

SUPREME COURT OF NIGERIA
FRIDAY 4TH JULY, 2003. SC. 143/1999
CORAM:- I. L. KUTIGI, M. E. OGUNDARE,
A. O. EJIWUNMI, N. TOBI, D. O. EDOZIE, JJSC

1. SALAMI AFOLABI

(For himself and on behalf of
Kayode Ruling House)

2. SULAIMANU OYETUNDE

(For himself and on behalf of
Olubaka Ruling House)

..... APPELLANTS

3. GBADAMOSI OLANIYAN

(For himself and on behalf of
Oduoye Ruling House)

AND

1. GOVERNOR OF OSUN STATE

2. ATTORNEY-GENERAL OF
OSUN STATE

3. IFELODUN LOCAL

GOVERNMENT COUNCIL

..... RESPONDENTS

4. MR. ALIM MOJOYINOLA

(For himself and on behalf of
Iwolode Ruling House)

ESTOPPEL - Res judicata - Plea - Ingredients - It must be shown that parties are same - As well as issues and subject matter - And the previous decisions must have finally decided the issues between the parties (H1)

ESTOPPEL - Res judicata - Applicability - Sameness of subject matter - It is obvious from the reliefs claimed in previous and in present suits - That subject matter for adjudication in both suits are same (H2)

CHIEFTAINCY MATTERS - Res judicata - Applicability - Sameness of issues - Issues in previous suit as in present suit - Question powers of Governor to amend the Chieftaincy Declaration - The issues are therefore same (H3)

FACTS

Plaintiffs/appellants sued defendants/respondents before the High Court of Osun (then Oyo) State sitting at Oshogbo, challenging the validity of the Ifelodun Local Government Traditional Council Declaration made under s. 4 of Chief's Law Cap. 21, Laws of Oyo State 1978, which declaration was approved and registered on 31st December, 1986. Pleadings were ordered, filed and exchanged. At the trial, 4th respondent raised a plea of *res judicata* on the basis that appellants were estopped from re-litigating the matter by virtue of the decision in an earlier suit between the same parties and on the same subject matter - Suit No. Hos/6/82.

By a Motion on Notice, 4th respondent applied for an order setting down for hearing, as a preliminary point, the issue of *res judicata*. After hearing on the point, the learned trial judge upheld the plea and accordingly dismissed the suit. Dissatisfied, appellants appealed to Court of Appeal, Ibadan Division. The court affirmed the decision of trial court and dismissed the appeal accordingly. Still aggrieved, appellants appealed to Supreme court.

ISSUE FOR DETERMINATION

"Whether the judgment of the Supreme Court in Appeal No. SC. 151/1984 reported in (1985) 2 NWLR (Pt. 9) page 734 could constitute an estoppel in the present proceedings."

HELD (Unanimously dismissing the appeal per **KUTIGI JSC**)

Res judicata - Plea - Ingredients

1. It is settled law that to sustain a plea of *res judicata*, the party pleading it must satisfy the following conditionalities, to wit-

(1) that the parties (or their privies, as the case may be) are the same in the present case as in the 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.

Failure to satisfy any of these conditions means failure of the plea in its entirety. (p. 2088 H)

Res judicata - Applicability - Sameness of subject matter

2. One does not require a magnifying glass after reading the reliefs claimed in the previous suit and in the present suit, to say that the reliefs are substantially the same, all tied to exclusion of Iwolode Family (the 4th Defendant) from the Ruling Houses entitled to fill the vacancy of Olobagun of Obagun. It is also that the 1986 Chieftaincy Declaration now being challenged, contains substantially what the 1982 Chieftaincy Declaration contained, that is, the inclusion of Iwolode Family as the 4th Ruling House to Olobagun of Obagun Chieftaincy title. I therefore have no difficulty in coming to the conclusion that both the trial High Court and the Court of Appeal were right in arriving at the conclusion that the subject matter for adjudication in the previous and present suits is the same.

