

SUPREME COURT OF NIGERIA

15TH JULY, 2005. SC. 42/2001

**CORAM:- I. L. KUTIGI, S. U. ONU, U. A. KALGO, I. C. PATS-
ACHOLONU, G. A. OGUNTADE, JJSC**

1. EKAETE BASSEY OKPOSIN
 2. IDIM UDO INWANG
 3. EBUKIBA AKPAN UKPONG PLAINTIFFS/APPELLANTS
 4. BASSEY EKANEM
 5. CHIEF BASSEY IKPE
 6. EDOHOESE IBIBOM
- (For themselves and as representing
six families in Ikot Uso Ekong)

AND

- 1 (a) FLORENCE ASSAM (MRS.)
 - (b) MISS ITORO ASSAM
 - (c) MR. S. B. ASSAM
- (As personal representatives of the
Estate of FREDRICK ASSAM)
2. JACOB ABIA DEFENDANTS/RESPONDENTS
 3. ABASI ASSAM II
 4. ATHANASIUS BASSEY ASSAM
 5. SUNDAY JAMES
 6. JOHN TOM ASSAM
 7. AMOS EFFIONG BASSEY
- (For themselves and as representing
six families of Ikot Odiong)

APPEALS - Objection - Notice of Appeal - Ground of appeal - Application for leave - Notice of appeal is valid and proper - Where appellant filed both old and amended grounds of appeal together (H1)

PLEADINGS - Res judicata - Sustenance of - Party pleading it must satisfy certain conditions - Failure to satisfy the conditions - Means failure of the plea in its entirety (H2)

ACTIONS - Res judicata - Where relied upon by defendant - Is made out - Where issues in previous suit are the same - With issues in the present suit (H3)

FACTS

Before the High Court of Akwa Ibom State holden at Eket, the plaintiffs/Appellants made the following claims against the defendants/respondents - (1) A declaration that the land known as Odoro Ndiso and shown on the plaintiffs' plan is the land of the plaintiffs (2) N4,000 damages for trespass (3) An injunction to restrain the defendants, their servants or agents from continuing any act of trespass on the land in dispute.

The trial Court gave judgment in favour of the plaintiffs concerning their claims for a declaration of title and perpetual injunction in respect of the land in dispute. Dissatisfied with the decision of the court, the defendants appealed to the Court of Appeal. The issue the Court of Appeal had to resolve was whether the plea of res judicata raised by the defendants was sustained. The Appeal was allowed. Aggrieved by the decision of the Court of Appeal, the plaintiffs have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the lower court was right when it held that the learned trial Judge was in error not to have upheld the plea of estoppel per rem iudicatam.

2. Whether the Court of Appeal was right in setting aside the findings of the learned trial Judge that the appellants had proved their ownership of the land and were therefore entitled to the declaration sought.

3. Whether the Court of Appeal had fairly considered the appellants' case as presented before it."

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

Objection - Notice of Appeal

1. On 23/5/2001, this court granted the application for extension of time to seek leave to appeal, for leave to appeal, and for extension of time to

appeal. The same ten (10) grounds of appeal were attached to the application. A fresh Notice of Appeal was then filed on 6/7/2001 which was titled "*Amended Notice of Appeal*" because the capacities of the parties which were omitted in the original Notice of Appeal were supplied in the Amended Notice of Appeal. It is clear to me that the leave granted by this court, on 23/5/2001 covers all the ten (10) grounds of appeal and not confined to grounds 3, 4, 7 & 8. The appellants were therefore, in order when they filed the entire ten (10) grounds of appeal once again. It was not required of them to have filed a separate Notice of Appeal covering grounds 3,4, 7 & 8 only as contended by the respondents (see *Akeredolu v. Akinremi* (1986) 4 S.C. 325. I therefore, hold that the Amended Notice of Appeal filed on 6/7/2001 is valid and proper. Accordingly, the preliminary objection is overruled. (p. 2316 A)

Res judicata - Sustenance of

2. It is settled law that to sustain a plea of "res judicata" the party pleading it must satisfy the following conditions to wit -

(1) 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. On urn & Ors.* (1977) 5 S.C (Reprint) 12; (1977) 5 S.C 11; *Dzungwe v. Gbinshe* (1985) 2 NWLR (Pt. 8) 28, and *Udo v. Obot* (1989) 1 S.C (Pt.1) 6; (1989) 2 NWLR (Pt. 95) 59).

Failure to satisfy any of these conditions means failure of the plea in its entirety. (p. 2317 G)

Res judicata - Where relied upon by defendant

3. I have myself closely examined the Amended Statement of Claim and the Amended Statement of Defence particularly paragraphs 3 and 4

respectively and completely agree with the Court of Appeal that plaintiffs' ODORO NDISO and defendants' MKPABAT ENANG are substantially the same one piece of land. The identity of the land in dispute is therefore not in doubt.

