

SUPREME COURT OF NIGERIA

7TH OCTOBER, 2005. SC. 90/2001

**CORAM:- A. I. KATSINA-ALU, U. A. KALGO, A. O.
EJIWUNMI, D. O. EDOZIE, G. A. OGUNTADE, JJSC**

OWUNARI LONG-JOHN 1ST SET OF DEFENDANTS/
APPELLANTS

AND

1. CHIEF TEDD IBOROMA 2ND SET DEFENDANTS/
2. CHIEF WELLINGTON LONG- APPELLANTS
JOHN IBOROMA

AND

1. CHIEF CRAWFORD N. BLAKK
2. MR. APPOLOS N. BLAKK PLAINTIFFS/
3. MR. LAWRENCE WILLIAMS RESPONDENTS

{For themselves and as representing
Dokuboye Ekine, Orubioye Akpana and
Pokiaye Fubara Compound of Fouchee}

ESTOPPEL - Res judicata - Will succeed - Where the previous action and present action - Are between same parties, same claim, same subject matter - And pronouncement is made - By a court of competent jurisdiction (H1)

COURTS - Actions - Estoppel per rem judicatam - Failure of - Will lead to court holding - That exhibits tendered in proof of the plea - Are irrelevant (H2)

EVIDENCE - Estoppel - Previous Judgment - Where a party relies on previous judgment - As creating estoppel - He must show - That the parties, subject matter and issues are the same (H3)

FACTS

Before the Port-Harcourt High Court, the plaintiffs/respondents

instituted an action against the defendants/appellants and made the following claims: (a) A declaration that the plaintiffs are entitled to the customary right of occupancy of the land in dispute (b) N400 damages for trespass (c) An injunction restraining the defendants from further acts of trespass. The plaintiffs claimed that their ancestor, one Dokuboye Ekine and his chiefs settled temporally on a site granted them by Chief Willy Braide (Igbaniibo). One Iboroma came to join them on the site.

Following a disagreement as to the shrines to be worshipped by the groups, the plaintiffs ancestor later migrated to South Bakana where he finally settled with his Chiefs. The plaintiffs' ancestor was in possession of the land and exercised thereon various acts of ownership. They granted a portion of the land for a church building. The defendants later broke into the land and began to erect buildings. In reaction the plaintiffs commenced this suit. The trial Court held that the exhibits submitted by the defendants are inadmissible. The defendants' appeal to the Court of Appeal also failed. They have further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(i) Did the Court of Appeal right (sic) when it failed to rule on the propriety of the order of the trial judge expunging exhibits 2, 3 and D2 from the record in his judgment?”

“(ii) Whether it was proper for the learned trial Justices of the Court of Appeal to hold that exhibit 2 ought not to have been admitted for its irrelevance?”

“(iii) Is the judgment against the weight of evidence?”

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

When res judicata will succeed

1. I think, with respect to appellants' counsel, on the two issues raised and argued that he clearly failed to take cognisance of the fact that the issues in question, were lucidly discussed in the judgment of the court below. The trial judge had said concerning exhibits D2, and 2 that the parties concerned in the judgment in suit No. P/3/57 were not shown to be the same as in the current case. The trial judge discussed the principles of law governing the applicability of estoppel per rem judicatam. At page 231 of

record of proceedings, the trial judge said:

“It is trite law that before a plea of *res judicata* can succeed, the previous action sought to be pleaded and the present action must be between the same parties, the subject-matter must be the same, the claim must be the same and the court which pronounced the judgment must be a court of competent jurisdiction.

Now, it is necessary preliminarily to expose the relationship between exhibits D2, 2 and 3. This will assist an appreciation of the treatment I shall accord to appellants’ issue No. 2 in respect of exhibit 2. Exhibit D2 is the record of proceedings and judgment in suit No. P/3/1957 between Chief Taylor John Iboroma & Ors. against Chief Samuel W. Braide & Ors. On 6th August, 1962, Idigbe J. (as he then was) dismissed the case brought by the plaintiffs. Dissatisfied, the plaintiffs brought an appeal against the judgment by Idigbe J. On 24-4-64, the Federal Supreme Court vide Exhibit 2 dismissed the appeal. Exhibit 3 is the plan of the land in dispute in the case. Clearly, it is seen that exhibits D2, 2 and 3 about which the appellants have complained in this appeal all emanated from the same suit.

