

**SUPREME COURT OF NIGERIA**

15TH JANUARY, 1999. SC. 133/1993

**CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,  
M. E. OGUNDARE, E. O. OGWUEGBU, JJSC.**

ANYAEZE CHUKWUEKE & ANOR ..... PLAINTIFFS/  
(For themselves and on behalf of Amaelu family APPELLANTS  
of Amankalu Alayi)

AND

OKORIE OKORONKWO & ORS. .... DEFENDANTS  
(For themselves and on behalf of Umuanya family RESPONDENTS  
of Amankalu Alayi)

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***COURTS*** - Native Courts - Proceedings - In considering proceedings in those Courts - The substance of the action and not the form should be looked at.

***EVIDENCE*** - Proof - The rule that a plaintiff must succeed on the strength of his own case - And not on the weakness of the defendant's case - When it does not apply.

***LAND LAW*** - Title to land - Proof of - Findings by the trial Court that title has been declared in favour of the plaintiffs - In earlier proceedings - The Court of Appeal was wrong to have interfered with such findings.

***TRESPASS*** - Possession - Where the plaintiffs have been in possession all the time - Acts of trespass by the defendants - Should not have been elevated to acts of possession.

**FACTS**

The plaintiffs/appellants instituted an action in the Umuahia Judicial Division against the defendants/respondents claiming N10,000.00 being special and general damages to a piece of land known and called "AKWAKWA" situate at Alayi; and an Order of perpetual injunction. Both

the plaintiffs and the defendants hail from the same village Amankalu Alayi; although from different families. The parties are in agreement that while the plaintiffs call the land in dispute "AKWAKWA", the defendants refer to it as "AJA OJI" land. Both sides pleaded and relied on previous courts judgments over the land in dispute.

At the conclusion of the trial the learned trial judge found for the plaintiffs in all their heads of claims. He based his judgment on the judgment in a previous suit No. 129/58 where the Alayi Native Court made a declaration in favour of the plaintiffs, as per exhibit A in the proceedings. The appeal against the Native Court's judgment was struck out (vide Exhibit B) Dissatisfied with the judgment of the High Court, the defendants appealed to the Court of Appeal Port Harcourt division. The Court of Appeal unanimously allowed the appeal, because it was of the view that there was no evidence to show that the land in dispute in the present case was the same land over which judgment was entered in favour of the plaintiffs in Alayi Native Court, and that therefore the plaintiffs failed to prove exclusive possession of the land in dispute to ground trespass. The judgment of the High Court was set aside and a verdict of dismissal of plaintiffs' case was substituted in its place. Aggrieved, the plaintiffs have now appealed to the Supreme Court raising two issues

#### **ISSUES FOR DETERMINATION**

*"(i) Whether the Court of Appeal was right when it held that there was no evidence before the Court to show that the land in dispute in this case was the same land over which a declaration of title was made in favour of the plaintiffs; and*

*(ii) Whether the Court of Appeal was right when it held that the plaintiffs failed to prove that they had been in exclusive and uninterrupted possession of the land in dispute from time immemorial."*

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

#### ***Land law - Title to land***

1. I think there was no doubt whatsoever that the land over which the Plaintiffs obtained judgment in the Alayi Native Court is the same land in

dispute here now. What is more the Defendants admitted and the trial court rightly found that the plaintiffs won all cases (1958 & 1972) in respect of the land in dispute against the Defendants. I am clearly of the view that the Court of Appeal was wrong when not disputing all these facts it still went on to hold that there was no nexus between the land in dispute in the previous suits and the land in dispute in the present case. Where there are specific findings of fact on issues relating to proof of title by the trial court, a Court of Appeal will be reluctant to interfere with such findings. (p. 48 E)

### ***Courts - Native Courts***

2. It is settled that in considering proceedings in native courts the court should look at the substance of the action and not the form. The pleadings and evidence also show that the 1958 and 1972 suits were all fought in representative capacities and not in personal capacities as Mr. Ofodile would want us to believe. (p. 48 H)