- B I have carefully read through the record myself and agree entirely with the court below that the plea of *res judicata* relied upon by the defendants in this case was made out. The issue and subject matter in the previous Suit No. C/30/65 and the present Suit No. HEK/375 are the same.
- C The parties and or their privies are also the same. The judgment of the Supreme Court (Exhibit H) affirming the judgment of Calabar High Court (Exhibit F) was the final judgment in the previous suit. All the three issues submitted for resolution are all answered in the affirmative.
- D In the final result, there is no merit in this appeal and it ought to be dismissed. (pp. 2319 F & 2321 D)

NOTABLE POINTS OF INTEREST

OGUNTADE JSC

E 1. *Admitted facts require no further evidence*

- Paragraphs 3 of the Amended Statement of Claim and 4 of the Amended Statement of Defence would appear to have converged on the identification of the land in dispute if one adverts one's mind to the descriptions of the land in dispute as given by the parties. In effect, parties were *ad idem* more or less on the land in dispute between them. It is now a well established principle of pleadings that there is no issue between parties in respect of matters expressly admitted on the pleading and therefore no evidence is admissible in reference to those matters. (p. 2328 F)
- G

2. *Consequence of successful res judicata plea*

- What is the consequence of a successful plea of estoppel per rem Judicatam in a civil dispute? Estoppel per rem judicatam is a rule of evidence whereby a party (or his privy) is precluded from disputing in any subsequent proceedings, matters which had been adjudicated upon previously by a competent court between him (or his privy) and his opponent. A party raising a plea of estoppel per rem judicatam is in fact
- H

urging the court before which it is raised not to consider the issues in the case anew, the issues having been previously adjudicated upon by a competent court. That being the position, the trial court, in this case, if it had properly considered the estoppel per rem judicatam raised by the defendants would not have considered the evidence called by the parties as to the merits of the plaintiffs' case. The consideration necessary would have been limited to whether or not the issues in contest in the case had previously been decided between the parties or their privies by a competent court. (p. 2329 A)

REPRESENTATION

B. F. Etuk Esq., for the Plaintiffs/Appellants.

Dr. J. O. Ibik, SAN., (with him, N. C. Okonkwo Esq.), for the Defendants/ Respondents.

CASES REFERRED TO

Oluef Okparaoke v. Obidike Egbuonu & Ors. (1941) 7 WACA 53 at 55
Nkanu & Ors. v. Onum & Ors. (1977) 5 S.C

Udo v. Obot (1989) 1 S.C (Pt.1) 6; (1989) 2 NWLR (Pt. 95) 59

British India General Insurance Co. (Nil.) Ltd, v. Thawardas (1973) 3 S.C (Reprint) 102; (1978) 3 S.C. 143

Pioneer Plastics Containers Ltd, v. Commissioner of Customs & Excise (1967) Ch. 597

Hameed A. Toriola & Ors. v. Mrs. Olusola Williams (1982) 7 S.C. (Reprint) 13 at 22

Morinatu Oduka & Ors. v. Kasumu & Anor. (1968) NMLR 28

Akeredolu v. Akinremi (1986) 4 S.C. 325.1

LEAD JUDGMENT BY KUTIGI JSC

In the High Court of Akwa Ibom State holden at Eket, the plaintiffs claimed against the defendants as follows:-

“(1) A declaration that the land known as Odoro Ndiso and shown on plaintiffs' Plan is the land of the plaintiffs.

(2) N4,000.00 damages for trespass.

(3) *An injunction to restrain the defendants by themselves, their servants or agents from continuing or repeating any act of trespass on the land in dispute.”*

(See paragraph 22 of the Amended Statement of Claim which
B supersedes the Writ).

After the filing and exchange of pleadings, the case proceeded to trial. At the trial, the plaintiffs called six witnesses while the defendants called two witnesses in support of their respective cases. Counsel on both
C sides addressed the court. In a reserved judgment, the learned trial Judge entered judgment for the plaintiffs in respect of their claims for a declaration of title and perpetual injunction in respect of the piece of land known and called ODORO NDISO. The claim for damages for trespass over the land was dismissed.

