

SUPREME COURT OF NIGERIA
18TH DECEMBER, 1998. SC. 300/1990
CORAM:- S. M. A. BELGORE, A. B. WALL, E. O. OGWUEGBU,
U. MOHAMMED, A. I. IGUH, JJSC.

JACOB OYEROGBA & ANOR. DEFENDANTS/APPELLANTS
AND
EGBEWOLE OLAOPA & ORS. PLAINTIFF/RESPONDENT

CHIEFTAINCY MATTERS - *Estoppel per rem judicatam* - Where Exhibit "A" a judgment in a previous suit - Decided who is entitled to the chieftaincy in dispute - It operates as an estoppel per rem judicatam.

ESTOPPEL - *The principle of estoppel* - *It's nature and when it applies.*

ESTOPPEL - *Estoppel per rem judicatam* - *The principle of* - *What it means.*

ESTOPPEL - *Estoppel by deed* - *When it applies.*

ESTOPPEL - *Representation of facts* - *When an estoppel arises against the maker.*

FACTS

This action concerning the succession to minor chieftaincy of Onilado of Igboora was instituted by the plaintiff/respondent following the appointment of 2nd defendant/appellant by 1st defendant/appellant as Onilado of Igboora. The 1st defendant is the Baale of Igboora and is the prescribed authority for the appointment of lesser chiefs under him. The plaintiff brought the action as a representative of the Ojo and Oje families. The plaintiff's case was that only two sub-families are entitled under native law and custom of Igboora to provide candidates for the stool of Onilado of Igboora, that is the Oje and Ojo branches of Odulana family. Odulana was the first Onilado of Igboora. Ogunrinde, the last Onilado

who died in 1977 came from Oje branch and it was then the turn of Ojo branch to present the next Onilado. The plaintiff who belonged to the Ojo branch was in December, 1977 appointed by his branch to succeed Ogunrinde and his name was forwarded to the 1st defendant for approval. He refused to approve the plaintiff's appointment but rather approved that of 2nd defendant - Macaulay Olaoye who hailed from the Ajadi family and was subsequently installed. The case of the defendants was to the effect that the Onilado chieftaincy belonged to all the descendants of Durogbade, the common ancestor of the plaintiff and the 2nd defendant and that the only family entitled to the Chieftaincy was Durogbade family. The plaintiff denied that he was related to the 2nd defendant. In 1946 one Olaitan Akande instituted an action on behalf of himself and Ajadi family (to which 2nd defendant claims ancestry) at Ibadan (Suit No. 1/1/1946) against Ogunrinde and Adeoye, the then Baale of Igboora challenging Ogunrinde's appointment as Onilado. The main plank of Olaitan Akande's claim was that his own father, Ajadi, was at one time the Onilado. The evidence in Suit I/1/1946 (Exhibit A) was to the effect that Ajadi was never a substantive Onilado but merely acted during the minority of the person entitled. The 1946 claim was dismissed.

The learned trial judge at the conclusion of hearing held inter alia that Exhibit A was available as estoppel against 2nd defendant and that no member of Ajadi family was entitled to the title of Onilado of Igboora. Judgement was therefore entered for the plaintiff as claimed. Dissatisfied, the defendants appealed to the Court of Appeal which entirely upheld the decision of the trial court. The defendants have further appealed to the Supreme Court. The appeal was decided on a lone issue.

ISSUE FOR DETERMINATION

(a) Whether the judgment in Suit No. 1/1/46 - Exhibit A' was available as an estoppel against the 2nd Defendant in this case when the parties in Suit No. 1/1/46 are not the same as the parties in the present action.

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

Estoppel - The principle of estoppel

1. It is indeed surprising that parties in litigation still have doubts as to when issue estoppel applies. Time and again this Court had occasions to pronounce on this principle of law and practice. Estoppel is now more than rule of practice and it can rightly be described as substantive rule of law. There is estoppel where a party is precluded from saying a certain statement of fact is untrue whether in reality it is true or not. Estoppel, in nature, is a conclusion creating a disability whereby a party is precluded from contending or proving in any legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. There are four kinds of estoppel, viz: "Estoppel by matter of record", "estoppel by deed", "estoppel in pais" and "promissory estoppel" (p. 2604 A)

Estoppel per rem judicatam

2. Estoppel of record is also called "estoppel quasi of record" and is commonly called an "estoppel per rem judicatam" where an issue of fact has been judicially considered and determined to finality or to the exhaustion of all judicial remedies. This implies that the fact in issue was judicially pronounced upon and there was no appeal against that decision, or there was futile exercise of that right of appeal to finality. The tribunal must have jurisdiction, concurrent or exclusive, in the matter between the same parties or their privies on the same facts and subject matter, whether affecting a certain state of matters as to status of a person or thing. The situation as far as the facts in issue are concerned is that those facts or issues have finally been decided and laid to rest between the parties or their privies. It is a rule to stop vexatious repeated litigation on the same issue between virtually the same parties and subject-matter. Where the earlier decision is by a court of record the resulting estoppel is said to be of record; where it is by any other tribunal it is said to be estoppel quasi record. It does not matter whether the earlier decision is

by an inferior Court of record; the golden thread always is that that tribunal has jurisdiction and has pronounced on the facts in issue and it is final whether because of its exclusive jurisdiction or because there was no appeal against its pronouncement, or where an appeal was available and utilized, it was futile or failed. (See this Court's decisions in Balogun vs. Adejobi (1995) 2 N.W.L.R. (pt. 376) 131; Ezeanya vs Okeke (1995) 4 N.W.L.R. (pt. 388) 142. (p. 2604 D)

C ***Estoppel - Estoppel by deed***

3. The estoppel by deed occurs where a statement of facts is in a solemn deed made by parties and authenticated by their seals whereby they cannot be heard to resile from the facts clearly set out therein. Those facts are clearly binding on the parties thereto. (p. 2605 B)

