

**SUPREME COURT OF NIGERIA**  
16TH JANUARY, 1998. SC. 182/1994  
**CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,**  
**U. MOHAMMED, S. U. ONU, JJSC**

CONSOLIDATED HN/3/79 & HN/5/79

ANAE BUE AGBASI & ORS.            ..... PLAINTIFFS/APPELLANTS  
(For themselves and on behalf of  
UMUENYILORA FAMILY OF URUAGU  
NNEWI)  
AND  
JOSEPH OBI & ORS            ..... DEFENDANTS/RESPONDENTS

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***COURTS*** - Native courts judgments or proceedings - Appellate court can go an extra mile in considering them - Towards ascertaining the real issues in dispute.

***ESTOPPEL*** - Res Judicata - Sustaining the plea - The lower courts were correct - In holding that the plea availed the defendants.

***ESTOPPEL*** - Res judicata - To sustain the plea - Conditions that must be satisfied by the defendants.

***SUPREME COURT*** - Alternative issue - When not to be considered by the Supreme Court - As a court of last resort.

**FACTS**

At the High Court of Anambra State Nnewi, plaintiffs/appellants filed an action against the defendants/respondents claiming N1,000.00 damages for trespass and perpetual injunction in respect of the land in dispute. The defendants rather than joining issue, instituted a separate action in respect of the same land claiming N50,000.00 damages for trespass, injunction and customary right of occupancy against the plain-

tiffs. The two suits were consolidated. The plaintiffs gave evidence of farming, building and grants made to members of their family in respect of the land in dispute without let or hindrance. They equally gave historical evidence of how the land descended to them through their ancestor. The defendants also led historical evidence in proof of their title to the land. Defendants further raised the plea of estoppel per rem judicatam relying on a native court judgment delivered on 15th March 1958, and the Onitsha County Court of Appeal judgment delivered on 16th June 1959.

The trial court upheld the plea of estoppel per rem judicatam and also considered the consolidated case on the evidence before him and then dismissed the plaintiffs' case. Plaintiffs appealed while the defendants cross appealed to the Court of Appeal which dismissed the appeal and cross appeal. Being dissatisfied, the plaintiffs have further appealed to the Supreme Court raising 4 issues but the Court determined the matter based on the main issue of estoppel.

**ISSUE FOR DETERMINATION**

*"1. Whether the Court of Appeal was right in confirming the respondents' (meaning defendants) plea of estoppel per rem judicatam having regard to the evidence before the court.*

**HELD** (Unanimously dismissing the appeal per lead judgment of **KUTIGI JSC**)

***Res judicata - To sustain the plea - Conditions***

1. Now, it is trite that to sustain a plea of res judicata the party pleading it, the defendants herein, must satisfy the following conditions, to wit:-

1. That the parties or their privies as the case may be, are the same in the present case as in previous case;

2. that the issue and subject matter are the same in the previous suit as in the present suit;

3. that the adjudication in the previous case must have been given by a court of competent jurisdiction; and

4. that the previous decision must have finally decided the issues between the parties. (p. 48 B)

***Native courts judgments or proceedings***

2. It is equally settled that when dealing with judgments or matters from native courts, an appellate court is entitled to go beyond what appears on the face of the claim or writ and ascertain from the entire evidence before the native court what was really the nature of the dispute between the parties to the action and the land involved. (See for example IYAJI v. EYIGEBE (supra) and IBERO V. UME-OHANA (SUPRA). (p. 48 E)

***Res judicata - Was rightly sustained***

3. I have myself carefully read the record and I am inclined to agree with the lower courts that the plea of estoppel per rem judicatam availed the defendants in this case. The learned trial judge meticulously examined the Native Courts proceedings, judgment and the exhibits tendered by the parties as well as the pleadings and evidence in the consolidated suits, to arrive at the conclusion that the consolidated case is caught by the doctrine of res judicata in favour of the defendants. I think he was right and the Court of Appeal was also right to have affirmed that decision. (p.51D)

***Supreme Court - Alternative issue***

4. Being a court of last resort, I cannot write two judgments in a case - one for and the other against? Consequently having come to the conclusion that the decisions of the lower courts on the sustainability of the plea of res judicata, were valid and proper, I do not need to consider the alternative issue. (p. 52 C)

**NOTABLE POINTS OF INTEREST**

**KUTIGIJSC**

***1. Lower courts' consideration of the issue in the alternative***

I think it was alright and quite proper for the learned trial judge to have considered the issue in the alternative, so as to enable the appellate court know his position in the matter and to avoid sending the case back for retrial should he be overruled on the plea of res judicata. The Court of Appeal having properly come to the conclusion that the plea of res judicata was established against the plaintiffs, also considered the alternative

issue as did the learned trial judge and found against the plaintiffs as well.  
(p. 51 H)