D The judgment concludes on page 232(a) thus:

*“From the evidence presented in the case, I find it difficult to hold that the plaintiffs were in exclusive possession of the disputed land prior to the institution of this case. The claim for damages for trespass cannot
E therefore succeed. Placing the totality of evidence produced by the plaintiffs in this suit side by side with the total evidence produced by the defence in this case my view is that the plaintiffs have had an edge over the defendants. I will therefore exercise my discretion in favour of the
F plaintiffs and declare that the title to that piece or parcel of land known as and called “Odoro Ndiso” situate at Ikot Uso Ekong within Ikot Local Government Area is vested in the plaintiffs. The said piece or parcel of land is more particularly delineated in Plan No. ESA/548/LD drawn by E, A. Akpan, licenced surveyor, filed in this action and therein verged
G YELLOW. There will also be an injunction to restrain the defendants and their agents etc, from further interference with the said “ODORO NDISO” land.”*

Dissatisfied with the above decision, the defendants appealed to the
H Court of Appeal holden at Calabar. The most important issue which the Court of Appeal had to resolve was whether or not the plea of res judicata raised by the defendants in their pleadings and evidence was sustained. In a unanimous judgment the appeal was allowed. The judgment of the trial

High Court was set aside and in its place an order dismissing plaintiffs' claims was substituted.

The lead judgment on page 427 of the record reads:-

"On a proper evaluation of the said evidence it is crystal clear that from the pleadings and the evidence before the trial court that 1st B appellant has raised a successful plea of res judicata and I so hold. In the final result there is merit in the appeal and it ought to be allowed. I therefore allow the appeal and set aside the judgment of the High Court of Akwa Ibom State and in its place I hereby enter judgment dismissing C plaintiffs' claims."

Aggrieved by the decision of the Court of Appeal, the plaintiffs have now appealed to this court. Ten (10) Grounds of Appeal were filed from which three (3) issues for determination have been identified as follows:-

"1. Whether the lower court was right when it held that the learned D trial Judge was in error not to have upheld the plea of estoppel per rem iudicatam.

2. Whether the Court of Appeal was right in setting aside the findings of the learned trial Judge that the appellants had proved their E ownership of the land and were therefore entitled to the declaration sought.

3. Whether the Court of Appeal had fairly considered the appel- F lants' case as presented before it."

But before delving into the issues, the defendants have raised an objection to Grounds 3,4, & 8 of the Grounds of Appeal. It is contended that the grounds being grounds of mixed law and facts are incompetent because no leave of court was sought before they were filed. Issue (1) G distilled from those grounds is equally incompetent. Consequently, the court was asked to strike out the grounds as well as issue (1).

Clearly, the position is that the Court of Appeal delivered its judgment herein on 10/4/2000. The Notice of Appeal was filed within the statutory period on 30/6/2000. There were ten (10) grounds of appeal H some of which are on questions of law alone together with those on fact and mixed law and fact. When it was discovered that grounds 3, 4, 7, & 8 are grounds of mixed law and fact, an application was made to this court

to regularize the position. **On 23/5/2001**, this court granted the application for extension of time to seek leave to appeal, for leave to appeal, and for extension of time to appeal. The same ten (10) grounds of appeal were attached to the application. A fresh Notice of Appeal was then filed on 6/7/2001 which was titled “*Amended Notice of Appeal*” because the capacities of the parties which were omitted in the original Notice of Appeal were supplied in the Amended Notice of Appeal. It is clear to me that the leave granted by this court, on 23/5/2001 covers all the ten (10) grounds of appeal and not confined to grounds 3, 4, 7 & 8. The appellants were therefore, in order when they filed the entire ten (10) grounds of appeal once again. It was not required of them to have filed a separate Notice of Appeal covering grounds 3, 4, 7 & 8 only as contended by the respondents (see *Akeredolu v. Akinremi* (1986) 4 S.C. 325.1 therefore, hold that the Amended Notice of Appeal filed on 6/7/2001 is valid and proper. Accordingly, the preliminary objection is overruled.

Now, just as it was in the Court of Appeal, it is clear from the pleadings, evidence and the issues, that the most important issue to be decided in this appeal is whether or not the plea of res judicata raised by the defendants was sustained as found by the Court of Appeal. In this regard, the plaintiffs contended that the land in dispute is called UDORO NDISO which is not the same as defendants’ land called MKPAB AT ENANG. Counsel referred to paragraph 3 of the Amended Statement of Claim and paragraph 4 of the Amended Statement of Defence. It was also contended that all the previous judgments relied upon were instituted in private capacities and that there was no nexus between the plaintiffs and the persons involved in those suits. It was submitted that the defence of res judicata did not avail the defendants who failed to prove the essential ingredients of the defence to wit-

“(i) *that the subject matter in the present suit must be the same as the previous suit;*

(ii) *that the parties or their privies are the same as in the previous suit;*

(iii) *that the court that tried the matter was competent to hear it;*

and

(iv) that the decision was final.”

The following cases were cited in support:-

Ikpang & Ors. v. Edoho & Anor (1978) 6-7 S.C. (Reprint) 155;
(1978) 6-7 S.C. 221.