Estoppel - Representation

E 4. Where a person by words and or deeds or by conduct made to another a clear and unequivocal representation of a fact either with knowledge of its falsehood or with the intention that it should be acted upon, or has so conducted himself that another would, as a reasonable man in his full faculties, understand that a certain representation of fact was intended to be acted upon, and that other person in fact acted upon that representation whereby his position was thereby altered to his detriment, an estoppel arises against that person who made the representation and he will not be allowed to aver that the representation is not what he presented it to be. (p. 2605 D)

Chieftaincy matters - Estoppel per rem judicatam

H 5. In this appeal the previous suit in Exhibit a was between the ancestor in office and blood relation of the first appellant, Baale Igbo Ora. The issue was the right to the minor chieftaincy of Onilado Igbo Ora concerning the descendants of Ajadi family represented here by second appellant, as opposed to the claim of Odulana descendants represented by

plaintiff. They are all privies² in blood and the subject matter is the same. The case decided in 1947 in then Supreme Court of Nigeria (which metamorphosed into present High Court) by Jibowu J (as he then was) and is now Exhibit A has sealed finally that only descendants of Odulana could be appointed Onilado of Igbo Ora and that the descendants of Ajadi were not entitled to ascend to that chieftaincy. This operates as estoppel per rem judicatam against Ajadi family forever. In my view this suit resulting in this appeal is no more than an effort to relitigate a matter already decided in Exhibit A in 1947. There must be an end to litigation.

(p. 2605 G)

NOTABLE POINTS OF INTEREST

OGWUEGBUJSC

1. Privies in relation to the doctrine of res judicata

In Coker & Or. v. Sanyaolu (1975)9-10 S.C. 203, this court considered the terminology "privies" in relation to the doctrine of res judicata and classified them into three, namely:

- (1) Privies in blood (as ancestor and heir);
- (2) Privies in law (as testator and executor; intestate and administrator) and
- (3) Privies in estate (as vendor and purchaser, lessor and lessee). It is the first class that is applicable to the case in hand. (p. 2614 E)

2. Plea of estoppel - The capacity of the parties

A plea of estoppel is not sustainable only where the heading of the later action strictly reflected the same capacity as in the earlier one. Strict emphasis on the heading of the action to show capacity is misleading. Once it is made clear that the self-same question is substantially in issue in two suits the precise form in which either suit is brought or the fact that the plaintiff in the one case was the defendant in the other is imma-

² The issue whether the parties are privies in the present and the past proceedings was also decided by the Supreme Court in Adedayo v. Babalola (1995) 7 KLR 1558 and Nkwo v. Uchendu (1996) 2 KLR (pt 38) 267

terial. The estoppel subsists between the parties. See Ojo v. Abadie 15 W.A.C.A 54 at 55. The issue in this case had been decided in the earlier action and the appellants cannot now impeach that judgment and the doctrine of issue estoppel applied. Once it is shown that the parties in the earlier and the later proceedings are the same or their privies as was shown in the present case, the court is left to find out whether the other two conditions are satisfied. The other two conditions are not part of the defendants' complaints in this appeal. (p. 2615 C)

C **IGUHJSC**

3. *When issue estoppel arises*

It has long been settled that an issue estoppel arises where an issue has been adjudicated upon in an earlier suit by a court of competent jurisdiction and the same issue comes incidentally in question in any subsequent proceedings between the same parties or their privies. See Fadiora and Another v. Gbadebo and Another (1978) 3 S.C. 219. This is based on the legal principle that a party is precluded from contending the contrary or opposite of any specific point which, having once been distinctly put in issue, has solemnly and with certainty been determined against him. Issue estoppel applies whether the point involved in the earlier decision is one of fact or law or one of mixed fact and law.

Three elements must however be established for a plea of issue estoppel to apply. These are:-

- (1) The same question must have been decided in both suits.
- (2) The judicial decision relied upon to create the estoppel must be final.
- (3) The parties to the judicial decision or their privies must be the same in both proceedings. (p. 2617 C)

REPRESENTATION

Miss M. O. Lewis for 1st Defendant/Appellant
Mr. J. O. Onibanjo for 2nd Defendant/Appellant
Mr. Kola Awodein for the Plaintiff/Respondent

CASES REFERRED TO

Balogun vs. Adejobi (1995) 2 N.W.L.R. (pt. 376) 131

Ezeanya vs Okeke (1995) 4 N.W.L.R. (pt. 388) 142

Adedayo vs. Babalola (1995) 7 N.W.L.R. (pt. 408) 383

Faleye vs. Otapo (1995) 3 N.W.L.R. (pt. 381)

B

Reichal v. Magrath (1889) 14 AC 665

Fadiora v. Gbadebo (1978) 3 SC 219

Coker v. Sanyaolu (1976) 9 & 10 SC 203

Iyayi v. Eyigebe (1987) 3 NWLR (pt 61) 523.

C

LEAD JUDGMENT BY BELGORE JSC

This is a matter concerning the succession of minor chieftaincy of Onilado of Igboora. Igboora is in the Ibarapa district of those south-western Oyo speaking Yorubas but was under the suzerainty of Baale of Ibadan (now known as Olubadan of Ibadan). They share boundary with Egbas to the South and Yewas (formerly Egbados) to the Southwest. Essentially they are Oyos but by linguistic twist known as Ibarapas. Igboora has as its village head a Baale. In this suit as it is now the style in many Yoruba hamlets, attempt was made to refer to Baale as "Olora of Igboora", but for the purpose of this judgment it is the title to Baale that I shall use.

The 1st appellant, Jacob Oyerogba is the Baale (Bale) of Igbo-Ora and is the prescribed authority for the appointment of lesser chiefs under him. His town falls under Eruwa Local Government, but his traditional allegiance is to Olubadan.