### **BELGORE JSC**

#### **B 2. *Native courts are not burdened by strict adherence to procedure***

The native courts are courts of common sense and simplicity; they are never burdened by strict adherence to procedure. They are the courts for quick and cheap manner of dispensation of justice. Most of the time, their decisions reflect the very justice and truth of the cases. It is because these courts are not tied to technicality of procedure that the appellate Court must look at the totality of the proceedings to find who were the parties before them, what were the issues before them and what have they decided. (p. 52 F)

D

### **REPRESENTATION**

T. O. Kasunmu (Miss) Plaintiffs/Appellants

Defendants/Respondents absent, not represented

E

### **CASES REFERRED TO**

Oyah v. Ikalile (1995) 7 NWLR (Pt. 406) 150

Ibero v. Ume-Ohana (1993) 2 NWLR (pt. 277) 510

F Iyaji v. Eyigebe (1987) 3 NWLR (pt. 61) 523

Oko v. Ntukidem (1993) 2 NWLR (pt. 274) 135 at 137

Chinwendu v. Mbamali (1980) 2 - 4 SC. 31

Nkanu v. Onum (1977) 5 SC. 11

Ikpong v. Edoho (1978) 6-7 S.C 221

G

Igwego v. Ezeugo (1992) 6 NWLR (pt. 249) 561

Iyaji v. Eyigebe (1987) 3 NWLR (Part 61) 523

Odadhe v. Okujeni (1973) 11 SC. 343 at 353

H

### **LEAD JUDGMENT BY KUTIGI JSC**

At the Nnewi High Court, the appellants were plaintiffs in Suit No. HN/3/79 and the defendants in Suit No. HN/5/79 which suits were consolidated and heard by Olike, J.

The appellants as plaintiffs in suit No. HN/3/79 sued the defendants claiming:-

- (i) N1,000.00 damages for trespass; and
- (ii) Perpetual injunction restraining the defendants and their agents from further trespass on the said land. B

The defendants rather than joining issues with the appellants instituted a separate action in HN/5/79 claiming against them:-

- (a) N50,000.00 damages for trespass;
- (b) injunction; and
- (c) customary right of occupancy over the land in dispute. C

The High Court on being satisfied that the parties in the suits are the same, that there was a common question of law and fact and that it was convenient to dispose of the suits together, consolidated them. The plaintiffs in HN/3/79 which was the first in time were made plaintiffs and the plaintiffs in HN/5/79 became the defendants in the consolidated suits. D

The parties filed and exchanged pleadings and called their witnesses. In a reserved judgment the trial High Court dismissed the plaintiffs' case and gave judgment in favour of the defendants. I shall have more to say on this later on in the judgment. E

Dissatisfied with the judgment of the High Court the plaintiffs appealed to the Court of Appeal, Enugu. The defendants also filed a cross-appeal. The Court of Appeal in a considered judgment dismissed both the appeal and the cross-appeal brought by the parties. The judgment of the High Court was thus confirmed. F

It is against the decision of the Court of Appeal that the plaintiffs have now further appealed to this court.

For a proper appreciation of the issue or issues to be considered in the appeal, I shall briefly summarize the case of the parties. The plaintiffs claimed that the land in dispute formed part of the property of one UMEONYILORA, their ancestor, from time immemorial and that they had been making maximum use of the said land. They gave evidence of farming, building and grants made to members of their family without let or hindrance. It is also part of their case that in the exercise of their rights of ownership, one Ifedigbo Obi was allotted a portion of G

Umuenyilora land to live on and protect the interests of the plaintiffs' family over the said land. That the said Ifedigbo turned out to be a thief who crossed over the boundary and stole a sheep belonging to one Ezebunighi, a member of the Ichi family, the defendants. He was caught and in order to save his neck, he granted a piece of the plaintiffs' land to the defendants. The plaintiffs challenged the defendants who then told them what had happened. As Ifedigbo was in prison at the time for another offence, he could not be confronted with the allegation. However, on his return from prison, he was confronted, but by then the relations of Ezebunighi had completed their buildings. And as the plaintiffs and defendants are related to each other, they were allowed to stay on the area of land which is on the other side of Onitsha - Nnewi Road, and not in dispute in this suit. However, the present action arose when the defendants moved on to the land in dispute and commenced building operations.

The defendants on the other hand claimed that the land originally belonged to one AGBAJA who begat three sons namely Nnewi, Ichi and Oraifite. That Agbaja before his death, shared his lands to his three children and the land in dispute was shared to Ichi. The defendants pleaded that both they and the plaintiffs are descendants of Agbaja, and that they have been on the land for over 5,000 years. They also pleaded estoppel per rem judicatam and led evidence that the land in dispute had been litigated upon by the parties. They relied on the judgment of the Agbaja/Ugwuochi Native Court in suit No. 76/56 delivered on 15th March, 1958 and the Onitsha County Court of Appeal judgment in Suit No. 13/59 delivered on 16th June 1959. These judgments and the Plan used were all tendered as exhibits.