### ***Evidence - Proof***

3. There is no doubt at all that the evidence of D.W.1. above supports the plaintiffs' case in all material particulars which the plaintiffs are entitled to use because the rule that a Plaintiff must succeed on the strength of his own case and not on the weakness of the Defendants case, does not apply where the Defendant's case (as in this case) itself supports that of the plaintiffs and contains evidence on which the plaintiff is entitled to rely (see for example) AJAO VS ALAO (supra). (p. 49 B)

### ***Trespass - Possession***

4. Having established that the land over which plaintiffs obtained judgment in the previous suits (Exhibits A & B) is the same as the land now in dispute, the learned trial judge was right when he held that -

*"The plaintiffs have proved their titled to the land in dispute based on previous judgments in their favour."*

The P.W. 1. made it clear above that the farming and quarrying of stones by the Defendants were without his consent. And that they plain-

tiffs) have been in possession all the time until sometime in 1972 and on 19/1/80 when the Defendants disturbed their possession thereof. In view of Exhibits A & B, these acts of the Defendants were clearly acts of trespass which should not have been elevated to acts of possession as the Court of Appeal appeared to have done (See ABOYEJI VS MOMOH (supra). (p. 49 D)

## NOTABLE POINTS OF INTEREST

### C WALI JSC

#### 1. *Judgment of a competent court remains valid until it is set aside*

Once the judgment of a competent court is perfected, it remains valid until it is set aside by a competent court or authority. Both the judgment of Alayi Native Court and the subsequent decision of striking out the appeal by the District Officer sitting as an appellate court in respect of the two judgments, are subsisting decisions and remain to be so until they are set aside by a competent court or authority. See Okoli Ojiako and ors. v. Onwuma Ogueze and ors. (1962) 1 ALL NLR 58. (p. 51 E)

### E OGWUEGBU JSC

#### 2. *Identity of land - Difference in names ascribed to it*

Where the parties by the evidence adduced are ad idem on the identity of the land in dispute, the fact that different names are ascribed to or that the area where it is located is called different names is immaterial as long as the parties are referring to the same parcel of land. See Makanjuola v. Balogun (1989) 3 N.W.L.R. (pt. 108) 142 at 204 and Aromire & Ors. v. Abayomi (1972) 1 ALL N.L.R. (Pt.1) 1 All N.L.R (Pt. 1) 101 at 113. (p. 55 A)

## REPRESENTATION

Chief F. R. A. Williams, San with T. E. Williams for the plaintiffs/Appellants  
Chukwumeka Ofodile for Defendants/Respondents

**CASES REFERRED TO**

Aboyaji v. Momoh (1994) 4 NWLR (Pt. 341) 646

Seismograph Service (Nig.) Ltd. v. Eyuafe (1976) 9-10 S.C. 135.

Ogungbemi v. Asamu (1986) 3 NWLR 161

Ojiako v. Ogueze (1962) 1 ALL NLR 58.

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Makanjuola v. Balogun (1989) 3 N.W.L.R. (pt. 108) 142 at 204 Aromire

v. Abayomi (1972) 1 ALL N.L.R. (Pt.1) 1 All N.L.R (Pt. 1) 101 at 113.

**LEAD JUDGMENT BY KUTIGI JSC**

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The Plaintiffs sued the Defendants claiming N10,0000.00 being special and general damages for trespass to a piece of land known and called "AKWAKWA", situate at Alayi in the Umuahia Judicial Division. They also claimed an order of perpetual injunction against the Defendants.

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Pleadings were ordered, filed and exchanged. At the trial evidence was led on both sides. A number of documentary evidence were also tendered. It is not disputed that both the Plaintiffs and the Defendants hail from the same village Amankalu Alayi, albeit from different families. Parties are also agreed that while the plaintiffs call the land in dispute as "AKWAKWA", the Defendants refer to it as "AJA' OJI' land. Both sides pleaded and relied on previous courts judgments over the land in dispute.