(p. 2091 A)

Res judicata - Applicability - Sameness of issues

3. On the issues, it should be emphasized that by the decision of this court in Afolabi & Ors. v. Governor Of Oyo State & Ors. (supra), which is final, the powers of the Governor of Oyo State to make amendments to the original 1957 Chieftaincy Declaration for the selection of Olobagun of Obagun was recognized and is no longer in doubt. Consequently, with effect from the 25th day of February, 1982, when the 1982 Chieftaincy Declaration became operational, Iwolode family joined the three original Ruling Houses as the fourth Ruling House to the Chieftaincy. That was a final decision. The present 1986 Chieftaincy Declaration as I said before is virtually the same as the 1982 Chieftaincy Declaration. The only difference is that the Iwolode Ruling House is now placed No. 2 after the present ruling Kayode House, instead of No. 4 after Oduoye Ruling House which was ruling at that time (1980). So here again I have no hesitation in arriving at the conclu-

sion that the issues in the previous and present suits are the same as found by the lower courts. And that being the case, the Plaintiffs are estopped from relitigating that same issue or issues all over again. (p. 2091 D)

^B NOTABLE POINT OF INTEREST

TOBI JSC

1. Estoppel ensures that litigation has an end

Estoppel, as a defence, is to ensure that a litigation which has been prosecuted to conclusion cannot be resuscitated at the instance of a plaintiff. The rationale behind this is to make sure that litigation comes to an end and not necessarily repeated to the annoyance of the defendant and the entire administration of justice or the judicial system. But for the principle of estoppel and the twin principle of res judicata, litigation could not have had an end. (p. 2092 G)

REPRESENTATION

Mohammed Fawehinmi, for Appellants

^E A. O. Adeniji, (Chief State Counsel, Ministry of Justice, Osun State), for the 1st & 2nd Respondents)

Akin Oladimeji, for the 3rd Respondent

Olaseni Okunloye, with Bolanle Oyeneyin (Miss), for the 4th Respondent

^F CASES REFERRED TO

Dzungwe v. Gbishe (1985) 2 NWLR (Pt. 8) 528

Udo v. Obot (1989) 1 S.C. (Pt. I) 64; (1989) 2 NWLR (Pt. 95) 59

Oshodi v. Eyifunmi (2000) 7 S.C (Pt. II) 145

^G STATUTE REFERRED TO

Chiefs Law, Cap. 21, Laws of Oyo State, 1978, ss. 4, 7, 10 and 25

LEAD JUDGMENT BY KUTIGI JSC

^H In the High Court of Justice holden at Oshogbo, the Plaintiffs in paragraph 24 of their Statement of Claim sought for the following reliefs -

“(1) A declaration that the “Ifelodun Local Government Tradi-

tional Council Declaration” made under Section 4 of the Chiefs Law of Laws of Oyo State and approved and registered on the 31st day of December, 1986 for the Regulation of the Olobagun Chieftaincy is contrary to the customary law regulating the said Olobagun Chieftaincy and is therefore null and void and of no legal effect whatsoever. B

(2) A declaration that the Iwolode Family of Obagun as represented by the 4th Defendant, is not a Ruling House in Obagun and is not recognised as such under the customary law of Obagun Chieftaincy in Obagun. C

(3) A declaration that the said Chieftaincy Declaration made pursuant to Section 4(2) of the Chiefs Law Cap. 19 Laws of Oyo State, and registered on the 31st December, 1986 for the regulation of the selection to the Olobagun of Obagun is contrary to Sections 4(4), 7, 10 and 25 of the said Chiefs Law, Cap. 21 Laws of Oyo State, 1978, and is therefore ultra vires, null and void. D

(4) A perpetual injunction restraining the Defendants either by themselves or by their servants, agents, and or privies from giving effect to the said Declaration.”

Pleadings were then ordered, filed and exchanged, some of which pleadings were later amended with leave of court. The 4th Defendant in paragraph 28 of his Amended Statement of Defence pleaded as follows- E

“28. The 4th Defendant raises the issue of “Res judicata” in respect of the Plaintiffs’ claims in paragraph 24(1) and (2) of the Statement of Claim as the Plaintiffs are estopped by virtue of the decision of the High Court of Oshogbo in suit No. HOS/6/82: Salami Afolabi v. Governor of Oyo State & Ors. and the decision of the Supreme Court in Appeal No. SC. 251/1984 in the same subject matter reported in (1985) 2 NWLR (Pt. 9) page 734.” F G