The 2nd appellant and respondent were brought in by order of court following the deaths of the original 2nd appellant and respondent. The appellants were defendants at the trial Court while the plaintiff was representing the Ojo and Oje families. Due to creation of new local government the original Ibarapa Local Government has been broken up and Igbo-Ora now falls in Eruwa Local Government. The suit was instituted following the appointment of 2nd Defendant by 1st Defendant as Onilado of Igbo Ora. Plaintiff's case was that the, Onilado chieftaincy started or descended from one Odulana and there has been only six Onilados in the

history of Igbo Ora, all descending from Odulana in the following order:

1. Odulana
2. Akanwo
3. Iyonwu
4. Oje
5. Ojo
6. Ogunrinde

B

C For the 2nd defendant it was contended that the Onilado chieftaincy originated from one Durogbade the ancestor of 2nd Defendant and that Ajadi, his father was Onilado before Ojo, that is after Oje, thus claiming that seven previous Onilados reigned. Thus it was when ojo, the fifth Onilado according to the plaintiff, but sixth according to the defendants, and Ogunrinde (the last Onilado) was appointed, one Olaitan D Akande instituted an action on behalf of himself and Ajadi Family (to which second defendant claims ancestry) in 1946 at Ibadan (suit No. 1/1/1946) against Ogunrinde and Adeoye, the then Baale of Igbo Ora challenging Ogunrinde's appointment as Onilado. The main plank of Olaitan E Akande's claim was that this his own father, Ajadi, was at one time the Onilado. The High Court dismissed the 1946 claim. It must be mentioned that the second defendant belonged to Ajadi family. The evidence in suit 1/1/1946 (Exhibit A) was to the effect that Ajadi was never a F substantive onilado but merely acted during the minority of the person entitled. Perhaps he never even died acting in that capacity. On the entitlement of Ajadi family to Onilado title the plaintiff relied on Exhibit A as estoppel against the defendants and also to establish his claim.

F

G The high Court in this present suit held that Exhibit a was available as estoppel against defendant and that no member of Ajadi family was entitled to the title of Onilado of Igbo Ora. Further the trial court held that first appellant, as prescribed authority under Chiefs Law was merely to approve appointment of those entitled under customary law to H the minor chiefs under him. Finally it was held that Onilado chieftaincy originated from Odulana, the ancestor of the plaintiff and not from Durogbade as claimed by the defendants. Judgement wads therefore entered for the plaintiff as claimed.

The defendants appealed to Court of Appeal which entirely up-held the decision of trial High Court. In arriving at their decision the Justices held that on the whole the evidence of defendant was in some respects at variance with their pleadings, that the plaintiff was privy in blood to first defendant in Exhibit A, that 1st defendant was privy in law to 2nd defendant in Exhibit and that 2nd defendant is privy in blood to the plaintiff in Exhibit A. This Court of Appeal held that on the totality of the pleadings and evidence before trial court including Exhibit A that court had come to the right conclusion and therefore dismissed the appeal. Thus the appeal to this court.

Before this Court , on the grounds of appeal, the following issues for consideration were raised in the three briefs of argument as follows:-

1. Appellants:

(a) Whether the judgment in Suit No. 1/1/46 - Exhibit A' was available as an estoppel against the 2nd Defendant in this case when the parties in Suit No. 1/1/46 are not the same as the parties in the present action.

(b) Whether the plaintiff in this case can make use of the said judgment in Suit No. 1/146 as a representative of Oje and Ojo Families to found an estoppel against the 2nd Defendant in this case when Oje and Ojo Families were not parties to the action in suit No. 1/146.

(c) Whether any other descendant of Odulana apart from Oje and Ojo Families could still lay claim to Onilado Chieftaincy.

2. In the 2nd appellant's brief only one issue is formulated as follows:

"Whether or not the parties in Exhibit A and instant suit are the same having not instituted and defended both suits in the same right and capacities?"

3. The respondent, for his own part, formulated to issues, to wit.

i. whether the parties in Exhibit A are the same as the parties in this suit

ii. whether the holding of the trial Court referred to by the Court of Appeal that the Onilado chieftaincy was still restricted to Odulana family was supported by the evidence

Thus, the main issue in contention in this appeal is the applicability of issue estoppel to this case in view of Exhibit A. **It is indeed surprising that parties in litigation still have doubts as to when issue estoppel applies. Time and again this Court had occasions to pronounce on this principle of law and practice. Estoppel is now more than rule of practice and it can rightly be described as substantive rule of law.**

There is estoppel where a party is precluded from saying a certain statement of fact is untrue whether in reality it is true or not. Estoppel, in nature, is a conclusion creating a disability whereby a party is precluded from contending or proving in any legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. There are four kinds of estoppel, viz: "Estoppel by matter of record", "estoppel by deed", "estoppel in pais" and "promissory estoppel"

Estoppel of record is also called "estoppel quasi of record" and is commonly called an "estoppel per rem judicatam" where an issue of fact has been judicially considered and determined to finality or to the exhaustion of all judicial remedies. This implies that the fact in issue was judicially pronounced upon and there was no appeal against that decision, or there was futile exercise of that right of appeal to finality. The tribunal must have jurisdiction, concurrent or exclusive, in the matter between the same parties or their privies on the same facts and subject matter, whether affecting a certain state of matters as to status of a person or thing. The situation as far as the facts in issue are concerned is that those facts or issues have finally been decided and laid to rest between the parties or their privies. It is a rule to stop vexatious repeated litigation on the same issue between virtually the same parties and subject-matter. Where the earlier decision is by a court of record the resulting estoppel is said to be of record; where it is by any other tribunal it is said to be estoppel quasi record. It does not matter whether the earlier decision is by an inferior Court of record; the golden thread always is that that tribunal has jurisdiction and

has pronounced on the facts in issue and it is final whether because of its exclusive jurisdiction or because there was no appeal against its pronouncement, or where an appeal was available and utilized, it was futile or failed. (See this Court's decisions in Balogun vs. Adejobi (1995) 2 N.W.L.R. (pt. 376) 131; Ezeanya vs Okeke (1995) 4 N.W.L.R. (pt. 388) 142; Adedayo vs. Babalola (1995) 7 N.W.L.R. (pt. 408) 383; Faleye vs. Otapo (1995) 3 N.W.L.R. (pt. 381) 1 among latest expositions of this principle of estoppel).