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At the end of the trial the learned trial judge in a reserved judgment found for the plaintiffs on all their heads of claims. He concluded his judgment thus -

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*"From the totality of evidence before me and after considering the submissions of the learned counsel on both sides and the authorities cited, I am satisfied that the plaintiffs have proved their case. There will therefore be judgment for the plaintiffs for N9,550.00 being special damages for trespass and N350.00 being general damages for trespass, bringing the total to N9,900.00. I also make an order of perpetual injunction restraining the Defendants, their servants and agents from entering the said land or interfering with or continuing to trespass on the said land."*

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A perusal of the judgment shows that the learned trial judge based his judgment on the judgment in a previous Suit No. 129/58 where the

Alayi Native Court made a declaration in favour of the plaintiffs, as per EXHIBIT A in the proceedings. The appeal against the Native Court's judgment was struck-out (see Exhibit B).

Dissatisfied with the judgment of the High Court, the Defendants  
 B appealed to the Court of Appeal holden at Port-harcourt. In a unanimous  
 judgment, the Court of Appeal allowed the appeal. The judgment of the  
 High Court was set aside and in its place a verdict of dismissal of plain-  
 tiffs case was substituted. Going through the judgment it is clear that the  
 C Court of Appeal simply allowed the appeal because it was of the view  
 that there was no evidence to show that the land in dispute in the case  
 now on appeal was the same land over which judgment was entered in  
 favour of the plaintiffs in Alayi Native Court, and that therefore the plain-  
 tiffs failed to prove exclusive possession of the land in dispute to ground  
 D trespass.

Aggrieved by the decision of the Court of Appeal, the plaintiffs  
 have appealed to this Court. Parties filed and exchanged briefs of argu-  
 ment which were adopted at the hearing and during which time oral  
 E submission were also made.

Chief Williams, SAN, learned counsel for the plaintiffs has in his  
 brief submitted two issues for determination thus -

"(i) *Whether the Court of Appeal was right when it held that there*  
 F *was no evidence before the Court to show that the land in dispute in this*  
*case was the same land over which a declaration of title was made in*  
*favour of the plaintiffs; and*

*(ii) Whether the Court of Appeal was right when it held that the*  
 G *plaintiffs failed to prove that they had been in exclusive and uninter-*  
*rupted possession of the land in dispute from time immemorial."*

I think the two issues can conveniently be treated and answered  
 together. And I will do just that.

It was submitted on behalf of the plaintiffs that the Court of Ap-  
 H peal was wrong in its conclusion that there was no nexus between the  
 land in dispute in the previous suits and the land presently in dispute.  
 Counsel referred to the evidence of P.W.1 and D.W.1 and to Exhibits A &  
 B. He said there was no dispute that AJAOJI land is the same as

AKWAKWA land, and that it was clear from the admission of D.W.1 in particular that the land over which the plaintiffs obtained judgment in the Alayi Native Court is the same land in dispute here. That while the Court of Appeal did not dispute the findings of the trial High Court to the effect that the plaintiff won all cases in respect of the land in dispute against the Defendants but it wrongly went on to say that there was no nexus between the land in dispute then and now, completely ignoring the evidence of D.W.1 in the proceedings. He referred to pages 186,209 and 281 - 282 of the record.

It was also submitted that although the plaintiffs must rely on the strength of their own case and not on the weakness of the Defendants' case, the plaintiffs as in this case are entitled to rely on such evidence where the Defendants' case itself supports that of the plaintiffs. That having shown that the land in dispute is the same land in dispute in the previous suits the learned trial judge was right to have given judgment in favour of the plaintiffs. It was again submitted that since the parties knew the land in dispute, the absence of a Survey plan indicating the same facts which are already admitted is unnecessary. The following E cases were cited in support -

AJAO VS ALAO (1986)5 NWLR (PT.45) 802 at 806

ATOLAGBE VS SHORUN (1985) 2 NWLR (PT.2) 360.