As stated above, both sides called witnesses at the trial and various documents were through them tendered and admitted as exhibits. In a considered judgment the learned trial judge came to the following conclusions:-

1. That the plaintiffs were estopped per rem judicatam from litigating on the land. He said:-

*"The plea of res judicata avails the defendants and the plain-*

*tiffs are estopped in their present claim against the defendants as their predecessors unsuccessfully litigated the same subject matter and the same issue - IYAJI v. EYIGEBE (1987) 3 NWLR (Pt. 61) 523 - 525. Judgments of the Court must be adhered to and respected by all the parties concerned otherwise the administration of the law will be rendered nugatory B in our society and yield place to the law of the jungle where the strongest survives. The plaintiffs' case should be dismissed. They should not relitigate the matter all over again."*

2. Dismissed the plaintiffs' claims.

3. Entered judgment for the defendants being plaintiffs in suit C  
No. HN/5/79 above.

As indicated earlier on, the plaintiffs being dissatisfied with the judgment of the High Court, appealed to the Court of Appeal, holden at Enugu. The defendants also cross-appealed. Both the appeal and cross-appeal were dismissed by the Court of Appeal and the decision of the High Court was confirmed. It is only the plaintiffs who felt aggrieved by the decision of the Court of Appeal that have now appealed to this Court. D

In compliance with the Rules of Court, counsel on both sides E filed and exchanged their briefs of argument. At the hearing of the appeal, only the plaintiffs were represented by counsel. She adopted her brief and made additional oral submission.

In the plaintiffs' brief, the following issues were submitted for F determination by this Court:-

*"1. Whether the Court of Appeal was right in confirming the respondents' (meaning defendants) plea of estoppel per rem judicatam having regard to the evidence before the court.*

*2. Was it proper for the Court of Appeal to confirm the decision G and findings of the Lower Court that the Respondents have satisfactorily proved title via traditional evidence led by them when such evidence was in fact not pleaded and when no evidence was in fact led on the issue?*

*3. Whether the Court of Appeal could suo motu affirm the judgment of the High Court on grounds other than the grounds given by the H High Court.*

*4. Was the Court of Appeal right in confirming the decision of*

*the Lower Court having regard to the evidence led by the parties in the case?"*

Before now, and in the Court of Appeal, four issues were also identified for determination thus:-

B        *"1. Was the learned trial judge right in finding that the plea of Estoppel per rem judicatam raised by the respondents succeeded?*

*2. Was the learned trial judge right in giving judgment to the respondents on their claim in HN/5/79 on the erroneous assumption that they did not join issues with the defendants or at all?*

C        *3. Did the learned trial judge adopt the right approach in his evaluation of the evidence?*

*4. Is the judgment supported by the evidence?"*

D        A careful examination of the issues now before this Court and those before the Court of Appeal show that apart from issue (3) in both courts which are different, issues (1), (2) and (4) are the same as they say same thing, even though differently worded. It is also clear to me that the issue of whether or not the plea of res judicata was properly made out is very fundamental and in fact is the gravamen of the appeal. E        So as it was in the Court of Appeal, once the plea of res judicata raised in issue (1) succeeds, being in fact the most important issue, there would be no need to consider the other remaining issues.

F        I shall now try to summarize the submissions of plaintiffs' counsel in respect of the plea of estoppel per rem judicatam raised in issue (1) above. It was contended that the previous suits pleaded and relied upon by the defendants as Exhibits H, H1, K and Q, showed that the defendants in those suits were sued in their personal capacities and that they defended or fought the cases in their personal capacities and not in a representative capacity. That while the plaintiffs therein might have even prosecuted the action in a representative capacity, the same action was defended personally which could not therefore affect the Umuenyilora G        family of Uruagu Nnewi, as to include them. That nowhere in the Exhibits was any mention made of the plaintiffs/appellants' family or even any village or family in Uruagu Nnewi as laying claim of ownership to that area of land. The suit was therefore never defended in a representative H



capacity. Reference was made to the cases of OYAH v. IKALILE (1995) 7 NWLR (Pt. 406) 150, IBERO v. UME-OHANA (1993) 2 NWLR (Pt. 277) 510; IYAJI v. EYIGEBE (1987) 3 NWLR (Pt. 61) 523.

It was further submitted that it was apparent from the face of the record that the names of the parties in this suit and in the previous suit, are not the same and that there is nothing to connect the parties in the two suits. It was also contended that there was no evidence that the land, subject matter of the previous suit is the same as the land subject matter presently in dispute. That is was necessary to call a surveyor to give evidence in order to relate the parcel of land in dispute to another in a previous litigation, especially when the plan 'Exhibit J' was not the plan relied upon by the defendants in suit No. 76/56 in the Native Court. She cited OKO v. NTUKIDEM (1993) 2 NWLR (Pt. 274) 135 at 137 in support. I say at once that Exhibit J. (i.e the Survey Plan No. MEC/43/59) is part and parcel of the Native Court and County Court proceedings Exhibit H and H1 respectively.

