial court an opportunity at that point in time to wade into hearing the merits of the case. The question of joinder being discretionary must be approached with care and caution, so that parties who would otherwise not be necessary parties should be kept out, whereas those whose joinder in the action will effectually dispense of the issue once and for all times, should be afforded the opportunity of such a joinder.

In saying all this, it ought to be borne in mind that for a plea of res judicata to succeed, the parties, the subject-matter and the issues in the two cases must be shown to be the same. See KPIISHI KUUSU v. VANGER UDOM (1990) 1 NWLR (part 127) 421 at 431; MOGOCHINWENDU v. NWANEGBO MBAMALI & OTHERS (1980) 3 - 4 SC. 31 at pages 56 - 57 and SALAWU YOYE v. LAWANI OLUBODE & ORS. (1974) 10 SC. 209 at 221 - 222.

In the instant case, the appellants counter-claimed for the entire Igando Community land against the plaintiff/respondent (B.A. Farinde) who bought only a small portion of the Igando Community land and in respect of which, the respondents are bound to testify as vendors in as much as the respondents would be bound by the decision reached in the case giving rise

to this appeal when eventually it comes to be heard by the trial court. The respondents herein being necessary parties (See GREEN v. GREEN (1987) 3 NWLR (part 61) 480; (1987) 2 N.S.C.C. 1115 the learned trial Judge, in my view, was right and the court below was justified to have allowed the application for joinder by the Interveners. See ANYA v. IYAYI (1988) 3 NWLR (part 82) 347; In Re MOGAJI (1986) 1 NWLR 759 and GREEN v. GREEN (supra), in which the principle now well settled was re-echoed, to the effect that the court must be guided by the desirability to have joined either as plaintiffs or defendants all persons who may be entitled to or who claim some share or interest in the subject - matter of the suit or who may be likely to be affected by the result, if these had not already been made parties. See also Order 13 Rule 19 High Court of Lagos (Civil Procedure) Rules, 1972 which provides:

"1. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights of and interests of the parties actually before it.

2. The Court or a Judge in chambers may, at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court or Judge in Chambers to be just, order that the names of any parties whether plaintiff or defendant, who ought to have been joined; or whose presence before the court is necessary to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

The above rule was construed by this Court not too long ago in CHIEF A.O. UKUT & OTHER v. D.E. OKUMAGBA (174) 3 S.C. 35 where Udo Udoma, J.S.C. said:

"The beginning and end of the matter is that the Court has jurisdiction to join a person whose presence is necessary for the prescribed purpose and has no jurisdiction under the rule to join a person whose presence is not necessary for that purpose."

See the recent cases of In Re MOGAJI (supra) and GREEN v. GREEN (supra) where this court in giving consideration to the English principle laid down in AMON v. RAPHAEL TUCK & SONS LIMITED (1956) 1 QBD 357, for the proposition that the only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action

which cannot be effectually and completely settled and that there must be a question in the action which cannot be effectually and completely settled unless he is a party (per Devlin, J) at Page 380. Under our law also a person whose interest is involved, or is in issue in an action and who knowingly chose to stand by and let others fight his battle for him, is equally bound by the result in the same way as if he were a party. See PEENOK INVESTMENTS LTD.v.HOTEL PRESIDENTIAL LTD. (1982) 12 S.C. 1 at 35 - 55. 5

In the instant case, matters having been made the more salutary in the sense that the Plaintiff/Respondent did not object to the application for joinder, the way was paved, there being no conflict in the presentation of the Interveners as well as the plaintiffs/respondent's case. Joinder of the Interveners' case, one must emphasise, was aimed at bringing about the effectual disposal of the matter in controversy between the parties thereto. Moreso, as it was bound definitely to curb any tendency at multiplicity of suits particularly in respect of Igando Community land, a decision on which would be a once-and-for-all times affair, see In Re MOGAJI (supra), nothing thereafter prevents the appellants and indeed any of the parties from raising in their pleadings or amended pleadings, any issue like Estoppel Per Rem Judicatam along with the exercise of their constitutional rights to lodge a Notice of Appeal if dissatisfied. 10 15 20

In the result I hold that the trial court not only rightly allowed the Interveners/ Respondents to be joined in the suit but later, and justifiably too, allowed the joinder of the Oba of Igando whose appointment to the stool of his ancestors had then just been ratified - the town having been without an Oba for quite sometime. The court below rightly, in my view, affirmed the decision of the joinder of the Interveners. 25

It is for the reasons I have stated above and the fuller ones contained in the lead judgment of my learned brother Iguh, J.S.C. that I dismiss the appeal and make similar consequential orders inclusive of those as to costs contained in that judgment. 30

ADIO JSC

I have had the privilege of reading, in draft, the judgment just read by my learned brother, Iguh, J.S.C, and I agree with the reasoning and conclusion. I dismiss the appeal and abide by the order for costs. 35