It was further submitted that what the Court of Appeal considered F as an admission by the plaintiffs that the Defendants were in possession of the land in dispute on page 275 lines 13 -25 was actually a restatement by P.W.1 of what constituted the acts of trespass by the Defendants. That P.W.1. Said that the farming and quarrying of stones by the Defendants were without his consent. The Court of Appeal was therefore G wrong to have elevated acts of trespass to acts of possession. The case of ABOYEJI VS. MOMOH (1994) 4 NWLR (PT.341) 646 was cited in support,

The Court was urged to allow the appeal, set aside the judgment H of the Court of Appeal and restore that of the trial High Court.

Responding Mr. Ofodile learned counsel for the Defendants submitted that the Alayi Native Court case (Exhibits A&B) No.128/58 has no

Survey plan to show exactly the extent of the land over which title was decreed in favour of the plaintiffs in that case. That it was also clear that while Exhibit A & B were fought by the parties in their personal capacities, the instant case is a representative action. Exhibits A & B therefore ought to have been discountenanced by the courts. He said the mere tendering of Exhibits A & B was not enough proof of the relationship between the land presently in dispute and that previously litigated upon and that, this is more so having regard to the materials before the court, it was justified in dismissing plaintiffs' case, title not having been established.

It was also submitted that the Court of Appeal was right when it made the finding that the Defendants had exclusive and uninterrupted possession of the land in dispute, the plaintiffs having failed to establish certainty of the land in the Alayi Native Court case being the same as that in the instant proceeding. The following cases were cited others -

SEISMOGRAPH SERVICE (NIG.) LTD. VS. CHIEF EYUAFE  
(1976) 9-10 S.C. 135.

OGUNGBEMI VS. ASAMU (1986) 3 NWLR 161

We were urged to dismiss the appeal and affirm the decision of the Court of Appeal.

Now, the plaintiffs in their Amended Statement of claim pleaded in paragraphs 3, 5 & 6 (1) as follows -

*"3. The land which is the subject matter of this suit known as and called "AKWAKWA" is situate at Alayi in the Umuahia Judicial Division."*

*"5. The said AKWAKWA land (hereinafter called the "land in dispute)" was the subject matter of Alayi Native Court Suit No. C/S.129/58 between the plaintiffs' people and the people of the Defendants in which the plaintiffs won. The said judgment has not been set aside and still subsists between the parties."*

*6(i) Since the said judgment, the plaintiffs remained in possession of the said land in dispute without any interference from the Defendants or any one claiming through them and have so remained in possession at all times material to this action."*



In response, the Defendants in their Amended statement of Defence pleaded thus -

"3. The Defendants admit paragraph 3 of the statement of claim save and except that the land is called Akwakwa which is denied by the Defendants and to which the plaintiffs are put to strict proof. The land is known as and called AJA OJI." B

"5. In reply to paragraph 5 of the statement of claim the Defendants aver that in Suit No. 125/58 the plaintiffs obtained judgment against the Defendant in his absence. On 20/10/59, the Assistant District Officer ordered that both parties should file plans prepared by a licensed Surveyor within six months. The case was then adjourned for no specific date for continuation. C

6. But on 10th May 1960 and 11th May 1960 without any hearing notices being served on the Defendant, the cases Nos. 129/58 and 128/58 respectively appeared before the court. The plaintiffs appeared with a plan and the Defendants who were not aware that the cases were coming up that morning did not appear nor did he authorize any person to represent him. The Defendants' appeals were struck-out ..... D E

"9. In reply to paragraph 6 of the Statement of claim, the Defendants deny that the plaintiffs had ever been in possession of the land in dispute. The Defendants had been in possession of the land in dispute. The Defendants had been in possession of the land..... F