The trial judge having held that the subject-matter of suit No. P/3/1957 and the parties were not the same as in the current case should not have used exhibit 3 which emanated from the same suit No. P/3/1957 as evidence in the current suit. (pp. 2658 G/ 2660 A)

Estoppel per rem judicatam - Failure of

2. The appellants have not asked this court to determine whether or not the court below was correct in upholding the finding by the trial court that exhibits D2, and 2 could not found estoppel per rem judicatam. Rather, the complaint of the appellants is that the court below had not considered the issue submitted to it that the trial court improperly held that exhibits D2 and 2 were inadmissible.

A close perusal of the judgment of the court below shows that the complaint of the appellants is unfounded. At pages 334 to 338 of the judgment of the court below, the question whether or not exhibits D2 and 2 were admissible was extensively discussed. The court below at the end

of the exercise concluded in these words:

“Apart from the Higher Registrar who tendered Exhibit 2, there was no reference to it by any witness. There was equally no evidence tending to show that that judgment in that appeal from Suit No. P/3/57 is connected to the case now being agitated. I find it difficult to ascertain or fathom why that case was even mentioned in the court below as no nexus was established between it and the present case. There was no evidence to show that for example the Respondents were party to that action. Indeed P.W.1 had testified that they were not party to that action. I am therefore unable to see why the judgment was admitted in the first place on the part of the Plaintiffs. The Appellants submitted that those documents ought not to have been described as irrelevant and therefore discarded by the lower Court.”

And at page 338, the court below said:

“From the facts of this case it would have been apostasy in the administration of justice to state that the Court below should have treated the matter as Estoppel Res Judicata. It is a skewed argument as the Appellants sought to show that the parties in the earlier suit who represented their respective communities are included in this action. The court below acted correctly in excluding those exhibits.”

It seems to me that since the parties failed woefully to establish estoppel per rem judicatum premised on exhibits D2, 2 and 3, both courts below were right to hold that the said exhibits were irrelevant.
(p. 2660 D)

EVIDENCE - Estoppel - Previous Judgment

3. A party to a dispute who relies on a previous judgment of a court as creating estoppel per rem judicatum must show that (1) the parties in the two cases were the same (2) the subject matter was the same and (3) that the issues being litigated upon were the same. See Ekpeke v. Usilo [1978] 6-7 SC 187; Fadiora v. Gbadebo [1978] 3 SC 219.

In the final conclusion this appeal fails and is dismissed.
(p. 2661 F)

REPRESENTATION

Uche Nwokedi Esq. (C. A. Chuks-Nnadi esq. with him) for the appellants.

Emeka Ofodile Esq. (Nnena Ofodile (Miss) with him) for the respondents.

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CASES REFERRED TO

Nkanu v. Onun (1977) 5 S. C. 13 at PP.27-28

Nwaneri vs. Oriuwa & ors. (1959) 4 F.S.C. 132

William Ude & Ors. v. Joseph Agu & Ors. (1961) 1 All N.L.R. 65

Ekpeke v. Usilo [1978] 6-7 SC 187

Fadiora v. Gbadebo [1978] 3SC 219

Ntiaro v. Akpan 3 N.L.R. 10

Lawal v. Dawodu (1972) 1 ALL N.L.R. 707

Lengbe v. Imale (1959) W.N.L.R. 323

Anaeze v. Anyaso (1993) 5 N.W.L.R. (PT.291) 1

Okonjo v. Njokanma (1991) 7 N.W.L.R. (pt.202)

Jamgbedi v. Jamgbedi (1963) N.S.C.C. 2811 at 1282

Ojogbue & Ors v. Ajie Nnubia & Ors (1972) 1 ALL N.L.R. (pt.2) 226 at 232

Chief G.A. Titiloye & Ors v. Chief Omoniyi Olupo & Ors (1971) 7 N.W.L.R. (pt. 205) 519 at 529

Chief Pro & Ors v. Joseph Fadade & Ors (195) 5 N.W.L.R. (pt. 369) 385 at 408

Ezekiel Adedayo v. Alhaji Yakubu Abimbola (1995) 7 N.W.L.R. (pt.408) 383

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LEAD JUDGMENT BY OGUNTADE JSC

The respondents were the plaintiffs before the Port-Harcourt High Court where they claimed against the 1st set of appellants as the defendants for:

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“1. A declaration that the plaintiffs are entitled to the customary right of occupancy according to Kalahari native law and custom to all the piece or parcel of land known and called Fubara Polo, Akpana Polo and

Dokubo-Ekine Polo land situate at Fouchee Bakana-Delga.