Udo & Ors v. Obot & Ors. (1989) 1 S.C. (Pt.I) 6; (1989) 1 SCNJ
1.

Cardaso v. Daniel & Ors (1986) 2 S.C. 481.

It was also submitted that the defence of res judicata was not raised
in the case since the defendants’ witnesses did not even know the land in
dispute. The court was urged to allow the appeal and set aside the judgment
of the Court of Appeal.

Counsel for the defendants submitted that res judicata was duly
raised in the pleadings and evidence was led therein and that it was
contested by the parties both in the trial High Court and in the Court of
Appeal that the trial court failed to do justice to the plea and therefore left
the court below with no alternative other than to determine the defence as
was done in this case. That res judicata was established, and it became
imperative to discountenance any attempt by the parties to reopen the
issues so solemnly and finally determined in the previous judgment. That
res judicata ousts both the jurisdiction of the court to entertain a reopening
of the case as well as the competency of the parties to relitigate. It was also
submitted that the plaintiffs have not succeeded in showing that the
judgment of the court below was not right and or has occasioned a
miscarriage of justice. A number of cases were cited in support including
Ikeni & Anor v. Efamo & Ors. (2001)5 S.C. ((Pt.I) 160; (2001) 10 NWLR
(Pt. 720) 1; Ndulue v. Ibezim & Ors (2002) 12 WLR (Pt. 130); Larbi v.
Kwaberia 14 WACA 299; Adomba & Ors. v. Odiese & Ors (1990) 1
NWLR (Pt. 124) 165. The court was urged to dismiss the appeal being
unmeritorious. **It is settled law that to sustain a plea of “res judicata
“ the party pleading it must satisfy the following conditions to wit -**

- (1) 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 (Reprint) 12; (1977) 5 S.C 11; Dzungwe v. Gbinshe (1985) 2 NWLR (Pt. 8) 28, and Udo v. Obot (1989) 1 S.C (Pt.1) 6; (1989) 2 NWLR (Pt. 95) 59).

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

Dealing with the plea and starting with the identity of the land in dispute, the Court of Appeal in the lead judgment on page 414 of the record said -

“In respect of the identity of the land in dispute, the plaintiffs call it Odoro Ndiso while the defendants call it Mkpabat Enang but it is settled that the true identity of the land does not depend on the names that the parties chose to call it and that the criteria for knowing the identity of the land is by ascertaining its boundaries, distinctive features and the location of the land as has been established by pleadings and credible evidence.”

The lead judgment thereafter proceeded to set out paragraph 3 of the plaintiffs’ Amended Statement of Claim and paragraph 4 of the defendants’ Amended Statement of Defence and came to conclusion thus -

“On a close examination of the averments in paragraph 3 of the Amended Statement of Claim and paragraph 4 of Defence, it clearly shows that the boundaries and description of both parties are substantially the same except the Northern boundary where in the Amended Statement of Claim, it is described as bounded by Idung Enen Ikot Uso Ekong Village land and by an arm of Ebukiba seasonal stream which flows up to Nsa Ebok which in the Amended Statement of Defence, it is said to be bounded by Ikot Odiong village.”

Paragraphs 3 and 4 of the Amended Statement of Claim and Amended Statement of Defence read as follows:-

“3. The land in dispute is known as and called Odoro Ndiso land

situate at Ikot Uso Ekong Village Eket. It is bounded as follows:- On the East by Ikot Odiong village land, on the North by Idung Enen Ikot Uso Ekong village land and by an arm of Ebukiba seasonal stream which flows up to an Nsa Ebok trees. On the West by Ebukiba seasonal stream which runs between the land in dispute and other lands of Ikot Uso Ekong village. On the South by part of Ikot Uso Ekong land as well as land of Uda Ikot Abasi.

4. Paragraph 3 of Amended Statement of Claim is denied. The 1st defendant further denies that the names of the boundaries of the land in dispute are as contained in paragraph 3 of the Statement of Claim. The defendant further avers that the land in dispute which is known as “MKPABAT ENANG” land has the following boundaries:-

- 1. On the North by the land of Ikot Odiong village.*
- 2. On the South by the land of Udo Ukot Abasi village.*
- 3. On the East by the land of Ikot Odiong village.*
- 4. On the West by Ebuk Iba Stream.*

The Ebuk Iba Stream forms a natural boundary between the land in dispute and the plaintiffs’ land.

The entire MKPABAT ENANG land which belongs to the defendant is verged pink in Plan No. ISH/911/LD dated

11th day of March, 1975 and filed with this Amended Statement of Defence.”