The P.W.1 in his evidence-in-chief on pages 153-154 of the record said as follows-

"I know the land in dispute called "Akwakwa" situate at Amankalu Alayi within the jurisdiction of this court ..... we had a title action against the Defendants in Alayi Native Court and we won. In that case we were represented by Ene Elom. The Defendants were represented by the 1st Defendant. This is a certified true copy of the judgment of that case. Tendered no objection admitted and marked Exhibit A. The Defendant in that case appealed. The District Officer looked into the appeal and struck it out. This is the judgment of the District Officer tendered no objection admitted and marked Exhibit B. ..... G H

We have been in possession of the land in dispute all the time. The acts

48      Chukwueke v. Okoronkwo (1999) 1 KLR Kutigi JSC  
*of trespass complained of were committed on 19/1/80. The Defendants did not get my consent to enter the land in dispute or my permission.*

For the Defendants, the D.W.1. testifying on pages 186 -187 of the record had this to, say -

B      *"The land in dispute called Ajaoji owned by the Defendants ..... The land in dispute is Ajaoji but plaintiffs in the present case call it Akwakwa."*

*Under cross-examination he said -*

C      *"We appealed when case suit No.129/58 was dismissed. The appeal was struck out. The land in dispute is Ajaoji land ..... we sued the plaintiffs in respect of the land in dispute in 1972. The land subject matter of this suit is the same thing as the land the subject of the suit in 1972. I know the land very well. The action of 1972 was dis-*  
D *missed. We did not appeal."*

It is clear both from the pleadings and evidence before the trial court that both sides know the land in dispute. There was evidence that "Akwakwa" land is the same as "Ajaoji" land. The P.W.1. tendered Exhibit A. as the judgment conferring title on the plaintiffs. The Defendant  
E appealed against Exhibit A and their appeal was struck out as per Exhibit B. **I think there was no doubt whatsoever that the land over which the plaintiffs obtained judgment in the Alayi Native Court is the same land in dispute here now. What is more the Defendants admitted and the trial court rightly found that the plaintiffs won all cases (1958 & 1972) in respect of the land in dispute against the Defendants. I am clearly of the view that the Court of Appeal was wrong when not disputing all these facts it still went on to hold that**  
F **there was no nexus between the land in dispute in the previous suits and the land in dispute in the present case. Where there are specific findings of fact on issues relating to proof of title by the trial court, a Court of Appeal will be reluctant to interfere with**  
G **such findings. It is settled that in considering proceedings in native courts the court should look at the substance of the action and not the form. The pleadings and evidence also show that the 1958 and 1972 suits were all fought in representative capacities and not**  
H

in personal capacities as Mr. Ofodile would want us to believe. It is equally settled that the judgment of a competent court subsists and is binding until set aside on appeal or by other judicial proceedings.

There is no doubt at all that the evidence of D.W.1. above supports the plaintiffs' case in all material particulars which the plaintiffs are entitled to use because the rule that a Plaintiff must succeed on the strength of his own case and not on the weakness of the Defendants case, does not apply where the Defendant's case (as in this case) itself supports that of the plaintiffs and contains evidence on which the plaintiff is entitled to rely (see for example) AJAO VS ALAO (supra).

Having established that the land over which plaintiffs obtained judgment in the previous suits (Exhibits A & B) is the same as the land now in dispute, the learned trial judge was right when he held that -

*"The plaintiffs have proved their titled to the land in dispute based on previous judgments in their favour."*

The P.W. 1. made it clear above that the farming and quarrying of stones by the Defendants were without his consent. And that they (plaintiffs) have been in possession all the time until sometime in 1972 and on 19/1/80 when the Defendants disturbed their possession thereof. In view of Exhibits A & B, these acts of the Defendants were clearly acts of trespass which should not have been elevated to acts of possession as the Court of Appeal appeared to have done (See ABOYEJI VS MOMOH (supra).