2. *N400.00 damages for trespass.*

3. *Injunction restraining the defendants by themselves, their agents and or servants from committing further acts of trespass thereon."*

B The respondents brought the suit as the representatives of Dokuboye Ekine, Orubioyo Akapana and Pokiye Fubara families of Efoko Bakana. The 2nd set of appellants who are the representatives of the IBOROMA Family were on their own application later joined to the suit and were described as the 2nd set of defendants.

C The parties filed and exchanged pleadings after which the suit was heard by Opene J. (as he then was). On 14-07-86, Opene J. in a reserved judgment granted the claims by the plaintiffs now respondents.

The two sets of defendants were dissatisfied with the judgment.
D They brought an appeal against it before the Court of Appeal, Port-Harcourt Division (hereinafter referred to as the 'court below'). On 7-12-2000, the court below in its judgment dismissed the appeal and affirmed the judgment of the trial court. Still dissatisfied, the two sets of defendants
E have come on a further appeal to this Court. In their appellants' brief, the issues for determination in the appeal were formulated thus:

"(i) *Did the Court of Appeal right (sic) when it failed to rule on the propriety of the order of the trial judge expunging exhibits 2, 3 and D2 from the record in his judgment?*

F (ii) *Whether it was proper for the learned trial Justices of the Court of Appeal to hold that exhibit 2 ought not to have been admitted for its irrelevance?*

G (iii) *Is the judgment against the weight of evidence?"*

The respondents in their brief also formulated three issues for determination, which said issues are in substance similar to the appellants' issues. The respondents raised a preliminary objection to the 3rd ground of appeal from which the appellant distilled the 3rd issue for determination
H reproduced above. The substance of the objection is that the said ground of appeal, being one of fact or mixed law and fact could not be validly raised without the leave of the court below or this Court being first sought and obtained pursuant to Section 213 (3) of the Constitution of the Federal

Republic of Nigeria, 1999.

When the appeal came before us on 12-07-05, Uche Nwodedi Esq., of counsel for the appellants conceded the objection. He thus agreed that the appellants had not first obtained the leave of the court below or this Court before raising the 3rd ground of appeal. This leaves this Court with no other option than to strike out appellants' 3rd ground of appeal and the 3rd issue for determination distilled from it. These are accordingly struck out.

The two issues surviving could be conveniently taken together. It is necessary that I examine briefly the relevant facts leading to the dispute out of which this appeal arose as put across by the parties in their respective pleadings. The plaintiffs based the title, which they asserted by their claim on traditional history. They pleaded that their great ancestor was one Dokuboye Ekine, the paramount chief of Fouchee. It was stated that Dokuboye Ekine and his chiefs first settled on a temporary site granted them by Chief Willy-Braide (Igbanibo). One Iboroma, came to join him and his chiefs on the site. Following a disagreement as to the shrines to be worshipped by the groups at the temporary site, plaintiff ancestor later migrated south of Bakana where he finally settled with his chiefs. The plaintiffs ancestor was in possession of the land exercising thereon various acts of ownership. His descendants have since remained thereon. They granted a portion of the land for a church building to St. John's Christ Army Church. It was pleaded that in February 1973, the 1st set of defendants with the support and encouragement of the 2nd set of the defendants broke into the land and began the erection of buildings thereon. In reaction, the plaintiffs brought the suit.

The 1st set of defendants in their amended statement of defence denied most of the averments pleaded by the plaintiffs. It was pleaded that the Iboroma family of the 2nd set of defendants in February, 1973 granted to the 1st set of defendants the land in dispute. The defendants claimed that they and not the plaintiffs granted the land on which St. John's Christ Army Church, Bakana stood to the church.

At the trial, the plaintiffs called 6 witnesses whilst the defendants called five. Some documentary exhibits were tendered. These include the

following: .

1. Exhibit D2 being the High Court proceedings and judgment in suit No. P/3/1957 between Chief Taylor John Iboroma & Ors. And Chief W. Braide & Ors.

B 2. Exhibit 2, a judgment of the Supreme Court in FSC 20/60 between Chief Taylor John Iboroma & Ors. and Chief Samuel W. Braide & Ors.