I have myself closely examined the Amended Statement of Claim and the Amended Statement of Defence particularly paragraphs 3 and 4 respectively and completely agree with the Court of Appeal that plaintiffs’ ODORO NDISO and defendants’ MKPABAT ENANG are substantially the same one piece of land. The identity of the land in dispute is therefore not in doubt.

The lead judgment on page 423 of the record continued thus-

“In a plea of res judicata, the only thing that a party raising the plea is obliged to do is to plead it specifically in his Statement of Defence and at the trial tender the previous judgment to show that there has been a previous litigation over the same land by the same parties or their

privies.....

In the instant case, the 1st defendant tendered Exhibits C, D and E, and particularly Exhibits F, G and H, which clearly show that there has been a previous litigation over the land in dispute between the 1st defendant and the plaintiffs.”

On page 427 of the record, the Court of Appeal concluded on the plea of res judicata thus -

“In the instant case the 1st defendant raised a plea of res judicata in paragraph 8 of the Statement of Defence and Exhibit F a judgment of Calabar High Court and Exhibit G, the plan were before the trial court and likewise Exhibit H which is a decision of the Supreme Court affirming the High Court judgment as per Exhibit F, but the learned trial Judge simply ignored those documents and the pleading.....

On a proper evaluation of the said evidence, it is crystal clear that from the pleadings and the evidence before the trial court that the 1st defendant has raised a successful plea of res judicata and I so hold.”

The court had before then dealt with the issue of previous judgment on pages 418-419 of the record where it stated -

“In paragraph 8(c) of the Amended Statement of Defence at page 140 of the record, it is averred as follows:-

“8 (c) *In 1963, the 1st defendant brought an action Suit No C/30/65 in the Calabar High Court for trespass and damages against Eno Ukit Akpan, Itiama Akpan and E. B. Okposen, the 1st plaintiff in the above suit who was substituted by one Ekaete Bassey Okposen by order of court. The defendants were sued “for themselves and others of Idung Ndo Ikot Use Ekong and the suit was in respect of the same piece of land called Mpkpaba Enang which is the subject matter in this action. In that action the defendants also called the land “Odoro Ndiso.” At the trial the defendant will rely upon the judgment and the plans tendered by the parties in that suit.”*

“The judgment in Suit No. C/30/65 was tendered in evidence as Exhibit F, and the plan is Exhibit C. It was an action in Calabar High Court in which the 1st appellant as plaintiff claimed damages for trespass and perpetual injunction against Eno Ukit Akpan , Itiama Akpan and E.

B. Okposen and the 1st appellant obtained judgment against the defendants and that judgment was affirmed by the Supreme Court as Exhibit H. The claim in Exhibit F, is in respect of “Mkpabat Enag” which the defendants in that case called “Odoro Ndiso.” The 1st plaintiff in this case E. B. Okposen who was substituted with one Ekaete Bassey Okposen was the 3rd defendant in Exhibit C. In that action, Eno Ukit Akpan, Itiama Akpan and E. B. Okposen were sued for themselves and others of Idung Ndo Ikot Use Ekong. It is clearly shown in Exhibit F that the land in dispute in the case is “Mkpabat Enag” and which the respondents call Odoro Ndiso and this is the same land in dispute in this case. As for the parties, the present 1st appellant who claimed the land as his own sued the present respondents in a representative capacity and they defended that action for themselves and on behalf of Idung Ndo Ikot Use Ekong people and this is clearly stated in the said judgment. In the present suit, it is the same Idung Ndo Ikot Use Ekong people that sued the 1st appellant for the same piece of land.”

I have carefully read through the record myself and agree entirely with the court below that the plea of res judicata relied upon by the defendants in this case was made out. The issue and subject matter in the previous Suit No. C/30/65 and the present Suit No. HEK/375 are the same.

The parties and or their privies are also the same. The judgment of the Supreme Court (Exhibit H) affirming the judgment of Calabar High Court (Exhibit F) was the final judgment in the previous suit. All the three issues submitted for resolution are all answered in the affirmative.

In the final result, there is no merit in this appeal and it ought to be dismissed.

I therefore dismiss the appeal and affirm the decision of the court below. The defendants/respondents are awarded costs of N10,000.00 against the plaintiffs/appellants.

ONUJSC

I have had the advantage of reading before now the judgment just delivered by my learned brother, Kutigi, JSC., and I agree with his reasoning and conclusion that the appeal lacks substance. It is accordingly dismissed by me and I make similar consequential orders inclusive of costs as therein awarded.