The estoppel by deed occurs where a statement of facts is in a solemn deed made by parties and authenticated by their seals whereby they cannot be heard to resile from the facts clearly set out therein. Those facts are clearly binding on the parties thereto. This is irrelevant to this appeal. It is the estoppel per rem judicatam (of record) that this appeal related to .

Where a person by words and or deeds or by conduct made to another a clear and unequivocal representation of a fact either with knowledge of its falsehood or with the intention that it should be acted upon, or has so conducted himself that another would, as a reasonable man in his full faculties, understand that a certain representation of fact was intended to be acted upon, and that other person in fact acted upon that representation whereby his position was thereby altered to his detriment, an estoppel arises against that person who made the representation and he will not be allowed to aver that the representation is not what he presented it to be.

I have to dwell at length on this principle of estoppel to, if possible allow peace to this Court by litigants who still have second thoughts on applicability of estoppel.

In this appeal the previous suit in Exhibit a was between the ancestor in office and blood relation of the first appellant, Baale Igbo Ora. The issue was the right to the minor chieftaincy of Onilado Igbo Ora concerning the descendants of Ajadi family represented here by second appellant, as opposed to the claim of Odulana descendants represented by plaintiff. They are all privies in blood and the subject matter is the same. The case decided in 1947 in

then Supreme Court of Nigeria (which metamorphosed into present High Court) by Jibowu J (as he then was) and is now Exhibit A has sealed finally that only descendants of Odulana could be appointed Onilado of Igbo Ora and that the descendants of Ajadi were not entitled to ascend to that chieftaincy. This operates as estoppel per rem judiciatam against ajadi family forever. In my view this suit resulting in this appeal is no more than an effort to relitigate a matter already decided in Exhibit A in 1947. There must be an end to litigation.

This matter is therefore decided on this issue along. I dismiss this appeal with N10,000.00 costs to respondents.

D **WALI JSC**

I have been privileged to read before now, the lead judgment of my learned brother Belgore, JSC and I entirely agree with the reasoning and conclusion for dismissing the appeal.

E The three issues raised by the appellants deal with the operation of judgment in Suit 1/1/1946 now Exhibit A as issue estoppel and res judicata. The parties in Exhibit A are:

Olaitan Akande

F [On behalf of himself and as a representative of Ajadi Family] -
plaintiff

And

1. Ogunrinde

2. Adeoye [Bale of Igboora] Defendants

G In that case, Jibowu J [as he then was] reviewed the evidence before him and made the following findings:-

"With regard to Ayesewon, it appears to me that the evidence for the defence is to be accepted that he was only an acting Onilado in the absence of Iyowun and that he had to yield place to Iyowun on his return from Iseyin as the plaintiff knows nothing about his connection with Efunlodi, wife of Iyowun.

The office of Bale is the highest title in Igboora, and the title of

Olukotun comes next. Both the 2nd defendant and Ogundele, the Olukotun never held any minor titles before they were appointed to their high offices. These the plaintiff had to admit; his suggestion that only a man who had received a minor title could be made the Onilado is untrue.

I do not believe the plaintiff, in view of the evidence of the B defendants which I accept, that he performed the funeral obsequies of the last Onilado.

I am satisfied that the 1st defendant and Emmanuel Oguntinyinbo know their family history better than the 2nd defendant and that Ogunde, the Olukotun, who knew the various Onilados from Akanwo personally, is a witness of truth. I accept his evidence that Oduntan was not a brother of Iyowun; that Odubiyei was Oduntan's father and that he was never an Onilado; that Oje was son of Akanwo and not of Iyowun."

As can be gathered from the pleadings and the evidence adduced in this case the main issue is whether Ajadi Family was one of traditionally recognized Families entitled to vie for Onilado chieftaincy in igboora. The 2nd defendant who was from Ajadi Family was appointed by the 1st defendant to the minor chieftaincy of Onilado in his capacity as the prescribed authority. This led the present plaintiffs to institute the present action claiming that Ajadi Family is not one of the recognized ruling families entitled to vie for the Onilado chieftaincy.

At the conclusion of the case, Ademakinwa J reviewed the evidence presented by all sides to the litigation and found that-

"The issue, which the plaintiff in the present case alleged was decided in the previous case is whether Ajadi, the ancestor of both Olaitan Akande (the plaintiff in that case) and the 2nd Defendant in the present case, was ever installed as a substantive Onilade or that he merely acted in that capacity.

There is no doubt in my mind after carefully reading Exhibit "A" that this issue was thoroughly canvassed by the parties to the Suit No. 1/1/46 and that the Court made a solemn finding on the issue." H

XX

"The record is conclusive as to the capacity in which a Plaintiff sued. (See: Henderson v. Henderson (1844) 6 Q.B. 288 at page 298). In

Exhibit "A" Olaitan Akande was shown to have instituted the action on behalf of himself and as a representative of the Ajadi family. It could also be gathered from Exhibit "A" and oral testimony of the Plaintiff's witnesses that Ogunrinde (the 1st Defendant in the previous case) was
 B sued as a representative of the Ojo/Oje families who claimed to be exclusively entitled to present candidates for Onilado chieftaincy; while the 2nd Defendant (Adeoye) was sued as the Bale of Igboora. It is therefore not correct to say that any of the Defendants in the previous case, was
 C sued in his personal capacity as was the case in the Shitta-Bey's case. It is settled law that the judgment in a representative action is binding on all the members of the class represented as they are deemed to be present by representation."