3. Exhibit 3, a plan of land in dispute in Suit No. P/3/57 between Chief Taylor J. Iboroma & 3 Ors. of Bakana and Chief Samuel W. Braide & Ors. of Bakana.

C Appellants' counsel has argued in his written brief that the court below failed to make a decision on an issue raised before it which challenged the propriety of the order made by the trial judge expunging D Exhibits D2, 2 and 3 from the record of proceedings in his judgment. Counsel also raised issue as to the correctness of the conclusion of the court below that Exhibit 2, being irrelevant evidence ought not have been admitted. Counsel submitted that it was a serious error for a court to have E failed to consider an issue submitted to it for adjudication. Counsel relied on Okonjo v. Njokanma [1991] 7 N.W.L.R. (Part 202); Jamgbedi v. Jamgbedi [1963] NSCC 281 Iat I 282; Ojogbue & Ors. v. Ajie Nnubia & Ors. [1972] 1 All NLR (Part 2) 226 at 232; Chief G. A. Titiloye & Ors. v. F Chief Omoniyi Olupo & Ors. [1971] 7 NWLR (Part 205) 519 at 529 and Chief Oro & Ors. v. Joseph Fadade & Ors. [1995] 5 NWLR (Part 369) 385 at 408.

The respondents' counsel in his brief did not stoutly meet the appellants' counsel's argument on the point as might have been expected.

G **I think, with respect to appellants' counsel, on the two issues raised and argued that he clearly failed to take cognisance of the fact that the issues in question, were lucidly discussed in the judgment of the court below. The trial judge had said concerning exhibits D2,**
H **and 2 that the parties concerned in the judgment in suit No. P/3/57 were not shown to be the same as in the current case. The trial judge discussed the principles of law governing the applicability of estoppel per rem judicatam. At page 231 of record of proceedings, the trial**

judge said:

“It is trite law that before a plea of res judicata can succeed, the previous action sought to be pleaded and the present action must be between the same parties, the subject-matter must be the same, the claim must be the same and the court which pronounced the judgment must be a court of competent jurisdiction. B

In Nkanu v. Onun (1977) 5 S. C. 13 at PP.27-28, Udo Udoma JSC observed as follows:-

‘It is worthy of note also that the learned trial judge in considering the issue of Res Judicata cited and relied on Ihenacho Nwaneri vs. Oriuwa & ors. (1959) 4 F.S.C. 132 and WILLIAM UDE & ORS. VS. JOSEPH AGU & ORS. (1961) 1 All N.L.R. 65 and, in our view, properly directed his mind to the principle involved when he said: C

‘For a defence or plea of Res Judicata to succeed, the parties in the previous action which is pleaded in the present one must be the same, the subject matter must be the same, the claim must be the same and the court which pronounced the judgment must be a court of competent jurisdiction.’” D

With respect to Exhibit 3, the trial judge at page 233 observed: E

“This has also been clearly shown in the plan Exh. “3” and from the parties pleadings and the evidence adduced before me, there is no doubt about it that the land - Ifoko Polo Kiri or Camp settlement litigated upon is quite different from the land in dispute in the present case which is situated at Ifoko village where the plaintiffs and the defendants now live. In respect of the parties to that case, Chief Taylor John Iboroma, Dick Benson Iboroma, Philip Loand I. Iboroma and Festus O. Long John Iboroma represented Iboroma family as the plaintiffs and Chief Samuel Will Braide, Chief Wells O. Yellowe, Chief Ebebezer M. Braide and Chief Ogi B. Pedro represented other houses of Bakana.” F

And finally at page 236 of the record the trial judge said: G

“The court proceedings in Exh. “D2” is very irrelevant to the present case. Besides the fact that the plaintiffs are not a party to that case, the evidence of a witness in a previous proceeding can only be used to contradict that witness in another trial and nothing more.” H

Now, it is necessary preliminarily to expose the relationship between exhibits D2, 2 and 3. This will assist an appreciation of the treatment I shall accord to appellants' issue No. 2 in respect of exhibit 2. Exhibit D2 is the record of proceedings and judgment in suit No. P/3/1957 between Chief Taylor John Iboroma & Ors. against Chief Samuel W. Braide & Ors. On 6th August, 1962, Idigbe J. (as he then was) dismissed the case brought by the plaintiffs. Dissatisfied, the plaintiffs brought an appeal against the judgment by Idigbe J. On 24-4-64, the Federal Supreme Court vide Exhibit 2 dismissed the appeal. Exhibit 3 is the plan of the land in dispute in the case. Clearly, it is seen that exhibits D2, 2 and 3 about which the appellants have complained in this appeal all emanated from the same suit.