By Notice of Motion, the 4th Defendant applied for an order “setting down for hearing as a preliminary point the issue raised in paragraph 28 of the Amended Statement of Defence” above. The preliminary point was set down and argued. In a considered ruling, the learned trial Judge, Sijuwade, J., upheld the preliminary objection and dismissed Plaintiffs’ claims, when he concluded his ruling thus - H

“On the sum total, I am inclined to uphold the submissions of

the learned counsel for the 4th Defendant/Applicant and the other parties' counsel associating themselves with him and hereby rule that the Plaintiffs' claim is caught by the plea of estoppel per rem judicata, and it is accordingly dismissed"

B Dissatisfied with the ruling of the trial court, the Plaintiffs appealed to the Court of Appeal holden at Ibadan. Only one issue was submitted for determination in that court. It reads -

C *"Whether the judgment of the Supreme Court in Appeal No. SC. 251/1984 reported in (1985) 2 NWLR (Pt. 9) page 734 could constitute an estoppel in the present proceedings."*

In a reserved judgment, the Court of Appeal unanimously dismissed the appeal. Adamu, JCA., who delivered the lead judgment concluded in part thus -

D *"The Ruling of the trial court on the plea of res judicata as raised and argued before it is hereby upheld and affirmed and the appellants' action before the said trial court is hereby dismissed."*

E Still aggrieved by the decision of the Court of Appeal, the Plaintiffs have now further appealed to this court. Briefs of argument were filed by all the parties. These briefs were adopted at the hearing during which oral submissions were also made.

The Plaintiffs in their brief have submitted only one issue for determination in this appeal. The issue is -

F *"Whether the judgment of the Supreme Court in Appeal No. SC. 151/1984 reported in (1985) 2 NWLR (Pt. 9) page 734 could constitute an estoppel in the present proceedings."*

G It can be seen at once that this is exactly the same issue that was before the Court of Appeal as well as the trial High Court. The Plaintiffs, who from the inception of this suit in 1987 have been represented by one and same able law firm of Gani Fawehinmi Chambers, therefore have nothing new to advance before this court which they have not already told the lower courts, and which have all been rejected. I say here now that the facts in this case are not in dispute. All that is required is the application of the law to the facts to see who is right or wrong. It is therefore not a question of dancing around and toying with the facts. With these comments therefore I intend to go straight to the single issue formulated for determination.

It is settled law that to sustain a plea of res judicata, the party pleading it must satisfy the following conditionalities, to

wit-

(1) that the parties (or their privies, as the case may be) are the same in the present case as in the 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 *Nkanu & Ors. v. Onum & Ors.* (1977) 5 S.C 11, *Ikpan v. Edoho* (1978) 6 - 7 S.C. 221, *Dzungwe v. Gbishe* (1985) 2 NWLR (Pt. 8) 528; *Udo v. Obot* (1989) 1 S.C. (Pt. I) 64; (1989) 2 NWLR (Pt. 95) 59.

Failure to satisfy any of these conditions means failure of the plea in its entirety.

Of the conditionalities set out above the learned trial Judge in his ruling on page 54 said -

“Mr. Ugoeke of counsel for the Plaintiffs/Respondents, after conceding that two of the required elements to make the plea successful are established, viz:- that the parties are virtually the same and that the decision in the previous judgments relied upon by the applicant were decided by a competent court to finality, however contended that both the subject matter before the court and the issues decided in those courts in the previous case were not the same as those being claimed in the present action, and as such the plea of res judicata must fail.”

The Court of Appeal also on page 168 of the judgment said -

*“In the present case, as we have seen from the submissions in the three briefs of argument, there is a consensus or a concession by the parties that conditions (a) and (b) (meaning (1) & (3) above) for the application of the plea or doctrine of res judicata have been satisfied. Thus there is no dispute that the parties in the present suit are the same as those in the earlier one that culminated in the Supreme Court’s decision in *Afolabi v. Governor of Oyo State* (supra and referred to in all the briefs). It is also conceded in the said briefs that the previous suit was adjudicated upon by the courts of competent jurisdiction including the Supreme Court.”*

Conditionalities (1) and (3) above are therefore clearly not in

contention. What are being contested are conditionalities (2) and (4) that is, whether the issue and the subject matter are the same and whether or not those issue or issues were finally decided between the parties. Before answering these questions a quick recap of the background facts of the case will help as follows:

B The Plaintiffs went to court in the previous suit to challenge the 1982 amendment of the existing Chieftaincy Declaration of 1957 concerning the selection of Olobagun of Obagun for the Obagun Chieftaincy, which introduced one Iwolode family as the 4th Ruling House in addition to the existing three (3) Ruling Houses. But because the incumbent chief had died in 1981, that is, before the 1982 amendment was introduced, this court ruled that since the Plaintiffs' right (Kayode Ruling House) had accrued in 1981 when the incumbent chief died, the Iwolode family could not claim in 1982 that they were entitled to present the next Olobagun under the 1982 amendment (see *Afolabi & Ors. v. Governor of Oyo State & Ors.* (supra)). The Defendants in 1986 now caused a fresh amendment to be made to the 1957 Chieftaincy Declaration in respect of the same Obagun Chieftaincy in order to avoid the consequence of the earlier Supreme Court decision above. The new Iwolode Ruling House was placed as No. 2 on the list of the (4) Ruling Houses after the present reigning Kayode Ruling House. Again the Plaintiffs in 1987 took out the writ of summons and commenced these proceedings claiming as set out above.

F It will also assist to set out the reliefs claimed by the Plaintiffs in the previous suit (*Kayode & Ors. v. Governor of Oyo State & Ors.* (supra)) as follows -

G *“(1) A declaration that according to the customary law of Olobagun of Obagun Chieftaincy, the only Ruling Houses which have the right to provide candidates for the Olobagun of Obagun Chieftaincy are: Kayode, Olubakin and Oduoye Ruling Houses.*

H *(2) A declaration that according to the customary law of Olobagun of Obagun Chieftaincy, Iwolode family is not a Ruling House and cannot provide any candidate to fill the vacant stool of Olobagun of Obagun Chieftaincy.*

(3) An injunction restraining the 3rd Defendant from announcing the name of Iwolode family to provide a candidate to fill the vacancy in Olobagun of Obagun Chieftaincy.

(4) An order that the 3rd Defendant do forthwith announce the name of Kayode Ruling House entitled according to the customary law of Olobagun of Obagun Chieftaincy to provide candidates to fill the vacant stool of Olobagun of Obagun."

One does not require a magnifying glass after reading the reliefs claimed in the previous suit and in the present suit, to say that the reliefs are substantially the same, all tied to exclusion of Iwolode Family (the 4th Defendant) from the Ruling Houses entitled to fill the vacancy of Olobagun of Obagun. It is also that the 1986 Chieftaincy Declaration now being challenged, contains substantially what the 1982 Chieftaincy Declaration contained, that is, the inclusion of Iwolode Family as the 4th Ruling House to Olobagun of Obagun Chieftaincy title. I therefore have no difficulty in coming to the conclusion that both the trial High Court and the Court of Appeal were right in arriving at the conclusion that the subject matter for adjudication in the previous and present suits is the same.

On the issues, it should be emphasized that by the decision of this court in Afolabi & Ors. v. Governor Of Oyo State & Ors. (supra), which is final, the powers of the Governor of Oyo State to make amendments to the original 1957 Chieftaincy Declaration for the selection of Olobagun of Obagun was recognized and is no longer in doubt. Consequently, with effect from the 25th day of February, 1982, when the 1982 Chieftaincy Declaration became operational, Iwolode family joined the three original Ruling Houses as the fourth Ruling House to the Chieftaincy. That was a final decision. The present 1986 Chieftaincy Declaration as I said before is virtually the same as the 1982 Chieftaincy Declaration. The only difference is that the Iwolode Ruling House is now placed No. 2 after the present ruling Kayode House, instead of No. 4 after Oduoye Ruling House which was ruling at that time (1980). So here again I have no hesitation in arriving at the conclusion that the issues in the previous and present suits are the same as found by the lower courts. And that being the case, the Plaintiffs are estopped from relitigating that same issue or issues all over again see for example *Madukolu v. Nkemdilim* (1962) 1 All NLR 585; *Ekpoke v. Usilo* (1978) 6-7 S.C 187; *Fadiora v.*

2092 Afolabi v. Governor Osun State (2003) 7 KLR Kutigi JSC
Gbadebo (1978) 3 S.C. 219).

I therefore resolve the single issue for determination in the appeal against the Plaintiffs and hold that “*the judgment of the Supreme Court in Appeal No. SC. 151/1984 reported as (1985) 2 NWLR (Pt.9) 734 constitutes an estoppel in the present proceedings.*”

The appeal therefore fails. It is accordingly dismissed. The judgment of the Court of Appeal is affirmed. I award N10,000.00 costs in favour of each set of Defendants against the Plaintiffs.