KALGOJSC

I have had the advantage of reading in draft the judgment of my learned brother, Kutigi, JSC., just delivered. I agree with the reasoning and conclusions reached therein by him. The issue of res judicata which is the central issue in controversy in this appeal was in my view properly upheld by the Court of Appeal, the trial court having failed to consider the same in its judgment. Therefore, for the reasons given in the leading judgment, I find no merit in this appeal. I accordingly, dismiss it with costs as assessed in the leading judgment.

E _____

PATS-ACHOLONUJSC

I have read the judgment of my learned and noble Lord, Kutigi, JSC., in draft and I agree with him. The appeal utterly lacks merit having nothing to commend it.

I too dismiss and abide by the consequential order in the lead judgment.

G _____

OGUNTADEJSC

The appellants were the plaintiffs at the Eket High Court of Akwa Ibom State where as the representatives of six families in Ikot Uso Ekong, they claimed against the respondents as the representatives of six families of Ikot Odiong for the following:

“(1) A declaration that the land known as Odoro Ndiso and shown on plaintiffs’ Plan is the land of the plaintiffs.

(2) *N4,000.00 damages for trespass.*

(3) *An injunction to restrain the defendants by themselves, their servants or agents from continuing or repeating any act of trespass on the land in dispute.”*

The parties filed and exchanged briefs after which the suit was tried by Nkereuwen, J. On 6-4-90, the trial Judge in his judgment entered judgment for the plaintiffs on their claims for declaration of title and perpetual injunction. The claim for damages for trespass was dismissed. The defendants were dissatisfied. They brought an appeal against the judgment before the Court of Appeal sitting at Calabar, (hereinafter referred to as the court below). On 10-4-2000, the court below in its judgment allowed the appeal. The judgment of the trial court was set aside and plaintiffs’ case dismissed. Dissatisfied, the plaintiffs have come on appeal before this court. They raised ten grounds of appeal against the judgment of the court below. The issues for determination distilled out of the ten grounds read:

“1. *Whether the lower court was right when it held that the learned trial Judge was in error not to have upheld the plea of estoppel per rem judicatam.*

2. *Whether the Court of Appeal was right in setting aside the findings of the learned trial Judge that the appellants had proved their ownership of the land and were therefore entitled to the declaration sought.*

3. *Whether the Court of Appeal had fairly considered the appellants’ case as presented before it.”*

I intend to consider together the three issues raised by the plaintiffs/appellants. The plaintiffs/appellants in paragraph 3 of their Amended Statement of Claim pleaded thus:

“3. *The land in dispute is known as and called Odoro Ndiso land situate at Ikot Uso Ekong Village Eket. It is bounded as follows:-*

On the East by Ikot Odiong village land.

On the North by Idung Enen Ikot Uso Ekong village land and by an arm of Ebukiba seasonal stream which flows up to an Nsa Ebok trees.

On the West by Ebukiba seasonal stream which runs between the

land in dispute and other lands of Ikot Uso Ekong village. On the South by part of Ikot Uso Ekong land as well as land of Uda Ikot Abasi.”

The defendants/respondents in paragraph 8 of their Amended Statement of Defence pleaded:

“8 (a) *The 1st defendant states that in 1948, one Eno Ukit Akpan from the village of the plaintiffs sued him claiming that the land ‘MKPABAT ENANG’ was pledged to the 1st defendant’s father and that he wanted to redeem the land, he lost in that action when in 1954, Eno Ukit Akpan alias Enabot Akpan trespassed into the same “MKPABAT ENANG’ land the 1st defendant brought an action in the Native Court, Eket in Suit No. 252/54 claiming title to the land called Mkpabat Enang situate at Ikot Odiong. The defendant Eno Ukit*

Akpan conceded the entire area of land claimed by the plaintiff except 4 pieces of land which he contested and lost. This suit was determined in favour of the 1st defendant. At the trial the defendant will rely on the judgment in the above suit and the plan No. EDCP 1/60 dated 9th February, 1960.

8 (b) The defendant in the Native Court Suit No. 252/54 however appealed to the Magistrate Court sitting at Uyo who reversed the judgment. The 1st defendant appealed further to the High Court, Calabar where the decision of the Eket Native Court was upheld. The judgment in the Appeal No. C/244/1961 will be founded upon at the trial. The defendant avers that it is the same piece or parcel of land that is the subject matter of the present suit.

8 (c) In 1965 the 1st defendant brought an action Suit No C/30/65 in the Calabar High Court for trespass and damages against Eno Ukit Akpan, Itiama Akpan and E. B. Okposen, the 1st plaintiff in the above suit who was substituted by one Ekaete Bassey Okposen by order of court. The defendants were sued ‘for themselves and others of Idung Ndo Ikot Use Ekong’ and the suit was in respect of the same piece of land called Mkpabat Enang which is the subject matter in this action. In that action the defendants also called the land “Odoro Ndiso.” At the trial the defendants will rely upon the judgment and the plans tendered by the

parties in that suit.