On the other hand, learned counsel for the defendants in his brief contended that all the conditions requisite for the success of the plea of estoppel per rem judicatam were established as shown by the pleadings and evidence led at the trial. That the plea was properly rested on the Native Court and County Court judgments, which show that the 1955 case was between the Umuaghamia and Ezeobiagha family of Ichi and the Uruagu Village, Nnewi. That evidence also showed that parties in the 1956 case are the same as those in the instant proceedings, Suits No. HN/3/79 and No. HN/5/79; and that it was the same piece of land litigated upon in 1956 that is now in dispute. He referred to Exhibits B, H, H1, J, M, P and Q and said that being native court proceedings we should look for the substance rather than the form by examining the entire proceedings carefully. The following cases were cited amongst others:-

IYAJI v. EYIGEBE (supra)

YOYE v. OLUBODE (1974) 9 N.S.C.C. 40

PASCOE v. TURNER (1979) 2 ALL ER. 949

IKPUKU v. IKPUKU (1991) 4 NWLR (Pt. 193) 571

OLUMA v. ISUTSU 10 WACA 89

IKPANG v. EDOHO (1978) 6-7 SC. 221

DINSEY v. OSSEI 5 WACA 177

It was submitted that on the welter of materials placed before the court, the plea of res judicata was clearly made out and that we should uphold the judgments of the lower courts.

Now, it is trite that to sustain a plea of res judicata the party pleading it, the defendants herein, must satisfy the following conditions, to wit:-

1. That the parties or their privies as the case may be, are the same in the present case as in previous case;

2. that the issue and subject matter are the same in the previous suit as in the present suit;

3. that the adjudication in the previous case must have been given by a court of competent jurisdiction; and

4. that the previous decision must have finally decided the issues between the parties.

(See for example CHINWEDU V. MBAMALI (1980) 3-4 SC. 31; IKPANG V. EDOHO (supra); UDO V. OBOT (1989) 2 NWLR (Pt. 95) 59, BAMISHEBI V. FALEYE (1985) 2 NWLR (Pt. 8) 525, NKANU & ORS. V. ONUM & ORS. (1977) 5 SC. 11).

It is equally settled that when dealing with judgments or matters from native courts, an appellate court is entitled to go beyond what appears on the face of the claim or writ and ascertain from the entire evidence before the native court what was really the nature of the dispute between the parties to the action and the land involved. (See for example IYAJI v. EYIGEBE (supra) and IBERO V. UME-OHANA (SUPRA)).

I think it is proper first to observe that the Court of Appeal was right when it said that the learned trial judge properly directed himself on the doctrine of estoppel per rem judicatam before applying same to the case before him. The Court of Appeal was also in my view right when it stated that the learned trial judge in the course of deciding whether the plea of res judicata would avail the defendants, examined very carefully the proceedings, evidence and judgments of the Native Court and appel-

late County Court in the 1956/59 case. It is not disputed that the Customary Court and County Court were courts of competent jurisdiction. The judgment or decision of the County Court of Appeal was also the final judgment awarding the land in dispute to the present defendants in 1959.

On the parties and claims in the old 1956/59 case and the present suit, the learned trial judge observed as follows:-

*"In 1956 Ezebunigh Osuno the 1st plaintiff in HN/5/79 sued (1) Daniel Obi, (2) Ezeofiaukwu, (3) Ononiwu and (4) Godwin Dala as defendants at Agbaja/Ugwuochi Native Court Suit No. 76/56 of 2/7/56. The claim which was for declaration of title to land known as Mibu Umughamia land, injunction and damages for trespass was for himself and for the people of Umughamia Ichi against the defendants for themselves and for the people of Uruagu-Nnewi. The 1st defendant Daniel Obi gave the name of the land as Ani Mgbu Ezeorimili alias Akwu Ogananya. At the hearing parties gave traditional evidence on their roots of title and called boundary witnesses. The court went on inspection of the disputed land and embodied the result of the inspection in the judgment. ----- The court awarded the land on the right and left (Onitsha-Nnewi Road) to the plaintiffs with damages."*

The judgment continued thus:-

*"Dissatisfied the defendants appealed to the Onitsha County Court of Appeal in CC/13/59 of 14/5/59 of the disputed land submitted by the plaintiffs. It made references to previous cases touching on land within the area in dispute and again inspected the land in dispute. It found that the No. 1 defendants father's evidence in case No. 152/47 was sufficient to believe the plaintiffs that the land was one until it was divided by the Onitsha-Port Harcourt Road. It found from the evidence of the defendants and their witnesses that the landed property of Ichi was being taken away by the Obi or Uruagu; that what obtains before the advent of British Government when poor lives (were) at the mercy of the rich cannot be allowed to continue ....."* "that No. 2 and 3 defendants really live on the plaintiff's land as tenants; their claim of ownership