"There is also evidence in the present case that the plaintiff is
 D basing his claim to Onilado chieftaincy on the fact of his being a descendant of Ojo while the 2nd Defendant has based his own claim on the fact of his being a descendant of Ajadi who, according to the 2nd Defendant was at one time a substantive Onilado of Igboora and not an acting
 E Onilado as alleged by the Plaintiff. The claim of Olaitan Akande, the Plaintiff in the former action depended on whether Ajadi was a substantive or acting Onilado. The Court in that case as shown in Exhibit "A" has found that Ajadi was really an acting Onilado and accordingly from
 F the evidence adduced that the 2nd Defendant in the present case is a privy-in-blood to Olaitan Akande, the Plaintiff in the previous action. In the circumstances the 2nd Defendant is estopped from relitigating the issue as to whether his ancestor Ajadi was an acting Onilado or not. This
 G issue had been resolved against him as a privy of Olaitan Akande and it is no longer open to him to reopen the issue."

The learned trial judge then concluded on this issue as follows:-
 The sum total of all these is that the 2nd Defendant in the present case, as a privy-in blood of Olaitan Akande, is estopped from relitigating the
 H issue as to whether or not Ajadi was an acting Onilado of Igboora - an issue which had previously been decided against him as shown in Exhibit "A". That being the case the 2nd Defendant or any other person routing his claim through Ajadi is not entitled, in my view, to be appointed as

Onilado of Igboora."

Aggrieved by the decision of the trial court, the defendants appealed to the Court of Appeal. In a unanimous judgment of that court Ogundare JCA [as he then was] affirmed the issue of res judicata against the defendants, particularly the 2nd defendant. The learned Justice said in his lead judgment that-

"Exhibit A, that is the judgment in Suit 1/1/1946 was relied on by the plaintiff. The learned trial Judge held that the 2nd defendant was estopped by Exhibit A from relitigating the entitlement of his family, the Ajadi family to the Onilado chieftaincy that issue having been decided against his family in that suit. This finding has come under attack in this ground. The gravamen of appellants' complaint is that parties are not the same in Suit 1/1/1946 and the present action in that while Ogunrinde was sued in his personal capacity in Exhibit A, the plaintiff in the present action sued in representative capacity.

I regret I cannot accept Mr. Arasi's submissions both in his brief and in his oral argument before us. In suit 1/1/1946, Olaitan Akande sued on behalf of the AJADI FAMILY and the main claim in that case as also in the present appeal, was the entitlement of the AJADI FAMILY to the Onilado chieftaincy. Akande lost. The defendants in that case were (a) Ogunrinde the then Onilado and a member of the OJE section of the ODULANO FAMILY, the family the trial Judge found to be the only family entitled to the Onilado chieftaincy and (b) Adeoye, the Bale of Igboora and the predecessor-in-office of the 1st defendant in the present appeal. The second defendant in the present suit was a member of the Ajadi Family that took the earlier action. It is a misconception of the law to say that the 1st and 2nd defendants and plaintiff respectively in suit 1/1/1946."

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I hold that the plaintiff in this case was a privy in blood of the 2nd defendant, Ogunrinde in the earlier suit and that this 1st defendant is a privy in law of the 1st defendant in the earlier suit.

I am satisfied from all I have said above that the learned trial Judge properly applied the doctrine of issue estoppel in this case and rightly

found that the appellants were estopped from relitigating the issue of the entitlement of the AJADI FAMILY to the Onilado chieftaincy it having been held in exhibit A that Ajadi was never an Onilado."

I cannot agree more with these findings by both the trial court and the Court of Appeal on the question of issue estoppel operating as res judicata against the 2nd defendant. He is undoubtedly a privy in blood of the plaintiff in suit No. 1/1/1946. The finding of the trial court in Exhibit A is binding not only on the 2nd defendant in that case who was sued in his official capacity but also on the 1st defendant in the present case as the successor-in-office of the 2nd defendant in the said earlier case. See Reichal v. Magrath (1889) 14 AC 665; Fadiora & Anor v. Gbadebo & Anor. (1978) 3 SC 219; Coker & Anor v. Sanyaolu (1976) 9 & 10 SC 203 and Iyayi v. Eyigebe (1987) 3 NWLR (pt 61) 523.

The defendants in Exhibit A are from Onilado Family from which the two sub-families of Oje and Ojo descended. Exhibit A was fought on that basis. Reading Exhibit A as a whole one cannot escape the conclusion that the defendants defended the case in a representative capacity for Onilado Family. Notwithstanding the plaintiffs/appellants contention that Ajadi Family sued Ogunrinde in suit No. 1/1/1946 in the latter's personal capacity, he fought and defended the case in a representative capacity for his family. See Ojo v. Abadie 15 WACA 54.

It is for these and the more elaborate reasons contained in the lead judgment of my learned brother Belgore, JSC that I also hereby dismiss the appeal with N10,000.00 costs to the Respondents.

G **OGWUEGBU JSC**

I have had a preview, in draft, of the judgment just read by my learned brother, Belgore, J.S.C. and I am in complete agreement with him that this appeal should be dismissed.

H The main issue canvassed by the appellants was whether the judgment in Suit No. 1/1/46 - Exhibit "A" was available as an estoppel against the 2nd defendant/appellant in this case when the parties in Suit No. 1/1/46 are not the same as the parties in the present action.

The facts of the case briefly stated are that only two families are entitled under native law and custom of Igboora to provide candidates for the stool of Onilado of Igboora - a minor chieftaincy under the Chiefs Law of Oyo State and that the Baale of Igboora is the prescribed authority and he approved appointment to the said chieftaincy. The chieftaincy is restricted to the OJE and OJO branches of Odulana family. Odulana was the first Onilado of Igboora. Ogunrinde, the last Onilado who died in 1977 came from OJE branch and it was then the turn of OJO branch to present the next Onilado. The plaintiff who belonged to the Ojo branch was in December, 1977 appointed by his branch to succeed Ogunrinde and his name was forwarded to the 1st defendant/appellant for approval. He refused to approve the plaintiff's appointment but rather approved that of the 2nd defendant/appellant - Macaulay Olaoye who hailed from the Ajadi family. Macaulay Olaoye was install by the 1st defendant.