C _____

OGUNDARE JSC

I agree entirely with the judgment of my learned brother, Kutigi, JSC., just delivered. I have nothing more to add. For the reasons D given by him, which reasons I hereby adopt as mine, I too dismiss the appeal and affirm the judgment of the court below which in turn affirmed the decision of the trial High Court.

I abide by the order for costs made by Kutigi, JSC.

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EJIWUNMI JSC

As I have had the privilege of reading before now the draft of the judgment just delivered by my learned brother, Kutigi, JSC., I agree entirely with the reasons given in the said judgment that this F appeal lacks merit. I therefore dismiss it and affirm the judgment of the Court of Appeal. The cost of N10,000.00 is awarded in favour of each set of defendants.

G _____

TOBI JSC

Estoppel, as a defence, is to ensure that a litigation which has been prosecuted to conclusion cannot be resuscitated at the instance of a plaintiff. The rationale behind this is to make sure that litigation H comes to an end and not necessarily repeated to the annoyance of the defendant and the entire administration of justice or the judicial system. But for the principle of estoppel and the twin principle of res judicata, litigation could not have had an end.

In this appeal, the main issue, if not the only issue, is whether

the judgment of this court in appeal No. SC. 151/1985 reported in (1985) 2 NWLR (Pt. 9) 739 constitutes an estoppel in the present proceedings. The issue was canvassed both in the High Court and the Court of Appeal. It has come to this court. Though the High Court and the Court of Appeal held that the case constituted estoppel, the appellants have again come to us because they are not satisfied. B

My learned brother, Kutigi, JSC., has clearly set out in the leading judgment, the four conditions to be satisfied before a plea of estoppel per rem judicatam could avail a defendant. I need not repeat the exercise. I need only to say that the issues and subject matter of the previous case reported in (1985) 2 NWLR (Pt. 9) 734 is substantially the same as those in this appeal. C

The parties in the High Court are the same. So too in the Court of Appeal. But the parties in this court are not exactly the same. In this court, the Military Governor of Osun State has taken the place of the Governor of Oyo State. This is understandable, as it arose from the creation of Osun State out of old Oyo State. In my view, the Military Governor of Osun State succeeded the Governor of Oyo State. That does not make the parties different. D E

In the light of the above and the more detailed reasons given in the leading judgment by my learned brother, Kutigi, JSC., I too dismiss the appeal and I award N10,000.00 costs in favour of each set of defendants against the plaintiffs. F

EDOZIE JSC

I was privileged to have read in draft the lead judgment just delivered by my learned brother, Kutigi, JSC. I agree with him that from a comparison of the claims in the previous and present suits the subject matter and issues in the two suits are substantially the same. That subject matter is the filling of vacancy in the stool of Olobagun Chieftaincy and the issue in contention is the inclusion or the exclusion of the Iwolode Family in the list of the Ruling Houses eligible to present a candidate for the stool. That issue had been distinctly and finally decided in the previous suit, to wit, Salami Afolabi & Ors. v. Governor of Oyo State & Ors. Appeal No. SC. 251/1984 reported in (1985) 2 NWLR (Pt. 9) 743 where at p. 751 this court, per Aniagolu, H

JSC., held thus

“By clause (1) of Exhibit “L”, Iwolode had become added to the existing ruling houses for the purpose of the Olobagun of Obagun Chieftaincy. No one is challenging the power of the Governor to make the addition. From the 25th February, 1982, it is not disputed
B that IWOLODE family is now one of the four families entitled at the appropriate times to present candidates.”

By the operation of the doctrine of estoppel per rem judicatam, the parties are precluded from relitigating the very issue that had
C been finally determined by a court of competent jurisdiction. See the case of Oshodi v. Eyifunmi (2000) 7 S.C (Pt. II) 145, (2000) 13 NWLR (P. 684) 298. The appeal lacks substance and is accordingly dismissed with costs as assessed in the lead judgment.

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