*does not hold water and could not be accepted." It awarded the land in plan No. MEC/43/59 to the plaintiffs Umughamia and Ezebiagha families of Ichi. It confirmed the judgment of the lower court and dismissed the appeal."*

B So, upon the findings and conclusions of Native Court and confirmed by the County Court of Appeal, the learned trial judge formed the view that the land in dispute in the Native Courts and the one being litigated upon in the consolidated suits are the same. He also came to the conclusion that the present plaintiffs are privies of the then defendants in the Native Court proceedings. He said:-

C *"Let me turn to the consolidated suits before me in which the privies of the defendants in the District Court case are again in Court (as plaintiffs) in HN/3/79 claiming damages and perpetual injunction against the defendants for trespass to their "AKWU-Umume-Onyilora" or "Akwu-Ogananya" land situate at Uruagu-Nnewi and verged pink in Survey Plan No. MEC/50/79. (Exhibit F). It is not in dispute that the present plaintiffs are privies to the defendants in blood and interest in the District Court case."*

The Court of Appeal also carefully examined the proceedings of the Native Courts and the pleadings in the consolidated suits herein and observed as follows:-

F *"The above observation and the reference made to the pleadings of the parties have been made in order to show that from the pleadings the parties in the consolidated suit are the same as well as the parties in the Native Court case and the appeal heard in the County Court. It does also appear that the pleadings also discloses that the subject matter of the claim in respect of the consolidated suits and the land claimed in the Native Court case and the appeal thereon that were both decided in favour of the respondents. Having read the records and the judgment of the lower court, it is also my view that the evidence led at the trial amply support that view. I only need to refer to the evidence of PW2, Okonkwo Onu who in his evidence in Chief and under cross-examination gave evidence affirming that the parties in the consolidated suits are the same. There is also the evidence of PW3, John Anaebue Agbasi who agreed*

*that the parties to the suit are relatives. And also admitted that he knew of the litigation that took place in the native court in 1956."*

The judgment continued thus:-

*"Now with regard to the plea of res judicata, it is, in my view also establish that the parties in the consolidated suits are the same as the parties in the action before the Native Court in suit No. 76/56 and as CC/13/59 on appeal. The learned trial judge also was right to have held that the disputed land being the same as in both the consolidated suits and the judgments of the Native Courts in suit No. 76/56 and CC/13/59. ----- The conclusion of the lower court upholding the plea of res judicata based on those judgments in CC/76/56 and CC/13/59 is hereby upheld.*

*In the result, as I have already held that the claim of the appellants on the evidence was rightly dismissed by the lower court, this appeal must fail in its entirety and it is hereby dismissed by me."*

**I have myself carefully read the record and I am inclined to agree with the lower courts that the plea of estoppel per rem judicatam availed the defendants in this case. The learned trial judge meticulously examined the Native Courts proceedings, judgment and the exhibits tendered by the parties as well as the pleadings and evidence in the consolidated suits, to arrive at the conclusion that the consolidated case is caught by the doctrine of res judicata in favour of the defendants. I think he was right and the Court of Appeal was also right to have affirmed that decision.**

Before I conclude I must observe that the learned trial judge did not only uphold the plea of estoppel per rem judicatam of the defendants, but proceeded to consider the case of the parties on the merit based on the evidence before the court because in his own words:-

*"----- in case I am wrong and the matter is taken up at high quarters -----"*

He therefore considered the evidence of traditional history and acts of long possession on both sides, but still concluded in favour of the defendants and against the plaintiffs. I think it was alright and quite proper for the learned trial judge to have considered the issue in the alternative, so as

to enable the appellate court know his position in the matter and to avoid sending the case back for retrial should he be overruled on the plea of res judicata. The Court of Appeal having properly come to the conclusion that the plea of res judicata was established against the plaintiffs, also considered the alternative issue as did the learned trial judge and found against the plaintiffs as well. The fortunate thing here, however, is that in their consideration of the alternative issue both the High Court and the Court of Appeal arrived at one and the same conclusion as in the main issue, that is, dismissing plaintiffs' claims and giving judgment in favour of the defendants. It is not therefore a case of two judgments in any of the courts. The irresistible conclusion therefore is that it did not affect the merit of their decisions in any way.

**Being a court of last resort, I cannot write two judgments in a case - one for and the other against. Consequently having come to the conclusion that the decisions of the lower courts on the sustainability of the plea of res judicata, were valid and proper, I do not need to consider the alternative issue.**

This appeal therefore fails. It is accordingly dismissed with N10,000.00 (Ten Thousand Naira) costs in favour of the defendants.