The two issues are consequently resolved in favour of the plaintiffs. The appeal therefore succeeds and it is hereby allowed. The judgment of the Court of Appeal is set aside while that of the High Court delivered by Ononuju J., on 14th day of February 1986 is restored. Costs of Ten Thousand Naira (N10,000.00) are awarded in favour of the plaintiffs. The plaintiffs are also entitled to costs in the Court below which I assess at N500.00.

**BELGORE JSC**

I agree with my learned brother, Kutigi, JSC that the Court of

Appeal erred in conceiving acts of trespass by defendants on the land in dispute as possession. Any act of trespass remains so and the rightful owner of the land once he is aware of the trespass can complain. The very fact that the defendants encroached on the land to carry act of quarrying, without consent of the plaintiffs is an act of trespass and cannot become act of possession.

As for the land in dispute the parties at the trial Court were virtually ad idem and there is certainty about that. The evidence of defendants support that of the plaintiffs. As two previous cases on the same land favoured the plaintiff, res judicata applied. I also allow this appeal for the foregoing reasons and for fuller reasons in the judgment of Kutigi JSC. I award N10,000.00 as costs in this appeal against defendants in favour of plaintiffs/appellants.

### WALI JSC

I have read in advance the lead judgment of my learned brother Kutigi, JSC and I agree with the reasons he gave therein for allowing the appeal.

From the evidence adduced, there was no doubt as regards the identity of the land in dispute, although the parties gave it different names: see the evidence of P.W.1 and D.W.1 respectively. The learned trial Judge was perfectly right to rely on such evidence when he said:

*"There is no doubt about the identity of the land in dispute. The plans of the parties in this case appear to be the same having drawn on the same scale with the same shape and size D.W. 1 gave evidence and confirmed that the land plaintiffs called "AKWAKWA" is the same land defendants called "AJA' OJI" and that stones are being quarried on the said Land. Parties know the land in dispute."*

The learned trial judge had earlier made a finding to the effect that

*"..... There is evidence that there was a case of trespass between the parties in respect of the land in dispute at Alayi Native Court Suits No. 25/57 and 26/57 which were consolidated. The defendants lost and*

*applied for review. This was struck out. There was no further appeal and the matter rested there. Alayi Native Court being a Court of competent jurisdiction, its judgment is binding on the defendants. See Exhibit L. The defendants' 1st witness admitted defendants losing the case in the said native Court and that their application for review was struck out. The plaintiffs also won titled action against the defendants in respect of the land in dispute. The defendants' appeal in respect of the 1958 case - No. 129/58 was struck out and no further appeal - See Exhibit A. With the judgments in Exhibit A. B. L. and other judgments tendered in this case, I am satisfied that the plaintiffs won all cases in respect of the land in dispute against the defendants and therefore have proved title to the land in dispute and need not prove it again in action for trespass. Plaintiffs have established title to the land in dispute. That the judgments between the parties were default judgments, does not make such judgments not final judgments. In my view, default judgment is final judgment until set aside."*

Once the judgment of a competent court is perfected, it remains valid until it is set aside by a competent court or authority. Both the judgment of Alayi Native Court and the subsequent decision of striking out the appeal by the District Officer sitting as an appellate court in respect of the two judgments, are subsisting decisions and remain to be so until they are set aside by a competent court or authority. See Okoli Ojiako and ors. v. Onwuma Ogueze and ors. (1962) 1 ALL NLR 58.

It is for this and the more elaborate reasons contained in the lead judgment of my learned brother Kutigi, JSC that I also allow the appeal. The judgment of the Court of Appeal, Port Harcourt Division, is hereby set aside and in place thereof that of the trial court is restored.

N10,000.00 costs is awarded to the plaintiffs against the defendants.