In 1946 one Olaitan Akande of the Ajadi family acting on behalf of Ajadi family sued Ogunrinde, the then Onilado and one Adeoye, the then Baale of Igboora claiming the right of Ajadi family to the Onilado Chieftaincy (Suit No.1/1/1946). The suit was dismissed. See Exhibit "A". The plaintiff/respondent denied that he was related to the 2nd defendant. The case of the 1st and 2nd defendants was to the effect that the Onilado chieftaincy belonged to all the descendants of Durogbade, the common ancestor of the plaintiff and the 2nd defendant and that the only family entitled to the chieftaincy was Durogbade family.

From the pleadings and the evidence the main issue arise in the case was whether the Ajadi family was entitled to the Onilado chieftaincy. The learned trial judge accepted plaintiff's evidence as to the origin of Onilado Chieftaincy and the number and identities of the previous Onilado of Igboora. He rejected the evidence for the defence on those points. He further held that the 2nd defendant was estopped from relitigating the issue as to whether or not Ajadi was an acting Onilado of Igboora which issue had been decided against Olaitan Akande in Suit No. 1/1/46 (Exhibit "A"). The learned trial judge held as follows:

"There is also evidence in the present case that the Plaintiff is basing his claim to Onilado chieftaincy on the fact of his being a descen-

dant of Ojo while the 2nd Defendant has based his own claim on the fact on his being a descendant of Ajadi who, according to the 2nd Defendant was at one time a substantive Onilado of Igboora and not an acting Onilado as alleged by the Plaintiff. The claim of Olaitan Akande, the Plaintiff in the former action depended on whether Ajadi was a substantive or acting Onilado. The Court in that case as shown in Exhibit "A" has found that Ajadi was really an acting Onilado and accordingly dismissed Olaitan Akande's claim. I am satisfied from the evidence adduced that the 2nd Defendant in the present case is a privy-in-blood to Olaitan Akande, the Plaintiff in the previous action. In the circumstance the 2nd Defendant is estopped from relitigating the issue as to whether his ancestor Ajadi was in acting Onilado or not. This issue has been resolved against him as a privy of Olaitan Akande and it is no longer open to him to reopen the issue."

The court below in affirming the above conclusion of the learned trial judge said:

"I regret I cannot accept Mr. Arasi's submissions both in his brief and in his oral argument before us. In Suit 1/1/46, Olaitan Akande sued on behalf of the AJADI FAMILY and the main claim in that case as also in the present appeal, was the entitlement of the AJADI FAMILY to the Onilado chieftaincy. Akande lost. The defendants in that case were (a) Ogunrinde the then Onilado and a member of OJE section of the ODULANO FAMILY, the family the trial judge found to be the only family entitled to the Onilado Chieftaincy and (b) Adeoye, the Baale of Igboora and the predecessor-in-office of the 1st defendant in the present appeal. The second defendant in the present suit was a member of the Ajadi family that took the earlier action. It is a misconception of the law to say that the 1st and 2nd defendants were not privies to the 2nd defendant and plaintiff respectively in Suit 1/1/46. Ogunrinde who was then Onilado, was a descendant of ODULANO, the first Onilado. The plaintiff in the present action was also a member of the ODULANO family being also a descendant of Odulano."

Learned counsel for the 1st and 2nd defendants/appellants submitted in their respective briefs and in oral arguments that the position

taken by the court below was erroneous in that it failed to consider the effect, if any, the different capacities in which the actions were instituted and defended had on the plea of estoppel. It was submitted that actions fought or defended in different rights and capacities cannot be used to estop any of the parties or their privies because the parties in such circumstances are regarded as different. We were referred to the cases of Re Deeley's patents (1895)1 Ch. 687, Fadiora v. Gbadebo (1978) 3 S.C. 219, Ezeanya v. Okeke (1995) 4 N.W.L.R. (pt. 388) 142 and Shitta-Bey & Ors. v. The Chairman, L.E.D.B. & Ors. (1966)2 N.S.C.C. 252.

I have carefully studied Exhibit "A" and the judgment of the court below giving rise to this appeal and I have no doubt in my mind that the courts below correctly applied the doctrine of issue estoppel to this case. Issue estoppel arises where an issue had earlier on been adjudicated upon by a court of competent jurisdiction and the same issue comes incidentally in question in a subsequent proceedings between the same parties of their privies. The conditions for the application of the doctrine are that;

- (i) the same question was decided in both proceedings;
- (ii) the judicial decision said to create the estoppel was final; and
- (iii) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

See Fadiora & Or. v. Gbadebo & Or. (supra).

In Exhibit "A", Olaitan Akande as plaintiff sued Ogunrinde and Adeoye (Baale of Igboora). He sued "on behalf of himself and as a representative of the Ajadi family." The learned trial judge found as follows:

"In Exhibit "A" Olaitan Akande was shown to have instituted the action on behalf of himself and as a representative of the Ajadi family. It could also be gathered from Exhibit "A" and oral testimony of the plaintiffs' witnesses that Ogunrinde (the 1st Defendant in the previous case) was sued as a representative of the Ojo/Oje families who claimed to be exclusively entitled to present candidates for Onilado chieftaincy; while the 2nd Defendant (Adeoye) was sued as the Baale of Igboora. It is therefore not correct to say that any of the defendants in the previous case, was sued in his personal capacity as was the case in Shitta-Bey's

case. It is settled law that the judgment in a representative action is binding on all members of the class represented as they are deemed to be present by representation. (See Opebiyi v. Oshoboja (1976)9 & 10 S.C. 195 at p. 200; Pabiekun & Ors. v. Ajayi (1966)1 All N.L.R.197 at 198."

B In the present proceedings, the plaintiff is basing this claim to Onilado chieftaincy on the fact of his being a descendant of Ojo while the 2nd defendant based his claim on the fact of his being a descendant of Ajadi, who according to him (2nd defendant) was at one time a substantive Onilado of Igboora and not an acting Onilado as alleged by the plaintiff. The claim of the plaintiff (Olaitan Akande) in Exhibit "A" depended on whether Ajadi was a substantive or acting Onilado. The court in that case found that Ajadi was in fact an acting Onilado and accordingly dismissed Olaitan Akande's claim.