The trial judge having held that the subject-matter of suit No. P/3/1957 and the parties were not the same as in the current case should not have used exhibit 3 which emanated from the same suit No. P/3/1957 as evidence in the current suit.

The appellants have not asked this court to determine whether or not the court below was correct in upholding the finding by the trial court that exhibits D2, and 2 could not found estoppel per rem judicatam. Rather, the complaint of the appellants is that the court below had not considered the issue submitted to it that the trial court improperly held that exhibits D2 and 2 were inadmissible.

A close perusal of the judgment of the court below shows that the complaint of the appellants is unfounded. At pages 334 to 338 of the judgment of the court below, the question whether or not exhibits D2 and 2 were admissible was extensively discussed. The court below at the end of the exercise concluded in these words:

"Apart from the Higher Registrar who tendered Exhibit 2, there was no reference to it by any witness. There was equally no evidence tending to show that that judgment in that appeal from Suit No. P/3/57 is connected to the case now being agitated. I find it difficult to ascertain or fathom why that case was even mentioned in the court below as no nexus was established between it and the present case. There was no evidence to show that for example the Respondents were party to that

action. Indeed P.W.I had testified that they were not party to that action. I am therefore unable to see why the judgment was admitted in the first place on the part of the Plaintiffs. The Appellants submitted that those documents ought not to have been described as irrelevant and therefore discarded by the lower Court.”

B

and at page 338, the court below said:

“From the facts of this case it would have been apostasy in the administration of justice to state that the Court below should have treated the matter as Estoppel Res Judicata. It is a skewed argument as the Appellants sought to show that the parties in the earlier suit who represented their respective communities are included in this action. The court below acted correctly in excluding those exhibits.”

C

It seems to me that since the parties failed woefully to establish estoppel per rem judicatam premised on exhibits D2, 2 and 3, both courts below were right to hold that the said exhibits were irrelevant. Section 54 of the Evidence Act provides:

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“54. Every judgment is conclusive proof, as against parties and privies, of facts directly in issue in the case, actually decided by the court, and appearing from the judgment itself to be the ground on which it was based; unless evidence was admitted in the action in which the judgment was delivered which is excluded in the action in which that judgment is intended to be proved.”

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A party to a dispute who relies on a previous judgment of a court as creating estoppel per rem judicatam must show that (1) the parties in the two cases were the same (2) the subject matter was the same and (3) that the issues being litigated upon were the same. See *Ekpeke v. Usilo* [1978] 6-7 SC 187; *Fadiora v. Gbadebo* [1978] 3 SC 219.

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In the final conclusion this appeal fails and is dismissed. There will be N10,000.00 costs in favour of the plaintiffs/respondents against the appellants.

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KATSINA-ALUJSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Oguntade JSC. I agree completely with it. It is clear as day that the appellants failed woefully to establish estoppel per rem
B judicatum founded on exhibits D2, 2 and 3. Both courts below, in my judgment, were right to hold that exhibits D2, 2 and 3 were irrelevant. It is crystal clear that there is no nexus between the earlier case and the present case.

C In the circumstances, I also dismiss the appeal with N10,000.00 costs in favour of the plaintiffs/respondents.

KALGO JSC

D I have read in advance the judgment just delivered by my learned brother Oguntade JSC in this appeal. He has in my respectful view, dealt fully with the issues raised in the appeal by the appellant and I entirely agree. I adopt the reasoning and conclusions reached in the said judgment
E and I also dismiss the appeal with N10,000.00 costs in favour of the respondents.

EJIWUNMIJSC

F I was privileged to have read before now the draft of the judgment just delivered by my learned brother, Oguntade JSC. In that judgment, the issues raised in the appeal have been properly considered in the light of the facts and the law thereon. It is manifest that this appeal is a further appeal
G from the concurrent judgments of the Court below and the Trial Court. Therefore, as it is settled law that where an appeal to this Court proceeds from such concurrent judgment, the appellant has to show that the Courts below were clearly wrong in law or in the application of the law to the
H admitted facts to justify the intervention of this Court. It is only where exceptional circumstances are shown for doing so that the finding will be tampered with. See Ntiaro v. Akpan 3 N.L.R. 10; Lawal v. Dawodu (1972) 1 ALL N.L.R. 707; Lengbe v. Imale (1959) W.N.L.R. 323; Anaeze v.