8 (d) After the judgment of the Calabar High Court which the court awarded N300.00 damages with N200.00 cost and also imposed injunction restraining the defendants from entering the land, the defendants in the said Suit No. C/30/65 appealed to the Supreme Court against the judgment. The Supreme Court however dismissed the appeal with N200.00 costs. The defendant will at the trial found upon the judgment of the Supreme Court Appeal No. SC. 182/1976.” B

It is apparent that whilst the plaintiffs pleaded that the land in dispute was known as and called ‘Odoro Ndiso’, it was the defendants’ case that the land was known as and called ‘MKPABAT ENANG’. Apart from this, the defendant went further to plead estoppel per rem judicatam. It was pleaded by them that the land which the plaintiffs identified as ‘ODORO NDISO’ had been the subject-matter of a suit fought between both parties. D The judgments that formed the basis of the plea were also pleaded.

At the trial, the plaintiffs called six witnesses. The defendants ailed two. The trial court in its judgment at page 232A of the record concluded in these words: E

”From the evidence presented in the case, I find it difficult to hold that the plaintiffs were in exclusive possession of the disputed land prior to the institution of this case. The claim for damages for trespass cannot therefore succeed. Placing the totality of evidence produced by the plaintiffs in this suit side by side with the total evidence produced by the defence in this case my view is that the plaintiffs have had an edge over the defendants. I will therefore exercise my discretion in favour of the plaintiffs and declare that the title to that piece or parcel of land known as and called ‘Odoro Ndiso’ situate at Ikot Uso Ekong within Eket Local Government Area is vested in the plaintiffs. The said piece or parcel of land is more particularly delineated in Plan No. ES A/548 LD drawn by E. A. Akpan, licensed surveyor, filed in this action and therein verged YELLOW. There will also be an injunction to restrain the defendants and their agents etc., from further interference with the said ‘ODORO NDISO’ land.” F G H

In reacting to the plea of estoppel per rem judicatam raised by the

defendants, the trial Judge said at pages 229-231 of the record:

“Any party who is desirous of setting up ‘res judicata’ by way of estoppel, whether he is relying on such res judicata as a bar to his opponent’s claim or as the foundation of his own, must establish each and

B every of the following unless it has been:-

(1) that the alleged judicial decision was what in law is deemed such;

(2) the particular judicial decision relied upon was in fact pronounced;

C (3) that the judicial tribunal pronouncing the decision had competent jurisdiction in that behalf;

(4) that the judicial decision was final;

D (5) that the judicial decision was, or involved, a determination of the same question as that sought to be controverted in the litigation in which the estoppel is raised;

(6) that 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 or that the decision was conclusive in rem.

E Above conditions are to be found in George Spencer Bower on the ‘Doctrine of Res Judicata’ 1924 Edition at paragraph 13, page 8. See also the case of Attah v. Attah VI ERNLR page 1.

F It must be remembered that the genesis of this case was the Native Court Suit No. 252/54. And in the District Officers Review - the D. O. stated inter alia on his observation thus:

‘I have no hesitation in setting aside the judgment of the Native Court and awarding title of the four pieces disputed to the plaintiff. The remaining area will be subject to fresh litigation if disputed

G It follows then that the decision of the District Officer was not final even assuming that ‘Mkpabat Enang’ land was one and the same piece of land as ‘Odoro Ndiso’ which the plaintiffs in this present action are claiming.

H In this connection the case of Babatunde Ayinde v. Labisi and Ors. (1970) 1 All NLR p. 168 is in point where the Supreme Court held that on proper appraisal of the evidence there was no proof that the land in dispute in that case was the same as, or forms part of the land in dispute in the

previous suit. The High Court was therefore, right in coming to conclusion that the plea of res judicata could not be sustained. If the defendants stuck to their ground that ‘Mkpabat Enag’ and ‘Odoro Ndiso’ is one and the same piece of land, one would have held that the plaintiffs were estopped per rem judicatam from bringing the claim before the court. But as it has been pointed out before the defendants at least the 1st defendant and his lone witness denied the existence of ‘Odoro Ndiso’ land and it was not until pressed very hard under cross-examination that they the 1st defendant and his witness admitted that ‘Odoro Ndiso’ land infact exists. Therefore, whatever evidence the plaintiffs and their witnesses gave at the hearing of the case was in respect of ‘Odoro Ndiso’ land and their evidence does not touch and concern ‘Mkpabat Enag’ land which the 1st defendant claimed it was given to him in the previous suit.”