D Having regard to the fact that the dispute between the parties in the earlier suit and the present is as to the entitlement of members of Ajadi family to Onilado chieftaincy, I am satisfied that the 2nd defendant/appellant herein is a privy of Olaitan Akande. He is accordingly estopped E from relitigating the issue as to whether his ancestor Ajadi was an acting Onilado or not. See Ijayi v. Eyigebe (1987)3 N.W.L.R. (pt.61) 532 at 534.

F In Coker & Or. v. Sanyaolu (1976)9-10 S.C. 203, this court considered the terminology "privies" in relation to the doctrine of res judicata and classified them into three, namely:

- (1) Privies in blood (as ancestor and heir);
- (2) Privies in law (as testator and executor; intestate and administrator) and
- G (3) Privies in estate (as vendor and purchaser, lessor and lessee).

It is the first class that is applicable to the case in hand.

H Similarly, the plaintiff in the earlier action claimed entitlement to Onilado of Igboora chieftaincy which was at the time occupied by Ogunrinde of Oje branch of Odulana family. The said chieftaincy was restricted to Ojo and Oje branches of Odulano family. The plaintiff in the present action was from Ojo branch of Odulano family. He was equally

a privy-in-blood of Ogunrinde (the first defendant in Exhibit "A").

Any person tracing his ancestry to Odulano in respect of Onilado chieftaincy will be bound by the judgment in Exhibit "A" because he is privy-in-blood in respect of Onilado chieftaincy. Adeoye the second defendant in the earlier suit was sued as Baale of Igboora just as Jacob B Oyerogba the first defendant in the present action was sued as Baale of Igboora. He is privy-in-law to Adeoye. The judgment in Exhibit "A" is conclusive for a against the parties in the present suit. See 16 Halsbury's Laws of England, 4th edition p. 1041 Article 1543.

A plea of estoppel is not sustainable only where the heading of C the later action strictly reflected the same capacity as in the earlier one. Strict emphasis on the heading of the action to show capacity is misleading. Once it is made clear that the self-same question is substantially in issue in two suits the precise form in which either suit is brought or the D fact that the plaintiff in the one case was the defendant in the other is immaterial. The estoppel subsists between the parties. See Ojo v. Abadie 15 W.A.C.A 54 at 55. The issue in this case had been decided in the earlier action and the appellants cannot now impeach that judgment and E the doctrine of issue estoppel applied. Once it is shown that the parties in the earlier and the later proceedings are the same or their privies as was shown in the present case, the court is left to find out whether the other two conditions are satisfied. The other two conditions are not part of the F defendants' complaints in this appeal.

I must at this stage say that the facts of the case of Shitta Bey & Ors. v. L.E.D.B & Ors. (supra) cited by the learned appellants are not the same as the facts of the present case. In that case, the 2nd respondent G had sued in a personal capacity in the earlier case and not in a representative capacity and the later suit did not involve his personal rights. The earlier case could not therefore constitute res judicata and the parties could not be said to be the same.

For the reasons I have given above and for the fuller reasons in H the judgment of my learned brother Belgore, J.S.C. I will dismiss the appeal on issue estoppel alone with N10,000.00 costs to the plaintiff/respondent.

MOHAMMED JSC

I entirely agree with the opinion of my learned brother, Belgore, JSC, in the judgment just read. I have had the privilege to read the judgment in draft before now. It is crystal clear that the appellants are descendants of Ajadi who was held in Exhibit "A" to have only acted as an Onilado during the minority of the person entitled. Exhibit "A" was Suit No.1/1/1946. I agree that the judgment, Exhibit A, operates as an estoppel per rem judicatam against the Ajadi family. The appeal is accordingly dismissed. The judgment of the Court of Appeal affirming the decision of the trial High Court is hereby affirmed. I also award N10,000.00 costs to the Plaintiff/Respondent.

D IGUH JSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Belgore, J.S.C. and I agree entirely that there is no merit in this appeal.

The appeal is in respect of the Onilado Chieftaincy in the Ibarapa Local Government Area of Oyo State. From the grounds of appeal filed, it is apparent that the main issue that arises for determination in this appeal is whether the judgment in the Ibadan Supreme Court Suit No. 1/1/1946, Exhibit A, operates as issue estoppel against the 2nd appellant precluding him from relitigating the entitlement of his family the Ajadi family, to the Onilado Chieftaincy. The gravamen of the appellants' complaint is that the parties in the present suit are not the same as those in the previous suit. It is their contention that the defendants in Exhibit A defended the suit personally and not in a representative capacity.

The issue which the respondents maintain was decided in Exhibit A is that Ajadi, the ancestor of both Olaitan Akande (the plaintiff in that case) and the 2nd defendant/appellant in the present case, was never installed as a substantive Onilado but merely acted in that capacity. In this regard, the trial court stated thus:-

"There is no doubt in my mind after carefully reading Exhibit "A" that this issue was thoroughly canvassed by the parties to the Suit

No. 1/1/46 and that the Court made a solemn finding on the issue. At page 3 of the said Exhibit "A" the following passage occurs:

'..... There can be no doubt that at one time in their history the father of the Plaintiff, Ajadi, was known as the Onilado, but the evidence is that he was never formally installed as he was made to act during the minority of Ojo on the death of his friend and relation-in-law Oje. Evidently the younger men who knew him to have been called the Onilado were not aware that he was only an acting man, but the older men, like the Olukotun, knew well this fact."

The above finding is clear and lucid. It was also affirmed by the court below. The real question is whether the parties in Exhibit A and the present suit are the same or not.