### BELGORE JSC

The native courts are courts of common sense and simplicity; they are never burdened by strict adherence to procedure. They are the courts for quick and cheap manner of dispensation of justice. Most of the time, their decisions reflect the very justice and truth of the cases. It is because these courts are not tied to technicality of procedure that the appellate Court must look at the totality of the proceedings to find who were the parties before them, what were the issues before them and what have they decided. To found on issue of estoppel per rem judicatum, it must be clear that the native court's decision had decided the issues between the same parties now in fresh litigation or their privies; that the issues in the native court are the same now being relitigated upon, and that the decision of the native Court had finally settled the

issues. Chinwedu v. Mbamali (1980) 3-4 S.C. 31; Ikpang v. Edoho (1978) 6-7 S.C. 221; Bamishebi v. Faleye (1985) 2 NWLR (Pt. 8) 525; Nkanu & Ors. v. Onum & Ors. (1977) 5 S.C.; Ogbogu v Ndiribe (1992) 6 NWLR (Pt 245) 40; Briggs v Briggs (1992) 3 NWLR (Pt 228) 128; Igwego v. Ezeugo (1992) 6 NWLR (Pt 249) 561. The "native court" is a convenient nomenclature for Area Courts and Customary Courts in various statutes in the Northern and Southern parts of Nigeria respectively. B

Trial Court in a dispassionate consideration of the evidence before it, came to the conclusion that the land in dispute in the case and that decided in 1959 are the same; that the present parties are privies of the 1959 case and that the said judgment was final. The Court of Appeal had no reason to interfere with this decision finding that issue estoppel per rem judicatam availed the defendant's. I find nothing on the face of the record perverse, in those decisions. I find no merit in this appeal and for the foregoing reasons and the fuller reasons in the judgment of Kutigi, J.S.C. I also dismiss it with N10,000.00 costs in favour of the respondents against the appellants D

E

### WALI JSC

I have had a preview of the lead judgment of my learned brother Kutigi, JSC and I agree with reasons advanced therein for dismissing the appeal. I adopt the reasons as mine and also hereby dismiss the appeal as lacking in merit. F

The issue of res judicata was thoroughly and painstakingly considered and correctly applied by the two lower courts. The concurrent findings are impeccable. I award N10,000.00 costs to the respondents in this appeal. G

### MOHAMMED JSC

H

I agree that the Court of Appeal is right to affirm the decision of the trial High Court on the issue of plea of estoppel per rem judicatam having regard to the evidence before the court. My learned brother,

Kutigi JSC., in his judgment which I have the privilege to read in draft has considered all the salient issues raised for the determination of this appeal and I agree with him that this appeal has failed. I also dismiss it and award N10,000.00 costs in favour of the respondents.

B \_\_\_\_\_

### ONU JSC

I have been privileged to have a preview of the judgment of my learned brother Kutigi, JSC and I entirely agree with his reasoning and conclusion that this appeal lacks merit and ought therefore to be dismissed.

Of the four issues formulated and submitted for our determination by the appellants and the three put forward by the respondents which overlap, I am of the view that the appellants' issue one which asks:

*"Whether the Court of Appeal was right in confirming the Respondents' plea of estoppel per rem judicatam having regard to the evidence before the court."*

is fundamental enough and will suffice to dispose of this appeal which in the trial court was commenced as two consolidated suits.

On issue number one after agreeing with the principles enunciated by the lower courts as regards the liberal attitude by courts in ascertaining who the parties and what the subject matter and issues in the previous litigation were, especial as they relate to proceedings/judgments in a Native Court or in the appeal arising therefrom, learned counsel for the appellants in their Brief referred us to the cases of Iyaji v. Eyigebe (1987) 3 NWLR (Part 61) 523 and Ibero v. Ume-Ohana (1993) 2 NWLR (Part 277) 510, for the proposition that the whole proceedings be taken account of, to wit: Whether on investigation it could be said that the plea of estoppel per rem judicatam validly avails the respondents i.e. whether the parties, subject-matter and issues in the consolidated suits are the same.

It is noteworthy that the previous suits pleaded and relied upon by the respondents vis a vis the plea of res judicata as is clearly discernible from the record of proceedings, is the Agbaja Ugwuochi Native Court



Suit No. 76/56 of 2/7/56 instituted by the respondent against the appellants over the same piece of land vide Exhibits H, K and Q. The said Suit went on appeal to the County Court Onitsha as Appeal No. CC/13/59 and also decided in favour of the respondents. Survey Plan No. MEC/43/59 was shown as having been used in the County Court of Appeal and tendered as Exhibits J & P were pleaded in paragraphs 1, 10, 11, & 12 of the Further Amended Statement of Defence in Suit HN/3/79 at page 232M and paragraphs 14, 15(a), 15(b) and 16 of the Amended Statement of Claim in Suit HN/5/79 at pages 345-349, with evidence pointing to the fact that the parties in Suit No. 76/56; CC/13/59 are the same as those in the instant proceedings. The sum total of the purport of these pleadings, it is further argued, is to the effect that the Native Court Suit was between the Umuaghamia and Ezeobiagha families of Ichi and Uruagu Village Nnewi. A cursory reference to the oral testimonies of P.W.2, Okonkwo Onu and P.W.3 (John Anaebue Agbasi i.e. 1st Plaintiff), is enough to exemplify this. PW2 stated when examined in chief thus:

*"..... I know the Plaintiffs in the case. They are from Uruagu Nnewi. I know the Defendants they are my inlaws and they are from Ichi. I know the land in dispute between the parties."*

When subjected to cross-examination the witness asserted as follows:-

*"Umu-umenyilora family is Uruagu Nnewi. I have been to the Umu-Umenyilora family or village, I know the Chief of Umu-Umenyilora and his name is Chief Daniel Obi. I heard that land in dispute was the subject-matter in litigation in the Native Court between the people of Uruagu Nnewi led by chief Daniel Obi and Ichi people ..... Daniel Obi, Eze Ofia Ukwu and Ononiwu are from Uruagu Nnewi."*

P.W.3 under cross-examination testified as follows:-

*".... The title name of Ifedigbo Obi was Eze-Offia-Ukwu ..... one of the brothers is Ononiwu Obi ..... Chief Daniel Obi is the cousin of Ifedigbo Obi, Daniel Obi is the Obi of Uruagu Nnewi ..... Eze Ogidi was present and was the Chief of Uruagu Nnewi ..... After his death his son Chief Daniel Obi became the Chief of Uruagu ..... In 1956 Chief Daniel Obi, Eze-Offia-Ukwu Ifedigbo Obi and Ononiwu Obi were alive. In 1956 there was no other person who goes by Eze-*

*Offia-Ukwu ..... Chief Daniel Obi, Eze-Offia-Ukwu Ifedigbo Obi and Ononiwu Obi are descendants of Umuonyilora - Umu-Umenyilora is a family in the village of Ndi Ojukwu. The Other Villages in Uruagu are ... In 1956 Chief Daniel Obi was the paramount ruler of Uruagu Nnewi*

B ..... "

The defence in their evidence also led evidence on the issue of the parties being the same. For instance, Chief Samuel Orakwe Unegbu, who was 5th plaintiff in Suit HN/5/79 testified as D.W.1 to the following effect.

C "..... I know the Uruagu Nnewi plaintiffs in this suit. They are from Uruagu village, Nnewi. I know them as defendants in HN/5/79. We sued in HN/5/79 as representing one family. .... I remember 1956. In the (sic) year our tenants Ifedigbo Obi, Unachukwu Udala, Ononiwu D Obi and Daniel Obi granted the land to Nnewi Youth League to erect a Secondary School in 1956, ..... and we sued them at Agbaja Ugwuochi Native Court. Some of the Plaintiffs in the case were Eze-Ebuninu Osuno, Okeke Obidike, Ilodimo Echesi and ors. They represented a family. Some E of the Defendants were Daniel Obi, the Obi of Uruagu, Unachukwu Udala and Ifedigbo Obi & ors. I know Daniel Obi personally. He was then the Obi of Uruagu Village Nnewi. He is still alive and still the Obi ..... "

F Besides, I think the trial court was right in arriving at the conclusion that in suits leading to the appeal herein the appellants were privies of the respondents in the Native Court proceedings when it categorically held among others:

G "Let me return to the consolidated suits before me in which the privies of the defendants in the District Court case are again in court (as plaintiffs) in HN/3/79 claiming damages and perpetual injunction against the defendants for trespass to their "Akwu-Umume-Onyilora" or "Akwu-Ogananya" land situate at Uruagu-Nnewi and verged pink in Survey H Plan No. MEC/50/79 (Exhibit F). It is not in dispute that the present plaintiffs are privies to the defendants in blood and interest in the District Court case."

In confirming the above views of the trial court the court below minced

no words in flawlessly observing, in my judgment, inter alia thus:

*"The above observation and the reference made to the pleadings of the parties have been made in order to show that from the pleadings the parties in the consolidated Suits are the same as well as the parties in Native Court case and the appeal heard in the County Court. It does also appear that the pleadings also disclose that the subject-matter of the claim in respect of the consolidated suits and the land claimed in the Native Court case and the appeal thereon were both decided in favour of the respondents. Having read the records and the judgment of the lower court, it is also my view that the evidence led at the trial amply support that view ....."*

Furthermore, it is my view that the learned trial Judge not only considered and upheld the respondents' plea of estoppel per rem judicata but proceeded to consider the case of the parties on the merit based on the evidence of traditional history and acts of long possession led thereat and the court below, rightly in my opinion, confirmed same. As nowhere in the proceedings did the appellants neither contradicted nor established by interrogation of the respondents that the parties in the suits in hand differed from those in the earlier suits, evidence relating to the parties ought to be taken as accepted or established. See Adejumo v. Ayantegbe (1989) 3 NWLR (Part 110) 417 and Ngene v. Igbo (1991) 7 NWLR (Part 203) 358 at 372. It is noteworthy therefore to observe that among the respondents (defendants thereat) sued in Exhibits 'H' and 'H1', is Chief Daniel Obi who throughout the whole gamut of evidence adduced in the trial court as well as in the court below, was acknowledged by both parties as the Obi (King) of Uruagu. As in the earlier cases the parties fought these cases in representative capacities similar to what has happened in the instant consolidated suits, the case of Oya v. Ikalile (1995) 7 NWLR (Part 406) 150 is distinguishable in the sense that in it -