**OGUNDARE JSC**

I read in advance the judgment just read by my learned brother

Kutigi, JSC. I agree entirely with his reasonings and the conclusion reached by him that this appeal be allowed. I have nothing more to add. I too allow the appeal and subscribed to the consequential orders, including the order for costs, made by him.

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### OGWUEGBU JSC

I have read the judgment of my learned brother Kutigi, J.S.C. and I agree with his reasoning and conclusion that this appeal be allowed.

C      The plaintiffs claimed the following reliefs from the defendants jointly and severally:

D      *"(1) N10,000.00 being special and general damages for trespass to the land known as and called "AKWAKWA" situate at Alayi in the Umuahia Judicial Division.*

*(2) Perpetual injunction to restrain the defendants by themselves, their servants or agents or otherwise however, from entering upon or interfering with or continuing to trespass on the said land."*

E      The case was set down for hearing at the close of pleadings. The learned trial judge Ononuju, J. after taking evidence and addresses of counsel gave judgment for the plaintiffs in terms of their claim. A total of N9,900.00 was awarded as special and general damages. The defendants who lost in the trial court appealed to the Court of Appeal. Their appeal was allowed and the judgment of the learned trial judge was set aside. The plaintiffs were dissatisfied and appealed to this court.

F      The two issues for determination submitted by the plaintiffs in their brief of argument have been set out in the judgment of my learned brother Kutigi, J.S.C. I need not reproduce them here. In allowing the defendants' appeal and dismissing the plaintiffs' claim, the court below held as follows:

G      *"From the foregoing therefore it is clear that from the pleadings, H plans and the evidence of the parties including the previous judgments tendered in the case, the learned trial judge was wrong in finding that title to the land in dispute was legally vested in the Respondents as against the Appellants to justify the finding that the Appellants were estopped*

*from questioning the Respondents' title to the land in dispute. His findings are therefore not supported by the evidence."*

The court below further held that none of the survey plans used in the Alayi Native Court proceedings was superimposed or reflected in any manner in either Exhibits "C" and "D" tendered by the plaintiffs in the present proceedings and to be able to use the Alayi Native Court judgments to establish their title to the land in dispute, the plaintiffs needed to lead evidence to show that the land over which they won in the previous suits is either the same, falls within or contains the land in the present dispute.

If the court below had taken the trouble to read the pleadings and the evidence adduced by the parties at the trial, it would have been obvious to it that the parties are certain as to the piece of land the subject matter of the present proceedings. P.W. 1 (Anyaele Chukwueke) in his evidence-in-chief stated:

*"I know the land in dispute called Akwakwa situate at Amankalu Alayi within the jurisdiction of this court. .... We had a title action against the defendants in Alayi Native Court and we won. In that case we were represented by Eme Ekom. The defendants are represented by the 1st defendant. This is a certified true copy of the judgment of that case. Tendered no objections admitted and marked Exhibit A. The defendant in that case appealed. The District Officer looked into the appeal and struck it out. This is the judgment of the District Officer tendered no objection admitted and marked Exhibit "B". The land in dispute called Akwakwa is part of the land the defendants refer to as Aja Oji."* (Underlining is for emphasis)

The evidence of the P.W. 1 and other witnesses for the plaintiffs was in line with their pleadings.

D. W. 1 (Ibrahim Eme) in his evidence-in-chief stated:

*"The land in dispute in 1961 was Aja Oji but the plaintiffs in that case called it Osula land. The land in dispute is Aja Oji but plaintiffs in the present case calls (sic) it Akwakwa."* (Underlining is for emphasis).

In answer to cross-examination by Chief Obonna, learned counsel for the plaintiffs, D.W.1 said:

"We appealed when case No. 129/58 was dismissed. The appeal was struck out. The land in dispute is Aja Oji land we gave to Dr. Davey for Leper Settlement. .... The land the subject matter of this suit is the same thing as the land the subject of the suit in 1972, I know the land very well. The action of 1972 was dismissed. We did not appeal." (Underlining is for emphasis).