It has long been settled that an issue estoppel arises where an issue has been adjudicated upon in an earlier suit by a court of competent jurisdiction and the same issue comes incidentally in question in any subsequent proceedings between the same parties or their privies. See Fadiora and Another v. Gbadebo and Another (1978) 3 S.C. 219. This is based on the legal principle that a party is precluded from contending the contrary or opposite of any specific point which, having once been distinctly put in issue, has solemnly and with certainty been determined against him. Issue estoppel applies whether the point involved in the earlier decision is one of fact or law or one of mixed fact and law.

Three elements must however be established for a plea of issue estoppel to apply. These are:-

(1) The same question must have been decided in both suits.
(2) The judicial decision relied upon to create the estoppel must be final.

(3) The parties to the judicial decision or their privies must be the same in both proceedings.

See too Fadiora and Another v. Gbadebo and Another (*supra*). It is only with the third element that this appeal is concerned.

In this regard, the learned trial Judge stated as follows:-

"I do not think the principle in *Shitta-Bey's* case is applicable here. The record is conclusive as to the capacity in which a Plaintiff

sued. (See: Henderson v. Henderson (1844) 6 Q.B. 288 at page 298). In Exhibit "A" Olaitan Akande was shown to have instituted the action on behalf of himself and as a representative of the Ajadi family. It could also be gathered from Exhibit "A" and the oral testimony of the Plaintiff's witnesses that Ogunrinde (the 1st Defendant in the previous case) was sued as a representative of the Ojo/Oje families who claimed to be exclusively entitled to present candidates for Onilado chieftaincy; while the 2nd Defendant (Adeoye) was sued as the Bale of Igboora. It is therefore not correct to say that any of the Defendants in the previous case, was sued in his personal capacity as was the case in the Shitta-Bey's case. It is settled law that the judgment in a representative action is binding on all the members of the class represented as they are deemed to be present by representation. (See: Opebiyi v. Oshoboja (1976) 9 & 10 S.C. 195 at page 200; Pabiekun & Ors. v. Ajayi (1966) 1 All N.L.R. 197 at page 198). On this principle, both the members of Ajadi family (including the 2nd Defendant in the present case) and the members of the Oje and Ojo families (including the Plaintiff in the present case) are bound by the decision in Suit No. 1/1/46 as shown in Exhibit "A".

He continued:-

"I am satisfied from the evidence adduced that the 2nd Defendant in the present case is a privy-in-blood to Olaitan Akande, the Plaintiff in the previous action. In the circumstances the 2nd Defendant is estopped from relitigating the issue as to whether his ancestor Ajadi was an acting Onilado or not. This issue had been resolved against him as a privy of Olaitan Akande and it is no longer open to him to reopen the issue."

He then concluded:-

"The sum total of all these is that the 2nd Defendant in the present case, as a privy-in-blood of Olaitan Akande, is estopped from relitigating the issue as to whether or not Ajadi was an acting Onilado of Igboora - an issue which had previously be decided against him as shown in Exhibit "A". That being the case, the 2nd Defendant or any other person routing his claim through Ajadi is not entitled, in my view, to be appointed as Onilado of Igboora."

The Court of Appeal, for its own part, dealing with the same issue, per the leading judgment of Ogundare, J.C.A., as he then was, with which, Omo and Onu, JJ.C.A., as they then were, agreed, resolved the issue as follows:-

"I regret I cannot accept Mr. Arasi's submissions both in his brief and in his oral argument before us. In suit 1/1/1946, Olaitan Akande sued on behalf of the AJADI FAMILY and the main claim in that case as also in the present appeal, was the entitlement of the AJADI FAMILY to the Onilado chieftaincy. Akande lost. The defendants in that case were (a) Ogunrinde the then Onilado and a member of the OJE section of the ODULANO FAMILY, the family the trial Judge found to be the only family entitled to the Onilado chieftaincy and (b) Adeoye, the Bale of Igboora and the predecessor-in-office of the 1st defendant in the present appeal. The second defendant in the present suit was a member of the Ajadi Family that took the earlier action. It is a misconception of the law to say that the 1st and 2nd defendants were not privies to the 2nd defendant and plaintiff respectively in suit 1/1/1946. Ogunrinde who was then Onilado, was a descendant of ODULANO, the first Onilado. The plaintiff in the present action was also a member of the ODULANO family being also a descendant of Odulano.

The term "PRIVIES" was considered by the Supreme Court in COKER & ANOR. V. SANYAOLU (1976) 9 & 10 S.C. 203, 223 wherein Idigbe J.S.C. delivering the judgment of the Court said:

"Privies are of three classes and they are (1) Privies in blood (as ancestor and heir); (2) Privies in law (as testator and executor; intestate and administrator) (3) Privies in Estate (which we think is germane to the case in hand) as Vendor and Purchaser, lessor and lessee (see also 15 Halsbury Laws of England 3rd Edition p. 196 Article 372)."

I hold that the plaintiff in this case was a privy in blood of the 2nd defendant, Ogunrinde in the earlier suit and that this 1st defendant is a privy in law of the 1st defendant in the earlier suit. The 2nd defendant in this appeal is a privy in blood of the plaintiff to the earlier suit.

I am satisfied from all I have said above that the learned trial Judge properly applied the doctrine of issue estoppel in this case and

rightly found that the appellants were estopped from relitigating the issue of the entitlement of the AJADI family to the Onilado chieftaincy, it having been held in Exhibit a that Ajadi was never an Onilado."

I have carefully examined the issue under consideration and must
B state that I agree entirely with both courts below that Exhibit a consti-
tutes issue estoppel against the 2nd appellant and other members of the
Ajadi family. This is because the 1st defendant in Exhibit A is a privy in
blood to the plaintiff herein while the 2nd respondent herein is also a
C privy in blood of the plaintiff in Exhibit A. The dispute between the
parties in the two cases relates to whether members of Ajadi family are
entitled to become Onilade. This issue was resolved against the 2nd
appellant and members of the Ajadi family and cannot now be relitigated.

D It is for the above and the more detailed reasons contained in the
leading judgment that I, too, dismiss this appeal as unmeritorious. I abide
by the order for costs therein made.

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