The above passage from the judgment of the trial court shows that the reason why the trial Judge did not hearken to the plea of estoppel raised by the defendants was that the defendants did not show that ‘Odoro Ndiso’ land and ‘Mkpabat Enang’ land were the same. Further, the trial Judge felt that the decision of the District Officer was not final even if it was assumed that ‘Odoro Ndiso’ and ‘Mkpabat Enang’ were different descriptions of the same piece of land in dispute.

The court below in its judgment after a comparison of the averments in parties’ pleadings said:

“On a close examination of the averments in paragraph 3 of his Amended Statement of Claim and paragraph 4 of the Amended Statement of Defence, it clearly shows that the boundaries description of both parties are substantially the same except the northern boundary, where in the Amended Statement of Claim it is described as bounded by Idling Enen Ikot Uso Ekong village land and by an arm of Ebukiba seasonal stream which flows up to Nsa Ebok trees which in the Amended Statement of Defence, it is said to be bounded by Ikot Odiong village.”

In reacting to the assertion of the trial Judge that the decision of a District Officer was not final, the court below said:

“In the case under reference the District Officer is vested with judicial powers to review the judgments of the Native Court at the instance

of an aggrieved party and to affirm or disaffirm or alter the verdict as it seems fit and the District Officer after reviewing the case held as follows:-

‘I have no hesitation in setting aside the judgment of the Native Court and awarding title of the four pieces of land in dispute to the B plaintiff.....’

has finally disposed of the rights of the parties and has left nothing to be further referred to that tribunal on the matter between the parties and it is for all intents and purposes a final judgment.’

C And in concluding its judgment, the court below said:

“On a proper evaluation of the said evidence, it is crystal clear that from the pleadings and evidence before the trial court that the 1st appellant has raised a successful plea of *res judicata* and I so hold.”

D It is seen that the court below allowed the appeal against the judgment of the trial court solely on the ground that the plea of estoppel per rem judicatam raised by the respondents succeeded. In coming to this conclusion the court below considered the pleadings of the parties with respect to the description of the land in dispute. It then held that ‘Odoro E Ndiso’ land as described by the plaintiffs was the same as Mkpabat Enang land as described by the defendants. The court below also held that the judgment of the District Officer was final. I think that the conclusions of the court below on both points were sound and unassailable. I think that F in the evaluation of the evidence called by the parties on whether or not ‘Odoro Ndiso’ and ‘Mkpabat Enang’ were description of the same land, the trial Judge had been too much concerned with minor inconsistencies in the evidence of the defence witnesses.

G Paragraphs 3 of the Amended Statement of Claim and 4 of the Amended Statement of Defence would appear to have converged on the identification of the land in dispute if one adverts one’s mind to the descriptions of the land in dispute as given by the parties. In effect, parties were ad idem more or less on the land in dispute between them. It is now H a well established principle of pleadings that there is no issue between parties in respect of matters expressly admitted on the pleading and therefore no evidence is admissible in reference to those matters. See *Oluef Okparaoke v. Obidike Egbuonu & Ors.* (1941) 7 WACA 53 at 55: British

India General Insurance Co. (Nil.) Ltd, v. Thawardas (1973) 3 S.C (Reprint) 102; (1978) 3 S.C. 143 and Pioneer Plastics Containers Ltd. v. Commissioner of Customs & Excise (1967) Ch. 597.’

What is the consequence of a successful plea of estoppel per rem Judicatam in a civil dispute? Estoppel per rem judicatam is a rule of evidence whereby a party (or his privy) is precluded from disputing in any subsequent proceedings, matters which had been adjudicated upon previously by a competent court between him (or his privy) and his opponent. See Hameed A. Toriola & Ors. v. Mrs. Olusola Williams (1982) 7 S.C. (Reprint) 13 at 22 and Morinatu Oduka & Ors. v. Kasumu & Anor. (1968) NMLR 28. A party raising a plea of estoppel per rem judicatam is in fact urging the court before which it is raised not to consider the issues in the case anew, the issues having been previously adjudicated upon by a competent court. That being the position, the trial court, in this case, if it had properly considered the estoppel per rem judicatam raised by the defendants would not have considered the evidence called by the parties as to the merits of the plaintiffs’ case. The consideration necessary would have been limited to whether or not the issues in contest in the case had previously been decided between the parties or their privies by a competent court. I have made this point in answer to the appellants’ 2nd and 3rd issues, which are an invitation to us to consider the merits of the case made by parties on the issues. Once the plea of estoppel per rem judicatam was upheld by the court below, all the evidence called by parties as to the merits of plaintiffs’ case became irrelevant.

It is for the above and more elaborate reasons in the lead judgment of my learned brother, Kutigi, JSC., that I would also dismiss this appeal. I subscribe to the order on costs made in the lead judgment.