*"The parties were merely listed in the claim without any indication against their names as to whether they sued or were being sued in representative capacities."*

In the present actions that have been brought in representative capacities for Umuaghamia and Ezeobiagha families clearly a successful plea of

estoppel which is a bar to plea and as evidence, is conclusive. See Iyaji v. Eyigebe (1987) 2 NSCC Vol. 18 1035 at 1036; (1987) 3 NWLR (Part 61) 533 and Spencer Bower on Res Judicata 2nd Edition page 350, paragraph 416. The effect in the instant appeal is that the respondents have clearly established a case of estoppel per Exhibits H, H1, and Q. The learned trial Judge therefore also said right when he held inter alia as follows:

*"The defendants led by Ezebunighi Osuno a centenarian (the plaintiff in the District Court case) in a sharp reaction instituted HN/5/79 against the (Plaintiff) claiming damages for trespass, perpetual injunction and a customary right of occupancy over their Mgbu land verged blue in Plan No. MG/AN.165/87. The suits were consolidated suits and the case determined at the District Court. It makes no difference that at the District Court the defendants (plaintiffs here) named the land Ani Mgba Ezeorimili alias Akwu Ogananya and in the instant case gave the name as Akwu Umeonyilora or Aku Ogaranya. The defendants have been consistent both at the District Court and in this Court in the name of the Ezeobiagha families of Ichi.*

*If I am correct it is in the interest of the public that there should be an end to litigation - interest republicae ut sit finis litium. The plea of res judicata avails the defendants and the plaintiffs are estopped in their present claim against the defendants as their predecessors unsuccessfully litigated the same subject-matter and the same issue - Iyaji v. Eyigebe (1987) 3 NWLR (Part 61) 523 - 525. Judgments of the court must be adhered to and respected by all the parties concerned otherwise the administration of the law will be rendered nugatory in our society and yield place to the law of the jungle where the strongest survives. The plaintiffs' case should be dismissed .....*"

I cannot agree more. And that being the case, the appellants' action in HN/3/79 is barred since res judicata also abrogates proof and is a bar to pleading and evidence. See Yoye v. Olubode (1974) 9 NSCC 409 at 414 in which this court referred to Odadhe v. Okujeni (1973) 11 SC. 343 at 353 wherein it cited with approval the illuminating passage from the judgment in the case of Bassil v. Honger 14 WACA 569 at page 572 as fol-

lows:-

*"Estoppel prohibits a party from proving anything which contradicts his previous acts or declarations "to the prejudice of a party, who relying upon them, has altered his position." It shuts the mouth of a party. The plea of res judicata prohibits the court from enquiring into a matter already adjudicated upon. It ousts the jurisdiction of the court."* B

In the instant appeal estoppel so raised, in my view, is available to the respondents in the consolidated suits both as a defence and as a cause of action in plaintiffs Suit HN/5/79. See Pascoe v. Turner (1979) 2 ALL ER 945 at 949 and O. A. U v. Onabanjo (1991) 5 NWLR (Part 193) 549 at 533. In the case in hand res judicata having been based on the Nnewi Native Court and Onitsha County Court judgments vide Exhibits B, H, H1, J, M, P and Q, the law is relatively settled on the way and manner of treating such proceedings. First, is to look at the substance rather than the form vide Oluma v. Isutsu 10 WACA 89 and Ikpang v. Edoho (1978) 6-7 SC. 221 at 238 - 239. The court must not place too strict emphasis on the form but must examine the entire proceedings in order to determine what the Native Court case is all about. See Dinsey v. Ossei 5 E WACA 177 and Ajayi v. Aina 16 NLR 67. Indeed, as decided in Iyaji v. Eyigebe (supra), judgments of Native Courts should be treated differently from those of a High Court. When dealing with such judgments, an appellate court is entitled to go beyond what appears on the face of the claim and ascertain from the entire evidence before the Native Court (customary court or area court) what really the nature of the dispute is involved. In other words, that great latitude must be given to, and a broad interpretation placed upon, Native Court cases and that the whole proceedings, the evidence of the parties and the judgment, must be looked at in order to decide what a Native Court case was about. D F G

On the welter of materials placed before the trial court, I am satisfied that the plea of estoppel per rem judicatam was clearly made out as to warrant my giving an unequivocal answer in the affirmative to the H issue addressed herein. Indeed, an affirmative answer to the issue, in my view, renders answers to the other issues otiose.

For these and the fuller reasons stated in the lead judgment of

my learned brother Kutigi, JSC, I too, dismiss this appeal. I make the same consequential orders inclusive of those regarding costs as set out in that judgment.

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