With the above evidence adduced by the parties as to the identity of the land the subject-matter of Exhibits "A", "B" and "L" and the pleadings, the parties are in agreement that the land is the same even though they call it different names. I do not know the nature of evidence which the court below required the plaintiffs to adduced. D.W. 1 was emphatic when he testified that the land involved in Exhibits "A" and "B" is AJA OJI land. It is not in dispute also that AJA OJI land is the same as AKWAKWA land the subject of the Alayi Native Court proceedings which terminated in Exhibit "A" and "B"

The learned trial judge had these to say about the previous proceedings (Exhibits "A", "B" and "L") and the identity of the land:

"With the judgment in Exhibits A, B, L and other judgments tendered in this case, I am satisfied that the plaintiffs won all cases in respect of the land in dispute against the defendants and therefore have proved title to the land in dispute and need not prove it again in action for trespass. Plaintiffs have established title to the land in dispute ..... The defendants are therefore estopped from questioning the title of the plaintiffs to the land in dispute. .... There is no doubt that the identity of the land in dispute, the plans of the parties in the case appear to be the same having been drawn on the same scale with the same shape and size. D.W.1 gave evidence and confirmed that the land plaintiffs call "Akwakwa" is the same land the defendants call Aja Oji and that stones are being quarried on the said land. Parties know the land in dispute."

The court below was wrong when it held that there was no nexus between the land in dispute in the previous suits and the land in the present proceedings. The court below overlooked the evidence of P.W.1 and D.W.1.



Where the parties by the evidence adduced are ad idem on the identity of the land in dispute, the fact that different names are ascribed to or that the area where it is located is called different names is immaterial as long as the parties are referring to the same parcel of land. See Makanjuola v. Balogun (1989) 3 N.W.L.R. (pt. 108) 142 at 204 and Aromire & Ors. v. Abayomi (1972) 1 ALL N.L.R. (Pt.1) 1 All N.L.R (Pt. 1) 101 at 113. B

It was submitted in the plaintiffs' brief that on the issue of identity of land, plaintiffs are entitled to rely on the defendants' case which supports their case. I agree with this submission. The rule that in reestablishing his claim a plaintiff must succeed on the strength of his own case and not on the weaknesses of the defendant's does not apply where the defendant's case itself supports that of the plaintiff and contains evidence on which the plaintiff is entitled to rely. See Akinola & Ors. v. Oluwo & Ors. D (1962) 1 All N.L.R. 224 at 227 and Ajao & 5 Ors. v. Alao & 4 Ors. (1986) 5 N.W.L.R. (pt. 45) 802. The evidence of D.W.1 in this case supported that of P.W.1 as to the identity of the land in the previous suits and the land in the present suit and they are entitled to rely on it. E

The court below was wrong and the learned trial judge was right when it held that the issue of title over the land in dispute as between the plaintiffs and the defendants had been resolved in favour of the plaintiffs by a court of competent jurisdiction and that the plea of estoppel per rem judicatam applied. F

As to exclusive and uninterrupted possession of the land in dispute from time immemorial by the plaintiffs, they testified that they have been in possession of the land in dispute all the time and the acts of trespass complained of were committed by the defendants on 19/1/80 and they did not consent to the acts. The learned trial judge found that the defendants did not challenge the items of special damages given in evidence on oath nor the amounts ascribed to each of them. What is more, D.W.1 G stated in his evidence that the plaintiffs started to disturb them on the land in dispute since the end of the Nigerian Civil War. The judgments in Exhibits "A", "B" and "L" went against the defendants and they continued H with their acts of trespass even after those judgments.

It is for the above reasons and the fuller reasons in the judgment of my learned brother Kutigi, J.S.C that I allow this appeal and set aside the judgment of the Court of Appeal. The judgment of the learned trial judge is hereby restored. I make the same consequential orders as contained in the judgment of my learned brother.

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