Anyaso (1993) 5 N.W.L.R. (Pt.291) 1.

In this appeal, the appellants questioned the failure of the Court below to rule on whether the trial Court was right to have expunged Exhibits 2, 3 and D2 from the Records in the course of his judgment. In support of his submission, learned counsel for the appellant cited the following cases: Okonjo v. Njokanma (1991) 7 N.W.L.R. (pt.202); Jamgbedi v. Jamgbedi (1963) N.S.C.C. 2811 at 1282; Ojogbue & Ors v. Ajie Nnubia & Ors (1972) 1 ALL N.L.R. (pt.2) 226 at 232; Chief G.A. Titiloye & Ors v. Chief Omoniyi Olupo & Ors (1971) 7 N.W.L.R. (pt. 205) 519 at 529 and Chief Oro & Ors v. Joseph Fadade & Ors (195) 5 N.W.L.R. (pt. 369) 385 at 408.

Now, while all these authorities go to show that where it is a fatal error for a Court to wrongly advert to the germane facts and documents placed before it, it is evident that that proposition does not apply in the case in hand. It is manifest that the learned trial judge faced with Exhibits D2 and 2 duly examined them as to the parties in the judgment in Suit No. P/3/57 and concluded that it was not shown that they were the same as the parties in the case before him. In coming to that conclusion, the learned trial judge said thus: -

“It is trite law that before a plea of res judicata can succeed the previous action sought to be pleaded and the present action must be between the same parties, the subject-matter must be the same, the claim must be the same and the court which pronounced the judgment must be a court of competent jurisdiction.”

On Exhibit 3, the learned trial judge had this to say at pages 233 of the Record: -

“This has also been clearly shown in the plan Exh “3” and from the parties pleadings and the evidence adduced before me, there is no doubt about it that the land - Ifoko Polo Kiri or Camp settlement litigated upon is quite different from the land in dispute in the present case which is situated at Ifoko village where the plaintiffs and the defendants now live. In respect of the parties to that case, Chief Taylor John Iboroma, Dick Benson Iboroma, Philip Loand Iboroma and Festus O. Long-John Iboroma represented Iboroma Family as the plaintiffs and Chief Samuel

Will Braide, Chief Wells O. Yellowe, Chief Ebenezer M. Braide and Chief Ogi B. Pedro represented other houses of Bakana.”

And at page 234, said: -

“The defendants in their pleadings and evidence stated that the plaintiffs are members of Dokuboye Ekine, Orubioye Akpana and Pokiye Fubara families of Ifoko compound in Bakana and that they do not live in a separate town called Ifoko. Exh “3” shows that Ifoko village is cut off from Bakana village by the Camp settlement and Bakana communal land. The defendants’ plan Exh. “D” showed the defendants’ land and also the plaintiffs’ land; it did not show the whole of Bakana and the part of it that the defendants and plaintiffs compounds are located. This is very important because defendants have pleaded and also gave evidence that the two are compounds in Bakana and it is for them to show where the two compounds are located in Bakana.”

It is my view that the Court below rightly concluded that the appellants failed to establish that they were privies to the cases decided as per Exhibits D2, 2 and 3 and the Courts below were right to have discountenanced them in the determination of the case. See Ezekiel Adedayo v. Alhaji Yakubu Abimbola (1995) 7 N.W.L.R. (pt.408) 383.

It follows that as the appellants failed to show any exceptional circumstances nor indeed failed show any error in the judgments of the Court below in dismissing their case, their appeal must-be; dismissed for the above reasons and the fuller reasons given in the leading judgment of my learned brother, Oguntade JSC. This appeal is also dismissed by me with costs in the sum of N10,000.00 in favour of the respondents in this appeal.

EDOZIE JSC

The leading judgment of my learned brother, Oguntade JSC was made available to me before now. For the reasons lucidly set out therein, I agree that the appeal lacks substance and is accordingly dismissed with costs to the respondents as made in the leading judgment.